## §2: Problem *(Requirements & Outcomes)*

(Time: 3 min [2:48]) | (Words: 294 / #)

I now turn to the core issue: the statutory and procedural requirements imposed on EI Decision-Makers *('ADMs')* under the EI Act. This became problematic because applying these legally-required processes would have resulted in hundreds of thousands of Canadians receiving benefits within just a few months – with significant financial implications for the EI Operating Account *(or: 'EIOA')*. Analysis involving claim numbers *(about 500,000)* **times** average benefits payouts *($26,000)* suggest around $13B – roughly 50% of the entire EIOA. These pressures appear to have led to the development of new, alternative EI adjudication processes designed to avoid that crisis.

In this section, I conduct a *Rizzo Analysis* of the EI Act, considering both Legislative History and Legislative Intent. To my knowledge, this essential process, directed by the Supreme Court *(in 'Rizzo Shoes')*, has never been applied to this context. *(§29-33: Just Cause & Disentitlement)*

Using the *"modern principle of statutory interpretation,"* I will explain Parliament's intention when it enacted these provisions. This analysis is supported by citations from applicable Hansards – reflecting statements from Ministers, Deputy Ministers, Parliamentary Secretaries, Members of Parliament, and three Employment Canada Directors who were directly responsible for drafting and implementing these amendments.

I then examine the broader legal context, including foundational Rule-of-Law considerations & Jurisdictional requirements. I will reference several binding Supreme Court authorities that directly address these issues. I also demonstrate that, prior to the pandemic, this legal framework was consistently applied across hundreds of EI Decisions, confirming that the required interpretive and adjudicative steps were well understood and regularly followed.

Finally, I address the unprecedented SST Decision that was erroneously relied upon to dismiss my Appeal Division case. I will show that this decision contains five substantive errors, rendering it incapable of supporting dismissal of my case – or any other one.

## §2.1: Legislative History & Intent *(EI Act)*

(Time: 13 min [12:53]) | (Words: 1447 / #)

**Problem #1 – Error #1** ***(History of the EI Act: Just Cause + Disentitlement)***

**From: Factum §B-C – Legislative Intent & History** ***(adapted from: ¶28-58 & FN:13-74)***

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

**Overview & Summary**

Applying the *modern principle of statutory interpretation* through a **Rizzo analysis** is established in both jurisprudence and statute *(e.g. Interpretation Act, §10: 'Law Always Speaking')*. In my SST-AD written submissions, I spent six pages examining the EI Act's legislative history and purpose, focusing on §29(c) *('Just Cause')* **&** §30–33 *(Disentitlement & Disqualification)*.

That Rizzo analysis of Parliament's Intent was ignored in TM Lafontaine's decision. Worse, the mandatory requirement to conduct Just-Cause fact-finding has been consistently avoided in 'Mandate Misconduct' EI decisions, despite its routine application up until 2019.

To summarize: the EI Act identifies **fourteen** factors that adjudicators ***must*** consider when determining whether a claimant had Just Cause for leaving their employment. These developed over three Bills: C-21 *(1990)*, C-113 *(1993)* & C-12 *(1996)*.

Section 29(c), labelled 'Interpretation' provides the framework:

> **§29(c):** "For the purposes of §30–33 [Disqualification & Disentitlement]:
>
> **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** *[also note subs: 7/9/13]*
>
> **§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."*

Note the inclusion of ***both*** 'voluntary leaving' **and** 'taking leave'. Just Cause is **the test** that EI adjudicators must apply when determining eligibility. My submissions proved this, yet both Tribunal Members refused to engage with it.

**Brief Legislative History of EI Act**

**[1971] – Bill C-229:** Parliament made the UI program *universal*, extending coverage to many special situations, including both voluntary quits and dismissals.

**[1980s]** Deindustrialization and free-trade restructuring produced major economic dislocation, high unemployment, and significant UI deficits. UI became a national political issue, prompting major institutional studies into Canada's "unemployment crisis." During the late 1980s, both the House and Senate undertook detailed two-year investigations, producing **over 4,000 pages of Hansard transcripts** across four volumes.

