Final

§0.1: Introduction

(Time: 4 min [3:48]) | (Words: 507 / 514)

I thank this honourable Court for the opportunity to finally obtain justice. While it is regrettable that this process has taken four years, I am grateful that this day has finally arrived.

I appear not only on my own behalf, but for numerous Canadians whose benefits were similarly denied because of systemic errors, breaches of procedural fairness, and other defects outlined in this case.

To be clear from the outset, we are **not** asking this Court to assess the ***reasonableness*** of any employer's policy. And we are **not** advancing arguments about human rights, medical issues, or scientific questions. Our objective has *always* remained the same: **to ensure the EI Act is faithfully applied as written**.

When determining EI benefits entitlement, decision-makers *must* conduct the **Just Cause** analysis mandated by §29(c) of the Employment Insurance Act. This includes assessing whether the ***employer acted contrary to law***, imposed ***significant changes*** to essential terms of the employment contract, or exerted **undue pressure** on workers to leave their employment.

The central question is therefore straightforward: **Was the employer's response lawful? Were contracts changed?** ***If not***, then Parliament is clear – EI benefits **must** be granted.

However, during the pandemic, federal agencies implemented new internal processes that, in practice, led decision-makers to act contrary to the EI Act. Purported 'precedent' was misquoted or selectively applied; established legal definitions and long-settled tests were displaced by internal policy directives; and logical errors and misstatements of fact and law were embedded into standardised decision templates, creating an entirely new – and unlawful – benefits decision framework **applicable only** to a targeted subset of claimants.

In total, fifteen distinct errors were identified across seven categories. All but one directly pertained to the EI adjudication process itself and were unrelated to the circumstances surrounding my former employer. Our esteemed Supreme Court holds that determining Legislative Intent can involve a Rizzo analysis of the relevant statutory sections – an exercise that, to our knowledge, had never previously been done using the 'modern principle of statutory interpretation'.

The provision at issue represents the most contentious amendment in the history of the EI program, generating more than 4,700 pages of Hansard debates and committee transcripts, and nearly 550 parliamentary references across three bills between 1988 & 1996. Parliament's intent was unequivocal: 'Just Cause' was to serve as ***the*** governing criterion for determining EI eligibility – and that expressly included 'contentious separations' in which employers *allege* 'misconduct'.

Despite this clarity – and even though this test was applied more than 1000 times in the six years preceding the pandemic – it was removed from the adjudication process during it, and this has now been effectively enshrined as precedent.

Based on this record, expert financial analysis estimates that nearly half a million claimants were unlawfully denied more than $12 billion in benefits to which they were legally entitled.

I recognize the seriousness of the remedy being sought – and its potential implications for the broader system. However, declining to grant this relief would effectively legitimize the sequence of errors at hand, and entrench an unjust and unreasonable precedent that would bind EI decision-makers for many years to come.

§0.2: Fairness Problems

(Time: 3 min [2:30]) | (Words: 361 / 361)

I must begin by addressing serious concerns regarding procedural fairness. I accept that my written submissions required major reduction from approximately 190 pages *(360 paragraphs + 271 footnotes)* to 30 pages – an 85% loss – but I understood that the hearing itself would allow me to present the full substance of my arguments. No party objected to a two-day hearing at the time, and this remained uncontested until scheduling occurred around Christmas, six months later.

The Respondent then made an unprecedented request. They sought to shorten the requested hearing length from two full days to two hours. It was argued that this was much longer than other EI Benefits judicial reviews – despite none of them raising the precedential, systemic errors that I am. Unfortunately, the Chief Justice mostly granted that request, resulting in another drastic reduction – about an 80% cut in hearing time. While I appreciate that, following my informal objections, the Court minimally lengthened this hearing, the time allotted remains far from sufficient to address fifteen errors, including a *Rizzo*-style statutory analysis involving nearly 5,000 pages of material, and *multiple* 'matters of first impression' never addressed by any Court before today.

