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# Examining the Social Security Tribunal's Navigator Service: Access to Administrative Justice for Marginalized Communities



## **FINAL REPORT**

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**January 2022**

## **Examining the Social Security Tribunal's Navigator Service: Access to Administrative Justice for Marginalized Communities**

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### **The Law, Disability & Social Change Project**

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The opinions expressed in this document are those of the authors alone.





# Executive Summary



This report provides the findings, analysis and recommendations of a research study conducted on the federal Social Security Tribunal's Navigator Service (SST Navigator Service). The SST Navigator Service was established in 2019 to ensure that appellants without professional representation are well-informed and feel comfortable at their hearings. The study examines the use of the Navigator Service for Canada Pension Plan–Disability (CPP–Disability) appeals heard by the Income Security - General Division of Canada's Social Security Tribunal.

This research study focuses on access to administrative justice on the ground. It examines how the SST Navigator Service facilitates access to CPP disability benefit decision-making as well as the ways that the Navigator Service could be improved. As part of its focus, the study examined how well the Navigator Service supports users from marginalized communities. The SST serves users who are often at the intersections of being people with disabilities and people who live with low income. Statistically, a significant proportion of people who live with low income in Canada are also women, immigrants and/or visible minorities. The SST Navigator Service therefore presents an opportunity to consider how individuals from these and other marginalized communities are experiencing the system and how the service may be helpfully improved.

Through 36 semi-structured interviews and documentary analysis, the researchers considered the perspectives of parties who have used the Navigator Service and received at least one tribunal decision between the Service's inception in November, 2019 and April, 2021. They also spoke with the navigators and, for context, gathered information from relevant government officials involved in the design, implementation and running of the Navigator Service.

The findings show, among other things, that the users appreciate the Navigator Service and that navigators provide value to SST appellants seeking CPP – Disability benefits. Navigators assist appellants to know their case, they provide emotional support, explain the appeal process, and empower users through information. At the same time, navigators expend considerable emotional labour and require ongoing mental health and other supports.

The interviews conducted also show that appellants from marginalized communities could benefit from greater multilingual service, and support with recognizing their disability rights as part of the SST appeal process. All appellants could benefit from alternate means of explaining the process (such as through infographics), at-home support to assist with preparing large volumes of paperwork and additional means of filing documents.

The report provides recommendations to help keep the SST Navigator Service strong. It concludes that navigator services may be beneficially adopted by other administrative tribunals at the federal level, and in the administrative justice systems of the provinces and territories. Navigator services may also be beneficial in other jurisdictions beyond Canada.



# Glossary of Terms



|                              |  |
|------------------------------|--|
| <b>AD</b>                    | Social Security Tribunal, Appeal Division                    |
| <b>CPP</b>                   | Canada Pension Plan, RSC 1985, c C-8                         |
| <b>CPP - Disability</b>      | Canada Pension Plan – Disability                             |
| <b>EI</b>                    | Employment Insurance   |
| <b>ESDC</b>                  | Employment and Skills Development Canada                     |
| <b>GD</b>                    | Social Security Tribunal, General Division                   |
| <b>GDIS</b>                  | Social Security Tribunal, General Division – Income Security |
| <b>OAS</b>                   | Old Age Security   |
| <b>SST</b>                   | Social Security Tribunal                                     |
| <b>SST Navigator Service</b> | Social Security Tribunal’s Navigator Service                 |
| <b>The Tribunal</b>          | Social Security Tribunal                                     |

# 1 Introduction

This report provides the findings, analysis and recommendations of an independent research study conducted on the federal Social Security Tribunal’s Navigator Service (SST Navigator Service). The SST Navigator Service was implemented in 2019 to assist litigants who do not have professional representation.<sup>1</sup> The study examines the use of the Navigator Service for Canada Pension Plan–Disability (CPP–Disability) appeals heard by the Income Security - General Division of Canada’s Social Security Tribunal. This study focuses on access to administrative justice on the ground.<sup>2</sup> It aims to understand the ways in which the Navigator Service facilitates access to CPP disability benefit decision-making as well as the ways that the Navigator Service could be improved. It considers the perspectives of parties who have used the Navigator Service and received at least one tribunal decision between the Service’s inception in November, 2019 and April, 2021. It also considers the perspectives of the navigators and, for context, gathers information from relevant government officials involved in the design, implementation and running of the Navigator Service.

The SST Navigator Service was established with the foundational goal of ensuring that appellants without professional representation are well-informed and feel comfortable at their hearings. The Navigator Service was not designed around efficiency: those involved in its development have been clear that its purpose is not and has never been about the faster movement of files, or to save money. The SST Navigator Service was created in response to a review of the federal social security system that was conducted in 2016 – 2017.<sup>3</sup> This review identified several shortcomings in the SST Appeal process, including that it was legalistic and difficult for a layperson to navigate.<sup>4</sup>

As a system designed to be client-centric and to assist litigants without professional representation through the processes of an adjudicative tribunal, the SST Navigator Service forms part of a family of navigational tools that are newly developing in the administrative justice system across Canada. However, the SST’s Navigator Service is by far a leader in navigational tools. It is presently one of the most developed systems, if not the most developed system, within administrative tribunals in Canada.

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

<sup>2</sup> On access to justice generally see Trevor C. W. Farrow, 2014. “What is Access to Justice?” 51(3) *Osgoode Hall Law Journal* 957-988.

