

Federal Court  
of Appeal



Cour d'appel  
fédérale

**Date: 20111121**

**Docket: A-481-10**

**Citation: 2011 FCA 320**

**CORAM: NOËL J.A.  
TRUDEL J.A.  
MAINVILLE J.A.**

**BETWEEN:**

**CLAUDE BLAIS AND OTHER APPLICANTS  
IDENTIFIED IN THE APPENDED LIST**

**Applicants**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

Heard at Montréal, Quebec, on October 20, 2011.

Judgment delivered at Ottawa, Ontario, on November 21, 2011.

**REASONS FOR JUDGMENT BY:**

**TRUDEL J.A.**

**CONCURRED IN BY:**

**NOËL J.A.  
MAINVILLE J.A.**

Federal Court  
of Appeal



Cour d'appel  
fédérale

**Date: 20111121**

**Docket: A-481-10**

**Citation: 2011 FCA 320**

**CORAM: NOËL J.A.  
TRUDEL J.A.  
MAINVILLE J.A.**

**BETWEEN:**

**CLAUDE BLAIS AND OTHER APPLICANTS  
IDENTIFIED IN THE APPENDED LIST**

**Applicants**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**REASONS FOR JUDGMENT**

**TRUDEL J.A.**

**Introduction**

[1] By order of this Court, the case at bar is an application for judicial review involving 165 Employment Insurance claimants, whose names appear in the Appendix to the forthcoming judgment. The file of Claude Blais is the reference file. When required by these reasons, the examples given will be drawn from his file.

[2] The application is filed in respect of CUB decision No. 75340, delivered by Umpire Guy Goulard on September 24, 2010, (decision under appeal) by which he allowed the Commission's appeal and set aside the June 26, 2009, decision of the Board of Referees (the third Board of Referees or the Board), which had ruled in the applicants' favour.

[3] The litigation between the parties arises from their dispute over the effect, on the allocation of earnings for benefit purposes, of a decision made on December 13, 2007, by a second Board of Referees, which had determined that the date of termination of the claimants' employment was the date on which the factory where they were employed closed for good, that is, December 31, 1999, rather than their individual layoff dates, which ranged from before to after December 31, 1999. More specifically, the applicants take issue with the reallocation of earnings by the Commission following that decision and with the ensuing consequences for them: the Commission's claim for repayment of the overpayments for the period before December 26, 1999.

[4] In my opinion, the application must be dismissed for the reasons that follow.

#### Relevant facts and applicable legislative framework

[5] For the purposes of this application, it suffices to know that the applicants all worked for Abitibi Consolidated Inc. at the Chandler plant (Chandler Mill – Abitibi Price). In late October 1999, the employer announced that its operations in Chandler would be ending

permanently. Initial benefit periods were established for each of the applicants, in accordance with their respective files. A few weeks later, the employees learned that the plant was closing its doors for good and that the employer would be paying them, in compensation, for amounts including floating holiday pay, vacation pay and severance pay.

[6] For the purposes of the *Employment Insurance Act*, S.C. 1996, c. 23 (the Act) and the *Employment Insurance Regulations*, SOR/96-332 (the Regulations), this sequence of events was experienced by Mr. Blais as follows.

[7] On October 16, 2009, Mr. Blais completed his final day of work at the Chandler plant. Two days later, he filed a claim for unemployment benefits (to use the former term, applicants' record, volume 1, page 55). On October 28, 1999, he was informed by a letter from the employer that the Chandler plant was closing for good (*ibidem*, page 61).

[8] Over the period from November 1999 to February 2000, Mr. Blais received \$18,415.53 in compensation payments from the employer.

[9] In February 2000, the Commission allocated this amount under section 54 of the Act and sections 35 and 36 of the Regulations, explaining its approach as follows:

[TRANSLATION] We wish to inform you of how your floating holidays, vacation pay for the year 2000 and severance pay, totalling \$18,415.53 . . . affect your Employment Insurance benefits.

This overall income, before deductions, constitutes earnings that will be deducted from your benefits on the basis of your normal weekly salary of \$896.80. As a result, you will receive no benefits from October 24, 1999, to March 11, 2000. A balance of \$480 will be deducted in the week of March 12, 2000. Once you become entitled to benefits, you will have to serve a two-week waiting period, during which no benefits are payable.

Please note that your benefit period has been extended by 20 weeks, and will thus end, at the latest, on March 3, 2001 . . . (*ibidem*, page 54) [Emphasis added.]

[10] This process implemented the applicable legislative framework respecting Employment Insurance eligibility. Indeed, section 7 of the Act sets out the conditions that must be met in order to receive benefits. More specifically, subsection 7(2) provides that a person is eligible for Employment Insurance if he or she has had an interruption of earnings from employment and has held an insurable employment for the number of hours set out in the Act.

[11] Furthermore, section 14 of the Regulations states that an interruption of earnings occurs where,

. . . following a period of employment with an employer, an insured person is laid off or separated from that employment and has a period of seven or more consecutive days during which no work is performed for that employer and in respect of which no earnings that arise from that employment, other than earnings described in subsection 36(13) [earnings paid or payable to a claimant in respect of a holiday or non-working day that is observed as such by law], are payable or allocated.

