Federal Court Cour fédérale

Date: 20201229

Docket: T-368-20

Citation: 2020 FC 1192

Ottawa, Ontario, December 29, 2020

PRESENT: Madam Justice McVeigh

BETWEEN:

JACQUELINE SMITH

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is a judicial review of a decision of the Social Security Tribunal (the "SST"). The February 18, 2020 decision under review is a refusal of an application for leave to appeal to the Appeal Division of the SST ("Appeal Division") because it is time-barred.

[2] The Applicant represented herself at the hearing as she has throughout this long process. The Court acknowledges that this is a very personal and painful journey for Ms. Smith that elicits sympathy — unfortunately, that is not the standard of review in a judicial review.

II. Background

A. *The Facts*

[3] The facts of the case are not in dispute. In 2002, the government of British Columbia enacted Bill 29, the *Health and Social Services Delivery Improvement Act*, SBC 2002, c 2 ("Bill 29"). Because of this law, many health care workers and support staff lost their jobs including Ms. Smith who lost her job in 2003.

[4] In 2007, the Supreme Court of Canada ("SCC") released a decision on the constitutionality of Bill 29, finding it violated the *Charter* in part (*Health Services and Support – Facilities Subsector Bargaining Assn v British Columbia*, 2007 SCC 27 at para 168). The law was repealed, and a settlement was offered to the people who lost their jobs. Ms. Smith received $11,820.00 before tax.

[5] While Ms. Smith was unemployed, she collected Employment Insurance ("EI") She was re-trained through an EI program but she was not allowed to work during her re-training without a reduction in the EI funding she received.

[6] On July 9, 2009, a determination by Human Resources and Skills Development Canada said that the settlement payments made to the fired workers was income (rather than damages) for the period between November 2003 and March 2004. This determination had a major impact to the fired workers. It meant that Ms. Smith had to pay back to Employment and Social Development Canada ("ESDC") the EI payments of $6,938.00 because she had received "income" during that time period despite the fact that the payment came years later.

[7] A representative claimant, Andrea Rachel, appealed the decision on behalf of the laid-off employees (including Ms. Smith) attempting to classify the settlement as damages and not income ("Andrea Rachel decision"). On August 19, 2014, the tribunal denied this appeal, but granted claimants the ability to request a reconsideration from the Canada Employment Insurance Commission (the "Commission").

[8] Pursuant to that decision, on November 4, 2014, Ms. Smith requested a reconsideration. On February 4, 2015, the Commission upheld the original decision, but adjusted the amount owing to $6,236.00.

[9] In a letter dated February 25, 2015, the Canada Revenue Agency ("CRA") notified Ms. Smith that they were responsible for collecting debts to ESDC, and that she needed to complete a financial questionnaire. She completed the form, dated May 5, 2015, and sent a letter detailing her financial hardship and requested debt forgiveness. The CRA responded, informing Ms. Smith that they could not consider her request, but forwarded her file to ESDC. She received a reply, dated July 22, 2015, denying her request However, the ESDC deferred payments for six months,

informing Ms. Smith that the CRA would still withhold income tax refunds and GST credits to offset the debt.

[10] On December 2, 2019, Ms. Smith appealed to the SST's General Division ("General Division"). In the Appeal application question 4, asking the date of the decision that is being appealed, Ms. Smith filled in that line as: 2010, 2014, 2015, 2016, 2018, 2019. This was presumably the list of different negative decisions she had received from various sources including the CRA, the EDSC, and the Commission.

[11] However, the only decision reviewed was the reconsideration of February 4, 2015. On December 13, 2019, the SST notified her that she filed her appeal late and then on December 30, 2019, she was notified that her appeal would not proceed, as it was time barred. On January 9, 2020, she appealed that decision to the SST - Appeal Division. In a letter dated February 19, 2020, they refused her appeal, with attached reasons. This is the decision that is the subject of this judicial review.

