

Federal Court of Appeal



Cour d'appel fédérale

Date: 20241023

Docket: A-54-24

Citation: 2024 FCA 170

**CORAM: BOIVIN J.A.
GLEASON J.A.
HECKMAN J.A.**

BETWEEN:

HONG ZHOU

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard by online videoconference hosted by the Registry on October 8, 2024.

Judgment delivered at Ottawa, Ontario, on October 23, 2024.

REASONS FOR JUDGMENT BY:

GLEASON J.A.

CONCURRED IN BY:

**BOIVIN J.A.
HECKMAN J.A.**

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REASONS FOR JUDGMENT

GLEASON J.A.

[1] The applicant seeks to set aside the decision of the Social Security Tribunal of Canada Appeal Division (the Appeal Division) in *H.Z. v. Canada Employment Insurance Commission*, 2023 SST 1104. In that decision, the Appeal Division dismissed an appeal from the earlier decision of the Social Security Tribunal of Canada General Division (the General Division) in *H.Z. v. Canada Employment Insurance Commission*, 2022 SST 273.

[2] The respondent has consented to this application for judicial review being granted but advances a somewhat different basis for intervention from that advanced by the applicant.

[3] For the reasons that follow, I would allow this application for judicial review on the basis proposed by the respondent and would remit the applicant's appeal to the Appeal Division for redetermination in accordance with these reasons. I would also award the applicant the all-inclusive sum of \$1000.00 in costs as I conclude that she has been largely successful in her application, the ultimate aim of which was to correct the notices of overpayment she received.

I. Background and Decisions of the General and Appeal Divisions

[4] The provisions applicable to this application relate to entitlements to employment insurance (EI) benefits and employment insurance emergency response benefits (EI ERB) and are set out in the *Employment Insurance Act*, S.C. 1996, c. 23 (*EI Act*) and the *Employment Insurance Regulations*, S.O.R./96-332 (*EI Regulations*). The relevant provisions are numerous and complex and are therefore set out in the Appendix to these reasons.

[5] In her submissions, the applicant referred to certain of the Interim Orders, promulgated under subsection 153.3(1) of the *EI Act* that enacted some of the EI ERB provisions. The portions of the Interim Orders the applicant relies on have been incorporated into the *EI Act*. Many of these provisions apply retroactively; others were in force at the relevant time and apply by their terms to Ms. Zhou's situation. For the sake of simplicity, I will refer only to the provisions in the *EI Act* and the *EI Regulations*.

[6] At the times relevant to this application, the applicant resided in the United States but worked in Windsor, Ontario. She was initially laid off on a temporary basis on April 10, 2020, after having worked for her employer since 2011. The applicant's employer issued her a record of employment (ROE), and she applied for EI benefits.

[7] The Employment Insurance Commission (the Commission) initially established a benefit period, commencing April 12, 2020, for the applicant during which it found she was entitled to regular EI benefits for 36 weeks. The Commission applied subsection 55(7) of the *EI Regulations* to determine the length of the benefit period. This provision applies to commuters, like the applicant, who live outside Canada in a state contiguous to Canada and work in Canada. Under subsection 55(7) of the *EI Regulations*, the maximum benefit period for regular EI benefits for commuters is 36 weeks. The Commission found that the applicant was entitled to the maximum 36-week benefit period because she had more than the required 1820 hours of insurable employment during her qualifying period.

[8] It appears that the applicant received 36 weeks of regular EI benefits.

[9] The applicant's employer put her back on the payroll before the end of her 36-week benefit period and paid her eight weeks termination pay, over the period from October 26, 2020 to December 18, 2020. The applicant's employer advised the applicant that she was permanently laid off and issued the applicant a second ROE on February 19, 2021.

[10] The applicant made a second claim for EI benefits in February 2021, and the Commission established a second benefit period, commencing on January 31, 2021. It found that the applicant was entitled to an additional 12 weeks of regular EI benefits in her second benefit period. In making this calculation, the Commission determined that the applicant had 320 hours of insurable employment in accordance with her second ROE and was entitled to a one-time additional credit of 300 hours under section 153.17(1) of the *EI Act*. This resulted in the applicant having a total of 620 hours of insurable employment, which, in turn, entitled her to 12 weeks of regular EI benefits in her second benefit period.

[11] The applicant was eventually paid 12 weeks of regular EI benefits in respect of her second benefit period.

[12] The applicant questioned the Commission's determination on her second claim, arguing that she was entitled to 50 weeks of regular EI benefits in respect of the second benefit period. The Commission disagreed with the applicant and determined that, as a commuter who resided in the United States, subsection 55(7) of the *EI Regulations* applied to establish her second benefit period.

[13] However, the Commission went on to determine that there had been an error in respect of the applicant's first claim for benefits. It concluded that she ought to have received EI ERB and not regular EI benefits. EI ERB was payable at the maximum rate of \$500 as opposed to \$573 per week that the applicant had received, and was payable for the maximum number of weeks outlined in section 153.11 of the *EI Act*.

[14] The conversion of the applicant's regular EI benefits to EI ERB benefits resulted in a \$73 overpayment every week until the end of the applicant's EI ERB benefit period. The Commission wrote off this amount.

[15] The Commission also backdated the applicant's second claim for benefits to cover the regular EI benefits the applicant had received over the period from October 4, 2020, the day after her EI ERB benefit period ended, to June 12, 2021, which overlapped with the second benefit period that it had previously established. The Commission thus voided the second benefit period and backdated the second claim to October 4, 2020. The Commission established a 36-week regular benefit period for regular EI benefits from October 4, 2020 to June 12, 2021.

[16] The applicant asked the Commission to reconsider its decision, but it declined to do so. The applicant then appealed to the General Division.

