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## WHAT'S IN A NAME

### EMPLOYEE, MANAGER, OR INDEPENDENT CONTRACTOR?

*By Stephen Portman*  
Finding out what your rights are at work can be a complicated process in today's precarious workplace. The *BC Employment Standards Act* (the *Act*) sets out protections for employees, but employers sometimes use exemptions, built into the law, to deprive workers of the wages they are entitled to.

Your legal rights as a worker often depend on the nature of the work you do and how your job is defined. Managers have fewer

protections under the *Act* than employees, and independent contractors have no protections under the *Act* at all. But a job title like "manager" and even a signed contract that states that you are an "independent contractor" are not always enough to exempt you from your legal rights as a worker. To be sure you are paid every nickel and dime you earn, it is important to know how the law works.

The *BC Employment Standards Act* applies to employees regardless of whether they are employed on a part-

time, full-time, temporary or permanent basis. An "employee" is a person receiving or entitled to receive wages for work, and includes people being trained by an employer for the employer's business, as well as people who are on leave from their work, and those who are not currently working at their job but who can be recalled to their job.

#### Employee or Manager?

Managers do receive some protections under the *Act* but are exempt from rules governing hours of work, overtime and statutory holidays

*(See Employee, page 4)*

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## NEW ID CLINICS THIS FALL

*By Doug King*

TAPS is once again partnering with Pro Bono Students Canada, the office of MLA Carole James, the Greater Victoria Public Library, and Our Place Society for another year of identification clinics.

Last year the clinics helped over 250 people with applications for their primary and secondary ID documents,

and we were still not able to meet the demand. The clinics have been renewed



for a second year, now with resources for a third pro bono student to help carry the load.

Losing ID can have a profound impact on a person's life, especially if that person is trying to access banking services, health care, housing, or provincial benefits. A lack of primary ID can be a significant barrier, and sadly we have seen far too many people threatened with a loss of housing or benefits as a result of having inadequate or no ID.

Over the course of our first year of clinics, we learned how to most effectively submit applications for ID. BC Vital Statistics agreed to waive fees for applications if clients provided additional paperwork. We also made connections with workers at Cool Aid who could support people who needed guarantors for their applications.

### UPCOMING ID CLINICS

Lost all your ID? Can't afford to replace it? These free ID clinics can help.

You must register first, which you can do at the clinic location at 9 am on the day of the clinic. Clinics run from 10 am to 1 pm. First come, first served.

- November 9—Greater Victoria Public Library (GVPL), Downtown Branch
- November 23—Our Place (919 Pandora)
- January 11—GVPL
- January 25—Our Place
- February 8—GVPL
- March 1—Our Place
- March 15—GVPL
- March 29—Our Place

# TAPS

*Annual General  
Meeting*

*All welcome*

*5:30 to 6:30 pm*

*Thursday*

*November 29, 2018*

*Contact TAPS in  
November for location*

*Note: You must be a member in  
good standing one month before  
the AGM to be able to vote.*

**Check us out at  
[www.tapsbc.ca](http://www.tapsbc.ca)**

While in the first year the unexpected popularity of the clinics and the shocking complexity of some of the applications made the process slow and frustrating for some clients, I'm confident that this year our ID clinics will be better than ever, and we'll be able to help even more people. ■

## TAPS IS MOVING!

Hold onto your hats—TAPS is moving! After 10 years at our current location, we move into our new home, just one block away, at the end of October.

Moving is never easy, and when the owners of our current building told us they had sold it to developers looking to create an assisted living facility, we worried we might not be able to find another place downtown we could afford.

Luckily, our friends at the Society of St. Vincent De Paul, who are just about to celebrate 100 years in our community, had office space coming open in their building at 828 View Street, just around the corner from TAPS. We worked out an arrangement with them, and that's where we're going. You may be familiar with this address: it's where St. Vincent's was running their Social Concern Office until recently.

Our new building will be a step up in many respects. TAPS has grown a lot in the last ten years, and we've been in desperate need of more space. The office at 828 View Street has more room for staff and volunteers, as well as a large area where we can hold

community events. And as a ground level storefront office, we can say: goodbye unreliable elevator!

We look forward to welcoming our clients and supporters to the new office once we are settled. And we'll be doing our best to ensure a smooth transition, with as little disruption as possible, for our clients.

Please note that TAPS will be closed on October 25<sup>th</sup> and 26<sup>th</sup>, and there will be no tax clinic on October 25<sup>th</sup>. Look for us to re-open at our new location in the first week of November.

*Doug King,  
Executive Director*



## TAPS STAFF

**Doug King**  
Executive Director

**Khalela Bell**  
Outreach Legal Advocate

**Izzy Dehler-Hyde**  
Coordinator of the Tax Project

**Daniel Jackson**  
Income Assistance Legal Advocate, Federal Disability Legal Advocate and Tenant Legal Advocate

**Yuka Kurokawa**  
Tenant Legal Advocate

**Jen Matthews**  
Income Assistance Legal Advocate

**Thea McDonagh**  
Coordinator of the Volunteer Disability Advocacy Project and Income Assistance Advocate

**Stephen Portman**  
Employment Standards Legal Advocate

**Emily Rogers**  
Tenant Legal Advocate

**On Leave**  
John Cooke

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(Cont'd from *Employee*, Page 1)

that apply to regular employees.