As a result, I have been compelled to proceed by reading from prepared oral submissions. This is the only way to ensure that each of the identified errors is properly placed on the record. Once I have completed that task, I will dedicate any remaining time for my reply and for questions from this Court. Lengthy interruptions that prevent completion of this record could themselves further impact procedural fairness by denying me the ability to fully present the core of my case.

Additionally, I am not a lawyer, and I am understandably nervous arguing complex legal issues in front of this Court and so many people. I respectfully request the Court's patience and leeway considering these circumstances. I will do my best to answer your questions once I have ensured that all material issues are properly before the Court.

Thank you for your full consideration of these matters, which raise several issues of significant national public importance. We appreciate you collectively rendering a thoughtful and just decision for all Canadians.

§0.3: Background

(Time: 4 min [3:22]) | (Words: 462 / 462)

By way of background, these next five paragraphs summarize the circumstances I have faced over the past four years. After them, I will focus on the issues themselves. These circumstances were shared by millions of Canadians since the onset of this 'once-in-a-century' COVID-19 pandemic. What began as an unprecedented global crisis gave rise to a cascade of adverse events and decisions. This situation escalated when certain employers, albeit often with good intentions, adopted policies purportedly designed to protect their workforces but that, in practice, violated established legal principles.

(2) The absence of historical precedent or proven policy frameworks resulted in wide-ranging societal experimentation as governments, businesses, and citizens navigated the unfolding crisis in real-time. This period saw effects on the economy and labour force that were unparalleled in modern history. Measures such as mass quarantines of healthy individuals, the designation of Canadians as 'essential' or 'non-essential', widespread operational restrictions, lock-downs, and severe logistical disruptions significantly harmed industries across the country. Meanwhile, the public awaited the solution that could "flatten the curve" and "save the healthcare system" so we could all "return to normal."

(3) The resulting conditions displaced hundreds of thousands of employees and contributed to an extraordinary surge in EI claims. The administrative response that followed was marked by numerous systemic errors – issues so significant that, were their impact not so detrimental to already vulnerable families, they might be described as a "comedy of errors." Despite this, these problems have gone largely unaddressed by those empowered to correct them.

(4) During this period, laws were disregarded, contracts were broken, and inapplicable case law – including outdated and erroneous precedents – were relied upon to rationalize these outcomes. This involved selectively citing isolated passages removed from their proper legal context and employing logical fallacies to create predetermined denial templates. The existence of an undisclosed internal memo and the use of template-driven case-management tools compounded the problem. Collectively, these developments have revealed a substantial departure from the **legislative intent** underlying the EI Act as enacted by Parliament between 1988 and 1996.

(And 5) This case seeks to draw attention to these legal errors and institutional 'process engineering', all of which directly affected my own experience – along with numerous other EI claimants who were *also* wrongly denied benefits *for these same reasons*. It requests corrective action from this honourable Court – from the only branch of government with both the independence and authority to address such issues when the legislative and executive branches have failed to do so. Our Courts serve as guardians of the rule of law and the ultimate arbiters of justice in Canada. So it is to this Court that Canadians look for hope, solutions, remedy, restoration of legal integrity, and proper direction to ensure that this 'unravelling of Justice' does not happen again…

§1: Summary

(Time: 9 min [8:55]) | (Words: 1034 / 1072)

My submissions are divided into two sections: *(there are three, but I do not have time to cover them all.)*

1. A general summary that outlines six specific issues, their impact, and the human cost of these errors.
2. The Problem: *(4 Headings)* An analysis of what the law requires – and was done regularly – *before* the pandemic.
3. The Solution: *(10 Headings)* A list of distinct problems occurring throughout this process *during* the pandemic.

I then conclude with brief closing remarks.

I now turn to this summary that outlines the errors, costs, and real consequences involved for many Canadians.