[17] The General Division found that the applicant's first claim was correctly converted from regular EI benefits to EI ERB pursuant to paragraph 153.1310(c)(i) of the *EI Act*. It also held that the applicant met the eligibility requirement for EI ERB set out in paragraph 153.9(1)(b) of the *EI Act* since she had made a claim for benefits on or after March 15, 2020.

[18] The General Division further held that the applicant would not be entitled to 50 weeks regular EI benefits under her second EI claim but, rather, only to a maximum of 36 weeks as a commuter. It declined to address the issue of when the second benefit period should have started or to decide how many weeks of benefits the applicant was entitled to receive in respect of her

second claim because it concluded that the Commission's voiding of the applicant's second claim was not properly before the General Division.

[19] The applicant sought and was granted leave to appeal the General Division's decision to the Appeal Division.

[20] In its decision on the merits of her appeal, the Appeal Division upheld the General Division's determination that the applicant's first claim was properly an EI ERB claim largely for the same reasons as the General Division gave.

[21] As concerns her second claim, the Appeal Division concluded that the General Division erred in failing to address the propriety of the Commission voiding and backdating the applicant's second claim. It concluded that the Commission should not have backdated the second benefit period to October 2020 because it had no authority to do so in light of the provisions in subsection 10(6) of the *EI Act*.

[22] The Appeal Division accordingly held that the applicant's second benefit period commenced on January 31, 2021, during which commuter benefits were payable. The Appeal Division found that the applicant was not entitled to the maximum 36-week benefit period since she only had 620 hours of insurable employment in the applicable qualifying period. The Appeal Division derived this number from the 320 hours shown on the applicant's second ROE as well as the additional credit of 300 hours available under section 153.17(1) of the *EI Act*.

Consequently, the Appeal Division found that the applicant was entitled to 12 weeks of benefits under her second claim.

[23] The forgoing decisions resulted in the applicant receiving multiple notices to remit differing amounts as overpayments of benefits under the *EI Act*.

II. Issues

[24] By virtue of section 58 of the *Department of Employment and Social Development Act*, S.C. 2005, c. 34, the Appeal Division may interfere with a decision of the General Division in a case involving EI if the General Division:

- (a) failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- (b) erred in law in making its decision, whether or not the error appears on the face of the record; or
- (c) 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.

[25] This Court may interfere with a decision of the Appeal Division if the Appeal Division denied a party procedural fairness or if its decision is unreasonable: see *Page v. Canada (Attorney General)*, 2023 FCA 169, 483 D.L.R. (4th) 742 at para. 45; *Sjogren v. Canada (Attorney General)*, 2019 FCA 157 at para. 6.

[26] Three issues arise on this appeal, namely whether the Appeal Division reasonably determined that:

1. the applicant's first claim should be converted to an EI ERB claim;
2. the Commission should reinstate the applicant's second claim, with a commencement date of January 31, 2021; and
3. the applicant was entitled to only 12 weeks of regular EI benefits in respect of her second claim.

[27] I note that neither party has suggested that the Commission erred in establishing two benefit periods for the applicant in the unusual circumstances of her case. Indeed, counsel for the respondent confirmed that there were properly two benefit periods in light of the timing of the applicant's claims and interplay between the EI ERB and regular EI benefit provisions in the *EI Act* and *EI Regulations*.

III. Analysis

[28] I find that the Appeal Division's decision on the first two of the foregoing issues was reasonable but that its decision on the third issue, limiting the period of regular EI benefits to only 12 weeks on her second claim, was unreasonable.

- A. *Did the Appeal Division reasonably conclude that the applicant was entitled to EI ERB as opposed to regular EI benefits in respect of her first claim?*

[29] Turning more specifically to the first issue, the applicant argues that she was not entitled to EI ERB by virtue of paragraph 153.9(1)(a) of the *EI Act* because she was not a Canadian resident and that she ought to have received 36 weeks of regular EI benefits under her first claim. She contends that it was unreasonable for the Appeal Division to conclude otherwise.

[30] I disagree.

[31] As the Appeal Division noted in its decision, paragraph 153.9(1)(a) of the *EI Act* is not the only provision of relevance. By virtue of the combined effect of section 153.1310, paragraphs 153.9(1)(b), 153.5(2)(b), and subsection 153.5(3) of the *EI Act*, the benefits the applicant received, which were originally assessed as regular EI benefits under Part I of the *EI Act*, are deemed to have been EI ERB. Moreover, the Appeal Division reasonably applied subsections 153.8(1), (5) and (6) of the *EI Act* to end the applicant's EI ERB benefit period on October 3, 2020.

[32] Thus, the Appeal Division reasonably concluded that the applicant was entitled to EI ERB in respect of her first benefit period and that it ended on October 3, 2020.

- B. *Did the Appeal Division reasonably conclude that the Commission should reinstate the applicant's second claim to provide a commencement date of January 31, 2021?*

[33] The provisions governing benefit periods for regular EI claims are set out in section 10 of the *EI Act*. The authority of the Commission to cancel benefit periods is circumscribed by subsection 10(6) of the *EI Act*. Where benefits have been paid out to a claimant in respect of a benefit period, the Commission may cancel a benefit period only with the consent of the applicant.

[34] Here, benefits were paid out to the applicant in respect of her second benefit period. She did not agree to cancel it in favour of establishing a new benefit period starting October 4, 2020, in the way the Commission proposed. In light of the limitation on the Commission's authority set out in subsection 10(6) of the *EI Act*, it was reasonable for the Appeal Division to have concluded that the Commission could not cancel the applicant's second benefit period, commencing January 31, 2021, in favour of a revised one commencing October 4, 2020.