[12] This regulatory provision must be read in conjunction with section 35 of the Regulations, which identifies what constitutes earnings for benefit purposes. For this application, it is sufficient to know that the case law is consistent in stating that severance pay (CUB 178052, 17564, 13063, 20753) and vacation pay (*Scully v. Canada (Commission of Employment and*

*Immigration*), [1989] F.C.J. No. 965, 107 N.R. 142) are earnings that disentitle the claimant concerned from receiving benefits. Many situations may lead to the allocation of earnings. In the applicants' case, the Commission applied subsection 36(9) of the Regulations, which provides as follows:

Subject to subsections (10) and (11), all earnings paid or payable to a claimant by reason of a lay-off or separation from an employment shall, regardless of the period in respect of which the earnings are purported to be paid or payable, be allocated to a number of weeks that begins with the week of the lay-off or separation in such a manner that the total earnings of the claimant from that employment are, in each consecutive week except the last, equal to the claimant's normal weekly earnings from that employment. [Emphasis added.]

[13] Accordingly, the Commission made its initial decision and, on February 24, 2000, sent Mr. Blais a notice of overpayment in the amount of \$3,304, as evidenced by a certificate issued under subsection 134(2) of the Act (*ibidem*, page 85).

[14] The Commission took the same legal approach in respect of the other claimants, with varying figures and dates for each of them.

[15] This allocation as of October 24, 1999, was appealed. The applicants submit that their employment terminated on December 31, 1999, as was negotiated between the employer and the union (applicants' memorandum, paragraph 4). On appeal, the first Board of Referees accepted the Commission's position regarding the date of allocation (decision dated September 8, 2004). However, Umpire Goulard allowed Mr. Blais' appeal in a decision dated September 9, 2005 (CUB 64293). It is important to reproduce the relevant passage:

I find that the Board erred in law and in fact in finding that the date that should apply to determine when to allocate the amounts received by the claimant should be the date the Canada Customs and Revenue Agency ruled was the date the claimant's employment terminated. . . . That ruling could not be considered determinant on the issue of the date the employment was definitively terminated and the amounts paid became payable. The Board should not only determine when each of the claimants was laid off but also when their employment was definitively terminated and the date the amounts received by the claimants became due and payable. In addition, the new Board should consider the particular situation of each claimant involved in the appeal, because the situation is obviously different for many of the claimants. (applicants' record, volume I, page 81).

[16] This returning of the file led to the decision by the second Board of Referees on December 13, 2007. In its decision, the second Board of Referees found that the claimants' date of termination of employment was December 31, 1999, that is, the date on which the plant closed for good. Allocation of the amounts received by those claimants therefore had to begin on that date (applicants' record, volume 1, page 123).

[17] In this decision, the Board also stated that it had no need to reconsider the matter of the overpayment calculations, since it [TRANSLATION] "concur[s] with both counsel, who argued that the Commission will have to amend its calculations in each case pursuant to this Board's decision" (*ibidem*).

[18] That decision was not appealed. Consequently, the Commission reallocated the earnings (second allocation) using this termination of employment date, that is, December 31, 1999, and issued new notices of debt showing, for Mr. Blais, an overpayment in the same amount of \$3,304 (*ibidem*, page 126). The allocation previously determined over the period from October 24, 1999,

to March 11, 2000, was now determined over the period from December 26, 1999, to May 13, 2000. The recovery of overpayments began on March 19, 2000 (week coded 1187) and continued until May 20, 2000 (week coded 1195), as shown in the table below.

[19] The calculations used to arrive at this sum are broken down in a table created by the Commission, reproduced at pages 135 and 136 of volume 1 of the applicants' record. I reproduce the relevant portions below, with the addition of the calendar date corresponding to the beginning of the period identified by week codes.

[TRANSLATION]

Week Code	Date	Breakdown of calculations following decision by the Board of Referees (BR) dated December 13, 2007	Balance of Overpayment (OP)
1165	Claim effective	17/10/1999 (Beginning of the benefit periods at issue (BBP))	
1166	24/10/1999	No OP. Waiting Period (WP) (Week 2)	none
1167	31/10/1999	OP 413	cancelled
1168	07/11/1999	OP 413	cancelled
1169	14/11/1999	OP 413	cancelled
1170	21/11/1999	No OP. Pay of \$1434.88 reported for floating holidays included in the amounts considered by the BR to be allocated as of 1175.	<b>(\$413 payable)</b>
1171	28/11/1999	OP 413	cancelled
1172	05/12/1999	OP 413	cancelled
1173	12/12/1999	OP 413	cancelled
1174	19/12/1999	OP 413	cancelled
<b>Total:</b>		<b>\$2,891</b>	<b>OP (\$2,891) cancelled</b>
		<b>Allocation following the BR from 1175 to 1195.</b>	
1175	26/12/1999	OP 413 already established This balance will be "absorbed" by the \$413.00 now payable for week 1170	Balance TP \$413
		<b>Initial OP: \$3,304 – OP \$2,891 cancelled following the BR – credit 1170 =</b>	<b>Balance OP \$0.00</b>
1176 to 1186	02/01/2000	Allocation already established. No benefits claimed.	No OP
1187	19/03/2000	Allocation established, Employment Insurance (EI) benefits of \$36 paid on account of Pay in WP.	OP \$36
1188	26/03/2000	Allocation established, EI benefits paid <b>OP established</b>	OP \$413
1189	02/04/2000	Allocation established, EI benefits paid <b>OP established</b>	OP \$413
1190	09/04/2000	Allocation established, EI benefits paid <b>OP established</b>	OP \$413
1191	16/04/2000	Allocation established, EI benefits paid <b>OP established</b>	OP \$413
1192	23/04/2000	Allocation established, EI benefits paid <b>OP established</b>	OP \$413



