Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *Minister of Employment and Social Development v S. H. and Justice for Canada and Youth*, 2020 SST 381

Tribunal File Number: AD-19-45

BETWEEN:

Minister of Employment and Social Development

Applicant

and

S. H.

Respondent

and

Justice For Children and Youth

Intervener

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Decision on Request for Intervener Status by: Paul Aterman

Date of Decision: March 19, 2020

Order and Reasons

Order

[1] The request by Justice For Children and Youth (JFCY) to intervene in this appeal is granted. JFCY will be allowed to make arguments on some of the issues in this appeal, but it will not be allowed to introduce the evidence that it wants to use to support its arguments. These reasons explain why.

Overview

[2] The Minister is challenging a decision of the General Division of the Social Security Tribunal (SST). The Minister is the appellant in this appeal.

[3] S. H. is the respondent. She applied for a *Canada Pension Plan*[1] (CPP) disability benefit in 1994 because she is disabled. She has chronic fatigue syndrome. The Minister granted her application in February 1995.

[4] The respondent has three children. They were born in 1997, 1999 and 2002.

[5] Each child of a person who receives a CPP disability benefit is eligible to receive the Disabled Contributor's Child's Benefit (DCCB).[2] The purpose of this benefit is to assist the children of a disabled parent. It makes up for some of the money that the parent could have earned by working, if they were not disabled in the first place.

[6] A parent can apply for the DCCB on behalf of their child. If the parent does not apply for the DCCB when a child is born, they can still apply for it later. But there is a limit to how far back the Minister will pay benefits after the application is made. The CPP says the Minister can only pay a maximum of 11 months' worth of benefit retroactively.[3]

[7] In this case the respondent applied for the DCCB for all of her children. But she did it in January 2013. That is 15 years and 4 months after her first child was born. The Minister

[1] This law can be found at https://laws-lois.justice.gc.ca/eng/acts/C-8/page-1.html.
[2] This is at s 74 of the CPP.
[3] The 11month limitation is at s 74(2) of the CPP.

approved the DCCB application, but only paid it retroactively for 11 months, back to February 2012.

[8] The respondent appealed this decision to the General Division. She did not have a lawyer.

[9] On her own she made the argument that she was not aware of the DCCB. She said that her disability prevented her from looking into what benefits were available for her children. She was also unable to take the steps needed to apply within the 11 month period because of her disability. She said that the 11 month limit on retroactivity discriminates. It violates the rights of her children under the *Canadian Charter of Rights and Freedoms* (the Charter),[4] because it deprives them of the equal benefit of the law. They could not apply for the DCCB on their own. And it is unfair that they should lose out on the benefit just because their parent was also unable to apply for it.

[10] The General Division agreed with her. It decided that the Charter equality rights of the respondent's children were breached. The Minister did not show that the breach was justified under the Charter. The General Division decided that the DCCB benefit should be paid retroactively, starting one month after the birth of each of the three children.

[11] The Minister appeals this decision. After the Minister filed its appeal, an organisation called Justice For Children and Youth (JFCY) asked to participate in the appeal.

Should the Appeal Division of the SST allow JFCY to intervene in this appeal?

[12] Most appeals about CPP benefits are disputes between the person claiming benefits and the Minister. They are the parties to an appeal. In some cases, the ex-spouse of the person claiming benefits is also involved. Then they are a party as well. Whether it is the Minister, the claimant or the claimant's ex-spouse, all the parties have a **direct interest** in the outcome. This is because a decision about whether benefits will be paid or not affects each of them directly.

[4] The Charter can be found at https://laws-lois.justice.gc.ca/eng/Const/page-15.html.

[13] This case is unusual because an organisation that has no direct interest in the outcome of this appeal is asking to participate.

[14] The organisation is JFCY, a legal aid clinic that specializes in law relating to children.

[15] It asks to participate as an intervener, not as a party.

[16] To deal with this request I have to decide three issues:

1. Can the Appeal Division allow interveners to participate in appeals?
2. If the answer is yes, should it allow JFCY to intervene in this appeal?
3. If the answer is yes, then how should JFCY participate in this appeal?