- C. *Did the Appeal Division reasonably conclude that the applicant was entitled to only 12 weeks of regular EI benefits in respect of her second claim?*

[35] The applicant argues that the Appeal Division ought to have found that she was entitled to 50 weeks of regular EI benefits under her second claim by virtue of section 12 of the *EI Act*, which she alleges establishes a 50-week benefit period applicable to her second claim. She contends that subsection 12(2.1) of the *EI Act* establishes the number of weeks of benefits available and that, as she does not fall into the exception set out in subsection 12(2.2), she is

entitled to 50 weeks of benefits and that it was unreasonable for the Appeal Division to conclude otherwise.

[36] I disagree.

[37] As the respondent correctly asserts, subsections 12(2.1) and 12(2.2) of the *EI Act* must be read in context and do not overtake other more specific provisions in the *EI Act* and *EI Regulations*. These include subsection 55(7) of the *EI Regulations*, which set out the benefit periods applicable to commuters, like the applicant.

[38] I accordingly conclude that it was reasonable for the Appeal Division to determine that subsection 55(7) of the *EI Regulations* applied to the applicant and that she was not entitled to a 50-week benefit period in respect of her second EI claim.

[39] That said, the Appeal Division unreasonably limited the applicant's second benefit period to only 12 weeks. In reaching this conclusion, the Appeal Division unreasonably ignored subsection 153.18(1) of the *EI Act*, which extends the benefit periods of those who received EI ERB by 28 weeks, the maximum period in respect of which EI ERB was payable. The respondent concedes that if the proper calculations had been made, the applicant would have been entitled to a second benefit period of 36 weeks in respect of her second EI claim.

[40] In light of this concession, I conclude that the Appeal Division unreasonably found that the applicant was entitled to a 12, as opposed to a 36-week, benefit period in respect of her second EI claim.

IV. Proposed Disposition

[41] I would allow this application, set aside the decision of the Appeal Division, and remit the applicant's appeal to the Appeal Division for redetermination in accordance with these reasons.

[42] The applicant has been required to pursue this matter through several levels of appeal, and has received varying answers from the authorities charged with administering the *EI Act*. This has required her to expend monies as well as time and effort. She seeks the amount of \$3000.00 to compensate her as costs. I find this to be excessive in light of the fact that the applicant has represented herself and the required disbursements were minimal. She also took some steps in the pursuit of this application that may have led to some delay. However, she was ultimately largely successful in cancelling the notices of overpayment she received. I would therefore award her costs in the fixed all-inclusive lump sum amount of \$1000.00.

“Mary J.L. Gleason”

J.A.

“I agree.

Richard Boivin J.A.

“I agree.

Gerald Heckman J.A.”

APPENDIX

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

Cancelling benefit period

10(6) Once a benefit period has been established for a claimant, the Commission may

(a) cancel the benefit period if it has ended and no benefits were paid or payable during the period; or

(b) whether or not the period has ended, cancel at the request of the claimant that portion of the benefit period immediately before the first week for which benefits were paid or payable, if the claimant

(i) establishes under this Part, as an insured person, a new benefit period beginning the first week for which benefits were paid or payable or establishes, under Part VII.1, as a self-employed person within the meaning of subsection 152.01(1), a new benefit period beginning the first week for which benefits were paid or payable, and

(ii) shows that there was good cause for the delay in making the request throughout the period beginning on the day when benefits were first paid or payable and ending on the day when the request for cancellation was made.

...

Payment of Benefits

Benefits

12(1) If a benefit period has been

Annulation de la période de prestations

10(6) Lorsqu'une période de prestations a été établie au profit d'un prestataire, la Commission peut :

a) annuler cette période si elle est terminée et si aucune prestation n'a été payée, ou ne devait l'être, pendant cette période;

b) à la demande du prestataire, que la période soit ou non terminée, annuler la partie de cette période qui précède la première semaine à l'égard de laquelle des prestations ont été payées ou devaient l'être si :

(i) d'une part, une nouvelle période de prestations, commençant cette semaine-là, est, si ce prestataire est un assuré, établie à son profit au titre de la présente partie ou est, si ce prestataire est un travailleur indépendant au sens du paragraphe 152.01(1), établie à son profit au titre de la partie VII.1;

(ii) d'autre part, le prestataire démontre qu'il avait, durant toute la période écoulée entre la date à laquelle des prestations lui ont été payées ou devaient l'être et la date de sa demande d'annulation, un motif valable justifiant son retard.

[...]

Versement de prestations

Prestations

12(1) Une fois la période de

established for a claimant, benefits may be paid to the claimant for each week of unemployment that falls in the benefit period, subject to the maximums established by this section.

General maximum

(2) The maximum number of weeks for which benefits may be paid in a benefit period because of a reason other than those mentioned in subsection (3) shall be determined in accordance with the table in Schedule I by reference to the regional rate of unemployment that applies to the claimant and the number of hours of insurable employment of the claimant in their qualifying period.

General maximum — exception

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

Non-application

(2.2) Subsection (2.1) does not apply to a claimant under the *Employment Insurance (Fishing) Regulations*.

...

Prison inmates and persons outside Canada

37 Except as may otherwise be prescribed, a claimant is not entitled to receive benefits for any period during

prestations établie, des prestations peuvent, à concurrence des maximums prévus au présent article, être versées au prestataire pour chaque semaine de chômage comprise dans cette période.

Maximum

(2) Le nombre maximal de semaines pour lesquelles des prestations peuvent être versées au cours d'une période de prestations — à l'exception de celles qui peuvent être versées pour l'une des raisons prévues au paragraphe (3) — est déterminé selon le tableau de l'annexe I en fonction du taux régional de chômage applicable au prestataire et du nombre d'heures pendant lesquelles il a occupé un emploi assurable au cours de sa période de référence.

