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

FEDERAL COURT OF APPEAL

BETWEEN:

(EI Claimant)

Applicant

AND

ATTORNEY GENERAL OF CANADA

Respondent

Rule 369.2(3): Reply Brief *[re:]*
Rule 397: Reconsideration Motion

Submitted: 2026-04-##

(EI Claimant)
(Contact Info Redacted)

RULE 369.2(3): REPLY BRIEF *(RE:)*

RULE 397: RECONSIDERATION MOTION

Case History

1. The Attorney General's Responding Motion relies on citing Case History while overlooking that those same citations *support* this Reconsideration Application. Although their cited excerpts accurately quote portions of the Record, the conclusions drawn from them are legally and factually incorrect – precisely the error I have consistently identified since the outset of my SST proceedings in 2022.

a. [Factum ¶1]: The CEIC & SST "considered the record, applied the applicable laws, and reached a decision that is justified, transparent, and intelligible."

Reality: They did ***not*** "appl[y] the applicable law." They **omitted** *the primary* legal analysis ***required*** by the Act. This was **proven** by my **Rizzo Analysis** – arguments which *every* ADM has *refused* to engage. **This is *not* Justified.**

Reality: The entire chain of pandemic-era Decisions is based upon ESDC's BE-Memo *('21/10)* – an ***internal*** **policy** that led Service Canada & EI Commission ADMs to **override the Act**. **This is not Transparent.** *(Vav. ¶95)*

b. [¶4]: The SST GD 'determined' that "knowingly refus[ing] his employer's mandatory COVID-19 vaccination policy [] amounted to Misconduct under subsection 30(1) of the EI Act."

Reality: Under the EI Act §29(c), Employers "acting **Contrary to Law**" or *unilaterally* **'changing'** the Employment Contract **constitutes 'Just Cause'**, which ***grants*** **Benefits**. My Motion cites ***over*** **100 SST Decisions** where this analysis *was conducted* – including in Cases of ***alleged*** worker 'Misconduct'.

c. [¶5]: The SST AD 'upheld' that "deliberate[ly] breach[ing] the COVID-19 policy met the test for Misconduct." They cited *inter alia* "Bellavance & Mishibinijima" which I *already* distinguished from my Case.

Specifically, it "focused on *his* conduct, ***not* the employer**'s policy, and maintained that accommodation or rights claims belong in another forum."

Reality: I will *not* address arguments *already rejected* at my FCA Hearing, however, this 'Misconduct Test' *was* ***engineered*** during the pandemic to ***avoid* Just Cause Analysis**. While I am appealing the **process engineering** to our Supreme Court, *this* esteemed Court did ***not*** address my Just Cause arguments.

d. [¶6]: This FCA 'held' that my SST Decisions *were* "reasonable under Vavilov" because *[inter alia]* they "fit the evidentiary record, respected the Act, and aligned with recent cases [] including *Lance*, *Cecchetto*, *Kuk*, *Francis*, [et al]."

Reality: My Decisions did ***not*** "respect the Act" – their ADMs *all* ***refused*** *to conduct* ***statutorily-mandated*** 'Just Cause' legal analysis. *Merely repeating* this sentence **again** *does* ***not*** *make it true* – either factually or legally. *If* this statement is *wrong*, then their citation of it ***proves*** my Case.

Argumentation

2. Throughout its Responding Motion, the Attorney General effectively affirms the core of this case by its citations. Where a **statute has been *misapplied*** *[en masse] (i.e. when "Court[s] overlook relevant statutory provision[s]" [Miller ¶10])* – in ways that depart from long-standing pre-2020 practice *across hundreds of cases* – this is *exactly* what Rule 397 addresses. **Reconsideration *is* warranted** where the Court *"omits a matter that should have been dealt with"* – the *very deficiency* identified here.

a. [¶8]: "Rule 397 motions arise only in very narrow circumstances." The AG then *affirms* that this *specifically* includes circumstances where "the Court overlooked [] an issue that required determination."

Reality: It did. It did *not* address my *statutory arguments* about Just Cause.

b. [¶9]: "The Applicant is effectively asking the Court to re-adjudicate his case. Rule 397 is not meant to be an appeal in disguise, allowing the Applicant to re-argue an issue a second time in the hopes that the Court will change its mind."