Analysis

Issue 1: Can the Appeal Division allow interveners to participate?

[17] A very small number of cases that the SST deals with may have an impact that goes beyond the direct interests of the parties. This is one of them.

[18] In this appeal, the General Division decided that the part of the CPP that limits retroactive payment of the DCCB to 11 months is unconstitutional. It is possible that the Appeal Division will decide this case without having to deal with the constitutional issue.

[19] However, if the Appeal Division decides that the General Division did not make an error, or if it deals with the constitutional issue, then it could mean that the SST would make similar decisions in similar cases. Even though a decision by one Appeal Division panel does not oblige other Appeal Division panels to make the same decision in similar circumstances, the Appeal Division has a duty to try to be consistent in its decision-making.[5]

[20] If the Appeal Division upholds the General Division decision in this appeal or otherwise finds in favour of the respondent, this would expand the amount of benefits payable to the

[5] This is explained in a recent decision of the Supreme Court of Canada called *Canada (Minister of Citizenship and Immigration v Vavilov* 2019 SCC 65 (CanLII). In that decision, the Court makes clear at paragraphs 129-130 that the integrity of tribunal decision-making requires tribunals to treat consistency in decision-making seriously. That means tribunals should use available tools to try and manage consistency themselves, rather than creating situations where courts are required to step in to do it for them.

respondent's children under the CPP. If other Appeal Division panels apply that reasoning in similar cases in the future, then the Appeal Division's decision in this case could affect the rights of other claimants besides the respondent's children. Expanding the amount of benefits payable under the DCCB in other cases would also affect the Minister's obligations under the CPP.

[21] In these circumstances, it is important for the Appeal Division to have arguments on the constitutional issue that are well thought out. The Appeal Division decision will address the particular circumstances of the respondent and her children. But it could also decide the broader question of whether the system of DCCB retroactivity is discriminatory.

[22] The Minister does not oppose JFCY's request. The respondent has not provided the Appeal Division with any arguments on this issue, even though she now has a lawyer.

[23] I need to consider the positions of the parties on this request. But JFCY should not be allowed to intervene just because the parties do not oppose it. I have to be satisfied that the SST has the legal authority to do what JFCY is asking.

[24] This is because the request raises a question about whether the SST has the power to allow interventions. A tribunal cannot use a power that it does not have under the law, even if all the parties in a case might want the tribunal to do so.

[25] The powers of the SST over how it manages its own procedure are set out in a law called the *Department of Employment and Social Development Act*[6] (DESDA), in the *Social Security Tribunal Regulations*[7] (Regulations) and in the decisions of courts that deal with tribunal powers.

[26] There is nothing specific in the DESDA, or in the Regulations that gives the SST a power to let an organisation like JFCY intervene in a case. However, the Supreme Court of Canada has said that even where a tribunal's statute does not give it a specific power to allow an intervention, the tribunal may have an implied power to do so. That power can come from its authority to conduct hearings and decide the issues that are raised by the case before it.[8]

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[6] This can be found at https://laws-lois.justice.gc.ca/eng/acts/H-5.7/
[7] The Regulations can be found at https://laws.justice.gc.ca/eng/regulations/SOR-2013-60/index.html.
[8] The case that deals with this is called *Canada (Dir. of Investigation) v NFLD. Telephone*, 1987 CanLII 34 (SCC).

[27] The SST has issued a document, called a practice direction, that deals with requests to intervene in a case.[9] But the practice direction says little about whether the SST has the legal power to allow an intervener to participate. Its main focus is to explain how someone who wants to intervene can make a request to the SST.

[28] To decide this question, I interpret the DESDA, the Regulations and court decisions. My purpose is to see whether Parliament meant to give the Appeal Division an implied power to allow interveners to participate. I conclude that there are three reasons which support the power of the Appeal Division to allow participation by interveners.

The Appeal Division can deal with all questions of law, including constitutional questions

[29] First, it is clear from section 64 of the DESDA that Parliament gave the SST the power to decide any legal or factual issue in any application that it has to deal with.[10] This is a broad power. There is no language in subsection 64(1) that limits the power. There are some specific limits in subsections 64(2) and (3) on the SST's power to decide certain issues in relation to the CPP and under the *Employment Insurance Act*.[11] But those specific limits deal with what questions the SST can decide under the CPP and the *Employment Insurance Act*. They do not deal with the question of how the SST manages its own process, and whether it has the power to allow interveners to participate.