III. Issues

[12] The issues are:

A. Is the decision to deny leave to appeal reasonable?

B. Is the Applicant's right to procedural fairness violated because her case was not heard?

IV. Standard of Review

[13] The presumptive standard of review for administrative decisions is one of reasonableness *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paragraph 23 [*Vavilov*]. None of the exceptions for this standard exists in the present case. Further, decisions of the SST have generally been determined on the standard of reasonableness (*Njagi v Canada (Attorney General)*, 2020 FC 998 at para 18; *Andrews v Canada (Attorney General)*, 2018 FC 606 at para 17 [*Andrews*]).

[14] A reasonable decision must be based on reasoning that is rational and logical, and be based on internally coherent reasoning (*Vavilov* at paras 85, 102). The decision must bear the hallmarks of reasonableness — justification, transparency and intelligibility (*Vavilov* at 99). The party alleging the unreasonableness of the decision bears the onus of demonstrating it is unreasonable (*Vavilov* at 100).

[15] The standard for determining whether the decision-maker complied with the duty of procedural fairness is generally said to be correctness. However, attempting to shoehorn the question of procedural fairness into a standard of review analysis is an unprofitable exercise (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 34-56, citing *Khela v Mission Institution*, 2014 SCC 24 at para 79). The ultimate question is whether the process was fair to the Applicant—and in answering that, no deference is owed to the decision maker (*Escape Trailer Industries Inc v Canada (Attorney General)*, 2020 FCA 54 at 13).

V. Preliminary Issue

[16] As the Applicant is self-represented, she has presented her entire story that includes many decisions over the years. In this judicial review, I will only be reviewing the February 18, 2020 decision of the SST. The SST does not have the jurisdiction to hear matters stemming from CRA decisions, and section 112.1 of the *Employment Insurance Act*, SC 1996, c. 23 [*EI Act*] does not allow the Commission to reconsider write-off decisions, and so are not properly before the SST.

[17] I am well aware that the Applicant has argued that she has not been heard and the constrictions of a judicial review may not alleviate her perception that her story is not being heard. I can assure her that she has been heard but within the Federal Court's jurisdiction, rules and administrative law constraints.

VI. Analysis

[18] The relevant provisions are attached as Annex A.

A. *Is the decision to deny leave to appeal reasonable?*

[19] What has unfolded during this case is an understanding of Ms. Smith's viewpoint. In her view, the current collection of the EI money is very unfair given that through no fault of her own the collection of the EI has caused her emotional and financial turmoil. She had to use the EI money in order to survive until the SCC ruling, which then resulted in the settlement funds. In her view, the settlement was years after she had unjustly lost her job, and when she received the

settlement money, she needed that money to live on going forward. When told the EI had to be repaid, Ms. Smith had no money to repay the EI that she had received years ago. Even with re-training, she was in a desperate situation with a husband who could not support them because of mental health issues. All this financial strife lead to her family losing their home. She currently can barely keep their current aged mobile home as their residence.

[20] To her, the government was one entity garnishing and collecting the EI overpayment. First she found it unfair that the EI had to be repaid and secondly could not see why the government would not write-off the debt given her impoverishment. Throughout the 11 years since the determination that her EI benefits were income, she has continued to ask “the government” to write-off the debt because of financial hardship.

[21] Because the CRA was collecting the EI, she contacted the CRA to write-off the EI repayment. She did not understand that the CRA is only collecting the garnishment, and is not the department with the authority to write-off the debt. This misunderstanding of the CRA’s role was perpetuated by the CRA postponing or suspending their collections after a review of her situation and their position of being the collectors only and then forwarding her requests to other departments to deal with the underlying decision that the garnishment was based on.

[22] It is evident on the record below that she thought at least initially that the CRA was the department that gave her the relief for financial hardship. Though somewhat repetitive of what was set out above, I will examine it in detail from Ms. Smith’s perspective.

[23] To Ms. Smith, the different departments seemed indistinguishable. Evidence of her misperception is that she wrote to SST on November 4, 2014 after the Andrea Rachel decision, telling them that she did not have the money to repay the EI. The SST acknowledged her letter but communicated that they were not the right department and forwarded it on to the Commission. Service Canada (Edmonton) contacted her about the reconsideration request, and the Commission rendered a decision on February 4, 2015. In that decision, they adjusted the amount repayable but did not make a write-off determination. Service Canada told her that she could appeal to the SST but soon after, the CRA followed up with a collection letter on February 25, 2015.

