

**Court File No.**

**SUPERIOR COURT OF JUSTICE  
(DIVISIONAL COURT)**

**B E T W E E N :**

**C D**

**Appellant  
(Appellant in appeal)**

**and**

**DIRECTOR OF THE ONTARIO DISABILITY SUPPORT PROGRAM**

**Respondent  
(Respondent in appeal)**

APPEAL UNDER s. 31 of the *Ontario Disability Support Program Act, 1997*,  
S.O. 1997, c. 25, Sched. B. and under s. 70 of the O. Reg. 222/98.

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**NOTICE OF APPEAL**

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**THE APPELLANT APPEALS** to the Divisional Court from the order of the Social Benefits Tribunal dated May 28, 2015 and confirmed on Reconsideration dated August 18, 2015, received August 21, 2015, made at Toronto, Ontario.

**THE APPELLANT ASKS** that the order be set aside and an order be granted as follows:

1. An Order directing that the Appellant qualifies as a “person with a disability” under subsection 4(1) of the *Ontario Disability Support Program Act, 1997* (the Act).

2. In the alternative, an Order referring the appeal back to the Tribunal for a new hearing before a different Tribunal member with such directions as this Honourable Court considers reasonable.
3. Such other relief as counsel may advise and this Honourable Court may deem just.

**THE GROUNDS OF APPEAL** are as follows:

1. C D is a 53 year-old house painter who suffers from multilevel degenerative disc disease and severe osteoarthritis, meniscus and a ligament tear in his right knee, which is significantly misaligned (his knee bends in the wrong direction). As a result of these conditions, he experiences severe pain, decreased range of movement and trouble walking. Two specialists, a physiatrist and orthopaedic surgeon, reported that Mr. D is and has been unable to work because of his back and knee pain.
2. Mr. D applied for Ontario Disability Support Program (ODSP) benefits. His application was denied by the Respondent on July 29, 2014.
3. Mr. D appealed to the Social Benefits Tribunal. The Tribunal denied his appeal on May 28, 2015 finding that his impairments were not substantial and therefore he was not a “person with a disability” under s. 4(1) of the *Act*. The Tribunal denied his request for reconsideration on August 18, 2015.
4. In denying the appeal, the Tribunal committed the following reviewable errors of law:
  - a. The Tribunal applied the wrong legal test by requiring specific forms of treatment, such as the use of a back brace and an assistive device for walking, for Mr. D to

- establish that his impairments were “substantial”. This is contrary to the flexible, “whole person” and individualized approach required under s. 4(1) of the *Act*.
- b. The Tribunal further applied the wrong test by expressly refusing to consider the evidence of Mr. D’s restrictions (his confirmed inability to work), which were relevant and necessary to the “substantial impairment” analysis.
  - c. The Tribunal erred in law by making findings unsupported by and contrary to the medical evidence, in particular finding that his impairments were “managed” and therefore not disabling.
  - d. Such other grounds as counsel may advise and this Honourable Court may permit.

**THE BASIS OF THE APPELLATE COURT’S JURISDICTION IS:**

1. Section 31 of the *Ontario Disability Support Program Act, 1997, supra*, which provides for a right of appeal of Social Benefit Tribunal decisions to the Divisional Court on questions of law;
2. The decision appealed from is final; and
3. Leave to appeal is not required.

The appellant requests that this appeal be heard at Toronto.

September 15, 2015

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Lawyers for the Respondent

**C D**

- and -

**DIRECTOR OF THE ONTARIO  
DISABILITY SUPPORT PROGRAM**

Appellant

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