Court File No: **A-##-24**

FEDERAL COURT OF APPEAL

BETWEEN:

(EI Claimant)

Applicant

AND

ATTORNEY GENERAL OF CANADA

Respondent

Rule 309(h): Memorandum of *(EI Claimant)*

Factum: Employment Insurance (SST-AD)

Submitted: 2025-04-##

(EI Claimant)

(PII Redacted)

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NB: Embedded/Inline Page #s refer to *source* document's *internal* P#, not this Record.

(A: p.##) Page#s in Parentheses with **'A'** prefix refer to Page# in **Affidavit** Appendix.

(B: p.##) Page#s in Parentheses with **'B'** prefix refer to Page# in **Evidence** Appendix.

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(B: p## [p.#]) References with *both*, begin with Appendix P#, then Document P#.

[GD# | ADN#] SST Page#: Where helpful, I include SST IDs. *(for Keyword Search)*

Footnotes: Most *government* documents include hyperlinked Page#s to online Source.

** **Colour Map:** Argumentation, Quotation, Commentary & Derived Conclusions **

Points at Issue: Expanded version of these Questions at ***(B: p.218)*** in Evidence PDF.

** **Emphasis** throughout this Factum is *my own*, unless specifically noted otherwise. **

Maxim of Law: 'Ut Res Magis Valeat Quam Pereat' ***(Substance Over Form)***

~ Lord Denning | *Edwards v. Edwards [1958], P. 235 [at 244]*

This Factum chronicles my legal adventures over the past three years. An unfortunate story that I – and millions of fellow Canadians – have endured since this 'once-in-a-century' COVID-19 Pandemic began. What started when an unforeseen, unprecedented worldwide crisis provoked a 'series of unfortunate events', became a 'living nightmare' when *some* [mostly] well-meaning Employers felt compelled to implement *unlawful* policies to help 'protect their workforce' from the 'killer virus ravaging our planet'.

The complete lack of any historical precedent – or proven 'playbooks' to follow based on prior 'lessons learned' – meant that *numerous* experiments were conducted *(at a societal level)* as we all 'learned on the fly'. This impacted economies & workforces unlike anything in modern history. Healthy citizens were quarantined *(aka 'locked-down')* for the first time ever *(limiting manpower, which reduced output)*, businesses were classified as 'essential' *(or not)* and restricted accordingly, and entire industries were hindered by 'logistical complications' while healthcare struggled to 'keep up'. Everyone was hoping for a 'silver bullet' that would end the madness, so we could all 'return to normal'.

This inevitably put thousands of good employees 'out-of-work' for various reasons, leading to an unprecedented spike in EI Benefits Claims. This led to a 'comedy of errors' – so many that it *would be* funny were it not for its devastating impact on *many* already-struggling families across our great land – errors that *(for some unknown reasons)* have been largely ignored by those with the power & authority to do something about it.

Laws were ignored. Contracts were broken. Inapplicable Case Law – and a decades-old erroneous Court Decision – was cited to explain [away] *(or justify)* all of the above. The use of 'secret memos' & introduction of AI-powered Case Management tools added to the story. This cumulative 'black-swan' event has exposed the fact that there has been *significant* 'drift' away from the Legislative Intent originally codified into the EI Act by Parliament when EI underwent its last significant transformation between 1987 and 1996.

My Case attempts to highlight these errors & legal wayward wanderings – *all of which* impacted *my* journey along the way – and seeks course-correction from the only *branch of government* with the legal capacity to address them, when the *first two* are responsible. Our Courts are Canada's Arbiter of Justice – and guardian over the Rule of Law. We look to you for *true* Justice. Only you have the authority to 'right the wrongs', remedy past injustices, and call upon our Legislative & Executive branches to make the meaningful changes necessary to ensure that this 'unravelling of Justice' never happens again…

Overview

1. This is an Application for Judicial Review *('JR')* of an EI Benefits Decision by the Social Security Tribunal of Canada *('SST')* Member **Pierre Lafontaine**. On 2024-01-09, he Denied my Appeal *(Case# AD-23-694)*. I am seeking to have this Decision **Quashed** on the Grounds that it is **Unreasonable** – for *many* different Reasons I will set out below.

2. My case took a lengthy, circuitous route here: My initial Application for EI was filed on 2022-01-20, which was **Denied** on 2022-02-23. I then Applied for Reconsideration on 2022-03-24 *(ID: **466400**)* and the CEIC **Denied** *that* on 2022-04-27. I have since had **four** different SST Cases: **GE-22-2273** [1] *(filed on 2022-07-10)*, **AD-22-909** [2] *(filed: 2022-12-04)*, **GE-23-740** [3] *(filed: 2023-03-13)*, and **AD-23-694** [4] *(filed: 2023-07-10)*.

3. There have been many different Errors made throughout this process, which is why my Case was continually resurrected upon Appeal of each Dismissal. I am filing for JR of the SST-AD Denial of my EI Benefits case based on **15**+ errors in **7** different categories:

Category #1: Legislative Intent ***(EI Act)***

Error #1 ***('C')*****:** Rizzo Analysis *Proves* Unlawful Decision-Making Process

Category #2: Rule of Law, Jurisdiction & Logic

Error #2 ***('F')*****:** Decisions *Defied* Rule of Law & *Refused* Lawful Jurisdiction

Error #3 ***('G')*****:** Decisions *Refused* to Factor Private Law & Common Law Tests

Error #4 ***('H')*****:** Decisions Contain Multiple *Logical Fallacies & Absurdities*

Error #5 ***('L')*****:** CEIC *Changed Facts* Creating *Circular Reasoning* Loop

Category #3: Inapplicable Jurisprudence

Error #6 ***('K')*****:** EI ADMs Cited *Inapplicable* Historical Jurisprudence

Error #7 ***('M')*****:** SST TMs Cited Current Case Law 'Out of Context'

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[1] (DA-2273, 2022); DA v. CEIC, *GE-22-2273*, on 2022-11-04 *(2022 SST 1649)*
[2] (DA-909, 2023); DA v. CEIC, *AD-22-909*, on 2023-02-16 *(2023 SST 171)*
[3] (DA-740, 2023); DA v. CEIC, *GE-23-740*, on 2023-06-08 *(2023 SST 1093)*
[4] (DA-694, 2024); DA v. CEIC, *AD-23-694,* on 2024-01-09 *(2024 SST 26)* **[This JR Case]**

Category #4: Inconsistent Use of Law & Corporate Policy

Error #8 *('O')*: SST TMs *Ignored* Key Facts & Serious Policy *Inconsistencies*

Error #9 *('P')*: Purolator Leadership *Knowingly, Wilfully Falsified* ROE Codes

Error #10 *('Q')*: CEIC *Wilfully* Changed Key Facts *After* Case Appealed to SST

Error #11 *('R')*: SST TMs *Selectively* Used Legal Principles to *Pick Outcomes*

Category #5: Use of Internal & Undisclosed Rules

Error #12 *('S')*: CEIC Relied on *Internal*, Undisclosed Rules in *Selected* Cases

Category #6: Erroneous Precedent ***(EI 'TaxPayer' Funding)***

Error #13 *('T')*: SST TMs Widely Cited Jurisprudence Based upon *Factual Error*

Category #7: Atrium Decision Templates ***(+Reverse-Engineering Decisions)***

Error #14 *('U')*: TMs *[Mis]Use* Decision Templates that *Direct* Decision-Making

Error #15 *('V')*: SST Deployed *Decision Template* Tool that Causes Various Errors

4. Unfortunately, the COVID-19 Pandemic caused fear-driven, impaired judgement – from many entities. Decisions were made apart from sound rationale & the Rule of Law. I *do* understand that we were in the middle of a worldwide Emergency, but that does *not* negate the need to make thoughtful, ***lawful*** choices. Unprecedented times call for wise sobriety – it is even more important to exercise due care & compassion – making sure that every decision promotes the success & welfare of ourselves *and* those entrusted to our care.

5. In this unfortunate situation, the livelihoods of thousands of Canadian households were devastated when workers declined to receive an *experimental* medical product [5] *(then undergoing Phase 2/3 Clinical Safety Trials, the* largest **3** *of which are* ***still*** *incomplete in*

[5] (Affidavit); Affidavit of (D.A.), **¶17-21**. *(Experimental Nature of COVID-19 Vaccinations)*
I am providing the official ClinicalTrial.gov data to prove their experimental nature. I am ***not*** *making any arguments based on this fact. Nonetheless, this is an undeniable fact.*

Dec. 2024) [6] – despite the *incredible pressure* created by employers' *unlawful coercion mandates* across our country – policies with *no significant impact* on workplace safety. [7]

6. A significant number of employers across Canada implemented & enforced corporate policies *(aka 'vaccine mandates')* that broke various federal & provincial laws – and contravened binding employment contracts. While many companies strove to adhere to these binding instruments, some did not, and refused to address their unlawful actions.

7. This is the nucleus of our case. This is ***not*** about the 'Reasonableness' of my *(or any other employers')* COVID-19 Workplace Safety policies. *(aka 'MVPs': or 'Mandatory Vaccination Policies')* This is about its **Lawfulness** – and the Rule of Law – which is the foundation of our legal system. (MVPs that **comply** with *all* relevant legislation *and* adhere to the applicable employment contracts *[or 'CBAs': 'Collective Agreements']* are obviously binding and enforceable. Non-compliance *would* be Misconduct & employers' have every right to enforce those policies per the CBA.) That said, some policies were patently unlawful: they broke multiple laws & breached applicable CBAs, as mine did.

8. I notified my employer about the many legal & contractual problems with their specific 'COVID-19 Safer Workplaces Policy' *('C19-SWP')*, and exhausted every *reasonable alternative*, trying to remedy this situation to no avail. I filed many Grievances, ensured that I always complied with every lawful policy, and fully complied with my CBA. Eventually, my employer breached our CBA & placed me on an Unpaid *Administrative* Leave of Absence – and subsequently filed a *Falsified Employment Record* with Service Canada, which led to my Case being 'Denied' on the basis of my 'Misconduct'.

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[6] (Affidavit); Affidavit of (D.A.), **¶19**, citing official Safety Study Data from ClinicalTrials.gov. *(NCT04702945 has **200K** Participants & **still** has an 'Unknown Status'. NCT04368728 has **47K** Participants, with its 'Results First Posted' on **2024-11-22** (4 weeks ago) [QC 'Not Concluded']. NCT04834869 has **30K** Participants and is not estimated to Complete until **2026-12-31**.)*

[7] (Affidavit); Affidavit of *(EI Claimant)*, **¶22**. *(Citing the professional medical opinions of CMOs [Chief Medical Officers] from **3** different jurisdictions: Dr. Teresa Tam, CPHO @PHAC [Federal], Dr. Kieran Moore, CMOH @ON-MoH [Provincial], Dr. David Patrick, @BC:CDC [PHSA]. By the time EI Denied my Claim [2022-02], this was the* consensus *amongst CMOs across the country.)*

9. As my Case progressed through four different SST Cases, I continually raised this fact, but it was always ignored – sometimes by silence – and sometimes by employing legal gymnastics to avoid having to address this fundamental fact: my employer broke several laws – and breached our employment contract – the EI Act **requires** EI Adjudicators *(or 'ADMs': 'Administrative Decision Makers')* to consider this fact *(in EIA §29[c])*. Examining the Parliamentary Hansards for the *Legislative Intent* underlying this specific section **confirms this fact**. EI ADMs *shall* consider whether the *"practices of an employer are contrary to law."* This is *intentionally* not done in thousands of EI Claims.

10. SST TMs are also employing a *modified* Misconduct test from Case Law with a different Fact Pattern. By employing it here – and combining it with other Jurisprudence – they are committing *multiple* logical fallacies, which renders their Decisions Unreasonable. [8,9]

Part 1: Statement of Facts

11. I herein incorporate by reference everything in my Affidavit. [10]

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[8] ('Vavilov') 2019 SCC 65: Canada (MC&I) v. Vavilov. Logical errors & other 'internal irrationalities' render a Decision 'Unreasonable' and subject to being overturned upon Judicial Review. *(¶104)*
[9] ('Affidavit') Affidavit of (EI Claimant), **¶69-74**. This is expanded upon below at: ¶147-57.
[10] ('Affidavit') Affidavit of (EI Claimant), **¶1-88** *(2024-07-24)*: ['A': p.1-53]

Part 2: Points at Issue

Fundamental Questions *(12x)*

12. At its core are **12** Fundamental Questions, most of which would have appeared non-controversial & self-evident in 2019. However, due to the confluence of unprecedented, interrelated global crises *(often demanding fast, high-impact, wide-ranging decision-making)* – combined with the fear, uncertainty & doubt that plagued society during the COVID-19 Pandemic – the Rule of Law was ignored. We abandoned our nation's foundation. Our first & second branches of government arguably overstepped their legal boundaries, and now our Constitutional system of government is reliant upon our third branch – our Courts – to restore the balance of the Rule of Law. Justice demands it.

13. These twelve questions fit neatly into four categories: Government, **Employers, Adjudicators & Employment Insurance**. All of them are directly relevant to this case, although the *first two* questions – about Government – are arguably outside the scope of this Judicial Review. *(For that reason, I will not make any Arguments based on them.)* But I – and all Canadians – would ask for your help. As the arbiter of Justice in our nation, we ask that you provide *certainty*. Please give us clear answers to these two additional questions, along with the ten that form the legal foundation of this case. Clarity & Direction are needed to ensure that the devastating consequences of this **injustice** never happen again, as the human, financial & societal costs have torn the fabric of our nation…

I've significantly expanded upon these **Key Questions** in my **Exhibits [B]**. *(p.218-23 [P19])*
(To save space, I will incorporate them here by reference & not repeat what is found there.)

Government [2x] *(Rule of Law)*

Question #1: Who has Jurisdiction for Specific Health-Related Matters?

Question #2: Can Government Use Companies to Violate Rights 'by Proxy'? *('State Action')*

Employers [3x] *(Rule of Law)*

Question #3: Can Corporate Policy Override Active Legislation?

Can companies write policies granting themselves the right to break the law?

Question #4: Can Corporate Policy Violate Collective Agreements?

Can companies write policies granting themselves the right to break contracts/CBAs?

Question #5: When Policies are In-Breach, are They Legally Active?

When such absurd & nullified policies are *written, are they binding notwithstanding?*

Adjudicators [5x] *(Rule of Law / Fairness)*

Question #6: Are Contracts & Common Law *Ultra Vires* for EI Adjudicators?

CEIC & SST ADMs claim they are – unless they need to cite them to Deny Benefits.

Question #7: What Would Be Acceptable Lawfulness Indicators/Tests?

By what standards should policies be deemed Lawful, Contractual & Binding?

Question #8: Can Tribunals Violate Home Statutes by citing Case Law?

*They are created & bound by said Statute: ADM Deference **depends** on this fact.*

Question #9: Can the CEIC & SST Members Selectively Apply the Law?

What happens when they treat like *cases* differently*, based on the Outcome?*

Question #10: Can They Use Internal & Undisclosed Info in their Decisions?

Is it Fair & Legitimate to use unpublished information to Decide Cases?

EI Benefits [2x] *(Fairness / Rule of Law)*

Question #11: If Wrong about Funding Source, Who Gets the Benefit of Doubt?

Some SST-EI Precedent is based on Factual Errors re. funding sources & flows.

Question #12: What Happens When Case Law is Wrong for Decades?

Does Justice require correcting Precedents based on Legal & Factual Errors?

14. Despite being a long list of questions, they are *all* relevant – each one builds upon the previous one – and collectively, they address the fundamental errors *('house of cards'?)* upon which these COVID-19 Mandate Misconduct *('C19-MM')* EI Benefits Cases stand.

Part 3: Submission

(Standard of Review)

15. Reasonableness: Since this is a Judicial Review of an Administrative Tribunal Decision *(SST-EI)*, the appropriate Standard of Review is **Reasonableness**. [11]

A. Vavilov Reasonableness Review

16. Here is a breakdown of the Vavilov Holding. *(I'm using it to correlate my arguments.)*

Reasonableness Factors: *(What [two] factors constitute 'Reasonableness'? [¶99-101])*

['RP']: Reasons *(the 'Process')*: Internal Coherence & Rational Consistency

['DO']: Decision *(the 'Outcome')*: Justifiable in Light of Law, Facts & Record

Emphasis: on Reasons *(Not Legal Analysis: What are the Unreasonable Reasons?)*

Reasoning Factors: *(Vavilov: ¶102..04)*

- **a.** Rational & Logical Reasoning Process *(No Errors or Fallacies)*
- **b.** Clear, Complete Traceable Reasoning *(from Start to Conclusion)*
- **c.** Thorough Statements of Fact, Analysis, Inference & Judgment
- **d.** Made 'in Light of' Record & Sensitive to Administrative Context

Decision Factors: *(Vavilov: ¶105..07)*

- **a.** Governing Statutory Scheme *(¶108..10)*
- **b.** Other Statutory or Common Law *(¶111..14)*
- **c.** Principles of Statutory Interpretation *(¶115..24)*
- **d.** Evidence Before the Decision Maker *(¶125..26)*
- **e.** Submissions of the Parties *(¶127..28)*
- **f.** Past Practices & Past Decisions *(¶129..32)*
- **g.** Impact of Decision on Affected Individual *(¶133..35)*

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[11] ('Vavilov') **Canada *(MC&I)* v. Vavilov, 2019 SCC 65**, which is the governing Admin Law.

B. Outline of Arguments

17. Having outlined Vavilov's definition of *Reasonableness*, I can summarise my Arguments

18. Problem #1: Legislative Intent & History

Fundamental Questions *(7)*: #3-8, #11

Grounds of Review *(4)*: FCA §18.1(4)(a-c,f)

Vavilov Principles *(2)*: Decision & Outcome

(a) Governing Statutory Scheme
(c) Principles of Statutory Interpretation

A *Rizzo Analysis* of the **Just Cause** section of the **EI Act** *(§29[c])* **proves** that there is *only one* valid legal & textual interpretation. When determining whether to Grant [or Deny] EI Benefits, ADMs *('Administrative Decision Makers')* **must** Fact-Find for whether one [or more] of **14 Just Cause Reasons** applies to the Claimant, who *always* receives the 'Benefit of the Doubt' in ambiguous or otherwise unclear situations. This *Just Cause* Fact-Finding is **statutorily mandated** and *cannot* be omitted merely because Employers ***allege*** Misconduct.

Parliamentary Hansards prove quite the opposite: in controversial situations, it is *more important* to *ensure* that Claimants *do **not** have* Just Cause *before* Denying their Benefits. This would be further compounding the injustice of lost livelihood by EI Denial at an already devastating point in their lives. This is something *clearly* identified as **unjust** by *numerous* MPs, Cabinet Ministers & senior decision makers when they were developing this section of the Act, which remains fundamentally unchanged to this day.

Importantly, the 14 *Just Cause* reasons enumerated in the EI Act include situations where *"employers act contrary to law"* or make *"significant changes"* to the employment contract – *both* of which conditions apply in *hundreds* of recent EI Benefits Denials – including mine.

19. **Problem #2-1: Rule of Law & Jurisdiction**

Fundamental Questions ***(7)*****: #3-8 *(+#2)***

Grounds of Review ***(4)*****: FCA §18.1(4)(a,c,e-f)**

Vavilov Principles ***(3)*****: Decision & Outcome**

- **(a)** Governing Statutory Scheme
- **(d)** Evidence Before Decision Maker
- **(e)** Submissions of the Parties

Notice of Application *('NOA')*: The Tribunal erred in determining that it did *not* have jurisdiction to consider the fact that my employer broke multiple laws, despite the EI Act requiring that. The Tribunal failed to apply the Rule of Law.

20. **Problem #2-2: Private Law & Common Law**

Fundamental Questions ***(4)*****: #4-6, #9**

Grounds of Review ***(4)*****: FCA §18.1(4)(a-d)**

Vavilov Principles ***(4)*****: Decision & Outcome**

- **(b)** Other Statutory or Common Law
- **(d)** Evidence Before the Decision Maker
- **(e)** Submissions of the Parties
- **(f)** Past Practices & Past Decisions

NOA: The Tribunal failed to Consider that the Employer's Vaccination Policy was Contrary to *both* existing Legislation *(federal & provincial) and* our Collective Agreement *(CBA)*. The proposed Vaccination Policy was *both* Prohibited & Nullified by multiple Terms in our CBA, and it was never Approved by our Union. When there

is a Conflict between congruent Statutory Obligations & our active CBA – and a *new* Policy *Not* ratified by a majority Union vote – the Legislation & CBA must prevail. *(This Ground for Application also applies to Problem #2-1: Jurisdiction [above].)*

NOA: The Tribunal ***selectively*** applied Terms from our CBA, ignoring clauses that were beneficial to my Case. Anything *not* leading to a Misconduct finding was deemed *ultra vires*, notwithstanding the established legal principles involved.

21. Problem #2-3: Internal Logic & Consistency

Fundamental Questions *(6)*: #3-8

Grounds of Review *(5)*: FCA §18.1(4)(a-c,e-f)

Vavilov Principles *(6)*: Internally Coherent Reasoning Process

- **(a)** Governing Statutory Scheme
- **(b)** Other Statutory or Common Law
- **(c)** Principles of Statutory Interpretation
- **(d)** Evidence Before the Decision Maker
- **(f)** Past Practices and Past Decisions
- **(g)** Impact of Decision on Affected Individual

NOA: Their Decision contained ***two*** different **logical errors**, which led to an **Absurdity**.

Summary: When the '4-Part Misconduct Test' *('as applied')* is *combined* with a requirement found in *inapplicable* Case Law *(that it is* 'ultra vires' *to Fact-Find relative to the Employer's* ***lawbreaking*** *whenever they* ***allege*** *'Misconduct')* ***two*** different Logical Errors occur: ***'Petitio Principii' &*** **'Special Pleading'** *both* of which Vavilov deems **unreasonable**.

It is absolutely **Absurd** to *find* that Employers can *grant themselves the right* to **break the law** *merely by* issuing corporate policy saying so – and equally **absurd** to *find* that **fact** *ultra vires* merely because that *same lawbreaking Employer* **alleges** Misconduct upon separation.

22. **Problem #3: Cited Inapplicable Case Law**

Fundamental Questions ***(2)*****: #8-9**

Grounds of Review ***(2)*****: FCA §18.1(4)(b-c)**

Vavilov Principles ***(4)*****: Decision & Outcome**

- **(b)** Other Statutory or Common Law
- **(d)** Evidence Before the Decision Maker
- **(e)** Submissions of the Parties
- **(f)** Past Practices and Past Decisions

NOA: The SST reiterated *inapplicable* Case Law, despite already being proven such.

23. **Problem #4-1: Ignoring Key Facts in the Record**

Fundamental Questions ***(7)*****: #3-9**

Grounds of Review ***(3)*****: FCA §18.1(4)(a,d-e)**

Vavilov Principles ***(2)*****: Decision & Outcome**

- **(d)** Evidence Before Decision Maker
- **(e)** Submissions of the Parties

NOA: The SST Member *Erred in Law* by erroneously Deciding that I was 'guilty' of *Misconduct*, by **ignoring** key elements of my Testimony, Arguments & Evidence that *proved* the contrary, to arrive at a *predetermined* conclusion.

24. **Problem #4-2: Selective Application of Law**

Fundamental Questions ***(8)*****: #3-10**

Grounds of Review ***(4)*****: FCA §18.1(4)(a-c,f)**

<u>**Vavilov Principles**</u> ***(5)*****: Decision & Outcome**

Fairness Principle & Meaningful Reasons

(b) Other Statutory or Common Law

(d) Evidence Before the Decision Maker

(e) Submissions of the Parties

(f) Past Practices and Past Decisions

NOA: There are *two* specific applications of key, relevant legal principles that were *applied* ***selectively*** throughout the pandemic, depending on their impact *and* the desired outcome. In other cases, where they lead to *Misconduct* findings, they were Cited and Used. But when they supported the Applicants *(like in my case)*, they were ruled *ultra vires*, ensuring a consistent finding of Misconduct. This is **unfair**.

25. <u>Problem #5: Use of Internal & Undisclosed Rules</u>

<u>**Fundamental Questions**</u> ***(1)*****: #10**

<u>**Grounds of Review**</u> ***(1)*****: FCA §18.1(4)(b)**

<u>**Vavilov Principles**</u> ***(4)*****: Process & Outcome**

Fairness Principle & Meaningful Reasons

(d) Evidence Before Decision Maker

(e) Submissions of the Parties

(f) Past Practices & Past Decisions

The EI Commission *('CEIC')* published an ***internal*** **policy** that ***changed*** **well-established** definitions, legal tests & adjudication processes – while simultaneously claiming that it was *"**not** linked to <u>any</u> legislative or regulatory amendments."* This **binding policy** *only* applied to a specific group of Claimants – and was *only* discoverable through *multiple* ATIPs *(which can be a complicated process for non-lawyer citizens)*. This violates ***transparency*** principles.

26. Problem #6: Precedent Error re. EI Program

Fundamental Questions *(2)*: #11-12

Grounds of Review *(3)*: FCA §18.1(4)(a,c-d)

Vavilov Principles *(3)*: Decision & Outcome

- **(d)** Evidence Before the Decision Maker
- **(f)** Past Practices and Past Decisions
- **(g)** Impact of Decision on Individual[s]

NOA: The Tribunal made a particularly egregious erroneous Finding of Fact. I had provided clear evidence from resources on *multiple* **government** websites *(including the Parliament of Canada)*, and yet they ruled to the contrary anyways.

Summary: Around **160** EI Claimants – *including me* – had their EI Claims **Denied** because *"it is **not** the responsibility of Canadian Taxpayers to **assume the cost** of wrongful conduct by an Employer by way of EI Benefits."* This is an **error in fact *codified in Jurisprudence*** that was cited by my GD TM. I clearly disproved this fact – using *both* Parliamentary Hansards *and* the *unambiguous* text of the EI Act itself – and yet my AD TM cited this *same* argument to Dismiss my Case **again**. Taxpayers have ***not*** funded the EI Program since Bill C-21, **enacted in 1990**.

This **erroneous claim** has been cited as precedent since 2007 – and it appears that **nobody** has identified this problem before – until this Case, where I **proved** this error *conclusively*. Regardless of whether my TM was bound by this finding or not, it is still **clear error** that has been used to *wrongly* justify Denying EI Benefits ~160 times.

Since this *erroneous precedent* was established by [well-intentioned] **FCA** Justices, it is both fitting – *and required* – that it be corrected by this Court as well.

27. Problem #7: Atrium Templates Drive Decisions

Fundamental Questions *(0)*: ***(Not Applicable)***

Grounds of Review *(1)*: FCA §18.1(4)(b)

Vavilov Principles *(?)*: ***(Impacts All of Them)***

The SST uses an *internal* Case Management tool *(named 'Atrium')* that possesses 'Template' functionality, whereby **pre-written** content *(corelated collections of Arguments + Case Law + Footnotes)* are inserted into their Decisions. Their internal *Style Guide* admits that these Templates serve as 'structural backbones' that *"often **set out** the **legal tests**"* in advance, which *directly* **controls** how to ***interpret facts & apply law***. This significantly impacts *final disposition* by ***arbitrarily*** **constraining** available legal analysis.

*(And in [at least] one case I've identified, a GD TM who exercised his legal obligation to 'disagree' with the Templated text – in his honest attempt to 'fairly administer justice' – was **overturned** for 'distorted analysis' because his Decision 'corrected' the system-inserted text.)*

Cross-case analysis ***proves*** that Atrium contains *legally-conflicting* templates that are used to *"reverse-engineer desired outcomes."* [12] Further analysis of Covid-era Decisions also shows that EI ADMs often *overlook* key Facts & Arguments when using these templates – something glaringly obvious in my specific Case. The *'Primary Issue'* that I *clearly* identified at the *outset* of my lengthy SST Journey was ignored at every stage – and my GD TM announced that she could 'only consider' the Legal Test found in her Template ***before*** I was even 'sworn in' at the start of my Hearing – which effectively *erased* the heart of my Case.

This violates the **Fairness** principle of Natural Justice and causes [at least] **four** *different* problems that ***all*** affected my Case. When I asked my AD TM about these Templates, his Decision said that it was because the *"GD had to deal with a very high volume of appeal applications"* – rather than publicly disclose this ***internal*** **feature** programmed into Atrium.

[12] I provide a detailed example in Problem #7 by analysing TMs' application of KVP to C19-MM.

Problem #1: Legislative Intent & History

28. **Section Analysis & Application:** This section *(Problem #1)* addresses seven of the [12] **Fundamental Questions** [in Part 2] ***(#3-8 & #11)***. It contains four of the [6] **Grounds of Review** in the Federal Courts Act [§18.1(4)] ***(a-c, f)***. [13] It also involves *both* Vavilov 'Reasonableness Factors' and two [of the 7] **Vavilov Decision Factors** ***(a,c)***. [14]

Fundamental Questions ***(7)*****: #3-8, #11**

Grounds of Review ***(4)*****: FCA §18.1(4)(a-c,f)**

Vavilov Principles ***(2)*****: Decision & Outcome**

- **(a)** Governing Statutory Scheme
- **(c)** Principles of Statutory Interpretation

29. This section contains a Rizzo Analysis [15] of §29-33 of the EI Act, which governs 'Just Cause', Disentitlement & 'Misconduct' Findings when adjudicating EI Benefits Claims.

Since Vavilov, the SCC ***requires*** ADMs to "apply[ing] the 'modern principle' of statutory interpretation" to determine *"the intention of Parliament."* [16] *(aka a 'Rizzo Analysis')*

(I already provided this in my SST-AD Filing, but it was completely ignored by the TM.) [17]

30. As an aside – albeit a fundamentally important one – Rizzo also stands for the *holding* that *"benefits-conferring legislation [...] ought to be interpreted in* a broad and generous manner. *Any **doubt** arising from difficulties of language should be resolved in favour of the **claimant**."* [18] This clearly is **not** being done by SST TMs in C19-MM Cases.

** (This is an important **legal error** that* needs *to be addressed by this honourable Court.)* *

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[13] ('FCA') **Federal Courts Act** *(RSC 1985, c.F-7).* **Grounds of [Judicial] Review**: [§18.1(4)]

[14] *In future sections, I won't provide an explanatory paragraph; just these Application Headings.*

[15] ('Rizzo') **1998 SCC 837: Rizzo & Rizzo Shoes Ltd. *(Re)*** *([1998] 1 SCR 27)* [¶31-35]
In Rizzo, the SCC held that *"us[ing] legislative history [to] determin[ing] the intention of the legislature is an entirely appropriate exercise & one which has often been employed by this Court"* then cited the Minister introducing that Amendment *(from the Hansard)*. *(Their holding depended on this process.)*

[16] ('Vavilov') Vavilov held that ADMs are required to determine & apply Legislative Intent. [¶117..24]

[17] ('DA-694') Rizzo Analysis of the Legislative History of 'Just Cause' in the EIA. ***(B**: p.171-76 [ADN6]**)***

[18] ('Rizzo') Rizzo held that 'benefits-conferring legislation' grants 'benefit of doubt' to Claimants [¶36]

31. Since the Denial of my EI Benefits Claim *(and hundreds of others)* is based upon a '**Misconduct**' finding per §30-32 of the EI Act,[19] we need to examine the 'Interpretation' section §29, which begins with: *"For the purposes of sections 30 to 33" [Disentitlement]***.**

Parliament had *a lot* to say about the subject of '**Just Cause**' when they inserted *this specific* section *(Bill C-21 [1989])* & updated it *(Bills C-105 & C-113 [1993])*. *(Legal Grounds for Entitlement, Disentitlement, Disqualification & Misconduct Findings)*.

The House [20] & Senate [21] *each* conducted detailed, *dedicated investigations* into EI Reform ***(Bill C-21)***, and *both* released ~2000 page reports, while **Bill C-113** resulted in a ~700 page House Report. [22] *(Between these five reports, 'Just Cause' appears* ***545 times****.)*

Bill C-105 *(1993)* also resulted in a House Debate over whether it was **Just** to *completely Disentitle* Claimants from EI Benefits under circumstances deemed to be 'Just Cause'. [23]

The common consensus of 10+ MPs, 5+ [Deputy] Ministers, 3 Directors, 2 Parliamentary Secretaries & numerous witnesses is clear: EI Benefits **cannot** be Denied to Claimants when they have 'Just Cause' for ending their Employment – and this *explicitly* includes situations when their Employers *allege Misconduct* 'Contrary to Law'. *One example:* [24]

Hon. Pauline Browes: [25] ***(Minister of State: Employment & Immigration)*** ***(1993-02-03)***

*(This Hansard excerpt is found in our Documentary Evidence @(**B:** p.523-25 [D04])*

Mr. Speaker, this is the first opportunity I have had to speak in the House of Commons since being appointed to the position of Minister of State for Employment and Immigration. I am very pleased to join my colleague, the Minister of Employment and Immigration, in this ministry and I want to thank Prime Minister Mulroney for appointing me to this position. *[...]*

[15351: ¶10]: The evidence the [EI] agents collect will not always be clear-cut. Clearly, there will be occasions when the evidence from one side will contradict the evidence from the other and it may be impossible to tip the scales one way or the other. In such situations the agent must draw on experience, judgment, and common sense to reach a conclusion. As I have already stated, the **Benefit of the Doubt will go to the Claimant**. This policy applies ***not only*** to people who quit their jobs voluntarily **but to those whose Employers claim they were Fired for Misconduct**.

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[19] ('EIA') **Employment Insurance Act** *(SC 1996, c.23)*. Interpretation: §29, Entitlement: §30-33
[20] ('House-C21') **House Legislative Committee on Bill C-21 *(1989)*, Vol. 1 & Vol. 2.**
[21] ('Senate-C21') **Senate Special Committee on Bill C-21 *(1989..90)*, Vol. 1 & Vol. 2.**
[22] ('House-C113') **House Legislative Committee on Bill C-113 *(1993)*, Vol. 1**
[23] ('House-C105') **House Debates, 34th Parl, 3rd Session, Vol. 12. *(p.15345..388)***
[24] ('House-C105') **MP Pauline Browes, Minister of State for Employment. *(p.15350..52)***
[25] ('About') Pauline Browes *(MP-PC)*: Minister of State: Employment *(ParlInfo Bio / Wikipedia)*

32. The primary principles of Rizzo Analyses are reinforced in various Statutes & Case Law:

"The Law shall be considered as Always Speaking […] it Shall be applied to the circumstances as they arise, so that effect may be given to the enactment according to its True Spirit, Intent, and Meaning." [26] *('Interpret' [§10])*

"The Legislature [and Parliament] does Not Speak in Vain." [27] *('Carrières' [¶28])*

"Because ADMs receive their Powers by Statute, the Governing Statutory Scheme is likely to be the most salient aspect *of the Legal Context relevant to a particular Decision…" ('Vavilov' [¶108]) "…**Legislative Intent** can be understood* **only** *by reading the language chosen by the Legislature in light of the Purpose of the provision **and** the entire relevant Context… The ADM's Task is to Interpret the contested provision in a manner **Consistent** with the Text, Context & Purpose, applying its particular Insight into the Statutory Scheme at issue. It cannot […] 'Reverse-Engineer' a Desired Outcome."* [28] *(id. ¶118-21)*

Facts & Issues

33. What does the *Home Statute* – specifically the EI Act *[§29(c)]* – *require* in this situation, based on the following Claims of Fact? How must an EI Claims Adjudicator proceed?

a. Employer: the Employer alleges Worker 'Misconduct' to SC/EI *(and on their ROE)*: [i.e.] 'willful non-compliance' with an important internal corporate policy. *(Ignoring for now that they later argued the* exact opposite *under oath during Arbitration…)*

b. Worker: the Claimant alleges that the Policy in question violates *multiple* active & binding laws *and* breaches the employment contract, making it *nullified* & non-enforceable, thus Misconduct is ***not*** possible. The Claimant argues 'Just Cause' based on the EI Act §29(c)(**xi**/vii/ix). *(Moreover, the Breach & Unlawfulness are patently obvious* on their face *– this isn't a 'complex interpretive issue' requiring expertise – the Policy's* clear wording *plainly contradicts* explicit terms *in* both *Law & Contract.)*

c. Adjudicators: the [CEIC & SST] ADMs claim that: (1) ***only*** the worker's side is relevant – that *all* investigations into the employer's *alleged* lawbreaking & contract violations are *ultra vires* to their Decision, and (2) that *proving* any alleged 'misconduct' *requires* intentionally avoiding any fact-finding for *Just Cause*.

[26] ('Interpret') **Interpretation Act** *(RSC 1985, c.I-21)*. 'Law Always Speaking' [§10]
[27] ('Carrières') **1985 SCC 35: A.G. *(QC)* v. Carrières Ste-Thérèse** *([1985] 1 SCR 831)* [¶28]
[28] ('Vavilov') Our SCC defined what Statutory Intent processes require from ADMs. [¶108, ¶118-21]

C. Rizzo Analysis: Employment Insurance Act

Legislation

34. In my final SST-AD written arguments, I spent *six pages* conducting an in-depth analysis of the EI Act's *Legislative Intent & History*, specifically focusing on **§29(c)**, the '**Just Cause**' clause. Evidence proves conclusively: there are *only two* valid interpretations, with ***only one*** practical application to these relevant Cases. [29]

To save space, I will incorporate it here by reference, but I want to repeat & expand on its highlights. This detailed analysis of the EI Act's 'Governing Statutory Scheme' – based on the 'Principles of Statutory Interpretation' – was completely ignored by TM Pierre Lafontaine. Worse, the fundamental *requirement* to Fact-Find for *Just Cause* has been completely avoided by TMs in our Post-COVID world. *(In most 'C19-MM' Cases)*

(I recognised this obvious problem – Legalised Injustice – from the very beginning of my SST-EI Journey – long before I ever heard of the term 'Rizzo Analysis'.)

35. Rizzo Analysis *(Text & History)*: EIA §29(c) ['Just Cause']

Summary: 14 Factors that Canadian Parliament ***requires*** EI Benefits Adjudicators to **consider** when **Disentitling Claimants:**

What did Parliament ***intend*** when they implemented the following section[s] in the EIA? *(Part 1, §29-33: 'Benefits: Disqualification & Disentitlement' – in Bills C-21 & C-113)*

§29 ['Interpretation']: "For the purposes of §30-33, *[Disqualification & Disentitlement]*

§29(c): Just Cause for voluntarily leaving an employment *or* taking leave from an employment exists **If** the Claimant had no reasonable alternative to leaving or taking leave, having regard to **all** the circumstances, including:

§29(c)(xi): Practices of an Employer are **Contrary to Law**, *[or]*
§29(c)(vii): Significant Modification of Terms & Conditions respecting Wages or Salary,
§29(c)(ix): Significant Changes in Work Duties.
§29(c)(xiii) Undue pressure by an Employer on the Claimant *to Leave their Employment."*

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[29] ('DA-694-Args') [2023-11-13] SST-AD Written Arguments: @(**B:** p.171-76 [P16]) *(ADN6-6..11)*

EI: Major Reforms: [30] **[1971] Bill C-229 => [1977] Bill C-27**

=> [1990] Bill C-21 => *(Lost: [1992] Bill C-105)*

=> [1993] Bill C-113 *('Temp')* => [1996] Bill C-12

a. In 1971, **Bill C-229** completely overhauled Canada's UI Program. For the first time, it was made 'Universal', providing coverage to virtually every Canadian that became unemployed – for any reason – including Quitting & Involuntary Termination. This reform also created 'Special Benefits' for situations like Sickness, Maternity Leave, and Retirement.

b. In the 1980s, western nations began experiencing *major economic crises*, primarily due to the **deindustrialisation** caused by Global Free Trade. This led to serious government budgetary shortfalls *and* widespread unemployment, which *both* became political 'hot-button' issues. *(Canada's Net Debt/GDP ratio increased **210%** from 1980 to Bill C-113: 44.9% [1980] to 94.7% [1993], while our Unemployment Rate rose **52%**+: from 7.5% [1980] to 11.4% [1993].)* [31]

c. In response, Canadian institutions conducted major studies into the 'Unemployment Problem'. This led to **Bill C-21** *(passed in 1990)*. Its primary change was to stop federal government contributions to the UI Program *(direct funding)*, meaning it became financed by ***only*** Employer and Employee contributions [58%/42%]. *(This reduced its income sources from three to two.)*

d. To compensate for this loss of program revenue, the government needed to enforce Penalties on workers who were Terminated *(or who Quit)*, *and* those who 'refused to accept suitable employment'. Parliament settled on a [variable] 7-12 week **ineligibility penalty** & an income coverage reduction, down from 60% to 50%. *(These UI 'Penalty' changes provoked significant Debate in Parliament…)*

e. The significant Penalties proposed *(listed above)*, generated substantial debate about *Who*, *How* & *What* to Penalise. The *new* term '**Just Cause**' appeared **348 times** throughout their reports. *(House: 186x & Senate: 162x)* *All* of the

[30] [StatCan]: Zhengxi Lin – 'E.I. in Canada: Policy Changes' *[p.6]* *(Summer 1998: 75-001-XPE)*
[31] Debt/GDP Data from TradingEconomics.com *(IMF)*; Unemployment Data from StatCan.

Parliamentarians *(and Witnesses)* were concerned with *ensuring* that Penalties were *not* levied upon struggling, unemployed Canadians *without* good reason.

f. **Joe Verbruggen** *(then current 'Director General of Insurance Policy' in the Ministry of Employment)* informed the Senate Committee that *"our instructions to the legal drafters was to reflect precisely the current state of jurisprudence."* Only **5** 'Just Cause' Reasons were specified in **Bill C-21**, but he testified that the remainder were codified in Jurisprudence. [32] *(There were 40 Reasons total.)* [33]

g. By 1992, the UI Program was haemorrhaging financially because it was no longer receiving any government funding *(short $1.75B over two years [p.546])*. To salvage the program, the government tried to insert a *radical* UI change into their **omnibus** *'1992 Expenditure Restraint Act'* (**Bill C-105**) *(p.577)* [34] – they tried to completely *Deny All Eligibility* for Terminated Workers *(and those who 'Leave Without Just Cause')*. Several MPs claimed this change would *'save the UI Program $1B annually'* *(p.546,581)* by '*preventing program abuse*'. ***(6 MPs**: 545-47, 568-69, 573, 578)* [35]

h. **8 MPs** expressed serious concerns with blanket UI denials *(harsh consequences and costly investigations when mistakes were made)*. **2 MPs** objected on the Principle of Injustice *(that 'sentences were imposed'* before *'investigation occurred' – and that Claimants were 'found guilty* before *being proven innocent') (p.566-67)*. This policy change was frequently identified as **'unfair'** *&* **'too severe'**, among other complaints. ***(8x**: p.543, 548, 551, 559-60, 571, 582-83)*

i. MPs repeatedly argued that **IF 'Just Cause'** was the *determining factor (for Complete Denial of EI Benefits)*, only **5** Reasons were explicitly listed in the Act *(Out of **40**)*. Many MPs were concerned about the consequences of *relying on Jurisprudence* – and costly, complicated, lengthy Appeal processes – to correct the *life-altering* effects of misjudgement. **Just Cause** would need to be ***explicitly***

[32] ('Senate-C21-1') Senate Committee on Bill C-21, Vol.1: Joe Verbruggen **[p.120]** ***(I:2, p.36)***
[33] ('House-C105') House Debate on C-105, [MP] Guy St-Julien [PC-Abitibi]. *(**B:** p.578, ¶2 [p.15380])*
[34] ('House-C113') House Committee, Bill C-113: Canada Labour Congress *(**B:** p.579, ¶2 [V1:5A:41])*
This controversial amendment was buried in a Supply Bill dropped *<24h before* Christmas Recess.
[35] ('House-C105') House Debate on C-105, *(many different MPs)*. *(**B:** p.543-86 [p.15350..52])*

defined ***before*** many MPs would vote for Total Disentitlement. *(8x: p.545-47, 549, 565, 576, 578-79)* Partisan squabbling aside, MPs from all *three* parties affirmed the need to **codify all 40** specific 'Just Cause' Reasons into the Law.

j. Not willing to give up on this crucial cost-saving UI Change *(Full Disentitlement instead of Penalty Weeks)*, the PCs tried again. *One month later*, they tabled *another* omnibus supply bill: *'Expenditure Restraint Act [No. 2]'* – for the next fiscal quarter *(**Bill C-113**)*. However, they learned from **C-105**. They took the **40 'Just Cause' Reasons** found in Case Law and created **Explicit Categories – 14 Reasons** *(in total)*. [36] *(This is the same list found in the EIA §29(c) today. They also created the **EI Digest Principles §6.8.1:** ['List of 40 Main Circumstances to Take Into Consideration'], based on the Jurisprudence.)* [37]

k. Testimony: During the Legislative Committee Hearing for Bill C-113, the following government officials provided testimony about these changes:

Gordon McFee, Director of UI Policy & Legislation, Ministry of Employment *(Hearing #1: 1993-03-08, p.59-63)*: *(About the History of Just Cause: [p.62])*

Norine Smith, Director General, UI Policy & Program, Ministry Employment: *(Hearing #1: 1993-03-08, [p.69-73])*: *(Entered 1991 UI Stats in Evidence [p.70])*
*('Of 3M new UI Claims, >2M were people laid off […] & ~650K quit, whether with or without Cause. (A large portion was maternity & sickness Claimants.) Of the 650K [Quitters], 460K had Just Cause (1/40 Reasons in Case Law). 190K were without Cause or Fired for Misconduct – or **<3% of All Separations**.')* [38]

Minister Bernard Valcourt, [39] Minister of Employment *(PC)* *(re. Full Denial)* *(Hearing #9: 1993-03-16, [p.619-634])*: *"This is difficult. I have **always** said that this is **not UI Reform**; this is a **fiscal measure**…"* *(p.623)*
(Temporary 'fiscal measures' in a Supply Bill [i.e. Confidence Vote in Parliament]? This 'temporary' 'non-reform' policy change is still found in the law today…)

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[36] ('House-C113') House Committee on Bill C-113: Vol.1, Iss.9 *(1993-03-16)*; [p.394..95, p.613..64]
[37] ('House-C113') House Committee on Bill C-113: Vol.1, Issue 5A *(1993-03-11)*; [p.390..93]
[38] ('House-C113') The UI Policy Director evidenced that under 3% of all Benefits Claims were *without* 'Just Cause' or based on 'Misconduct' allegations. This is relatively small considering the ***$B** Deficit* being cited as justification for implementing this major policy change. *(Issue 1: 1993-03-08)*; [p.70]
[39] ('About') Bernard Valcourt *(MP-PC)*: Minister of Employment *(ParlInfo Bio / Wikipedia)*

Warren Allmand [40] *(Clause 20 Debate: Total EI Denial without 'Just Cause')* *(Hearing #9: 1993-03-16, [p.654-657])* *(Reminded Minister about "occupations of MP's offices" after announcing this change. Asked about security-related costs due to "expected increase [in] violence against officials"* ***if*** *approved. [p.655])*

*"I have one question on this. The department has announced – and I don't know whether it was the Minister or Officials – that because of this bill you expected increased violence against officials of the department… **You already had** **occupations of MP's offices.** You are going to put in certain new security measures, including back doors… To what extent have you proceeded with these new security measures, and how much will they cost?"*

l. This proposed change was so unpopular *(complete EI Denial for* all *employment separations* without *Just Cause)*, it resulted in several large Protests & Sit-Ins at MPs' Offices. In one demonstration *(Montreal: 1993-02-07)*, 50K protesters gathered in -25°C weather to voice their concerns. These protests were mentioned *several times* in Committee Testimony & House Hansards.

Canadian Labour Congress: *(Hearing #5: 1993-03-05, [p.384-399])*: *"Never in the fifty-two year history of the Unemployment Insurance program has a change of this magnitude been introduced* without extensive consultation *with Workers and Employers, and* never *without cross country public hearings. **Never** have permanent changes to UI been made in an Omnibus Bill advertised as **Temporary** Restraint measures. […] This has outraged Canadians. Employed & Unemployed* across the country *have tried to have their voices heard. [They] have braved the bitter cold expressing their opposition. The depth of this outrage was demonstrated in one of the largest marches in Montreal's history. 50,000 people filled city streets on Feb. 7, 1993." (p.386)*

MP Vincent Della Noce [41] Parliamentary Secretary: Minister of Immigration & Multiculturalism *(PC)* *(House Debate: 1993-02-03, [p.574-575])*

"As you know, almost all Members' offices were invaded today by unions and groups that naturally came into our offices without appointments, without calling, by surprise. I find it very unfortunate […] Still, they have taken over our riding offices and are deciding themselves when they will arrive and how long they will stay. I find that really deplorable. The worst part is that at the offices of some of our colleagues here on this side of the House, there were violence and arrests, believe it or not. I find that even more deplorable… I have just spoken with the police and I received confirmation that there were violence and arrests. […] I must tell you that now that we are at this point, there have even been threats

[40] ('About') Warren Allmand *(MP-LPC)*: Critic, Ministry of Employment *(ParlInfo Bio / Wikipedia)*
[41] ('About') Vincent Della Noce *(MP-PC)*: Secretary: Immigration Minister *(ParlInfo Bio / Wikipedia)*

> *against our homes and families. I called and asked the RCMP, who seemed unaware of certain things, to do their job. I must tell you that if there is no protection tomorrow, probably I will not be able to come to sit here. This is a notice to those concerned! When our families are affected because of a Bill, we realize that Members are no longer free to act in the House of Commons. Groups are now dictating to the government what to do. That is too bad. […] All those who came to protest in our offices […] they were better informed when they left than when they arrived. They will probably come to see me more often. It is a pleasure for me to meet these people, as long as there are not 200 of them arriving together, because our offices cannot accommodate that many, not to mention the disturbance for our personnel. […] I caution the unions looking to muddle the whole thing to be careful not to threaten our families which have nothing to do with this, our wives who have been alone for seven or eight days and our children who are truly defenseless. To these people, I say: '**Watch out.** Do Not Dare* cross the threshold of my house, ***just in case***.' *One thing is sure, my family is not responsible for this bill."* (*'HC-105' [p.574-75]*)

36. Analysing 'cause-and-effect' & the 'chain-of-events' behind this amendment proves ***why*** this clause was added to the Law. It leads to *only one* **reasonable** conclusion:

a. Initially, UI was available to *every unemployed Canadian*, even those who were fired or quit *without* Just Cause. *(This was obviously too expensive so):*

b. The Government decided to *stop funding UI*, to eliminate the ballooning program/budgetary cost. *('Relieve the Taxpayer Burden')*

c. This funding reduction [obviously] created massive UI *cost overruns*: if serious changes were not made to compensate, the UI Program would fail.

d. Instead of acknowledging the *obvious* cause *(removing government contributions 2.5 years earlier)*, the governing party *reframed* the problem as *widespread* 'program abuse' – but said that 'penalising the cheaters' would 'save $1B annually' and 'fix the problem'.

e. Their solution was to completely disentitle all 'program abusers' *(i.e. workers who were terminated or left 'without just cause')*. This 'sledgehammer approach' obviously had profound implications for the livelihood of many Canadians whose employment had ended due to ***alleged*** 'fault' or [questionable] 'cause' – or under other 'complicated' – circumstances… *(All deemed 'with Just Cause')* *(Ergo)*:

f. Many MPs *(from All opposition parties)* **refused to pass** this ***'all-or-nothing'*** amendment *until* proper safeguards were instituted, to protect Canadians who ***did have*** Just Cause for leaving their employment.

g. The result was the *codification* of **14 'Just Cause' Reasons** into the EI Act *(from established labour jurisprudence)*. Claimants could ***not*** be denied EI **If** they met [one of] these Just Cause criteria.

h. Simultaneously, 'Benefit of the Doubt' was explicitly awarded to the Claimant [**by Law**] in nebulous circumstances, or where there were problems on *both sides* of the 'Just Cause' Fact-Finding exercise *(i.e. where 'fault' could not be clearly attributed to only one party)*.

