



Review of the Social Security  
Tribunal of Canada  
For Employment and Social  
Development Canada

Final Report



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Through normal ESDC processes, ESDC will be responsible for the assessment of KPMG’s observations and the decisions to implement (or not) any findings and/or recommendations. Implementation of opportunities for change will require ESDC to plan and test any changes to help make certain that it will realize any intended outcome. Final benefits realized from implementing any changes will be based on future events and decisions made by ESDC and will vary from the estimates included in this document. These variances may be material.



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## Executive Summary

On March 7, 2017, the Honourable Jean-Yves Duclos, Minister of Families, Children and Social Development, announced that the Social Security Tribunal (SST or Tribunal) would undergo a review by the end of the year to improve the SST's processes to ensure it meets the needs and expectations of Canadians, and to assess its fairness and transparency.

This review was a response to a series of reports that found the appeals process was too complex, legalistic, and took far too long for vulnerable Canadians to be confirmed for benefits.

In Budget 2012, the federal government introduced legislative amendments "to eliminate administrative duplication in appeals and tribunal services by replacing the current administrative tribunal system for major federal social security programs with a single-window decision body." The expectation was that a new single decision body would streamline and simplify the appeals processes and improve decision-making. Resulting from this modernization effort the new tribunal system once mature would realize efficiencies and cost reductions generating \$25 million in annual savings. As part of the Budget 2012 announcement, the Government reaffirmed its commitment to preserve an independent, objective, client-centered appeals process for administrative decisions.

Reporting to the Minister of Employment and Social Development Canada (ESDC), the SST was created on April 1, 2013 to review appeals of decisions from the Canada Employment Insurance Commission (CEIC or Commission) relating to the Employment Insurance (EI) program, and decisions from ESDC pertaining to the Canada Pension Plan (CPP) and Old Age Security (OAS) programs. This new administrative tribunal combined under one structure four administrative tribunals<sup>1</sup> that made quasi-judicial decisions on appeals for the aforementioned programs. These former legacy tribunals operated under the umbrella of the former Human Resources and Social Development Canada (HRSDC) and CEIC.

The Government of Canada's Open and Accountable Government principles<sup>2</sup>, combined with ESDC's priorities and strategic direction to design and deliver client-focused, convenient, and secure services, provide strong guidance as to the expectations for a client-focused tribunal function. Open and Accountable principles state that the intent of an administrative tribunal is to operate according to a less formal, more expedient and more accessible procedure than that of the courts. They should enable citizens who have no legal representation to realize their interests effectively and equally important, the independence of administrative tribunals is not an absolute standard.

## The Review

This review included the full scope of the SST's mandate, structure, functions, performance, and relationships. SST's cost and operating results for the two fiscal years ending March 31, 2017 were compared to cost and operating results of the legacy tribunals for the two years ending March 31, 2012.<sup>3</sup> We reviewed more than 300 documents provided by ESDC and the SST relevant to both the previous and current tribunal systems, including financial, resource and performance information, organization and

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<sup>1</sup> The Board of Referees (BOR) and the Office of the Umpire (OU) for Employment Insurance (EI), and the Office of Commissioner of the Review Tribunals (OCRT) and the Pension Appeals Board (PAB) for Income Security (IS) benefits

<sup>2</sup> <http://pm.gc.ca/eng/news/2015/11/27/open-and-accountable-government>

<sup>3</sup> These periods were selected as representing periods of relative stability for the respective organizations



process maps, legislation, regulations and policies, previous reviews and reports of the social benefits programs, media clippings and more.

Leading practices derived from literature and academic papers, experience, and an environmental review informed the review. Five tribunals were identified as external comparators against which to examine the SST, four in Canada and one international. These tribunals have similarities with the SST in that they provide income or benefit payments to citizens and/or workers, and have comparable range in complexity, for example from basic eligibility to complex medical evidence.

We also needed to hear, listen and learn directly from those who interacted with the previous tribunals and with the SST.

We interviewed more than 30 government officials, and held workshops with ESDC, the SST and the Administrative Tribunals Support of Service Canada (ATSSC) officials to understand the appeals processes and the structures, policies, and legislation that underpin them.

Online consultations were promoted on 14 government websites, and over 17,680 emails were sent to targeted audiences. Between June 28, 2017 and August 8, 2017 we conducted four surveys of appellants, representatives, current and former tribunal members, and employees who provide services to the SST. More than 900 responses were received. In addition, we received more than 30 written submissions from labour and community organizations, legal clinics and law firms, appellants and representatives, former and current SST members, and CEIC Commissioners for Workers and Employers.

We held six focus groups across Canada with over 60 community and labour stakeholders, members of the previous tribunals, and a few appellants.

Through the course of the review, KPMG heard from many stakeholders an overwhelming conclusion that the appeals processes under the SST are not meeting expectations of timeliness, fairness, transparency, accessibility, and efficiency. We also heard of the resource and workload challenges the SST was faced with when it was stood up in 2013.

These perspectives were important to listen to and understand. The perspectives informed and corroborated the analysis of costs, operating results, and client satisfaction of the SST as compared to the former tribunals and external comparator tribunals that hear social benefits appeals.

All of these activities informed KPMG's analysis of the appeals system for social benefits under the SST and ensuing recommendations to improve this system for Canadians.

## **Key Findings**

Overall the review found:

- The SST was born of an initiative under the Deficit Reduction Action Plan with a focus on achieving \$25 million in annual savings, and was announced in the Federal Budget without the benefit of stakeholder engagement. These two factors, combined with poor transition planning under which the SST inherited a large backlog of appeal cases before they had staff, systems, and processes in place, meant for a very shaky start that many stakeholders have neither forgiven nor forgotten.
- Notwithstanding the challenges that the SST faced with transition, the total cost of the SST is lower than the total cost of the four legacy tribunals combined. However, the average cost per EI appeal to the SST General Division is significantly higher than under the former Board of



Referees. The average cost per other appeals to the SST is lower than what it was under the three other legacy tribunals.

- Timelines from application to decision are longer under the General Division for both EI and IS, and the Appeal Division for EI than under the legacy tribunals. This extended timeline is particularly acute for EI appeals to the General Division which take on average over five times longer than the former Board of Referees.
- The SST's appeals processes flow from its enabling legislation enacted in 2012 and regulations published in 2013. It is important to recognize that a number of changes from the legacy Board of Referees to the current system reflect leading practices and enhance the independence of the appeals system, a fundamental requirement for an administrative tribunal. Still, the SST's approach to strictly apply the law comes with a cost with respect to effectiveness, efficiency, and client orientation. Providing client-centric service while leveraging the full flexibility of the SST's enabling legislation and regulations is what will better serve vulnerable Canadians.
- Examination of the appeals structure and its enabling legislative and regulatory framework found that a number of measures introduced to expedite appeals with a reasonable chance of success have, as implemented, had the unintended consequence of slowing down the process and frustrating clients. Further, the SST's processes largely reflect a "one size fits all" approach, and they do not adequately differentiate between the short term nature of the EI benefits program and the longer term nature of a pensions program.
- The public consultations consistently identified dissatisfaction with the accountability of the SST including public reporting, accessibility of its processes and decisions, service standards and timelines, and financial performance. More is required to support a transparent, accountable tribunal, aligned with the Government of Canada's whole of government focus on accounting for the financial and non-financial contributions to outcomes for Canadians.
- Finally, governments around the world recognize that in order to improve social outcomes, human and social programs must be designed and delivered with a focus on the client. The appeals system in the context of social and human service programs must balance the principles of an independent administrative process to review and adjudicate program decisions with the values and principles of the program itself. While the SST continues to develop its practices and procedures, the current system under the SST does not incorporate many of the leading practices of a client-centric organization.

The complex environment within which the SST operates served as an important backdrop to this review and highlighted the importance of collaboration and cooperation across government organizations that have roles in the appeals system.

The review and resulting analysis considered the complexity of the system, along with a number of other areas of focus including analysis of costs and timelines, the appeals structure, the complexity of the processes, the relationships between government organizations, the accountability of the SST and engagement with stakeholders, and the client-centricity of the appeals processes and system.

## Recommendations

There was unanimous concurrence among the key stakeholders to the tribunal system that the goal of the appeals system should be to serve vulnerable Canadians through a fair, objective, and responsive appeals process, while respecting the Tribunal's independence of decision-making.



Achieving this goal will require a resetting of the SST – a renouvellement – shifting from a primary orientation to the law towards a greater orientation to the client, using the full flexibility provided by the SST’s enabling legislation and regulations. This “renouvellement” must be accompanied by a leadership ethos that is also focused on the client and on the quality of services. The opportunities for change will require conscious choice and trade-offs across objectives. Some changes are within the current authority of the SST to seize; others will require collective collaboration and cooperation of the government agencies involved in the appeals system and meaningful and enduring engagement of the stakeholder communities. Still others will likely require changes to legislation and/or regulations. What is indisputable is that changes are required, beginning with operational changes in the SST that enhance client satisfaction, supported by a well-developed plan.

KPMG provides seven recommendations to the Minister, each supported by a range of options presented in Section 3 of this report. The options range from making changes within the current governance, organization, and appeals structure to making foundational and structural changes to the SST governance and organization. The majority of options likely do not require legislative or regulatory changes, but will call for a shift from a legalistic culture to a client-centric one where some of the authorities are delegated in an effort to increase efficiency.

***KPMG recommends the Minister:***

1. Implement a suite of changes that will shift the orientation of the SST to a client-centric model and culture
2. Align the structure of the appeals processes with the characteristics of the benefits programs they support, while providing an appeals process that clients see as fair and transparent
3. Minimize complexity to better serve client needs, and where required, provide assistance to help clients navigate complex interactions
4. Strengthen the appeals system by formalizing engagement strategies to better involve stakeholders
5. Define and clarify ESDC, SST and ATSSC roles and responsibilities with respect to how they work together to achieve government objectives while serving clients
6. Make more effective use of ATSSC employees by increasing the scope of support services and support to members
7. Establish an integrated accountability and reporting framework from reconsideration through appeals that incorporates all parties’ contributions to an effective and efficient recourse process.

***In Conclusion***

While the SST’s legislative and regulatory framework that underpins its processes and operations has significant differences from the previous tribunals, the “raison d’être” remains the same: to secure the just, most expeditious and least expensive determination of appeals and applications, and to conduct proceedings as informally and quickly as the circumstances and the considerations of fairness and natural justice permit. There are two levels of appeal for each program, as before. The basis of appeal – eligibility against established criteria – remains. The governing principles of providing a fair, credible and accessible appeals process are unwavering. Economies of scale have been achieved by consolidating administrative functions of four tribunals to one. According to survey responses and reference documents, client satisfaction with the SST is not high but not necessarily lower than under the previous system. Still, legitimate complaints and strong evidence of added complexity, lengthier timelines, and a





more formal, distant, legalistic tribunal that is difficult for the lay person to navigate, has many longings for the past and calling for change.

In addition to the factors noted above, other differences include the shift in the balance of power from a three-member tribunal, seen as a “trial by peers” to a single decision-maker often in a location distant from the appellant and his/her associated work/life context, a process that is not seen as putting the client first, and the elimination of tripartism in EI appeals. These factors are at the very least creating a perception of reduced access and fairness.

The question, therefore, is less about which tribunal, past or present, has it “right,” but rather, how to take concrete measures to improve the effectiveness and efficiency of the SST’s structures and processes, leverage the full flexibility of its enabling legislation and regulations, and foster a client-centric culture that places the client at the heart of the appeals process.

In conclusion, we strongly encourage the Minister to take the required time to complete the due diligence necessary to evaluate the recommendations and options available. These will require conscious choice and trade-offs across multiple objectives and require further analysis and assessment to ensure that the changes achieve positive results for clients in the short, medium, and longer term. Learning from the past, the go-forward strategy should include engagement with the stakeholder communities, and include a multi-year plan designed to deliver operational changes in the short term, followed by more fundamental changes, including changes to legislation and regulations, in the medium to long term. The plan should be updated annually, accompanied by regular public reporting on results. The changes implemented should be designed to achieve desired outcomes for accessibility, fairness, and transparency, that collectively continue to improve the SST’s appeals processes and the overall benefits system for vulnerable Canadians.



# 1 Introduction to the Review

## 1.1 Scope, Background and Review Guidance

### 1.1.1 Scope

Employment and Social Development Canada (ESDC), under the direction of the Minister of Families, Children and Social Development, engaged KPMG LLP (KPMG) to design and undertake a review of the Social Security Tribunal of Canada (SST) to assess and make recommendations regarding its efficiency, timeliness, and effectiveness.

The review included the full scope of the SST's mandate, structure, functions, performance, and relationships. SST's cost and operating results for the two fiscal years ending March 31, 2017 were compared to cost and operating results of the legacy tribunals for the two years ending March 31, 2012.<sup>4</sup>

An environmental review was conducted of the differences and similarities between the SST and five administrative tribunal business models with similar functions or mandate, including operating results and measures of client satisfaction based on publicly available information.

Critical to the review has been obtaining and leveraging input and perspectives from a variety of internal and external stakeholders and interested parties.

Although considered, the scope of the review did not include reviewing the Administrative Tribunals Support Service of Canada (ATSSC) and the reconsideration process (as explained below).

The SST receives support services and facilities from the ATSSC and by its nature an assessment of the efficiency and effectiveness of the SST invariably considered the support and services received from the ATSSC. The assessment and findings should not however be interpreted to be reflective of the ATSSC organization as a whole.

Before appealing to the SST, an individual must first request Service Canada reconsider the disallowed claim for Employment Insurance, Canada Pension Plan, and Old Age Security benefits. This process is part of the overall recourse process and is often not distinguished from the appeals process by the appellant, and as such observations and relevant information to the SST appeals process is included.

### 1.1.2 Background to this Review

On April 1, 2013, the SST was created to review appeals of decisions from the Canada Employment Insurance Commission (CEIC) relating to the Employment Insurance (EI) program, and decisions from the Department of Employment and Social Development Canada pertaining to the Canada Pension Plan (CPP) and Old Age Security (OAS) programs.

On June 15, 2016, the Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities (HUMA) tabled its report, *Exploring the Impact of Recent Changes to Employment Insurance and Ways to Improve Access to the Program*. Specifically, Recommendation #13 in that report proposed that ESDC undertake a review of the new SST that

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<sup>4</sup> These periods were selected as representing periods of relative stability for the respective organizations



focuses on costs, efficiency, client satisfaction, transparency, form of hearing, and timeliness of decisions. The concerns expressed from witnesses before the Committee related to:

1. The far lower number of appeals heard under the new system compared with the previous system
2. The time it takes claimants to have their appeal heard because of the lack of SST staff/members and the lack of a time limit to issue decisions
3. The use of video conferences or telephone hearings instead of in-person hearings, which causes problems for some appellants
4. The seemingly reduced transparency of the new system, which no longer makes all of its decisions public and accessible.<sup>5</sup>

On March 7, 2017, the Honourable Jean-Yves Duclos, Minister of Families, Children and Social Development, announced that the Social Security Tribunal (SST) would undergo a review by the end of the year to improve the SST's processes to ensure it meets the needs and expectations of Canadians, and to assess its fairness and transparency.

### 1.1.3 Review Guidance

KPMG's assessment was guided by the following:

- The rationale for the creation of the SST was to streamline and simplify appeals and to improve decision-making<sup>6</sup>
- The intent of an administrative tribunal is to operate according to a less formal, more expedient and more accessible procedure than that of the courts, which should enable citizens who have no legal representation to realize their interests effectively<sup>7</sup>
- Core principles set out in Open and Accountable Government regarding a range of administrative, procedural and institutional matters on Canada's system of government, including administrative tribunals<sup>8</sup>
- In response to the HUMA report, the Government committed to providing a quick, effective and efficient system of appeals that will ensure that Canadians get the support they need when they need it most<sup>9</sup>

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<sup>5</sup> Report of the Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities, Exploring the Impact of Recent Changes to Employment Insurance and Ways to Improve Access to the Program, June 2016, p.33

<sup>6</sup> Overview: Legislation for the Social Security Tribunal, HRSDC, May 8, 2012

<sup>7</sup> A Canadian Social Security Tribunal, Patrice Garant, LL.D, FRSC, Quebec City, November 30, 2002

<sup>8</sup> <http://pm.gc.ca/eng/news/2015/11/27/open-and-accountable-government>

<sup>9</sup> Government Response to HUMA Report, Exploring the Impact of Recent Changes to Employment Insurance and Ways to Improve Access to the Program, Jean-Yves Duclos, Minister, Families, Children and Social Development



- The SST has committed to quality and timely decisions, and improving the tribunal’s efficiency, transparency and access to justice as established in the SST’s 2013-2016 Achievements Report
- All key stakeholders emphasized the importance of a client-focused review.

## 1.2 Navigating the Report

### 1.2.1 Statement of Work

The review was based on the requirements established by the Statement of Work (SOW). The following table maps the SOW requirements from the relevant report sections

Statement of Work Requirement	Where to Find It
<b>Scope</b>	
Review materials previously developed by ESDC, the SST and other sources on the topic of its statutory programs and recourse processes	Materials provided by ESDC, Commissioners for Workers and Employers, the SST, the ATSSC, and our literature review served as the basis for KPMG’s review and analysis
Review the SST’s governance and organizational structure and as required identify options for alternative models	References to SST governance and organizational structure and options for alternative models are incorporated in Section 6 SST Relationship with ESDC, Section 7 SST Relationship with ATSSC, Section 8 Role of Stakeholders, and Section 9 Accountability for Results
Conduct an environmental review of the differences and similarities between different appropriate metrics, for the purposes of providing a comparison, with particular focus on these organization’s business models, service standards and resultant client satisfaction, if available	Section 5 Appeals Structure Section 7 SST Relationship with ATSSC Section 9 Accountability for Results Section 10 Complexity Section 11 Efficiency Section 12 Client Centricity



Statement of Work Requirement	Where to Find It
<p>Review the current legislation and regulations governing the SST and its operations to determine whether they impact the flexibility of the Tribunal to implement changes that will improve the overall process. The review of the legislation and regulations (and supplier proposed legislative/regulatory changes) on operations and outcomes should include providing an analysis and assessment of how efficiencies can be gained in terms of hearing scheduling, forms of hearings, length of time to render decisions, length and complexity of decisions, access to justice, timeliness, operational guidance and direction etc.</p>	<p>A legislative review served as a key element to all aspects of the review, and legislation is specifically referenced in Section 4 Comparison with Legacy Tribunals, Section 5 Appeals Structure, Section 9 Accountability for Results, and Section 10 Complexity</p>
<p>The Supplier will conduct a series of public consultations. No less than four (4) group (in-person) consultations in locations across Canada will be designed, organized and fully conducted by the Supplier so as to ensure a cross representation of Canadian constituents</p>	<p>Annex B Consultations</p>
<p>The Supplier will provide various options for other means of consultations with stakeholders</p>	<p>Annex B Consultations</p>
<p>Perform a total cost level comparison between the current operations of the SST and the former tribunals (Board of Referees, Umpire, Review Tribunal and Pension Appeals Board)</p>	<p>Section 4 Comparison with Legacy Tribunals Annex A Approach and Methodology</p>
<p>Analyze the efficiency and outcomes of decision-making by the SST including, but not necessarily limited to, speed of service, claimant success rates and subsequent overturn rates, and compare to that of the former tribunals on the basis of efficiency, speed of service, client satisfaction, fairness and transparency, taking into account the different legislative and regulatory requirements under which they operated</p>	<p>Section 4 Comparison with Legacy Tribunals Section 11 Efficiency</p>



Statement of Work Requirement	Where to Find It
Identify any potential options to further improve the efficiency, timeliness, effectiveness of the SST's operations and decision-making functions which would be possible within the current legislative and regulatory framework. In addition, outline any policy, legislative or regulatory changes that would be required in order to improve the SST's operations, transparency and decision-making functions with the view of reducing administrative burden and wait times	Section 3 Recommendations and Options for Consideration
Identify the impacts of setting limits on the amount of time the SST takes to issue decisions	Section 3 Recommendations and Options for Consideration
Assess the impact (effectiveness, cost, overturn rate, client satisfaction, etc.) of facilitating hearings in-person, via video conference or via teleconference, by question and answer or on the record, in both General and Appeal Divisions	Section 12 Client Centricity
<b>Key Activities and Deliverables</b>	
Review of SST's governance structure	References to SST governance and organizational structure and options for alternative models are incorporated into Section 6 SST Relationship with ESDC, Section 7 SST Relationship with ATSSC, Section 8 Role of Stakeholders, and Section 9 Accountability for Results
Cost comparison between current and previous system	Section 4 Comparison with Legacy Tribunals Annex A Approach and Methodology
Efficiency comparison between current and previous system	Section 4 Comparison with Legacy Tribunals
Client satisfaction comparison between current and previous system	Section 4 Comparison with Legacy Tribunals
Observations and recommendations on improving SST fairness and transparency	Section 3 Recommendations and Options for Consideration



Statement of Work Requirement	Where to Find It
Conduct environmental review of the business models of other similar recourse processes	Comparator information is presented in Section 5 Appeals Structure, Section 6 SST Relationship with ESDC, Section 7 SST Relationship with ATSSC, Section 10 Complexity, Section 11 Efficiency, Section 12 Client Centricity
Design and conduct a series of public consultations and perform a review of the SST	Annex B Consultations
Recommend appropriate resourcing levels for SST	Section 3 Recommendations and Options for Consideration
Assess changes on the way facilitating hearings could have at first and second appeal stages	Section 4 Comparison with Legacy Tribunals Section 12 Client Centricity
Assess impacts of setting a time limit on decisions	Section 3 Recommendations and Options for Consideration
Provide options to improve efficiency, timeliness and effectiveness of the SST	Section 3 Recommendations and Options for Consideration

## 1.2.2 Organization of the Report

The report that follows presents the results of KPMG’s review, including the underlying analysis and supporting evidence, and provides recommendations and options for consideration to improve the SST’s efficiency, timeliness, and effectiveness. The report is organized as follows:

Section	Description
Section 2 Complex System	Provides an overview of the system of social benefits in which the SST operates
Section 3 Recommendations and Options for Consideration	Provides recommendations resulting from the analysis presented in subsequent sections and options for considerations
Section 4 Comparison with Legacy Tribunals	Compares the SST with the legacy tribunals including a comparison of total and unit costs
Section 5 Appeals Structure	Provides an analysis of the structure of the appeals process, including the levels of appeal and outcomes
Section 6 SST Relationship with ESDC Section 7 SST Relationship with ATSSC	Examines the relationships between the SST and these other parts of Government through the lens of serving clients and an efficient and timely tribunal operation



Section 8 Role of Stakeholders	Examines the role of labour and community groups in the appeals process and their relationship with the SST
Section 9 Accountability for Results	Considers the accountability structure and reporting of the SST
Section 10 Complexity	Analyzes, from an appellant perspective, the complexity of interaction with the SST and the support provided
Section 11 Efficiency	Considers the efficiency of the SST
Section 12 Client Centricity	Analyzes the orientation of the SST relative to client-centric principles
Annex A Approach and Methodology	Provides an overview of the approach and underlying methodologies for the review
Annex B Consultations	Provides supporting information summarizing the consultations conducted with ESDC, the SST and ATSSC, the focus groups, surveys, and written submissions
Annex C Acronyms	

### 1.2.3 **Survey and Consultation Results**

Survey results are presented throughout this report. The online surveys, including the online written submission form, were available from June 28, 2017 to August 8, 2017. Approximately 6,000 visits were recorded, and 905 responses were received.

Appellants, representatives, Tribunal members and employees past and present were asked to provide their views on a range of topics related to the SST. The survey presented a positive statement such that agreement would represent a favourable opinion and disagreement an unfavourable opinion. For example: "Overall I was satisfied with the Tribunal process."

Results are presented either in terms of percentage that selected each choice from strongly disagree to strongly agree, or as the average response for each question.

The views of stakeholders are also presented through the use of quotes from the consultations. They are reflected throughout the report and reflect the opinions of those that participated in the consultations and not KPMG.

Further details can be found in Annex B Consultations.

### 1.2.4 **Legacy Tribunals and SST Comparison**

The previous administrative tribunal system consisted of four tribunals, the Board of Referees (BOR) and the Office of the Umpire (OU) for Employment Insurance (EI), and the Office of the Commissioner of the Review Tribunals (OCRT) and the Pension Appeals Board (PAB) for Income Security (IS) benefits. The



legacy tribunals were replaced by the SST with a General Division with two sections, and an Appeal Division. The EI reconsideration process was an informal review that was conducted at the same time as an appeal was made to the Board of Referees. The following illustrates the comparable legacy tribunals to the SST divisions.

Figure 1- Legacy Tribunals

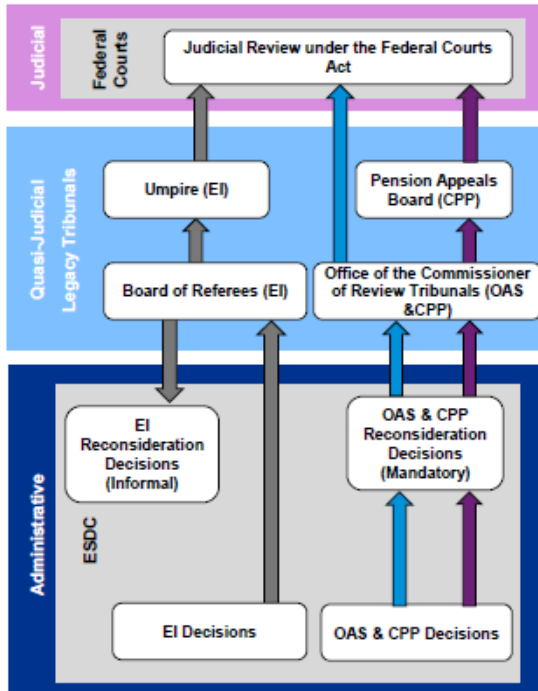
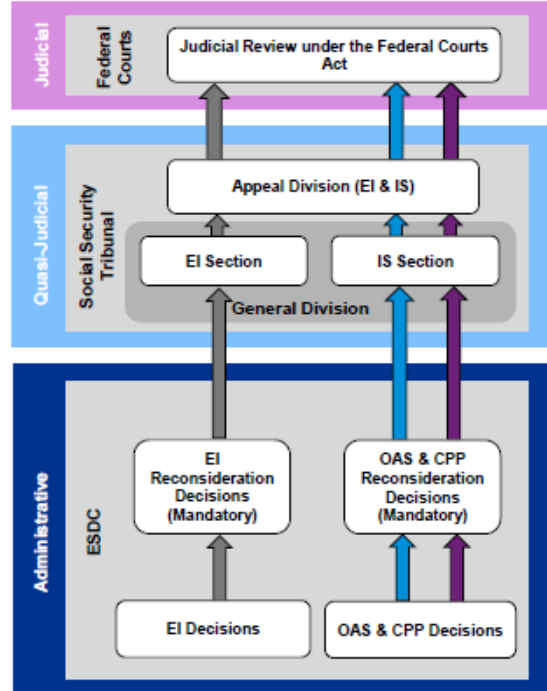


Figure 2 – The SST



Further details on the comparison of the legacy and SST appeals structures and processes are provided in Section 4.

### 1.2.5 External Comparators

The scope of the review included an environmental review of the business models of five other similar recourse processes. The basis for selection of comparators as agreed with ESDC is that they should be

- Related to income or social benefit programs
- The underlying program should target the citizen as opposed to businesses or specialists
- Have comparable complexity of appeals as the SST, for example the requirement for medical evidence
- A quasi-judicial administrative tribunal.

The five tribunals selected for the environmental review and used as a basis for developing common and leading practices presented through this report are:

- The Ontario Social Benefits Tribunal (OSB): The Social Benefits Tribunal hears appeals from people who have either been refused social assistance or who receive social assistance but disagree with a



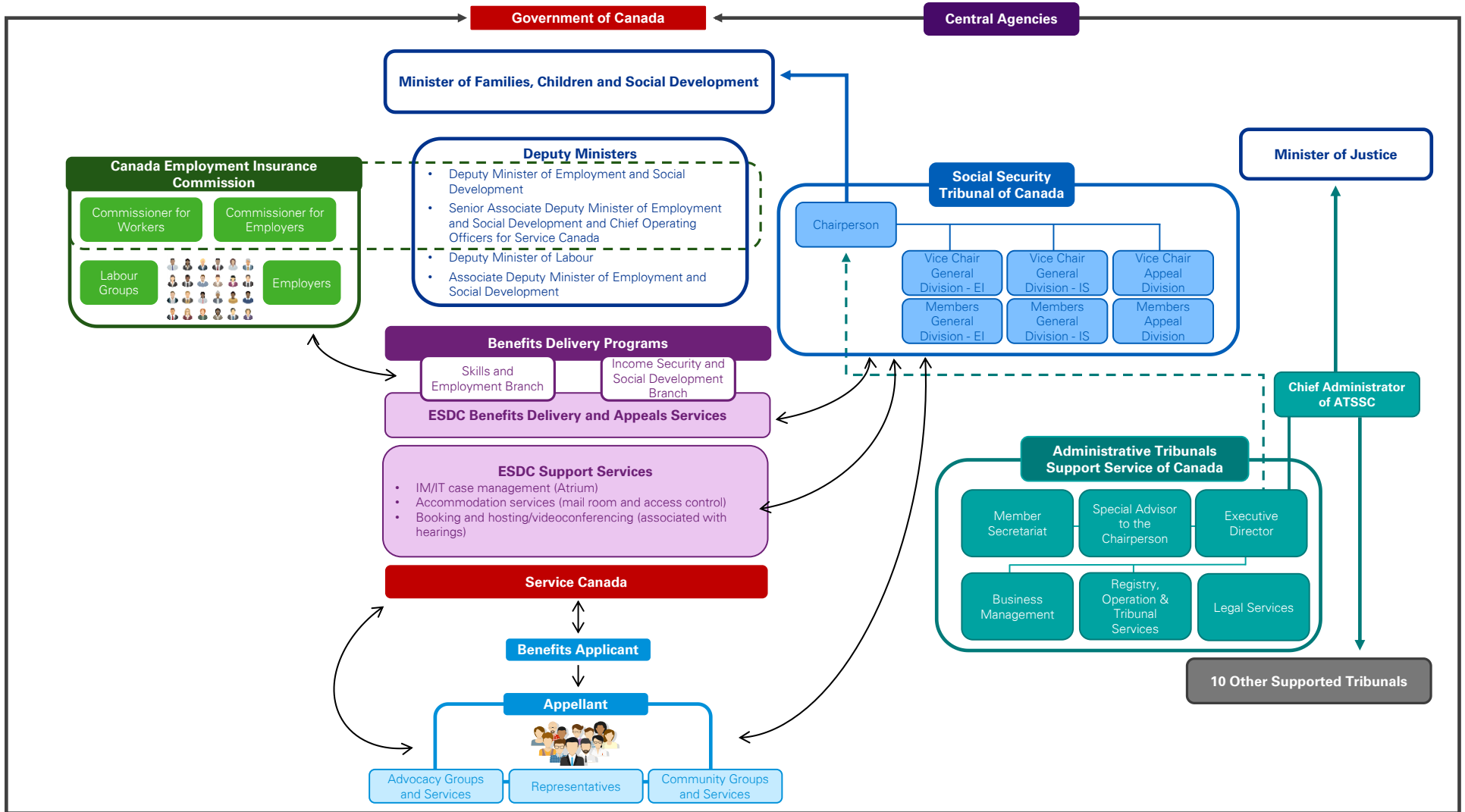
decision that affects the assistance they receive. This tribunal provides recourse decisions from the Ontario Works and Ontario Disability Support programs. The OSB is a portfolio tribunal of Social Justice Tribunals Ontario (SJTO), a group of eight adjudicative tribunals in Ontario

- Administrative Appeals Tribunal, Australia (AAT): The Administrative Appeals Tribunal is an independent body established to provide independent review of administrative decisions made by the Australian Government and some non-government bodies. Within the AAT, the Social Services and Child Support Division reviews decisions in relation to social security, family assistance and student assistance entitlements, child support, and paid parental leave
- Appeals Commission for Alberta Workers' Compensation (AC): The Appeals Commission for Alberta Workers' Compensation is a quasi-judicial tribunal operating under the authority of the Workers' Compensation Act as the final level of appeal for decisions made by the Workers' Compensation Board. The Workers' Compensation system is funded by employers, offering a parallel to the EI system which is funded by employers and employees
- Veterans Review and Appeal Board (VRAB): The Veterans Review and Appeal Board provides the recourse process for disability benefits decisions made by Veterans Affairs Canada
- Tribunal Administratif du Québec (TAQ): The TAQ reviews administrative decisions made within Quebec, grouped according to categories of social affairs, real estate affairs, economic affairs as well as territory and environment. The Tribunal decides on appeals filed by citizens against decisions taken by the Public Administration.

These external comparators provide useful insights on practices used in the social security recourse space, including disability cases. Relevant appeal structure comparisons are presented in Section 5.2.

# A Complex System

Figure 3 – Illustration of the SST and Stakeholder Interactions





## **2 A Complex System**

This section of the report presents contextual and background information to understand the complexity of the broader system that the SST operates within, an overview of the governance, and other guidance considered in this review.

As illustrated, the SST as an administrative tribunal forms part of a broader and complex system to deliver on the federal government's policy objectives for employment insurance and income security to Canadians.

### **2.1 Understanding a Complex System**

#### **2.1.1 Legislative Framework**

Part 5 of the Department of Employment and Social Development Act (DESD Act) establishes the SST and the legal basis for its structure and decision-making powers. The SST Regulations form the basis of the Tribunal rules and procedures and are supplemented by the Tribunal's practice directives.

#### **2.1.2 Governance**

Governance and oversight of the system of employment insurance and social benefits is complex.

The SST falls within the portfolio of the Minister of Families, Children and Social Development.

The Canada Employment Insurance Commission represents government, workers and employers and plays a key role in overseeing the EI program, including a legislated mandate to annually monitor and report on the EI program.

ESDC and Service Canada carry out the administration of the EI program on behalf of the Commission, and administer the CPP and OAS programs.

The Administrative Tribunals Support Service of Canada provides administrative support to the SST under the authority of the Minister of Justice.

As set out in Open and Accountable Government principles, Ministers will have varying authority and oversight over organizations within their portfolio. The integrity and coherence of government activities depend strongly upon a Minister's ability to coordinate the respective portfolio in an integrated way while respecting any necessary degrees of independence.

Further, the role of the Deputy Minister is to advise the Minister on all matters under the Minister's responsibility and authority. While the Deputy Minister does not have direct authority over non-departmental bodies in the portfolio, they play a key role in promoting appropriate policy coordination across the portfolio and building coherence in the activities and reporting of the portfolio bodies, consistent with government priorities and policy goals, while respecting any accountability requirements and mandates set out by legislation.

In turn, agency heads, while maintaining necessary arms-length relationship and managerial autonomy, should seek out opportunities to contribute to the overall functioning of the portfolio, and support an environment for mutual understanding and collaboration.



### 2.1.3 Administrative Tribunals

Guidance provided by Open and Accountable Government Annex H4 Portfolio Organizations informed the analysis of the governance and organization of SST of which key principles related to administrative tribunals are summarized below.

The purpose of an administrative tribunal is to make decisions at arms-length from government, often referred to as quasi-judicial decisions. These decisions often concern individual rights or interests, are technical in nature, and may be considered sensitive and vulnerable to political interference.

They however are not courts and do not occupy the same constitutional role as a court; they operate as part of the executive branch of government. Further the degree of independence can vary and is determined by enabling statutes.

The principle of independence - that Ministers should not intervene with administrative or “quasi-judicial” tribunals on any matter that requires a decision *in their quasi-judicial capacity* - is subject to a number of nuances:

- The principle does not apply to every aspect of the organization’s work, but specifically to decisions made in a quasi-judicial capacity
- The extent to which the quasi-judicial decision-making process is insulated from ministerial involvement is largely determined by the constituent legislation
- Whatever the degree of independence of an administrative tribunal, the responsible Minister is at some level accountable for the effective functioning of all portfolio organizations, including tribunals. Hence, it is important that tribunals be attuned to the broader context in which the government operates.<sup>10</sup>

There needs to be a clear understanding of roles that the Minister and the Deputy Minister will have with respect to the tribunal within the portfolio. Although the Deputy Minister does not have direct authority over an administrative tribunal, the portfolio deputy is the Minister’s principal source of public service advice and support on managing relationships with administrative tribunals. In turn the head of the tribunal has a responsibility to work cooperatively with the Minister and the Deputy Minister to the full extent consistent with their statutory independence.

The guidance identifies the importance of maintaining an ongoing open dialogue to discuss matters of general relevance to both parties, such as administration and budgeting, the tribunal’s mandate and enabling legislation, and the Minister’s responsibility to answer for the tribunal in Parliament. Key practical considerations are outlined:

- Administrative or “quasi-judicial” tribunals are part of the executive branch of government under the mandate of Parliament. The responsible Minister is ultimately accountable for the effective functioning of the tribunal and must answer questions in Parliament for all matters pertaining to it
- The independence of administrative tribunals is not an absolute standard arising from a constitutional separation of powers. An administrative tribunal’s independence, in both quasi-judicial and non-quasi-judicial functions, is determined by its enabling statute

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<sup>10</sup> Open and Accountable Government, issued by the Privy Council of Canada, 2015



- Ministers must not intervene, or appear to intervene, with tribunals on any matter requiring a decision in their quasi-judicial capacity, except as permitted by statute
- In all cases, even where the Minister or Governor in Council has authorities to send back or overturn decisions once made, it is inappropriate to attempt to influence the outcome of a specific decision of a quasi-judicial nature.

#### 2.1.4 **Government Objectives and Priorities**

Overarching goals and priorities of the government are set out in a number of communications, including ministerial mandate letters. Common and consistent direction includes accountability, openness and transparency, and collaboration.

The priorities outlined in the Minister's mandate letter and the goals of ESDC also helped guide the review. For example, the Minister's mandate letter from the Prime Minister identifies the:

- Overarching goal to increase Canadians' economic and social security and lists the improvement of the EI system as a top priority<sup>11</sup>
- Importance of constructive dialogue with Canadians, civil society, and stakeholders, including business and organized labour
- Commitment to set a higher bar for openness and transparency
- Setting of transparent service standards in cooperation with the Minister of Public Services and Procurement so that Canadians get timely access to the benefits to which they are entitled
- Expectation that work be informed by performance measurement, evidence, and feedback from Canadians.

ESDC's departmental plan 2017-18 identifies as a strategic direction the design and delivery of client-focused, convenient and secure services and the associated initiative to simplify service delivery and provide client-centric services through Benefits Delivery Modernization.

## 2.2 **Collaboration and Cooperation**

It is important to note that through the course of the review KPMG heard unanimous commitment from key stakeholders that the goal of the appeals system should be to serve vulnerable Canadians through a fair, objective, and responsive appeals process, while respecting the tribunal's independence of decision-making.

The SST was established quickly, and it was clear from the review that the SST has made changes and continues to make changes to improve the efficiency and effectiveness of the tribunal function. It was also evident that there is operational coordination between key stakeholders.

However it was also clear that there are fundamental differences as to the flexibility and the application of the existing legal framework, what was intended, the objectives of the new system, and the roles and accountabilities of key stakeholders in the appeals process. These differences are highlighted throughout this report.

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<sup>11</sup> Minister of Families, Children and Social Development Mandate Letter, 2015



In a 2011 Congressional Research Service Report, Frederick Kaiser wrote about the importance of interagency collaboration among federal agencies with overlapping jurisdictions with objectives ranging from reducing policy fragmentation and mitigating competition among agencies, to enhancing efficiency and effectiveness, changing organizational and administrative cultures, and streamlining and improving executive oversight. Such cooperation and collaboration is clearly called for in the delivery of social security appeals, while respecting respective roles and mandates.

**Operationalizing the recommendations and options presented in Section 3 will require collective collaboration and cooperation of the government agencies involved, strong leadership, a clearly articulated mandate, and meaningful and enduring engagement of the stakeholder communities.**



## **3 Recommendations and Options for Consideration**

### **3.1 Overview**

Through the course of the review, KPMG heard from many stakeholders an overwhelming conclusion that the appeals processes under the SST are not meeting expectations of fairness, transparency, accessibility, and efficiency. Many expressed a strong desire to return to the previous system, or at least to restore elements of the previous system. Further, varying perspectives were presented by the four government organizations that support the appeals system on respective roles, responsibilities, and relationships and on whether the appeals system has met the expectations of reduced costs, improved efficiency, and client satisfaction.

There is an easy temptation to lay all blame on the SST; however, it is important to remember that the SST's appeals processes flow from its enabling legislation and regulations which are different from what existed for the legacy tribunals. This is not an excuse, nor a defence, but an important consideration in the quest for meaningful change. Still, the SST has not taken full advantage of the flexibility that many stakeholders maintained the Regulations afford, and that the principles of informality and expediency of proceedings have become subordinate to the application of the prescriptive elements of the SST Regulations.

There was unanimous concurrence among the key stakeholders to the tribunal system that the goal of the appeals system should be to serve vulnerable Canadians through a fair, objective, and responsive appeals process, while respecting the Tribunal's independence of decision-making.

Achieving this goal will require a resetting of the SST – a renouvellement – shifting from a primary orientation to the law towards an orientation to the client, using the full flexibility provided by the SST's enabling legislation and regulations.. This renouvellement must be accompanied by a leadership ethos that is also focused on the client and on the quality of service.