1193	30/04/2000	Allocation established, EI benefits paid <b>OP established</b>	OP \$413
1194	07/05/2000	Allocation established, EI benefits paid <b>OP established</b>	OP \$413
1195	14/05/2000	End of established allocation, balance of \$480 = \$36 payable EI benefits paid \$413 – \$ 36 = \$377 OP established	OP \$377
<b>OP established: following the BR's decision =</b>			<b>OP \$3,304</b>
1196 to 1199	21/05/2000	EI benefits paid (4 x \$413).	No OP
1200 to 1213	18/06/2000	No benefits claimed.	No OP
1214 to 1228	24/09/2000	EI benefits paid, (15 x \$413).	No OP
<b>Grand Total of OP balance</b>			
<b>Initial OP:</b>		<b>Balance of initial OP</b>	<b>\$0.00</b>
<b>OP established:</b>		<b>Following the BR's decision</b>	<b>\$3304.00</b>
<b>Total:</b>		<b>Grand Total of OP balance</b>	<b>\$3304.00</b>

[20] Although the balance of the overpayment remained unchanged for Mr. Blais, the same cannot be said for all of the claimants. For some, the overpayment balance went up or down. The applicants argue that the approach used by the Commission to arrive at the amount claimed did not flow from the decision dated December 13, 2007, but from another decision-making process. They made note, in particular, of two cases where the balance was increased as a result of the second allocation. I will return to this later on.

[21] This second allocation and the resulting overpayment amounts gave rise to the applicants' appeal to the third Board of Referees, which ruled in their favour, thus leading to the Commission's appeal to the Umpire. The Umpire allowed the Commission's appeal in CUB 75340 (decision dated September 24, 2010), which is the subject of this application for judicial review.

Decision of the Umpire

[22] In the Umpire's view, the Board's jurisdiction was limited to determining whether "the Commission's decision to allocate the amounts received as of December 31, 1999, was consistent with the evidence concerning the date of final termination of the claimant's employment and with the relevant legislative provisions" (decision under appeal, applicants' record, volume 1, page 31). [Emphasis added.] To that effect, the Umpire noted that, instead of tackling this issue, the Board had concluded that the Commission had overstepped the bounds of the decision by the second Board of Referees. The Board had found that the Commission "had amended its initial declarations and determined a new allocation" (*ibidem*, page 32).

[23] The Umpire pointed out that the dispute which the second Board of Referees had to decide concerned the date of final termination of employment for allocation purposes under subsection 36(9) of the Regulations, not the issue of whether the amounts received were earnings under section 35 of those Regulations.

[24] Unlike the Board, the Umpire was of the opinion that the Commission, by taking the approach it had, was doing no more than implementing the decision of December 13, 2007. With that finding, the Umpire set aside the Board's decision that the Commission's new calculations were new facts. The Board wrote the following:

[TRANSLATION]

Therefore, in the Claude Blais file, we give credit to the arguments [of the applicants, who state] that [TRANSLATION] “. . . the appealed allocation period was from 1166 to 1185 [October 24, 1999, to March 11, 2000], and the benefits claimed were those received over the course of this period for a total of \$3,304.00. The Commission’s new decision and ensuing claim refer to the weeks from 1187 to 1195 [March 19, 2000, to May 20, 2000] in the Commission’s digital calendar. On their face, these benefit weeks have nothing to do with the initial benefits claimed. In our opinion, this constitutes a new decision-making process related to the benefits received in 2000 (and continuing, in some cases, into 2001). There was a 36-month mandatory time limit for claiming those benefits. A decision rendered in 2008 or 2009 cannot meet such a requirement . . .” (decision of the Board, applicants’ record, volume V, page 938). [Emphasis added.]

[25] The Umpire did not share that view. He therefore concluded that the Board could not draw authority from section 120 of the Act, pertaining to new facts, to review the decision of the second Board of Referees. In the same breath, the Umpire dismissed the applicants’ argument pertaining to the limitation period set out in section 52.