[24] Ms. Smith responded with a letter to the CRA telling them of her financial hardship and asked that the debt be written off. On the same day as the collection letter, the CRA asked for information to see if they could remove the debt from active recovery. Again, in July 2015, Ms. Smith wrote to the CRA and asked for a write-off of her debt because of financial hardship and they sent it to ESDC to assess.

[25] On July 22, 2015, the ESDC denied the write-off (pursuant to subsection 56(1)(f)(ii) of the *Employment Insurance Regulations*, SOR/96-332 ("EIR")) but did defer the payments 6 months not including any CRA setoffs. This I will label as her first write-off refusal. She wrote again to CRA on November 25, 2017 for a write-off. The CRA again forwarded the write-off request to ESDC. On March 9, 2018, pursuant to the request under subsection 56(1)(f)(ii) of the *EIR*, they denied the request to write-off the EI overpayment and said CRA will continue to collect or she can make payments to Service Canada. I will call this the second denial.

[26] On September 22, 2019, once again she wrote CRA a letter concerning the need for a write-off because of financial hardship. On November 5, 2019, the CRA wrote her and told her they are only responsible for collecting the debts for ESDC. Next, she requested a reconsideration on a Service Canada form to write-off the debt. Later, on November 30, 2019, she sent a letter to the SST requesting a write-off. On December 10, 2019, she appealed to the general division.

[27] On December 13, 2019, the SST indicated that her appeal was beyond the 30 days time limit and they would decide whether to grant a time extension. On December 18, 2019, the benefits officer denied the appeal because it was more than one year after the reconsideration so it had to be dismissed pursuant to section 52(2) of the *DESDA*. Then, in reasons dated December 29, 2019, the SST General Division also determined she was outside the year timeframe pursuant to subsection 52(2) of the *DESDA*, which says you cannot bring an appeal more that one year after the reconsideration decision, which was February 4, 2015.

[28] On February 18, 2020 the SST - Appeal Division made the decision and outlined the facts that confirmed the submission of a number letters to CRA and to the SST - General Division. The Appeal Division indicated that the only reconsideration decision was on February 4, 2015, and under section 112.1 of the *EI Act*, the Commission may not reconsider its write-off decision. The Appeal Division found that she would not have received reconsideration if she had asked for one. Her request was refused because reconsideration decisions are the only decisions appealable to the General Division, and that the General Division "could not consider an appeal of the write-off decision." The only decision they had jurisdiction to deal with was the decision

from February 4, 2015. The General Division exercised their jurisdiction and, because it was more than one year since the decision, found that the General Division did not ignore or misunderstand any evidence. They found that the decision was correct at law, as section 52(2) of the *DESDA* does not allow an appeal more than one year after a decision.

[29] Ms. Smith has been diligent in her pursuit of a write-off but it is clear she often asked the wrong department or decision-maker.

[30] It does appear that an individual can make more than one request for a write-off. I say that only because Ms. Smith has, as seen above, had more than one refusal for a write-off. If a further examination needs done to determine whether it may be possible for her to request another write-off under another subsection other than the hardship section and if not successful, she may have a right to judicially review that decision if there are no adequate alternative remedies legislated. That is not before the Court and nor does the Court opine on any "next steps".

[31] It is evident that Ms. Smith needs legal advice. She cannot afford to retain a lawyer and has not been successful at obtaining any from law school programs.

[32] It is also evident that this application must fail, as the decision I am reviewing is reasonable. I understand that this does not appear to be reasonable to the Applicant because she has been asking the government to write-off this overpayment of EI for financial hardship for

years and yet, in her mind, no one looked at her actual financial hardship and the collection continues.