Maximum : exception

(2.1) Malgré le paragraphe (2), le nombre maximal de semaines pour lesquelles des prestations peuvent être versées au cours d'une période de prestations — à l'exception de celles qui peuvent être versées pour l'une des raisons prévues au paragraphe (3) — au prestataire dont la période de prestations débute durant la période commençant le 27 septembre 2020 et se terminant le 25 septembre 2021 est cinquante.

Non-application

(2.2) Le paragraphe (2.1) ne s'applique pas au prestataire visé par le *Règlement sur l'assurance-emploi (pêche)*.

[...]

Prestataire en prison ou à l'étranger

37 Sauf dans les cas prévus par règlement, le prestataire n'est pas admissible au bénéfice des prestations

which the claimant

(a) is an inmate of a prison or similar institution; or

(b) is not in Canada.

...

Interim Orders

COVID-19

153.3(1) The Minister may, for the purpose of mitigating the economic effects of the coronavirus disease 2019 (COVID-19), make interim orders that

(a) add provisions, including provisions that provide for new benefits, to this Act or any regulation made under this Act;

(b) adapt provisions of this Act or any regulation made under this Act; or

(c) provide that any provisions of this Act or a regulation made under this Act do not apply in whole or in part.

...

Retroactive effect

(6) An interim order made under subsection (1) may, if it so provides, have retroactive effect.

...

Definitions

153.5(1) In this Part,

(a) COVID-19 means the coronavirus disease 2019;

(b) [Repealed, SOR/2020-188, s. 1]

(c) initial claim for benefits has the same meaning as in

pour toute période pendant laquelle il est :

a) soit détenu dans une prison ou un établissement semblable;

b) soit à l'étranger.

[...]

Arrêtés provisoires

COVID-19

153.3(1) Le ministre peut, afin d'atténuer les répercussions économiques découlant de la maladie à coronavirus 2019 (COVID-19), prendre des arrêtés provisoires :

a) ajoutant des dispositions à la présente loi ou à ses règlements, notamment afin de prévoir de nouvelles prestations;

b) adaptant toute disposition de la présente loi ou de ses règlements;

c) prévoyant que toute disposition de la présente loi ou de ses règlements, ou partie de telle disposition, ne s'applique pas.

[...]

Effet rétroactif

(6) L'arrêté provisoire peut, s'il comporte une disposition en ce sens, avoir un effet rétroactif.

[...]

Définitions

153.5(1) Dans la présente partie :

a) COVID-19 s'entend de la maladie à coronavirus 2019;

b) [Abrogé, DORS/2020-188, art. 1]

c) demande initiale de prestations s'entend au sens du

subsection 6(1).

Definition of Claimant

(2) For the purposes of this Part, claimant means a person

(a) who ceases working, whether employed or self-employed, for reasons related to COVID-19;

(b) who could have had a benefit period established on or after March 15, 2020 with respect to any of the benefits referred to in paragraph (3)(a);

(c) who is unable to start working for reasons related to COVID-19 and to whom, at any time during the period beginning on December 29, 2019 and ending on October 3, 2020, at least one benefit referred to in paragraph (3)(b) has been paid or was payable, if, during that period

(i) the established benefit period of that person with respect to those benefits has ended,

(ii) all of those benefits have been paid to that person, or

(iii) some of those benefits cannot be paid to that person by virtue of subsection 12(6); or

(d) who is unable to start working for reasons related to COVID-19 and to whom, at any time during the period beginning on December 29, 2019 and ending on October 3, 2020, at least one benefit referred to in paragraph (3)(c) has been paid or was payable, if, during that period

paragraphe 6(1).

Définition de prestataire

(2) Pour l'application de la présente partie, prestataire s'entend des personnes suivantes :

a) celles qui cessent d'exercer leur emploi — ou d'exécuter un travail pour leur compte — pour des raisons liées à la COVID-19;

b) celles qui auraient pu voir établie à leur profit une période de prestations à partir du 15 mars 2020 à l'égard de l'une des prestations visées à l'alinéa (3)a);

c) celles qui ne peuvent commencer à travailler pour des raisons liées à la COVID-19 et à qui, à un moment donné pendant la période commençant le 29 décembre 2019 et se terminant le 3 octobre 2020, a été versée ou devait être versée au moins l'une des prestations visées à l'alinéa (3)b), si, pendant cette période, selon le cas :

(i) la période de prestations établie à leur profit à l'égard de ces prestations s'est terminée,

(ii) toutes ces prestations leur ont été versées,

(iii) certaines de ces prestations ne peuvent leur être versées en raison du paragraphe 12(6);

d) celles qui ne peuvent commencer à travailler pour des raisons liées à la COVID-19 et à qui, à un moment donné pendant la période commençant le 29 décembre 2019 et se terminant le 3 octobre 2020, a été versée ou devait être versée au moins l'une des prestations visées à l'alinéa (3)c), si, pendant cette période, selon

- (i) the established benefit period of that person with respect to those benefits has ended,
- (ii) all of those benefits have been paid to that person, or
- (iii) some of those benefits cannot be paid to that person by virtue of subsection 8(18) of the *Employment Insurance (Fishing) Regulations*.

Benefits referred to in paragraphs (2)(b) to (d)

(3) The benefits referred to in paragraphs (2)(b) to (d) are

- (a) with respect to a claimant referred to in paragraph (2)(b), benefits provided under section 152.03 or provided under Part I, other than those benefits provided under any of sections 22 to 24;
- (b) with respect to a claimant referred to in paragraph (2)(c), benefits provided under Part I, other than those benefits provided under any of sections 21 to 24; and
- (c) with respect to a claimant referred to in paragraph (2)(d), benefits provided under the employment insurance scheme established under Part VIII.

...