[26] Ultimately, the Umpire found that the Board of Referees had “overstepped its jurisdiction and erred in fact and in law in deciding that the overpayment amount being sought from the claimant by the Commission pursuant to the Board of Referees’ decision of December 13, 2007 was not justified, and in allowing the claimant’s appeal” (decision under appeal, applicants’ record, volume I, page 38).

Issues

[27] The parties suggested various issues, but I propose only one: Did the Board err in its interpretation of sections 52 and 120 of the Act and their application to the facts of the case, or did the Umpire misdirect himself in law in concluding as he did?

Positions of the parties

[28] The applicants' argument has remained unchanged since they made their submissions before the Board. In their opinion, the Commission's claims regarding the overpayments are unfounded and cannot result from the execution of the decision dated December 13, 2007.

[29] They result from a new decision-making process that the Commission was prevented from engaging in by section 52 of the Act, which provides that the Commission may only reconsider a claim within 36 months after the benefits have been paid or would have been payable. The applicants are therefore adopting the Board's conclusion that [TRANSLATION] "the amendments and claims of which the Commission gave notice in 2008–2009 are found to be new facts and [this] was indeed a new decision overstepping the confines of the decision . . . of December 13, 2007" (Board's decision, applicants' record, volume V, page 939). In order to comply with section 52, above, these [TRANSLATION] "amendments should have been made between February 2000 and March 12, 2003" (*ibidem*). According to the applicants, only

[TRANSLATION] “. . . the benefits claimed and received as of week 1175 (that is, the week of December 26, 1999) until the end date set out in the initial appealed decision [March 11, 2000] are consistent with a proper application of the decision of the [second] Board of Referees, dated December 13, 2007 and . . . only this part of the claim has merit” (decision under appeal, applicants’ record, volume 1, pages 29-30). In short, the benefits received before December 26, 1999, cannot be claimed as an overpayment.

[30] The Umpire therefore erred in concluding that the decision of December 13, 2007, had limited the Board’s jurisdiction [TRANSLATION] “in respect of the reallocation process amending the specific allocation period and claiming, in whole or in part, benefits other than those initially claimed . . . [especially since] the Commission . . . had accepted the context and the limits defined by the parties to the dispute as set out at section 52 of the Act in the context of the decision rendered” (applicants’ memorandum, paragraph 55).

[31] As for the Commission, it submits that the reallocation is simply the result of applying the various relevant legislative provisions to the facts of the case, since the execution of the decision of the second Board of Referees had set December 31, 1999, as the date of termination of employment for all of the applicants. In no way was this a reconsideration under section 52 of the Act. Since the decision dated December 13, 2007, was not appealed, that decision is final and, in accordance with section 120 of the Act, may not be rescinded or amended unless new facts are presented. In short, neither section 52 nor section 120 is triggered.

[32] Furthermore, before this Court, the Commission noted that section 52 cannot be read without a parallel examination of subsections 47(3) and (4) of the Act, which address the time limits applicable to debts due to the Crown and to their recovery by deduction and retention and the fact that a limitation period does not run when there is pending an appeal against the decision establishing the liability to be recovered.

Legislative provisions referenced by the parties

[33] These provisions read as follows:

Debts to Crown

**47.** (1) All amounts payable under section 38, 39, 43, 45, 46 or 46.1 are debts due to Her Majesty and are recoverable in the Federal Court or any other court of competent jurisdiction or in any other manner provided by this Act.

Recovery

(2) If benefits become payable to a claimant, the amount of the indebtedness may be deducted and retained out of the benefits.

Limitation

(3) No amount due under this section may be recovered more than 72 months after the day on which the liability arose.

Appeals

Créances de la Couronne

**47.** (1) Les sommes payables au titre des articles 38, 39, 43, 45, 46 ou 46.1 constituent des créances de Sa Majesté, dont le recouvrement peut être poursuivi à ce titre soit devant la Cour fédérale ou tout autre tribunal compétent, soit selon toute autre modalité prévue par la présente loi.

Recouvrement par déduction

(2) Les sommes dues par un prestataire peuvent être déduites des prestations qui lui sont éventuellement dues.

Prescription

(3) Le recouvrement des créances visées au présent article se prescrit par soixante-douze mois à compter de la date où elles ont pris naissance.

Interruption de la prescription

(4) A limitation period established by subsection (3) does not run when there is pending an appeal or other review of a decision establishing the liability.

...

#### Reconsideration of claim

**52.** (1) Notwithstanding section 120, but subject to subsection (5), the Commission may reconsider a claim for benefits within 36 months after the benefits have been paid or would have been payable.

#### Decision

(2) If the Commission decides that a person

(a) has received money by way of benefits for which the person was not qualified or to which the person was not entitled, or

(b) has not received money for which the person was qualified and to which the person was entitled,

the Commission shall calculate the amount of the money and notify the claimant of its decision and the decision is subject to appeal under section 114.

#### Amount repayable

(3) If the Commission decides that a person has received money by way of benefits for which the person was not qualified or to which the person was not entitled,

(a) the amount calculated is repayable under section 43; and

(4) Tout appel ou autre voie de recours formé contre la décision qui est à l'origine de la créance à recouvrer interrompt la prescription visée au paragraphe (3).

