§3.1: Employer: Falsified ROEs *(Code 'M')*

Time: 3:30 (6 min [5:15]) | (Words: 631 / 417)

Problem #4 – Error #9 ***(Falsifying ROEs 'with Intent' potentially breaks Criminal Code)***

From: Factum §L – (SideBar): Employer Falsified Evidence ***(adapted from: ¶237-269 & FN: 181-218)***

7 Points at Issue – 3 Grounds of Review – 2 Vavilov Principles

Section 398 of the Criminal Code makes it an Offence to Falsify Employment Records **IF there is 'Intent'**.

Since this is civil, I'm ***not*** alleging wrongful intent. But my ROE contains a reason code that is provably false.

In Block 22 on all ROEs, the Issuer swears that: "I am aware that it is an Offense to make false entries and hereby Certify that all statements on this form are True." *(Record: p.100 [ROE])*

This is important. ***If*** a Court *"acts on fraud or perjured evidence,"* that is grounds for Judicial Review under **§18.1(4)(e).**

If the Reason Code on ***any*** ROE is ***provably false*** based on the evidence, those Decisions ***may*** be set aside.

My factum cites **six sources** confirming I was on ***Approved*** Administrative Leave. *(¶84, FN-113)*

Purolator's final 'Employee Bulletin' said: *"Employees who [] are not fully vaccinated [] will be placed on an Unpaid Leave of Absence [] and* ***should not report to work****."* *(HR Director: Policy Update ¶2 [p.328])*

Compare this with Service Canada's special HR Guide: **"*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'*** *(Leave of Absence)."* *(Authorities: p.1817 [C19])*

Instead of **'N'**, my ROE was coded **'M'** which was **false**. This denied my EI due to my 'Misconduct'.

Here are **two** *(of six)* other warnings from Employment Canada: *(**Authorities:** p.103 [CC §398], p.1774 [ROE Guide])*

> **ROE Guide: Box 16 Warning:** *(Authorities: p.1771)*
>
> "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."
>
> **ROE Guide: Box 22 Warning:** *(Authorities: p.1786)*
>
> "…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'."

These miscoded ROEs potentially deprived EI of millions of dollars in premiums that were owed after arbitrations.

I respectfully urge the Court to consider the consequences of so many EI claimants being issued **factually false** ROEs. **Certified** documents claiming 'Suspension or Dismissal' for Misconduct when we were all on **Approved** 'Admin Leaves'.

Since ROEs Codes are the basis for deciding EI Claims, widespread, knowingly-false, **criminally-certified** documents impact fairness, legal compliance, and the integrity of the EI system. This cannot be accepted, validated, or turned into precedent.

§3.2: SC/CEIC: BE-Memo *(2021-10)*

Time: 5:45 (8 min [7:10]) | (Words: 759 / 590)

Problem #5 – Error #12 ***(Legal Issues with* Internal *BE-Memo* Overruling *EI Act)***

From: Factum §O – Internal 'BE-Memo' Usurps Law ***(adapted from: ¶304-321 & FN: 245-249)***

1 Points at Issue – 1 Grounds of Review – 4 Vavilov Principles

[Vavilov ¶95]: "reviewing courts must keep in mind the principle that the **exercise of public power must be justified, intelligible and transparent** []. It would therefore be **unacceptable** for an ADM to provide an affected party formal reasons that fail to justify its decision, but nevertheless **expect that its decision would be upheld on the basis of internal records that were not available to that party**."

On October 19, 2021, Employment Canada *(ESDC)* issued an ***internal policy*** named *"EI Eligibility & Refusal to Comply with Mandatory Vaccination Policy"* – known as the **BE-Memo** *(2021-10)*. It changed how they processed claims – but **only** for workers in mandate situations.

It introduced new definitions and fact-finding procedures that **did not exist in the EI Act**, including different interpretations of "voluntary leaving," "suspension," "leave of absence," and other key terms, plus new criteria for assessing exemptions.

It began with an admission: ***"Th[is] memorandum is not linked to any legislative or regulatory amendments."***

If it has no legal basis, by what authority did it change definitions, processes, and requirements set by Parliament?

An internal memo cannot lawfully rewrite the Act, regulations, or case law.

For that reason, the BE-Memo – and all decisions based on it – rest on legally invalid foundations.

This raises four critical questions: *(1)* Who authored it? *(2)* Who approved its use? *(3)* Why was it kept internal and unpublished? and *(4)* Why was it **only** applied to one subset of claimants?

These are core questions of **legality, transparency, and procedural fairness**.

1. The BE-Memo Redefined Fact-Finding

It provided a new definition of 'complete fact-finding' that **removed employment-contract analysis** from the process. Contracts are the legal basis of all employment relationships, and are core to determining eligibility.

2. It Conflated Approved Administrative Leaves with Disciplinary Suspensions

During the pandemic, many employers made the deliberate choice to put unvaccinated workers on **Approved Leave**, instead of disciplinary suspensions, or firing them. They did this for business and legal reasons.

