Court No. T-1769-25

FEDERAL COURT

BETWEEN:

JOSEPH HICKEY

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

APPLICANT'S MEMORANDUM OF FACT AND LAW
(Rule 309(2)(h) of the *Federal Court Rules*)

SUMMARY

I was a data scientist fired for refusing to follow my employer's directive to be injected with a COVID-19 vaccine while working entirely from home. My expressed concerns were based on many scientific studies and published governmental data about COVID-19 vaccine adverse effects, especially proven heart inflammation (myocarditis and pericarditis) for males in my age group.

The Social Security Tribunal of Canada (SST) decided that my intentional refusal to follow my employer's demand to get vaccinated constitutes "misconduct" based entirely on refusing to do whatever the employer asked, without giving any consideration to the nature of the employer's demand or its impacts on my health or fundamental rights.

According to the SST, my intentional refusal to be injected with a substance while working from home constitutes misconduct, irrespective of what my employer was demanding of me and the health risks involved.

On the basis of this supposed "misconduct", I was denied Employment Insurance (EI) benefits following Federal Cabinet directives in the exceptionally politicized environment of the COVID-19 pandemic period.

OVERVIEW

1. This is an application for judicial review of Social Security Tribunal of Canada (SST) Appeal Division Member Lew's decision[1] denying me leave to appeal SST General Division Member Bourgeois's decision not to grant me Employment Insurance (EI) benefits.[2]

2. In November 2021, my employer demanded that I receive injections of a COVID-19 vaccine. I refused to be vaccinated, and requested an accommodation for medical, religious, and human rights reasons.

3. In my letter to my employer requesting accommodation dated November 12, 2021, I cited scientific evidence, including published data from Public Health Ontario, demonstrating an elevated risk of heart inflammation (myocarditis and pericarditis) for males in my age group.[3]

4. My employer denied my accommodation request and suspended me without pay or benefits on November 19, 2021.[4] I then applied for EI benefits.

5. The SST General Division decided[5] that my refusal to be vaccinated constituted misconduct justifying denial of EI benefits, pursuant to the *Employment Insurance Act* (*"EI Act*"). The SST Appeal Division denied leave to appeal the General Division's decision.[6]

6. I am a trained professional interdisciplinary scientist with the capacity to gather and knowledgably present scientific evidence, including in the field of epidemiology of vaccination.[7,8]

---

[1] Leave to Appeal Decision by SST Appeal Division Member Lew of May 7, 2025 in SST file AD-24-13 [No hyperlink].
[2] *JH v Canada Employment Insurance Commission*, 2023 SST 1786 (CanLII), https://canlii.ca/t/k26z0.
[3] Applicant's Supporting Affidavit at pgs. 217/2311-220/2311 (GD2-214 to GD2-217 in the SST's numbering).
[4] Applicant's Supporting Affidavit at pgs. 221/2311-223/2311 (GD2-218 to GD2-220 in the SST's numbering).
[5] *JH v Canada Employment Insurance Commission*, 2023 SST 1786 (CanLII), https://canlii.ca/t/k26z0.
[6] Leave to Appeal Decision by SST Appeal Division Member Lew of May 7, 2025 in SST file AD-24-13 [No hyperlink].
[7] Applicant's Supporting Affidavit at pgs. 72/2311-73/2311 (pgs. GD2-69 to GD2-70 in the SST's numbering).
[8] J. Hickey, D.G. Rancourt, "Predictions from standard epidemiological models of consequences of segregating and isolating vulnerable people into care facilities", *PLOS One* 18 (2023) e0293556, https://doi.org/10.1371/journal.pone.0293556; J. Hickey, D.G. Rancourt, "Viral Respiratory Epidemic Modeling of Societal Segregation Based on Vaccination Status", *Cureus* 15 (2023) e50520, https://doi.org/10.7759/cureus.50520.

7. I entered extensive documentary evidence by affidavit before the SST General Division that the COVID-19 vaccines can cause permanent disability and death, especially myocarditis for males in my age group.[9]

8. The SST expressly adopted a definition (a "test") of "misconduct" in which an employee's intentional refusal to follow an employer's directive automatically constitutes misconduct, irrespective of the said directive (irrespective of what is being demanded of the employee).

9. Specifically, the SST disregarded the documented medical dangerousness of my employer's vaccination directive to me in its calculus for deciding whether my refusal to be vaccinated constituted misconduct, which is contrary to the intent and plain meaning of the *EI Act*.

10. Additionally, and disjunctively, the SST failed to recognize the issue raised that the CEIC's originating decision itself to interpret my decision not to be vaccinated as "misconduct" under the *EI Act* and thereby deny me access to EI benefits was government action that breached my fundamental rights.

1. STATEMENT OF FACTS

11. I began working as a Data Scientist at the Bank of Canada in June 2019.

12. In March 2020, I and all my colleagues were directed to work entirely remotely, by telecommunication, with no physical attendance at the employer's offices.

13. In October 2021, my employer implemented a mandatory vaccination policy, directing all employees to become vaccinated or obtain an accommodation to continue working without becoming vaccinated.

14. In November 2021, I asked my employer for an accommodation based on medical, religious, and human rights grounds.

15. In my letter to my employer requesting accommodation dated November 12, 2021, I cited scientific evidence, including published data from Public Health Ontario, demonstrating an

[9] Applicant's Supporting Affidavit at pages 68/2311-799/2311 (pgs. GD2-65 to GD2-896 in the SST's numbering), especially at pgs. 91/2311-160/2311 (GD2-88 to GD2-157), 169/2311-176/2311 (GD2-166 to GD2-173) and 763/2311-780/2311 (GD2-860 to GD2-877).

elevated risk of heart inflammation (myocarditis and pericarditis) for males in my age group.[10]

16. My employer denied my request for accommodation and placed me on unpaid leave without benefits (suspended me without pay or benefits) on November 19, 2021.[11]

17. From March 2020 until my suspension in November 2021, I worked exclusively from home.

18. My employer's mandatory vaccination policy was in place from November 2021 until June 2022. Following my employer's removal of its vaccination mandate, I was not brought back to work, but rather ended my employment by negotiated mutual agreement with my employer.

19. I was not asked to be present in person in the workplace while my employer's vaccination mandate was in place. My colleagues continued working from home the entire time the vaccination mandate was in place, such that there was never any need to bring me back to the physical workplace. Working from home would not have impaired my ability to perform my work in any way, and I had been working from home for 20 months (from March 2020 to November 2021) at the time I was removed from work. The facts in this regard are not contested, and are clear from the record of the instant proceedings.[12]

20. I am a trained interdisciplinary scientist with the capacity to gather and knowledgably present scientific evidence.[13] I have published scientific research articles in the field of epidemiology of vaccination, in peer-reviewed scientific journals.[14]

21. I submitted extensive scientific evidence by affidavit about the dangers of the vaccine, which include permanent disability, serious injury and death, and in particular to my age group and sex.[15]

22. The said scientific evidence is not contested and includes:

    i. More than 1000 peer-reviewed scientific articles demonstrating harm from COVID-19 vaccines.[16]

[10] Applicant's Supporting Affidavit at pgs. 217/2311-220/2311 (GD2-214 to GD2-217 in the SST's numbering).
[11] Applicant's Supporting Affidavit at pgs. 221/2311-223/2311 (pgs. GD2-218 to GD2-220 in the SST's numbering).
[12] Applicant's Supporting Affidavit at pgs. 68/2311-75/2311 (pgs. GD2-65 to GD2-72 in the SST's numbering).
[13] Applicant's Supporting Affidavit at pgs. 72/2311-73/2311 (pgs. GD2-69 to GD2-70 in the SST's numbering).
[14] See footnote 8 of the instant submissions.
[15] See footnote 9 of the instant submissions.
[16] Applicant's Supporting Affidavit at pgs. 115/2311-153/2311 (pgs. GD2-112 to GD2-150 in the SST's numbering).

ii. Autopsy reports of death caused by COVID-19 vaccines.[17]

iii. Government health agency studies of serious adverse event reports following COVID-19 vaccination using pharmacovigilance systems such as the Vaccine Adverse Event Reporting System (VAERS) in the United States, Public Health Ontario's adverse events database, and Pfizer's database of adverse event reports made following injection with its COVID-19 vaccine products.[18]

iv. The significantly increased risk of dangerous heart inflammation following COVID-19 vaccination, especially for younger males, which danger is heightened for those who engage in strenuous sports activity with large cardiovascular system demand.[19]

v. Government public health agencies in many countries removing authorization for COVID-19 vaccines due to serious and fatal adverse events.[20]

23. I am a male and was under age 40 at the time of my loss of work (November 2021), and I was therefore at significantly elevated risk of myocarditis or pericarditis (heart inflammation) following vaccination, as is overwhelmingly demonstrated by the scientific evidence on the record in my appeal.[21]

24. I squarely put it to the General Division that I could not take the vaccine because it was dangerous and that there was no valid reason I could not work from home.