KPMG provides seven recommendations to the Minister, each supported by a range of options presented below. The recommendations and options look to reinstate some of what was lost in the creation of the SST, but as well to retain and enhance the positive changes and practices required for an effective and independent administrative tribunal. The options will require conscious choice and trade-offs across multiple objectives. Some changes are within the authority of the SST, others will require collective collaboration and cooperation of the government agencies involved in the appeals system, and meaningful and enduring engagement of the stakeholder communities. Still others likely will require changes to legislation and/or regulations that can accelerate the reorientation to the client and facilitate greater efficiency and effectiveness.

What is indisputable is that changes are required, beginning with operational changes in the SST, followed by legislative and regulatory changes, supported by a well-developed plan that enhances client satisfaction.

The changes implemented should be designed to achieve desired outcomes for accessibility, fairness, and transparency that collectively continue to improve the SST's appeals processes and the overall benefits system for vulnerable Canadians.





***KPMG's recommendations to the Minister are therefore to:***

1. Implement a suite of changes that will shift the orientation of the SST to a client-centric model and culture
2. Align the structure of the appeals processes with the characteristics of the benefits programs they support, while providing an appeals process that clients see as fair and transparent
3. Minimize complexity to better serve client needs, and where required, provide assistance to help clients navigate complex interactions
4. Strengthen the appeals system by formalizing engagement strategies to better involve stakeholders
5. Define and clarify ESDC and SST and ATSSC roles and responsibilities, with respect to how they work together to achieve government objectives while serving clients
6. Make more effective use of ATSSC employees by increasing the scope of support services and support to members
7. Establish an integrated accountability and reporting framework from reconsideration through appeals that incorporates all parties' contributions to an effective and efficient recourse process.

## **3.2 Recommendations and Options**

Following each recommendation are options for consideration. A number of options apply to more than one recommendation but are not repeated for ease of reading. These recommendations and options will require time for consideration and assessment in the context of the analysis contained in this Report, followed by the development of a go-forward strategy and detailed implementation plan.

### ***1 Implement a suite of changes that will shift the orientation of the SST to a client-centric model and culture***

- 1.1. Articulate core SST values and principles that guide all actions and processes of the Tribunal. These value statements should focus on the client, e.g. respect, inclusion, courtesy, diversity, and dignity
- 1.2. Develop a Client Service Charter modeled after the Board of Referees Service Pledge, elements of the Veterans Bill of Rights, and the AAT Service Charter that sets out the SST's commitment to service principles
- 1.3. Adopt a "tell us once" approach that doesn't require clients to submit information that the government already has
- 1.4. ESDC and the SST should collaborate to enable the use of a single electronic case file that is created and maintained throughout the application for benefits and recourse continuum, accessible to the client, and that facilitates the electronic exchange of information, thereby reducing the burden and time delays on clients. Clients would have ready access to their information and the state of their appeal through My Service Canada Account
- 1.5. Regularly measure and report upon client experience and satisfaction
- 1.6. Adjust member recruitment and training processes to emphasize both lived and specialized experience and greater client-orientation, particularly at the first level



- 1.7. Adjust SST executive recruitment and selection processes to emphasize leadership values towards client-orientation and performance, in addition to specialized skills and experience
- 1.8. Further develop Tribunal direction regarding language used in decisions, explaining how the law and facts are applied in plain language
- 1.9. Increase the number of SST decisions or decision extracts published in a searchable manner with any information that could be used to identify anyone involved in the appeal removed, e.g. names of individuals, specific employers and doctors
- 1.10. Redesign the Tribunal website to better serve client needs and make it much more user-friendly, e.g. pictorial home page, Service Charter, more extensive use of lay language, addition of frequently asked questions, links to sources of representation/support, addition of videos or graphic-novel type depictions of the process

**2 *Align the structure of the appeals processes with the characteristics of the benefits programs they support, while providing an appeals process that clients see as fair and transparent***

*For all appeals*

- 2.1. Make greater use of the flexibility provided in the SST Regulations
- 2.2. Give choice of form of hearing to clients, with due consideration of the implications for timeliness and cost
- 2.3. Provide for more than one member to hear and adjudicate an appeal, as is the case for all comparators. This could be designed based on pre-established criteria and/or appellant choice
- 2.4. Eliminate the provision for summary dismissal at the first level and require the SST to take decisions on the merits of the appeal
- 2.5. Reduce the administrative burden on clients and associated time delays by providing greater flexibility for the SST to support clients in submitting complete applications, e.g. on-line applications that automatically draw available tombstone data when the client enters an identifier, and/or revising the SST Regulations to simplify the requirements for appeal applications
- 2.6. Conduct immediate client satisfaction surveys similar to that employed by VRAB, which allows for rapid feedback

*For all appeals at the second level*

- 2.7. Eliminate leave to appeal to provide simpler and more timely access to justice for the client, and to better optimize member resources to decide appeals at the second level
- 2.8. Limit, if not eliminate, the ability of the Appeal Division to refer appeals back to the General Division

*For EI appeals at the first level*

- 2.9. Reorient the first level of EI appeals such that it is hospitable to appellants who are not represented by counsel, procedures are straightforward and limited in number, and decisions are rendered more quickly. Such a model could leverage elements of the former Board of Referees such as more than one member hearing the appeal, and the “tell your story” approach
- 2.10. Take concrete measures to streamline the process, e.g. eliminate unnecessary delays by initiating the appeal process while appeal application information is being completed; enable



the SST to draw the case file from ESDC/ Service Canada; automatically add the employer as a party at the onset of the process

For IS appeals at the first level

- 2.11. Remove the notice of readiness requirement and extend the deadline to appeal at first level to allow appellants more time to gather the necessary information to include with their appeal
- 2.12. Take concrete measures to streamline the process, e.g. eliminate unnecessary delays by initiating the appeal process while appeal application information is being completed; enable the SST to draw the case file from ESDC/ Service Canada

Other

- 2.13. Within the agenda of service transformation initiatives under ESDC, undertake a review of the end-to-end recourse process with a view to eliminate or reduce duplication and low value steps, improve coordination and information-sharing between ESDC/Service Canada and the SST, and assure a more client-centric benefits system
- 2.14. Maintain the mandatory requirement for reconsideration by Service Canada as a proven mechanism that resolves a great proportion of complaints quickly that may otherwise proceed to appeal. Conduct immediate client satisfaction surveys which allow for rapid feedback
- 2.15. Provide clients with ready access to their files via My Service Canada Account throughout the application-recourse-appeal continuum
- 2.16. Conduct a review to determine the reasons for GD-EI decisions overturned by the Appeal Division, and AD-IS decisions overturned by the Federal Court

**3 Minimize complexity to better serve client needs, and where required, provide assistance to help clients navigate complex interactions**

- 3.1. The SST and ESDC to collaborate on considerations for legislative and regulatory changes to streamline and simplify processes
- 3.2. Consider providing facilitated access to representatives for all appeals. At a minimum the SST should provide links on its website to sources of support
- 3.3. The SST to clarify that representatives do not have to be members of provincial or territorial law societies
- 3.4. Provide documents and decisions in plain language and in a timely manner. This extends to include the full benefits application-to-appeal continuum by providing clients with ready access to their files via a My Service Canada Account
- 3.5. Service Canada to provide clients with more rationale for EI reconsideration decisions
- 3.6. The SST to provide a range of services to support appellants such as checklists and resources, a consistent case officer, and verbal explanations of decisions similar to what is provided by Service Canada for reconsideration decisions.

**4 Strengthen the appeals system by formalizing engagement strategies to better involve stakeholders**

- 4.1. The SST, in coordination with ESDC, should develop a formal engagement strategy that is inclusive and tailored to the interests and needs of the various communities



- 4.2. The SST, in coordination with ESDC, should strengthen its practice to actively consult stakeholders to continuously improve its processes and results for clients, including the setting of service standards.

**5 Define and clarify ESDC, SST, and ATSSC roles and responsibilities, with respect to how they work together to achieve government objectives while serving clients**

- 5.1. Develop a formal mandate letter from the Minister to the SST Chairperson outlining shared goals, expected outcomes, respective roles and responsibilities, and oversight of the development and achievement of service standards
- 5.2. The SST, ATSSC and ESDC to establish formal planning, engagement and coordinating mechanisms at the policy, program, and operation levels.

**6 Make more effective use of ATSSC employees by increasing the scope of support services and support to members**

- 6.1. Make more effective use of ATSSC employees by increasing the scope of support services and support to members, including delegating administrative decisions
- 6.2. Adopt a model in which the SST specifies outcomes for ATSSC to achieve, giving ATSSC the flexibility to adjust its processes.

**7 Establish an integrated accountability and reporting framework from reconsideration through appeals that incorporates all parties' contributions to an effective and efficient recourse process**

- 7.1. Evolve the SST's Achievements Report to a mandated or legislated requirement to table annually to the Minister the SST's performance and priorities report, outlining results against commitments and resources. This report should be shared with the CEIC given its role to monitor and assess the effectiveness of the EI program
- 7.2. Expand service standards beyond timelines to include client satisfaction, access and quality, and monitor and report annually
- 7.3. Develop an integrated reporting framework that comprises the full recourse process from reconsideration to final appeal.

Implementation of some or all of the above options are intended to support the shift to a more client-centred culture that permeates all aspects of the SST, reduce complexity, improve accessibility, fairness and transparency, and strengthen accountability for results across the recourse process. In some cases the options may have resource implications, and in many cases the implementation of the options will require some level of investment to facilitate the change.

Many of these recommendations and options can be implemented within the current policy and legislative framework; others may require legislative and/or regulatory changes that can accelerate the reorientation to the client and facilitate greater efficiency and effectiveness. Some options would need to be developed at the portfolio level and in cooperation with the ATSSC.

### **3.3 Additional Comments**

In addition to the above recommendations and options for consideration, a number of questions were raised either through the statement of work for this review, or through the public consultation. The following observations are offered with respect to these questions. In all cases they need to be



considered in context of the recommendations and options and choices made for change moving forward.

### 3.3.1 Setting Time Limits

Time limits that establish the time from appeal application to hearing, and from hearing to decision, are an important tool to help appellants prepare, manage expectations, and measure performance. Setting time limits in the SST Regulations would be reflective of the commitment to conduct appeals as expediently as possible; however, the SST does not control all the levers, e.g. allocation of resources by ESDC and/or the Department of Justice (for ATSSC), member appointment by the Governor in Council. Setting time limits in legislation was not identified as a practice by comparators, although similar to the SST, service standards are established and reported against. **While enshrining time limits in the SST legislation is not recommended for the aforementioned reasons, there can and should be more oversight in the establishment, monitoring, and reporting of service standards. Further, it is timely to examine the SST's service standards and accountability to meet them, in the context of program objectives (EI and IS), client expectations, and the findings and recommendations in this report.**

### 3.3.2 Resourcing Levels

The SST undertook a detailed review of resourcing levels based on an assessment of caseloads and complexity within the current legislative and operational framework. Their review calls for additional resources based on the current operational model. **Such a request should be reviewed in the context of this review including a thorough cost analysis of the options offered - some of which may increase costs, others may decrease costs. Consideration should be given to funding models that can best support variable demand, link resources to expected results, and ensure the SST is resourced appropriately.**

### 3.3.3 Structural Changes

Overall, the structure of the SST is consistent with that of modern tribunals, e.g. the executive, members and support services, and distinct divisions for each benefit program. That said, as demonstrated throughout this report, although the total cost of the appeals process is lower than it was, the expected synergies have not materialized, most notably for the EI appeals. Stakeholders therefore questioned whether appeals for the two benefits programs of Employment Insurance and Income Security can and should be administered by one tribunal.

The construct of an umbrella organization to support many tribunal functions is not uncommon and is increasingly being adopted by governments in Canada and abroad. Three of the external tribunal comparators selected for review each sit within a portfolio of appeals programs, enabled by common administrative supports. The underlying programs range from income and disability benefits, to economic and property decisions. Done well, consolidating appeal systems for varying government programs, supported by common services and administrative and management oversight, can deliver efficiencies. Equally important is recognizing the differences and therefore unique requirements of the respective government programs and designing the associated appeals processes accordingly.

Finally, while many stakeholders expressed a desire to return to the previous system, this would be neither practical nor recommended. The recommendations and options presented in this review are specific to the EI and IS tribunal appeal processes; there is no practical reason they cannot be



accommodated within a single tribunal, allowing for the distinct needs of each. Further, the options provide the opportunity to reinstate certain elements of the previous system that promoted client-centricity, while recognizing the importance of reinforcing the elements of the SST that reflect a modern independent tribunal.

**Structural changes to return to the past, including splitting the EI and IS tribunal functions into separate organizations, is therefore not recommended.**

### **3.4 Considerations for Implementation Planning**

**Finally, it is recommended that the Minister take the required time to complete the due diligence necessary to evaluate the many recommendations and options available.** These will require conscious choices and trade-offs across multiple objectives and require further analysis and assessment to ensure that the changes achieve positive results for clients in the short, medium, and longer term. Learning from the past, the development of the go-forward strategy should include engagement with the stakeholder communities and development of a multi-year plan designed to deliver operational changes in the short term, followed by more fundamental changes, including changes to legislation and regulations, in the medium to long term. The plan should be updated annually, accompanied by regular public reporting on results. The changes implemented should be designed to achieve desired outcomes for accessibility, fairness, and transparency that collectively continue to improve the SST's appeals processes and the overall benefits system for vulnerable Canadians.



## 4 Comparison with Legacy Tribunals

*The HUMA Committee recommended that ESDC undertake a review of the SST to determine how it compares to the previous system in terms of cost, efficiency, and client satisfaction, including a cost level comparison between the current operations of the SST and former tribunals.*

### 4.1 Overview

In Budget 2012, the Minister of Human Resources and Social Development Canada (HRSDC) introduced legislative amendments “to eliminate administrative duplication in appeals and tribunal services by replacing the current administrative tribunal system for major federal social security programs with a single-window decision body.”<sup>12</sup> The expectation was that a new single decision body would streamline and simplify the appeals processes and improve decision-making. Resulting from this modernization effort the new tribunal system once mature would realize efficiencies and cost reductions generating \$25 million in annual savings. Equally important, as part of the Budget 2012 announcement, the Government reaffirmed its commitment to preserve an independent, objective, client-centered appeals process.

The previous administrative tribunal system consisted of four tribunals, the Board of Referees (BOR) and the Office of the Umpire (OU) for Employment Insurance (EI), and the Office of Commissioner of the Review Tribunals (OCRT) and the Pension Appeals Board (PAB) for Income Security (IS) benefits. The four legacy tribunals were administrative tribunals that made quasi-judicial decisions, although they varied considerably in structure and the degree of formality in procedures and hearings.

The Board of Referees and the Office of Commissioner of the Review Tribunals both acted as administrative tribunals, hearing each side and rendering a decision based on the facts of the particular case and the law, in accordance with the principles of natural justice. Hearings were conducted in person by three members. Members were expected to act independently regardless of their background. In contrast, appeals to the Pension Appeals Board and the Office of the Umpire were heard by judges and were more judicial in nature.

Two government agencies had responsibilities under the legacy system - the Canada Employment Insurance Commission (the Commission) and HRSDC (now ESDC). With the creation of the SST and the ATSSC, four government agencies now have key roles in the appeals system for EI and IS benefits. KPMG heard from the Commissioners for Workers and Employers and external stakeholders a desire to return to the previous system, or at least to restore elements of the previous system. Further, varying perspectives were presented by the four government agencies that support the appeals system on the roles, responsibilities, and relationships of the agencies and whether the appeals system has met the expectations of reduced costs, improved efficiency, and client satisfaction.

KPMG compared the SST to the previous system as recommended by the HUMA Committee. The total cost of the new appeals system is lower than the legacy system by approximately \$22.6 million before taking into account additional costs incurred by ESDC for changes to the EI reconsideration process.<sup>13</sup> This reduction in total cost of the previous system to the SST is however largely a reflection of the reduction in the number of EI appeals proceeding to the SST.

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<sup>12</sup> HSRDC Overview: Legislation for the Social Security Tribunal May 8, 2012

<sup>13</sup> ESDC indicated that there has been an increase of approximately \$6 million expenditure within ESDC to account for the changes in the EI reconsideration process



Looking at the average cost per case, the cost per EI appeal to the General Division increased significantly over the Board of Referees. In contrast, the cost per case for all other appeals decreased. The increased cost per case for EI appeals to the General Division results from both higher operating and higher member costs per case. Operating costs for the GD-EI relatively the same as before, although the number of cases per year fell dramatically. The increased member cost per case is largely attributed to the increase in member time per case.

With the exception of IS appeals at the second level, the average time from appeal application to final decision is longer for the SST in comparison with previous tribunals, most notably for EI appeals to the General Division. The average time for an appeal to the SST is 227 days at first level and 309 days at second level, compared to 44 days under the Board of Referees and 180 days under the Office of the Umpire.

While there is evidence to support that client satisfaction is low with the SST, evidence from surveys conducted for this review and reference documents also suggest that client satisfaction with the legacy tribunals was not necessarily better.

The following section provides:

- An overview of the changes between the legacy tribunals and the current system as a result of the creation of the SST
- How the changes impacted the roles and responsibilities of the Commission and ESDC
- The comparison of case volume, costs and timelines between the legacy tribunals and the SST
- The perspectives of stakeholders in moving from four tribunals to four government agencies to support one Tribunal
- The impact and change in client satisfaction between the legacy tribunals and the SST.

## 4.2 Overview of Changes

A number of changes were introduced that were meant to streamline and modernize the appeals system:

- Reduction in number of members hearing an appeal
- Replacement of part-time members dispersed geographically with predominately full time members working remotely
- Change in professional requirements of members for both the first and second levels of appeal
- Change in the timing of the reconsideration review and a reduction in the timelines to appeal an EI decision at the second level
- Introduction of a number of interlocutory decisions<sup>14</sup> such as summary dismissals and leave to appeal to optimize member time hearing complete and valid appeals

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<sup>14</sup> The decisions to allow or deny benefits being appealed are called merit decisions. Prior to concluding on the merits of the appeal, a number of intermediary or procedural decisions are made by Tribunal members before they review and conclude on the merits of an appeal. These are called interlocutory decisions





- Reduction of in-person hearings through the introduction of member choice over form of hearing
- Changes to when new information can be introduced (de novo), and the introduction of a requirement for notice of readiness to improve timely resolution for IS appeals.

**These changes, although meant to streamline the appeals system, introduced complexity into what appeared to many stakeholders to be a simpler and more transparent and fair process previously.**

For comparison to the legacy tribunals, the GD-EI is compared to the Board or Referees, AD-EI is compared to the Office of the Umpire, GD-IS is compared to the Office of the Commissioner of the Review Tribunal, and AD-IS is compared to the Pension Appeals Board. Although as reflected below there are some significant differences in the underlying regulatory frameworks, these comparisons reflect the similar levels in the recourse process.

The impact of these changes on the Commission, ESDC, ATSSC, case levels, form of hearing, client satisfaction, and the perspectives of the stakeholders follows the table.

Factor	Employment Insurance	Income Security
Appeals previously heard by three members now heard by one member	For the first level of appeal the three-member Board of Referees was replaced with a single member to review and hear the appeal. A single member to hear appeals at the second level is consistent with the previous Office of the Umpire.	For both the first and second levels of appeal, the three-member Office of the Commissioner of the Review Tribunal and the Pension Appeals Board were each replaced with a single member to review and hear the appeal.
Member requirements for the SST are no longer subject to the same considerations or professional requirements as was the case for the Board of Referees and the Office of the Commissioner of Review Tribunals	<p>The Board of Referees chairpersons were appointed by the Governor in Council, on the recommendation of the Minister of Human Resources and Skills Development Canada.</p> <p>Other board members were appointed by the Canada Employment Insurance Commissioners for Workers and Employers respectively, following consultation with labour groups and employer organizations. There were some 1,000 part-time Board members in Canada sitting in approximately 80 towns and cities.</p> <p>Under the SST, full-time and part-time members are appointed by the Governor in Council based on the recommendation of the Minister and following a selection process.</p>	<p>The Governor in Council appointed a panel to review appeals to the Office of the Commissioner for Review Tribunals. The panel consisted of between one and four hundred members of which at least 25 percent were members of a provincial bar, at least 25 percent were qualified to practice medicine or related profession, and members of the panel were from across Canada.</p> <p>Each appeal was reviewed by three persons chosen by the Commissioner of the Review Tribunals from among the panel, of which the Chairperson was a member of a provincial bar and, in cases of disability benefits one member was qualified to practice medicine or a prescribed related profession. These requirements were replaced with legal and medical advice being available to SST members.</p>



Factor	Employment Insurance	Income Security
	<p>For EI members, the Minister consults a committee composed of the Chairperson of the SST and the Commissioners for Workers and Employers before recommending any appointments to the EI section of the Tribunal. The selection criteria for EI members include experience working on labour or employer issues.</p> <p>Members of the SST's General Division and the Appeal Division are located across Canada and work remotely.</p>	<p>The panel was replaced with full-time and part-time members appointed by the Governor in Council based on the recommendations of the Minister, following an open selection process and consultation with the Chairperson of the SST.</p> <p>Members of the SST's General Division and the Appeal Division are located across Canada and work remotely.</p>
<p>The tripartite element of the BOR was significantly dismantled for EI appeals under the SST</p>	<p>BOR panels comprised a neutral Chair appointed by the government, a member appointed by the Commissioner for Workers, and a member appointed by the Commissioner for Employers.</p> <p>For the SST, all members are appointed by the Governor in Council following consultation with the Commissioners for Workers and Employers and the Chairperson of the SST. The selection criteria include experience working on labour or employer issues.</p>	<p>N/A</p>
<p>Reduced formality and member requirements for cases at the second level of appeal</p>	<p>Cases are no longer heard by judges at the second level of appeal. Formerly, a single Umpire heard appeals to the Office of the Umpire. The review was judicial in nature.</p>	<p>Cases are no longer heard by judges at the second level of appeal for CPP and OAS. Pension Appeals Boards were composed of a panel of three federal or superior court judges and was a judicial hearing.</p>
<p>Second level of appeal introduced for all appeals</p>	<p>A second level for EI appeals existed under the legacy system.</p>	<p>A second level of appeal was introduced for OAS appeals.</p> <p>A second level for CPP appeals existed under the legacy system.</p>
<p>Mandatory reconsideration</p>	<p>A mandatory reconsideration was introduced prior to an appellant proceeding to make an appeal to the SST.</p>	<p>No change as mandatory reconsideration was already required prior to the first level of an IS appeal.</p>



<b>Factor</b>	<b>Employment Insurance</b>	<b>Income Security</b>
introduced prior to an appeal	Under the BOR, informal but full reconsideration was conducted as part of the first level appeal.	
Summary dismissal introduced	The introduction to summarily dismiss appeals made to General Division.	The introduction to summarily dismiss appeals made to General Division.
Leave to Appeal introduced for the second level of appeal	The introduction of a leave to appeal to proceed to the second level of EI appeals (Appeal Division).	The extension of the leave to appeal provision under the Pension Appeals Board to the second level of Old Age Security appeals (Appeal Division).
The SST was designed to be more electronic, with the SST Regulations providing for more options for form of hearing, with choice made by SST member	Hearings at both levels were previously held mostly in person, often in the community or region of appellant residence.  Currently appellants are asked their preference, but do not have a choice.	Hearings at both levels were previously mostly in person, often in the community or region of appellant residence.  Currently appellants are asked their preference, but do not have a choice.
Time to make an appeal reduced for second level of EI appeals	A reduction from 60 days to 30 days to make an appeal to the Appeal Division.	No change to the previous 90 day limitation.
De novo hearings eliminated for second level IS appeals	Continued application of the de novo restriction at second level, as was the case under the EI Umpire.	Hearings for CPP appeals at second level are no longer de novo.
Notice of readiness process introduced for IS cases	The notice of readiness process only applies to IS appeals.	Under the SST Regulations, parties to IS appeals at the General Division have 365 days to file documents and indicate they have no further documents to file, after which the GD/IS must make a decision or schedule a hearing and make a decision.

Other changes were expected to support the simplification and efficiency objectives including:

- Provision of a single window for appealing Employment Insurance and Income Security (CPP and OAS) decisions
- The use of written submissions and video conferencing to conduct hearings thereby reducing the number of in-person hearings



- Introduction of dispute resolution and case management tools to reduce the number of hearings and make hearings more efficient
- Availability of electronic submission of documents and access to electronic tools for filing requirements and communications to and from the SST
- Reduction in administrative infrastructure.

Further to the above changes, on November 1, 2014 the ATSSC was established which now provides most of the administrative support to the SST.

Combined, these changes had a significant impact on the responsibilities and roles of the Commission and ESDC, responsible for the oversight and delivery of the appeals system. At the same time the SST and ATSSC, both new organizations themselves, were focused on establishing the policies and processes to support their responsibilities and roles in the appeals system in accordance with the new legislative framework.

#### 4.2.1 **Change in Role - The Commission**

The Commission has the legislated mandate to monitor and assess the EI program and as such has an important role and interest in the well-functioning of the entire life cycle of the EI program from policy, effectiveness of the program, and program delivery (including effectiveness of the recourse process).

The Commission has four members, three of whom are voting members representing the interests of workers, employers, and government. Two Commissioners represent the Government (currently the Deputy Minister, ESDC and the Senior Associate Deputy Minister of ESDC and Chief Operating Officer of Service Canada), and two Commissioners represent the interests of workers and employers. This structure reflects the “tripartite” or business-labour-government relationship associated with employment insurance.

The Deputy Minister of ESDC acts as the Chairperson of the Commission. Under the Department of Employment and Social Development Act (DESD Act), the Minister must consult a committee composed of the Chairperson of the Tribunal and the Commissioners for Workers and Employers before recommending to the Governor in Council any person to be appointed as a member of the Tribunal who may hear matters in the Employment Insurance Section.

The Commission reports to Parliament through the Minister of ESDC. Although much of the day-to-day duties of the Commission have been delegated to ESDC officials, the main statutory function of the Commission is to administer the Employment Insurance Act by:

- Making regulations with the approval of the Governor in Council
- Reviewing policies related to EI program administration and delivery
- Monitoring and reporting on program effectiveness through the annual EI Monitoring and Assessment Report, which must be tabled in Parliament
- Setting the annual EI premium rate
- Preparing a summary of the EI Chief Actuary’s reports on premium rate setting; both the summary and the report are tabled in Parliament



- Providing advice on which EI appeal decisions be submitted for review by the Federal Court of Appeal.<sup>15</sup>

#### ***What changed for the Commission***

Under the legacy system, the Commissioners for Workers and Employers were actively engaged in the recourse process for EI. They selected members of the Board of Referees and participated in their training; they had full access to the Board of Referees, and they had access to cost and performance information of the EI recourse process.

With the creation of the SST, the role of the Commissioners representing Workers and Employers has diminished, for example their input to member selection occurs once candidates have been shortlisted; they do not provide input to member training; there is less of a relationship with the SST than what existed with the BOR; and less information is available to them on the cost and performance of EI appeals under the SST – important as part of their mandate regarding overall effectiveness of the EI program. In short, the tripartite element prevalent in the former Board of Referees has been severely diminished in the interest of an independent arms-length administrative tribunal.

#### **4.2.2 Change in Role - ESDC**

The Employment Insurance program operations are carried out, on behalf of the Commission, by ESDC and Service Canada. ESDC/Service Canada is also responsible for delivering benefits directly to individuals and organizations for other Government of Canada programs and services such as Old Age Security and the Canada Pension Plan.

Service Canada's delivery of benefits involves answering program queries through specialized call centres, online through the web and at in-person points of service; receiving and processing applications; issuing payments; monitoring of claims for accuracy; administering requests for reconsideration of a decision; client authentication and identification; and preventing, detecting and deterring fraud and abuse.

#### ***What changed for ESDC/Service Canada***

ESDC provided administrative support to the legacy tribunals and was responsible for the reconsideration of decisions. The introduction of mandatory reconsideration of all EI decisions did not require significant operational changes for ESDC/Service Canada as the practice under the BOR included an informal reconsideration. There were however three important factors that changed the EI appeals process. First, under the legacy system the appeal process to the BOR triggered the informal reconsideration process in which Service Canada officials would review an appeal application to determine if benefits should be granted. To the appellant there was no interim step before their appeal. All appeals, unless the original decision was reversed through reconsideration, proceeded to the BOR. The shift to a formal reconsideration process under the new system has made the reconsideration decision visible to the appellant. Second, this change was accompanied by a new policy requirement for Service Canada officials to contact clients by telephone to explain the reconsideration decision which informs their decision to proceed or not to appeal. Third, the establishment of the SST as a separate independent organization from ESDC, coupled with the move of tribunal support staff from ESDC to the

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<sup>15</sup> Program and Service Delivery Overview, Canada Employment Insurance Commission (source ESDC)



ATSSC (which reports to the Minister of Justice), provided a clearer distinction of ESDC's role as a party, on behalf of CEIC, and full independence of the appeals process. This structural separation has made more formal the way in which ESDC/Service Canada participates in the appeals process. For example, under the SST Regulations, CEIC (in the case of EI appeals) and ESDC/Service Canada (in the case of IS appeals) have specified timelines in which to file relevant documents in their possession.

#### 4.2.3 **ATSSC**

The ATSSC was established on November 2014 to provide support services and facilities to eleven federal administrative tribunals by way of a single, integrated organization. The ATSSC provides specialized services tailored to and required by each tribunal (e.g. registry, research and analysis, legal and other mandate or case activities specific to each tribunal), as well as common and shared internal services (e.g. human resources, financial services, information management and technology, accommodations, security, planning and communications).

With some exceptions (e.g. information technology services), ESDC's overall responsibility to provide support to the four legacy tribunals was transferred to the ATSSC to provide support to the SST.

#### 4.2.4 **Change in Applications and Member Caseloads**

Appeal volumes are measured in a number of different ways depending on the objective of the measurement. Common measurements include the number of applications or appeals received and the number of concluded cases. The number of applications provides an indication of the overall recourse system and decisions made at each level in the process, including the original decision. Cases concluded by member is an indicator of member productivity and is used to compare cost per appeal.

##### ***Applications***

While the applications for appeal to the GD-EI were expected to be lower than the BOR, the actual experience is considerably lower than forecast when the SST was first established. Contributing factors include the introduction of mandatory reconsideration by Service Canada of its initial decision to deny benefits, coupled with an explanatory telephone call to each applicant providing the rationale for the reconsideration decision. Stakeholders and government officials reported that the addition of the obligatory telephone call to the client provides a more fulsome and personal explanation of the reconsideration decision, such that the client has more and better information to decide whether to proceed to appeal. The complexity of the new processes was identified as a factor by appellants and representatives that may deter appellants from proceeding to the SST (refer Section 10.4). It should be noted however, that approximately 46 percent of reconsideration cases are either rescinded or modified.

Also of note is that the proportion of IS reconsideration cases that proceed to a first level IS appeal remained constant both in absolute volume and percentage. Although not directly related to the EI appeals process, the mandatory reconsideration process did exist for IS appeals previously which lends some credence to the suggestion that the introduction of the formal reconsideration process along with the verbal explanation may have contributed to a decrease in appeals proceeding to the GD-EI.

The table that follows shows these changes in the annual average number of applications received by the SST and the legacy tribunals.



Figure 4 – Annual Average Number of Applications received by the SST and Legacy Tribunals

<b>Tribunal</b>	<b>Reconsideration Cases (ESDC)</b>	<b>1st Level Appeals<sup>16</sup> General Division</b>	<b>Percent of Reconsideration Cases</b>	<b>2nd Level Appeals<sup>16</sup> Appeal Division</b>	<b>Percent of the 1st Level</b>
Legacy EI	53,930	24,040	45%	2,210	9%
SST-EI	56,720*	3,790	7%	380	10%
Legacy IS <sup>17</sup>	13,660	3,670	27%	680	18%
SST - IS	15,670	3,890	25%	650	17%

\*46 percent of EI reconsideration cases are either rescinded or modified

### **Member Caseload**

Member caseload is calculated as all appeals concluded by members in the fiscal year. This calculation excludes cases concluded through an agreement between ESDC or CEIC and the appellant, and also counts group appeals as one case.

#### **Agreements**

When the SST was created, it inherited a large backlog of IS appeals. To address the backlog of IS appeals, many were resolved through agreement between ESDC/CEIC and the appellant, which required limited to no member time. As such, agreements were not included in member caseloads.

#### **Group Appeals**

A group appeal occurs when more than one individual appeals for the same or similar situation. This occurs for example when multiple individuals lose their employment under similar or identical circumstances. Although group appeals will tend to be more complex, the member is able to review and conclude the cases on the collective issues. As such, group appeals were counted as one case.

The caseload volumes will also vary from appeal applications as not all cases are concluded in the same fiscal year as the application is made.

The table that follows shows applications and member caseloads for both the legacy tribunals and the SST. The GD-EI caseload is considerably lower than the legacy system. The reduction in caseload is consistent with the reduced appeal applications. The rationale for the higher rate of GD-IS caseload was identified as being related to the backlog inherited by the SST.

<sup>16</sup> First level of appeals consists of the BOR and OCRT for the legacy tribunals and the General Division of the SST. Second level consists of OU and PAB for the legacy tribunals and Appeal Division of the SST

<sup>17</sup> Caseload is used as appeal applications were not available for the IS legacy tribunals. Further only fiscal year 2010/11 caseloads was available versus the two year annual average



Figure 5 – Applications and Member Caseloads for the SST and Legacy Tribunals

Tribunal	First Level <sup>16</sup>		Second Level <sup>16</sup>	
	Application	Member Caseload	Application	Member Caseload
Legacy EI	24,040	23,790	2,210	2,260
SST-EI	3,790	3,390	380	530
Legacy IS <sup>16</sup>	3,670	3,670	680	680
SST - IS	3,890	4,990	650	390

#### 4.2.5 Change in Costs

##### Summary

The total cost and cost per case of the SST was compared to the legacy tribunals. The member caseload was used as the measure of number of cases for purposes of comparing cost per case/appeal<sup>18</sup>.

The establishment of the SST and the ATSSC created a significantly different operating model from what existed previously. The legacy appeals processes were embedded within ESDC operations and were not subject to the same regulatory framework as the SST.

Overall costs of the SST are lower than those under the previous system, albeit not to the degree expected. The average annual cost of the SST was \$21.2 million for the two fiscal years ending March 31, 2017. The comparative average annual cost of the four legacy tribunals combined was \$43.8 million for the two fiscal years ending March 31, 2012. Not reflected in the cost comparison is the additional cost associated with the mandatory reconsideration process for EI which ESDC incurs and estimates to be \$5.7 million annually.<sup>19</sup>

The average cost per EI appeal to the General Division increased from \$780 per appeal to the Board of Referees to \$2,040 under the SST. This increased cost results from both a substantially higher operating cost per appeal and a higher member cost per appeal.

Operating costs have not changed substantially between the Board of Referees and the operating costs for the GD-EI. The number of cases however dropped significantly from approximately 24,000 per year to less than 4,000 proceeding to GD-EI thus increasing the operating cost per appeal. The increase in the GD-EI member cost per appeal over the legacy system is largely attributed to the member taking substantially more time than the three members took to review an appeal under the legacy tribunal. This increased time by member includes time spent on interlocutory and procedural decisions but also includes a general increase in the time members are taking to consider the merits of the case.

In contrast the cost per appeal for all other divisions decreased. The average cost per EI appeal to the Appeal Division has decreased from \$1,430 per appeal under the Office of the Umpire to \$1,050 under the SST. The reduction is primarily a result of lower operating costs. The average cost of IS appeals

<sup>18</sup> The terms cases and appeals are used interchangeably

<sup>19</sup> Note that all costs were adjusted for inflation using Bank of Canada rates and are presented in fiscal year 2016/17dollars





decreased over the legacy tribunals, from \$4,830 to \$2,450 for appeals to the General Division and from \$6,090 to \$4,040 to the Appeal Division. These decreases are largely a reflection of the reduction in members hearing an appeal from three to one, and lower operating costs than the legacy tribunals incurred.

Further details on the costs are provided below.

### Cost

The cost of the SST comprises member and employee salaries and benefits<sup>20</sup> plus an allocation of corporate and Operations and Maintenance (O&M) costs incurred by ESDC and the ATSSC.

In comparing the cost of the SST to the cost of the legacy tribunals, it is important to note the SST incurs additional costs that either were not incurred by the legacy tribunals or were absorbed within ESDC operations as a result of the different operating models. In addition, certain support services were and continue to be provided by ESDC/Service Canada and are not included in the costs of either the SST or legacy tribunals.

The following table summarizes the costs included in the total cost comparison, the primary differences between the SST and the legacy tribunals, and the costs not reflected in both the SST and legacy 'level cost comparison'.

Figure 6 – Cost Comparison for the SST and Legacy Tribunals

Cost Category	SST	Legacy
Translation	Translation costs relating to publishing of decisions are included in SST costs	The BOR did not publish decisions and therefore there were no equivalent translation costs  The OU did publish decisions and the relevant translation costs are included
Call Centre	The costs related to the call centre are included in SST costs	No equivalent activity/costs are reflected in the legacy tribunals
Corporate	ATSSC corporate costs are allocated and reflected in the SST costs	Some portion of corporate costs incurred by ESDC are reflected in the legacy tribunal costs, although not to same extent as the ATSSC corporate costs charged to the SST
Additional ESDC Corporate Support	Not included	Not included
Booking and hosting	Not included	Not Included

<sup>20</sup> Centrally managed costs (for e.g. severance, leave of absence benefits, etc.) are excluded as they fall outside the responsibility of both the SST and legacy tribunals



<b>Cost Category</b>	<b>SST</b>	<b>Legacy</b>
Information Management and Information Technology	Not included	Not included
Reconsideration	Not included	Not included

Recognizing that differences in the operating models noted above would have increased the cost structure of the SST, the level cost comparison of the SST still reflects an overall lower cost than the cost of the legacy tribunals.

**Average Annual Cost**

The average annual cost of the SST was \$21.2 million for the two fiscal years ending March 31, 2017. The comparative average annual cost of the four legacy tribunals was \$43.8 million for the two fiscal years ending March 31, 2012. Not reflected in the cost comparison is the additional cost associated with the mandatory reconsideration process for EI which ESDC incurs and estimates to be \$5.7 million.

The following table and graphs show the average annual tribunal cost between EI and IS for both the SST and the legacy tribunals. All dollars are rounded to the nearest thousand.

*Figure 7 – Cost Comparison (in thousands)*

<b>Tribunal</b>	<b>EI</b>	<b>IS</b>	<b>Total</b>
SST	\$7,469	\$13,777	\$21,246
Legacy	\$22,012	\$21,833	\$43,845
Difference	\$14,543	\$8,056	\$22,599*

*\*Excludes the additional cost incurred by ESDC related to the mandatory EI reconsideration process*

The total costs split by category type are shown below. The difference in the GD-EI costs compared to the BOR is largely attributable to member costs and reflects the significantly reduced caseload that the GD-EI processes. The GD-IS costs are lower primarily due to lower operating costs<sup>21</sup> as reflected in the illustrations that follow.