37. The *entire reason why* the 'Just Cause' clause was added to the EI Act was to protect the livelihood of Canadians who were 'not at fault' for their employment separation – *when* Parliament added Penalties to the Act. *(i.e. It ensured that workers who* leave with Just Cause *will receive EI.)*

There is ***only one*** reason & interpretation for Just Cause: §29(c) – it is **intended** [by Parliament] to *be the* determining factor as to whether someone *either* receives *or is* denied EI Benefits when employment ends – based on whether there are *legally–justifiable reasons* for leaving employment. *(Both: "voluntarily leaving **or** taking leave")*

But now, EI Adjudicators *speciously* purport to be *legally-required* to **avoid** this fact-finding on the basis that 'an employer *alleged* Misconduct'. It is trite law that *"[Parliament] does not speak in-vain." ('Carrières') [¶28]*

38. The following government officials made ***authoritative*** statements about 'Just Cause', Fact-Finding & 'Benefit of the Doubt' in Parliament: *(Legislative Change Hansards)*

Peter McCreath [42] Parliamentary Secretary: Minister of State *(Finance & Privatisation)*:

"*I want to reiterate what many of my colleagues have said. Voluntary quitters who quit* with *Just Cause will* **not *be penalized*** *by these proposed measures. [...] If anybody is suggesting that people who* quit with Just Cause *will be imperilled by this legislative proposal, they are wrong.* ***The reasons are spelt out in the Act***. *[...] There have been a multitude of Decisions by the Supreme Court of Canada & Federal Court listing reasons. There are 50 pages of valid reasons, of Just Cause spelt out &* ***binding****." (C-105 [p.565])*

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[42] ('About') Peter McCreath *(MP-PC)*: Secretary: Minister of Finance *(ParlInfo Bio / Wikipedia)*

"If people leave their jobs for a legitimate reason, then they should be supported. If they do not get satisfaction from their CEIC office, I would hope, if nothing else, they would go to see their Member of Parliament and complain. Part of the function of a Member of Parliament is to see that individuals get fair treatment from the system. (C-105 [p.567])

Vincent Della Noce: Parliamentary Secretary to Multicultural/Immigration Minister:

"*When a Claim for Benefits is submitted, UI Officers give to both the Employer and the Claimant the same chance to provide the required information. The Officer must hear both sides… Moreover – and I am sure some [from the other side] will intentionally avoid mentioning it – we give the Benefit of the Doubt to the Claimant." (C-105 [p.574-575])*

"*…The Benefit of the Doubt is **never** given to the Employer. It is given to the second party which is the Employee. If the Employer says that the Employee went out because of Misconduct and the Employee says it is because the Employer changed his hours or because of other reasons, I can guarantee my Hon. colleague that I will fight for this person and **he will** **not** **be Penalized**…" (C-105 [p.576]; 1993-02-03)*

Pauline Browes: **Minister of State for Employment**: "the Benefit of the Doubt will go to the Claimant. This policy applies *not only* to people who quit their jobs voluntarily but to those whose Employers *claim* they were **fired for misconduct**." *(cf. FN:24-25})*

Gordon McFee, Director, UI Policy & Legislation Development, Dept. of Employment: *[p.62]* "*Those of you familiar with the program are aware that in the fact-finding exercise, particularly when issues such as Voluntary Quit, Just Cause, and so on are present, the fact-finding is somewhat complicated… because there are* two sides *to the story. In those situations, it will sometimes arise that the Agent making the Decision does **not** have a clear-cut avenue to follow, given the evidence that the Agent has received from the Claimant & the Employer. In those cases where the **fact-finding leads** to an inconclusive Decision, the* 'Benefit of the Doubt' ***will be given** to the **Claimant**. One concern that has been expressed was whether or not the Burden of Proof in these cases would be put on the Claimant so they would have to go through a second kind of difficulty, having already either been forced to quit their job or been fired in a case where it really wasn't their fault. Bill C-113 contains a clause that **obliges** officers of the Commission to hear both versions of the story before a Decision is allowed to be made… [p.67] They base their Decision on the guidelines. **The Act**, Regulations & Jurisprudence essentially provide the frame-work for the **fact-finding** and the consideration of what could be considered as Just Cause for the voluntary leaving. The agent assesses the credibility of the information received, weighs it, and determines on a balance of probabilities whether the Decision was with or without Just Cause. When the evidence from one side contradicts the other and no information is uncovered that would tip the scale, then the Agents are instructed that Benefit of the Doubt must **always** go to the Claimant." (C-113 [p.59-68]; 1993-03-08)*

Julie Zahouruk-Tanner, Chief, Unemployment Insurance Policy, Dept. Employment: [p.66] *"...as soon as the Claimant comes through the door; that they [...] identify a situation where there might be* Just Cause *for* leaving *the employment, to recognize these situations and clarify any kind of conflicting information. Of course, this is where we'll be* emphasizing the principles on the Benefit of the Doubt. *[...] One of the more important relationships in the local offices is between the Agent and the Claimant, particularly in terms of collecting the facts. The Agents are instructed to remain neutral*

and objective. They must always be respectful toward the Claimant, and the Agent must use discretion and judgment to obtain only as much information as necessary to make a Decision for the purposes of Unemployment Insurance entitlement. []

…The questions have to be pertinent, and they must be asked, as the Law will be requiring us to do, of both the Employer and the Claimant. The questions are adapted to the circumstances. The agent has to try to understand what happened. []"

[p.67] "*…It is an objective evaluation of the facts, and it must take into consideration the individual circumstances of the Claimant. It is very important that we do not label Claimants leaving situations for any particular reason. Everyone has their own reasons and their own circumstances related to it. [] It is very important that it is* ***individualized*** *and* **not** ***generalized***.[43]

When the Agent has this type of information, they base their Decision on the guidelines. ***The Act****, the Regulations, and the Jurisprudence essentially provide the framework for the Fact-Finding and the consideration of what could be considered as Just Cause for the voluntary leaving. The Agent assesses the credibility of the information received, weighs it and determines on a balance of probabilities whether the decision was with or without Just Cause.* When the evidence from one side contradicts the other and no information is uncovered that would tip the scale, then accordingly the Agents are instructed that Benefit of the Doubt must **always** go to the Claimant." *(C-113 [p.64-68]; 1993-03-08)*

Gordon McFee, Director, UI Policy & Legislation Development, Dept. of Employment: "...it may be spelled out more clearly in this Legislation than it was before [they are] **obliged** to *hear both sides* of the case before they make a Decision. In fact […] the Administrative Law **requires** that *both parties* be **heard** when a Decision is made that affects one of their rights.

What happens in Unemployment Insurance legislation is that it is a rights and obligations program. If Claimants fulfil certain obligations, they have the unfettered right to receive UI – obviously, not totally unfettered – within the confines of the legislation. Therefore, *in any kind of* ***contentious claim*** – voluntary quits, **misconducts**, and that kind of thing are called contentious claims – the Agent is **obliged** by policy, *by legislation*, and by tradition, if I may say something as maudlin as that, to get *all* the facts, to assess the facts.

The agent uses the principle of preponderance of the proof or whatever in coming to a Decision. If the decision is not clear-cut, the Benefit of the Doubt is given to the Claimant. *The agent is obliged to* ***consider all the facts****…* []

I would, with respect, suggest it is not as much an issue of cross-examination. I know the point you're trying to make. I think I would prefer to describe it as ***hearing*** *both sides of the story*. They are *absolutely obliged* to get both sides of the story before they make a decision." *(C-113 [p.658]; 1993-03-16)*

Nick Mulder, **Deputy Minister of Employment**: *(C-113 [p.652]; 1993-03-16)*

"It's certainly *not* the policy of this department to have anything done at anyone's whim. **We look at the facts** and certainly the current legislation provides it, *and this legislation reinforces it*. People document the case, hear both sides of the story, and then make the

[43] This "individualized not generalized" requirement was broken by the BE-Memo. *(Problem #5)*

Decision. They give the Benefit of the Doubt to the Claimant where there are *'on the one hand/on the other hand'* situations."

Bernard Valcourt, **Minister of Employment & Immigration**: *(C-113 [p.619..34])*

[p.624] *"I think Canadians are reasonable people, and when I* know *that the law, the* ***UI Act, says*** *that a person who has* no choice but to quit a job, no reasonable alternative… *[] All we are saying – and* ***the law says so especially*** *– is* ***if*** *a person has no reasonable alternative but to quit, then* ***that person is protected****."*

[p.628] *"The thing is that a social program such as UI […] is a benefit system that is administered according to the principles of natural justice, and the burden of proof required in instances such as this is 'on the balance of probabilities'. He who claims must establish the facts supporting his claim.* If the Employer claims that he fired you for Misconduct, then **he has the burden**; *if you claim that you left because you had a big headache, then you have the burden of establishing your headache… []*

You ask what will happen to the person who quits? Where will he or she go? Well, that person will not quit his or her job ***without a valid reason****.* And **if the person has one**, *Cid,* then he or **she is protected**. *So who has a problem?* If the person has a cause, *then I have no problem,* because the system is there to protect her or him. ***That will happen."***

39. When this Legislative History – and the various Committee Reports – are *fully* considered *in context*, there are three clear observations:

a. This change was *very* contentious. Even within the majority party, MPs recognised the potential problems this change could create – and MPs from *all* sides acknowledged that many Canadians opposed this amendment. *(That is probably why it was inserted into an* ***omnibus supply bill*** *– creating a confidence vote in Parliament. Supply bills are intended for* temporary fiscal measures – ***not*** *policy reform. The Minister of Employment admitted this key fact in Committee.)*

b. MPs were careful to clarify their **intentions**: this change was about 'saving UI costs' by 'stopping UI abuse'. Almost every MP *explicitly* stated the same objective: they wanted to **ensure** that workers **with** *Just Cause* would ***not*** be impacted by this change. *(That is why this major change was initially* not passed *in* ***Bill C-105****. Many MPs would not vote for this change* until *safeguards were added to protect innocent Canadians from potential misapplication and other serious [unintended] consequences when they had Just Cause.)*

c. Numerous MPs and witnesses openly discussed *many* personal stories about workers who were mistreated or abused at work. They also acknowledged that this change *could* be *leveraged* by unsavory employers. There was *unanimous* agreement that *any* time *Employers* were acting improperly, they **intended** to protect the Workers. By *explicitly* inserting **14 Categories of '*Just Cause'* Reasons** into the Act *(including Reason #11: 'Employer Practices Contrary to Law')*, they were **requiring** that *all* these situations would be **investigated *&* weighed** during fact-finding, whenever EI ADMs adjudicated Benefits Claims.

Application

40. I cannot see how it is **not** *both* an Error *in* Law – and Violation *of the* Law – to *refuse* to conduct Just Cause analysis in this case. Both sides are clearly pointing at each other – and *neither* is faultless at first look.

a. Constructive Dismissal has *always* been considered Just Cause. 'Significant Changes' to the CBA are covered under §29(c)(vii/ix).

b. Whenever an "Employer's Practices are Contrary to Law" Claimants *also* have Just Cause per §29(c)(xi). *(This is* obviously *true here…)*

c. Any time it is **not** possible to clearly attribute 'Fault' to the Claimant *Alone*, then *they* receive the Benefit of the Doubt, per §49(2). *("**IF** the evidence on Each Side of the issue is equally balanced.")*

41. On what grounds can the SST *(or CEIC)* **reasonably refuse** to conduct Fact-Finding for Just Cause in this situation? I clearly meet its requirements… *(And **'fact-finding'** **always** involves examining "documents […] such as Contracts & Collective Agreements.")* [44, 45]

[44] Digest Principles, §21.2.2: ['Proving Facts: Gathering All Available Evidence']: "Evidence is any information that tends to prove or disprove a point; it can take many forms such as: *any written instrument including* documents and records such as […] **contracts & collective agreements**."

[45] Digest Principles, §21.2.3: ['Proving Facts: Evaluating the Evidence']: "In the case of Misconduct or voluntary leaving, a Decision cannot be based solely on the claimant's statement…" The Agent is pointed to EIA §51(b) ['Information']: "**if** information **is** provided, take it into account in determining the Claim." *(re. "documents relating to Misconduct claim" from the Claimant.)*

42. It is an Error in Law to claim that EIA **§29(c)**(**xi**/vii/ix) – sections in the *Home Statute* – are *ultra vires*. This meets the Grounds of Review requirement at FCA §18.1(4)(c).

43. The SST TMs "acted in a way that was Contrary to Law" by refusing to Fact-Find for Just Cause. This meets FCA §18.1(4)(f).

44. Lastly, by definition, choosing *this* Decision pathway for COVID-19 'Mandate Misconduct' *('C19-MM')* cases – when EI ADMs *regularly* conducted *Just Cause* Fact-Finding in Misconduct cases [46] *(before 2020)* ***and*** examined Employment Contracts [47] – this violates *both* Jurisdiction & Fairness principles. This meets FCA §18.1(4)(a/b).

45. Any *one* of these errors is sufficient grounds to find their Decision **Unreasonable** *(per Vavilov)*. But with all four? **There is no choice…**

*"If the Claimant has a legitimate expectation that a certain procedure will be followed, this procedure will be **required** by the **Duty of Fairness**." (Baker [¶26], cf. Qi & Bendahmane)*

Decision

46. We respectfully ask this Court to Quash TM Lafontaine's Decision on the Grounds that **Legislative Intent** *(the Governing Statutory Scheme* and *Principles of Statutory Interpretation)* make his Decision **Unreasonable**.

The EI Act requires ADMs to Fact-Find for Just Cause. Based on EIA §29(c)(xi/vii/ix), I have Just Cause for my *'Leave from Employment'*, therefore I qualify for EI Benefits: *(1)* My Employer 'acted contrary to law' *(CLC §81.1)*, *(2) unilaterally* made 'Significant Changes' that breached our CBA, [while] *(3)* I *always* complied with our CBA.

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[46] In the six years prior to the pandemic *(2014-01 to 2019-12)*, the SST Adjudicated **449 Misconduct** Cases & **Granted 174** based on 'Just Cause'. *(174/449=**38.8%**)* *(URL=Query)*
[47] In the six years prior to the pandemic *(2014-01 to 2019-12)*, **365 SST-EI Decisions** contain discussion about the contents of Employment Contracts & CBAs. *(per the Digest Principles §21)*

D. Post-Script: EIA Statutory Amendments

"The Legislature does *not* speak in vain." *(Carrières [¶28])*

47. Successive iterations of the Just Cause clause: *(None => Voluntary Only => **Any** Leave)*

[1990] Bill C-21 *(PC)* | [1993] Bill C-113 *(PC)* | [1996]: Bill C-12 *(LPC)*

(Bill C-21): "§28 of the said Act is amended by adding thereto the following subsection:

§28(4) For the purposes of this section '**Just Cause**' for ***voluntarily leaving*** an employment **exists** where, having regard to all the circumstances, including any of the circumstances mentioned in paragraphs **(a)** to **(e)**, the Claimant had *no reasonable alternative* to ***immediately* leaving** the employment:

(a) sexual or other harassment:
(b) obligation to accompany a spouse or dependent child to another residence;
(c) discrimination on a prohibited ground of discrimination within the meaning of the Canadian Human Rights Act,
(d) working conditions that constitute a danger to health or safety: and
(e) obligation to care for a child."

(Bill C-113): §28(4) of the said Act is repealed and the following substituted therefor:

§28(4) For the purposes of this section, '**Just Cause**' for ***voluntarily leaving*** an employment **exists** where, having regard to all the circumstances, including any of the following circumstances, the Claimant had *no reasonable alternative* to ***leaving*** the employment:

(a) sexual or other harassment;
(b) obligation to accompany a spouse or dependent child to another residence;
(c) discrimination on a prohibited ground of discrimination within the meaning of the Canadian Human Rights Act;
(d) working conditions that constitute a danger to health or safety;
(e) obligation to care for a child or a member of the immediate family;
(f) reasonable assurance of another employment in the immediate future;
(g) **significant modification** of terms and conditions respecting wages or salary:
(h) excessive overtime work or refusal to pay for overtime work;
(i) **significant changes** in work duties;
(f) antagonistic relations between an employee and a supervisor for which the employee is not primarily responsible;
(k) **practices of an employer that are contrary to law**;
(l) discrimination with regard to employment because of membership in any association, organization or union of workers;
(m) **undue pressure** by an employer on employees to leave their employment; and
(n) such other reasonable circumstances as are prescribed."

(**Bill C-12**): "**§29**. For the purposes of **§30** to **§33**: *(Disqualification & Disentitlement)*

§29(c) **Just Cause** for **voluntarily leaving** an employment ***or taking leave*** from an employment **exists if** the Claimant had *no reasonable alternative* to **leaving *or taking leave***, having regard to all the circumstances, including any of the following:

{exact same list of 14 Reasons: now identified by roman numerals instead of letters}

(**EI Act**): "**§29**. For the purposes of **§30** to **§33**: *(Disqualification & Disentitlement)*

§29(c) **Just Cause** for **voluntarily leaving** an employment **or *taking leave*** from an employment **exists if** the Claimant had *no reasonable alternative* to **leaving *or taking leave***, having regard to all the circumstances, including any of the following:

(ii) obligation to accompany a spouse, common-law partner or dependent child to another residence.

*(Only one change since EIA, 1996: **(ii)** addition of 'Common Law Partner' [¶57(a)])*"

48. When the '**Just Cause**' clause was originally added to the *Unemployment Insurance Act (Bill C-21)*, it **only** contained **five Reasons**, which ***only*** applied to 'Voluntary Leaving'.[48]

It was a minority-proposal from MP Warren Allmand, then Employment Critic, who spent much of his **31** years in Parliament serving on Labour & Employment Committees. [49, 50]

*([**17** Total Assignments]: **11** Parl. Sessions [with **2** as Committee Chair] – plus **2** Labour-specific Subcommittees* and **4** special *Legislative Committees studying UI Reform.)*

"We are condemning the Conservative government in this motion for its proposal to ***completely deny*** UI benefits to those who quit their jobs supposedly – I emphasize the word ***supposedly*** – ***without*** **Just Cause**. The government would ***completely deny*** UI benefits to those who are **fired** *supposedly **with*** **Just Cause**. [] If workers who have left their jobs can *prove* that they quit the job for Just Causes then they will get their UI benefits. If people who are **fired** can prove that they were **fired *without* Just Cause**, for frivolous reasons, then they would get UI benefits as well. What is the problem? The problem is that workers who leave their jobs or who are **fired** are *presumed* to be guilty. They are presumed to have quit *without* Just Cause or to have been fired fairly. **Workers** then have the Burden of Proof. [] They *have* Just Cause but they are *presumed* to be *guilty* as soon as they leave the job. [] Because it is in a grey area and difficult to prove, to *completely deny* UI benefits to those who have paid contributions for years and years is unfair, harsh and unacceptable. There have always been penalties. I want to make clear that we believe in a *reasonable* penalty. [] To completely *deny* benefits to people who have paid premiums is harsh and unacceptable, **especially if** it is *not* easy to prove and it

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[48] ('Bill-C21') "'Just Cause' for Voluntarily Leaving" Clause [¶21] *(UIA §28[4] [p.16])*

[49] ('About') Warren Allmand *(MP-LPC)*: Critic, Ministry of Employment *(ParlInfo Bio / Wikipedia)*

[50] Labour/UI Committee Activity: [Parl: Sess] **27:** 1+2, **28:** 1+2, **32:** 1+2 *(both as Chair)*, **33:** 1+2, **34:** 2+3 *(+Sub.)*, **35: 2** *(EI Act)*; **Legislation:** [33:1] **C-62**: Employment Equity, [33:2] **C-16**: UI Act, [34:2] **C-21**: UI Act, [34:3] **C-113**: UI Act

is *not* clear-cut *both* **on the firing side** *and* on the quitting side. [] Most people do not do absolutely ridiculous things which will have them Fired for Cause, for reason of misbehaviour. **I described the process in the law.** It came about as a result of an amendment from *this* side of the House, ***because*** **I was the critic at the time**. When the penalty was increased from seven to, twelve weeks, we asked the government to at least put in a definition of Just Cause and it did. It put in certain things. It was not entirely what we wanted, but at least it was a step in the right direction." [51]

49. In this House Speech, MP Allmand – who was *personally* responsible for ***both*** the **Just Cause & Benefit of Doubt** amendments – provides two clear statements of his **Intent**:

- **a. Just Cause:** Fact-Finding was Intended to apply in *every* situation. EI Claimants *would* **qualify** for Benefits, regardless of whether they Left, Quit, or were 'Fired' – as long as they met one of the statutorily-defined Just Cause conditions.

- **b. Benefit of the Doubt:** It was important that Claimants were **not** Denied Benefits in "grey areas [or] difficult to prove" situations – on "both on the **firing side** and on the quitting side." Fact-Finding was crucial in *every* separation scenario…

50. When these **five Reasons** were expanded to the current **fourteen** *(Bill C-113)*, it *still* continued to ***only*** apply to 'Voluntary Leaving' – however, this situation was directly addressed in Committee during the 'Clause-by-Clause' Debate, **by its authors**. [52, 53]

Also of important note is that *both* the expanded *Just Cause Reasons* & proposed *Benefit of Doubt* amendments were brought before Committee *just* **five weeks** after this speech.

The debate and subsequent votes on *both* **Clause 18: 'Just Cause'** *and* **Clause 20: 'Disqualification'** *each* had **two** important dialogues. *(Three are directly relevant here.)*

- **a. Just Cause: Dialogue #1: Various Definitions of 'Just Cause'** [54]

  MP Allmand asked about the possible limitations of this 'categorised' list, and whether it eliminated *other* situations later deemed 'Just' by EI Investigators.

[51] ('House-C105') House Debate on C-105, [MP] Warren Allmand [LPC]. *(**B:** p.543-45 [p.15370f])*
[52] ('House-C113') House Committee on Bill C-113: Clause-by-Clause Debate *(1993-03-16)*
Clause 18: Just Cause *(**B:** p.629f [9:36f])*; Clause 20: Disqualification *(**B:** p.635f [9:42f])*
[53] Witnesses: Employment Dept: **3x** *(**B** p.645 [9:52])*; Martin Low [QC], Senior General Counsel; Nick Mulder, Deputy Minister; Gordon McFee, Director of Policy & Legislation Development
[54] ('House-C113') EI Staff possess 'general authority' to **find** other 'Just Cause'. *(p.629f [9:36f])*

Martin Low *(Senior General Counsel with the Dept. of Employment)* clarified that it did **not**. He listed **three** *different* ways to identify Just Cause per *this* Bill:

i. **Option #2:** The 14 Reasons explicitly listed in this statutory amendment.

ii. **Option #3:** The Governor-in-Council could expand this list via Regulation.

iii. **Option #1:** The *discretionary* 'general authority' granted to EI Investigators to identify *any other situation* they deemed 'Just' given the Case specifics.

(How is this possible unless Fact-Finding is conducted in every situation?)

[Martin Low]: "But I can describe the way proposed §28(4) will work. There are really ***three*** areas of Just Cause: '*For the purposes of this section,*

> '**Just Cause**' … **exists where**, having regard to all the circumstances … the Claimant had no reasonable alternative to Leaving the employment.

That's in the opening words of the clause. That's number one. And that is a **general authority** to people to make determinations that Just Cause exists in the circumstances. [] That's a description of the **policy**…"

(i) Paragraphs (a) to (m) cover specific grounds that are known. ***(ii)*** Paragraph (n) permits the Governor-in-Council to describe *any other situation* that is equivalent in seriousness to the ones that are listed, **&** ***(iii)*** there is the *general authority* to determine Just Cause in the opening part of the paragraph."

(This discretionary 'general authority' ***cannot narrow*** *the* ***enumerated list*** *of definitions as that would violate the principles of statutory interpretation.)*

b. Just Cause: Dialogue #2: Definition of 'Voluntary' [55]

MP Cyril 'Cid' Samson [56] questioned the definition & necessity of the word 'voluntary' several different times. During the Clause-by-Clause, he asked about its applicability to one of his constituents, a bank manager who experienced 'constructive dismissal' because she refused to "dismiss a visible minority."

Gordon McFee *(Director of UI Policy, Legislation & Development)* said that *Just Cause* would ***not*** apply, since her departure was ***not*** 'voluntary', but that her 'involuntary quit' was *already* covered by UI due to the 'constructive dismissal'.

[MP Samson]: "Is it absolutely essential to have the word 'voluntarily'? If we were to remove [it], would it take away from the bill? I will give you this scenario: *[cited example]* She would *not* fire the visible minority because she

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[55] ('House-C113') Although 'Constructive Dismissal' did qualify for UI, it did not trigger the *Just Cause* clause *then* under review in C-113. This loophole was fixed in Bill C-12. ***(B:*** *p.630 [9:37f])*

[56] ('About') Cyril 'Cid' Samson *(MP-NDP)*: Labour Critic, Bill C-113 *(ParlInfo Bio / Wikipedia)*

would be known and seen as a bigot or a racist. She was put in a situation where she was forced to resign. Did she **'voluntarily' leave** her employment? [] Could we not just say '**for leaving** an employment' [and] omit the word 'voluntarily'?"

[Gordon McFee]: "The [word] 'voluntarily' ***is*** necessary. The UI legislation is *predicated* upon people **involuntarily** losing their employment and receiving short-term income support while they look for another job. So the issue of ***why*** someone has lost his employment is *always* the first issue looked at when a person files for UI. [] In a general sense, if a person resigns under extreme pressure because the person is asked to carry out something that is wrong, or perceived to be wrong, that would **not** be considered to be **voluntary**. That could be considered to be a **constructive dismissal** and/or could be considered to be an involuntary quit. The example you gave explains why the word 'voluntary' is so important, because **if** the quit is **involuntary**, then the Claimant has **no difficulty at all**. **It's *only* if it's *voluntary* that the issue of Just Cause even arises**."

(Both MPs Samson & Allmand asked questions about this potential interpretive gap throughout these Hearings. The next time this clause was amended, Allmand was in the majority, and Samson's suggested change was added to the statute.

That said, even without *the Just Cause clause, the legislative authors confirmed that 'constructive dismissal'* already **qualifies** *for EI.* ***That applies to me*****…)**

c. Disqualification: Dialogue #3: Public Outcry & EI Staff Safety [57]

[MP Allmand]: "[This clause] removes the 7-week to 12-week penalty for those who **quit *without* Just Cause** and replaces it with a **total exclusion**. This is the *worst part* of this whole bill [] that has attracted a lot of fire all over the country. [] One massive inflexible penalty for all people [] is Draconian, excessive & unnecessary. [] **Our caucus totally opposes Clause 20.**" [58]

("The depth of this ***outrage****" is important context. It explains* ***why*** *Just Cause was so important to MPs. The public push-back against this specific amendment – that completely Denied UI – was mentioned [at least]* ***six*** *times in Parliament. It provoked large protests, coordinated MP sit-ins & multiple arrests in various ridings across the country. One Parliamentary Secretary felt so much pressure that he publicly threatened Canadians to stay away from his home & family.)* [59,60]

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[57] ('House-C113') Questions about EI Staff Safety considering public response. *(**B** p.635f [9:42f])*
[58] This subject is addressed above [¶35(k-l)] & throughout Committee Testimony for Bill C-113.
[59] Public outrage mentioned **6+** times in two months: 1:5:62, 1:5A:42, 1:7:12, 1:7:18, 1:9:43
[60] ('House-C105') MP Vincent Della Noce, Parliamentary Secretary *(**B:** p.549-50 [p.15376f])*

d. Disqualification: Dialogue #4: Definition of [re]Qualifying Hours [61]

This most contentious clause also created some interpretive confusion, as it created multiple pathways to determining UI Eligibility, based on the situation – and created *conditional requalification* – based on the [type of] separation clause.

(Which work hours would count towards Claim [re]Qualification would depend on which clause governed their separation: §28(1) *[Voluntary Leave without Just Cause + Misconduct Dismissal]* OR §28(4) *[Voluntary Leave with Just Cause]. Note that Just Cause is referenced in* both *subsections: it determines the branch.)*

(This too was fixed in the subsequent EI Act two years later, as described below.)

[**C-113: Clause 20**]: "**20.** The said Act is further amended by adding thereto, immediately after §30 thereof, the following section:

§30.1 (1) Where a Claimant is Disqualified under §28 from receiving Benefit, the Disqualification is for each week in the Claimant's Benefit period for which Benefit would otherwise be payable following the Claimant's waiting period.

(4) Where a Claimant who is Disqualified as described in subsection (1) makes an *initial* Claim for Benefit, *no week* of insurable employment *before* the *week in which the event giving rise to the Disqualification* occurs & no week of insurable employment in *any* employment that the Claimant **loses or leaves**, *after that event*, as described in §28(1), may be used for the purposes of §6(2) or (3)." [62]

[Gordon McFee]: "You're talking about §(4) of what will be §30.1, in Clause 20. I want to make sure I have the right thing. What that proposed subsection means is that no week of insurable employment or no week of work that a Claimant had *before* the Claimant voluntarily quit ***without*** Just Cause can be used for the purposes – it says here – of §6(2) and §6(3) of the Act. That means to Requalify for Benefits [] subsequent to having voluntarily quit ***without*** Just Cause. [] *If other* employment could be used to requalify, there would be many cases where the Claimant wouldn't have a penalty at all. If a Claimant, for example, had two jobs [] If he had a 15-week job, and then another 15-week job, and *voluntarily quit* the 15-week job *without* Just Cause, if that proposed subsection wasn't there the person would immediately qualify for UI."

[MP Samson]: "I wanted to ask the officials for some clarification on the word *'**loses**'*. Once a person is *disqualified*, none of the insurable weeks of employment prior to the event can be used to requalify at a later Claim. If a person then secures employment, works a number of weeks & is disqualified again – which is another

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[61] ('House-C113') Only hours worked at employment which ended with Just Cause could count towards Requalifying for Benefits in future Claims; everything else was lost. *(B: p.637f [9:44f])*

[62] ('Bill-C113') Clause 20: Disqualification & Requalification Hours *(UIA §30.1 [p.9-10])*

event – those weeks are also not counted towards insurable weeks of employment. **I have difficulty with the wording.** The proposed subsection talks about employment that the Claimant **loses**. It is open to interpretation that even a lay-off at that point could result in those weeks being disqualified, because we're talking *employment that is 'lost'*. We don't specifically say in here what you implied a few minutes ago."

[Gordon McFee]: "Perhaps I could clarify that. If you'll take a close look at that proposed subsection, it talks about *that* event – that's the '**losing *or* leaving**' – as described in **§28(1)** [which] talks about a person *'voluntarily leaving his employment* without *Just Cause, **or** being Dismissed for Misconduct'*. That's **§28(1)** of the UI Act, **which I don't believe is in this bill**. If that reference wasn't there, your point would be accurate. It would be correct. But the reference is there and therefore it has to refer back to that subsection."

(Just Cause fact-finding was **required** in every ***voluntary*** separation – it determined which [re]qualification branch to follow. Meanwhile, 'constructive dismissals' & other 'quits' were *automatically* considered for Benefits – Just Cause was ***not*** relevant to the consideration in every ***involuntary*** separation. The *only* change to this clear **legislative intent** was to extend Just Cause *Interpretation* [analysis] to ***both*** 'leaving *and* taking leave' – as MP Samson suggested.)

51. These controversial amendments were added to the *omnibus supply bill* 'on Division' along Party lines. Being a *confidence vote*, Bill C-113 was passed in Parliament shortly after, thereby cementing these 'fiscal measures' that were '***not*** UI Reform' into law. [63,64,65]

(The *now-defunct* PC Party added the two amendments raised by MP Allmand *[expanded Just Cause & Benefit of the Doubt]* between Bills C-105 & C-113 *[in 1993-03]* – to 'calm the storm'. However, their *sledgehammer* 'creative use' of Parliamentary Procedure ensured that the *most controversial* structural change to the UI Program in decades passed *without* substantive House Debate. Bernard Valcourt, *then* Employment Minister, simply *reframed reality* in terms of the process itself, by saying that *obvious* UI Reform, was ***not*** – it was a 'fiscal measure' by virtue of existing inside omnibus *supply legislation* which was guaranteed to pass. *[PC MPs were either voting* for the Bill *or an election.]* This

[63] ('House-C113') Amendment Passage: Clause 18 *(**B:** p.635 [9:42f])*; Clause 20 *(p.638 [9:45])*
[64] cf. ¶35(k) & FN-39: Bernard Valcourt, Minister of Employment, Clause-by-Clause Debate.
[65] For a Bill **not** about UI Reform, it is telling that almost every witness testified about UI Reform. The significant majority of its 9 Issues + 700 pages concerned the few clauses re. UI Changes.

mirrors the way in which they 'used' the Constitution to enact GST in the Senate. Their *creative* legislative changes ultimately led to the Party's *downfall* mere months later…

"Most notably, the election marked the worst defeat for a governing party at the federal level & the worst ever suffered by a governing party in the Western democratic world.")[66]

52. [To Summarise]: **Bill C-21:** In order to justify **defunding UI**, they needed to enact substantial Penalties for work separations deemed to be *without* Just Cause – which required codifying it *in that* legislation. *(MP Allmand: the LPC Labour Critic's request.)*

Bill C-105: After 2.5 years without government funding, UI was 'on life support' *($1.7B+)*. Radical reform was required to save it, so the government proposed *completely denying* Claimants *without* Just Cause *(instead of Penalty Weeks)*. This caused 'outrage' across the country – which prevented its last-minute implementation – and provoked another House speech by MP Allmand. *(The PCs listened & added two amendments…)*

Bill C-113: Five weeks later, the failed UI Reform from C-105 was back in C-113 – this time *with* Allmand's request: ① expanded 'Just Cause' *(from 5x to 14 Categories covering all 40 Reasons found in EI Jurisprudence)* **and** ② codified Benefit of the Doubt *(which* guaranteed *Claimants would still qualify for UI in unclear or questionable situations)*.

However, the statute's construction was ambiguous, [67] and Just Cause *only* applied to Voluntary Leaving, rather than *all* employment separations. This was called-out by two different MPs several times each – with real-world examples of applicable situations.

The legislative authors acknowledged these circumstances but stated that it didn't matter as Just Cause was ***not*** needed to qualify for EI given those specifics: "the Claimant has *no difficulty* at all. It's *only* if it's *voluntary* that the issue of Just Cause even arises."

Bill C-12: The 'hardball' austerity measures *imposed* by the majority government *(PC)* led to its complete collapse several months later & a *different* majority government *(LPC)*.

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66 Wikipedia: '1993 Canadian Federal Election' *(Lede: ¶1)*; 'PC Party of Canada' *(Lede: ¶3)*; The PCs 'lost party status' in that [1993] fall election and later completely dissolved in 2003.

67 ('House-C113') For one example, the Canada Labour Congress addressed this in their written submission *(V1:I5A:40)* to the Legislative Committee investigating Bill C-113. *(at: 5A:50-55)*

MP Allmand was *again* on the Parliamentary Committee studying EI Reform [68] – this time as government – & the amendments previously requested [but rejected] *were* made.

53. Just Cause was moved into the *Interpretation* section *(§29)* governing *Disqualification & Disentitlement (§30-§33)* and now applied to ***both*** "voluntary leaving ***or*** **taking leave**." This change directly addressed the many concerns raised before the C-113 Legislative Committee – which included MPs from *both* minority Parties at the time *(LPC & NDP)* – including the *exact wording* suggested by MP Samson during the Clause-by-Clause…

This is *proof* of **Legislative Intent** – along with specific Case Studies from witnesses.

How else can this change in language be interpreted? Specific real-life examples were identified in Committee – along with the precise wording needed to address the problem. And as soon as government changed, the **same** [then-minority] **MP** – now empowered to change the statute – amended the law using the exact same language recorded the last time around. A change that was inserted into the *new* Interpretation section of *that* Part.

54. (**NB:** There are ***only*** **two ways** to interpret this change in verbiage: *in* **length** or *by* **cause** – and *either way*, the practical application to these C19-MM Cases is the **same**…

> **EIA §29(c)**: "**Just Cause** for **voluntarily leaving** an employment **or** ***taking leave*** from an employment **exists if** the Claimant had *no reasonable alternative* to **leaving *or taking leave***, having regard to all the circumstances, including:"

Length: 'Voluntarily Leaving' indicates permanent separation, while 'taking [a] leave' refers to temporary separation – an *approved* Leave of Absence with intended return.

Cause: '[Voluntarily] Leaving' indicates volitional separation, while 'taking leave [of]' refers to involuntary separation – leaving under 'constructive dismissal' or *other* 'quits' – ***leave*** **not** deemed Dismissal, yet **no** *reasonable alternative* to stay working was viable.

Both of these situations were discussed multiple times – *both* in the Motion Debate for Bill C-105 *and* in Legislative Committee for Bill C-113. Both options were raised as legitimate situational issues by MPs *and* Witnesses – and recorded in relevant Hansards – and *both* are resolved by the 'taking leave' amendment in Bill C-12.

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[68] Unfortunately, the Committee Hansards from the 35th Parliament are **not** available online.

Regardless of which interpretation is chosen, they **both** apply to my specific situation:

['Length']; I was on a **temporary**, '**Approved** Leave of Absence' that would end whenever the policy was changed [read: mandate ended] and I returned to work ***[OR]***

['Cause']: the 'Leave' *(legally deemed a **'Lock-Out'** under the CLC [§3(1) & §88.1])* was non-consensual: I was 'taking [my] leave' as opposed to 'voluntarily leaving' – and *controlling* jurisprudence legally deemed my situation 'constructive dismissal'.) [69, 70]

55. The *consistent* testimony from those involved was that Just Cause was a **determining factor** in EI Eligibility – first for *voluntary* separations – and then for **both** *(voluntary + forced)*. Numerous MPs & legislative authors confirmed that *both* Just Cause fact-finding & Benefit of Doubt analysis applied *across the board*, **including firings & Misconduct**.[71]

56. Deference to ADMs is based on respect for Parliamentary Authority. Deference should be granted [or forfeit] to the degree that Legislative Intent is honoured [or abandoned].

57. There have only been *two* substantive amendments to the 'Just Cause' & Entitlement provisions of the EI Act *(originally from Bills C-21 [1990] & C-113 [1993])* since they were imported into the present statute *(Bill C-12: SC 1996, c.23)*. [72]

- **a.** In 2000, the 'Modernization of Benefits & Obligations Act' *(§§106-109)* added 'Common Law Partner' [& 'Unions'] to the Definitions, which *"Extends benefits and obligations of husbands and wives provided by a number of acts to all couples who have been cohabiting in a conjugal relationship for at least one year."* [73] This also included amending *Just Cause* Fact-Finding re. *'Family Obligations'*.

[69] ['Affidavit'] of (EI Claimant), **¶28-29**: (**A:** p.17-19 [11-0724]); *(cf. 'Cabiakman' [**¶61f**, ¶72])*
[70] The legislative **authors** confirmed 'Constructive Dismissal' **qualified** for EI. *(¶50b, FN:54-55)*
[71] See authoritative quotes from Parliamentary Hansards at: 'C: Rizzo Analysis' *(¶35-39)*
[72] The Full Text of Bill C-12 is Archived *(PDF Only)* at LegisInfo *(from Parl.ca)*. *(PDF: p.45-49)*
[73] Full Text of Bill C-23 *(SC 2000, c.12)* from LegisInfo *(at Parl.ca)*. Summaries and metadata obtained from Publications Canada & the UN-ILO *(International Labour Organisation)* NATLEX Database *(UN: National Labour, Social Security & Related Human Rights Legislation)*.
[PubCanada] Doc: YX3-2000/12: https://publications.gc.ca/site/fra/9.534276/publication.html
[ILO]: CAN-2000-L-58148: https://natlex.ilo.org/dyn/natlex2/r/natlex/fe/details?p3_isn=58148

b. In 2021, the 'Budget Implementation Act, 2021, No. 1' *(SC 2021, c.23)* amended several statutes to account for the 'COVID-19 Response Measures Act' *(SC 2020, c.12)*, which created the CERB Program *('Canada Recovery Benefits Act')*. [74]

The BIA 2021 #1 *(Div. #35)* *(§315-16)* specifically amended the relevant EI Act sections *(§29-34: Disqualification & Disentitlement)* by changing the ***application*** of 'Employment', 'Disentitlement' & 'Misconduct' to ***only*** include the *most recent* Employment – as opposed to *any* employment within the Benefits Period – to match CRB Requirements which *only* applied to Claimants' primary, most-recent Employment. *(Preventing extra/frivolous CRB applications for secondary, alternate & historical work separations* not *directly affected by the pandemic.)* It also changed the number of hours required to re-qualify after Disqualification.

The EI Monitoring & Assessment Report *(Annex #7)* lists and explains all the Legislative Changes to covered Acts. It states that the changes listed above were to *"simplif[y] treatment of reasons for separations"* and *"Ensure the EI system remains responsive to the needs of Canadian workers."* Both of these statements coincide with the statutory changes listed above. ***Neither* justify changing** the *historical, statutory practice* of Fact-Finding for Just Cause re. EIA 29(c).

58. CanLII's Black-Line highlights all the specific wording changes between versions of any statute. Using this tool to examine changes to the EI Act proves that the Legislative Intent re. Just Cause & Fact-Finding **did not change** – either during the pandemic or before it.

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[74] Budget Implementation Act, 2021, No. 1 *(SC 2021, c.23)* at *(§315-16)* *['Division #5: Benefits & Leave Related to Employment]* **only** changed relevant 'Employment' Definitions. It did **not** change *any* of the Rules re. Fact-Finding for Just Cause *(or related Entitlement & Eligibility Rules)*.

Problem #2: Rule of Law, Jurisdiction & Logic

E. Tribunal Precedent: *(2023 SST 1032: CEIC v. AL)*

59. There is a ***key*** Tribunal Decision which was cited in my Case which is relevant here, with a foundational argument ***(error)*** that SST TMs frequently make when citing Jurisdiction:

"It is one thing to ask whether an *express* or *implied duty* exists. It is another to ask whether the duty was *validly imposed*. The second question *falls outside of EI Law*." [75]

This 'Reason' first occurred in an *unprecedented [en banc]* SST Decision, overturning 'AL v. CEIC' *(2022 SST 1428)*. The original [GD] Decision found that the EI Claimant was eligible for EI Benefits because *"the Commission hasn't proven that there was a Breach of either an Expressed or Implied Duty for the Claimant to get Vaccinated arising out of her Employment Contract despite the Employer's Covid-19 Vaccination Policy."* [76]

I will include some relevant sections from this Decision for further analysis:

A. "I find that the Employer *unilaterally* imposed a *new* Condition of Employment upon the Claimant *without* her Agreement *nor* the Agreement of her Bargaining Agent." *('AL-1889' [¶50])*

B. "It is *both* well founded *and* long recognized in Canadian Common Law that an individual has the Right to Control what happens to their Bodies." *(¶75)*

(cf. 'CBoR' §1(a), 'Charter' §7, 'Hopp')

C. "Indeed, I could Not find a *single case* where a Claimant did something for which a specific Right, *Supported in Law*, exists & subsequently that Action was *still* found to be Misconduct simply because it was *deemed Willful*." *(¶79)*

D. "Further, the Claimant had a Right *both* expressed in Canadian Case Law *and* detailed in Article 19.02 of her CBA to Refuse Vaccination. Given those *expressed Rights*, I Find that the Claimant Decision ***not*** to be Vaccinated, *despite her Employer's Policy*, is **not** Misconduct under the Act." *(¶84-85)*

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[75] ('CEIC-AL') **CEIC v. AL, 2023 SST 1032** ***(¶20)***, cited in my own case: at **DA-694 [¶37]**
[76] ('AL-1889') **AL v. CEIC, 2022 SST 1428** ***(¶29)***, is probably the most-cited SST-EI Decision.

60. This SST Decision, made in full compliance with relevant Jurisprudence – and in accord with their Home Statute *(EIA)* – became an unwanted Precedent. *(For* some *in our Government this Decision could* not *stand. '2022 SST 1428' has been cited in* ***135+*** *other SST Cases and* ***6+*** *FC[A] Decisions.)* In response, the CEIC Appealed, and the SST-AD held an *unprecedented 'en banc' Hearing* because: *"it saw an* arguable case *that, among other things, the General Division had Exceeded its Powers by Finding that the Policy Breached the Terms of the Collective Agreement."* *('CEIC-AL' [¶6])*

61. I am *not* here to [re]litigate that case, and there is a fundamentally different Fact Pattern underlying our two cases, but inasmuch as this primary argument was also used *dispositively* in my case, I feel it prudent to briefly trace & analyse its legal history.

This Argument: "It is one thing to ask whether an *express* or *implied duty* exists. It is another to ask whether the duty was *validly imposed*. The second question *falls outside of EI Law.*" is **unreasonable** for *many* different reasons. I will briefly summarise several of them here but, ***If*** permitted to stand, this argument would *institutionalise* several different **errors** into EI Jurisprudence forever – *and render Injustice as Precedent*.

a. **Rule of Law:** Implicit in this Argument is a *fatal* Assumption: that the Duty is **Lawful** *('Valid')*. By jumping from *'whether the Duty Exists' to 'whether it's Validly Imposed'*, the SST is tacitly Finding that the Duty Is Lawful *(which in my Case, it clearly wasn't)*. This violates the Rule of Law, because it permits Employers to impose *Unlawful Duties* on Workers *without consequences* – and then later Deny their EI Benefits. Companies *cannot* grant themselves the Right to *Break the Law*, merely by issuing some Policy saying so. **This is Absurd.** *(At what point does the 'Fruit of the Poisonous Tree' doctrine begin to apply?)*

b. **Jurisdiction:** By *explicitly* excluding the question of whether *'the Duty is Validly Imposed'*, they are violating EIA §29(c)(xi), by permitting Employers to **In**validly Impose Duties 'Contrary to Law'. *If* an Employer's Lawbreaking constitutes 'Just Cause' – which can *only* be determined by Fact-Finding for it – then the SST is committing a Jurisdictional Error by *refusing* to test a Duty's Validity.

*(**Q:** What is the definition of 'Valid' in this context? **A:** Something Compliant with the Law* and *the Contract. Therefore, something deemed 'Invalid' is something 'Contrary to the Law' or Contract. By definition, judging whether 'something is Lawful' IS to determine whether that thing is 'Valid'. They are Synonymous.)*

c. **Fairness Principle:** It is a patent violation of the Fairness Principle to hold *Workers* to a legal standard that *Employers* can freely violate. Both Parties signed the Contract. Both Parties pay EI Premiums. Both Parties are subject to applicable Legislation. And yet the SST would legitimise penalising *Workers* for 'Breaking their Contracts' *(i.e. Denying EI Benefits for 'Breach of Duties')*, while simultaneously granting *Employers* the inherent Right to 'Breach that *same* Contract' without Penalty – by Invalidly *Imposing* ***unlawful*** Duties.

d. **Private Law:** Regarding: 'whether the Duty exists'. There are *No* **Reasonable** grounds to divorce corporate Policy from its enabling Employment Contract. In our Cases, our Employers Breached the CBA, while we Workers *legitimately* cited it to Justify our Actions. So to maintain 'Misconduct' Findings, ADMs would have to *exclude* our Contracts from their Decisions. *But How?* Corporate Policy is **only** Binding *because* Contracts establish Management Rights: eliminate the Contract & you remove the *'Duty to Comply'*. It is an Error in Law – and Jurisdiction – to Arbitrarily exclude the CBA from consideration, relying only on Policy compliance *(in a vacuum)*. It is worse yet to refer back to 'Management Rights' *after* ruling the CBA *ultra vires*… On what Grounds‽

(And it is incredible to claim that: (1) Workers can break the Contract [and be penalised for it], (2) workers can violate the Policy [and be penalised], **but** *that (3) Policies cannot 'Breach the Contract', regardless of how contradictory their Terms are & (4) that these same Employers cannot be penalised for their 'questionable' – or outright unlawful – Policies, despite the glaring violations…)*

e. **Logically Incoherent Reasoning:** This Reasoning process – as applied to the 4-Part 'Misconduct Test' found in EI Jurisprudence – contains *multiple* Logical Fallacies: specifically, 'Petitio Principii' and 'Special Pleading'. *(cf. ¶145-57)*

62. There is one more sentence from this SST Decision worth quoting: *"[per Cecchetto]: the [SST]GD has **no authority** to assess whether an employer's policy is… legal."* [77] This is ***not*** what the FC found in Cecchetto: *"The key problem with the Applicant's argument is that he is criticizing decision-makers for failing to deal with a set of questions they are not, by law, permitted to address: […] regarding bodily integrity, consent to medical testing, the safety and efficacy of the COVID-19 vaccines or antigen tests."* @[¶32]

What does this list have to do with examining the ***lawfulness*** of an employers' actions & policies? The EI Act – and its Legislative Intent & History are absolutely clear – EI ADMs ***shall*** **fact-find** for whether *"practices of an employer [] are contrary to law."* [78]

(And investigate Constructive Dismissal: 'significant changes' & 'undue pressure'…)

63. I realise that I am quoting a different case. However, this is necessary, since this 'logic' ***(errors)*** not only underlies my Denial – but also that of *hundreds* of other SST-EI cases. Understanding the inherent legal & logical errors behind these two sentences, exposes the unfair, *un*precedental & legally incorrect EI Denials devastating over 1000 families. They are *both* **core** to my specific Case – and fixing theses errors *reverses* my Outcome…

F. Rule of Law & Jurisdiction

Fundamental Questions ***(7)*****: #3-8** ***(+#2)***

Grounds of Review ***(4)*****: FCA §18.1(4)(a,c,e-f)**

Vavilov Principles ***(3)*****: Decision & Outcome**

- **(a)** Governing Statutory Scheme
- **(d)** Evidence Before Decision Maker
- **(e)** Submissions of the Parties

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[77] ('CEIC-AL') The three SST TMs cite & summarise Cecchetto v. Canada [AG] *(2023 FC 102)* @[¶39-44] before *falsely* concluding that assessing employers' policies is *ultra vires*. **[¶44]**

[78] ('EIA') **Employment Insurance Act** *(SC 1996, c.23)*. **Interpretation: re. 'Just Cause' [§29]**

Facts & Issues

64. Rule of Law: How does this apply to EI Benefits Adjudication Cases?

Jurisdiction: What specific Jurisdiction is Assigned to EI Adjudicators? When & Where was it Assigned? Why? Are there any exceptions?

Legislation

65. Please consider my SST-AD Written Arguments incorporated *(by reference)* into this J.R. Factum *(Memorandum of Fact & Law)* *(AD-23-694)*. To save space, I won't reprint *everything it* contains, but large sections are critically relevant. This specific section incorporates from the Unreasonableness *and* Legislative Supremacy sections. [79]

[SST-AD] **TM Lafontaine** made *many* of the *same **errors*** committed by [SST-GD] **TM Usprich** in my Primary Case *(GE-23-740)*. [80]

66. Both our Constitution *and* our inherited Common Law system of governance are based upon the fundamental principle of the **Rule of Law**.

Every Citizen – regardless of power, position, resources, or lot in life – are subject to these same Laws. This not only applies to *civil life*, but also to *private life*. Not only are [we] *workers* subject to our Laws, but our *employers* are too – along with the various *Government bodies & civil servants* with whom we interact each day.

Our 13th Prime Minister, the Rt. Hon. John G. Diefenbaker clearly understood this principle when he drafted our Canadian Bill of Rights, which he considered to be his chief contribution to Canadians – and his crowning achievement in life. *(Its Preamble contains this prescient warning…)* [81]

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[79] ('DA-694-Args') [2023-11-13] SST-AD Written Arguments: (**B:** p.167-99 [P16]) *(ADN6-2..34)*
Unreasonableness: Written Arguments: (**B:** p.169-70 [P16]) *(ADN6-4..5)*
Legislative Supremacy: Written Arguments: (**B:** p.180 [P16]) *(ADN6-15)*

[80] ('DA-740-Args') [2023-04-23] SST-GD Written Arguments: (**B:** p.106-17 [P11]) *(RGD8-3..14)*

[81] ('CBoR') **Canadian Bill of Rights** *(SC 1960, c.44)* [§Preamble]

"The Canadian Nation is *founded* upon Principles that acknowledge the Supremacy of God, the Dignity & Worth of the Human person, and the Position of the Family in a Society of Free Men & Free Institutions. Affirming also that Men & Institutions *Remain Free only* when Freedom is founded upon Respect for Moral & Spiritual Values *and* the Rule of Law."