[33] In *Andrews*, a decision regarding an extension of time at the SST, the SST found that:

> …the reasons clearly conclude that the appeal did not have a reasonable chance of success as the Application was not supported by new evidence. The Decision, when read in light of the record, explains the basis for the Decision. I am satisfied that the SST-AD's Decision to refuse an extension of time and deny leave was within the range of acceptable outcomes.
>
> (*Andrews* at para 20)

[34] In the present case, section 52(2) of the *DESDA* renders the decision reasonable because the General Division of the SST did not have discretion to allow for an extension of time. As Justice Grammond ruled in *Pellettieri v Canada (AG)*, 2019 FC 1585 at paragraphs 7-8:

> 7 After reviewing the record, I conclude that the General Division had no choice but to dismiss Mr. Pellettieri's appeal. Section 52(2) of the *Department of Employment and Social Development Act*, SC 2005, c 34, states that "The General Division may allow further time within which an appeal may be brought, but in no case may an appeal be brought more than one year after the day on which the decision is communicated to the appellant." In this case, the completed notice of appeal was filed three years after the decision.
>
> 8 For that reason, the Appeal Division made a reasonable decision when it denied leave to appeal.

[35] Even if the SST has the discretion to offer an extension of time, Ms. Smith has submitted no evidence as to why there was such a delay. In addition, there is of course no guarantee it would even be granted. *Daley v Canada*, 2017 FC 297 [*Daley*] is a case where the applicant represented himself, and is factually quite close to that of the present case. In *Daley*, the

applicant was also applying for a reconsideration of the Commission for a monetary penalty connected with EI benefits. He appealed to the SST, first to the General Division, and then to the Appeal Division. In that case, he did not appear in front of the General Division or file any evidence explaining the "medical reason" for the delay. In that case, the applicant was not completely time-barred because of section 52(2) of *DESDA*. Justice Mosley still found that the decision to deny him an extension was reasonable (*Daley,* at para 15).

[36] I believe that this decision satisfies all of the earmarks of a reasonable decision when evaluated through *Vavilov*. It is justified, transparent and intelligible. The decision made every effort to explain and communicate the reasons for the denial of her appeal, and addressed the matters it would not be considering, including the decision of March 9, 2018, where the Commission refused her request for reconsideration that her debt be written off. The reasons cite section 112.1 of the *EI Act*, which bars reconsideration of write-off decisions. They also note in the reasons that they have no jurisdiction to consider any decision of the CRA.

B. *Is the Applicant's right to procedural fairness violated because her case was not heard?*

[37] Nor was the Applicant's procedural fairness breached. She claims that her appeal was not heard by the Appeal Division, however, the detailed decision would suggest otherwise.

VII. Conclusion

[38] I find that the decision is reasonable, and that there was no breach of the Applicant's procedural fairness. The judicial review is dismissed.

[39] No costs were sought by the Respondent and none are ordered.

JUDGMENT IN T-368-20

THIS COURT'S JUDGMENT is that:

1. The application is dismissed;

2. No costs are ordered.

"Glennys L. McVeigh"
Judge

ANNEX A

Department of Employment and Social Development Act (S.C. 2005, c. 34)

Appeal to Tribunal — General Division

Appeal — time limit

52 (1) An appeal of a decision must be brought to the General Division in the prescribed form and manner and within,

(a) in the case of a decision made under the Employment Insurance Act, 30 days after the day on which it is communicated to the appellant; and

(b) in any other case, 90 days after the day on which the decision is communicated to the appellant.

Extension

(2) The General Division may allow further time within which an appeal may be brought, but in no case may an appeal be brought more than one year after the day on which the decision is communicated to the appellant.

Dismissal

53 (1) The General Division must summarily dismiss an appeal if it is satisfied that it has no reasonable chance of success.

Decision

(2) The General Division must give written reasons for its decision and send copies to the appellant and the Minister or the Commission, as the case may be, and any other party.

Appeal

Modalités de présentation

52 (1) L'appel d'une décision est interjeté devant la division générale selon les modalités prévues par règlement et dans le délai suivant :

a) dans le cas d'une décision rendue au titre de la Loi sur l'assurance-emploi, dans les trente jours suivant la date où l'appelant reçoit communication de la décision;

b) dans les autres cas, dans les quatre-vingt-dix jours suivant la date où l'appelant reçoit communication de la décision.

Délai supplémentaire

(2) La division générale peut proroger d'au plus un an le délai pour interjeter appel.