[...]

#### Nouvel examen de la demande

**52.** (1) Malgré l'article 120 mais sous réserve du paragraphe (5), la Commission peut, dans les trente-six mois qui suivent le moment où des prestations ont été payées ou sont devenues payables, examiner de nouveau toute demande au sujet de ces prestations.

#### Décision

(2) Si elle décide qu'une personne a reçu une somme au titre de prestations pour lesquelles elle ne remplissait pas les conditions requises ou au bénéfice desquelles elle n'était pas admissible, ou n'a pas reçu la somme pour laquelle elle remplissait les conditions requises et au bénéfice de laquelle elle était admissible, la Commission calcule la somme payée ou payable, selon le cas, et notifie sa décision au prestataire. Cette décision peut être portée en appel en application de l'article 114.

#### Somme remboursable

(3) Si la Commission décide qu'une personne a reçu une somme au titre de prestations auxquelles elle n'avait pas droit ou au bénéfice desquelles elle n'était pas admissible :

a) la somme calculée au titre du paragraphe (2) est celle qui est remboursable conformément à l'article 43;

b) la date à laquelle la Commission

(b) the day that the Commission notifies the person of the amount is, for the purposes of subsection 47(3), the day on which the liability arises.

#### Amount payable

(4) If the Commission decides that a person was qualified and entitled to receive money by way of benefits, and the money was not paid, the amount calculated is payable to the claimant.

#### Extended time to reconsider claim

(5) If, in the opinion of the Commission, a false or misleading statement or representation has been made in connection with a claim, the Commission has 72 months within which to reconsider the claim.

...

#### Amendment of decision

**120.** The Commission, a board of referees or the umpire may rescind or amend a decision given in any particular claim for benefit if new facts are presented or if it is satisfied that the decision was given without knowledge of, or was based on a mistake as to, some material fact.

notifie la personne de la somme en cause est, pour l'application du paragraphe 47(3), la date où la créance a pris naissance.

#### Somme payable

(4) Si la Commission décide qu'une personne n'a pas reçu la somme au titre de prestations pour lesquelles elle remplissait les conditions requises et au bénéfice desquelles elle était admissible, la somme calculée au titre du paragraphe (2) est celle qui est payable au prestataire.

#### Prolongation du délai de réexamen de la demande

(5) Lorsque la Commission estime qu'une déclaration ou affirmation fautive ou trompeuse a été faite relativement à une demande de prestations, elle dispose d'un délai de soixante-douze mois pour réexaminer la demande.

[...]

#### Modification de la décision

**120.** La Commission, un conseil arbitral ou le juge-arbitre peut annuler ou modifier toute décision relative à une demande particulière de prestations si on lui présente des faits nouveaux ou si, selon sa conviction, la décision a été rendue avant que soit connu un fait essentiel ou a été fondée sur une erreur relative à un tel fait.



Standard of review

[34] It is undisputed that the correctness standard applies to the Umpire's conclusions of law (*Canada (Attorney General) v. Lemire*, 2010 FCA 314, paragraph 8) and that, in this case, the Umpire's findings of mixed fact and law, as well as his findings of fact, will be upheld if they "[have] the qualities that make a decision reasonable" (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, paragraph 47).

[35] We must also determine, on a standard of correctness, whether the Umpire erred in identifying the standard of review applicable to the Board of Referees' decision. Here, the Commission's appeal, filed under section 115 of the Act, concerned the Board's jurisdiction to act as it did. The Umpire had to ensure, first of all, that the Board had correctly interpreted the Act and the Regulations. Although the Umpire did not specify the standard of review underlying his review of the Board's decision, it can only be inferred from his reasons that he applied the correctness standard, and rightly so.

Analysis

[36] I agree with the position taken by the Umpire and the Commission. With respect, the applicants' position fails to take into account the legal effects of the decision dated December 13, 2007, on the allocation of the earnings received by the applicants.

Effect of the decision dated December 13, 2007

[37] The December 13, 2007, decision amended the date as of which the allocation was determined by setting the date proposed by the applicants, December 31, 1999, as the date of termination of employment. In fact, as stated by the second Board of Referees,

[TRANSLATION]

[a]ccording to Mr. Ouellet, by means of this document [the letter of agreement dated December 2, 1999, between the employer and the union, which provides that the employee benefits would be continued until December 31 and that the severance pay would be paid upon final termination], the company is demonstrating that the employees were still working in December 1999 (applicants' record, volume I, page 102).

[38] As a result, in accordance with the Act and the Regulations, the Commission had to establish a revised allocation. For Mr. Blais, this allocation period began on December 26, 1999, and ended on May 20, 2000, that is, 20.5 weeks later (weeks 1175 to 1195), on the basis of his weekly earnings.