[30] If an Act of Parliament clearly gives a tribunal a broad power to decide questions of law, this means that the tribunal also has the power to decide constitutional questions. This is set out in a decision of the Supreme Court of Canada.[12]

[31] When a tribunal deals with a constitutional issue, its decision can have an impact on how the tribunal deals with other similar cases in the future. In addition, constitutional issues can be

[9] The practice direction can be found at https://www1.canada.ca/en/sst/rdl/gdpd2017isintervener.html .
[10] This can be found at s 64(1).
[11] These can be found at ss 64(2) and (3). The *Employment Insurance Act* can be found at https://laws-lois.justice.gc.ca/eng/acts/E-5.6/index.html
[12] This can be found at paragraph 40 of a case called *Nova Scotia (Workers' Compensation Board) v Martin; Nova Scotia (Workers' Compensation Board v Laseur*, 2003 SCC 54 (CanLII).

very complex. If a tribunal has the power to decide a constitutional question, then it is important for it to get the benefit of well-reasoned arguments before making a decision.

[32] In the court system, the role of an intervener is to assist the decision-making process, especially where the decision could reach beyond the direct interests of the parties to a case. The intervener has to be able to contribute something to the decision-making process that the parties themselves cannot contribute. That is why courts generally look for expertise on the part of the intervener when deciding intervention applications.

[33] The same considerations apply when a tribunal is dealing with such an issue. This is one reason which supports an interpretation that the Appeal Division can allow interveners to participate.

The Appeal Division's job includes giving guidance on a system level, not just in individual cases

[34] A second reason is found in the structure of the SST. Most tribunals in Canada only have one level of decision-making. The tribunal hears a case and makes its decision. If a party wants to challenge the decision, they have to go to court. They either apply for judicial review or they appeal, if the law has granted a right of appeal.

[35] At the SST, there are two levels of decision-making. A party who does not succeed at the General Division can apply for leave to appeal to the Appeal Division.

[36] There are few tribunals in Canada like the SST, which have an appeal within the tribunal itself.[13]

[37] In addition, the appeal at the Appeal Division of the SST is formal. The way an appeal works at the SST resembles an appeal in the court system:

- The grounds of appeal are limited;[14]

[13] At the federal level, in addition to the SST, the Immigration and Refugee Board has two levels of decision-making for refugee claims and some immigration cases. The Parole Board of Canada also has an internal appeal.
[14] The grounds are set out in DESDA at s 58.

- The Appeal Division cannot consider new evidence (that means evidence that was not already introduced at the General Division hearing) except in limited circumstances;[15] and
- When it decides whether the General Division made an error, the Appeal Division cannot rehear the case by reweighing the evidence that the General Division looked at. That job belongs to the General Division.[16] However, if it concludes that the General Division did make an error, then the Appeal Division can assess the evidence that was before the General Division. It does this to see whether it can make the decision that the General Division should have made, or if it has to send the case back to the General Division for a new hearing.[17]

[38] Why did Parliament choose this two-level structure, and why did it place these limits on the role of the Appeal Division?

[39] In my view, the intent of Parliament was to have the Appeal Division fulfil two functions. One is to make sure that justice is done in individual cases. It does this by making sure in each case that the General Division acted fairly, applied the law correctly and made findings of fact that were based on the evidence.[18]

[40] The Appeal Division`s other function is to help the SST make decisions that are consistent. This enables the SST to develop case law that is predictable. The quality of justice delivered by the SST improves if like cases are treated alike, and if the people who use the system (appellants and their counsel) can better anticipate how the SST will deal their case by reading the SST's decisions. This second function goes beyond doing justice in individual

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[15] This is explained at paragraph 108 of a decision of the Federal Court called *Belo-Alves v Canada (Attorney General)*, 2014 FC 1100 (CanLII) and in a more recent decision of the Federal Court called *Parchment v Canada (Attorney General)*, 2017 FC 354 (CanLII), at paragraph 23.