Reality: I have *explicitly* **agreed** with this principle – while arguing that **I am *not* doing this**. *(Motion Affidavit: ¶3-4; Factum: ¶4-5, ¶57-58, cf. ¶13)*

c. [¶10]: The AG *cited* my request: "[The] Applicant said the Court *'overlooked or omitted'* a mandatory *'Rizzo/Just Cause'* analysis under §29-33 of the Act and failed to engage with his Hansard and case-usage materials."

Reality: This is true. "Overlook[ing a] relevant statutory provision" ***is*** grounds for *both* Reconsideration *and* **overturning Decisions**. The AG cited *both* the analysis name *('Just Cause')* and statutory sections *(§29-33)*. Meanwhile, my 'Rizzo Analysis' ***proves* Legislative Intent** by **citing *Parliamentary Hansards***. This is how *both* citizens *and* the Courts ***know*** what Parliament ***meant*** by the statutory language they successfully passed into law. This 'modern principle of statutory interpretation' was made *binding* SCC precedent in *Rizzo*.

Reconsideration

3. The same fundamental problem persists: each adjudicator simply cites the record *by assertion* and declines to engage with my submissions. No substantive legal reasons are provided, and my arguments remain unaddressed.

4. ***Where*** Decisions are 'manifestly wrong' – ***when*** "Court[s] *overlook* relevant statutory provision[s]" and "matter[s] that should have been dealt with [are] *omitted*" *(despite being conducted* hundreds of times *in the six years preceding the pandemic)* – **reasons must be provided**. Merely re-quoting statements from previous Decisions ***asserting*** that the 'Decision *is* reasonable' is ***not*** **sufficient** under Vavilov *(¶102)*.

[Vavilov ¶102]: To be **reasonable**, a Decision *must be* based on reasoning that is *both* **rational** *and* **logical**. [] The *reviewing* Court must be able to trace the ADM's reasoning *without* encountering any *fatal flaws in its overarching logic*. [] Reasons that *"simply repeat statutory language, summarize arguments made, and then state a peremptory conclusion"* will *rarely assist* [] in **understanding the *rationale*** *underlying Decisions* and *"are* ***no substitute*** *for statements of fact,* ***analysis****, inference, and* ***judgment****. (Irving [¶54], cit. Newfoundland Nurses [¶14]; Gonzalez [¶57-59])*

5. Refusing to provide reasons makes the purported rationale *impossible* to challenge. Repeating this error again would be an obvious attempt to avoid legal scrutiny. From the outset, neither the Respondents *nor* the Adjudicators have engaged with or refuted my written submissions about Just Cause. Instead, they rely on erroneous precedent and sidestep the arguments – even *after* those cases have been distinguished. **This is patently unreasonable.** It also *fails* to produce a Decision "that is **justified**, transparent, and intelligible" – which is ***required*** under Vavilov.

6. This repeated 'omission' is telling. This pattern persists because any attempt to *provide proper reasons* – to engage in *meaningful* legal analysis – would *confirm* my case, and many others like it. Continued failure to address these arguments suggests an awareness of that consequence. I respectfully ask this Court to disprove that inference and, in doing so, help restore Canadians' confidence in the legal system, which has been significantly strained since the onset of the pandemic.

7. **Why is *Just Cause* analysis – *and reasons* – omitted** when the statute *(EI Act)*, EI Policies *(DBEP)*, and long-standing adjudicative practice *(pre-2020)* all require it? **This omission is 'manifestly wrong'.** Reliance on *erroneous precedent* **cannot** cure this defect – especially when those cited prior cases suffered from the *same legal error (despite never being raised or addressed)*. **I am raising it now: *clearly & expressly*.**

8. Based on this Court's *own* Decision & Jurisprudence, **Reasons are *required***: 'Manifestly wrong' ***includes*** when "Court[s] overlook a relevant statutory provision."

(FCA Decision [¶5]: 2002 FCA 370: Miller [¶10] & 2022 FCA 190: Feeney [¶16])

9. I respectfully ask this Court to **explain why** *statutorily mandated analysis* has been *refused wholesale* – but *only* for a clearly defined subset of cases – *despite* that same analysis having been conducted *hundreds of times* prior to the pandemic. **Please provide reasons** that can be assessed for "justification & intelligibility" under Vavilov.

Thank you for your time and attention to this matter of *National Public Importance*.

Respectfully Submitted,

On: 2026-04-##

~ (EI Claimant)