[39] By appealing the [TRANSLATION] "extension of the allocation period" (applicants' memorandum, paragraph 51), the applicants are essentially seeking to keep the benefits received before December 26, 1999, even though they were not entitled to them, and are objecting to any allocation beyond March 11, 2000. In practice, this means that the \$18,415.53 received by Mr. Blais, and henceforth required to be allocated from December 26, 1999, to May 20, 2000, would have to be allocated over less than 20.5 weeks, and therefore on a basis other than his weekly wages, thus rendering him eligible for regular benefits sooner than is provided by law.

[40] I cannot agree that this is the effect that the second Board of Referees wished to give to the phrase [TRANSLATION] “. . . the Commission will have to amend its calculations in each case in accordance with our decision”, since that would, undeniably, be contrary to the Act and the Regulations. The amendment of the calculations resulting from the December 13, 2007 decision necessarily meant that a new allocation period had to be determined for each of the applicants. This issue was well known to the parties, who, throughout the fall of 2010, had exchanged tables showing the effects of an allocation beginning in December 1999 rather than in October 1999 (applicants’ record, volume I, pages 70, 72).

[41] The evidence does show that certain overpayments were corrected or simply cancelled during the second allocation, which is a possibility noted in the decision dated December 13, 2007. These corrections or cancellations resulted, in large part, from errors in the notices of overpayment or simple calculation errors. My view is that, by making its comment, the second Board of Referees wanted to ensure that the Commission’s claims in respect of the numerous claimants at issue were accurate.

[42] In this vein, the Commission made an undertaking before this Court to cancel all corrections in the second allocation which had the effect of penalizing an applicant by increasing the amount claimed for repayment. This undertaking was made at the hearing of the application after counsel for the applicants gave two examples, the only ones he was able to give the Court, of corrections having been made which increased the amount claimed: the files of Gatien Dugal and Maurice Aspireault.

[43] In the Aspireault file, the Commission claimed an overpayment of \$1,618 in 2000 (applicants' record, volume II, page 355; volume IV, page 735), which was increased to \$2,857 in 2007 (*ibidem*, volume V, page 1063). I will not discuss his file further since Mr. Aspireault is not on the list of applicants (*ibidem*, volume IV, page 892).

[44] In Mr. Dugal's case, the \$48 increase results from a calculation error by the Commission, which, during the first allocation, had calculated a weekly overpayment of \$390 rather than \$398 for weeks 1166 to 1171, that is, October 24, 1999, to December 4, 1999 (*ibidem*, volume V, page 1076). Further to the Commission's undertaking, \$48 will be subtracted from the amount owed.

Section 52 is not engaged

[45] The matter of the corrections made by the Commission in determining its second allocation and the matter of the ensuing overpayments are at the core of the applicants' arguments. As mentioned above, the applicants submit that those corrections in fact constitute a reconsideration of the files, which section 52 does not allow.

[46] I disagree. As a result of the decision dated December 13, 2007, the Commission had to redetermine the allocation in accordance with the Act and the Regulations. This was not a reconsideration of the applicants' files which the Commission can carry out at its discretion, as

provided for by section 52 (*Portelance c. Canada (Commission de l'Emploi et de l'Immigration)*, [1990] F.C.J. No. 309).

[47] Section 52 is not engaged, and neither is the time limit it sets out. In any case, as the respondent argues, section 52 must not be read without taking section 47 into account (*Brière v. Canada (Employment and Immigration Commission)*, [1988] F.C.J. No. 551), which provides that a limitation period does not run in certain circumstances, including for the recovery of debts owing as a result of overpayments (section 43 of the Act).

[48] Furthermore, the recalculations have in no way altered the situation of the applicants, who, as of February 2000, were disentitled from receiving benefits for the period at issue. The Umpire was therefore correct in concluding that the Commission's execution of a Board of Referees' decision is not a new decision (*Pirker v. Canada*, 2002 FCA 235).

#### Section 120 is not engaged

[49] In *Canada (Attorney General) v. Chan*, [1994] F.C.J. No. 1916, this Court wrote the following:

A different version of facts already known to the claimant, mere afterthoughts or the sudden realization of the consequences of acts done in the past are not "new facts". "New facts", for the purpose of the reconsideration of a decision of an umpire sought pursuant to section 86 of the Act, are facts that either happened after the decision was rendered or had happened prior to the decision but could

not have been discovered by a claimant acting diligently and in both cases the facts alleged must have been decisive of the issue put to the umpire.

[50] Adapting this test to the facts of the case, it is useful to recall that the issue before the second Board of Referees was to determine the date of final termination of employment. More specifically, the issues, as expressed by the second Board of Referees, were the following:

[TRANSLATION]

- a. Do the floating holiday pay, the vacation pay for 2000 and the severance pay in the amount of \$18,415.53 received from your employer Abitibi-Price affect your benefits?
- b. As of which date must the amounts received by the claimant begin to be allocated?
- c. Specifically, the Board must determine the following:
  - When was the claimant laid off?
  - When was his date of final termination of employment?
  - Last, on which date did the amounts received by the claimant become payable and due? (applicants' record, volume I, page 97)

[51] These issues were all aimed at determining on which date, between October 24 and December 31, 1999, the claimants' final termination of employment occurred. The Commission's recalculations did not decide the issues set forth; the recalculations were but the logical consequence of the second Board of Referees' ruling on those issues. The Board should not have described those calculations as "new facts". It erred in doing so, and the Umpire was correct in finding that the Board had exceeded its jurisdiction.