(Undermining the Rule of Law is the prerequisite to removing Freedom. For centuries, our Common Law system has been founded upon the legal maxim "A Verbis Legis Non est Recedendum" ***or*** *"From the words of the Law there should be No Departure.")*

67. It is **absurd** to claim that an Employer can codify *flagrant* **breach of *multiple* Laws** *(into corporate policy)* – and then attempt to *justify* that fact with the argument that *"we created a document giving ourselves this right"* – as if merely 'issuing' some 'policy' granted them the *authority* to break the law. *(Yet, that's exactly what happened at 1000s of companies across Canada – and EI ADMs are largely condoning this nonsense…)*

68. Here is a partial listing of *some* of the relevant statutes. Since everything is detailed in previous submissions, I won't repeat everything here in full. This list should suffice. [82]

a. **CLC: Canada Labour Code** *(RSC 1985, c. L-2)* [83]
re: 'Lock-Outs' ***(§88.1)***, 'Breaching CBAs' *(§166-68)*

b. **CBoR: Canadian Bill of Rights** *(SC 1960, c.44)*
re: Mandates: Personal Security *(§1[a])*
re: Mandates: Equal Protection *(§1[b])*
Jurisdiction: 'Under Parliament' *(§5[2-3])*
Examination: re: Rights *(§3[1])*

c. **CC: Criminal Code** *(RSC 1985, c. C-46)*
re: Falsifying Employment Records ***(§398)***

d. *(Multiple Provincial Health Statutes)*
(Indirectly: By Proxy – 'State Action')

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[82] This primarily summarises legal analyses found in **3** different filings. *(RGD8, ADN6, Affidavit)*
['CLC'] **Canada Labour Code** Args: *([Affidavit]: ¶8-10,14-16,23,28-29,43,49 [ADN6-31..34])*
['CBoR'] **Canadian Bill of Rights** Arguments: *([DA-740-Args]:[#2])* ***B:*** *p.109-12 [RGD8-6..9])*
['CC'] **Criminal Code** Arguments: *([Affidavit]: ¶8-10,24-34,49,75)*
['Other'] Various Legal Args: *(**B:** p.191-99 [Appendix B: Policy Unlawfulness], [ADN6-26..34])*
(Complete Version: @[Respondent's Affidavit], Vol.1, #11b; p.215..23 [ADN6-26..34])

[83] I examine the CLC 'Lock-Out' issue below. *(Purolator 'acting contrary to law': ¶81, ¶111-15)*

HPPA: [ON] Health Protection & Promotion Act
HCCA: [ON] Health Care Consent Act

e. This also contravened the *spirit* of various Jurisprudence:

1) **Management Rights:** All Corporate Policy must Comply with *both* applicable Legislation *and* the Employment Contract.

***KVP:** 1965 (ON-LA) 1009*
Parry Sound: 2003 SCC 42
Irving: 2013 SCC 34

2) **Constructive Dismissal:** Unilaterally-Imposed Administrative Leaves of Absence *(Non-Disciplinary LOAs)* must be **Paid.** *(to 'Ready' Workers)*

Cabiakman: 2004 SCC 55

3) **Informed Consent:** Must be *explicitly* obtained *before* administering any [permanent] Medical Treatments. Exercise of Authority, Threats, or Coercion Vitiates any Consent.

Hopp: 1980 SCC 14
Ewanchuk: 1999 SCC 711

69. Not only did the Policy *itself* violate multiple Laws, but it coerced middle-Management into doing so too, to enforce its Application. *(Especially personnel in the HR Dept.)*

70. As cited before, our CBA *explicitly* restricted Purolator's Management Rights to operate *within* the confines of the Law & our CBA – four times… [84]

71. Our esteemed Supreme Court concurs. They have *repeatedly* held that Employers *are subject* to the Rule of Law – *both* contractually *(in CBA Negotiation & Arbitration)* and in their exercise of Management Rights *(Development & Enforcement of Policy):*

[84] ('CBA') Collective Agreement: (§3.01, §5.01, §5.05, §22.02) *(**B:** p.281-84 [D01]) (RGD8-75)*

> [¶145] *"…this Court held that the Employer's Management Rights were **limited*** not only *by the Collective Agreement but also by mandatory Legislative provisions*. (¶146) [] *…CBAs* may *give the Employer a broad right to manage the operations of the business. However, that power is **limited** by the Employees' Statutory Rights even where the CBA is silent on the subject. […] The absence of an express provision that* prohibits *the violation of a particular Statutory Right is* insufficient *to conclude that a violation of that Right does **not** constitute a violation of the Collective Agreement. […] A CBA **cannot** be used to reserve the right of an Employer to manage operations and direct the work force **otherwise** than **in accordance** with its **Employees' Statutory Rights**…"* [85]

Argumentation

72. No matter which system is considered: Statutory Law, Common Law, or Private Law *(our CBA)*, the Rule of Law stands. Employers cannot break the law – nor coerce their workers to do so. Whenever they do [anyways], workers have *Just Cause* for leaving that employment – regardless of who initiates the separation. *(EIA §29(c): 'Just Cause' for 'voluntarily leaving'* **or** *'taking leave' exists whenever* Employers *act 'contrary to law'.)*

How is it **reasonable** for an Employer to violate any one – or all three – of these Legal Systems, but when employment subsequently ends because of that fact, it is the [unjustly unemployed] worker who 'pays the price' by being Denied their EI Claim?

The Rule of Law demands that *everyone* be subject to the Law – and when it is violated, Justice be dispensed appropriately. In this [EI] context, that means identifying the reasons *why* employment ended – by fact-finding for the *precipitating factor[s]* underlying the employment separations. And when the Claimant has a statutorily-enumerated ground of *Just Cause* – they are ***not*** Disqualified or Disentitled from receiving EI Benefits.

73. Unfortunately, the COVID-19 Pandemic caused fear-driven, impaired judgement. Decisions were made apart from sound rationale *and* the Rule of Law. To better explain the principle, I offer two hypothetical situations that use the same underlying fact pattern, to help highlight the problem. [86]

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[85] **2006 SCC 2: Isidore Garon v. Tremblay; Fillion v. SNEGQ** *('Garon & Fillion' [¶145-46])*
Citing: **2003 SCC 42: Parry Sound DSSAB v. OPSEU #324** *('Parry Sound' [¶24-30])*
Citing: **1995 SCC 108: Weber v. Ontario Hydro** *('Weber" [¶53-58])*

[86] ['Affidavit'] Affidavit of (EI Claimant), **¶69-74**: Logical Fallacies (**A:** p.38-40)

Situation: a busy multisite manufacturer begins losing key contracts which eventually impacts their share price. After six straight quarters of decline, the Board hires an Analyst who makes the following discoveries:

The factories suffer from significant Productivity problems, much of which is due to 'company culture' or 'continuously declining morale'… *[So]:*

a. To 'promote productivity', management implements a *new* corporate policy **mandating** that All Employees *must* *"work 24-hour-straight shifts, with **no** breaks."* *(This clearly violates provincial labour laws.)* Then, any employees who 'refuse to comply' with this 'important policy' are 'Terminated With Cause' for 'Willful Misconduct'.

b. To 'improve workplace morale', a depraved executive issues a *new* policy **mandating** that All Employees *must* *"provide sexual services for their supervisor on a weekly basis."* Any 'non-compliant workers' will have their *"shifts cancelled the following week" (will be placed on Unpaid Leaves of Absence)* for every week they *"choose not to participate as 'team-players'." (This is ongoing Extortion – and it violates Workplace Safety & Harassment/Violence legislation.)* Likewise, any Workers deemed *persistently* 'non-compliant' with this [ludicrous] proposition, will be 'Fired For Cause' for 'Insubordination'.

74. Claim: That all these 'Non-Compliant' [Unemployed] Workers *should* be **Denied** EI Benefits *because* they are 'Guilty of Misconduct'. *(i.e. They ① willfully ② chose to ignore ③ a clear policy ④ knowing the consequences. The fact that these policies violated Statutory Rights, Binding Legislation & the Criminal Code is supposedly 'Not Relevant' to the Decision-making process – because 'Misconduct'…)*

Absurdity: Denying EI Claimants *after trying* to **justify** their **Employer's lawbreaking** with *"they gave themselves the right to do so in policy"* excuses – ***and*** *"because they alleged Misconduct, we* cannot investigate *whether they broke the law or not…"*

75. What does EIA §29(c)(xi) mean? That: "Just Cause *exists when* an Employer's practices are Contrary to Law." How can this be **Reasonably** interpreted to mean anything ***but*** *"EI holds Jurisdiction to adjudicate the Lawfulness of an Employer's actions in employment*

separations?" Ergo, both Legally & Logically, it is Absurd to claim *ultra vires* Jurisdiction to avoid Fact-Finding for Just Cause *when there are allegations of Employer Lawbreaking* involved in the Case. The EI Act requires this Finding…

76. Parliament *explicitly* assigned EI Adjudicators *(CEIC & SST)* Jurisdiction to Investigate 'Just Cause', based on existing Labour Jurisprudence. They are **mandated** – by Law *(via the EI Act §29[c])* – to Investigate the **40 Just Cause Reasons** established within Employment & Arbitration Law.

What changed? If today's Adjudicators are to be believed, they *"do Not have Jurisdiction to investigate whether an Employer broke the law."* *When, Where & How did that Authority Change?* [87] *(The Statute did **not** Change.)* [88]

The **Legislative Intent** *(per multiple Ministers & Directors of UI Policy)* memorialised inside Parliamentary Committee Hansards is *both* **unmistakable** *and* **unambiguous**: Parliament **Intends** that EI ADMs Fact-Find for Just Cause. *They* have *Jurisdiction*:

Senate Special Committee on Bill C-21 ***(Parl: 34, Session: 2, Issue: 2, 1989)***

Senator Anne Cools: [89] *(Hearing #2: 1989-05-12, [p.85-140])*:

"…I am wondering **why** the *new* Act is using such provocative language as '**Just Cause**', because my understanding is that this phenomenon of *Just Cause* comes out of the new wave of Labour Law of the last 20 years in which terms such as 'Termination for Just Cause' are used?"

Joe Verbruggen: Director General, Insurance Policy "…Our instructions to the Legal Drafters was to try to reflect *precisely* the present state of Jurisprudence, because we *did not want to introduce* any *new* notions or changes, we just wanted to make sure that the Law would reflect what is in the Jurisprudence. No one believes you when you say, *'Do not worry about it, it's All in Jurisprudence.'* Then people say, *'Where is it?'* Then you have to give them a stack of Jurisprudence that they cannot read. There was a lot of demand to have this reflected in the Legislation. So what the Legislation does is *no more* and *no less* than what is in Jurisprudence…"

Senator Anne Cools: "So the Legislation is choosing to reflect the social dilemma, is that it? Not to solve it, but to reflect it?"

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[87] Deeming Just Cause fact-finding as *ultra vires* in 'Taking Leave' cases is a new phenomenon. What happened in 2020 that caused this vital policy shift *without* corresponding changes in Law?

[88] The Just Cause, Disentitlement & Misconduct section *(§29-34)* of the EI Act only received two amendments in the ~30 years since they were first codified. Neither one changed the Legislative Intent or legally-defined processes. See Problem #1: Post-Script for analysis & legal BlackLine.

[89] ('About') Anne Cools *(Sen-Ind)*: Committee, Unemployment Insurance *(ParlInfo Bio / Wikipedia)*

Joe Verbruggen: "To certainly reflect it, yes." ***(Vol.1, p.120-23)***

***(Continues**: How EI Adjudicators will Use **this** List to Find for Just Cause.)*

House Legislative Committee on Bill C-113 ***(Parl: 34, Session: 3, Issue: 1, 1993)***

(Hearing #1: 1993-03-08, [p.59-74]): **Nick Mulder**, Deputy Minister of Employment: "I have with me *three* of my colleagues in *Employment and Immigration* who are familiar with a lot of the details of the proposed amendments to the Unemployment Insurance Act. Julie Zahoruk-Tanner is the Chief of Unemployment Insurance Policy. **Gordon McFee is the Director of Unemployment Insurance Policy, Legislation & Development.** It is a long title. He is really the Chief Guru on a lot of Legislative Initiatives. He is not responsible for them, he just does all the work. Norine Smith is our Director General of Policy & Program Analysis.

[…] We thought we would allow Mr. McFee first of all to walk you through an explanation of the elements of the Legislation, the Clauses, to give you some background on them and tell you what they're about." *(p.59)*

Gordon McFee, Director, UI Policy & Legislation Development: *(p.62)*

"There are some other important elements in **Bill C-113** and in terms of the way it will be implemented that should be touched on at least briefly. The first is that the Legislation you have before you has *expanded* the definition of '**Just Cause**'. Those of you familiar with the program will remember that up until 1990 *Just Cause* was *not* defined in the Legislation at all. The Guidelines used arose from the Jurisprudence.

In 1990, *five items* were added to the Legislation in **Bill C-21**, which were the *first definitions* of Just Cause. In the current bill that number is now up to around 14 or 15. […] Those **14 Reasons** in fact incorporate a kind of Summary of what is in the Jurisprudence. The Jurisprudence identifies around 40 Reasons […] Actions that can be taken that are considered to be **Just Cause** for ***Quitting*** Employment. Those 40 Reasons, to the extent possible, have been sort of encapsulated into the 13 or 14 Reasons you will find in the Legislation. […]

Another point you might find of Interest is the fact that the *Policy Directives* to be issued by the Commission […] will instruct that the *Benefit of the Doubt* in cases of this kind be given to the Claimant.

Those of you familiar with the Program are aware that in the Fact-Finding exercise, particularly when issues such as *Voluntary Quit*, **Just Cause** & so on are present, the Fact-Finding is somewhat Complicated […] because there are *two sides* to the Story. In those situations it will sometimes arise that the Agent making the Decision does *not* have a clear-cut avenue to follow, given the evidence that the Agent has received from the Claimant & Employer. In those cases where the Fact-Finding leads to an Inconclusive Decision, the Benefit of the Doubt will be given to the Claimant." *(p.62)*

*(Both of these excerpts are **unequivocal**. Both come directly from the **UI Policy Department Heads** in the Ministry of Employment. Both state that EI Adjudicators **shall** Fact-Find for Just Cause when investigating EI Claims. **That means they hold***

Jurisdiction – for All 40 Reasons*… That includes examining whether Employers' Act 'Contrary to Law', Exert 'Undue Pressure', or make 'Significant Changes' to Contracts.)*

77. Parliament *assigned* Jurisdiction precisely *because* EI Adjudicators *need* to Investigate circumstances involving Just Cause, to factor them into their EI Benefits Entitlement Decisions. Justice Expects It. The Act Requires It. And **the Rule of Law demands it**…

78. This expectation is *not* new; it has *long* been understood as a **requirement** for EI ADMs. For ***over* 20 years**, the Federal Court has **held** that [EIA §29(c)(xi)] Analysis includes actions ***both*** "**contrary to law *and*** as well to the Claimant's **union contract**." [90, 91]

[¶98]: "The term *'illegal'* has a *broader meaning* than merely *'contrary to the criminal law'* and can include **contraventions** of employment standards ***and legislation*** *(CUB 16209)*, **collective agreements** *(CUB 51219)*, and licensing board certifications." [92, 93]

79. Parliament *ensured* that SST TMs possess the power they need to fully, honestly weigh each Decision. This has **life-altering consequences** for wrongly unemployed Claimants. The DESDA grants them authority to pursue *every* avenue necessary to achieve Justice. And Just Cause is *the* central question when separations are *not* completely involuntary.

DESDA §64(1) ['Powers of Tribunal']: "The Tribunal may decide ***any* question** of **Law *or* Fact** that is ***necessary*** for the **disposition** of ***any*** Application made or Appeal brought under this Act." [94]

This plenary jurisdiction stands in stark contrast to the claims made by most EI ADMs in C19-MM Cases – including *both* of the TMs adjudicating *my* Decisions under J.R: [95, 96]

"I **cannot** make *any* decisions about whether [you] have other options under other laws."

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[90] (**CUB 51219**) Linda Earl v. CEIC: 'Contrary to Law' means both Legislation & Work Contracts.
[91] ('Umpires') "Umpires are considered the second level of Appeal [over] a Board of Referees… [CUB] Umpires are usually Judges of the Federal Court." *(cf. Jurisprudence Library: 'Umpires')*
[92] (2023 SST 1886) AM v. CEIC: 'Contrary to Law' includes CBAs, Work Standards ***&*** Legislation.
[93] (**CUB 16209**) Steven Becker v. CEIC: 'Legislation' inc. federal statutes & 'business ethics'.
[94] While Tribunals may have 'broad power' to 'interpret their own statute', they do **not** have the power to **refuse** a requirement *explicitly* enumerated in their home statute[s]. When DESDA §64(1) is applied to §58(1) ('Grounds of Appeal'), "decid[ing] **any** necessary question of fact" includes those questions forming the basis of the Appeal under the Home Statute: in this case, the EI Act's 'Just Cause' clause requiring fact-finding into employers acting 'contrary to law'.
[95] ('DA-740') [SST-GD]: TM Usprich refused mandated jurisdiction to **find** whether 'employer acted contrary to law': ¶¶68,74,90,99. Also invoked 'strawman' about granting 'options under other laws': ¶¶28,75,92,99,103. **Fact-Finding** CBA & Labour Law Breaches is not *ultra vires*.
[96] ('DA-694') [SST-AD]: TM Lafontaine also erred by refusing jurisdiction: ¶¶11-13,35-36,38,40. He likewise invoked relief 'under other laws': ¶¶38,40,43,49 – something I **never** requested.

80. I **never** asked for any **relief** "under other laws." But Justice *requires* honest investigation into the full context surrounding my specific situation. That *necessitates* considering the influence & 'net-effect' of the 'whole picture' – weighing *every* relevant legal instrument.

I ***am*** asking for **fair** consideration of the predominant laws involved – Parliament **expects** as much. They do *not* grant power only to subsequently permit abdication. TMs *must* exercise the Jurisdiction explicitly given to them: **failure** to do so **is a statutory error**.

81. Historical analysis of binding Court precedent *proves* that Employment Contracts, Labour Laws, Health & Safety Legislation, Constitutional & Human Rights, and any other *case-relevant* statutory authorities *are* applicable to Decisions under the EI Act.

In my case, that primarily includes [at least] the following **two** considerations: [97]

a. CBA: My **Collective Agreement** is *the* '**private law**' authority governing my employment at Purolator. It contains the 'express duties' we each **owe** the other parties – and defines the *legal boundaries* around any *potential* 'implied duties'.

Prior to this pandemic, considering the applicable Contractual Clauses – and the specifically enumerated Terms & Conditions of Employment – was *understood* to be a ***required*** *task* when adjudicating any Benefits Claims. What changed?

My employer violated *several* different sections, while I *never* breached any. [98]

(Also: ***if*** my CBA **is** *ultra vires*, how can I be found to have 'breached' it‽)

b. CLC: The Canada Labour Code is *the* governing authority over federally-regulated workplaces. It contains *both* the applicable Labour law *and* Health & Safety requirements – which are **both** historically deemed part of EI adjudication.

Purolator codified & enforced *prohibited* Lock-Outs 'contrary to law'. §88.1, §3[99]

(Also: CBA Terms are considered to possess statutory application. Part III: §167)

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[97] Falsifying my ROE is a Criminal Code offence *(§398)*. This is also 'contrary to law' and directly led to my employment separation – which necessitated my EI Claim. Factum: 'P': ¶237-69

[98] **CBA:** Affidavit: ¶¶10,15-16,23,47,49,58,68,80,86. Factum: 'G': Private Law, **'O'** & **'R'**, et al

[99] **CLC:** Affidavit: ¶¶10,15-16,29,47,58,68. Factum: 'G': Private Law, **'O'** & **'R'**, et al.

82. There *are other* aspects germane to my separation from Purolator that were 'contrary to law'. (For the sake of brevity & simplicity, I will not list them here, as these **two** are the *most egregious* violations. I *do* argue additional factors in other sections of this Factum.)

What matters here, is that the statutory Jurisdiction of **legal & factual** considerations extends well beyond the *artificially* narrow limits *claimed* by EI TMs in C19-MM Cases.

The EI & DESD Acts are clear – as is binding Jurisprudence. Adjudicating EI Benefits **requires** factoring **all** the relevant legal instruments when making Decisions. §29(c)(xi) mandates **fact-finding** into whether "practices of an employer are contrary to law."

This includes 'any law' directly related to the employment separation. This does ***not*** mean **granting relief** under those laws – but it **does** mean "decid[ing] **any** question of **Law or Fact** that is **necessary** for the **disposition**" of the EI Benefits Claim.

(Just Cause also includes 'Constructive Dismissal' related factors under §29(c)(vii/ix)...)

83. This statutorily-mandated Jurisdiction was intentionally ***abdicated*** from the very beginning of this process. TM Usprich arbitrarily limited the boundaries of my SST-GD Hearing *even* ***before*** I was put under Oath/Affirmation: [100] *(TimeCode: 16:15 min)*

[Ms. Usprich]: *"I can **only consider** whether or not your conduct amounted to Misconduct under the EI Act & related Case Law." (@15-16 min)*

This **error** was further proven when she fully rejected her *obligation* to Fact-Find for whether my *'Employer acted contrary to Law'* (*EIA §29[c][xi]*) by selectively citing the DBEP. [101, 102, 103] *(GD Decision: ¶107)* This *completely ignored* my *repeated* references to the **Just Cause** provision in the EI Act – which explicitly includes **both** 'voluntarily leaving' **and *'taking leave'*** – which I have *consistently* labeled as my '**Primary Claim**' & '**Main Issue**' *(among other similar references) all throughout* my Case History. [104]

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[100] **Both** Problems #5 (BE-Memo) **&** #7 (Atrium Templates) prove her Reasons Why are **errors**.

[101] ('DBEP') **ESDC:** EI Policy: Digest of Benefit Entitlement Principles *(Some Relevant Chapters)* Ch.6: 'Leaving Employment' ***&*** Ch.7: 'Misconduct' *(Citing DBEP does **not** override the Act.)*

[102] ('DA-740') **DA v. CEIC** *(2023 SST 1093)*; [¶104-08, esp. ¶107]. *(Rejection of Just Cause)*

[103] ('DBEP') Incidentally, *(DBEP §21.2.2: 'Gathering All Evidence' policy)* defines *"other pertinent legislation (e.g. labour laws) [&] collective agreements"* as **required** 'Documents & Records' because *"we **must** apply the law to the facts [] it is **necessary** to establish/prove the facts."*

[104] ('DA-740-Args') SST-GD Written Arguments: citing 'Previous Appeals': (**B:** p.107) *(RGD8-4)* ('DA-694-Args') SST-AD Written Arguments: 'Legislative Intent' (**B:** p.168-89) *(ADN6-3..4)*

84. Both Purolator *and* EI ADMs must be **consistent**. This was *either* **choice** *or* **coercion**. If they **coerced** me into unwanted medical treatments, I *obviously* have Just Cause – *and* they become **liable** [both civilly & criminally] for any damages I incur. But if ***I** made* a '**choice** with consequences' *(eliminating coercion)* the outcome is still the same: this was the '*choice*' they gave me: [either] ① take two experimental injections [or] ② take a Leave of Absence. Either way, I 'made a **choice**' to '**take**' something. *(Whether or not I truly consented is semantics, given it's* either *'**choice**' or '**coercion**' – and **any** '**choice**' to 'take leave' is one* explicitly *'**authorised**' by & '**compliant**' with my employer's policy. They **cannot approve** Leaves of Absence in policy & subsequently claim Misconduct.)*

85. The statute **intentionally** lists **both** 'voluntary leaving' **&** 'taking leave' in the Just Cause clause. Denying this obvious fact denies Parliamentary Intent – making that distinction superfluous – which violates fundamental Statutory Interpretation. [105]

This language decision was 'clarified' by its legislative authors, in the same Hansard volumes cited above. **Both** options were provided **on purpose** to cover **both** temporary Leaves of Absence & [in]voluntarily 'quitting **for cause**' *('constructive dismissal')* – **ensuring** that fact-finding for Just Cause is *always* conducted. [106]

[EIA §29(c)]: "**Just Cause** for voluntarily leaving an employment ***or*** taking leave from an employment **exists** ***If*** the Claimant had *no reasonable alternative* to leaving **or** taking leave, having regard to all the circumstances, including any of the following:

(xi) practices of an employer that are **contrary to law**.
(vii) **significant modification** of terms and conditions respecting wages or salary.
(ix) **significant changes in work duties**
(xiii) **undue pressure** by an employer on the claimant to **leave their employment**."

86. Meanwhile, the **Disqualification clause** **omits** **'taking leave'** as grounds to Deny EI Benefits with equal **intentionality**:

[EIA §30(1)]: "A Claimant is Disqualified from receiving any benefits **if** the Claimant lost any employment because of their misconduct **or** **voluntarily** left any employment **without** Just Cause." **<=** *('taking leave' prong removed from test)*

The Disqualification clause is **not** **applicable** to Lock-Outs, Constructive Dismissals & **in**voluntary separations. *(i.e. 'Voluntary Leaving' **and** 'Taking Leave' **both** **require***

105 The two different interpretations of 'taking leave' are discussed at: **¶54** ***(D: EIA Changes)***

106 The Legislative History of this specific amendment is documented at: **¶47-55** ***('D: EIA')***

*Just Cause analysis – but the later type of Leaving is **not** applicable to any Misconduct analysis.)* This distinctive textual difference *must* have **interpretive meaning**. [107]

As cited above: "The UI legislation is ***predicated*** upon people **involuntarily** losing their employment & receiving short-term income support while they look for another job." [108]

87. **Approved** 'Administrative Leaves of Absence' ***cannot*** be grounds for Disqualification. *(Whether Claimants are Entitled to collect EI depends on whether their LOA has Just Cause; there is legal distinction between 'Not Entitled' & 'Disqualified for Misconduct')* And ***any*** Leave predicated upon Purolator 'acting contrary to law' constitutes **Just Cause**. Either way, Misconduct is ***not*** **possible** given *both* the Statutory text & Facts of the Case.

Application

88. Intentionally refusing to consider 'whether a Duty is Validly Imposed' – or, more fundamentally, 'whether it is Valid' to begin with – Violates the Rule of Law and is a Jurisdictional Error. The Home Statute is clear. As is the proverbial mountain of Legislative History *(over 4,500 pages)*.

a. The Rule of Law requires Employers to comply with the Law. They cannot reasonably use 'Management Rights' to excuse Lawbreaking. When they *do* act unlawfully *anyways*, the Law still stands – and aggrieved Workers have 'Just Cause' for the ensuing employment separation. This means they Qualify for EI Benefits. *(And when situations are unclear, Workers get the 'Benefit of Doubt'.)*

b. When the UI Program was completely overhauled in 1990 *(Bill C-21)*, Parliament established the principle of [partially] Disentitling *some* Claimants from receiving EI Benefits based on *whether they lacked* Just Cause. They simultaneously defined the legal definition of Just Cause, its corresponding 14 Reasons *(C-113)* & set the Adjudication process, specifically assigning Jurisdiction in the Statute.

[107] This is why the CEIC's unilateral redefinition is so **egregious**. *(**L: ¶192-95** & **Q: ¶270-78**)*
[108] ('House-C113') Gordon McFee: Director of UI Policy, Legislation & Development. *(¶50[b])*

89. On what grounds can the SST *(or CEIC)* **reasonably** argue that they '**Lack** Jurisdiction' to investigate 'Duty Validity' – or its 'Imposition Validity'? *(Finding whether either are 'Contrary to Law' is required by EIA §29[c][xi])*

90. The EIA **§29(c)** – and its historical context – plainly assigns Jurisdiction. To claim otherwise is to 'refuse to exercise jurisdiction': Grounds for Review at FCA §18.1(4)(a).

91. Ignoring the Rule of Law – and applying different standards to the Employer vs. the Claimant – violates 'Procedural Fairness' per §18.1(4)(b).

92. Since the EI Act clearly mandates that EI Adjudicators factor whether "Employer practices are Contrary to Law" ***not*** doing so meets §18.1(4)(c/f).

"If the Claimant has a legitimate expectation that a certain procedure will be followed, this procedure will be ***required*** *by the Duty of Fairness." (Baker [¶26], citing Qi & Bendahmane)*

Decision

93. We respectfully ask this Court to Quash TM Lafontaine's Decision on the Grounds that the **Rule of Law** *and* the Assigned **Jurisdiction** make his Decision **unreasonable**.

(cf. ['DA-694']: ¶37, ¶44-45, ¶47)

Rule of Law: He failed to consider the fact that my employer broke several different laws, *inter alia,* the Canada Labour Code *('CLC')* – when *that* fact was precisely *why* my employment ended – claiming such fact-finding was *ultra vires.*

Jurisdiction: TMs incorrectly found that Fact-Finding for the 'validity' *('lawfulness')* of any Policy was *ultra vires*, despite their Home Statute *(EI Act)* requiring that Finding.

(Vavilov [¶108]) "…ADMs are [not] permitted to disregard or rewrite the law as enacted by Parliament. [] [Their] Decision must ultimately comply *"with the rationale and purview of the statutory scheme under which it is adopted."* [] …Decision[s] must comport with any more specific constraints imposed by the governing legislative scheme, such as the statutory definitions, principles or formulas that prescribe the[ir] exercise of discretion."

G. Private Law & Common Law

Fundamental Questions ***(4)*****: #4-6, #9**

Grounds of Review ***(4)*****: FCA §18.1(4)(a-d)**

Vavilov Principles ***(4)*****: Decision & Outcome**

- **(b)** Other Statutory or Common Law
- **(d)** Evidence Before the Decision Maker
- **(e)** Submissions of the Parties
- **(f)** Past Practices & Past Decisions

"It is evident that ***both*** *Statutory* ***and*** *Common Law will impose constraints on How & What an ADM can Lawfully Decide… [They]* ***cannot adopt an interpretation*** *that is inconsistent with applicable Common Law principles regarding the nature of Statutory Powers… Where a relationship is* ***governed by Private Law*** *{[i.e. Employment Contracts]}, it would be* ***unreasonable*** *for [them] to* ***ignore*** *that Law in adjudicating the* ***parties' rights*** *within that relationship…" (Vavilov [¶111] | cf. Dunsmuir [¶74])*

Facts & Issues

94. Employment Contracts: What relevance do CBAs have? Can they *reasonably* be ignored? Can they be selectively referenced? What happens when multiple CBA sections explicitly *nullify* prospective corporate Policies?

Common Law: Can Management Rights *override* Common Law? Can the KVP Test be Used? Ignored? What happens when Policies Fail KVP?

Private Law: Can Management Rights *override* Employment Contracts? Can corporate Policies be 'divorced' from their 'enabling' Contracts and Statutes? Are they still considered Active & Binding in that situation?

95. Errors in Law:

(1) My CBA was Misused to Justify their Decision to Deny EI Claim
(2) Both SST TMs 'Divorced' corporate Policy from governing CBA
(3) TMs Used a *clearly* Nullified corporate Policy in their Decision
(4) Refused to apply Common Law KVP Test, despite 50-year History

Error in Fact: A Nullified Policy was Deemed Active & Applicable,
Despite the Fact it was patently Unlawful & Contrary to my CBA

96. Please consider my SST-AD Written Arguments ***(AD-23-694** [ADN06])* incorporated *(by reference)* into this J.R. Factum *(Memo of Fact & Law)*. To save space, I won't reprint *everything it* contains, but large sections are critically relevant and must be expanded…

This incorporates #1: Nullified Policy & Misused CBA. ***(B:** p.178-81 [ADN06-13..16])*

97. Preface: I am ***not*** seeking a ruling on the ***reasonableness*** of my employer's **policy** [109] – I *am* seeking statutorily-mandated **fact-finding** into the ***unlawfulness*** of their **actions**.

98. It is **not** *ultra vires* to read our **CBA** and apply its Provisions to the situation – it is the requisite *foundation* of investigating Just Cause, when adjudicating EI Benefits Claims.

Management Rights

[¶20]: "Management's residual right to **unilaterally impose** workplace rules is ***not* unlimited**. Management Rights **must be exercised reasonably** *and* **consistently with the Collective Agreement**. [¶21]: Clause 5.02 of the CBA *also* ***constrains*** management's ability to exercise these rights, as it provides that in administrating the CBA, the employer must *'act reasonably, fairly, and in good faith.'* Any *unilaterally imposed* workplace policy **must comply** with these **limitations**." ***('AJC' [¶20-21])*** *(Cited: 'KVP' & 'Irving')*

[109] This **policy** has *already* been **ruled 'Unreasonable'** in federal Labour Arbitration. Covered employees have been *ordered* 'Back-to-Work', with a Back-Pay award currently worth **~$85M+:** 2023 (CA LA) 120937: Teamsters #31 v. Purolator Canada; **Arbitrator:** Nicholas Glass; 2023-12-14

99. Employment Contracts *(or CBAs)* form the **foundation** of *all* employment relationships. *All* corporate policy & 'Management Rights' flow out of this **contract**. Therefore, corporate policies **cannot** violate the contract – nor can they **violate** applicable laws.

There is a *long-settled* hierarchy in common law, which is reinforced in jurisprudence: [110]

Hierarchy of Precedence: Laws => Contracts => Policies

100. Our Employment Contract *('CBA')* – between Purolator Canada & Teamsters Canada – contains **four** different clauses that specifically **require *all* contract provisions, policies & procedures** to ***comply*** with *both* the CBA **and** *all* applicable legislation *(CBA §3.01, §5.01, §5.05 & §22.02)*. This includes an explicit **'Nullity'** *('severability')* clause *(§5.05)* making '**null & void**' *whatever* contravenes the CBA *or* relevant government legislation.

CBA §3.01 ['Acknowledged Right']: "The Union recognizes the ***exclusive right*** of the Company to operate its establishment, machinery and equipment and to manage its undertakings as it sees fit, **subject only to** the **restrictions imposed by law** or by the ***provisions of the present Collective Agreement***."

CBA §5.01 ['Regulations & Policies']: "The Company has the ***exclusive right*** to make, modify and implement regulations, policies and procedures to be observed by the employees; such regulations, policies and procedures ***must not be inconsistent*** with the provisions of the present agreement. Furthermore, where in the present agreement it is provided that a policy is maintained, such policy remains in force and may not be modified by the Company for the duration of the present agreement."

CBA §5.05 ['Nullity']: The nullity of a provision of the present agreement does not affect the validity of other provisions of the agreement. Any provision of the agreement which is or which **becomes a violation of applicable laws**, will be **null and void**. In such a case, the parties will enter into bargaining to arrive at a mutually satisfactory replacement for the void provision. If the parties cannot agree, *the clause(s) affected shall be amended in conformity with the law*."

CBA §22.02 ['Respect of the Law']: "The Company, the Union and the employees collectively undertake to respect the health and safety measures **prescribed by applicable laws & regulations** in order to ensure the health and safety of all employees."

Black's Law, 6th ['Null & Void']: "…that which **binds no one** or is **incapable** of giving rise to any rights or obligations under any circumstances, [] of **no validity or effect**."

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[110] 2013 BCCA 371 *('DTLC')*, 2015 SCC 1 *('MPAO')*, and 2015 SCC 2 *('Meredith')*, all **hold** that Parliament **can** pass laws that override *existing* employment contracts when 'justified'.

101. My GD TM erred **three** different ways *in one paragraph*, which was **key** to her Decision:

[¶79]: "An employer has a right to manage their daily operations, which includes the authority to develop and implement policies at the workplace. When the employer implemented this policy as a requirement for all of its employees, this policy became an express condition of the Appellant's employment. *(FN: Citing 'Lemire')*" [111, 112]

102. Not only did she **omit** the **requirement** that proposed corporate policies are *"subject to the restrictions imposed by law,"* but her citation was ***doubly*** **erroneous**: the *'Lemire'* Court made **no such finding** *(which is why there was no para. cited)*, [113] and it's also wrong as a basic matter of law. Employers **cannot** unilaterally impose *new* policies and automatically make them "express condition[s] of the Appellant's employment." There are *many* conditions that must be met **first**, including that they **cannot violate** binding **legislation**, **employees' statutory rights**, or terms in the **CBA**. *(There's an abundance of Case Law reiterating this fact from several different perspectives…)* [114, 115]

103. EI ADMs **cannot** rely on CBA provisions that *grant* the *right* to create policy, *without* also considering any **conditions** listed in that *same* provision. One must *either accept* ***or*** *reject* the provision *as a whole*. One cannot **use** the *first half* while simultaneously **rejecting** the *second half* of the exact same sentence to justify **unlawful** policy creation: Either our CBA authorises ***lawful*** corporate policy, or it *cannot* be used to justify policy creation at all… Anything else is ***both*** an **error in law** *and* **violation** of the first principle of Fundamental Justice – the Duty to Act Fairly.

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[111] ('DA-740') **DA v. CEIC** *(2023 SST 1093)*; [¶79] in my GD Decision, on Appeal to SST-AD.

[112] This citation [DA-740, FN54] was also [mis]citing an FCA Case ['Lemire']: 2010 FCA 314.

[113] This is *yet another* example of the problems with using 'Decision-Template Generation' tools. This **legally erroneous template** was used to Deny **14x** Claimants their EI Benefits. *(CanLII)*

[114] 1974 SCC 12 *('McLeod')*, 2003 SCC 42 *('Parry Sound') [¶25-32]*, 2006 SCC 2 *('Garon & Fillion') [¶145-46]*, all **hold** that 'Management Rights' *(and ensuing corporate policies)* **cannot** break binding legislation, nor can it be [mis]used to violate employees' statutory rights.

[115] 1965 (ON LA) 1009 *('KVP') [p.85]*, 2008 ONCA 327 *('Wronko') [¶32-36]*, 2013 NBCA 13 *('Brown & Cormier') [¶26-28]*, ***2013 SCC 34*** ***('Irving')*** *[¶24-26]*, all **hold** that employment contracts cannot be *unilaterally* subject to new terms *(or policies)* *without consent & consideration first* – ***or*** ensuring that they are *both* lawful *and* compliant with the remaining contract terms.

104. It is **inconceivable** that my TM referred to a sentence in my CBA to justify *including* a specific corporate policy in her Decision *(**§3.01:** "the exclusive right of the Company to [] manage its undertakings as it sees fit")* but ***disregarded*** the very next phrase *(from the exact same sentence)* which required excluding that policy on legal grounds *("subject only to the restrictions imposed by law")*. *(This also violates Natural Justice: **Fairness**.)*

105. And even ***if*** our CBA did ***not*** contain these constraints – requiring any policies to comply with the law & our contract – these same tenets are *already* found in Case Law.

Common Law

106. Our **SCC** has consistently held – *and reaffirmed for 50+ years* – that an Employer's 'Management Rights' are constrained by applicable legislation. [116] *(Provincial Labour Laws, Human Rights Codes, etc.)* Here is one citation from 2006: *('Garon & Fillion')*

> [¶145] "…this Court **held** that the employer's Management Rights were limited **not only** by the collective agreement *but also by* mandatory legislative provisions."
>
> [¶146] " In *Parry Sound*, Iacobucci J. also recognized that the CBA *may* give the employer a *broad right* to manage the operations of the business. However, that power is limited by the employees' statutory rights even where the CBA is silent on the subject."
>
> *(NB: These cases explicitly include the governing Labour Code. This is relevant here…)*

107. **KVP:** The '**KVP Test**' addresses an Employer's *right* to **unilaterally** *impose* corporate policies. [117] This test defines ***six* requirements** which *must* all *be met* before companies can ***impose*** *new* policies without the requisite: ① union vote *or* ② employee consideration:

The first rule is that said policy *"must **not** be **inconsistent** with the* CBA*."*

The second rule is that said policy *"must **not** be* **unreasonable**.*"* *(inc. **unlawful**)*

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[116] ('Garon & Fillion') 2006 SCC 2 *[¶144-48]*. 50 years ago, a SCC Case *(1974 SCC 12: 'McLeod' v. Egan), initiated the principle that employment contracts cannot violate applicable laws. Parry Sound and this case (Isidore Garon v. Tremblay; Fillion et Frères v. SNEGQ) expanded & codified this principle. Collectively, they have been cited over 2500 times across Canada (including QC).*

[117] ('KVP') 1965 (ON LA) 1009 *[p.85]*. This precedent was established in the 1965 Ontario Labour Arbitration case: *"Re: Lumber & Sawmill Workers' Union ['LSWU'], Local #2537 v. KVP Co. Ltd."*

108. **SCC:** In 2013, our esteemed Supreme Court codified KVP into binding precedent.[118]

> [¶24] *"The scope of management's **unilateral** rule-making authority under a CBA is persuasively set out in … the '**KVP Test**'. […] Any rule or policy unilaterally imposed by an employer and **not subsequently** agreed to by the Union, **must be consistent with the collective agreement*** and *be **reasonable**."*

> [¶25] *"The **KVP Test** has also been applied by the Courts. Tarnopolsky J.A. launched the judicial endorsement of KVP … concluding that the 'weight of authority & common sense' supported the principle that '**all** company rules* with disciplinary consequences *must be reasonable.' In other words, 'the Employer **cannot**, by exercising its Management functions, issue* unreasonable *rules and then **discipline employees** for failure to follow them. Such discipline would simply be* without *reasonable cause. To permit such action would be to invite subversion of the reasonable cause clause.'"*

> [¶26] *"Subsequent appellate decisions have accepted that rules unilaterally made in the exercise of management discretion under a collective agreement **must not only be consistent with the agreement**, but must also be reasonable **If** the breach of the rule results in disciplinary action. (SCC then cites 3 Appeals Courts rulings: PEI, NL & MB)"*

> ***(****In the context of this SCC Decision, surely* **unlawfulness** *constitutes* 'unreasonableness'***)***

109. Several provincial Appellate Courts also apply this standard without naming KVP.[119]

> **Principle #1:** "Whether the rule in question is reasonable and **lawful**."

> **Principle #2:** "Whether the rule is consistent with the employment **contract**."

110. Whether taken directly from our CBA, or based on binding Case Law, Purolator **cannot** *legitimately* impose corporate policies that violate key legislation like the CLC.

Legislation

> "A high standard of Justice is *required* when the *right* to continue in one's profession or employment is at stake... A Disciplinary Suspension can have grave and permanent consequences upon a professional career." *(Baker [¶25], citing: Kane [p.1113])*

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[118] ('Irving') 2013 SCC 34 *[¶24-27]*. Our SCC solidified KVP as binding precedent in 'CEPU Canada #30 v. Irving Pulp & Paper'. *(CEPU: Comm., Energy & Paper-Workers Union of Canada)*

[119] ('Brown & Cormier') 2013 NBCA 13 *[¶28]*. This precedental case *('Asurion Canada v. Brown & Cormier')* listed [essentially] the same six principles as KVP for determining 'Misconduct'.

111. Purolator is *both* **federally regulated** *and* **unionised**, therefore we are subject to the Canada Labour Code *('CLC')* & our negotiated CBA *(in that order)*. *(cf. Affidavit ¶8)*

CLC §3(1) ['Interpretation']: "***Lock-Out*:** includes the closing of a place of employment, a suspension of work by an employer, or a refusal by an employer to continue to employ a number of their employees, **done to compel** their employees […] to **agree to terms** or conditions of employment."

CLC §88.1 ['Lock-Outs Prohibited']: "Strikes & **Lock-Outs** are **prohibited** during the term of a collective agreement."

CBA §4.01 ['Strike & Lock-Out']: "It is agreed that for the duration of the present Agreement, there shall be no strike **nor Lockout**, nor work slow-down, nor total or partial stoppage of work, nor study session. The parties agree *not* to counsel nor encourage the above-mentioned actions." *(Does this last sentence include HR Personnel via Policy?)*

112. Purolator *both* broke the CLC & breached our CBA by *unilaterally* imposing **Lock-Outs** on workers who *did not consent* to taking an *experimental* medical treatment.

(Although the CLC is germane to this case, this section focuses on the CBA & Case Law. That said, weaponizing Lock-Outs to coerce *'policy compliance' is the clearest, most egregious example of 'acting contrary to law'. Purolator Leadership's choice to insert & enforce Lock-Outs in their [C19-SWP] policy, violated all three tests – prima facie:*

a) *It broke the Canada Labour Code (§88.1) and was thus 'Contrary to Law'*

b) *It breached our CBA (§4.01)* **and** *was Nullified (§5.05) by its unlawfulness*

c) *By virtue of* ***both*** *(a+b), it failed KVP & could* not *be unilaterally imposed*

On all three grounds, this particular immunisation mandate implementation ***fails****. This specific policy* either *required: Union Approval* ***or*** *modification: Removing the LockOut.)*

113. TM Lafontaine's Decision even concedes that I was Locked-Out. *('DA-694': ¶16)*

[¶16]: "The **evidence shows** that the Employer *prevented* the Claimant from working *even though there was work*. The Claimant acknowledged that the **Leave** was **imposed** on him and that he would have continued to work but for the Policy."

114. (*(Executive)*, Purolator's *(Role & Title)*, testified [under oath] during Arbitration that there were *"two serious outbreaks at Purolator caused by employees* ***not*** *following the rules."* [120] They did not mention any outbreaks at facilities that adhered to their *'COVID-*

[120] ('Glass') 2023 (CA LA) 120937: Teamsters #31 v. Purolator Canada *(¶74-80)*.

19 Safety Plan' – which did **not** include Vaccination. This *pre*-vaccine-mandate policy proved to be sufficient at managing risk and eliminating workplace transmission. There was ***no*** justifiable need to use *illegal* Lock-Outs to force employees to take *experimental* medical treatments – which are *irreversible* medical procedures. Their existing policy *was already working*, as the complete absence of outbreaks *for 18+ months* ***proved****…*)

115. As an aside, Purolator also lost the Arbitration: the SWP was deemed 'Unreasonable' *(from: 2022-07-01)* & **563+** Employees were *ordered* back-to-work with backpay. [121]

(This Arbitration Ruling was also recently upheld on Judicial Review in the BCSC.) [122]

EI Benefits Cases

116. Throughout this process, SST ADMs have consistently refused to address this fundamental issue: while Purolator *does* have "the ***exclusive right*** to make, modify and implement regulations, policies & procedures" these Management Rights are "*subject to* the restrictions imposed by law" – and these limitations are reinforced by SCC Case Law.

(2023 SST 1093) **[SST-GD]:** TM Usprich repeatedly refused to factor my CBA into her Decision. *(¶74, ¶79, ¶90, ¶91)* There is a significant difference between assigning something little weight and outright refusing to consider it. The former is arguably discretional, the latter is an **error in law**. There is **no basis** to expect policy compliance unless the CBA is invoked to obtain Management Rights. Simultaneously invoking these Rights while deeming every other clause in the CBA *ultra vires* is another Error in Law.

(2024 SST 26) **[SST-AD]:** TM Lafontaine also reiterated that he had no jurisdiction to even consider my CBA – or the KVP Test – using the same citations. *(see: Problem #3)*

[¶37] *"It is one thing to ask whether an express or implied duty exists. It is another to ask whether the duty was validly imposed by the employer. [That] falls outside of EI law."*

(¶37:FN12) *"This is why the KVP Test does not apply in EI Misconduct cases."*

[121] ('Glass') 2023 (CA LA) 120937: Arbitration: *('Teamsters Local #31 v. Purolator Canada')*
[122] ('Purolator-JR') 2025 BCSC 148: Purolator Canada v. Teamsters Canada, Local #31 & Glass

[¶40] *"The question of whether the employer [...] violated legislation and his CBA [...] is a matter for another forum."*

[¶44] *"The Court reiterated several times that the SST does not have the authority to assess or rule on the merits, legitimacy, or legality of the employer's vaccination policy."*

117. As another important aside, TM Usprich made several *categorically **false*** assertions & cited Case Law that did **not** support those conclusions. They were **key** to her Decision.

[¶79]: "An employer has a right to manage their daily operations, which includes the authority to develop and implement policies at the workplace. When the employer implemented this policy as a requirement for all of its employees, this policy became an express condition of the Appellant's employment." *(citing: 'Lemire' [2010 FCA 314])*

[¶82]: "*Cecchetto* also makes it clear than an employer may unilaterally introduce a vaccination policy **without** an employee's consent." *(citing: 'Cecchetto' [2023 FC 102])*

Lemire did ***not*** find that policies automatically become conditions of employment. *(This subject was not even addressed in that Decision.)* [¶18] set out the Questions at Issue…

Cecchetto did ***not*** *hold* that employers may 'unilaterally introduce policies *without* consent.' *(That was a reference to another SST Decision that was deemed of 'limited relevance here.' [¶41-43])* [¶5] is unequivocal: his employer *"did* not *have its own policy, but rather followed the rules set out in Directive 6"* which was a *binding Order* from the CMOH across the Healthcare sector, made under the provincial Health Protection statute.

She **relied** on **both** of these assertions to justify her Decision. **Both were Erroneous.**

118. Meanwhile, in the six years *before* the pandemic *(2014–2019)*, there were **365 Cases** that seem to discuss contents of "employment contracts" or "collective agreements" – which is what you would expect to find, based on the EI Digest Principle §21.2.2 *('Gathering All Available Evidence')* [123] which states that *"employment contracts"* and *"collective agreements"* are among the *"evidence necessary to prove the facts of a particular case." (Twice in five paragraphs EI ADMs are told to gather contracts for evidentiary purposes.)*

[123] ('DBEP') **ESDC:** EI Policy: Digest of Benefit Entitlement Principles, Ch.21 *('Evidence or Proof')* This published EI Policy Manual is based upon binding Jurisprudence. §21.2 *('Proving Facts')*

The **EIA §51** [‘Information’] provides specific instructions for when: *“the Commission finds an indication* from the documents *relating to the claim that the loss of employment resulted from the claimant’s misconduct.”* They are **required** to *“give the[m] [] an opportunity to provide information & […] take it into account in determining the claim.”*

The Digest Principle §7.2.1.1 covers ‘Fact-Finding [Misconduct] with the Employer’: “To determine whether or not a claimant was dismissed for reasons of misconduct, the employer is asked to provide […] whether such action or omission violated a provision of the contract of employment…” *(Employers are* required *to cite contract violations‽)*

And Vavilov’s **requirement** for ‘Reasonable Decisions’ re. ‘Common Law’ involves: [124] *“Where a relationship is governed by private law [i.e. Employment Contracts], it would be* ***unreasonable*** *for the ADM to ignore that law in adjudicating the parties’ rights...”*

119. EI ADMs are truly engaging in legal gymnastics in their attempt to avoid the obvious: the legally requisite process – along with decades of historical precedence – *required* detailed fact-finding. Examining the employment contract was deemed an essential part of this…

120. To further their hypocrisy, I’ve found *several* SST-AD Decisions *(from* multiple *AD TMs)* where they *explicitly* mention that the Appellants *could have* legally **filed their CBAs** as **evidence** *(with GD) and* **argued** that the COVID-19 Vaccination ‘Policies in question **violated** their Contracts’. **I did both!** *(Ironically, they all also cite KVP as justification.)’*

Finding [8]: Did **not** file a CBA, but *could* have – and Argued that Policy violated it…
2023 SST 31: SS v. CEIC *[¶86-87]*, 2023 SST 63: TH v. CEIC *[¶45-47]*,
2023 SST 128: MW v. CEIC *[¶69-71]*, 2023 SST 183: TH v. CEIC *[¶80]*,
2023 SST 671: MV v. CEIC *[¶10, ¶41-42]*, 2023 SST 682: SJ v. CEIC *[¶39-40, **¶44**]*
2023 SST 807: NG v. CEIC *[¶35-36, **¶40**]*, 2023 SST 887: CD v. CEIC *[¶29-30, **¶35**]*

Finding [2]: Unilaterally applied KVP to Justify MVP [Policy] regardless of CBA…
2023 SST 348: AG v. CEIC *[¶29-33]*, 2023 SST 675: GM v. CEIC *[¶46-47]*

And one more ‘insult to injury’: this TM *(Janet Lew)* actually **applied** the CBA to KVP!
2023 SST 99: KM v. CEIC *[¶29, ¶34-37]*

[124] (‘Vavilov’) For Decisions to be deemed ‘reasonable’ regarding Common Law & Private Law, EI ADMs are required to consider them both: in this case, the CBA & KVP Test… *(¶111)*

[¶29]: "… The Supreme Court of Canada has **endorsed the *KVP* Test** which means **it is good law** that should be applied." *(FN7: Citing: 'Irving' [2013 SCC 34])*

In total, here are **11** C19-MM Cases where SST-AD TMs ruled that the Appellant *could have* filed their CBA & **used it** to **argue** for KVP non-compliance – **something I did.** *(So ADMs can cite CBAs & KVP to justify Dismissing Cases, but it's* ultra vires *for us‽)*

121. Aside from the *obvious* breach of Natural Justice *(Procedural Fairness)* – and astounding **hypocrisy** – this demonstrates our reality: until the unprecedented *[en banc]* CEIC v. AL Decision ***codified in*****justice**, TMs recognised that examining CBAs *(Private Law)* & considering KVP *(Common Law)* was part of ensuring they made 'reasonable' Decisions.