There was **no lawful basis** to reclassify Approved Leaves as Suspensions. EI eligibility must be based on **actual employment status**, not labels defined by an internal memo.

3. It Reversed the Benefit of the Doubt

The BE-Memo also introduced the concept of "exceptional circumstances" that placed an undefined burden of proof on claimants. It subtly shifted the **Benefit of Doubt** to the employer, contrary to **EI Act §49(2)**, which requires that **claimants** receive it where evidence is balanced. This is not a small change. It reverses a core legal protection.

Conclusion: The BE-Memo unlawfully changed the processes governing EI adjudication. It removed contract analysis, invented new definitions, overrode the 'Just Cause' factors, and effectively replaced the EI Act with an internal, unpublished policy applied **only** to selected "mandatory vaccination non-compliant" claimants.

This is procedurally unfair under **§18.1(4)(b)**. It also violates *Vavilov*'s prohibition against **internal records** *(¶95)* – and its **transparency, consistency, and lawful decision-making requirements**.

Because EI staff were **bound** by **undisclosed internal rules** – and because the BE-Memo displaced Parliament's authority – we respectfully ask this Court to **quash the Decision as unreasonable**.

Finally, we submit that the Court should provide guidance on the use of undisclosed internal policies. Any internal rule that determinatively affects a claimant's benefits **must** be disclosed publicly – without requiring ATIP litigation – so its legality can be verified. This is essential to coherent reasoning and meaningful justification under *Vavilov*.

§3.3: CEIC: Changing Facts *(LOA ≠ Suspension)*

Time: 3:15 (5 min [4:45]) | (Words: 603 / 398)

Problem #4 – Error #10 ***(EI Commission Potentially Changing Facts of the Case)***

From: Factum §M – (Side-Bar): CEIC: Changing Facts ***(adapted from: ¶270-278 & FN: 219-227)***

There are serious legal problems with using terms like "Suspension" and "Misconduct" in ways that don't reflect the factual record or the reality of my employment status. When the CEIC substituted *them* for the words used by witnesses and documents, that arguably amounted to **changing the facts** in the case.

The only Purolator exec who *{[emphasise: air quotes]}* "confirmed" I was "Dismissed" never once used the terms "Suspended" or "Misconduct." No Purolator employee used them and when EI Agents did, they were corrected four times.

My internal Service Canada Claims File was coded "LOA – Leave of Absence" from the outset – and remained that way until I appealed to the Tribunal. Only when the Commission's decision and underlying evidence was to be reviewed, did they suddenly *{[emphasise: air quotes]}* "discover" their "clerical error" and retroactively change my status from "Leave of Absence" to "Suspended due to Misconduct." This was the **first time** the term "Suspended" was used in their record.

Changing my separation type from "Leave" *(EIA §30)* – which **requires** Just Cause Analysis – to "Suspended" *(EIA §31)* changes the applicable section of the Act. They introduced new, unused terms that formed the basis for an adverse finding.

The CEIC's Record contains **18 statements from four sources** confirming I was on **Approved Admin Leave**, *all* contradicting their later finding of "Suspended for Misconduct." This new [emphasise air quotes] "fact" was "discovered" only ***after*** I filed an appeal with the Tribunal – appearing ***ex post facto*** as a supposed [emphasise air quotes] "clerical error."

Worse, they attempted to justify this by [mis]citing a case: [saying that: quote] "an error which does not cause prejudice is not fatal to the Decision under Appeal." *(Desrosiers: #A-128-89)* This proves that **errors causing prejudice *are* fatal**.

Characterizing this conduct as mere "clerical error" is inappropriate. That involves harmless mistakes that do not alter the substance of a decision. By contrast, **revising a final decision after issuance, by substituting new findings with different legal analysis that invokes different sections in the act** is ***not*** a 'clerical' correction. It is a retroactive change to the decision's foundation. No reasonable administrative framework should permit this to stand.

Ignoring this is not merely **unreasonable**. It should be examined whether they **changed material facts** by doing this.

And this problem was **not** isolated to **my** file. I can prove it happened to others. It was part of a broader, systemic pattern.

§3.4: SST: Atrium Templates *(Overview & History)*

Time: 6:45 (10 min [10:11]) | (Words: 1166 / 752)

Problem #7 – Error #14 *(Legal Issues with using* Pre-Written *Decision Templates)*

From: Factum § Q-R – Atrium Templates Control Decisions *(adapted from: ¶346-361 & FN: 261-271)*

Points at Issue *(N/A)* – 1 Grounds of Review – Vavilov Principles *(All of Them)*

The Tribunal's case-management platform *('Atrium')* 'builds' decisions using ***pre-written*** templates containing preselected arguments, footnotes, and case-law excerpts. By inserting "backbone" paragraphs that "often set out the legal tests" **in advance**, Atrium risks shaping – if not predetermining – the Decision's outcome.

