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F I L E D	FEDERAL COURT COUR FÉDÉRALE  July 13, 2023 13 juillet 2023
Justin Wong	
TOR	1

**FORM 301- Rule 301****NOTICE OF APPLICATION**

Court File No. \_\_\_\_\_

(Court seal)

**FEDERAL COURT**

BETWEEN:

KERRY MAYHEAD

Applicant

AND:

Canada Employment Insurance and

The ATTORNEY GENERAL OF CANADA

Respondents

APPLICATION UNDER sections 18 and 18.1, 18.3(1), 18.4(2) of the Federal Courts Act R.S.C.  
1985, c. F-7 and Rule 301 of the Federal Court Rules, 1998.

**NOTICE OF APPLICATION**

TO THE RESPONDENT(S): The Attorney General of Canada

AND TO: Canada Employment Insurance Commission (CEIC)

AND TO:

SST of Canada Appeal Division: Leave to Appeal Decision: Ad-23-292—May 24.2023

A PROCEEDING HAS BEEN COMMENCED by the applicant. The relief claimed by the applicant appears on the following page.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard by teleconference, at Toronto, ON.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the Federal Court Rules,

1998 and serve it on the applicant's solicitor, or where the applicant is self-represented, on the applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the Federal Court Rules, 1998, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

(Date) Issued by: \_\_\_\_\_ (Registry Officer)

Address of local office:

Registry office

Federal Court

180 Queen St W, 2<sup>nd</sup> floor, Toronto, ON M5V 3L7 (accord to Web site)

TO:

The Attorney General of Canada

The Honourable

Justice Building, 4th Floor

284 Wellington Street

Ottawa, ON K1A 0H8

CEIC office-the Commissioner

Place du Portage, Phase

IV room 13126

140 Promenade du Portage,

Gatineau, Quebec K1A0J9

SST -Appeal Division

PO BOX 9812, Station T

Ottawa, ON K1G6S3

## APPLICATION

(Where the application is an application for judicial review)

This is an application for judicial review in respect of: the decision of the Social Security Tribunal of Canada, Appeal Division of May 24, 2023 (with notification to the Applicant weeks later, on June 21, due to mail delivery delays.) Pursuant to the Appeal Division of the Social Security Tribunal established under section 44 of the *Department of Employment and Social Development Act* regarding the decision made under section 112 of the *Employment Insurance Act*;

The applicant makes application for judicial review:

- 
- a. the Federal Court, if it considers it appropriate, **direct that this application for judicial review be treated and proceeded with as an action.**

section 28, the Federal Court has exclusive original jurisdiction, including writs, [57] Subsection 1(1) of the JRPA defines “statutory power of decision” to mean, a power or right, conferred by or under a statute, to make a decision deciding or prescribing, (including EIA, regulations, Digest of Benefit Entitlement, and other related legislation.)

2(1) **grant any relief that the applicant would be entitled** to in any one or more of the following: 1. Proceedings by way of application for an order in the nature of mandamus, prohibition or certiorari. 2. Proceedings by way of an action for a declaration or for an injunction, or both, in relation to the exercise, refusal to exercise or proposed or purported exercise of a statutory requirement.

- b. the Federal Court, if it considers it appropriate, **direct that this application for judicial review be treated and proceeded with orders/writs/and declaratory relief**

section 28, the Federal Court has exclusive original jurisdiction, including writs, [57] Subsection 1(1) of the JRPA defines “statutory power of decision” to mean, a power or right, conferred by or under a statute, to make a decision deciding or prescribing, (including EIA, regulations, Digest of Benefit Entitlement, and other related legislation.) 2(1) **grant any relief that the applicant would be entitled** to in any one or more of the following: 1. Proceedings by way of application for an order in the nature of mandamus, prohibition or certiorari.

- c. **review and/or action for a declaration to set aside the SST decision(s) made in the exercise or relation to the exercise, refusal to exercise proposed or purported exercise of a statutory power acted or refused to act and/or without jurisdiction, acted beyond its jurisdiction or refused to exercise its jurisdiction**

section 28, the Federal Court has exclusive original jurisdiction, including writs, [57] Subsection 1(1) of the JRPA defines “statutory power of decision” to mean, a power or right,

conferred by or under a statute, to make a decision deciding or prescribing (included EIA, regulations, Digest of Benefit Entitlement, and other related legislation.)

2(1) **grant any relief that the applicant would be entitled** to in any one or more of the following: 2. Proceedings by way of an action for a declaration or for an injunction, or both, in relation to the exercise, refusal to exercise or proposed or purported exercise of a statutory requirement.

- d. **review and/or a mandamus writ/order and/or declaration in the nature of natural law, setting aside the SST decision(s)**, on the basis failed to observe a principle of natural justice, procedural fairness or other procedure that it was required by law to observe, failure towards the SST rules and EIA and Regulations; claimant legal right to have a fair and just appeal heard. The Commission and subsequent refusal of the SST to address jurisdiction, fact and law for all issues and mandatory statutory requirements' effects upon the claimant's reconsideration and appeal applications.

Erred notwithstanding other relevant legal issues and including error of fact finding and facts (SST continuance to ignore) and absence of decision making. The 'claimant express' request (according to Digest of Benefit Entitlement, EIA) within the original EI reconsideration and SST appeal applications. The claimant legal request to have Sect 153 EIA 300 credit hours added as qualifying hours, towards qualifying period of claim (Jan 2022 (or antedated Sept 2021). Claimant in Reconsideration and Appeal applications requesting antedating of Employment Insurance claim, to the end of the immediately preceding claim, (Mar 2020 (extended Sept 2020) to Sept 2021.) Accordingly the SST perform duties towards legislative requirements and control overall effects upon the claim (Sect 8-10, 12 EIA)

- e. **review and/or an order in the nature of certiorari, setting aside the decision(s) of the SST, leading to and including the Appeal Division decision dated May 24, 2023, on the basis of laws, and/or mandatory statutory requirements, and/or facts and/or jurisdiction.** Reconsideration decisions are not always detailed, and it is sometimes necessary to look at the underlying requests and decisions to determine the scope of the reconsideration and appeal decisions. This approach is necessary here, because the reconsideration decision gives no detail and the SST/Commission decision(s) **failed to address all, only reference one** of the claimant's requested reconsiderations, Sect 112 decision on claim's sufficient qualifying hours. The claimant had other requests in the Reconsideration and Appeal applications not considered, addressed nor decided upon.