Problem #4 – Error #11 ***(Financial Cost of EI Process Engineering)***

From: Factum §N – Many Cases: EI Adjudicators ***(adapted from: ¶279-303 & FN: 228-244)***

7 Points at Issue – 4 Grounds of Review – 2 Vavilov Principles

<u>Executive Summary</u>

Jurisdiction, Procedural Fairness, and Legal/Factual Errors:

In this case – and many others – key legal principles were ignored or applied selectively, resulting in *"reverse-engineering [of] desired outcomes"* – which violates the *Vavilov* requirements for **fair *and* reasonable** decision-making. Among them: *(1)* the mandatory **Just-Cause analysis** under EI Act §29(c), *(2)* consideration of **employment contracts** required by the EI Act & Benefits Principles *('DBEP')*, and *(3)* application of the **KVP framework** governing unilaterally imposed policies.

Compounding this, Tribunal decisions were produced using **<u>pre-written</u> Atrium 'decision templates'**, containing stock paragraphs, case citations, and analysis blocks that shaped the outcome rather than reflecting case-specific independent reasoning. These templates consistently favoured **denial**, even when doing so contradicted the reasoning used by Tribunal Members in their other COVID-19 'Mandate-Misconduct' cases.

Each of these issues will be addressed in detail throughout this submission.

Let me start with the numbers.

The Tribunal's own decisions over the last decade show three clear periods:

Mid-2013–2019 — the *pre-pandemic baseline*; *(I'm using the 2019 statistic of 988 Tribunal Cases as a benchmark)*

2020–21 — the *lockdown lull*;

2022–23 — the *mandate peak*, when EI processed more than **one million** excess claims.

Across the full pandemic era *(2020-'24)*, the SST decided **4,943** EI appeals.

During the **lockdown lull**, annual EI appeals fell **by one-third** *(to 650 from 988)*. Once mandates were introduced, the caseload **jumped 42%** above the 2019 baseline and **214%** above the lull *(from 650 to 1400 annual cases)* – the largest spike ever recorded. During the mandate peak, **over 37%** of all EI appeals were mandate-misconduct cases.

And outcomes shifted dramatically. Mandate-misconduct claimants were denied benefits **4.23 times** more than other claimants – a success rate of **6%**, compared with **25%**.

In 2023 alone, **over 41%** of all EI appeals at the SST were mandate-related – hardly a "fringe minority."

These numbers – and the modified processes discussed below – reveal something unmistakable: **Mandate-misconduct cases were treated differently** – **systematically, consistently, to the detriment of claimants across the country.**

Here's a brief overview addressing six specific matters:

(1/6) Just-Cause Analysis — EI Act §29(c): Before the pandemic, Tribunal Members routinely applied this Analysis. From 2013–2019, over **1,300 decisions** included Just-Cause analysis and about 550 directly cited §29(c), with hundreds of claims allowed. **450 misconduct-specific cases** received 'Just Cause' analysis and **174 were allowed**.

Before the pandemic, **94 cases** were decided on "Contrary to Law" or contract-based grounds, including 38 misconduct cases. But during the pandemic, mandate-misconduct decisions never applied §29(c) meaningfully – and almost always denied benefits.

One specific point of hypocrisy. During the pandemic, 'contrary to law' analysis ***was*** applied when claimants alleged 'feeling unsafe' at work, because their employer did not enforce mask mandates on their coworkers. They were granted benefits. But applying this same test to other mandate policies was deemed *ultra vires* – or outside their jurisdiction.

This comparison shows a clear break from long-standing EI adjudication practices – and the statute itself.

(2/6) CBA / Contract Analysis

Before the pandemic, about **350 tribunal decisions** analyzed employment contracts, **with 126 allowed**. During the pandemic, contract arguments more than **doubled** to over **800 cases** – yet the **allowance rate dropped sharply**. And contracts were consistently ruled inadmissible in 'mandate misconduct' cases.

We also see other troubling inconsistencies: (for example:)

- 58 cases were dismissed on *Management Rights* grounds, even though these Rights **only exist because of** the Employment Contract the Tribunal was refusing to consider.