122. *(As another interesting sidebar, all the aforementioned SST Decisions affirming the* requisite use *of CBAs & KVP are all Templatised. [cf. Problem #7: Templates])*

123. Lastly, using *vires (Jurisdiction)* to dismiss my CBA's *clear* contractual 'terms of employment' – and ignoring the KVP's legitimate application – both TMs were *tacitly* finding that this new, non-union-approved corporate policy superseded both in authority.

And they *both* did so by invoking Management Rights – *after* **ruling** that the CBA which contained that 'source of authority' was *inadmissible* into their decision-making process.

124. As a corollary yet to be explicitly stated: the operative definition of '**Misconduct**' in the EI-context is a 'breach' of an 'express or implied' 'duty' based in *(or 'arising' from)* the 'employment contract'. This was apparently *codified* in *Bellavance (2005 FCA 87)*.

This definition has been used 300+ times since then, including 15+ in Court *(FC[A])*. [125]

By definition, determining the veracity of this statement **requires considering** *some part* of that Contract/CBA – the part submitted by the Employer – who is ***never*** told that *their* submission *(based on specific CBA Terms)* is *ultra vires* or otherwise inadmissible.

*(**Q:** Is 'overstepping'* or *'misusing' Management Rights considered a Contract Breach?)*

[125] ('Bellavance') 2005 FCA 87: Canada (AG) v. Bellavance *[¶8]*. *(CanLII Search Query: 300+)*

125. **Fact:** There is **no duty** regarding *any* medical treatment found *anywhere* in our **contract** – express or implied – and the *only* citation is a new, non-union-approved *(and* successfully *Grieved & Arbitrated **'unreasonable'**)* corporate policy that *explicitly* advocates for **Lock-Outs** to compel *(coerce?)* compliance. This *clearly* violates the Canada Labour Code, is *both* Prohibited & Nullified by our CBA ***&*** violates the first *two* KVP Test Requirements advocated by our Supreme Court *(to determine policy 'validity')*.

Is this *really* the basis on which I'm being *found* 'guilty' of 'Misconduct'⁈ **Reasonably⁈**

126. Purolator has virtually limitless potential when designing & managing their *internal controls, **policies** & procedures*. Their ***only*** limitation is self-imposed *(within the CBA)*: their practices ***(a)*** must be **lawful** *&* ***(b)*** must **comply** with our mutually agreed-upon **Contract** – which is *exactly* what has been codified in SCC Jurisprudence for decades…

127. I am ***not*** asking this Court to '*overturn'* anything here; quite the contrary. Respectfully, I am only expecting this honourable Court to *recognise* the obvious: that legally speaking, the Rule of Law – and our CBA – *demand* that prospective corporate policies *must* meet these *two* prerequisites *before* they can be enacted – much less enforced – and in this case, this policy **fails** *both* requirements. And their *only* justification for this **unlawful**, **breach of contract** is that *"'our policy* says' *we have the right to do this… [to break these laws]"* This is *both* Absurd & Unreasonable.

Application

128. There are many serious problems with this Decision-Making process, comprised of several different errors – *each one* deserving to be **Quashed**:

Employment Contracts: CBAs form the foundation of any employment relationship; they are what legally *bind* the workers to *policy adherence*. Ignoring this legal fact in EI Benefits adjudication is **unreasonable**. Only *selectively* applying *partial* CBA Terms is worse yet. It is objectively **unfair** to hold workers to contract compliance while the employers blatantly violate it – and the Law. And when the CBA itself explicitly requires *(or prohibits)* something, to ignore that fact in *decision-making* is *also* **unreasonable**.

Management Rights: …cannot ***reasonably*** overrule Contracts, Common Law, and applicable Legislation. That would violate the Rule of Law. These Rights only exist due to these *instruments* – and cannot be separated from them. Therefore, it's patently **unreasonable** to cite 'Management Rights' as a *legitimate* excuse to Breach the Contract, Violate a Common Law Principle, or Break the Law, while simultaneously claiming *these* are all *'ultra vires'*. *(This Decision does all three – while erroneously citing Jurisdiction.)*

129. Citing 'Management Rights' while simultaneously claiming that Contracts are *'ultra vires'* raises Jurisdictional concerns under FCA §18.1(4)(a).

130. Including allegations that *Workers* violated Policies & Contracts, while excluding evidence that the *Employers* did the same *(or worse)* first raises legitimate questions about 'Procedural Fairness' per FCA §18.1(4)(b).

131. This Decision contained several Errors in Law, *inter alia*, misapplying CBA Terms, using Nullified corporate Policies, and elevating Management Rights *above* their superseding Contracts – even applicable Legislation. These Errors all meet §18.1(4)(c).

132. Lastly, explicit claims about the Validity and Admissibility of specific Contracts and Policies represent Factual Findings, meaning incorrect Decisions represent Errors in Fact under FCA §18.1(4)(d).

Decision

133. For all these Reasons, we respectfully ask this Court to **Quash** TM Lafontaine's Decision on the Grounds that his Decision is **unreasonable**.

H. Internal Logic & Consistency

Fundamental Questions *(6)*: #3-8

Grounds of Review *(5)*: FCA §18.1(4)(a-c,e-f)

Vavilov Principles *(6)*: Internally Coherent Reasoning Process

- **(a)** Governing Statutory Scheme
- **(b)** Other Statutory or Common Law
- **(c)** Principles of Statutory Interpretation
- **(d)** Evidence Before the Decision Maker
- **(f)** Past Practices and Past Decisions
- **(g)** Impact of Decision on Affected Individual

*"To be **reasonable**, a Decision must be based on reasoning that is* both ***rational*** and ***logical**… A Decision will be **unreasonable** if the reasons for it, read holistically,* fail to reveal *a rational chain of analysis **or** if they reveal that the* Decision was based on *an **irrational** chain of analysis… Similarly, the internal rationality of a Decision may be called into question if the reasons exhibit clear Logical Fallacies, such as **circular reasoning**, false dilemmas, unfounded generalizations, or an **absurd premise**." (Vavilov [¶102-104])*

Facts & Issues

134. Logical Fallacies: What happens when Decisions contain Logic Errors? And when precedental Common Law Tests also contain these Logic Errors? And when these Errors are used to *override* Statutory Requirements?

[Potentially] Perjured Evidence: Can Adjudicators Ignore this Factor? Are there Legitimate excuses for Falsified Evidence? Can it still be Used?

Authorities

135. Please consider my SST-AD Written Arguments *(**AD-23-694** [ADN06])* incorporated *(by reference)* into this J.R. Factum. To save space, I won't reprint *everything it* contains, but some content is critically relevant and must be expanded…

This incorporates the Unreasonableness section. *(**B:** p.169-70 [ADN06-4..5])*

136. The Primary underlying Reason for **Denying** EI Claims in 'C19-MM' *(Mandate Misconduct)* Cases is the Common Law 4-Part 'Misconduct Test'.

This test contains the following elements: Did the Claimant?
① Willfully ② Choose to Ignore ③ a Clear Policy ④ Knowing the Consequences

137. This Test – and several Federal J.R. cases relying on it – have been widely cited in C19-MM Cases. *(Breakdown of the most common cases):*

Federal Court [of Appeal]: J.R. of SST-AD [Umpire] Decisions		
Case No.	**Case Name: Parties**	**Citations *(GD/AD)***
2005 FCA 87	Canada *(AG)* v. Bellavance	**331** *(100 / 231)*
2007 FCA 36	Mishibinijima v. Canada *(AG)*	**849** *(524 / 325)*
2007 FCA 107	Canada *(AG)* v. McNamara	**593** *(329 / 264)*
2010 FCA 314	Canada *(AG)* v. Lemire	**110** *(63 / 47)*
2016 FC 1282	Paradis v. Canada *(AG)*	**610** *(367 / 243)*

138. For reasons I will discuss more in the next section *(**Problem #3:** 'Cited Inapplicable Case Law')*, this Test is ***not*** applicable in these situations.

This Test contains an unstated underlying fundamental assumption *(i.e. an 'unjustified premise')*: that the Conduct itself is somehow worthy of the 'Misconduct' label. In the cited Cases, that assumption *is* reasonable. However, that is not always true.

In **Paradis & McNamara**, the Claimants *both* Failed Drug Tests *(THC)*, which obviously violated their Contracts – *and* Provincial Health & Safety Legislation.

Mishibinijima had serious Attendance problems ['persistent absenteeism'] *(due to his alcoholism)*, with *many* warnings on record. This *also* violated his Contract. *(¶19, ¶32)*

And **Bellavance & Lemire** both Breached their Contracts by breaking government requirements. **Lemire** was selling contraband cigarettes at work *(which is a Criminal Code offence) [¶21]*, while **Bellavance** was a federal government employee who repeatedly broke the HRDC 'Code of Conduct' *(¶3,11)* by *"intervening personally in the processing of EI cases"* and *"giving preferential treatment to some of his former employees & certain family members"* – which also borderlines on criminal conduct.

In all of these cases, the Claimants breached their employment contracts – and most of them also broke various government statutory requirements.

139. That is *very* different from these C19-MM cases, because the Conduct in question is fundamentally different in nature. In SST-cited cases, *their* Conduct violated contractual obligations that were Lawful expectations – and they admitted such in the record.

In *our* cases, the *policy requirement itself* was both unlawful *and* violated our Contracts. We did not *'Breach a fundamental Term'* nor an *'express or implied Duty'* found in our Employment Contracts. We were merely expecting that our CBAs & 'Laws of the Land' would be upheld – in addition to our Constitutional Rights to 'Security of Person' & 'Enjoyment of Property'. *(Partial list of legal principles: Informed Consent, Privacy of Health Records, Lock-Outs & Constructive Dismissal, Breach of Contract, et al)*

140. Coercing someone into taking an *experimental* medical product *against their will* is patently **unlawful** – as is *withholding their livelihood* when they say 'No'. It is ***not*** 'Misconduct' to **not** participate in global medical trials. Informed Consent is the bedrock of western Medicine & violating it often ends in practitioners losing their medical license. *(It is well established that expensive torts & criminal charges [Assault] can also ensue.)*

141. Here is the **Official Database** of various 'Phase 3 Clinical Safety Trials' for COVID Vaccines in Canada. *(Hosted by https://ClinicalTrials.gov)* As detailed above *(Overview: ¶5, & FN:6-7)* and in my Affidavit *(¶17-22)*, these vaccines were – and ***still are*** – experimental. Major Clinical Safety Trials are *still ongoing* and very little *interim* results have been published in Canada, none of which passed Quality Control *(as of this writing)*.

Clinical Trials Database: *(50 Total Canadian Studies)* (*https://tinyurl.com/ClinicalTrials-C19Vaccine-CA*)		
Study	**Trial ID**	**Link**
CCEDRRN	**NCT-04702945**	https://ClinicalTrials.gov/study/NCT04702945
BioNTech	**NCT-04368728**	https://ClinicalTrials.gov/study/NCT04368728
CoVaST	**NCT-04834869**	https://ClinicalTrials.gov/study/NCT04834869

142. (I incorporate **Side-Bar 'J'** by reference. It highlights *three* documents that contain key evidence about the 'Safety & Efficacy' of these *experimental* immunisations. Most of this data – or *their* primary sources – were available to relevant parties in early 2022. Much of it comes from *authoritative* sources that meet the Rules of Evidence.)

Argumentation

143. How can exercising one's *constitutionally-protected right* to say 'No' to participating in a medical Clinical Safety Trial – or taking that *same experimental product (for which zero Safety Studies were published in Canada at the time)* outside of the monitoring included in the Clinical Trial context – possibly constitute 'Misconduct'‽ *(Unless one is referencing the Employer's Misconduct by* coercing *this participation using Lock-Outs…)*

144. Furthermore, it has *already* been demonstrated that this Policy – and my Employer's actions – violated, *inter alia*, the Canada Labour Code *and* multiple Terms in our CBA. *(Many policies also violated various provincial statutes across the country.)*

This is all that matters: I have *already* proven that Purolator acted 'Contrary to Law'. This Constitutional issue – although important – is *not necessary* to prove to Quash this Decision. *(Yes, I recognise that this is claimed to be* ultra vires *– but it does raise Justice considerations of serious National Public Importance: as the underlying premise is that thousands of Canadians had their Employment & Livelihood Ceased* en masse *because they Declined to partake* in-trial *medical treatments: mRNA Injections are Experimental. They have* never *been Approved for Human Use prior to this Pandemic – and* every *prior attempt to obtain Approval* Failed *because* Experimental mRNA Gene Therapies *were*

*found to be objectively unsafe during their Clinical Trials. What Changed? History **will** Judge what happened during this Pandemic – **Did Justice Prevail?**)*

145. Back to the *composite* Misconduct Test. It assumes that the contravened policy – and its underlying conduct – is worthy of the 'Misconduct' label. In the oft-cited cases, it was. But what happens when it's **not**? It then becomes Absurd.

146. Vavilov *(¶104)* states that *Logical Fallacies*, *Circular Reasoning*, and other *Absurdities* constitute **incoherent reasoning** – which are legitimate Grounds to Appeal – and can lead to Quashing Decisions as **unreasonable**. My specific case has *multiple* absurdities. The Decision I'm appealing *also* contains unaddressed **logical fallacies**.

147. It is **circular reasoning** to rule that *"we cannot consider your Employer's unlawful actions **because** you [allegedly] committed Misconduct*" when the ***only*** reason I'm supposedly 'guilty' of Misconduct is because of my Employer's unlawful actions.

*(Using that flawed logic, it would be **impossible** to qualify for EI Benefits any* time an employer decided *to **falsely** code 'Misconduct' on an ROE – even criminal employers – since 'M'* automagically *means 'no questions asked', 'no investigation allowed' & "we cannot consider your employer's law-breaking – it's* ultra vires*" [merely because they allege 'Misconduct' – something which supposedly cannot be considered]...)*

148. This is also an **Absurd Premise**: IF an ROE is coded anything else but 'M', then **Legislative Intent** requires investigating an **employer's unlawful actions** – *But:* Anytime 'Misconduct' is claimed *(not proven)*, employers are free to act unlawfully & it's magically *ultra vires* to consider the *exact* same facts *(notwithstanding EIA §29[c])*. This is especially **absurd** when it's the unlawful conduct itself that ultimately resulted in the falsified 'M' coding – which *itself* is a Criminal Code offense.

149. This is **determining** 'Guilt' in ***alleged*** Misconduct on the basis of an **employer's unlawful actions**, while simultaneously **presuming** to [mis]use that 'Guilt' to **avoid** the statutory requirement to **investigate** the employer's unlawful actions. One **cannot *reasonably*** use the fact that an employer *claims* Misconduct to *determine* ['rule'] that it

is *ultra vires* to *consider* that same employer's egregious unlawfulness solely ***because*** 'Misconduct negates that necessity'. *(This **absurdity** actually prevents its possibility!)*

This is *both* a 'Faulty Premise' **logical fallacy** *(specifically 'Petitio Principii') and* 'Special Pleading' – *both* of which Vavilov deems ***unreasonable***…

150. Compare this with the two examples *(cf. ¶73-74)*. An Employer institutes two unlawful policies requiring: ***(1)*** 24-Hour-straight-shifts *and* ***(2)*** weekly sexual 'favours' from their subordinates. Then, whenever anyone [rightfully] *refuses* to comply, they are Suspended with ROEs coded 'M' for Misconduct. How could they possibly Qualify for E.I.? They meet all four Test Requirements. Notwithstanding the policies' Illegalities:

they: ① Willfully ② Breached ③ a Clear Policy ④ Knowing the Consequences

And every attempt to Appeal would be met with the same blanket rebuttal: *"the employer's conduct is **not** a relevant consideration." (Paradis [¶30], et al)*

This is **not** Justice, and this is clearly **contrary** to the **Legislative Intent** recorded in the relevant Parliamentary Hansards. *(cf. ¶¶31,35,38)*

151. Important Note: This *'4-Part Misconduct Test'* is ***not*** specifically defined *anywhere* in Jurisprudence – [that is] these *four* parts are **not** *explicitly* defined together as a 'Test'. They are *each* independent requirements found in *different* Cases that, when *combined*, make up the elements necessary for a **finding** of 'Misconduct'. *(This matters because Claimants have 'challenged the validity' of this 'Test'. Since it is **not*** explicitly *defined as such, it does* not *need to 'change'. Rather the individual components must be examined in context to see whether they **logically** apply given the factual & legal circumstances. In these situations – C19-MM Cases – they clearly **cannot** stand together on their own.)* [126]

(Put differently: ***all* four** elements *must* be true to sustain a Misconduct finding. If ***any*** component is missing, there **cannot** be Misconduct. However, there are situations where specific – and unusual – circumstances may *impact* given elements. This 'test' is context-specific and *must* maintain **logical coherency** considering the specific facts of the Case.)

[126] ('Francis') 2023 FCA 217: Francis v. Canada *(AG)*: [¶14]

152. Combining **this** '4-Part Misconduct Test' *with* the **requirement** to intentionally ignore the Employer's actions *creates* an *inherent* **logical fallacy** due to the **assumption** that *all claims* of Misconduct *really are* legitimate: here is the relevant 'syllogism':

A: The Employer Terminates a Worker, Claiming Misconduct.

B: In Misconduct Cases, Apply the Test & Ignore the Employer.

C: The Claimant meets All 4 Parts of the 'Misconduct Test'.

Therefore: The Claimant is 'Guilty of Misconduct' & **Denied EI**.

As *should* be obvious, the Premise was **not** proven due to the word: **Claim**. Misconduct has **not** been **proven**, because the 4-Part Test **assumes** the conduct in question *really is* Misconduct – without *any* legal confirmation. And Vavilov is clear: **absurd** & **unjustified premises** are **unreasonable**. *(Fact-Finding would obviously prove this…)*

153. To verify this analysis, conduct the Substitution Test on this 'syllogism': *(Mr. X 'only' worked 5x 12h shifts: 12≠24h. Are 60h work-weeks 'misconduct'‽)*

A: The Employer Terminates X, Alleging 'Only 12-Hour Shifts'. *(Not 24h)*

B: In '12h Shift' Cases, Apply the Test & Ignore the Employer.

C: The Claimant meets All 4 Parts of the '12h Shift' Test.

Therefore: X is 'Guilty' of 'Working 12h Shifts' & **Denied EI**.

154. To further demonstrate the **absurdity** of this [il]logical construction, we can apply this same Substitution Test to the other sample policy [above]:
(the requirement to provide 'weekly sexual favours to your supervisor')

A: The Employer Terminates X, Alleging 'No Weekly Favours'.

B: In 'Favours' Cases, Apply the Test & Ignore the Employer.

C: The Claimant meets All 4 Parts of the 'Weekly Favours' Test.

Ergo: X is 'Guilty' of 'Not Prostituting Themself' & **Denied EI**. *[Why‽]*

They: ① Willfully ② Violated ③ a Clear Policy ④ Knowing the Consequences

155. This is the 'Petitio Principii' Logical Fallacy *(aka 'Begging the Question')*. It **assumes** the truth of the Premise within the Body of the Syllogism, therefore appearing in the Conclusion **still** untested & unproven. *(i.e.* 'only' *working 12-hour shifts [not 24] is 'Misconduct', meriting EI Benefits Denial.)*

156. 'Passing' all 4 Parts of the Common Law 'Misconduct Test' **still leaves** the fundamental question about *whether* the specific act [or omission] in question *really IS* 'Misconduct' **unanswered**. This Test [in its current logical form] provides ***no** meaningful information* about the nature of the [mis]conduct itself – it only addresses the worker's compliance. Meaning its corollary requirement to wilfully ignore the ***Employer's*** 'side of the equation' *still violates* the statutory requirement to Fact-Find for Just Cause. Did *they* act 'contrary to law' or make 'significant changes' to the Contract? Without answering these questions *(specifically regarding the contravened policy)*, this Misconduct Test is **meaningless**. *(Otherwise, you must accept the **unreasonable absurdity** that **not** prostituting yourself is **misconduct** deserving of Termination – **and the** compounded **injustice of EI Denial** – strictly because 'the policy says so'...)*

157. This construction also meets the definition of a 'Special Pleading' Fallacy.

The EIA 29(c)(xi) **requires** Adjudicators to examine the Employer's conduct, to see whether anything was 'contrary to law'. Excusing this requirement merely *'because an Employer **alleges** Misconduct'* is *exactly* Special Pleading. IF *they* are doing *nothing wrong*, then it makes *no difference* when *their* side is investigated – so do it [**it's law**]. But, when they are *breaking the law*, this 'rule' gives them an 'escape hatch' to avoid accountability. One which cannot be overridden – all they must do is put an 'M' in Box 16 of the Workers' ROE.

158. In my specific case, we have a senior *(Executive) pleading under oath* that we were all on *'Approved Administrative Leaves of Absence'* – and that we were **not** being 'Disciplined for Misconduct' or Insubordination. Yet *(Executives)* directed an '**M**' coding in Box 16 on my ROE – and *(an Executive)* told the SC/EI Investigator that I was *"**Dismissed** based on the Covid-19 Mandates."* [127]

[127] ('Affidavit') Details about *(Executives)* & my falsified ROE at: *(**A:** ¶24-27, ¶31-33, ¶75)*

Considering that Box 22 on that same ROE said:

> *"I am aware that it is an Offense to make False Entries and hereby Certify that All statements on this form are True."*

And that the Criminal Code states: [§398 ['Falsifying Employment Record']] *"Every one who, with Intent to Deceive, Falsifies an Employment Record by* any *means… is Guilty of an Offence punishable on summary conviction."*

Does this constitute: *'acted by reason of fraud or perjured evidence'*? [128]

159. Before I leave my arguments on Logic Errors & Incoherencies, there are *two* other incidences of such **unreasonableness** found below at: *(¶192-95 & ¶202-05)*. I will wait to explain them for the sake of logical flow, but they need to be incorporated by reference.

Application

160. Parliament's **Legislative Intent** is clear. The Hansard commentary of Parliamentary Ministers, MPs & Senators – and the sworn testimony of *many* senior civil servants responsible for researching & drafting Bills C-21, C-105 & C-113 – are equally clear:

When Deciding EI Benefits cases, they **require** Adjudicators to *Fact-Find* for whether the Employer acted 'Contrary to Law' – or made 'Significant Changes' to *key* Terms in the Employment Contract *(thereby 'Breaching' it).*

a. Claiming to use a 'Misconduct Test' *composited* from *multiple* Cases to **override the EI Act** is '**Special Pleading**'. The ADM's *Home Statute* takes precedence over Common Law Jurisprudence during Conflicts. *[and]*

b. The 4-Part Test itself **'Begs the Question'** *(called 'Petitio Principii')* because its logical structure contains an '**Unjustified Premise**'.

c. These are *both* 'informal' Logical Fallacies, and, per Vavilov, *both* constitute **Unreasonableness**.

[128] See argumentation for 'Falsified Evidence' at: '**P**: Purolator Management' *(¶237-69)*

d. Finally, combining these two Logical Incoherencies with an Employer who enacts **unlawful** Policies – and subsequently 'covers their tracks' by **falsely** claiming the 'worker committed Misconduct' – the end result is *always* an **unjust absurdity**.

161. On what grounds can the SST *(or CEIC)* **reasonably refuse** to address an **Employer's unlawful actions** – and **breach of contract** – in favour of a **logically incoherent Test** containing an **unjustified premise**‽

162. Additionally, the primary reason the Misconduct Test was selected in my case, was due to the **'M'** coding on my **ROE**. Yet *(Executives)* *directed & confirmed* this to SC/EI, while *(Exec)* ***swore*** it was **not true** during Arbitration. This meets FCA §18.1(4)(e). [129]

Decision

163. We respectfully ask this Court to Quash TM Lafontaine's Decision on the grounds that **logical fallacies** inherent to their **reasoning process** renders their Decisions **unreasonable**. *(More importantly, the Misconduct Test itself, found in Jurisprudence, needs to be **modified** in two ways. It needs to: **(1)** Comply with the EIA §29(c), and **(2)** Account for the occasional operating condition wherein the Policy tested is itself unlawful. On this specific ground, TM Lafontaine was only following precedent – notwithstanding that he was simultaneously violating the EI Act – as with almost every other C19-MM case. This is a widespread problem that has unjustly deprived hundreds of unlawfully, wrongfully terminated Canadians of EI Benefits – during a Pandemic…)*

I. Post-Script: Rule of Law, Jurisdiction & Logic

164. The second Problem with the EI Decision under Review is an interrelation of questions pertaining to the Rule of Law, Jurisdiction & Logical Coherency. *(It's probably worth adding Justice & Prudence [Common Sense] to this list too…)*

[129] Another reason why the Misconduct Test was used is addressed at 'Problem #7: Templates'.

165. It is now established that Parliament's Legislative Intent is for EI ADMs to Investigate both sides to establish whether Just Cause exists in every applicable Case.

166. The Rule of Law & Jurisdiction *(assigned in EIA §29[c])* both confirm this.

167. The DBEP *(EI Policy)*, Common Law & historical precedent *all* prove that Employment Contracts must be examined as part of the Fact-Finding process. *(The invocation of Management Rights in Decisions obviously requires this exam* prima facie.*)*

168. Other relevant Common Law tests – like the SCC-endorsed KVP Test – are also important factors in 'reasonable' Decision-making. *(By an SST-AD TM's own admission)*

169. Finally, we have proven that the '4-Part Misconduct Test' cannot be used to avoid this *Just Cause Fact-Finding* process, since that introduces Logic Errors.

170. As a footnote, [possibly] consider that my ROE contains *perjured* claims.

171. **Now:** Here are *some* of the Reasons written in my Denied Benefits Case:
(These same ***reasons*** *also appear in hundreds of similar C19-MM Cases…)*

Please tell Canadians whether this is **Reasonable & Just** – considering EI Act 29(c)(xi):
"Just Cause *exists when* an Employer's Practices are Contrary to Law."

"I must reiterate that the GD could *not* focus on the Employment Law relationship, the conduct of the Employer, and the penalty imposed by the Employer. It had to focus on the Claimant's conduct." *('DA-694' [2024 SST 26: ¶36])*

(How can the Adjudicator 'Find' for 'Just Cause' – or determine whether Purolator's actions were 'contrary to law' if they cannot 'focus on the Employment Law relationship [or] the conduct of the Employer'?)

"[The SST's] role in EI cases is *not* to determine whether the *Employer* was guilty of misconduct [or whether] the suspension was unjustified." *(id ¶45)*

"Just Cause *exists when* an *Employer's* practices are contrary to law."

"The Tribunal does *not* have the authority to assess or rule on the merits, legitimacy, or **legality** of the Employer's [Vaccination] **Policy**." *(ibid ¶44)*

It does re. their Actions: "Just Cause *exists* **If** Employer practices are contrary to law." *(EI Adjudicators are **mandated** to compare the Employer's actions [re. the Separation] to applicable Laws, and **Rule** 'on the Balance of Probabilities'.)*

"During the term of employment, the Employer may try to *impose* Policies that encroach on their employees' rights. If they believe that a *new* Policy violates their Employment Contract *(CBA)*, they can sue their Employer for Wrongful Dismissal or file a Grievance."

(ibid ¶39)

(Unionised employees cannot sue their Employers – by law & by contract. What happens when thousands of Grievances are *filed – and then ignored? What happens when thousands of workers become [unjustly] Unemployed during a* global pandemic *that* already *caused mass unemployment? What happens to the EI Premiums we have already prepaid into our Insurance plan designed for these exact situations? Does declining Consent to an* experimental *medical treatment – during an unpredictable, unprecedented worldwide medical emergency – despite the unlawful coercion [and illegal Lock-Outs]* really *equate to 'Misconduct' – and therefore Unemployment "through our own **Fault**?" Or could that be rightly considered "undue pressure to leave their employment?" **And**: 'Just Cause exists when an Employer's Practices are Contrary to Law.')*

"The question of whether […] the Employer violated legislation and his CBA, or whether the Employer's Policy violated his Human & Constitutional Rights, is a matter for another forum." *(¶40)* *(**Parliament assigned this forum**: 'Just Cause exists* when *Employer's "practices are contrary to law"* ***or*** *when Employers make "significant changes in work duties" or to "Terms & Conditions respecting wages" contained in the Contract. By definition,* proving *these causes requires considering the Law & CBA. EIA §29(c)[ix/vii])*

"The Federal Court has *held* that, even **If** an Employee has a legitimate complaint against their Employer, *'it is* not *the responsibility of Canadian taxpayers to assume the cost of wrongful conduct by an Employer'."* *(¶39)*

*(As proven below [**Problem #6**], this is an Error in Law memorialised in Jurisprudence: Taxpayers do not – and have not – contributed to the EI Operating Account since 1990.*

Also: This Finding could be ultra vires *for the initial Judge[s].* **Parliament** *defines who qualifies for EI – and Executive branch officials: SC/EI, CEIC & SST ADMs enforce it. Do individual members of the Judiciary possess the Authority to arbitrarily factor* new, *social-impact-based, Benefits eligibility considerations within their* binding *Judgements?* [Notwithstanding their honest fiduciary intentions…] *Policy is owned by the Legislature: If the EI Act qualifies someone for Benefits, they qualify. If it Denies them Benefits, they cannot collect. Do well-meaning Judges possess the authority to add* new *conditions to Benefits rules codified in law? Doesn't this violate the Separation of Powers doctrine?*

And even if *this wasn't their original intent – which is possible [considering it was* dicta*] – it's current interpretation & application by EI ADMs opens the door for serious error…*

The EIA confers 'Just Cause' status to Claimants when Employers' 'act contrary to law' – this cannot be overridden by arbitrary 'taxpayer burden' arguments from 'precedent'.)

"It is one thing to ask whether an express or implied duty exists. It is another to ask whether the duty was validly imposed by the employer. The second question falls outside of EI law." *(ibid ¶37) (Here we come 'full circle', ending where we started.* ***Is this Argument still Reasonable?****)*

172. This Case, at its core, is ***not*** about Vaccination – or Public Health measures of any kind. While important context, these subjects enflame emotions & cloud judgement – while obscuring the core issue[s]. This Case is *really* about *Statutory Interpretation & Administrative Law*: Can ADMs use 'convenient' statements in the 'ocean' of Case Law to avoid clear statutory mandates in their Home Statute? What happens when a Rizzo Analysis of the Legislative History proves Parliamentary Intent matches the Act's text? Vavilov is clear: ADMs cannot *'reverse-engineer desired Outcomes'*, yet **selectively** [not] applying various Common Law principles to 'standardise' the Outcome is **exactly** that.

The Rule of Law matters. Some employers will make endless justification to create corporate policies that *either* break laws *or* breach contracts – or both. When that happens, EI ADMs need to **follow the law** – they *must* **Fact-Find for Just Cause** –

including all the prerequisite processes that entails: examining contracts, employing various Common Law tests, assessing their Decisions for logical inconsistencies, etc.

What's next? Night Club owners mandating a 'minimum breast size' policy? Then women who refuse unnecessary surgeries will be Denied EI *"due to their Misconduct?"*

J. Post-Script: Publicly-Important Vaccine Data

173. On 2022-01-06, a US Federal Judge ordered Pfizer to publish the internal results of their **Phase 2 Safety Trials**, after they tried to withhold them for 75 years. The results are damning & suggest that they engaged in medical fraud to limit their liability.

Summary: 1,223 [2.9%] *of reporting participants* **died** *during the 90 Day Trial. Only 19,582 [46.5%] 'resolved' their health problems during the study, meaning 22,504 [53.5%] received 'ongoing' or long-term* adverse events. *9,400 [22.3%] 'dropped out' or became 'unfollowable', hiding their outcomes from the already concerning results. Pfizer was finally forced to* ***hire 2,400 new employees*** *just to process all the injury reports.*

Knowing this data would eventually come out, they ***unblinded the study*** *[vaccinated everyone in the Control groups]* ***before*** *sending the data to regulatory authorities, meaning it would be [almost] impossible to prove whether the product 'caused' this.)*

US Lawsuit: PHMPT v. FDA *(TXND: 4:21-cv-01058):* ***(Docket)***
[ECFs]: *Complaint (#1), Response (#14), Judge's Order (#35)*

PHMPT: Pfizer Adult Data, Pfizer Youth Data, Moderna Data *(FDA Safety Data)*
Analysis: Summaries, Detailed Reports, Analysis, Specific Findings

174. The Alberta provincial government published their comprehensive *post-mortem* report entitled *'COVID-19 Pandemic Response Review'*. Chapter 8 covers the "data and decisions related to the approval & use of COVID-19 Vaccines in Alberta." [130] It contains a forensic analysis of Pfizer's *intentionally withheld* Phase 2 Safety Report *(listed above)*, which confirms these alarming safety signals. *[p.195-98]* [It also found that]:

[130] ('AB-C19-PR') Alberta COVID-19 Pandemic Review: Chapter 8 ['Vaccines'] *[p.186-220]*
Key Findings: Safety & Efficacy *[p.186-205].* **Raw Data:** **8** Appendices *[p.206-20]*

"This crisis and threat ['global pandemic'] dominated the daily narrative everywhere. This *fear was leveraged internationally* to push several novel vaccine platforms through development, delivery, and implementation in record time through Emergency Use Authorization *(EUA)*. The expedited process **incurred profound consequences**. The EUA approval pathway left large holes in the efficacy and safety data that is now being questioned by academic and clinical specialists internationally." *(p.188 [¶1])*

"In terms of safety, the Task Force identified reports of deaths & injuries attributed to the vaccines, as well as a *known risk* of myocarditis, particularly in young males. The long-term safety of the vaccines is undetermined due to their rapid deployment & limited follow-up.

Task Force recommends **halting the use of COVID-19 vaccines** *without* full disclosure of their potential risks, **ending their use** *in* healthy children and teenagers, conducting further research into their effectiveness, establishing support for vaccine-injured individuals, and providing an opt-out mechanism from federal public health policy.

[] Further research, transparency and individual choice in decision-making will be important for any future pandemic response vaccination initiative." *(p.186 [¶3-5])*

This chapter concludes that – *despite* the 'repeatedly used tagline' – these *experimental* COVID-19 Vaccines could ***not*** be **proven** *either* **safe *or* effective**. And they definitely "were *not* designed to halt transmission" – this endpoint was *not* part of *any* clinical trials.

"**All 3** of the originally approved vaccines, Pfizer, Moderna, and J&J, were ***not*** powered for ***nor*** tested the *efficacy* against **hospitalization**, **death**, **or** stopping transmission. The end point was **efficacy against symptomatic COVID-19 infection**." *(p.199 [¶4])*

175. Since 2022 – through **NCI** – Canadian Citizens conducted the *world's first & largest Public Inquiry* into many aspects of the COVID-19 pandemic. They *deposed* **365 Sworn Witnesses & 128 Experts** over **30 Days of Hearings** in **7 Provinces**, which culminated in **two** detailed Reports. *(Each split into 3 Volumes: Summary, Analysis & Transcripts.)*

Report #1 *(2023-11)*: 5,342 Pages *(Report: 637 pg + Transcripts : 4,705 pg)* [131]

Report #2 *(2024-11)*: 740 Pages *(Report: 216 pg. + Transcripts : 524 pg.)* [132]

Each Report also contains **over 100** detailed Recommendations to protect Citizens' Rights & Freedoms in future Emergencies & Restore Trust in our Public Institutions.

131 ('NCI-CFR') National Citizens' Inquiry: Canada's Response to COVID-19 *[**CFR:** p.152-558]*
132 ('NCI-CSR') NCI: Commissioners' Supplemental Report [2024] *[**CSR:** p.117-66]*

176. These volumes are being cited in *hundreds* of Pandemic-related lawsuits across the western *Common Law* world – and *should be* required reading for *every* citizen. They will be shared, studied & referenced for decades to come…

Although I will *not* be making any arguments from this invaluable resource, it is **critical** to document the **National Public Interest** the NCI generated – both 'at home' and abroad.

Here is a partial listing of some of the important subjects analysed in these Reports:

Report #1: Commissioners' Final Report ***(2023-11-28)*** [133]

§7.1.7: Coercion vs. Consent **§7.1.9:** Workplace Mandates

§7.5.7: Vaccines: Interim Approval **§7.5.10:** Vaccines: Adverse Reactions

§7.1.3: Labour Law & Unions **§7.2.3:** Social Effects of Mandates
§7.2.7: Impact on Social Fabric **§7.3.1:** Mandate Impacts on Business
§7.3.2: Mandate Impacts on Citizens **§7.5.12:** Impacts in Public Workplaces

Report #2: Commissioners' Supplemental Report ***(2024-11-28)*** [134]

§5.4: Health Impacts | 11 Expert Witnesses *(Top Domain Experts Worldwide)*

Fields: Geneticists, Emergency & Critical Care, Immunologists, Infectious Diseases, Microbiologists, Mortician & Embalmer, OB/GYNs, Orthopaedic Surgeon, Pathologist, Public Health *(+CMO)*

§5.4.1: DNA/RNA Contamination **§5.4.2:** Vaccine Adverse Reactions
§5.4.3: Vaccine Testing & Approval **§5.4.7:** Vaccine Mortality & Impact

§5.4.4: Medical Ethics & Public Trust **§5.4.8:** Financial & Institutional Conflicts

Report #1 *(Home)*: https://tinyurl.com/NCI-Report-1
Report #2 *(Home)*: https://tinyurl.com/NCI-Report-2

Report #1 *(PDF)*: https://tinyurl.com/NCI-Report-1-PDF
Transcripts *(PDF)*: https://tinyurl.com/NCI-Report-1-Transcripts

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[133] ('NCI-CFR') Commissioners' Report: Video Presentation https://rumble.com/v3y7hm1
[134] ('NCI-CSR') Supplemental Report: Release Presentation https://rumble.com/v5twk5t

Report #2 *(PDF)*: https://tinyurl.com/NCI-Report-2-PDF

Expert Witnesses: https://tinyurl.com/NCI-Experts
Hearings *(Listing)*: https://tinyurl.com/NCI-HearingList
Testimony *(Video)*: https://tinyurl.com/NCI-Testimony
Interviews *(Video)*: https://tinyurl.com/NCI-Interviews
Video Clip Library: https://tinyurl.com/NCI-Clips

177. These *three* resources only represent a 'drop in the bucket' of the *internal* documents *(from Pfizer & Moderna)*, *official* reports, sworn testimony, and well-sourced, domain-expert research that is largely being ignored by the Media, Public Health & *some* Courts. *(Again, I am* ***not*** *making any arguments from these publicly available resources. I am only drawing* Judicial Attention *to where the National Public Interest currently resides.)*

There was an abundance of evidence indicating that these ***experimental*** **immunisations** were [at most] of ***unknown*** safety & efficacy – and *some* high-quality signals that they were *objectively* **unsafe** *and* **ineffective** – publicly available data that met the Rules of Evidence back in early 2022. *(Information that Public Officials across our government were directly sent – and sometimes* served *– at the time: CMOs, MPs, MPPs/MLAs, etc.)*

Put differently: while there were **zero** Canadian Safety Studies published from the *[still] ongoing* Clinical Trials, there were many domain experts testifying to their serious risks & documented harms *(incl. death & permanent disability)*. There were also *hundreds* of internal Pfizer & Moderna documents [forcibly disclosed by Court Order] that indicated the manufacturers' own awareness of this vital information.

178. The United States government is maintaining a combined public repository of their COVID-19 related [unclassified] Reports & Investigations: **https://COVID.gov**

Science, Public Health Policy & the Law *(https://PublicHealthPolicyJournal.com)*

Review: Calls for Market Removal of COVID-19 Vaccines Intensify as Risks Far Outweigh Theoretical Benefits *(https://tinyurl.com/IPAK-C19-Vaccine-Removal)*

https://PublicHealthPolicyJournal.com/review-of-calls-for-market-removal-of-covid-19-vaccines-intensify-risks-far-outweigh-theoretical-benefits

Problem #3: Cited Inapplicable Case Law

Fundamental Questions ***(2)*****: #8-9**

Grounds of Review ***(2)*****: FCA §18.1(4)(b-c)**

Vavilov Principles ***(4)*****: Decision & Outcome**

- **(b)** Other Statutory or Common Law
- **(d)** Evidence Before the Decision Maker
- **(e)** Submissions of the Parties
- **(f)** Past Practices and Past Decisions

Facts & Issues

179. **Jurisprudence:** Can EI ADMs ***reasonably*** apply Case Law containing *substantively different* underlying Fact Patterns & Pleadings? What happens when they are shown this **error**, and they persist in using it anyways?

180. **Error in Law:** SST TMs cited Inapplicable Case Law, despite being shown how it was fundamentally different from my present Case. These cases were also being cited 'out-of-context' *('proof-texting')*, ignoring the primary Reasons for their Holdings.

Furthermore, these *same* irrelevant cases are being cited in hundreds of other C19-MM Cases, often using the same *fallacious* Reasoning processes.

K. Historical Jurisprudence

181. Please consider my SST-AD Written Arguments ***(AD-23-694*** *[ADN06])* incorporated *(by reference)* into this J.R. Factum *(Memo of Fact & Law)*. To save space, I won't reprint *everything it* contains, but some content is critically relevant and must be expanded…

This incorporates the 'Problem #2: Case Law' section. ***(B:*** *p.181-85 [ADN06-16..20])*

Jurisprudence

182. As cited above *(under [Problem #2: Internal Logic & Consistency](), at: ¶137-38)*, there are **five** primary FCA Cases being used to Dismiss *(C19-MM)* EI Appeals *en masse*.

They are combined with the [fallacious] 4-Part Misconduct Test to support the proposition that EI ADMs **cannot** *"consider how the employer behaved"* or *"focus on the employer's conduct"* or investigate *"whether the[y] breached a term in the contract"* as that is *all 'ultra vires'* – since they allege Misconduct – which these Cases *supposedly* justify. [135]

Since we have *conclusively proven* that using the Misconduct Test is ***unreasonable*** from a Logical standpoint, it's time to address the practical applications of these **five** Cases.

Federal Court [of Appeal]: J.R. of SST-AD [Umpire] Decisions		
Case No.	**Case Name: Parties**	**Citations *(GD/AD)***
2005 FCA 87	Canada *(AG)* v. Bellavance	**331** *(100 / 231)*
2007 FCA 36	Mishibinijima v. Canada *(AG)*	**849** *(524 / 325)*
2007 FCA 107	Canada *(AG)* v. McNamara	**593** *(329 / 264)*
2010 FCA 314	Canada *(AG)* v. Lemire	**110** *(63 / 47)*
2016 FC 1282	Paradis v. Canada *(AG)*	**610** *(367 / 243)*

As proven by this table, these Cases were cited ~**2500** times *(as of 2024-12-13)*. *(And that's unique Case citations. Factoring multiple quotes per case approximates **50K** refs.)*

183. While the 4-Part Test contains an *Unjustified Premise (an untested, unverified assumption)* that the *'policy-violating conduct'* is inherently 'Misconduct', these oft-cited Cases *all* address situations wherein the EI Claimant was *legitimately* – self-admittedly – guilty of real, proven Misconduct *because* they Breached their Employment Contracts.

[135] In my two Cases alone *(GD+AD)*, they are *cumulatively* cited **39 places**. *(15 para + 24 FNs)* *(The actual 'individual' count is higher, as some citations are repeated in the same location.)*

Summary: In **Paradis & McNamara**, the Claimants *both* Failed Drug Tests *(THC)*, which obviously violated their Contracts – *and* federal Health & Safety Legislation. [136]

[593] **2007 FCA 107: Canada *(AG)* v. McNamara** *(¶9)* | Failed THC Test *(¶21-23)*
[610] **2016 FC 1282: Paradis v. Canada *(AG)*** *(¶15-16)* | Failed THC Test *(¶1-2,34)*

Mishibinijima had 'persistent absenteeism' Attendance issues *(due to his alcoholism)*, with '*numerous* warnings' on record, which *explicitly* violated his Contract. *(¶19, ¶32)*

[849] **2007 FCA 36: Mishibinijima v. Canada *(AG)*** *(¶32)* | Alcohol/Absence *(¶2,19)*

And **Bellavance & Lemire** both Breached their Contracts by breaking government requirements. **Lemire** was selling contraband cigarettes at work *(which is a Criminal Code offence) [¶21]*, while **Bellavance** was a federal government employee who repeatedly broke the HRDC 'Code of Conduct' *(¶3,11)* by *"intervening personally in the processing of EI cases"* and *"giving preferential treatment to some of his former employees & certain family members"* – which also borderlines on criminal conduct.

[331] **2005 FCA 87: Canada *(AG)* v. Bellavance** *(¶3)* | Code/Trust/CoI *(¶10-11)*
[110] **2010 FCA 314: Canada *(AG)* v. Lemire** *(¶21)* | Criminal/Contraband *(¶5,19)*

In all of these cases, the Claimants breached their employment contracts – and most of them also broke various government legislative requirements. *(How can this finding be made if assessing CBAs is* ultra vires*? Why do all these cases mention **CBA Breaches**?)*

Argumentation

184. I did **not** 'breach my contract' – nor was there *ever* any *allegation* that I did. Citing Cases wherein the Claimants *self-admittedly* **broke** their Contracts when that was **never** a consideration here is *clearly* an Error in Law. *(For me and hundreds of other cases…)*

These Cases are all being cited because they provide the [unfounded] Justification for **refusing** to conduct Fact-Finding into whether the *"Employer acted contrary to Law."*

[136] ESDC: Labour Regulations *(**IPG-080**: Substance Use in the Work Place)*

It is **self-evident** that *when* Claimants **admit** to *wilfully* breaking their Contract, there is no need to look further – this amounts to a 'joint submission' of 'guilt' – any 'reasons' why *may* impact sentencing, but do not change the ultimate disposition of the Case.

It is equally *self-evident* that, to the contrary, when Defendants plead 'Not Guilty', Fact-Finding ensues to determine the innocence or guilt of the accused. It would be laughable – and possibly censurable – if *(after taking a 'not guilty' plea)* the Prosecutor began citing historical cases where other [completely unrelated] Defendants pled *Guilty* as 'evidence' to attempt to establish any Guilt in the present Case. **Why is this injustice allowed here?**

185. Citing other Cases with different fact-patterns & pleadings – cases where **contract violations** were mutually **conceded** – merely to 'proof-text' unrelated holdings where *those* Judges stated the obvious *(that further Fact-Finding was **not** necessary **in those Cases**)* is an **outrageous** Error in Law – and clear violation of Natural Justice *(Fairness)*.

186. Given enough time, EI ADMs could find dozens *(maybe hundreds?)* of Cases containing *any* desired Judicial sentiment – and given equal time, I could likely find & cite as many 'opposing' holdings – and *neither* collection of Case Law *(regardless of how many volumes we filled)* would matter **if** the principal Facts & Pleadings were different.

187. Where 'EI guilt' [read: Misconduct] is admitted *(where EI Claimants concede that they* wilfully *broke their Contracts)*, there is clearly *no legitimate reason* to Fact-Find for 'Just Cause' – thus *"considering how the employer behaved"* **is** obviously *ultra vires.* **But**, where Claimants deny 'EI Guilt' [read: oppose Misconduct] *(where Claimants* clearly refute *that they broke their Contract)*, 'thorough Fact-Finding' is **required** to determine 'Just Cause' – it's *mandated* by policy, by statute & for fundamental Justice.

It is **clear error** to skip this Fact-Finding exercise *(deem it ultra vires)* merely because the employer alleges Misconduct – or purely because *other unrelated Claimants* admitted to their own Misconduct many years ago. Citing such cases as 'precedent' – to justify refusal to *properly* investigate the 14 'Just Cause Reasons' enumerated in EIA is **unjust**.

188. *Employers* **cannot** *unilaterally impose* **unlawful** corporate policies. Period. And the EI Act – *and* the clear Legislative History & Intent of Parliament – **require** EI ADMs to

Fact-Find for whether *they* "acted contrary to Law," applied "undue pressure to [take] Leave," or made 'significant changes' to core Contract Terms. *(EIA §29(c): 'Just Cause')*

189. I realise that I am repeating these key **facts**. *(Legal Truths)* Yet, I have repeated them far less times than the corresponding **errors** were repeated in my *erroneous* EI Decisions.

It would be a travesty against Justice to allow this Injustice to stand *unquashed*. EI ADMs are citing Jurisprudence with different Facts & Pleadings to excuse *their* attempts to *avoid* their statutorily-mandated duty to **Fact-Find for 'Just Cause'** – specifically, the *[four]* Reasons listed in the last paragraph. This ***cannot*** be left standing – **or become precedent**.

It is patently *self-evident* that *willfully* breaking a contract **is** Misconduct. If **full Fact-Finding** is conducted – and it is *legally established* that the 'violated' policy in question *(C19-SWP)* is ***both*** **lawful *and* contractual – then** I accept that I am disentitled from EI.

But until this statutorily-mandated process is done, inapplicable Case Law is **irrelevant**. Compounding the weight of errors does not change the truth – or any legal realities…

190. Another point of distinction must be made: these cases **don't** address **my** argument. When *those* Judges held that *further Fact-Finding was unnecessary*, the objection raised was universal: those EI Claimants were alleging *'Wrongful Dismissal'*, *'Unjustified Dismissal'* & Unnecessarily 'Severe Penalties'. [137] I **never** made these arguments before *either* TM Usprich *or* TM Lafontaine *(the Decision [chain] under Judicial Review)*.

From inception, my argument has *not* changed: I want *statutorily-mandated* Fact-Finding for *Just Cause*, specifically re. 'Contrary to Law' & 'Significant Changes' to our CBA.

Citing Jurisprudence where Claimants were asking for considerations I have *never* sought – and using *those* Judges' Denials of *those* requests to **deny** my completely different request is disingenuous at best – and it is also another *obvious* **error in law**…

191. It is telling that *both* TMs refused to address my EIA §29(c) 'Just Cause' Arguments by citing these same five Cases *ad nauseum*. [138] *(What might be worse is that TM Usprich*

[137] Identical Arguments: Mishibinijima *(¶21)*, McNamara *(¶22-23)*, Lemire *(¶22)*, Paradis *(¶30)*
[138] ('DA-740') **DA v. CEIC [GD]** *(2023 SST 1093)*: **[33x]** ¶24-25 *(FN:13,16)*; ¶26 *(FN:18)*;

*actually mentioned 'Just Cause' in her Decision, but **rejected** it based on what section of the DBEP it appears in, while **completely ignoring** the text of the statute itself. (Policy over statute again?) It was **repeatedly said** that I was on '*administrative *unpaid leave of absence'*[139] *– which is the wording the EIA uses in the Interpretation section: "Just Cause for voluntarily leaving an employment **or** taking leave from an employment exists **If**…")*

L. Side-Bar: Redefinitions & Logic Errors

192. *(The fact the CEIC unilaterally changed my Disposition **to** 'Suspended' **from** 'Leave without Just Cause' is very concerning.* [140] *There was **no factual basis** for changing this. On my second SRC, my HR Manager* confirmed *my first ROE was coded **wrong**.* [141] *Just because I did **not** consent to this Admin LOA, that did not change it's 'essential nature' – the documentary evidence repeatedly says that I was on Administrative Leave – redefining it as a 'Suspension' [which legally implies Discipline] to change the applicable sections of the Act* is yet another ***error in law*** *– one made in hundreds of Cases.)* [142, 143]

193. TM Lafontaine continued with this 'red herring' to justify his use of the 'Suspension' Clause *(EIA §31)* – instead of 'Leave *Without* Just Cause' *(EIA §30)* – even though he simultaneously conceded that I was 'Locked-Out' on a Leave of Absence. *(¶15-19)*

"The **evidence shows** that the *employer* **prevented** the Claimant from working even though there was work. The Claimant acknowledged that the **Leave** was ***imposed*** on him and that he would have continued to work but for the Policy." *(¶16) (cf. CLC §3[1])*

(NB: This is a de facto ***finding*** *that Purolator 'acted contrary to law' in his Decision.)*

¶28-31 *(FN:20-23)*; ¶32 *(FN:24-25)*; ¶33 *(FN:26,27)*; ¶71 *(FN:48)*; ¶75; *(FN:52)*; ¶79 *(FN:54)*; ¶88 *(FN:64,65)*; ¶92 *(FN:68)*; ¶99 *(FN:75)*

('DA-694') **DA v. CEIC [AD]** *(2024 SST 26)*: **[10x]** ¶32 *(FN:10)*; ¶40 *(FN:14)*; ¶47 *(FN:18)*

[139] The various policies, letters & documents I entered into evidence clearly use the terms *'leave of absence', 'administrative leave'* & similar sentiments **15+** different times. ***(FN-222)***

[140] ('Evidence') Compare the CEIC's consecutive Findings: Reconsideration vs GD Representation "Leave of Absence *without* Just Cause" *(04-27)* to "Suspended due to Misconduct" *(07-18)* The CEIC deemed this change a 'clerical error'. (**B:** p.51-54 [P01-02]) *(GD3-47..GD4-7)*

[141] ('Affidavit') [of] (EI Claimant), **¶31-34**: SC/EI SRC Records (**B:** p.36 [P01]) *(GD3-32f)*

[142] ('DA-740') **DA v. CEIC** *(2023 SST 1093)* @[¶107] *(¶14 & FN7), (¶18-20, ¶22)*

[143] ('BE-Memo') This ***internal*** CEIC policy redefined 'Leave of Absence', despite *"not [being] linked to legislative amendment[s]." (cf. Problem #5: Use of Internal Rules [¶311(c)])*

[immediately followed by]: "The Claimant temporarily lost his job. He was ***therefore*** Suspended under the EI Act." *(This is a bare assertion, void of any legal foundation. The Record is clear: I was on an Approved Administrative LOA, **not** Suspended.)*

"It was therefore *not necessary* for the GD to determine whether the employer had followed its usual discipline procedure. An employer's discipline procedure is irrelevant to determine Misconduct under the EI Act." ***(***[*¶18*]*) (Why invoke 'Discipline' for a LOA? I have **always** argued that my 'Employer acted contrary to Law', seeking Fact-Finding.)*

194. **Side Note:** This 'bait-and-switch' is also a **tautology** – and 'circular reasoning' is deemed **unreasonable** under Vavilov. By rights and definition, my situation is a *'period of Leave* with *Just Cause'* under the EIA §29(c)(xi). In an unfair & legally dubious move, the CEIC used the words "**lost** *any* employment ***because of*** their misconduct" *(EIA §30[1])* to *justify* **changing facts** *('Approved LOA' to 'Suspension')*. This obviously requires a ***proven*** **finding** of Misconduct – and yet the only way to justify applying the Misconduct Test to someone on 'Approved Leave' is to first pretend it's a Suspension. *(And this is separate from the* logical fallacies *inherent to using the Misconduct Test.)*

Under normal circumstances, the Suspension moniker is obtained from the Employer, by virtue of the Disciplinary process that TM Lafontaine admitted was absent in this case. That leaves only the *tautological* definition that "loss of any employment **because** of Misconduct" *is* grounds to claim I was "Suspended because of my Misconduct."