25. I explicitly invoked my rights under the *Canadian Charter of Rights and Freedoms* (sections 2 and 7), which are violated by my employer's directive of mandatory vaccination.[22,23]

[17] Applicant's Supporting Affidavit at pgs. 104/2311-107/2311 (pgs. GD2-101 to GD2-104 in the SST's numbering).
[18] Applicant's Supporting Affidavit at pgs. 107/2311-115/2311 (pgs. GD2-104 to GD2-112 in the SST's numbering).
[19] Applicant's Supporting Affidavit at pgs. 153/2311-155/2311 (pgs. GD2-150 to GD2-152 in the SST's numbering) and pgs. 763/2311-780/2311 (GD2-860 to GD2-877). I affirmed that I regularly engage in strenuous sports activity that places a large demand on my cardiovascular system at para. 20 of my Affidavit of July 14, 2022 filed with the SST (pg. 74/2311 of the Applicant's Supporting Affidavit, which is pg. GD2-71 in the SST's numbering).
[20] Applicant's Supporting Affidavit at pgs. 217/2311-220/2311 (pgs. GD2-214 to GD2-217 in the SST's numbering).
[21] See footnote 9 and paragraph 22 of the instant submissions.
[22] Notice of Appeal of Denial of Employment Insurance Benefits, July 15, 2022, at pgs. 15/2311-67/2311 of the Applicant's Supporting Affidavit (pgs. GD2-12 to GD2-64 in the SST's numbering).
[23] Applicant's Supporting Affidavit at pgs. 68/2311-799/2311 (pgs. GD2-65 to GD2-896 in the SST's numbering).

26. The SST General Division decided[24] that my refusal to be vaccinated constituted misconduct justifying denial of EI benefits, pursuant to the *Employment Insurance Act* (*"EI Act*"). The SST Appeal Division denied leave to appeal the General Division's decision.[25]

27. The Appeal Division granted my request for permission to file an Amended Application for Leave to Appeal the General Division's decision denying EI benefits.[26] My Amended Application for Leave to Appeal was filed on September 27, 2024.[27]

28. In my Amended Application for Leave to Appeal, I argued that Member Bourgeois of the General Division erred by not recognizing the raised issue that the CEIC's decision to interpret my refusal to be vaccinated as misconduct under the *EI Act* and thereby deny me EI benefits itself violated my fundamental rights under sections 2(a) and 7 of the *Canadian Charter of Rights and Freedoms*.[28]

2. POINTS IN ISSUE

29. First issue:

> **ISSUE 1:** Did my refusal to follow my employer's demand to accept the medical intervention of injecting a substance into the body that can cause long-term or permanent disability and death constitute "misconduct" justifying depriving me of EI benefits pursuant to the *EI Act*?

30. Second issue:

> **ISSUE 2:** Did the SST Appeal Division fail to recognize and address my raised issue that the CEIC itself violated my constitutional rights, including the right to life, liberty and security of the person (s. 7 of the *Charter*) and freedom of conscience and religion (s. 2(a) of the *Charter*) in deciding to interpret my refusal to be vaccinated as "misconduct" under the *EI Act* and thereby deny me EI benefits?

[24] *JH v Canada Employment Insurance Commission*, 2023 SST 1786 (CanLII), https://canlii.ca/t/k26z0.
[25] Leave to Appeal Decision by SST Appeal Division Member Lew of May 7, 2025 in SST file AD-24-13 [No hyperlink].
[26] *Ibid.*, at footnote 1.
[27] Amended Application for Leave to Appeal, dated September 27, 2024, pages AD22-12 to AD22-45.
[28] Amended Application for Leave to Appeal, dated September 27, 2024, pages AD22-37 to AD22-45.

3. APPLICANT'S ARGUMENTS

3.1 The Social Security Tribunal's express definition of "misconduct" is absurd and amounts to arbitrary state action that must be corrected

31. In the instant case, the crux of the matter is as follows:

- The *EI Act* requires the Social Security Tribunal (SST) to determine whether certain employee conduct constitutes "misconduct".
- In this case, the employee conduct at issue is that an employee who worked entirely from home, with no physical contact with any co-worker, refused his employer's demand to receive a COVID-19 vaccine.
- The employee is a trained interdisciplinary scientist and an epidemiology researcher. He entered extensive scientific documentation by affidavit submission demonstrating known risks of COVID-19 vaccination, especially myocarditis to males in his age group, which is shown in the submitted scientific articles to be capable of causing permanent disability or death.
- Both levels of the tribunal (General Division and Appeal Division) expressly adopted a "test" for misconduct that excludes any consideration of what is being demanded by the employer and refused by the employee, including any consideration of the potential consequences of the demand, while claiming to be bound by court decisions in doing so.
- The tribunal's thus constructed definition of misconduct equates to the formula: "wilfully disobey demand = misconduct, irrespective of what is being demanded".
- The said constructed definition of misconduct is obviously absurd, and palpably contrary to the purpose, intent and languge of the *EI Act*. According to the said definition, an employee's refusal to obey an employer's demand to permanently harm hinself or others would constitute misconduct disqualifying the employee from EI benefits.
- Furthermore, via its constructed definition of misconduct, the tribunal circumvented any consideration of infringement or denial of the employee's *Charter* rights, including the right to life, liberty, and security of the person, the right to freedom of conscience, and the right to freedom of religion.

32. Although each case has its own factual context, a multitude of tribunal and court decisions have followed the same path in the COVID-19 vaccination refusal cases before them, systematically disregarding the nature and consequences of the employer demand in determining whether their refusal of the demand constitutes misconduct.[29]

33. The newly entrenched bad law requires the individual to disregard their own bodily integrity and safety in obeying employer demands or be denied EI under the rubric of "misconduct", whereas nothing about the statute supports the tribunal's constructed tunnel-vision definition of "misconduct" as "disobedience, irrespective of the demand".

34. No reasonable person could predict or anticipate such a meaning of "misconduct" from reading the text of the *Act*.

35. In such cases, where no reasonable person, from a reading of the purpose, intent, and language of the *Act*, can anticipate how an administrative tribunal will decide a matter pursuant to the *Act*, the tribunal creates unpredictability that undermines public confidence in the consistency and meaning of the law, and compromises the rule of law.

36. When a tribunal compromises the rule of law by repeatedly applying an interpretation that is absurd on its face and that is disconnected from the purpose, intent, and language of its enabling *Act*, the court has a constitutional obligation to step in and set the record straight with a "singular, determinate and final answer":[30]

---

[29] *Kuk v. Canada (Attorney General)*, 2024 FCA 74 (CanLII); *Cecchetto v. Canada (Attorney General)*, 2024 FCA 102 (CanLII); *Spears v. Canada (Attorney General)*, 2024 FC 329 (CanLII); *Davidson v. Canada (Attorney General)*, 2023 FC 1555 (CanLII); *Butu v. Canada (Attorney General)*, 2024 FC 321 (CanLII); *Abdo v. Canada (Attorney General)*, 2023 FC 1764 (CanLII); *Boskovic v. Canada (Attorney General)*, 2024 FC 841 (CanLII); *Milovac v. Canada (Attorney General)*, 2023 FC 1120 (CanLII); *Wong v. Canada (Attorney General)*, 2024 FC 686 (CanLII); *Hazaparu v. Canada (Attorney General)*, 2024 FC 928 (CanLII); *Palozzi v. Canada (Attorney General)*, 2024 FCA 81 (CanLII); *Khodykin v. Canada (Attorney General)*, 2024 FCA 96 (CanLII); *Sullivan v. Canada (Attorney General)*, 2024 FCA 7 (CanLII); *Matti v. Canada (Attorney General)*, 2023 FC 1527 (CanLII), https://canlii.ca/t/k16rf; *Zhelkov v. Canada (Attorney General)*, 2023 FCA 240 (CanLII); *Murphy c. Canada (Procureur général)*, 2024 CF 1356 (CanLII); *Francis v. Canada (Attorney General)*, 2023 FCA 217 (CanLII); *Hey v. Canada (Attorney General)*, 2025 FC 46 (CanLII).

[30] *Canada (Minister of Citizenship and Imm.) v. Vavilov*, 2019 SCC 65 (CanLII), https://canlii.ca/t/j46kb, at para. 32.