This is not consistent or reasonable statutory interpretation.

(3/6) KVP Policy-Validity Test

Since 2020, **KVP was cited 24 times**. Half the time, Members invoked KVP to uphold an employer's unilaterally imposed policy. The other half, when claimants correctly argued that KVP rendered these policies **unenforceable**, those same Members suddenly declared KVP *"ultra vires."*

KVP was **used** when it **denied** benefits but **rejected** when it **helped** claimants – an example of outcome-driven reasoning.

(4/6) Atrium Templates: The Tribunal used Atrium decision templates that inserted ***prewritten*** paragraphs, citations, and reasoning. The result? Inconsistent logic but consistent outcomes – **benefits denied**. This is also outcome-driven adjudication, not independent, fact-based decision-making.

(5/6) Tribunal Membership Shifts: During the mandate peak, EI appeals rose **214%**, while the Tribunal lost **28%** of its Members. Shortly thereafter *(by late summer 2022)*, membership jumped by **50%**, and mandate-misconduct denial rates increased by **over 400%**. That pattern raises obvious concerns and deserves scrutiny.

(6/6) Impact on Individuals – *Vavilov* ¶133-135: *Vavilov* requires decision-makers to consider how their decisions affect people's lives – and include this in their written reasons. Mandate-misconduct decisions had life-altering consequences during a national crisis. Yet in my case – and many others – this mandatory factor was **never addressed**.

Your Honours, the core problem is simple: **the law has not been applied consistently or fairly.**

Before the pandemic, EI adjudicators routinely followed their home statutes and conducted the required **Just-Cause** analysis. But in mandate-misconduct cases, that process was universally rejected. The same selective approach appeared in their treatment of employment contracts, common-law principles, and key evidence.

Under *Vavilov*, a decision is **only reasonable *if*** it identifies and 'grapples with' the real issues and **justifies** the reasoning.

Fundamental justice demands **consistent application of law and fact**, not consistent outcomes.

Arbitrary use of "vires" to exclude relevant tests and evidence raises both **jurisdictional** and **fairness** concerns under **§18.1(4)(a) and (b)**. *(from: the Federal Courts Act, 'Grounds of Review')*

Using **prewritten** templates containing various errors to build Decisions also impacts fairness under **§18.1(4)(b)**.

Applying legal principles inconsistently without justification – is an **error of law** under **§18.1(4)(c)**.

And flawed processes overriding the EI Act arguably meets **'acting contrary to law'** under **§18.1(4)(f)**.

For all these reasons, this pattern of unjust decision-making cannot stand. **We respectfully ask the Court to intervene and quash the Decision as unreasonable.**

Your Honours, because of time constraints I won't be able to walk through the full Legislative Process section today. My filed factum contains 47 paragraphs and 81 footnotes detailing the EI Act, the Hansard record, and the documentary evidence before you – including our Rizzo analysis of EI Act §29–33 on Just Cause, Entitlement, and Disqualification.

This includes the Rule-of-Law and Jurisdictional issues that arose during the pandemic, and the private and common-law principles that govern these cases. They are listed under Problems #1-2, in §B-F.

I respectfully ask the Court to consider that material carefully. It sets the foundation for what follows. Understanding what Parliament intended – and how EI adjudication normally operated before the pandemic – is essential to understanding the depth of the problems we are addressing today.

If time permits, I will return at the end to the key Tribunal precedent used to dismiss my case. It contains five major errors, each sufficient to be quashed. I cannot change that decision, but I can show why it cannot apply to my circumstances – and why correcting that citation definitively changes the outcome in my case.

For now, I will move to Part 3, where I briefly outline **ten structural errors** that occurred in mandate-misconduct EI cases. These are not minor defects. They represent system-wide procedural shifts that displaced the proper adjudication process required by the EI Act and the Rule of Law. And they affected thousands of claimants. Thank you for your time.