Decisions issued during the pandemic prove that Atrium's library includes **conflicting templates**, that embed contradictory reasoning. They enable Members to *"reverse-engineer desired outcomes,"* which our Supreme Court has prohibited.

I'll read three statements about templates from the Tribunal's published Reports & Manuals. They raise serious concerns about how they influence decision-making.

1. **Report on the Tribunal's Activities & Accomplishments (2016-2017)** *(Record, p.958)*

   "…The Tribunal launched five new releases of its Case Management System ['Atrium']. Tribunal capacity was 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."

   Issues: Who approved this preselection of case law? Was it reviewable? Who authored the KVP Templates? Who can insert them? And who decides when they apply – or if they can be overridden?

2. **Evaluation of How Easy It Is to Read SST Decisions (2024)** *(Record, p.1053 [top] & p.1054 [Impact ¶4])*

> "…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**." *(Note: The #1 Training Support Request was for 'Decision Templates')*

Issues: What does it mean for "training recommendations" to be *"inconsistent with Templates or internal messaging?"* When there was conflict, what took precedence? Is this "internal messaging" published, binding, or reviewable? If not, it's like the BE-Memo: a parallel, undisclosed system managing adjudication.

3. **Style Guide: Social Security Tribunal of Canada Decisions** *(Authorities, p.1821 [Part 1] & p.1845 [top])*

[Part 5: Formatting]: "Before you start writing your Decision, **make sure you use** the most recent Decision Template. [] **Using Atrium Templates has benefits**:

> • **They often set out the legal tests.** Avoid using an old Decision as a Template."

In 'Part 1: Writing Strategies,' Members are further told: "A **solid structure** will serve as the **backbone** for your Decision. [] The most recent Decision Templates in Atrium give you solid examples."

Issues: TMs are **instructed** to use Atrium templates. Pre-selecting legal tests predetermines the analytical path, shapes the evidentiary framing & analysis, and influences outcomes.

When TMs encounter prewritten Templates that are unhelpful, inapplicable, or legally incorrect, they are forced into one of three bad choices: **justify, remove, or comply**.

A. **Justify** departing from the pre-inserted arguments and jurisprudence, risking findings of [quote] "inconsistency," "distorted analysis," or "incorrect application."

(2023 SST 1032: CEIC v. AL: ¶45): "Despite its flaws, the GD's Decision contains numerous statements of the Law that are, on the face of it, correct. *([i.e. 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."

This illustrates the problem: TMs must either conform to inserted text, or risk being overturned. How do TMs fix it without compromising their decision?

B. **Remove** the prewritten content and risk being overturned – and its consequences.

C. **Comply** with the prewritten content, even when they recognize that doing so leads to incorrect or unreasonable outcomes – that could become precedent later – ones difficult to correct.

Pressing questions arise:

- What happens when Templates 'set out' the wrong legal test?
- Who is responsible when Templates contradict precedent?
- What happens when legal or logic errors are embedded?

- Can TMs override these templates without repercussion?
- And how can claimants receive fair, individualised, lawful adjudication when prewritten content plays the 'backbone' role in the decision-making process?

These concerns go to the heart of **procedural fairness** and **administrative independence**.

Templates shape the structure, legal framing, and interpretation in decisions. They influence how Members interpret laws, apply legal tests, and construct their reasoning. The presence of **conflicting Templates** containing **erroneous or incompatible legal principles** only deepens the **fairness concerns**. *(see: §3.9: KVP Templates)*

It is essential that the development, management, and use of these Templates be subject to public disclosure and judicial scrutiny. TMs must retain genuine independence to identify and apply the appropriate legal tests themselves, free from prewritten reasons, mandatory citations, or implicit policy directives embedded in their case-management system.

§3.5: SST: Precent Error *(re. EI Funding Model)*

Time: 7:20 (9 min [8:22]) | (Words: 925 / 783)

Problem #6 – Error #13 ***(EI Benefits Denied using Erroneous 'Tax-Payer Impact' Templates [~160 Times])***

From: Factum §P – EI Denied on 'Tax-Payer' Grounds ***(adapted from: ¶322-345 & FN: 250-260)***

2 Points at Issue – 3 Grounds of Review – 3 Vavilov Principles

> **[Vavilov ¶133-135]:** "Individuals are entitled to *greater* procedural protection when the Decision in question involves the potential for *significant personal impact* [] includ[ing] Decisions with consequences that *threaten* an individual's [] **Livelihood**. [] Where the consequences [are] *particularly severe or harsh*, a failure to grapple with [them] may well be **unreasonable**. The corollary to [their extraordinary degree of] power is a *heightened responsibility* [] to **ensure** that their reasons demonstrate that [] those consequences are **justified** in light of the **facts *and* law**."

Two decades ago, a judicial misunderstanding about EI funding overrode Parliament's will in the EI Act. Although originally ***dicta***, the error 'migrated' into ***ratio*** over time. That mistake now lives as binding precedent – despite being textually indefensible under the Act.