[16] This is explained at paragraph 42 of a decision of the Federal Court called *Rouleau v Canada (Attorney General)*, 2017 FC 534 (CanLII).

[17] This is explained in a decision of the Federal Court of Appeal called *Nelson v Canada (Attorney General)*, 2019 FCA 222 (CanLII), at paragraphs 16-19.

[18] In DESDA the language used in relation to findings of fact is confusing, old-fashioned legal jargon. It says "…an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it." In practice what this means is that the General Division has to make findings of fact that are logical conclusions, based on relevant evidence. Even if the Appeal Division member might have made a different finding if she or he had been the one hearing the case at the General Division, the Appeal Division should not treat the General Division's finding as an error, as long as the General Division relied on relevant evidence to make a logical finding.

appeals. It is about providing consistency and predictability across the system of tribunal decision-making. That is the traditional role of a decision-making body that has a pure appellate function.

[41] If one of the Appeal Division`s goals is to provide consistent and predictable guidance on a system level, then interveners can help move the SST towards that goal. They can do this by providing thoughtful arguments in complex and unusual cases.

[42] I conclude from this that the role of the Appeal Division within the structure of the SST is another indicator that the Appeal Division can grant permission to intervene in appropriate cases.

The Regulations give the Appeal Division the flexibility to let interveners participate

[43] Third, the wording of the Regulations also supports this approach. To begin with, the Regulations give the Appeal Division the power to hold hearings.[19] This suggests that the Appeal Division has an implied power to allow an intervener to participate, as I explain above in paragraph 26.

[44] In addition, even though the Regulations do not talk specifically about requests to intervene, the SST has the power to shape its process in a way that is flexible and that can respond to special circumstances that do not arise in every case.[20]

[45] Finally, the SST also has to interpret the Regulations in a way that gets results that are just, fast and inexpensive.[21] In this case the question of what is “just” is more important than in routine appeals, because this appeal involves equality rights under the Charter, and could affect other cases.

[46] Taken together, these parts of the Regulations also support the idea that the Appeal Division can grant permission to intervene.

[47] I want to summarise this point. The broad power to interpret and apply the law (including constitutional law), the role of the Appeal Division in providing guidance on a system level and

[19] This is found at s 21 of the Regulations.
[20] This is set out in s 3 of the Regulations.
[21] This is set out in s 2 of the Regulations.

the flexibility in the Regulations to make the SST process fit the needs of the individual case all indicate that the Appeal Division can allow an intervener to participate in appropriate cases.

[48] I also want to be clear that this reasoning only applies to the role of the Appeal Division in deciding whether to allow an intervener to participate. It is not necessary in this case to decide whether the General Division has a similar power. That can be decided by the General Division, if it has to deal with that issue in a future case.

Issue 2: Should the Appeal Division let JFCY intervene in this appeal?

[49] The next question is whether JFCY should intervene in this particular appeal.

[50] To answer that, I set out a series of factors to consider in intervener requests generally. These factors are taken from a decision of the Federal Court of Appeal.[22] They are relevant to this request. There may be other factors that arise in other cases, but I do not need to consider those in this case.

[51] The first is whether the intervener has a genuine interest in the issues raised. JFCY's only purpose is to promote the rights and legal interests of children and young people.[23] It is a specialty legal clinic. It has a long and impressive history of intervention in legal cases, advocacy on law reform, and involvement in community development and public legal education. The history of its activity itself demonstrates that it has a genuine interest in the issue the Appeal Division will decide if the Appeal Division is required to deal with the Charter issue.

[52] The second is whether the intervener will bring a perspective that is different from the parties, and that would assist the Appeal Division in making its decision. It is clear from the JFCY request that it has expertise in the treatment of children in Canadian law. This includes expertise regarding the rights of children under the Charter. Neither party has that degree of expertise.