**[1990] – Bill C-21:** Parliament ended federal *(taxpayer)* contributions to UI. To offset this revenue loss, they proposed new penalties for quits, dismissals, and related separations, which sparked extensive debate. The term **"Just Cause"** appears **348 times** in the C-21 Hansards. MPs and witnesses emphasized that penalties must *not* be imposed on workers who had legitimate reasons for 'leaving or losing employment'.

**[1992] – Bill C-105:** Without federal funding, UI hemorrhaged money: **-$1.75B in two years**. To "save" UI, Bill C-105 proposed **complete disentitlement** for workers "without Just Cause," which some MPs claimed would save **$1B annually** by "preventing program abuse." This proposal was deeply unpopular and triggered Canada-wide protests, MP sit-ins, etc.

Hansards from early 1993 document: *(1)* an MP reporting threats to his family, *(2)* Employment Canada announcing the construction of *back doors* in adjudication rooms for staff safety *(3)* Persistent public pushback over blanket denials.

MPs from all parties raised serious concerns about harsh consequences, costly appeals, and the injustice of "sentences imposed before investigation." They insisted that ***if*** Just Cause was to become the *only* basis for total disentitlement, it must be **clearly defined in law** – not buried across jurisprudence.

**[1993] – Bill C-113: Just Cause Defined & Claimant Benefit of Doubt**

After the political and public backlash against C-105, the government re-introduced these same reforms again just five weeks later. This time, Bill C-113 codified **14 'Just Cause' categories** derived from the **40 reasons in case law.** *(Later reflected in EI Digest §6.8.1: 'List of 40 Circumstances to Consider')*

MPs and Employment Canada Directors testified repeatedly that **Just-Cause analysis** and the **Benefit of Doubt** principle were intended to govern ***all*** EI adjudication: including quits, dismissals, **and employer-alleged misconduct cases**.

**Important Hansard Quotes**

Here are 8 citations: 1 sworn witness testimony, and statements from 5 parliamentarians + 2 Employment Directors.

**Consequences of UI Changes: *(3 Citations)***

**Canadian Labour Congress:** *(Hearing #5: 1993-03-05, [p.657])*: *"Never in the fifty-two year history of the UI 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."*

**MP Vincent Della Noce [Conservative: Parliamentary Secretary]** *(C-105 House Debate: 1993-02-03, [p.626f])*
*"As you know, almost all Members' offices were invaded today by unions and groups. [] I have just spoken with the police and I received confirmation that there were violence and arrests [and] there have even been threats against our homes and families. [] I must tell you that if there is no protection tomorrow, probably I will not be able to come to sit here. [] 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.*** *[…] 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."*

**MP Warren Allmand [Liberal: Employment Committees]** *(Hearing #9: [Clause-by-Clause] 1993-03-16, [p.713])*
*"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?"*

**Legislative Intent:** ***(5 Citations)***

**MP Vincent Della Noce: (Parliamentary Secretary)** *(Bill C-105 Debate: 1993-02-03 [p.686])*

**Summary:** Confirmed that Benefit of Doubt is *always* given to claimants & that Just Cause **incudes misconduct allegations**.

**MP Pauline Browes (Minister of State for Employment)** *(Bill C-105 Debate: 1993-02-03 [p.600-02])*

"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**." *(p.601)*

**Julie Z.-Tanner (Chief: UI Policy):** *(C-113: Committee Hearing #1; 1993-03-08 [p.646f])*

**Summary:** Confirmed that the new EI Act changes require objective, thorough fact-finding. Just Cause analysis must be individualised, not generalised, and Benefit of Doubt is always given to the claimants.

