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# ***A Summary* of the Report on Examining the Social Security Tribunal's Navigator Service: Access to Administrative Justice for Marginalized Communities**

Laverne Jacobs, Professor, Faculty of Law, University of Windsor  
Sule Tomkinson, Associate Professor, Department of Political Science,  
Université Laval

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# Glossary of Terms

AD	Social Security Tribunal, Appeal Division
CPP	<a href="#"><i>Canada Pension Plan (R.S.C., 1985, c. C-8)</i></a>
CPPD	Canada Pension Plan – Disability
CPP – Disability	Canada Pension Plan – Disability
EI	Employment Insurance
ESDC	Employment and Social Development Canada
GD	Social Security Tribunal, General Division
GDIS	Social Security Tribunal, General Division – Income Security
OAS	Old Age Security
SST	Social Security Tribunal
SST Navigator Service	Social Security Tribunal’s Navigator Service
The Tribunal	Social Security Tribunal

# 1. Introduction

This report provides a summative overview of the findings, analysis and recommendations of an independent study conducted on the federal Social Security Tribunal's Navigator Service (SST Navigator Service), which was implemented in 2019 to assist self-represented litigants.<sup>1</sup> The independent study examines the use of the Navigator Service for Canada Pension Plan – Disability (CPP – Disability) appeals heard by the Income Security - General Division of Canada's Social Security Tribunal. This study focuses on access to administrative justice on the ground.<sup>2</sup> It aims to understand the ways in which the Navigator Service facilitates access to CPP disability benefit decision-making as well as the ways that the Navigator Service could be improved. It considers the perspectives of self-represented parties who have used the Navigator Service and received at least one tribunal decision between the Service's inception in November, 2019 and April, 2021. It also considers the perspectives of the navigators and, for context, gathers information from relevant government officials involved in the design, implementation and running of the Navigator Service.

The SST Navigator Service was established with the foundational goal of ensuring that appellants are well-informed and feel comfortable at their hearings. The Navigator Service was not designed around efficiency; those involved in its development have been clear that its purpose is not and has never been about the faster movement of files, or to save money. The SST Navigator Service was created in response to a review of the federal social security system that was conducted in 2016 – 2017.<sup>3</sup> This review identified several shortcomings in the SST Appeal process including that it was legalistic and difficult for a layperson to navigate.<sup>4</sup>

As a system designed to be client-centric and to assist self-represented litigants through the process of an adjudicative tribunal, the SST Navigator Service forms part of a family of navigational tools that are newly developing in the administrative justice system across Canada. However, the SST's Navigator Service is by far a leader in navigational tools. It is presently one of the most developed systems, if not the most developed system, within administrative tribunals in Canada.

The SST Navigator Service was first implemented at the General Division – Income Security (GDIS) for CPP – Disability appeals. During the time frame covered by this study, the SST and its Secretariat had 11 full-time navigators exclusively dedicated to working one-on-one with individual appellants for CPP – Disability appeals at the GDIS. After that, the Navigator Service was extended to all appeals across the Appeal Division of the SST, followed by a further extension

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<sup>1</sup> The SST provides information on its Navigator Service on its website. Please see Social Security Tribunal of Canada, "[Your Appeal-Navigators](#)". For more information about the SST generally, see the [Social Security Tribunal of Canada website](#).

<sup>2</sup> On access to justice generally see Trevor C. W. Farrow, "What is Access to Justice?" (2014) 51 Osgoode Hall Law Journal 957.

<sup>3</sup> See KPMG LLP, [Review of the Social Security Tribunal of Canada for Employment and Social Development Canada](#) (October, 2017).

<sup>4</sup> *Ibid* at 96.

to Employment Insurance (EI) files involving the *Canadian Charter of Rights and Freedoms*,<sup>5</sup> GDIS Old Age Security (OAS) files, CPP Non-Disability appeals and GD EI Group Appeals.<sup>6</sup>

Navigators have been trained to check in regularly with appellants to ensure their readiness for hearings. They are in frequent contact with appellants, they assist them by answering questions concerning the material in their file, what documents they will need for the SST hearing, and the nature of the hearing. They get to know each of their appellants well, and work to understand their personal circumstances relevant to their files. They are trained to work within the limits of providing information, while refraining from providing legal advice.