[53] The Minister states that JFCY is unlikely to assist the Appeal Division in deciding the factual or legal issues in this appeal. It notes that the issue is whether the General Division was

[22] The case is called *Canada (Attorney General) v Pictou Landing First Nation*, 2014 FCA 21 (CanLII).
[23] This is found in ADN-8, the JFCY request to intervene, at paragraph 5, Affidavit of Anne Irwin.

wrong in deciding that the Charter was breached. The Minister provides no explanation to support its claim that JFCY would not assist on this point.

[54] I disagree with the Minister. If this appeal requires that the Appeal Division decide the Charter issue, then it will have to apply the correct legal test to decide whether the respondent's children were denied the equal benefit of the law. This is exactly the area where JFCY has expertise. It has intervened at the Supreme Court of Canada more than 20 times. This is a strong indicator that it can produce useful legal arguments on the law relating to children. I conclude that JFCY has relevant expertise, as well as a perspective that is different from the parties. Its involvement will assist the Appeal Division in making a more informed decision in this appeal.

[55] The third factor is whether it would be in the interests of justice to grant JFCY permission to intervene. I have explained that if the General Division decision is upheld, this could have implications for other cases. Cases like this, which have system implications, are ones where participation by an intervener is appropriate.

[56] The last factor is whether JFCY's intervention will complicate or slow down a decision in this appeal unnecessarily. As a tribunal, the SST must make decisions quickly, but not at the expense of getting the law right. It is normal and appropriate for a case that raises Charter issues to take longer than an ordinary appeal. However, it is also necessary to make sure that JFCY's participation is limited to its role as an intervener. It is not there to do the job that the parties have to do. I explain this further below.

[57] When I consider the four factors above, I conclude that JFCY should be allowed to intervene in this appeal. Its participation will assist the Appeal Division, if the Division is required to decide whether the Charter rights of the respondent's children were breached.

Issue 3: How should JFCY participate in this appeal?

[58] I need to define the scope of JFCY's participation, so that the Appeal Division gets the benefit of its expertise. There are two aspects to the scope of JFCY's participation. One is what arguments JFCY should be allowed to make. The other is whether JFCY can introduce the evidence it wants to use to support its arguments.

[59] JFCY states that it wants to make arguments on:

- The ways in which children and young people are recognised as being inherently vulnerable in both Canadian and international law;
- The ways in which that vulnerability may be aggravated by its intersection with other grounds of social disadvantage (such as poverty, disability, race and gender);
- The entitlement of children and young people to special legal protections that recognise their vulnerabilities; and
- The correct framework of analysis for ensuring that the rights of children and young people to equal treatment under the law and equal benefit of the law are respected in applying and interpreting the CPP.[24]

[60] I understand JFCY's position to be that it will provide a broad overview of the treatment of children and young people under the law. In my view, this would assist the Appeal Division if it then has to analyse the narrower question of whether the retroactivity limit on DCCB benefits offends section15 of the Charter. Arguments from JFCY on the correct framework of analysis for assessing whether equality rights have been violated would also assist the Appeal Division. For these reasons, JFCY will be allowed to make arguments on the points set out above.

[61] To support its arguments, JFCY also wants to introduce evidence in the form of an affidavit.

[62] There is an underlying question here: can an intervener introduce evidence at the Appeal Division? The Appeal Division has never decided that question. I will assume that the answer to that question is "yes", but without actually deciding it in this case.

[63] The reason I make this assumption is because, whether or not an intervener can introduce evidence, I am not allowing JFCY to introduce the evidence it has asked to introduce in this case. I now explain why.

[24] This is found at ADN8-16,17.

[64] This is how JFCY describes the evidence it wants to introduce:

> "While the General Division was provided with evidence relevant to the situation of the Respondent and her children, the appeal to this Tribunal may have widespread impact on the rights of the children and young people beyond the immediate parties. It is therefore just that the Tribunal be provided with **evidence concerning the situation of the relevant claimant group more generally, that is, young people who themselves or their caregiver experience intersecting grounds of disadvantage relevant to their entitlement and ability to access benefits under the Canada Pension Plan, such as health status, disability or gender**." (I added the emphasis here)[25]

[65] This description of the evidence JFCY wants to introduce is vague. What exactly is "…the evidence concerning the situation of the relevant claimant group more generally"?