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

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

The SST Navigator Service was first implemented at the General Division – Income Security (GDIS) for CPP–Disability appeals. During the time frame covered by this study, the SST and its Secretariat had 11 full-time navigators exclusively dedicated to working one-on-one with individual appellants for CPP–Disability appeals at the GDIS. After that, the Navigator Service was extended to all appeals across the Appeal Division of the SST, followed by a further extension to Employment Insurance (EI) files involving the *Canadian Charter of Rights and Freedoms*,<sup>5</sup> GDIS Old Age Security (OAS) files, CPP Non-Disability appeals and GD EI Group Appeals.<sup>6</sup>

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

By way of background information, under the statutory framework, there are many steps for an individual who is pursuing CPP–Disability benefits. An individual interested in receiving a CPP–Disability pension will apply for CPP – Disability by completing an application form and submitting



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

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

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

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

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

<sup>9</sup> CPP *supra* note 7, s 81.

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

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

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

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

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

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<sup>12</sup> See CPP *ibid*, s 82, and [Department of Employment and Social Development Act \(SC 2005, c 34\)](#), s 54.

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

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

## 2 Methodology

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

The 21 former appellants interviewed had each brought an appeal regarding an application for CPP – Disability benefits before the SST’s General Division – Income Security (GDIS) between 2019 and 2021. During that time, they had been assigned and worked with a navigator. At the time of their interview, their CPP–Disability case had been finalized and the GDIS decision rendered. A small proportion of the interviewees (n=3) appealed a negative decision of the General Division to the Appeal Division (AD). For these appellants, the AD decision had been rendered as well by the time - they participated in the study. The majority of the appellants who appeared before the AD (n=2) did not have a navigator at the AD level. Only one of the appellants before the AD had a second navigator during their appeal.

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

The user interviewees (n=21) were asked about their case, about the ways in which the navigator worked with them, and about the strong points and areas for improvement of the Navigator Service. They were asked to indicate if they self-identified as an individual from a marginalized community and, if so, to provide any comments they may have on how the system might be improved for their community or communities. The full set of questions asked of the interviewees is provided in Appendix A.

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

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

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

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

# 3 Findings

## a) User experiences – generally

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

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

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



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

It was also suggested that at the initial meeting with the appellants, the navigators should emphasize that they are there to help as opposed to the legal limitations of what they can do. The users/appellants realized that there are limitations to the service that the navigators can provide, but the relationship could start off on a more empathetic note in some cases with more emphasis on how they can help before entering into what they cannot do.

In addition to these general suggestions for improvement, we outline below notable themes that emerged from interviews with navigated appellants. We found that these themes reflect some of the most important lived experiences of tribunal users and can be used to help shape the future institutional design of the Navigator Service. We discuss three themes relating to users generally first, followed by four themes relating to users from marginalized communities.

## i. Knowing the case to be met

Knowing the case that one has to meet is a fundamental principle of administrative law.<sup>16</sup> Yet, for a person seeking CPP – Disability benefits, an appeal to the General Division of the SST is often the first time that they see all the medical and other evidence used to reach the earlier decisions to deny them benefits. This is because an appeal to the SST General Division opens the door for a reconsideration of the evidence that is in the file, along with the ability to introduce new relevant evidence. The appellant has better access to their file through the navigator who takes them through it. They can see what is already in the file and can work to gather the additional documents they feel necessary to make their case for benefits. Several interviewees indicated that before they started their SST appeal, they did not know what evidence or material the minister had relied on in their case. If a doctor’s note had been provided, they often did not know how the doctor had described their case.

*“[N]avigators ... are the people who guide people through, otherwise it would not be a fair appeal...[J]ust to say how... strongly I feel about it, they’re not only an ingredient in the process... they are outright oxygen in the process. ... [I]t’s like a fire needs oxygen, fuel, and...a spark.”*

Some tribunal users expressed surprise and dismay at either the evidence used to construct their narratives at the ministerial level or at the way in which the material was brought together. Many felt that the evidence was “cherry picked” with material from doctors’ notes being pulled together to support an inadequate case for their claim. In some cases, there was also surprise expressed that the evidence of certain doctors who did not know their medical conditions as well as others was chosen over those who knew their files well.

Before working with their navigators, who went through the evidence used and made sure that they had all of the material in their files, these interviewees had not known or been able to respond to the case against them. Interviewees were therefore grateful for the opportunity to know, identify and, where possible, correct mistakes in their file. Many interviewees were also gravely concerned about the lack of information shared with them during the first instance decision-making and at the reconsideration stage prior to their appeal to the SST.

<sup>16</sup> See e.g. one of the early contemporary Supreme Court of Canada cases concerning this principle, *Cardinal v Director of Kent Institution*, [1985] 2 SCR 643.

An interviewee who was successful at the Tribunal shared the following reflection on their experience: “[I]t was the first chance I’d had... to actually explain the experience that I was going through.”

This interviewee expressed gratitude for the work of their navigator and saw the Navigator Service as a key element for securing fairness in the overall process of seeking disability benefits. In this former appellant’s words:

“[N]avigators ... are the people who guide people through, otherwise it would not be a fair appeal...[J]ust to say how... strongly I feel about it, they’re not only an ingredient in the process... they are outright oxygen in the process. ... [I]t’s like a fire needs oxygen, fuel, and...a spark.”

## ii. Emotional support

By far, emotional support was one of the aspects of the Navigator Service that navigated appellants appreciated the most. Interviewees described the emotional support they received in various positive ways. Many of the interviewees discussed how the navigators boosted their confidence, served as a calm presence, validated their feelings, and put their mind at ease, especially after going through an earlier denial of benefits by ESDC.

The emotional support of a navigator can have an incredible significance for those who seek CPP - Disability benefits. In some cases, the work of the navigator was particularly impactful. One interviewee described how the navigator’s compassion and work in making sure they understood the process and what was needed literally kept them alive. This person was experiencing extreme physical pain due to their medical condition, which had been misdiagnosed. “I would have committed suicide”, this interviewee said, “I would probably be dead if I didn’t have [the navigator’s] help... I would’ve given up.”

