

FEDERAL COURT OF APPEAL

BETWEEN:

JOSEPH HICKEY

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

APPELLANT'S MEMORANDUM OF FACT AND LAW

JOSEPH HICKEY

Appellant

ATTORNEY GENERAL OF CANADA

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Summary

An employee who decides to avoid working conditions that unnecessarily subject him to a risk of bodily harm cannot be deprived of EI by constructively casting the employee’s loss of work as a suspension or dismissal for misconduct. In the alternative, when the evidentiary record shows that the only alleged fault is refusing to needlessly expose oneself to a risk of bodily harm, then the refusal cannot be misconduct.

Overview

1. This is an appeal of the order of Federal Court Justice Simon Fothergill dated March 6, 2026,¹ by which my application for judicial review of the decision of the Social Security Tribunal of Canada (SST) to deny me Employment Insurance (EI) benefits² was dismissed.

1 *Hickey v. Canada (Attorney General)*, 2026 FC 313 (CanLII), <https://canlii.ca/t/kin4f>.

2 Leave to Appeal Decision by SST Appeal Division Member Janet Lew of May 7, 2025 in SST file AD-24-13 [No hyperlink]; *JH v Canada Employment Insurance Commission*, 2023 SST 1786 (CanLII), <https://canlii.ca/t/k26z0> [SST General Division decision].

2. When an appellate court reviews a first-instance court’s judicial review of an administrative tribunal’s decision, the appellate court “step[s] into the shoes of the lower court”,³ such that the appellate court “performs a *de novo* review of the administrative decision”.⁴
3. In October 2021, my employer demanded that I receive injections of a COVID-19 vaccine, stating the firm consequence of unpaid leave regarding ultimate failure to comply.⁵ I refused to be vaccinated, and duly requested an accommodation for medical, religious, and human rights reasons.⁶
4. In my letter dated November 12, 2021 to my employer requesting accommodation, 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.⁷
5. On November 22, 2021, my employer denied my accommodation request and put me on leave without pay or benefits,⁸ as was my employer’s announced unavoidable consequence in response to my decision not to receive injections of a COVID-19 vaccine. I then applied for EI benefits.
6. The SST General Division decided⁹ 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.¹⁰
7. I am a trained professional interdisciplinary scientist with the capacity to gather and knowledgeably present scientific evidence, including in the field of epidemiology of vaccination.^{11,12}

3 *Ontario (Attorney General) v. Ontario (Information and Privacy Commissioner)*, 2024 SCC 4 (CanLII), <https://canlii.ca/t/k2l80>, at para. 66; *Northern Regional Health Authority v. Horrocks*, 2021 SCC 42 (CanLII), [2021] 3 SCR 107, <https://canlii.ca/t/jitkc>, at para. 10; *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 (CanLII), [2013] 2 SCR 559, <https://canlii.ca/t/fz8c4>, at para. 46.

4 *Northern Regional Health Authority v. Horrocks*, 2021 SCC 42 (CanLII), [2021] 3 SCR 107, <https://canlii.ca/t/jitkc>, at para. 10; *Mason v. Canada (Citizenship and Immigration)*, 2023 SCC 21 (CanLII), <https://canlii.ca/t/k0c85>, at para. 36.

5 Appeal Book, pgs. 242-245 [Bank of Canada COVID-19 Vaccination Policy].

6 Appeal Book, pgs. 246-249 [Appellant’s Nov. 12, 2021 accommodation request letter].

7 Appeal Book, pgs. 246-249 [Appellant’s Nov. 12, 2021 accommodation request letter].

8 Appeal Book, pgs. 250-252 [Employer’s Nov. 19, 2021 email to the Appellant].

9 *JH v Canada Employment Insurance Commission*, 2023 SST 1786 (CanLII), <https://canlii.ca/t/k26z0>.

10 Leave to Appeal Decision by SST Appeal Division Member Lew of May 7, 2025 in SST file AD-24-13 [No hyperlink].

11 Appeal Book, pgs. 101-102.

12 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,

8. 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.¹³
9. The SST cast my refusal, while working entirely from home, to be injected with the dangerous substance of the COVID-19 vaccine as “misconduct” (s. 31 of the *EI Act*) rather than as voluntarily taking leave with just cause (s. 29 of the *EI Act*), having no reasonable alternative.
10. Instead of properly evaluating my situation as being one of voluntarily taking leave with just cause — since imposed leave was an automatic and reversible known consequence of not being subjected to vaccination and given the submitted danger of vaccine-induced myocarditis — the SST adopted a definition (a “test”) of “misconduct” in which an employee’s intentional refusal to follow any employer’s directive automatically constitutes misconduct, irrespective of the said directive (irrespective of what is being demanded of the employee).
11. Specifically, the SST disregarded as irrelevant the evidence of the medical dangerousness of my employer’s vaccination directive to me and applied a spurious analysis to decide that my refusal to be vaccinated constituted “misconduct”, which the SST unreasonably siloed as determinative of the issue.
12. Justice Fothergill did not consider, question or overturn the said spurious analysis and siloed determination, and said in the judicial review hearing that it would be misconduct to refuse vaccination, even if the facts showed that being vaccinated carried a 50% risk of death for the employee.

1 Statement of Facts

13. I began working as a Data Scientist at the Bank of Canada in June 2019.
14. 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.
15. In October 2021, my employer announced a mandatory vaccination policy for its staff. Pursuant to the policy, staff who remained unvaccinated as of November 22, 2021, and

<https://doi.org/10.7759/cureus.50520>.

¹³ Appeal Book, at pages 97-828, especially at pages 120-189, 198-205, and 792-809.

who had not been granted an accommodation to remain unvaccinated, were placed on leave without pay or benefits.¹⁴

16. I declined vaccination, and duly requested to be accommodated for medical, religious, and human rights reasons, in a letter to my employer dated November 12, 2021.¹⁵ In my letter, I submitted scientific evidence of the increased risk of dangerous and potentially fatal heart inflammation (myocarditis and pericarditis) from the vaccines to males under 40, which was my age and sex group, as I was 36 at the time. The said scientific evidence was entered via affidavit on the Tribunal's record and is uncontested.¹⁶
17. My accommodation request was rejected by my employer on November 18, 2021, and I was therefore automatically placed on leave without pay or benefits as of November 22, 2021.
18. My employer communicated to me on November 19, 2021 that I would be brought back to work and my pay reactivated should I choose to receive injections of a COVID-19 vaccine.¹⁷
19. While I was on unpaid leave, my employer offered me an open-ended process to appeal its denial of my request to be accommodated. I submitted an internal appeal to my employer containing extensive documentation of scientific proof of risk of harm to me from COVID-19 vaccines (including myocarditis and pericarditis) on March 16, 2022,¹⁸ and made a supplementary appeal submission pursuant to my employer's open-ended appeal process on June 14, 2022, which also contained scientific proof of the risk of harm to me from COVID-19 vaccines (myocarditis and pericarditis).¹⁹ The said scientific evidence submitted to my employer pursuant to the appeal process offered to me while I was on unpaid leave was entered via affidavit on the Tribunal's record and is uncontested.²⁰
20. From March 2020 until my suspension in November 2021, I worked exclusively from home.
21. 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.