**Gordon McFee (Director: UI Policy & Legislation Development):** *(Bill C-113: Hearing #9, 1993-03-16 [p.716])*

"UI legislation is [] **a rights and obligations program**. If Claimants fulfil certain obligations**, they have the unfettered right to receive UI** – obviously [] within the confines of the legislation. Therefore, *in any kind of **contentious claim*** – voluntary quits, [and] **misconducts** [] the Agent is **obliged** by policy, ***by legislation*** […], to get *all* the facts, to assess the facts. […] If the decision is not clear-cut, **the Benefit of the Doubt is given to the Claimant.**"

**Bernard Valcourt (Minister of Employment)** *(Bill C-113: Hearing #9, 1993-03-16 [p.686])*

**Summary:** The **Minister** verified that UI complies with 'natural justice': when **employers *allege* misconduct**, ***they*** have the 'burden of proof' to prove it. *Any* Canadian who has Just Cause when leaving work **is protected** and receives benefits.

**Section Conclusion**

In closing, when this Legislative History, Legislative Intent, and the corresponding Parliamentary Hansards are considered in full context, three clear conclusions emerge:

1. These reforms were among the most **contentious** in the history of the EI program.
2. MPs from all three political parties consistently articulated two *unanimous* legislative objectives:
   a. Protect the financial integrity of the UI program by preventing abuse and ineligible claims; and
   b. Ensure that workers with **Just Cause** are **protected**, not penalised.

3. Parliament repeatedly clarified the meaning and operation of "Just Cause":
   a. Just-Cause fact-finding is **universal**: it applies to quits, terminations, **and employer-alleged misconduct**;
   b. Claimants receive the **Benefit of the Doubt** when entitlement-related evidence is evenly balanced;
   c. "Just Cause" expressly includes situations where the employer **acts contrary to law**, imposes **significant changes** to the employment contract, or **unduly pressures** workers;
   d. MPs & witnesses cited various examples of Canadians forced to leave work due to unlawful employer conduct, stating that, whether they quit, were forced out, or were fired, such workers ***always*** **have Just Cause**.

## §2.2: Rule of Law & Jurisdiction

(Time: 8 min [7:42]) | (Words: 776 / #)

**Problem #2 – Error #3** ***(Rule of Law Violations from Misuse of Jurisdiction)***

**From: Factum §E – Rule of Law & Jurisdiction** ***(adapted from: ¶64-93 & FN: 79-108)***

**7 Points at Issue – 4 Grounds of Review – 3 Vavilov Principles**

**[2006 SCC 2: ¶145-146]** *"…this Court* ***held*** *that the Employer's Management Rights were* ***limited*** not only *by the Collective Agreement but also by mandatory Legislative provisions.* [] *…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. [] 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****…"*

*(from: Isidore* ***Garon*** *v. Tremblay,* ***Fillion*** *& Brothers v. SNEGQ,* ***2006 SCC 2****)*

**Overview & Summary**

It is **unreasonable** to say that employers can codify conduct that breaches multiple laws and contracts into policy and then justify enforcing those actions because [quote] *"we created a policy giving ourselves this right."* Issuing policy does not grant them the authority to break the law – or contracts. **This is absurd.**

The **Rule of Law** is foundational. Under the EI Act, when employers **act contrary to law *or* change contracts**, claimants have **Just Cause**. That principle is reinforced by jurisprudence. Our Supreme Court repeatedly confirmed that employers are bound by the law – both in collective bargaining and arbitration – and when exercising management rights, including policy development and enforcement.

In numerous workplaces, including Purolator, the mandate-era policies placed frontline workers and middle-management *(especially HR staff)* into positions where enforcing the policies required them to engage in unlawful conduct.

A partial list includes:

a. **Canada Labour Code** ***(RSC 1985, c. L-2)***
   • Provisions prohibiting lock-outs *(§88.1)*
   • Prohibitions against breaching collective agreements *(§166–168)*

b. **Criminal Code** ***(RSC 1985, c. C-46)***
   • Offence of Falsifying Employment Records *(§398)*

c. **Supreme Court Jurisprudence – Management Rights**
Courts have consistently held that all employer policies must comply with legislation and employment contracts:
• *Parry Sound (2003 SCC 42)*
• *Irving (2013 SCC 34) (codifies 'KVP': 1965 ON-LA 1009)*
*{Garon/Fillion + AJC}*

*d.* **Supreme Court – Constructive Dismissal *(or Paid Administrative Leave)***
Unilaterally imposed, non-disciplinary administrative leaves for "ready and willing" employees must be **paid**, and constitutes constructive dismissal if not:
• *Cabiakman (2004 SCC 55)*

These authorities make one point clear: employers cannot override binding contracts and laws of Parliament by issuing policies. They cannot break the law, nor can they compel workers to do so. Whenever their practices are unlawful, **Just Cause** must be recognized, regardless of who initiated the separation.