In some cases, emotional support is necessary because of a lack of knowledge of the administrative justice system. One appellant described the experience learning that they would have to go to the tribunal as:

“...very stressful. In my brain when I hear the word tribunal I see... like on TV where it is you and you are walking and they are all looking at you... you know... I really did not know what it was about ...I said, you know what? If [my spouse] and I have to live on Kraft dinner for the rest of our life, I am not going to do this. I am done. I am done fighting. I am not a fighter.”

In other situations, emotional support is necessary for the psychological aspects of the tribunal hearing itself. For example, as one user stated: “[The navigator] really prepped me for the emotional piece that was going to occur.”

Others faced several simultaneous challenging life experiences. For example, one interviewee indicated having to pay off her debt, credit cards and running out of money while also dealing with her appeal before the SST. She said that the navigator’s support to go through an amount of paperwork that she found overwhelming and during an urgent time “kept her sane”.

Finally, one interviewee spoke generally about the compassion showed by their navigator and expressed how important it was to them as they went through the SST appeal process. By compassion, they explained that the navigator spoke about the technical aspects of the process, but that they could be interrupted at any time to be asked for more comprehensive explanations. The navigator could also be counted on to appreciate, with kindness, and on a human level, what the appellant was going through.

The SST navigators clearly take on a heavy individual burden of emotional labour to provide this emotional support to tribunal users. Appropriate supports for the navigators are important to maintain their mental health. At the time of this study, mental health supports for navigators had been introduced. It will be important to continue and to develop this support and training. Referrals to additional outside supports for users had also been established and, similarly, should be maintained.

### iii. External pressure from insurance companies

Some users of the SST discussed how their appeal was generated by their insurance companies. They were not particularly motivated to re-apply after having been denied CPP-Disability the first time. Some may not have been motivated to apply for CPP-Disability at all if it had not been for their insurance company directing them to do so. This may be in the insurance contract. One interviewee described the pressure this way:

“I said I do not understand that. I said... I am living my life. I am doing everything that I can. I am writing stuff down... I have done all this stuff that I think I can do for myself. I am walking, exercising, losing weight... doing all the good things... nothing has changed other than I am trying to live with this. Nope, apply again. So back to the drawing board I go again... back to the doctor I go again.

Now [my insurance company] said I have to reapply or to fight it and I said I do not understand this...I have to fight again... okay so back I go again. So then I get another "you have been denied" again. I said oh here is a big surprise, they have denied me again. I am not surprised at all because this is no different than the first time. So he said okay, okay we have been denied twice and I said that is correct. So, then I get another email, another phone call saying you have to now go to the tribunal.... I have not lied about one darn thing and they keep putting me in this corner basically saying you are lying... or it felt like they were saying I was lying about my life."

Another interviewee expressed indifference about the receipt of CPP–Disability in light of the pressure to pursue it from their insurance company: "Whether she had the CPP or not, we didn't care. It doesn't matter to us if she has the CPP." (*our translation*)

Pressure from insurance companies means that users are not necessarily before the SST on appeal because of their own free will. They may have mixed emotions about pursuing the appeal and this approach deviates greatly from the desire to right a wrong or be vindicated that is typically associated with appeals. Navigators, in the context of benefits or other administrative regimes, should be aware that external pressures may be part of what motivates a tribunal user and may wish to develop ways of supporting tribunal users in such circumstances.

Interviewees in this position felt most comfortable when the navigator served as a middle person. As a middle person, the navigator did not push them to act in a particular way or to pursue a particular path; rather, the navigator supported them with the work for the appeal that they felt they wanted or were obliged to do.

## b) User experiences – tribunal users from marginalized communities

In conducting the study, we did not seek out individuals from specific pre-identified marginalized communities to interview. Instead, we asked each interviewee if they self-identified as member of a marginalized community or marginalized communities, and, if so, to share any thoughts on how the Navigator Service could be improved for them in light of their demographic factors.<sup>17</sup> We provided examples of communities that have been marginalized (e.g. people with disabilities, older people, people living with low income, people of colour, etc.) in formulating the question to assist respondents in thinking about how to answer it. Interviewees shared their experiences and reflections on living with a disability, experiencing inequities in the healthcare system and dealing with government departments.

### i. Being “newly disabled”

A number of interviewees described themselves as newly disabled persons. As a new member of this minority group, they found that they required service providers to be really patient with them as they adapted to their new lifestyle. As one user put it:

“[W]hen you deal with somebody that has like a new disability which is basically, probably a lot of people, they go from leading regular lives... to all of a sudden, this gets thrown at them and it’s a big loophole. It’s a big loop for them. .... [J]ust really be patient and try and understand where they’re coming from ‘cause they don’t want to be doing this, at all. But, they don’t have a choice really, they need income.”

Navigators who were patient were very much appreciated during this transition. As the interviewee quoted above describes, patience means recognizing the abrupt change in life circumstance and offering time and understanding as the appellant adjusts. Patience also means recognizing that CPP – Disability benefits are often a form of income that places one in a circumstance that is uncomfortable, but can be a necessary reality for many newly disabled individuals.

Being newly disabled came with triumph and validation for some who felt as though they had disabilities or illnesses that rendered them unable to work, but that they were persistently disbelieved. For example, one interviewee stated that, with their successful appeal decision, they now had documented proof about their illness and they “no longer ha[d] to feel ashamed” about not being able to keep jobs. They felt that they could now say that they had legitimately faced barriers.

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<sup>17</sup> Unless it was clear from the interviewee’s prior responses that they did not self-identify as part of a marginalized group, in which case this question was not asked.

Although these are genuine reflections expressed by users of the tribunal, as discussed in the next section, they also raise concerns about ableism.