14 Appeal Book, pgs. 242-245 [Bank of Canada COVID-19 Vaccination Policy].

15 Appeal Book, pgs. 246-249 [Appellant's Nov. 12, 2021 accommodation request letter].

16 Appeal Book, pgs. 246-249 [Appellant's Nov. 12, 2021 accommodation request letter].

17 Appeal Book, pgs. 250-252 [Employer's Nov. 19, 2021 email to the Appellant].

18 Appeal Book, pgs. 106-775

19 Appeal Book, pgs. 792-809.

20 See footnotes 18 and 19, above.

22. 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 automatically removed from work for not accepting vaccination. The facts in this regard are not contested, and are clear from the record of the instant proceedings.²¹
23. I am a trained interdisciplinary scientist with the capacity to gather and knowledgeably present scientific evidence.²² I have published scientific research articles in the field of epidemiology of vaccination, in peer-reviewed scientific journals.²³
24. 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.²⁴
25. The said scientific evidence is not contested and includes:
 - ◆ More than 1000 peer-reviewed scientific articles demonstrating harm from COVID-19 vaccines.²⁵
 - ◆ Autopsy reports of death caused by COVID-19 vaccines.²⁶
 - ◆ 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.²⁷
 - ◆ 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.²⁸

21 Appeal Book, pgs. 97-104.

22 Appeal Book, pgs. 101-102.

23 See footnote 12 of the instant submissions.

24 See footnote 13 of the instant submissions.

25 Appeal Book, pgs. 144-182.

26 Appeal Book, pgs. 133-136.

27 Appeal Book, pgs. 136-144.

28 Appeal Book, pgs. 182-184 and pgs. 792-809. 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

- ◆ Government public health agencies in many countries removing authorization for COVID-19 vaccines due to serious and fatal adverse events.²⁹
26. 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.³⁰
 27. 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.
 28. 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.^{31,32}
 29. The SST General Division decided³³ 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.³⁴
 30. The Federal Court dismissed my application for judicial review of the SST Appeal Division’s decision on March 6, 2026.³⁵

2 Points in Issue

31. First issue:

ISSUE 1: Did the decision makers and reviewers err by casting my sustained refusal to be injected with the dangerous substance of the COVID-19 vaccine, while working entirely from home, as “misconduct” (s. 31 of the *EI Act*) rather than as voluntarily taking leave with just cause (s. 29 of the *EI Act*), having no reasonable alternative?

32. Second issue:

SST (Appeal Book at pg. 103).

29 Appeal Book, pgs. 246-249.

30 See footnote 13 and paragraph 25 of the instant submissions.

31 Notice of Appeal of Denial of Employment Insurance Benefits, July 15, 2022, at pgs. 44-96 of the Appeal Book.

32 Appeal Book, pgs. 97-831.

33 *JH v Canada Employment Insurance Commission*, 2023 SST 1786 (CanLII), <https://canlii.ca/t/k26z0>.

34 Leave to Appeal Decision by SST Appeal Division Member Lew of May 7, 2025 in SST file AD-24-13 [No hyperlink].

35 *Hickey v. Canada (Attorney General)*, 2026 FC 313 (CanLII), <https://canlii.ca/t/kin4f>.

ISSUE 2: If the decision makers and reviewers did not err in casting the case as one of potential “misconduct” (s. 31 of the *EI Act*), which is denied, then is the case law relied upon in deciding “misconduct” distinguished from my case and misapplied?

33. Third issue:

ISSUE 3: If the said case law relied upon is not distinguished from my case, which is denied, then is the statutory interpretation of “misconduct” (i.e., that “misconduct” is always decided irrespective of the nature of the demand being refused) applied by the decision makers and reviewers unreasonable and incorrect?

3 Appellant’s Submissions

3.1 ISSUE 1: The decision makers and reviewers erred by casting my refusal to be injected as “misconduct” (s. 31 of the *EI Act*) rather than voluntarily taking leave with just cause (s. 29(c) of the *EI Act*)

34. In my case, the automatic and reversible employer policy to apply unpaid leave for deciding not to be vaccinated³⁶ is logically and in reality equivalent to voluntarily taking leave to avoid the imposed workplace condition of vaccination. The rigid mechanics of the said policy were in place and the decision was entirely and knowingly mine. It is taking leave with just cause since I showed in evidence the established risk of harm to me of the unnecessary (working from home) workplace condition of imposed vaccination.³⁷

35. It was my decision not to get vaccinated. I informed my employer of my said decision before being placed on unpaid leave, in my November 12, 2021 letter to my employer requesting an exemption:³⁸

I am a scientist with B.Sc., M.Sc., and Ph.D. degrees in Physics, and I have carefully considered the scientific literature regarding the risks posed to me by COVID-19 and by the COVID-19 vaccines. Having done so, I have come to the deep personal conviction that the right choice for my health is for me not to take a COVID-19 vaccine. From my analysis of the available evidence, I have also come to the deep conviction that the government should not be recommending these vaccines for young and healthy individuals; I therefore object, as a matter of conscience, to participating in the government's vaccination program.

36 Bank of Canada COVID-19 Vaccination Policy (Appeal Book, pgs. 242-245).

37 See footnote 13 and paragraph 25 of the instant submissions.

38 Appeal Book, pgs. 246-249 [Appellant's Nov. 12, 2021 accommodation request letter].

36. It was clear from the start that I would choose leave from work because of my employer's dangerous imposed condition that I become vaccinated. That is the main feature of my entire case. In my November 12, 2021 letter to my employer requesting an exemption, I wrote:³⁹

I am concerned about the known and unknown medical risks of COVID-19 vaccines. Administration of the AstraZeneca vaccine was halted in Canada after several people died due to lethal blood clots caused by the vaccine.^{4,5,6} Although the potential dangers were well-known internationally as early as March 11, 2021, and use of the AstraZeneca vaccine had already been halted in at least nine European countries,⁷ Canadian provinces continued to administer hundreds of thousands of doses before finally discontinuing use of the AstraZeneca vaccine in mid-May because of the associated health risks. ^{8,9} The currently-available COVID-19 vaccines have also been associated with many serious adverse health events.¹⁰ Due to the risks of heart inflammation (myocarditis and pericarditis), Germany, France, Norway, Denmark, Sweden, Iceland, and Finland have paused or are no longer recommending the Moderna vaccine for younger people,^{11,12,13,14} and Ontario is no longer recommending Moderna for males aged 18-24.¹⁵ These decisions by governments to stop administering or recommending COVID-19 vaccines demonstrate that my concerns about the medical risks associated with COVID-19 vaccines are legitimate. [footnotes in the original]