The SST/Commission erroneous facts, assumptions and submissions that 'the 300 credits can be added to any claim,' regardless of the existence of a still active claim with an outstanding benefit period of payments. Nor recognized the establishment date of the claim was before inter-emerg measures were March 15 enacted. **THE JUDICIAL REVIEW AND SST DECISIONS NEED TO INCLUDE THE LEGAL APPLICATION OF THE PARTICULAR ITEMS OF THE EIA part three; SECT 153 in compliance with **EIA SECT 8 (1-5)**: addition of the 300 credits 'on the first day of an immediately preceding benefit period ( Mar 8 2020- Sept 2021 claim; applied towards the claim after the 300 credits were enacted (Jan 2022 (or Sept 2021 antedated).**

The SST ignores the claimant's Reconsideration and Appeal applications' requests for a decision on other issues of: Emerg-measures legislation including: EIA Part 3 Sect 153, legally required 300 additional claim qualifying credits towards claim (Jan 2022/Sept 2021 antedate,) with antedate according to Digest of Benefits Entitlement and EIA Sect 10(4). SST decisions absence, lack consideration, explanation for: without legal rendered decisions or failure to recognize legal ramifications, no exercised or absence to embrace jurisdiction; of underlying facts, mandatory statute requirements or support provisions; within the process, determinations or decision(s).

- f. **review and/or an order in the nature of natural justice, setting aside the decision(s)** of the SST, leading to and including the Appeal Division decision dated May 24, 2023. The SST relies on the Commission changes or to make formal decisions, such as Antedating. Digest of Benefit Entitlement states the Commission CAN NOT CHANGE ITS RECONSIDERATION decision. ONCE THEIR DECISION GOES TO APPEAL AT THE SST. ~~Unable to fix erroneous or missing information within a decision, once the Commission has made its reconsideration.~~ The SST had the legal perimeters and jurisdiction to decide on all issues, facts, laws and provide for natural justice. SST may decide upon effects of procedures, facts, laws, within issues; ignored, leading to or creating an error in the reconsideration decision by the Commission. A SST jurisdictional failure or absence of completeness of reconsideration, omission of facts, error of laws, contrary to law or natural justice; towards the applicant's Reconsideration request(s).

1-the claimant request for 'the Emerg-measures applicable to the (Jan2022) claim,' administration and application of the 300 credit hours; with needed consideration by the SST, in absence of the Commission. 2-The 'claimant's express request' (Digest of Benefit Entitlement) to antedate the claim, back to the end date of the preceding claim. The claimants application made a request for antedating and credit application; that was never addressed by the SST.

The SST Appeal Second-level within discovery questions, asked the First-level, during the returned SST decision at appeal level; 'whether the First-level SST would rule and apply the 300 credit hours towards the claim.' (Jan 2022) **Here creating need for natural justice. Creating a new judicial matter and its effects, that will affect the justice system at large;** when judicially deciding upon matters, such as addressed, about new Emerg-measures legislation.

- g. **review and/or an order in the nature of certiorari, setting aside the decision of the SST,** based its decision(s) on erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it: acted, or failed to act, by reason of fraud or perjured evidence; or acted in any other way that was contrary to law. **SST erred by facts, legal or lack for considerations, fact finding, materials or missing evidence, not included or relied upon within the decisions.** The SST decisions lack of or refusal for fact finding, to acknowledge facts and legal perimeters of: mandatory statutes, Digest of Benefit Entitlement and other Regulations, related legislation towards (Jan2022) EIA Sect 153, 300 credit application and/or antedating.

SST decision(s) omissions or error include: the claimant Reconsideration/Appeal applications 'expressly requested' Emerg-measures (300 credit) addition to claim and for qualifying hours (Jan 2022) and antedating.' SST use erroneous facts and fact finding, nor considered the Commission's (Sept 2021) antedate reconsideration within the Mar 4 telephone conversation. SST never included the computation, consideration, application nor inclusion of 300 credit mandatory statutes, to be applied Sect 153, towards insurable hours qualifying formula (nor for Jan 2022.)

In SST actions or lack for action legitimate effects upon claim, without the 300 credits, and antedate. The SST decision(s)' continued illegal denial 'state lack of jurisdiction;' to decide upon and apply EIA sect 10/ Regulations and Digest of Benefit Entitlement.

Legal demonstrations: the claimant made an explicit request in all applications, and the

Commission made an official decision ('any action upon a claim is considered an act upon the claim' including telephone conversations;) regardless, the SST failure to recognize the legitimacy of: the antedate, formal or informal decisions or decision processes, documented correctly, informally or formally. The onus is not on the claimant.

The absence of official documentation does not override the decision, or erroneous decision making, absence of completeness of decisions towards antedating nor the mandatory statutory requirements, regulations and related legislation towards antedate and inclusion of additional 300 credit hours.

**Department of Employment and Social Development Act S.C. 2005, c. 34 Assented to 2005-07-20 Powers of tribunal 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.**

**h. review and/or an order in the nature of certiorari setting aside the decision of the SST, on the basis of mandatory statutory requirements of EIA Sect 7.** It is sometimes necessary to look at the underlying requests, issues, facts, laws and statute requirements, to determine the scope of the reconsideration decision and subsequent decisions. It is necessary to look at the underlying, consecutive and accumulative nature of the entirety of EIA applicable statutes. This approach is necessary here, because the SST decisions give no detail and actual basis for decision on the SST/Commission not expressed and/or lack of consideration on the effect of Sect 7 upon Sect 153, additional 300 credit hours application towards qualifying hours. (Jan 2022/Sept 2021 antedate) **The already Commission established 288 qualifying hours from insured earnings** and legal additional credit hours; towards qualifying period and benefits. SST lacks legal awareness for application of new Emerg legislation.

**i. review and/or an order in the nature of certiorari setting aside the decision of the SST, on the basis of misappropriated jurisdiction, error of fact, error of law, and mandatory statutory requirements of EIA Sect 8.** It is sometimes necessary to look at the underlying requests, issues, facts, laws and statute requirements, to determine the scope of the reconsideration decision and subsequent decisions. It is necessary to look at the underlying, 'consecutive, and accumulative nature' and the entirety, of EIA applicable statutes. This approach is importantly necessary here, because the SST decision(s) give: no consideration, decision making, detail nor explanation of: Sect 153, relevancy, absence and/or missing decision about the application of the Sect 153 credits in relevancy to Sect 8. These credits are legally added to a 'newly established' claim? (Jan 2022) This specific question was asked by the SST 2<sup>nd</sup> Level to the SST 1<sup>st</sup> level, and over 11/2 years unanswered..