## ii. User perceptions of disability, and ableism

Although some of the users interviewed had pre-existing health issues that would be considered a disability under the CPP or the *Canadian Human Rights Act*,<sup>18</sup> most interviewees considered themselves to be newly disabled. This transition brought a certain amount of confusion about when one should be eligible for disability benefits. Most placed themselves within a category of needing to apply for CPP–Disability as a last straw. One had waited until after family breakdown to apply for disabilities that had existed for some time, some made a point to distinguish themselves from “scammers”, and one stressed that they only took the benefits because they needed it and did not plan to stay on it once back to “normal” and they could work again. There were others who saw CPP – Disability as not designed for those who are educated and saw this as part of the reason for their denial of benefits.

Many of these ideas reflect stereotypes about the lives of people with disabilities. Although disability is a part of the spectrum of human variation, and a situation that we will all face, especially as we age, there was a strong theme that emerged from many respondents that they sought to avoid the life of the “disabled other”, which was seen at times as desperate, tragic, uneducated, unproductive and possibly dishonest.

These stereotypes perpetuate ableism. Ableism is the privileging of able-bodied lives and experiences over the lives and experiences of people with disabilities. It has been addressed by Canadian courts on a few occasions. In a 2017 decision, for example, the Ontario Court of Justice denounced ableism in declaring unconstitutional a section of the Ontario *Family Law Act*<sup>19</sup> that had the effect of denying child support for children over 18 living at home because their disabilities prevented them from obtaining gainful employment.<sup>20</sup> The Supreme Court of Canada has also rejected ableism in a number of key decisions.<sup>21</sup> One of the harmful aspects of ableism when it is in the form of stereotypes is that it perpetuates stigma about members of the disability community.

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<sup>18</sup> [Canadian Human Rights Act \(RSC 1985, c H-6\)](#).

<sup>19</sup> RSO 1990, c F3, s 31.

<sup>20</sup> *Coates v Watson*, 2017 ONCJ 454 at para 110.

<sup>21</sup> See e.g. *Eaton v Brant County Board of Education*, [1997] 1 SCR 241, *Eldridge v British Columbia (Attorney General)*, [1997] 3 SCR 624 and *Council of Canadians with Disabilities v VIA Rail Canada Inc.*, [2007] 1 SCR 650.

Users' confusion about eligibility was further compounded by a lack of knowledge of disability equality rights. Some users did not realize that medical conditions could be accommodated, even within the SST Tribunal process. One interviewee, for example, blamed themselves for their unsuccessful appeal, indicating that their disability simply did not allow them to respond well to the Navigator Service, but also indicating that they had not asked for accommodations. Another discussed accommodations generally in terms of undeserved charity.

The SST is in an excellent position to take the lead in denouncing ableist stereotypes. It should do so by ensuring that the language of all communications, including its decisions, does not perpetuate ableism and disability stereotypes. It may wish to obtain a consultant to review its decisions and public correspondence and to provide advice on ensuring disability inclusive language. It would also be beneficial to ensure that persons with disabilities and organizations dedicated to disability issues are included in its regular stakeholder consultation group.

The SST should also make a point to support tribunal users in recognizing their rights to disability equality under human rights legislation, the Charter<sup>22</sup> and the United Nations *Convention on the Rights of Persons with Disabilities*<sup>23</sup> and related UN documents on access to justice for persons with disabilities.<sup>24</sup> It can do so through the Navigator Service as the navigators are well placed to share information with tribunal users about accommodations both within the Navigator Service itself and at the tribunal hearing.

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<sup>22</sup> *Charter supra* note 5, s 15.

<sup>23</sup> [Convention on the Rights of Persons with Disabilities](#), 30 March 2007, 44910 UNTS 2515 (entered into force 3 May 2008) (CRPD).

<sup>24</sup> United Nations, [International Principles and Guidelines on Access to Justice for Persons with Disabilities](#) (2020).

### iii. Experiences of systemic inequity within the healthcare system

*“I’m not asking for thousands of dollars, I’m just asking to exist.”*

Some tribunal users reported experiencing repeated issues within the healthcare system that could be seen as systemic inequities. These users typically had chronic and difficult to diagnose medical conditions. They spent years within the healthcare system either being told by doctors that they did not have a medical condition or receiving a misdiagnosis. In both cases, they spent a prolonged period with no certainty and experienced much frustration, physical pain and emotional stress because of the issues with diagnosis. Furthermore, for these individuals, the challenges faced in the healthcare system made them even more marginalized than the average individual seeking CPP–Disability benefits.

The situation of marginalization due to issues with diagnosis is one that should be noted by navigators as they provide process-related and emotional support to the tribunal users.

The financial circumstances of many tribunal users bringing an appeal for CPP–Disability benefits are generally and concerningly dire. However, these issues of extended time to diagnose or misdiagnosis often contributed to the financial difficulties they experienced. Often, interviewees could not work because of their medical issues, but at the same time were unable to obtain a diagnosis to obtain benefits. Two interviewees related their financial concerns in the following ways:

“I’m not asking for thousands of dollars, I’m just asking to exist.”

“I went to \$30 000 a year; I can’t even pay the bills on that.”

These quotes serve as an important and useful reminder that most CPP–Disability appellants are trying to exist within very low income brackets in comparison to the cost of living. They are often in precarious and stressful financial situations when they arrive at the SST to launch an appeal for CPP–Disability benefits. The situation becomes even more acute for appellants who have faced prolonged systemic inequities in the healthcare system dealing with their diagnosis. Navigators who make themselves aware of this situation and find ways to factor this into the service that they provide will be appreciated. This might include expanding the range of resources to which navigators can refer tribunal users.

#### iv. Unfamiliarity with government departments

Statistics Canada tells us that over 36% of individuals who live with low income have come to Canada from another country.<sup>25</sup> The fact of joining a new society often comes with an unfamiliarity with its machinery of government. One interviewee expressed the fear that they had when their navigator made initial contact with them. This contact made them nervous, as they wondered why the government would make a point of reaching out to them. The interviewee became worried that they may make an error in stating their information to this government worker, and initially was quite reserved with their navigator for this reason. As this interviewee aptly stated:

*“In daily life, nobody knows government rules and regulations.”*

“In daily life, nobody knows government rules and regulations.”