> [32] That being said, our starting position that the applicable standard of review is reasonableness is not incompatible with the rule of law. However, because this approach is grounded in respect for legislative choice, it also requires courts to give effect to clear legislative direction that a different standard was intended. Similarly, a reviewing court must be prepared to derogate from the presumption of reasonableness review where respect for the rule of law requires a singular, determinate and final answer to the question before it. […] [Emphasis added]

37. In such cases, the court has a constitutional obligation to create binding precedent to correct the tribunal's faulty interpretation of its enabling act:[31]

> [T]he majority acknowledges a constitutional limit to legal pluralism. The judicial branch has a constitutionally prescribed role as the ultimate interpreters of the law. The courts cannot entrench deference in doctrine to the point that this role is entirely delegated to other parts of government. [Emphasis added]

38. The needed binding precedent can only be made by a court:[32]

> Where the rule of law requires a matter to be decided so as to avoid unpredictability, incoherence, or inconsistency, it is only a court that can do so definitively, and then only by applying a correctness standard. [Emphasis added]

39. Otherwise, if the court fails to step in and correct the tribunal's repeated (here systematic) misdirection, the disconnect between the purpose, intent, and language of the *Act* and the tribunal's decisions creates a state of affairs in which the meaning of the *Act* is so unpredictable to the reasonable person that the tribunal's decisions are equivalent to being arbitrary. Arbitrary state action is anathema to the rule of law:[33]

> Rejection of arbitrariness has been the ostinato rhythm of advocates of the rule of law,316 from Lord Hewart317 to Carleton Allen,318 to G.W. Keeton,319 to Hayek,320 to McRuer,321 to Tom Bingham.322 The principle is fundamental to our constitutional order.323 Though many doubt discretion itself must lead to arbitrariness, no one defends arbitrary state action as such.324 Mary Liston has argued that:

[31] E. Cottrill, "Administrative 'Determinations of Law' and the Limits of Legal Pluralism after *Vavilov*", Alberta Law Review, 2020;58:153-186, https://doi.org/10.29173/alr2614, at pg. 166.
[32] *Ibid.*, at pg. 175.
[33] *Ibid.*, at pg. 184.

> If the rule of law has a core of meaning in legal theory, it is the principle of legality. The import of the principle of legality for the rule of law is that it conveys the basic intuition that law should always authorize the use of public power and constrain the risk of the arbitrary use of public power.325

40. Regarding standard of review for ISSUE 1, I respectfully request essentially a correctness determination in which the "misconduct" bad-law adventure of the tribunal is definitively reset. If the court is inclined to define a new category of exception from reasonableness review, I might respectively suggest the following language:

> A new rule of law exception to reasonableness review is warranted and correctness review applies in cases where the interpretation of a statutory provision that is pivotal to the case is *prima facie* incompatible with the purpose, intention, context and plain language of the statute, thus collapsing the utility of conducting a full reasonableness review.

3.2 ISSUE 1: Refusing a potentially lethal medical injection is not "misconduct" under the *EI Act*

3.2.1 The SST failed to adhere to the *EI Act* in constructing and applying its absurd definition of "misconduct"

41. Sections 30(1) and 31 of the *EI Act* (the "misconduct sections")[34] allow the government to withhold EI benefits based on impugned employee conduct.

42. The said sections give the SST the authority, duty and responsibility to judge whether the impugned employee conduct constitutes "misconduct", as the statutory criterion for barring EI.

43. Therefore, the SST must determine what the said impugned employee conduct is, and must consider the said impugned employee conduct in deciding whether it constitutes misconduct.

44. When the said impugned employee conduct is to refuse to follow an employer's order or directive, then determining and considering the said impugned employee conduct must

[34] *Employment Insurance Act*, Employment Insurance Act (S.C. 1996, c. 23), https://laws-lois.justice.gc.ca/eng/acts/e-5.6/page-6.html#h-216396, ss. 30(1) and 31.

logically and necessarily include determining and considering the said employer's order or directive that is refused by the employee.

45. The decision maker's statutorily required said consideration of the order or directive being refused by the employee must necessarily include all factors on record that can impact the judgment of misconduct pursuant to the *EI Act*. The said factors may include whether following the order would infringe the employee's *Charter* rights, expose the employee to health risks, lead to violation of laws, and so on.

46. The act of refusing an employer's demand is not defined sufficiently to permit due consideration pursuant to the *EI Act* unless the decision maker appreciates what is being refused.

47. When conducting a misconduct analysis, if the SST fails to consider what the impugned employee conduct is, then the SST fails to follow the *EI Act*.

48. In cases in which the impugned employee conduct is to refuse to follow an employee's order or directive, if the SST fails to consider what the employee's order or directive is, then the SST fails to consider what the impugned employee conduct of refusal was and fails to follow the *EI Act*.

49. The SST as an administrative tribunal is constitutionally bound to follow its enabling act:[35]

> 35 Administrative tribunals or agencies are statutory creations: they cannot exceed the powers that were granted to them by their enabling statute; they must "adhere to the confines of their statutory authority or 'jurisdiction'[; and t]hey cannot trespass in areas where the legislature has not assigned them authority": Mullan, at pp. 9-10 (see also S. Blake, Administrative Law in Canada (3rd ed. 2001), at pp. 183-84). [Emphasis added]

50. The powers of an administrative tribunal can exist by necessary implication from the wording of the tribunal's enabling act:[36]

> The respondent argues that the power to revisit the period during which interim rates were in force cannot exist within the statutory scheme established by the Railway Act and the National Transportation Act because these statutes do not grant such a power explicitly, unlike s. 64 of the National Energy Board Act, R.S.C., 1985, c. N-7. The powers of any administrative tribunal must of course be stated in its enabling statute but they may also exist by necessary implication from the wording of the act, its structure and its

[35] *ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)*, 2006 SCC 4 (CanLII) , para. 35.
[36] *Bell Canada v. Canada (Canadian Radio-Tel. and Telecom. Commiss.)*, 1989 CanLII 67 (SCC), at pg. 1756.

> purpose. Although courts must refrain from unduly broadening the powers of such regulatory authorities through judicial law-making, they must also avoid sterilizing these powers through overly technical interpretations of enabling statutes. […] [Emphasis added]

51. Likewise, the obligations of an administrative tribunal, with regard to following its enabling act, can exist by necessary implication from the wording of the *Act*.

52. In the case of impugned employee conduct that constitutes a refusal to follow an employer directive, the *EI Act* necessarily requires that the decision maker consider what it is that the employee has refused to do, in its calculus of whether there was "misconduct".

53. In my case, my employer directed me to be injected with a potentially lethal substance. The SST explicitly refused to consider the nature of the directive, applying a formula of "wilfully disobey demand = misconduct, irrespective of what is being demanded". The SST failed to perform its statutory duty to evaluate the employer's directive in my case.

3.2.2 The SST's constructed definition of "misconduct" is incorrect

54. In my case, Member Bourgeois of the SST General Division incorrectly severed the impugned refusal to be vaccinated into two separate parts:

    i. The part she considered not to be determinative of or relevant to judging misconduct: the reality and implications of what was being demanded (vaccination), and

    ii. The part she considered determinative for judging misconduct: the essentially generic notion of wilfully refusing the employer's directive.

55. Member Bourgeois explicitly decided not to consider what was being demanded by the employer and refused by the employee (vaccination) and in-effect only considered that there was a refusal by the employee.

56. Member Bourgeois by implication thus in-effect silently presumed without due or expressed consideration that the employer demand (vaccination) was benign, that no danger or risk or violation of fundamental rights needed to be considered, despite the extensive record before her of relevant scientific and other evidence.[37]

[37] See footnote 9 and paragraph 22 of the instant submissions.

57. Member Lew of the SST Appeal Division made the same error, in dismissing my application for leave to appeal Member Bourgeois's decision.

58. In her decision denying leave to appeal, Member Lew stated (underlining emphasis added; square brackets in the original):

> [27] It is now well established that any arguments about the constitutionality, legality, and reasonableness of an employer's vaccination policy are irrelevant to the misconduct issue. As the Federal Court of Appeal determined in one case, the General Division erred when it focused on the merits of an employer's policy and the employment contract, rather than on the applicant's conduct. The Court of Appeal wrote:
>
> > [The General Division] erred in law in considering whether the hospital's policy was fair, legal, complied with the Charter, violated the employee's human rights or the terms of a collective agreement. The only question that the General Division ought to have asked was whether the employee knew or ought to have known of the policy, the consequences of non-compliance, and voluntarily chose not to comply.13
>
> [28] Or, as the Court of Appeal succinctly put in another decision, "An employee's reasons for non-compliance are not relevant to the [misconduct] analysis."14
>
> [29] As for the nature of the Claimant's conduct, misconduct under the *Employment Insurance Act* does not require criminal, abhorrent, or reprehensible conduct.15 The courts have defined what conduct qualifies as misconduct:
>
> [T]here will be misconduct where the conduct of a claimant was wilful, i.e., in the sense that the acts which led to the dismissal were conscious, deliberate or intentional. Put another way, there will be misconduct where the claimant knew or ought to have known that his conduct was such as to impair the performance of the duties owed to his employer and that, as a result, dismissal was a real possibility.16
>
> [30] And it is unnecessary for a claimant's conduct to be blameworthy or to attract any discipline. Misconduct results as long as the applicant engages in conduct with the knowledge that consequences might flow.17
>
> [31] The General Division identified this test.18 It then proceeded to apply this same test. For this reason, I am not satisfied that there is an arguable case that the General Division misinterpreted what misconduct is under the *Employment Insurance Act*. [Underlining emphasis added; square brackets in the original]

59. Member Lew therefore defined misconduct to mean any wilful disobedience of an employer's demand, irrespective of what is being demanded.