**Responsibilities of EI Decision-Makers**

Across all branches of law – statutory, common law, and private contractual law – the **Rule of Law** remains foundational.

In the EI context, this requires adjudicators to identify *why* employment ended by conducting **fact-finding**. When claimants meet defined **Just-Cause** grounds, they cannot be denied benefits.

Parliament granted EI decision-makers **jurisdiction** to investigate this. Trying to avoid responsibility by invoking jurisdiction is unreasonable. Parliament provided explicit authority.

**DESDA §64(1):** *"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." (i.e. they can investigate whatever is needed to determine eligibility.)*

Parliament does not grant authority, only to permit abdication when it's 'inconvenient'.

This is not new. For over two decades, the Federal Court has confirmed that "contrary to law" analysis includes conduct that violates legislation *or* employment contracts:

**2023 SST 1886 (AM v. CEIC, ¶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: from 1989)*, **collective agreements** *(CUB 51219: from 2001)*, and licensing board certifications."

Together, the statutory text, legislative intent, and case law impose a clear duty: **EI adjudicators must investigate employer unlawfulness when determining Just Cause.** Declining this is a jurisdictional error and breaches the Rule of Law.

**Section Conclusion**

In my case, the following three legal frameworks were directly engaged:

1. **Statute Law: Canada Labour Code (CLC)**
Being federally regulated, Purolator is bound by this. It includes both labour-relations and health-and-safety provisions. Their actions amounted to **unlawful lock-outs** contrary to §88.1. *(§166–68 prohibit contract breaches.)*

2. **Private Law: Employment Contract (CBA)**
   Our CBA is the private-law instrument governing my employment relationship. It establishes the **express duties** owed by both parties and defines the legal boundaries around **implied duties**.

3. **[Potential] Criminal Law: Criminal Code (CC)**
   Falsifying Records of Employment [with Intent] – including *knowingly* misrepresenting Reason Codes – ***can be*** a Criminal Code offence under §398.

Despite this clear statutory and contractual framework, the Tribunal's **mandated jurisdiction** was abandoned from the outset. Before I was sworn in, TM Usprich restricted the scope of my General Division hearing to a single issue *(@16:15)*, rejecting my statutory arguments about **Just Cause** – and my other submissions.

## §2.3: Private Law & Common Law

(Time: 15 min [13:53]) | (Words: 1659 / #)

**Problem #2 – Error #4** ***(Legal Issues with 'Selectively' Citing Contracts & Case Law)***

**From: Factum §F – Private Law & Common Law** ***(adapted from: ¶94-133 & FN: 109-125)***

**4 Points at Issue – 4 Grounds of Review – 4 Vavilov Principles**

**(Vavilov ¶111)**: *"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. Contracts]}, it would be **unreasonable** for [them] to **ignore** that Law in adjudicating the **parties' rights**..."* *(cit. Dunsmuir ¶74: 2008 SCC 9)*

**Overview & Summary**

I am not asking this Court to evaluate the ***reasonableness*** of Purolator's policy. I am asking you to confirm that EI ADMs must conduct **statutorily mandated 'Just Cause' fact-finding**.

*Vavilov* reaffirms that **private-law frameworks** apply – employment contracts – when interpreting and applying the law. Our Supreme Court holds that **management rights** are limited: all policies must comply with both **legislation** and the **contract** from which they derive.

