



# Challenging EI Decisions

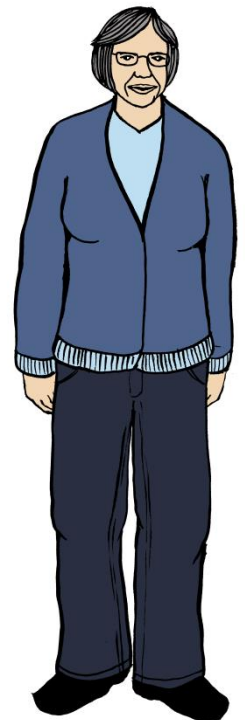
Navigating the new appeal system  
and the Social Security Tribunal

# What You Will Learn

- Overview of new system.
- The different levels of appeal:
  - Reconsideration.
  - The Social Security Tribunal – General Division.
  - The Social Security Tribunal – Appeal Division.

# Overview of What's New

- Internal reconsideration is mandatory.
- Board of Referees and Umpire gone.
- Appeals now heard by the Social Security Tribunal.



# EI

# CPP / OAS

Decision by Commission

Decision by Minister

Reconsideration Decision  
by Commission

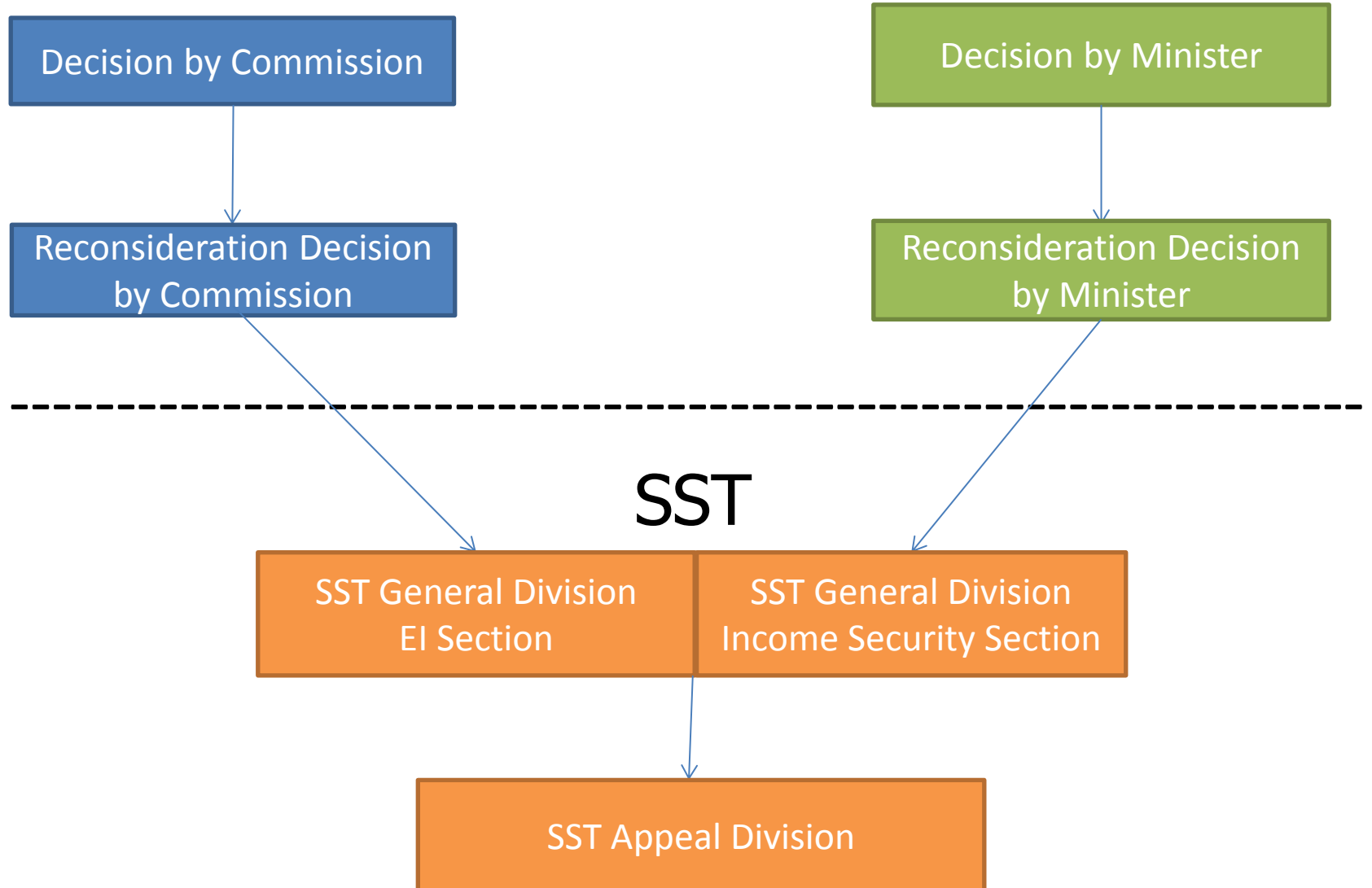
Reconsideration Decision  
by Minister

## SST

SST General Division  
EI Section

SST General Division  
Income Security Section

SST Appeal Division





# Reconsideration

- Deadline is 30 days from date decision is communicated.
- Can get extension of time.
- Send in Application for Reconsideration form.