Another interviewee needed to rely on a relative within their home in order to communicate with their navigator. It was clear from the interview that they had had difficulty with the process, even with the navigator. They compared the SST process to a provincial benefit process which had fewer steps and which they found to be easier to understand as someone who did not fluently speak English or French. They suggested having interpreters for a few common languages for the SST Navigator service.

Another interviewee shared how discouraging the entire process can be. They indicated that they were deterred from appealing by government officials at the lower level. Although this interviewee was not from a marginalized community, they expressed concern that those who are new to the country and to the system may not have others around them who know better and who could encourage them to push on. Their comments connected to a comment that we heard from a number of interviewees who indicated that it was common knowledge that applicants for CPP–Disability benefits are denied the benefits at least twice, but tend to succeed after that.

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<sup>25</sup> Statistics Canada, National Household Survey *supra* note 14 and accompanying text.

Finally, highlighting the extent of the general need for education generally about the SST legislation and processes, there were also interviewees who were not newcomers to Canada and who largely misunderstood how the CPP – Disability system works. One native English speaker said that, “the [statutory] language is confusing or we don’t understand it”, confirming the need for navigators to continue to assist in interpreting statutory requirements and processes into plain language, especially for those who are from marginalized communities, but also, generally, for all Navigator Service users.

### c) Navigator perspectives

All navigators with whom we spoke expressed passion and enthusiasm about their work. They found their role meaningful and saw it as an important one that makes a difference in access to the appeal process. They described the objective of the Navigator Service in the following terms: explaining the appeal process, giving the right information, providing guidance, educating the appellants, being their resource person, building their confidence, and helping them gain control of their file. Even though during the pandemic navigators conducted their work remotely, they emphasized the value of a supportive peer network and the availability of Tribunal management. While they gave numerous rewarding examples of their experiences with the users, they also described the emotionally taxing aspects of their job. This last aspect matches our earlier finding regarding the emotional support navigators offer to users.

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

This section presents the principal three themes navigators developed during interviews regarding their perceptions of the users, their relations with peers and management and the challenges of the navigator role. It concludes with a few suggestions navigators offered for improving the service.

## i. Navigator perceptions of access to justice and marginalization

In this section, we look at what the Navigator Service entails, how user marginalization manifests in the appeal process and what navigators do to address it. Previous research on access to justice indicates that a wide cluster of attributes, many of which are not prospectively identifiable, can potentially obstruct the capacity of a user to fully engage with and participate in the justice system (Jacobson and Cooper 2020). The interviews with the Navigators allowed us to identify three main ways in which they help tribunal users' access to justice and to combat marginalization:

- a) Explaining the appeal process and the key criteria,*
- b) Empowering the users through information, and,*
- c) Facilitating the hearing process.*

### *a) Explaining the appeal process and the key criteria*

Navigators described the steps they pursue with a typical file:

***Navigator 1st Call (Acknowledgement call):*** When users who are not represented by a paid professional, file an appeal at the SST, navigators make the first call within a week to describe their role during the appeal process. During this call, they explain the Navigator Service, confirm the contact information of the user, provide a call centre number and clarify how they can be reached in the future. They describe the roles of ESDC, Service Canada (SC) and the difference between ESDC, SC and the STT. Afterwards, navigators request the ESDC file that gave rise to the appeal from the under s. 26 of Social Security Tribunal Regulations (SOR/2013-60). They answer the user's questions and set up their second call after the s. 26 file is shared with the user.

***Navigator 2nd Call (After s. 26):*** The objective of this call is to explain the main aspects of the legal test with reference to the s. 26 documents. This includes the concept of "ready to proceed" (RTP), the meanings of key criteria such as "minimum qualifying period" and "severe and prolonged disability". Before this call, the navigators review the s. 26 file and ask the user to review it as well. In this call, navigators also describe the difference between evidence and submissions, the type of information the Tribunal member will need to make a decision, the types of documents that the user can submit that are not already on file. Further, navigators explain the different formats for hearings and confirm the user's format of choice.

After determining whether the user is RTP, Navigators go over possible timelines for a hearing date, describe what users can expect at the hearing, and the possible witnesses they can bring. They conclude the second call by explaining that the user will receive ESDC submissions and setting up the third call. At this stage, the Navigator generates and sends the letter to ESDC requesting the minister's submissions within 6 weeks. This letter is also shared with the user.

**Navigator 3rd Call (After ESDC Submission):** Navigators make the third call to the user 14 days after the ESDC sends in their submissions. The objective of this call is to ensure that the user is still RTP and to provide them with the information for their proposed hearing. Navigators explained that most users assumed this was a negative decision on their appeal and needed more emotional support during this call. Reviewing the content of the ESDC submission, navigators clarify that this is the ESDC's point of view, and it does not constitute evidence or a SST decision. They inform the user of their right to file responses to the ESDC submission within 30 days of receiving the submission. They explain that the user is going to the hearing and reiterate the purpose of the hearing. If the hearing date is confirmed, they set up the next call for 5 business days before the hearing.

**Navigator 4th Call (Reminder Call):** In this call, Navigators confirm whether the user will be present at their hearing, explain the logistics of the hearing, confirm the list of documents on file and to ensure that the user knows how to refer to these documents during the hearing. In sum, the aim of this call is to ensure that the user is ready for their hearing.

These steps were in conformity with the official Operational Instructions of the General Division.<sup>26</sup> For some navigators, the official script for calls was very long as they had to cover a lot of information. They contended that some users were unable to focus and follow the call. They focused on providing the necessary information without being overwhelming. One navigator described their approach as the following:

"I just like to have an organic conversation with the person. And I don't know if you've ever gone to a dinner party and they are handing out mission cards, and it's like "you need to bring up this topic and talk about it. And I'm making my call and I have those five mission cards, and I'm like "I have to slip those in somewhere", and try to make it feel natural."