37. My employer stated that it was my choice whether or not to get vaccinated, in its COVID-19 Vaccination Policy:⁴⁰

Mandatory Policy Requirements

[...]

g. Employees who opt not to get fully vaccinated as required by this policy and who do not have a requirement for accommodation will be placed on special leave without pay or benefits (COVID-19 Leave of Absence Without Pay or Benefits) as of November 22, 2021. The status of employees on COVID-19 leave will be reviewed regularly. [emphasis added]

38. The Governor of the Bank of Canada (my employer), Tiff Macklem, also stated that it was my choice whether or not to get vaccinated, in his memo to staff of October 6, 2021 regarding the Bank's COVID-19 Vaccination Policy:⁴¹

39 Appeal Book, pgs. 246-249 [Appellant's Nov. 12, 2021 accommodation request letter].

40 Appeal Book, pgs. 242-245 [Bank of Canada COVID-19 Vaccination Policy].

41 Appeal Book, pgs. 741-743.

Starting November 22, employees who choose not to be vaccinated will be placed on unpaid leave, with no access to benefits. Exceptions will only be provided to employees who have legitimate medical or religious reasons that can be accommodated without putting their colleagues' health and safety at risk. I cannot stress enough that, while it is also federally mandated, our policy is first and foremost driven by our focus on your wellbeing. [emphasis added]

39. Regarding workplace vaccination mandates for federal public sector workers and travelers on trains and airplanes, Prime Minister Justin Trudeau made the following statements showing that it was always the employee's decision whether or not to undergo COVID-19 vaccination:

- At an election campaign rally on August 19, 2021:⁴²

You know what? If you don't want to get vaccinated that's your choice, but don't think you can get on a plane or a train next to vaccinated people and put them at risk [emphasis added]

- At an election campaign rally on August 17, 2021:⁴³

We're unequivocal that civil servants must be vaccinated. If anyone doesn't have a legitimate medical reason for not getting fully vaccinated – or chooses to not get vaccinated – there will be consequences [emphasis added]

- In an interview with CBC Radio's *The House* broadcast on June 25, 2022:⁴⁴

[COVID-19 vaccination] was their choice and nobody was ever going to force anyone into doing something they don't want to do [...] But there are consequences when you don't. You cannot choose to put at risk your co-workers. You cannot choose to put at risk the people sitting beside you on an airplane. [emphasis added]

40. All these statements (above paras.: employer's policy; my employer the Governor of the Bank of Canada; and the Prime Minister) are explicit and clear that it is the employee's choice not to be vaccinated and to be subjected to the administrative consequences of that choice.

42 Radio Canada International, "Conservative opposition to mandatory vaccinations is 'irresponsible' and 'dangerous,' says Trudeau", 20 August 2021, <https://ici.radio-canada.ca/rci/en/news/1818142/conservative-opposition-to-mandatory-vaccinations-is-irresponsible-and-dangerous-says-trudeau>.

43 CBC News, "Trudeau warns of 'consequences' for public servants who duck COVID-19 shots", 17 August 2021, <https://www.cbc.ca/news/politics/trudeau-consequences-public-servants-vaccines-1.6143735>.

44 Radio Canada International, "Trudeau defends vax mandates, Emergencies Act decision, in interview", 24 June 2022, <https://ici.radio-canada.ca/rci/en/news/1893584/trudeau-defends-vax-mandates-emergencies-act-decision-in-interview>.

41. I chose not to get vaccinated because of the potentially severe health risks to me, and I communicated this to my employer. The automatic policy consequence was that my employer placed me on unpaid leave with the option of returning to work should I choose to become vaccinated.
42. My case was a case of taking leave from work in order to avoid the danger of vaccination, not logically an act of misconduct. My case is no more a case of “misconduct” than an employee who refuses to attend a workplace that has been demonstrated to be contaminated with harmful environmental toxins or pollutants. The relevant question is whether my voluntary taking leave was done with just cause, not whether my voluntary taking leave constitutes misconduct. Everything was in the record for the SST to recognize and admit this, and for the SST Appeal Division to correct the SST General Division’s casting, rather than repeat it.
43. The decision makers and reviewers erred by casting my sustained refusal to be vaccinated exclusively as a siloed question of “misconduct” rather than voluntarily leaving with just cause. The said casting is evident throughout Justice Fothergill’s decision,⁴⁵ such as:
 - [5] The Canada Employment Insurance Commission [Commission] denied Mr. Hickey’s application for benefits, finding that he left his job without just cause. Upon reconsideration, the Commission upheld its decision but changed the reason. The Commission concluded that Mr. Hickey was suspended for misconduct.
 - [7] [...] Regarding the merits, the General Division found that Mr. Hickey knew or ought to have known that his conduct would lead to suspension or dismissal. It therefore agreed with the General Division that Mr. Hickey was suspended for misconduct.
 - [14] The jurisprudence clearly establishes that the only relevant question is whether the claimant knew or ought to have known that their conduct would result in suspension. Misconduct under the EI Act does not require blameworthiness, and the employer’s actions and policies need not be justified.
 - [18] As the General Division and Appeal Division both found, the employer’s actions in Mr. Hickey’s case do not cast doubt on the intentionality of his conduct. [...] Here, the Appeal Division found that Mr. Hickey knew he would be suspended for not being vaccinated after his request for an exemption was denied. This was a reasonable conclusion, and consistent with binding jurisprudence.

⁴⁵ *Hickey v. Canada (Attorney General)*, 2026 FC 313,

44. After rejecting my request for an accommodation to continue working without receiving the COVID-19 vaccine, my employer placed me on leave without pay or benefits, effective November 22, 2021.⁴⁶
45. My employer communicated to me on November 19, 2021 that I would be brought back to work and my pay reactivated should I choose to receive injections of a COVID-19 vaccine.⁴⁷
46. I refused to receive the injections and thus chose not to resume my employment, which is identical to voluntarily leaving my employment pursuant to section 29(b.1)(ii) of the *Employment Insurance Act*.
47. I had just cause not to resume my employment under section 29(c)(iv) of the *EI Act*⁴⁸ due to the scientifically established risks of fatal harm to me (myocarditis and pericarditis) from the injections. The relevant s. 29(c)(iv) of the *EI Act*, which is not an exhaustive test, reads:

29 For the purposes of sections 30 to 33,

[...]