[66] I suspect that it refers to evidence which could show that parts of the CPP are discriminatory in their effect on "the relevant claimant group". A common way for a party to show that they were discriminated against is to produce evidence that shows that a law has a negative (or adverse) effect on a group on grounds that are protected by the Charter.

[67] My suspicion that this is the kind of evidence that JFCY wants to introduce is supported by a letter that JFCY has since sent to the Appeal Division.

[68] The Minister objected to JFCY introducing evidence. Its position is that in general, the Appeal Division cannot accept new evidence. One exception is when the evidence is just general background information, but does not deal with the core of the issues that the Appeal Division has to decide. In this case, the evidence that JFCY wants to file is evidence that could be used to prove discrimination. That is not general background information, says the Minister. For this reason it cannot be introduced by JFCY. The Minister relies on a decision of the Federal Court called *Marcia*, and a decision of the Federal Court of Appeal called *Sharma*.[26]

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[25] This is found at ADN8-26.

[26] *Marcia v Canada (Attorney General)*, 2016 FC 1367 (CanLII); *Sharma v Canada (Attorney General)*, 2018 FCA 48 (CanLII).

[69] JFCY responded to the Minister's argument. In a letter dated February 14, 2020, JFCY says that the evidence should be admitted because it could affect the outcome of the Appeal Division's decision. It also would be unfair to expect the respondent to have produced this evidence at the General Division. She represented herself. This is how JFCY explains its position:

> "These issues transcend the circumstances of the individual litigant and her children. It is therefore essential that the Tribunal be presented with submissions regarding the full context and potential implications of any decision it may render. JFCY, as a children's rights organization and legal clinic serving a broad population of young people, is in a unique position to provide these submissions to the Tribunal. **It would be unreasonable and unfair to expect an individual litigant to make such arguments, both at first instance and on appeal.**
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> …
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> Given that this case raises important constitutional issues concerning children's equality rights, evidence concerning relevant social facts – including the position of children of persons with disabilities and children experiencing various intersecting grounds of disadvantage with respect to income security – should be placed before this Tribunal. **It is both relevant and could affect the result and, as above, it is unreasonable to expect that the then-unrepresented Respondent could have accessed and adduced such evidence at first instance.** Rather, such evidence is the province of JFCY and ought to be admitted in support of JFCY's submissions. In light of the significance of the issues before the Tribunal and potentially profound impact of its decision, JFCY submits that it is in the interests of justice that this evidence be admitted." (I added the emphasis here) [27]

[70] JFCY does not argue that this evidence is general background evidence that would not affect the outcome of the appeal. Instead, it argues that this is new evidence that the Appeal

[27] ADN14-4 to 5.

Division can receive. It says the evidence would influence the outcome of the appeal. JFCY relies on a decision of the Supreme Court of Canada called *Palmer* to support its argument.[28]

[71] *Palmer* is a case which deals with whether courts can accept new evidence in an appeal. It does not assist JFCY in this case.

[72] To begin with, JFCY relies on cases where *Palmer* was applied by a court in deciding an appeal, not a tribunal.[29] Tribunals do not have the same powers as courts. The Appeal Division's power to receive new evidence is limited by the DESDA and decisions of the courts which interpret that power. There is nothing in the DESDA or in the decisions of the courts which say that the Appeal Division can even apply the test in *Palmer* to allow in new evidence.

[73] In addition, *Palmer* and the other cases that JFCY relies on are all cases where a party was asking to introduce new evidence at an appeal level. They are not cases where an intervener was trying to introduce new evidence.

[74] JFCY is an intervener, not a party. The job of an intervener is to assist a decision-maker by providing a perspective on a dispute that the parties will not have. It is not to take on the role of a party. In an appeal, an intervener cannot bring in evidence that a party could have introduced to prove its case at the first level, but did not. The intervener cannot change the evidentiary record. It has to make its arguments on the evidence that is in the record.[30]

[75] In this case, the respondent cannot now introduce new evidence to prove discrimination at the Appeal Division. This is because she had the opportunity to do so at the General Division hearing. I appreciate that the respondent presented her case by herself at the General Division. This is the reality in most cases at the General Division.