- Representatives must send an authorization.
- Employers can request reconsideration too.



# Reconsideration: Requesting the File

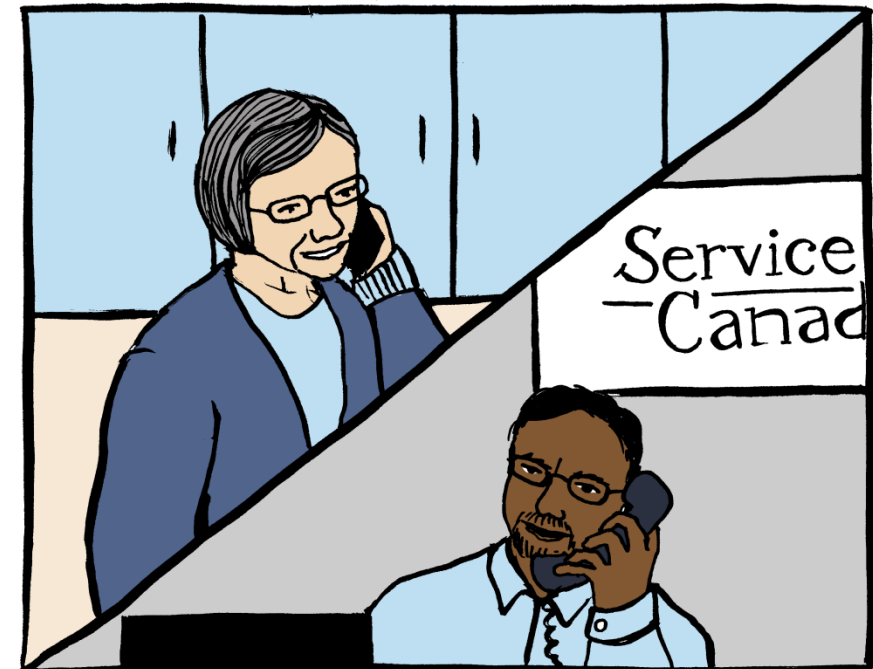
- Commission will not automatically send you file.
- Must request under *Privacy Act*.
- Can request online. Follow link to online portal:  
[www.tbs-sct.gc.ca/atip-aiprp/index-eng.asp](http://www.tbs-sct.gc.ca/atip-aiprp/index-eng.asp)
- Direct request to Employment and Social Development Canada.



# Reconsideration: Key Points

- Reconsideration mandatory before you can appeal.
- Deadline is 30 days from date decision is communicated.
- No automatic disclosure of file material.
- No formal hearing.







# The Social Security Tribunal

- Federal tribunal for EI, CPP, and OAS appeals.
- Two divisions (levels of appeal):
  - General Division.
  - Appeal Division.
- General division has two sections:
  - EI Section.
  - Income Security Section (CPP and OAS).