195. The CEIC made the following categorical statements in their 'Position' arguments:[144]

"HR at Purolator was contacted and stated employees were required to be vaccinated by 10 January 2022 or they would be placed on unpaid **Leave**. [] The employer states that the Claimant was ***not*** *Dismissed* but rather, placed on unpaid **Leave**." *(GD4-2 ¶1)*

"He willfully refused to be vaccinated, knowing this would lead to a Suspension, ***which amounts to*** **Misconduct**." *(GD4-4 ¶3) (This is either **unproven** or **tautological**. There is no other way to interpret this sentence – which **is** their* ultimate *Argument to the SST.)*

*(Purolator clearly, repeatedly stated that I would be 'placed on Leave' [aka **Locked-Out**] – they **never** used the word 'Suspension'. The Commission arbitrarily **changed** what my Employer said – from 'Leave' [which is Administrative in nature] to 'Suspension' [which is Disciplinary] & then arbitrarily **equated** that 'Suspension' to **'proven Misconduct'**.* [145]

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[144] ('Evidence') CEIC Representations [to SST-GD] (**B:** p.53-60 [P02]) *(GD4-1..8)*

[145] ('SRC-RR') The CEIC justified Denying my EI Benefits Claim based on "the Claimant's Dismissal [] as being due to **misconduct proven**, as defined by the EI Legislation." *([GD3-45f], p.49) (Where? The EIA **requires** Just Cause Fact-Finding. 'Proving Misconduct' is **nowhere** in it. Jurisprudence – especially inapplicable Cases – **cannot override** [Home] **statutory duties**.)*

"Suspension 'amounts to' Misconduct" is either *an unproven allegation* **or** *a* ***tautology****. One cannot* ***reasonably*** *change the legal term* Leave *to* Suspension *to* ***prove*** *Misconduct, nor can 'Suspension' and 'Misconduct' be* ***reasonably*** *deemed as legally synonymous: doing so creates an unfalsifiable tautology by using the* existence *of a Suspension to prove Misconduct, while concurrently justifying the Suspension 'due to unproven Misconduct'.*

What this ***tautology*** *is missing is the* interim step *of a completed Grievance investigation – which was* ***not*** *done in my Case. The mere* existence *of a 'Suspension' does* ***not prove*** *Misconduct – it is the* ***result*** *of a Grievance which has been* ***rejected* after *fact-finding****. Most CBAs, including mine, prohibit applying Suspensions until* ***after*** *the process is done. Ergo, Suspensions do* ***not*** *'amount to' Misconduct – they are the natural result of* ***proven*** *Misconduct. The* ***evidence*** *in the Grievance file* ***proves*** *Misconduct [or not]. Suspensions are the result –* ***not*** *the proof –* **if** *they are done. And when there is* ***no*** *investigation…*

And ***none*** *of this remotely applies to workers who are on 'Authorized Admin Leave'.)* [146]

M. Current Jurisprudence

2023 FC 102: Cecchetto v. Canada *(AG)*

196. Since *post-Covid* Case Law is also cited in both my SST Decisions, I need to address them briefly. I have already disproven Cecchetto's application to my specific Case *(at length)* in my SST-AD written Arguments, [147] so I won't waste time & space repeating them here, suffice to say that TM Lafontaine *did not even reference* those 3+ pages of argumentation – much less properly address them in his Decision.

197. The holding in Cecchetto is clear – and repeated several times – Cecchetto was Denied Leave to Appeal because he *"did not raise an arguable case per the DESDA." (the Governing Statute)* (¶¶33,40) *(cf. ¶¶23,28,31-32)* This sentiment was repeated numerous times throughout that Judgement. That Reasoning does ***not*** apply to my Case. My lengthy list of arguments all cited their relevant legislative bases *(by section)*.

[146] Detailed analysis of this **error** at: Problem #3: ('P') Purolator *(& its Side-Bar)* down below.
[147] ('DA-694-Args') [2023-11-13] SST-AD Written Arguments (**B:** p.182-85 [P16]) *(ADN6-17f)*

As above, simply citing another Case merely because it mentions 'COVID Vaccination Policies' is **not** sufficient to stand as a 'reasonable' justification upon J.R. – especially when my primary arguments remain *both* uncited & unaddressed in their two Decisions.

Mass-citing a Case that was Dismissed because the Appellant 'did not follow the rules' is hardly **'reasonable'** grounds to justify *their* own *wilful* decision to 'not follow the rules' – by **refusing** to conduct Fact-Finding into Just Cause. Irony aside, that is also *not* '**reasonable**' grounds to ignore the long list of legal & factual errors I submitted to them. Vavilov is clear: 'reasonable' Decisions must *(1)* properly state, and then *(2)* fully address the relevant legal & factual issues 'at bar'. *(cf. Vavilov [¶125-28])*

198. Ergo, citing Cecchetto – which was Dismissed on procedural grounds – should ***not*** be deemed 'reasonable' justification for ignoring the salient points in **my** Submission[s]. As with the five *mass-cited* historical Cases, Cecchetto is ***not*** relevant to my Case. *(I will also reiterate this point – I am* not *commenting on Cecchetto's applicability elsewhere…)*

*(Although I will say this: the 'Cecchetto' Case has been cited **386** times to Deny EI Claimants [as of: 2024-12-18]. That is concerning for a Case that was Dismissed on technical grounds, rather than on any **merits** that were **not** properly argued – as he self-represented. I will also note that **it** is now on Leave to Appeal before the SCC [#41441].)*

199. Instead of addressing my 'Cecchetto Inapplicability' arguments – which *is* a **legal error** itself – TM Lafontaine doubled down by citing **five** more post-Cecchetto Cases. [148]

2023 FC 1120: Milovac v. Canada *(AG)*, **2023 FC 1134: Kuk v. Canada *(AG)***, **2023 FC 1527: Matti v. Canada *(AG)***, **2023 FC 1555: Davidson v. Canada *(AG)*** **2023 FCA 217: Francis v. Canada *(AG)***

200. At risk of sounding like a redundant 'broken record', these five cases too, are *not* helpful in addressing my arguments – for similar reasons already stated above.

Cecchetto, Matti *(¶23-24)* & Davidson *(¶41-42,¶46)*, were *all* Dismissed for the same reason – one clearly deconstructed in my SST-AD Filing – they did *not* follow the

[148] ('DA-694') **2024 SST 26: DA v. CEIC** *(¶44)*, citing: Milovac, Kuk, Matti, Davidson & Francis.

prescribed SST Appeal & FC J.R. Rules & processes. They ‘did not make any arguments that the SST-AD & FC-JR could address’. *(per SST Rule §26[3] & DESDA §58[1])*.

Considering their pleadings before the SST-AD *(at least what I can see in public documentation)*, I understand *both* the AD’s *Denial of Leave* & the FC’s J.R. *Affirmation*.

ADMs & Courts can only be expected to address the pleadings *properly made* by various Applicants. If they raise nothing that falls within the statutory Grounds for Appeal, the Judges’ rightly Dismiss their Cases. However, using these Cases *(Dismissed on technical & procedural Grounds)* – as **precedence** to Deny *other* Cases on their Merits – while simultaneously ***not*** addressing their actual pleadings, raises *serious* **Justice** issues.

201. I will not spend any significant time on Milovac *(¶22-23)* & Kuk *(¶47)*, suffice to say that, they too, are inapplicable to my Case – although for quite different additional reasons. As a baseline, they were also rejected for the same reason as the above three Cases, but there was also a significant difference in factual basis underlying their Claims.

Milovac *(¶17)* & Kuk *(¶3-4)* cases were Dismissed because they worked at Health Care facilities that were subject to Directive #6. [149] *(Ignoring for now the serious question about whether this Order was properly published in the Ontario Gazette, under the Authority of the Lt.Gov.-in-Council, as that is an issue for the Ontario Superior Court.)* [150] Directive #6 *was* a public-health mandate from the Ontario Provincial Government – specifically a Health Order issued by our province’s Chief Medical Officer under the Health Protection & Promotion Act *(§77.1)*, which arguably made the Immunisation Requirement a legal *‘condition of employment’* for all HCPs employed in the province.

Based on legal precedent, that authority *could* supersede the CBAs, meaning ‘covered employers’ were legally authorised to create & enforce specific policy that was *not* part of the CBA – and the Directive itself made that policy ‘lawful’ . As such, the Appellants *were* bound to comply, and wilfully refusing *was* **Misconduct**. *(Legal judgements aside, it* ***is*** ultra vires *for EI Adjudicators to ‘rule on’ whether Provincial Orders issued without requisite Cabinet Approval can lawfully bind* citizens, *like OICs [Orders in Council].)*

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[149] (‘D6-PH’) **Directive #6: for Public Hospitals** *(CMoH Directive to Health Care Providers)*
[150] Establishing privity with Citizens to bind them *individually* is *ultra vires* for the Board of Health**.**

But that too, has no application to my Case. Purolator is federally regulated, not provincial & there was no [similar] *Immunisation* OIC from Trudeau's Privy Council.

Circular Reasoning

202. Which leaves one final argument in this section. *('Cecchetto')* was already cited in my GD Decision, so I spent 3.5 pages *(in my AD written arguments)* quoting many relevant sections, proving how the underlying circumstances & pleadings were different, making it inapplicable to my case. *(above: ¶196-98)*

Instead of addressing those arguments, TM Lafontaine cited five other cases – all relying on the same two underlying differences – making them equally inapplicable to this case. To make matters worse, the first four cited – and *depended on* – the original case *(Cecchetto)*, making this entire Argument a textbook case of Circular Reasoning.

When I provide sound reasons why a particular Case is *not* applicable to my situation, it is *unreasonable* to ignore those arguments & counter them with a list of *newer* cases that cite the original ['distinguished'] one as *their* precedent. *(w/ same inapplicable reasons.)*

Logic 101: When Proposition *'A'* is already **falsified**, it is *illogical* to counter with Propositions *'**B-E**'*, all of which explicitly depend on Proposition *'A'* as their opening [major] Premise. In addition to being 'Circular Reasoning' it becomes *Absurd*.

203. **[Script]:** **EI ADM:** "I am denying your Case because Cecchetto requires me to."

Claimant: "Why? How does Cecchetto apply to this specific case?"

EI: "Because it does. See here? Cecchetto refused to take the COVID Vaccine – just like you. And he gave a long list of reasons why. Aren't these the same reasons why you said *No*? He was being discriminated against; because it was unsafe, untested & not proven to work, so he refused consent; it was also dangerous and unnecessary since he already had natural immunity. And the Judge Dismissed his Appeal – so I have to too…"

Claimant: "But the Judge said *four times* that his *reason* for Dismissing the Case is because Cecchetto *'didn't follow the rules'*. He also made it clear that both he & EI ADMs have no authority to discuss that long list of concerns. I *am* following the rules.

And I'm not asking you to decide anything in that list. But I *am* asking you to follow the law. The EI Act says you have to investigate whether my *'employer broke the law'*."

EI: "*And?* Look at Cecchetto. It's from the Federal Court. That makes it binding…"

Claimant: "What does Cecchetto have to do with the important questions I asked you?"

EI: "Hey look! I found 5 other cases about vaccine policies that were also Denied."

Claimant: "Are you going to answer my questions about Cecchetto?

EI: "But these five new vaccine cases were also Denied, so I have to follow precedent."

Claimant: "But the Judges in those *new* Cases you gave me all cited Cecchetto… If Cecchetto isn't applicable to my Case, then it doesn't matter how many other Judges find it useful to theirs. And are you going to investigate whether Purolator broke the law?"

EI: "But look. There's five of them. And they're newer. I have to follow them. And wait, here's four more…" *(Totally ignoring that they all cite Cecchetto* dispositively*…)*

204. While a fictional script – and intentionally 'over the top' – the underlying principles are exactly what is happening in my case. Whenever EI ADMs are challenged to follow the law – or answer hard questions about their decision-making process – they respond by repeating themselves & citing new cases, completely ignoring their circular reasoning.

205. Like these compounding logical, legal & factual errors, this case is a 'house of cards'. There are so many different errors, it's honestly hard to believe that they have not been collectively Argued before. In my two Cases under J.R. – *(1)* TM Lafontaine's Appellate Denial of *(2)* TM Usprich's [de novo] Decision to Deny my EI Benefits – both historical and contemporary Case Law was [mis]cited to Justify their Denial Decisions. Including jurisprudence not already listed in this Factum, 10+ Cases were cited 50+ times – all to *avoid* addressing my Arguments – and *justify* violating the EI Act §29(c) *(and §48-51)*.

Using Jurisprudence *dispositively* after *reasonably* addressing the Claimant's arguments is one thing. But [mis]using it to pre-empt statutorily-requisite processes – and later to avoid answering core, germane, outcome-affecting questions – is clearly an **error in law**.

Application

206. Relying on Jurisprudence with fundamentally different underlying Facts & Pleadings is an **Error in Law**. Citing *more* of the Same – *after* being shown this – is **unreasonable**. Furthermore, cherry-picking sentences 'out-of-context' while ignoring the *core* context & holding – to justify *refusal* to perform statutory duties – is *another* **Legal Error**.

207. On what Grounds is this deemed **reasonable**? Whenever Claimants cite inapplicable Case Law, it is plainly noted & rejected in Decisions. Is it **fair** to *not* hold ADMs to the *same* standards? Can primarily *irrelevant* – or *distinguished* – Jurisprudence <u>reasonably</u> be used 'as a shield' to <u>avoid</u> the obligation to address key legal Arguments – or comply with the *legislative requirements* Parliament *codified* into their 'Home' EI Act?

208. Ignoring the primary arguments in our submissions and employing circular reasoning *(multiple times)* violates the 'reasonableness' principles enshrined in Vavilov.

209. Misusing Jurisprudence is an Error in Law, meeting FCA §18.1(4)(c).

210. It is arguably also a Fairness violation to use *inapplicable* Case Law as an <u>excuse</u> to avoid the obligation to 'fairly address' *all* the Claimant's *primary* arguments. This would qualify under §18.1(4)(b).

Decision

211. We respectfully ask this Court to **Quash** TM Lafontaine's Decision on the Grounds that Misapplying Jurisprudence makes his Decision **Unreasonable**.

N. Post-Script: Curious Court Findings

212. There are two interesting findings from Milovac & Davidson that bear mentioning:

(a) re. Employer's *Unilateral* Changes to Contract

2023 FC 1120: Milovac v. Canada [¶17] "In this case, the GD **made** these findings:

The Employer's COVID-19 Vaccination Policy did ***not*** breach the Collective Agreement *or unilaterally* change the Claimant's conditions of employment..."

In other words, the Federal Court found that SST-GD Findings of Fact regarding:

(1) Corporate Policies that Breach the CBA, and

(2) Unilateral Changes to Conditions of Employment

are valid, relevant, and **reasonable** Findings *(under Vavilov)*.

Conclusion: Does that mean these are 'reasonable' arguments on J.R.? *Both apply here.*

Does that also imply these specific findings *(or lack thereof)* are subject to Review ***if*** "made without regard for the Material before it?"

(b) re. '[Im]Proper' Policy Enactment

2023 FC 1555: Davidson v. Canada *(AG)* [¶77]

"...the Commission was acknowledging that it is ***not*** within its authority to assess the reasonableness of employer policies, and ***all*** properly enacted policies are considered to be legitimate and reasonable for the purpose of determining an EI benefits claim "

In other words, improperly enacted policies are deemed as *illegitimate & unreasonable* when adjudicating Misconduct in EI Benefits cases... *(That is the CEIC's own Argument, made in* their own *words.)* So where is their fact-finding for 'proper policy enactment'? Where are the Cases where EI Benefits were *granted* because employers failed this test?

For more information on what constitutes a '*properly enacted policy*', please look at **Argument #4** *(p.20-22)* in my SST-AD Filing – and the following Case Law. *(I'm sure there are other cases too; these are just the two that I argued.)*

1965 (ON LA) 1009: LSWU, Local #2537 v. KVP Co. Ltd. *(p.85-90)*

2013 NBCA 13: Asurion v. Brown *(¶28)*

Problem #4: Inconsistent Application of Law

[¶20]: "Management's residual right to **unilaterally impose** workplace rules is ***not*** **unlimited**. Management Rights **must be exercised reasonably** and **consistently with the Collective Agreement**. *(citing: 'KVP' & 'Irving')* [¶21]: Clause 5.02 of the [CBA] also ***constrains*** management's ability to exercise these rights, as it provides that in administrating the CBA, the employer must *'act reasonably, fairly & in good faith.'* Any *unilaterally imposed* workplace policy **must comply** with these **limitations**." *(SCC: 'AJC' [¶20-21])*

O. My Case: Purolator Management

Fundamental Questions *(7)*: #3-9

Grounds of Review *(3)*: FCA §18.1(4)(a,d-e)

Vavilov Principles *(2)*: Decision & Outcome

- **(d)** Evidence Before Decision Maker
- **(e)** Submissions of the Parties

Facts & Issues

213. Key Facts: Can EI ADMs ignore key facts in the Record? If so, when, and on what grounds? Must they be stated in their Decision[s]? What constitutes 'prior knowledge'? Does *intent* matter? What is *legitimately* [not] admissible or 'outside Jurisdiction'?

Management Admissions: Can EI ADMs ignore CBAs? Can Employers make unilateral changes to [pre]existing CBAs? Can those changes violate established Law? How does that impact EI? What happens when Execs admit in writing that they *know* they cannot legitimately do something, but then do it anyways? Is that admissible?

Inconsistencies: What happens when policies frequently change? What about inconsistent enforcement? How much inconsistency before *they* become *unenforceable*? *(Is **20** Changes* or *'Selective' Enforcement Enough?)* What about *that* Jurisprudence?

False or Perjured Evidence: What happens when *falsified* records are created *(or used)*? Does it matter who is responsible? Or where they are used? How much *employer* dishonesty is necessary to impact EI Eligibility?

214. Errors in Fact: (1) Purolator Executive admitted *in writing* that they do **not** have the legal authority to *mandate* [experimental] medical treatments. [151]

(2) Purolator Executive admitted *in writing* that this policy was *unilaterally imposing* a *new* condition of employment on our existing CBA *(one without Union Ratification)*. [152]

(3) There were significant inconsistencies in policy application & enforcement between various managers – and at local depots vs. 'HQ' – making it legally *unenforceable*. [153]

(4) Purolator Executives *consistently* [mis]reported the status of non-compliant workers: '*Authorized* Admin. Leave' *vs.* 'Dismissed based on COVID-19 Mandates.' [154]

Perjured Evidence: Purolator executive provided *sworn* testimony in Arbitration that contradicted our Employment Records – ROEs that *[they] directed & confirmed*.

215. Please consider my SST-AD Written Arguments *(**AD-23-694** [ADN06])* incorporated *(by reference)* into this J.R. Factum *(Memo of Fact & Law)*. To save space, I won't reprint *everything it* contains, but large sections are critically relevant and must be expanded…

This incorporates from #3: Ignored Admissions *(**B:** p.185-86 [ADN06-20f])* and parts of #4: Ignored Inconsistencies *(**B:** p.186-89 [ADN06-21ff])*

216. When I was hired at Purolator *(in 1990)*, I legally *bound myself* to fulfill all *"dut[ies] owed my employer"* based upon the Employment Contract *('CBA')* in force at the time. Being Unionised, Teamsters renegotiated that CBA every five years, with our consent *(by majority vote)*. This contract also defined – and delimited – their 'Management Rights'. *Any* ***other*** Terms & Conditions are ***not*** considered **legally binding** without specific Consent: there ***must*** be a *specific* Union Ratification Vote *(or an Arbitration ruling)* **first**.

[151] ('Affidavit') [¶**9**, FN-15] *(cf. ¶81-85, ¶87)*. *(esp. [Role] [Executive]'s FB WorkPlace Post)*
[152] ('Affidavit') [**¶49**] *(cf. ¶8,10,16)*. *(esp. [Role/Title] [Executives]'s 'Final Warning' Letter)*
[153] ('Affidavit') [¶10-16, **FN-23**, ¶54(A4)]. *(Local Depots Openly Refused to Enforce Policy)*
[154] ('Affidavit') [¶31-33, FN-41..43**;** ¶24, FN-33..35**;** ¶49, ¶74-75, ¶87] *(cf. ¶26-29)* *('Exec')*

Management Rights: "[Purolator's] ***exclusive right*** [] to operate its establishment, machinery & equipment, and to manage its undertakings as it sees fit, **subject** ***only*** **to** the **restrictions imposed by law** or by the ***provisions of the present Collective Agreement.***" This includes: "the[ir] ***exclusive right*** to make, modify & implement regulations, policies & procedures to be observed by the employees; *[which]* ***must not be inconsistent*** with the provisions of the present agreement. […] ***Any provision*** [] which is or which becomes a violation of applicable laws, **will be null and void.**" [155] *(CBA: §3.01, §5.01 & §5.05)*

Multiple Purolator executives **conceded** that the **policy** in question *(C19-SWP)* was a ***new*** *condition of employment*, one imposed ***without*** prior Union consent. It violated the CBA @*(§4.01)* **and** broke the Canada Labour Code *(CLC §88.1 & §3[1-2])* re. ***'Lock-Outs'*** – *prima facie* – which **nullified** it. **Ergo: It was *not* binding; there *cannot* be Misconduct.**

217. Purolator had ***no*** **legal authority** to **impose *unlawful* policies** upon their employees. Nor could they create ***new*** Conditions of Employment *without* prior Union Ratification. They *knew* as much & *(Senior Leadership)* admitted this in writing – multiple times. The only ***"express or implied [legal] duty"*** [156] I **owed** them was found within our CBA – and any applicable 'Laws of the Land'. [157] *('Misconduct' is **not** possible outside this realm.)*

218. *Local Depot* Management innately understood this legal fact. They **wilfully** *(justly)* **refused** to **enforce** the ***unlawful*** policy requirements 'at home' – on Purolator premises under *their* legal purview. [158, 159] *(I listed **five** clear deadlines that they* refused to enforce *during my AD Hearing.)* [160] They not only refused to enforce them *('in practice' vs. 'on paper')*, they actively facilitated our 'non-compliance' – in recorded conversations.

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[155] ('CBA') Purolator's *Management Rights* are *cumulatively* defined in CBA §3.01, §5.01 & §5.05. Argumentation at: ¶98-¶105; Affidavit: ¶8 [FN:5-14] *(**B:** p.281-84 [D01]) (RGD8-75..78)*

[156] Case History: "duties owed [] employer"; **CanLII:** 126 Cases, **SST:** C19-MM Denied: **(66)**

[157] In addition to there being "**no** duty owed" – and therefore **No Misconduct** – the EIA §29(c) explicitly **codifies** "employers acting contrary to law" ***&*** making "significant changes" to CBAs as **'Just Cause'** for "**taking leave** from employment" which **rebuts** Disentitlement claims.

[158] ('Affidavit') [¶14, FN-23] *(While they* did warn us *about non-compliance, including 'Notes to File', they* should have *blocked us from coming into work five deadlines prior. They did not. It looked like this was* their way *to 'walk the middle road' to limit* their own *personal liability. Meanwhile, HQ Leadership constantly changed policy terms for Service Level & 'Liability' reasons.)*

[159] While Local Depot Leadership refused to enforce *unlawful* mandates *('SWP')*, they *did* enforce the 'C19 Safety Plan' (¶114) *(e.g. Cleaning, Masking, Distancing)*, with which I fully complied.

[160] ('AD-Hear') List of *unenforced* policy deadlines: *@(Time: 31:20-33:35)*. Lock-Out Discussion: *@(36:40-38:40)*. TM Lafontaine discussion with CEIC re. Inconsistency: *@(47:35-51:00)*.

219. In *this* case, there were **two** major facts in the record that *both* TMs side-stepped. The logically fallacious Misconduct Test *(cf. Problem #2)* – coupled with inapplicable Case Law *(Problem #3)* – created a mantra that was repeatedly cited to justify doing so… [161]

220. **Fact #1: Two Management Admissions:** Purolator executives made *two* serious admissions in writing that *completely* ***undermined*** their ability to implement this policy.

a. In Sept. 2021, Purolator's *(Executive)*, posted to our FaceBook @WorkPlace portal, affirming that Management had ***"…absolutely zero intent** to **make vaccines mandatory.*** *We would **never** do that and **couldn't even if we wanted** to…"* [162] This formal public confession from their *(Role & Title)* – in response to *legitimate questions* from concerned workers – ***proves*** their Senior Leadership Team ***knew*** they had ***no legal basis*** to do what they did. They were attempting to **add *new*** Conditions of Employment to our existing **Contract** ***without*** going through the requisite process of gaining Union Consent first. A *condition* that **coerced** *every* employee into *receiving two* experimental *medical injections &* used ***illegal*** **Lock-Outs** to *economically* ***break*** 'non-compliant' workers who *had* ***Just Cause*** for 'taking Administrative Leave'. *(or: expressing concerns & exercising caution)* It is ***ludicrous*** that *(Executives)* published their C19-SWP policy *just one week* later *(expecting legal support)*…

b. In Nov. 2022, *(Executive),* Purolator's *(Role & Title)*, mailed out an **official notice** *(on company letterhead)* to *every* non-compliant employee, reminding them of their need to ***"attest to being vaccinated** against COVID-19 **as a condition of employment"*** ***and*** *confirming* that they were *still* currently *"absent from work on **authorized administrative leave**."* [163] *(Both admissions were repeated twice.)* This is a Work Condition that was ***not*** Ratified by the Union. By this time, *numerous* Grievances had been filed *and* a *thorough* Arbitration was underway with Local #31 in B.C. *(There were already* seven *full days of Testimony by that point – out of 24 Total Days of Hearings.)* [164]

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[161] ('Factum') *@(¶59, **¶72-75, FN-86, ¶149-57,** ¶183-91, ¶202-05, ¶191, FN-138)*
[162] ('Affidavit') [¶9, FN-15] (Executive)'s FB WorkPlace Post *(Exhibits: p.225 [RGD8-19])*
[163] ('Affidavit') [¶49, FN-59] (Executive)'s *Final Warning* Letter *(Exhibits: p.254 [RGD8-48f])*
¶1+¶3 confirm ***both*** the 'condition of employment' *and* '*authorized*'^'admin leave of absence'.
[164] ('Glass') 2023 (CA LA) 120937: Teamsters Local #31 v. Purolator Canada *('Hearings')*

(As an interesting side note, Teamsters still *hasn't grieved the most important complaints – ones I submitted – about the Policy's **unlawfulness**. However, the Arbitration over the **Reasonableness** of the C19-SWP [Policy] is complete. Purolator* did *'Breach the CBA'. The Policy* was *deemed '**Unreasonable**'. And Grievers* were *Ordered 'Back-to-Work'* with *full Back-Pay [as of 2022-07-01]. This Award to Teamsters' Union Members was also upheld upon JR in the BCSC.)*

221. The record is clear. As are these two confessions. Purolator **knew** – and admitted in writing – that they had **no** legal grounds to implement this **new** Condition of Employment. *(Mandate medical treatments & enforce using **illegal** Lock-Outs.)* The policy itself was *legally baseless*, *union unapproved*, *contractually nullified & practically unenforceable*. And this is all *before* the question about *illegal Lock-Outs*, which *itself* granted *Just Cause* for *taking* what was **already** an "**authorized** administrative leave of absence" from work.

222. Ignoring all this because *(Exec[s]) wrongly alleged* Misconduct is a serious **error**. Mere *allegations* of Misconduct are ***not*** sufficient to abandon the *statutory requirement* to Fact-Find for Just Cause – and *(as proven in: Problem #2: Internal Logic)* using the *'4-Part Misconduct Test'* absent this Fact-Finding results in *two* different logical fallacies.

And any Fact-Finding that *properly* considered these two admissions would be hard-pressed to **justify** this Breach of Contract – **knowingly** *imposing* a ***new*** Condition of Employment *(mandated medical treatment) without* Union Ratification – ***or*** any finding of 'Misconduct' for what is clearly an 'authorized' 'Administrative Leave of Absence'.

223. **Fact #2:** [There was] **Serious Management Inconsistency:** during my final months at work. Senior *leadership* often **contradicted** each other – *and* our corporate policies – which changed frequently *and* were ***not*** applied **consistently**. *(e.g. on my last shift, **local Management** [my **Depot Manager & Union Steward**] **both** assured us that we* could *'come in' and 'continue working next week'* despite *our undeclared Immunisation Status.)*

224. Regarding the SWP [policy] itself, my written submissions document ***five*** different Attestation Deadlines *(**2021:** 09-20, 10-15; **2022:** 01-07, 11-16 & 2023-04-13) before* employees were ***brought back to work***. There were also ***four*** 'Antigen Testing Deadline'

changes *(Issued **2021:** 09-16, 10-13, 11-01 & 2022-01-07)* and ***four*** different 'Immunisation Deadline' *changes (**2021:** 10-01, 11-01, 12-31 & 2023-04-13) – also before* non-compliant workers were **brought back to work** – ***despite*** their **unvaccinated status**. Purolator HQ also changed their non-compliance consequences several times. **Consistent Inconsistency.** *(How can* this *situation be deemed enforceable?)* [165]

> **Black's Law, 6th ['Consistent']:** "Having agreement with itself or something else; accordant; harmonious; congruous; compatible; compliable; **not contradictory**."
>
> **Black's Law, 6th ['Inconsistent']:** "Mutually repugnant or contradictory. Contrary, the one to the other, so that both cannot stand, but the acceptance or establishment of the one implies the abrogation or abandonment of the other."
>
> Changing the **rules** *(enforcement deadlines)* **five times** – by 'establishing' *new* policy application & consequences *(⁂ 'abandoning the other')* – for **self-serving reasons**. *(i.e. Business Costs & [potential] Liability are 'too high' to enforce* their own *policy.)*

Argumentation

225. There were *many* date & policy changes *because* they **could not *enforce*** *compliance*. Each time a significant workforce percentage 'missed the deadline' they had to reissue it *('graciously giving another chance')*, rather than suffer the consequences of enforcement. They waited *('gave extensions')* until *after* the Christmas rush was finished *(the busiest time of the year)* ***and*** the number of workers 'placed on Leave' was small enough, that it wouldn't cause Service Level interruptions & *unmanageable* legal & liability problems.

(And they 'played this game' two years in a row. In 2021, they refused to put people off, then in 2022, they refused to bring them back using the same [inverted] rationale. This is patently **unreasonable**. *Repeatedly changing* policy requirements *and* refusing enforcement *until* it's *economically feasible & politically convenient* to do so…)

226. There was also *significant* ***inconsistency*** amongst Management themselves. Local *Depot Management* often contradicted policy from HQ. More than once, I was reassured that this policy would ***not*** **be enforced locally**. As stated above, several of us ***unattested***

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165 ('Affidavit') [¶10-16, **FN-23**, ¶54(A4)] *(**B:** p.115 [RGD8-12]: 'Argument #4: §Inconsistency')*

workers had a group conversation with *both* our Depot Manager ***&*** Union Steward on the ***third*** **Attestation Deadline** date *(Friday: 2022-01-07)* about **missing our sixth deadline**. This was **after** *already missing* the last ***two*** **Vaccination Deadline** dates *(and several other deadlines)* **without policy enforcement.** We were **reassured** – yet again – that we would be permitted to return to work after the weekend, **despite** what the ***nullified, CBA-contradicting, extra-contractual*** **policy** from HQ stated. **Inconsistency?** *(We were **Locked-Out** that weekend, in violation of CBA §4.01* and *'contrary to law' at CLC §88.1. Our swipe cards were [presumably] disabled by HQ, since this* same *person "didn't know what happened" when we were Locked-Out on Monday morning. We video recorded this conversation & discussed it during my SST-AD Hearing.)*

227. **Excusing** ***both*** this sheer magnitude of **management inconsistency** – and Purolator's underlying rationale *(i.e. "you must comply **today**, but we **won't** enforce anything until it's convenient for us & we won't tell you* when *until the day of… Oh, and we can change the policy any time we want 'for business reasons'")* – **excusing this** ***because*** *"the Policy allows for review and updates"* is *egregiously* **unreasonable**. *Both* Common Law precedent *(KVP & Asurion, et al) – and* the applicable EI Tests ***require*** **consistency**.

An employer that *repeatedly, consistently* **violates** its own policy – until *it's expedient* ***not to*** *anymore* – **cannot** ***reasonably*** rely on ridiculous 'escape hatch' clauses that permit *"amendments for business requirements." (Especially when the policy is predicated on **Lock-Outs**, which* both *violate our CBA & **break the CLC**, either one of which legally Nullifies that specific policy.)* It is worse yet for EI ADMs to **justify** this unfair – and unlawful – behaviour using the same excuses. *(This truly* is *'perverse' & unreasonable.)*

> [GD: ¶114] "The Appellant argued that the Employer kept changing its Policy. Yet, the policy allows for **review** and updates. The policy says, *'the company reserves the right to amend these dates or the terms of this policy at any time in accordance with Public health, legislation, or business requirements'*."

> [AD: ¶29] "The fact that the Policy was amended several times by the Employer as the situation evolved during the pandemic *does **not** mean* that it was ***not** applied and enforced* **consistently** by the Employer. The Policy was clear from the beginning: You needed to attest your vaccination status or be put on Unpaid Leave."

> *(Here TM Lafontaine* contradicts his own statements *from our Hearing, re. apparent reasons for these 'constantly moving goalposts'. He refuted the* **CEIC**'s *argument –*

saying it was 'not new information' but 'employer convenience' responsible – **they** *responded by arguing from general practices at* other *employers*, ***not*** this *case.)* [166]

228. Aside from being *perversely* **unreasonable**, TM Lafontaine's justification is **factually wrong**: "The fact that the Policy was amended several times [] *as the situation evolved* during the pandemic *does **not** mean* that it was ***not** applied and enforced* **consistently**." *(Really? 'As the situation evolved'? Purolator* weaponised *the threat of* being without income *during the Christmas rush to drive up vaccination rates. This threat wouldn't work in the 'New Year Lull'. They simultaneously* refused to enforce anything *until after the Christmas rush because there was no excess labour: they hired numerous Temp workers* just for *the Holiday Season… And the repeated 'extensions' 'in-between' enabled renewed threats: each time, the # of 'non-compliant' workers dropped.)*

The oft-changing policy *dates & requirements were **not enforced** until the **sixth** deadline. This is* precisely the definition *of: "*was ***not** applied & enforced* **consistently.***")*

(Put differently: TM Lafontaine effectively ruled *that the uncontroverted **fact** this policy "**was not** applied consistently" is **not proof** that it "was* not ***applied*** **consistently***" – ergo: his* ipse dixit *finding that 'it **was** applied consistently?' What* does ***'consistent'** mean?*

It's a **fact** *that Purolator Leadership [in]*consistently ***refused*** *to **enforce** five deadlines: Each time* hundreds *of workers* became *'non-compliant', otherwise* healthy employees *were labelled* unacceptable *'health risks' who were* supposed *to be banned from company property for 'everyone else's* safety*'. And yet did that happen?* ***No.*** If ***safety*** *was* truly *their priority & primary concern, why were 'dangerous' & 'contagious' people allowed to continue working* – for 100 days – *despite being* barred from *all* premises *by this SWP?*

229. *It is **unreasonable** to* hold *that an* oft-changing policy – *modified* ex post facto – *is somehow **'consistently' enforced**, because management adheres to the 'newest versions'* after *their release. Then, subsequent 'mass violation' of their* new *deadline* again, *results in* another *'policy update' 'for business reasons' that* legitimises *past* non-enforcement…

Can repeated wilful failure *to enforce corporate policy be 'saved' by simply permitting* unilateral modifications *that automagically bring them back into compliance again?)*

*Based on this logic, it would be **impossible** to **prove 'inconsistency'**: what **would** qualify?*

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[166] See my brief analysis of key Hearing moments further down in this section. *(¶233)*

Example: *What would happen if I promised to pay someone an outstanding debt by a specific date* and *signed a written agreement to do so. Then, I refuse to pay 'for business reasons' and, when called to account, I unilaterally amend our contract with a new* future *due date. I subsequently miss* that *deadline too, so I 'reissue' the contract yet again with* another *future date. After missing* five *deadlines with **$0** repaid, I am sued for the debt.*

*How should the Court adjudicate the following argument? I **am** consistently 'compliant' with the contract as my* repayment date *always was – and still is – in the future, based on the 'newest' iteration. Nevermind that I missed five deadlines – I'm **not*** **in***consistent since I still haven't* missed *the 'current' future deadline. As long as I can keep* pushing *the due date –* **after** *missing it – I* am *still 'consistently' 'in compliance' with its* present *terms.*

Is this really a *legally* **reasonable** interpretation of the word **'consistent'**? Does continual *compliance* with 'evergreened' terms, ***excuse*** regular **breaches** & consequent **revisions**?

230. *Consider the alternative: Purolator first implemented the policy on 2021-09-15, with a deadline of 2021-10-01. More than 40% of the workforce missed this deadline.* [167]

Imagine they simply announced a 'temporary suspension' of the policy until into the New Year. How many people would voluntarily *'comply' in the interim? And everyone would **know** why Jan. 10 was chosen: they needed one week to clear the Holiday backlog – and they could* not *afford to put 6000 people on Leave* before *then, but they* could *after that…*

*So, they couldn't afford to enforce it – and they couldn't simply defer the policy either. If anything, that would prove the obvious: there was no change in COVID-19 related absences and no outbreaks. How could they justify this unlawful policy in January: it **wasn't** important enough for **safety** in our* busiest *season, but* was ***needed*** *in our slowest?*

They only had one option: continue the policy with several interim short-term threats, each several weeks away, changing relevant requirements & deadlines each time, knowing that some more would 'comply' each time – and when the staff were no longer

[167] ('AD-Hear') [51:20-56:20] While the **#of original hold-outs** was 'new', nothing else was. The number of policy changes and replacement deadline dates were already 'in the record'.

needed, the fewest number possible would be impacted – which reduced their liability as much as possible. ***This* is *inconsistency.*)** [168]

231. Purolator's actions are glaringly transparent. Yet TM Lafontaine rejected this with the argument "I can't consider *new evidence* at this stage" – when *both* he & TM Usprich *already had* my comprehensive Matrix of Inconsistency *in the written record*. [169, 170]

The were *other* places listing the *approximate* number of non-compliant workers *already in the record* too – including *my* EI-SRC – which *I also* submitted for my GD Hearing:

[2022-02-23] (EI-SRC): "The Client says there are over a thousand that didn't attest." [171]

[2022-07-18] *(The CEIC submitted this document with my Reconsideration File.)* [172]

[2023-04-23] *(I later [re]submitted this document with my SST-GD 'B' Evidence.)* [173]

[2023-11-13] "Thousands of employees filed Grievances, they ignored [] processes." [174]

232. Vavilov lists requirements for Reasons, Evidence & Meaningful Responses. *(¶125ff)*

[¶126]: "Reasonable Decisions… [are] Justified *in light of* the Facts, *(Dunsmuir [¶47])* …the Evidentiary Foundation, and general Factual Matrix. *(Southam [¶56])* The Reasonableness of a Decision may be jeopardized where the ADM has *fundamentally misapprehended* or *failed to account* for the Evidence before it."

[¶127]: "The principles of Justification & Transparency *require* that an ADM's Reasons *meaningfully* account for the central issues and concerns raised by the Parties… [Their] failure to *meaningfully* grapple with Key Issues or Central Arguments raised by the Parties *may* call into question whether the[y were] actually alert & sensitive to the matter. Addition[ally]… drafting Reasons *with Care & Attention* can alert the[m] to inadvertent gaps & other flaws in [their] Reasoning. *(Baker [¶39])*"

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168 ('Glass') Purolator's internal 'speculations' about the 'possible adverse consequences' for the 'employer's side **only**' ***(all** corporate liability related)* were key to Arbitrator Glass' findings of 'policy unreasonableness' *and* their 'lack of appreciation' for their legal 'responsibilities'. Glass specifically cited their **KVP & Irving** obligations. *([¶240-56, esp. ¶251,256])*

169 ('AD-Hear') [51:20-56:20] TM Lafontaine refused to hear 'new evidence' based on the record.

170 ('DA-740-Args') GD Written Arguments: Matrix of **20** *different* Deadlines & Consequences *(**B:** p.115-16 [RGD8-12f]: 'Argument #4: §Inconsistent Policies')*

171 ('SRC-DA') [SC/EI] Supplementary Record of Claim: (EI Claimant) *(**B:** p.30, #2 [GD3-26])*

172 ('DA-2773') [SST: GE-22-2273] CEIC for my original SST-GD Case: Summary Dismissal

173 ('DA-740-BPS') [GD] Appendix 'B': Prior Submissions *([RGD8-338], [p.338]; @1001h, ¶1)*

174 ('DA-694-Args') [AD] Arguments: Foundational Principles *(**B:** p.177, ¶1(2b) [ADN6-12])*

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233. Compare this with some of the highlights from my SST-AD Hearing under J.R.

I listed all TM Usprich's ***errors*** from my GD Decision at the start: @**10:00** ***(+75 sec)***
I reiterated *the* **unfairness errors** *(re. Vavilov)* towards the end: **@39:30** ***(+2:15 min)***

a. Unreasonable Definition of 'Consistent' ***(5 Changed Deadlines ≠ 'Consistency')***

[28:45] TM Lafontaine Granted me *Leave* based on the Misconduct Test: Prong #4 *("whether you knew [or should have known] that you would be 'Suspended'")*, which he identified as "[my] strongest argument." *[30:55]* *(This was essentially a repeat of his introductory explanation from the start of the Hearing. [at: 13:15 & 14:45])*

([28:10–39:45] Full Testimony about 'Policy Inconsistencies' at Purolator.)

[31:20-34:05] I listed the **six** explicit deadlines set by HQ *(Leadership Team)*. The first **five** of these deadlines were 'violated' by *hundreds* of employees. Instead of **enforcement *('consistency')***, they merely set *new* deadlines *(with renewed threats)*. Meanwhile, my *local* Depot Management *openly refused* to **enforce** the SWP *and* all associated deadlines – as did the *local leadership* at every Depot across the country.

"How was I still working on the property having conversations with [management]? *[{list}]* I failed all those deadlines [] & still was allowed in the building. They never enforced one of those policies. [] Each time I was told I was *'not to be allowed in the building'*; yet I was. [] Never once did I think I was going to be let go…"
[37:50] "On Jan. 7, I expected it to be like the last five times – to continue to work."

([34:10] Specific testimony about what happened on Jan.7 [Fri] & Jan.10 [Mon].)
([36:50] Testimony about 'Lock-Outs' relative to the CBA, CLC & Vavilov.)

([40:10–43:55] Application of 'Policy Inconsistencies' [re. CBA, CLC & Vavilov])

([44:30–51:10] Full Arguments from the CEIC Representative: Angèle Fricker.)
(Argued that self-serving inconsistency *should be allowed due to* 'convenient' *policy.*
[Also: Subtext] 'Misconduct Test' Jurisprudence supersedes *EI Act* requirements.*)*

[47:30–51:00] TM Lafontaine discussion with CEIC re. Management Inconsistency

"[SST]: [Mr. (D.A.)] mentions [] **six** changes in dates.

[CEIC]: This was addressed by the GD. [] The company *'reserves the right to review the policy'* [re. *'time moving forward'* and *'pandemic evolution'*]. [] It happened with a lot of other employers; it was reviewed & adjusted – that was part of the policy [] to make changes as time went on.

[SST]: I'm not sure it was reviewing the policy following new information; it looks like it was *just a change in the deadlines* that appeared to be *more convenient* to the employer […] changing the deadline five times in two months, I'm not sure it was because of *'new information'*."

[CEIC]: (Argues from *other* cases) "I don't believe I said it was because of *'new information'* necessarily in this case, [] the policy explicitly says *'we can adjust it'* [] I've seen this in many cases, the employer *'was allowed to give more time'* [] they were not disadvantaging them by giving them more time.

[SST]: …even though it was changed several times – and he was told by his Manager on the Friday that he could come in on the Monday that he *'should have known that he would be Suspended or Dismissed'*?

[CEIC]: That there was a 'real possibility'…

Policy *consistency* is determined by whether it is **applied** [adhered to] *as written*. [175]

Whether [or not] **prejudice** occurs *('they were* not *disadvantag[ed]')* is ***not*** relevant to that determination. *(I may* not *'need' the money owed* right then*, but it's* still due*.)*

(If 'safety' was truly important, they should have picked an enforceable date to start, not 'slow walk' the 'long march' of an unlawful, otherwise unenforceable policy… {Who would have been responsible for all the 'dead grandmas' of Purolator workers because they put year-end corporate profits ahead of 'safety considerations'?})

Neither is comparing how widespread the problem *appears to be* by **ignoring** the *current situation*, due to *potential* similarities with *other* **inconsistent** application[s].

*("I **don't believe** I said it was because of 'new information' in this case, [but] I've seen this in many [other] cases…") (Fallacy: the "Everyone's doing it" Defence? The specific facts of* this case *can be* ignored *because* others *are also inconsistent?)*

([54:30-57:05] Conclusion: Reiterated Inconsistent Application & Missed Dates.)

(Purolator was equally inconsistent *with their COVID-19 Antigen Testing Policies.)*

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[175] I cited relevant Jurisprudence regarding Policy 'applicability' & 'consistency' for them: 'KVP' & 'Asurion' were also included in my SST Written Arguments. **'Consistent'** does ***not*** have an open, subjective, discretionary interpretation. It's 'bound'…

b. Overbroad Definition of 'New Evidence' ***(Rationale & Impact of Policy Changes)***

([51:10–57:05] 'New Evidence' about* Reasons [Motive] *for Inconsistencies.)

In replying to the CEIC, I stated my *educated 'belief'* as to the *probable* **reasons why** Purolator did ***not*** *('could not')* enforce their SWP. This was based on arguments *already* 'in the record' [176] – except I *quantified* something *specific ('6,000 people')*, that was previously only *qualified* and *approximated ('thousands' & 'over 1,000')*.[177]

TM Lafontaine deemed this 'new evidence' despite being *legal argumentation* – ***not*** factual statements – that was *almost* a *direct quote* from the existing record. *(–'6k')*

[51:20] One of the reasons *I believe* that all these dates were changed is because we had at least 6000 people that were not Attested at the start of the policy []. They kept moving the date because *'how are you going to put 6k people off during Christmas?'*

[SST]: Did you mention this to the GD Member – that that was the reason why it was changed – the dates?

[Me]: "No."

[SST]: As I mentioned, I cannot consider 'new evidence' at this stage.

[Me]: But I did do this. [] It still proves Inconsistency. Why were *some* people brought back? Why wasn't *everyone* fired? *[{Continues: examples}]* Why did *they* come back then? Why weren't they all fired? Again, another inconsistency…

[56:33] *[(Walked through the **five** 'missed'* – ignored & reissued – *deadlines again)]*

Legal discussion about the [probable] 'reasons why' something happened is ***not*** 'new evidence'. While *that specific statement ("[potentially] put 6k people off")* <u>was</u> 'new', the existing Record already contained multiple statements verifying that "*over a thousand* [workers] didn't attest" *and* "*thousands* of employees filed Grievances." And this is beyond our detailed, well-documented table, ***proving*** all the changes to policy application – most made *ex post facto* – <u>with specific dates</u> & supporting documentation. This isn't *reasonable* grounds to Strike the whole legal argument. TM Lafontaine's *immediately preceding* admission that 'employer convenience' was likely **why** the 'deadlines changed' *proves* he understands this.

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[176] ('DA-694-Args') [AD]: 'Prior Submissions' ***&*** 'Corp. Policy Inconsistent' *(**B:** p.188 [ADN6-23])*
('DA-740-Args') [GD]: Arg#4: 'Policy Conflicts' ***&*** 'Inconsistent' *(**B:** p.113-16 [RGD8-10,12f])*

[177] ('Factum') More argumentation about this *error* at: ¶231 **+** (FN-171..74)

Also: Since TM Usprich *arbitrarily* limited my testimony to the 'Misconduct Test' '***only***' – *before* we even started *(cf. ¶83, ¶116)* – this discussion was *already* deemed *ultra vires*. Any claims & arguments about ***Purolator's*** actions & intentions were ***not*** *admissible* at the GD Hearing. Penalising me for *not* testifying to something I was *already [erroneously] barred from discussing*, *cannot* be considered 'reasonable' upon Review. *(And a significant amount of these facts & arguments were* already *submitted for the record anyways – this moment was* ***not*** *the 'first time' this subject was raised. How can these* questions *be deemed 'new evidence' [reasonably]?)* [178]

[GD: ¶75]: "Again, I have to focus on the Act only. […] I can ***only* consider** whether what the **Appellant did**, or failed to do, is Misconduct under the Act."

[¶91]: "[…] Appellant argues that the policy goes against other pieces of legislation, and goes against his CBA. I find that these things are *outside of my authority* and the Federal Court has made it clear, on a similar case, that the focus is on the Appellant."

c. Elusive Definition of Misconduct *(Absurdities ≠ Reasonable Decisions)*

([18:47–31:25] Arguments about Errors & Absurdity in this Misconduct Test.)