During the pandemic, it was templatized and mass-cited to deny benefits unjustly. In many cases, employers had *broken laws* or *violated their contracts*, yet this precedent was invoked to **excuse employer wrongdoing** while decision-makers ignored mandatory Just-Cause fact-finding. This was systemic.

E.I. Funding Model in Case Law

Both Tribunal Members denied my EI claim on the ground that [quote] *"it is not the responsibility of Canadian Taxpayers to assume the cost of wrongful conduct by an Employer by way of EI Benefits,"* as though I must personally bear that cost [quote] *"rather than having Taxpayers pay for the Employer's actions through EI Benefits."*

This reasoning is legally *and* factually wrong. It originated as an error in ***McNamara** [¶23] (in 2007)*, was repeated in ***Paradis** [¶34]* and ***Dubeau** [¶36]* and was later used to deny benefits in 160 pandemic-era cases.

After [GD] TM Usprich relied on this rationale, I spent **six pages** of my [AD] written arguments documenting the legislative history of the EI Act, including its funding model. I cited the Act, Bill C-21, and Hansards, all proving that taxpayer funding ended in 1990. [AD] TM Lafontaine ignored this evidence **and *repeated* the same** "taxpayer" **error.**

I *do* agree that **taxpayers** should *not* pay for **<u>employers</u>' unlawful conduct**. And they don't. EI benefits are funded ***only*** by the premiums remitted every pay period.

<u>EI Funding Model under the Act</u>

The EI Act §65–70 govern Premiums, and §70.2–80.1 govern the EI Operating Account *(EIOA)*. The EI program has been required to operate on a **revenue-neutral** basis **without taxpayer funding** since 1990. Surpluses reduce future premium rates; shortfalls increase them. Taxpayers do not – and cannot – subsidise EI benefits, by law.

Annual financial reports submitted to Parliament prove that the program meets its seven-year break-even requirement.

The structure of EI is straightforward: workers and employers *both* pay premiums so that, ***if*** the worker has **Just Cause**, this prepaid insurance is returned for up to 45 weeks. But, when there is **no** Just Cause, all premiums paid by both parties remain with the program for others.

This makes Just Cause the **keystone of entitlement** – and explains why Parliament fought so hard to codify it. Yet because a well-meaning judge misunderstood EI's funding model, erroneous ***obiter dicta*** evolved into *so-called* binding precedent during the pandemic, creating a perverse, unjust outcome:

> **I pay for me + they pay for me. If I have Just Cause, some is returned to me.**
> **But: if *they* break the law, everything we both paid *for me* is forfeited – to [quote] "save taxpayers" <u>$0</u>.**

Under this error, law-abiding workers lose their job, income, and now EI benefits – even when Just Cause exists – while the law-breaking employers incur no added cost. And this is justified on the false premise that "taxpayers" would be unfairly burdened **by paying nothing**.

This directly contravenes said *Vavilov* requirements:

1. My livelihood was plainly threatened; Purolator's unlawful lock-outs eliminated it entirely.
2. Both Members failed to "grapple" with the severe consequences of their decision or justify them through intelligible reasons.
3. Reliance on this erroneous precedent undermined both the facts and the law:

   • **Factually**, it *assumed* a taxpayer burden disproven by the Act itself.
   • **Legally**, it permitted them to avoid their mandatory Just-Cause fact-finding duties, thereby excusing Purolator's unlawful conduct.

This flawed precedent shields lawbreaking employers while depriving not-at-fault workers of their insurance. These are not abstract harms; they destroy the integrity of Canada's national social-insurance program.

This is the **opposite** of **fairness and justice**. It is **unreasonable**. 20 years of inadvertently repeating this error – even out of sincere concern for public funds – cannot justify perpetuating a mistake that contradicts the Act and harms Canadians.

§3.6: SST: Historical Cases *(Misuse of Process)*

Time: 4:00 (5 min [5:07]) | (Words: 525 / 426)

Problem #3 – Error #6 ***(Mis-Cited Cases, Templates & Potential Abuse of Process)***

From: Factum §H – Historical Jurisprudence ***(adapted from: ¶179-195 & FN: 135-146)***

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

There are five federal decisions used to dismiss 'Mandate Misconduct' appeals *en masse*. They are paired with the flawed "4-Part Misconduct Test" *(discussed next)* to justify the claim that EI decision-makers cannot *"consider how the employer behaved," "focus on the employer's conduct,"* or *"examine whether they breached a term in the contract"* because doing so is said to be *ultra vires* in misconduct situations. They are:

- **Bellavance** [331 Pandemic Citations]
- **Mishibinijima** [849 Pandemic Citations]
- **McNamara** [593 Citations]
- **Lemire** [110 Citations]
- **Paradis** [610 Citations]

Together, these authorities have been cited **2,500 times** in SST mandate decisions. **And they're wrong.**

These cases involve claimants who were **self-admittedly guilty of real misconduct** because they **breached their contracts** – ***and*** **broke the law**. The Courts *specifically* reached misconduct findings **because of *this*** – so they **cannot** apply to us.