60. Member Lew referred to her definition of misconduct as a "test".

61. Member Lew's definition of misconduct (wilfully disobey demand = misconduct, irrespective of what is being demanded) is not a complete and context-independent test, because the condition "wilfully disobey demand" is a necessary but not sufficient condition for establishing misconduct.

62. There are many cases in which an employee's refusal to obey an employer's directive can be wilful but does not constitute misconduct. Refusal to comply with an employer's demand to engage in criminal acts is an obvious example. Therefore, the condition "wilfully disobey demand", while necessary, is not sufficient for establishing misconduct.

63. In my case, my employer's demand was mandatory vaccination, which carries the risk of permanent disability or death, as per uncontested evidence in the record.[38]

64. My case is one where it is necessary to consider what is being demanded by the employer and refused by the employee, in order to appreciate the impugned conduct and to judge whether the refusal constitutes misconduct. Otherwise, one is judging a shadow of the conduct, not the actual conduct itself.

65. In my case, Member Bourgeois' erroneous application of the equation "wilfully disobey demand = misconduct, irrespective of what is demanded" (upheld by Member Lew), leads to the incorrect finding that an individual's decision to decline a dangerous medical intervention involving injecting a substance into the individual's body that is known to produce irreversible adverse effects including death,[39] while the individual's decision does not in-fact hinder the individual's ability to fulfill his contractual obligations, is misconduct. This is an absurd result on its face.

66. There are many recent cases in which employees who refused employer directives to receive COVID-19 vaccine injections were denied EI benefits on the basis of misconduct. The said cases are not helpful in the instant case because they do not consider the nature of the directive

[38] See footnote 9 and paragraph 22 of the instant submissions.
[39] See footnote 9 and paragraph 22 of the instant submissions.

being refused to be relevant in the calculus of whether or not the refusal constituted misconduct.[40]

67. The said cases[41] expressly or *de facto* apply a constricted definition of misconduct that excludes considering the possible deleterious nature of the employer's directive in judging whether there is misconduct. These cases in-effect apply the equation "wilfully disobey demand = misconduct, irrespective of what is being demanded," which is not provided by or intended in the *EI Act*. Even though the said equation may give the correct answer in some circumstances, it can produce unjust or even absurd results in other circumstances.

68. In contrast to the many cases mentioned above, in which EI benefits were denied pursuant to the misconduct sections of the *EI Act* for refusing vaccination,[42] in my particular case:

    i. I worked exclusively from home, and I was not asked to be present in person in the workplace while my employer's vaccination mandate was in place. All of my colleagues continued working from home the entire time the vaccination mandate was in place, such that there was never any need to bring me back to the physical workplace. Working from home would not have impaired my ability to perform my work duties in any way, and I had been working from home for 20 months (from March 2020 to November 2021) at the time I was removed from work for not being vaccinated. The facts in this regard are not contested, and are clear from the record of the instant proceedings.[43]

    ii. I submitted extensive and conclusive scientific evidence about the dangers of the vaccine, which include permanent disability, serious injury and death.[44] The said scientific evidence is not contested.

[40] See the cases cited in footnote 29 of the instant submissions.
[41] See the cases cited in footnote 29 of the instant submissions.
[42] See the cases cited in footnote 29 of the instant submissions.
[43] Applicant's Supporting Affidavit at pgs. 68/2311-75/2311 (pgs. GD2-65 to GD2-72 in the SST's numbering).
[44] See footnote 9 and paragraph 22 of the instant submissions.

iii. I am a trained interdisciplinary scientist with the capacity to gather and knowledgably present the said extensive scientific evidence.[45] For example, I recently published two scientific research articles on epidemiological modeling related to COVID-period measures, in peer-reviewed scientific journals.[46]

iv. I am a male and was under age 40 at the time of my loss of work (November 2021), and I was therefore at significantly elevated risk of myocarditis or pericarditis (heart inflammation) following vaccination, as is overwhelmingly demonstrated by the scientific evidence on the record in my appeal.[47]

v. I squarely put it to the General Division that I could not take the vaccine because it was dangerous and that there was no valid reason I could not work from home.

vi. I explicitly invoked my *Charter* rights (ss. 2 and 7), which are violated by the employer's directive of mandatory vaccination.[48,49] The said *Charter* violations are an inseparable part of the nature of the employer demand that I refused.

69. All of the above characteristics of my case were before the SST.

70. The said extensive and conclusive scientific evidence about COVID-19 vaccine harms has only accelerated since I submitted my notice of appeal to the SST on July 15, 2022, and now includes many additional published peer-reviewed scientific studies.[50] I respectfully request that the Court take judicial notice of the existence of the said new scientific publications.

[45] Applicant's Supporting Affidavit at pgs. 72/2311-73/2311 (pgs. GD2-69 to GD2-70 in the SST's numbering).
[46] See footnote 8 of the instant submissions.
[47] See footnote 9 and paragraph 22 of the instant submissions.
[48] Applicant's Supporting Affidavit at pgs. 15/2311-67/2311, (pgs. GD2-12 to GD2-64 in the SST's numbering).
[49] Applicant's Supporting Affidavit at pgs. 68/2311-799/2311 (pgs. GD2-65 to GD2-896 in the SST's numbering).
[50] See para. 38 and its footnotes, of the Amended Application for Leave to Appeal of September 27, 2024, at pgs. 2286/2311-2287/2311 of the Applicant's Supporting Affidavit (pgs. AD22-30 to AD22-31 in the SST's numbering).

71. I also ask the Court to take judicial notice that the United States Department of Health and Human Services (HHS) Biomedical Advanced Research and Development Authority (BARDA) has cancelled its investments in mRNA vaccine development for respiratory infections including COVID and influenza. In the words of HHS Secretary Robert F. Kennedy Jr:[51]

> "We reviewed the science, listened to the experts, and acted," said HHS Secretary Robert F. Kennedy, Jr. "BARDA is terminating 22 mRNA vaccine development investments because the data show these vaccines fail to protect effectively against upper respiratory infections like COVID and flu."

72. The *Charter* violation dimension of the vaccination mandate (paragraph 70(vi) of the instant submissions) is not an academic point. There is extensive relevant caselaw regarding *Charter* violations related to medical interventions, including from the SCC.[52]

3.2.3 The SST's constructed definition of "misconduct" is not rational nor justified

73. In addition to being outside of the enabling statute and incorrect in application, the definition of misconduct adopted by the tribunal is not rational or justified.

74. The decisions below are not "based on an internally coherent and rational chain of analysis" and are not "justified in relation to the facts and law that constrain the decision maker".[53] The decisions below are unreasonable.

75. The fatal flaw in the SST's logic is the misapplication of a definition of misconduct (wilfully disobey demand = misconduct, irrespective of what is being demanded) that is copy-pasted from cases in which it was not contested that the employee's actions were of a nature that would cause the employee to be dismissed.[54] In my case, the nature of the employer's directive (injection with a potentially lethal substance) needs to be considered in the evaluation of whether my refusal to be injected constituted misconduct pursuant to the *EI Act*.

---

[51] US Department of Health and Human Services, "HHS Winds Down mRNA Vaccine Development Under BARDA", 5 August 2025, https://wwuw.hhs.gov/press-room/hhs-winds-down-mrna-development-under-barda.html.
[52] See the caselaw quoted in para. 39 of the Applicant's Amended Application for Leave to Appeal, at pgs. 2288/2311-2292/2311 of the Applicant's Supporting Affidavit (pgs. AD22-32 to AD22-36 in the SST's numbering).
[53] *Mason v. Canada (Citizenship and Imm.)*, 2023 SCC 21 (CanLII), https://canlii.ca/t/k0c85, para. 8, citing *Vavilov v. Canada (Citizenship and Imm.)*, 2017 FCA 132 (CanLII), https://canlii.ca/t/h4j13, para. 85.
[54] *Mishibinijima v. Canada (Attorney General)*, 2007 FCA 36 (CanLII), https://canlii.ca/t/1qgkr.

76. The SST explicitly refused to consider the nature of my employer's directive to me to become vaccinated, despite my extensive submission of scientific evidence of risk to me of permanent disability or death from vaccination.[55] Not considering the nature of my employer's directive to me in its analysis of misconduct is a "failure of rationality internal to the reasoning process", making the SST's decisions unreasonable.[56]

77. The SST also committed a "failure of justification given the legal and factual constraints bearing on the decision"[57] by failing to justify why it chose not to consider the dangerousness of the vaccine to me. Instead, the SST copy-pasted a definition of "misconduct" from the case *Mishibinijima*,[58] which is not relevant to my case.