By way of background information, under the statutory framework, there are many steps for an individual who is pursuing CPP – Disability benefits. An individual interested in receiving a CPP – Disability pension will apply for CPP – Disability by completing an application form and submitting it to the responsible minister under s. 60 of the *Canada Pension Plan*.<sup>7</sup> As a practical reality, this form is submitted to Service Canada, which is a branch of Employment and Social Development Canada.<sup>8</sup> If unsuccessful, the applicant has the right to ask for their application to be reconsidered by the minister.<sup>9</sup> If this reconsideration application fails, the applicant may make an appeal to the SST.<sup>10</sup> The factors considered for eligibility are provided in both the CPP and its regulations. They include requiring that an individual have a “severe and prolonged mental or physical disability” and that they meet a minimum qualifying period.<sup>11</sup>

The original application for CPP – Disability benefits and the reconsideration are completed in writing. By contrast, the appeal at the SST involves a viva voce hearing. Appeals to the Social Security Tribunal are first decided by the General Division. It is a fresh reconsideration to which new evidence can be brought by the appellant.<sup>12</sup> After that, if the person seeking benefits would like to appeal further because they are dissatisfied with the result, they may bring an appeal to the Appeal Division of the SST. Appeals to this Division are not based on a fresh reconsideration but, instead, seek only to determine if an error was made by the General Division of the SST.<sup>13</sup>

The COVID – 19 pandemic began four months after the Navigator Service was first implemented. For the tribunal users interviewed, this meant that their hearings took place by phone or videoconference. Interviewees generally expressed agreement with telephone hearings. One user who had experienced an oral hearing at another tribunal in the past indicated that they experienced less stress because they did not have to anticipate being face to face with the opposing party, although the other party was not present in any event. As for the navigators, they noted that although the pandemic and the ensuing closures and lockdowns facilitated reaching users by phone, it also rendered getting medical appointments and ultimately preparing their case harder for users.

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<sup>5</sup> *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK), 1982*, c 11.

<sup>6</sup> See Social Security Tribunal, Canada, 2021 Progress Report, “Justice is a Service for Everyone” <https://www.sst-tss.gc.ca/en/our-work-our-people/2021-progress-report-justice-service-everyone> (September 2021) at 11.

<sup>7</sup> See *Canada Pension Plan (R.S.C., 1985, c. C-8)* (CPP), s. 60.

<sup>8</sup> See Information about the Canada Pension Plan program, available at: <https://www.canada.ca/en/employment-social-development/corporate/contact/cpp.html> .

<sup>9</sup> CPP *ibid.*, s. 81.

<sup>10</sup> CPP *ibid.*, s. 82.

<sup>11</sup> See CPP *ibid.*, s. 42(2). The types of evidence required for determination of disability are outlined in the *Canada Pension Plan Regulations CRC, c 385*, s. 68.

<sup>12</sup> See *Canada Pension Plan (RSC, 1985, c C-8)* (CPP), s 82, and *Department of Employment and Social Development Act (SC. 2005, c 34)*, s 54.

<sup>13</sup> *Department of Employment and Social Development Act (SC 2005, c 34)*, s 58(1).

This research study was undertaken with a view to fulfilling two goals. The first is to take stock of the strengths and weaknesses of the SST Navigator Service with a view to sharing knowledge about this novel service more broadly among administrative tribunals at the federal level, and in the administrative justice systems of the provinces and territories where it may be beneficially adopted. In our view, the Navigator Service may also be beneficial in other jurisdictions beyond Canada. Second, the study aims to consider how the Navigator Service is doing with respect to marginalized communities, in particular. The SST serves users who are often at the intersections of being people with disabilities and people who live with low income. What we know from statistics is that many people who live with low income are also women, immigrants and / or visible minorities.<sup>14</sup> The SST Navigator Service therefore presents an opportunity to consider how individuals from these and other marginalized communities are experiencing the system and how the service may be helpfully improved.

## 2. Methodology

This study relied on 36 semi-structured interviews and on document analysis. Interviews were conducted with 21 former tribunal users (appellants), with 11 navigators, and with four (4) key government officials involved in the design, implementation and running of the SST Navigator Service.<sup>15</sup> The interviews were conducted between June and September 2021.