The *Employment Standards Regulation* defines a manager as a person whose principle employment responsibilities are supervising or directing human or other resources, or a person employed in an executive capacity.

In most cases, determining who is a manager involves an investigation into the type of workplace duties an

individual performs and the nature of the relationship between this individual and the employer. In some cases your job title may be “manager” even though the law would find that you’re actually an employee.

Let’s take the example of someone I’ll call Martha. Martha is a shift manager at a fast food restaurant where she gives direction to members of the team while also preparing food and taking orders from customers. She does not have the ability to discipline, hire, or fire staff, and she is not authorised to make any decisions about day-to-day operations like setting menu prices or hours of operation. She has a supervisor above her who she reports to, and the supervisor has to report to the restaurant owner. The limits of Martha’s actual work role means she is much more likely to be considered an employee under the *Act* than a manager.

However, because Martha’s employer considered her to be a manager, Martha was not being paid overtime wages. Martha filed a complaint with the Employment Standards Branch (the “Branch”), and the Branch determined that Martha was indeed an employee and not a manager, regardless of her

## **TAPS’ New Address:**

**828 View Street.**

**We move at the  
end of October.**

**Come by and check  
out our new office**

**in November!**



job title, and was therefore entitled to receive overtime pay the same as any other worker. The restaurant was required to pay Martha all outstanding wages she was entitled to.

### **Employee or Independent Contractor?**

Independent contractors are fully exempt from the protections in the *Employment Standards Act*. However, “independent contractor” is defined narrowly, and the onus is on the employer to demonstrate

(See *Employee*, page 5)

**Follow us on twitter  
@tapsbc**

## **FEDERAL DISABILITY ADVOCACY PROJECT**

TAPS’ Federal Disability Advocacy Project can provide information on CPP-Disability, the Disability Tax Credit and the Registered Disability Savings Plan. If you would like to speak with an advocate about any of these benefits contact TAPS at 250-361-3521.

(Cont'd from *Employee*, Page 4)

that a worker is in fact an independent contractor and not an employee entitled to the protection in the *Act*.

In order to prove that a worker is exempt from the protections in the *Act*, an employer needs to show that the worker is truly independent. Essentially, the employer needs to demonstrate that the worker is in business for themselves. In order to determine whether a person is an independent contractor or an employee, adjudicators from the Employment Standards Branch look at the degree of independence the worker

has over their work, the control by the employer of the worker, and the worker's opportunity for profit or loss.

For example, "Ronald" is a tile installer. A tiling company provided Ronald with an indefinite contract to lay tile at a rate of \$25 per hour, 40 hours per week. The tiling company supplied all of the tools and materials for the work, set a schedule, and administered payments. The tile company refused to pay statutory holiday pay, vacation pay or overtime, claiming that Ronald was not an employee. Ronald filed a complaint with the Branch, which found that, as he was

not free to pursue independent contracts, was economically dependent on the work that he performed, and his work was ultimately under the control of the company, he was an employee entitled to be paid all outstanding wages.

The *Employment Standards Act* is there to protect workers. If your employer alleges that you are an independent contractor or manager and that you are therefore not entitled to basic protections, it is best to call the Employment Standards Branch directly or get in touch with an advocate. ■

## BECOME A TAPS MEMBER!

Want to support TAPS? Why not become a member! We are happy to waive the fee, so it doesn't have to cost you anything. You will get the Taproot mailed or e-mailed to you.

### Together Against Poverty Society Membership Registration 2018

**Together Against Poverty Society, #302 - 895 Fort Street, Victoria, BC, V8W 1H7**

Annual Membership Fees:  Unwaged \$5 (we are happy to waive this fee)

Waged \$20       Organization \$80

Method of payment:  Cash    Check    N/A

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_ Postal Code: \_\_\_\_\_

Phone: \_\_\_\_\_ e-mail: \_\_\_\_\_

I would like to join TAPS' mailing list to receive:  E-mails from TAPS about its work

Taproot—TAPS' newsletter

>>>  by e-mail       by postal mail

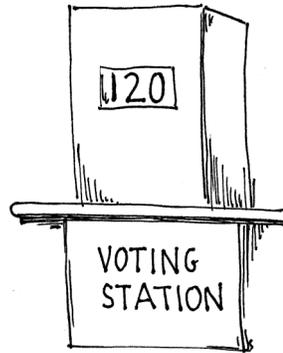
# VICTORIA TENANT ACTION GROUP: BRING OUT THE VOTE

By Madyson Powell and Emily Rogers

There's a municipal election coming up on October 20, and those of us who are renters in Victoria have a chance to get our voices heard and have our values represented in municipal office.