As discussed above *(Problem #2: '**F**', '**G**' & '**H**')*, the current *aggregated* Misconduct Test has **two** [potential] **logic errors** because it contains an **Unjustified Premise**. It inherently **assumes** that any *alleged* conduct truly ***is*** 'Misconduct' – *without* the *statutorily-mandated Fact-Finding* – while **simultaneously *refusing*** to consider ***If*** the *"**employer's practices** are **contrary to law**."* *(Violating EIA §29[c][xi].)*

The **logical errors & absurdity** this enables is evident in *any* **use cases** where the corporate policy in question **violates the Law** – which ***is*** what happened in this Case. *(Detailed arguments at: ¶145-57)* I raised one of these examples with TM Lafontaine and he *refused* to answer the *self-evident* question. *(There was over 30 sec. of* 'dead air' *because* any *answer would destroy the CEIC's Case,* ***granting*** *me EI Benefits.)*

[18:47] *(Read Vavilov 'reasonableness requirements' into Record. [¶108f –¶121f])*

[178] ('Factum') Erroneous Jurisdiction at: ¶83, ¶116. Citing GD Decision at: (¶75, ¶91)

[21:06] *(Distinguished GD Jurisprudence from* my *Case: In the **five** oft-cited Cases, the Claimants* **all** self-admittedly *broke their CBAs & were Denied EI. **I did** **not**.)*

[22:51]: "They [Purolator] added a *new* Condition of Employment. I already had an existing Contract. [] It was new. It was *not ratified* [] not voted on. [] It also says in the CBA *'any policies that are unlawful'* are [Nullified *(§5.05)*] *'unenforceable'*. I *cannot* commit 'Misconduct' if the policies are [nullified as unlawful]."

[23:47]: [Me]: "Can you tell me what 'Misconduct' is?"

[SST]: Well, there's a **legal test**, and the GD rendered a Decision. You have to convince me that she made an **error**. []

[Me]: […] Allowing an ***unlawful*** *policy* to overrule active legislation. It is absurd to determine… [read from *written arguments: #1:¶1-5*] [179] …never been binding? []

"Trying to justify *breaking the law* because one *'gave themself permission to do so'* in corporate policy [is Absurd] and that's what my company did. [] I'm *'in violation'* – *misconduct* – for an *illegal* policy, and I can't wrap my head around that…"

[26:47]: [Me]: "Absurdity is grounds for *'unreasonableness'* under Vavilov. [] So if they told me – because they're so busy – that I had to work 24 straight hours, and I said *'No'*, is that 'Misconduct'? Would I be *disqualified* for EI? ***[{31 sec 'dead air'}]*** Sorry, I'm asking a question."

[SST]: I'm not here to answer questions sir, I'm here to Decide the Appeal. [] Convince me that the first Judge *made an error* that would *justify* my intervention.

Both the EI Act ***&*** binding Case Law on this issue are clear. *(cf. ¶73-82, ¶145-57)* 'Taking Leave' from employment when *"employers act contrary to law"* constitutes **Just Cause**, which **grants** EI Benefits. Parliamentary Hansards unequivocally agree. *Denying* EI for '*not* complying' with *unlawful policies* **cannot** be deemed ***reasonable***.

This situation is why Parliament took *five years* – and *4500+ pages* of Committee Testimony & Commons Debate to write *and* ratify the 'Just Cause' clauses. *(cf. **'C'**)*

This explains TM Lafontain's *unprecedented 30 seconds* of 'dead-air'. It is *clearly* **unreasonable** – and *contrary* to the *Parliamentary Intent* of the EI Act – to **deny** EI Benefits for refusing to work 24-hour shifts *without breaks* on 'Misconduct' grounds.

Admitting this obvious fact *proves* the Absurdity of using this *modified* Misconduct Test *and* simultaneously *refusing jurisdiction* to fact-find for *employer* unlawfulness.

My AD TM could not *admit* this reality – but *denying* it is obviously **erroneous**. So, he chose the only other option: *refuse to state* the *self-evident* answer 'for the record'.

[179] ('DA-694-Args') [AD]: 'Unreasonableness: #1: Unlawful Policy' ***(B:** p.169f, **#1** [ADN6-4f])*

Allowing this *combination* **finding** to *stand* ***as precedent*** – *(i.e.* applying the *4-Part Misconduct Test* to *unlawful* corporate policies, **while *also refusing*** statutorily-mandated jurisdiction to *fact-find* for *'employers acting contrary to law')* – making this *finding* **precedent** would **codify *injustice* as law**. This is **unreasonable**.

d. Conflicting Authorities: 'Bound' by What? *(Statute or Precedent?)*

Lastly, the binding *statutory* and *common law* requirements to weigh the **lawfulness** of Purolator's conduct – which includes their *codified* corporate policy requirements – was clearly raised at the Hearing. *(It was also argued in my written Submissions)*[180]

[¶108]: "ADMs receive their powers by statute, [so] the *governing statutory scheme* is likely to be the *most salient aspect* of the *legal context* relevant to a Decision…"

[EIA §29(c)]: "**Just Cause** for voluntarily leaving an employment ***or taking leave*** from an employment **exists if** the Claimant had *no reasonable alternative* to **leaving *or taking leave***, having regard to all the circumstances, including:

(xi) Practices of an Employer that are **contrary to law**"

([13:17–23:40] Errors about Legal Authorities: Case Law* Overruling *Statutes.)

[13:45-14:47] (SST) "[] the FC has rendered – since your Appeal – ~**5** Decisions, saying it's not up to the SST to assess the merits, legitimacy, ***or legality*** of any policy from an employer. *[{list of Cases}]* All these Decisions say it's ***not*** up to me to Decide whether the policy is **Legal**, legitimate, or reasonable. [] There are several FC Decisions saying I don't have to address these issues – **it's *not* in my power**. "

[15:13] (SST) "[] You have to be aware that I'm *binded* by the FC Decision[s], and you have to convince me that I don't have to follow them. Okay?"

[30:00] (SST) "As I mentioned at the beginning, [] I am *binded* by the FC, and they have already, repetitively, told me that it's not my job to review the merits, the **legality**, or legitimacy of the policy of the employer. [] And they told me it's *not* up to me to interpret your CBA. [] You have to convince me that the FC was wrong."

[17:58] (Me) "Elizabeth said [] that she *has to* take the EI Act into consideration – *and* Case Law – but in her Arguments *[Decision]* it seems like she did *not* do that."

[SST]: So [] you're saying that she did *not* consider the legislation & your CBA…

[Me]: That's true, correct. []

[180] *(ibid)* [AD] Args: Foundational Principles & Legislative Intent ***(B:** p.167-70 [ADN6-1ff])*

[18:47] *(Read Vavilov '**reasonableness**' requirements: [¶108, ¶118, ¶111, ¶102-04])*
[21:06] *(Arguments about the* unlawful *nature of Purolator's SWP* **&** *GD-cited* Case Law *explicitly* determined *EI Eligibility on* whether the Claimants *broke their CBAs. How can EI ADMs reach this* conclusion ***if*** *CBAs are deemed* ultra vires*?* ***Errors**.)*

[23:20] "[] It also says in the CBA, any policies that are **unlawful** […] I *cannot* commit Misconduct if the policy is unenforceable. *[i.e. nullified: 'contrary to law']*"

Is it *legally* possible to be *'binded by'* FC Precedent to ***not*** factor the **lawfulness** of an Employer's actions? This *clearly* violates *both* the Home Statute ***&*** *Vavilov (SCC)*.

(What about Conditions of Employment & 'required' actions codified *into* policy*? Surely* corporate policy *carries* more weight *than independent employer actions…)*

Assessing 'reasonableness' *might* be *ultra vires*, but **lawfulness** is a different story: It is *explicitly enumerated* in the EI Act as a *guaranteed* reason for ***Just Cause*** status.

ADM Deference is based upon *Parliamentary Intent* – here, ***codified*** into the EI Act. Deeming *fact-finding* into the **lawfulness** of employers' actions as *ultra vires*, clearly *violates* the unequivocal will of Canadian Parliament re. the EI Program. *(§29[c][xi])*

Even ***if*** Jurisprudence *overruled* 'Home Statutes', the *binding* SCC Precedent on Administrative Law *(Vavilov)* governs 'Reasonableness Reviews'. This *cannot* be overridden by *controversial* Trial Court findings that violate *long-held* EI Case Law.

(Full Argumentation *at:* **Policy Lawfulness:** ¶77-83 *[and]* **CBAs:** ¶116-21)

e. **Unusual Admission: Jurisdiction** ***(re. KVP: CBA & Policy Admissibility)***

Instead of answering the "interesting legal question" about **Contracts, KVP Applicability *&* Policy Lawfulness**, TM Lafontaine relied on a ***non-binding*** SST Decision – which was based on an unprecedented *en banc* Appeal. *(2023 SST 1032)*

([57:00] 'Interesting Legal Question': Can* 'vires' *be used to Violate Precedent.)

[58:00] (SST) "[] I will take this matter under advisement. I understand it's not fun for Mr. (D.A.) to go through this process, but he raises an **interesting legal question**, so I have to think about this… [] I will listen to the audio recording *before* I decide."

I address this **error** at '**E:** Tribunal Precedent' – but ultimately, he did *not* address this "interesting legal question" – he *avoided it* using a *faulty* SST Case *(**not** Case Law)*.

This is *seriously* **unreasonable** – for *many* different reasons. I am just noting that my TM himself admitted to the "interesting legal question" the SST **ignored** *en masse*...

Problem #2: Rule of Law, Jurisdiction & Logic underlies the *many* interrelated ***errors*** that were relatively undocumented *prior* to this worldwide pandemic. The widespread injustice that resulted from this event will take significant work to repair. Can we restore confidence in our government? This Case will provide some answers.

234. These *four* major **problems** [listed here], relate to *categories* of **errors** in this Case – and *anchor* these questions in my SST-AD Hearing. This proves that these problems were identified & argued Orally. *(In addition to arguments in my* written representations*)*

Also: I clearly listed the various **legal, factual, jurisdictional & fairness *errors*** from my SST-GD Decision during my AD Hearing. *(Timecodes: 10:00 & 39:30)*

a. Unreasonable Definition of 'Consistent' ***(5 Changed Deadlines ≠ 'Consistency')***

TM Lafontaine adopted an *unreasonable* definition of 'Consistent' in his Decision. Whether using the dictionary – or basic legal principles – *his* [unstated] definition defies logic & reason *and* provides [potential] cover for *unlawful* corporate activities.

Repeatedly *changing the rules* in the 'middle of the game' – in many cases *after breaking* the 'old rules' – *cannot stand* merely because they *arrogated* that 'right' before the game started. Especially for *self-serving* reasons. Whether this occurred is one question – but whether it can *stand* as 'consistent' & 'reasonable' is another...

b. Overbroad Definition of 'New Evidence' ***(Rationale & Impact of Policy Changes)***

One of the strongest *motives* for *why* Purolator repeatedly *changed the rules* mid-game, pertains to their [perceived] *business liabilities* – which was also their *major argument* during their [losing] Arbitration over this *same situation*. TM Lafontaine ruled this 'new evidence' in order to *strike* it, despite being *based on* evidence *(rough numbers, specific dates & documents on a timeline) already* 'in the record'.

While publicly claiming that 'safety' was their *primary* concern, Purolator constantly changed the rules in ways that *directly undermined safety* for 'business reasons'. But, my *GD* TM *wrongly* ruled these matters *ultra vires* before my Hearing started.

Obvious logical inferences – based on evidence *in the record* – cannot be *reasonably* deemed 'new evidence' to block *weighing* arguments *derived* from them. Especially when *erroneous* jurisdictional claims originally prevented their discussion before…

c. Elusive Definition of Misconduct ***(Absurdities ≠ Reasonable Decisions)***

(Based on: Problem #1: Legislative Intent & History *(EI Act)* *['C' & 'D']*)
(Based on: Problem #2: Rule of Law, Jurisdiction & Logic *['F', 'G' & 'H']*)
(Based on: Problem #3: SST Cited Inapplicable Case Law *['K', 'L' & 'M']*)

Both SST TMs used a problematic – and *erroneous* – definition of 'Misconduct'.

1) The *composite* test used **omits** *statutorily-mandated* Fact-Finding into whether my 'employer acted *contrary to law*'. *(cf. EIA §29[c][xi])*

2) When *employers* **do** 'act contrary to law', this multipart Test contains *two* [unreasonable] Logical Fallacies: *Petitio Principii & Special Pleading*.

3) When I asked my TM a *self-evident* question that exposes the *Absurdity* of this definition, he declined to answer – to avoid the consequences.

4) 'Jurisdiction' reasons are [mis]used to justify *violating* the EI Act. *(re.#1)*
(Despite the long case history *of EI ADMs* requiring *this as evidence.)*
"Focus on the employee" & "Employer considerations are not *relevant"*
"CBAs are ultra vires*" & "Court says I can't examine [work] Contracts"*

5) Case Law is cited that is fundamentally *distinguishable* for *three* reasons:

- It is based on *CBA compliance* – something deemed *ultra vires*.
- These cases have *significantly* different Facts & Pleadings.
- They contain *admissions of 'guilt'*, so fact-finding is *unnecessary*.

6) Extracts from *[lower-level]* FC Jurisprudence – decided on *procedural & summary* grounds *(not Merits)* – are cited to *justify* **#1**. *(No Fact-Finding)*

7) This [FC] Case Law *conflicts* with *long-settled* [SCC] Precedence about Statutory Interpretation, Management Rights & EI Adjudication Rules.

8) The *Rule of Law* is broken *(inverted)*: somehow corp. policy *supersedes* employment contracts – and *both* are permitted to *violate legislation*. Backwards: when in conflict, the *Law* always *overrules* CBAs & Policy.

d. Conflicting Authorities: 'Bound' by What? *(Statute or Precedent?)*

(Based on: Problem #1: Legislative Intent & History *(EI Act)* *['C' & 'D']*)

(Based on: Problem #2: Rule of Law, Jurisdiction & Logic *['F', 'G' & 'H']*)

(Based on: Problem #3: SST Cited Inapplicable Case Law *['K', 'L' & 'M']*)

EI ADMs claim to be 'bound' by the wrong – or [already] *overruled* – **authorities**:

- Recent *(and unsettled)* Case Law is used to violate the ['Home'] EI Act.
- Trial Court *procedural findings* cited that conflict with *SCC* Precedence.
- *Novel* FC Case Law cited that conflict[s] with *long-settled* Jurisprudence.
- *Circular Reasoning* is used to 'pile on' *already invalidated* Case Law.
- *Non-binding* SST Decisions overrule *binding* precedent & break EI Act.

e. Unusual Admission: Jurisdiction *(re. KVP: CBA & Policy Admissibility)*

Several of these issues were raised from the beginning of my SST Journey. TM Lafontaine identified them as "interesting legal questions" that were *not* resolved. Instead of using existing *precedent* & proper *legal analysis* to provide *reasonable* answers, he cited a controversial, unsettled, unprecedented *en banc* SST Decision to avoid them all – thereby relying on a source already established as *non-authoritative*.

Application

235. The detailed Application for this section *('O: Purolator Management')* is found at the end of the [immediately] following Side-Bar *('P: Falsified Evidence')*. *(at: ¶265-68)*

Decision

236. We respectfully ask this Court to **Quash** TM Lafontaine's Decision on the Grounds that *rejecting* Key Evidence & related Argumentation makes his Decision **Unreasonable**.

P. Side-Bar: Purolator's Falsified Evidence

Facts & Issues

237. Under 'Grounds of Review', the FCA §18.1(4)(e) lists "act[ed] by reason of fraud or perjured evidence" as a legitimate reason to overturn an ADM Decision. My Case ***was*** determined based on *knowingly* **false** information – either **Perjury** *(§131[1])* *or* my **Falsified ROE** *(§398)* – both Criminal Code Offences – there is **no way** around that fact.

238. When *(Executives)* Purolator's *(Roles & Titles)* directed my ROE coding, they ***certified*** an **'M'** in Box 16 *(alleging 'Misconduct' ended my employment)*. They later 'confirmed' this by telling an EI Agent that I was *"Dismissed based on the Covid-19 Mandates."* Despite all the paperwork & repeated managerial affirmations that I was on "Approved Admin Leave" they were unequivocal with Service Canada. This was **false**. When SC/EI contacted (HR Manager) *(my local HR Rep)* for more details one month later, she refuted this statement, confirming I was on Approved Admin Leave. [181, 182, 183]

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[181] ('Affidavit') Details at: ¶24-27 *(FN-33..37)*, ¶31-34 *(FN-41..44)*, ¶74-75 *(FN-92)*, ¶87 cf. ROE-1: (**B:** p.23 [GD3-19]), EI-SRC-1: (p.28 [GD3-24]), EI-SRC-2: (p.36 [GD3-32f])

[182] ('SRC-1') 'Unpaid Leave' was listed on 'final notice' but *(an Exec)* 'confirmed' the **'M'** *(not 'N')*.

[183] ('SRC-2') The front-line *(Payroll Analyst)* who processed my 1st ROE "stated she was **not** the correct person to speak with" when the SC Investigator *(SC/EI Agent)* called to research my original EI Claim **4 days** before it was first Denied. *(**B:** p.36 [GD3-32])*

Then later, when being deposed during the Glass Arbitration, *(an Executive)* changed this answer, ***swearing*** **to the opposite**, confirming what the legal record overwhelmingly reflected: that we were all on *Approved* Admin Leave – and that *nobody* was Dismissed.

re. Truth: Either way, they gave *directly opposing facts* when **truth** was **required**.

239. The unanimous consequence for 'remaining unvaccinated' was repeated *ad nauseum*.

a. **2021-09-14** *(SWP-2109)*: *"All Purolator employees are required to be* fully vaccinated *with a COVID-19 Vaccine series by October 1, 2021. […] Notwithstanding the short transition period preceding the enforcement of the Policy,* ***any*** *employee found to be in* ***non-compliance*** *with this Policy will be placed on an* ***Unpaid Leave of Absence****…" (§5.1: Timelines, §9: Non-Compliance)* [184]

b. **2021-10-07** *(SWP-2110)*: *"All Eligible Individuals are required to be* fully vaccinated *with a COVID-19 Vaccine series* by November 1,2021*. […] Anyone who is not vaccinated, and without an approved exemption for medical or religious grounds will be in contravention of the policy. Those individuals* ***will be placed on an Unpaid Leave****." (§5.1: Timelines, §5.3: Non-Compliance)* [185]

c. **2021-11-08** *(Policy Reminder Letter)*: *"Our records indicate that you have not completed your COVID-19 Vaccination Attestation. The deadline to submit this information was October 15, 2021. […] Failure to complete this Attestation immediately may result in you being prevented from accessing the workplace & being* ***placed on an Unpaid Leave of Absence*** *until we can determine your vaccination status." (Reminder Letter [¶1,5])* [186]

d. **2021-12-07** *(Policy Update Message)*: *"On Sept. 15, 2021, Purolator announced our COVID-19 Safer Workplace Policy, whereby all eligible employees are required to be* fully vaccinated *against COVID-19,* and Attest *to this status, by Nov. 1, 2021. […] Employees* ***not*** *vaccinated by Jan. 10, 2022, [will be]* ***placed on Unpaid Leave of Absence****." (Policy Message from [Exec])* [187]

e. **2021-12-14** *(Final Reminder Letter)*: *"This letter is to remind you of the requirement under our [C19 SWP] for all employees are [sic] to be* fully vaccinated *by December 31, 2021. […] On January 10, 2022, you will be found in violation of our policy requirement, and you will be* ***placed on an Unpaid Leave of Absence*** *until you meet the requirement." (Depot Management)* [188]

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[184] ('SWP-2109') Purolator Safer Workplaces [Vaccination] Policy [2109] ***(B:** p.232 [RGD8-25ff])*

[185] ('SWP-2110') Purolator Safer Workplaces [Vaccination] Policy [2110] ***(B:** p.243 [RGD8-36ff])*

[186] ('SWP-PRL') Depot Management: Policy Reminder Letter ***(B:** p.249 [RGD8-43])*

[187] ('SWP-PUM') [Exec] Message: [SWP] Policy Update ***(B:** p.32 [GD3-28f])*

[188] ('SWP-FRL') Depot Management: Final Reminder Letter ***(B:** p.250 [RGD8-44])*

f. **2022-01-04** *(Employee Information Bulletin)*: ***"****Employees who have attested that they are not fully vaccinated, using the online tool, will be* ***placed on an Unpaid Leave of Absence*** *effective January 10, 2022 and* ***should not report to work*** *as of January 10." (HR [Exec]: Policy Update [¶2])* [189]

g. Compare this final 'Update' Bulletin with Service Canada's policy guidance documentation for HR Personnel: *(ROEs during COVID-19: Vaccination)*

"When the employee **doesn't report to work** because they **refuse to comply** with your mandatory COVID-19 Vaccination policy, **use** [] **Code 'N'** *(LOA)*." [190]

These formal documents *(and more)*, prove the obvious **fact**: that *Approved Leaves of Absence* were the requisite alternative to 'Mandatory COVID-19 Vaccination' – for which Service Canada clearly required *all* ROEs to be Coded **'N'** *(for LOA)*. Due to the harsh consequences for incorrect Coding, this Reason Code *(ROE Box 16)* is Certified under the Criminal Code *(Box 22)*. *(As an aside: also note the often-shifting Deadline dates…)*

240. ESDC *(Service Canada)* maintains their 'ROE Guide' which provides detailed instructions for HR Personnel. It clearly requires a coding of **'N'** for Leaves of Absence.

"Use Code **'N'** when the employee is leaving the workplace temporarily to take a Leave of Absence. For example, if the employee is taking ***any*** period of **Unpaid Leave**." [191]

They also published a document specifically for coding 'COVID-19 Vaccination' ROEs:

"When the employee **doesn't report to work** because they refuse to comply with your mandatory COVID-19 vaccination policy, **use** [] **Code 'N'** *(Leave of Absence)*." [192]

The ROE Guide also warns about the Criminal nature of Falsifying ROEs:

"It is a serious Offence to misrepresent the reason for issuing an ROE. If you **knowingly** enter a **false** or misleading **reason** [] you may be subject to fines or prosecution." [193]

This confirms the warning in the Certification block on my ROE *(Box 22)*:

"I am aware that it is an Offense to make **false entries** and hereby **Certify** that ***all statements*** on this form are **True**." [194]

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[189] ('SWP-EIB') HR [Exec]: Employee Information Bulletin ***(B:** p.251 [RGD8-45])*
[190] ('ROE-C19') [ESDC]: Records of Employment during COVID-19: Vaccination
[191] ('ROE-Guide') [ESDC]: Employers: How to Complete the ROE *(Box 16 Specifics)*
[192] ('ROE-C19') Records of Employment during COVID-19: Vaccination
[193] ('ROE-Guide') Employers: How to Complete the ROE *(Box 16 Specifics) (id FN-191)*
[194] ('ROE') Record of Employment ***(B:** p.23 [GD3-19])* **|** ('EI-SRC-1') ***(B:** p.28 [GD3-24])*

The Criminal Code Offence for *'Falsifying Employment Records'* codifies: *(at §398)*

"Every one who, with intent to deceive, **falsifies an employment record** by any means [] is guilty of an Offence punishable on summary conviction." [195, 196]

And the ROE Guide confirms this warning about False Certifications *(Box 22)*:

"In this block, the person who is completing the ROE ***knowingly* certifies** that the information on the ROE is correct. The term *'knowingly'* means fully aware, *'with full knowledge of the facts'*." [197]

241. *(Executives)* are Purolator's *(Roles & Titles)* – they *were on* the *(Senior Leadership Team)* or *(Health & Safety Committee)* which owned the SWP. They **knew** *exactly* what it said. By definition, they had "full knowledge of the facts," so they had **no excuse** for telling SC/EI I was 'dismissed' for non-compliance *or* directing my ROE's 'M' coding. They *owned (approved)* the policy that *required* LOAs, ***not*** *Dismissal*, for 'violators'. [198]

Argumentation

242. My first ROE was submitted by *(Accounting)* – a frontline Payroll Analyst *(with **no** documented HR experience [LinkedIn])* – someone who **self-admittedly** told the EI Investigator that she *"was **not** the correct person to speak with"* when they called seeking details about my employment separation. She did ***not*** provide ***any*** info about the cause of *or* reason for its coding. ESDC's ROE Guide requires *'knowing certification'* when filing ROEs, which it defines as *"fully aware, with full knowledge of the facts."* *(Payroll)* **knew** that *she* could **not** meet this formal **Certification requirement** herself under these circumstances, so she listed *(an Exec)* as *"further information Contact"* leaving *them* to fulfil that role. *(On an official, Certified government document, used to allocate money coming from federal operating accounts.)* Why use *that* name? Who authorised its use?

243. **Contact:** The staff who filed our ROEs had to **know** that *(Exec)* could [and would] fulfil '*knowing* certification' – for *everyone's* records – when there were *already* good HR personnel *in each location* that personally *knew* our situations. *No-one* would *unilaterally*

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195 ('CCC') Criminal Code: False Books & Documents *(§398: Falsifying Employment Record)*
196 ('Affidavit') Facts suggesting requisite *mens rea* for Criminal Intent at: ¶25-28, ¶75
197 ('ROE-Guide') Employers: How to Complete the ROE *(Box 22 Specifics)*
198 ('Glass') (Executive)'s relevant sworn testimony is summarised at: *(¶80-82, ¶240-56)*

list a ***corporate exec*** for knowing certification without *prior* direction & authorisation. *(Which [Executives], as (Roles & Titles), would be involved in approving themselves.)*

(Exec) was managing the "most challenging thing [] in their more than 25-year career."[199] Why make *(Executive)* point-person for **hundreds of EI Investigations** *(which the 'M' Coding guarantees will result)* – in a situation that is highly contentious *and* legally controversial – unless *standardising answers* **&** *managing* ***liability*** for their Certification?

244. *(Put differently: knowing both the requirements for & consequences attached to these ROEs – and subsequent interview questions – could Purolator Leadership afford to have conflicting answers provided by different HR personnel across the country? What happens when these grieving/suing employees compare notes & catch the discrepancies?*

'Career-Limiting-Move': *Knowingly* putting **false**, ESDC-policy-contradicting Codings on ROEs *(knowing the legal consequences)*, while simultaneously *violating* standard procedure by assigning *your boss' boss'* name as the Contact *(without their knowledge)*, leaving **them** to deal with the *many* ensuing EI Investigations *you caused* through your blame-shifting, *EI Denying* Codings – *false* statements you *knowingly* Certified as *true*.

The **decision** to use *(Exec)*'s name either came *from them* – or from *[Senior Leadership]*.)

245. **Coding:** That raises the *crucial question* of who **authorised** my **'M'** Coding. *All* the published government guidance *unanimously* ***requires*** **'N'** Coding for Leaves of Absence *(even for wilful "refus[al] to comply with mandatory COVID-19 vaccination polic[ies]")* – so it was **not** them *(despite that exact claim @¶256)*. *This* was **not** called Misconduct in the policy either. It – and *every* other *knowledgeable* Purolator contact – *all* confirmed our Admin Leaves *(and often* ***corrected*** *SC & CEIC Investigators who* ***mislabelled*** *our LOAs as being Fired)*. The ***only*** 'knowledgeable' employees to use this **knowingly false** label was [the] *(Executive)* specified as Contact Person for the obvious 'mountain' of EI Investigations ***caused by*** these **same** false filings – and [an] *(Executive)* that explicitly 'confirmed' my 'Dismissal'. Is it *coincidental* that they also happened to [co]write & [co]own the **unlawful** policy in question? And ***(Roles & Titles)*** for *thousands* of English-

[199] *(ibid)* (Executives) describe their experiences navigating the pandemic at: *(¶70-80)*

speaking employees? ***(Execs)*** that appreciate the *legal complications* of having *hundreds* of staff off-work on *indefinite*, long-term LOAs – especially **under Grievance**?

*(What happens to EI Premium [re]Payments **if** an Arbitrator awards reinstatement + compensatory back-pay to workers still deemed as employed during their LOA? **Also:** How long can Purolator* justify *keeping hundreds of workers in employment limbo?)*

246. **Legislation:** The EI Act & Regulations clearly state that workers on Approved Leave who will be compensated at any time are deemed 'Employed' under the statute. This means that EI Premiums are **owed** for the *entire* Leave period. For Purolator that amounts to **$680K–$1M** just for the workers 'made whole' under the Glass Arbitration. [200, 201]
*(This does **not** include the hourly employees* not *covered under the Teamsters Grievance.)*

EIR §14(6) ['Interruption of Earnings']: A period of Leave referred to in **§11(3)** of the Act does ***not*** constitute an *interruption of earnings*, **regardless** of the time at which ***or*** the manner in which remuneration is paid.

EIA: §11(3) ['Leave with Deferred Remuneration']: A week or part of a week during a period of Leave from employment is ***not*** a week of **unemployment** ***If*** the employee:

- **(a)** takes the period of Leave under an agreement with their employer;
- **(b)** continues to be an employee of the employer during the period; ***and***
- **(c)** receives remuneration that was set aside during a period of work, regardless of when it is paid.

EIR §23(1)(a)(ii) ['Allocation of Insurable Earnings']: **if** the remuneration is paid in respect of a period of Leave, it ***shall*** be allocated to ***that*** period at the rate at which the period was compensated.

247. ***Anyone*** with the ***legally requisite*** **'N' Coded ROE** on *'Approved Admin Leave'* meets requirements ***(a)+(b)*** during their *entire* Leave of Absence. But, if they *permanently leave* that employment while still 'on Leave', they **fail *(c)***, meaning ***no*** EI Premiums are due.

Likewise, if the Grievances are *Denied* during Arbitration, they will ***not*** receive income.

But what happens if the Arbitrator awards the Grievers? They are reinstated *based on a specific date* **and** receive back-pay then deemed *"**allocated** to **that** [same] period."* This means they now **meet *(c)*** and [retroactive] **EI Premiums are owed** for that *whole period*.

[200] Formula for Employer Premium Contributions at: ¶327, FN-253 *(Problem #6: 'R' [EI])*
[201] ('Glass') Details from Arbitration: Workers: ¶241, Dates: ¶560,¶569 *(**B:** p.366: Wage Table)*

*(**Formula:** Employees **x** Hourly Wage **x** Hours **x** 4% EI Rate **x** 58% Employer Share*

563 *Workers **x** ≈**$30/hr** Blended Wage **x** **2720** Hours [68 Weeks **x** 40 Hours: (Leave: 2022-01-10 [to] 2023-05-01)] **x** **0.04** Premium Rate **x** **0.58** Employer Share = **$ Owed***

563 Workers x $30/hr x 2720 hrs LOA x 0.04 EI x 0.58 Employer ≈ $1.066M) [202]

248. Purolator *potentially* avoided **over $1M** in EI Premiums by **falsely coding** our ROEs: Misconduct Dismissal ***('M')*** [instead of] Approved LOA ***('N')*** – as *'ending'* our work status for EI Purposes means we **fail** the first two requirements ***(a+b)***. Subsequent return awarded by Arbitration *could* be considered 'new employment' ***if*** amended ROEs were ***not*** submitted, correcting the original ones. And if the 'rehiring' happened in a *different* fiscal year – which it did in *this specific* situation – are such amendments even possible‽

*(Submitting these falsified ROEs **without** filing Amended ones later [upon Arbitration reinstatement]* possibly *constitutes the* actus reus *for EI Fraud. Whether Purolator execs possessed the* mens rea *for Criminal Fraud is a different question – and* ultra vires*…)*

249. *Someone* had to **direct** our **'M' Codings**. If *everything* historically – *and* during the pandemic – **required 'N'**, ***coordinating*** **'M'** across the country required *some* directive.

Is this something that *many different* frontline HR & Payroll staff would *each* consider – and **all** *individually* decide to **miscode**? Would they **all** choose to miscode our ROEs *uniformly* knowing it could cost them their job – and *potential* legal troubles? If frontline staff were *assigned* a specific ROE Contact, would the Coding ***not*** be mandated too‽

Is there any *reasonable* prospect that *dozens* of frontline staff across the country **all** decided to *wilfully* **violate** established EI requirements – *in the exact same manner* – *without* the 'cover' provided by specific direction? Considering the reporting structure, could anyone *lower* than *(an Exec[s])* have *both* the **authority** *and* **motive** to **knowingly** direct **falsified ROEs** to *every* frontline worker in English-speaking Canadian regions?

How & why do these 'coincidences' ***all*** converge in the *same* policy-owning executives?

The evidentiary standard for EI Benefits Cases is 'balance of probabilities'. *(51%+)*

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[202] Since the Return/Award Date is **unknown** *beforehand*, the whole LOA Period [68 Weeks] must be used when projecting savings. *(The actual backpay was Awarded at 43 Weeks.)*

250. One other important side note: Due to the Denial of my EI Benefits – based upon this *falsified* ROE – I was coerced to retire early, to withdraw some Pension Benefits to avoid Bankruptcy. [203] This necessitated issuing a *new* ROE to reflect my *permanent* employment separation from Purolator, which was Coded **'G'** *(Mandatory Retirement)*.

251. Using Code **'G'** *requires* ***approval*** from the Government under the WorkForce Reduction Program *('WFR')*. Among the **prerequisites** for WFR Approval: [204, 205]

> ***Work Force Reduction* Program due to Downsizing:**
>
> Normally, employees who quit their job *without* Just Cause *cannot* receive Regular Benefits. However, workers who agree to leave their job under a Work Force Reduction program to preserve their co-workers' jobs may receive EI Regular Benefits, as long as they are eligible. *(Link to standard EI Eligibility Requirements)*
>
> **You must provide documents that will allow us to determine that:**
>
> - This is in fact a ***permanent*** Reduction in the Work Force.
> - Your personnel was **informed**; and,
> - Your employees covered by this program were given the option of **voluntarily** leaving their job.
>
> This might take the form of a letter, a notice, a memorandum or some other relevant documentation. Hypothetical situations or vague uncorroborated statements concerning possible or potential reductions are ***not*** **acceptable**.
>
> The next step is for us to be able to confirm that:
>
> - Each employee voluntary leaving ***protected*** the employment of a co-worker.

I did *not* receive any WFR Notice or related documentation and I certainly wasn't told I needed to Retire in order to "protect[] the employment of a co-worker." I was **voluntarily retiring** *(under duress)*, but I was *not* 'aging out' or retiring under some corporate restructuring… The ROE Guide provides further critical information:

> **Code G: Retirement** *(Mandatory/Approved under the WFR Program)*

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203 ('Affidavit') Facts surrounding my coerced Retirement *('G')*: Affidavit: ¶37-39 *(**A:** p.21-22)*
204 ('ESDC-WFR') [ESDC]: *Work Force Reduction* Program due to Downsizing
205 ('ROE-Guide') [ESDC]: Employers: How to Complete the ROE *(Box 16 Specifics)*

"Use Code **'G'** when the employee is leaving the workplace because of **Mandatory Retirement** or *through a Work Force Reduction* **approved** by Service Canada. [] See the Work Force Reduction program for details."
Note: If the employee is Voluntarily Retiring, see **Code 'E'** ***(Quit)***."

Code E: Quit "Use Code **'E'** when the **employee initiates** the separation from employment. For example, an employee may Quit to [] **voluntarily retire**."

252. How can Purolator apply for permission to *'permanently reduce'* their workforce when they have hundreds of employees off *on Approved LOA*, with no defined return? The imminent return of hundreds of workers still on-record, is the antithesis of *reduction*.

Had the requisite Code **'N'** been used, it is difficult to see how Purolator would qualify for the Benefits of WFR. This conclusion is further supported by the regular redactions in my EI paperwork from SC – ***my*** file contained pending matters related to Purolator that *I* was *not* a Party to – nor was I permitted to view this data *from my own record…* [206]

"A subsequent Record of Employment has been provided with a Reason for Separation of Mandatory Retirement. This Reason for Separation has not yet been adjudicated but does not prevent a Decision on the current issue."

"A separate decision in this letter, not currently before the Tribunal, has been redacted as the employer is a potential interested party." *(citing: My EI Decision [GD3-35f])*

"A separate decision in this letter, not currently before the Tribunal, has been redacted as the employer is a potential interested party." *(citing: CEIC Reconsideration [GD3-47f])*

(Back to tracing Purolator's testimony about my Separation & ROEs…)

253. When SC/EI finally contacted *(HR Manager)* – the 'HR Business Partner' *(LinkedIn)* who was *personally* familiar with my circumstances – she **repeatedly** 'corrected the record'. That SRC-2 documents [at least] **four** *different* times that she replied that I was 'on Leave' **not** 'Dismissed', 'Terminated', or other related concepts. *(And only ten-minutes elapsed between the start time of that phone call & my own right afterwards…)*

[206] ('EI-DD'), ('CEIC-RR'), ('CEIC-SST') Document Key @¶257 ***(B:** p.39,51f [GD3-35,47, GD4-1f])*

The *only* reason my EI Investigator *(EI Case Agent)* even had *(HR Manager)*'s name & contact information is because **I** *specifically* gave it to *him* and asked that *he* call her. [207]

254. Even *without* the weight of documentary evidence *(and [HR Manager]'s* 'corrections' on *Purolator's 2nd SRC)*, this ***dichotomy*** stands unrebutted. **Either** my ROE *was* **falsified** *(which [an Exec] personally confirmed when interviewed)* **or** *(Exec)* **perjured** themself in Arbitration – **both** are Criminal Offences. And *either one* was "with full knowledge."

I **cannot** *simultaneously* be on '*Approved* Admin Leave' **&** 'Dismissed' for Misconduct.

So either way, this meets the Grounds of Review @FCA §18.1(4)(e). *(False Evidence)*

Furthermore, ESDC's guidance about completing & submitting ROEs is unambiguous: ***any*** Leaves of Absence – even ***Unpaid Leave*** for *intentionally "refus[ing] to comply with COVID MVPs"* – ***must* be coded 'N'**. Mine was coded **'M'** [for **M**isconduct], which is ***only*** reserved for situations *"when you Suspend or Terminate an employee."* ***(I was not.)*** *(If my ROE was correctly coded* ***'N'*** *[=> 'G'], I could have qualified for EI Benefits.)*

255. I clearly raised this issue at my GD Hearing. TM Usprich & I discussed my ROEs for several minutes. ***Twice*** I expressed my shock & frustration that Purolator "was not fined" for their ***knowingly*** "false information" on my ROEs. [208] *(And* hundreds *of others.)*

256. This issue was briefly discussed again re. my Grievance for my *"Falsified ROE."* [209]

(Despite asking for my "Grievances & Results" before my GD filing deadline, Teamsters did not respond until well afterwards [2023-05-04]. It took ***13+ months*** *to get any written response from them, which was only a brief email summary – our CBA requires 10 days… [Falsified ROE: 2022-03-14 => 2023-05-04] It took another* ***276 days*** *– and multiple written requests – before they sent me my formal documentation [2024-02-04].)* [210]

(It took ***692 Days*** *[2022-03-14 => 2024-02-04] to finally received my* official *Grievance form & it still looked incomplete, as the 'Third Step' [final disposition] was* ***unsigned****.*

207 ('SRC-DA') [SC/EI] Supplementary Record: (EI Claimant) [2/21@12:59] *(**B:**p.30,¶2 [GD3-26])*
208 ('GD-Hear') [30:30-37:20] Detailed discussion about knowingly falsified ROEs.
209 ('GD-Hear') [1:36:23-:37:27] Specific discussion about my ROE Grievance. *(#39321)*
210 ('DA-740-Args') **[GD]** Grievances Not Addressed: Argument #3 *(**B:** p.112 [RGD8-9])*

Purolator initially 'Denied' it [within 24 hours] & Teamsters eventually 'withdrew' it due to a 'signed Settlement Memorandum' they refused to provide me due to 'privacy issues'.)

Email Summary: *"**#39321** was Grieving the code that Purolator had provided to Service Canada for your ROE. This issue was brought up across Canada and the conclusion was that **SC had instructed Purolator** on **how to code the employees** that were being **put on the Leave of Absence** for **not** complying with the policy."*

(The only one-paragraph *answer they gave me was* ***unbelievable****.* Teamsters *claims that Purolator Denied it, saying that "**SC instructed [them]**" to **use** the **'M' coding** for us all – and* they *accepted that ridiculous answer at face value – and therefore withdrew the Grievance. SC **did** instruct Canadian HR Personnel how to Code our ROEs: '**N**' for LOA. Someone is lying & the lack of signature makes it challenging to address this legally.*

*Purolator HR **knows** what Teamsters can find in 5 min: everything listed above. (¶240) Blaming it on SC is **unacceptable**:* every *published government instrument agrees. They **required** us to **all** be coded **'N'** [Leave of Absence] – anything else is a* Criminal Offence*.)*

257. I traced the history of Purolator's **false claim** of Misconduct in my GD Arguments.[211]

This is further documented in the Record at: *(**9** Documents)*

- **a.** [2021-01-21] Record of Employment #1 *('M')* *('ROE-1': p.23 [GD3-19ff])*
- **b.** [2021-01-25] Supplementary Record #1 *('SRC-1': p.28 [GD3-24])*
- **c.** [2021-02-23] Supplementary Record #2 *('SRC-2': p.36 [GD3-32ff])*
- **d.** [2021-02-23] Supplementary Record: D.A. *('SRC-DA': p.30 [GD3-26ff])*
- **e.** [2021-02-27] EI Decision: Denied *('EI-DD': p.39 [GD3-35])*
- **f.** [2021-04-26] Supplement: Reconsideration *('SRC-RR': p.49 [GD3-45ff])*
- **g.** [2021-04-27] CEIC: Reconsideration Denied *('CEIC-RR': p.51 [GD3-47ff])*
- **h.** [2021-05-27] Record of Employment #2 *('G')* *('ROE-2': p.25 [GD3-21])*
- **i.** [2021-07-18] CEIC: SST Representations *('CEIC-SST': p.53 [GD4-1ff])*

258. I also expanded upon the Record via argumentation in my AD Submission: [212, 213]

[211] ('DA-740-Args') **[GD]** False Misconduct Claims: Argument #4 *(**B:** p.113 [RGD8-10])*
[212] ('DA-694-Args') **[AD]** Written Arguments: #2 *(**B:** p.170 [P16] | [ADN6-5])*
[213] This argumentation is contained in Problem #2: '**H**: Logic & Consistency' *(¶145-59)*

It is *both* **unreasonable** *and* **absurd** to avoid *statutorily-mandated* Fact-Finding for Just Cause, based solely upon *mere* allegations of Misconduct. They must be **proven**. It is a violation of Natural Justice to *blindly accept* serious claims of Misconduct but refuse to *investigate* the veracity of those claims – especially considering the *severe* consequences.

*(Employers willing to **break the law** are capable of **blame-shifting**: claiming Misconduct.* Only Fact-Finding ***proves*** *whether Misconduct allegations are factual or 'cover stories'.)*

259. But fact-finding did *not* happen. Instead, the **implied** allegation of '**M**isconduct' – something that **nobody** at Purolator *explicitly* stated – was used by EI ADMs to *wrongly* invoke Case Law to *justify* their **refusal** to investigate **my employer's lawbreaking**. The CEIC & SST *ruled* that my ***alleged*** Misconduct supposedly ***bound them*** *by precedent &* made it *'impossible'* for them to conduct their *statutorily-mandated* ***duty*** to fact-find for Just Cause – in this case [§(xi):] whether my "employer acted contrary to law." [214]

Did I *legitimately* "breach a duty [arising] from my contract" ***or*** was my ROE [mis]coded to 'provide cover' for ***their*** Misconduct? Put differently: Did **I** break the law? Or **them**?

260. There are [at least] **four** serious problems with using Case Law to **override** the EIA: ① it is illogical, ② it defies the Rule of Law, ③ it violates proper 'order of operations', and ④ it contravenes the 'fruit of the poisonous tree' doctrine. Any *one* of these reasons – all legal errors – grants sufficient grounds to Quash or overturn this Decision.

- **a.** I address the two *different* **logical fallacies** above at: Problem #2: '**H**: Logic'. It is *both* 'Petitio Principii' *(Begging the Question)* & Special Pleading. [215]
- ***b.*** Case Law **cannot *override*** a Tribunal's *'Home Statute'* – their ***only*** 'source of authority'. This **defies the *Rule of Law***. See: Problem #2: '**F**: Rule of Law'. The very basis for *ADM Deference* is based on Parliamentary Authority *(Supremacy)*. *(Jurisprudence derives* from *Statutory Interpretation,* ***not*** *the other way around.)*
- **c.** This **violates logical** [mathematical] '**order-of-operations**'. The ***existence & legitimacy*** of *any thing* [i.e. a policy] *must* be ***proven*** before it can be used. It is nonsensical to 'apply' something that is *already* ***legally*** **nullified** *before* its use.

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[214] I list the **43 times** that TMs cited such Case Law to **excuse** Fact-Finding @*(¶191,* ***FN-138****)*

[215] Wikipedia: Logical Fallacy, **Begging the Question**, **Special Pleading**, Circular Logic

d. The '**fruit of the poisonous tree**' doctrine demands that *anything* downstream from fraud *or* unlawfully obtained evidence – or clear legal error – is inadmissible in legal proceedings. Our EI Benefits Denials are based on knowingly, wilfully **falsified ROEs** – something the EI Act *requires* ADMs to investigate. Doing so removes the 'Misconduct' factor – which eliminates the Case Law's *applicability*.

261. Aside from the testimony of *(Executive[s])* – based upon my *first* ROE – there is **zero** legal basis to support *any* finding of Misconduct *or* Suspension. The overwhelming testimony from *every* other source indicates that I was on an 'Approved *Admin* Leave of Absence'. This makes ***both*** my ROE's 'M' Coding ***and*** *(Exec)*'s confirmation that I was "Dismissed based on the Mandates" **provably false** – and they were the policy owners.[216]

*(The real question is: **why** were these **knowingly**, provably **false** statements **Certified**?)*

262. The documentary evidence that Arbitrator Glass obtained during Discovery was published within the body of his Award. One of the primary reasons that he found the SWP **unreasonable** was because Purolator was more concerned with limiting their perceived **liabilities** than ensuring the wellbeing & livelihood of their employees. [217, 218]

Means: Only Senior Leadership – like *(Executive Roles) (or above)* – possessed the necessary **authority** to require [mandate] & coordinate *Falsified ROEs* across Canada.

Motive: Glass documented Purolator's focus in his Award. It was *key* to his Decision. Their *(Senior Leadership Team)* was driven by a [perceived] need to **Avoid Liability**.

Opportunity: *(Executives)* were *all* SWP Owners *or (Executive Roles)*.

263. **Falsified Evidence** meets the Grounds of Review @FCA §18.1(4)(e). The **'M'** Coding on my ROE is a Criminal Offence that **requires** this Decision to be **Quashed**. Had any EI ADMs conducted their statutorily-mandated fact-finding, this would have been obvious. I was on "*Approved* Admin Leave" – ***not*** "Dismissed" for Misconduct.

Further investigation would have also uncovered everything listed in this section, which explains **why** our ROEs were **falsified** when submitted to the government *(ESDC)*.

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216 See the following Side-Bar: 'P' about the CEIC Changing the Facts (Terms) in my Case.
217 ('Affidavit') Arbitrator Glass' findings are examined in my Affidavit: ¶40-42 *(**A:** p.22-25)*
218 ('Glass') Purolator's policy justification & focus on corporate liability at: *(¶240-53)*

(Impact of ROE Coding & 'Employment Status' on amount of EI Premiums *due [$1M+] & ability to receive ESDC Approval for the* WorkForce Reduction Program *[to justify the otherwise unlawful # of 'employment separations' within such a small time window].)*

<u>**Application**</u>

264. I have had <u>three</u> different SST Cases Dismissed throughout this process and, each time, the *same* **errors** are made. TMs ignore <u>fundamental</u> Facts in the Record & avoid foundational Pleadings, often making Jurisdictional excuses. This is Unfair & Unjust.

- **a. Executive Admissions:** This Record contains two damning Admissions from key Purolator Executives – *(Roles & Titles)* are part of their Senior Leadership Team – or among the legal 'owners' of HR-related Policies. These *(Executives)* Admit <u>in writing</u> that this SWP [Mandatory Vaccination Policy] ***is*** a 'Condition of Employment' <u>unilaterally imposed</u> upon our pre-existing CBA <u>*without* Union Ratification</u>, something they **know** they "couldn't [do] <u>even if we wanted to</u>." This **proves** that they all *knew* in advance that they could *not legally* do this. And yet *both* TMs refused to properly address this, **ignoring crucial evidence**.

- **b. Constant Inconsistencies:** The Record documents <u>major</u> Policy Inconsistencies: Various deadlines constantly **changed** every time <u>hundreds</u> of Workers 'remained non-compliant.' *(i.e. Declined their Consent to inject an* experimental medication *<u>still</u> in Clinical Safety Trials.)* Local Depot Management also <u>refused</u> to *enforce* the policy – enabling us to miss **five** deadlines – despite the pressure from HQ. They also confirmed that we *could* 'continue working' after the *sixth* deadline. And our legal 'status' diametrically changed, depending on the situation. This was either *rejected* or *dismissed* on flawed Evidentiary & Jurisdictional Grounds.

- **c. False or Perjured Evidence:** How can we all *simultaneously* be on '*Approved* Administrative Leaves of Absence' while <u>also</u> being 'Suspended [or Dismissed] for Misconduct'? This dichotomy was never addressed. More recently, the sworn evidence coming from our Labour Arbitration **proves** that these falsified ROEs & <u>contradictory</u> answers were knowingly, purposely provided to <u>Avoid Liability</u>.

265. On what grounds is it **reasonable** to **ignore** all these key Facts in the Record? How can documented evidence of senior *(Execs)* Admitting that they ***know*** they 'cannot do this' – *unilaterally impose* a new, non-negotiated 'condition of employment' upon our CBA – be irrelevant or inadmissible? How can *numerous* changes in policy requirements & enforcement be ignored? How can local Depot Management's deliberate undermining of the [unlawful] policy be disregarded? How can *wilful* **untruthfulness** be *'ultra vires'*?

266. The selective [mis]use of Jurisdiction to *avoid* addressing major facts in the Record *(and related Pleadings)* is Grounds for Review – and Quashing – per FCA §18.1(4)(a).

267. Ignoring or Rejecting these same fundamental Facts meets §18.1(4)(d).

268. And basing their Decisions upon *intentional* misrepresentation of facts – and our *Falsified Employment Records (CC §398)* – qualifies for Review under §18.1(4)(e).

Decision

269. We respectfully ask this Court to **Quash** TM Lafontaine's Decision on the Grounds that *rejecting* Key Evidence & related Argumentation makes his Decision **Unreasonable**. And *both* of their [SST TMs'] primary findings are also based upon **Falsified Evidence.**

[Hoffman ¶39-41]: A Decision which *"ignored the evidentiary record"* or is based upon ignoring *"crucial documentary evidence"* or **evidence *"not appropriately considered"* will be** one made in a **perverse or capricious manner**. *(Canada v MacLeod, 2010 FCA 301 [¶5])*

[¶41] Reasons should be understandable, sufficiently detailed and provide a logical basis for the Decision. Reasons should be responsive to the live issues presented by the case and the parties' key arguments. The reasons must be read together with the outcome to determine whether it is reasonable. ***(SST-AD Case:*** *Canada [AG] v. Hoffman, 2015 FC 1348)*

[Vavilov ¶127-28]: "The principles of Justification & Transparency *require* that an ADM's Reasons *meaningfully* account for the central issues and concerns raised by the Parties… [Their] failure to *meaningfully* grapple with Key Issues or Central Arguments raised by the Parties *may* call into question whether the[y were] actually alert & sensitive to the matter. Addition[ally]… drafting Reasons *with Care & Attention* can alert the[m] to inadvertent gaps & other flaws in [their] Reasoning. *(Baker [¶39])*"

Q. Side-Bar: CEIC Changed Terms & Facts

270. **[(EI Claimant)]:** Statement of **Belief** to be **confirmed** with **certainty** at Hearing: *(We have spent about **2500** hours working on this Case & **~350 hours** on this Factum.)*

271. There are serious legal problems with using terms like 'Suspension' ***&*** 'Misconduct' *(in all their forms, along with all their synonyms)*. They are being used in legal proceedings, in ways that do ***not*** reflect *either* reality *or* the record itself. Worse yet, replacing other *different* words in the record *with these terms* amounts to **changing facts**. *(e.g. Changing 'Leave of Absence' to 'Suspension' and 'Administrative' to 'Misconduct'.)*

272. *(Executive)* is the **only** person from my employer *(Purolator)* to *knowingly* 'confirm' I was 'Dismissed'. And they ***never*** used the term 'Misconduct' – in fact, **no Purolator employee** *ever* used this term – something to which I have ***always*** **objected**.