Error lies within illegal applied jurisdiction, without fact and law, preponderance subsequent infectious poisoning of SST decisions. Decisions upholding erroneously, credit hours were mysteriously applied Sept 2020. The Commission supposition erroneously suggested in their submission ALL claims were computerized credited, 'regardless if needed or not.' SST erroneous illegal assumption upon an already established claim (Mar 2020); during Sept 2020 new legislation of 50 weeks extension. (Sect 12) Erred judicial supposition that; credits were included Sept 2020, towards a payable claim from before Mar Emerg-legislation. (Mar 8, 2020) Legally there is non- application of credits in Sept 2020, for claims established before Emerg-legislation (Mar 2020)

The SST has never questioned nor legally demonstrated such credit application-magic act. SST ignored, failure of mandatory statutory requirements. SST has not considered the effect of Sect 8, upon EIA Part 3-Sect 153 of 300 credit application. Credits are the same as qualifying hours, towards the benefit period; a new claim can only be established once the preceding claim has ended. EIA ‘**Qualifying period, 8 (b) the period that begins on the first day of an immediately preceding benefit period.**’ Before Sept 2020, established claim (Mar 8) qualified benefit period, were still payable past Oct 3 2020.

**j. review and/or an order in the nature of certiorari setting aside the decision of the SST, on the basis of mandatory statutory requirements EIA Sect 10.** It is sometimes necessary to look at the underlying requests, issues, facts, laws and statute requirements, to determine the scope of the reconsideration decision and subsequent decisions. It is necessary to look at the underlying, ‘consecutive, and accumulative nature’ of the entirety of EIA applicable statutes. This approach is necessary here, because the SST decisions give no detail and especially the SST/Commission has not considered the mandatory statutory requirements of Sect 10 (3), a claim is not established until the last day of preceding claim. Legally Sect 153 is not applied to a claim established (Mar 8, 2020) before Mar 15 or any Emerg-measures legislation enacted. The SST failed decisions for the mandatory statutory requirements for establishment date of a claim and the legal mandatory application of Sect 153 for, 300 credit’s application towards qualifying hours for benefits.

**k. review and/or an order in the nature of certiorari setting aside the decision of the SST, on the basis of mandatory statutory requirements EIA Sect 9** It is sometimes necessary to look at the underlying requests, issues, facts, laws and statute requirements, to determine the scope of the reconsideration decision and subsequent decisions. It is necessary to look at the underlying, ‘consecutive and accumulative nature’ of Emerg-measures legislation and the entirety of EIA applicable statutes. The legal approach is necessary here, because the SST decision(s) give no detail and have absence of consideration; for the effect of Sect 9 upon Sect 153. Legally 300 credits are within the qualifying period to establish the claim (Jan 2022/Sept 2021 antedate). While ignoring applicant’s requests for S.153 credits within Reconsideration/ Appeal applications. The decision(s) merely disqualified based upon earned hours(288) and without legal application of 300 credits.

**l. review and/or an order in the nature of certiorari setting aside the decision of the SST, on the basis of mandatory statutory requirements EIA Sect 12.** It is sometimes necessary to look at the underlying requests, issues, facts, laws and statute requirements, to determine the scope of the reconsideration decision and subsequent decisions. It is new legislation; and necessary to look at the underlying, ‘consecutive and accumulative nature’ of Emerg-measures legislation towards the entirety of EIA applicable statutes. This approach is necessary here because the SST decisions give no detail and actual consideration, for new Emerg- legislation ongoing implementation effects, on two consecutive claims, activity or affects .

The SST/Commission has not considered the EIA entirety and effects of Sect 12, **Employment and Social Development web site** ‘will have their Regular EI benefits calculated on the basis of the 13.1% rate” changes; providing for 50 weeks extension in Sept 2020. Sect 12 allowed 50 weeks extension upon the outstanding payable Mar 8 Regular EI claim. (Sept 2020-Sept 2021.(S.8) SST without distinguishing the date of establishment of the preceding claim. (Mar 8) According to Sect 153 and 10(3), it is not allowable to add additional credits until after the ending day of the preceding claim. The EIA mandatory statutory requirements **do not allow the 300 credit application where the claim is already established** before Mar 15 2020.

**m. review and/or an order in the nature of certiorari setting aside the decision of the SST, on the basis of mandatory statutory requirements of EIA Sect 153.** It is sometimes necessary to look at the underlying requests, issues, facts, laws and statute requirements, to determine the scope of the reconsideration decision and subsequent decisions. It is necessary to look at the underlying, 'consecutive and accumulative nature' of emerg legislation and the entirety of EIA applicable statutes. This approach is necessary here because the SST decisions give no detail and actual consideration of the establishment date of the claim, mandatory statutory requirements to apply 300 credits for Sect 153. Credits are not applicable to claim (Mar 8 2020) BEFORE the enacted EIA emergency measures. The establishment date (Mar 2020) mandatory statutes do not allow credit application to an ongoing still payable claim.

**Legally Sect 10 (3) the Commission did not establish a new claim in September 2020,** having an already actively paying claim (from Mar 2020.) The SST accepted illegal and nonfactual underlying assumptions, statements, and decisions: 'that the credits are added to any claim, whether needed or not.' Legally Sect 153 additional credits are for an initial claim established after Sept 2020, and not a claim before Mar 15, 2020. A claim can only be established AFTER the last day of a preceding claim. (S.10(3))

The SST decision failure of the legal application for the Sect 153 credits; towards the newly established after Sept 2020 claim. (Jan 2022/Sept antedate)

**n. a declaration that the Applicant is entitled to be treated equally under the law,** of the EIA and other related legislation and their interpretations; towards governing bodies' "jurisdiction" within the meaning of S. 15 of the Charter of Rights and Freedoms. Especially during a pandemic when the legislator is making rapid additional changes to the EIA and other related legislation or changes. The overall application and effects is still not within jurisprudence fully: tried nor tested, how overall decisions are effected, and the effects on the overall justice system.

The SST decision(s) failure to recognize that regular employment insurance initial claim for benefits were already established (Mar 8) before any Emergency-legislation was enacted March 15, 2020. The CEIC 'pushed' claims into EI ERB 28 week extensions March 2020, and **Employment and Social Development web site: August 2020** "will have Regular EI benefits calculated on the basis of the 13.1% rate." EIA Sect 12 created further extensions September 2020, totaling 50 payable weeks.