<sup>21</sup> Operating costs represent salaries and benefits of administrative staff and operations and maintenance costs



Figure 8 - SST Average Annual Costs (in thousands based on two years ending March 31, 2017 )

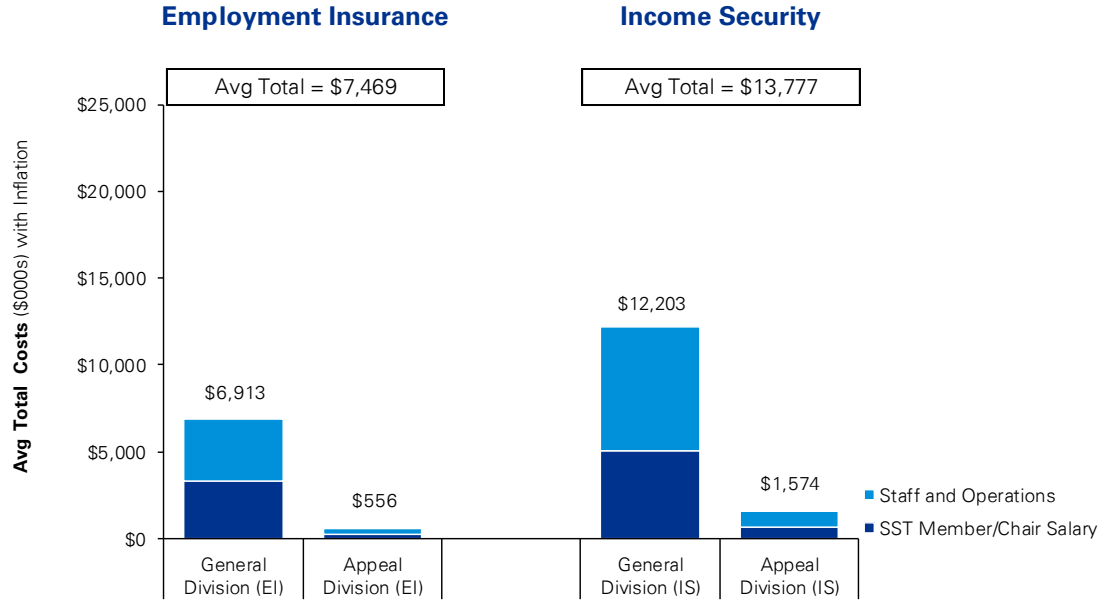
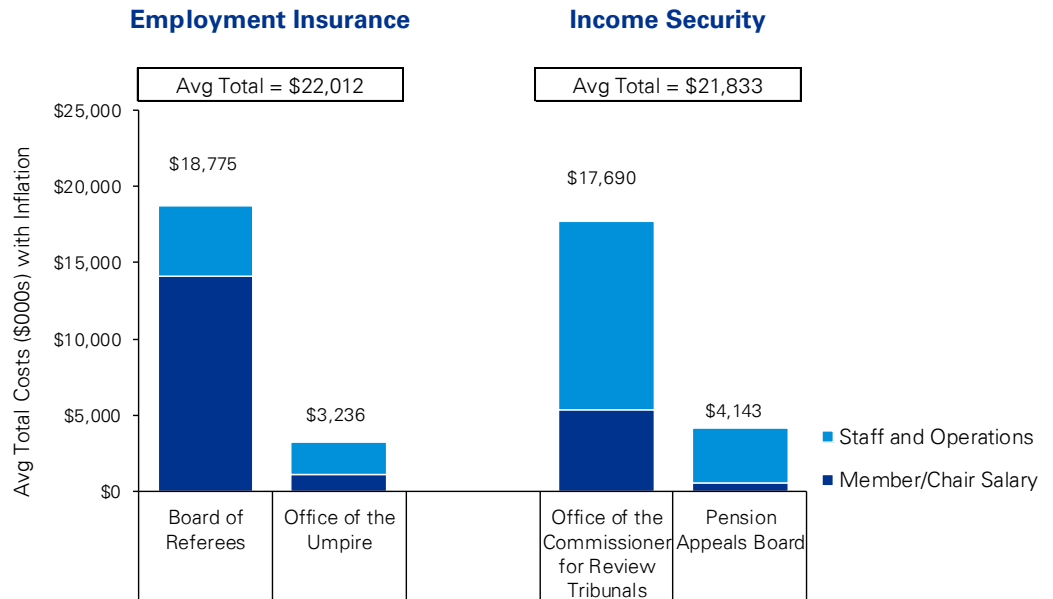


Figure 9 - Legacy Tribunals Average Annual Costs (in thousands based on two years ending March 31, 2012)





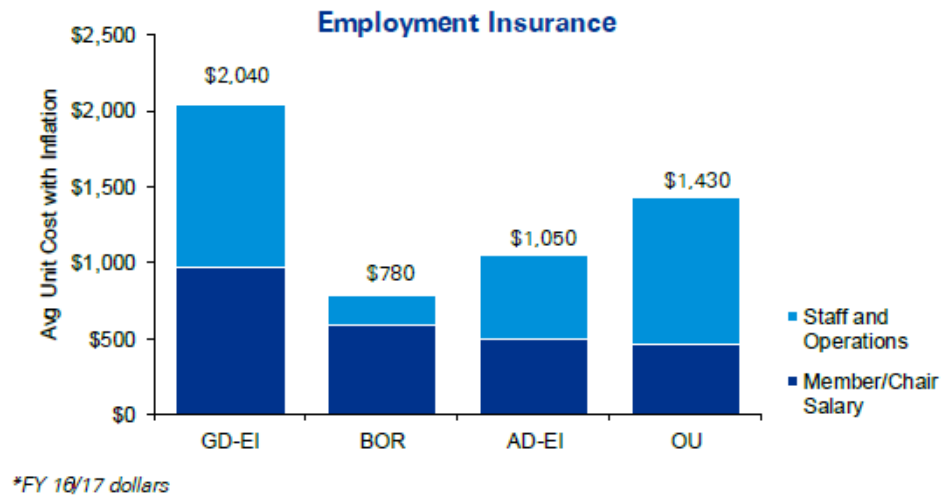
### Cost per Case

As a measure of relative productivity and efficiency, the cost per case was compared to the legacy tribunals. The two most notable differences in the cost per case were an increase in the cost per case for GD-EI cases from the BOR and a reduction in cost per case for GD-IS cases from the OCRT.

### EI

The increase in the cost per GD-EI case results from increases in both member cost and operating cost per case. The increased member cost is attributed to the additional member time for interlocutory and procedural decisions, and the time members are taking to consider the merits of the case. Operating costs have not changed substantially over the legacy system; however, the number of cases has dropped significantly as presented earlier. The increase in member time is further reflected in timelines discussed under Section 4.2.6.

Figure 10 – EI Cost per Case Comparison to the Legacy Tribunals

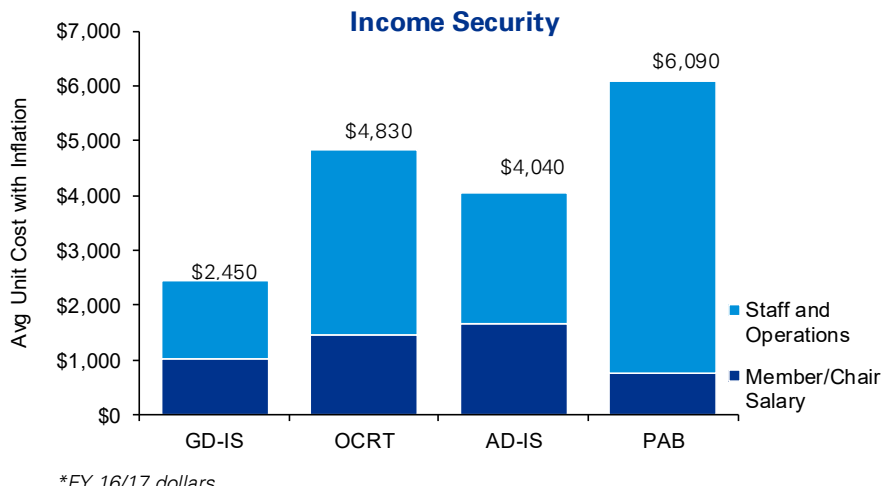




## IS

In contrast to EI, the GD-IS unit cost per case decreased 49% under the SST as compared to the OCRT. This is largely attributed to the reduction in number of members from three to one while the appeal structure did not change significantly from the legacy system. This is supported by the smaller percentage increase in timelines in GD-IS compared to GD-EI discussed in Section 4.2.6.

Figure 11 – IS Cost per Case Comparison to the Legacy Tribunals\*



## 4.2.6 Timelines

### ***The increase in time to resolve General Division appeals has increased, most notably for EI***

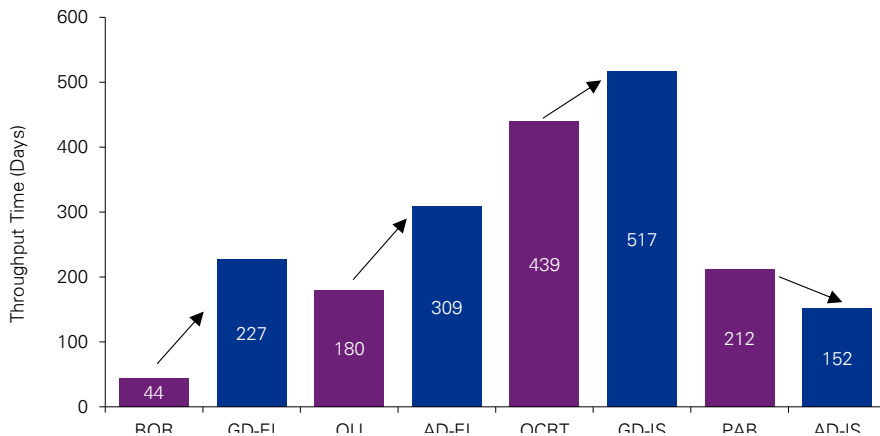
The time to resolve an appeal, or throughput time, is defined by the SST as the time from receipt of an appeal application until the client receives a decision.

Timelines from application to decision have generally increased under the SST. EI appeals to the General Division increased over five times from what they were previously. Timelines are also longer under the SST for EI appeals to the Appeal Division and IS appeals to the General Division although not to the degree found in GD-EI. Timelines for IS appeals to the Appeal Division did in fact decrease.

There are a number of factors that impact timelines outside the control of the SST such as caseload volumes, member complement, and complexity of the appeal itself. There are however a number of factors that are within the control of the SST including the complexity of the process (recognizing that some requirements are driven by the legislative framework), member performance, and the optimization of support from administrative staff that could reduce both timelines and the related costs.



Figure 12 – Comparison of Tribunal Timelines



*\*Only 10/11 data was available for the OCRT and PAB*

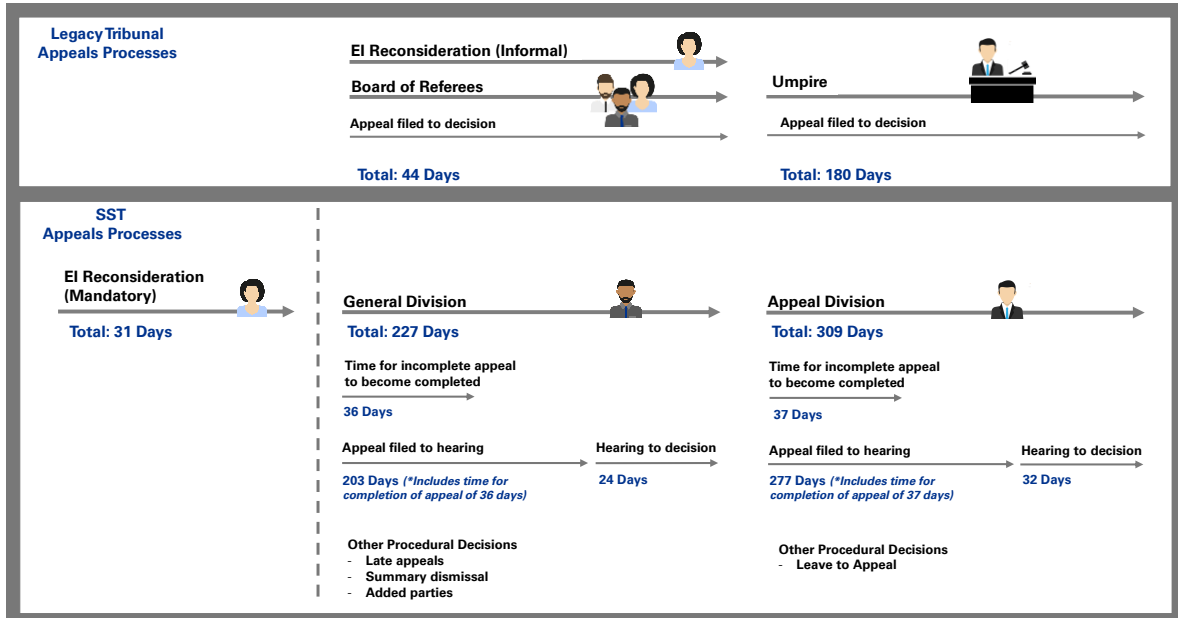
As mentioned above, the throughput time for an appeal hinges on a variety of contributing factors, e.g. caseload volumes, complexity of the process, member complement, member performance, and complexity of the appeal itself. Complexity of the process is discussed in Section 10 and member productivity in Section 11. Regarding the caseload volumes, the SST states that the introduction of mandatory reconsideration by Service Canada as a precursor to appeals has meant that generally only the most complex appeals proceed to the Tribunal. Under the legacy system, reconsideration was mandatory for CPPD cases (the majority of IS cases), and informal reconsideration of EI decisions was conducted concurrent with the application for appeal to the Board of Referees. In addition, the eligibility criteria for benefits have not substantially changed since the SST was created, nor have the top six reasons for EI appeals.<sup>22</sup> Member complement fluctuated during the review period; however, that is a constant for all tribunals and appeals boards subject to formal appointment processes.

The following further illustrates the major steps in the end-to-end appeals process for EI and IS and the corresponding average throughput times and provides supporting rationale for the increased times.

<sup>22</sup> Most challenged EI issues reported by ESDC under previous (2012-2013) and current (2013-2017) system are voluntary leaving, benefit period not established, availability, misrepresentation – penalty, misconduct and earnings

## Employment Insurance

Figure 13 – Illustration of Major Steps in the Appeals Process for EI



The shift to increased time to conclude EI appeals is misaligned with the more static nature of EI cases, the less complex eligibility criteria for EI benefits, the short term nature of this benefit, and the principle of expeditious determination of appeals as outlined in the SST Regulations. To highlight the significance of the misalignment, the average time of 227 days to conclude an EI appeal at the first level and 309 days at the second level<sup>23</sup> comes close to the maximum number of weeks of EI regular benefits payable at 45 weeks or 315 days. As the chart above demonstrates, the majority of EI appeal duration is the period from application to hearing.

Factors contributing to longer timelines for GD-EI cases include:

- Delays of an average of 30-50 days when appeal applications do not include all information required under the SST Regulations, currently one-third of all applications
- The provision in the DESD Act of the requirement for the SST to summarily dismiss an appeal that has no reasonable chance of success was intended as an efficiency measure but in fact adds time to the process due to the requirement under the SST Regulations to give notice in writing to the appellant and allow the appellant a reasonable period of time to make further submissions before making and documenting the decision. While consistent with the principle of natural justice, the low rate of summary dismissals (refer Section 5.3.1) indicates this time could be better used to decide the appeal on its merits
- An increase from 30 days to 90 days as the service standard to process an EI appeal at the first level<sup>24</sup>

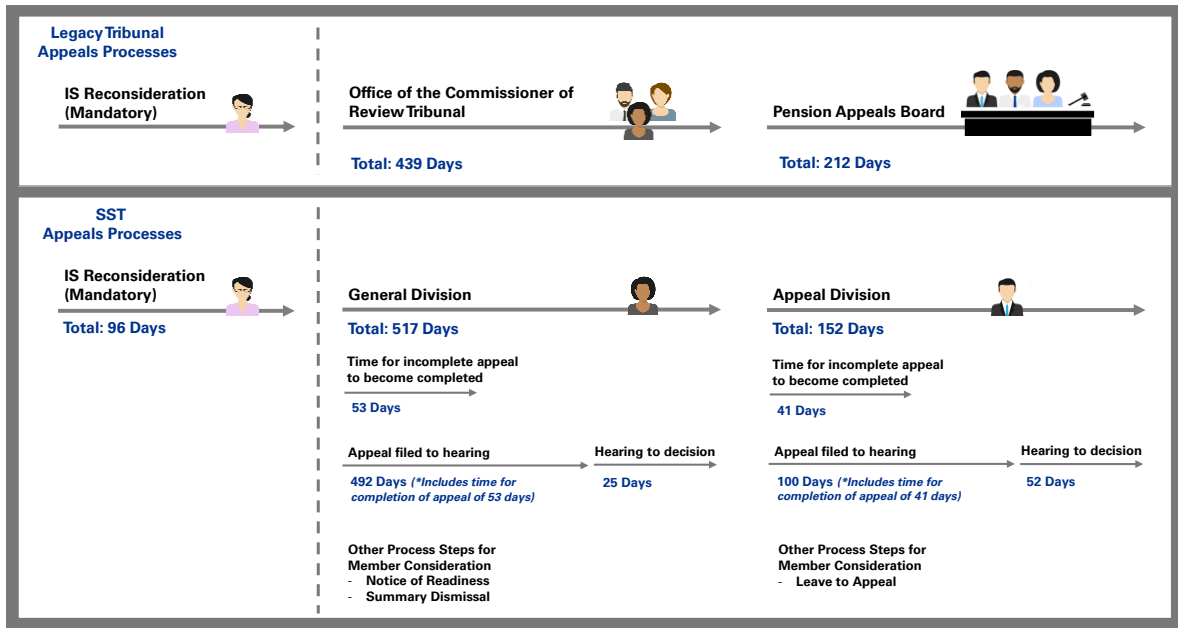
<sup>23</sup> Based on data provided by the SST

<sup>24</sup> A service standard to complete the appeals process was only in place for the Board of Referees

- The formal process under the SST to add parties resulting in an additional 45 days, when this was done automatically by the Board of Referees
- The time required by SST members to make interlocutory decisions, e.g. time extensions, late appeals, and adjournments, all of which are carefully documented with rationale.

### Income Security

Figure 14 – Illustration of Major Steps in the Appeals Process for IS<sup>25</sup>



The longer GD-IS throughput time than that of the OCRT may be explained by the introduction of summary dismissal and the Notice of Readiness under the DESD Act, the latter which provides parties with up to 365 days to file documents and/or indicate readiness to proceed. While intended to constrain numerous adjournments of such cases in the past, it was reported by SST and ESDC officials and representatives that the Notice of Readiness has had the unintended consequence of providing parties with more time. The AD-IS delivers judgement faster than the legacy tribunal, although these numbers are likely more volatile year over year due to a smaller case volume.

There was wide recognition throughout the review of the length of time required for CPPD cases due to the changing nature of disability, time required to obtain medical evidence, etc. There was general agreement that this interest could be met by eliminating the Notice of Readiness combined with extending the deadline to appeal while still providing adequate time to gather the necessary information, facts, and evidence before deciding the appeal.

<sup>25</sup> The number of days for the legacy tribunal IS reconsideration process was not available



#### 4.2.7 Form of Hearings

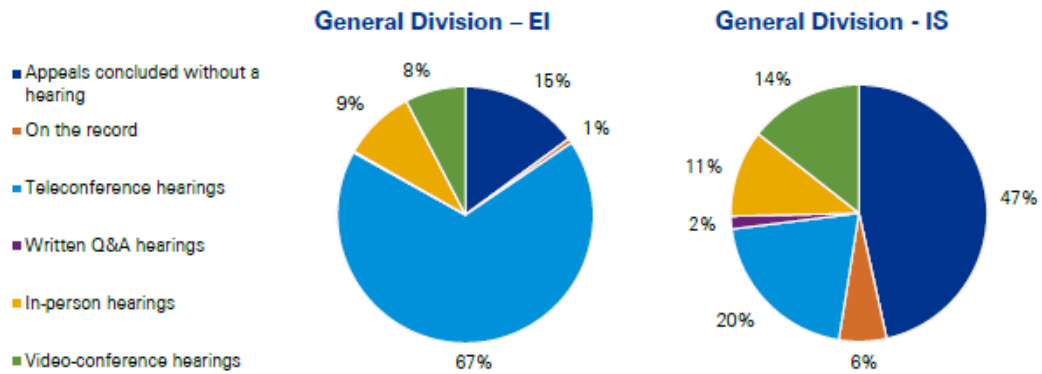
The legacy tribunal hearings were mostly held in person, although some would have been conducted by telephone and in cases of a no-show, appeals would have been decided on the basis of the information on the record. The SST Regulations provide for various forms of hearings, with decision by the member, although the SST does invite appellants to indicate their preference.

Both sections of the General Division provide appellants an opportunity to participate in the hearing, although more often it is by telephone which is the predominant method for both EI and IS, as well as by video conference and in person.

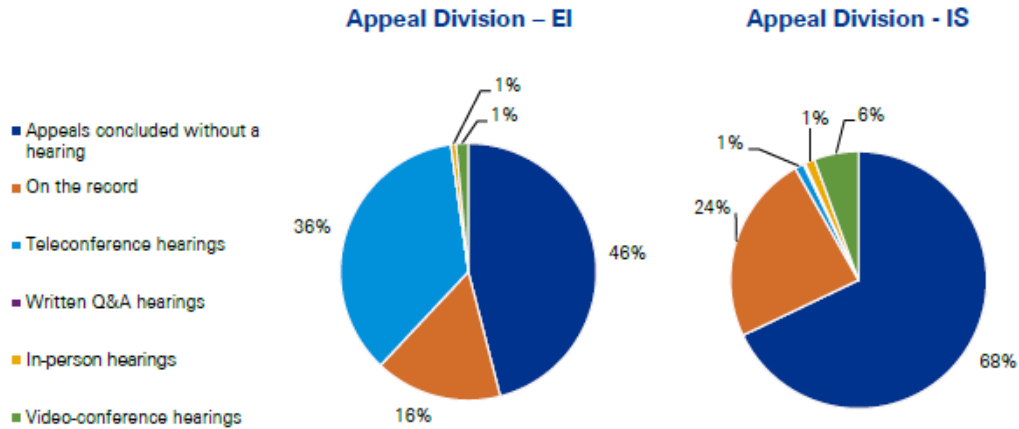
A comparison of EI and IS General Division sections shows that significantly more IS appeals are concluded without a hearing than EI appeals (47 percent and 15 percent respectively). There are significantly more appeals concluded without a hearing at the Appeal Division for both EI and IS cases.<sup>26</sup>

The format of hearings by EI and IS is based on case volume (refer Section 4.2.4) and is reflected below.

Figure 15 – Format of Hearings - SST



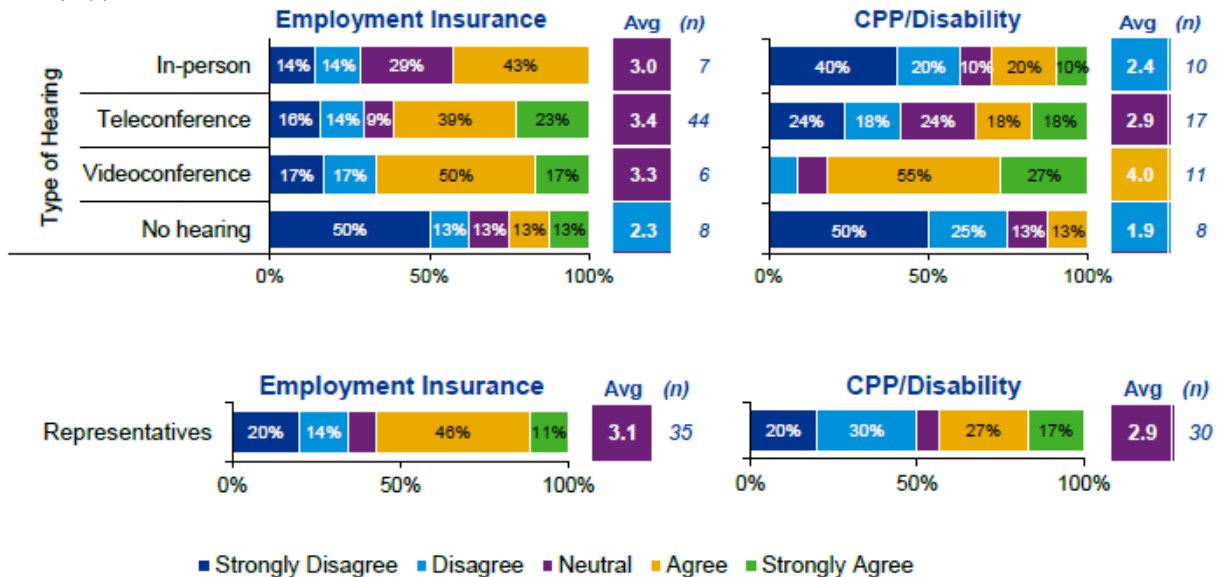
<sup>26</sup> Reasons to conclude cases without a hearing include withdrawals, agreements, and late appeals denied



While the form of hearing has changed to favour alternate forms of hearings, survey results do not suggest that fewer in-person hearings have an impact on client satisfaction. For example, 67 percent of EI appellants were satisfied with video conference hearings, slightly lower than those with an in-person hearing (72 percent); CPPD appellants showed a strong preference for video conference hearings at 82 percent, likely as this form provides more flexibility and accommodation for persons with disabilities, while preserving the face-to-face interaction.

Appellants who had no hearing (on-the record) did, however, showed lower satisfaction illustrated by survey results that follow.

Figure 16 – Appellant and Representative Agreement with the Question “I was satisfied with the method in which my appeal was heard”



Representative perspectives overall were not very different from those of appellants, with 57 percent of those representing EI appellants and 44 percent of those representing CPPD appellants satisfied with



the form of hearing. Responses from representatives cover the range of hearings in which they would have participated so are not broken down by hearing type.

The SST provided data on selected preference for form of hearing at the time of application to appeal.<sup>27</sup> This differs from the satisfaction with the actual form of hearing reported above in the surveys conducted, and is also based on appeal applications between April and June 2017. Based on 687 appeal applications submitted between April and June 2017, 65 percent of appellants had no stated preference for form of hearing; ten percent selected in person as their preference; eight percent selected telephone hearing, and no appellants selected video conference. Although these results provide a different perspective from what the survey asked, it does support that the form of hearing is not a factor for many appellants. The chart below provides further data on stated preferences; data is not available regarding actual form of hearing selected by the member, or the associated client satisfaction rate.

Figure 17 – Preferred Form of Hearing at Time of Application to Appeal – In Percentage<sup>28</sup>

Form of Hearing	Appellants (667)	Lawyers (53)	Other Reps (70)
No preference	65%	30%	41%
Multiple forms	6%	17%	4%
Blank	10%	6%	13%
In person only	10%	24%	27%
By telecom only	8%	17%	10%
By video only	0%	6%	1%
Qs and As only	2%	0%	3%

### 4.3 Client Satisfaction

The following key themes in relation to client satisfaction emerged from the consultations:

**The extra steps required to have an appeal heard by the SST compared to the legacy tribunals (summary dismissal, leave to appeal) coupled with the removal of choice of hearing diminish the ability for appellants’ voices to be heard.**

One written submission highlighted that “a right to appeal is meaningless if the claimant cannot navigate the appeal process.”

There is a common perception that with the addition of extra steps throughout the appeal process, (i.e., reconsideration, leave to appeal, summary dismissal), there are now several obstacles for appellants to go through and overcome. Additionally, multiple stakeholders consulted felt that the summary dismissal

<sup>27</sup> Data provided by the SST/ATSSC September 2017

<sup>28</sup> SST Survey Data. Totals may not add to 100% due to rounding



and leave to appeal processes violated the appellant's right to be heard and were counter to natural justice.

A common theme that emerged from the focus groups was format of hearings, specifically around the lack of choice of hearing by an appellant. While appeal hearings were conducted in person in the legacy tribunals, under the current system, SST members have the discretion to choose between several modes of hearings. In-person hearings are perceived to allow appellants to more adequately present facts and circumstances of their case without any barriers including access to technology (i.e. phone or computer), or communication/literacy and language. While in-person hearings were noted as being an optimal forum for hearings, according to a number of community and labour groups, the underlying theme was that selecting the format of hearings should be client-driven and determined based on what the appellant needs or wants.

"...overall complication of the process, particularly of the appeal division, took the worst from the Umpire and Pension Appeals Board and mashed them together - should be the best of both worlds - should be a massive simplification of the process."

**The SST has become more complex than the legacy tribunals.**

A repeated sentiment was that "SST operations are based on economic principles not based on elements of natural justice."

The SST process is seen as lengthier and more complex with an increased number of steps, a greater level of formality, and a shift to a more judicial Tribunal, in particular between the BOR and the GD-EI. Coupled with appellant challenges with language, literacy, and socio-economic status, it was felt that this added complexity increases probability of failure for appellants, adds costs and time, and reduces access to justice. While acknowledging the value of a more legalistic second level of appeal, stakeholders called for the first level to be "accessible, simple (pas simpliste), juste, et équitable."

The SST requires appellants to submit information that, from a client perspective, the government already has, including for example the reconsideration decision, Social Insurance Number or business number. The absence of what should be basic information already on file leads to delays in progressing the appeal, and causes frustration and an additional administrative burden on appellants. Stakeholders indicated missing information under the previous system was obtained more quickly and informally by the case officer. Calls were repeatedly made for more open and early access to the client file to support case preparation. A key irritant was the requirement to request information through Info Source, rather than ESDC/Service Canada making the reconsideration file readily accessible to clients.

**Wait time for hearings and decisions for both EI and IS are longer than before and are too long to serve appellants.**

There was strong feedback that the timelines of the EI recourse process had increased significantly relative to that under the BOR, and were too long for appellants in need of benefits. There were strong comments that the service standard of 90 days for EI appeals at the first level was unsuitable for those with low incomes waiting for benefits, and that the timelines were contributing to poverty. For example, "The lack of timeliness in the appeals processes has negative consequences on the personal lives of appellants. Sometimes, they become homeless while waiting for a decision from the SST." Others emphasized the need for CPPD decisions to take the time required. Many called for the appeal process to be commensurate with the associated benefit – shorter timelines for short-term benefits (EI); longer timelines for long-term benefits (CPPD).

With respect to the IS recourse process, it was felt that timelines were not designed with clients in mind. For example, a community group indicated that "The one year limitation period for making an



application to the General Division is unfair for CPPD claims; it sets a limitation bar for disabled appellants.”

Those giving feedback also felt that the lack of timeliness of the SST undermined confidence in it and diminished appellants’ right to appeal: “The delays discourage appellants to defend their right to benefits because the process costs a lot in time and energy.”

#### **The SST is less accountable to clients.**

The change away from the locally-based, tripartite hearing format of the BOR was felt to reduce accountability: “People on the SST have no lived experience with the workplace and are only accountable to meeting performance requirements of the SST. The BOR was accountable to the union and business groups that nominated them.”

Related to accountability is public confidence. It was felt that public confidence in the SST has been undermined:

“Public confidence in the SST is critical to its success and can only be fostered when it has a culture of transparency and accountability. Efforts to increase transparency have been recognized and are appreciated, however steps need to be taken proactively and not in response to complaints from the public – i.e. it took a substantial amount of work to convince SST to publish decisions and preserve access to decision databases from previous tribunals.”

Comments were made regarding member - client interaction, including members conducting video conference hearings from their homes and technical problems with remote hearings that reduced perceptions of professionalism. It was also felt that reduced input from stakeholders, especially with regards to the role of the Commissioners for Workers and Employers, had reduced public confidence in the SST.

### **4.3.1 Client Satisfaction in Comparison to the Legacy Tribunals**

Based on appellants and representatives who responded to the survey, client satisfaction was not rated high for either the SST or the previous tribunals. Further, although survey data on the legacy tribunals was not available, media reports and an Auditor General report on EI in 2003<sup>29</sup> would suggest that changes to the legacy systems were warranted.

#### ***Appellants***

Of the SST appellants surveyed, those that had also appealed under the legacy system were asked to respond to questions concerning their experience with both tribunals. A small sample of 34 appellants had interacted with both systems: 11 EI and 23 IS. Further, of the 34 appellants, nine had their appeal allowed and 25 had their appeal denied. Because of the small sample size, it is inappropriate to analyze the data by sub-group (for example by EI or IS). The skew towards IS appellants and appellants who were not successful in their appeals makes the absolute value of the responses biased. However, it is

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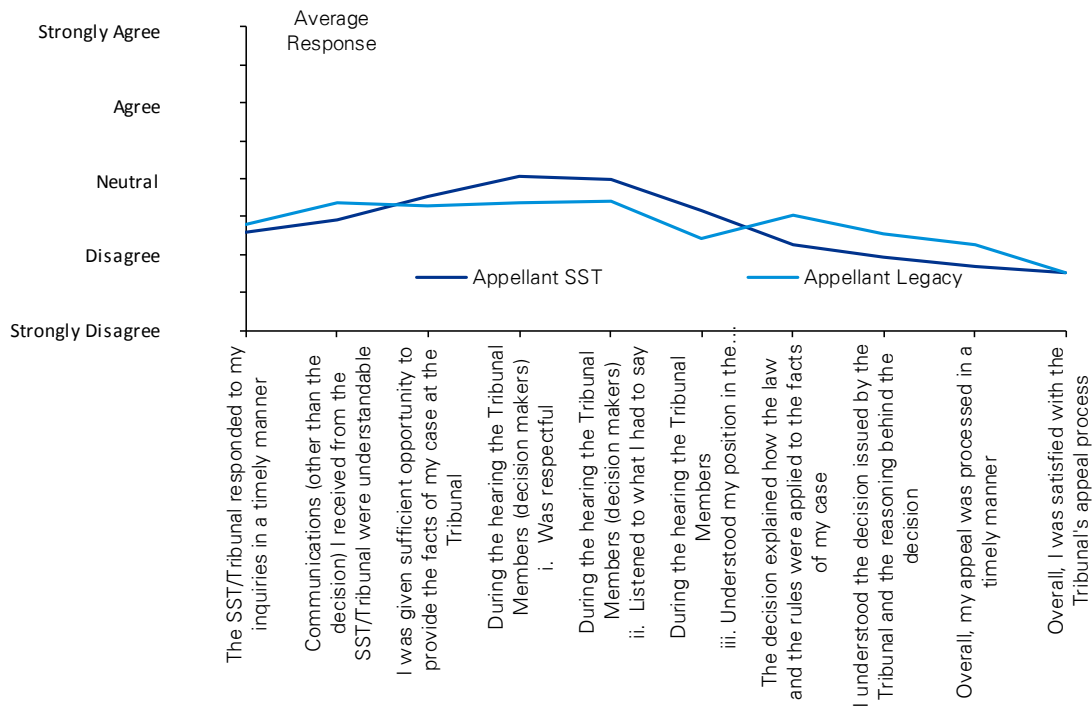
<sup>29</sup> 2003 Auditor General of Canada Report Section 7—Human Resources Development Canada and the Canada Employment Insurance Commission—Measuring and Reporting the Performance of the Employment Insurance Income Benefits Program. This audit examined four components of EI program delivery, including the processing of appeals, and found that timeliness targets for appeals were not met, nor was there consistent quality review of Board of Referees appeals across the regions



possible to compare how this group responded to questions regarding the SST versus previous tribunals to gauge how satisfaction changed between the two.

Satisfaction rates for appellants under both systems were strikingly similar, with overall satisfaction rates exactly the same and low. Only three elements scored slightly above a neutral response: sufficient time to complete the appeal application (SST), sufficient time to respond to tribunal requests for information (both), and being treated with respect (SST). The lowest responses were in three areas: fair treatment by the tribunal (former system), understanding the tribunal decision (SST), and timeliness of the process (SST). Average appellant responses are summarized below.

Figure 18– Comparison of Appellant Survey Responses, SST and Legacy Tribunals



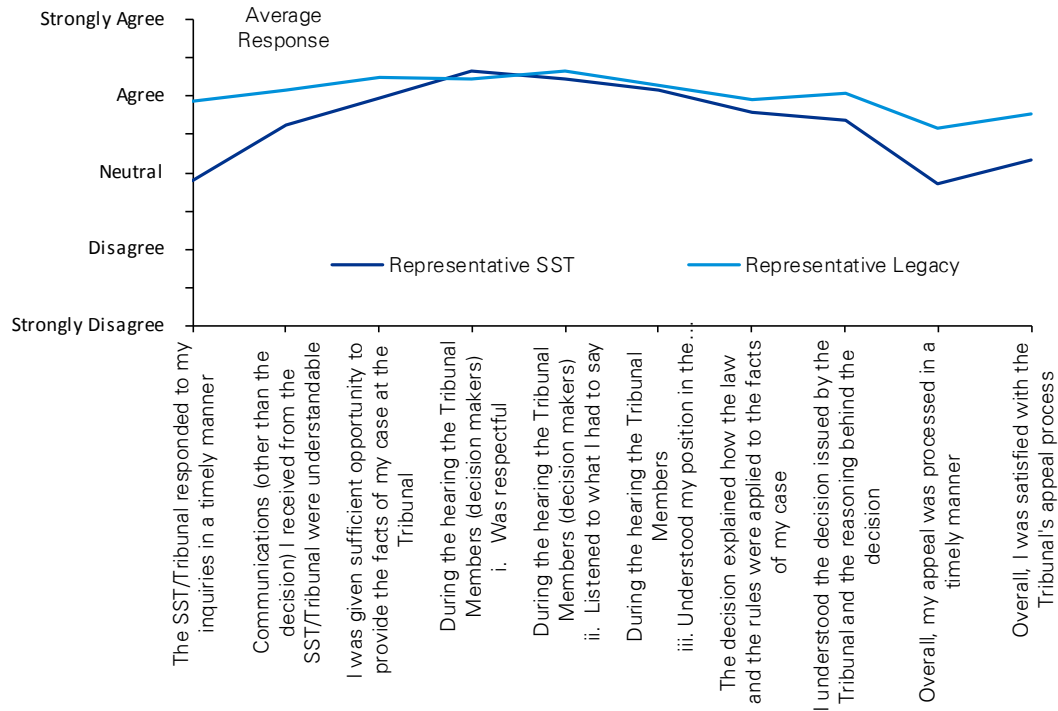
### Representatives

A total of 42 representatives who had worked with the current and legacy tribunals responded, 18 with EI experience and 24 with IS. Similar to the appellant numbers, the responses for this group are suitable for comparison between the SST and previous tribunals.

Representatives generally reported higher rates of satisfaction than appellants. Overall satisfaction rates were higher for appeals under the former tribunals. The highest score for both was having the legal knowledge to present the case. The SST scored lowest in timeliness. The former tribunals consistently scored positively in all areas. Average representative responses are summarized in the figure below.



Figure 19 – Comparison of Representative Survey Responses, SST and Legacy Tribunals



## 4.4 Stakeholder Perspectives

### 4.4.1 SST

In its 2013-2016 Achievements Report, the SST stated that after three years in operation, the Tribunal had established a solid foundation to deliver on its mandate. Highlights that the SST has accomplished follow:

- Published on its website tools and step-by-step guidance for appellants and representatives to navigate the process
- Established service standards in 2015<sup>30</sup>
- Publishes all decisions at the second level and a select number at first level searchable by key word
- Invites feedback from parties, stakeholders, and the general public.

<sup>30</sup> The SST will be reporting on the service standards beginning with its 2016-2017 Achievements Report



The SST also reports publicly on its caseload on a quarterly basis, including timelines from appeal hearings to decisions. For members, the SST provides formal training, and it has published its practice directions and guidelines and a Code of Conduct.

The SST cautions against comparing the SST to the former system given the difference in levels of maturity of the tribunals – “There is a premium for new organizations” – and the very different legislative framework within which it operates. The SST also emphasizes that the Tribunal is a creature of statute and therefore has no authority beyond what is bestowed upon it by the DESD Act and the SST Regulations, and that its practices and procedures must align with the current requirements of those instruments.<sup>31</sup>

The SST raises a fair point: one should not expect a new tribunal, underpinned by a different legislative and regulatory framework, to operate in the same manner as the previous system. However, the SST’s statements capture what has been reflected repeatedly by ESDC officials and external stakeholders – “the SST has been captured by the law.” The General Principle found in the SST Regulations – that the Regulations be interpreted to secure the just, most expeditious and least expensive determination of appeals and applications – is indicative of the government’s intent that the SST’s legislative and regulatory framework be considered as enabling, rather than prescriptive. This framework encompasses rules that support attributes of a modern tribunal, while other elements provide flexibility to enable the SST to align its processes to meet the needs of the clients.

#### 4.4.2 **ESDC**

ESDC contends that the SST’s processes are complex, burdensome, and focused on the law, in stark contrast with the original vision of a streamlined and simplified process, and that the legislation is sufficiently flexible to support that vision.

Both ESDC and SST officials spoke of the need for interdependence amongst the agencies, while respecting the independence of the Tribunal and its decision-making. For example, legal teams from each organization have developed thoughtful proposals for legislative and process improvements, but we could find no evidence of inter-agency cooperation to move these proposals forward. Similarly, the issue of redaction of documents for reasons of privacy which causes delays and constrains information sharing is long-standing and remains unresolved between the two organizations.

#### 4.4.3 **Commissioners for Workers and for Employers**

Commissioners presented the BOR as the “yardstick of success,” acknowledging it wasn’t perfect but did what it was supposed to do: timely, close to people, user-friendly, transparent, truly independent with three members with life experience – “not bureaucrats or lawyers. The old system was rooted in the community.” Commissioners questioned the wisdom of bringing together EI and IS appeals – “artificially combined” - as they are quite different. They believe the current system does not have the qualities of the previous system, nor is it delivering on the administrative efficiencies. They also expressed concerns that employees and employers are footing the EI bill under the SST/ATSSC with insufficient insight on how the funds are being spent.

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<sup>31</sup> Based on interviews and discussions with the SST up to and including August 18, 2017





#### 4.4.4 External Stakeholders

Similar to the HUMA report, June 2016, and the Service Quality Review (SQR), 2017, we also heard strong views from external stakeholders, ranging from representatives and community organizations, that the SST had failed in its mandate, emerging as a legalistic, bureaucratic organization through which appellants are not better served; the process is more complex and difficult, if not impossible for the average appellant to navigate; the time to receive a decision is significantly longer; and the SST is not accountable to clients, stakeholders, and the government.

Many also argued it was a mistake to amalgamate Employment Insurance and Income Security appeals under one tribunal – “they are vastly different.” Regarding the Appeal Division, some felt “they took the worst from the Umpire and Pension Appeals Board and mashed them together – the SST should be the best of both worlds – there should be a massive simplification of the process.”

Most telling is the assertion that “appellants have lost the right to be heard,” with many calling for a return to the previous system, seen as a place “where people could tell their story.”<sup>32</sup> As did the SQR Panel, we consistently heard that the problems do not fall solely on the SST: “the high overturn rate of initial benefits decisions at the mandatory reconsideration stage within ESDC/Service Canada begs a thorough review.”<sup>33</sup> The topic of overturn rates is discussed in Section 5.3.1.