Problem: ***If*** assessing contracts was truly *ultra vires*, *(as now claimed)*, **none** of these findings could have been made.

I did **not** breach my employment contract – nor was that allegation ever made. Relying on cases where ***other*** claimants **admittedly** broke their contracts to justify denying my claim now is an error in law, for me – and for thousands of others…

These authorities are [mis]cited to justify **refusing** to conduct required Fact-Finding. When claimants **admit to misconduct**, no further inquiry is needed. But the **opposite** is true when misconduct is **denied**. It would be **absurd** – and improper – for a prosecutor to respond to a "not guilty" plea by citing unrelated cases in which other defendants pled guilty **as evidence** of the present accused's guilt. Yet this is precisely what occurs here.

Where EI claimants **admit** misconduct *(broken contracts)*, there is no need to investigate Just Cause. So *"considering how the employer behaved"* ***is*** irrelevant – in those cases. But where claimants **deny** misconduct – as I did – the EI Act **requires** thorough Fact-Finding. This requirement flows from statute, policy, and basic fairness. Members cannot avoid it merely because an employer ***alleges*** misconduct, or because some **unrelated claimants** in unrelated cases admitted ***their*** **guilt** *many years ago*. Therefore, citing these five cases as so-called "precedent" is not only **unjust** – it is legally indefensible.

Employers **cannot** *unilaterally impose* **unlawful** corporate policies – full stop. It is unjust to allow adjudicators to divorce their citations from their legal context **to justify lawbreaking**. **This cannot be permitted to remain precedent.** *(And like* ***changing facts****, should be* ***sanctionable****…)*

§3.7: SST: Internal Logic & Consistency

Time: 5:00 (6 min [5:30]) | (Words: 679 / 620) [5min]

Problem #2 – Error #5 ***(Legal Issues with Misconduct Test: Logical Fallacies)***

From: Factum §G – Internal Logic & [in]Consistency ***(adapted from: ¶134-163 & FN: 126-129)***

6 Points at Issue – 5 Grounds of Review – 6 Vavilov Principles

[Vavilov ¶102-104]: *"To be **reasonable**, a Decision must be based on reasoning that is* both ***rational*** and ***logical*** *[…] 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**."*

After examining the decisions wrongly invoked to dismiss our cases, I now turn to ***how*** this process engineering operates:

> The principal tool used to deny EI claims in pandemic-mandate cases is the *composite* **4-Part Misconduct Test**.
> It asks whether the claimant: ① Willfully ② Ignored or Violated ③ a Clear Policy ④ Knowing the Consequences

This test rests on the faulty ***assumption*** that policy non-compliance is *inherently* "misconduct" – **without** any investigation. In the five mass-cited cases, that label ***was*** justified. But when the underlying conduct is **lawful**, **contractual *&*** constitutionally protected, applying that label becomes **absurd**.

It is **circular reasoning** to conclude that *"we cannot consider your employer's unlawful actions **because** **you** committed misconduct,"* when the ***only*** basis for the ***alleged*** misconduct is **my employer's unlawful actions**. This logic lets employers insulate their wrongdoing from scrutiny by falsely coding "M" on an ROE. This *automagically* triggers an irrebuttable claim that reviewing the employer's conduct is ***always ultra vires*** solely because misconduct has been **asserted *(not proven)***.

This framework effectively **determines** misconduct **based on** the employer's *unlawful actions*, while simultaneously using that ***alleged*** "misconduct" to avoid examining those unlawful actions. This makes **Justice *logically* impossible**: the premise *prevents* them from fulfilling their duty to investigate whether the *"employer acted contrary to law."*

To illustrate this flaw, test ***any* unlawful** policy. *(Ex: an employer with productivity problems implements a policy requiring employees to work **24-hour-straight-shifts without breaks**, contrary to labour law. When workers reasonably refuse to comply, the employer suspends them with ROEs coded "M" for Misconduct.)*

Under this current approach, those workers *still* satisfy all four parts of the *composite* Misconduct Test:

> [they] ① Willfully ② Violated ③ a Clear Policy ④ Knowing the Consequences

How could any worker qualify for EI? Any refusal to comply with a policy – lawful or not – becomes automatic misconduct. Any legitimate appeals are dismissed with the blanket assertion: *"the employer's conduct is not a relevant consideration."*

This cannot be "misconduct" in any meaningful legal sense. **Note:** the 48-hour work-week limitation *comes from the same law* that prohibits using Lock-Outs to compel worker compliance with *new* policies and employment conditions. *(Canada Labour Code: §169-173 vs. §88-89)*

Without ***first*** determining whether the underlying policy is **lawful & contractual**, this Test provides no meaningful information about 'misconduct'. This form evaluates only **policy compliance**, not **legality**. Applying it mechanically to ***unlawful*** policies produces **illogical *and* absurd** results.