Canadian law recognizes a settled hierarchy, repeatedly affirmed in jurisprudence: **Law → Contract → Policy**

This hierarchy governs every employment relationship – and EI adjudication. The fundamental question here is whether Purolator's actions were **contrary to law** or constituted **significant changes** to the contract.

In this section, I will briefly address four independent problems: Lock-Outs, Contracts, Management Rights & KVP.

**(1) Purolator Lock-Outs: Compelling Compliance**

Our CBA contains four clauses requiring that **all** contractual provisions *&* workplace polices comply with ***both*** the contract *&* applicable legislation *(§3.01, §5.01, §5.05, §22.02)*. This includes a **nullity *(severability)* clause** (§5.05) that renders **'null & void' *any*** policy or practice that breaks the CBA or governing law – **including lock-outs**.

Both the **Canada Labour Code** and our **CBA *prohibit* lock-outs** *(CLC §88.1 & CBA §4.01)*. The CLC defines a **'Lock-out'** as:

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

The same Purolator execs who owned the mandate policy also sent out written letters confirming that their vaccination requirement constituted a **new condition of employment**. *(p.331-32)* Preventing us from working *and* withholding our pay, to **compel our compliance** meets the definition of a **lock-out**.

TM Lafontaine acknowledged this in his Appeal Division Decision:

**[¶16]:** "**Evidence shows** that the Employer ***prevented*** the Claimant from working *even though there was work*. [The Claimant] acknowledged that **Leave** was **imposed** on him." *(p.280)*

This conduct was **contrary to law**. It breached the Labour Code and our CBA. This alone establishes **Just Cause**.

**(2) Employment Contracts**

In the **7 years** *before* the pandemic *(2013–2019)*, about **350 SST Cases** examined contracts *(or CBAs)* – and over **140 Cases** were 'Misconduct'-related. This proves that TMs understood their legal obligations…

> The **EI Act §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 **DBEP §21.2.2** requirement for *'Gathering All Available Evidence'* states: *"employment contracts"* & *"CBAs"* are among the *"evidence **necessary** to **prove** facts of a particular case." (**2x** in 5‼ EI ADMs are told to consider contracts.)*
>
> The **DBEP §7.2.1.1** governs *'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…" *(So employers are* **required** *to cite contract violations?)*
>
> This coincides with Vavilov's **requirement** that *'Reasonable Decisions'* re. employment **requires examining contracts**: **[Vavilov ¶111]:** *"Where a relationship is governed by private law [e.g. employment contracts], it would be **unreasonable** for the ADM to ignore that law in adjudicating the parties' rights..."*

These all prove the necessity of considering contracts when determining eligibility. Failing to do so is **unreasonable**, yet *both* Members refused to conduct this analysis. *([SST-GD: TM Usprich]: ¶74, ¶79, ¶90, ¶91 [p.208f] & [SST-AD: TM Lafontaine]: ¶37-38, ¶40 [p.284])*

This refusal violates the EI Act and core *Vavilov* requirements about justification and faithfulness to the law.

**(3) Management Rights**

**('AJC' ¶20-21):** "Management's residual right to **unilaterally impose** workplace rules is ***not* unlimited**. Management Rights **must be exercised reasonably** *and* **consistently with the Collective Agreement**. [] Any *unilaterally imposed* workplace policy **must comply** with these **limitations**." *(from: Association of Justice Counsel v. Canada (AG),* ***2017 SCC 55****)*

Management Rights originate from the contract. They establish the employer's authority to implement policies *and* they bind workers to comply with them. Management Rights do not exist independently; without the contract, there are no rights to invoke or enforce.

Our Supreme Court confirms that Management Rights must operate **within applicable legislation**. They cannot authorize unlawful conduct, just as policies cannot override legal requirements.