(c) just cause for voluntarily leaving an employment or taking leave from an employment exists if the claimant had no reasonable alternative to leaving or taking leave, having regard to all the circumstances, including any of the following:

[...]

(iv) working conditions that constitute a danger to health or safety,

[...]

48. I also had just cause not to resume my employment under section 29(c)(iii) of the *EI Act*, due to discrimination on the basis of age and sex, which are prohibited grounds of discrimination per s. 3(1) of the *Canadian Human Rights Act*.⁴⁹ The said discrimination occurred because I, as a male under age 40, was at a scientifically demonstrated higher risk of developing dangerous heart inflammation (myocarditis and pericarditis) from COVID-19 vaccination than females or males aged over 40. I expressed this point, citing Public Health Ontario's adverse events monitoring data regarding myocarditis and pericarditis following COVID-19 vaccination, in my November 12, 2021 letter to my

46 Appeal Book, pgs. 250-252 [Employer's Nov. 19, 2021 email to the Appellant].

47 Appeal Book, pgs. 250-252 [Employer's Nov. 19, 2021 email to the Appellant].

48 *Employment Insurance Act* (S.C. 1996, c. 23), <https://laws-lois.justice.gc.ca/eng/acts/e-5.6/FullText.html>.

49 *Canadian Human Rights Act* (R.S.C., 1985, c. H-6), s. 3(1), <https://laws-lois.justice.gc.ca/eng/acts/H-6/FullText.html>.

employer requesting exemption from its vaccination policy.⁵⁰ The relevant s. 29(c)(iii) of the *EI Act* reads:

29 For the purposes of sections 30 to 33,

[...]

(c) just cause for voluntarily leaving an employment or taking leave from an employment exists if the claimant had no reasonable alternative to leaving or taking leave, having regard to all the circumstances, including any of the following:

[...]

(iii) discrimination on a prohibited ground of discrimination within the meaning of the *Canadian Human Rights Act*,

[...]

49. In *Canada (Attorney General) v. Hernandez*, the Federal Court of Appeal held that the *EI Act* requires the decision maker to consider whether an employee's decision to voluntarily leave their employment because of their concern about a dangerous condition at work was the only reasonable alternative, and that not making the said consideration is an error of law:⁵¹

[2] In analyzing the respondent's grounds of appeal, the board of referees failed to consider whether the fact that the respondent voluntarily left his employment as a result of fears he had of dangerous conditions at his work was the only reasonable alternative. This is an essential condition of paragraph 29(c)(iv) of the *Employment Insurance Act*, S.C. 1996, c. 23 (the Act): see *Attorney General of Canada v. Horslen*, A-517-94, September 21, 1995; *Astronomo v. Attorney General of Canada*, A-141-97, July 10, 1998.

[3] The board of referees' failure to consider this condition was an error of law which the umpire should have corrected: *Canada (Attorney General) v. Johnson*, 2004 FCA 100.

50. The SST was required to consider whether my decision to voluntarily leave my employment (by choosing to be placed on unpaid leave by not being vaccinated) was the only reasonable alternative in my situation. The SST did not make the said consideration, which is an error of law, and the SST Appeal Division erred by not correcting the SST General Division's error.

50 Appeal Book, pgs. 246-249 [Appellant's Nov. 12, 2021 accommodation request letter].

51 *Canada (Attorney General) v. Hernandez*, 2007 FCA 320 (CanLII), <https://canlii.ca/t/1v3kt>, paras. 2-3.

51. In *Canada (Attorney General) v. Langlois*, the Federal Court of Appeal noted that, prior to taking the last-resort action of voluntarily leaving one’s employment, an employee could attempt to mitigate dangerous working conditions by taking steps such as wearing safety equipment:⁵²

[18] This notion of “no reasonable alternative” does apply, without a doubt, to many of the situations provided for in paragraph 29(c). Thus, it is often possible to resolve the issues posed by the following situations through methods other than leaving one’s employment: sexual or other harassment (subparagraph 29(c)(i)), discrimination (subparagraph 29(c)(iii)), working conditions that constitute a danger to health or safety (subparagraph 29(c)(iv)), excessive overtime work (subparagraph 29(c)(viii)), to name just a few.

[19] For example, one could mitigate the problem of dangerous employment by improving working conditions, by wearing a mask or other safety equipment, or by arranging to be relocated in another part of the factory or company: see *Canada (Attorney General) v. Hernandez*, 2007 FCA 320. An employee resigns in such situations as a last resort, and the legislator’s requirement that there be no reasonable alternative to leaving is understandable.

52. In my case, I offered alternative arrangements to my employer including continuing to work entirely from home.⁵³ My employer rejected all of my offers to mitigate the danger to me, leaving me no reasonable alternative but to voluntarily leave my employment by choosing to be placed on unpaid leave for not getting vaccinated.
53. In *Canada (Attorney General) v. Peppard*, the Federal Court of Appeal held that “just cause will exist whenever an employee has no reasonable alternative but to leave his or her job”:⁵⁴

[7] We find the decision under review to be reasonable. While we agree with the Attorney General that paragraph 29(c)(vii) of the EI Act does not apply as a pension annuity is not “wages or salary”, that is not the end of the inquiry as the case law recognizes that the situations listed in subsection 29(c) of the EI Act are not a complete catalogue of the circumstances in which an employee might have just cause for leaving his or her employment and thus be entitled to receive employment insurance benefits. Rather, just cause will exist whenever an employee has no reasonable alternative but to leave his or her job: Hong at para. 3; Hurtubise at para. 3; Canada (Procureur général) c. Paquet, 2013 CAF 48 at para. 4, 450 N.R.

52 *Canada (Attorney General) v. Langlois* (F.C.A.), 2008 FCA 18 (CanLII), [2008] 3 FCR 556, <https://canlii.ca/t/1w03c>, paras. 18-19.

53 Appeal Book, pgs. 246-249 [Appellant’s Nov. 12, 2021 accommodation request letter].

54 *Canada (Attorney General) v. Peppard*, 2017 FCA 110 (CanLII), <https://canlii.ca/t/h3zkg>, para. 7.

190; *Canada (Procureur général) c. Marier*, 2013 CAF 39 at para. 20, 450 N.R. 122; *Canada (Procureur général) c. Lessard*, 2002 CAF 469 at para. 10, 300 N.R. 354. [emphasis added]

54. My employer imposed a potentially lethal medical injection on me, which was unnecessary since I worked entirely from home. After my request to my employer for an exemption to its vaccination policy was denied, I had no reasonable alternative other than voluntarily leaving my employment (choosing to be placed on unpaid leave without benefits). Since I had no reasonable alternative, I had just cause.
55. There are cases of denial of EI benefits for refusing COVID-19 vaccination where the question of voluntarily leaving was raised.⁵⁵ These cases do not substantively consider whether or not the circumstances and the evidence put on the record in-effect amounts to voluntarily leaving, and did not present evidence of unnecessary risk of harm. In contrast, my decision not to be vaccinated due to the unnecessary health risks to me shown in duly entered evidence constitutes voluntarily leaving pursuant to the *EI Act*, and the decision makers erred by not admitting, recognizing or substantively considering this.