Conclusion

[52] Consequently, I would dismiss the applicants' application for judicial review, with one set of costs.

[53] I would also give effect to the Commission's commitment, regarding those files where a given applicant's overpayment balance was increased as a result of the new calculations made after the decision dated December 13, 2007, to cancel the amount corresponding to this increase and claim only the repayment of the overpayment as originally established by the Commission.

“Johanne Trudel”

---

J.A.

“I agree.

Marc Noël, J.A.”

“I agree.

Robert M. Mainville, J.A.”

Certified true translation  
Sarah Burns

## APPENDIX 1

RAOUL ALBERT,	CUB 75465
GILLES ALLAIN,	CUB 75358
CHARLES-AUGUSTE ANGLEHART,	CUB 75479
RICHARD ARSENAULT,	CUB 75370
JEAN-GUY ASPIROS,	CUB 75466
GILLES AUDET,	CUB 75361
GÉRARD BABIN,	CUB 75463
JEAN-YVES BASTIEN,	CUB 75365
GÉRALD BEAULIEU,	CUB 75458
RENÉ BERGER,	CUB 75362
MICHEL BISSON,	CUB 75363
ALAIN BLAIS,	CUB 75457
JEAN-YVES BLAIS,	CUB 75366
LUDOVIC BLAIS,	CUB 75502
RÉGINALD BLAIS,	CUB 75377
RENAUD BLAIS,	CUB 75451
GAÉTAN BOUCHARD,	CUB 75367
JEAN-YVES BOUDREAU,	CUB 75368
LÉOPOLD BRIAND,	CUB 75356
CLAUDE BUJOLD,	CUB 75359
JEAN-RENÉ CAYER,	CUB 75467
RAOUL CHOUINARD,	CUB 75369
MARC COMEAU,	CUB 75461
JEAN-MARC CORMIER,	CUB 75480
ALAIN CYR,	CUB 75393
BILLY CYR,	CUB 75464
FABRICE CYR,	CUB 75481
GASTON CYR,	CUB 75476
GINETTE CYR,	CUB 75485
HENRICYR,	CUB 75490
HERMEL CYR,	CUB 75419
MARCEL CYR,	CUB 75492
MARIO CYR,	CUB 75376
PAUL-EGIDE CYR,	CUB 75450
PLACIDE CYR,	CUB 75491
RÉGIS CYR,	CUB 75462
RÉJEAN CYR,	CUB 75378
RENAUD CYR,	CUB 75482
ARSÈNE DARAICHE,	CUB 75478
CLAUDE DERAICHE,	CUB 75397
ADORIS DORION,	CUB 75420



GÉRARD DUBÉ,	CUB 75452
BRIAN DUFFY,	CUB 75468
GATIEN DUGAL,	CUB 75501
ANTONIO DUGUAY,	CUB 75489
JACQUE-DENIS DUGUAY,	CUB 75484
MARC DUGUAY,	CUB 75488
GAÉTAN DUPUIS,	CUB 75379
GEORGES-HENRI DUPUIS,	CUB 75360
MICHEL DUPUIS,	CUB 75425
SERGE DUPUIS,	CUB 75456
DALE FITZPATRICK,	CUB 75493
GAÉTAN GIONEST,	CUB 75455
ALBIN GIROUX,	CUB 75483
BRUNO GIROUX,	CUB 75486
GÉRARD GODIN,	CUB 75470
FRANÇOIS GRENIER,	CUB 75454
GILLES GRENIER,	CUB 75471
GRATIEN GRENIER,	CUB 75395
JEAN-GUY GRENIER,	CUB 75364
JEAN-PAUL GRENIER,	CUB 75423
MARIO GRENIER,	CUB 75448
MARCEL GUILBEAULT,	CUB 75459
YVES HAUTCOEUR,	CUB 75504
MARC HUARD,	CUB 75428
MARCEL HUARD,	CUB 75426
MAURICE HUARD,	CUB 75341
PAUL-ÉMILE HUARD,	CUB 75342
RENAUD HUARD,	CUB 75449
SERGE HUARD,	CUB 75427
JEAN-CLAUDE HUET,	CUB 75350
ROGER KEIGHAN,	CUB 75453
CHARLES LAGACÉ,	CUB 75394
GILLES LAGACÉ,	CUB 75343
SUCCESSION PIERRE LAGACÉ,	CUB 75380
GEORGES LAMBERT,	CUB 75460
MARLÈNE LAMBERT,	CUB 75498
RAYNALD LAMBERT,	CUB 75421
JUDES LANGELIER,	CUB 75344
EUGÈNE LANGLOIS,	CUB 75398
JEAN-MARC LANTIN,	CUB 75422
MARC-ANDRÉ LANTIN,	CUB 75424
MÉDARD LANTIN,	CUB 75345
RENÉ LANTIN,	CUB 75346
JEAN-RENÉ LAPLANTE,	CUB 75347