The Supreme Court's decision in *Parry Sound* confirms this. At ¶25–29, the Court held that employees' **statutory rights** – including labour-standards, employment-standards, and human-rights protections – form a **minimum legal floor** beneath which neither management rights nor contracts may fall. While contracts may be more restrictive than legislation, they cannot be less. The Court further held that an employee's statutory *"bundle of rights"* is **incorporated into the contract**. *(Parry Sound (DSSAB) v. OPSEU Local 324, 2003 SCC 42.)*

In short:

- **Management Rights flow from the contract**
- **The contract is constrained by legislation**
- **Policies are constrained by both**

Any decision that ignores this hierarchy – or selectively cites from it – is *both* **unreasonable** *and* **contrary to law**.

It is concerning that, while refusing to consider my CBA, GD-TM Usprich refers to a single phrase in Article §3.01 *("the exclusive right of the Company to [] manage its undertakings as it sees fit")* to justify incorporating Purolator's disputed policy into her decision – yet ignored the immediately following clause, from the *same sentence*, which limits that right [saying] ***"subject only to the restrictions imposed by law."*** Selectively relying on half a sentence while ignoring the legal qualifier violates basic **natural justice and fairness**.

**(4) KVP: Conditions for Imposing Policy**

**(Irving ¶24-26):** *"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**… 'the Employer **cannot**, by exercising its Management functions, issue* unreasonable *rules and then **discipline employees** for failure to follow them.' 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"*

*(from: CEPU Canada, Local #30 v. **Irving** Pulp & Paper, **2013 SCC 34**)*

The KVP Test – originating in 1965 labour arbitration – governs an employer's ability to **unilaterally implement workplace policies**. It sets out six requirements that must **all** be satisfied before they can impose a *new* rule.

The first two principles are foundational:

1. The policy ***"must not be inconsistent with the CBA."***
2. The policy ***"must not be unreasonable."*** *(which includes facially unlawful)*

These same principles have been applied in non-unionized settings by provincial appellate courts without naming *KVP. (e.g. Asurion Canada v. Brown & Cormier (2013 NBCA 13) at [¶28])*

In 2013, the Supreme Court confirmed KVP as binding precedent. This was recognized in SST decisions, like **KM v. CEIC *(2023 SST 99)***, where AD TM Janet Lew stated:

**(¶29): "The Supreme Court of Canada has endorsed the KVP Test which means it is good law that should be applied."**

The legal framework is clear:

- Employer policies must comply with **the contract**,
- they must comply with **the law**, and
- The KVP criteria determine whether a unilateral policy can be enforced at all.

**Section Conclusion**

Purolator is federally regulated, unionized, and governed by the **Canada Labour Code (CLC)** (§88.1) and our **CBA** *(§4.01)*, which both **prohibit lockouts**. This policy was also **Nullified** by CBA *(§5.05)*. By breaching **both**, it failed the **KVP** criteria and could not legally be imposed without union ratification. *(Or amendment, removing the lock-out.)* Using lock-outs to **compel compliance** with a new, ***unratified*** employment condition, is clearly acting **contrary to law.**

Despite this, both TMs effectively held that this new, non-union-approved, nullified corporate policy superseded **both** *federal law* **and** *our contract*. And they reached this conclusion by invoking **Management Rights** – while refusing to consider the very contract from which those rights derive.

Making ***this*** the foundation for finding me *guilty of misconduct* is **unreasonable**.

Purolator has broad discretion when designing policy – only two limits constrain it:

1. Policies **must be lawful**, and
2. Policies **must comply with the CBA**.

These limits have been codified in jurisprudence for decades and by our Supreme Court since 2013.

I am not asking this Court to overturn established doctrine. I am simply asking you to recognize what the Rule of Law and our CBA already require: **no policy can override legislation or our contract**. Here, the policy violates both. Their excuse – that *'our policy says we can do this'* – is **absurd** and **unreasonable**.

This decision-making process contains numerous defects – each warranting this being **quashed**.

1. **Lock-Outs: Contrary to Law *(CLC & CBA)***
2. **Employment Contracts: Refusing to examine them**
3. **Management Rights: Invoking them Regardless of #2**
4. **KVP: Applying an unlawful policy that violated KVP #1-2**

**Jurisdiction – FCA §18.1(4)(a):**

Relying on Management Rights while declaring the CBA *outside jurisdiction* raises jurisdictional concerns.