It contains **two** inherent logical fallacies: ***'begging the question'*** and **special pleading**. The reasoning proceeds as follows:

A. The employer terminates a worker, *alleging* misconduct.
B. In 'misconduct' cases, the Test is applied. *(but now, the employer's conduct is ignored)*
C. The Test is *always* satisfied when a worker refuses an employer policy, lawful or not.
Therefore: the worker is *always* [quote] *"guilty"* of misconduct and denied EI benefits.

This is faulty reasoning. The employer's **allegation** creates *both* the premise *and* the **exemption** from scrutiny. This cannot stand. It fails the basic logic, fairness, and law-abiding requirements mandated by *Vavilov* & the EI Act.

More broadly, the notional 'Misconduct Test' requires modification:

1. To comply with the **mandatory fact-finding** requirements of **EIA §29(c)**; and

2. To explicitly account for circumstances where the underlying employer policy is **unlawful**.

§3.8: SST: Bad Case Law *(Pandemic Era)*

Time: 2:15 (3 min [2:10]) | (Words: 200 / 201)

Problem #3 – Error #7 *(Legal Issues with COVID-19-specific Case Law)*

From: Factum §I-J – Current Jurisprudence & Logic Errors *(adapted from: ¶192-211 & FN: 140-150)*

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

Since post-COVID case law was cited in both my decisions, I must address it briefly. I explained in my AD written arguments why *Cecchetto (2023 FC 102)* does **not** apply to *my* case. TM Lafontaine did not engage with any of them.

That *Cecchetto* holding is clear: he was denied Leave to Appeal because he *"did not raise an arguable case per the DESDA."* My case identified numerous errors, each supported by laws and jurisprudence.

Citing a decision because it mentions "COVID vaccination policies" is **not** a *reasonable* basis to uphold it on review.

However, *Cecchetto's* broader reliance is concerning: as of 2025, it was cited **over 400 times** to deny EI claimants – often on their merits – despite *his* federal JR ***not*** being decided on its merits.

Instead of grappling with *my* arguments that distinguish its applicability, Lafontaine cited five more post-*Cecchetto* cases.

Milovac *(2023 FC 1120)*, **Kuk** *(2023 FC 1134)*, **Matti** *(2023 FC 1527)*, **Davidson** *(2023 FC 1555)*, and **Francis** *(2023 FCA 217)*.

Four of them **explicitly depend on** *Cecchetto*, which is **circular reasoning**. Once I prove that "Case A" (*Cecchetto*) does not apply, it is **illogical** to respond with "Cases B–E," when they *all rely on* "Cecchetto" themselves.

§3.9: SST: Specific Templates *(KVP)*

Time: 5:15 (Time: 4 min) | (Words: 402 / 520)

Problem #7 – Error #14 ***(Legal Issues with*** **specific Pre-Written** ***Decision Templates [e.g. KVP])***

From: Factum §Q-R – Atrium Decision Templates ***(adapted from: ¶346-361 & FN: 261-271)***

TMs **selectively** invoked KVP to support blanket denials. Many claimants argued that their employer's policies broke their contracts. Pre-pandemic, this was strong: many historical decisions analyzed contract clauses for violations.

KVP first appeared in CH v. CEIC *(2022 SST 1337)*, where the claimant argued the policy was unreasonable because it failed the KVP test. The TM rejected this, stating that *"this legal test was developed in the labour relations context and is not applicable in the interpretation of the EI Act."*

86 days later, KVP was cited **by the TM** *in favour* of the employer. This time, it included a detailed, templated explanation – multiple paragraphs, case-law citations, and footnotes – asserting that KVP justified the unilateral policy imposition:

(2023 SST 31: SS v. CEIC, ¶83) "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 Supreme Court of Canada has endorsed the KVP Test."*

Across mandate-related cases, four recurring KVP templates appear:

- Two invoked by Members to justify unilateral policy impositions; and
- Two used to rebut claimants who argued their policy breached their CBA.

All four come with identical citations and footnotes. Some Members change a few words to "customize" them, but the underlying structure remains the same.

These prewritten templates contain significant legal problems themselves:

1. KVP does **not** authorize *"any [unilateral] policy, even where the union disagrees"* – it imposes strict constraints.
2. By invoking KVP without request, the TM elevates it to persuasive authority – contradicting their earlier finding that it is *ultra vires* for EI adjudication.
3. When TMs cite Supreme Court & labour-arbitration cases, it undermines the argument that KVP is irrelevant.
4. These same paragraphs reappear, verbatim, in many other decisions, confirming their template-driven origin.

KVP appears in **24** mandate-misconduct decisions. All 24 times, benefits were denied – often for contradictory reasons. When claimants argue that their employer unilaterally imposed a policy, a template is used asserting that KVP permits this. But when claimants argue that KVP *invalidates* unilateral policies that **violate the contract**, a different template is deployed, asserting that KVP is *ultra vires* and cannot be considered.