Claim

153.8(1) Any claimant may, in the form and manner established by the Minister, make a claim for the employment insurance emergency response benefit for any two-week period starting on a Sunday and falling within the period beginning on March 15, 2020 and ending on

le cas :

- (i) la période de prestations établie à leur profit à l'égard de ces prestations s'est terminée,
- (ii) toutes ces prestations leur ont été versées,
- (iii) certaines de ces prestations ne peuvent leur être versées en raison du paragraphe 8(18) du *Règlement sur l'assurance-emploi (pêche)*.

Prestations visées aux alinéas (2)b) à d)

(3) Les prestations visées aux alinéas (2)b) à d) sont les suivantes :

- a) à l'égard du prestataire visé à l'alinéa (2)b), celles prévues aux termes de l'article 152.03 ou sous le régime de la partie I, à l'exception des articles 22 à 24;
- b) à l'égard du prestataire visé à l'alinéa (2)c), celles prévues sous le régime de la partie I, à l'exception des articles 21 à 24;
- c) à l'égard du prestataire visé à l'alinéa (2)d), celles prévues au régime d'assurance-emploi établi sous le régime de la partie VIII.

[...]

Demande

153.8(1) Tout prestataire peut, selon les modalités — notamment de forme — fixées par le ministre, présenter une demande de prestation d'assurance-emploi d'urgence pour toute période, commençant un dimanche, de deux semaines comprise dans la période commençant le 15 mars 2020 et se

October 3, 2020.

Exception — week of September 27, 2020

(1.1) Despite subsection (1), an employment insurance emergency response benefit is not payable to a claimant for the week beginning September 27, 2020 unless an employment insurance emergency response benefit was paid or payable to the claimant for any week beginning before that date.

Limitation

(2) A claim must not be made after December 2, 2020.

Information

(3) A claimant must provide the Minister with any information that the Minister may require in respect of the claim.

Information — Employer

(4) An employer must provide the Minister with any information that the Minister may require in respect of the claim.

No benefit period — March 15 to September 26, 2020

(5) For the period beginning on March 15, 2020 and ending on September 26, 2020, no benefit period is to be established with respect to any of the benefits referred to in paragraph 153.5(3)(a).

No benefit period — September 27 to October 3, 2020

(6) For the period beginning on September 27, 2020 and ending on October 3, 2020, no benefit period is to be established with respect to any of the benefits referred to in paragraph 153.5(3)(a) if

terminant le 3 octobre 2020.

Exception — semaine du 27 septembre 2020

(1.1) Malgré le paragraphe (1), la prestation d'assurance-emploi d'urgence n'est à verser au prestataire pour la semaine commençant le 27 septembre 2020, sauf si la prestation d'assurance-emploi d'urgence a été versée au prestataire ou devait l'être pour toute semaine commençant avant cette date.

Restriction

(2) Aucune demande ne peut être présentée après le 2 décembre 2020.

Renseignements

(3) Le prestataire fournit au ministre tout renseignement que ce dernier peut exiger relativement à la demande.

Renseignements — employeur

(4) L'employeur fournit au ministre tout renseignement que ce dernier peut exiger relativement à la demande.

Aucune période de prestations — du 15 mars au 26 septembre 2020

(5) Pour la période commençant le 15 mars 2020 et se terminant le 26 septembre 2020, aucune période de prestations ne peut être établie à l'égard de l'une des prestations visées à l'alinéa 153.5(3)a).

Aucune période de prestations — du 27 septembre au 3 octobre 2020

(6) Pour la période commençant le 27 septembre 2020 et se terminant le 3 octobre 2020, aucune période de prestations ne peut être établie à l'égard de l'une des prestations visées à l'alinéa 153.5(3)a), si :

(a) an employment insurance emergency response benefit was paid or payable to the claimant for any week beginning before September 27, 2020; and

(b) the claimant has not claimed the employment insurance emergency response benefit for the maximum number of weeks referred to in section 153.11.

Notification

(7) On receiving a claim for the employment insurance emergency response benefit, the Commission shall decide whether the claimant is eligible for the benefit and whether the benefit is payable to the claimant for the two-week period in respect of which they claimed the benefit, and shall notify the claimant of its decisions in any manner that it considers adequate.

...

Eligibility

153.9(1) A claimant is eligible for the employment insurance emergency response benefit

- (a) if they
 - (i) reside in Canada,
 - (ii) are at least 15 years of age,
 - (iii) have insurable earnings of at least \$5,000 in 2019 or in the 52 weeks preceding the day on which they make the claim under section 153.8,
 - (iv) whether employed or self-

a) la prestation d'assurance-emploi d'urgence a été versée au prestataire ou qu'elle devait l'être pour toute semaine commençant avant le 27 septembre 2020;

b) le prestataire n'a pas demandé la prestation d'assurance-emploi d'urgence pour le nombre maximal de semaines prévu à l'article 153.11.

Notification

(7) Sur réception d'une demande de prestation d'assurance-emploi d'urgence, la Commission décide si le prestataire est admissible ou non à la prestation et si celle-ci est à verser ou non au prestataire pour la période de deux semaines pour laquelle il demande la prestation, puis lui notifie ses décisions de la manière qu'elle juge indiquée.

[...]