**The necessary legality of SST decisions towards the CEIC responsibility to the claimant, to pay out the initial claim according to the individual claim's qualifying periods and payable weeks. The consequential recognition of a second claim effected by Emerg-measures legislation (Jan 2022/ Sept 2021 antedated) including using credits towards qualifying periods. (Sect 8, Sect 10(3), 153)**

The SST decisions need to reflect how and the legal reasons used in decisions. Notwithstanding and including: consideration of the claimant's specific dates of initial establishment, benefit payment period perimeters and all related legal mandatory and statutory applications accordingly. Regardless of the Commission without fact and illegal statements that Sect 153 credits, 'are added to all claims, whether needed or not.' The credits are not added to an already established Mar 8 prior to CERB and payable claim.

**Employment and Social Development Site: Chapter 2 - Impacts and effectiveness of Employment Insurance benefits (Part I of the Employment Insurance Act)**

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A total of 61,000 EI Regular claims were established in the first 2 weeks in March 2020, compared to 68,300 claims established during the full month in March 2019.



The overall application and effects is still not within jurisprudence fully: tried nor tested, how overall decisions are effected, and the effects on the overall justice system. However the above stat demonstrates that twice (50% more) as many EI applicants are effected by new Emerg-measures legislation. At least ten of thousands of more applicants need for natural justice.

**o. costs for all judicial proceedings and legal and related preparations.**

**p. and such other order as this Honourable Court may deem appropriate.**

## The grounds for the application are:

**Reason: the Judicial review of the SST decision, lack of or refusal to exercise jurisdiction, based on error of law and fact, mandatory statute requirements; that are relevant based on EI Act, related legislation and Case Law.** None of the Part 3 EIA sections and credits is part of an exception, regarding employable earnings towards qualifying benefit period. Decisions were previously made for qualifying hours, the Commission already decided and qualified the 288 earned hours for Sept 2021.

SST lacks the needed influence of factual, lawful and allowable jurisdictional basis; to recognize and allow the qualifying of the claim Jan 2022/Sept 2021 antedated; that are presently amiss. The SST fails to acknowledge and include the entirety of the UIA towards the emergent Sect 153 within decision making and decisions. SST decision(s) failure to legitimately recognize that additional credits, need to be added to the 288 already qualified hours. The 300 credits application has not been legally rendered. Decision(s) are flawed using only earned 288 hours towards qualifying period not being sufficient to qualify, absence of the additional 300 credits- Sect 153 credits. Leave to Appeal Division.  
**May24,2023: pt (14)**

**The SST acted without jurisdiction in refusing the 300 credits, and/or refusal to exercise jurisdiction, to allow the mandatory statute requirements for 300 credits, and to make adequate decision(s).** SST based decisions on erroneous finding of facts, with the absence of the Commission's desire for, incompleteness or missing facts. SST failed adherence to laws, towards the claim Jan 2022/Sept 2021 antedate qualifying period(s). (EIA Sect 7 through 10, 153)

The 1<sup>st</sup> claim Mar 8, 2020 benefit period has to paid-out fully and including the newly extended Sept 2020 to Sept 2021 additional benefit weeks. The 2<sup>nd</sup>, the Commission has already applied EIA Part 1 and 2 qualifying the 288 hours for the claim Jan 2022/Sept 2021 antedate. The SST decision's failure to decide upon, address and/or for the need of jurisdiction and rendering of legal decisions, towards the Part 3 Sect 153 credits legal application. The SST decision fails to ensure jurisdiction and to decide needed questions of: law, contrary to law, fact, and mandatory statute requirements of Part 3 and related UIA. The 300 credits were legally only available and should have been applied to the Jan 2022/Sept 2021 antedated claim.

SST decisions fail to address underlying ramifications of fact, contrary to law, law and mandatory statute requirements; toward the legal application of Part 3, 300 credits. SST decision making processes with underlying erroneous facts or law. SST failed decisions **based upon misguided prior erroneous assumptions of the Commission; that Sept 2020 the credits were purported supposedly added, or exhausted though not added, to the still payable Mar 2020 claim.** The first claim was established Mar 2020, and extended to Sept 2021, not established Sept 2020.

Legally it is NOT possible to apply 300 credits to the Mar 2020-Sept 2021 claim. The 300 credits S153: 1-were enacted Sept 2020, 2-applicable to an initial claim established after Sect 153 enactment, 3-300 credits were used for qualifying hours in addition to earned qualifying hours. The 300 credits legal application using the date of both claims' establishment, only fell within the qualifying period of the claim Jan 2022 (Sept 2021 antedate.)

**The 300 credits legally being added to qualifying hours include mandatory requirements in the fulfillment of the Act. These are credit hours applicable by Sect 153. The credit hours are not defined by Sect 90 EI A concerning employable earning. Not credit hours, but only**

employable hours may require a further decision decerned by the CRA.

**Department of Employment and Social Development Act, S.C. 2005, c. 34** Assented to 2005-07-20  
**Powers of tribunal. 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. The SST decisions acted without or refused jurisdiction were erroneously based or failed to address; facts and laws, or contrary to laws, relevant for the 300 credits need to be applied to Jan 2022 claim.

EIA:

**Additional credits S153, S153.3 - [PART VIII.3 - Interim Orders](#), 153.5 - [PART VIII.4 - Employment Insurance Emergency Response Benefit](#)**

**Sect 8: new claim established only after preceding claim, Sect 10 (3) benefit period shall not be established for the claimant if a prior benefit period has not ended. (The Mar 8 2020 claim was established before the Section 8(3) repeal.)**

### **Reason: Error of natural law: Leave to Appeal-Decision May 24 /23:**

**pt(18) “interest of justice”** The Appeal Decision’s recommendation that antedating of claim would provide for jurisprudence. The Appeal decision May 24, 2023, point (18), “In the **interest of justice**, I recommend that the Commission render a formal decision on antedate request made by the claimant.” The SST Decision’s absence to recognize, render legal and facilitate mandatory statute and regulations, to provide for judicial antedating. This SST appeal to the ‘interest of justice’ acted without jurisdiction and/or lack of jurisdiction to antedate, presented by the contrary point (18).

**Reference by federal tribunal 18.3 (1)** A federal board, commission or other tribunal may at any stage of its proceedings refer any question or issue of law, of jurisdiction or of practice and procedure to the Federal Court for hearing and determination. Instead of referring the claim to the court, the SST refused to exercise its jurisdiction. Instead made the statement about ‘interest of justice,’ and denied the claimant leave to appeal.