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<sup>26</sup> Social Security Tribunal, 2019. *Navigator Program General Division – Income Security: Operational Instructions*, Director Registry Operations, pp.1-12 (Internal Tribunal document shared with researchers).

Navigators also expressed that they feel that they have autonomy in their work to adjust their approach according to the needs of the user. For example, navigators regularly check in with users who need direction and planning for obtaining documents for their appeal. They emphasize that they can be contacted directly if users have some questions. As two navigators aptly put:

“You just have to give them that extra push.”

“We are always there. They have our number.”

Finally, navigators help users designate a personal representative such as a family member or a friend. All navigators described cases where they could not communicate with the users - especially the ones with mental health issues and those labelled with intellectual disabilities as well as the ones who could not communicate in English or French - and how the process went smoothly once they confirmed a personal representative with the user. One navigator offered the following answer when asked what they do when a user is unable to answer the phone or communicate:

“I ask point-blank if there is someone else I can talk to. It’s just the easiest way. I want to make sure they get the information, or, most of the time, they have that person attend the hearing with them. On our forums, when they ask if they are going to have a representative, most of the time, they automatically think of a lawyer, so they say no. Then, if I explain to them “no, representative can be a family member, it can be a friend, anyone like that”, then they are like “oh, my wife is going to be, she is the one who deals with all this paperwork”, or, my husband, my daughter etc.”

However, not all users could fully benefit from this solution. As one navigator explained, sometimes they had to speak to the user’s minor child “who is maybe twelve and not fully understanding what’s is happening on the phone to explain these concepts”. The interviewee added that they navigated some users who needed support but “they don’t want to bother their family and friends who could be of assistance because they are working and they don’t have the choice to take time off”.

## *b) Empowering the users through information*

Other than explaining and providing guidance through the appeal process and supporting the user without giving legal advice, the navigators' role in the appeal process can be described as empowering the users through information. As they lend an ear to the users' problems and act as their point of contact, navigators described several situations where they helped users build their confidence and make their best case. All navigators we spoke to emphasized that before they filed their appeal for CPP-Disability benefits, users lacked information, had a very negative perspective of the government and never had the opportunity to see their entire file. Four navigators explained their experiences with the users in the first call:

*“The biggest challenge I face is to see how unfairly they feel that they have been treated ... the lack of information ... they got from other organizations or ... trying to get them back on track ...”*

“The biggest challenge I face is to see how unfairly they feel that they have been treated. The lack of information. Or misinformation they got from other organizations or it is just trying to get them back on track or give them the right information.”

“In some of our appellants' minds, “I am disabled, the government should know.”

“With Service Canada, you know, sometimes they weren't aware of the decision or sometimes the decision wasn't in the mail and you know they feel that they weren't given guidance and by the time they come to us it's like they're beat up. They are like ‘I'm just appealing because I was told to appeal.’”

“[T]hey get very emotional. Very emotional that somebody finally cares, somebody's finally listening, somebody's finally reaching out, that they can talk to a real person.”

Offering an opportunity to the users to “talk to a real person” who knows the nuts and bolts of the appeal process, navigators play an educational role and instill confidence in users regarding their ability to challenge a government decision. The emphasis on putting the user in the driver seat regarding their file was a consistent theme that emerged in navigator interviews. One navigator explained that they openly tell the user that their role is to navigate, “I’m not here to tell you what to do, you tell me”. Another navigator emphasized the importance of the guidance they offer to users:

“You tell them what, what they can submit: medical reports, evaluations, capacity evaluation reports, stuff like that. But, it is not you who will go and get them but at least let them know” (*our translation*).

One navigator explained that the best part of their job was “to see someone going from, “I basically don’t see a point in living” to empower themselves slowly but surely”. Other navigators also reiterated the emphasis on user empowerment. As one aptly put:

“I am not their advocate, as I explain to them, right. But, I also say to them: “You know, the role of a navigator, why I have this job and why I am calling you, is because, you know, you are appealing a decision from the department. The department is very familiar with the rules, with the Canada Pension Plan Act, the Legislation, and, so, you know, we’re just trying to make it sort of more even so that you can understand, as well, all of those things, as a regular citizen who’s never been through this process. You know, so you can have the information, the same information that the department has.”

Navigators stressed the users’ negative experiences with ESDC; how they had lost trust in government and how users believed that their applications were not adequately examined. As one navigator stressed:

“A lot of people are like, “our information got there and they already submitted a decision”. Now we can tell them, “you have a year”. So we’re giving them a time frame, of a year, - some people aren’t happy about a year -, but by telling them that they have this amount of time and we won’t do anything unless that year has passed or they tell us they are ready to move forward, it puts them at ease to know that “okay, no decision is going to be made without me”, and they’ll be present at the hearing which is something that they didn’t have at the other levels.”

Users re-experience distrust towards ESDC when they receive the submissions from the Department. Navigators explained that while ESDC typically does not attend the hearing, the language used in the submissions often makes users feel misunderstood and discredited. The Navigator Training Notes has a section on addressing users' feelings about the Department's submission and helping them refocus on their hearing. "One of the things that gets appellants very upset is the harsh language e.g. "It is irrelevant that their condition deteriorated".<sup>27</sup> In this situation, navigators are asked to put the user at ease by explaining that the submissions are simply ESDC's view; the Department has no power over the decision of the SST member and users can explain the points they disagree with in writing or raise it with the member at the hearing. It appears that receiving ESDC submissions is a very stressful moment for the users according to navigator interviews. They explained that many users broke down at this stage and the navigators had to remind the roles of key institutional actors and the Tribunal decision-making process.