Admissibilité

153.9(1) Est admissible à la prestation d'assurance-emploi d'urgence le prestataire suivant :

- a) celui qui, à la fois :
 - (i) réside au Canada,
 - (ii) est âgé d'au moins 15 ans,
 - (iii) a une rémunération assurable, pour l'année 2019 ou au cours des cinquante deux semaines précédant la date à laquelle il présente une demande en vertu de l'article 153.8, qui s'élève à au moins cinq mille dollars,
 - (iv) cesse d'exercer son emploi

employed, cease working for at least seven consecutive days within the two-week period in respect of which they claimed the benefit, and

(v) have no income from employment or self-employment in respect of the consecutive days on which they cease working;

(b) if they are a claimant referred to in paragraph 153.5(2)(b) and they have no income from employment or self-employment for at least seven consecutive days within the two-week period in respect of which they claimed the benefit; or

(c) if they are a claimant referred to in paragraph 153.5(2)(c) or (d) and they

(i) reside in Canada,

(ii) are at least 15 years of age,

(iii) have insurable earnings of at least \$5,000 in 2019 or within the 52 weeks preceding the day on which they make the claim under section 153.8, and

(iv) have no income from employment or self-employment for at least seven consecutive days within the two-week period in respect of which they claimed

— ou d'exécuter un travail pour son compte — pendant au moins sept jours consécutifs compris dans la période de deux semaines pour laquelle il demande la prestation,

(v) n'a aucun revenu provenant d'un emploi qu'il exerce — ou d'un travail qu'il exécute pour son compte —, pour les jours consécutifs pendant lesquels il cesse d'exercer son emploi ou d'exécuter un travail pour son compte;

b) celui visé à l'alinéa 153.5(2)b) qui n'a aucun revenu provenant d'un emploi qu'il exerce — ou d'un travail qu'il exécute pour son compte —, pendant au moins sept jours consécutifs compris dans la période de deux semaines pour laquelle il demande la prestation;

c) celui visé à l'alinéa 153.5(2)c) ou d) qui, à la fois :

(i) réside au Canada,

(ii) est âgé d'au moins 15 ans,

(iii) a une rémunération assurable, pour l'année 2019 ou au cours des cinquante-deux semaines précédant la date à laquelle il présente une demande en vertu de l'article 153.8, qui s'élève à au moins cinq mille dollars,

(iv) n'a aucun revenu provenant d'un emploi qu'il exerce — ou d'un travail qu'il exécute pour son compte —, pendant au moins sept jours consécutifs

the benefit.

compris dans la période de deux semaines pour laquelle il demande la prestation.

Ineligibility

(2) A claimant is not eligible if,

(a) they receive, under this Act, a benefit other than the employment insurance emergency response benefit;

(b) they receive allowances, money or other benefits paid under a provincial plan

(i) because of pregnancy, or

(ii) because the claimant is caring for one or more of their new-born children, or one or more children placed with them for the purpose of adoption;

(c) they receive an income support payment under the *Canada Emergency Response Benefit Act*; or

(d) they receive a Canada emergency student benefit under the *Canada Emergency Student Benefit Act*.

Subsequent ineligibility

(2.1) A claimant is not eligible if a benefit period established for the claimant — including a benefit period established in respect of benefits payable under Part VIII — begins after the claimant received an employment insurance emergency response benefit or an income support

Non-admissibilité

(2) Le prestataire n'est pas admissible si, selon le cas :

a) il reçoit, sous le régime de la présente loi, une prestation autre que la prestation d'assurance-emploi d'urgence;

b) il reçoit des allocations, prestations ou autres sommes, en vertu d'un régime provincial, pour l'une ou l'autre des raisons suivantes :

(i) sa grossesse,

(ii) des soins à donner à un ou plusieurs de ses nouveau-nés ou à un ou plusieurs enfants placés chez lui en vue de leur adoption;

c) il reçoit l'allocation de soutien du revenu au titre de la *Loi sur la prestation canadienne d'urgence*;

d) il reçoit la prestation canadienne d'urgence pour étudiants au titre de la *Loi sur la prestation canadienne d'urgence pour étudiants*.

Non-admissibilité subséquente

(2.1) Le prestataire n'est pas admissible si une période de prestations établie à son profit — notamment une période de prestations établie à l'égard de prestations à payer au titre de la partie VIII — débute après qu'il a touché la prestation d'assurance-emploi d'urgence ou

payment under the *Canada Emergency Response Benefit Act*.

l'allocation de soutien du revenu au titre de la *Loi sur la prestation canadienne d'urgence*.

Exclusion

(3) A claimant does not cease working for the purpose of subsection (1) if they leave their employment voluntarily.

Exclusion

(3) Pour l'application du paragraphe (1), le prestataire ne cesse pas d'exercer son emploi s'il le quitte volontairement.

Exception — employment, self-employment and income

(4) If a claimant receives income, whether from employment or self-employment, the total of which does not exceed \$1,000 over a period of four weeks that succeed each other in chronological order but not necessarily consecutively and in respect of which the employment insurance emergency response benefit is paid, the claimant is deemed to meet the requirements of subparagraphs (1)(a)(iv) and (v), of paragraph (1)(b) or of subparagraph (1)(c)(iv), as the case may be.

Exception — emploi, travail et revenu

(4) Dans le cas où le total des revenus provenant d'un emploi que le prestataire exerce ou d'un travail qu'il exécute pour son compte est de mille dollars ou moins pour une période de quatre semaines qui se succèdent dans l'ordre chronologique sans nécessairement être consécutives et à l'égard desquelles la prestation d'assurance-emploi d'urgence est versée, le prestataire est réputé satisfaire aux exigences des sous-alinéas (1)a)(iv) et (v), de l'alinéa (1)b) ou du sous-alinéa (1)c)(iv), selon le cas.

Receipt of income support payment

(5) If, for any week, a claimant received an employment insurance emergency response benefit for which they were not eligible by reason only of paragraph (2)(c), the claimant, despite that paragraph, is deemed to have been eligible for the benefit unless the Commission has, under subsection 15(2) of the *Canada Emergency Response Benefit Act*, informed the Minister, as defined in section 2 of that Act, that subsection 15(1) of that Act should not apply in respect of the claimant.