The 21 former appellants interviewed had each brought an appeal regarding an application for CPP – Disability benefits before the SST’s General Division – Income Security (GDIS) between 2019 and 2021. During that time, they had been assigned and worked with a navigator. At the time of their interview, their CPP disability case had been finalized and the GDIS decision rendered. A small proportion of the interviewees (n=3) appealed a negative decision of the General Division to the Appeal Division (AD). For these appellants, the AD decision had been rendered as well by the time they participated in the study. Only one of the appellants before the AD had a second navigator during their appeal.

Potential user interviewees were contacted first by the Secretariat to the SST in the Administrative Tribunals Support Service of Canada to see if they would be interested in participating in the study. Those who were interested agreed to have their contact information shared with us. In contacting the potential interviewees, we explained that we were university professors, independent of the SST, and that the study was independent of the SST and of government. We explained the nature of the study to the interviewees and obtained their oral or written consent to participate before proceeding.

The user interviewees (n=21) were asked about their case, about the ways in which the navigator worked with them, and about the strong points and areas for improvement of the Navigator Service. They were asked to indicate if they self-identified as an individual from a marginalized

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<sup>14</sup> See Statistics Canada, National Household Survey, 2011, [“Persons living in low-income neighbourhoods”](#) [Statistics Canada, National Household Survey] showing that 36.6% of residents in low-income neighbourhoods were immigrants and that visible minorities “accounted for a higher proportion of the population inside low-income neighbourhoods than in other neighbourhoods” at 7-8. See also [Table 1 - Proportion of selected population subgroups by neighbourhood type](#).

<sup>15</sup> This project was approved by the Research Ethics Board of the University of Windsor (Certificate # 39161 - REB# 21-085) and by the Research Ethics Committee of Université Laval (Approval #: 2021-058 / 26-04-2021).



community and, if so, to provide any comments they may have on how the system might be improved for their community or communities. The full set of questions asked of the interviewees is provided in Appendix A.

The 11 navigators constituted the full complement of navigators who have worked on CPP – Disability files since the Navigator Service had been initiated for those appeals. In order to present the nature of our study and research objectives, we held a group meeting with the navigators in early June 2021. We explained that we were university professors acting independently of the government and the SST and we were interested in their experiences and perceptions of the Navigator Service. We invited them for individual interviews and obtained their oral or written consent before proceeding with the interview.

The navigator interviewees were asked about their professional background, how they became a navigator, the aspects of their job they enjoy and the ones they find challenging, as well as the types of tribunal users they navigate. They were asked to share a memorable case where they felt like they made a difference for the navigated user. They were also given specific examples from marginalized groups and were invited to share their experiences in assisting them. Finally, they were asked to offer their reflections on how the Navigator Service could be improved to better serve users from marginalized communities and users more broadly. The navigator questions can be found in Appendix B.

Data was reviewed by the two researchers who identified prominent themes.

## **3. Findings**

### **a) User experiences**

Overall, the tribunal users interviewed expressed having very positive experiences with the SST Navigator Service. The researchers repeatedly heard glowing expressions of gratitude by users for the work that their navigators did for them. Several indicated that their navigator explained clearly and effectively what needed to be done and were thankful for a service that made the system less foreign and complex. One metaphor that was used to describe the valuable work of the navigator was that the navigator clears a path for the appellant who starts off at a deficit and faces a number of roadblocks that they could not even anticipate because they had never been there before. Navigators were highly praised not only for the substantive work that they did in preparing users for their hearings, but also for their responsiveness. As one interviewee stated: “The responsiveness is just outstanding.”

A number of interviewees had several different legal processes taking place simultaneously in their lives, including their appeal before the SST. These legal processes included working through private insurance claims and trying to obtain funding from their provincial social assistance administrative regime. This made the SST process an additional burden to go through, especially if one had to do it on their own. Similarly, all the appellants were dealing with their appeal at the same time as taking care of themselves and the medical issues that brought them to apply for CPP-Disability benefits. Because of these stressful life circumstances, they appreciated having their navigator’s services.