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<sup>32</sup> Composite of interviews, written submissions and focus groups

<sup>33</sup> The rate of overturned decisions at the reconsideration stage is 36 percent for EI and 39 percent for IS in FY16/17



## 5 Appeals Structure

### 5.1 Overview

Today's appeals system under the SST reflects elements of appeals system design outlined by Patrice Garant, Doctor of Laws (Paris), member of The Royal Society of Canada, and professor at Laval University, in his paper of 2002, A Canadian Social Security Tribunal:

- The "external review" be preceded by an "internal review," namely a recourse by reconsideration before the decision-maker
- The nature of the appeal – a review whereby an administrative decision of the government is reviewed "on the merits" affirming, varying or setting aside the original decision
- A single or several levels of appeals, with a two-tier appeal system justifiable with programs involving numerous decisions, such as Employment Insurance and the Canada Pension Plan
  - Limit the right of appeal at the second level by subjecting it to authorization or permission based on strict tests
- Whether the appeal will be *de novo*; in plain language this allows the appellant to provide new information for consideration.<sup>34</sup>

In addition to the original design considerations outlined above, key structural elements of the SST were evaluated against comparators.

#### **Key findings from the review of structural elements identified the following differences between the SST and external comparators**

- The summary dismissal is not consistent with comparator tribunals, resulting in additional member time and does not provide substantive value to the process, contrary to the intent under the DESD Act to restrict consideration of appeals to those with a reasonable chance of success
- Decisions made by SST members include matters such as adjournments, time extensions, summary dismissal, and leave to appeal and represent between 26 and 42 percent of the decisions that SST members make, reducing time available for deciding appeals on their merits. Direct comparison of non-merit decisions to external comparators was not available. However based on discussions with the VRAB, certain non-merit decisions (adjournments and time extensions) are not made by members but rather by the administrative support function
- New information can be provided in an appeal to the General Division and not the Appeal Division. For those comparators with two levels of appeal this is not consistent with some comparators
- The leave to appeal mechanism appears to be effective in reducing the number of appeals at second level by limiting only those that meet the requirements to progress to a hearing; however,

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<sup>34</sup> A Canadian Social Security Tribunal, Patrice Garant, LL.D, FRSC, Quebec City, 30 November 2002 defined *de novo* as a first external challenge before a tribunal where any manner or method of proof is admitted even if the tribunal is seized of a preconstituted file



approximately 17 percent of EI appeals and 13 percent of IS appeals are referred back to the General Division because of the de novo restriction<sup>35</sup>, further extending the process for appellants

- The SST asks appellants their preference for form of hearing (e.g. in person, telephone, video conference) but members decide the type of hearing, in contrast to all comparators which provide appellants the choice in type of hearing and in contrast to legacy tribunals which heard appeals almost exclusively in person
- Unlike the SST, there are typically at least two members in attendance for all hearings by the comparators; further, depending on the nature of the appeal, specific experience/background is required by at least one of the members
- None of the comparators requires a notice of readiness by all parties. For veterans, appellants and their representatives signal readiness to proceed when they select a hearing date on the published VRAB schedule.

Other elements of the SST appeals structure align to comparators although with some variations:

- The requirement for mandatory reconsideration varied amongst comparators, although there is at least an informal reconsideration required by all comparators prior to proceeding to appeal, similar to the legacy Board of Referees
- Similar to the SST, two levels of appeal are provided by three comparators; alternative mechanisms are generally available prior to proceeding to a court where only one level of appeal is provided, such as access to report a complaint to an ombudsman
- The recruitment and selection of members is consistent with all comparators.

The design and implementation of the structural elements by their nature typically require trade-offs between efficiency and effectiveness of the tribunal operations, transparency and perceived fairness of the appeals process, and client satisfaction.

**This review found that the SST's appeals structure favours ensuring that only appeals with a reasonable chance of success go to a hearing over enabling the tribunal to conduct its business as informally and as quickly as warranted by the circumstances. Further the appeals structure of the SST does not provide clients with the same level of transparency, perceived fairness, access and support through the process as the comparators as evidenced by the following results.**

The following section of this report provides:

- The evaluation of the structural similarities and differences between SST and external comparators
- A review of key operating statistics related to speed of service, claimant success rates, and overturn rates against both external and legacy comparators where available

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<sup>35</sup> Under the DESD Act, grounds for appeal to the Appeal Division restrict the ability of the AD to consider new information; therefore, if the appellant raises new information in the application for leave, the AD returns the case to the General Division which can consider the new information. This step adds time and complexity to resolve the appeal, and can be confusing for the appellant, even more so if the General Division still denies the appeal, leading on occasion to "an endless loop"



- The experience and views from key stakeholders, appellants, and representatives on the appeals structure collected through the consultations.

## 5.2 Structural Comparison

### 5.2.1 Key structural element comparison

The key structural elements of the SST and comparators are provided in the following table.

Structural Element	SST	Comparators	Findings
<b>Reconsideration</b>	Prior to proceeding with an appeal to the SST, a mandatory reconsideration is required for both EI and IS decisions by Service Canada	<p>Three of the five comparators require a mandatory review by the program department prior to proceeding to appeal to the respective tribunal</p> <p>The remaining two of the five comparators have a broader mandate than the SST and do not specify the requirement for a mandatory review</p>	The mandatory reconsideration for EI and IS decisions is consistent with comparators and literature review of leading practices



Structural Element	SST	Comparators	Findings
<p><b>Gates in the appeals process</b></p>	<p>At the General Division level a review of the case by the member is conducted to determine whether the appeal has sufficient merit and should proceed to a hearing and if not it is summarily dismissed</p> <p>At the Appeal Division the member reviews the case to ensure it meets the requirements for appeal at the second level and to grant or not leave to appeal</p>	<p>Four of the five comparators do not have a summary dismissal at the first level of appeal</p> <p>One comparator incorporates an early resolution option where a phone meeting is conducted between the parties to the appeal, moderated by a resolution officer, to look for opportunities to resolve without an appeal</p> <p>Comparators with a second level do not have a leave to appeal process</p>	<p>The use of summary dismissal and leave to appeal is not consistent with the majority of the comparators</p>
<p><b>Levels of appeal</b></p>	<p>The SST provides two levels of appeal.</p> <p>The first level of appeal allows for all applications with a reasonable chance of success</p> <p>The second level of appeal only allows appeals on prescribed grounds</p>	<p>Three of the five comparators provide one level of appeal; both VRAB and the OSB provide two levels</p>	<p>Two levels of appeal under the SST is not inconsistent with two of the comparators</p>
<p><b>Size of adjudication panel</b></p>	<p>One member reviews and hears the appeal</p>	<p>Four of the five comparators require more than one member to hear the appeal</p> <p>One comparator varied the size of the panel dependent on a number of criteria</p>	<p>Comparator review combined with other literature review indicates that leading practices suggest at least two members to review and hear the appeal</p>

<b>Structural Element</b>	<b>SST</b>	<b>Comparators</b>	<b>Findings</b>
<p><b>Appointment, background and experience of the members</b></p>	<p>Members are recruited and recommended based on merit and relevant experience related to the program</p> <p>The Minister must consult a committee composed of the Chairperson of the SST and the Commissioners for Workers and Employers before recommendation to the Governor in Council of any person to be appointed to the Employment Insurance Section of the Tribunal</p> <p>All members are appointed by Governor in Council</p>	<p>For all comparators, members are recruited and recommended based on merit and relevant experience related to the program</p> <p>All members are appointed by the respective legislative authority (for example Order in Council)</p>	<p>Comparator review combined with literature review indicate that members have a combination of experience and knowledge reflective of the nature of the program and nature of appeals</p> <p>If there is a second level of appeal, the second level of appeal is focused on the application of the law and therefore members generally have a legal background</p>
<p><b>Form of participation of the appellant in the hearings</b></p>	<p>The SST Regulations state that the choice of hearing is determined by the member</p>	<p>For all comparators, the appellant has choice of hearing including in person</p>	<p>Decision on form of SST hearings is not consistent with comparators</p>
<p><b>De novo</b></p>	<p>New information can only be introduced at the General Division (first level of appeal)</p>	<p>All comparators allow for new information to be introduced at the first level of appeals</p> <p>Two comparators with a second level (VRAB and OSB) allow for the introduction of new information at both levels</p>	<p>The SST is not consistent with those with two levels of appeal regarding the acceptance of new information at the second level</p>
<p><b>Notice of readiness (NOR)</b></p>	<p>Under the SST Regulations parties to IS appeals at the General Division have 365 days to file documents and indicate readiness to proceed, after which the GD-IS must make a decision, or schedule a hearing and make a decision</p>	<p>No comparator tribunal has such a legislated provision</p>	<p>The SST Regulations are not consistent with comparators and unintentionally offer potential for further delays – the very issue the NOR was intended to address</p>



## 5.2.2 External comparators

To provide a reasonable comparison between tribunals, the different appeals structures need to be considered. Based on the above analysis, the following shows the relevant comparative external tribunals applied to this review.

SST	AC	TAQ	VRAB	AAT	OSB
<b>Reconsideration or equivalent departmental review</b>	✓	N/A	✓	N/A	✓
<b>First level of review – General Division</b>	1 <sup>st</sup> level of appeal conducted by the Decision Review Body within the WCB	✓	✓	✓	✓
<b>Second level of appeal – Appeal Division</b>	✓	N/A	✓	N/A	✓

## 5.3 Operating Statistics

The following available operating statistics were identified to measure the impact or effect that the SST appeals structure has on efficiency, transparency and client satisfaction:

- Number of applications for appeal that proceed to formal hearing
- Percentage of overturned decisions by successive levels of appeal
- Timelines from application to decision
- Number of member decisions - both merit decisions (denial or allowance of an appeal) and procedural decisions (e.g. allowances of late appeals, summary dismissals, and leave to appeal).

It is noted that these measures provide directional evidence of effect of the appeals structure and need to be considered in context of other information including the perspectives and experience of stakeholders.

### 5.3.1 Number of applications that proceed to formal hearing

The analysis of progression from total applications through hearings, subsequent applications for leave to the Appeal Division, actual Appeal Division hearings, and final Tribunal decisions challenged in Federal Court shows:



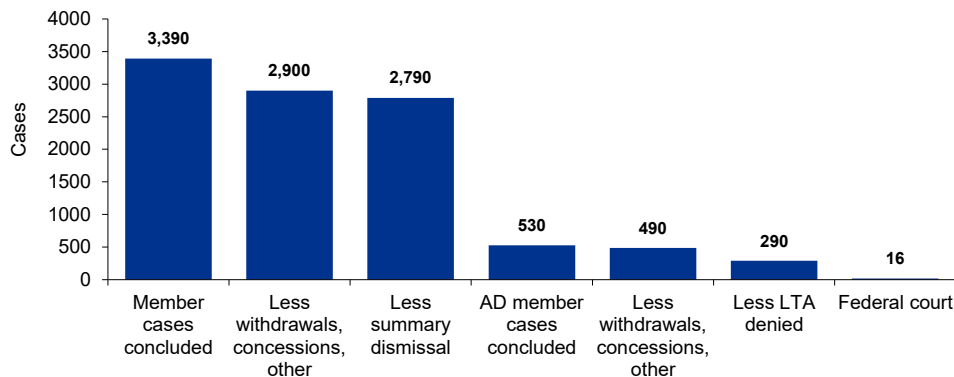
- Of the average annual cases concluded less withdrawals and concessions, approximately four percent of EI cases and 13 percent of IS cases to the General Division were summarily dismissed
- Of the average annual cases concluded less withdrawals, approximately 41 percent of EI cases and 61 percent of IS cases are denied leave to appeal at the Appeal Division.

These results suggest that the summary dismissal is not providing the value anticipated when this measure was included in the legislation. Given the low numbers, the time to process a summary dismissal, and the perceived denial of natural justice when an appeal is dismissed, the SST's resources may be better applied to deciding the case on its merits.

The high rate of denial of leave to appeal, particularly for IS appeals (the majority of which are CPPD appeals), while consistent with the intent to resolve the majority of cases at the first level, raises the question of whether this provision is consistent with the principles of informality, fairness, and natural justice outlined in the SST Regulations, section 3(1)(a): "The Tribunal must conduct proceedings as informally and quickly as the circumstances and the considerations of fairness and natural justice permit." In these cases the Appeal Division is often returning the appeal to the General Division, taking valuable member time to document the rationale for the denial, and creating what was described as an endless loop for clients (refer Section 5.4.2). In some instances appellants are seeking to have information considered that they did not submit to the first level, either through ignorance of the process or the fact that new information relevant to their appeal only became available after the first level decision, e.g. medical information.

The following illustrates the number of appeals that do not proceed to hearing as a result of the summary dismissal at General Division and leave to appeal denied at Appeal Division. The charts begin by showing the total member cases concluded, adjusting for withdrawals, late appeals, and other reasons an appeal is not heard, and then showing the drop in cases due to summary dismissals and leave to appeal (LTA). This is repeated for both divisions.

Figure 20 - Volumes at Each Step – EI

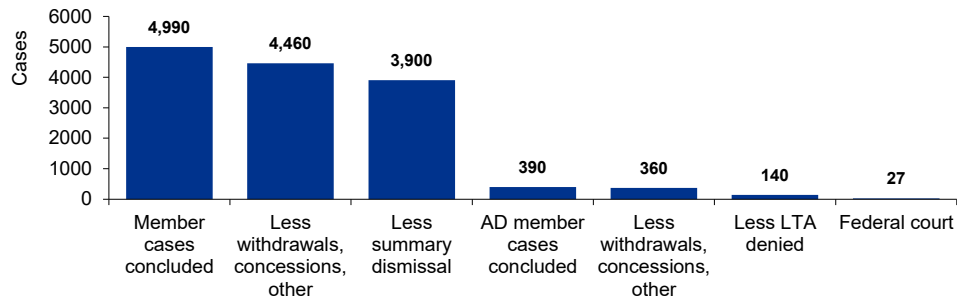


The majority of EI cases concluded shown above are not summarily dismissed and result in hearings. A larger proportion of leave applications are denied.





Figure 21 - Volumes at Each Step – IS



Compared with EI appeals, a larger number of IS applications are summarily dismissed and do not proceed to hearings. Over half of IS leave to appeal applications are denied and do not result in a hearing.

#### **Percentage of decisions overturned**

Overturn rates (the percentage of decisions made at a lower level that are overturned on appeal) provide an indication of the effectiveness of the appeals structure in limiting only valid appeals to proceed to hearings and the overall effectiveness of the decision-making. Only hearing valid appeals would be expected to increase overturn rates, while effective decision-making at a lower level would be expected to reduce overturn rates. Comparator overturn rates range from 10 percent to just under 60 percent. The GD-EI has an overturn rate of about 20 percent. This is at the low range of comparators. A higher number, 40 percent, of decisions are overturned at the AD-EI level, followed by a low overturn rate for appeals to the Federal Court. The overturn rate in AD-EI is consistent with that of VRAB.

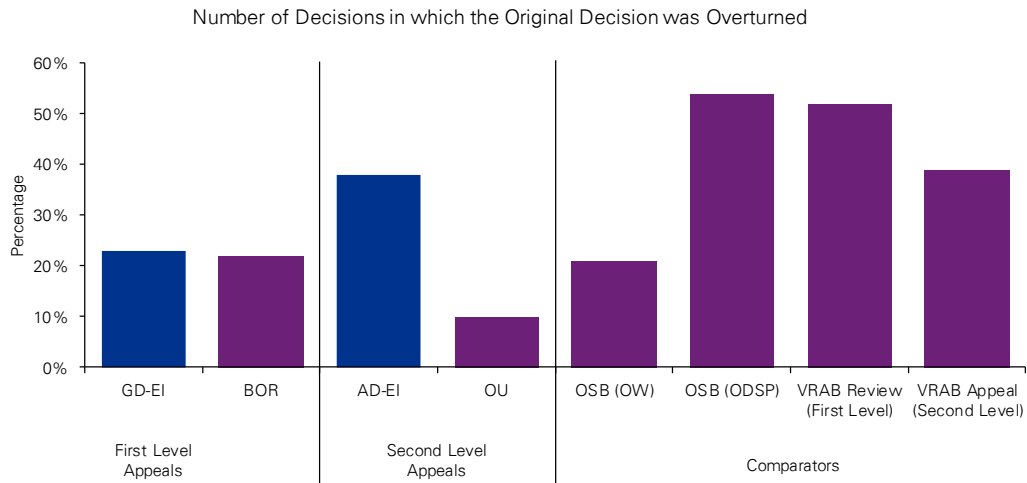
With respect to the IS tribunals, the GD-IS overturns about 30 percent of ESDC reconsideration decisions, and the AD-IS overturns about 20 percent of General Division decisions. These numbers are within the low end of the comparator range. At the Federal Court, a higher percentage of IS appeals are overturned, suggesting cases should be examined to determine why the overturn rates at the Federal Court are as high as they are.

As shown in the figures below:

- GD-EI overturn rates are lower than most comparators and consistent with the Board of Referees, indicating better decision-making at the reconsideration stage
- The AD-EI rate of overturn is higher than the Office of the Umpire which is consistent with the higher rate of appeals being upheld by the Federal Court than was the legacy experience
- GD-IS and AD-IS overturn rates are lower than the legacy tribunals and comparators.

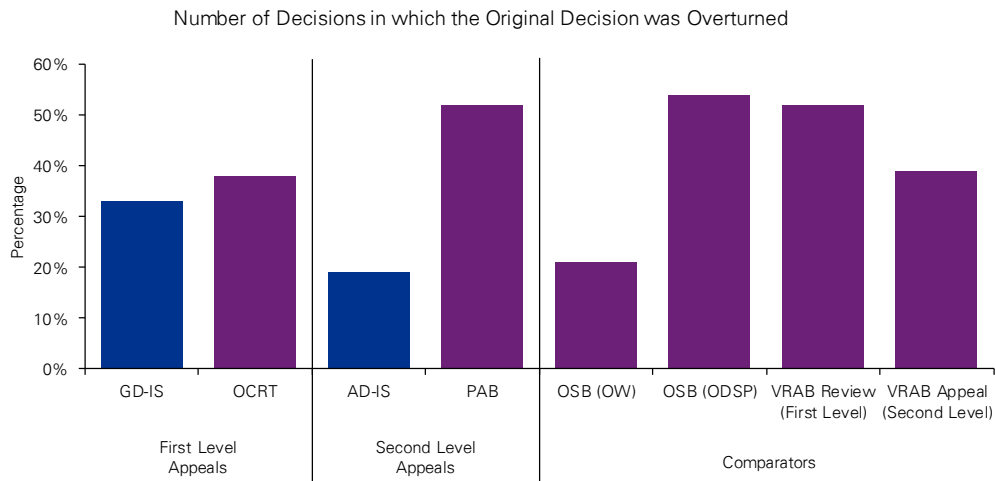


Figure 22 - Percentage of Cases where the Previous Decision was Overturned versus Comparators – EI



Note - OSB results are reported for the Ontario Works (OW) and Ontario Disability Support Program (ODSP)

Figure 23 - Percentage of Cases where the Previous Decision was Overturned versus Comparators – IS



Note - OSB results are reported for the Ontario Works (OW) and Ontario Disability Support Program (ODSP)

**Percentage of decisions overturned in Federal Court**

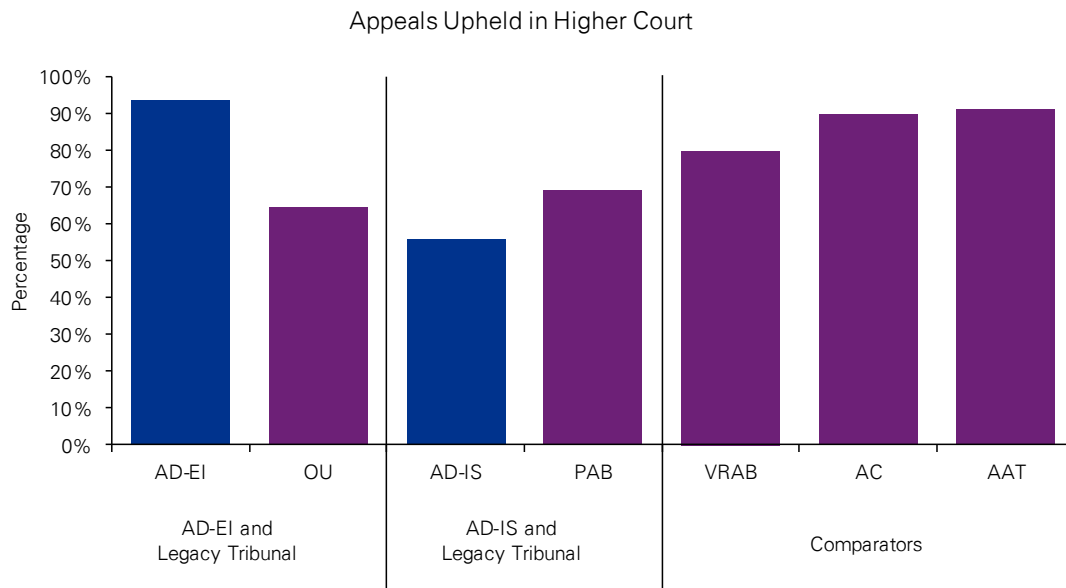
The number of Appeal Division decisions that are appealed to the Federal Court, and the number of those that are upheld speak to the effectiveness of the Tribunal at delivering decisions that reflect the law and facts, and at reducing unnecessary burden on the Federal Court system. Over 90 percent of AD-EI decisions were upheld by the Federal Court suggesting soundness of decisions. This is above the rate for



comparators which were in the 80 to 90 percent range. At the AD-IS, only about 55 percent of decisions were upheld which is lower than both the legacy tribunal and comparators.<sup>36</sup>

The chart below shows the percentage of appeals upheld by a higher court for EI and IS relative to legacy tribunals and comparators. The AD-EI has the highest rate of appeals upheld among comparators, compared to the Office of the Umpire which was at the low end of the range.

Figure 24 - Percentage of Appeals Upheld in Higher Court



\*The SST rates reflected in the chart above is based on fiscal year 2016/17 information

### Overall

The percentage of EI decisions being overturned at the AD-EI level warrants a review of the reasons that GD-EI decisions are not being upheld. For IS decisions, the lower percentages of overturned decisions at the first and second levels of appeal compared to the legacy tribunals and the higher rate overturned by the Federal Court warrant a more detailed review of appeals before the AD-IS and reasons for overturn at the higher court.

### 5.3.2 Timelines from application to decision

Timelines between the external tribunals and the SST are difficult to compare directly due to differences in the basis for reporting timelines.<sup>37</sup> More relevant to this review was the comparison of timelines for the legacy tribunals reflected in Section 4.2.6.

<sup>36</sup> To note, in fiscal year 2016/17, there were 16 AD-EI appeals to the Federal Court and 27 AD-IS appeals to the Federal Court.

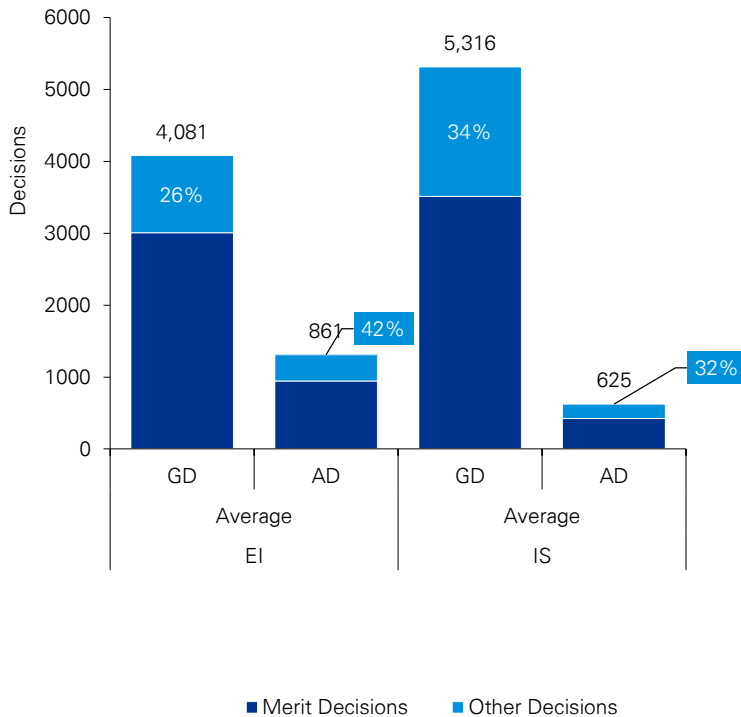
<sup>37</sup> Information is included in Annex A however should be considered directional only



### 5.3.3 Number of decisions that are not merit decisions

Merit decisions under the SST predominately result in the denial or allowance of an appeal. Other decisions made through the process include interlocutory or procedural decisions such as allowances of late appeals, time extensions, adjournments, granting leave to appeal, etc. As shown below, for the two-year period under review, between 26 percent and 42 percent of member decisions were related to other decisions and not merit decisions. In contrast, the legacy tribunals convened a hearing based on available information; there was limited member time spent on other decisions prior to the hearing.

Figure 25 – Merit Decisions and Interlocutory Decisions (decisions related to group appeals counted as a single decision)



At the General Division level, the most common interlocutory decisions were for time extensions, late appeals, and adjournments. At the Appeal Division level, the majority of interlocutory decisions were for leaves to appeal granted.

In addition, because new information cannot be introduced at the Appeal Division, for the two-year period under review, an annual average of 133 EI appeals and 85 IS appeals were referred back to the General Division to consider new information. This is compared to 285 EI and 134 IS merit decisions made by the Appeal Division in the same period. This suggests that while the appeals structure and



processes are providing appellants an option to introduce new information, it adds additional time and steps in the process.

## **5.4 What we Heard**

Through the public consultation we heard from appellants, representatives including community and labour groups, and tribunal members.

Overall, whether in regards to the EI or the IS programs, significant concerns were raised with respect to the access and timeliness of the tribunal system. Stakeholders consistently identified the following contributing factors that impede access and add time to the SST appeals processes:

- Incomplete applications
- Document sharing between ESDC, SST, and the appellant
- Summary dismissal
- Leave to appeal
- Notice of readiness
- Rulings from the Canada Revenue Agency and the Tax Court of Canada.

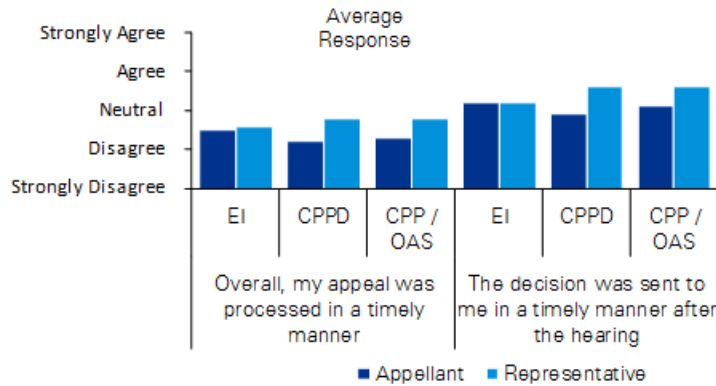
Refer to Sections 5 and 10 for discussion of these processes.

### **5.4.1 Survey responses**

Appellants and representatives were asked through the survey to comment on the degree to which they agreed that the overall appeal was processed in a timely manner and if the decision was sent in a timely manner.

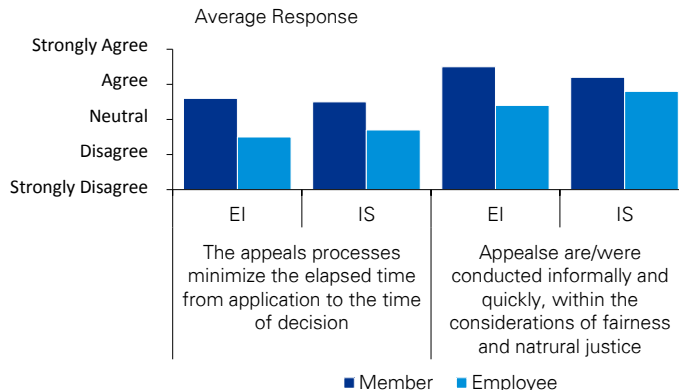
Responses were generally neutral in regards to the time between the hearing and receipt of the decision, but were low in relation to the overall timeliness of the appeal processing. This result is consistent with findings reported throughout this review, specifically in the review of the major steps in the end-to-end appeals processes for both EI and IS, which identified the increased wait times from when an appeal is filed to the hearing, as well as the number of other procedural decisions that take place throughout this period. Time from hearing to decision is relatively consistent with VRAB as an example, but other steps are adding significant time to the appeals process.

Figure 26 – Appellant and Representative Responses on Timeliness



Members and employees were also asked to rate whether they agreed the appeals process minimized the elapsed time from application to decision and if they agreed that they were able to conduct proceedings informally and quickly within considerations of fairness and natural justice. Both members and employees generally reflected a low level of agreement with respect to the processes minimizing the time. Members reported more positive responses than employees for both questions and notably quite positive as it relates to the second question. The difference in how members and employees view the informality within considerations of fairness and natural justice should be further explored when evaluating the potential options presented in Section 3.

Figure 27 – Employee and Member Responses on Timeliness



### 5.4.2 Focus Groups and Written Submissions

Through focus group sessions and written submissions, community and labour groups and representatives expressed the following observations and concerns.



### **Three levels of recourse, embedded with multiple stages, each requiring decisions.**

Consistent input was received by stakeholders for both EI and IS appeals. From an appellant's perspective, the appeals process begins with reconsideration. The full end-to-end recourse process is complex and hard to navigate, such that there is at least in perception a common view that clients are discouraged and overwhelmed by the process and often give up without appeal.

"The service standard to resolve 85 percent of (EI) cases within 90 days of when an appeal is filed<sup>38</sup> is too long for someone to be unemployed, especially for those with low income."<sup>39</sup>

In comparison to legacy tribunals the following comments were heard repeatedly:

- The addition of extra steps/processes within the appeals processes (e.g. reconsideration (EI), summary dismissal (all), and request to appeal to the Appeal Division (EI and OAS)) have created several obstacles for appellants
- A one size fits all approach does not work; EI and IS appeals cannot be assessed using the same timelines and processes
- Under the previous legacy tribunals for EI and OAS, there was no need to request permission to appeal to the Appeal Division; an appellant had the automatic right to appeal; this once again negates the right to be heard
- The Notice of Readiness for IS appeals is complex, confusing and frustrating for appellants and representatives. For example, appellants file notice of readiness within three months, but other parties can take up to 180 days to respond, thereby delaying the process and decision for the appellant.

Historically, the leave to appeal already existed in the legacy tribunals for CPP, but the second level of appeal could rehear an entire case, and did not limit itself to the current three grounds to appeal under the SST. The current leave to appeal provision significantly lengthens the process and can result in subsequent applications for leave to appeal, referred to by some as "the endless loop." Concerns were raised regarding other restrictions that limit time, potentially to the detriment of the appellant. The example of the 45-day limit to send submissions regarding the appeal after leave to appeal is granted by the Appeal Division was identified as too short, as the appellant is often required to find help from a representative/lawyer because of the complexity of this step.

A common recommendation identified by stakeholders to remove unnecessary delays in the appeal process, is to eliminate the need to obtain leave to appeal from the Appeal Division and empower Tribunal members to hear appeals and receive new evidence so that appeals can be resolved without referring the matter back to the General Division.

The introduction of mandatory reconsideration of EI decisions prior to appeal was consistently identified as a concern: the requirement to apply first for reconsideration and then again for appeal to the SST was seen to add time to the recourse process; the high rate of allowed decisions questioned the efficacy of the initial decision-making process under Service Canada; and there were conflicting views on whether

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<sup>38</sup> SST service standard established for EI appeals filed at the General Division, September 1, 2015, SST website

<sup>39</sup> The SST's Achievements Report 2016-2017 stated that this service standard was met 12% of the time for that year



the mandatory communications to clients to explain the rationale for the reconsideration decision helped clients understand the decision and therefore choose not to appeal, or intimidated clients from appealing to the SST. Absent in the current process are mechanisms to alleviate and/or identify such concerns quickly. This includes for instance immediate client satisfaction surveys similar to that employed by VRAB, which allows for rapid feedback.

**A one size fits all approach is not effective and does not reflect the short term nature of the EI benefits program and the longer term nature of a pensions program.**

Stakeholders representing both EI and IS, in particular CPPD, strongly voiced that a one size fits all approach does not reflect the unique characteristics of the two benefits programs. Given the relatively straightforward eligibility criteria and short term nature of EI benefits, EI processes should be lighter and faster. Conversely, IS processes should take longer due to the more complex nature of the appeal and the weight of a decision that has a much longer tenure.





## 6 SST Relationship with ESDC

### 6.1 Overview

The establishment of the SST as a separate independent organization from ESDC, coupled with the move of tribunal support staff from ESDC to the ATSSC (under the Department of Justice), created a more formal separation between ESDC and the appeals process.

More specifically the separation of administrative support to the Tribunal, and the autonomy of the SST to establish policy and process, changed the way in which ESDC participates in the appeals process. As outlined in Open and Accountable Government, clarity of roles and accountabilities, and maintaining an ongoing open dialogue in support of the Minister’s responsibility to answer for the Tribunal in Parliament, is essential.

**The review identified that although there is ongoing sharing of information at an operational level between the SST and ESDC, formal articulation of roles, expectations, and accountabilities are lacking. Further, there are no formal and ongoing mechanisms between the two organizations to promote appropriate policy coordination, and to build coherence in the recourse activities and reporting of the SST.**

The following section of this report provides:

- An overview of the ways in which the SST and ESDC interact and practices of comparators
- What we heard from stakeholders.

### 6.2 Relationship between the SST and ESDC

Under the legacy tribunals, Memoranda of Understanding (MOU) were in place between the benefits programs and the BOR and the OCRT. Further, as the tribunals were administered by ESDC, case information was shared directly between the benefits programs and appeals tribunals.

The following table provides an overview of the relationship that now exists between the SST and ESDC.

Element of relationship	SST
<b>Clarity of expectations, roles and responsibilities</b>	Although ESDC has MOUs with the ATSSC, there is no MOU between ESDC and the SST, or mandate letter from the Minister to the SST
<b>Executive Communications</b>	There are regular communications between the Chair of the SST and the Associate Deputy Minister of ESDC and the Corporate Secretary.
<b>Information sharing</b>	EI files are shared between ESDC and the SST over a shared drive; IS files are scanned and sent to the SST. Lack of a fully electronic information-sharing mechanism constrains efficiencies



<b>Planning/forecasting case volumes and business cycles</b>	No formal mechanism
<b>Resolving operational issues</b>	A caseload interface committee of the SST and ESDC meets monthly. SST representation includes legal services, operations and case management. ESDC representation includes legal services, appeals services, and program staff
<b>Feedback on decision quality</b>	No formal mechanism
<b>Feedback to legislation and regulations</b>	No formal mechanism
<b>Participation in hearings</b>	CEIC/ESDC rarely participates as a party to hearings before the General Division or at pre-hearing conferences <sup>40</sup>

### 6.3 Observations

**Documented expectations from the Minister to the SST, and formal and ongoing mechanisms promoting appropriate policy coordination, planning, and accountabilities are needed to strengthen overall governance of the SST and the recourse process.**

In recognition of the importance of portfolio coordination of policy matters that extend beyond the purview of one particular organization, the document Open and Accountable Government makes reference to such mechanisms as mandate letters from the Minister to the organization, and regular meetings with the deputy head to promote appropriate policy coordination. The short-lived SST-ESDC forum, now defunct, was a preliminary step in the right direction, if overly focused on more operational matters such as the efficient and effective management of resources, caseloads, and hearings.<sup>41</sup>

The model of the MOU between the Attorney General of Ontario and the Executive Chair of Social Justice Tribunals Ontario (SJTO) is instructive, setting out the accountability relationship between the Minister and the Executive Chair, including the expectations for information exchange and working relationships that support the accountability and governance requirements within a framework that recognizes the independence of SJTO and its constituent tribunals. Specifically, this MOU establishes:

- The accountability and governance framework between the Ministry and SJTO

<sup>40</sup> ESDC officials state its case file and position on the appeal is prepared to stand on its own before the General Division, and their participation at the hearing could be intimidating for appellants

<sup>41</sup> Forum Social Security Tribunal (the Tribunal) / Employment and Social Development Canada (ESDC) Terms of Reference, document provided by ESDC



- The roles and responsibilities of the Minister the Executive Chair, SJTO, the Deputy Minister, and the Executive Lead, SJTO
- The expectations for the operational, administrative, financial, auditing and reporting arrangements between SJTO and the Ministry of the Attorney General.<sup>42</sup>

#### **Document sharing practices are not in line with leading comparators.**

Delays were reported in relation to the exchange of documents between ESDC and the SST, and disagreement regarding which documents are relevant and which information is appropriate to redact for privacy reasons. This disagreement is long-standing and according to some, intractable, contributing to mistrust between the respective organizations.

VRAB uses a common case management system with Veterans Affairs Canada (VAC) for processing appeals of VAC decisions. This gives VRAB direct and unfettered access to appellant information contained in a shareable case file that it can pull directly from the system of record to avoid the need for delays of coordination with VAC.

There are precedents related to the open court principle (Lukacs 2015 FCA 140) that all documents on the record should be provided when requested by a party; however, there are also precedents on the obligation to protect sensitive personal information. Agreement on interpretation of the applicability of this principle, in the context of obligations under the Privacy Act and the DESD Act, is required between the SST and ESDC.

## **6.4 What we Heard**

There is a shared history between the personnel making up the SST and their counterparts within ESDC. Both groups have deep connections to the legacy tribunals and the inception of the SST, and strong opinions of the legacy tribunals, the design of the SST, and the way the SST runs now. There is not a consistent view of how the SST was intended to operate, what were and are its priorities, and if these are being addressed in its operation. This should be borne in mind when considering the perspectives below.

The Tribunal's legislative and regulatory framework, coupled with an organizational culture that is focused on the law, is not in line with the originating intent of streamlining and simplifying the appeals process.

While there is no question about the Tribunal maintaining its independence, opinions differ over the application of tribunal independence, both with regard to institutional independence and independence of decision-making. There is a common view held by stakeholders, and supported by the evidence referenced throughout this report, that strict adherence to independence comes with a cost to effectiveness and client orientation.

Coordination issues between the two organizations impede effectiveness and service to clients. For example, there is no formal mechanism to facilitate joint planning of business cycles to prepare for fluctuating appeal volumes.

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<sup>42</sup> MOU between the Attorney General of Ontario and the Executive Chair of Social Justice Tribunals Ontario, 2017: <http://www.sjto.gov.on.ca/documents/sjto/Memorandum%20of%20Understanding.html>

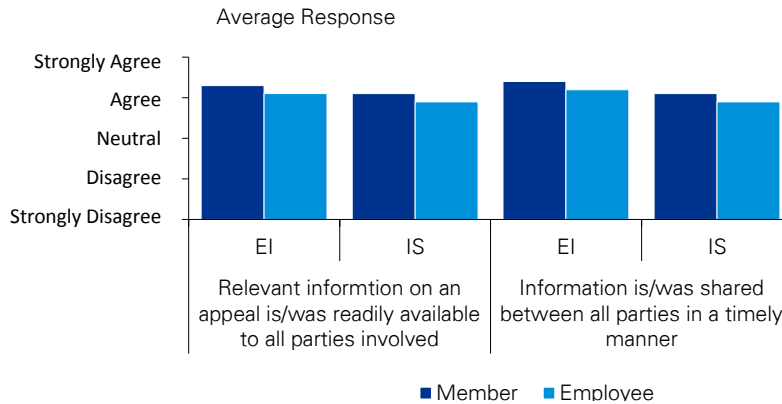


Lack of ESDC participation in pre-hearing conferences can be a lost opportunity to increase effectiveness. Such hearings allow for better understanding of the issues in complex appeals and the potential to resolve the appeal more rapidly.

Opinions differ between the SST and ESDC over the extent of redaction of documents and relevance of documents for sharing, combined with varying approaches across ESDC regions regarding redaction.

SST members and ATSSC employees reported agreement that information on appeals was readily available and shared with parties in a timely manner. The survey responses are shown below:

Figure 28 – Employee and Member Responses regarding Information Sharing





## 7 SST Relationship with ATSSC

### 7.1 Overview

As an administrative tribunal, the SST exercises delegated statutory powers and performs a variety of functions that can be seen as “spanning the constitutional divide between the executive and judicial branches of government.”<sup>43</sup> The SST falls along a continuum that ranges from those that perform administrative functions on one end to those that operate in a court-like manner on the other. Positioning on this continuum influences all aspects of a tribunal’s operation, including the way in which a tribunal leverages administrative staff in support of its operations. For the SST, a consequence of its emphasis on the law and its mandate to make quasi-judicial decisions has extended to considering administrative decisions as quasi-judicial and therefore the exclusive purview of members.

The Administrative Tribunals Support Service of Canada (ATSSC) was established in November 2014 to provide support services and facilities to eleven federal administrative tribunals by way of a single, integrated organization. The ATSSC provides specialized services tailored to and required by each tribunal (e.g. registry, research and analysis, legal and other mandate or case activities specific to each tribunal), as well as common and shared internal services (e.g. human resources, financial services, information management and technology, accommodations, security, planning and communications).

ESDC continues to provide some limited services to the SST (for example services related to information technology); however, the ATSSC provides the majority of the administrative support for SST.