78. *Mishibinijima* is not relevant to my case because it inolved employee conduct that was uncontested to be of a type warranting dismissal (repeatedly arriving late for work after being repeatedly warned about tardiness, in *Mishibinijima*). The decision not to consider what I was refusing (my employer's directive to be vaccinated) in the analysis of misconduct is untenable in light of the relevant and legal constraints,[59] including the fact that the directive breached my fundamental rights to bodily integrity, life, liberty, and security of the person, and freedom of conscience and religion.

79. The decisions below are also unreasonable because the SST failed to consider the following important legal constraints, which were emphasized by the SCC in *Mason*:

    i. the SST failed to address the potentially broad consequences of its interpretation of the "misconduct" provisions of the *EI Act*;[60] and

    ii. the SST failed to address critical points of statutory context.[61]

80. My arguments regarding the SST's failure to consider the two said legal constraints are elaborated in subsections 3.2.4 and 3.2.5, below.

---

[55] See footnote 9 and paragraph 22 of the instant submissions.
[56] *Mason v. Canada (Citizenship and Imm.)*, 2023 SCC 21 (CanLII), at para. 64.
[57] *Ibid.*
[58] Leave to Appeal Decision by SST AD Member Lew of May 7, 2025 in SST file AD-24-13 [No hyperlink], at para. 29, citing *Mishibinijima v. Canada (Attorney General)*, 2007 FCA 36 (CanLII), https://canlii.ca/t/1qgkr, at para. 14.
[59] *Canada (Minister of Citizenship and Imm.) v. Vavilov*, 2019 SCC 65 (CanLII), https://canlii.ca/t/j46kb, at para. 101.
[60] *Ibid.*
[61] *Mason v. Canada (Citizenship and Imm.)*, 2023 SCC 21 (CanLII), https://canlii.ca/t/k0c85, at para. 10.

81. The SCC in *Mason*, citing *Vavilov*, held that a reviewing court cannot disregard the flawed basis for a decision and substitute its own justification for the outcome. This means that if the SST's chain of reasoning contained a fatal logical flaw, or if the SST's decision was untenable in light of the relevant factual and legal constraints that bear on it, then the court must find the SST's decision to be unreasonable:[62]

> [101] With respect, the Court of Appeal effectively buttressed the IAD's reasons to provide a justification that the IAD did not itself provide, contrary to *Vavilov*'s direction that "it is not open to a reviewing court to disregard the flawed basis for a decision and substitute its own justification for the outcome" (para. 96). This Court warned that "[t]o allow a reviewing court to do so would be to allow an administrative decision maker to abdicate its responsibility to justify to the affected party, in a manner that is transparent and intelligible, the basis on which it arrived at a particular conclusion" (para. 96). [Emphasis added]

3.2.4 The SST's constructed definition of "misconduct" leads to broad and absurd consequences

82. It is undeniable that there are many circumstances in which employer demands can be legitimately refused by employees. For example, it is justifiable for an employee to refuse an employer's demand that the employee commit or be subjected to:

- criminal acts, or
- acts that irreparably violate the employee's *Charter* or human rights, or
- acts that directly harm or injure others, or
- acts of self-harm, or
- acts (including returning to the workplace) exposing the employee or others to unnecessary risk of bodily or psychological harm, or
- acts (including returning to the workplace) exposing the employee to sexual or racist harassment.

83. Such refusals by the employee are legitimate, and arguably would not constitute "misconduct" disqualifying the employee from EI benefits for loss of employment due to refusing the

[62] *Mason v. Canada (Citizenship and Imm.)*, 2023 SCC 21 (CanLII), https://canlii.ca/t/k0c85, para. 101, citing *Canada (Minister of Citizenship and Imm.) v. Vavilov*, 2019 SCC 65 (CanLII), https://canlii.ca/t/j46kb, at para. 96.

employer's demand. The SST must consider the salient characteristics and consequences of the employer demand, or it would not be considering the actual employee conduct that is a refusal.

84. The SST cannot, in such said circumstances, misdirect itself to apply a strict equation "wilfully disobey demand = misconduct, irrespective of what is demanded", thereby not considering the actual employee conduct of refusal, as required by the *EI Act*. Nor can the SST uncritically and silently presume that the employer demand is irrelevant, justified or benign.

85. This is not to say that the SST must consider employer conduct. This is not about subjective employer conduct. Rather, this is about the objective nature of the employer's demand or directive that is being refused by the employee.

86. Equivalently in the instant case, the employer order or directive being refused by the employee can be an employer policy.

87. In the instant case of my refusing to follow an employer policy, it is not determinative that the government would be advising or recommending the said policy. The government position and role in developing the said policy does not remove or constrain the SST's statutory obligation pursuant to the *EI Act* to judge whether the impugned conduct of refusing to follow the employer policy is "misconduct".

88. There are many circumstances in which the government could advise or require employers to impose policies that are objectively contrary to science, safety, decency, *Charter* rights, human rights, dignity of the person, or respect for bodily integrity. For example:

    i. The Quebec government banned the wearing of clothing or objects deemed to be religious in many workplaces, which infringes individuals' *Charter* rights.[63] An individual who is fired for declining to remove their deemed-religious clothing or symbols would uncritically be found to commit misconduct and be disqualified from receiving EI benefits, under the incorrect methodology for determining misconduct applied by Member Bourgeois (carving out the employer directive being refused by the employee).

[63] *Hak c. Procureur général du Québec*, 2021 QCCS 1466 (CanLII), https://canlii.ca/t/jff8f.

ii. It was formerly a criminal offence in Canada for a woman to have an abortion.[64] A woman who had an abortion and was subsequently fired for having engaged in the said criminal act would presumably have been found to have committed "misconduct" and been disqualified from EI benefits, according to the incorrect methodology for determining misconduct applied by Member Bourgeois (carving out the employer directive being refused by the employee). The same can be said about same-sex sexual activity, which was a criminal offence in Canada until 1969,[65] and could be argued to put employees at risk of disease.

iii. Workplace policies requiring employees to denounce colleagues for their political, religious, or cultural views or practices can be advised or condoned by governments, as in periods such as McCarthyism, or had the Stephen Harper Conservatives won the 2015 Canadian federal election and implemented a "barbaric cultural practices hotline" as was promised during the election campaign.[66]

89. Clearly, governments can create laws and advise workplace policies that offend basic norms of decency, not to mention *Charter* and human rights. There has to be a limit to how far the government can go in using removal of employment and employment insurance benefits to impose its policy schemes of the day. The *EI Act* must be applied independently of government. In this case, the government publicly practiced express coercion to become vaccinated or be denied EI benefits, as detailed below (Section 3.2.5).

90. In the instant case, it makes no difference that the employer demand refused by the employee is made using a "policy", or that the policy is supported by the government. The crux of the demand is mandatory vaccination, which carries the risk of permanent disability or death. Regarding death, this risk is proven by several autopsy studies and by adverse effect vigilance.[67]

[64] K. Ackerman, S. Stettner, "'The Public Is Not Ready for This': 1969 and the Long Road to Abortion Access", *Canadian Historical Review*, 100 (2019) 239, https://www.utpjournals.press/doi/abs/10.3138/chr.2018-0082-3.
[65] D. Kimmel, D.J. Robinson, "Sex, Crime, Pathology: Homosexuality and Criminal Code Reform in Canada, 1949–1969", *Canadian Journal of Law and Society*, 16 (2014) 147-165, https://doi.org/10.1017/S082932010000661X.
[66] CBC News, "Conservatives pledge funds, tip line to combat 'barbaric cultural practices'", 2 October 2015, https://www.cbc.ca/news/politics/canada-election-2015-barbaric-cultural-practices-law-1.3254118.
[67] See footnote 9 and paragraph 22 of the instant submissions.

91. Like the examples above in paragraph 84 of the instant submissions, my case is one where it is necessary to consider what is being demanded by the employer and refused by the employee, in order to appreciate the impugned conduct and judge whether the refusal constitutes misconduct. Otherwise, one is judging a shadow of the conduct, not the actual conduct itself.

92. The incorrect and explicit methodology for determining misconduct applied by Member Bourgeois[68] (carving out the employer directive being refused by the employee) leads to absurd results when one considers cases that go beyond traditional workplace misconduct — such as theft or consuming alcohol or illegal drugs during working hours — in which it is uncontested and obvious that the employee conduct is of a nature warranting dismissal.

93. In my case, Member Bourgeois' erroneous application of the equation "wilfully disobey demand = misconduct, irrespective of what is being demanded", leads the misdirected Member to the finding that an individual's decision to decline a dangerous medical intervention involving injecting a substance into the individual's body, which is known to produce irreversible adverse effects including death,[69] while the individual's decision does not in-fact hinder the individual's ability to fulfill his contractual obligations, is misconduct. This is an absurd result on its face.