The only *potential* exception would be (Accounting) *(Purolator's **Administrative Assistant in Accounting**)* who is quoted as saying [both]: *"The client was **not** vaccinated. He was **terminated** and an ROE was issued."* **and** *"that she* again *was **not** the correct person to speak to and that I needed to speak with (Executive) or (Manager) from HR."*

(Whether she actually used that term or not, she self-admittedly *was **not** in any position to make* any *definitive statements – and she was only responding to a leading question… Her* only *connection to this Case was as an intermediate Contact between Payroll & HR. She answered the phone like every good Admin Assistant & arranged the call-back.)* [219]

273. Aside from *(Executives)*, neither I ***nor any* person** from Purolator *ever* claimed I was 'Fired' *(or its synonyms)* ***nor*** that I committed 'Misconduct' or was 'Disciplined' *(and their synonyms)*. In fact, every time *either* of these concepts [220] were raised by EI Investigators, they were ***always*** corrected. The CEIC's Record submitted to the SST [221]

[219] ('SRC-2') SC/EI record of statements from various Purolator personnel. *(**B:** p.36 [GD3-32])* Note that she also said that I was 'unvaccinated' which is also unsupported by the record.

[220] **Concept #1:** Type of Employment Separation *(i.e. Dismissed, Terminated, et al)*
Concept #2: Reason for Employment Separation *(i.e. Discipline, Misconduct, et al)*

[221] This analysis relied *only* on **GD3** *(Reconsideration File)* **+ GD4** *(CEIC Arguments to SST).* There were other documents in the record that *compounded* this evidence *(like the SWP).*

documents [at least] **<u>18</u>** *different* statements – from **<u>4</u>** different sources – that *clearly* contradict findings of *either* 'Dismissal' or 'Suspension for Misconduct'. [222, 223]

274. My **<u>first</u> ROE** *(+SRC-1 re. [Executive])* is the ***only*** evidence in *that* record that can support *either* concept. But: this ROE *also* indicates that <u>I *could* return to work</u> *(Box 14)* **and** that my Vacation Pay was **<u>not</u> <u>being paid out</u>** *(Box 17) because* <u>my employment relationship still existed</u>. My **second ROE *confirms*** these facts: Box 14 *still* indicates that I *could* return to work *(if Arbitration succeeds)* and Box 17 now shows my Vacation Pay-Out, as our current employment relationship ended with my Retirement. [224]

275. Furthermore, my *EI Claims* file was always **coded** '**LOA** – Leave of Absence' [225] internally, *until* I Appealed to the SST *(Tribunal)*. It wasn't until the CEIC's Decision *(& associated evidence)* were to be subjected to **external review**, that they *'discovered'* their 'clerical error' & changed my status from 'LOA' to "Suspended due to Misconduct." [226]

> [¶4]: "The attention of the SST is drawn to the fact that a <u>clerical error</u> was made in the notice sent to the claimant. The notice indicated that the <u>claimant is dismissed</u> *whereas it should have stated* that the claimant was <u>suspended due to misconduct</u>."

> [¶7]: "The attention of the SST is drawn to the fact that a <u>clerical error</u> was made in the notice sent to the claimant. The notice indicated that the <u>claimant is on a leave of absence</u> *whereas it should have stated* that the claimant was <u>suspended due to misconduct</u>."

This is also the **first time** that the term 'Suspended' is used *anywhere* in the record.

276. In her GD Decision, TM Usprich acknowledged – *and **affirmed*** – this 'clerical error', while **ignoring** the underlying implications of *equating* 'lost employment' & 'LOA': [227]

*(She also **inverted the error** in her Decision – citing the* **opposite** terms *used by the CEIC: they* ultimately *claimed that their 'error' was deeming me on* 'Approved Leave' *when their **intention** was to categorise me as "Suspended due to Misconduct".)*

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[222] ('SRC-1') **1x** ***(B:** p.28 [GD3-24])*; ('SRC-DA') **5x** ***(B:** p.30 [GD3-26f])*;
('SRC-2') **5x** ***(B:** p.36 [GD3-32f])*; ('SRC-RR') **3x** ***(B:** p.49 [GD3-45f])*;
([Other]) **4x** [EI App: Reason, [Exec] Update, Note to File] ***(B:** p.11,32-34 [GD3-7,28-30])*

[223] ([Other]) **8x** CEIC's arguments list **<u>8</u>** different contradictions [<u>with citations</u>]. *(p.53f [GD4])*

[224] ('ROE-1') ROE #1: 'M' ***(B:** p.23 [GD3-19f])* **|** ('ROE-2') ROE #2: 'G' ***(B:** p.25 [GD3-21f])*

[225] My EI Case file [@SC] was <u>always</u> coded LOA <u>until</u> SST Appeal. *(GD3-<u>23</u>,<u>25</u>,<u>31</u>,<u>47</u>; GD4-<u>2</u>)*

[226] ('CEIC-SST') CEIC unilaterally changed legal terms <u>without evidence</u>. ***(B:** p.54, ¶7 [GD4-2])*

[227] ('DA-740') **DA v. CEIC** *(<u>2023 SST 1093</u>)* 'Clerical Error' @(<u>¶14</u> & <u>FN7</u>)

(i.e. First 'Dismissed' was an 'error', then later, 'LOA' was *an* **error** *too:* both *should be 'Suspended'. Ultimately, they are arguing that the* **written record** *is a 'clerical error' and should be replaced with legally distinct, heretofore* ***unused*** ***Terms*** *that* **they supplied***…)*

[¶14]: "The Commission wrote in their representations that they made a *clerical error* in their notice of Decision to the Appellant. The Commission wrote that the Appellant had *'**lost** his employment'*. **This wasn't the case**. The Appellant ***agrees*** that he was on an Unpaid Leave of Absence and **wasn't let go**. For the reasons that follow, I do ***not*** **find** that this **error** was ***material*** and was clerical in nature."

277. How is this **reasonable**? EI staff are *unilaterally* changing terms – from words that allow EI Benefits to words that deny them – despite constant correction from witnesses. And when their Decision is about to be subjected to Appeal, they completely change **both** the *Type of* ***&*** *Reasons for* my employment separation – and call it a 'clerical error'…

Worse yet, they have the nerve to [mis]cite jurisprudence as justification for this travesty:

"an ***error*** *which does* ***not*** *cause prejudice is* **not fatal** *to the Decision under Appeal."*

Changing my separation Type *(from 'LOA' to 'Suspended')* changes the applicable subsection in the EIA – and introduces a new term they *inartfully* [mis]use to justify their Decision – and even *this* change *still* requires circular logic. *(cf. L: Side-Bar: ¶192-95)* *(This is the precise definition of '**prejudice**'. By their own citations this change is **fatal**.)*

278. The CEIC & SC/EI Investigators *wilfully* used terms that the witnesses ***never*** **used** – and *frequently corrected* when they *were* mentioned – while Purolator's testimony used terms that support EI Benefits Claims. Despite these numerous & consistent objections, they persisted in using incorrect language that made EI Benefits **impossible** to receive.

The CEIC's Record contains **18+** documented **evidentiary statements** from **4** *different* witnesses that *all* **confirm** my '*Approved* Administrative Leave' *and* **contradict** their 'Suspended for Misconduct' finding. This **new fact** was only 'discovered' *ex post facto* – as a 'clerical error' – **after** I appealed to the Tribunal. *(Ignoring this is* ***unreasonable****.)*

R. Many Cases: Adjudicators *(CEIC/SST)*

Fundamental Questions ***(8)*****: #3-10**

Grounds of Review ***(4)*****: FCA §18.1(4)(a-c,f)**

Vavilov Principles ***(5)*****: Decision & Outcome**

Fairness Principle & Meaningful Reasons

(b) Other Statutory or Common Law

(d) Evidence Before the Decision Maker

(e) Submissions of the Parties

(f) Past Practices and Past Decisions

(g) Impact of Decision on Affected Individuals

Questions & Issues

279. **Jurisdiction:** Are there Objective Standards for 'vires' *(Admissibility)*?

Fairness & Consistency: Are these standards Discretionary [and Public]? On what Grounds? What Reasons are Required? Is Consistency Required? Can EI ADMs Arbitrarily Include/Exclude Evidence *between* different-yet-similar Cases?

Private Law: Can ADMs Ignore Employment Contracts? On what Grounds? Are they Binding? Are Contracts Admissible by *Both* Parties or Just the Employer? Is there Equal Application *(or Implication)* Requirements? Must they be Stated in their Reasons?

Common Law: Are various legal 'Tests' Applicable to EI, specifically 'KVP'? When? What are the Grounds for Using/Omitting such Tests? Can they be Argued by Claimants? Can they be *unilaterally* Introduced by Adjudicators while Refused to Claimants?

280. Jurisdiction: Conflicting Standards or Definitions re. Admissibility.

Fairness: SST TMs Arbitrarily Use or Exclude 'Inconvenient' Evidence & Legal Tests.

Errors in Law: Employment Contracts & Common Law Tests *(such as 'KVP')* are often Misused or Selectively Applied to Reverse-Engineer Desired Outcomes.

Process Errors: The EI *Home Statute* is being Violated in Decision Making.

Law & Jurisprudence

281. Please consider my SST-AD Written Arguments *(**AD-23-694** [ADN06})* incorporated *(by reference)* into this J.R. Factum *(Memo of Fact & Law)*. To save space, I won't reprint *everything it* contains, but large sections are critically relevant and must be expanded…

This contains excerpts from #1: Nullified Policy & Misused CBA *(**B:** p.178-81 [ADN06])* and #4: Management Inconsistency. *(**B:** p.186-89 [ADN06-21..24])*

282. Procedural Fairness & Errors in Law: There are **two** specific legal principles that are often **applied *selectively***, depending on the desired Outcome: the KVP Test *and* the Use & Analysis of Employment Contracts *(CBAs)*. EI ADMs *consistently* choose the application that leads to Denial of EI Benefits, even when that means *contradicting* their findings or selection of these *exact same* entities in ***their own*** other C19-MM Decisions.

a. During the pandemic, I noted *many* SST Decisions *(at both GD & AD levels)* **used** the 'KVP Test' [228] to ***justify*** **Denying** EI Benefits Claims. But, whenever applying KVP would result in the Claim being Allowed, it was instead declared ***ultra vires***.

*(This **[mis]use** is **consistent**: whatever KVP Jurisdiction is needed to **Deny** Benefits is 'found' by the TM – regardless of* their *other Cases. This is **unfair** [per Vavilov]: ADMs cannot 'reverse-engineer desired Outcomes' via 'selective' findings.)*

[228] **KVP:** see details at: Problem #2: 'G: Common Law' *(¶106-10, ¶120-23; FN-115..19)*, and: Problem #7: 'U: Templates Change Decisions' *(¶348-49, FN-263..65)*

b. This 'selective unfairness' applies to Employment Contracts *(collective agreements)* as well. When citing relevant **contractual Terms** justifies **Dismissing** cases, many SST Members do. However, when applying relevant Terms would result in Allowing EI Benefits, it is suddenly *ultra vires* to do so. My case received this unfair treatment.

283. This *miscarriage* of Justice seems to occur much more frequently in *('C19-MM')* pandemic-mandate-related cases *(post-2021)*. Querying & analysing the SST Decisions database for cases prior to 2020, evidences the fact that this inconsistency was rare.

In most cases, SST Members did *not* selectively refuse to apply relevant legal principles and statutory provisions on jurisdictional grounds prior to 2020.

284. This section relies on – and incorporates by reference – arguments from other sections in this Factum. They are introduced & primarily contained there to facilitate logical flow.

Problem #2 *('G')*: Private Law *(Employment Contracts)* & Common Law *('KVP')*
Specifically: Contracts & CBAs *(¶98-105)*, KVP Test *(¶106-10, ¶116-23)*

Problem #7 *('U')*: Contradictory Atrium Templates Facilitate 'Choosing' Outcomes
Specifically: Reverse-Engineering Outcomes re. KVP Test *(¶347-49)*

Cross-Case Statistical Analysis

285. Below are various statistical analyses of historical SST Decisions. [229]

SST Cases: Statistical Analyses *(Inconsistent Application of Law)*
** Incomplete Listing: Only Includes Final-Disposition Decisions **
**** Current as of: 2024-11-30 * (All Stats Queried from SST Decisions Database)***

[229] **All Stats Queried from: SST Decisions Database** ***(Current to: 2024-11-30)***

286. **C19 Mandate Case Load:** Total Cases by Cause *(Vaccine Mandate Misconduct)*

2019 is included to provide a *pre-COVID* benchmark for cross-comparison purposes.

SST Statistics: Case Load *(By Separation Reason)*				
Year	**EI Cases**	**Non-C19**	**C19-MM Cases**	**MM Load**
2019	**988**	988	0	0.0%
2020	712	712	0	0.0%
2021	595	588	7	1.2%
2022	**1304**	**874**	**430**	**33.0%**
2023	**1496**	**875**	**621**	**41.5%**
2024	836	768	68	8.1%
Total	**5931**	**4805**	**1126**	**19.0%**

During the pandemic *(2020-2024)*, there were **4943** Total EI Claims Cases Adjudicated:

Pandemic Mandates: **1126** *C19-MM* related, **3817** were **not** – or **22.28%** of *All* Claims.

Mandate Peak *(2022-23)*: Total: **2800** | C19-MM: **1051** | 'Normal': **1749** = **37.54%**

Mandate Case Load Increase: **1400 / 988 = 142%** | Peak Mean: (1304+1496)/2 = **1400**

Pre-Mandate Pandemic Decline: **653.5 / 988 = 66%** | PreMean: (712+595)/2 = **653.5**

287. During the ***first*** **two years** of the Pandemic *(pre-Mandates)*, there was a **33% Decline** in SST-EI Cases, partly due to the reduction in EI Claims covered by the CERB Program.

In late 2021, Vaccination Mandates began, which caused a significant spike in EI Claims, most of which hit the Tribunal between 2022-23 or during the 'Peak Pandemic' period.

Pre-Pandemic: 988 Cases | Pre-Mandate: 654 Cases | Mandate Peak: 1400 Cases

The **C19 Mandates** caused a **42% Increase** in Case Load *(vs. pre-Pandemic benchmark)*, and a **2.14x Increase** over the Pre-Mandate Lull *(1400/653.5)*. During this COVID-19 Mandate-Peak, **37.5% of *All*** EI Appeals were caused by 'non-compliance' with MVPs.

No matter how this is framed, this is a ***National Crisis***. There has **never** been a **singular cause** underlying **22%** of ***all*** EI Appeals *(C19-MM Cases / Pandemic Total)* – much less a **42% Increase** in EI Appeals provoked by **one policy change**. *(C19-MM vs. Baseline)*

[Some] ***unlawful*** Mandates caused a **214% Increase** in SST Appeals vs. the 'Lull' when we 'Locked-Down' most of the Western world. *(2022-23 vs. 2020-21: Total SST Cases)*

288. Success Rate: Comparison of EI Benefits 'Success' *(Appeals Granted)* by Cause.

Comparison: Benefits Granted Rate: C19-MM *(Vaccine Mandates)* vs. Non-C19-MM Cases

SST Statistics: Benefits Granted Rate *(By Reasons + Difference)*										
'21-'24	**Cases**	**Yes**	**Rate**	**Non**	**Yes**	**Rate**	**MM**	**Yes**	**Rate**	**Diff**
GD	2370	453	19.1%	1768	*424*	24.0%	597	29	4.86%	4.93x
AD	1861	398	21.4%	1337	*360*	26.9%	526	38	7.22%	3.73x
Total	**4231**	**851**	**20.1%**	**3105**	***784***	**25.25%**	**1123**	**67**	**5.97%**	**4.23x**

All of the **C19-MM Cases** were Appealed through the SST between **Jan 2022** *(01-04)* [230, 231] **& Sept 2024** *(09/05)*. [232, 233] Analysing their Decisions – compared with non-mandate related EI Cases – exposes *serious* **inconsistency** in Reasoning. *(Often from the exact same TMs.)* *(There were other pandemic-prevention-mandate-related cases in 2021: Masking, etc.)* [234]

Between **2021-2024** there were **4231** SST Decisions rendered: **GD: 2370 + AD: 1861.** [235] Of these, **3105** were ***not*** C19-Mandate related & **1123** ***were*** based on policy 'compliance'. [236]

C19-MM: GD: 29 / 597 = 4.86% || AD: 38 / 526 = 7.22% || Total: 67 / 1123 = 5.97%

Non-MM: GD: 424 / 1768 = 24% || AD: 360 / 1337 = 26.9% || Total: 784 / 3105 = 25.25%

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[230] **First** [SST] C19-MM Case: KW v. CEIC *(2022 SST 217)* Decision Date: 2022-01-04

[231] There were **seven 'C19 Vaccination' cases** in late 2021 but were **not** decided on the basis of 'Misconduct' for 'policy violation'. They involved Work Eligibility, Employment Conditions, etc.

[232] **Last** [SST] C19-MM Case: CEIC v. AD *(2024 SST 1065)* Decision Date: 2024-09-05

[233] There are C19-MM Cases Decided after this date, but they are **all** Appellate Remands. (Or were Decided on non-'Misconduct' bases: Back-Dating Claims, Work Eligibility, etc.)

[234] This is an interesting Case. The Employer's C19 Policy **was** found to be 'contrary to law'. This **proves** that TMs will consider EIA §29(c)(xi) when it suits them. *(2021 SST 377)*

[235] Date range expanded from above to capture **all** pandemic-mandate Cases, inc. Remands.

[236] Three cases had non-standard dispositions & could not be bucketed as Finalised Yes/No.

289. This may *not* seem significant up-front, but a detailed analysis of their Reasoning **proves** that there are *serious* problems with this considerable discrepancy in Dispositions:

'Normal' Cases: **25.25%** of the ***non-***Mandate EI Claims were 'Allowed' by the SST.

C19-MM Cases: **5.97%** of the Vaccine-Mandate EI Claims were 'Allowed' by the SST.

This means C19-MM Cases were Denied at: **4.23x greater** rate than 'standard' EI Claims.

Difference *(SST Total)*: (*(784 / 3105) =* **25.25% / ** *(67 / 1123) =* **5.97%) = 4.23x**

Difference *(by Level)*: (GD: 24% / 4.86% = 4.93x | AD: 26.9% / 7.22% = 3.73x)

290. During the 'Pandemic Peak' *more than* **1 in 3** EI Claims were based on C19 Mandates. At the same time, these cases were **Denied 423%** *more often* than 'normal' EI Claims. In the following paras, we will analyse the **Reasons** given to see whether TMs were **fair**.

291. The following Cross-Case Analyses cover just over the last decade *(2014-2024)*. [237]

*(Although not included in these Analyses – since it was published in 2013 – the **first** SST Decision is notable as the TM* conducted a **Rizzo Analysis** *of the EI Act & Regulations…)*

a. **EI Act §29(c) Analysis:** Historically, the SST examined ***both*** Provincial Labour Laws *and* Provincial Health & Safety Laws – *despite* EI being a federal program. The **CLC** – a federal statute – is *both* **the governing** Labour & H&S Legislation.

   Given this fact, it is historically **unreasonable** to ***refuse*** to conduct any §29(c)(xi) Analysis to **fact-find** for whether the "employer acted contrary to law." [238]

b. **KVP Test:** During the Pandemic, the *'KVP Test'* was either applied or argued 24 times. In **every** situation, the TM used the application that would Deny Benefits – either *unilaterally* citing KVP to justify MVPs ***or*** deeming it *ultra vires* to avoid considering whether the specific MVPs in question were 'contrary to law'.

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[237] The first full year of SST Cases published in the Decision Database is 2014. The current SST was created by statute in April 2013 – and their first Decision was published on 2013-09-10. (GDEI) 2013 SST 1 *(JB v. CEIC)*. This Case is notable as the TM conducted a **Rizzo Analysis**.

[238] Binding precedent defines 'contrary to law' as both legislation & employment contracts. *(¶78)*

c. **Employment Contracts:** Similar to KVP, SST TMs ***selectively*** decided whether to apply terms & clauses from CBAs in a way that ***ensured*** Benefits were Denied.

*(**[b+c]**: This amounts to 'reverse-engineering outcomes' which violates Vavilov.)*

292. Details & Findings: 'Just Cause' *(EIA §29(c)(xi): 'Contrary to Law' Clause)* [239]

(Rizzo Analysis [EI Act]: Problem #1: ['C'] Legislative Intent & History [¶35-58])

(Legal Argumentation: Problem #2: ['F'] Rule of Law & Jurisdiction [¶75-83])

Both **binding** FC precedent – and *multiple* SST TMs **concede** – that ***both*** CBAs & the CLC *must* be considered under the 'contrary to law' factor. *(What happened?)*

Before the pandemic *(2014-19)*, there were **539 Cases** that Contain '29(c)' Analysis. Apparently, it was understood that this Statutory Requirement mattered before C19.
Also: **13 Cases** relying on '29(c)(xi)' Analysis: 'Employer Practices Contrary to Law'
Also: 24 Cases relying on '29(c)(xi)' Analysis *during* the Pandemic. *(2020-2024)*

(CUB 51219): AM v. CEIC, 2023 SST 1886 [¶98]

[¶98]: "If an employer requires a claimant to perform acts which are illegal or contrary to business ethics, the claimant may have Just Cause for Leaving their position. The term 'illegal' has a broader meaning than merely *'contrary to the criminal law'* and can include contraventions of Employment Standards & Legislation, **Collective Agreements,** and Licensing Board Certifications."

How is it *reasonable* for SST TMs to **'selectively'** conduct this *required* investigation?

Even *during the pandemic*, TMs *did* conduct this *statutorily-mandated* Fact-Finding – ***unless*** it was related to **C19-MM** *(COVID Vaccination)*. Then it's suddenly *ultra vires*?

[239] ('Appendix A') Tables with lists of specific §29(c) Cases at: Appendix 'A' *(SST Analysis)*

293. Details & Findings: KVP Test *(Policy 'Applicability' Test)* [240]

*(Argumentation: **Problem #2**: **['G'] Private & Common Law** [¶106-10, ¶120-23])*
*('Selective' Use: **Problem #7**: **['U'] Erroneous Templated Decisions** [¶347-49])*

(The Validity & Applicability of the KVP Test is est. by SCC Precedent. [cf. ¶106-10])
[2023 SST 99: KM v. CEIC [¶*29*]: "The SCC has **endorsed the *KVP* Test** which means **it is good law** that should be applied." *(Citing: 'Irving' [2013 SCC 34])*

TMs are *selectively applying* the KVP Test in a way that ensures EI Benefits are Denied:

KVP has been cited in **24** SST Cases since the Pandemic started. **12x** it was unilaterally *cited* by TMs to Justify using *new, non-CBA-compliant* corporate policies to **Disqualify** the EI Claimants. But **12x**, when Argued by the Claimants *(because the policy in question Failed KVP Test #1)*, their TMs ruled that KVP was *ultra vires* & ***not*** arguable *(notwithstanding it would have Changed the Outcome)*. In some cases, it was the ***same*** **TM** applying KVP inversely, ensuring the result was *still* Disentitlement. **Is this Justice?**

294. Details & Findings: CBA Analysis *(Employment Contracts)* [241]

*(Legal Argumentation: **Problem #2**: **['F'] Rule of Law & Jurisdiction** [¶116-24])*

In the six years *before* the pandemic *(2014–2019)*, there were **365 Cases** that seem to discuss contents of "employment contracts" or "collective agreements" – which is what you would expect to find, based on the EI Digest Principle §21.2.2 *('Gathering All Available Evidence')* [242] which states that *"employment contracts"* and *"collective agreements"* are among the *"evidence necessary to prove the facts of a particular case."* *(Twice in five paragraphs EI ADMs are told to gather contracts for evidentiary purposes.)*

But now, in C19-MM Cases [only], examining the relevant Employment Contract sections is deemed *ultra vires*. How is this practice of *'selective application'* **reasonable**?

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240 ('Appendix A') Tables with lists of individual KVP Cases at: Appendix 'A' *(SST Analysis)*
241 ('Appendix A') Tables with lists of individual CBA Cases at: Appendix 'A' *(SST Analysis)*
242 ('DBEP') **ESDC:** EI Policy: Digest of Benefit Entitlement Principles, Ch.21 *('Evidence or Proof')*
This published EI Policy Manual is based upon binding Jurisprudence. §21.2 *('Proving Facts')*

In 15 Cases, SST TMs *Dismissed* EI Appeals because the Claimants 'did ***not*** file [their] CBAs' which *they* '*would have* examined' for 'contractual violations'. But, in their absence, TMs were *required* to find the MVPs 'compliant' with their Contracts.

In 58 Cases, TMs *Dismissed* EI Appeals on 'Management Rights' grounds – authority that *directly derives* from Employment Contracts. If CBAs are truly *ultra vires*, the Management Rights clause is ***not*** **admissible**. How is this *reasonable*?

And what happens in situations where the *specific* Management Rights clause in use deems the policy in question Nullified – as in my Case? Without that clause, they *cannot* enforce *any* policy – but when *properly applied*, it *prevents* the *specific* policy in question.

On what grounds are CBAs 'necessary evidence' to *properly* determine EI Benefits Eligibility – in *hundreds* of SST Cases – *unless* it involves *unlawful* pandemic mandates?

295. Details: Atrium Decision Templates *('Reverse-Engineering' Outcomes)*

('Selective' Use: Problem #7: Template Use Determines Decisions [¶346-60])

This *widespread* **procedural unfairness** occurs through the use of Decision Templates – a collection of *prewritten* Reasons, Citations & Footnotes with *contradictory* Findings.

TMs can select the Template that enables them to Deny Benefits with *prewritten* reasons.

If CBA Terms *or* the KVP Test would *Deny* the Claimant's Benefits, it contains references to the appropriate Jurisprudence – with blanks to supply the relevant information.

But, if CBA Terms *or* the KVP Test would *Grant* the Claimant's Benefits, then they are suddenly *ultra vires* – again with corresponding, *contradictory* Reasons & Case Law.

Example: ***Four*** common templates re. KVP that are used by TMs: two *unilaterally* invoked by TMs to **justify** employers' contract breaches + two **rebutting** Claimants who argue their MVPs breached their contracts – *all* with corresponding case law & footnotes. *(This is "reverse-engineering desired outcomes" which Vavilov deems* ***unreasonable****.)* Some TMs change a few words to customise the template, but the interlinked combination of text, citations & footnotes 'give it away'. *(Ex: KVP Used v. KVP Denied, Footnotes)*

This results in ***inconsistent* reasoning** that *consistently* favours the *government*. But, the **Outcome *is* consistent** – EI Benefits are *always* Denied – regardless of whether [or not] the Reasons & Citations given **conflict** with *that same TM's* previous Decision.

(I hereby incorporate by reference: [Problem #7](#) [¶345-61])

296. Details & Findings: SST Members *(Appointment Analysis)* [243, 244]

Coincidentally, there was a significant reduction in SST TMs during the Peak Pandemic.

At the *same time* that the Case Load was *increasing by **214%***, the Tribunal ***lost 28%*** of its Members – *some of whom* still had substantial time left on their Appointments.

This was followed by a *rapid* ***50% increase*** in Members, while the rate of *EI Denials* to C19-MM Claimants **increased by 423%** *(as compared to 'standard' EI Claims)*.

Is there any correlation between Mandates and this *statistically significant* **anomaly**?

297. One key *Vavilov* factor underlying *reasonable* Decisions: It requires considering:

['G'] Impact of Decision on Affected Individuals *('Vavilov' [¶133-35])*

"Where the impact of a Decision on an individual's Rights & Interests is *severe*, the Reasons provided to th[em] *must reflect* the stakes. The principle of Responsive Justification means that *If* a Decision has *harsh consequences*… the ADM *must explain why* [their] Decision *best reflects* the **Legislature's intention**. This includes Decisions with consequences that threaten an individual's Life, Liberty, Dignity, or **Livelihood**. […] ADMs are entrusted with an extraordinary degree of *power over the lives* of ordinary people, which [calls for] heightened responsibility… to *ensure* that their Reasons demonstrate that they have considered the consequences of [their] Decision and that th[ey] are **justified** in light of the Facts & Law." *(¶133-135)*

How does this apply to these frequently *reverse-engineered* C19-MM Decisions? This had *life-altering* impacts on *many* Claimants' *livelihoods* – during a global crisis.

And *my* EI ADMs gave *no consideration* to this crucial factor in their Decisions…

[243] ('Appendix A') Table with *SST Membership List* links located at: Appendix 'A' *(SST Analysis)*
[244] ('Affidavit') Information about SST Member Appointments at: ¶62 ***(A:** p.34f)*

Application

298. There are *very* unequal applications of the Law, depending on the circumstances. Prior to the Pandemic, many EI ADMs followed their Home Statute, conducting Just Cause Analysis *(per §29[c])*. However, this statutory **requirement** is universally *ignored* in C19-MM Cases, with varying excuses offered [or not] in their Decisions. The same applies to their use of Employment Contracts & Common Law Principles.

Jurisdiction: There are ***no*** historical authorities listed, leaving each ADM 'Discretion' – which is widely abused in COVID-19 Mandate Cases. 'Jurisdiction' is whatever choice leads to Misconduct Findings, regardless of the consequences – for the wrongly Denied Claimants – and the EI Program's Reputation. <u>This cannot stand</u>. For the sake of Justice, *Judicial Intervention* is needed to permanently fix this *unreasonable* Decision-making.

Fairness & Consistency: EI Adjudicators need to be reminded to Justify their Decisions – Vavilov <u>requires</u> this to Find their Decisions 'Reasonable'. It is patently *unreasonable* for ADMs to <u>arbitrarily</u> *either* include or exclude Facts, Evidence, Contracts, and Common Law Tests & Principles, *without* proper Justification. Merely repeating the words 'Jurisdiction' *should be* insufficient for this *lack of Fairness* to stand upon Review. Furthermore, their jurisdictional choices & reasons should be *consistent* – individual EI ADMs should ***not*** be permitted to *change* these choices to justify *specific* Outcomes.

Specific Elements: Here are specific elements drawn from my Case:

- **a. Individual Facts & Evidence:** Emails, Letters, Policies, etc.
- **b. Private Law:** CBAs *(generally)* and specific Terms & Clauses.
- **c. Common Law:** Binding Precedents, Principles & Tests

299. On what **Reasonable** Grounds can ADMs *selectively* apply various legal fundamentals like Contracts, their Terms, and Common Law Principles? On what Grounds can they choose differently in other Cases? *(Fundamental Justice* requires consistent Application *of Law & Fact* – ***not*** consistent Outcomes – *regardless of the effects on the Individual. Or any [potential] impacts to the EI & Justice systems.)*

300. Arbitrary [mis]use of *'vires'* to exclude key Facts & Evidence raises both Jurisdiction & Fairness considerations, under FCA §18.1(4)(a/b).

301. Unequal application of the Law – and of various Legal Principles – is an Error in Law since something cannot be *both* Applicable *and* Inapplicable simultaneously. This meets the Grounds found in FCA §18.1(4)(c).

302. This is also arguably 'acting contrary to law' per FCA §18.1(4)(f).

Decision

303. For all these Reasons, we respectfully ask this Court to Quash TM Lafontaine's Decision on the Grounds that it is **Unreasonable**.

Problem #5: Use of Internal & Undisclosed Rules

Transparency is a fundamental tenant of Reasonableness. It is both Unfair & explicitly *"**Unacceptable** for ADMs to … expect that its Decision would be upheld on the basis of **internal records** that were **not available** to that party."* *(Vavilov [¶95])*

Fundamental Questions ***(1)*****: #10**

Grounds of Review ***(1)*****: FCA §18.1(4)(b)**

Vavilov Principles ***(4)*****: Process & Outcome**

Fairness Principle & Meaningful Reasons

(d) Evidence Before Decision Maker

(e) Submissions of the Parties

(f) Past Practices & Past Decisions

S. Internal 'BE-Memo' Usurps Law

Facts & Issues

304. Internal Rules: Can EI ADMs rely on Confidential Internal Rules? Are they subject to Disclosure or Discoverability? Can this be Overruled? Is this Vavilov-Compliant?

305. Important Clarification: I am ***not*** relying on Lex Acker's blog post – nor am I submitting any arguments related to his 'conspiracy' concerns or other potential claims of mal-intent. This is strictly about the **Fairness** of allowing ***"internal records** that [a]re **not available** to that party"* – *binding policies* that are *only* discoverable & obtainable through a complex, time-consuming legal process that requires *multiple* ATIPs – to *determine* the outcome of EI Benefits Claims.

*(I want to be explicitly clear: When discussing the BE Memo, I am **not** claiming personal discrimination, collusion, or any other problems with any specific person involved in my Case. This is about the **Fairness of the process itself**. ATIPs, which provide a legal 'chain-of-custody', clearly **prove** that CEIC Agents are bound by an **internal policy** – one that* targets a specific class *of [C19-MM] Claimants – and redefines historical definitions & changes long-established adjudication processes when* deciding their specific *Claims.)*

306. On 2021-10-29, the CEIC's 'Business Expertise' Team *('BEA')* – under the authority of the 'EI Operational Policy Service Desk' *('OPSD') {Org}* – published an ***internal*** **'memo'** *('BE-2021-10')* to the '**Policies**' portal of the 'EI Online Reference Tool' *(ORT)*. Its full title was the: *"EI Eligibility & Refusal to Comply with Mandatory Vaccination Policy" (or 'BE Memo')*. This **internal 'policy'** purported to provide *"guidance [to] all staff involved in the processing of claims" (p.10)* for a specific subset of Claimants – ***only*** those who *"refus[ed] to comply with a mandatory vaccination policy." (p.10)*

307. This **internal policy** provided ***new*** **Definitions** *(i.e. 'Just Cause' & 'exceptional circumstances' [p.3], 'suspended' [p.4-5] & 'availability' [p.6-7], etc.)* and ***different*** **Processes & Procedures** *('Fact-Finding' [p.9-10] & determining the **validity** of Medical & Religious Exemptions [p.7-9])* that ***only*** **applied** to *this* specific subset of EI Claimants.

308. Despite being a ***binding* 'policy'**, the BE Memo opened with a ***legal disclaimer***: that *"Th[is] memorandum is **not linked to any legislative or regulatory amendments**."* *(What possible purpose – other than for future indemnification – could this notice serve?)*

309. Since this 'memo' *self-admittedly* contained **no** legal foundation, on what basis could it be published as an official 'policy'? By what authority? These Definitions & Processes are *already* defined by **statute, regulation & precedence** *(in that order)*. This fact alone should *legally invalidate* the BE Memo – and **every** Decision based upon it.

310. This raises several crucial questions that should be answered *before* relying on it:

- **a.** Who specifically authored this BE Memo?
- **b.** Who specifically authorised its enforcement?
- **c.** Why was it an unpublished internal memo?
- **d.** Why only apply to specific Claimants, not all?

Authorities

311. Here are some **unreasonable** changes to *established* Definitions & Processes:

- **a. Voluntary Leaving** *(BE Memo: p.3-4)*

"In the context of a mandatory vaccination policy, an employee would ***not*** have Just Cause to voluntarily leave their employment ***unless*** they left due to exceptional circumstances. *(What is the legal basis for this policy change? Just Cause is already defined in statute. There is no 'exceptional circumstances' enhancement that only applies to selective Claimants. This is beyond patently **unreasonable**...)*

*(**Alternatively:** Is a* global pandemic *not 'exceptional circumstances'? Or mandating experimental medical treatments upon 8B people? Or withholding livelihoods? My AD TM* conceded *"the **exceptional circumstances** created by the pandemic.")* [245]

"Some clients could argue that a new Mandatory Vaccination Policy is a major change in the terms or conditions of employment and their duties. The Just Cause exception is usually used in the context of changes that have a direct impact on the work and therefore the employee had no other choice than to leave their employment *(i.e., reduction of hours, change in the shifts, direct change in work duties)*. A mandatory vaccination policy *may* not change an employee's specific duties but *merely* changes the work environment and therefore an employee who voluntarily left employment because of a refusal to be vaccinated ***may*** **not** have had Just Cause."

[245] ('DA-694') DA v. CEIC [¶46] *(2024 SST 26)*. *('Exceptional circumstances' only go one way?)*

('May not' is clearly conditional, based upon Fact-Finding. Purolator's own policies & communique repeatedly states this was a 'Condition of Employment'[246] *– one they **knew** they could not enforce via policy.*[247] *[cf. Problem #4: Purolator Management] Furthermore, the term 'work environment' is an invented term in this context that has no legal precedence or significance. It is an HR Term that refers to the 'company culture' & social conditions – or physical hazards on a factory floor – **not** changing workers' personal medical health [internal biological 'environment'] by requiring multiple irreversible injections of experimental mRNA 'gene therapy' immunisations.)*

In order to properly determine that a client had Just Cause for voluntarily leaving their employment, thorough fact-finding must be conducted **and** documented to support the existence of exceptional circumstances. It would be insufficient to rely only on a client's statement." *(Where does this 'exceptional circumstances' requirement come from? The statute requires 'no reasonable alternatives'. Involuntary **Lock-Outs** resulting from non-compliance with an unlawful policy – coercive medical mandates – is exactly 'no alternative'. 'Employer acting contrary to law' **is Just Cause by law**.)*

b. Suspension or Dismissal *(BE Memo: p.4-5)*

"Even *if* a policy was implemented *after* the employee was hired, the application of the policy *could be* viewed as reasonable in the context of the COVID-19 pandemic."

(Since when is it 'reasonable' to investigate the 'application' of a policy, but refuse *to examine the policy itself? This is nonsensical & clearly designed to limit requisite Fact-Finding. Besides, the* application ***is*** *problematic anyways: enforcing new, anti-contractual policies that unions have **not** approved **is** 'applying' it – regardless of the policy's content. The 'application' is a clear 'breach of contract'. And 'Could be?' There is **no discretion** in the **statutory requirement** to Fact-Find for Just Cause. This isn't about the **policy's reasonableness**. It's about Just Cause – whether the 'employer acted contrary to law' or made 'significant changes' to the Contract. §29(c)(xi/vii/ix)*

c. Leave of Absence *(BE Memo: p.5)*

"The EI legislation provides for clients to be disentitled from receiving benefits if they have taken a voluntary leave of absence from their employment *without* Just Cause. To prove Just Cause, clients must show that they had 'no reasonable alternative' but to take a Leave from their employment. *(This definition intentionally [mis]conflates 'Voluntary Leaving' with 'Taking Leave' which are two separate conditions in the Just Cause clause. An 'Admin Leave of Absence'* **is** *'Taking Leave'.)*

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[246] I provided evidence that *proved* Purolator Leadership considered this *new non-union-approved* policy a 'Condition of Employment' from the beginning of my SST Proceedings & I have argued it at every available opportunity. (**B:** p.254, ¶1,3 [RGD8-48]; SST-GD: p.114 [RDG8-11]; SST-AD: p.186 [ADN6-21]; Affidavit: ¶49; Factum: ¶220-22)

[247] As above, the fact that Purolator's *(Executive)* admitted in writing that they had **no** legal grounds to enforce mandatory [experimental] medical treatments, has been proven & argued from the beginning. (**B:** p.225 [RGD8-19]; SST-GD: p.115 [RDG8-12]; SST-AD: p.186 [ADN6-21]; Affidavit: ¶9; Factum: ¶220-22) *([Exec]: "Folks absolutely zero intent to make vaccines mandatory. We would* never *do that and couldn't even if we wanted to!")*

"For employers that ***choose*** to place employees on *Leave Without Pay* **rather than imposing** a Termination or **Suspension** for Misconduct, the Leave Without Pay ***could be*** considered equivalent to a Suspension, **if** the reason for the Leave Without Pay was non-compliance with the mandatory vaccination policy." *(On what Grounds? By what Authority? Employers* had *the option of Disciplining & Suspending non-compliant workers. Some chose to do so. Most didn't for obvious* ***liability*** *reasons.*

By mid-2022, Labour Arbitrators established the ***precedent*** *that any Disciplinary Enforcement [Suspensions & Termination] for Non-Compliance was* ***unreasonable*** *under the '****minimally impairing****' doctrine.* [248] *("beyond what is strictly necessary to accomplish its aims" [FireFighters: ¶263ff]* ***and*** *"less intrusive on the employee [] than fixing [their] record with a significant discipline." [id. ¶313])* ***Additionally****, our own Grievance Arbitration* also *deemed* this specific policy *ultimately* ***unreasonable*** *[from: 2022-07-01] per the '****proportionality****' doctrine. (Glass: [¶285-88])* [249]

It is also ***logically & legally inconsistent*** *to equate 'Admin Leave' with 'Suspension for Misconduct'. They are legally distinct. One is an Administratively* ***Approved*** *function that makes no mention of Misconduct, whereas, by definition, Suspension is the natural result of* ***proven*** *Misconduct – something which requires Fact-Finding.)*

d. Fact-Finding *(BE Memo: p.9-10)*

"The Decision-maker is responsible for ensuring that Fact-Finding is **complete** *before* making a decision. 'Complete' **means** that *all facts* necessary to make a sound decision have been obtained and are included in the Claims file. [] In the case of a refusal to comply with a mandatory vaccination policy, fact-finding is essential for understanding the file. Certain elements must be on file: *{Specific MVP-Only List}*"

(By stating that 'complete means', this policy is explicitly ***redefining*** *the pre-existing definitions & processes involved. The list of Fact-Finding requirements that follows* **only** *lists policy-centric evidence. There is* ***no mention of Contracts****, despite being mentioned multiple times in the DBEP – and all throughout six years of documented historical precedent – in a policy that only applies to specific Claimants. ¶78,81, ¶118-20, ¶124, ¶294, FN-123f)*

e. Processes & Procedures *(BE Memo: p.10-11)*

"Processes & procedures in regards to EI Eligibility and the *refusal to comply with a mandatory vaccination policy* are available in the ORT. We ask that you share this guidance with all staff involved in the processing of Claims. Questions regarding this ***policy*** should be directed to Regional Business Expertise who may refer questions to the EI OPSD as appropriate. To streamline the analysis process, *all questions must be accompanied* by 'complete fact-finding' & a recommendation from the region."

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[248] ('Toronto FireFighters') **Holding:** While MVPs were *initially* deemed reasonable, Disciplinary Enforcement was **not**, as that has "nothing to do with [achieving] the policy's objectives." *(¶263f)*
[249] ('Glass') 2023 (CA LA) 120937: Teamsters Local #31 v. Purolator Canada *(¶285-88)*

*('All Staff' are required to comply with a **policy** that targets* specific *Claimants. Any questions about 'process analysis' **require** Agents to conduct 'complete fact-finding' as defined in this policy – **not** the historically, statutorily-defined processes. And non-compliance can result in Case escalations to the OPSD Management Team. This implies that Managerial Authority can be invoked when Agents follow the **precedental** pre-COVID Definitions & Processes – as opposed to these new* discriminatory *ones.* By definition*, treating one arbitrarily-selected group differently – or using different legal definitions and processes – **is** 'discrimination.' **No** 'wrong' 'intent' is required.)*

f. Other Problems: Medical & Religious Exemptions *(BE Memo: p.7-9)*

"In some cases the employer could **refuse** to accept a medical certificate because it does not meet the *conditions* of the employer's mandatory vaccination policy." *(Since when does the 'condition' [read: opinion] of an HR Manager overrule the medical advice of a licensed, professional medical doctor? Similar arguments apply to the BE Memo's attempt to override constitutionally-defined Religious protections.)*

Argumentation

312. As shown above, the BE Memo – which was *enforced* as an ***internal*** **policy** – targeted a specific sub-group of EI Claimants, creating **new** legal Definitions & Adjudication Procedures that must be followed when processing their Claims. This is precisely the dictionary definition of 'discrimination' – one based on "***internal records** that were **not available** to that party."* This is clearly deemed **unreasonable** per Vavilov.

313. **Primarily:** Leaves of Absence were explicitly [mis]conflated with Suspensions. Thousands of workers were put on Admin Leaves – **not** Disciplinary Suspensions – a policy option *intentionally* chosen by Employers *after* their own internal legal analysis. There was **no legal basis** to **change facts** *(what Employers clearly stated)* – what existing statute & precedent required – to enforce ***new*** Claim adjudication definitions & processes.

There were many business reasons for choosing to place workers on Leave – which maintained the employment relationship while the mandates were in place – something understood to be **temporary** in nature. There were also many legal reasons for using Admin Leaves instead of Suspensions, which invoke Disciplinary sections in Contracts.

(COVID-era Arbitral Precedence has deemed Suspensions ***'unreasonable'*** *for being 'more excessive than necessary' using [Oakes](#) & [Irving](#) Analyses. It is a* **factual *error*** *to arbitrarily change Employee Status from* Approved Leave *to* Disciplinary Suspension*.)*

314. This is an **undisclosed internal**, *binding* 'Benefits Eligibility' *(read: Adjudication)* **policy** that **targets** a *specific group* of Claimants – ***only*** those who "refuse to comply with a mandatory vaccination policy." This 'Process & Procedure' document 'guides' Case Workers through a custom decision-tree that results in findings of **ineligibility** at virtually every branch, by *undermining* established statutory definitions & processes – and creating new precedent. If this discriminatory **'policy'** was not bad enough already, Claims Agents were warned that questions or non-compliance could result in referrals to Management.

315. This Policy covertly inverted 'Benefit of Doubt': Instead of workers being granted [justified] caution re. new, experimental medical technologies – while *pre-existing*, non-mandate policies were *already* effective – the concept of 'exceptional circumstances' was **invented** with an *undefined* Burden of Proof that was almost impossible to meet. This subtly assigned Benefit of the Doubt to the Employer, which violates [EIA §49(2)](#).

The *statutorily-mandated* Fact-Finding process for Just Cause was also **changed** to **remove** all reference to – and analysis of – employment contracts, which was long-required by the DBEP *(under precedental interpretation of [EIA §51](#).)* This ***invented*** legal concept of 'exceptional circumstances' also **removed** the necessity to **factor** the **14 Just Cause Reasons** codified in the EI Act, including [§29(c)[xi/vii/ix]](#). *(& Arguably ['x/xiii'])*

316. Although clearly discriminatory, I am ***not*** arguing 'Discrimination'. I ***am*** arguing the fundamental **unfairness & unreasonableness** of *compelling* EI Claims Agents to use **different** – and completely **novel** – **definitions & processes** when **adjudicating** Claims. **New** adjudication practices that **undermine** publicly-defined, historically-established ones found in **statute & precedent** – using ***internal*** **policies** that **only** apply to **selected** Claimants, listed in documents that are ***only*** available through obscure **ATIP litigation**.

Application

317. Creating special, **binding** policies – with **new** Tests & Definitions – that *only* target specific groups of Claimants violates 'Procedural Fairness' per FCA §18.1(4)(b).

318. Keeping these targeted Policies **internal & unpublished** – until *after* Claimants litigate ***multiple*** ATIPs – also violates 'Procedural Fairness' per FCA §18.1(4)(b).

319. This also violates the Vavilov ***'internal records'*** **reasonableness** factor. (*¶95*)

Decision

320. We respectfully ask this Court to **Quash** this Decision as being **Unreasonable**. Specifically, the CEIC Case Agents were **bound** by **internal, undisclosed policy** documents that 'guided' them through Decision-making processes that were **different** from the publicly-documented ones. They used **novel** Tests & Definitions that do ***not*** appear anywhere in established EI Statutes, Policies & Case Law. Decision 'Processes & Procedures' that *only* target a **specific** sub-group of Claimants – 'C19-MM' Cases.

321. **Internal Rules:** We need Clarity & Consistency around How & When Undisclosed Internal Policies can be applied to EI Decisions. At minimum, anything Internal that is determinative to the Decision *should be* Disclosed, so that it can be examined for any Legal Errors. This directly impacts the 'Coherent Reasoning' and 'Meaningful Reasons' factors defined in Vavilov.

Problem #6: Precedent Error re. EI Program

Fundamental Questions ***(2)*****: #11-12**

Grounds of Review ***(3)*****: FCA §18.1(4)(a,c-d)**

Vavilov Principles ***(3)*****: Decision & Outcome**

- **(d)** Evidence Before the Decision Maker
- **(f)** Past Practices and Past Decisions
- **(g)** Impact of Decision on Individual[s]

"Where the impact of a Decision on an individual's Rights & Interests is *severe*, the Reasons provided to th[em] *must reflect* the stakes. The principle of Responsive Justification means that *If* a Decision has *harsh consequences*… the ADM *must explain why* [their] Decision *best reflects* the **Legislature's intention**. This includes Decisions with consequences that threaten an individual's Life, Liberty, Dignity, or **Livelihood**. […] ADMs are entrusted with an extraordinary degree of *power over the lives* of ordinary people, which [calls for] heightened responsibility… to *ensure* that their Reasons demonstrate that they have considered the consequences of [their] Decision and that th[ey] are **justified** in light of the Facts & Law."

('Vavilov' [¶133-135])

T. EI Denied on 'Tax-Payer' Grounds

Facts & Issues

322. Jurisdiction: What happens when Judges step outside their Jurisdiction *(when well-intentioned)*? And when those Rulings become Precedent? How & when is this fixed?

Legislative Intent: EIOA Funding ***(EI Operating Account)*****:** What happens when **legal errors** about EI Funding become *institutionalised* in Jurisprudence? What happens when *binding precedent* is based upon these *erroneous* legal findings? And when *both* the 'letter' *&* 'spirit of the law' are abandoned due to this 'precedent'? How do we remedy the personal harm & damages caused by ignoring Parliamentary Intent?

Impact on Livelihood: How many Canadians need to have their Livelihood *seized unjustly* before the Court steps in? It is one thing to follow the Law – it is something very different to cite *errors* to *justify violating* the Law, especially when the consequences *deprive innocent Citizens of Livelihood* during unprecedented worldwide turmoil…

323. **Legal Error:** Around two decades ago, the Court made an **erroneous finding** about EI Funding in Judicial Review – explicitly overruling the EI Act with **error** – and usurped Parliament's Authority in the process. Although that error was originally contained in ***dicta***, over time it 'migrated' into ***ratio***. That **error** now stands as ***unjust*** **precedent**…

Unfair or Unjust Process: This erroneous precedent has now been cited ~**160** times [250] to **unjustly deny** Claimants' EI Benefits. In *many* Cases, their Employers *broke the Law* or *breached their contracts*, but 'precedent' was cited to *justify* **excusing** the employers' lawbreaking, while ADMs violated the EIA's *'Just Cause'* Fact-Finding requirements.

Jurisprudence

324. Please consider my SST-AD Written Arguments *(**AD-23-694**:[ADN06])* incorporated *(by reference)* into this J.R. Factum *(Memo of Fact & Law)*. To save space, I won't reprint *everything it* contains, but large sections are critically relevant and must be expanded…

This incorporates from the Legislative History section. *(**B:** p.171-76 [ADN06-6..11])*

325. Both SST TMs **erroneously** ruled that my EI Claim should be Denied because *"it is **not** the responsibility of Canadian Taxpayers to **assume the cost** of wrongful conduct by an Employer by way of EI Benefits"* – as if ***I*** should have to suffer that cost *"rather than having Taxpayers pay for the Employer's actions through EI Benefits."* [251]

[250] SST 'C19-MM' Cases that cite 'taxpayer' reasons in their Decision to Deny EI. *(**SST**, CanLII)*

[251] ('DA-740') **GD:** DA v. CEIC [¶31], *(2023 SST 1093)*, citing: *McNamara [¶23]*
('DA-694') **AD:** DA v. CEIC [¶39], *(2024 SST 26)*, citing: *Dubeau [¶36]*

326. There are several problems with these citations, primarily the fact it's an **error in law**. This finding originated in McNamara *(¶23)* and was repeated in Paradis *(¶34)* & Dubeau *(¶36)*, before being used to Deny EI Benefits Claims in **159**+ C19-MM Decisions. [252]

*"There are, available to an Employee wrongfully dismissed, remedies to sanction the behaviour of an Employer **other than** transferring the costs of that behaviour to the Canadian Taxpayers by way of Unemployment Benefits." (Paradis [¶34], citing: McNamara [¶23])*

*"Even if one accepts that the Applicant's reproaches against the Employer are well-founded, it is **not** the responsibility of Canadian Taxpayers to assume the cost of wrongful conduct by an Employer by way of Employment Insurance Benefits." (Dubeau [¶36])*

a. After TM Usprich used this reason to Deny my EI Claim, I spent **6** pages documenting the Legislative History of the EI Act in my AD written arguments. One of the facts I *proved* was that the government stopped using tax revenue to fund the EI Program **in 1990**. *(Prior to that, it* **was** *taxpayer funded.)* Since then, it is **100%** funded by Employer *(58%)* & Employee *(42%)* contributions. [253] I specifically cited the law that made this change *(Bill C-21),* along with the government's reasons why. [254] This included *exact page references* to Parliamentary Hansards where **two MPs** confirmed this fact while debating a motion on Bill C-105. [255] *(All of this is 'properly before' the SST & FCA.)*

327. Despite this clear evidence – which TM Lafontaine *completely ignored* – he ruled that, *"it is **not** the responsibility of Canadian Taxpayers to assume the cost of wrongful conduct [read: lawbreaking] by an Employer by way of EI Benefits."* Aside from the obvious Breach of Fairness *(TM Usprich had already used this erroneous reason, which is why I disproved it, using **both** the Statute itself & Hansard quotations)*, *I don't disagree* with this principle. *I too* believe that **taxpayers** should ***not*** fund employers' lawbreaking.

