



Citation: *DS v Minister of Employment and Social Development and MS*, 2025 SST 202

## **Social Security Tribunal of Canada Appeal Division**

# **Leave to Appeal Decision**

**Applicant:** D. S.

**Respondent:** Minister of Employment and Social Development  
**Representative:** Andrew Kirk

**Added Party:** M. S.

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**Decision under appeal:** General Division decision dated January 28, 2025  
(GP-24-1911)

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**Tribunal member:** Jude Samson

**Decision date:** March 6, 2025  
**File number:** AD-25-77

## Decision

[1] I'm refusing the application for leave (permission) to appeal.

## Overview

[2] The Applicant (DS) receives a Canada Pension Plan disability pension. For many years, the Minister of Employment and Social Development (Minister) also paid him the disabled contributor's child benefit (DCCB) on behalf of his child.

[3] In 2024, however, the Added Party (MS), being DS's ex-wife, applied for the DCCB. The Minister had to decide whether to pay the DCCB to DS or to MS. The Minister couldn't pay the benefit to both parents: it had to choose between them.

[4] The *Canada Pension Plan* says that the Minister pays the DCCB to the parent with decision-making responsibility for the child.<sup>1</sup> This is based in part on how much parenting time each parent has with their child.

[5] As part of her application, MS said that she'd had 100% of the parenting time with the couple's child since February 2021.<sup>2</sup> DS agreed, though he claimed to be the victim of parental alienation.<sup>3</sup>

[6] Based on this information, the Minister decided to pay the DCCB to MS starting in February 2021. As a result, the Minister also demanded that DS repay the DCCB benefits that he had received from March 2021 to April 2024.

[7] DS appealed this decision to the Tribunal's General Division in October 2024.

[8] In January 2025, the Minister wrote to the General Division asking for MS to be added as a party to the appeal. Indeed, the General Division added MS as a party to the appeal a couple of days later. But DS objected.

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<sup>1</sup> See section 75 of the *Canada Pension Plan*.

<sup>2</sup> See page GD2-64 of the Appeal Record.

<sup>3</sup> See page GD2-52 to 53 of the Appeal Record.

[9] The General Division responded to DS's objection by letter dated January 28, 2025. Given the Minister's request, the General Division concluded that it had no choice but to add MS as a party to the appeal.

[10] DS now wants to appeal the General Division's January 28, 2025, interlocutory (interim) decision to the Appeal Division. However, some preliminary issues arise from an application to appeal an interlocutory decision.

[11] In a nutshell, I've decided that this application can proceed, even though it's based on an interlocutory decision from the General Division. However, I've also decided that DS hasn't met the legal test for getting permission to appeal. As a result, his application to the Appeal Division stops here.

## **Issues**

[12] This decision focuses on the following issues:

- a) When should the Appeal Division consider an application to appeal from an interlocutory decision made by the General Division?
- b) Are there exceptional circumstances in this case that justify allowing DS's application to proceed?
- c) Has DS met the legal test for getting permission to appeal?

## **Analysis**

[13] The General Division can make interlocutory decisions in the course of a proceeding. For example, it might decide to reschedule a hearing or to consider evidence that was filed after the deadline. Interlocutory decisions are made during the appeal process. Final decisions bring an appeal to its end.

– **The Appeal Division normally refuses to hear applications from interlocutory decisions**

[14] Any General Division decision can be appealed to the Appeal Division.<sup>4</sup>

However, the Appeal Division has the power to control its procedures. This includes the ability to refuse to hear appeals that are premature.<sup>5</sup>

[15] For that reason, the Appeal Division has said that there must be **exceptional circumstances** for it to consider applications to appeal interlocutory decisions.<sup>6</sup>

[16] This doesn't mean that the Appeal Division refuses to consider interlocutory decisions altogether. Instead, the General Division proceeding should be allowed to run its course. Then the Appeal Division can consider the final decision and any interlocutory decisions at the same time, based on a complete record.

[17] I agree with the reasoning in these Appeal Division decisions and have decided to follow them.

[18] My conclusion is reinforced by the approach taken in the Federal Courts. They are also reluctant to hear challenges from interlocutory decisions.<sup>7</sup> The Court has said that it wants to avoid fragmented proceedings, along with the associated costs and delays that can be incurred.<sup>8</sup> Plus, proceedings can become moot (irrelevant) if the person trying to challenge the interlocutory decision wins their case in the end.

[19] As a result, I must decide whether there are exceptional circumstances in this case that justify allowing DS's application to proceed.

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<sup>4</sup> See section 55 of the *Department of Employment and Social Development Act*.

<sup>5</sup> See *Prasad v Canada (Minister of Employment and Immigration)*, 1989 CanLII 131.

<sup>6</sup> See, for example, *MW v Canada Employment Insurance Commission*, 2022 SST 338 and *RP v Minister of Employment and Social Development*, 2022 SST 242.