In terms of general elements to improve, a repeated concern was that there was a significant amount of paperwork. More than one interviewee mentioned that there were upwards of 1,000 pages for their file. Although they appreciated the organizational efforts of their navigators, including numbering each of the documents before sending them to the appellants, they stated that it was overwhelming to go through all the paperwork to make sure that they were prepared. The users experienced numerous difficulties related to physical and literacy challenges. Physically, having the ability and time to go through all of the paperwork posed a barrier for some, often but not exclusively because of their medical conditions. Others suggested that it was psychologically disturbing to see the comments made by doctors about them, especially if they did not agree with diagnoses or how they had been made. For many, it was also difficult to have to print off this paperwork due to financial costs and logistical reasons. Many tribunal users did not have printers.

The extent to which there should be reliance on friends and family of the appellants/users to assist with the Navigator Service is an important question that arose through the interviews. This question came up with respect to appellants who experienced literacy challenges. A number of interviewees indicated that they did not have relatives, support workers or others in the home who could assist with sorting through papers, filling out paperwork, etc. A similar issue arose for those who did not speak English or French fluently. For these users, the quality of the service they received depended on whether they had at-home assistance with language interpretation when speaking with navigators on the telephone. In the opinion of the researchers, it would be wise to provide navigational services in additional languages, including sign language interpretation, and to consider collaborating with community organizations that may be able to provide additional in-home assistance with the handling of paperwork and other service delivery tasks.

Through discussions with interviewees, a suggestion was also made that the navigators could initially present themselves by emphasizing that they are there to help as opposed to the legal limitations of what they cannot do. The users/appellants realize that there are limitations on the service that the navigators can provide, but the relationship could start off on a more empathetic note in some cases with more emphasis on how they can help before entering into what they cannot do.

In addition to these general suggestions for improvement, a number of notable themes emerged from interviews with navigated appellants. We found that these themes reflect some of the most important lived experiences of tribunal users and can be used to help shape the future institutional design of the Navigator Service. The themes include assisting users to understand what they have to prove to the tribunal, providing emotional support, and dealing with perceived pressure from insurance companies. With respect to users from marginalized communities, themes raised dealt with the experience of being newly disabled, user perceptions of disability, experiences of perceived systemic inequity within the healthcare system and lack of familiarity with government departments.

## **b) Navigator perspectives**

All navigators with whom we spoke expressed passion and enthusiasm about their work. They found their role meaningful and saw it as an important one that makes a difference in access to the appeal process. They described the objective of the Navigator Service in the following terms: explaining the appeal process, giving the right information, providing guidance, educating the appellants, being their resource person, building their confidence, and helping them gain control of their file. Even though during the pandemic navigators conducted their work remotely, they

emphasized the value of a supportive peer network and the availability of Tribunal management. While they gave numerous rewarding examples of their experiences with the users, they also described the emotionally taxing aspects of their job.

While some navigators shared their experiences of providing support to users from marginalized communities, others saw marginalization as a condition shared by all appellants they have served rather than attributing it to certain groups. This perception is in line with the intentions of the government officials who were in charge of the creation of Navigation Service in order to help all appellants who lack a professional representative.

The principal three themes navigators developed during interviews deal with their perceptions of access to justice and marginalization, their relations with peers and management and the challenges of the navigator role.

The interviews with the navigators allowed us to identify three main ways in which they help tribunal users' access to justice, explaining the appeal process and the key criteria, empowering the users through information, and facilitating the hearing process.

Navigators expressed very positive views regarding the training they received. They explained the contribution of the peer-to-peer training model, as well as small group discussions for the preparation of their role. They stressed that this model facilitated their learning and contributed to exchanges among navigators.

Regularly mentioned in the interviews was the availability of Tribunal management for the navigators' questions and comments. Collectively, navigators believed opportunities for harmonious exchanges among peers and the management allowed them to talk through their experiences with peers and discuss different possibilities for improvement.

The most common challenge navigators mentioned concerned users who refused to listen and were uncooperative during the call. Even though they felt uncomfortable during these calls, they felt that their training prepared them to handle these situations.

Navigators also offered the following suggestions for improving the service:

1. Diversifying and enhancing mental health services for the navigators,
2. Having bilingual navigators who speak languages other than English or French
3. Creating an infographic that explains the steps and the duration of the appeal process,
4. Providing users other means for filing their documents (such as video recording),
5. Fostering the training program for Tribunal members to eliminate bias.