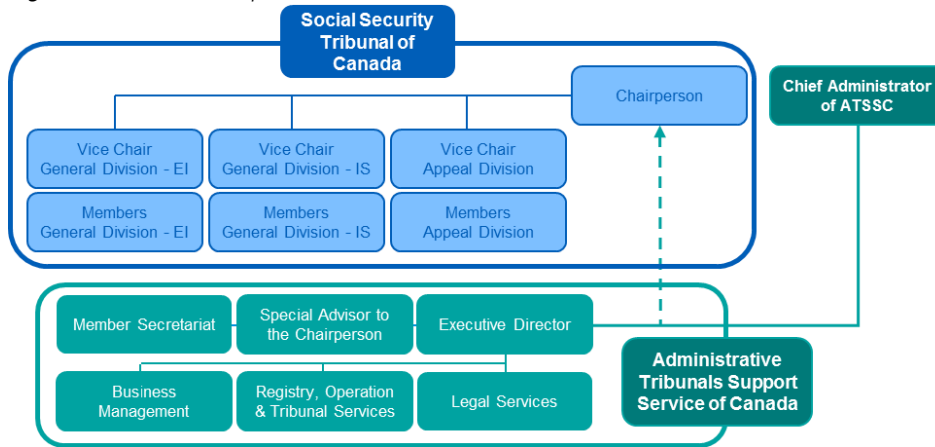
As outlined in its 2017-18 departmental report, the ATSSC is committed to providing efficient and effective support for the administrative tribunals it serves, while maximizing service delivery through strengthened capacity and modernized approaches that meet the needs of the tribunals and improve access to justice. To this end, the ATSSC continues to focus on increasing its capacity to address changing demands that respond to business needs through efficient and agile internal systems and services and a commitment to service excellence.

The ATSSC employees working in support of the Tribunal are responsive to the Chairperson of the SST through the Executive Director. This relationship is shown in the SST’s organization chart below.

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<sup>43</sup> Ocean Port Hotel Ltd. v British Columbia (General Manager, Liquor Control and Licensing Branch), 2001 SCC 52, [2001] 2 SCR 781 at para 24

Figure 29 – Relationship between the SST and the ATSSC



As described in the ATSSC Act, the Chief Administrator is the chief executive officer of the ATSSC, and is responsible for the provision of the support services and the facilities that are needed by each of the administrative tribunals to exercise its powers and perform its duties and functions in accordance with the rules that apply to its work. The Chief Administrator has all the powers necessary to perform his or her duties and functions under this or any other Act of Parliament. Section 12 of the Act specifies that “the Chief Administrator’s powers, duties and functions do not extend to any of the powers, duties and functions conferred by law on any administrative tribunal or on any of its members.” Section 14 clarifies that the chairperson of each administrative tribunal served by the ATSSC continues to have supervision over and direction of the work of the tribunal.

The SST/ATSSC relationship is a similar model to the Courts Administration Service’s (CAS) relationship with the four courts it serves: the Federal Court of Appeal, the Federal Court, the Court Martial Appeal Court of Canada, and the Tax Court of Canada. In this comparator relationship, a Chief Administrator acts as the Chief Executive Officer for CAS, and has all the powers necessary to:

- Provide effective and efficient management and administration of court services, including court facilities, libraries, corporate services and staffing
- Structure registry operations and prepare budgets, in consultation with the Chief Justices of the four courts, for the requirements of those courts and the related needs of CAS.

As with the ATSSC, the Chief Administrator of CAS is responsive to the Chief Justices of the courts served, and his or her powers are restricted not to include matters assigned by law to the judiciary, and subject to direction by the Chief Justices.

This model for tribunal support, where one shared services provider supports many independent tribunals, is not shared with external comparators examined during this review. Comparators either have their own support services, or are part of an umbrella tribunal (AAT and TAQ) with common services.

Beyond common functions, the ATSSC does not share specialized services between tribunals, and each tribunal including the SST has dedicated staff following tribunal-specific processes. In the case of the SST, the processes implemented by ATSSC staff are under the direction of the SST Chair, restricting opportunities to optimize processes internally at the ATSSC.



Consistent with SST direction, the ATSSC performs registry, legal and other administrative services (e.g. human resources, financial services, accommodations, among others). The SST does not require the ATSSC to assist members with most aspects of the cases or decisions. In other tribunals, it is common for staff to provide advisory services to members, including research tasks, decision review for consistency, assembling the facts of the case for member review, scheduling hearings, and making routine decisions on behalf of members, e.g. simple adjournments.

The SST Chair expressed a position that a great number of decisions are required to be performed by members in accordance with the legislative framework that was designed to preserve the independence of decision-making of the Tribunal. Such decisions include accepting applications to appeal as complete, determining the form of hearing and when it will be heard, deciding on adjournments, among others. In addition, the SST contends that this approach is more cost-effective as the members have the necessary training for these tasks and turnover of administrative staff is higher. Interviews with a comparator tribunal indicated that they did not share this belief, and as long as members were 'unfettered' in their decision-making on the appeal, there was no issue with employees fulfilling these tasks.

**The results of the analysis suggest that there is scope to expand the role of the ATSSC to support the tribunal function, provide advice to tribunal members, and be delegated to make procedural decisions without compromising member independence in quasi-judicial decision-making.**

The following section of this report provides:

- A comparison of the relationship between members and employees to external comparators and legacy tribunals where information was available
- What we heard from stakeholders.

## 7.2 Findings

### **Ratio of employees to members is consistent with comparators.**

The SST ratio of support to members is generally in line with external comparators, although VRAB in particular does have a greater ratio of employees to members. This reflects the greater support provided to appellants as explained later.

The legacy tribunals could not be compared as only headcount of part-time members was available.

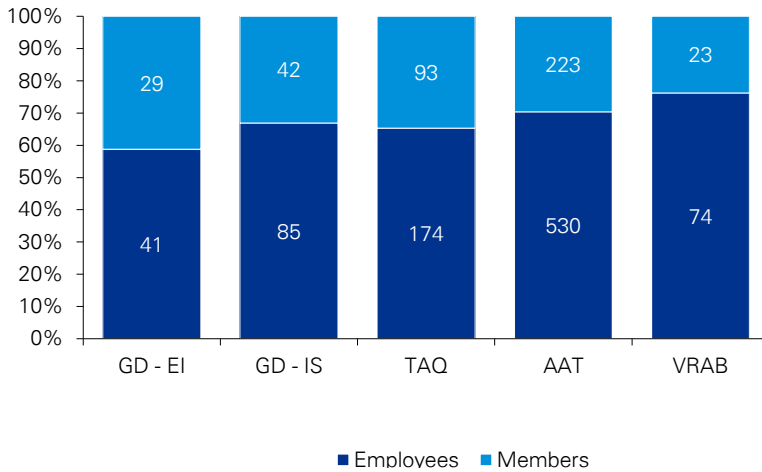
Finally, only the first levels of appeals are shown in the comparison; the small number of members in the Appeal Division, and the different nature of the division does not support a fair comparison with external tribunals.



Figure 30 - Ratio of Employees to Members – First Level of Appeal

\* The number of members / employees is indicated in white, the bar heights represent percentage

Number of employees vs number of members



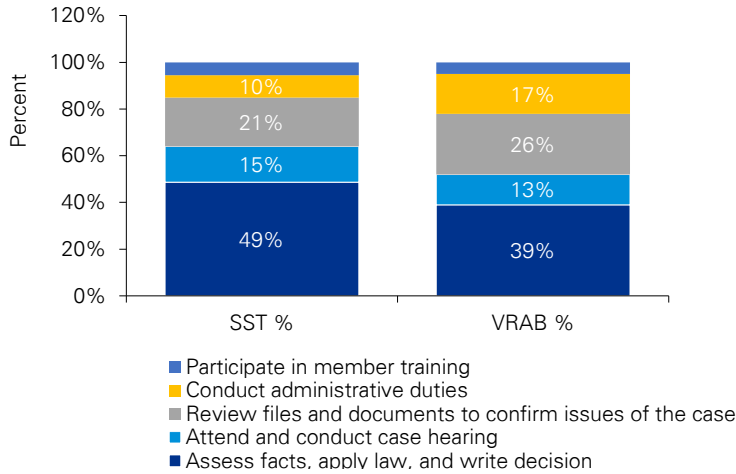
**Member time use is in line with VRAB.**

The figure below shows the breakdown of member time use for VRAB and the SST. SST data was recorded as part of the member survey, and the VRAB data was provided by that tribunal. Data at this level of detail was not available from other tribunals. The results are very similar between these two tribunals. VRAB indicated that they spend less time assessing facts, applying the law, and writing the decisions, while they spend more time on administrative work and reviewing files. The difference in administrative work may be due to the travel requirements for VRAB members as almost all hearings are in person. The lower percentage of time spent by VRAB members on assessing facts, applying the law, and writing the decision may be due to the support provided by administrative staff in assembling the facts of the case for members, scheduling hearings, and providing input to drafting decisions.





Figure 31 - Member Time use Comparison  
Member time use comparison



**Division of work between employees and members will vary between tribunals.**

Based on the scope of the review, detailed time tracking of SST member duties was not conducted. However, the VRAB model was explored, whereby members are responsible for independently making decisions, but are supported and advised closely by staff. In the case of VRAB, staff prepare an evidence package for each case containing all the relevant material and decisions from previous levels of adjudication, often accompanied by a list of issues and analysis. Members may also request legal opinions, legal research, other decisions, precedents, jurisprudence, and other types of information/research pertinent to the case or a more detailed analysis of complex files. Staff schedule hearings, following which all decisions are reviewed by staff against a checklist to support quality decisions.

VRAB indicated that avoidance of fettering members is always at the forefront of assistance provided to members. Decisions are the members own, but staff are there to advise and support.

**Members conclude fewer appeals per year than most comparators.**

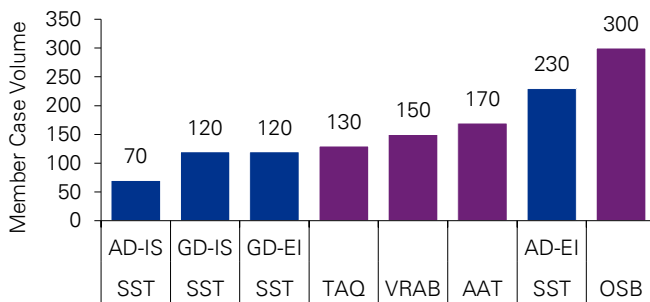
As shown below, in the General Division the average number of annual appeals concluded per member was 120 for both EI and IS.<sup>44</sup> One would expect a higher average number for EI appeals as they are known to be less complex than CPPD appeals. Also, these numbers are below those for the majority of comparators. Factors that may be responsible for the difference between the SST and comparators include time associated with additional steps in the appeals process under the SST, e.g. summary dismissal and leave to appeal, time spent by members both on interlocutory decisions such as adjournments, and time spent on research and decision-writing.

<sup>44</sup> Member caseload is explained in Section 4.2.4



At 230 appeals concluded per member, the AD-EI is above most comparators.<sup>45</sup> The AD-IS has a much lower number of appeals concluded per member which is reflective of the more complex nature of CPPD appeals which comprise the majority of the IS caseload. Still, VRAB appeals would also deal with complex and long-standing medical conditions yet has a higher rate of average appeals concluded.

Figure 32 - Annual Case Volume per Member



## 7.3 What we Heard

Members' time is spent on administrative tasks and decisions. The SST was initially established with the capacity for support staff to directly support members in the administrative aspects of researching and drafting input to decisions, scheduling hearings, and more, but this facility is not being fully used.

The SST does not avail itself of the potential services of the ATSSC, e.g. scheduling hearings, preparing appeal cases, making minor decisions (routine adjournments), drafting input to decisions, medical expertise, etc., citing interpretation of the regulations, independence of member decision-making, and the level of training that would be required for ATSSC staff when members are already trained. None of these reasons is a show stopper: the SST can delegate routine administrative decisions and/or task input to member decision-making while retaining accountability, and the investment in training would be more than offset by the increased time available to members to decide appeals in a more timely manner.

There is a perception that the functional reporting structure to the SST does not permit the ATSSC to independently optimize or refine its processes; however, this goes more to the nature of the ATSSC's business model which provides responsive and tailored services to each tribunal.

Stakeholders commented that members do not adequately access medical expertise available in the ATSSC, although this is not borne out in survey responses presented below.

### 7.3.1 Survey responses

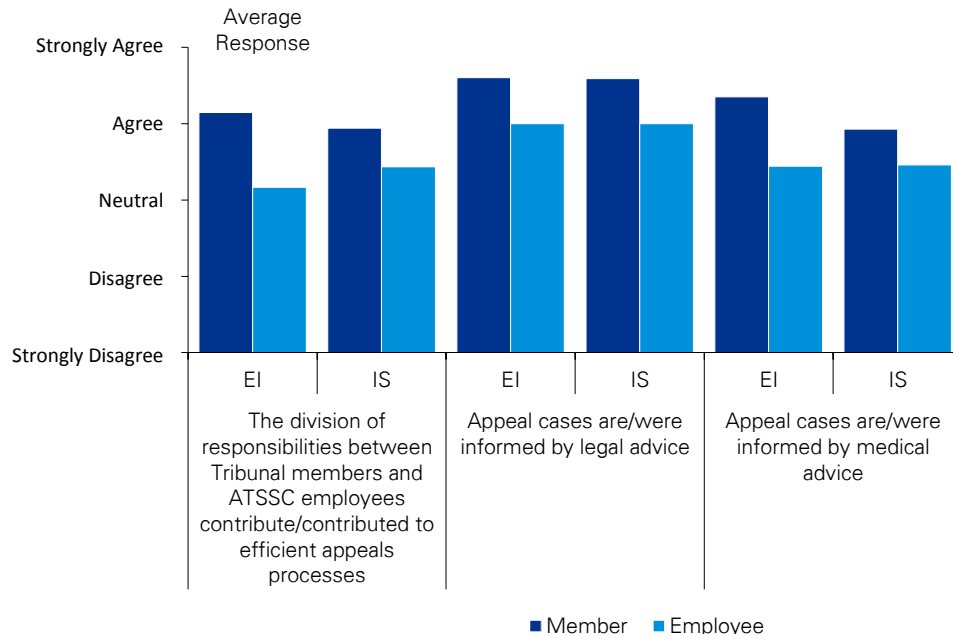
Members and employees were asked about factors related to the SST/ESDC relationship, such as the division of responsibilities between the SST and ATSSC, and whether appeal cases were informed by legal and medical advice. Employees rated these factors lower than members. Additionally, member responses overall were lower in relation to efficiency and time use, and were higher in provision of supporting services and independence. The highest ratings for both members and employees were for

<sup>45</sup> Decisions related to group appeal have been counted as one decision



the application of legal advice to inform appeal cases, indicative of the prominence of the legal lens under the SST reported throughout this review. Contrary to what we heard from stakeholders, members agreed that appeal cases were informed by medical advice.

Figure 33 – Member and Employee Ratings of Factors Related to ATSSC / SST Relationship





## 8 Role of Stakeholders

### 8.1 Overview

**Together with openness, accountability, effectiveness and coherence, participation is recognized as one of the five principles of good governance.<sup>46</sup>**

While the origins of the SST preceded its creation by many years (Garant 2002), a variety of stakeholders, e.g. the Commissioners for Workers and for Employers, community groups, labour organizations, advocates, counsel, and more, lament their lack of involvement and engagement in its design and its processes. Of particular concern is the loss of voice of business and labour, often referred to as the tri-partite element of the former appeals system for Employment Insurance, whereby tribunals under the Board of Referees comprised a Chair appointed by the government, a member appointed by the Commissioner for Workers, and a member appointed by the Commissioner for Employers.

A large measure of the input received through this review called for government to restore this tripartite element of EI appeals. In his paper, A Canadian Social Security Tribunal, Patrice Garant of the University of Laval wrote about the concept of “equal representation” which provides for participation by both employers and employees in the tribunal, stating: “nothing prevents it from being retained in one of the sections of the future Tribunal. Furthermore, equal representation is not incompatible with a recruitment and selection plan based on skills and qualifications as opposed to patronage or favouritism, whether it be political, managerial or union-related.”<sup>47</sup>

In a recent paper published by the Mowat Centre, Donna Wood argues that business and labour involvement in Employment Insurance is important for a number of reasons, most significantly because as a social insurance program, contributions from their members finance most of the program costs through a dedicated payroll tax. Their advice can improve performance. A place at the table is also a requirement of international conventions and agreements that Canada has signed on to.<sup>48</sup>

Community groups and advocates for CPPD also expressed concerns of not being able to participate effectively in the appeals process but in addition, also feel that their concerns are often overshadowed by the EI community or at least are not being heard to the same degree.

The above is not to say that the SST has not engaged with stakeholders. In fact the SST has met with a variety of stakeholders since its inception and provided examples of benefits of their engagement, such as the redesign of its notice of appeal forms and its online feedback form. “The Chair’s door is always open,” reported one stakeholder. However, based on the consistent responses from all stakeholder groups, more formal and ongoing engagement mechanisms are expected.

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<sup>46</sup> Stakeholder Involvement in Decision Making: A Short Guide to Issues, Approaches and Resources, OECD 2015

<sup>47</sup> A Canadian Social Security Tribunal, Patrice Garant, LL.B, FCRA, Quebec City, November 2002

<sup>48</sup> The Seventy-Five Year Decline, How Government Expropriated Employment Insurance from Canadian Workers and Employers and Why This Matters, Donna Wood, June 15, 2017



Although one might question the appropriateness of stakeholder involvement in an independent arms-length administrative tribunal it must be remembered that the appeals process is an important component of the broader social security/insurance system. Stakeholder participation in the total system, including the appeals process, can and should contribute to its effectiveness in achieving desired government policy outcomes for Canadians, consistent with the Minister's mandate letter from the Prime Minister: "As Minister, you will be held accountable for our commitment to bring a different style of leadership to government. This will include ...constructive dialogue with Canadians, civil society, and stakeholders, including business, organized labour..."<sup>49</sup>

**Based on the analysis completed there is a need for a formal stakeholder engagement strategy that sets out a comprehensive approach for stakeholder participation, aligned with the broader stakeholder strategy for social benefits programs.**

The analysis completed for purposes of this section included:

- Review of government intent regarding stakeholder engagement
- The experience and views from key stakeholders and representatives collected through the consultation
- Review of stakeholder involvement in the SST and comparator tribunals.

## 8.2 What we Heard

**Labour, employers, and the Commissioners for Workers and for Employers are an integral part of the EI system, yet felt they were not consulted when the tribunal system was changed, and now feel left out of the process, including the move away from a tripartite hearing mechanism and minimal input in selection of new members.**

- A weakened position of labour as an actor with respect to EI has created a broken link between EI Commissioners for Workers and Employers and EI appeals. Labour needs to be a stakeholder in the system and the role of labour and business needs to be restored
- Commissioners do not have adequate access, input to the system. They no longer appoint members to the tribunal, they are excluded from activities and operations of the SST, for example training of new members; and they have limited access to performance and financial information of the SST
- The Government should restore stakeholder input into the system and return to tripartite tribunals that provide for inclusion of the community perspective with knowledge of the local labour market and social services and a worker-friendly process which is accountable to taxpayers and benefits contributors. The choice of the members of the SST should be made taking into consideration the recommendations of the affected/related parties
- *"The community perspective has been lost with the change to one professional adjudicator, a three member panel had knowledge of local labour market and social services."*

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<sup>49</sup> Minister of Families, Children and Social Development Mandate Letter, 2015



**Representatives of CPPD clients expressed desire for greater participation in the appeals process, and concerns that their voices are overshadowed by the EI community when advocating for change to address the unique needs of their clients.**

- Community groups and organizations spoke of the complexity and long duration of the process which vulnerable clients, many of whom suffer both physical and mental health challenges, struggle to navigate
- Representatives expressed a fundamental need for assistance to clients and cautioned against a drive for more timely decisions at the expense of taking the time to consider all the factors
- Some members of the CPPD Client Roundtable want to see improvements to the adjudication process that precedes and informs appeals.

**Advocates, community groups, and labour organizations are challenged in supporting appellants through the appeals process.**

- There is an interest across community groups and organizations for training of community members and advocates to better support clients in navigating the process
- Websites, including those for Service Canada and the SST, should publish contact information of existing and relevant groups and organizations (community, legal, and labour groups) that are able to provide support and assistance to appellants
- Community groups and organizations spoke of the benefit to clients of establishing networks across communities and cities to share information, tools, and resources
- Community groups and organizations could better support clients with government funding.

### **8.3 What we Found**

The SST has met with a variety of stakeholders since its inception and provided examples of benefits of their engagement such as the redesign of its notice of appeal forms and its online feedback form.

An examination of external comparators revealed a range of mechanisms and practices regarding stakeholder involvement and participation in the appeals process. Examples are the inclusion of effective stakeholder relationships and partnerships as strategic priorities in annual plans, formal mechanisms such as councils and advisory bodies, public consultations on potential reforms, and participation by tribunals in stakeholder events.

#### **Designing stakeholder participation**

Instruments for stakeholder involvement/participation can take a variety of forms, such as roundtables, councils, advisory groups, and networks, among others. One such example of a potential relevant roundtable is the CPPD Client Roundtable which serves as a forum for discussion between ESDC and individuals from the community who have direct experience with the program.



Ultimately a comprehensive approach to designing meaningful, active and enduring stakeholder participation could include but not be limited to:

- Explicit statement of desired effects and goals
- Identification of the stakeholder communities
- Planned scope of participation and any constraints
- Level(s) of involvement/participation, ranging from passive (feedback) to active (design/ redesign).<sup>50</sup>

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<sup>50</sup> Adapted from Stakeholder Involvement in Decision Making: A Short Guide to Issues, Approaches and Resources, OECD 2015



## 9 Accountability for Results

*Open and Accountable Government* sets out the fundamental principles of the federal government's system of responsible government, with application to administrative tribunals.<sup>51</sup> It speaks of individual accountability, i.e. carrying out responsibilities assigned, and collective accountability in support of the ministry team and decisions of Cabinet.

Although created by government through enabling legislation, administrative tribunals, once established, exercise decision-making responsibilities at arm's length from government. There is a natural and healthy tension between the public accountability of administrative tribunals and their independent decision-making role.<sup>52</sup>

Lorne Sossin, Dean of Osgoode Hall Law School, York University, proposes "transparency" as the bridge between accountability and independence: the government can impose its policy choices on the tribunal through the transparency of the legislative process, and make the appointment process transparent, with selection criteria consistent with the goals of the legislation. For its part, the tribunal too has an obligation for transparency:

- Publication of decisions and its positions on issues related to its mandate
- Publication and dissemination in accessible formats of tribunal rules, structure, and relevant timelines or administrative requirements to access its process
- Spending tribunal resources as a matter of public record
- Provision of rationale for all its decisions.

"Independence creates the need for greater accountability, and greater accountability creates the conditions for strengthened independence. The goal of this mutually reinforcing approach to independence and accountability is not just to sort out effective, efficient and appropriate institutional relationships, but ultimately to enhance public confidence."<sup>53</sup>

As an instrument of government, the SST is accountable to the Minister of ESDC for providing fair, impartial and efficient appeal processes for Canadians. The ultimate outcome of effective tribunal accountability is public confidence in and trust of the SST by government, parties involved, stakeholders, and the public, in part when:

- Strategic direction and goals and priorities are defined and clearly articulated throughout the organization
- Decisions are made based on relevant and complete information, reflecting the rules of natural justice
- The public is properly informed of tribunal processes, proceedings and decisions.

It needs to be recognized that the SST has accomplished much since it was first created. The SST meets many criteria of accountability and continues to enhance and improve all aspects of the tribunal

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<sup>51</sup> *Open and Accountable Government*, issued by the Privy Council Office, Canada, 2015

<sup>52</sup> Government of BC, Tribunal appointment guidelines, May 2007

<sup>53</sup> Independence, Accountability and Human Rights, Lorne Sossin, Dean Osgood Law School, [http://www.justice.gov.yk.ca/fr/pdf/Lorne\\_Sossin\\_Article.pdf](http://www.justice.gov.yk.ca/fr/pdf/Lorne_Sossin_Article.pdf)





functions in this regard. At the same time in contrast to more mature tribunals the following accountability measures are not in place or are still developing for the SST:

- Formal agreement between the Minister and the Chair of the SST that outlines roles, responsibilities, expected outcomes, and accountabilities
- Formal reporting of financial performance and key operating statistics
- Reporting of results against priorities, goals, and service standards
- Reporting on client satisfaction
- Publication of decisions and greater ease of access to them (searchable data base).

Through the public consultations, we heard from appellants, representatives including community and labour groups, members and employees. Overall, significant concerns were raised with respect to the accountability of the SST as it related to public reporting, accessibility of its processes and decisions, service standards and timelines, and financial performance. These concerns were also heightened for EI stakeholders who believe the requirement for accountability to rate payers is unmet.

**Based on the analysis more is required to support a transparent, accountable tribunal, aligned with the government of Canada's whole of Government focus on accounting for the financial and non-financial contributions to outcomes for Canadians.**

**Notwithstanding the principle of independence of the Tribunal, the absence of an integrated reporting framework from reconsideration through appeals that incorporates all parties' contributions to an effective and efficient recourse process makes it difficult to assess the impact on client outcomes such as accessibility, fairness, and transparency.**

The remainder of this section provides an overview of the analysis completed. In assessing the effectiveness of the Tribunal's accountability, our analysis included:

- Review of the SST Regulations, Chairperson Guidelines and Directives and those of comparators
- Review of the SST's Achievements Report 2013-2016<sup>54</sup> and the annual plans and reports of comparators
- Review of Tribunal information available on its website and on those of its comparators
- The experience and views from key stakeholders.

## 9.1 Key Accountability Features of the SST and Comparators

The chart that follows provides a summary of accountability features of the SST and comparators

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<sup>54</sup> The SST Achievements Report 2016-2017 was published late September 2017 after completion of our analysis



	<b>SST</b>	<b>Comparators</b>	<b>Findings</b>
<b>Annual Plans and Reports</b>	The SST published its first Achievements report 2013-2016 that highlighted caseloads, appeal outcomes, and priorities for the year ahead	Four of five comparators publish an annual plan (TAQ has a three-year plan) and all publish annual reports; elements include caseloads, appeal outcomes against service standards, client satisfaction results, priorities	After almost five years in operation, the SST can improve its planning and reporting in a more comprehensive and public manner
<b>Financial Statements</b>	The SST does not publish financial or operating information. The ATSSC publishes financial information but the data is aggregated across all tribunals it supports	Four of five comparators publish their financial statements in either or both annual plans and reports	The SST should publish its financial and operating statements
<b>Service standards and reports</b>	The SST publishes service standards on timelines for hearings and decisions, and reports on overturn rates at the judicial level	Comparators publish and report on service standards, client satisfaction data, and a variety of performance indicators, e.g. fairness, overturn rate at judicial level	The SST should report against service standards, client satisfaction levels, and performance expectations e.g. fairness
<b>Decisions and positions on key aspects</b>	The SST publishes all Appeal Division decisions and a selection of General Division decisions with search tools	Comparators publish decisions but only one publishes all decisions	The SST's practice is aligned to that of comparators; however, stakeholders call for all decisions to be published in a searchable index
<b>Strategic goals and priorities</b>	The SST outlines its priorities in its Achievements Report	All comparators publish and report on goals and priorities and results achieved	The SST can strengthen its practice in this area by more comprehensive annual reporting against plans
<b>Processes and guidelines</b>	The SST publishes on its website its appeals processes, and guidelines and directives for its members	Comparators publish information on processes and guidelines for both applicants and its members, some with videos depicting the process (VRAB and AAT)	The SST can enhance its information for applicants by orienting information to the applicant



	<b>SST</b>	<b>Comparators</b>	<b>Findings</b>
<b>Accountability mechanism with host department</b>	There is no MOU between the SST and ESDC. There is an MOU between ESDC and the ATSSC	Two comparators have an MOU with its minister/host department that sets out the accountability and governance framework, respective roles and accountabilities of each party, and expectations for the operational, administrative, financial, auditing, and reporting arrangements <sup>55</sup>	There should be a published document that outlines the accountability and governance framework within which the SST operates
<b>Other</b>	The SST's Code of Conduct for members is published on its website. The SST also provides an on-line feedback mechanism with associated commitments and service standards	Some tribunals publish their hearing schedules, client satisfaction data  VRAB adheres to the Veterans Bill of Rights	The SST can increase transparency by adopting and publishing a performance framework aligned with the Treasury Board Policy on Results

## 9.2 What we Heard

Through the public consultations, we heard from appellants, representatives including community and labour groups, and members.

Overall, significant concerns were raised with respect to the accountability of the SST as it related to public reporting, accessibility of its processes and decisions, service standards and timelines, and financial performance. These concerns were heightened for EI stakeholders who believe the requirement for accountability to rate payers is unmet.

### Surveys

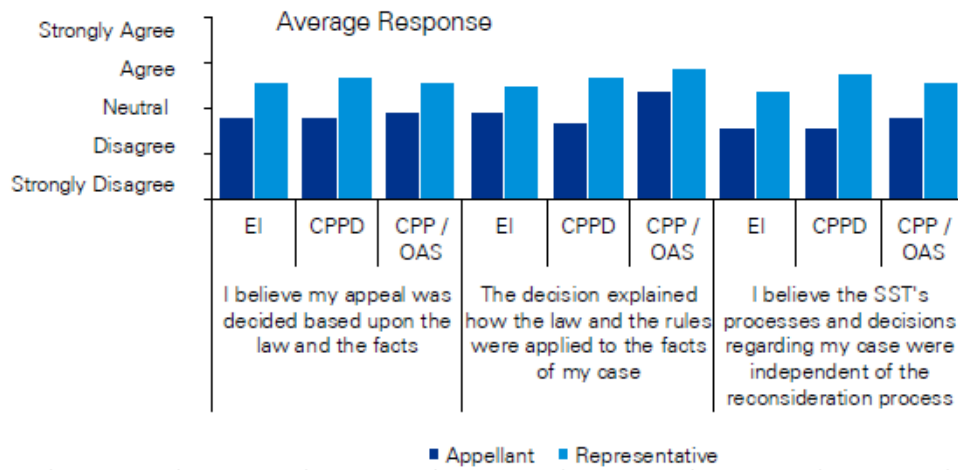
Appellants and representatives were asked through the survey to comment on the degree to which decisions were based on the law and the facts of their case, and the independence of the appeals process and decisions 'vis a vis' the reconsideration process.

<sup>55</sup> See MOU between the Attorney General of Ontario and the Executive Chair of the Social Justice Tribunals Ontario <http://www.sjto.gov.on.ca/documents/sjto/Memorandum%20of%20Understanding.html>. VRAB reported an MOU with VAC; however, it is not available online



Appellant respondents for EI and IS appeals at the first level were satisfied that the decisions were based on the law and the facts, and that decisions explained how the law and the rules were applied to their case. Appellant respondents at the second level reported much lower levels of satisfaction on both of these measures. Agreement levels were lower regarding the independence of the SST process and its decisions from the reconsideration process, and considerably lower at the second level for both EI and IS respondents. Representative respondents reported satisfaction with all three dimensions at both appeal levels.

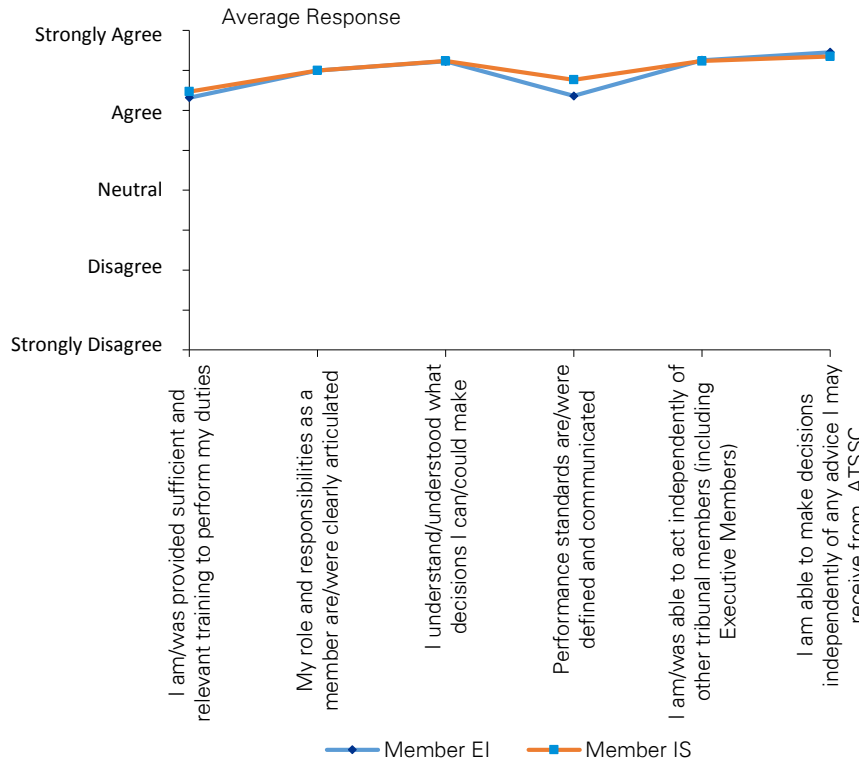
Figure 34 – Appellant and Representative Views Regarding their Appeal



Members were asked to comment on the level of training received, clarity of roles and responsibilities, performance expectations, and independence of decision-making. Member respondents reported high levels of agreement on all dimensions.



Figure 35 – Member Perspectives



Through focus groups and written submissions, community and labour groups and representatives expressed the following observations and concerns.

**The move from the tripartite system to an independent tribunal created a perception among EI stakeholders that the Tribunal has lost accountability to key stakeholders.**

- There is a perception that Tribunal members have no lived experience with the workplace and are only accountable to meeting performance requirements of the SST. The Board of Referees was accountable to the union and business groups that nominated them
- Create workers’ access to justice within a worker-friendly process such as the tri-partite panel, which is accountable to taxpayers and benefits contributors. The SST must be accountable to labour, business and the Commission
- Must restore stakeholder input into the system. Many of the problems with the existing system arose because the SST was created with little, if any, input from affected stakeholders. The connection between former tribunals and the communities they served was directly embedded into those systems. BOR members were appointed with input from employer and worker communities. Those members cared deeply about the system and felt a true sense of accountability to parties appearing before them.



Interviews with government stakeholders and focus group participants raised the following concerns with respect to accountability of the SST.

**It is recognized that the SST is four years old but should be reaching the next stage of maturity. Reporting has focused on service standards for timelines and not client outcomes such as accessibility, fairness, and transparency.**

- There is a reluctance by the SST to standardize procedures and provide greater direction to members in order to avoid overstepping the independence of member decision-making
- There is minimal performance management for members, e.g. members are able to choose when and how they work, resulting in them scheduling their own hearings; too many members have low levels of productivity
- The annual Achievement Report should report on what SST has done and its performance
- There is a performance management framework in place for ATSSC operations but one is lacking for SST Members. SST needs a stronger performance management framework ("judicial independence doesn't over-ride this"), for example, hours expected to be available, productivity, clarify expectations during hiring process, track outputs and quality
- Service standards are silent on the decision-maker as they are seen by the SST as at odds with independence. Independence of decision-making is important but doesn't extend to how members do the work and expectations of performance.

The above comments are as reported by various stakeholders and must be considered in the context of the fact that the SST publishes guidance and directives to guide its members; a performance management process for members is in place, including expectations regarding the number of cases per month; and the SST published its first Annual Report on results against plans in September 2017. These reflect a commitment to accountability and should continue to evolve and be strengthened.



## 10 Complexity

The government's stated goal is "providing a quick, effective and efficient system of appeals that will ensure that Canadians get the support they need when they need it most."<sup>56</sup> Either or both a complex, complicated system of appeals will constrain achievement of this goal. A formal appeals system by design will include a degree of complexity in the interests of providing a consistent, coherent, and clear process for all parties to follow.

Quasi-judicial proceedings must also follow basic standards of due process, including:

- Proper notice of the hearing
- Providing everyone with an interest in the proceedings an opportunity to be heard and to hear what others have to say
- Full disclosure to every one of the facts being considered by the decision-making body (i.e., no ex-parte contacts)
- An impartial decision-maker free from bias and conflicts of interest
- Decisions based on the facts of the case, not on political pressure or vocal opposition.<sup>57</sup>

Federal administrative tribunals "operate as part of the executive branch of government, under the mandate of the legislature as outlined in Open and Accountable Government. They are not courts, and do not occupy the same constitutional role as courts. The degree of independence required of a particular government decision-maker or tribunal is determined by its enabling statute."<sup>58</sup> A Tribunal nevertheless has a duty of fairness.<sup>59</sup> Fairness for purposes of this review was defined from both a structural and a procedural perspective.

**Structural Fairness:** evaluates whether there are structural guarantees of judicial independence, the individual independence of each of the tribunal's members, and the institutional independence of the tribunal itself. It includes an evaluation of whether there are structural arrangements for ensuring adjudicative competence, and whether the underlying act and supporting regulations are fair.

**Procedural Fairness:** examines whether the process elements themselves support fairness outcomes. This includes an examination of whether trust in the tribunal members has been established, the quality of treatment of clients, whether procedures are impartial and fact based, and the extent to which all clients are given the opportunity to participate in, and provide input to the process.

The challenge and even obligation of administrative tribunals serving Canadians and the public interest is to apply such standards while avoiding unnecessary complexity, and to illuminate residual complexity in a manner that allows all parties to successfully navigate the process. "Accessibility" is the antidote to complexity in this context. Examples of the benefits of an effective process include:

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<sup>56</sup> Government response to HUMA report

<sup>57</sup> Legislative versus quasi-judicial decisions, Iowa, 2010 <http://articles.extension.org/pages/27631/legislative-vs-quasi-judicial-decisions>

<sup>58</sup> Open and Accountable Government, Government of Canada 2015

<sup>59</sup> Practice Essentials for Administrative Tribunals, Saskatchewan Ministry of Justice and Attorney General



- Appeals are conducted as informally and quickly as warranted by the circumstances
- Decisions are made based on relevant and complete information, reflecting the rules of natural justice
- Clients are provided with appropriate tools, information, and logistical support and have access to the process
- The public is properly informed of tribunal processes, proceedings and decisions.

In assessing the extent to which complexity hinders the Tribunal's ability to achieve expected outcomes, our analysis included:

- Review of the SST Regulations, Chairperson Guidelines and Directives and those of comparators
- Review of Tribunal information available on its website for appellants and representatives and those of comparators
- The experience and views from key stakeholders, appellants, representatives, and members collected through the consultations
- An analysis of key operating results.

The key findings from the analysis showed:

- A significant percentage of appeal applications were returned/not accepted because appellants did not provide information the government already had (from initial application for benefits and/or reconsideration). Only 57 percent of applications of IS and 62 percent of EI applications were received complete
- Summary dismissals, notice of readiness, and leave to appeal steps can be intimidating and difficult for appellants to navigate
- Tribunal decisions are lengthy and do not always explain in lay terms the considerations and rationale for the decisions
- The drop-off rate of EI appeals, where the reconsideration process changed to be mandatory coupled with verbal explanations of results to appellants, is significant: roughly 3,900 appeals per year compared to 24,000 under the previous system, a decline of about 85 percent. This drop-off rate is explained in Section 4.2.2, specifically under the discussion related to the change to ESDC
- The drop-off rate did not change between the legacy IS tribunal and the GD-IS
- The SST provides a 1-800 number for appellants and representatives to obtain information on their case; however, there is no consistent case officer assigned, nor can an appellant/representative track their case throughout the process.

**Based on the analysis completed, the SST Regulations outline an appeals process consistent with the standards of due process but one that is more prescriptive than those of comparators.**

**The SST Regulations introduced new mechanisms and steps to address challenges experienced under the previous system; however, these measures have added complexity and time without achieving the desired benefits.**





**The complexity of the appeals process makes it challenging for the lay person to navigate the process on their own and is considered by stakeholders to be a deterrent to the pursuit of appeals, in direct contradiction with the very intent of the creation of the SST.**

The following section of this report provides:

- An overview of key features of the SST Regulations as they relate to complexity
- A summary of the key added steps to the appeals process under the SST, as compared to the five external tribunals
- Operating data regarding applications
- The perspectives of stakeholders.

## 10.1 Overview of the SST Regulations

The Social Security Tribunal Regulations begin with the general principle:

**2** These Regulations must be interpreted so as to secure the just, most expeditious and least expensive determination of appeals and applications.

Section 3 goes further to clearly convey the intent of government that proceedings are to treat appeals in an informal and expedient manner. The Regulations also allow for flexibilities under special circumstances:

**3 (1)** The Tribunal

**(a)** must conduct proceedings as informally and quickly as the circumstances and the considerations of fairness and natural justice permit; and

**(b)** may, if there are special circumstances, vary a provision of these Regulations or dispense a party from compliance with a provision.

In addition, the Regulations frequently use the term “without delay” regarding notifications, sharing of documents with parties, hearings, and decisions. This is consistent with the government’s stated goal of “providing a quick, effective and efficient system of appeals that will ensure that Canadians get the support they need when they need it most.”<sup>60</sup> With the exception of IS cases at second level, timelines under the SST, from first contact with the Tribunal through to decision, are longer on average than under the previous system (refer Section 4 Comparison with Legacy Tribunals).