This inconsistent, outcome-driven use of KVP – invoked when it supports denial but dismissed when it supports eligibility – is *"reverse-engineering desired outcomes"* which violates *Vavilov*. This **unfairness** undermines the independence and integrity of EI adjudication.

[Vavilov ¶121] “The decision maker’s task is to interpret the contested provision in a manner **consistent with the text, context and purpose**, applying insight into the statutory scheme at issue. [They] **cannot** adopt an interpretation [they] know to be inferior – albeit plausible – merely because [it] appears to be available and [] expedient. The[ir] responsibility is to **discern meaning and legislative intent**, ***not*** to **‘reverse-engineer’ a desired outcome**.”

Template-driven reasoning departs from these principles. Decisions produced through Atrium cannot meet the standard of justification, transparency, and intelligibility required by *Vavilov*.

§3.10: SST: Template Problems *(Atrium)*

Time: 3:30 (Time: 3 min) | (Words: 241 / 274)

Problem #7 – Error #15 ***(Legal Issues with using* Pre-Written *Decision Templates [in General])***

From: Factum §Q-R – Atrium Decision Templates ***(adapted from: ¶346-361 & FN: 261-271)***

There are four distinct problems with the Atrium decision-template system. All four affected my case:

1. **Imposed Legal Constraints:** At my GD hearing, TM Usprich limited the scope of my testimony to the “Misconduct Test” ***only – before*** I was even sworn in. This premature restriction occurred before any fact-finding took place. Was this her own independent choice, or was it dictated by the template she was using?

2. **Template Accuracy:** My factum identifies multiple legal errors appearing verbatim across numerous EI decisions, indicating they originate from shared templates rather than independent reasoning. Templates perpetuate them.

3. **Improper Application:** Heavy reliance on the same excerpts – repeated across hundreds of mandate decisions – shows that paragraphs, citations, and footnotes are being inserted from templates rather individually written. This causes key facts and arguments to remain unaddressed in the decisions.

4. **Reverse-Engineering:** The selective and inconsistent use of KVP-related templates proves that templates are being used to predetermine outcomes, contrary to *Vavilov*’s prohibition on “reverse-engineering desired results.”

In many cases, this templated approach resulted in key facts and pleadings being entirely omitted from the decisions. This is **unreasonable** – as is any **internal system** that shapes decision-making in non-transparent ways.

Atrium inserts prefabricated content – with *some* templates provably containing legal errors. Pre-selecting the legal tests inherently influences the outcome. This violates **procedural fairness** under **§18.1(4)(b)**.

Without full public disclosure of how Atrium functions – and the ability to subject template-management decisions to judicial review – this system also violates the *Vavilov* “internal records” reasonableness factor *(¶95)*.

§4: Purolator-Specific

§4.1: Management Inconsistency

Time: 3:45 (Time: 3 min) | (Words: 321 / 388)

Problem #4 – Error #8 ***(Purolator Management Problems)***

From: Factum §K – My Case: Purolator Management ***(adapted from: ¶213-236 & FN: 151-180)***

7 Points at Issue – 3 Grounds of Review – 2 Vavilov Principles

The record contains key facts about Purolator Management's decisions that prove the unlawfulness of their policy – and the unreasonableness of the Tribunal's findings.

1. Two Direct Admissions by Purolator Leadership

First, in September 2021, their CHRO publicly stated on their Workplace platform that management had "absolutely zero intent to make vaccines mandatory... we would never do that **& couldn't even if we wanted to**."

This proves *they knew* they **had no legal authority** to create **new** *conditions of employment* without union consent.

Second, in November 2022, their National Labour Relations Director issued written "final warnings" to all non-compliant employees, calling vaccination a **"condition of employment"** while acknowledging again that workers remained on **"authorized admin leave."** These admissions were each repeated twice – and issued despite active grievances and arbitration.

2. Internal Inconsistency in Enforcement

In the final four months before we were **locked-out**, local depot management contradicted Purolator's Senior Leadership Team – and their written policy – several times, by allowing us to continue working when the policy banned us from the property.

This inconsistency makes the policy **unenforceable** under labour-relations principles – and proves depot managers understood the policy had no legal basis.

Purolator could not impose unlawful policies, nor create new conditions of employment without prior union consent. Senior leadership admitted as much in writing. Local management refused to enforce the policy in practice – and actively facilitated non-compliance.

3. Ever-Changing Deadlines: Evidence of Arbitrary Enforcement

I listed **five different attestation deadlines**, **four testing-requirement changes**, and **four different immunization deadlines** before unvaccinated staff were allowed to return to work. We also **missed five deadlines** without any policy enforcement through New Year 2022. Instead, HQ kept revising the policy. Nothing happened until after the Christmas rush was over – **on the sixth deadline**.