3.2 ISSUE 2: In the alternative, the case law relied upon in deciding “misconduct” is distinguished from my case, and misapplied

56. I was or would have been working from home during the entire period relevant to my EI claim.⁵⁶
57. I entered extensive documentary evidence by affidavit before the Tribunal’s General Division (many published scientific papers and reports, and such) that the COVID vaccines can cause permanent disability and death, especially myocarditis in males in my age group.⁵⁷
58. These two facts:
 - ◆ heart inflammation risk of death to my age group and sex established on the record, and
 - ◆ the proven work-from-home context,

55 *Pagano v. Canada (Attorney General)*, 2026 FC 584, <https://canlii.ca/t/kkq9z>; *Laurence v. Canada (Attorney General)*, 2024 FC 1498, <https://canlii.ca/t/k6zz0>; *GL v Canada Employment Insurance Commission*, 2022 SST 1382, <https://decisions.sst-tss.gc.ca/sst-tss/ei-ae/en/item/522156/index.do> [found to be reasonable in *Lalancette v. Canada (Attorney General)*, 2024 FCA 58 (CanLII), <https://canlii.ca/t/kdt3j>].

56 Appeal Book, pgs. 97-105.

57 See footnote 13 and paragraph 25 of the instant submissions.

distinguish my case from all other cases that have come before the Federal Court or the Federal Court of Appeal.

59. The table below summarizes how in particular the cases cited by Justice Fothergill⁵⁸ concerning denial of EI for the “misconduct” of refusing an employer’s vaccination mandate are distinguished:

Citation	Decisions Below (or Above) the Cited Decision	Why Distinguished	Where Cited in the Decisions in the Instant Case
<i>Besley v Canada</i> (Attorney General), 2025 FCA 47	2023 SST 1147 (SST AD, appeal decision) 2023 SST 1148 (SST GD)	Appellant was a Toronto Transit Commission Operator who could not work from home. Appellant argued that he had a right to refuse an untested and potentially unsafe medical treatment, but he did not enter scientific documentation into the record regarding potential risks to him from being injected with a COVID-19 vaccine.	FC, para. 13 SST AD, para. 29
<i>Kuk v Canada</i> (Attorney General), 2024 FCA 74	2023 FC 1134 (FC, JR) 2022 SST 1532 (SST AD, LTA denied) 2022 SST 1533 (SST GD)	Appellant did not enter scientific evidence of risk of harm to him from COVID-19 vaccines into the record.	FC, paras. 13, 16 SST GD, paras. 32, 50, 51, 52
<i>Sullivan v Canada</i> (Attorney General), 2024 FCA 7	2023 SST 518 (SST AD, appeal decision) 2022 SST 1748 (SST GD)	Appellant submitted a medical note from his medical doctor stating he should not receive COVID-19 vaccination due to prior allergic reactions to non-COVID-19 vaccines. Appellant did not submit evidence regarding harms to him that are specific to the COVID-19 vaccines. Appellant was a security guard who could not work from home.	FC, paras. 13, 15, 16 SST AD, para. 45

58 *Hickey v. Canada* (Attorney General), 2026 FC 313, <https://canlii.ca/t/kin4f>.

<p><i>Hazaparu v Canada</i> (Attorney General), 2024 FC 928</p>	<p>2023 SST 645 (SST AD, LTA denied) 2023 SST 646 (SST GD)</p>	<p>Appellant did not enter scientific evidence of risk of harm to her from COVID-19 vaccines into the record.</p>	<p>FC, para. 13</p>
<p><i>Palozzi v Canada</i> (Attorney General), 2024 FCA 81</p>	<p>2023 SST 1049 (SST AD decision) 2023 SST 1050 (SST GD)</p>	<p>Appellant did not enter scientific evidence of risk of harm to him from COVID-19 vaccines into the record.</p>	<p>FC, para. 13</p>
<p><i>Cecchetto v Canada</i> (Attorney General), 2024 FCA 102</p>	<p>2025 CanLII 9722 (SCC) (SCC, LTA denied) 2023 FC 102 (FC, JR) 2022 SST 587 (SST AD) 2022 SST 588 (SST GD)</p>	<p>Appellant’s employer offered him the option of rapid antigen testing in lieu of vaccination. Therefore, the appellant was not required to be vaccinated in order to continue working.</p>	<p>FC, para. 13</p>
<p><i>Arnold v Canada</i> (Attorney General), 2026 FCA 41</p>	<p>2024 SST 26 (SST AD) 2023 SST 1093 (SST GD) 2023 SST 171 (SST AD, sending matter back to SST GD) 2022 SST 1649 (SST GD, summary dismissal)</p>	<p>Appellant did not enter scientific evidence of risk of harm to him from COVID-19 vaccines into the record. Appellant worked for Purolator with no option of working from home.</p>	<p>FC, paras. 13, 16</p>

<i>Abdo v Canada (Attorney General)</i> , 2023 FC 1764	2025 FCA 55 (FCA) 2023 SST 310 (SST AD, LTA denied) 2022 SST 1702 (SST GD)	Appellant did not enter scientific evidence of risk of harm to her from COVID-19 vaccines into the record.	FC, para. 18 SST AD, paras. 20, 21, 22, 23
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60. Additional cases, which were not cited by Justice Fothergill, that have come before the Federal Court or the Federal Court of Appeal concerning denial of EI for the “misconduct” of refusing an employer’s vaccination mandate are also distinguished. The table below summarizes how the said additional cases that were not cited by Justice Fothergill are distinguished:

Citation	Decisions Below (or Above) the Cited Decision	Why Distinguished	Where Cited in the Decisions in the Instant Case
<i>Wong v. Canada (Attorney General)</i> , 2025 FCA 63	2024 FC 686 (FC, JR) 2022 SST 1506 (SST AD, LTA denied) 2022 SST 1507 (SST GD)	Appellant did not enter scientific evidence of risk of harm to her from COVID-19 vaccines into the record. Appellant worked as a librarian for the Toronto Public Library. There is no indication in this case or any of the decisions below that the appellant worked from home.	N/A
<i>Sturgeon v. Canada (Attorney General)</i> , 2024 FC	2023 SST 920 (SST AD) 2023 SST 921 (SST GD)	Appellant did not enter scientific evidence of risk of harm to him from COVID-19 vaccines into the record.	SST AD, paras. 39, 45