The Regulations also provide for pre-hearing conferences, alternative dispute resolution, and settlement conferences which would indicate an intent that the Tribunal provide various means for parties to be heard and to facilitate the resolution of cases, consistent with the above-stated goal. Operational data indicated limited use of such mechanisms: settlements were reached in 116 GD-IS cases (3 percent) and 17 AD-IS cases (3 percent) per year on average during the two years’ data examined.

That said, the Regulations set out clear parameters within which the appeals process operates. These “rules” reflect considerable formality and range from time requirements for appealing at each level and for submitting documents, detailed requirements to be met by appellants for an appeal to be considered complete, Tribunal authority for decision-making at numerous steps, among others.

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<sup>60</sup> Government response to HUMA report



## 10.2 Structural Requirements

The chart below outlines the key additional steps introduced under the SST Regulations that did not exist under the previous system, and are not replicated in comparator tribunals, indicative of the more legalistic/prescriptive SST model.

Refer to Section 5.2 on Appeals Structure for more detailed analysis.

	SST	VRAB	OSB	AC	TAQ	AAT
<b>Summary dismissal</b>	Y	N	N	N	N	N
<b>Notice of readiness (IS)</b>	Y	N	N	N	N	N
<b>Leave to appeal</b>	Y	N	N	N	N	N

- The rate of summary dismissal is low at two percent for EI and 12 percent for IS and adds delays as the SST is required under the Regulations to allow the appellant to make submissions prior to making a decision. Regulations for comparators do not include this provision
- The notice of readiness, introduced to curb endless adjournments by parties, has had the unintended consequence of extending the process. None of the comparators requires a notice of readiness by the parties
- The introduction of leave to appeal at the second level of the process poses a higher bar than that of comparator tribunals, and has resulted in an annual average of 133 EI appeals (17 percent) and 85 IS appeals (13 percent) referred back to the General Division, further extending the process.

## 10.3 Key Operating Statistics

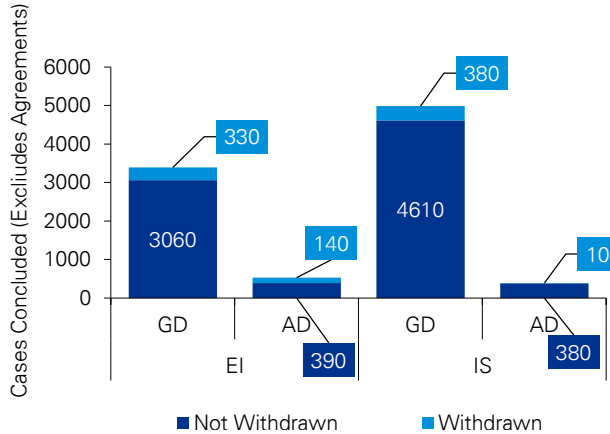
### *Drop-off Rates and Withdrawals*

Much has been made of the 85 percent reduction in EI appeals under the SST, as compared to the previous system (refer Section 4.2.4). As mentioned previously, the added step of explaining the reconsideration decision to clients is considered a contributing factor to the reduction in EI appeals to the General Division. The complexity of the new processes were also identified to be a deterrent to appellants proceeding to the SST (refer Sections 10.4, 12.4).

The figure below shows the number of appeals withdrawn from each division. Only a small proportion of EI and IS appeals were withdrawn. Overall, this data does not indicate that appeals are not proceeding due to the complexity of the process.



Figure 36 - Withdrawn Appeals - Annual Average



Another example of complexity is the information required under the SST Regulations to constitute a complete application. The majority of reasons for incomplete appeal applications are for information the government already had as part of the application for benefits-appeal-decision continuum.

Between April 2013 and October 2016, 57 percent of applications of IS and 62 percent of EI applications to the General Division were complete. Missing items are outlined in the chart below (there can be more than one missing item per case). Until all such information is provided, appeals are not accepted and do not progress, and can add on average 30-50 days to the appeal process (refer Section 4.2.6). In November 2016, the SST updated its notice of appeal forms, and completion rates increased to 78 percent and 74 percent respectively.<sup>61</sup> Nonetheless, with the exception of grounds for appeal (which can be different than those under reconsideration), this information should all be available from ESDC with the case file and not be a reason for delay.

Missing items	Incomplete Applications IS (%) <sup>62</sup>	Incomplete Applications EI (%) <sup>62</sup>
Reconsideration decision	72%	84%
Date received recon decision	47%	21%
Declaration	47%	10%
Telephone number	23%	10%
Grounds	9%	4%

<sup>61</sup> New Appeal Applications Analysis, SST, May 2017

<sup>62</sup> Each percentage in the chart is a stand alone metric out of 100%. For example, 72% of IS-applications are missing the reconsideration decision. Percentages should not intended to be summed or added together



Missing items	Incomplete Applications IS (%) <sup>62</sup>	Incomplete Applications EI (%) <sup>62</sup>
Social Insurance Number	9%	4%

### ***Procedural Decisions***

The establishment of the SST introduced formal procedural decisions that differ from those of the legacy tribunals. As presented in Section 5.3.3, decisions other than merit decisions made through the process include procedural decisions such as allowances of late appeals, summary dismissals, and leave to appeal granted. As was shown for the two-year period under review, between 26 and 42 percent of member decisions related to these other types of decisions. In contrast, the legacy tribunals convened a hearing based on available information; there was limited member time spent on other decisions prior to the hearing.

Generic client journey maps were created for both simple and complex appeals to understand the interaction between the SST and the appellant over the course of the appeals process. What these journey maps demonstrate is the number of decision types that the SST performs with limited personal interaction with the appellant until the hearing. At the very least, the length of time for appeals as previously presented in Section 4.2.6 creates a perception of complexity for the appellant.

## **10.4 What we Found and Heard**

**“The SST brand is stained because of the complexity of the process, the timelines, and a number of other factors; they need to rebrand or address the complexity and bring the trust back to the citizens.” – Community Group**

Below are highlights of survey responses and input from the consultations regarding the complexity of the appeals process. There is a stark difference of views between appellants and representatives, and those of Tribunal members.

- The majority of appellants (50 percent of EI and 53 percent of CPPD) did not agree with the statement that they understood the decision on their appeal and the reasons behind it
- Relative to available comparators, appellants expressed overall dissatisfaction with the accessibility and timeliness of information relevant to their case, the SST website, and other support available
- Complexity of the process:
  - The process was often described as formal, impersonal, and legalistic, making it intimidating and difficult to navigate for clients, many of whom are challenged with varying literacy levels and language barriers, especially for those without representation; appellants are discouraged from appealing or continuing with appeals due to the complexity of the process and document submission requirements



- The current system appears to discourage appellants from moving on from the reconsideration phase because it is too complex and people get discouraged from continuing the appeal. People get to the point that they become upset, they do not understand why the process is taking so long or why they are not entitled to the benefits; this disincentivizes people. The process is overly complex - appeal numbers are down because of complexity
- 89 percent of EI and 82 percent of IS Tribunal members agreed that they can conduct proceedings informally and quickly, within the considerations of fairness and natural justice.
- Communications:
  - Communication throughout the process is viewed as too legalistic and not accommodating enough to the lay person, or persons with literacy and/or language barriers
  - Stakeholders indicated that the process and decisions are often not in plain language, may include boilerplate text, references to precedent, etc., that are not well understood by lay people. There are too many barriers for claimants who do not speak French or English, those with literacy issues, and for persons with disabilities, including mental health needs, e.g. forms are difficult to understand and complete
  - There is an assumption that all appellants have access to computers, phones, and transportation but many do not, making the methods of communication and forms of hearings inaccessible
  - Timelines for key steps in the process, e.g. time to hearing, are not being well communicated. Application forms are not as clear as they could be
  - If form content (language) and format does not change, a step-by-step guide or Frequently Asked Questions document should be provided to support applicants or those completing the forms. Ineffective communication on timelines is viewed as an accessibility issue
  - Appellants whose appeals were successful agreed communications were understandable (79% EI, 59% CPPD agreed), while there was less agreement for those with unsuccessful appeals (34% EI, 27% CPPD agreed). For AAT, 75 percent of parties and representatives were satisfied with information products (website and correspondence); for TAQ, 90 percent of appellants agreed correspondence was easy to understand
  - 91 percent of EI and 77 percent of IS Tribunal members agreed relevant information was readily available to all parties involved.
- Decisions:
  - The length and lack of clarity of decisions make it hard for appellants to really understand why their appeal was either granted or denied, making the process appear not very transparent or fair
  - Decisions and forms are not accessible due to the quality and use of too much legal language in decisions and documents



- While reportedly an improvement from the previous legacy tribunals, we heard from stakeholders that Service Canada reconsideration of EI decisions lack adequate explanation or rationale, in contrast with IS decisions. EI phone calls help but the level of understanding is still low
- The majority of appellants with appeals granted agreed they understood the reasoning behind the decision (100% EI, 82% CPPD); survey results for appellants whose appeals were denied indicated the reverse: only 1% agreed they understood the reasoning behind their decision, and over 55 percent of EI and CPPD did not feel that the decisions explained how the law had been applied.
- Representation:
  - The need for appellant support was echoed in focus groups, in particular for disadvantaged and vulnerable groups
  - There is a view that there are different outcomes for appellants with and without representation; appellants should be aware that they are allowed to use a representative throughout the process; when an appellant does not have a representative, they are not able to obtain or really understand information about the process itself and the decisions
  - Barriers to representation exist for those who are not lawyers due to the rules of provincial and territorial law societies intended to prevent the unauthorized practice of law and provision of what may be seen as legal services.
- Case management:
  - There is no consistency of case managers or people you are dealing with throughout the process, since there is no longer a single case manager that is assigned to one case. The 1-800 number does not provide this, it is very indirect and anonymous. Survey respondents (appellants and representatives) responded neutrally when asked whether they agreed that they were able to obtain the information they needed from the SST's toll free line.
- Timelines:
  - One year limitation period for making an application to the General Division is unfair for CPPD claims, it sets a limitation bar for disabled appellants
  - Timelines to hear an appeal are largely delayed, pushing workers into poverty. The process needs to be faster, including the time to send and receive decisions; the speedier the process, the more confidence Canadians will have in it
  - Timelines for the BOR were considerably shorter than for the GD-EI
  - The lack of timeliness in the appeals process has negative consequences on the personal lives of appellants. Sometimes they become homeless while waiting for a decision from the SST
  - It takes too long to resolve an appeal – the service standard to resolve 85 percent of EI cases within 90 days of appeal filed (to the GD-EI) is too long for someone to be unemployed, especially those with low incomes. The delays discourage appellants to defend their right to benefits because the process costs a lot in time and energy



- Appellants and representatives should be provided with a detailed schedule of timelines at the beginning of the appeal process. Introducing a case manager or single point of contact to support appellants would help to effectively communicate timelines.

**Community groups and labour associations are interested in supporting appellants and want to work with the government to inform Canadians of potential services.**

- There is an interest across community groups and organizations for training of community members and advocates who assist appellants through the appeals processes, either to provide representation or to better explain how to navigate the process
- Community groups and organizations have noted the need for literacy training or leveraging literacy organizations to better assist and equip appellants through the process
- Websites, including Service Canada and the SST, should publish contact information of existing and relevant groups and organizations (community, legal, and labour groups) that are able to provide support and assistance to appellants
- Previous support projects and programs should be brought back to help people in the community get the assistance and information needed. The public outreach and sharing of knowledge made people feel better about the process
- While all forms cannot be translated into all languages spoken by Canadians, contact information could be provided to direct appellants to community groups and centres that are able to provide support in the language of their choice
- There is interest across community groups and organizations to develop networks across communities and cities to be able to share information, tools, and resources to better support appellants.

**“Make resources more readily available for appellants, i.e. non-profit organizations, community groups. There needs to be a better way to refer appellants on how and where to get help. If the process is complex, there needs to be resources available to help”. – Community Group**

Complexity of the appeals process is part of a larger story, beginning with initial application for benefits to Service Canada. While the extent to which complexity under the SST is an extension of the overall process is not in scope of this review, it is worth noting that in its 2015 report, the OAG found that applying for the Canada Pension Plan Disability (CPPD) benefit was a lengthy and complex process, requiring the completion of many forms in a largely paper-based process: between the 2009–10 and 2014–15 fiscal years, more than a third of CPPD applicants who were granted the benefit after reconsideration or appeal had waited more than one year.<sup>63</sup> While the Department indicated that they are already working to address this issue, opportunities to reduce complexity should take a whole-of-system approach.

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<sup>63</sup> Report 6—Canada Pension Plan Disability Program, 2015 Fall Report of the OAG



## 11 Efficiency

### 11.1 Overview

Efficiency is the extent to which the use of resources is optimized, using the least amount of resources to produce an output. Something is more efficient if it produces more output for the same level of input, or if a lower level of input is used to produce the same level of output.

An efficient tribunal function has enabling legislative and supporting regulations, and established policies and processes that contribute to the following outcomes:

- Tribunal resources are optimized
- Tribunal processes ensure that only appeals with merit are heard
- Client participation is balanced with procedures supporting a fact-based decision
- Workflows minimize wait time and delays for transfer of information
- Decisions are made in a timely manner
- Hearing time and costs are minimized.

The determination of whether tribunal resources are optimized was based on the number of merit decisions per member and the cost per merit decision in comparison to the external comparators. The analysis of the remaining outcomes was drawn from the analysis completed in previous sections of the report.

On balance the results show that the SST is not as efficient as the comparators:

- Members appear to make fewer decisions annually than most comparators
- Member cost per decision is generally higher than most comparators
- Total cost per decision appears consistent or slightly lower than most comparators supporting the corroborating evidence that the SST provides less support than comparators
- Timelines for GD-EI and AD-IS are largely in line with the majority of comparators, while those for AD-EI and GD-IS are longer than comparators.

In comparison to legacy tribunals, the SST does not present as efficient. Important to remember in this regard however is that the establishment of the SST shifted what was previously a much more informal and less structured EI appeals process that operated within ESDC, to an independent tribunal that is required to follow processes enacted by legislation (such as summary dismissal and leave to appeal).

The SST has implemented some measures that contribute to efficiency, for example the workflow enabled by its case management system (Atrium), and its digital case files are considered leading practices.





**There are opportunities to improve the efficiency of the Tribunal function, which could both reduce member time and cost per decision, and reduce the time from appeal to decision.**

The remainder of this section includes:

- An analysis of key measures compared to external comparators and legacy tribunals
- Other observations related to efficiency
- What we heard.

## **11.2 Findings**

### ***Optimization of Tribunal Resources***

The analysis of the optimization of Tribunal resources considered member case loads, timelines, and the unit cost per case in comparison to the external comparators.

Member caseloads were presented in Section 7.2. Other than AD-EI, the number of cases per SST member is lower than most comparators.

SST members were also asked to consider the proportion of time spent on various tasks. Illustrated in Section 7.2, a similar assessment was obtained from VRAB. In comparison, SST members allocate their time in similar proportions as do VRAB members. At the same time, the overall time for an appeal under the SST is longer than most comparators.

### ***Cost per Case***

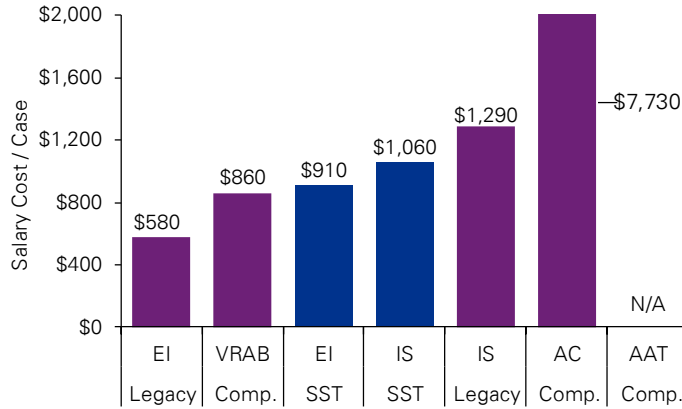
The cost per case was also compared to external and legacy tribunals (refer Section 4.2.5). The calculation of total cost of the SST was based on total costs of the SST (the Tribunal function consisting of SST leadership and SST members), cost of the services and support provided by ATSSC, and cost of certain services and support provided from ESDC. Support and services that the SST receives from ESDC that were not available and therefore not reflected in part or in whole include: corporate support, booking and hosting hearings, information management, and information technology support. The cost per case for comparators was based on available public reports.

As with the SST, it is expected that the comparator tribunals may also receive certain services and supports from the related programs or departments. Notwithstanding these differences, and there will be some variation to actual from what is reported herein, the results from the analysis are considered directionally relevant.

Shown below are both the average member salary cost per decision for the SST, legacy tribunals, and comparators, and the total cost per decision. Although salary costs are higher for the SST than VRAB and legacy tribunals, total cost per decision is lower than comparators for the SST-EI and in line with comparators for IS.

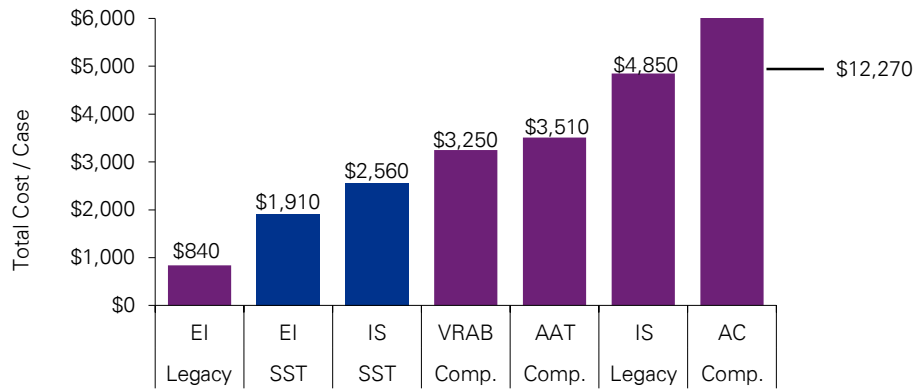


Figure 37 – Member Salary Cost per Case – SST and Comparators



\*SST figures include both the General and Appeal Divisions

Figure 38 – Total Cost per Case – SST and Comparators



\*SST figures include both the General and Appeal Divisions

**Other Observations on Efficiency**

Other observations on efficiency are summarized below and reflect a mix of results in relation to efficiency.



Outcome	Relevant Observations
Increased time available to review appeals with merit	<p>This review found that summary dismissal and leave to appeal processes designed to increase the time available to review appeals with merit are at odds with enabling the SST to conduct its business as informally and as quickly as warranted by the circumstances.</p> <p>Results indicate that the summary dismissal is not providing the value anticipated when this measure was included in the legislation. Given the low numbers, the time to process a summary dismissal, and the perceived denial of natural justice when an appeal is dismissed, the SST's resources may be better applied to deciding the case on its merits.</p>
Reduction in hearing time and travel costs	<p>Under the legacy systems, members were located often in centres close to appellants. As the SST conducts a significant portion of hearings through video conference and by telephone, there is not a significant difference from legacy tribunals to the SST cost of hearings. The time for hearing, whether conducted in person or through another mechanism that allows for participation, was reported to be the same.</p>
Client participation is balanced with procedures supporting a fact-based decision	<p>SST generally allows for some form of client participation as noted above; member time was considered to be the same regardless of hearing format, unless the decision was made without any client participation.</p>
Decisions made in a timely manner	<p>As previously presented, the time of hearing to decision under the SST compares to VRAB; it was not possible to draw a conclusion on total time in comparison to other tribunals due to differences in reporting.</p> <p>Total duration of SST appeals is significantly higher than legacy tribunals.</p>
Increased speed and accuracy of workflow	<p>While members and employees agreed that the Atrium case management system supported efficient workflow, processes were found to involve considerable back and forth between members and employees working on files due to division of responsibilities that could introduce delays into appeals processing. In addition, the exchange of information for IS cases between ESDC and the SST are not fully electronic, further contributing to delays.</p>

### 11.3 What we Heard

Although members expressed satisfaction with having access to the necessary supporting tools, other stakeholders expressed concerns that the current policies and processes place a much greater burden on the appellant.

Enhanced support to appellants is needed so they better understand the appeals process, including the rationale for the reconsideration decision, and the required information and opportunity to provide new information to support an appeal.



Conducting hearings on the record or via telephone or video conference has not directly contributed to increased efficiencies of the tribunal processes, nor to faster outcomes for appellants.

Stakeholders challenged the limited use of alternative mechanisms as allowed for in the Regulations to more quickly resolve appeals, e.g. alternative dispute resolution.

There were differing views on the value of summary dismissal, ranging from not applied often enough to its use considered as a denial of natural justice.

### 11.3.1 Survey Responses

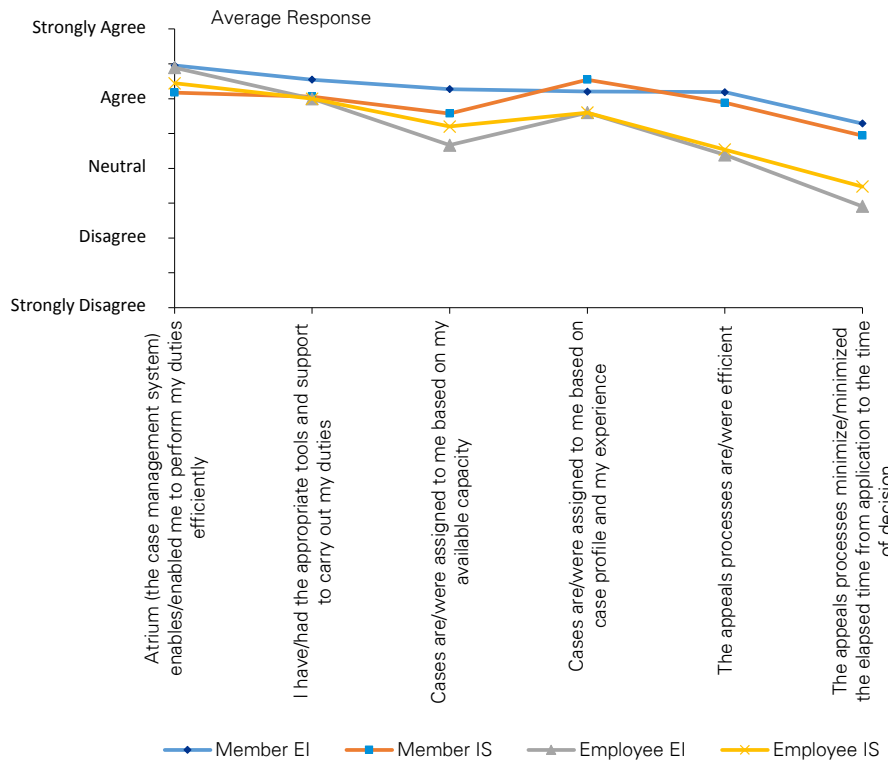
Members and employees were surveyed on attributes of the Tribunal function related to efficiency and effectiveness.

While members agreed that they were both effective and efficient, employees did not agree that the function was efficient.

Members strongly agreed that they were able to work effectively from home. Opinions were lower in relation to caseload. While the majority agreed that their caseload was reasonable, approximately 20 percent of EI members and 33 percent of IS members disagreed that their caseload was reasonable.

Employee responses were neutral to negative regarding the timelines of processes.

Figure 39 – Employee and Member Survey Results





## 12 Client Centricity

### 12.1 Overview

The strategic direction set out in the ESDC 2017-18 Departmental Plan (the ESDC Plan) is to “design and deliver client-focused, convenient, and secure services”. Key priorities within this strategic direction include development of digital tools to support access to services and information, bundling services across departments, and leveraging information already provided for related services, ensuring clients have easy to use, timely, and secure services. The ESDC Plan also emphasizes processes premised on the results of client engagement and consultation.

ESDC’s strategic direction and plan is consistent with a continued emphasis and recognition by governments around the world that in order to improve social outcomes, human and social programs must be designed and delivered with a focus on the client. A client-focused model based on leading practices includes the following key elements:

- Values and policies promote respect and diversity
- Policies and program designs reflect the circumstances and needs of the client
- Service delivery systems meet the diverse needs of the communities they support
- Service delivery systems enable a “tell us once” approach for the client that is convenient and accessible
- Service delivery systems enable collaboration and coordination across government programs and between government and non-government organizations to share information and build partnerships
- Clients are provided the necessary support to ensure they understand their rights and responsibilities, and are able to navigate the system and meet their obligations.

When the SST was announced in Budget 2012, “the Government reaffirmed its commitment to preserve an independent, objective, client-centered appeals process for administrative decisions.” There is an opportunity now to orient the SST more towards the client, including options around consistent case management, client-centred priorities and performance measures, and providing additional support.

**The SST does not incorporate practices consistent with external comparators that support a client-centric orientation while still maintaining critical elements of an administrative tribunal.**

The following section of the report provides:

- Leading practices identified from the comparative tribunals in comparison to SST’s policies, practices and delivery system
- Findings regarding what is important to clients
- Operating metrics and survey results relating to client-centric elements
- What we heard from appellants and representatives.



## 12.2 Client Centricity Leading Practices

ESDC's strategic direction and plan is consistent with a continued emphasis and recognition by governments around the world that in order to improve social outcomes, human and social programs must be designed and delivered with a focus on the client.

The appeals system in the context of social and human service programs must balance the principles of an independent administrative process to review and adjudicate program decisions with the values and principles of the program itself.

The external comparator tribunals were selected purposefully to understand the degree to which other income and social benefit support tribunals reflect client-centric elements. KPMG reviewed the comparator tribunals' public reports, websites, value statements, and other documents such as charters to identify leading examples of client-centric elements. For each element that follows below, SST's practices are compared to the leading practices identified.

### ***Values and policies promote respect and diversity***

Core value statements or other mechanisms such as a declaration of commitment to citizens set out the values and principles that guide all actions of the tribunal. These value statements include statements focused on the client and include respect, inclusion, courtesy, diversity, and dignity.

For example, the Appeals Commission for the Worker's Compensation Board states "We are guided by four values – respect, fairness, cooperation, excellence – and a Code of Conduct." The Appeals Commission defines each value further. For respect the Appeals Commission states "We respect all people, treating them with honesty and integrity. We show respect by treating all people the way we would like to be treated. In doing so, we consider people's thoughts, aspirations and feelings. In our dealings with people we are truthful, ethical and straightforward."

The core value statements also reflect foundational elements of a tribunal and include independence, transparency, fairness, efficiency, consistency, and quality. The Social Justice Tribunal of Ontario (which includes the Ontario Social Benefits Tribunal) has four core values of which one is fairness and independence which states: "SJTO and its tribunals must be, and be seen to be, impartial and independent in our decision-making functions. Our decisions will be based on the evidence and the law, and will be supported by clear, concise and coherent reasons." As explained by the SJTO, core value statements "set the foundation for rules and policies, how those rules and policies will be applied, and how we deliver service to the public." Core value statements are important to guide all members and employees to act consistently against a common values framework.

The SST's website is silent on its core values. Its Code of Conduct for Members, largely a technical document that discusses compliance with legislation and directives, work expectations, decision-making, protection of personal and confidential information, among others, does include a statement that members are expected to make every effort to act with dignity, respect, courtesy, fairness, discretion and impartiality in all aspects of their role as decision-makers. The SST could do more to articulate its values from the lens of its clients.

### ***Policies and program designs reflect the circumstances and needs of the client***

Leading practices for policies and program designs that reflect the circumstances of the client include accessibility, choice of hearing, and proportionality.



- Accessibility provided by other tribunals includes translation services, services for the deaf, hearing or speech impairments, interpreters, access for wheelchairs and other mobility devices, and other supports to ensure that all clients have equal and consistent access to the appeals system
- Appellants have the choice of method of hearing to fit their circumstances and needs
- Resolution processes allow for flexibility such that the process is proportionate and appropriate to the issues in each case.

The SST provides and funds interpretation services for persons who cannot communicate effectively in English or French. The description of the appeals process published on its website does not include consideration of other supports described above such as for hearing or mobility impairments. Appellants are asked if they have a preference for the form of hearing, but the decision rests with the member hearing the case.

#### ***Service delivery systems meet the diverse needs of the communities they support***

Community needs are reflected in the service delivery systems of the comparator tribunals while ensuring the independence, quality and efficiency of the tribunal decision-making. This includes the member requirements, appointment of members, location of members and number of members assigned to a hearing, and location of hearings.

- Members are selected based on merit and appointed by the Governor in Council or equivalent. The total make-up of the membership reflects a range of knowledge and experience that represents the underlying income, social or benefit program, as well as some members having a legal background
- Members are generally located in major centres
- Hearings are generally conducted by at least two members with different backgrounds reflecting the circumstances of the case
- Hearings are held in person. It was also noted that the comparators all are working to implement greater use of automation, digital access, and to increasingly shift in-person hearings to alternative methods.

The SST service delivery system differs from the noted practices in the following ways:

- Although recruitment of SST members asks for related income and benefit experience, the actual membership consists largely of those with legal backgrounds
- Appeals are heard by only one member
- There is limited use of in-person hearings.

In contrast to the external comparators and the SST, the Board of Referees had a tripartite system for both the selection of members and the make-up of the appeals panels. Under the legacy system, the Commissioners for Workers and Employers were actively engaged in the recourse process for EI. They selected and participated in training members of the Board of Referees; they had full access to the Board of Referees, and they had access to cost and performance information of the EI recourse process. Over 1,000 members were located in approximately 80 cities and towns across Canada.



There is no evidence of external comparators providing formal structural measures for inclusion of components of civil society in the appeals system, such as the former tripartite system that existed under the BOR. That said, both the SST and external comparators reported member selection processes and stakeholder engagement mechanisms that are intended to bring relevant expertise and experience to bear on the appeals process (refer Sections 5.2 and 8).

***Service delivery systems enable a “tell us once” approach for the client that is convenient and accessible***

It has been recognized that the provision of timely and appropriate benefits for those in need requires a different approach that enables the client to tell their story once, and that service providers are working from a single case file. Service delivery systems are tiered, recognizing that some just require access to the system and can navigate on their own, whereas others have complex needs and require case managers to help them navigate the multitude of government programs and arrange the necessary support.

Similarly, leading practices of the comparator tribunals includes:

- The use of a single case file that originates from the program and is accessed by the tribunal member for review
- The assignment of a single case manager
- A range of supports to the client including help to understand the process, drafting and filing of the client’s appeal, and referrals for representation which may or may not be available to the client at no cost
- The use of plain language.

***Service delivery systems enable collaboration and coordination across government programs and between government and non-government organizations to share information and build partnerships***

Appellants to the SST are required to provide all supporting documentation for their appeal, including for instance the reconsideration decision. A single case file for the individual that originates with the ESDC and accessed by the SST is not in place, but a new case file is created. Once created by the SST, a single case file is then maintained for the appellant.

Supports accessed through the SST are limited and include access to tools allowing all parties to identify precedent information to help determine and prepare their appeals as well as the use of the call center to help clients navigate the system. The SST’s website uses a mix of plain and technical language to explain the appeals process and requirements and what to expect.

***Service delivery systems are strengthened by the participation of stakeholders***

Tribunals by their nature must be both in fact and perception independent of the underlying programs on which they are making decisions. Notwithstanding, leading practices of the external tribunals included formal outreach programs to key stakeholders and representatives.

The SST has conducted a number of sessions with stakeholders for input on changes to legislative reforms, policy, and process. A formalized strategy and communication of planned engagements however does not exist.





***Support for clients ensure they understand their rights and responsibilities and meet their obligations.***

Similar to value statements that reflect respect, leading practices also include expectations of appellants. The AAT for instance includes a statement of “Your Responsibilities” which outlines what the tribunal needs of the individual in order to meet its commitments, for example:

- Let us know in advance if you need any assistance with language and/or access to our offices
- Take reasonable care for your own (and other’s) health and safety when at the AAT and cooperate with any reasonable AAT instruction, policy or procedure
- Give us complete and accurate information
- Tell us promptly of any changes to your contact details
- If you are a department/agency, use your best endeavors to assist the AAT in making its decision.

The AAT was the only comparator that included an explicit statement of others’ responsibilities.

## **12.3 Findings**

Through the surveys, a number of questions explored the importance and degree to which the SST reflects the elements of a client-centric organization while still balancing the attributes of an independent tribunal. An analysis was completed of available operational metrics relating to form of hearing and completion of applications.

The results show there are positive attributes to the SST that should be recognized. The independence of the tribunal function was most notably identified as being one of the most important attributes. Other feedback received through the survey was the high level of respect for appellants by members, and that the process allowed for some form of client participation.

Overall however the SST has not incorporated attributes that reflect a client-centric organization as demonstrated by the following:

- The majority of appellants and representatives did not agree with the statement that they understood the appeals process or the decision
- There is a high percentage of incomplete submissions received from appellants which delays the process and suggests a lack of understanding of the requirements and the need for more support
- The SST does not present information in a way that is easy to understand and navigate
- Notwithstanding the general satisfaction with form of hearing, CPPD appellants expressed a high level of dissatisfaction with the form of hearing
- The time to process an EI appeal is simply too long in relation to the short term nature of the benefit and the vulnerability of the appellant while waiting for a response.

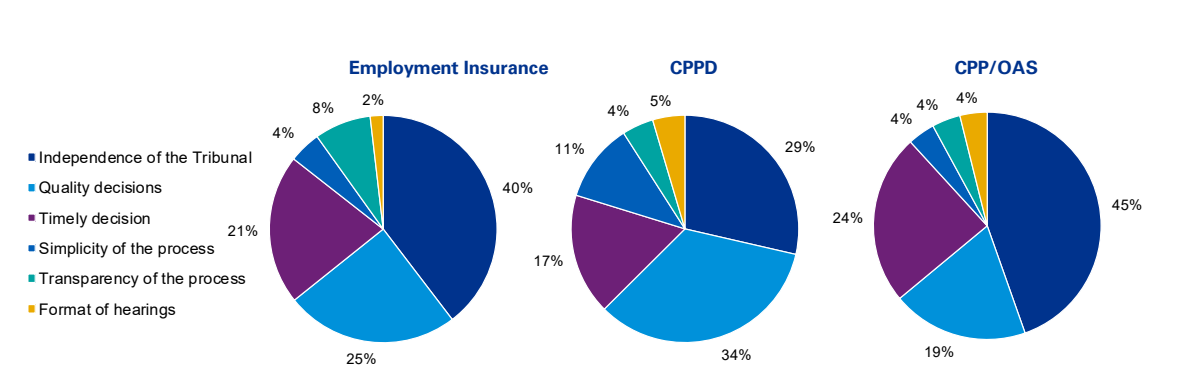
The above findings are further explained and supported below.

### What's Important

Survey appellants were asked to identify what was most important: independence of the tribunal, quality decisions, timely decisions, simplicity of the process, transparency of the process, or format of the hearings.

The results of the survey by program area reflect that independence, quality, and timeliness are the most important factors for all appellants. Of additional interest is the difference in ratings between CPPD appellants as compared to EI and CPP/OAS reflected below. CPPD ranked quality of the process higher than independence in comparison.

Figure 40 – Factors Identified as Most Important by Appellants



### Independence of the SST

Despite the importance of independence, when asked to rank the degree to which appellants felt the appeals system was independent, only 31 percent of EI appellants and 26 percent of CPPD appellants agreed that they believed the SST's processes were independent of reconsideration within ESDC.

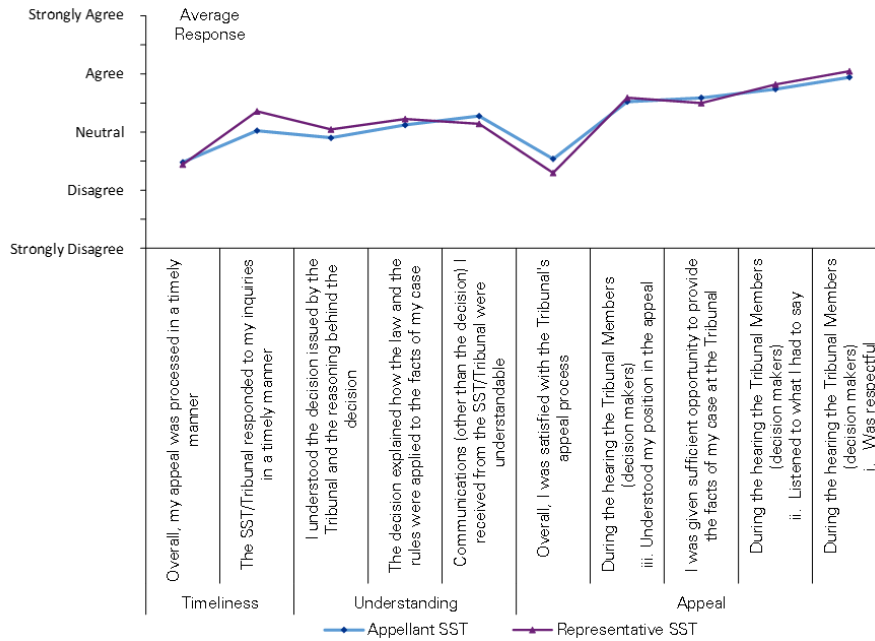
### Timeliness, Understanding and Experience

Appellants and representatives were asked whether they agreed or disagreed with statements relating to timeliness, understanding of the appeal process, and the statements related to the conduct of the appeals process.

The results below show that the majority did not agree that the appeals process is timely, or that they understand the process and decision. Appellants and representatives agreed that members listened to them and that they were treated with respect.

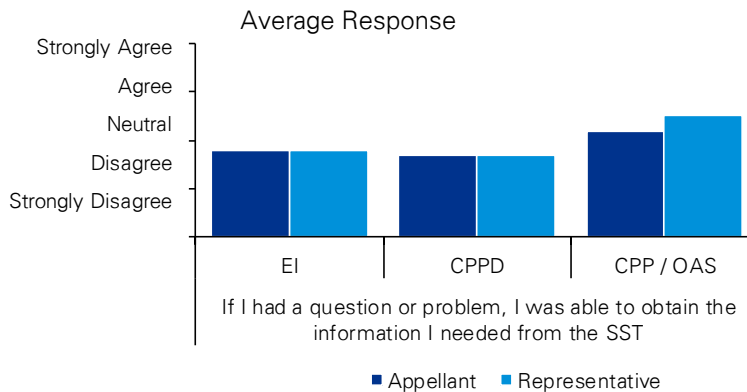


Figure 41 – Appellant Responses in Relation to Timeliness, Understanding and the Appeal Process



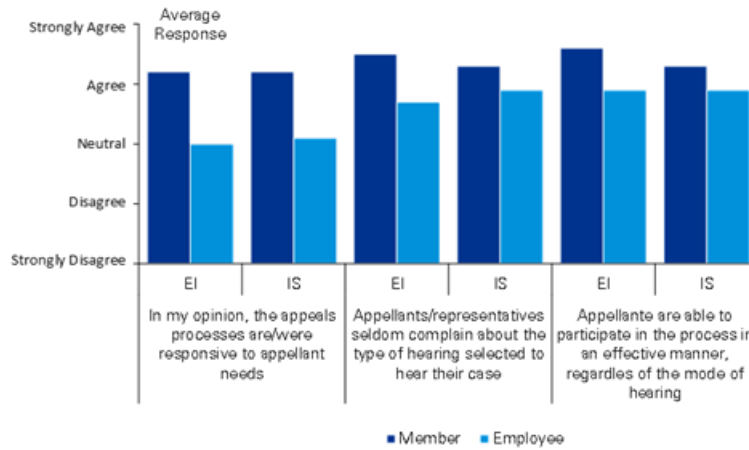
Appellants and representatives were asked if they were able to obtain the information they needed from the SST. The responses below indicate that those in all programs largely disagreed or were at best neutral, with slightly higher responses in CPP/OAS.

Figure 42 – Appellant and Representative Responses about Availability of Information



Members and employees were asked similar questions regarding responsiveness of the appeals process and participation by appellants. The results below reflect a significant contrast between the perspectives of members and those of employees.

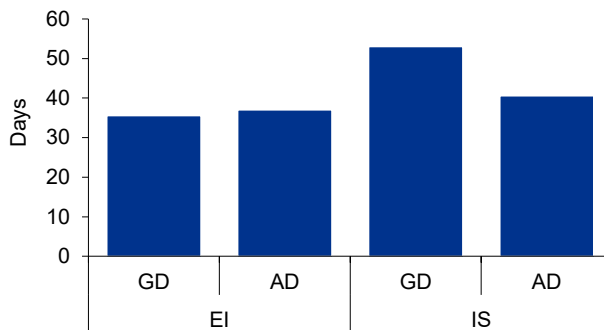
Figure 43 – Employee and Member Perceptions of Responsiveness to Client Needs



### Incomplete Applications

Over one-third of applications to the General Division are incomplete. Often missing is information that the appeals system should already have if a single case file between the ESDC and the SST existed. The current application process has put the responsibility for the provision of all information primarily on the appellant. Further, the process for the identification and provision of missing information, including basic information already in the possession of the underlying program areas, increases the time from application to final decision between 30 and 50 days as reflected in the figure below.