94. Many cases that analyze misconduct are not helpful or relevant in the instant case because they do not consider the nature of the directive being refused to be relevant in the calculus of whether or not the refusal constituted misconduct. This includes the many recent cases in which employees who refused employer directives to receive COVID-19 vaccine injections were denied EI benefits on the basis of misconduct.[70]

95. The said cases expressly or *de facto* apply a constricted definition of misconduct that excludes considering the possible deleterious nature of the employer's directive in judging whether there is misconduct. These cases in-effect apply the equation "wilfully disobey demand = misconduct, irrespective of what is being demanded," which is not provided by or intended in the *EI Act*. Even though the said equation may give the correct answer in some circumstances, it can produce unjust or even absurd results in other circumstances.

[68] *JH v Canada Employment Insurance Commission*, 2023 SST 1786 (CanLII), https://canlii.ca/t/k26z0, paras. 42-50.
[69] See footnote 9 and paragraph 22 of the instant submissions.
[70] See the cases cited in footnote 29 of the instant submissions.

96. The fact that the employee's actions could lead to dismissal was not at issue in *Mishibinijima*.[71] This means that the definition of misconduct contained in paragraph 14 of *Mishibinijima* (applied in the decisions below) cannot be applied by copy-pasting in my case. Rather, the decision maker must view the Court's decision in *Mishibinijima* in light of the full context of the case.

97. The Federal Court of Appeal's decision in *Granstrom* shows that an employee's actions have to be of a nature that dismissal would be warranted in order to make a finding of misconduct:[72]

> [8] With respect, we believe the Umpire in the *Speckling* case misstated our finding in *Brissette*. He defined misconduct of the claimant by the claimant's inability to fulfill a condition of employment. In so doing, he confused the effect of a misconduct with the cause of that misconduct. Under such an approach, there is misconduct every time a person is unable to fulfill a condition of his or her employment. This cannot be. In *Brissette*, our Court ruled that it was the commission of a summary conviction offence, which resulted in a conviction under the Criminal Code, that constituted misconduct within the meaning of the Act. The inability to fulfill a condition of employment resulted from that misconduct and entailed as a consequence the loss of employment. Thus the loss of employment was due to misconduct. [Emphasis added]

98. In *Granstrom*, the Federal Court of Appeal was clear that a violation of an employment condition, even if voluntary, is not necessarily misconduct.

99. The SST has to evaluate whether dismissal would be warranted based on the employee's action (here: refusing vaccination) rather than any policy infringement that results from the employee's action (here: being in a state of non-compliance with the employer's mandatory vaccination policy).

100. The SST's decisions in my case were unreasonable because the *Mishibinijima* definition of misconduct (wilfully disobey demand = misconduct, irrespective of what is being demanded), when ripped out of context and blindly pasted into other cases with different factual matrices, can lead to broad and absurd consequences.[73]

---

[71] *Mishibinijima v. Canada (Attorney General)*, 2007 FCA 36 (CanLII), https://canlii.ca/t/1qgkr.
[72] *Canada (Attorney General) v. Granstrom*, 2003 FCA 485 (CanLII), https://canlii.ca/t/1g3mh, para. 8.
[73] *Mason v. Canada (Citizenship and Imm.)*, 2023 SCC 21 (CanLII), https://canlii.ca/t/k0c85, paras. 98-122.

101. In my Amended Application for Leave to Appeal,[74] I argued that the definition applied by the SST General Division (wilfully disobey demand = misconduct, irrespective of what is being demanded) cannot be correct because it leads to broad and absurd consequences. The SST Appeal Division failed to address my argument about the broad and absurd consequences of applying the said definition of misconduct. For this reason, the SST's decisions are unreasonable on the basis of failure to provide responsive justification.[75]

3.2.5 The SST's adopted definition of "misconduct" enables the express government coercion to become vaccinated or be denied EI benefits, which is contrary to the purpose of the *EI Act*

102. Following the federal election of September 20, 2021, the federal government directed public sector employers, including my employer the Bank of Canada (a Crown corporation), to implement mandatory vaccination policies for their staff.

103. The social and political context of the governmental directive to implement vaccination mandates is one in which:

i. the state expressed that denial of EI was part of its planned coercion that state employees be injected, reported this way by the CBC:[76]

> Employment Minister Carla Qualtrough says it's likely that people who lose their jobs for not complying with employer COVID-19 vaccine policies will not be eligible for employment insurance (EI).
> "It's a condition of employment that hasn't been met," Qualtrough said in an interview with CBC's Power & Politics. "And the employer choosing to terminate someone for that reason would make that person ineligible for EI.
> "I can tell you that's the advice I'm getting, and that's the advice I'll move forward with."

[74] Amended Application for Leave to Appeal to the SST Appeal Division of September 27, 2024, at pgs. 2268/2311-2301/2311 of the Applicant's Supporting Affidavit (pgs. AD22-12 to AD22-45 in the SST's numbering).
[75] *Mason v. Canada (Citizenship and Imm.)*, 2023 SCC 21 (CanLII), https://canlii.ca/t/k0c85, paras. 98-122.
[76] "Don't expect EI if you lose your job for not being vaccinated, minister says", CBC News, 21 October 2021, https://www.cbc.ca/news/politics/ei-vax-status-1.6220287; archived at: https://archive.ph/2xpmg.

ii. The government's use of EI denial as an instrument to coerce employees to become vaccinated was widely criticized by civil society, including the Canadian Civil Liberties Association (CCLA):[77]

> "Dear Minister Qualtrough,
> I am writing on behalf of the Canadian Civil Liberties Association (CCLA) regarding comments you have made in the media and information on the Employment Insurance (EI) website about eligibility for EI. As you know, the position stated is that if an individual is terminated for failing to comply with an employer's vaccination mandate, the individual will not be considered eligible for employment benefits. In effect, a refusal to be vaccinated, or to disclose one's vaccination status to an employer, is treated as misconduct. In our view, this policy is wrong-headed, counter-productive, and may well conflict with the government's constitutional and human rights obligations. We strongly urge you to reconsider this position. (…)
> Sincerely,
> Cara Faith Zwibel, Director, Fundamental Freedoms Program" [Emphasis Added]

104. Denial of EI benefits due to employees' refusal to be vaccinated was part of the government's planned coercion for public sector employees to become vaccinated, in addition to loss of employment.

105. An administrative tribunal is bound by its enabling legislation.

106. The SST is bound by the *EI Act*. It cannot interpret the "misconduct" in ss. 30(1) and 31 of the *EI Act* in ways that contradict the intended purpose of the *EI Act*.[78]

107. The purpose of the EI benefits program is to provide income support to individuals who lose their employment "through no fault of their own".[79] Denying EI benefits because an employee refuses to be injected with a potentially lethal medical substance allows the government to use the *EI Act* and EI benefits program as a tool to coerce employees into getting vaccinated. Such coercion is squarely counter to the intent of the *EI Act*.

[77] Letter from CCLA to Minister Qualtrough, "RE: Denial of Employment Insurance based on vaccination status", 1 Nov 2021, https://ccla.org/wp-content/uploads/2021/11/2021-10-25-Ltr-re-EI-denial-vaccination-status.pdf.
[78] *ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)*, 2006 SCC 4 (CanLII) , para. 35.
[79] Government of Canada, "EI regular benefits", updated 17 July 2025, accessed on 19 August 2025, from: https://www.canada.ca/en/services/benefits/ei/ei-regular-benefit.html.

108. As previously stated in the instant submissions, in the decisions below, the SST applied the formula "wilfully disobey demand = misconduct, irrespective of what is being demanded".

109. The SST's application of "misconduct" to mean intentionally refusing to follow an employer's directive regardless of the nature of the directive contradicts the broader statutory context of the *EI Act* and ignores that the *EI Act* provides for a large category of voluntary employee actions of refusing employer directives that would not disqualify the employee from EI benefits.

110. The said large category of voluntary employee actions of refusing employer directives that would not disqualify an employee from receiving EI are listed in section 29(c)(i)-(xiv) of the *EI Act*,[80] and include "(iv) working conditions that constitute a danger to health or safety".

111. When an employee voluntarily leaves their employment for one of the reasons listed in section 29(c)(i-xiv) of the *EI Act*, the employee is not disqualified from receiving EI benefits.[81]

112. The inclusion of the list of valid reasons for leaving employment in section 29(c) of the *EI Act* shows that the legislature intended to allow that certain employee refusals of employer directives must not result in disqualification from EI benefits. The SST's adopted meaning of "misconduct" using the formula "wilfully disobey demand = misconduct, irrespective of what is being demanded" contradicts the intention of the legislature and is untenable considering the broader statutory context.