## **4. Conclusion and Recommendations**

In conclusion, the SST Navigator Service is a high-water mark in services provided to self-represented tribunal users in Canada. It has deservedly received praise from users and the pride of navigators. From interviewing users and navigators, and from documentary analysis, the researchers offer the following recommendations as a means of continuing and strengthening this valuable service:

1. Provide navigational services in additional languages and consider collaborating with community organizations that may be able to provide additional in-home assistance.

2. Navigators clearly take on a heavy individual burden in order to provide emotional support. Appropriate supports for the navigators are important to maintain their mental health. It will be important to continue and to develop the mental health support and training already being provided. Referrals to additional outside supports for users had been established and should also be maintained.
3. To ensure a disability inclusive lens, obtain a consultant to review SST decisions and the language of all communications, and to provide advice on disability inclusive language. Moreover, the SST should make sure that persons with lived experiences of disability as well as organizations dedicated to disability rights form part of its regular stakeholder consultation group. While identifying disability-related issues should not be the responsibility of these individuals and organizations alone, they can bring valuable insights on the ongoing work of the Navigator Service (and Tribunal) from the perspective of disability inclusion.
4. Consider providing infographics and other means of filing documents for Tribunal users applying for CPP – Disability.

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# Appendix A

## Questions for User Interviews

### Preliminary matters

- consent to participate, to be recorded
- background of this study – (researchers are independent – not in a position to continue or stop the Navigator Service, not part of the government or the SST, independent university professors and interested in how this service may be expanded to other tribunals, its positive aspects and how it may be improved)
- Overview of the types of questions
  - one question deals with your other experiences dealing with a tribunal (e.g. landlord and tenant Board, Worker's Compensation, benefit elsewhere, even insurance) or government bureaucracy. We are interested in people's experiences with process. We are interested for comparison's sake – to compare with SST Navigator service.
  - another question deals with how the Navigator Service might be improved for individuals from marginalized communities. We are interested in how the service works generally but also particularly for marginalized communities. Communities of interest include people with disabilities, elderly, people from lower income, people of colour. If you identify with any of these marginalized communities or others we would be interested in hearing your perspective on this question
- Any questions before we begin?

### Semi-structured Interview Questions

*The researchers elaborated on each question asked.*

#### **Case background**

- Tell me about your case - What was your case about?
- What made you decide to appeal?
- Have you read the decision-does it adequately capture your situation?/ Do you agree with the decision?

### **Experience with the SST Navigator Service**

- How did you learn about the Navigator Service?
- What were your expectations of the Navigator Service/Navigator?
- How did the Navigator help you to prepare and present your case?
- Have you ever had to deal with an administrative tribunal or government bureaucracy before in the past? If so, how did your experiences with the Navigator Service compare to that experience?
- If you could tell one thing to officials who are responsible for this service, what would it be?
- Is there anything that the SST Navigator Service could have done that would have had more relevance to you in light of your age, disability, income level or other demographic factors? Please explain.
- is there anything else you would like to tell us?

# Appendix B

## Questions for Navigator Interviews

### Professional background and experience

- Can you tell me a bit about yourself? Have you had any past experiences similar to working as a Navigator?
- How did you become a Navigator?
- What do you enjoy about your job as a Navigator?
- What are the biggest challenges that you have experienced in your work?
- Tell us about a time you felt you made a real difference for a tribunal user. Are there any other memorable cases you would like to share?

### Tribunal users

- Can you tell us about the Tribunal users who benefited from the Navigator service? What were their expectations when you first communicated with them?
- Have you encountered Tribunal users who experienced difficulties in using the Navigator service? How do you know that they experienced difficulties?
- From your perspective as a Navigator, have you ever heard from a Tribunal user that they encountered challenges in their experiences with the SST that relate to their existence as part of a marginalized community?"<sup>16</sup>
- In your opinion, who is most likely to benefit from this service? Who faces difficulties? What "groups" specifically?
- In what ways could the Navigator Service be improved for marginalized individuals?
- Finally, thinking about the Navigator service more generally, in what ways could it be improved?
- Is there anything else you would like to tell us?

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<sup>16</sup> We elaborated our interest in the following manner: The marginalized groups and communities that we are particularly interested in are people with disabilities, the elderly, people from racialized backgrounds, and people living with low income. But, there may be others and if you feel that you have experiences relating to other types of marginalization, please feel free to let us know.