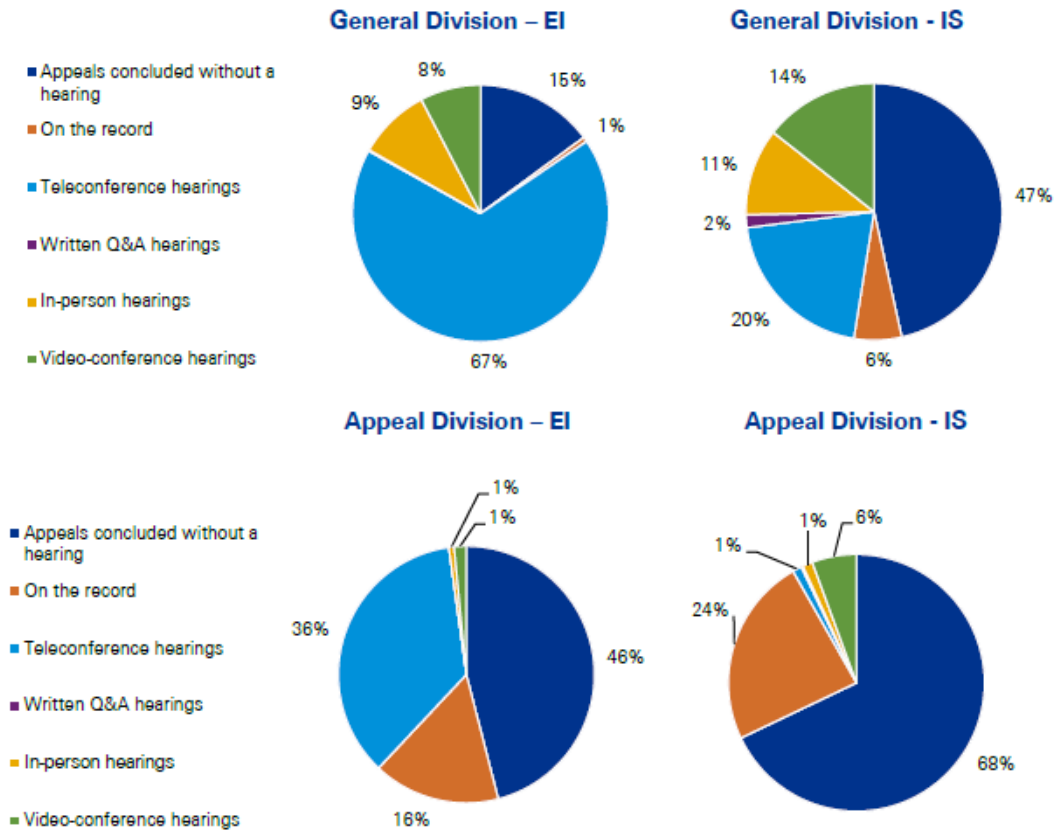
Figure 44 - Processing Time – Delay Added by an Incomplete Application for an Appeal



### In-person Hearings

Although the SST conducts much fewer hearings in person than external comparators, most hearings still allow for some form of participation as reflected in the charts below.

Figure 45 – Format of Hearings - SST

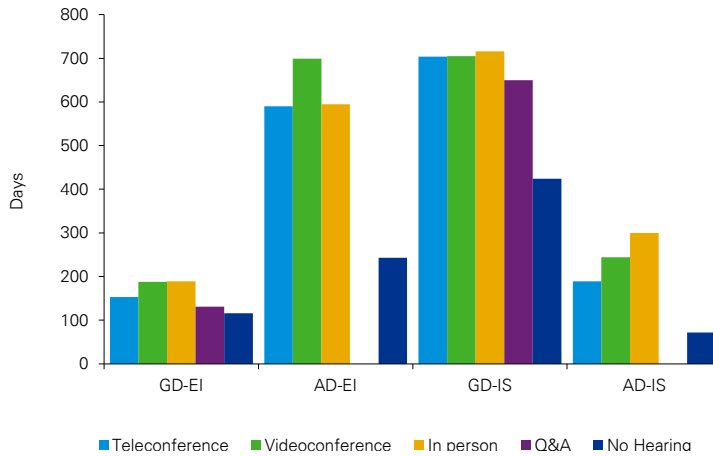


Appeals concluded without a hearing include those that were withdrawn or dismissed before a hearing, or settled due to an agreement between the appellant and ESDC. This type of resolution was especially prevalent in the AD-IS and is reflected in the large percentage of appeals concluded without a hearing. Overall, when an appeal was heard, of the three major hearing types, in-person hearings take place less often than video conference or teleconference hearings. In-person hearings were used in 10 percent of cases overall, while video/teleconference was used in 45 percent of hearings.

The length of time to complete an appeal does not strongly depend on the form of hearing. The figure below shows that there is little variation of the total time elapsed between appeal submission and decision within each division, whether the hearing was held in person, by video conference, or by teleconference. Only cases with no hearing are resolved more quickly.



Figure 46 – Time from Complete Application to Decision by Form of Hearing



\* There were no hearings performed by written Q&A in the Appeal Division during the review period.

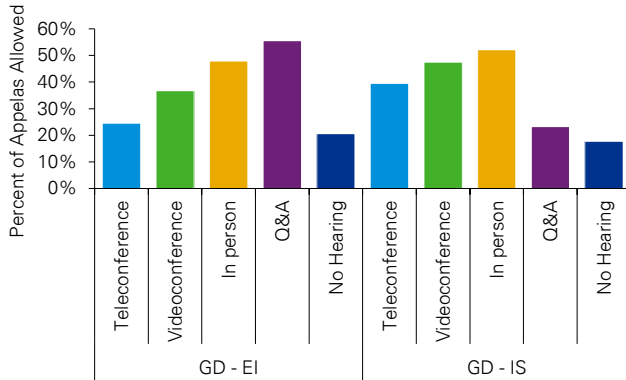
An analysis was also performed of the appeal outcomes by hearing type. This data was only available for the General Division and is shown below. The data shows that cases with no hearing have the lowest success rate, and that in-person hearings generally have higher acceptance rates.

It should be noted that there were only an average of five EI appeals involving written Questions and Answers (Q&A) so the high rate of success for these appeals may not be representative.

Discussions with the SST indicated that in-person hearings are selected by members for cases where there is more complexity, more doubt in the mind of the adjudicator, and/or questions of credibility. These factors may explain in part why this form of hearing is associated with a greater percentage of appeals being allowed as they are more likely to require the application of judgement. In-person hearings are normally held at locations closest to addresses provided by appellants, usually at the local Service Canada office.

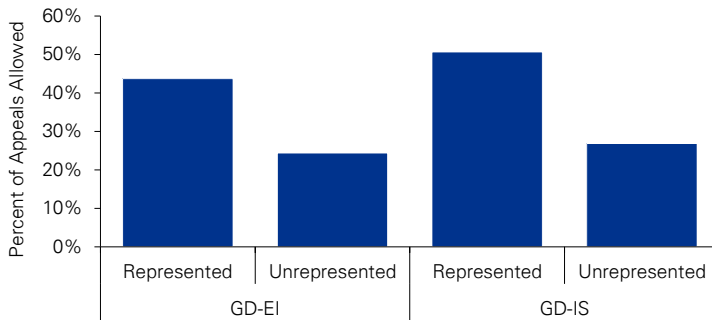


Figure 47 – Rate of Allowed Appeals by Hearing Type



Success rates for represented and unrepresented appellants were also compared. The figure below shows that where the appellant has been represented, there has been a higher success rate.<sup>64</sup>

Figure 48 – Rate of Allowed Appeals by Representation



While the majority of SST cases are resolved with alternate forms of hearings, survey results do not suggest that fewer in-person hearings have had an impact on client satisfaction. Results indicate that as long as the appellant had a forum to be heard, satisfaction was relatively consistent. Appellants who had no hearing (on-the record) did, however, show lower satisfaction.

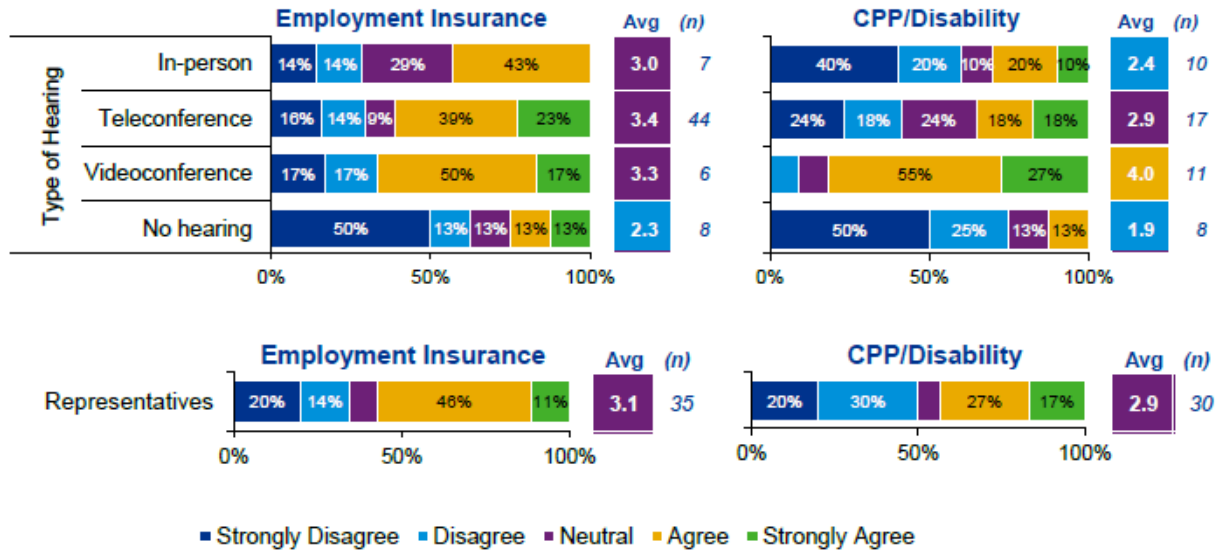
Representative perspectives overall were not very different from those of appellants, with 57 percent of those representing EI appellants and 44 percent of those representing CPPD appellants satisfied with

<sup>64</sup> The SST indicated that while it appears to show that the outcome is biased towards those with representation, it was felt that representatives would be more likely to counsel a client without a viable case not to pursue an appeal, and therefore the average case with representation would be expected to be stronger than those that are unrepresented



form of hearing. Responses from representatives cover the range of hearings in which they would have participated and therefore are not available by type of hearing.

Figure 49 – Appellant and Representative Agreement with the Question “I was satisfied with the method in which my appeal was heard”



## 12.4 What we Heard

In addition to the findings reflected above, the results of the public consultation provide insight into the experiences of appellants and their representatives in relation to client-centric elements.

Overall, what we heard reflects that the current system does not incorporate many of the leading practices of a client-centric organization:

- There is inadequate support to appellants through the appeals process
- There is too much emphasis on the law and the regulations, versus the tenets of an administrative tribunal, to the detriment of the population served
- An overly bureaucratic approach to administrative issues, such as completeness of applications and document sharing with appellants following reconsideration, increases barriers to client participation
- There is a desire for choice in the format of hearing, balancing accessibility and desire for appellants to feel heard. Not all appellants want an in-person hearing, and not all are satisfied with an alternate form of hearing.

These observations are further explained below.

### There is inadequate support to appellants through the appeals process

With regard to support provided for appellants, opinions of those consulted included:

- The appeals processes are impersonal and intimidating, which are hard to navigate and often confusing for those without representation





- There is a perceived lack of accommodation for languages other than English and French, and physical and mental health requirements (i.e. insufficient available tools and support resources)
- Services are geared towards appellants who have access to computers, phones, and transportation but many do not, making the methods of communication and forms of hearings inaccessible
- There is a view that there are different outcomes for appellants with and without representation
- When an appellant does not have a representative, they are not able to obtain or really understand information about the process itself and the decisions. Part of this is due to the legalese of the process, and part due to the overall state the appellant is in, i.e. overwhelmed and stressed.

A common challenge raised was not having a single point of contact for the client through the appeal process; there is a need for someone who can walk clients through the end-to-end process. The SST's current toll free line was felt to be impersonal and less straightforward to use. In contrast, recent polling by the SST of representatives indicates high levels of satisfaction with their 1-800 service.<sup>65</sup> As satisfaction perceptions of the toll free line appear to be mixed, it will be important to identify and recognize the aspects of the service that are effective and helpful to clients, but also acknowledge there are still likely opportunities for improvement.

One community group summarized some of these issues: "Needless complexity of the process undermines accessibility. There are unnecessary procedural hurdles for those who do not speak or read English or French fluently, and for persons with disabilities. The system should be created with the needs of the most vulnerable in mind."

**There is too much emphasis on the law and the regulations, versus the tenets of an administrative tribunal, to the detriment of the population served.**

There is a perception that the appeals process is overly procedural and legalistic and does not consider all of what clients deem is relevant information, such as testimony from family, friends, and other witnesses.

A need is seen for more flexible deadlines for clients, but also adherence to schedules and deadlines by the Tribunal.

Decisions are long and legalistic, include boilerplate text, and are not in plain language.

In terms of the streamlining that took place in consolidating the legacy tribunals into the SST, a repeated sentiment was that "Operations based on economic principles not based on elements of natural justice."

Some interviewed felt that judicial soundness is emphasized over satisfying the client.

Perception was that clients are less interested in independence of the SST than in a streamlined appeals process.

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<sup>65</sup> Social Security Tribunal of Canada Representatives Satisfaction Study Final Report, Quorus Consulting Group, February 2017



**An overly bureaucratic approach to administrative issues such as completeness of applications and document sharing with appellants following reconsideration increases barriers to client participation.**

The SST requires appellants to submit information that, from a client perspective, “the government” already has, e.g. reconsideration decision, Social Insurance Number, business number. This information was not required for legacy tribunals due to closer integration with ESDC, and missing information leads to incomplete applications, delays, and frustration, and creates an additional administrative burden on appellants.

Regulations are too prescriptive and formal regarding procedural aspects of the appeal, including completeness of appeals, and have been strictly interpreted – there is no reason the regulations cannot be interpreted closer to BOR type arrangement.

“Current tribunal follows the letter of the law”

Challenges were cited in relation to the ability for the appellant to have access to all relevant documents in advance of filing their appeals to prepare and understand their case. Some parties felt that with more information available, fewer applicants would appeal, and those who did would have higher quality, evidenced-based cases to present.

**There is a desire for choice in the format of hearing, balancing accessibility and desire for appellants to feel heard. Not all appellants want an in-person hearing, and not all are satisfied with an alternate form of hearing.**

Many stakeholders felt that type of hearing is a crucial factor to a fair appeal. Right now the format is decided by the SST and not the appellant. It was felt that in-person hearings should be the default and that it should be the appellant deciding on the format.

Reasons for the importance of in-person hearings included assessing credibility, greater transparency between the appellant and the Tribunal, and better communication both of the facts and of decisions to appellants.

There were those who felt that leaving the choice of hearing to the SST interfered with the appellant’s right to be heard.



## 13 Conclusion

While the SST's legislative and regulatory framework that underpins its processes and operations has significant differences from the previous tribunals, the "raison d'être" remains the same: to secure the just, most expeditious and least expensive determination of appeals and applications, and to conduct proceedings as informally and quickly as the circumstances and the considerations of fairness and natural justice permit. There are two levels of appeal for each program, as before. The basis of appeal – eligibility against established criteria – remains. The governing principles of providing a fair, credible and accessible appeals process are unwavering. Economies of scale have been achieved by consolidating administrative functions of four tribunals to one. According to survey responses, client satisfaction with the SST is not high but not significantly lower than under the previous system. Still, legitimate complaints and strong evidence of added complexity, lengthier timelines, and a more formal, distant, legalistic Tribunal that is difficult for the lay person to navigate has many longing for the past and calling for change.

In addition to the factors noted above, other differences include the shift in the balance of power: from a three-member tribunal, seen as a "trial by peers" to a single decision-maker often in a location distant from the appellant and his/her associated work/life context; a process that is not seen as putting the client first; and the elimination of tripartism in EI appeals. Combined with the reduction in EI appeals and the five-fold increase in time to conclude EI appeals, these factors are at the very least creating a perception of reduced access and fairness. These changes have masked the positive attributes introduced by the creation of the SST, most notably independence.

The challenge for this review has been to understand these perspectives from the various stakeholders - many of which are deeply embedded - in the context of the available evidence and in comparison to the previous system, and endeavour to distinguish fact from fiction, reality from perception, in a manner that can help all share a common understanding of what is working and what needs to improve, and offer options for a coherent path forward.

At the same time, multiple sources of input into this review - from what we know and what we heard - provide the basis for a reliable assessment to compare the current system to the legacy tribunals. The legacy appeals system that consisted of four tribunals were supported by two government agencies - the Commission and ESDC. With the creation of SST and ATSSC, four government agencies now have various roles in the appeals system for EI and IS benefits. Each of these four agencies recognize and are focused on realizing the government's commitment for "an independent, objective, client-centred appeals process for administrative decisions through continued modernization to improve efficiency" but lack effective coordinating and accountability mechanisms and a collective ethos focused on the client.

The question, therefore, is less about which tribunal, past or present, has it "right," but rather, how to take concrete measures to improve the effectiveness and efficiency of the SST's structure and processes, leverage the full flexibilities of its enabling legislation and regulations, and foster a client-centric culture that places the client at the heart of the appeals process.



**In light of our review, we strongly encourage the Minister to take the required time to complete the due diligence necessary to evaluate the recommendations and options provided.** These will require conscious choice and trade-offs across multiple objectives and require further analysis and assessment to ensure that the changes achieve positive results for clients in the short, medium, and longer term. Learning from the past, the development of the go-forward strategy should include engagement with the stakeholder communities and include a multi-year plan designed to deliver operational changes in the short term, followed by more fundamental changes, including changes to legislation and regulations, in the medium to long term. The plan should be updated annually, accompanied by regular public reporting on results. Finally, the changes implemented should be designed to achieve desired outcomes for accessibility, fairness, and transparency, that collectively continue to improve the SST and the overall benefits system for vulnerable Canadians.



# Annex A - Approach and Methodology

## Annex A - Approach and Methodology

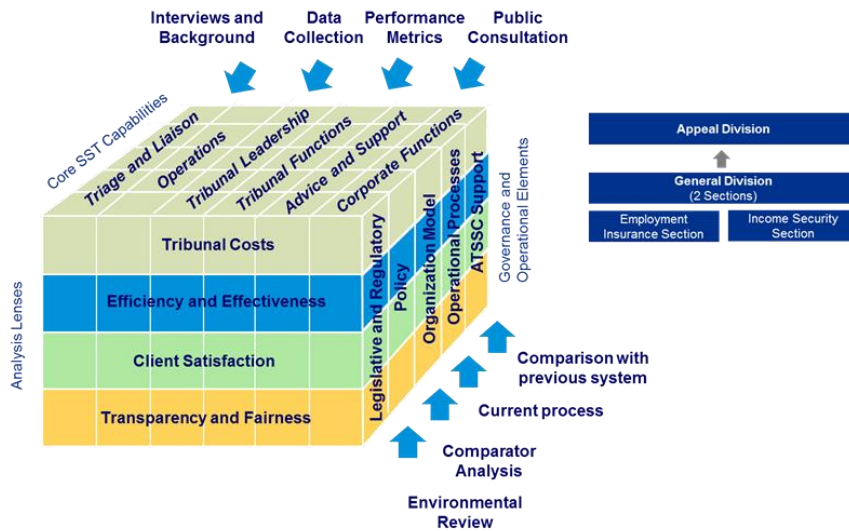
The following Annex provides information on KPMG’s approach and underlying methodologies including an overview of the Evaluation Framework, and the Resource and Financial Model to develop the costs of the SST. Additional supplementary information is provided on the external comparators.

### Evaluation Framework

KPMG developed the following framework to reflect the multiple dimensions of the SST review based on the scope and tasks described in the Statement of Work summarized in Section 1.2.1 of this Report.

The framework captures all review elements and enabled the different analytical lenses to be applied to inform the development of recommendations and options for consideration.

Figure 50 – Illustration of the Evaluation Framework Developed and Applied for the SST Review



Applying the framework, a comprehensive view of the current and previous state governance and operating model for the SST was developed. This included collecting both structured and unstructured data, such as cost and performance data; information from previous reports; information from the SST, ESDC, and the ATSSC; and insights and learnings from stakeholder interviews and consultations. Likewise, similar information for the legacy tribunals and for the external comparators was collected to the extent information was readily available.

The results were analyzed using the lenses shown on the face of the cube above. The analysis lenses and the governance and operational elements align to the requirements specified in the Statement of Work as presented in Section 1.2.1.



### ***Analysis Lenses***

The analysis lenses are described below.

#### **Tribunal Costs**

Tribunal costs are the total costs including all direct and indirect costs to deliver the mandate of the SST. This includes all costs incurred directly by the SST, as well as indirect costs including administrative and other costs incurred by ESDC and ATSSC, based on agreed upon criteria (for e.g. Full Time Equivalent (FTE), volume of transactions, etc.). Further information on the actual cost categories, in addition to salaries and benefits is included in Section 4.2.5.

#### **Efficiency and Effectiveness**

The following definitions from the Treasury Board Secretariat<sup>66</sup> were applied:

Efficiency is the extent to which resources are used such that a greater level of output is produced with the same level of input, or a lower level of input is used to produce the same level of output. The level of input and output could be increased or decreased in quantity, quality or both.

Effectiveness is the extent to which the Tribunal is achieving expected outcomes.

#### **Client Satisfaction**

Client satisfaction is defined as the extent to which the client was satisfied with their experience with the Tribunal. This took into consideration aspects such as:

- Customer service
- Complexity of process
- Deadlines
- Timelines
- Forum
- Communications
- Responsiveness.

#### **Transparency and Fairness**

Transparency and fairness considered both structural fairness and procedural fairness.

Structural fairness evaluates whether there are structural guarantees of judicial independence, the individual independence of each of the tribunal's members, and the institutional independence of the tribunal itself. It includes an assessment of whether there are structural arrangements for ensuring adjudicative competence, and whether the underlying act and supporting regulations are fair.

Procedural fairness examines whether the process elements themselves support fairness outcomes. This includes an examination of whether trust in the tribunal members has been established, the quality of treatment of clients, whether procedures are impartial and fact based, and the extent to which all clients are given the opportunity to participate in and provide input to the process.

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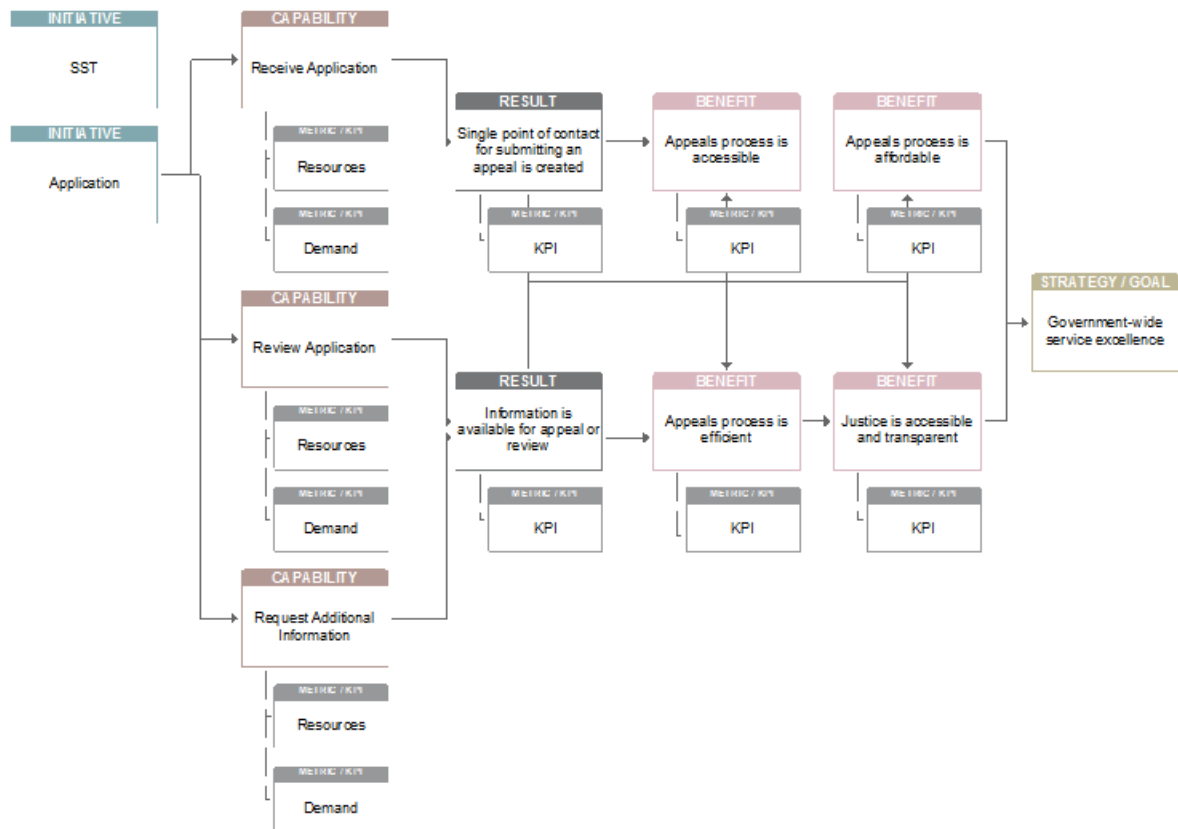
<sup>66</sup> Source: TBS Policy on Evaluation (April 2009, <http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=15024&section=text>)



### Value Management

KPMG’s proprietary Value Management methodology provided a formal, disciplined approach to identify and catalogue the ways in which the SST creates value using logic models. The logic models graphically depicted how business processes and capabilities gave rise to results, and indicated how those results contributed to benefits and strategic objectives. The use of value models provided a formal, disciplined approach to guide the collection of information and conduct of analysis in order to assess the value contribution of the SST’s activities to intended outcomes.

Figure 51 – Example of KPMG’s Value Management Logic Model



The use of value models enabled:

- The identification of relevant key operating metrics for comparison to legacy tribunals and different administrative tribunals
- Understanding the relationship of legislative and policy requirements on core business processes
- The comparison of service standards and client satisfaction between the SST and legacy tribunals
- The comparison of volume demand and operational performance between the SST and legacy tribunals.





### Period of Review

The review periods selected to compare the legacy tribunals costs and operating results to the SST costs and operating results were fiscal years 2010/11 and 2011/12 and fiscal years 2015/16 and 2016/17 respectively. Results over the respective two year periods were averaged to calculate average annual results, unless otherwise stated in the Report.

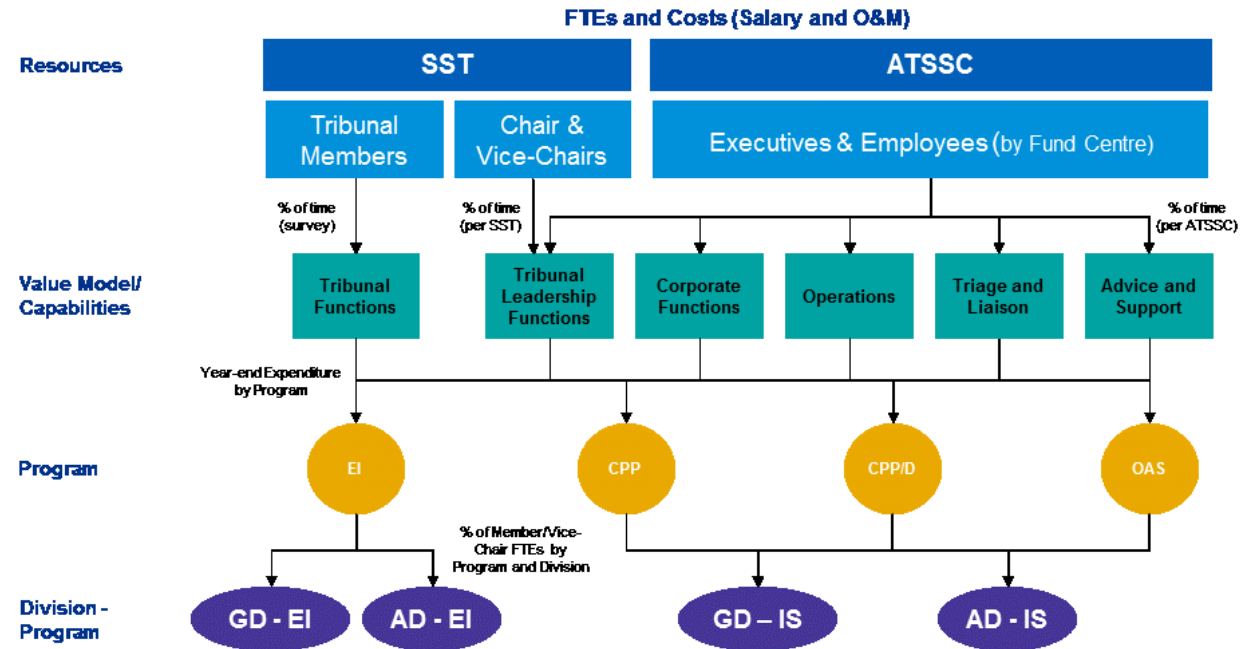
### Client Journey Maps

KPMG’s Client Journey Mapping methodology was leveraged to examine the SST’s processes from the appellants’ perspective. This methodology allowed KPMG to better understand the EI and IS recourse processes and implications for efficiency, effectiveness, client satisfaction, and fairness and transparency, across organizational boundaries. Appellant personas and the respective journey maps were developed to capture and illustrate the experience throughout the appeals processes.

### Resource/Financial Model

The total costs as previously defined were allocated to Tribunal capabilities, to the EI and IS programs and to the divisions within the programs following the model illustrated below.

Figure 52 – Illustration of Resource and Financial Model



The underlying information was based on the following:

- Allocation to capabilities was based on time use data provided by members and by the ATSSC
- Expenditures by program were provided by the SST



- Resources were allocated to the divisions based on the number of members in each division – member Full Time Equivalents (FTEs) were provided by the SST
- Costs were adjusted for inflation to fiscal year 2016/17 dollars using an average annual rate of inflation of 1.59 percent. The average rate was obtained from the Bank of Canada’s Inflation Calculator for the years 2010 to 2017. The Calculator uses data from Statistics Canada’s Consumer Price Indexes for Canada.

A summary of the results is reflected below.<sup>67</sup>

### FTEs

The figures below show the FTE break down between the ATSSC and the SST membership, and their capabilities as well as between the General and Appeal Divisions for EI and IS. The leadership within the SST represents the Chair and three Vice-Chairs, accounting for four FTEs.

Figure 53 - FTEs by Capability (Average Fiscal Year 2015/16 and Fiscal Year 2016/17) for the SST and ATSSC

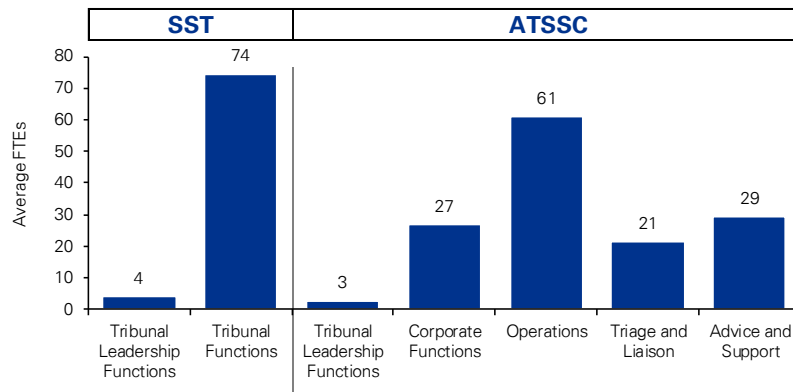
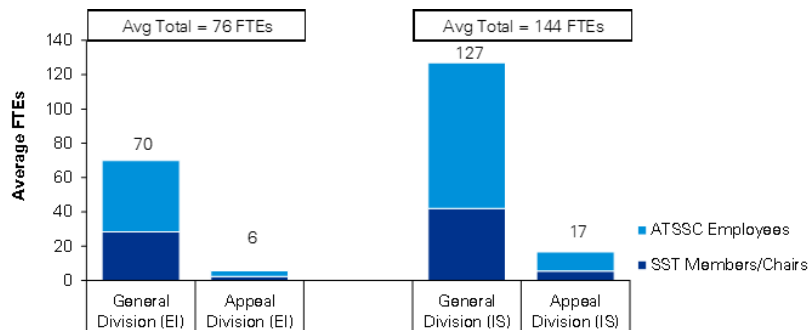


Figure 54 - Total average FTEs (Average Fiscal Year 2015/16 and Fiscal Year 2016/17) for the SST and ATSSC by Division



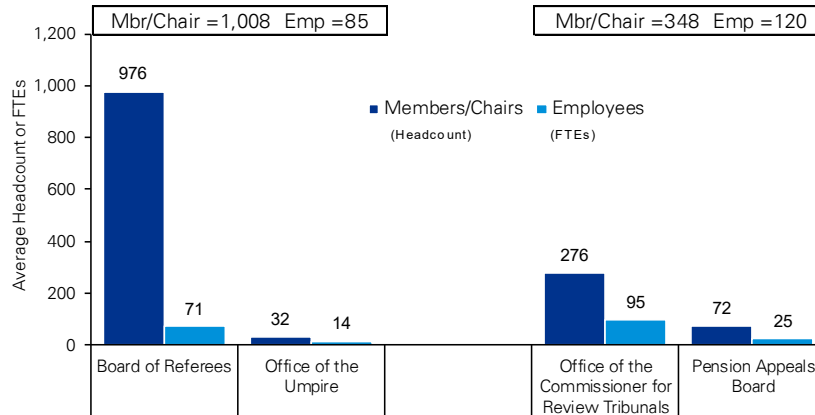
<sup>67</sup> Totals may differ slightly for both FTEs and costs reflected in the detailed graphs as a result of differences due to rounding



### FTEs Legacy

The FTEs for the legacy tribunals were provided by ESDC and are reflected in the figure below. It should be remembered that the BOR members were generally part-time.

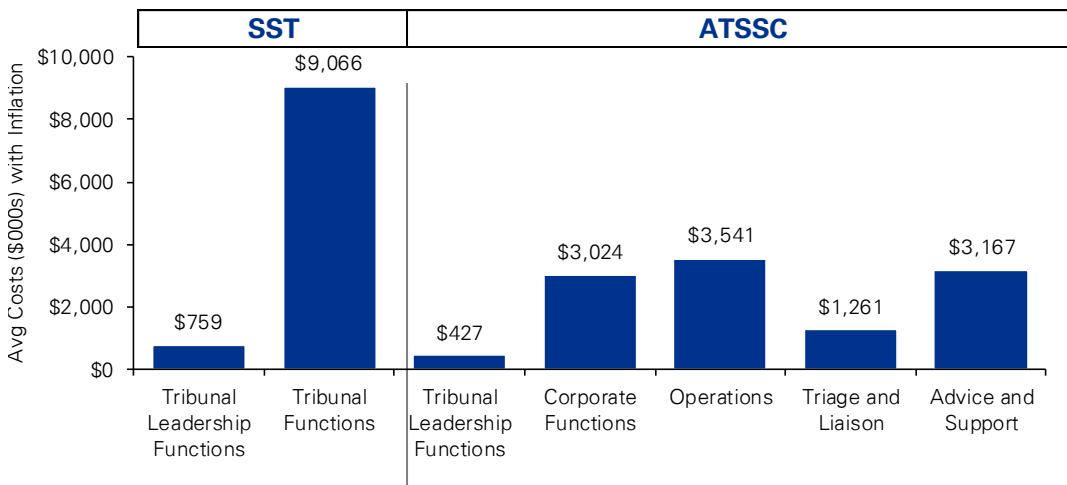
Figure 55 - Legacy Tribunals – Members/Chairs and Employee FTEs



### SST Costs

The annual average cost for the SST adjusted for inflation was \$21.2 million based on fiscal year 2015/16 and fiscal year 2016/17 costs. The break down by capability is illustrated below. Further details on SST costs are included in Section 4 of the Report and are based on information provided by the SST/ATSSC and ESDC.

Figure 56 - Costs by Capability (Average FY15/16 and FY16/17) for the SST and ATSSC – Adjusted for Inflation





### **Legacy Tribunal Costs**

The average annual cost of the four legacy tribunals combined, adjusted for inflation, was \$43.8 million based on fiscal years 2010/11 and 2011/12. The costs of the legacy tribunals are included in Section 4 of the Report and are based on information provided by ESDC.

## **Comparator Information and Sources**

The five tribunals that formed the basis of the environmental review and used as a basis for developing common and leading practices presented throughout this Report are:

### **Ontario Social Benefits Tribunal**

- The Ontario Social Benefits Tribunal (OSB): The Social Benefits Tribunal hears appeals from people who have either been refused social assistance or who receive social assistance but disagree with a decision that affects the assistance they receive. This tribunal provides recourse decisions from the Ontario Works and Ontario Disability Support programs. The OSB is a portfolio tribunal of Social Justice Tribunals Ontario (SJTO), a group of 8 adjudicative tribunals in Ontario
- Data regarding the OSB was sourced from this Tribunal's 2015-16 annual report, available at <http://www.sjto.gov.on.ca/documents/sjto/2015-16%20Annual%20Report.html#sbt1> as well as the OSB website at <http://www.sjto.gov.on.ca/sbt/>

### **Administrative Appeals Tribunal, Australia**

- Administrative Appeals Tribunal (AAT, Australia): The Administrative Appeals Tribunal is an independent body established to provide independent review of administrative decisions made by the Australian Government and some non-government bodies. Within the AAT, the Social Services and Child Support Division reviews decisions in relation to social security, family assistance and student assistance entitlements, child support, and paid parental leave
- Data regarding the AAT was sourced from this Tribunal's 2015-16 annual report at <http://www.aat.gov.au/about-the-aat/corporate-information/annual-reports/2015-16-annual-report/annual-report-2015-16/appendix-1-members-of-the-aat> as well as the AAT website <http://www.aat.gov.au/>

### **Appeals Commission for Alberta Workers' Compensation**

- Appeals Commission for Alberta Workers' Compensation (AC): The Appeals Commission for Alberta Workers' Compensation is a quasi-judicial tribunal operating under the authority of the Workers' Compensation Act as the final level of appeal for decisions made by the Workers' Compensation Board
- Data regarding the AC was sourced from the Board's 2015-16 annual report at <https://www.appealscommission.ab.ca/Website%20Documents/AC%20AnnualReportFinal.pdf>; information on member counts was sourced from the AC's website at <https://www.appealscommission.ab.ca/about-us/our-commissioners>; additional information was sourced from the AC's website <https://www.appealscommission.ab.ca/> and from the Alberta



Workers' Compensation Board website at <https://www.wcb.ab.ca/> as well as cost information from the Alberta Labour 2015-16 Annual Report <https://work.alberta.ca/documents/2015-16-labour-annual-report.pdf>

## Veterans Review and Appeal Board

- Veterans Review and Appeal Board (VRAB): The Veterans Review and Appeal Board provides the recourse process for disability benefits decisions made by Veterans Affairs Canada
- Data regarding VRAB was sourced from the Board's 2015-16 annual report <http://www.vrab-tacra.gc.ca/Plans/2015-16-Annual-Report-Rapport-Annuel-eng.cfm>, their 2015-16 Departmental Performance Report <http://www.vrab-tacra.gc.ca/Plans/2015-16-DPR-RMR-eng.pdf>, their website <http://www.vrab-tacra.gc.ca/>, and information provided directly from VRAB, including interviews with Director of Strategic and Corporate Services and Director General of VRAB

## Tribunal Administratif du Québec

- Tribunal Administratif du Québec (TAQ): The TAQ reviews administrative decisions made within Quebec, grouped according to categories of social affairs, real estate affairs, economic affairs as well as territory and environment. The Tribunal decides on appeals filed by citizens against decisions taken by the Public Administration
- Data regarding the TAQ was sourced from the Tribunal's 2015-16 annual report [http://www.taq.gouv.qc.ca/documents/file/RAG\\_2015-2016\\_VF\\_2016-10-12.pdf](http://www.taq.gouv.qc.ca/documents/file/RAG_2015-2016_VF_2016-10-12.pdf) and the Tribunal's website <http://www.taq.gouv.qc.ca>.

## Tribunal Information

Shown below are statistics for each of the comparator tribunals showing the number of members, appeal volume, timelines, and total costs.