<sup>7</sup> See *Dugré v Canada (Attorney General)*, 2021 FCA 8 and *Herbert v Canada (Attorney General)*, 2022 FCA 11.

<sup>8</sup> See *Canada (Border Services Agency) v CB Powell Limited*, 2010 FCA 61 at paragraphs 32–33.

– **There are exceptional circumstances in this case**

[20] Correctly identifying the parties to an appeal is so fundamental that it amounts to exceptional circumstances in this case.

[21] On the one hand, the General Division would violate a basic pillar of the legal system if it proceeded without involving a party that could be directly affected by its decision. Doing so would taint the entire proceeding and could lead to a significant waste of resources.

[22] And on the other hand, if the General Division proceeded with too many parties, then it would be sharing sensitive information with people who shouldn't have been part of the appeal process. Indeed, the Claimant has already raised concerns about the sharing of his personal information.

[23] Given these exceptional circumstances, I will allow DS's application to go ahead and decide whether he meets the requirements for getting permission to appeal.

**I am not giving DS permission to appeal**

[24] I can give DS permission to appeal if his application raises an arguable case that the General Division:

- didn't follow a fair process;
- acted beyond its powers or refused to exercise those powers;
- interpreted or applied the law incorrectly; or
- got the facts wrong.<sup>9</sup>

[25] I can also give DS permission to appeal if his application sets out evidence that wasn't presented to the General Division.<sup>10</sup>

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<sup>9</sup> See sections 58.1(a) and (b) of the *Department of Employment and Social Development Act*.

<sup>10</sup> See section 58.1(c) of the *Department of Employment and Social Development Act*.

[26] Since DS hasn't raised an arguable case and hasn't set out new evidence, I'm refusing to give him permission to appeal.

– **There's no arguable case that the General Division made an error or followed an unfair process**

[27] DS's arguments focus on his allegations of parental alienation and breach of privacy. However, the decision DS is trying to challenge is about whether MS has a direct interest in the appeal and whether she should have been added as a party to the proceeding.

[28] For the reasons described above, MS's direct interest in the appeal is clear: DS and MS can't both receive the DCCB. So, if DS wins his appeal, then the Minister would stop paying the DCCB to MS and ask her to repay the amounts that she's already received.

[29] I've already mentioned how it's a basic pillar of our legal system that people can participate in proceedings that could directly affect their rights. This basic principle is incorporated into the law that governs the Tribunal.

[30] The law says that the Minister **must** notify the Tribunal of a person who could be directly affected by a decision about the DCCB and that the Tribunal **must** add that person as a party to an appeal.<sup>11</sup>

[31] The General Division clearly made no error in the way that it assessed MS's interest in the appeal or by adding her as a party to the appeal following the Minister's request. The General Division's decision to add MS as a party to the appeal was inescapable.

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<sup>11</sup> See section 65(a.2) of the *Department of Employment and Social Development Act* along with section 33 of the *Social Security Tribunal Rules of Procedure*.

– **DS hasn't provided any new and relevant evidence**

[32] I can give DS permission to appeal if his application sets out new evidence that wasn't presented to the General Division. However, the new evidence must be relevant to an issue the Appeal Division needs to decide.<sup>12</sup>

[33] DS is challenging a decision about whether MS has a direct interest in the appeal and about whether the General Division should have added her as a party to the appeal. But any new evidence DS has provided pertains to his qualities as a father and his allegations of parental alienation. DS's documents do not cast doubt over MS's direct interest in the appeal or the General Division's interpretation of the law.

[34] As a result, there's no new relevant evidence that justifies giving DS permission to appeal.

## **Conclusion**

[35] Before concluding, I'd like to briefly respond to DS's breach of privacy concerns. I've already addressed DS's allegations in my letter dated February 24, 2025.<sup>13</sup> But it's worth repeating the principle highlighted above: the Tribunal doesn't operate in the shadows. Rather, everyone who could be directly affected by one of the Tribunal's decisions must be able to participate in its proceeding.

[36] Beyond that, for a party to participate fully in a proceeding, they must know about all the documents that the member will consider when making their decision. This includes documents that were submitted by the other parties. Again, this is not just a basic principle of fairness, it's also incorporated into the rules governing the Tribunal's process.<sup>14</sup>

[37] Finally, many of the documents filed as part of this application to the Appeal Division are about the underlying question in dispute: Does DS or MS have decision-

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<sup>12</sup> See *SN v Minister of Employment and Social Development*, 2024 SST 46 at paragraph 18 and *BS v Minister of Employment and Social Development*, 2023 SST 1441 at paragraphs 14-15.

<sup>13</sup> See document AD3 of the Appeal Record.

<sup>14</sup> See section 20 of the *Social Security Tribunal Rules of Procedure*.

making responsibility for their child? As a result, I'm directing that a copy of all the documents filed with the Appeal Division be added to the General Division file.

[38] Permission to appeal is refused. This means that the Appeal Division file is closed and that the General Division can continue with its proceeding.

Jude Samson  
Member, Appeal Division