EI

CPP / OAS

Decision by Commission

Decision by Minister

Reconsideration Decision  
by Commission

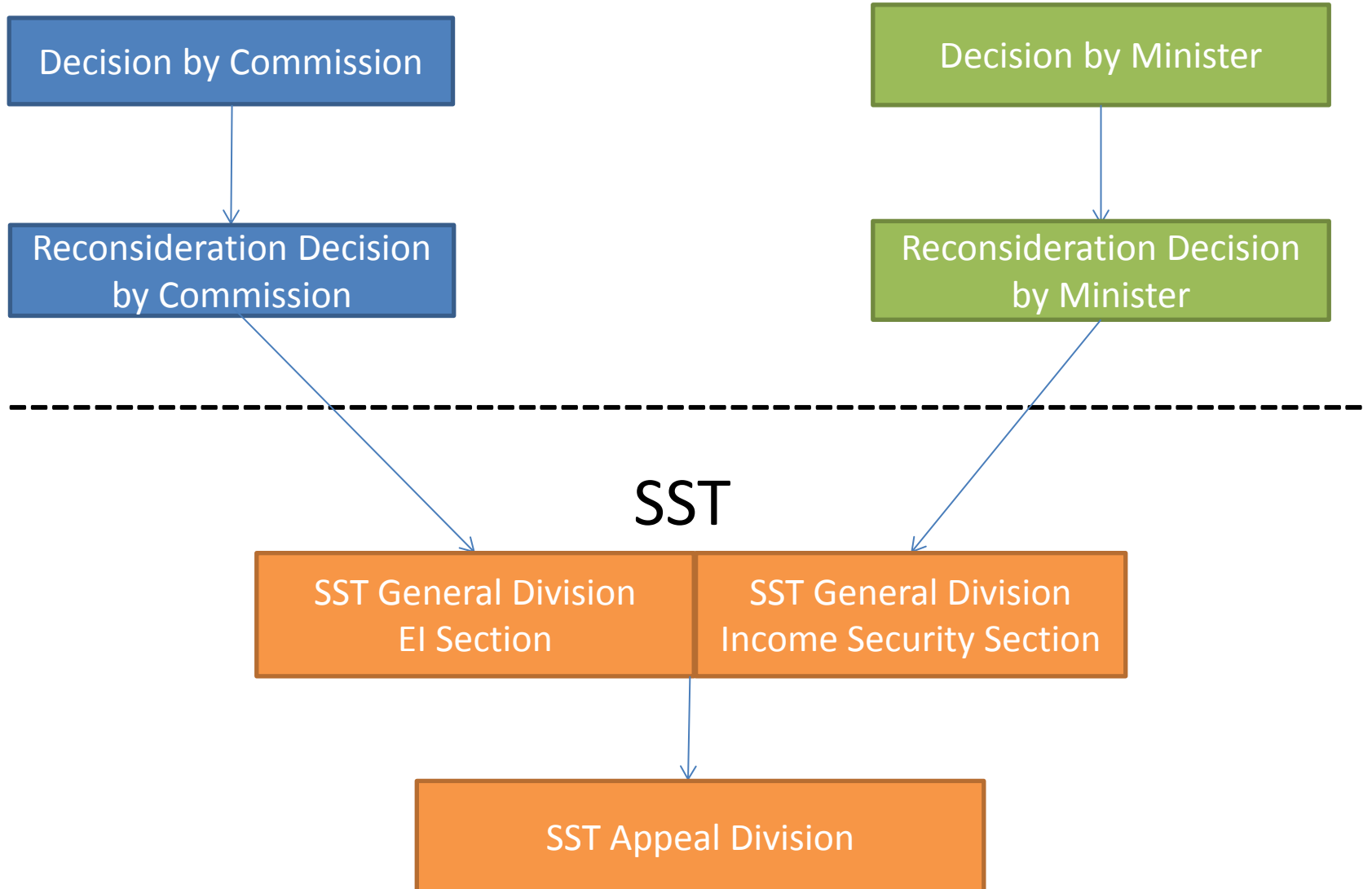
Reconsideration Decision  
by Minister

SST

SST General Division  
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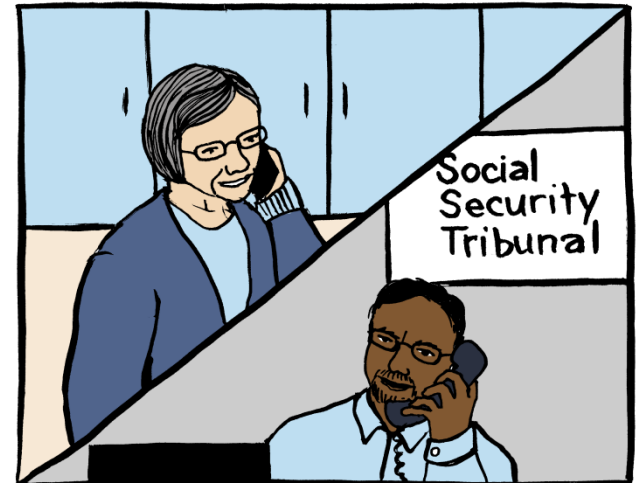
# The SST General Division

- Deadline is 30 days from date decision is communicated.
- No extensions beyond 1 year.
- Send in a Notice of Appeal.
- Employers can also appeal.