1888			
<i>Davidson v. Canada</i> (Attorney General), 2023 FC 1555	2022 SST 1468 (SST AD, LTA denied) 2022 SST 1461 (SST GD)	Appellant did not enter scientific evidence of risk of harm from COVID-19 vaccines into the record.	N/A
<i>Francis v. Canada</i> (Attorney General), 2023 FCA 217	2024 CanLII 43102 (SCC) (SCC, LTA denied) 2023 SST 185 (SST AD decision) 2022 SST 1657 (SST GD)	Appellant did not enter scientific evidence demonstrating risk of harm to a person in his age and sex category from COVID-19 vaccines into the record.	N/A
<i>Zagol v. Canada</i> (Attorney General), 2025 FCA 40	2025 CanLII 101821 (SCC) (SCC, LTA denied) 2024 SST 54 (SST AD) 2023 SST 1873 (SST GD)	Appellant did not enter scientific evidence of risk of harm from COVID-19 vaccines into the record. Appellant did not work from home.	SST AD, paras. 30, 45
<i>Khodykin v. Canada</i> (Attorney General), 2024 FCA 96	2023 SST 1190 (SST AD decision) 2023 SST 239 (SST GD)	Appellant did not enter scientific evidence of risk of harm from COVID-19 vaccines into the record. Appellant did not work from home.	SST AD, para. 45
<i>Lance v. Canada</i> (Attorney General), 2025 FCA 41	2023 SST 1032 (SST AD) 2022 SST 1428 (SST GD)	Appellant did not enter scientific evidence of risk of harm from COVID-19 vaccines into the record.	SST AD, para. 27

<i>Costea v. Canada</i> (Attorney General), 2025 FCA 57	2023 SST 1005 (SST AD) 2023 SST 1006 (SST GD)	Appellant did not enter scientific evidence of risk of harm from COVID-19 vaccines into the record.	SST AD, para. 28
<i>Zhelkov v. Canada</i> (Attorney General), 2023 FCA 240	2023 SST 372 (SST AD) 2022 SST 1710 (SST GD)	Appellant's employer offered him the option of rapid antigen testing in lieu of vaccination. Therefore, the appellant was not required to be vaccinated in order to continue working. Appellant did not enter scientific evidence of risk of harm from COVID-19 vaccines into the record.	N/A
<i>Lalancette v. Canada</i> (Attorney General), 2024 FCA 58	2022 SST 1382 (SST AD decision) 2022 SST 1435 (SST GD)	Appellant did not enter scientific evidence of risk of harm from COVID-19 vaccines into the record.	N/A
<i>Spears v. Canada</i> (Attorney General), 2024 FC 329	2023 SST 533 (SST AD, LTA denied) 2023 SST 534 (SST GD)	Appellant "made numerous statements about the risks and efficacy of COVID-19 vaccines" (SST GD decision, at para. 33), but she did not enter scientific evidence of risk of harm to her from COVID-19 vaccines into the record.	N/A
<i>Murphy v. Canada</i> (Attorney General), 2024 FC 1356	2023 SST 13 (SST AD, LTA denied) 2022 SST 1550 (SST GD)	Appellant provided some documentation about her medical history prior to the introduction of the COVID-19 vaccines, but she did not enter scientific evidence of risk of harm to her from COVID-19 vaccines into the record.	N/A
<i>Hey v. Canada</i> (Attorney General), 2025 FC 46	2023 SST 191 (SST AD, LTA denied) 2022 SST 1661 (SST GD)	Appellant stated his belief that the COVID-19 vaccines were lethal, but he did not enter scientific evidence of risk of harm to him from COVID-19 vaccines into the record. Appellant was a bus driver who could not work from home.	N/A

<p><i>Brown v. Canada (Attorney General)</i>, 2024 FC 1544</p>	<p>2023 SST 110 (SST AD, LTA denied) 2023 SST 117 (SST GD)</p>	<p>Appellant did not enter scientific evidence of risk of harm from COVID-19 vaccines into the record.</p>	<p>SST AD, para. 45</p>
<p><i>Daggett v. Canada (Attorney General)</i>, 2025 FC 114</p>	<p>2023 SST 169 (SST AD, LTA denied) 2022 SST 1647 (SST GD)</p>	<p>Appellant did not enter scientific evidence of risk of harm from COVID-19 vaccines into the record.</p>	<p>N/A</p>
<p><i>Matti v. Canada (Attorney General)</i>, 2023 FC 1527</p>	<p>2022 SST 1534 (SST AD, LTA denied) 2022 SST 1535 (SST GD)</p>	<p>Appellant did not enter scientific evidence of risk of harm from COVID-19 vaccines into the record.</p>	<p>N/A</p>
<p><i>Boskovic v. Canada (Attorney General)</i>, 2024 FC 841</p>	<p>2023 SST 364 (SST AD, LTA denied) 2023 SST 363 (SST GD) 2023 SST 366 (SST AD, LTA denied, on issue of availability to work) 2023 SST 365 (SST GD, on issue of availability to work)</p>	<p>Appellant submitted that he had a heart condition and believed that COVID-19 vaccination was a high risk medical intervention, but he did not enter scientific evidence of risk of harm to him from COVID-19 vaccines into the record.</p>	<p>SST AD, para. 45</p>
<p><i>Butu v. Canada (Attorney General)</i>, 2024 FC</p>	<p>2023 SST 631 (SST AD, LTA denied) 2023 SST 632</p>	<p>Appellant did not enter scientific evidence of risk of harm from COVID-19 vaccines into the record.</p>	<p>N/A</p>

321	(SST GD)		
<i>Jeglum v. Canada</i> (Attorney General), 2024 FC 1499	2023 SST 1347 (SST AD, LTA denied) 2023 SST 1348 (SST GD)	Appellant did not enter scientific evidence of risk of harm from COVID-19 vaccines into the record.	N/A
<i>Milovac v. Canada</i> (Attorney General), 2023 FC 1120	2023 SST 256 (SST AD, LTA denied) 2023 SST 257 (SST GD)	Appellant had a heart condition and was concerned about how the vaccine would affect him, but the appellant did not enter scientific evidence of risk of harm to him from COVID-19 vaccines into the record. Appellant worked as a coordinator for a community care and support agency. There is no indication in this case or any of the decisions below that the appellant worked from home.	SST GD, para. 50
<i>Laurence v. Canada</i> (Attorney General), 2024 FC 1498	2022 SST 1462 (SST AD, LTA denied) 2022 SST 1463 (SST GD)	Appellant did not enter scientific evidence of risk of harm from COVID-19 vaccines into the record.	N/A
<i>Pagano v. Canada</i> (Attorney General), 2026 FC 584	2024 SST 48 (SST AD, LTA denied) 2023 SST 1217 (SST GD) 2023 SST 763 (SST AD, granting leave to appeal summary dismissal) 2022 SST 1775 (SST GD, summary dismissal)	Appellant did not enter scientific evidence of risk of harm from COVID-19 vaccines into the record.	N/A