RENAUD LAPLANTE,	CUB 75400
SYLVIO LAPLANTE,	CUB 75399
MARCEL LAPOINTE,	CUB 75475
MAURICE LEBLANC,	CUB 75417
RICHARD LEBLANC,	CUB 75418
YOLAND LEBLANC,	CUB 75474
YVON LEBLANC,	CUB 75473
JEAN-MARC LEFEBVRE,	CUB 75477
MARCEL LEFEBVRE,	CUB 75401
ROBERT LEGRESLEY,	CUB 75499
GASTON LELIÈVRE,	CUB 75429
ROBERT LENFESTY,	CUB 75414
DENIS LÉVESQUE,	CUB 75402
MARCEL LÉVESQUE,	CUB 75403
BERNARD LUCAS,	CUB 75404
GARRY LUCAS,	CUB 75405
MERVEN LUCAS,	CUB 75432
CARMEL LUCE,	CUB 75348
DENIS LUCE,	CUB 75349
JEAN-PIERRE MARTIN,	CUB 75496
RAPHAËL McInnes,	CUB 75503
JEAN-MARC McInnis,	CUB 75494
MARIO MERCIER,	CUB 75391
MICHEL MERCIER,	CUB 75430
NORBERT MERCIER,	CUB 75406
GAÉTANE MÉTHOT,	CUB 75375
HERMEL MÉTHOT,	CUB 75351
RENAUD MÉTHOT,	CUB 75416
MARTINE MÉTIVIER POIRIER,	CUB 75408
JACQUES MEUNIER,	CUB 75495
JEAN-GUY L. MEUNIER,	CUB 75431
MARIO MEUNIER,	CUB 75438
CLAIRE MICHEL,	CUB 75407
LUC MONTMAGNY,	CUB 75439
OVILA MONTMAGNY,	CUB 75352
ADRIEN MOREAU,	CUB 75354
DENIS MOREAU,	CUB 75409
BRUCE MURPHY,	CUB 75433
DOUGLAS MURPHY,	CUB 75415
KIRBY JR. MURPHY,	CUB 75434
ORLAND MURRAY,	CUB 75392
GILLES NOËL,	CUB 75355
ROGER NOËL,	CUB 75435
BERTRAND PARISÉ,	CUB 75373

LADISLAS PARISÉ,	CUB 75371
BERNARD POTVIN,	CUB 75436
GILLES QUIRION,	CUB 75437
YVES QUIRION,	CUB 75390
MICHEL RAIL,	CUB 75472
RAYMOND RIOUX,	CUB 75353
JEAN-CHARLES RITCHIE,	CUB 75410
MARIO RITCHIE,	CUB 75381
RÉJEAN RITCHIE,	CUB 75412
JEAN-GUY ROUSSEAU,	CUB 75469
CARMEL ROY,	CUB 75411
SERGE ROY,	CUB 75500
ALAN SMITH,	CUB 75389
DANIEL SMITH,	CUB 75444
EDMOND SMITH,	CUB 75447
JEAN-MARC SMITH,	CUB 75497
RENAUD SOUCY,	CUB 75445
SERGE SOUCY,	CUB 75446
RENÉ ST-LAURENT,	CUB 75372
RICHARD ST-PIERRE,	CUB 75388
BARRY SUTTON,	CUB 75440
MARC VALLÉE,	CUB 75387
JACQUES VILLENEUVE,	CUB 75441
NORBERT WAGNER,	CUB 75357
ROBERT WARREN,	CUB 75442
GILLES WHITTOM,	CUB 75413
PIERRE WHITTOM,	CUB 75443
TERRY BOYLE,	CUB 75383
DENIS BRADBURY,	CUB 75382
ALLEN MORRIS,	CUB 75386
RANDOLPH MURRAY,	CUB 75384
RENÉ MURRAY,	CUB 75385
GAIL THIBODEAU,	CUB 75396
ROBERT BABIN,	CUB 75505
JACQUES LEGRESLEY,	CUB 75506

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-481-10

**STYLE OF CAUSE:** Claude Blais and other applicants  
identified in the appended list v.  
Attorney General of Canada

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** October 20, 2011

**REASONS FOR JUDGMENT BY:** TRUDEL J.A.

**CONCURRED IN BY:** NOËL J.A.  
MAINVILLE J.A.

**DATED:** November 21, 2011

**APPEARANCES:**

Jean Guy Ouellet  
Gilbert Nadon

FOR THE APPLICANTS

Pauline Leroux  
Paul Deschênes

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Ouellet, Nadon, Cyr, Cousineau, Gagnon, Tremblay,  
Denis, Fortin-Legris, Couturier, Chiu, Pepin,  
Dhavernais  
Montréal, Quebec

FOR THE APPLICANTS

Myles J. Kirvan  
Deputy Attorney General of Canada

FOR THE RESPONDENT