113. In my case, the CEIC initially issued a decision denying me EI benefits on the basis that I had voluntarily left work without just cause.[82] Following my request for reconsideration to the CEIC, the CEIC changed its decision from denying me EI benefits due to voluntarily leaving without just cause to denying me EI benefits due to misconduct.[83]

114. The fact that the CEIC initially considered my employer's suspension of me without pay to be a case of voluntarily leaving without just cause shows the importance of the broader context of the *EI Act*. Had the CEIC maintained its allegation that I voluntarily left work without just cause, then the SST would have been more confined to consider my evidence that my

[80] *Employment Insurance Act* (S.C. 1996, c. 23), https://laws-lois.justice.gc.ca/eng/acts/e-5.6/FullText.html, s. 29(c).
[81] *Ibid.*, ss. 29-31.
[82] CEIC decision of April 4, 2022, at pg. 825/2311 of the Applicant's Supporting Affidavit (pg. GD3-26).
[83] CEIC decision of June 17, 2022, at pg. 842/2311 of the Applicant's Supporting Affidavit (pg. GD3-42).

employer requiring me to become vaccinated created "working conditions that constitute a danger to health or safety" pursuant to section 29(c)(iv) of the *EI Act*.[84] The CEIC did not provide one iota of evidence to the SST regarding the safetey, efficacy, or lack thereof of the COVID-19 vaccines.

115. The CEIC's initial decision to deny me EI benefits on the basis of voluntarily leaving without just cause shows that my refusal to be vaccinated is an employee action of refusal for which it is necessary to consider the nature of the employer directive being refused, in deciding whether or not to grant EI benefits.

116. Furthermore, the decisions below did not address the raised issue contained in this subsection (i.e., that the formula "wilfully disobey demand = misconduct, irrespective of what is being demanded" allows the *EI Act* and EI benefits program to be used to coerce employees into becoming vaccinated, which is contrary to the intent of the *EI Act*), such that the decisions below are unreasonable on the basis of failure to provide reasonable justification.

3.2.6 The SST explicitly refused to consider *Charter* rights and *Charter* values in applying its constructed definition of misconduct

117. The decisions below to deny me EI benefits for refusing to be injected with a potentially lethal substance (while working entirely from home with no contact with an co-workers) violate my *Charter* rights to life, liberty, and security of the person, freedom of conscience, and freedom of religion.[85]

118. That employer-mandated and/or government-coerced vaccination engages *Charter* values is self-evident and is amply demonstrated by Canadian caselaw including the SCC.[86]

119. Administrative tribunals have an obligation to consider *Charter* rights and *Charter* values in making their decisions:[87]

> [64] Indeed, it has consistently been held that the *Doré* framework applies not only where an administrative decision directly infringes *Charter* rights but also in cases where it simply engages a value underlying one or more *Charter* rights, without limiting these

[84] *Employment Insurance Act* (S.C. 1996, c. 23), s. 29(c)(iv).
[85] See footnote 52 of the instant submissions.
[86] See footnote 52 of the instant submissions.
[87] *CSFTNO v. Northwest Territories (Education., Culture, and Employment)*, 2023 SCC 31 (CanLII) , paras. 64-65.

rights (*Doré*, at paras. 35 et seq.; *Loyola*, at para. 4; *Trinity Western University*, at para. 57).

[65] This is the case because administrative decision makers have an obligation to consider the values relevant to the exercise of their discretion, in addition to respecting *Charter* rights. There can be no doubt about this, because "[t]he Constitution — both written and unwritten — dictates the limits of all state action" (*Vavilov*, at para. 56). As L'Heureux-Dubé J. clearly stated in *Baker v. Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 S.C.R. 817, a discretionary decision, to be reasonable, must be made in accordance with the "fundamental values of Canadian society" as reflected in the *Charter* (para. 56). Relying on this statement, Abella J. held in *Doré* that discretionary decisions must "*always*" take *Charter* values into consideration (para. 35 (emphasis in original)). [Underline emphasis added]

120. Despite the said obligation, the SST explicitly refused to consider *Charter* rights or *Charter* values in making the decisions below:[88]

[27] It is now well established that any arguments about the constitutionality, legality, and reasonableness of an employer's vaccination policy are irrelevant to the misconduct issue. As the Federal Court of Appeal determined in one case, the General Division erred when it focused on the merits of an employer's policy and the employment contract, rather than on the applicant's conduct. The Court of Appeal wrote:

> [The General Division] erred in law in considering whether the hospital's policy was fair, legal, complied with the Charter […] [Emphasis added]

121. The SST did nothing more than apply the formula "wilfully disobey demand = misconduct, irrespective of the demand". In doing so, the SST failed in its duty to take *Charter* rights and *Charter* values into consideration, which makes its decisions unreasonable.

3.3 ISSUE 2: The SST Appeal Division failed to recognize and address my raised issue that the CEIC's decision itself violated my fundamental rights

122. In my Amended Application for Leave to Appeal,[89] I raised the issue that the CEIC's decision itself to deny me EI benefits by interpreting my refusal to be injected with a COVID-19 vaccine as "misconduct" violates my fundamental rights including the rights to freedom of

[88] Leave to Appeal Decision by SST AD Member Lew of May 7, 2025 in SST file AD-24-13 [No hyperlink], para. 27.
[89] Amended Application for Leave to Appeal to the SST Appeal Division of September 27, 2024, at pgs. 2268/2311-2301/2311 of the Applicant's Supporting Affidavit (pgs. AD22-12 to AD22-45 in the SST's numbering).

conscience,[90] freedom of religion[91] and life, liberty, and security of the person,[92] which are enshrined in the *Charter*.

123. My argument in this regard was made in my Amended Application for Leave to Appeal at paragraphs 44-67.[93]

124. The SST Appeal Division failed to recognize and address my raised issue that the CEIC's decision itself to deny me EI benefits by interpreting my refusal to be injected with a COVID-19 vaccine as "misconduct" violates my fundamental rights.

125. Instead, Member Lew of the SST Appeal Division stated that: "The thrust of the Claimant's arguments in fact indicates that the Claimant's complaints are primarily about his employer's vaccination policy."[94]

126. Member Lew thereby sidestepped my raised issue that the CEIC's decision itself violated my fundamental rights, by supplanting it with an argument, which I did not make, about my employer's vaccination policy.

127. An administrative tribunal must address central issues raised and hear and consider the arguments that are properly before it.

128. The SCC in *R. v. Conway* confirmed that administrative tribunals empowered to hear questions of law have jurisdiction to hear arguments about the interpretation of legislation that are based on the *Charter* when intepreting legislation, and must comply with the *Charter* when deciding questions of law.[95] In particular, the SCC stated in *Conway*:[96]

> [77] These cases confirm that administrative tribunals with the authority to decide questions of law and whose *Charter* jurisdiction has not been clearly withdrawn have the corresponding authority — and duty — to consider and apply the Constitution, including the *Charter*, when answering those legal questions. […] [Emphasis added]

---

[90] *Canadian Charter of Rights and Freedoms*, s. 2(a), https://laws-lois.justice.gc.ca/eng/const/page-12.html#h-40.
[91] *Ibid.*
[92] *Canadian Charter of Rights and Freedoms*, s. 7, https://laws-lois.justice.gc.ca/eng/const/page-12.html#h-40.
[93] Paras. 44-67 of the Amended Application for Leave to Appeal of September 27, 2024, at pgs. 2293/2311-2301/2311 of the Applicant's Supporting Affidavit (pgs. AD22-37 to AD22-45 in the SST's numbering).
[94] Leave to Appeal Decision by Member Lew of May 7, 2025 in SST file AD-24-13 [No hyperlink], para. 41.
[95] *R. v. Conway*, 2010 SCC 22 (CanLII), https://canlii.ca/t/2b2ds, paras. 19-23, 28, 46, 56-57, 66, 77-79.
[96] *R. v. Conway*, 2010 SCC 22 (CanLII), https://canlii.ca/t/2b2ds, para. 77.

129. The SST is empowered to decide questions of law.[97] Therefore, the SCC has the duty to hear and consider my argument that the CEIC's decision itself to deny me EI benefits by interpreting my refusal to become vaccinated as "misconduct" violates my fundamental rights.

130. The SST Appeal Division's failure to hear and consider my argument that the CEIC's decision itself to deny me EI benefits by interpreting my refusal to become vaccinated as "misconduct" violates my fundamental rights was an error of law and of natural and procedural justice.

131. In *Vavilov*, the SCC held that judicial review of breaches of natural justice and/or the duty of procedural fairness must be done using the correctness standard:[98]

> [23] Where a court reviews the merits of an administrative decision (i.e., judicial review of an administrative decision other than a review related to a breach of natural justice and/or the duty of procedural fairness), the standard of review it applies must reflect the legislature's intent with respect to the role of the reviewing court, except where giving effect to that intent is precluded by the rule of law. The starting point for the analysis is a presumption that the legislature intended the standard of review to be reasonableness.