<p><i>Barton v. Canada</i> (Attorney General), 2026 FC 756 (CanLII)</p>	<p>2025 SST 994 (SST AD, LTA denied)</p> <p>2025 SST 995 (SST GD)</p>	<p>Appellant did not enter scientific evidence of risk of harm from COVID-19 vaccines into the record.</p>	<p>N/A</p>
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61. The SST General and Appeal divisions relied upon several of the cases listed in the tables above — specifically, *Kuk and Milovac* (used by the SST GD), and *Besley, Sullivan, Abdo, Sturgeon, Zagol, Khodykin, Lance, Costea, Brown, and Boskovic* (used by the SST AD) — assuming in error that these cases were applicable to the circumstances in my case.
62. The case law that was relied upon in deciding that there is “misconduct” irrespective of the imposition to be vaccinated constituting a danger is distinguished from my case, because the said case law does not involve proven risk of death from adverse effects of the COVID-19 vaccine in a work-from-home context.
63. My thorough search did not identify any case that is not distinguished regarding the central questions of (a) possibility to work from home and (b) admitted evidence of risk of harm from the vaccine.
64. It was an error for the SST to rely on case law where danger from and non-necessity of the injection were not in the evidentiary record, because in my case the danger was proven and exposing myself to the risk was unnecessary since I could work from home. And, it was an error for the STT Appeal Division not to correct the SST General Division’s error but instead repeat it.
65. In my case, if the decision makers and reviewers were correct to cast the case as one of potential “misconduct” (s. 31 of the *EI Act*) rather than as voluntarily taking leave with just cause (s. 29 of the *EI Act*), which is denied, then the scientifically demonstrated and uncontested evidence of risk of harm to me from vaccination must be considered in the decision maker’s calculus for deciding “misconduct” pursuant to the *EI Act*.

3.3 ISSUE 3: In the alternative, the statutory interpretation of “misconduct” applied by the decision makers and reviewers is unreasonable and incorrect

66. My case is not common in that the alleged misconduct is entirely having decided not to follow an employer’s new vaccination policy directive that was both:

- unnecessary (working from home, as with all employees in similar positions, in the entire time of interrupted salary and benefits⁵⁹), and
 - dangerous (risk of injury in uncontradicted evidence in the record⁶⁰).
67. It is not established law that choosing not to follow a policy or policy provision is necessarily and automatically misconduct. Policy-related cases have actually been about violations of rules of professional conduct, and this court's analysis included determinations of the severity of the said violations: *Canada (Attorney General) v. Bellavance*, 2005 FCA 87 (CanLII), <https://canlii.ca/t/1b4n>, at paras. 3-8; *Canada (Attorney General) v. Gagnon*, 2002 FCA 460 (CanLII), <https://canlii.ca/t/21r8n>, at paras. 2-5.
68. In my case, the decision makers and reviewers decided that my reasoned and conscientious refusal to be vaccinated was "misconduct" justifying depriving me of government assistance, pursuant to the *EI Act*.
69. The decision makers and reviewers used an incorrect definition of (or test for) "misconduct" (a definition not following by necessity from the *EI Act*) that permits no consideration of the employer's directive being refused.
70. The said definition of misconduct applied by the decision makers and reviewers amounts to the equation:
- wilfully disobey demand = misconduct, irrespective of what is being demanded (i.e., irrespective of potential negative consequences of the demand, or anything else).
- The definition (which is rejected) applied by the decision makers and reviewers is a necessary condition but not a sufficient one. The generically applied said definition leads to absurd results.
71. Specifically, the SST based its said applied definition of misconduct on the Federal Court of Appeal's decision in the 2007 case *Mishibinijima*,⁶¹ in which it was uncontested that the employee's actions (repeatedly arriving late for work after being warned about tardiness) were of a nature warranting dismissal.
72. In *Mishibinijima*, the Court expressly applied the said constricted definition of misconduct which excludes considering the possible deleterious nature of the employer's directive in judging whether there is misconduct. In *Mishibinijima*, the Court in-effect applied the

59 Appeal Book, pgs. 97-105.

60 See footnote 13 and paragraph 25 of the instant submissions.

61 *Mishibinijima v. Canada (Attorney General)*, 2007 FCA 36 (CanLII), <https://canlii.ca/t/1qgkr>, cited at paras. 28 and 29 in the SST AD's decision below (SST AD decision of May 7, 2025 by Member Janet Lew [No hyperlink available]).

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.

73. The question of whether the employee’s actions were of a nature warranting dismissal was not at issue in *Mishibinijima*. This means that the definition of misconduct contained in paragraph 14 of *Mishibinijima* (applied by the SST Appeal Division below) cannot be applied by copy-pasting into my case. Rather, the decision maker must view the Court’s decision in *Mishibinijima* in light of the full context of that case.
74. The decision not to consider what I was refusing (my employer’s directive to me to get vaccinated) in the analysis of misconduct is untenable in light of the relevant factual and legal constraints,⁶² 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.
75. 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:⁶³

[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]

76. Thus, in *Granstrom*, the Federal Court of Appeal was clear that a violation of an employment condition (“inability to fulfill a condition of employment”), even if voluntary, is not itself necessarily misconduct.
77. The SST was required to evaluate whether dismissal would be warranted based on the employee’s action (here: refusing vaccination, which is a medical intervention by injection

62 *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 (CanLII), [2019] 4 SCR 653, <https://canlii.ca/t/j46kb>, at para. 101.

63 *Canada (Attorney General) v. Granstrom*, 2003 FCA 485 (CanLII), <https://canlii.ca/t/1g3mh>, para. 8.

with a proven risk of death to the employee, in a work-from-home context) 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). The SST General Division thus erred, and the SST Appeal Division erred by not correcting the SST General Division's error.

In the alternative: Decision to refuse being subjected to potentially fatal consequence is not wilful

78. In the alternative, if the decision makers and reviewers were correct to cast the case as one of potential "misconduct" (s. 31 of the *EI Act*) rather than as voluntarily taking leave with just cause (s. 29 of the *EI Act*), which is denied, and if the test for "misconduct" being applied by the decision makers and reviewers (i.e., wilfully disobeying) is appropriate, which is denied, then my refusal to receive the injections was not "wilful" because receiving the injections would have put me at a significantly elevated risk of dangerous and potentially disabling or fatal heart inflammation, and infringed my fundamental rights. An employee's refusal to engage in a potentially fatal and unwanted medical procedure that is unnecessary for the performance of their work duties cannot be "wilful" with respect to the test of "misconduct" being applied by the decision makers and reviewers.