# Communicating with the SST

- Call centre, call backs in 3 business days.
- Use of email is unclear.
- Deemed to receive documents:
  - Regular mail: 10 days.
  - Fax or email: Next business day.
  - Courier or registered mail: Day someone signs or delivered to last known address.



# SST General Division: Summary Dismissal

- If there is no reasonable chance of success, must dismiss.
- SST will give you a final opportunity to explain why appeal could succeed.



# SST General Division: Types of Hearings

- In person hearing.
- Video conference.
- Teleconference.
- Written question and answer.





# SST General Division: Types of Hearings

- SST Member decides what type of hearing to hold.
- You can make submissions.
- Some factors supporting an in person hearing:
  - Credibility is an issue.
  - Many people attending hearing.
  - The appeal is very complex.
  - Hard for client to understand by phone or by video.

# SST General Division: Other Hearing Arrangements

- Interpreters.
- Witnesses.
- Length of hearing.
- Availability.
- Accommodations.
- Private hearings.
- Expedited hearings.

# SST General Division: The Notice of Hearing

- Sets out type of hearing.
- When and where to go for in person or video conference.
- Call in instructions for teleconference



# SST General Division: Rescheduling and Adjournments

- 48 hour window to reschedule.
- After that, must request adjournment, explain reasons.
- Second adjournment only in “exceptional circumstances”.

# SST General Division: The Hearing File (docket)

- SST will automatically send a copy.
- May arrive late in the process.
- Can make your own request if you want file sooner.

# SST General Division: Preparing for the Hearing

- Review hearing file when the SST sends it out.
- Review Commission's submissions or representations.
- Crucial to send in all helpful evidence.
- Good to send a written submission.
- No formal deadline, but send well in advance to avoid adjournments.



# SST General Division: At the Hearing

- Decision made by one SST Member.
- Employer might be there.
- Commission rarely sends a representative.
- Basic structure of hearing is the same. Call witnesses, ask questions, make submissions etc.
- Decision mailed out after hearing.

# SST General Division: Key Points

- Deadline is 30 days from communication of reconsideration decision.
- No extensions of time beyond 1 year.
- Summary dismissal if no chance of success.
- Most hearings not in person.
- Strict with rescheduling and adjournments.
- Decisions now made by a single SST Member