132. The standard of correctness should be applied to the second issue in this application.

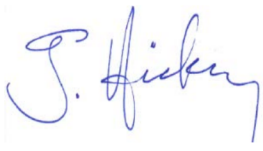
4. ORDER SOUGHT

133. The Applicant asks that this Court

GRANT the application for judicial review,

ORDER the matter returned to a new member of the SST Appeal Division so that my file can be re-evaluated in light of the Court's decision.

RESPECTFULLY SUBMITTED ON OCTOBER 8, 2025



Joseph Hickey (Applicant)

---

[97] *Department of Employment and Social Development Act* (S.C. 2005, c. 34), s. 64(1).
[98] *Canada (Minister of Citizenship and Imm.) v. Vavilov*, 2019 SCC 65 (CanLII), https://canlii.ca/t/j46kb, para. 23.

5. LIST OF AUTHORITIES

5.1 Legislation/Regulations

1. *Employment Insurance Act* (S.C. 1996, c. 23), https://laws-lois.justice.gc.ca/eng/acts/e-5.6/FullText.html, ss. 29-31.
2. *Department of Employment and Social Development Act* (S.C. 2005, c. 34), https://laws.justice.gc.ca/eng/acts/h-5.7/FullText.html, s. 64(1).

5.2 Case law

3. *JH v Canada Employment Insurance Commission* (Leave to Appeal Decision by Social Security Tribunal of Canada (SST) Appeal Division Member Janet Lew, dated May 7, 2025 in SST file no. AD-24-13) [No publicly available hyperlink to date].
4. *JH v Canada Employment Insurance Commission*, 2023 SST 1786 (CanLII), https://canlii.ca/t/k26z0.
5. *Kuk v. Canada (Attorney General)*, 2024 FCA 74 (CanLII), https://canlii.ca/t/k44d7.
6. *Cecchetto v. Canada (Attorney General)*, 2024 FCA 102 (CanLII), https://canlii.ca/t/k4xjs.
7. *Spears v. Canada (Attorney General)*, 2024 FC 329 (CanLII), https://canlii.ca/t/k39k1.
8. *Davidson v. Canada (Attorney General)*, 2023 FC 1555 (CanLII), https://canlii.ca/t/k1b22.
9. *Butu v. Canada (Attorney General)*, 2024 FC 321 (CanLII), https://canlii.ca/t/k38sw.
10. *Abdo v. Canada (Attorney General)*, 2023 FC 1764 (CanLII), https://canlii.ca/t/k25db.
11. *Boskovic v. Canada (Attorney General)*, 2024 FC 841 (CanLII), https://canlii.ca/t/k5179.
12. *Milovac v. Canada (Attorney General)*, 2023 FC 1120 (CanLII), https://canlii.ca/t/jztrm.
13. *Wong v. Canada (Attorney General)*, 2024 FC 686 (CanLII), https://canlii.ca/t/k4fqb.
14. *Hazaparu v. Canada (Attorney General)*, 2024 FC 928 (CanLII), https://canlii.ca/t/k5c0x.
15. *Palozzi v. Canada (Attorney General)*, 2024 FCA 81 (CanLII), https://canlii.ca/t/k48gd.

16. *Khodykin v. Canada (Attorney General)*, 2024 FCA 96 (CanLII), https://canlii.ca/t/k4m47.

17. *Sullivan v. Canada (Attorney General)*, 2024 FCA 7 (CanLII), https://canlii.ca/t/k269v.

18. *Matti v. Canada (Attorney General)*, 2023 FC 1527 (CanLII), https://canlii.ca/t/k16rf.

19. *Zhelkov v. Canada (Attorney General)*, 2023 FCA 240 (CanLII), https://canlii.ca/t/k1qs1.

20. *Murphy c. Canada (Procureur général)*, 2024 CF 1356 (CanLII), https://canlii.ca/t/k6jms.

21. *Francis v. Canada (Attorney General)*, 2023 FCA 217 (CanLII), https://canlii.ca/t/k0xf0.

22. *Hey v. Canada (Attorney General)*, 2025 FC 46 (CanLII), https://canlii.ca/t/k8pcj.

23. *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 (CanLII), [2019] 4 SCR 653, https://canlii.ca/t/j46kb.

24. *ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)*, 2006 SCC 4 (CanLII), [2006] 1 SCR 140, https://canlii.ca/t/1mj7l.

25. *Bell Canada v. Canada (Canadian Radio-Television and Telecommunications Commission)*, 1989 CanLII 67 (SCC), [1989] 1 SCR 1722, https://canlii.ca/t/1ft4g.

26. *R. v. Morgentaler*, 1988 CanLII 90 (SCC), https://canlii.ca/t/1ftjt.

27. *Rodriguez v. British Columbia (Attorney General)*, 1993 CanLII 75 (SCC), https://canlii.ca/t/1frz0.

28. *A.C. v. Manitoba (Director of Child and Family Services)*, 2009 SCC 30 (CanLII), https://canlii.ca/t/24432.

29. *Carter v. Canada (Attorney General)*, 2015 SCC 5 (CanLII), https://canlii.ca/t/gg5z4.

30. *Electrical Safety Authority v Power Workers' Union*, 2022 CanLII 343 (ON LA), https://canlii.ca/t/jlnm8.

31. *Duplessis v. Canada*, 2000 CanLII 16541 (FC), https://canlii.ca/t/42cc.

32. *Mason v. Canada (Citizenship and Immigration)*, 2023 SCC 21 (CanLII), https://canlii.ca/t/k0c85.

33. *Mishibinijima v. Canada (Attorney General)*, 2007 FCA 36 (CanLII), https://canlii.ca/t/1qgkr.

34. *Hak c. Procureur général du Québec*, 2021 QCCS 1466 (CanLII), https://canlii.ca/t/jff8f.

35. *Canada (Attorney General) v. Granstrom*, 2003 FCA 485 (CanLII), https://canlii.ca/t/1g3mh.

36. *Commission scolaire francophone des Territoires du Nord-Ouest v. Northwest Territories (Education, Culture and Employment)*, 2023 SCC 31 (CanLII), https://canlii.ca/t/k1kct.

37. *R. v. Conway*, 2010 SCC 22 (CanLII), [2010] 1 SCR 765, https://canlii.ca/t/2b2ds.

5.3 Secondary sources

5.3.1 Legal scholarship

Citation	Link	Footnote(s) of the instant submissions
E. Cottrill, "Administrative 'Determinations of Law' and the Limits of Legal Pluralism after Vavilov", Alberta Law Review, 58 (2020) 153-186	https://doi.org/10.29173/alr2614	31-33
K. Ackerman and S. Stettner, "'The Public Is Not Ready for This': 1969 and the Long Road to Abortion Access", The Canadian Historical Review, 100 (2019) 239-256	https://www.utpjournals.press/doi/abs/10.3138/chr.2018-0082-3	64
D. Kimmel and D.J. Robinson, "Sex, Crime, Pathology: Homosexuality and Criminal Code Reform in Canada,	https://doi.org/10.1017/S082932010000661X	65

1949–1969", Canadian Journal of Law and Society, 16 (2014) 147-165		

5.3.2 Scientific publications

Citation	Link	Footnote of the instant submissions
J. Hickey and D.G. Rancourt, "Predictions from standard epidemiological models of consequences of segregating and isolating vulnerable people into care facilities", PLOS One 18 (2023) e0293556	https://doi.org/10.1371/journal.pone.0293556	8, 14, 46
J. Hickey and D.G. Rancourt, "Viral Respiratory Epidemic Modeling of Societal Segregation Based on Vaccination Status", Cureus 15 (2023) e50520	https://doi.org/10.7759/cureus.50520	8, 14, 46

5.3.3 Government, civil society organization, and media publications

Citation	Link	Footnote of the instant submissions
Government of Canada, "EI regular benefits", updated 17 July 2025, accessed on 19 August 2025.	https://www.canada.ca/en/services/benefits/ei/ei-regular-benefit.html.	79
US Department of Health and Human Services, "HHS Winds Down mRNA Vaccine Development Under BARDA", 5 August 2025	https://wwuw.hhs.gov/press-room/hhs-winds-down-mrna-development-under-barda.html; archived at: https://archive.ph/21m8z.	51
Letter from the Canadian Civil Liberties Association (CCLA) to Employment Minister Carla Qualtrough, "RE: Denial of Employment Insurance based on vaccination status", 1 November 2021	https://ccla.org/wp-content/uploads/2021/11/2021-10-25-Ltr-re-EI-denial-vaccination-status.pdf	77
CBC News, "Conservatives pledge funds, tip line to combat 'barbaric cultural practices'", 2 October 2015	https://www.cbc.ca/news/politics/canada-election-2015-barbaric-cultural-practices-law-1.3254118; archived at: https://archive.ph/SlPu2	66
"Don't expect EI if you lose your job for not being vaccinated, minister says", CBC News, 21 October 2021	https://www.cbc.ca/news/politics/ei-vax-status-1.6220287; archived at: https://archive.ph/2xpmg	76