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[252] EI Funding Error *(Law/Fact)* origin: 2007 FCA 107: Canada *(AG)* v. McNamara *[¶23]*. Repeated at: 2016 FC 1282: Paradis v. Canada *(AG)* *[¶34]*, 2019 FC 725: Dubeau v. Canada *(AG)* *[¶36]*

[253] ('EIA') Employment Insurance Act *(c.2024)*: §67-68, *('Employee & Employer Premium[s]')* *"An Employer shall pay a Premium equal to 1.4 times the Employees' Premiums." [§68]* *(Formula: $x + 1.4x = 100$ | $x = 100/2.4 = 41.67$ | $41.67 * 1.4 = 58.33$ | $41.7 + 58.3 = 100$)*

[254] ('DA-694-Args') SST-AD Written Arguments: (**B:** p.171..72, §'C-105', ¶2) *([P16] ADN6-6..7)*

[255] ('House-C105') House Debate on C-105: [MPs]: Alfonso Gagliano *(p.546)* & Sid Parker *(p.581)*
('About') Alfonso Gagliano *(MP-LPC)*: Chief Opposition Whip *(ParlInfo Bio / Wikipedia)*
('About') Sidney James Parker *(MP-NDP)*: [Former] Labour Critic *(ParlInfo Bio / Wikipedia)*

And they don't. This is **wrong**. It is ***only*** Employers & Workers that **prepay** EI Benefits via *[biweekly]* Premiums that are *automatically* remitted & deducted every pay period. *(Premiums are* taken *'off the top' of every hard-earned paycheque to pay for my Benefits.)*

328. This means it is ***only*** the Employers who pay us *(the Workers)* for *their* illegal conduct when we receive EI Benefits *whenever* the[y] *"employer acted contrary to law."* The Premiums I paid are [re]covered when EI Benefits supplement my lost wages – and *their* *past* Premiums are paid out to me *because* I have 'Just Cause' under these circumstances. *(When I do **not** have Just Cause, I* forfeit *my Premiums & receive* none *of what they paid.)*

329. However, this means that Denying my Benefits in this situation *(when I **have** Just Cause per §29[c][xi])* deprives me of Justice. I lose everything I have paid into it & they have no additional costs beyond the remittances they have already paid. There is **no *new* cost** to them and **life-altering consequences for me**. And either way there is ***no*** financial impact to taxpayers. They pay **$0**, regardless of whether my Claim is Allowed *or* Denied.

330. How is this fair? When I leave my job **without** Just Cause, I rightly lose whatever Premiums I have *already* paid – *and* my work income – and my Company stops remitting [paying] for *my* Benefits. But when *they* **break the law** – giving me *legal* Just Cause – it costs them **nothing *&*** I lose **everything‽** *(Both my **livelihood &** EI Benefits)* And the justification given by ADMs for this travesty is that *"**taxpayers** shouldn't pay for this‽"* *(And when I disproved this claim, TM Lafontaine not only ignored it, **he 'doubled down'**.)*

331. "It is well established that individuals are entitled to *greater* procedural protection when the Decision in question involves the potential for *significant personal impact* or harm [] includ[ing] Decisions with consequences that *threaten* an individual's life, liberty, dignity, or **Livelihood**. [] Where the consequences of the Decision for the affected party are *particularly severe or harsh*, a failure to grapple with such consequences may well be **unreasonable**. The corollary to [their extraordinary degree of] power is a *heightened responsibility* on the[ir] part [] to **ensure** that their reasons demonstrate that [] those consequences are **justified** in light of the **facts *and* law**." *(Vavilov [¶133-135])*

(① My Employer's actions – and *both* TMs' subsequent Decisions – clearly 'threatened my livelihood': Purolator's ***unlawful* Lock-Outs** *completely* deprived me of it. ② *Both* TMs 'failed to grapple' with *[address]* the 'fall-out' from such a 'severe consequence', much less 'demonstrate' through their 'reasons' that it was 'justified'. ③ Lastly, using this ***erroneous* precedent** undermined *both* the Facts & Law: **[Facts]** It *wrongly* asserted that **granting Justice** would impose an expensive financial burden on *innocent* **taxpayers**

[despite the EI Act itself disproving this claim]. **[Law]** It enabled my TMs to *refuse* their statutory duty to *Fact-Find* for Just Cause, which ironically 'justified' Purolator's **law-breaking**: this is the *polar antithesis* of true Fairness & Justice. This is **Unreasonable**.)

Legislation

332. **[Part III: Financial Matters]: §65-§70** of the **EI Act** govern '**Premiums**', while **§70.2-§80.1** administer the '**EI Operating Account**' *('EIOA')*. Since 1990 *(Bill C-21)*, this statute *requires* the EI Program to be **'revenue neutral'**, meaning it pays for itself. Any profits are returned to the program to lower the Premium Rates in future years & any shortfalls are funded by raising future Premiums. There ***cannot*** be a **Taxpayer 'burden'**. Since the 'Great Recession' *(c.2008)*, the EI Program requires professional Actuaries to *forecast* financials & provide annual reports to its various owners & stakeholders. [256]
(CEIC, Finance Minister, Treasury Board, Governor-in-Council, Parliament & the Public)

333. The 'neutral revenue' requirement reconciles the program's financials over rolling seven-year cycles: *'7-year forecast break-even rates.'* [257]

2024 Actuarial Report *(Summary)*: Premium Rate Setting *(¶2)*: "The Premium Rate is set according to a 7-year forecast **break-even rate**. The Senior Actuary forecasts this **break-even rate** in an actuarial report. The **break-even rate** is the Premium Rate that would result in an EI Operating Account balance of **$0** in 7 years. This means that the **break-even rate** also eliminates any cumulative surplus or deficit after this period. [] These measures ensure stable & predictable Premium Rates for employees & employers. It also ensures that EI contributions are *only* used for EI purposes."

This corresponds with the current 'Premium' statutory requirements in the **EI Act**. [258]

"The **CEIC *shall* set** the Premium Rate for each year in order to generate ***just enough* premium revenue** to ensure that, at the end of the seven-year period that commences at the beginning of that year, the ***total*** of the amounts ***credited*** to the EIOA after December 31 […] **is *equal*** to the ***total*** of the ***amounts charged*** to that Account after that date."

The 'Premium' statutory requirements under the original EI Act show the same intent. [259]

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[256] ('CEIC-EIAR-Cat') Actuarial Reports on the EI Premium Rate, *(Catalogue: GC Publications)*
[257] ('CEIC-EIAR-24') Summary of the 2024 Actuarial Report on the EI Premium Rate *(**B:** p.671)*
[258] ('EIA-2024') Employment Insurance Act *(c.2024)*: §66(1), *('Annual Premium Rate Setting')*
[259] ('EIA-1996') Employment Insurance Act *(c.1996)*: §66, *('Annual Premium Rate Setting')*

"The CEIC ***shall**,* with the approval of the Governor-in-Council on the recommendation of the Minister [of Employment] and the Minister of Finance, set the Premium Rate for each year at a rate that the Commission considers will, to the extent possible:

(a) ensure that there will be enough revenue over a business cycle to pay the amounts authorized to be charged to the Employment Insurance Account; and

(b) maintain relatively stable rate levels throughout the business cycle."

Because of the lack of Actuarial Forecasting *(prior to 2010)*, there were occasional operational shortfalls that required interim financing. This too, was statutorily required to operate 'revenue neutral'. *(This section was removed with the 2010 amendments.)* [260]

[**§80**]: "***(1)*** If the amount standing to the credit of the EI Account is *not* sufficient for the payment of amounts authorized to be charged to that Account, the Minister of Finance, when requested by the Commission, may authorize the advance to the Account from the CRF of an amount sufficient to make the payment.

(2) The advance shall be credited to the EI Account and be repaid in such manner and on such terms and conditions as the Minister of Finance may establish.

(3) The repayment of the amount advanced ***and*** the interest on it, if any, **shall** be charged to the Employment Insurance Account."

Argumentation

334. As shown above, various iterations of the Act & the Actuarial Reports tabled before Parliament **prove** that 'Canadian Taxpayers' ***do not*** – and have not – *"assume[d] the cost of wrongful conduct"* by *either* the Employer *or* the Worker. This was true in 1990 *(after Bill C-21 passed)*, it was true in 1996 *(when the UI Program became the EI Program)*, it was true in 2007 *(when the McNamara Decision* codified *this **factual error** as precedent)* – and has remained true *to this day* – and all throughout the COVID-19 Pandemic.

335. The EI Program is quite simple in nature: *Both* I & my employer pay Premiums to cover *some* of **my** lost income ***if*** I have 'Just Cause' when my job ends. Put differently:

I pay for me + they pay for me. **If** Just Cause, *some of it* is returned to me for 45 weeks. When Fact-Finding **proves** *they* 'acted contrary to law' I have Just Cause, per the EI Act. If ***no*** Just Cause, everything we have *both* paid is forfeit to the program for other people.

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[260] ('EIA-1996') Employment Insurance Act *(c.1996)*: §80, *('Advances & Repayment')*

This is why Just Cause is ***the*** determining factor when disentitling unemployed workers. This is why MPs fought so hard to ensure Just Cause was *codified* into the Act when *potentially* Denying EI Benefits for newly unemployed workers. We need[ed] protection.

336. However, because a *well-meaning* [generalist] Judge – who didn't understand the EI Program's Funding model – wrote **erroneous *dicta*** in his Decision about who really pays for EI Benefits, we now have a *perverse* **caricature** *codified* into *binding* precedent:

I pay for me + they pay for me. **If** Just Cause, *some of it* is returned to me for 45 weeks. When *they* break laws, *everything* we *both* paid **for me** is forfeit to **'save taxpayers' $0**. **So I lose everything**: my **job**, my **wages *&*** my **EI Benefits**, *despite* having Just Cause.

And everyone involved is perfectly ok with this *life-altering* unlawful **injustice** because:
(a) I'm 'guilty of Misconduct' *(meaning: my lawbreaking Employer **falsified** my ROE, but EI ADMs 'cannot investigate' because my lawbreaking Employer **falsified** my ROE.)*
(b) The 'Court said' that Taxpayers *(who **don't** pay for EI)* would be *unfairly burdened* by paying out **$0** to 'sanction' my *lawbreaking* Employer *(for everything in point 'a')*.

EIA §29(c)(xi): "**Just Cause *exists*** *when* an Employer's practices are Contrary to Law."

337. The claim that Taxpayers pay for EI is an **error in fact**. This has ***not*** been true since Bill C-21 in 1990. Our two-decade legacy of Honorable Judges unwittingly repeating this mistake – in sincere attempts to fairly allocate public monies *(and follow precedent)* – is **no** Justification for *continuing* an **error** causing such serious harm to Canadians.

Application

338. The EI Act clearly defines the *revenue streams* that fund the EI Program – and specifies the *legal basis* on which to Grant or Deny EI Claimants their Benefits. Regular government Financial Reports *verify* this funding allocation & program expenditures.

Yet somehow, the Court historically overlooked this and discussed *new* criteria – reasons that *contradicted* the EI Act – and now their *dicta* are treated like *precedent* by EI ADMs.

Now, that precedent is being used to *override* statutory mandates in the EI Act, to *deny* otherwise eligible Claimants their Benefits at critical *(often the hardest)* times in life.

Even worse, that precedent is used to *justify* employers that *break the law*, taking *their side* against struggling, unemployed workers otherwise *'not at fault'*.

339. This truly unfortunate situation is *both* an **error in Law** & an *inequitable process* that stems from *two* historical **errors** in Jurisdiction & Fact.

340. On what legitimate grounds can the Court allow this **injustice** to continue? How many Canadians must have their *lives turned upside-down* before this **error** is admitted *&* corrected, and the unjust precedent is overturned to establish *new* Case Law that ***aligns*** with the EI Act's **text & legislative intent**? **Justice & the Rule of Law demand this…**

341. This bad precedent started with a Jurisdictional error – and is now being used to perpetuate a different Jurisdictional error – EI ADMs *cite precedent* over *complying with EIA statutory requirements*. Both factors meet FCA §18.1(4)(a).

342. The original Erroneous Finding of Fact is Grounds under §18.1(4)(d).

343. And the perpetual use of bad Precedent is covered by §18.1(4)(c).

Decision

344. We respectfully ask this Court to **Quash** TM Lafontaine's Decision on the Grounds that Relying on Erroneous Precedent renders it **Unreasonable**.

Problem #7: Atrium Templates Drive Decisions

Fundamental Questions ***(0)*****:** ***(Not Applicable)***

Grounds of Review ***(1)*****: FCA §18.1(4)(b)**

Vavilov Principles ***(?)*****:** ***(Impacts All of Them)***

I plan to address this novel situation *(re. SST 'Atrium' Templates)* during Oral Argument.

U. Erroneous Templates Change Decisions

Facts & Issues

345. Summary: SST TMs use an 'intelligent' Case Management system *('Atrium')* that inserts **prewritten** 'templated' paragraphs into their Decisions, complete with Arguments & Case Law citations *(possibly based on keyword analysis)*. By **prefilling** specific Case Law & Argumentation – that *"often set[s] out the legal tests" (in advance)* [261] – the *final dispositions* of many written Benefits Decisions are effectively 'suggested' based on the context of the Template, which is driven by **undisclosed** algorithms *(or TM actions)*.

Case Studies

346. As shown in CEIC v. AL, when SST TMs find that Atrium's auto-generated content is unhelpful, inapplicable, or erroneous, they are placed in an *impossible* predicament: [262]

- **a. Justify** their departure from the *pre-selected* argumentation & jurisprudence, and risk being overturned for 'inconsistency', 'distorted analysis', or 'incorrect application'.

[261] SST Training Manual: Style Guide: SST Decisions *(Part 5: Formatting) re. 'Decision Templates'*
[262] ('CEIC-AL') 2023 SST 1032: CEIC v. AL *(¶45-50)*

[¶45]: "It is worth observing that, despite its flaws, the GD's Decision contains numerous statements of the Law that are, on the face of it, correct. *([Inserted by Atrium])* In more than one section, the GD accurately summarized & cited a key legal principle, only to ignore or distort it in the analysis that followed." *('Fixing' Errors.)*

[¶46]: "At one point, the GD wrote that it could *'only consider the behaviour of the employee'*. But it then spent much of its written reasons describing how, in its view, the Claimant's employer wrongfully and unilaterally imposed a new condition of employment." *(If Atrium inserts are inapplicable or legally erroneous, what then?)*

b. Intentionally **remove** the 'boilerplate' content inserted by Atrium & risk 'policy non-compliance': 'wilfully' changing 'deciding jurisprudence.' *Are there consequences?*

c. **Comply**: Simply accept pre-existing content, knowing that it *potentially* leads to incorrect Decisions – ones very difficult to overcome without 'causing problems.'

347. Another good example is studying how SST TMs *selectively* applied KVP to justify blanket Denials of EI Benefits. Many Claimants argued that their Employer's MVP violated their Contracts. Prior to the pandemic, this was a strong argument – many historical Decisions contain analyses of various Contract clauses & *alleged* violations. [263]

KVP first appeared in the C19-MM context in 'CH v. CEIC' *(2022 SST 1337)* where the *"Claimant argue[d] that the policy must be unreasonable because it fails the KVP test."* The TM rejected this: *"this legal test was developed in the labour relations context and is **not** applicable in the interpretation of the EI Act."* [264] *(¶24, FN-26)*

KVP next appeared 86 days later *(2022-10-16 => 2023-01-10)* in an SST Appellate Case 'SS v. CEIC' *(2023 SST 31)*. [265] This time, *the TM cited it* to *justify* the *employer's breach of contract*. It came complete with a detailed collection of paragraphs, case law citations & footnotes, explaining KVP & **justifying why** TMs *could* cite it [unsolicited].

"The Claimant argues that there was no misconduct in her case because her employer's vaccination policy represented a new condition of her employment. [] So, she says that there was no misconduct." *(¶82)*

"But in what is generally known as the '*KVP* Test,' ***any*** rule or policy can be *unilaterally* introduced by an employer, even if the union disagrees with it. The test arises out of

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[263] **SST Keyword Search** *(Various Results: 2017 SST 84988, 2018 SST 679, 2019 SST 431, 2019 SST 619, 2019 SST 816, 2019 SST 949…) (Benefits Granted per Contract Analysis)*
[264] ('CH-CEIC') 2022 SST 1337: CH v. CEIC *(¶24, FN-26)*
[265] ('SS-CEIC') 2023 SST 31: SS v. CEIC *(¶82)*

Arbitrator Robinson's decision in *Re Lumber & Sawmill Workers' Union, Local 2537, and KVP Co*. The Supreme Court of Canada has endorsed the *KVP* Test." *(¶83)*

"The *KVP* Test has been used in numerous labour arbitration awards, as well as in at least one recent court decision in deciding whether an employer can unilaterally introduce a rule or policy. The discussions in those cases have been helpful." *(¶84)*

(There are *many* problems with these paras: ① KVP does ***not*** permit just *'**any** unilateral'* policy impositions *"even if the union disagrees with it."* ② By 'unilaterally' citing KVP [unsolicited] this TM is making it *'persuasive authority'*. How can it also be *ultra vires*?
③ Why mention the SCC & Labour Arbitration jurisprudence when *both* are also *vires?*
④ How is 'discussion' from **non-EI** Court Cases 'helpful' to EI ADMs, unless **not** *vires*?
⑤ It is **templatized** *& repeated in other Decisions* with the *same citations & footnotes*.
Example: 'TH v. CEIC' (2023 SST 63) [¶44]. There are other similar templates.)

348. There are *four* common templates re. KVP that are used by TMs: two *unilaterally* invoked by TMs to **justify** employers' contract breaches + two **rebutting** Claimants who argue their MVPs breached their contracts – *all* with corresponding case law & footnotes. *(This is "reverse-engineering desired outcomes" which Vavilov deems **unreasonable**.)* Some TMs change a few words to customise the template, but the interlinked combination of text, citations & footnotes 'give it away'. *(Ex: KVP Used v. KVP Denied, Footnotes)*

Application

349. These templates are **diametrically opposed**. Some invoke KVP, while others deem it *ultra vires*. Their unifying factor is that they are ***all*** used to Deny EI Benefits. Aside from the obvious **Fairness** violations, this 'templatization' provokes pressing questions:

- **a.** Who wrote these boilerplate language combos? *(Text + Citations + Notes)*
- **b.** Did the *same person* compose *both sets* of legally conflicting templates?
- **c.** Who *knowingly approved* obviously **unfair**, legally conflicting templates?
- **d.** Who *authorised* their publication *(insertion)* into Atrium for use by TMs?
- **e.** Who has the necessary system permissions to *manage* the template DB?
- **f.** What *triggers* Atrium to insert any particular template? Is it human or AI?
- **g.** Who *programmed* the trigger events & how are conflicting events handled?
- **h.** Are these events *tracked & logged* in Atrium? And by Management?

i. How are these templates *managed* in the Atrium UI? *(User Interface)*

j. Is there a 'version control' system or some other governing process[es]?

k. Was there any 'training' or 'team meetings' where they were discussed?

l. Are there *consequences for removing* these system-inserted templates?

m. Have any TMs complained about the potential unfairness this causes?

n. What happened to them? Are there policies about this? Or discipline?

350. Here are three brief quotes about these Decision Templates from official SST Reports. They raise more questions than they answer, especially considering how old they are:

Report on the Tribunal's Activities & Accomplishments *(2016-2017)* ***[p.9]*** [266]

"Between April 1, 2016, and March 31, 2017, the Tribunal launched *five* new releases of its Case Management System *['Atrium']*, resulting in an increased capacity to develop and generate performance reports. Tribunal capacity was also enhanced with new features, such as assignment tools. **Efficiency** was further improved with the development of Decision Templates **pre-populated with legislative texts** related to the issues at hand, as determined by [Tribunal] Members."

('As determined by Members': Was there any oversight or approval? Is there a record of *which* 'legislative texts' were deemed 'related' vs *ultra vires*? *How* were these selections made? Is there a record? Are these choices subject to Appeal or Judicial Review? Who *personally* wrote these 'pre-populated Decision Templates'? **Who determines where & when they apply**? Can this choice be overridden? By whom?)

Evaluation of How Easy It Is to Read SST Decisions *(2024)* ***(Original: 2021)*** [267]

"Members first received *plain language training* in January 2018, then subsequent sessions or supporting tools, and at least 15 months practice before this study began to sample their Decisions for analysis. *Some TMs expressed challenges* in applying training recommendations, particularly those delivered by non-legal professionals ***or*** **inconsistent with Templates *or* internal messaging**.

(What does this statement mean? TMs found that their 'plain-language training' was *'**inconsistent** with Templates or internal messaging?'* What is meant by 'internal messaging?' Is it related to the Templates? How were these conflicts reconciled? Which 'source of authority' took precedence during these conflicts? Is the 'internal messaging' published anywhere? Is it **binding**? Is it subject to Judicial Review? If not, then it falls under the same category as the BE Memo discussed at Problem #5. That fact that ***half*** of all TMs had *difficulty* with these Templates speaks volumes.) [268]

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[266] ('SST-RTAA-17') SST Progress Repost *(FY17)* *[p.9]*, Evidence: (**B:** p.881 [D08])

[267] ('SST-SSTRE') Evaluation of SST Decision Readability *(2021)*. Evidence: (**B:** p.976-78 [D08])

[268] This same Study found that TM's **#1 Request** ***(48%)*** was 'Training on Decision Templates' *(This table is immediately above the 'Style' section header. There are {no page numbers}.)*

351. The SST recently published their updated '[Style Guide]' "for SST Members [which] addresses linguistic & formatting issues." *(Updated: 2024-05-16)* The start of '[Part 5: Formatting]' covers 'Decision Templates' and makes the following admissions:

> "Before you start writing your Decision, *make sure* you use the *most recent* Decision Template. Use the Templates in Atrium so that your Decisions are consistent with other SST Decisions in *how they look and read*. Using Atrium Decision Templates has benefits:
>
> - They have the right formatting built in.
> - **They *often* set out the legal tests.**
> - *Some* are already in plain language.
>
> **Avoid** using an old Decision as a Template."

(So, to address 'formatting issues' TMs need to use the *"most recent Decision Template"* that *"often **set[s] out** the legal tests?"* How is **pre-determining** applicable Case Law related to 'formatting issues'? The chosen jurisprudence *usually* **controls** how to ***interpret facts* and *select & apply the law***, which *directly* impacts *final disposition*.)

Earlier, in [Part 1: Writing Strategies], SST TMs are advised to use these Templates because they provide a 'solid structure' for the "**backbone** [of] your Decision." So not only do these Templates **predefine** which Legal Tests to use *(and any resultant analytical flow)*, they are **intended** to compose the very **core** of every Decision.

> "A solid structure will serve as the **backbone** for your Decision. Organizing your ideas well will communicate them clearly. The most recent Decision Templates in Atrium give you solid examples for how to structure your Decision."

What happens when you 'break' the 'backbone' of something? Is that 'fatal' to *expected* Decision-making **outcomes**? Atrium Templates are clearly *intended* for more than mere 'consistency' and "help[ing] with readability." What happens when TMs *independently* **decide** *pre-selected* legal tests are **not** relevant to their current Decision? What happens when they *don't decide* at all, and the *prewritten* Templates do that *crucial task* for them? Are there consequences for violating the 'solid structure' by restructuring the backbone?)

352. If anything, the admissions in these publicly-published documents reinforce the importance of answering the questions listed above *(¶350)*. The evidence in this section *proves* these Decision Templates *far exceed* mere 'formatting'. *("How they look & read")* They serve as the 'structural backbones' that directly impact *(and thereby*

logically guide) TMs' statutory interpretation & legal application. And these ***conflicting*** templates contain obvious **legal errors** & facilitate other **unfair** situations. It is **imperative** that there is **public disclosure & judicial oversight** into how they are *developed and applied* to individual SST Cases. TMs must have the **independence** to *determine* 'applicable legal tests' themselves, without 'suggestions' *(or stronger 'policy' implications)* from an 'intelligent' Case Management tool. *(And this does **not** address the **fairness** implications re.* specific conflicting templates *themselves [linguistic content].)*

V. Templates Alter Decision-Making

353. Atrium is analogous to the 'Chinook' AI-Template-Generation tool employed by Immigration Canada. There have been many Cases discussing this issue in *that* context.

This does not appear to have been adjudicated at the Appellate level *(FC=23+, FCA=0)*, but the FC Decisions are consistent: whenever reliance on the tool leads to **ignoring key Facts & Pleadings**, the Decisions are deemed **unreasonable**.

> 2023 FC 775: Safarian v. Canada *(C&I)*; 2023 FC 805: Khosravi v. Canada *(C&I)*; 2023 FC 1521: Arani v. Canada *(C&I)*; 2024 FC 856: Kashefi v. Canada *(C&I)*; 2024 FC 1002: Mohammadi Rouzbahani v. Canada *(C&I)*

354. That said, *none* of the Chinook cases *appear* to have addressed the fundamental questions I listed above. *They* largely pertain to the fairness of *involving AI* in the ADM's Decision-making process. Since AI provides unprecedented efficiencies at unparalleled cost savings, it is *inevitable* that it will increasingly participate in government processes – maybe even replace humans one day. *(Therefore,* I do *appreciate the Judicial reticence to 'ban AI' on Fairness grounds – especially by establishing Appellate Precedence…)*

355. For that reason, I am ***not*** making any Submissions about the **fairness** of employing AI & ML as a technological means to 'aid', 'support', or otherwise 'improve' processes. These tools are all coded, trained & managed by real people – at least for now. In all the 'Key Ps' *(People, Paper & Processes [+Programs])*, human interaction is still required. *(Although 'paper' is quickly morphing into 'electronic records' split across disparate data*

sources.) Regardless of whether the templates are auto or manually inserted, the boilerplate language itself was still written by a human. Whether the Decision is purely written or only 'assisted' by AI/ML tools, an ADM still must 'Approve' or 'Publish' it.

This is why the lower Courts have *consistently* found that relying on these tools *to the degree that* crucial facts, evidence & pleadings are ignored – *left unaddressed in reasons* – ***is*** **unreasonable**. This Factum contains a long list of strongly germane evidence & arguments left ignored or unaddressed by ADMs. Ergo, this Decision is **Unreasonable**.

And lastly, the [partial] list of questions @*(¶350)* about Atrium Templates listed above ***all*** concern the human touchpoints into the system. ***None*** of them require *findings* about the 'Fairness of using AI' as a rule. They ***all*** relate to the *human side* of managing & operating 'intelligent' programs. They equally apply, regardless of whether a TM or Bot *primarily authored* the Decision. At least in *this* context *(erroneous & legally conflicting templates)*, any 'algorithmic unfairness' *still* requires ***many*** human 'points-of-failure'. *(Simply replace the terms 'AI/ML' with 'personal assistant who Xeroxes & superglues' to prove this point. The fundamental '**unfairness**' in this situation is* directly linked *to the* [in]actions *of assigned ADMs – and various CEIC & SST leadership & support personnel. Isolating & removing the 'intelligent technology' factor does* ***not*** *change the fundamental problem – the unfairness is* **not *'caused by'*** *the 'Program' [any 'AI enhancements'] – they only exacerbate* ***policy*** *choices* already present *due to the 'People' & 'Processes'.)*

356. (There are [at least] **four** *different* problems arising from Atrium 'Template' usage: Imposed Constraints, Template Correctness, Improper Application & Reverse-Engineering

There is nothing inherently 'wrong' with using a database of 'templates' to facilitate faster, 'more consistent' Decisions. The **fairness** problem arises when said templates **impose** 'backbone' Legal Tests, Arguments & Citations upon EI ADMs, who are then **constrained** in their analysis, reasoning & decision-making by content they did **not** write.

An important corollary is the **correctness** of the 'boilerplate' template content itself: **what *if*** *they* contain legal errors, irrelevant citations, incorrect interpretation, or wrong tests?

Application matters too. What if the unique factual circumstances 'at bar' are different from what precipitated the original template? **Errors.** Justice *requires* that each Case be assessed & Decided on ***its own*** merits – templates *potentially* undermine this *core* **right**.

And lastly, there is a fundamental **fairness** problem when templates can *contradict* each other – *standardising* the Outcomes while using *opposite* reasons & legal conclusions to 'get there' – thereby ***reverse-engineering*** 'desired results'. Using a database of such templates – one that facilitates 'quick & easy' 'search & entry' – seriously increases the opportunities for **error**. It permits ADMs to *search for their desired Outcome*, rather than analytically process the Facts & Argument to arrive at a Just & Reasonable conclusion.

ADMs are *responsible* for their Decisions: 'templatization tools' reduce ownership by enabling 'reliance on the system' and 'passing the buck' to whomever wrote the template.)

357. All [4] of these template-related problems listed above *potentially* impacted my case:

a. Legal Constraints & Imposition: My GD TM *(Ms. Usprich)* had determined – *before I was even sworn-in* – that my Hearing would be **limited** to ***only*** the 'Misconduct Test'. [269] This ***summary judgement*** was **not** based upon 'full fact-finding' as the Hearing had *not* even started yet. Was this based on the Decision Template she was using? *(Did she freely 'choose it' or was it 'chosen for her'?)*

b. Template Correctness: This factum contains several examples of legal **errors** contained in content that is reused elsewhere – indicating they are templates. [270]

c. Specific Application: The [over]use of specific Case Law to Deny EI Benefits was based upon templates that appear in *hundreds* of other C19-MM Cases. Whole paragraphs with 'canned' citations & footnotes exist across many of these Cases: this is clearly Template-driven. [271] *(cf. Problem #3: Case Law)*

d. Reverse-Engineering Results: The *selective application* of KVP – justified using *complex* templates – **proves** that 'reverse-engineering' ***is*** happening.

[269] I discuss this Jurisdictional error in Problem #2: Rule of Law. *(¶83), (cf. ¶233b)*

[270] For example: TM Usprich's *legally erroneous* holding *(supposedly based on 'Lemire')* that 'implementing policies' *automagically* makes them *legally-binding* 'conditions of employment'. This **templatized error** was cited to Deny 14x Claimants EI Benefits. ***(¶101f, FN-112f)***

[271] Citing cases where Claimants *self-admit* to Misconduct to justify *instant* Misconduct findings *without* requisite Fact-Finding & circularly *using that* to cite *other* Jurisprudence justifying it.

358. Using tools which: insert **prewritten** content *(arguments, citations & footnotes)* containing **legal errors** into Decisions – and pre-selecting the *Legal Tests* TMs *must apply* – *influences* the ultimate Outcome & violates 'Procedural Fairness' per FCA §18.1(4)(b).

In many cases, it also led to **key** facts & pleadings remaining unaddressed in Decisions.

359. And unless there is full public disclosure about how this program works – and proper opportunity to subject Template-Management decisions to Judicial Review – this feature in Atrium also violates the **'internal records'** ***unreasonableness*** factor in Vavilov. *(¶95)*

Decision

360. We respectfully ask this Court to **Quash** this Decision as being **Unreasonable**. I have demonstrated real-world examples where *legally erroneous* reasons & incorrect citations resulted from using this 'template' tool. And the reasons publicly provided to justify their existence are ***not*** rationally connected to their *actual use* today. Using any **internal** system that **alters** Decision-making processes in a non-transparent way is **unreasonable**. As is operating a tool with so many unanswered Justice & Fairness questions, when the result is reinforcing legal errors & *misdirection* that results in missing key Facts & Issues.

Conclusion

This Case has a *significant* number of **errors**: **15** across **7** Categories. Many of them are *systemic* – impacting more than just *my* Case – making it of *National Public Importance*.

I appreciate the overwhelming Case Load & Political Pressures *underlying* this subject. Despite the occasional strong wording, I am ***not*** blaming SST TMs for *intentional* bias. I am ***not*** intending to 'fault-find' anyone specific – although some **errors** were *egregious*.

All that said, **Justice** is still the desired – and *required* – Outcome of this Judicial Review. Unreasonable Decisions & Unjust Outcomes must obtain a Fair & 'Proper' Remedy: E.I.

Most importantly, Justice needs to *reign supreme* across the *E.I. Corpus* – as **Precedent**.

For all these Reasons *(and more details to be presented at my Hearing)* – and for the **sake of Justice** – this Decision *(TM Lafontaine's Affirmation of TM Usprich's Dismissal of my EI Benefits Case)* must be **Quashed**.

PART 4: ORDER & RELIEF SOUGHT

"An intention that the ADM Decide the matter at first instance ***cannot*** give rise to an endless merry-go-round of Judicial Reviews & subsequent Reconsiderations. Declining to remit a matter […] may be appropriate where it becomes evident to the Court […] that a particular Outcome is **inevitable**… *(Mobil Oil [p.228-30]; Renaud; Groia [¶161]; Sharif [¶53-54]; Maple Lodge [¶51-56,84]; Gehl [¶54,88])* **Concern** for Delay, **Fairness** to the Parties, **Urgency** of providing a Resolution to the Dispute, […] whether the ADM had a genuine opportunity to weigh in on the issue in question, **Costs** to the Parties, and the **efficient use** of public resources may also influence the exercise of a Court's discretion to remit a matter […] or exercise its discretion to Quash a Decision that is flawed. *(MiningWatch [¶45-51]; Alberta Teachers [¶55])*"

('Vavilov' [¶142])

Costs

If this Application **Succeeds**, I would ask for whatever Costs the Court deems **Reasonable** considering the circumstances and my Self-Represented status. *(This journey has lasted ~**4*** years*, and (Helper) & I have spent* ~2500 hours *studying, learning & fighting for Justice.)*

I would ask that No Costs be Ordered Against Me regardless, considering the circumstances – that this Case involves a significant Loss of Livelihood – and an *exceptional* amount of Time spent throughout my 4 SST Cases and this very complicated J.R.

Order

I, *(EI Claimant)*, would ask the Court to **Allow** this Application for Judicial Review *and* **Quash** the Decision of the Tribunal *(to Dismiss my Appeal for EI Benefits)*.

Furthermore, I would ask the Court to exercise its discretion to **Not Remit** this Case back to the Tribunal for the following Reasons: *(I believe **Justice** demands that this Unjust Situation be permanently Resolved once-and-for-all.)*

Concern for Delay: I have already spent **36+ Months** striving for Justice.
I am in *serious* financial straights and struggle to pay my bills every month.

Inevitable Outcome: It is *obvious* how the Tribunal would Rule. They have *already* Dismissed my Case **3 times** – and Dismissed **over 1000** C19-MM Cases. *(Statistically speaking, they Dismiss ~94% of All COVID-19 Mandate Cases… [GD: 95.1%, AD: 92.8%] Actual Success Stats [2021-24:YTD]: GD = 29 / 597 | AD = 38 / 526 | 67 / 1123 = 5.97%)*

Urgency of Resolving Dispute: There are currently *hundreds* of other ongoing Cases subject to the same Errors & Injustices that I am. Many other Canadians are also desperately close to *bankruptcy, homelessness & divorce*.

Cost & Impact on Parties: Receiving backpay for 30-45 weeks of EI is Life-Changing right now, considering my personal circumstances – and that of All Canadians.

If I am forced to wait another 4-6 months to relitigate my EI Benefits Case – and there is no guarantee of success – my family will likely be *homeless*; my mortgage is becoming unaffordable considering my significantly reduced income – and the increasing interest rates, inflation & cost-of-living.

Efficient Use of Resources: How much Public Money is cumulatively being spent on these C19-MM EI Cases – both at the Tribunal & in Federal Court Judicial Reviews?

Is this **wasted money?** Considering the known income bands for all the civil servants involved *(SC/EI CaseWorkers, CEIC Adjudicators, SST TMs, Federal Judges & AG/Crown Litigators)* – **and** the fact that I have had **7 Cases** thus far *(1x SC/EI, 1x CEIC, 4x SST & 1x FCA)* – my Case has *now* cost the Taxpayers **more** than if I was just Granted EI in Jan. 2022. *(Now we **know** that Canadian Taxpayers **will Not Pay** for my EI after all – but they **did pay** for all this… ~$300K of Taxpayer costs to avoid giving me ~$40k of my own Contributions?)*

Thank you for taking the time to *honestly* weigh my Case. You **three** Honorable Justices hold the lives & futures of many Canadian Families in your hands…

The Canadian Bill of Rights clearly defines our Nation's Foundation. Our most pressing question is: Do we **still:** *"Acknowledge the Supremacy of God, the Dignity & Worth of the Human Person, and the Position of the Family in a Society of Free Men & Free Institutions? [Will Canadians] Remain Free, founded upon Respect for Moral & Spiritual Values and the Rule of Law?"*

Respectfully Submitted,
Date: 2025-04-##

~ EI Claimant

(PII Redacted)

Part 5: Table of Authorities

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https://srv130.services.gc.ca/index/eng/subissue.aspx?issuesn=25&level=1

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CUB 18009: Amos DeBay v. CEIC *(Umpire: MacKay J.; 1990-05-03) ['DeBay']*

CUB 51219: Linda Earl v. CEIC *(Umpire: W.J. Grant; 2001-03-20) ['Earl']*

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https://PublicHealthPolicyJournal.com/review-of-calls-for-market-removal-of-covid-19-vaccines-intensify-risks-far-outweigh-theoretical-benefits

Short Link: https://tinyurl.com/IPAK-C19-Vaccine-Removal

APPENDIX A: SST CROSS-CASE ANALYSIS

This section contains the citations from argumentation in **Problem #4 *('R')*: Adjudicators**.

[¶292]: Details & Findings: 'Just Cause' ***(EIA §29(c)(xi): 'Contrary to Law' Clause)***

Between 2015-2019 (5 years), there are 501 Cases that Contain '29(c)' Analysis. Apparently, it was understood that this Statutory Requirement mattered before the COVID-19 Pandemic. **Also:** 12 Cases relying on '29(c)(xi)' Analysis: 'Employer Practices Contrary to Law'

1. **2019 SST 816 (CBA)**
2. 2019 SST 963 (CC)
3. 2019 SST 1719 (ESA)
4. 2018 SST 1254 (CLC/ESA)
5. 2017 SSTGDEI 74 (Safety: 'Red Zone')
6. 2015 SSTGDEI 201 (QC: Highway-Traffic)

2016 SSTGDEI 115 (CPS Kidnapping Children)
2016 SSTADEI 212 (Leave to Appeal)

SST: EIA §29(c)(xi) Analysis: 37 Cases Total

SST: EIA §29(c)(xi) Analysis: Appeal Allowed ***(12)***

JS v. CEIC, 2017 SST 94826 *(¶37)*; EP v. CEIC, 2019 SST 816 *(¶13f)*;

RF v. CEIC, 2014 SST 98699; JG v. CEIC, 2015 SST 105344; WD v. CEIC, 2018 SST 1254;
VR v. CEIC, 2019 SST 963; CC v. CEIC, 2019 SST 1329; LA v. CEIC, 2019 SST 1719;

VD v. CEIC, 2021 SST 197; CE v. CEIC, 2021 SST 388;
GM v. CEIC, 2022 SST 878; JL v. CEIC, 2021 SST 377 *

* *(Pandemic Context re. Employer Masking)* *

SST: EIA §29(c)(xi) Analysis: Appeal Dismissed ***(22)***

AL v. CEIC, 2019 SST 872 *(¶18)*; TH v. CEIC, 2022 SST 1588 *(¶25)*;
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JA v. CEIC, 2020 SST 1110; VD v. CEIC, 2021 SST 1; KM v. CEIC, 2022 SST 898
CK v. CEIC, 2022 SST 1013; JP v. CEIC, 2022 SST 1031; CL v. CEIC, 2022 SST 1153;
DP v. CEIC, 2022 SST 1646; CC v. CEIC, 2023 SST 1650; DC v. CEIC, 2023 SST 1933;
DM v. CEIC, 2024 SST 159; TB v. CEIC, 2024 SST 917;

JC v. CEIC, 2023 SST 1913 *(2024 SST 278)*; CM v. CEIC, 2024 SST 860 *(2024 SST 859)*;

DG v. CEIC, 2022 SST 760 *(¶39)*; (Just Cause Alternative to Misconduct)
DG v. CEIC, 2022 SST 759 *(¶75)*; [CLC]

[¶293]: Details & Findings: KVP Test ***(Policy 'Applicability' Test)***

SST: KVP Applied: Appeal Dismissed ***(12)*** | ***(* Quotes CBA *)***
***SS v. CEIC**, 2023 SST 31; TH v. CEIC, 2023 SST 63;
***KM v. CEIC**, 2023 SST 99; MW v. CEIC, 2023 SST 128;
TH v. CEIC, 2023 SST 183; AG v. CEIC, 2023 SST 348;
RR v. CEIC, 2023 SST 367; WW v. CEIC, 2023 SST 368;
GM v. CEIC, 2023 SST 675; SJ v. CEIC, 2023 SST 682;
NG v. CEIC, 2023 SST 807; CD v. CEIC, 2023 SST 887;

SST: KVP Ignored: Appeal Dismissed ***(12)***
CH v. CEIC, 2022 SST 1337; MV v. CEIC, 2023 SST 671;
AG v. CEIC, 2023 SST 1063; MB v. CEIC, 2023 SST 1147;

OK v. CEIC, 2023 SST 1195; AK v. CEIC, 2023 SST 1411
JP v. CEIC, 2023 SST 1833; KM v. CEIC, 2024 SST 16
DA v. CEIC, 2024 SST 26; VM v. CEIC, 2024 SST 194
SM v. CEIC, 2024 SST 583; JP v. CEIC; 2024 SST 714

[¶294]: Details & Findings: CBA Analysis *(Employment Contracts)*

(Vaccine OR Vaccination OR Vaccinated) AND "The second question falls outside of EI law"
https://decisions.sst-tss.gc.ca/sst-tss/en/d/s/index.do?cont=%28Vaccine+OR+Vaccination+OR+Vaccinated%29+AND+%22The+second+question+falls+outside+of+EI+law%22&ref=&d1=2021-01-01&d2=2024-12-31&col=219&or=date

CanLII Search Query *(102 SST Cases)*: ‘"express or implied duty" AND ("contract" OR "CBA") AND ("Vaccinated" OR "Vaccination" OR "Vaccine")’
Date Range: 2021-01-01 to 2024-12-31 *(Filter by Date)*
2022-03-14 *(2022 SST 280)* to 2024-08-23 *(2024 SST 1025)*

SST: Contract/CBA Cited Analysis: Appeal Allowed *(3+12=15)*
LN v. CEIC, 2022 SST 1654; JB v. CEIC, 2022 SST 1797;
AL v. CEIC, 2022 SST 1428;

‘Could have Filed’ / ‘CBA Did Not Say’ / (Similar Acceptance):
MW v. CEIC, 2023 SST 128; TH v. CEIC, 2023 SST 183,
SS v. CEIC, 2023 SST 31; TH v. CEIC, 2023 SST 63;
KW v. CEIC, 2023 SST 271; HJ v. CEIC, 2023 SST 314;
RA v. CEIC, 2023 SST 310; AF v. CEIC, 2023 SST 370;
DS v. CEIC, 2023 SST 362; FS v. CEIC, 2023 SST 382;
RD v. CEIC, 2023 SST 423; IT v. CEIC, 2023 SST 602;

SST: Contract/CBA Cited Analysis: Appeal Dismissed ***(3)***
AL v. CEIC, 2022 SST 280; SM v. CEIC, 2023 SST 27,
DC v. CEIC, 2023 SST 88;

SST: Contract/CBA U.Vires Analysis: Appeal Dismissed ***(13)*** *(Charter)*
*JM v. CEIC, 2022 SST 1550; MS v. CEIC, 2023 SST 768;
KZ v. CEIC, 2023 SST 1287; MD v. CEIC, 2023 SST 835;
CEIC v. AL, 2023 SST 1032; **CEIC v. JB, 2023 SST 1062**;
AG v. CEIC, 2023 SST 1063; LY v. CEIC, 2023 SST 1085;
LM v. CEIC, 2023 SST 1088; DN v. CEIC, 2023 SST 1133;
MB v. CEIC, 2023 SST 1147; MM v. CEIC, 2023 SST 1747;
({This Case}); *(2308: Common Vires Argument)*

SST: Contract/CBA Analysis *(Law: BC, ON, NB)*: Appeal Dismissed ***(11)***
MO v. CEIC, 2022 SST 702; MN v. CEIC, 2022 SST 960; CS v. CEIC, 2022 SST 975; LM v. CEIC, 2022 SST 1700; SS v. CEIC, 2022 SST 1004;
SM v. CEIC, 2022 SST 1438; MV v. CEIC, 2022 SST 1254;
MV v. CEIC, 2022 SST 1636; GH v. CEIC, 2023 SST 12;
MD v. CEIC, 2023 SST 835; AK v. CEIC, 2023 SST 1411;

SST: Contract/CBA Analysis *(None/Mgmt.Rights)*: Appeal Dismissed ***(58)***
WW v. CEIC, 2022 SST 1044; DC v. CEIC, 2022 SST 1599;
LA v. CEIC, 2022 SST 1126; LC v. CEIC, 2022 SST 1641;
AD v. CEIC, 2022 SST 1595; RZ v. CEIC, 2022 SST 1383;
TC v. CEIC, 2022 SST 1656; BW v. CEIC, 2022 SST 1444;
DP v. CEIC, 2022 SST 1646; DS v. CEIC, 2022 SST 1742;
JC v. CEIC, 2023 SST 325; MW v. CEIC, 2023 SST 128;
ME v. CEIC, 2023 SST 125; RS v. CEIC, 2023 SST 131;
SO v. CEIC, 2023 SST 118; IT v. CEIC, 2023 SST 603;
TS v. CEIC, 2023 SST 151; GL v. CEIC, 2023 SST 165;
SC v. CEIC, 2023 SST 885; TH v. CEIC, 2023 SST 183;
MB v. CEIC, 2023 SST 179; MC v. CEIC, 2023 SST 226;
AK v. CEIC, 2023 SST 239; EM v. CEIC, 2023 SST 658;

KW v. CEIC, 2023 SST 271; YS v. CEIC, 2023 SST 279;
HJ v. CEIC, 2023 SST 314; RA v. CEIC, 2023 SST 310;
AF v. CEIC, 2023 SST 370; DS v. CEIC, 2023 SST 362;
FS v. CEIC, 2023 SST 382; CL v. CEIC, 2023 SST 436;
RD v. CEIC, 2023 SST 423; SR v. CEIC, 2023 SST 467;
DS v. CEIC, 2023 SST 485; LY v. CEIC, 2023 SST 1084;
IT v. CEIC, 2023 SST 602; MS v. CEIC, 2023 SST 768;
KZ v. CEIC, 2023 SST 1287, CP v. CEIC, 2023 SST 1049;
LM v. CEIC, 2023 SST 1088; AD v. CEIC, 2023 SST 1096;
DN v. CEIC, 2023 SST 1133; MB v. CEIC, 2023 SST 1147;
AK v, CEIC, 2023 SST 1190; PZ v. CEIC, 2023 SST 1199;
RT v. CEIC, 2023 SST 1203; KR v. CEIC, 2023 SST 1235;
CEIC v. RB, 2023 SST 1249; KZ v. CEIC, 2023 SST 1286;
CK v. CEIC, 2023 SST 1699; CL v. CEIC, 2023 SST 435;
GM v. CEIC, 2023 SST 1297; BK v. CEIC, 2023 SST 1304;
KZ v. CEIC, 2023 SST 1360;
Purolator: KS v. CEIC, 2022 SST 1600;
AB v. CEIC, 2023 SST 1292; MM v. CEIC, 2023 SST 1747;

SST: Contract/CBA Analysis *(N/A)*: Summary Dismissal *(3)*
BH v. CEIC, 2022 SST 1240; ZF v. CEIC, 2022 SST 1245;
FA v. CEIC, 2022 SST 1753;

CanLII Search Query *(96 SST Cases)*: ‘"express or implied duty" AND ("contract" OR "CBA") AND NOT ("Vaccinated" OR "Vaccination" OR "Vaccine")’
Date Range: 2014-02-27 *(2014 SST 103728)* to yyyy-mm-dd *(___)*

[¶346-48]: Decision Templates

Direct Copies:

MV v. CEIC, 2023 SST 671; SJ v. CEIC, 2023 SST 682;

NG v. CEIC, 2023 SST 807;

RR v. CEIC, 2023 SST 367; GM v. CEIC, 2023 SST 675

AG v. CEIC, 2023 SST 348; WW v. CEIC, 2023 SST 368;

MW v. CEIC, 2023 SST 128; TH v. CEIC, 2023 SST 183;

Search *(17)*: Q = ‘"express or implied duty" AND "personal and deliberate choice"’

Search *(6x)*: Q = ‘"express or implied duty" AND "never pointed to a comparable provision"’

Search *(6x)*: Q = ‘"express or implied duty" AND "It is another to ask whether the duty was validly imposed"’

Search *(4x)*: Q = ‘"express or implied duty" AND "Employees often voluntarily subordinate their rights when they take a job"’

Search *(6x)*: Q = ‘"express or implied duty" AND "it is not the responsibility of Canadian taxpayers to assume the cost of wrongful conduct by an employer by way of employment insurance benefits"’

EIA §29(c): Mapachee v. Canada *(AG)*, 2023 FCA 109

2012 FCA 35: Canada *(AG)* v. Maughan

SST: Members ***(Historical Lists)***

[1903:27]
https://web.archive.org/web/20190502174149/https://www1.canada.ca/en/sst/members.html

[1909:13]
https://web.archive.org/web/20191119225201/https://www1.canada.ca/en/sst/members.html

[2006:15]
https://web.archive.org/web/20200805095114/https://www1.canada.ca/en/sst/members.html

[2010:02]
https://web.archive.org/web/20201025071427/https://www1.canada.ca/en/sst/members.html

[2102:22]
https://web.archive.org/web/20210411174220/https://www1.canada.ca/en/sst/members.html

[2107:12]
https://web.archive.org/web/20210727234038/https://www1.canada.ca/en/sst/members.html

[2109:01] https://web.archive.org/web/20210911021017/https://www.sst-tss.gc.ca/en/our-work-our-people/sst-members

[2207:20] https://web.archive.org/web/20220901013837/https://sst-tss.gc.ca/en/our-work-our-people/social-security-tribunal-members

[2303:27] https://web.archive.org/web/20230529205813/https://www.sst-tss.gc.ca/en/our-work-our-people/list-social-security-tribunal-members

[2308:01] https://web.archive.org/web/20231004084633/https://www.sst-tss.gc.ca/en/our-work-our-people/list-social-security-tribunal-members

[2310:03] https://web.archive.org/web/20231030204823/https://www.sst-tss.gc.ca/en/our-work-our-people/list-social-security-tribunal-members

[2312:18] https://web.archive.org/web/20240202091245/https://www.sst-tss.gc.ca/en/our-work-our-people/list-social-security-tribunal-members

[2404:02] https://web.archive.org/web/20240412163900/https://www.sst-tss.gc.ca/en/our-work-our-people/list-social-security-tribunal-members

[2407:03] https://web.archive.org/web/20240803061652/https://www.sst-tss.gc.ca/en/our-work-our-people/list-social-security-tribunal-members

[2412:18] https://web.archive.org/web/20250102194656/https://www.sst-tss.gc.ca/en/our-work-our-people/list-social-security-tribunal-members

[Live] https://sst-tss.gc.ca/en/our-work-our-people/list-social-security-tribunal-members

But maybe our society's increasing deference to claims of bureaucratic expertise threatens something even more vital than our promise of democratic self-government or rule-of-law values: our nation's respect for the *individual* – for the dignity that exists within each of us, whatever our quirks, warts, and failings – and our conviction that the individual's inalienable rights may not be bargained away, even in the name of efficient public administration.

~ Neil Gorsuch, SCOTUS J.
Over-Ruled: *(PDF: p.97)*