### ***c) Facilitating the hearing***

We identified three main ways navigators help users who are members of marginalized communities in preparation for their hearing. Taking into account the financial and health challenges users face, navigators expedite the appeal and organize the hearing at an earlier date. They also inform the Tribunal member and the Vice Chair about the particular difficulties the user faces before their hearing.

Navigators explained that they can expedite hearings for two reasons: when the user faces financial hardship or when they are terminally ill. One navigator elaborated:

"[I]f they mention either of these [financial hardship or terminal illness], I'm able to get approval to expedite it. So, what that means is the Tribunal will do everything possible to make sure they get to the hearing as soon as possible. We send a letter to ESDC, so hopefully they can expedite on their part as well, but we are a separate department, so we cannot control them. But, we do everything on the tribunal that they need to get them to a hearing."

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<sup>27</sup> Navigator Training Notes, Undated. (Internal Tribunal document shared with researchers).

Navigators shared several examples of expediting hearings for users living with terminal illness such as advanced cancer. They also described the extreme financial hardship some appellants went through: some had no income for the last few years, some faced eviction, while others defaulted on their mortgage or lost their house. One navigator explained:

“Going back to one of my expedited files, the appellant, we had a little bit of a relationship, and then, all of sudden, he completely fell off the grid. His phone would go to voicemail, so I tried calling him several times. I finally sent him a letter, saying I’m unable to reach him and asked him to call us. So, he called me a couple days later after he received the letter, saying he can no longer afford... he lost his phone, and he can’t afford to replace it. So that’s why it kept going to voicemail, and that he... was evicted, so he had nowhere else to go. This was all new information to me. And he told me to call his friend’s number, but he wouldn’t always be with his friend. So, I was able to expedite his file. We got him to a hearing as soon as possible. With his phone situation and his living situation, he consented to have an on-the-record decision. So, what that means is he didn’t actually have to go to the hearing because he didn’t have a phone to get him to the hearing. That was a little bit unorthodox. Typically, Tribunal members like to have the appellant at the hearing, but, because of his situation, I was able to talk to the Tribunal member and he ultimately did get approved for a CPP disability.”

This navigator’s testimony illustrates the transformative contribution the Navigator Service offers for users from marginalized communities. It shows that navigators can facilitate the appeal process in important ways by playing a coordination role among different key institutional players.

Navigators also described situations where they informed the Tribunal member about the challenges the user faces that would impact their testimony regarding difficulties with memory and literacy. One navigator expressed:

“Whenever I have somebody... that’s illiterate, I always make sure to inform the member, because normally in the hearing they would say “oh, go to G-D-2-4, and tell me what you think of paragraph A”. So... they are always notified in advance, at least from me, and I know I do that to give them that heads-up so then they can read it out.”

Despite these examples of accommodation of users by the Tribunal member, one navigator stressed that some Tribunal members had difficulty grasping the challenging lived-experiences of the users from marginalized communities.

Finally, one navigator explained that they are asked to refer the users who they believe are incapable of representing themselves to the Tribunal Vice Chair (VC). While they did not elaborate the exact role of the VC in these files or the outcome of the decision, they explained:

“I had one case, it was pretty far along. It was obvious to me that the person could not represent themselves because he was uh, severely depressed and he just didn’t care if he lived or died. Didn’t care about the process, didn’t care if he was successful or not. Um, suicidal. He said the only reason he stayed alive was for his 21-year-old daughter. So, it got to the point, it had been scheduled already so, it’s not for another few weeks. But, the VC advised me to reach out to the member and talk to the member.”

Therefore, navigators employ several tools and practices to render the appeal process more accessible for users who face particular challenges.

## ii. Training, Peer Support and Availability of Tribunal Management

While navigators come from different educational and professional backgrounds, the majority had previous experience in customer service and regularly interacted with people in a public-facing position. As navigators, they spend most of their work hours on the phone with users explaining the appeal process and providing guidance. Despite their remote work conditions, they explained that they received satisfactory training and they had opportunities for regular exchanges with their peers and the management.

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

It is important to indicate that the concepts of marginalization or marginalized do not appear in the operation instructions for the navigators nor in their training notes. The officials who designed the service considered how the Navigators could provide support for all CPP-disability appellants who do not have access to professional representation, rather than how users deemed to be members of marginalized communities could be better supported. At the same time, navigators described regular group discussions on how they could better support specific groups of users. They explained that they felt very comfortable with asking questions and offering their perspectives.

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

"The department has been amazing in, pretty well, every respect about adapting and improving procedures. The IT portion is great. Legal is very responsive. Policies and procedures, they will... they will do it, sometimes we have to wait for the approval, but it takes, that part, it's the only part that takes a while, but... yeah, everyone is very responsive, and they work together. Yeah, I love working here."

### iii. Challenges of the Navigator role

This section documents the challenges the Navigators face in their communications with the users. These difficulties relate to engaging in emotional labour in public service. Emotional labour is a necessary aspect of service work and includes efforts made by service workers to create desired emotional states in themselves and their clients.<sup>28</sup> For service workers, person-to-person interaction is at the core of their work. Navigators fit this description. Their job requires contact with users who may be uncooperative or hostile and whose needs and changing situation rarely conform to the typical file. While emotional labour is a necessary aspect of service work, the persistent engagement and management of emotions can have harmful consequences for the service workers such as psychological stress, low job satisfaction and burnout unless they have the necessary support system in place.<sup>29</sup>

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<sup>28</sup> Sloan, Melissa M. 2014. "The Consequences of Emotional Labor for Public Sector Workers and the Mitigating Role of Self-Efficacy". *The American Review of Public Administration* 44 (3):274-290.