In 2017, the TAPS Tenancy Project got together with local tenants

who had been displaced from their homes to create the Victoria Tenant Action Group



(VTAG). The goal of VTAG is to provide support and education, as well as a forum for activism, for people who do not own their homes in the Greater Victoria

region. VTAG has grown significantly over the past 18 months and is now a formal non-profit society. Most recently, VTAG launched the Municipal Election Renters Mobilization campaign (MERM).

In light of the upcoming municipal election, VTAG is working to ensure that renters, who make up 60 percent of Victoria's inhabitants, have their values represented in municipal office. We want municipal governments to protect the quality and quantity of existing rental stock and increase the stock of genuinely affordable rental housing, thereby fostering the dignity and quality of life of renters and all members of our community who do not own their home.

*(See VTAG, page 7)*

## TAPS TAX CLINIC

Thursdays

9 to 11

and

1 to 4

**First come, first served.**

**Note: no tax clinic on October 25th.**

Check TAPS out on facebook

## VOLUNTEER AT TAPS!

**Come and volunteer on our busy front desk— a great way to participate in the fight against poverty!**

**Call Heidi at 250-361-3521**

## PERSONS WITH DISABILITIES

TAPS has advocates who can help you apply for Person With Disabilities status (PWD) through the Ministry of Social Development and Poverty Reduction. TAPS can also help you with an appeal if you have been denied. Call us at 250-361-3521 for more information. If you are at the appeal stage, get in touch with us as soon as possible after receiving your letter of denial, and tell the receptionist you are calling about a disability appeal.

(Cont'd from VTAG, page 6)

Because it can be hard to comb through each candidate's platform, we at VTAG are working to make relevant information accessible to voters. We have sent a survey to the 2018 municipal candidates asking them to present their positions on the ever-present housing crisis, and will be packaging the results into a fact sheet designed to help renters determine which candidates reflect their values and prioritize their needs. The fact sheet will be available at [www.victoriatenants.com](http://www.victoriatenants.com) and in pamphlet form at VTAG events.

Interested in getting involved? Here's how:

- Pledge to cast an informed vote on election day: [www.tinyurl.com/rentersvote](http://www.tinyurl.com/rentersvote)
- Become a member: join the Victoria Tenant Action Group at [www.victoriatenants.com](http://www.victoriatenants.com) and be a part of a community of care and action
- Volunteer with VTAG to help engage other community members, write your candidates, or organize in your neighbourhood. ■



## WELCOME, MADYSON

We would like to welcome Madyson Powell to TAPS. Madyson is our Social Work Practicum Student this year, and she is working in disability advocacy and tenancy, as well as helping out in the ID Project. We are all thrilled to have Madyson on the TAPS team, and look forward to working with her through the fall and into 2019.



## BECOME A MONTHLY TAPS DONOR!

With your support, individuals and families living in poverty in our region will have access to critical legal advocacy and educational services. TAPS' services are unique in their design and delivery, and offer knowledge, empowerment and, in many cases, a new sense of hope.

Select a monthly amount that's affordable to you, and TAPS will automatically deduct it from your checking account each month. You'll never have to write a check, buy a stamp or find an envelope again.

Monthly donors receive the following benefits:

- Updates on TAPS programs
- Annual tax receipt for all your donations during the year
- Taproot delivered to your e-mail.

See the monthly donor form on page 8 of this newsletter.

## ABOUT TAPS

TAPS was established and registered as a society in 1989. We provide legal information and representation on issues relating to income assistance, provincial and federal disability benefits, residential tenancy, and employment standards to people in the Greater Victoria area. We also provide public legal education in these areas and on broader poverty issues.

You can reach us between 9:30 am and 4:30 pm, Monday to Friday, by phone at 250-361-3521 or in person at #302 - 895 Fort Street. The office is closed daily for lunch between noon and 1:00 pm and is closed to walk-in clients on Monday and Friday mornings.

## TAPS IS FUNDED BY



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Generous Supporters**

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## Thank You for Supporting TAPS' Legal Advocacy!

The best way to support TAPS is by becoming a monthly donor! Please submit this form and your voided check to: Together Against Poverty Society, #302 - 895 Fort Street, Victoria, BC, V8W 1H7

Date: \_\_\_\_\_

*Please debit my bank account (attach VOID cheque):*

\$10   \$25   \$35   \$50   \$100   Other amount \$ \_\_\_\_\_ (please specify)

*I would like this donation debit to be processed through my account on the 25th of each month.*

Signature: \_\_\_\_\_

Donor Name: \_\_\_\_\_

Address: \_\_\_\_\_ Postal Code: \_\_\_\_\_

Phone: \_\_\_\_\_ e-mail: \_\_\_\_\_

This donation is made on behalf of:   an individual   a business

*A tax receipt for your total monthly donations will be sent to you at the end of the calendar year.*

I would like to join TAPS' mailing list to receive:   E-mails from TAPS about its work

Taproot—TAPS' newsletter

>>>   by e-mail   by postal mail