Figure 57 – Statistics of Comparator Tribunals, including Number of Members, Appeal Volume, Timelines, and Total Costs

Tribunal	Members	Appeals	Average Timelines (Days)	Costs
OSB	43 Manual count from listing in annual report	13,038 Cases completed, from annual report	299 Average processing time, from annual report	Not Available
AAT	223 From table in annual report, counting Part-time as 0.5 members	38,146 Overall decisions, from annual report	77 days 11 weeks, from annual report	\$133,895,000 Annual report (Australian dollars based)



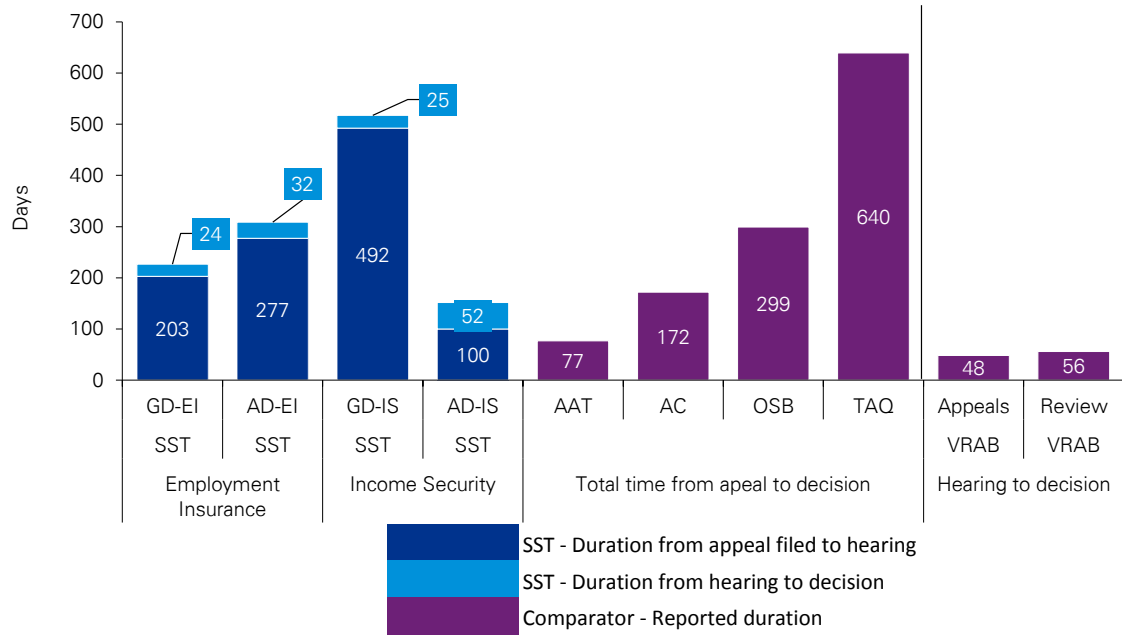
<b>Tribunal</b>	<b>Members</b>	<b>Appeals</b>	<b>Average Timelines (Days)</b>	<b>Costs</b>
AC	37  Manual count from listing on website	998  Appeals concluded, from annual report - 922 initial appeals, 50 reconsiderations and 26 time extensions	172  Annual report, 144 from application to hearing, 28 from hearing to decision	\$12,399,000  Alberta 2015-2016 Labour Annual Report
VRAB	23  Departmental Performance Report	3389  Total decisions, from annual report	56/48 Review/Appeal  Average based on distribution of appeal times provided in annual report	\$11,002,365  Departmental Performance Report 2015/16
TAQ	93  From annual report, counting Part-time as 0.5 members	11,796  Annual report, number of files closed	694  22.8 months for social affairs section, from annual report	\$36,462,045  Total expenditures, from annual report 2015/16

***Timelines of the SST and comparator tribunals***

The time to resolve an appeal, or throughput time, is defined as the time from receipt of an appeal application until the client receives a decision. Timelines for the SST in comparison to the legacy tribunals is provided in Section 4.2.6 of this Report. Timelines between the external tribunals and the SST were difficult to compare directly due to differences in the basis for reporting timelines. The information provided below should be considered directional only.



Figure 58 - Average Tribunal Throughput Times



AAT, AC, OSB and TAQ reported durations reflecting total time from application to decision. VRAB appeals begin with the appellant contacting the Bureau of Pension Advocates and preparing their case with a lawyer. When the case has been prepared, the lawyer notifies VRAB and schedules a hearing. Times represent the time between when the hearing was scheduled and when the decision was provided to the appellant.



# Annex B – Consultations





## Annex B - Consultations

### Internal Consultations

KPMG interviewed 34 individuals representing the internal stakeholders including the CEIC Commissioners for Workers and Employers, the SST Leadership, ESDC and Service Canada Officials, and the ATSSC.

#### Executive Leadership

*Figure 59 – Executive Leadership Interview Dates and Interviewee Names*

Interview Date	Stakeholders
May 3, 2017	Groen, Cliff – Assistant Deputy Minister, Benefits Delivery Services, ESDC
May 4, 2017	Robidoux, Benoit – Associate Deputy Minister, ESDC
May 11, 2017	Brazeau, Murielle – Chairperson, SST Ballagh, Margot – VP, Appeal Division, SST Lengellé, Fabien - Executive Director, ATSSC Proulx, Chantal – Senior Counsel, ATSSC
June 9, 2017	Forget, Dominique – Senior Director of Operations, ATSSC Lengellé, Fabien - Executive Director, ATSSC

#### Internal Stakeholders

*Figure 60 – Internal Stakeholder Interview Dates and Interviewee Names*

Interview Date	Stakeholders
May 15, 2017	Brown, Steve – Manager, ESDC
May 16, 2017	Andrew, Judith – Commissioner for Employers, CEIC
May 16, 2017	Laliberté, Pierre – Commissioner for Workers, CEIC
May 19, 2017	McCombs, Mark – Senior General Counsel, ESDC McLean, Carol – Senior Counsel, ESDC Richard, Annie – Paralegal, ESDC
May 19, 2017	Perlman, Mark – Chief Financial Officer, ESDC



Interview Date	Stakeholders
	<p>Won, Jason – Director General, Financial Management and Advisory Services and DCFO, ESDC</p> <p>Stephens, Clifford – Executive Director, Special Projects, ESDC</p> <p>Tanguay, Sylvie – Director, Financial Management Services, ESDC</p>
May 23, 2017	<p>MacNeil, Isabel – Manager, CPP, ESDC</p> <p>Saravanamuttoo, Malcolm – Executive Director, CPP, ESDC</p>
May 29, 2017	<p>McDade, Kathryn – Senior Assistant Deputy Minister, Income Security and Social Development, ESDC</p> <p>Johnson, Kris – Director General, CPPD, ESDC</p> <p>Campbell, Gillian – Director, ESDC</p> <p>Racine, Marc – Director, ESDC</p>
May 30, 2017	<p>Thompson, Paul – Senior Assistant Deputy Minister, Skills and Employment Branch, ESDC</p> <p>Meighan, Ron – Director General, ESDC</p> <p>Brown, Andrew – Director, ESDC</p> <p>Underwood, Kristen – Director, ESDC</p>
May 30, 2017	Giguère, Eric – Former Director Appeals, ESDC
June 2, 2017	<p>Mathieu, Michel – General Counsel, ATSSC</p> <p>Proulx, Chantal – Senior Counsel, ATSSC</p>
June 7, 2017	<p>Ballagh, Margot – VP, Appeal Division, SST</p> <p>Bellemare, Dominique – VP, General Division EI, SST</p> <p>Hazlett Parker, Valerie – VP, General Division IS, SST</p>
June 13, 2017	Chartrand, Raynald - Second Executive Director, ATSSC (Retired)
June 14, 2017	Shimbashi, Danica – First Executive Director, ATSSC
July 17, 2017	<p>Pelletier, Marie-France – Chief Administrator, ATSSC</p> <p>Lengellé, Fabien - Executive Director, ATSSC</p>



## Focus Group Summary

KPMG facilitated a series of focus groups as part of the review of the Social Security Tribunal. A total of six in-person focus groups were conducted across the country in Halifax, Montreal, Vancouver, Ottawa, and two in Toronto. A virtual Skype session was also held for participants in Manitoba and Saskatchewan.

Invitations were sent to 139 stakeholders; a total of 62 stakeholders participated in the focus groups. Participants included representatives from a broad spectrum of community, legal, and labour organizations; former members of the Board of Referees; and a few appellants (invited by their representatives). This diverse range of participants provided KPMG with the opportunity to hear from stakeholders across Canada involved throughout the appeals processes before the SST and previous tribunals for both CPP and EI.

ESDC representatives and the Commissioners for Employers and for Workers attended the focus groups as observers.

Over the course of each focus group session, participants took part in engaging dialogue, and identified desired outcomes of the review, improvement opportunities, and suggestions for change. Key discussion topics included:

- Timeliness
- Accessibility and Complexity
- Communication and Interaction
- Transparency

## Focus Group Discussion Highlights

The following reflect the level of engagement with the focus group sessions, and highlight the reaction to the consultation approach and opportunity to participate.

- Overall, the discussion topics resonated well with participants from across all focus group sessions and there was valuable input provided on the need and suggestions for change
- Participants viewed the focus groups as a good opportunity to share views, opinions, and suggestions in an open and safe environment
- A number of participants came prepared with reports, documents, and data in order to engage in meaningful discussions, support their points of view, and provide improvement opportunities
- Many of such documents were provided to KPMG either by hand or by email and were reviewed and analyzed
- Participants' interest in the improvement of the SST was evident across all focus groups. While a number of participants felt strongly that the current system was beyond repair, several pain points within the appeals processes were identified and recommendations for change were proposed



- Attendance by ESDC officials and the two CEIC Commissioners was particularly valuable and allowed participants to have direct discussion with the leaders and key stakeholders of the SST
- Participants were interested in the other consultation methods, in particular the survey designed for the appellants and representatives, as they felt that input and feedback from these stakeholders were integral to the review.
- 

### Focus Group Location, Date, and Participants

Figure 61 – Halifax Focus Group Details

Location:	Halifax
Date:	June 16, 2017
Participant Organization	
Annapolis Valley Labour Council	
Appellant	
Canadian Labour Congress	
Dalhousie Legal Aid Service	
Former Board of Referees member	
Halifax-Dartmouth & District Labour Council	
New Brunswick Federation of Labour (2)	
New Brunswick Union of Public and Private Employees	
PEI Council of People with Disabilities (4)	
Prince Edward Island Federation of Labour	
Retired Occupational Therapist (Previously Employment Services Manager at Halifax Connections)	



Figure 62 – Montreal Focus Group Details

Location:	Montreal
Date:	June 27, 2017
Participant Organization	
Mouvement Action Chômage Est de Montréal	
Fédération des travailleurs et des travailleuses du Québec (FTQ) (2)	
Mouvement autonome et solidaire des sans-emploi (MASSE) (2)	
Centrale des syndicats démocratiques (2)	
Confédération des syndicats nationaux (CSN) (2)	
Conseil national des chômeurs et chômeuses	
Centrale des syndicats du Québec	
Ouellet, Nadon et Associés	
Walk-in participant - Did not register or provide name and contact details	

Figure 63 – Vancouver Focus Group Details

Location:	Vancouver
Date:	June 29, 2017
Participant Organization	
BC Maritime Employers Association	
Community Legal Assistance Society (2)	
Disability Alliance BC	
Former Board of Referees member and previously a senior official with the Ontario Ministry of the Attorney General	
National ME/FM Action Network (Myalgic Encephalomyelitis / Chronic Fatigue Syndrome and Fibromyalgia)	



Figure 64 – Toronto Focus Group Details

Location	Toronto
Date	July 4, 2017
Participant Organization	
Appellant (2)	
Canadian Council on Rehabilitation and Work	
Canadian Labour Congress (CLC)	
Canadian Life and Health Insurance Association Inc.	
Former Board of Referees member	
Good Jobs for All Coalition	
Income Security Advocacy Centre (2)	
Legal Aid Clinic Employment Insurance Working Group	
Legal Aid Clinic Employment Insurance Working Group and Els' Health and Safety Legal Clinic	
Sudbury Community Legal Clinic	
Toronto East Employment and Immigration Law Services (TEELS)	
Unifor	
Unifor Local 88 and Unifor Ontario EI/CPP Committee	
Voices of Scarborough	
Yormak and Associates	



Figure 65 – Videoconference Focus Group Details

Location:	Manitoba, Saskatchewan, (Videoconference)
Date:	July 12, 2017
Participant Organization	
Community Unemployment Help Center – Regina (2)	
Community Unemployment Help Center - Saskatoon	
Community Unemployment Help Center - Winnipeg	
Former Board of Referees member and Community Unemployment Help Centre – Winnipeg	
Manitoba Federation of Labour – Winnipeg	
Manitoba Teachers’ Federation– Winnipeg	

Figure 66 – Second Toronto Focus Group Details

Location:	Toronto
Date:	July 13, 2017
Participant Organization:	
Council of Canadians with Disabilities	
Parkdale Community Legal Services	
Former CPPD Appellant and current community volunteer	

Figure 67 – Ottawa Focus Group Details

Location:	Ottawa
Date:	July 24, 2017
Participant Organization:	
Disability Claims Advocacy Clinic Inc.	



## Survey Summary

Online consultations were promoted on 14 government websites, and over 17,680 emails were sent to targeted audiences. The online surveys, including the online written submission form, were available from June 28, 2017 to August 8, 2017. In total 5,967 visits were recorded and 905 responses were received. Of the 905 responses, 886 were included in the analysis<sup>68</sup> representing 661 completed surveys, and 225 written comments.

Figure 68– Total Survey Responses and Written Comments Received

Total Responses	Survey Responses			Written Comments
	Appellants and Representatives	Members	Employees	
905	354	245	62	225

The sections that follow provide information on the survey response demographics. Note percentages will not always add to 100 percent, nor will the population numbers remain constant as respondents may have answered for more than one role, program, or tribunal, or may not have responded to all questions. Perspectives shared through written feedback are reflected throughout the main Report and are not replicated here.

### Appellant and Representative Survey

The 354 responses from appellants and representatives were split as follows:

Appellants	248
Representatives	96
Other Interested Party	10
<b>Total</b>	<b>354</b>

<sup>68</sup> Of the 905 responses, 19 did not address any of the topics of the study and were therefore not included in the analysis





The following charts show the relative distribution of appellant and representative survey responses by program. The distribution by program was relatively consistent by appellants and representatives, and whether they had experience with the SST or the legacy tribunals. Almost half of all respondents indicated they interacted with the EI appeals process, and over a third of the respondents indicated they had interacted with CPPD. Less than 12 percent interacted with the OAS program.<sup>69</sup>

Figure 69 – Percentage of Survey Responses received by Role (Appellant and Representative), broken down by Benefit Program

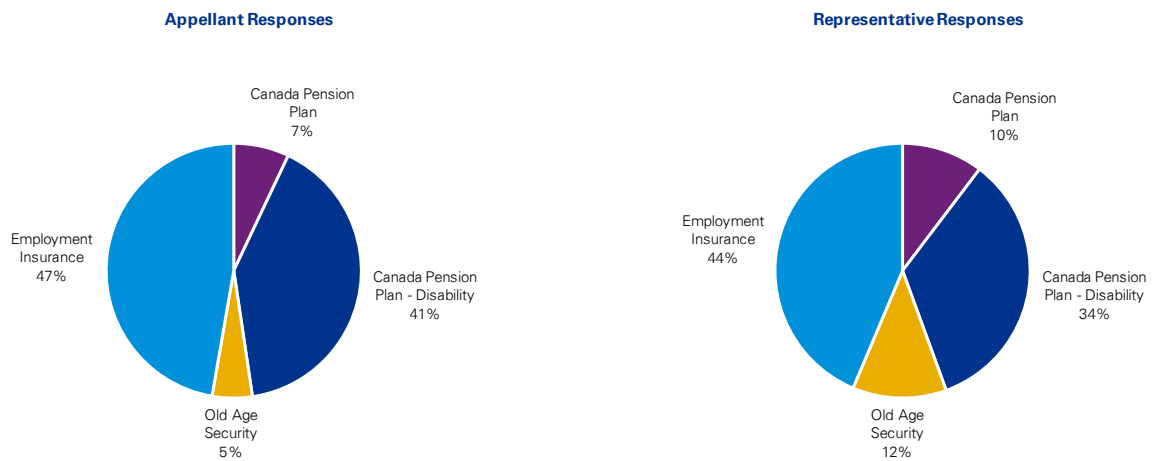
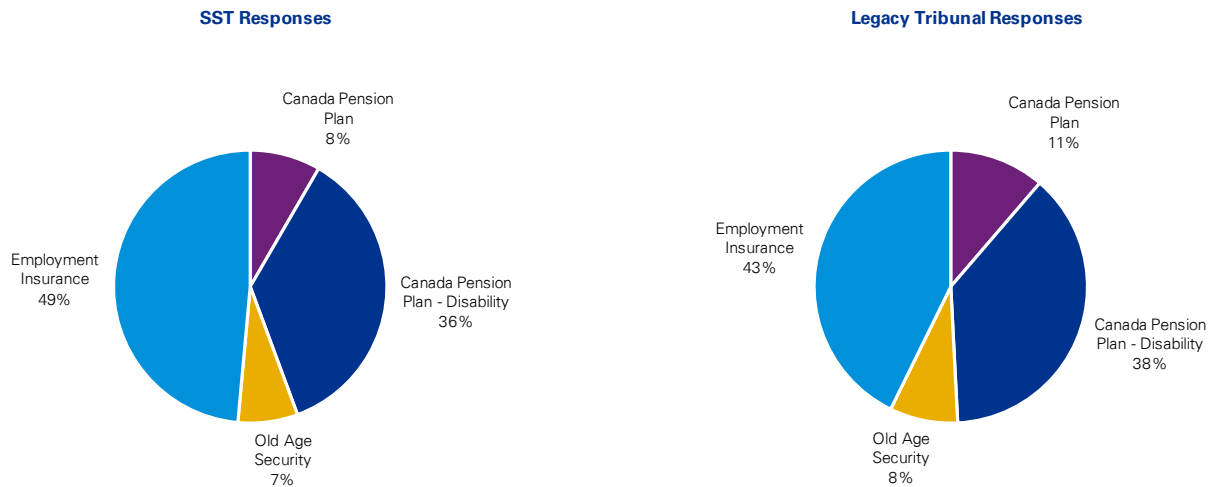


Figure 70 – Percentage of Survey Responses received by Tribunal (SST and Legacy Tribunals), broken down by Benefit Program



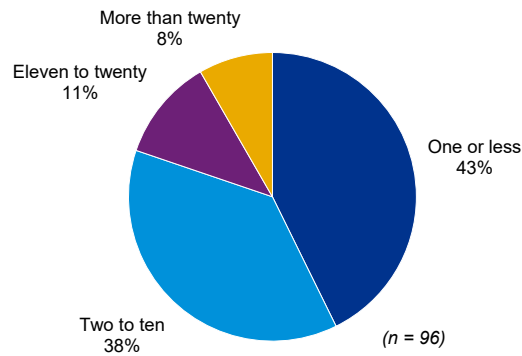
<sup>69</sup> The response rate between CPPD and the other IS programs (CPP and OAS) is consistent with the higher rate of appeals for CPPD



As shown in the chart below, most representatives (81 percent) were involved in ten or less appeals a year, almost equally split between one or less appeals and two to ten appeals.

Figure 71 – Percentage of Appeals per Representative for SST and Legacy Tribunals

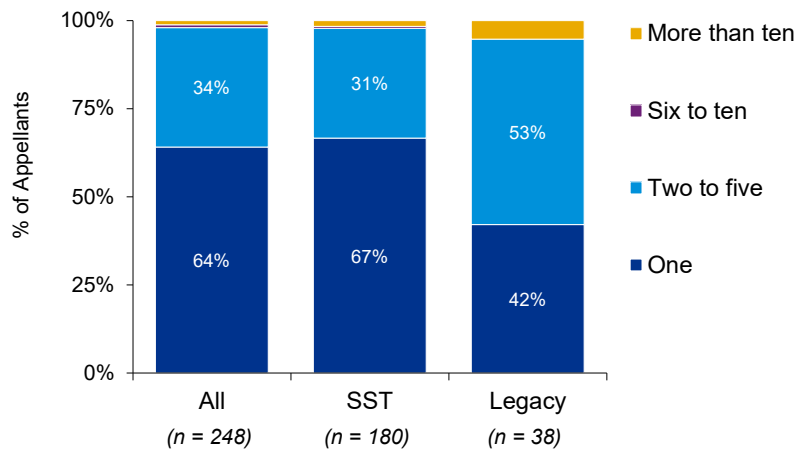
**Number of Appeals per Representative for SST and Legacy Tribunals**



As shown below, the majority of the SST appellant respondents indicated that they have submitted only one appeal. A slight majority of legacy appellant respondents indicated they had submitted two to five appeals. Most of the SST respondents also indicated they had participated in the appeals process over the fiscal years 2015/16 and 2016/17.

Figure 72 – Percentage of Appeals per Appellant for All Appeals and also broken down by SST and Legacy Tribunals

**Number of Appeals per Appellant**



The SST and Legacy appellants that responded to the survey were from across Canada.

Figure 73 – Percentage of SST Appellant Survey Responses broken down by Location

**SST Appellants**

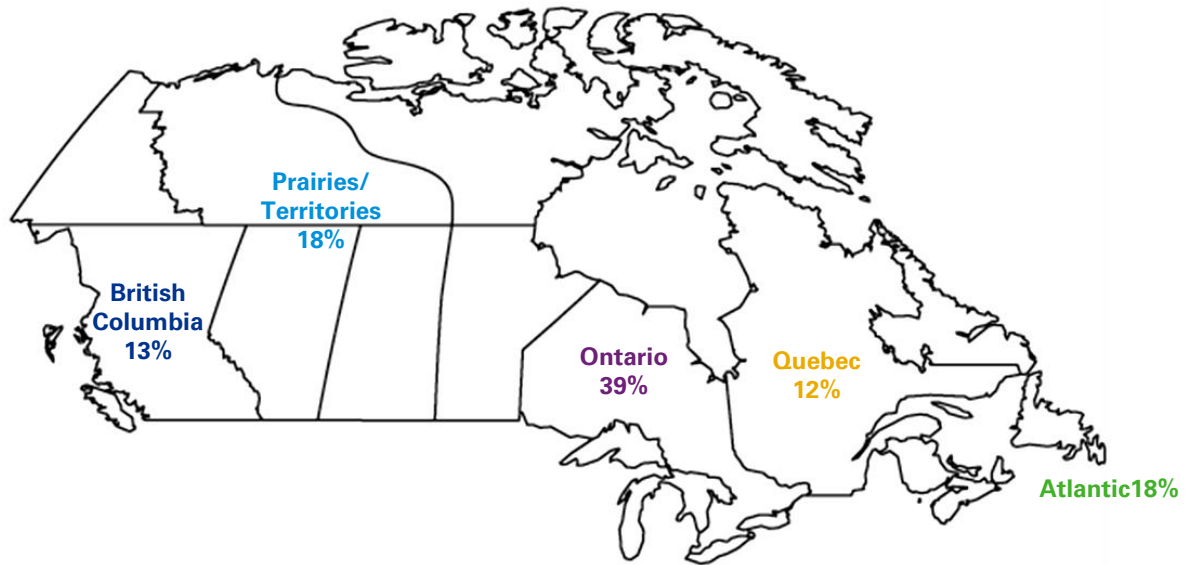
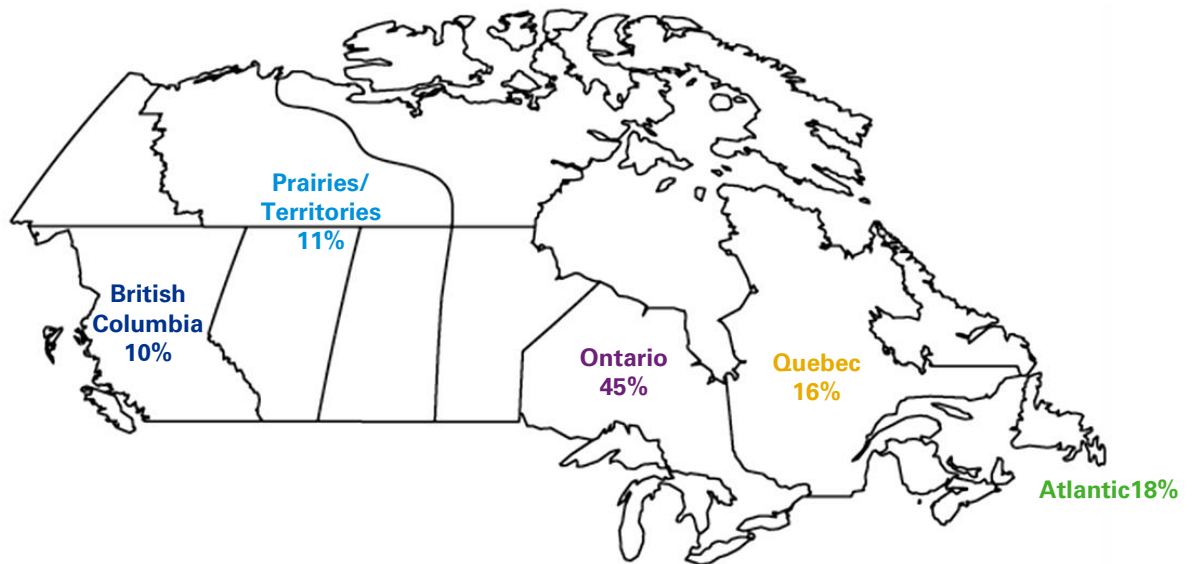


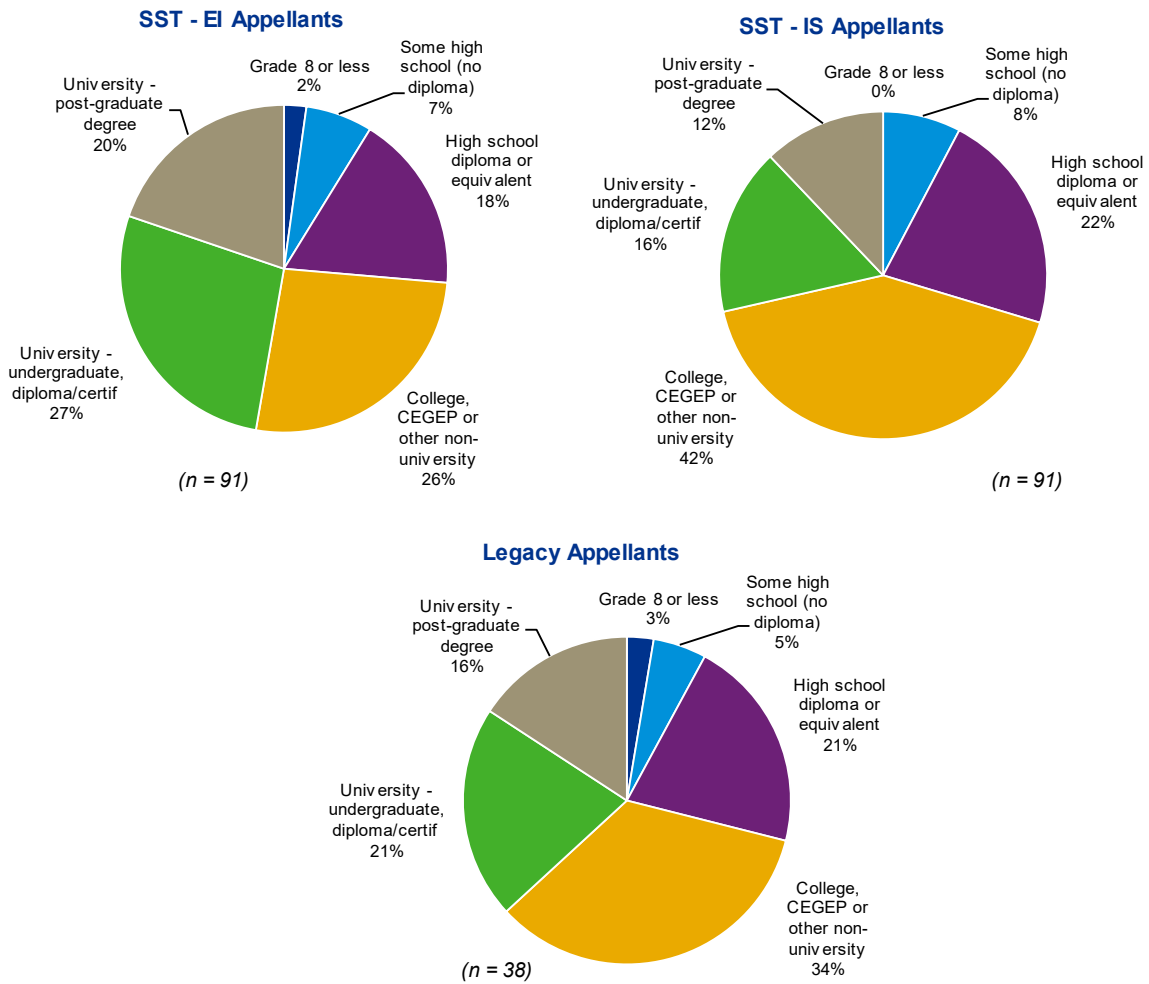
Figure 74 – Percentage of Legacy Tribunal Survey Responses broken down by Location

**Legacy Appellants**



The following charts summarize the level of education of the appellants that responded to the survey. The relative percentages were similar between the EI and IS and legacy appellants. Further, the majority that responded to the survey had a minimum high school education.

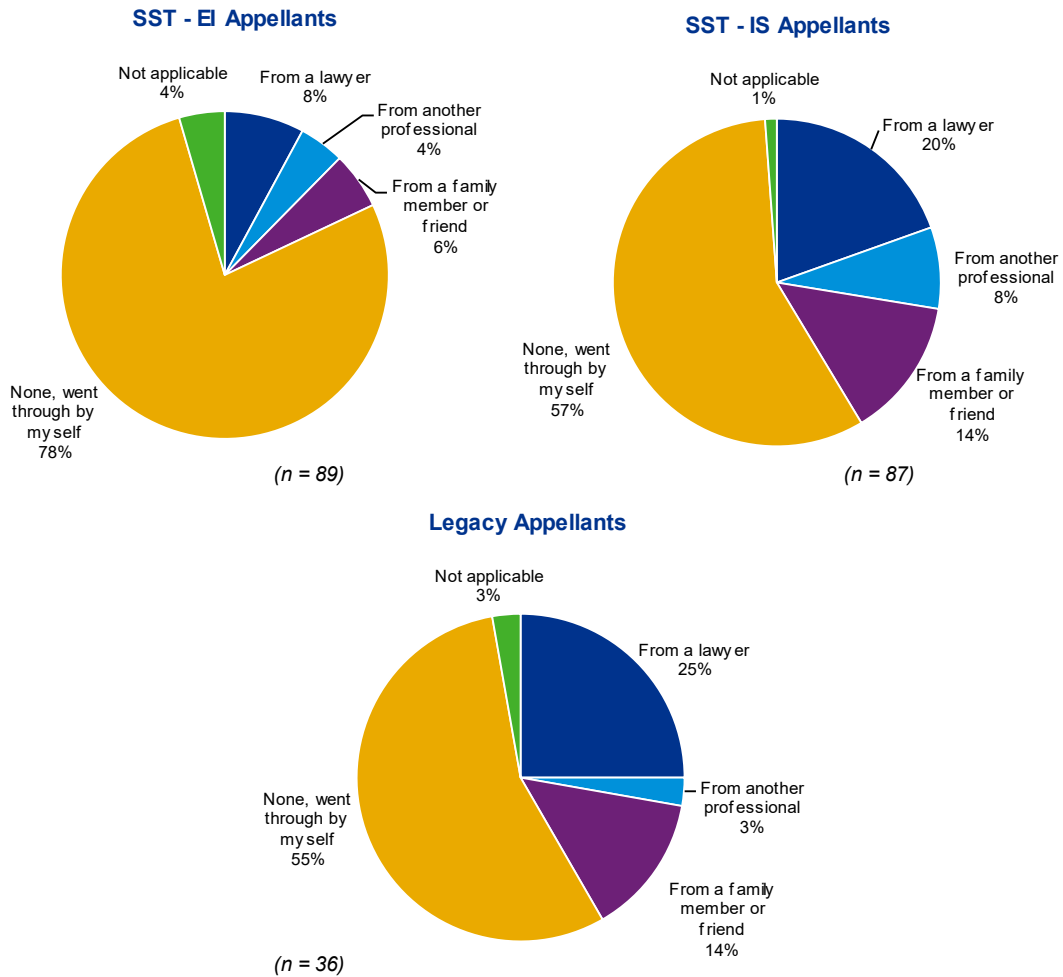
Figure 75 – Percentage of SST and Legacy Tribunal Appellant Survey Responses broken down by Level of Education





The following charts present information regarding assistance to appellants with the appeals process. Of the EI appeals to the SST, 78 percent of appellants were not represented, compared to 57 percent of IS appellants. Data was only available in the aggregate for the legacy tribunals where representation levels were similar to those of SST-IS appellants.

Figure 76 – Percentage of SST and Legacy Tribunal Survey Responses broken down by Type of Assistance/Representation used throughout the Appeal Process

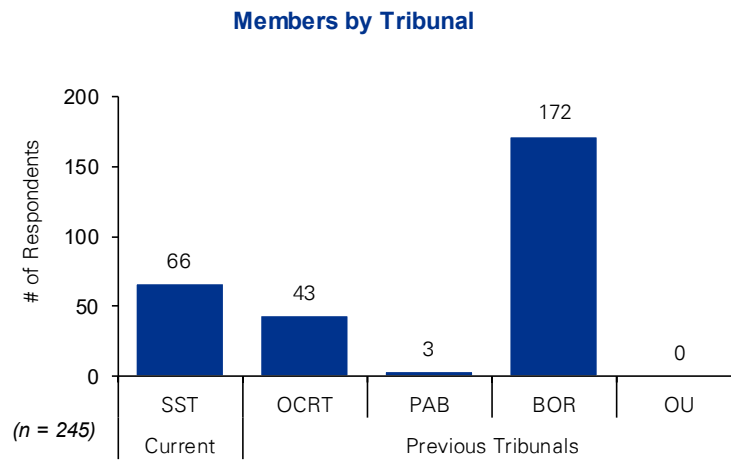




### Member Survey

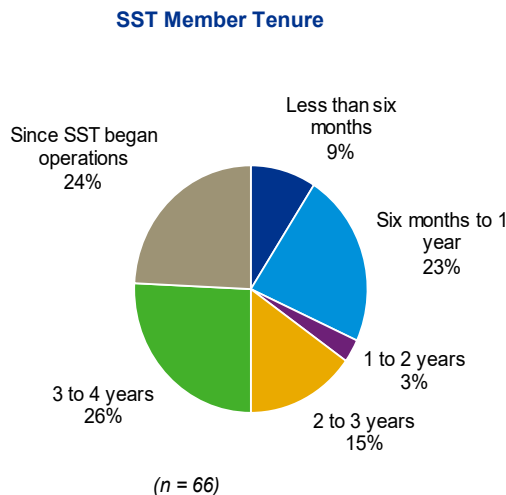
In total 245 members responded to the survey. The following chart shows that 172 (or 70 percent) respondents indicated they were appointed to the Board of Referees, 66 (or 27 percent) are/were members of the SST, 43 (or 18 percent) were members of the OCRT, and three (or 1 percent) were members of the PAB. Responses were not solicited from members of the Office of Umpire as contact information was unavailable. Note that 207 respondents indicated they were/are a member of one tribunal, 37 indicated two tribunals, and one respondent indicated three tribunals.

Figure 77 – Number of Member Survey Responses broken down by Tribunal



About half of the member respondents have worked for the SST for three to four years or since the SST began operations, indicative of stability in member tenure.

Figure 78 – Percentage of SST Member Survey Responses broken down by Tenure

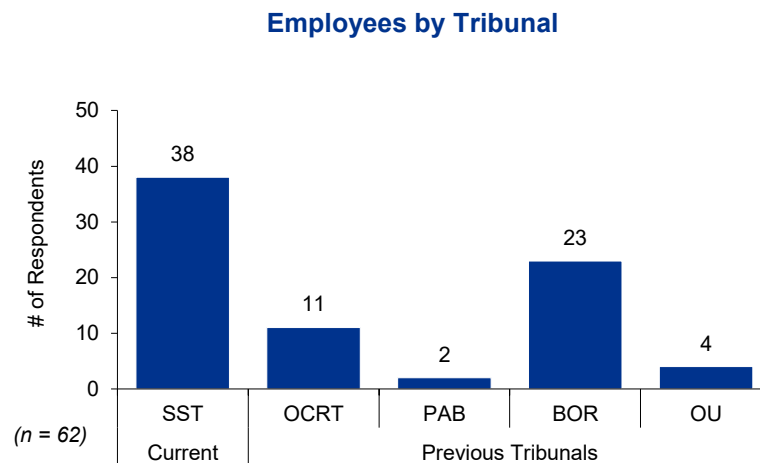




### Employee Survey

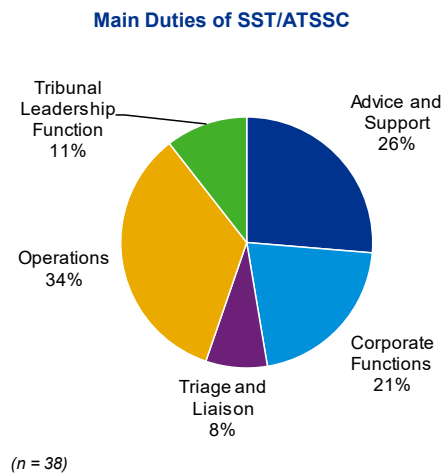
There were 62 participants in the employee survey; of those 38 participants (or 61 percent) were employees of the SST/ATSSC and the remainder employees of a legacy tribunal. With respect to the previous tribunals, more than half the respondents were employees of the Board of Referees. In addition 46 of the participants indicated they were employed with only one of the tribunals, while the remaining 16 participants had been employed by two or more of the tribunals (either the SST/ATSSC and a legacy tribunal or more than one legacy tribunal).

Figure 79 – Number of Employee Survey Responses broken down by Tribunal



The following chart shows the percent of SST/ATSSC employees by the main duties their work support(ed).

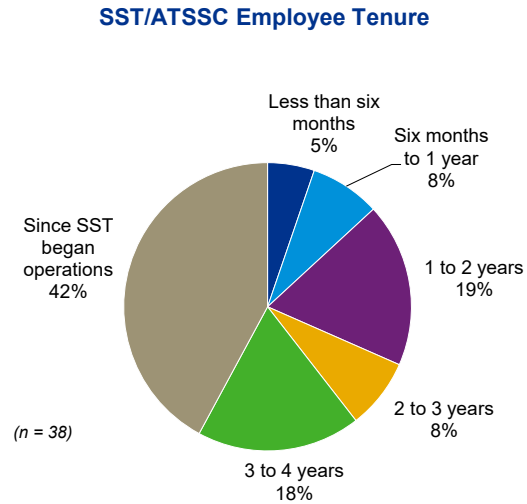
Figure 80 – Percentage of SST/ATSSC Employee Survey Responses broken down by Main Duties



All but one of the SST/ATSSC employees who participated in the survey indicated they are still employed with the SST/ATSSC. Also, 42 percent of the employees indicated that they have been employed since the SST began operations indicative of stability of tenure (as shown below).



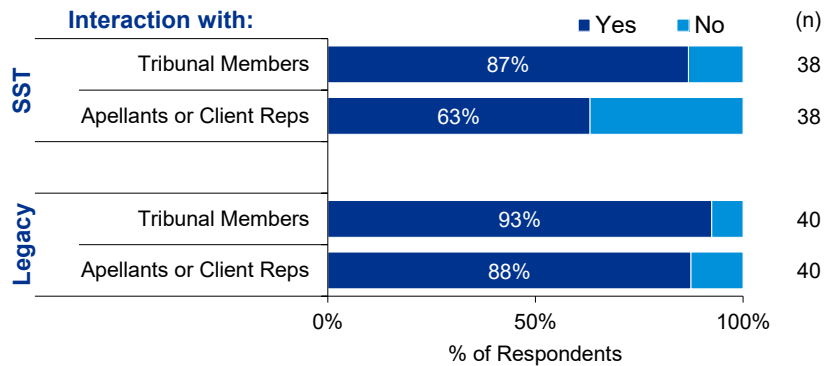
Figure 81 – Percentage of SST/ATSSC Employee Survey Responses broken down by Tenure



While more than 60 percent of the SST/ATSSC employees indicated they interact(ed) with Tribunal members and directly with appellants and/or client representatives, their interactions were at lower rates than those of employees of the legacy tribunals, consistent with interviews that reflected a narrower scope of duties for the SST/ATSSC employees.

Figure 82 – Percentage of SST/ATSSC Employee Survey Responses broken down by Interaction with Tribunal Members and Appellants/Client Representatives for the SST and Legacy Tribunals

**Interactions of SST/ATSSC and Legacy Tribunal Employees**







# Annex C - Acronyms



## Annex C - Acronyms

AAT	Administrative Appeals Tribunal Australia – Social Services and Child Support
AC	Appeals Commission for Alberta Worker’s Compensation
AD	Appeal Division
AD-EI	Appeal Division - Employment Insurance
AD-IS	Appeal Division - Income Security
ATSSC	Administrative Tribunals Support Service of Canada
BOR	Board of Referees
CEIC	Canada Employment Insurance Commission
CPP	Canada Pension Plan
CPPD	Canada Pension Plan Disability
EI	Employment Insurance
ESDC	Employment and Social Development Canada
FTE	Full-Time Equivalent
GD	General Division
GD-EI	General Division - Employment Insurance
GD-IS	General Division - Income Security
HRSDC	Human Resources and Skills Development Canada (now ESDC)
HUMA	Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities
IS	Income Security
MOU	Memorandum of Understanding
OAS	Old Age Security



OCRT	Office of the Commissioner of Review Tribunals
ODSP	Ontario Disability Support Program
O&M	Operations and Maintenance Costs
OSB	Ontario Social Benefits Tribunal
OU	Office of the Umpire
OW	Ontario Works
PAB	Pension Appeals Board
SJTO	Social Justice Tribunals Ontario
SST	Social Security Tribunal of Canada
TAQ	Tribunal Administratif du Québec
VRAB	Veterans Review and Appeal Board