The SST plea for the ‘interest of justice’ warrants review and demonstrates: the unlawful, ongoing, overall perspective systematic effects. 11/2 years of SST absence of decision(s) and/or lack of antedating. **EIA Regulations:** ‘decision made on a claim includes any consideration made’ including Mar 4, with telephone conversation. With the absence of law and regulating when refusing the claimant’s ‘express request’ to antedate to Sept 2021, from the end of the preceding claim (S.8(1),10(3) **Reconsideration application: 22/01/220-GD3-Sect 3**

**Canada.ca: Decision 17296: summary:** UI is a social programme for people who are disadvantaged in their desire to work. Since nothing is to be gained by denying UI to people otherwise entitled on purely technical grounds that they have not filed at the right time, Parliament has enacted the antedating provisions. (Decision 14326)

**Statutory Powers Procedure Act (SPPA): Notice of facts and opinions 16** A tribunal may, in making its decision in any proceeding, (a) take notice of facts that may be judicially noticed; and (b) take notice of any generally recognized scientific or technical facts, information or opinions within its scientific or specialized knowledge. R.S.O. 1990, c. S.22, s. 16

**Reason:** the Judicial review of the SST decision, lack of or refusal to exercise jurisdiction, based on error of law, erroneous fact finding, and mandatory statute requirements; that are relevant based on EI Act, related legislation and Case Law. **The Judicial review of the SST decision enate refusal of jurisdiction, to decide law and facts that are relevant based on EI Act Section 10 and the Digest of Benefit entitlement to antedate.** Without consideration for Natural Law for a just and fair appeal, denies the Digest of Benefit Entitlement: Principles: 3.2.4: ‘disqualifying ...of earnings, which may apply for part or all of the period of the antedate, does not prevent allowing the antedate.’ Essentially the requested claim date - antedate continues regardless of secondary decisions on the claim.

The claim is antedated once the claimant requests (IEA-S.10(4) The SST decision(s) failed by the lack of recognition that; the Mar 4 agent stated that the claim could be

antedated to Sept 2021, with 288 hours. The SST erroneous support for the disqualification of the claim antedate, and without legal 300 credits; is not factual, erred in fact finding, law, or contrary to law; Commission's failure to adhere or recognize, the 300 credits are legally applicable to the claim according to Sect 153.

**Act and mandatory statute requirements, beginning of benefit period 10 (1)** *A benefit period begins.* **Late initial claims (4)** An initial claim for benefits made after the day when the claimant was first qualified to make the claim shall be **regarded as having been made on an earlier day if the claimant shows that the claimant qualified** to receive benefits. The claimant showed the legal addition of the 300 credits towards the antedate, and even for the claim for Jan 2022.

**Reason:** the Judicial review of the SST decision, lack of or refusal to exercise jurisdiction, based on error of law and fact, mandatory statute requirements; that are relevant based on EI Act, related legislation and Case Law. **The Judicial review of the SST refusal to exercise jurisdiction and/or acted without jurisdiction, in making decisions erred in law and used erroneous finding of facts. SST acted contrary to law with lacking consideration and application; of mandatory statutes' requirements and to apply the EI ACT. The SST used erroneous fact finding merely excepted illegal evidence, a legally unproven submission of the Commission about the 300 credits' application. The SST failed to exercise jurisdiction instead made decisions without legal consideration nor application, of Part 3 EIA- 300 credits towards qualifying hours for Jan 2022 claim.**

**SPPA: Evidence** What is admissible in evidence at a hearing: 15 (1) Subject to subsections (2) and (3), a tribunal may admit as evidence at a hearing, whether or not given or proven under oath or affirmation or admissible as evidence in a court.

The SST without needed facts or legal basis erred in their Decision using the CEIC submission on the purported and supposed applied, 300 credits usage, **when there is an absence of credits' application.** The Commission after CERB Sept 2020, **reactivated the already established with 675 earned hours** qualified Mar 8 claim. Sept 2020 reverted back to Regular Benefits, previously established and sufficient 675 hours claim, in the absence or need for credit application. In direct contradiction to the Commission factious statement, credits added 'whether needed or not.' The Commission assertion is contrary to legal facts: that the claim after CERB reverted back to Regular Benefits, having been Mar 8 established, computed 675 hours sufficient qualified, legally regulated and without credits applied.

Also a Commission unlawful statement according to EIA Sect 153 credit application. (RGD12-2(par2) The CEIC submitted that the 300 credit hours were factiously applied to the March 2020 established claim, *'whether needed or not;'* However an **unlawful premise according to the EIA Sect 153, the credits are added to a) an initial claim, b) after September 2020.**

The SST based their decisions on the erroneous assumption towards the 300 credits; supposedly had been and purportedly stated, exhausted in Sept 2020. The SST erroneously based decisions about the second claim of Jan 2022, without any discovery to know or proof of: the absence of Jan 2022 needed credits, or how credits should be applied, nor legal ramifications or remedies; towards credit addition unto qualifying hours for Jan 2022 claim, and lacking credit application would be illegal. Legally the credits were still available for the Jan 2022 claim still within Emerg-legislation, and qualifying period for Jan 2022.

**The Jan 2022 qualifying period according to 8 (1) (b):** the period that begins on the first day of **an immediately preceding benefit period** and ends with the end of the week before the beginning of a benefit period under subsection 10(1). The Jan 2022 claim's immediately preceding benefit period was from the Mar 8 claim, still payable until Sept 2021. The Commission without fact and unlawfully purported the credits were previously applied to the Mar 8, 2020 claim, impossibly, as that claim was before the CERB measures of Mar 15, 2020.

Sept 2020 enacted changes, extended the Mar 8 claim's payable weeks to Sept 2021. **The 300 credits could not have been legally added Sept 2020 when extending the payable weeks, upon EI reactivation, upon the Mar 2020 ongoing and still payable claim (as erroneously purported and/or supposition of the SST.)** This previous claim was

established March 2020, not after Sept 2020. (Sect 153)

The second Jan 2022 or September 2021 antedated was the only initially established claim, after the legislative changes of Sept 2020. The SST failed to identify the erroneous facts, legally apply the act and provide for jurisdiction for the newly enacted legal 300 credit application, towards the Jan 2022/Sept 2021 antedated claim. (GD4-2: P2)

**The Commission computer records were never requested by the SST showing 675 qualified Mar 8 claim extended Sept 2020 to Sept 2021. EIA Section 153-300 credits could not be applied to the ALREADY established March 2020 claim that still had an outstanding payable benefit period to Sept 2021. (EIA Sect 8 (1) (b) The 300 credits could only be applied once this already established Mar 2020 claim ended its payable weeks in Sept 2021.**

Legally, EIA Sect 8 only allows an initial claim to be established 'after the first day of an immediately preceding benefit period.' the period that begins on the first day of an immediately preceding benefit period. In Mar 2020 the initial claim was established, and after added 28 weeks of EI ERB that were still payable. Then Sept 2020 an action to reactivate Mar 8 2020 EI claim-revert back and automatic effect of 'newly developed rates' changed to increase the claim to 50 weeks payable.