Rejet

53 (1) La division générale rejette de façon sommaire l'appel si elle est convaincue qu'il n'a aucune chance raisonnable de succès.

Motifs

(2) Elle rend une décision motivée par écrit et en fait parvenir une copie à l'appelant et, selon le cas, au ministre ou à la **Commission, et à toute autre partie.**

Appel à la division d'appel

(3) The appellant may appeal the decision to the Appeal Division.

Decision

54 (1) The General Division may dismiss the appeal or confirm, rescind or vary a decision of the Minister or the Commission in whole or in part or give the decision that the Minister or the Commission should have given.

Reasons

(2) The General Division must give written reasons for its decision and send copies to the appellant and the Minister or the Commission, as the case may be, and any other party.

Appeal Division

Appeal

55 Any decision of the General Division may be appealed to the Appeal Division by any person who is the subject of the decision and any other prescribed person.

Leave

56 (1) An appeal to the Appeal Division may only be brought if leave to appeal is granted.

Exception

(2) Despite subsection (1), no leave is necessary in the case of an appeal brought under subsection 53(3).

Appeal — time limit

57 (1) An application for leave to appeal must be made to the Appeal Division in the prescribed form and manner and within,

(3) L’appelant peut en appeler à la division d’appel de cette décision.

Décisions

54 (1) La division générale peut rejeter l’appel ou confirmer, infirmer ou modifier totalement ou partiellement la décision visée par l’appel ou rendre la décision que le ministre ou la Commission aurait dû rendre.

Motifs

(2) Elle rend une décision motivée par écrit et en fait parvenir une copie à l’appelant et, selon le cas, au ministre ou à la Commission, et à toute autre partie.

Division d’appel

Appel

55 Toute décision de la division générale peut être portée en appel devant la division d’appel par toute personne qui fait l’objet de la décision et toute autre personne visée par règlement.

Autorisation du Tribunal

56 (1) Il ne peut être interjeté d’appel à la division d’appel sans permission.

Exception

(2) Toutefois, il n’est pas nécessaire d’obtenir une permission dans le cas d’un appel interjeté au titre du paragraphe 53(3).

Modalités de présentation

57 (1) La demande de permission d’en appeler est présentée à la division d’appel selon les modalités prévues par règlement et dans le délai suivant :

(a) in the case of a decision made by the Employment Insurance Section, 30 days after the day on which it is communicated to the appellant; and

(b) in the case of a decision made by the Income Security Section, 90 days after the day on which the decision is communicated to the appellant.

Extension

(2) The Appeal Division may allow further time within which an application for leave to appeal is to be made, but in no case may an application be made more than one year after the day on which the decision is communicated to the appellant.

Grounds of appeal

58 (1) The only grounds of appeal are that

(a) the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;

(b) the General Division erred in law in making its decision, whether or not the error appears on the face of the record; or

(c) the General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

Criteria

(2) Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success.

Decision

a) dans le cas d'une décision rendue par la section de l'assurance-emploi, dans les trente jours suivant la date où l'appelant reçoit communication de la décision;

b) dans le cas d'une décision rendue par la section de la sécurité du revenu, dans les quatre-vingt-dix jours suivant la date où l'appelant reçoit communication de la décision.

Délai supplémentaire

(2) La division d'appel peut proroger d'au plus un an le délai pour présenter la demande de permission d'en appeler.

Moyens d'appel

58 (1) Les seuls moyens d'appel sont les suivants :

a) la division générale n'a pas observé un principe de justice naturelle ou a autrement excédé ou refusé d'exercer sa compétence;

b) elle a rendu une décision entachée d'une erreur de droit, que l'erreur ressorte ou non à la lecture du dossier;

c) elle a fondé sa décision sur une conclusion de fait erronée, tirée de façon abusive ou arbitraire ou sans tenir compte des éléments portés à sa connaissance.

Critère

(2) La division d'appel rejette la demande de permission d'en appeler si elle est convaincue que l'appel n'a aucune chance raisonnable de succès.

Décision

(3) The Appeal Division must either grant or refuse leave to appeal.