Allocation de soutien du revenu reçue

(5) S'il a reçu, pour toute semaine, une prestation d'assurance-emploi d'urgence à laquelle il n'était pas admissible par le seul effet de l'alinéa (2)c), le prestataire est, malgré cet alinéa, réputé avoir été admissible à la prestation à moins que la Commission ait avisé, au titre du paragraphe 15(2) de la *Loi sur la prestation canadienne d'urgence*, le ministre, au sens de l'article 2 de cette loi, que le paragraphe 15(1) de cette loi ne devrait pas s'appliquer à l'égard du prestataire.

Receipt of Canada emergency student benefit

(6) If, for any week, a claimant received an employment insurance emergency response benefit for which they were not eligible by reason only of paragraph (2)(d), the claimant, despite that paragraph, is deemed to have been eligible for the benefit unless the Commission has, under subsection 15.1(2) of the *Canada Emergency Student Benefit Act*, informed the Minister, as defined in section 2 of that Act, that subsection 15.1(1) of that Act should not apply in respect of the claimant.

...

Maximum number of weeks

153.11 The maximum number of weeks for which the employment insurance emergency response benefit may be paid to a claimant is 28 minus the number of weeks, if any, for which the claimant receives an income support payment under the *Canada Emergency Response Benefit Act* or a Canada emergency student benefit under the *Canada Emergency Student Benefit Act*.

...

Special Rules

Benefits referred to in paragraph 153.5(3)(a)

153.1310 The following rules apply to a person who made an initial claim for benefits in respect of any of the benefits referred to in paragraph 153.5(3)(a) and who either had, before

Prestation canadienne d'urgence pour étudiants reçue

(6) S'il a reçu, pour toute semaine, une prestation d'assurance-emploi d'urgence à laquelle il n'était pas admissible par le seul effet de l'alinéa (2)d), le prestataire est, malgré cet alinéa, réputé avoir été admissible à la prestation à moins que la Commission ait avisé, au titre du paragraphe 15.1(2) de la *Loi sur la prestation canadienne d'urgence pour étudiants*, le ministre, au sens de l'article 2 de cette loi, que le paragraphe 15.1(1) de cette loi ne devrait pas s'appliquer à l'égard du prestataire.

[...]

Nombre maximal de semaines

153.11 Le nombre maximal de semaines pour lesquelles la prestation d'assurance-emploi d'urgence peut être versée au prestataire est de vingt-huit, moins, le cas échéant, le nombre de semaines pour lesquelles il reçoit l'allocation de soutien du revenu au titre de la *Loi sur la prestation canadienne d'urgence* ou la prestation canadienne d'urgence pour étudiants au titre de la *Loi sur la prestation canadienne d'urgence pour étudiants*.

[...]

Règles spéciales

Prestations visées à l'alinéa 153.5(3)a)

153.1310 Les règles suivantes s'appliquent aux personnes qui ont formulé une demande initiale de prestations à l'égard de l'une des prestations visées à l'alinéa 153.5(3)a)

the coming into force retroactively of this Part, a benefit period established on or after March 15, 2020 with respect to the benefits for which the claim was made, or who would have had, but for the coming into force of this Part on March 15, 2020, a benefit period established on or after that same date with respect to the benefits for which the claim was made:

(a) the person is deemed to have made a claim for the employment insurance emergency response benefit under section 153.8;

(b) the rules set out in Part VIII.4 apply to a claim for the employment insurance emergency response benefit, with the exception of the rule requiring that a claim be made in accordance with subsection 153.8(1); and

(c) the benefits referred to in paragraph 153.5(3)(a) received on or after March 15, 2020 are deemed to be the employment insurance emergency response benefit and, as the case may be,

(i) the person is to be paid, for each week for which they receive the benefits referred to in paragraph 153.5(3)(a), an amount of employment insurance emergency response benefit that is equal to the difference between the amount set out in subsection 153.10(1) and the amount of benefits that they received for the week in question, and

(ii) each amount of benefits

et, soit au profit desquelles avait été établie, avant l'entrée en vigueur rétroactive de la présente partie, une période de prestations à partir du 15 mars 2020 à l'égard des prestations visées par la demande, soit au profit desquelles aurait été établie, n'eût été l'entrée en vigueur de la présente partie le 15 mars 2020, une période de prestations à partir de la même date à l'égard des prestations visées par la demande :

a) les personnes sont réputées avoir présenté une demande de prestation d'assurance-emploi d'urgence en vertu de l'article 153.8;

b) les règles prévues à la partie VIII.4 s'appliquent à ces demandes de prestation d'assurance-emploi d'urgence, à l'exception de celle exigeant le dépôt de la demande conformément au paragraphe 153.8(1);

c) les prestations visées à l'alinéa 153.5(3)a reçues à partir du 15 mars 2020 sont réputées être des prestations d'assurance-emploi d'urgence et, selon le cas :

(i) il est versé à chaque personne, pour chacune des semaines pour lesquelles elle a reçu des prestations visées à l'alinéa 153.5(3)a, un montant de prestation d'assurance-emploi d'urgence égal à la différence entre le montant prévu au paragraphe 153.10(1) et le montant des prestations reçues pour la semaine visée,

(ii) chacun des montants de

received for a week that exceeds the amount set out in subsection 153.10(1) is deemed to be equal to the amount set out in that subsection and section 44 does not apply to any amount of benefits received for a week that exceeds the amount set out in subsection 153.10(1).

prestations reçus pour une semaine qui est supérieur au montant visé au paragraphe 153.10(1) est réputé être égal à celui visé à ce paragraphe et l'article 44 ne s'applique à aucun des excédents des montants de prestations reçues pour une semaine sur le montant prévu au paragraphe 153.10(1).

...

[...]