According to the commission's computer records and computed new extended period from Sept 2020 (upon the already existing Mar 2020 claim); payable benefit weeks were extended from Sept 2020 to Sept 2021. Under the new emergency measures legislation, changes to regional rates extended payable weeks. Section **8 (4)**, a qualifying period is further extended by the aggregate of any weeks during an extension..., in any manner that the Commission may direct.

**Reason: The Judicial review of the SST refusal to exercise jurisdiction, in making decisions erred in law and used erroneous finding of facts. SST acted contrary to law with lacking consideration and application; of mandatory statutes' requirements and to apply the EI ACT. The March 2020 claim was only "FURTHER EXTENDED" (EIA Sect 8 (4) NOT ESTABLISHED.** The SST had the *jurisdiction to recognize the 'already established claim.'* The March 2020 established claim had newly acquired regional rates (in Sept 2020), and the claims payable weeks were further extended. The March 2020 claim already previously-had sufficient Employment earned hours -675 qualifying hours

that were greater than the 420 hours needed for the new extension of payable weeks, Sept 2020. (Not by the Commission *purported*, “computer” factiously added 300 credit hours.)

- **Employment and Social Development web site:** August 2020- “When individuals **begin transitioning off of the CERB back to EI regular benefits** at the end of this month, those living in EI regions with an unemployment rate lower than 13.1% will have their EI benefits calculated on the basis of the 13.1% rate.”



**EIA: Qualifying period: Marginal note: Period not counted if benefits received: (5) For the purposes of subsections (2) and (4), a week during which the person was in receipt of benefits does not count.**

The initial claim already established March 2020 was still payable when new regional rates were developed. Payments stopped automatically and reactivated by pre-set determining qualifiers in the computer system, in September 2020; during extension of weeks, with the newly changed emergency measures 'regional rate' Sect 12. **This ESTABLISHED Mar /20 claim met the computer qualifiers for the perimeters of 420 hours requirement, sufficient employment earned hours** (the Mar 2020 claim had 675 hours) Providing for the further extension of payable weeks to Sept 2021, for the already established claim of March 2020.

At the Sept 2020 halt, the claim had outstanding weeks that would still be paid, once the claim was reactivated. Secondly, Sept 2020 to Sept 2021 extended weeks were added and became 50 weeks payable. The already established Mar 2020 claim before the further extension of Sept 2020 had outstanding payable weeks; that **were halted** to adjust the regional rate and further extend payable weeks to Sept 2021.

**Reason: The Judicial review of the SST refusal to exercise jurisdiction, in making decisions erred in law and used erroneous finding of facts. SST acted contrary to law with lacking consideration and application; of mandatory statutes' requirements and to apply the EI ACT. The Leave to Appeal Decision error of fact, law, jurisdiction, absence of decision making towards 300 credit hours of insurable employment; that allows the Jan 2022 claim 300 additional hours, which legally Sect 153 falls within the qualifying period.** The SST acted without jurisdiction to state the Jan 2022 claim had insufficient qualifying hours. And/or refused to exercise its jurisdiction to apply Sect 153-300 credits to Jan 2022 claim/or antedated Sept 2021. *Sect 153 credits are Part 3 of the EI Act, Part 1 and 2 had already recognized the earned qualifying hours for the Jan 2022 claim.* **Leave to Appeal-Decision May 24 /23: pt.(13):** qualifying period Jan 3 /21 to Jan 1/22' (SST: GD: Decision: Feb 27 /23: (pt (40/41)

**Leave to Appeal-Decision) May 24 /23: pt. (11)**-"the Claimant *essentially submits* that the General division erred in not allowing her antedate." This is not factually correct, as the main issue for the Claimant is the 300 credits are legally available for the Jan 2022 claim qualifying period as 'insurable employment' (Sect 153) According Sect 153.17 (1) make an initial claim under part 1 on or after September 27, 2020 (b) additional 300 hours of insurable employment

**SST decisions legally erred and failed to recognize facts about the 300 credits' towards the Jan 2022 qualifying period; outlined in the request of the SST Appeal Level to the General Division. SST ignoring claimant questions, about the error of law and need for jurisdiction: for 300 credit hours towards qualifying period Jan 2022: (RGD9(#2pts), RGD2-2)**

**SST based decisions on errors of law, and errors of fact: Decision SST:GD-GE-22-3045:**

**Feb.27/23: Pt (46)** “The 300-hour credit that was available for a time during the Covid 19 pandemic does not apply.” The 300 According Sect 153.17 (1) make an initial claim under part 1 on or after September 27, 2020 (b) additional 300 hours of insurable employment. 300 credits could not be legally applied to a new claim (EIA S.10(3) until after the outstanding payable Mar 15-Mar 26 2020 ERB, automatically transitioned to EI Sept 27/20 to Sept 2021 (50 wk. extended) completed payable weeks. (doc GD4-2 (p2) **300 credits enacted Sept 2020 were applicable for Jan 2022 claim.**

**Reason: The Judicial review of the SST refusal to exercise jurisdiction, in making decisions erred in law and used erroneous finding of facts. SST acted contrary to law with lacking consideration and application; of mandatory statutes' requirements and to apply the EI ACT. Error of law and/or error of fact: Decision SST:GD-GE-22-3045:**

**Feb.27/23: Pt (47)** “Section 153.17(1) of the EI Act says that a claimant who makes an initial claim,” factually, the only initial claim after S.153 enacted was Jan 2022 claim, “on or after September 27, 2020 is deemed to have an additional 300 hours **in their qualifying period**. The SST continues, “this was a temporary section that ended in September 2021, (**however still within the Jan 2022 qualifying period**) before the Claimant applied for benefits. The SST erroneously states, “This means it doesn’t apply to the Claimant.”

**The qualifying period for Jan**

**2022 claim had still unused and available, within its qualifying period, these Sept 2021 additional 300 credits. Leave to Appeal-Decision May 24 /23: pt.(13):** qualifying period Jan 3 /21 to Jan 1/22' (SST: GD: Decision: Feb 27 /23: (pt (40/41) The 300 credits- included in qualifying period Jan 2022 added to Part 1 Mar 2020 claim insured with 675 earned hours (established March 2020) provided for sufficient qualifying hours.