Reasons

(4) The Appeal Division must give written reasons for its decision to grant or refuse leave and send copies to the appellant and any other party.

Leave granted

(5) If leave to appeal is granted, the application for leave to appeal becomes the notice of appeal and is deemed to have been filed on the day on which the application for leave to appeal was filed.

Decision

59 (1) The Appeal Division may dismiss the appeal, give the decision that the General Division should have given, refer the matter back to the General Division for reconsideration in accordance with any directions that the Appeal Division considers appropriate or confirm, rescind or vary the decision of the General Division in whole or in part.

Reasons

(2) The Appeal Division must give written reasons for its decision and send copies to the appellant and any other party.

(3) Elle accorde ou refuse cette permission.

Motifs

(4) Elle rend une décision motivée par écrit et en fait parvenir une copie à l’appelant et à toute autre partie.

Permission accordée

(5) Dans les cas où la permission est accordée, la demande de permission est assimilée à un avis d’appel et celui-ci est réputé avoir été déposé à la date du dépôt de la demande de permission.

Décisions

59 (1) La division d’appel peut rejeter l’appel, rendre la décision que la division générale aurait dû rendre, renvoyer l’affaire à la division générale pour réexamen conformément aux directives qu’elle juge indiquées, ou confirmer, infirmer ou modifier totalement ou partiellement la décision de la division générale.

Motifs

(2) Elle rend une décision motivée par écrit et en fait parvenir une copie à l’appelant et à toute autre partie.

Employment Insurance Act (S.C. 1996, c. 23)

Reconsideration — Commission

112 (1) A claimant or other person who is the subject of a decision of the Commission, or the employer of the claimant, may make a request to the Commission in the prescribed form and manner for a reconsideration of that decision at any time within

Révision — Commission

112 (1) Quiconque fait l’objet d’une décision de la Commission, de même que tout employeur d’un prestataire faisant l’objet d’une telle décision, peut, dans les trente jours suivant la date où il en reçoit communication, ou dans le délai supplémentaire que la Commission peut

(a) 30 days after the day on which a decision is communicated to them; or

(b) any further time that the Commission may allow.

Reconsideration

(2) The Commission must reconsider its decision if a request is made under subsection (1).

accorder, et selon les modalités prévues par règlement, demander à la Commission de réviser sa décision.

Nouvel examen

(2) La Commission est tenue d'examiner de nouveau sa décision si une telle demande lui est présentée.

Employment Insurance Regulations (SOR/96-332)

Write-off of Amounts Wrongly Paid, Penalties and Interest

56 (1) A penalty owing under section 38, 39 or 65.1 of the Act or an amount payable under section 43, 45, 46, 46.1 or 65 of the Act, or the interest accrued on the penalty or amount, may be written off by the Commission if

(a) the total of the penalties and amounts, including the interest accrued on those penalties and amounts, owing by the debtor to Her Majesty under any program administered by the Department of Employment and Social Development does not exceed $100, a benefit period is not currently running in respect of the debtor and the debtor is not currently making regular payments on a repayment plan;

(b) the debtor is deceased;

(c) the debtor is a discharged bankrupt;

(d) the debtor is an undischarged bankrupt in respect of whom the final dividend has been paid and the trustee has been discharged;

(e) the overpayment does not arise from an error made by the debtor or as a result of a false or misleading declaration or representation made by the debtor, whether

Défalcation des sommes indûment versées, des pénalités et des intérêts

56 (1) La Commission peut défalquer une pénalité à payer en application des articles 38, 39 ou 65.1 de la Loi ou une somme due aux termes des articles 43, 45, 46, 46.1 ou 65 de la Loi ou les intérêts courus sur cette pénalité ou cette somme si, selon le cas :

a) le total des pénalités et des sommes, y compris les intérêts courus, que le débiteur doit à Sa Majesté en vertu de tout programme administré par le ministère de l'Emploi et du Développement social ne dépasse pas cent dollars, aucune période de prestations n'est en cours pour le débiteur et ce dernier ne verse pas de paiements réguliers en vertu d'un plan de remboursement;

b) le débiteur est décédé;

c) le débiteur est un failli libéré;

d) le débiteur est un failli non libéré à l'égard duquel le dernier dividende a été payé et le syndic a été libéré;

e) le versement excédentaire ne résulte pas d'une erreur du débiteur ni d'une déclaration fausse ou trompeuse de celui-ci, qu'il ait ou

the debtor knew it to be false or misleading or not, but arises from

(i) a retrospective decision or ruling made under Part IV of the Act, or

(ii) a retrospective decision made under Part I or IV of the Act in relation to benefits paid under section 25 of the Act; or