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[28] The case of *Palmer v The Queen* can be found at 1979 CanLII 8 (SCC).

[29] The cases of *'Namgis First Nation v Canada (Fisheries and Oceans),* 2019 FCA 149 (CanLII), and *Brace v Canada*, 2014 FCA 92 (CanLII) are ones where a court which has the powers of a superior court is deciding whether to admit new evidence. A tribunal such as the Appeal Division does not have the powers of a superior court.

[30] This is explained by the Federal Court of Appeal in a case called *Canada (Citizenship and Immigration) v Ishaq*, 2015 FCA 151 (CanLII), at paragraphs 16-19, and in a case called *Zaric v Canada (Public Safety and Emergency Preparedness),* 2016 FCA 36 (CanLII) at paragraph 14.

[76] In practice, it is extremely difficult for an unrepresented appellant to bring forward the evidence and legal arguments to support a claim that the Charter is being breached.

[77] The Social Security Tribunal is well aware of the barriers to access to justice. That is why it is taking steps to reduce them.[31]

[78] A tribunal can change its process to make it easier to use for people who do not have a lawyer. But there are limits to what it can do. It cannot ignore the laws that Parliament and courts require it to apply.

[79] Here the Appeal Division cannot allow JFCY to bring forward the same kind of evidence which the respondent is prohibited from bringing forward.

[80] There are two reasons for this limitation. One is the general rule against introducing new evidence at the Appeal Division. This is explained above, at paragraph 37. The other is that it would put JFCY in the position of acting like a party (in this case the respondent), instead of sticking to its role as an intervener.

[81] JFCY might have been allowed to introduce this kind of evidence if it had intervened at the General Division. But it did not. I have to deal with its request to introduce evidence at the Appeal Division, where the rules are different from the General Division.

[82] For these reasons JFCY will not be allowed to introduce the affidavit evidence it has asked to introduce. What this means in practice is the following:

- JFCY must make its arguments based on the evidentiary record that is before the Appeal Division; and
- It also cannot make new legal arguments if those are not supported by the evidence in the record.

[83] In their arguments, both the Minister and JFCY suggested that if I was not prepared to decide this issue in their favour, an alternative would be for the Appeal Division to look at JFCY's affidavit and then decide if it could be admitted into evidence. I see no reason to do this,

[31] The Tribunal's website sets out what steps the SST has taken to improve access to justice.

because JFCY's letter of February 14, 2020, clearly states that it wants to introduce evidence that the respondent could have introduced at the General Division. The letter alone is enough to allow me to make a decision on JFCY's request to admit the evidence.

Conclusion

[84] JFCY's request to intervene in this appeal is granted.

[85] JFCY is to be given access to the appeal record.

[86] JFCY is allowed to make arguments on:

- The ways in which children and young people are recognised as being inherently vulnerable in both Canadian and international law;
- The ways in which that vulnerability may be aggravated by its intersection with other grounds of social disadvantage (such as poverty, disability, race and gender);
- The entitlement of children and young people to special legal protections that recognise their vulnerabilities; and
- The correct framework of analysis for ensuring that the rights of children and young people to equal treatment under the law and equal benefit of the law are respected in applying and interpreting the CPP.

[87] JFCY is allowed to make its argument in writing, but its argument should not be more than 20 pages. It will also be allowed to make oral arguments.

[88] JFCY is not allowed to introduce the evidence that it asked to introduce. JFCY must make its arguments based on the evidentiary record that is before the Appeal Division. It also cannot make new legal arguments if those arguments are not supported by the evidence in the record

[89] There is another preliminary issue that needs to be dealt with.

[90] The respondent has made a request for advance costs. In an earlier case management conference, the Appeal Division indicated that JFCY would be allowed to make arguments on

this issue if it were granted permission to intervene. But JFCY has no expertise in relation to the questions of whether an administrative tribunal can award costs or advance costs. It is not the role of an intervener to make arguments on questions that are outside the scope of its expertise. For this reason, it will not be allowed to make submissions on that issue.

Paul Aterman
Member, Appeal Division

REPRESENTATIVES:	Matthew Vens, for the Appellant David Baker, for the Respondent Jane Stewart, for the Intervener