The 300 credit hours were never nor could be applied to the Mar 8 claim, SST error of law, and fact: The automatically Reverted-Back-EI Regular Benefits Mar 2020 claim had sufficient 675 insured hours. The 675 insured hours qualified March 8 2020 claim was reactivated Sept 2020, automatically reverting back to Regular Benefits, still having outstanding payable weeks. A s s t a t e d b y CEIC: “automatically transition back to Regular Employment Insurance”

The Mar 15/Mar 26 2020 ERB, automatically transitioned-reverted back to EI Regular Benefits, Sept 27/20 to Sept 2021 (50 wk. extended) (doc GD4-2 (p2)

**Employment & Social Development : (website) Canada.ca: After CERB: transitioning to RECOVERY benefits :** If receiving CERB through EI (Commission) AFTER CERB (28 WEEKS) - continue to report, no need to apply, automatically review file & ROE and restart the claim for EI Regular Benefits. Questions: What happens if you have weeks remaining to be paid. Answer: Service Canada automatically reactivates the claim (renewed) @ existing rate.

**Reason: The Judicial review of the SST refusal to exercise jurisdiction, in making decisions erred in law and used erroneous finding of facts. SST acted contrary to law with lacking consideration and application; of mandatory statutes' requirements and to apply the EI ACT. SST decision(s) failure to use jurisdiction, error of law EIA Sect 10 (4) with mandatory statute requirements outlined in the Digest of Benefit Entitlement, based on Mar 4 telephone conversation and decision (actually a legal antedate)**

**Leave to Appeal-Decision May 24 /23: pt. (11)-“the Claimant essentially submits that the General division erred in not allowing her antedate.” Canada.ca: Decision 18656: Andedate “The failure to do so is an error of law which enables me to intervene under Sect 95 of the Act. ...More expeditiously settled were I to avail myself of the jurisdiction under Sect 96 of the Act.”**

**Acted without and/or refused to exercise jurisdiction, lack of address towards the 300 credits legal application and mandatory statute requirements. Notice of Settle Conference: Aug 26/22 (2<sup>nd</sup> level - AD22-501-no document #): Invitation questions: (pt 2): stated by the SST about Sect 153.17: The SST stated, ‘were there sufficient hours for a claim effective Sept 19/2021 (with additional 300-hour credit).’ SST Appeal Division further questioned, “has the Commission made? Will it make a reconsideration decision on antedate request?’ The SST level questions on credits**

The Claimant’s original Reconsideration Application: within the reasons, the claimant requested the claim antedated, ‘back to immediately preceding (last) claim.’ (Sect 10(4) Antedate is allowed when:

‘the claimant makes a request’ (GD3-23(Sect3), RGD12-5(par1)

**CEIC (Serv.Can): ‘advised that her entire claim would be reviewed including the possibility of an antedate’ (RGD12-4)(p4):02-16-2022)**

**Digest of Benefit Entitlement Principles: 3.2.4:** ‘disqualification of earnings, which may apply to part or all of the period of the antedate, **does not prevent allowing an antedate.**’

**The Digest principal determines that the Mar 4 decision of antedate remains. The Digest directs that the antedate remains, although the CEIC also stated that the claim was disqualified. The Digest demonstrates the SST error of law and erroneous finding of facts; while failing to address the jurisdictional need to apply 300 credits to qualify the claim. The 300 credits were applicable for an antedated claim, Sept 2021. Importantly the 300 credits to qualify the claim were also applicable to the Jan 2022 claim, falling within its qualifying period. The credit hours are applied in the qualifying period, in the same manner as earned hours.**

**Further evidence and extra explanation submissions: Claimant documents submitted ADN1-F,G, H...Submitted to the SST dated May 3-8, 2023.**

**This application will be supported by the following material**

**All materials submitted to the SST by both parties, at all levels of the SST. These materials are requested by the applicant to be provided by the SST, and used as submissions for this case.**

## Relevant information and related legislation:

# Government of Canada temporarily sets a minimum unemployment rate for the Employment Insurance program

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From: Employment and Social Development Canada

## News release

August 10, 2020  
Canada

Gatineau, Quebec

Employment and Social Development

...Since it was launched, the Canada Emergency Response Benefit (CERB) has been an important income support for over 8.5 million Canadians and their families, who have had to stop working due to the pandemic. As the country continues to gradually and safely restart the economy, over 1.6 million Canadians have been able to return to work. However, we know that not all sectors are re-opening at the same pace. That's why the Government is preparing to **transition** as many Canadians as possible **back to** the Employment Insurance (EI) system at the end of month.

Today, the Honourable Carla Qualtrough, Minister of Employment, Workforce Development and Disability Inclusion, announced that effective August 9, 2020 a minimum unemployment rate of 13.1% will be applied temporarily for all EI economic regions across Canada.

When individuals **begin transitioning off of the CERB back to EI regular benefits** at the end of this month, those living in EI regions with an unemployment rate lower than 13.1% will have their EI benefits calculated on the basis of the 13.1% rate, while individuals living in regions with a higher unemployment rate will have their benefits calculated using the actual rate for that region.

This temporary measure will establish minimum entry requirements for EI eligibility across the country for Canadians to access the income support they need now or might need later as we continue to deal with the economic impacts of COVID-19.

This is the first in a series of steps, to be announced in the coming weeks, that will help eligible Canadians **transition from emergency income measures back into the EI system** and into the labour force as we work together to best position our country for a strong economic recovery.

## Quotes

*"Since the beginning of the COVID-19 pandemic, our Government has taken action to support*

*Canadians and businesses facing financial hardship. As we carefully and gradually restart parts of our economy, we recognize that many Canadian workers continue to face challenges. The temporary use of a national minimum unemployment rate for the EI program will help more people access EI regular benefits and provide eligible Canadians with access to a minimum 26 weeks of benefits."*

– The Honourable Carla Qualtrough, Minister of Employment, Workforce Development and Disability Inclusion

## Quick facts

- Employment Insurance (EI) regular benefits provide income support to individuals who lose their jobs through no fault of their own and are available for and able to work, but can't find a job.
- This temporary measure will set a uniform eligibility requirement for EI regular benefits, provide a minimum entitlement of 26 weeks of benefits, and set the number of best weeks of earnings used in the calculation of the weekly benefit rate at 14.
- Normally, a claimant can qualify to receive EI regular benefits from 14 weeks up to a maximum of 45 weeks, depending on the unemployment rate in the region where they reside at the time of filing their claim and the amount of insurable hours accumulated in the

last 52 weeks or since their last claim, whichever is shorter. Date modified:

## EMPLOYMENT INSURANCE ACT

- **Establishment of benefit period**
- **9** When an insured person who qualifies under section 7 or 7.1 makes an initial claim for benefits, a **benefit period shall be established** and, once it is established, **benefits are payable to the person**

The claim could not have 300 credits added, at the Sept 2020 further extension of payable weeks. It did not meet the perimeters of Sect 153

: a) it was not established in Sept 2020, but merely further extended, b) the **300**

**(credits could not be added Sept 2020, as the claim was extended to Sept 2021 )**

*(preceding benefit period from the date of the pre-existing Mar 2020 claim ending.*

period *that begins Jan 2022 (or Sept 2021) on the first day of an immediate claim end)*

## Qualifying period

- **8 (1)** Subject to subsections (2) to (7), **the qualifying period** of an insured person is the shorter of
  - **(a)** the 52-week period immediately before the beginning of a benefit period under subsection 10(1), and
  - **(b)** the period that begins on the first day of **an immediately preceding benefit period** and ends with the end of the week before the beginning of a benefit period under subsection 10(1).