(f) the Commission considers that, having regard to all the circumstances,

(i) the penalty or amount, or the interest accrued on it, is uncollectable,

(ii) the repayment of the penalty or amount, or the interest accrued on it, would result in undue hardship to the debtor, or

(iii) the administrative costs of collecting the penalty or amount, or the interest accrued on it, would likely equal or exceed the penalty, amount or interest to be collected.

(2) The portion of an amount owing under section 47 or 65 of the Act in respect of benefits received more than 12 months before the Commission notifies the debtor of the overpayment, including the interest accrued on it, may be written off by the Commission if

(a) the overpayment does not arise from an error made by the debtor or as a result of a false or misleading declaration or representation made by the debtor, whether the debtor knew it to be false or misleading or not; and

(b) the overpayment arises as a result of

non su que la déclaration était fausse ou trompeuse, mais découle :

(i) soit d'une décision rétrospective rendue en vertu de la partie IV de la Loi,

(ii) soit d'une décision rétrospective rendue en vertu des parties I ou IV de la Loi à l'égard des prestations versées selon l'article 25 de la Loi;

f) elle estime, compte tenu des circonstances, que :

(i) soit la pénalité ou la somme, y compris les intérêts courus, est irrécouvrable,

(ii) soit le remboursement de la pénalité ou de la somme, y compris les intérêts courus, imposerait au débiteur un préjudice abusif,

(iii) soit les frais administratifs de recouvrement de la pénalité ou de la somme, ou les intérêts, seraient vraisemblablement égaux ou supérieurs à la pénalité, à la somme ou aux intérêts à recouvrer.

(2) La Commission peut défalquer la partie de toute somme due aux termes des articles 47 ou 65 de la Loi qui se rapporte à des prestations reçues plus de douze mois avant qu'elle avise le débiteur du versement excédentaire, y compris les intérêts courus, si les conditions suivantes sont réunies :

a) le versement excédentaire ne résulte pas d'une erreur du débiteur ni d'une déclaration fausse ou trompeuse de celui-ci, qu'il ait ou non su que la déclaration était fausse ou trompeuse;

b) le versement excédentaire est attribuable à l'un des facteurs suivants :

(i) a delay or error made by the Commission in processing a claim for benefits,

(ii) retrospective control procedures or a retrospective review initiated by the Commission,

(iii) an error made on the record of employment by the employer,

(iv) an incorrect calculation by the employer of the debtor's insurable earnings or hours of insurable employment, or

(v) an error in insuring the employment or other activity of the debtor.

(i) un retard ou une erreur de la part de la Commission dans le traitement d'une demande de prestations,

(ii) des mesures de contrôle rétrospectives ou un examen rétrospectif entrepris par la Commission,

(iii) une erreur dans le relevé d'emploi établi par l'employeur,

(iv) une erreur dans le calcul, par l'employeur, de la rémunération assurable ou du nombre d'heures d'emploi assurable du débiteur,

(v) le fait d'avoir assuré par erreur l'emploi ou une autre activité du débiteur.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-368-20
STYLE OF CAUSE:	JACQUELINE SMITH v ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	VANCOUVER, BRITISH COLUMBIA
DATE OF HEARING:	NOVEMBER 16, 2020
JUDGMENT AND REASONS:	MCVEIGH J.
DATED:	DECEMBER 29, 2020

APPEARANCES:

Ms. Jacqueline Smith	FOR THE APPLICANT, ON HER OWN BEHALF
Mr. Jordan Marks	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada Vancouver, British Columbia	FOR THE RESPONDENT