**Procedural Fairness – FCA §18.1(4)(b):**

Alleging policy violations by me, while excluding evidence that they committed more serious violations *(law + contract)*, undermines procedural fairness.

**Errors of Law – FCA §18.1(4)(c):**

This Decision misapplies CBA terms, relies on nullified policies, and elevates Management Rights above the contract and the laws of Parliament. Each constitutes a distinct error of law.

**Errors of Fact – FCA §18.1(4)(d):**

Incorrect factual findings about *alleged* contract and policy violations constitute errors of fact.

**For all these reasons, we respectfully ask this Court to quash TM Lafontaine's Decision, as the legal, jurisdictional, factual, and fairness errors render it unreasonable.**

## §2.4: Tribunal Precedent *(CEIC v. AL)*

(Time: 5 min [4:30]) | (Words: 498 / 498)

**Problem #2 – Error #2** ***(Many Legal Issues with SST-AD Case [Used as Precedent])***

**From: Factum §D – Tribunal Precedent (CEIC v. AL)** ***(adapted from: ¶59-63 & FN: 75-78)***

**Overview & Summary**

A key SST decision dispositively cited in my case contains five major errors. *(from: 2023 SST 1032: CEIC v. AL [¶20].* Cited in my own AD case: at **2024 SST 26 [¶37]***)*

[¶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*. The second question *falls outside of EI Law*." *(p.284)*

This proposition is unreasonable for five reasons. Because it was relied upon decisively in my case, it must be addressed. If left uncorrected, it would entrench several legal errors into EI jurisprudence & **convert injustice into binding precedent**.

**5 Separate Reasoning Errors**

1. **Rule of Law**

This reasoning assumes – without analysis – that the duty was lawful. By jumping from *"does the duty exist?"* to *"valid imposition [] is outside EI law,"* the Tribunal **implicitly finds** the duty lawful even when it was not. That **violates the Rule of Law**: employers ***cannot*** **impose unlawful duties** through policy. And ADMs ***cannot*** deny benefits based on **unlawful requirements**. In short: a company **cannot grant itself the right to break the law.** This is both **absurd** and **unreasonable**.

2. **Jurisdiction**

Refusing to examine whether a duty was validly imposed means refusing to examine whether the employer acted contrary to law – a requirement under §29(c)(xi). Because this conclusively establishes Just Cause, **lawfulness** must be tested.

The Tribunal therefore commits a jurisdictional error by declaring that assessing validity is *"outside EI law."*

In this context, validity and lawfulness are synonymous: a duty is valid only if it complies with legislation and the contract.

### 3. Procedural Fairness

It is fundamentally unfair to hold workers accountable for contractual violations while excusing employers from their own contractual and statutory obligations. Both parties signed the contract, and both pay EI premiums. The Tribunal's approach allows denying benefits for ***alleged*** worker breaches while immunizing employers who break the same contract – or impose unlawful duties. This violates basic fairness principles.

### 4. Management Rights & Private Law Foundations

Determining whether a "duty exists" cannot be divorced from the contract that creates it. Policy binds employees **only** because the contract establishes Management Rights. If the Tribunal excludes the contract from its analysis, it removes the basis for duty of compliance.

How can adjudicators invoke "Management Rights" after ruling the contract that creates those rights inadmissible?

### 5. Logical Incoherence

The *composite* 4-Part Misconduct Test – as applied in these cases – **contains *two* logical fallacies**, including 'petitio principii' *(begging the question)* and special pleading. *(This will be examined in detail below in §3.7)* Under Vavilov, such incoherent reasoning is unreasonable.

**<u>Section Conclusion</u>**

For these reasons, the Tribunal's assertion that testing the validity of a duty "falls outside EI law" is incorrect in principle, contrary to statute, incompatible with the Rule of Law, unfair in practice, and logically indefensible.

This was TM Lafontaine's **primary basis** for rejecting my written submissions. **Reversing this changes the Outcome.**

**Worse yet, this case has been cited to deny 57 other Claimants.**