- **Marginal note: Extension of qualifying period**

**(2)** A qualifying period mentioned in paragraph (1)(a) is extended by the aggregate of any weeks during the qualifying period for which the person proves, in such manner as the Commission may direct, that throughout the week the person was not employed in insurable employment because the person was

- **(a)** incapable of work because of a prescribed illness, injury, quarantine or pregnancy;
- **(b)** confined in a jail, penitentiary or other similar institution and was not found guilty of the offence for which the person was being held or any other offence arising out of the same transaction;
- **(c)** receiving assistance under an employment support measure other than one referred to in paragraph 59(c) or (d); or



- (d) receiving payments under a provincial law on the basis of having ceased to work because continuing to work would have resulted in danger to the person, her unborn child or a child whom she was breast-feeding.

- (3) [Repealed, 2021, c. 23, s. 305]

- **Marginal note:Further extension of qualifying period**

(4) A qualifying period is further extended by the aggregate of any weeks during an extension for which the person proves, in any manner that the Commission may direct, that the person was not employed in insurable employment because of a reason specified in subsection (2).

- **Marginal note:**

- **Period not counted if benefits received**

- (5) For the purposes of subsections (2) and (4), a week during which the person was in receipt of benefits does not count.

- **Establishment of benefit period**

- 9 When an insured person who qualifies under section 7 or 7.1 makes an initial claim for benefits, a benefit period shall be established and, once it is established, benefits are payable to the person

#### Beginning of benefit period

- 10 (1) A benefit period begins

- **Prior benefit period**

- (3) Subject to a change or cancellation of a benefit period under this section, a benefit period shall not be established for the claimant if a prior benefit period has not ended.

- 

- **Late initial claims**

(4) An initial claim for benefits made after the day when the claimant was first qualified to make the claim shall be regarded as having been made on an earlier day if the claimant shows that the claimant qualified to receive benefits

#### Payment of Benefits **Marginal note:Benefits**

- **12 (1)** If a benefit period has been established for a claimant, benefits may be paid to the claimant for each week of unemployment that falls in the benefit period, subject to the maximums established by this section.

- **7 (1)** Unemployment benefits are payable as provided in this Part to an insured **person who qualifies** to receive them.
- **Marginal note:Qualification requirement**
  - (2)** An insured person qualifies if the person
    - **(a)** has had an interruption of earnings from employment; and
    - **(b)** has had during their qualifying period at least the **number of hours of insurable employment** set out in the following table in relation to the **regional rate of unemployment** that applies to the person.

**7 (1)** Unemployment benefits are payable as provided in this Part

### **Sect 12 General maximum — exception**

**(2.1)** Despite subsection (2), the maximum number of weeks for which benefits may be paid in a benefit period because of a reason other than those mentioned in subsection (3) to a claimant whose benefit period begins during the period beginning on September 27, 2020 and ending on September 25, 2021 is 50.

- 153.3 - [PART VIII.3 - Interim Orders](#), 153.5 - [PART VIII.4 - Employment Insurance Emergency Response Benefit](#)

### **Judicial Review - Remedies Generally [JRPA 2(1)]**

[56] Subsection 2(1) of the Judicial Review Procedure Act, R.S.O. 1990, c. J.11 (“JRPA”) states: On an application by way of originating notice, which may be styled “Notice of Application for Judicial Review”, the court may, despite any right of appeal, by order **grant any relief that the applicant would be entitled** to in any one or more of the following:

1. Proceedings by way of application for an order in the nature of mandamus, prohibition or certiorari.
2. Proceedings by way of an action for a declaration or for an injunction, or both, in relation to the exercise, refusal to exercise or proposed or purported exercise of a statutory power.

Jurisdiction of Federal Court (continued)

### **Marginal note:Extraordinary remedies, federal tribunals**

- **18 (1)** Subject to section 28, the Federal Court has exclusive original jurisdiction

- **(a)** to issue an injunction, writ of *certiorari*, writ of prohibition, writ of *mandamus* or writ of *quo warranto*, or grant declaratory relief, against any federal board, commission or other tribunal; and
- **(b)** to hear and determine any application or other proceeding for relief in the nature of relief contemplated by paragraph (a), including any proceeding brought against the Attorney General of Canada, to obtain relief against a federal board, commission or other tribunal.

### **18.1 Powers of Federal Court**

**(3)** On an application for judicial review, the Federal Court may

- (a)** order a federal board, commission or other tribunal to do any act or thing it unlawfully failed or refused to do or has unreasonably delayed in doing; or

#### **Marginal note: Grounds of review**

**(4)** The Federal Court may grant relief under subsection (3) if it is satisfied that the federal board, commission or other tribunal

- a. **(a)** acted without jurisdiction, acted beyond its jurisdiction or refused to exercise its jurisdiction;
- b. **(b)** failed to observe a principle of natural justice, procedural fairness or other procedure that it was required by law to observe;
- c. **(c)** erred in law in making a decision or an order, whether or not the error appears on the face of the record;
- d. **(d)** based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it;
- e. **(e)** acted, or failed to act, by reason of fraud or perjured evidence; or
- f. **(f)** acted in any other way that was contrary to law.

#### **(b) Marginal note: Defect in form or technical irregularity**

**Reference by federal tribunal 18.3 (1)** A federal board, commission or other tribunal may at any stage of its proceedings refer any question or issue of law, of jurisdiction or of practice and procedure to the Federal Court for hearing and determination.

Submitted by:

Kerry Mayhead, Applicant

BOX 43, 100 QUEEN ST, LONG LAC, ON P0T 2AO: TELEPHONE: 519-562-8554

Signature: Kerry Mayhead

(in absence of electronic signature):

Dated: 2023-07-10, at LongLac, ON