# EI

# CPP / OAS

Decision by Commission

Initial Decision  
by Minister

Reconsideration Decision  
by Commission

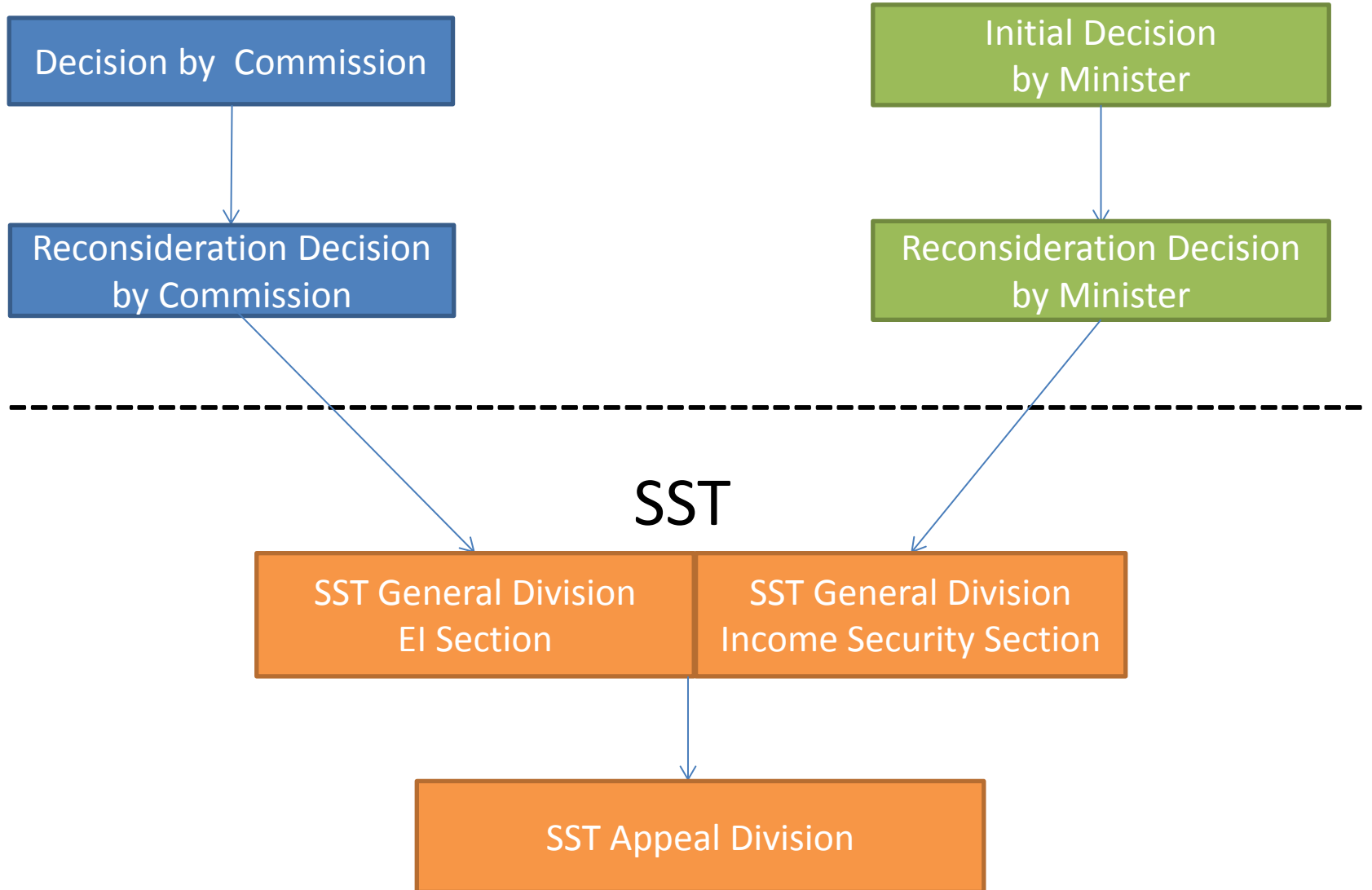
Reconsideration Decision  
by Minister

## SST

SST General Division  
EI Section

SST General Division  
Income Security Section

SST Appeal Division



# SST Appeal Division

- You now need leave (permission) to appeal.
- Reasonable chance of success.
- Exception if case summarily dismissed.
- Employer and Commission can also seek leave to appeal.
- Deadline is 30 days from date decision is first communicated.



# SST Appeal Division: Grounds for Appeal

- Breach of natural justice.
- Jurisdiction.
- Errors of law.
- The decision is based on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material before it.

Note: new evidence generally not allowed.

# SST Appeal Division: Decision on Leave to Appeal

Decision will be in writing.

- If leave denied, case over (subject to judicial review).
- If leave granted, appeal will proceed.



# SST Appeal Division: What Happens Next?

- 45 days from leave decision to file written submissions.
- Appeal Division does not have to hold a hearing.
- If Appeal Division does hold a hearing, will send a Notice of Hearing.



# SST Appeal Division: At the Hearing

- Appeal heard by one SST Member.
- The Commission usually has a lawyer there.
- Employer could be there.
- Generally no witnesses, just argument.
- Focus on the grounds for review.
- Decision mailed out after hearing.





# SST Appeal Division: Key Points

- Now need leave to appeal.
- Deadline is 30 days from date general division decision is communicated.
- No extensions beyond 1 year.
- Narrow grounds for appeal.
- Generally no new evidence.
- Not required to hold hearing.





# Wrap Up

- PovNet runs courses.  
[povnetu@povnet.org](mailto:povnetu@povnet.org)
- Community Legal Assistance Society.  
[www.clasbc.net](http://www.clasbc.net)



A co-production of the Community Legal Assistance Society and  
PovNet, hosted by Courthouse Libraries BC. Written by Kevin Love,  
graphics by Kara Sieviewright.

**Generously funded by the BC Law Foundation.**