3.4 Conclusion

79. The crux of my case is choosing not to be vaccinated because of the established risk of personal injury.

80. The alleged misconduct is entirely having decided not to follow an employer's new vaccination directive that was both:

- unnecessary (working from home, as with all employees in similar positions, in the entire time of interrupted salary and benefits), and
- dangerous (risk of injury in uncontradicted evidence in the record).

81. The denial of EI in these circumstances is contrary to the intent and purpose of the *EI Act*.

82. The error is repaired by finding that either:

- my decision not to be vaccinated (and to be thus automatically denied salaried employment) is justified, or
- my contravening the said directive does not constitute misconduct.

83. With respect, it is difficult not to see an appearance of institutional bias in the tribunal decisions below. The context is one in which the Minister of Employment stated in October 2021 that people who lose work for refusing to comply with workplace COVID-19 vaccination directives would not receive EI benefits:⁶⁴

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.

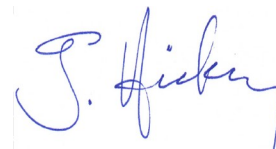
"I can tell you that's the advice I'm getting, and that's the advice I'll move forward with."

4 Order Sought

84. The appellant asks that the Court:

- **QUASH OR SET ASIDE** the Social Security Tribunal's decision;
- **REFER BACK** the matter to a new member of the Appeal Division of the Tribunal for a new determination;
- **ORDER** any directions that the Court considers to be appropriate.

June 26, 2026



JOSEPH HICKEY

Appellant

64 "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>.

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>.
2. *Canadian Human Rights Act* (R.S.C., 1985, c. H-6), s. 3(1), <https://laws-lois.justice.gc.ca/eng/acts/H-6/FullText.html>.

5.2 Case Law

3. *Hickey v. Canada (Attorney General)*, 2026 FC 313 (CanLII), <https://canlii.ca/t/kin4f>.
4. Leave to Appeal Decision by SST Appeal Division Member Janet Lew of May 7, 2025 in SST file AD-24-13 [No hyperlink].
5. *JH v Canada Employment Insurance Commission*, 2023 SST 1786 (CanLII), <https://canlii.ca/t/k26z0>.
6. *Ontario (Attorney General) v. Ontario (Information and Privacy Commissioner)*, 2024 SCC 4 (CanLII), <https://canlii.ca/t/k2l80>.
7. *Northern Regional Health Authority v. Horrocks*, 2021 SCC 42 (CanLII), [2021] 3 SCR 107, <https://canlii.ca/t/ijtkc>.
8. *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 (CanLII), [2013] 2 SCR 559, <https://canlii.ca/t/fz8c4>.
9. *Mason v. Canada (Citizenship and Immigration)*, 2023 SCC 21 (CanLII), <https://canlii.ca/t/k0c85>.
10. *Canada (Attorney General) v. Hernandez*, 2007 FCA 320 (CanLII), <https://canlii.ca/t/1v3kt>.
11. *Canada (Attorney General) v. Langlois (F.C.A.)*, 2008 FCA 18 (CanLII), [2008] 3 FCR 556, <https://canlii.ca/t/1w03c>.
12. *Canada (Attorney General) v. Peppard*, 2017 FCA 110 (CanLII), <https://canlii.ca/t/h3zkg>.
13. *Besley v. Canada (Attorney General)*, 2025 FCA 47 (CanLII), <https://canlii.ca/t/k9rr0>.
14. *MB v Canada Employment Insurance Commission*, 2023 SST 1147 (CanLII), <https://canlii.ca/t/k1k84>.

15. *MB v Canada Employment Insurance Commission*, 2023 SST 1148 (CanLII), <https://canlii.ca/t/k1k8j>.
16. *Kuk v. Canada (Attorney General)*, 2024 FCA 74 (CanLII), <https://canlii.ca/t/k44d7>.
17. *Kuk v. Canada (Attorney General)*, 2023 FC 1134 (CanLII), <https://canlii.ca/t/k0l4p>.
18. *WK v Canada Employment Insurance Commission*, 2022 SST 1532, <https://decisions.sst-tss.gc.ca/sst-tss/ei-ae/en/item/522528/index.do>.
19. *WK v Canada Employment Insurance Commission*, 2022 SST 1533, <https://decisions.sst-tss.gc.ca/sst-tss/ei-ae/en/item/522525/index.do>.
20. *Sullivan v. Canada (Attorney General)*, 2024 FCA 7 (CanLII), <https://canlii.ca/t/k269v>.
21. *SS v Canada Employment Insurance Commission*, 2023 SST 518, <https://decisions.sst-tss.gc.ca/sst-tss/ei-ae/en/item/523116/index.do>.
22. *SS v Canada Employment Insurance Commission*, 2022 SST 1748, <https://decisions.sst-tss.gc.ca/sst-tss/ei-ae/en/item/523117/index.do>.
23. *Hazaparu v. Canada (Attorney General)*, 2024 FC 928 (CanLII), <https://canlii.ca/t/k5c0x>.
24. *NH v Canada Employment Insurance Commission*, 2023 SST 645, <https://decisions.sst-tss.gc.ca/sst-tss/ei-ae/en/item/523251/index.do>.
25. *NH v Canada Employment Insurance Commission*, 2023 SST 646, <https://decisions.sst-tss.gc.ca/sst-tss/ei-ae/en/item/523252/index.do>.
26. *Palozzi v. Canada (Attorney General)*, 2024 FCA 81 (CanLII), <https://canlii.ca/t/k48gd>.
27. *CP v Canada Employment Insurance Commission*, 2023 SST 1049, <https://decisions.sst-tss.gc.ca/sst-tss/ei-ae/en/item/523681/index.do>.
28. *CP v Canada Employment Insurance Commission*, 2023 SST 1050, <https://decisions.sst-tss.gc.ca/sst-tss/ei-ae/en/item/523679/index.do>.
29. *Cecchetto v. Canada (Attorney General)*, 2024 FCA 102 (CanLII), <https://canlii.ca/t/k4xjs>.
30. *Anthony Cecchetto v. Canada (Attorney General)*, 2025 CanLII 9722 (SCC), <https://canlii.ca/t/k9fvm>.
31. *Cecchetto v. Canada (Attorney General)*, 2023 FC 102 (CanLII), <https://canlii.ca/t/jv4ns>.
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5.3 Secondary Sources

5.3.1 Scientific publications

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5.3.2 Media publications

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CBC News, “Trudeau warns of ‘consequences’ for public servants who duck COVID-19 shots”, 17 August 2021	https://www.cbc.ca/news/politics/trudeau-consequences-public-servants-vaccines-1.6143735	43
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