A simple analogy makes the point:

Imagine I borrowed money promising to repay you on Jan 1. When I failed to pay, I changed it to Feb 1.

After moving the repayment date 5 times, I was sued for the debt. What would a judge say if I argued that I was still 'compliant' because I "hadn't yet missed the newest date?" Would that be deemed 'compliant' & 'consistent'‽

§4.2: Errors at Hearing *(SST-AD: TM Pierre Lafontaine)*

Time: 2:30   (Time: 2 min) | (Words: 177 / 210)

Problem #4 – Error #8 ***(Errors at SST Hearing under Judicial Review)***

From: Factum §K – My Case: Purolator Management ***(adapted from: ¶233-236 & FN: 175-180)***

7 Points at Issue – 3 Grounds of Review – 2 Vavilov Principles

1. Unreasonable Definition of 'Consistent'

TM Lafontaine adopted a definition of "consistency" that cannot stand. Changing policy deadlines five times – often after breaking previous ones – is not "consistent." It is arbitrary and unreasonable.

2. Overbroad Definition of 'New Evidence'

TM Lafontaine struck arguments as "new evidence" despite being logical inferences drawn from numbers, documents, and facts already in the record. This is basic reasoning. It was especially problematic given that earlier jurisdictional errors prevented these points from being raised sooner.

3. Elusive & Erroneous Definition of 'Misconduct'

Both TMs relied on a faulty definition of misconduct that produced several absurd and unreasonable conclusions, contrary to statute and precedent.

4. Conflicting Authorities: What are Adjudicators 'Bound By'?

TMs repeatedly claimed to be "bound" by authorities that were either inapplicable or contradicted by the EI Act.

5. Unresolved Jurisdictional Issues ***(KVP, CBA & Policy Admissibility)***

From the beginning, I raised clear legal questions about my CBA, their policy, and KVP. TM Lafontaine even acknowledged them as "interesting legal questions," yet they were never answered – another jurisdictional failure.

§5: Closing Statements

(Time: 4 min) | (Words: 576 / 568)

Thank you, Justices, for permitting me to place the major errors in this matter into the record. Your willingness to allow me to present a summary of my core arguments has helped mitigate the essential fairness concerns in this proceeding.

This case contains **numerous errors**: fifteen across seven categories. Many are systemic, affecting not just my claim but thousands of others, which is why this matter is of **national public importance**.

I fully recognize the extraordinary caseload pressures and political context in which these decisions were made. And despite any firm language in my submissions, I want to be clear: **I am not blaming individual decision-makers.** The errors were **engineered –** systemic, structural, and inter-agency in nature **–** not personal.

My only objective is **true justice**. When errors of this magnitude occur, the law provides a proper remedy: **Employment Insurance benefits** for **those who possess Just Cause**. More importantly, correcting these errors will restore fairness, consistency, and confidence across the EI system.

In closing, I respectfully urge the Court to carefully consider the gravity of the issues raised in these submissions. Dismissing this appeal would not simply deny me the EI benefits to which I was lawfully entitled – and paid into over my 30-year career. It would risk opening Pandora's Box – with profound consequences that may be exceedingly difficult to reverse.

A dismissal would do more than overlook a series of serious errors – it would effectively validate them. It would transform them into binding precedent for years to come.

Such an outcome would, in effect, approve the use of undisclosed internal memoranda that operate as private, discriminatory rules overriding Acts of Parliament. *(I use 'discriminatory' in the dictionary sense: these policies applied only to a definable subset of claimants; no improper motive is alleged.)* It would authorize internal directives that led decision-makers to break their Home Statute *(the EI Act)*. It would affirm processes that alter facts, disregard established court procedures, and replace mandatory legal tests with selective sentence fragments lifted out of proper context under the guise of 'precedent'.

It would also endorse embedding these errors into *prewritten*, legally inconsistent 'decision templates' that replaced individualized adjudication and automatically denied benefits. It would bind Members to processes that are procedurally unfair – processes that effectively wield jurisdiction to prevent consideration of relevant facts, binding employment contracts, and statutory provisions. The KVP-style templates alone demonstrate the extent of this problem.

The recent pandemic harmed millions of Canadians in countless ways. Hundreds of thousands were denied EI in numbers far exceeding historical norms. Numerous Tribunal Applicants were affected by the list of injustices described here. For many, the consequences were devastating: loss of livelihood, reputational damage, mental and physical health impacts, marital breakdown, impacts on children, home foreclosures, and more. These are not abstract harms. They are lived realities for many productive citizens.

I respectfully ask the Court to fully consider the national public importance and the far-reaching implications of the precedent that will be set in this case.

Only this Court possesses the constitutional and legal authority to correct these injustices and to provide justice for those accused of "EI Misconduct" under engineered processes now shown to be fundamentally flawed.

Thank you for your patience, your attention, and your thoughtful consideration of the full merits of this judicial review.

I now reserve the remainder of my time for my Reply to the AG, and to answer any questions the Court may have.