<sup>29</sup> Guy, Mary E., Meredith A. Newman, Sharon H. Mastracci, and Steven Maynard-Moody. 2009. "Emotional Labor in Human Service Organizations" in *Human Services as Complex Organizations*, edited by Yeheskel Hasenfeld, 291-310. Thousand Oaks, CA: Sage Publications. Mastracci, Sharon H. 2021. "Dirty Work and Emotional Labor in Public Service: Why Government Employers Should Adopt an Ethic of Care." *Review of Public Personnel Administration* 0 (0): doi: 10.1177/0734371x21997548.

Overall, all navigators provided examples of difficulties they faced with gaining the trust of some users. They explained that the SST sends an acknowledgement letter to the users that indicates the name of their assigned Navigator, but some users were surprised to receive the very first call. They explained that some users were frustrated by applying, being denied, and waiting for their benefits. They attributed some users' aversion to talk to them to fears of spam calls or identity theft. In these situations, the navigators clarified to the users that they launched the appeal process and the navigator's role was to help them make their case. They also gave a few examples of a few users who did not want to benefit the Navigator Service despite their explanations.

Some navigators also explained that even after a few calls, a number of users had difficulty understanding what concrete role the Navigator plays during the appeal process. They were often mistaken for one of three officials: official at the ESDC, legal counsel or advocate, or the tribunal member. In these situations, they clarified to the users that Navigators are non-partisan; they do not take sides, they cannot record evidence, and cannot make a decision.

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

"I've had one experience where I had to actually hang up on someone because they were being very verbally abusive. But then, you know, you just remind yourself that they are angry at the situation and not you. And I have to protect myself first and foremost, so if it's reaching a point where I am no longer comfortable, then I, I'm confident that I can cut it off. But, again, you, you're able to, sort of, not reach that point by, by directing them and saying, like, "you know, I understand". You know, once they know that you don't work for Service Canada, they tend to be like "oh, ok", and they take their guard down. You know, you tell them that they are getting a fresh new decision on their appeal, and then, you can see that they are getting more relaxed. And, yeah, so, I feel like we did have good training to, sort of, deescalate that aspect of the job."

Another navigator reflected on the challenges of communicating on the phone:

“I am not sure I really realized that before I took the job. So, it is a lot more time on the phone, and we are reaching out to people much earlier in the appeal process, so... which I thought people would be happier about. But, I mean sometimes they are, but I think they do not know what this experience could have been if we didn't reach out to them, of course. So, they don't have anything to compare, they are going through this for the first time, but I think... Unexpectedly, to me, people are more angry and aggressive on the phone than I expected them to be at the beginning.”

As users explained how they benefited from the emotional support navigators offered, similarly navigators noted the importance of providing space for users who need to express their emotions. One navigator elaborated:

“[There] are people who come, sometimes, there are people who tell you, there are appellants who cry, and you are there to listen to them, you do not judge them, you listen to them, you let them talk...” (*our translation*)

Ultimately, navigators described the most significant challenge they face as the emotionally taxing element of their work especially in their work with users who face significant health issues and/or severe financial distress. One navigator noted that within six months of offering the Navigator Service:

“I had already two cases of someone who, you know, we would like to flag them in the beginning of the appeal of someone pretty much stating they are going through severe mental health issues and there's been attempt of you know, trigger warning, of suicide right and stuff like that. So, a lot of the times I flag it to my manager and that's when they make the call for me to refer them or try to offer them services that we have. If they need someone to talk to separate from the Tribunal, it's private, confidential. You know through Health Canada, the Employee Assistance Program or that you know they can talk to someone about their mental health because there is only so much we can do. You know, we're not mental health professionals.”

This testimony offers a good example of how emotional labour can be shared among the management and the workers. Rather than loading the emotional burden on the individual navigator, offering them official support can prevent exhaustion, alienation and burnout.<sup>30</sup> On the other hand, we heard from navigators who, on their own initiative, went the extra mile to help the users. One navigator explained:

“[W]e have a list on our website on legal aid, and uh we also have a list of food banks. And when I talk to appellants and they have like no money coming in, I just take it upon myself to research the programs and benefits in their particular province and I’ll send them a link... I provide a women’s helpline. Because we do have people, especially during COVID, the domestic violence has increased. So, whatever resources I can give, that are available to everybody in Canada, I will give it.”

All navigators we spoke to emphasized that their job definition has boundaries “we are not mental health workers,” as well as the need to protect their own health. The emotional support that they provide the users requires them to engage in significant emotional labour. To consolidate and maintain the Navigator Service, the Tribunal needs to invest in a strong mental health support program for the navigators.

In conclusion, while the majority of the navigators emphasized that the service they are offering is adequate, a few made the following suggestions for improving access:

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

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<sup>30</sup> Mastracci, *ibid.*

# 4 Conclusion and Recommendations

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

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

# 5 Appendix A

## Questions for User Interviews

### Preliminary matters

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

## Semi-structured Interview Questions

*The researchers elaborated on each question asked.*

### **Case background**

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

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

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

# Appendix B

## Questions for Navigator Interviews

### Professional background and experience

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

### Tribunal users

- Can you tell us about the Tribunal users who benefited from the Navigator service? What were their expectations when you first communicated with them?
- Have you encountered Tribunal users who experienced difficulties in using the Navigator service? How do you know that they experienced difficulties?
- From your perspective as a Navigator, have you ever heard from a Tribunal user that they encountered challenges in their experiences with the SST that relate to their existence as part of a marginalized community?<sup>31</sup>

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<sup>31</sup> We elaborated our interest in the following manner: The marginalized groups and communities that we are particularly interested in are people with disabilities, the elderly, people from racialized backgrounds, and people living with low-income. But, there may be others and if you feel that you have experiences relating to other types of marginalization, please feel free to let us know.

- In your opinion, who is most likely to benefit from this service? Who faces difficulties? What “groups” specifically?
- In what ways could the Navigator Service be improved for marginalized individuals?
- Finally, thinking about the Navigator service more generally, in what ways could it be improved?
- Is there anything else you would like to tell us?

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