Increase in Hours of Insurable Employment

Majoration des heures d'emploi assurable

Benefits under Part I

Prestations visées à la partie I

153.17(1) A claimant who makes an initial claim for benefits under Part I on or after September 27, 2020 or in relation to an interruption of earnings that occurs on or after that date is deemed to have in their qualifying period

153.17(1) Le prestataire qui présente une demande initiale de prestations à l'égard de prestations visées à la partie I le 27 septembre 2020 ou après cette date, ou à l'égard d'un arrêt de rémunération qui survient à cette date ou par la suite, est réputé avoir, au cours de sa période de référence :

(a) if the initial claim is in respect of benefits referred to in any of sections 21 to 23.3, an additional 480 hours of insurable employment; and

a) si la demande initiale de prestations est présentée à l'égard de prestations visées à l'un des articles 21 à 23.3, 480 heures additionnelles d'emploi assurable;

(b) in any other case, an additional 300 hours of insurable employment.

b) dans les autres cas, 300 heures additionnelles d'emploi assurable.

Limitation

Restriction

(2) Subsection (1) does not apply to a claimant who has already had the number of insurable hours in their qualifying period increased under that subsection or under this section as it read on September 26, 2020, if a benefit period was established in relation to that qualifying period.

(2) Le paragraphe (1) ne s'applique pas au prestataire dont le nombre d'heures d'emploi assurable exercé au cours de sa période de référence a déjà été majoré au titre de ce paragraphe ou au titre du présent article dans sa version au 26 septembre 2020, si une période de prestations a été établie à

...

Recipients of emergency response benefit

153.18(1) A qualifying period mentioned in paragraph 8(1)(a) is extended by 28 weeks if the claimant

(a) makes the initial claim for benefits on or after September 27, 2020 or in relation to an interruption of earnings that occurs on or after that date; and

(b) received, during the period mentioned in that paragraph, an employment insurance emergency response benefit referred to in subsection 153.7(1) or an income support payment under the *Canada Emergency Response Benefit Act*.

Limitation

(2) Subsection (1) does not apply to a claimant who has already had a qualifying period extended under that subsection or under this section as it read on August 29, 2020 or September 26, 2020.

l'égard de cette période de référence.

[...]

Bénéficiaire d'une prestation d'urgence

153.18(1) La période de référence visée à l'alinéa 8(1)a est prolongée de vingt-huit semaines si le prestataire, à la fois :

a) présente la demande initiale de prestations le 27 septembre 2020 ou après cette date ou à l'égard d'un arrêt de rémunération qui survient à cette date ou par la suite;

b) a touché, au cours de la période visée à cet alinéa, la prestation d'assurance-emploi d'urgence visée au paragraphe 153.7(1) ou l'allocation de soutien du revenu au titre de la *Loi sur la prestation canadienne d'urgence*.

Restriction

(2) Le paragraphe (1) ne s'applique pas au prestataire dont la période de référence a déjà été prolongée au titre de ce paragraphe ou du présent article dans sa version au 29 août 2020 ou au 26 septembre 2020.

Employment Insurance Regulations, S.O.R./96-332

55 (6) Subject to subsection (7), a claimant who is not a self-employed person and who resides outside Canada, other than a major attachment claimant referred to in subsection (5), is not disentitled from receiving benefits for the sole reason of their residence outside Canada if

55 (6) Sous réserve du paragraphe (7), le prestataire qui n'est pas un travailleur indépendant et qui réside à l'étranger, à l'exception du prestataire de la première catégorie visé au paragraphe (5), n'est pas inadmissible au bénéfice des prestations du seul fait qu'il réside à l'étranger si, selon le

cas :

(a) the claimant resides temporarily or permanently in a state of the United States that is contiguous to Canada and

(i) is available for work in Canada, and

(ii) is able to report personally at an office of the Commission in Canada and does so when requested by the Commission; or

(b) the claimant is qualified to receive benefits under Article VI of the Agreement between Canada and the United States respecting Unemployment Insurance, signed on March 6 and 12, 1942, and resides temporarily or permanently in one of the following places in respect of which the Commission has not, pursuant to section 16 of the *Employment and Immigration Department and Commission Act*, suspended the application of that Agreement, namely,

(i) the District of Columbia,

(ii) Puerto Rico,

(iii) the Virgin Islands, or

(iv) any state of the United States.

(7) Subject to subsection (10), the maximum number of weeks for which benefits may be paid in a benefit period, in respect of a claimant referred to in subsections (5) and (6) who is not disentitled from receiving benefits, is

(a) in the case of benefits that are paid for a reason referred to in

a) il réside à titre temporaire ou permanent dans un État des États-Unis qui est contigu au Canada et :

(i) d'une part, il est disponible pour travailler au Canada,

(ii) d'autre part, il peut se présenter en personne à un bureau de la Commission au Canada et il s'y présente à la demande de la Commission;

b) il remplit les conditions requises pour recevoir des prestations au titre de l'Article VI de l'Accord entre le Canada et les États-Unis d'Amérique concernant l'assurance-chômage, signé les 6 et 12 mars 1942, et il réside à titre temporaire ou permanent à l'un des endroits suivants pour lequel la Commission n'a pas suspendu, selon l'article 16 de la *Loi sur le ministère et sur la Commission de l'emploi et de l'immigration*, l'application de cet accord :

(i) le District de Columbia,

(ii) Porto Rico,

(iii) les îles Vierges,

(iv) tout État des États-Unis.

(7) Sous réserve du paragraphe (10), dans le cas du prestataire qui, en vertu des paragraphes (5) et (6), n'est pas inadmissible au bénéfice des prestations, le nombre maximal de semaines pour lesquelles des prestations peuvent être versées au cours d'une période de prestations est :

a) dans le cas des prestations versées pour l'une des raisons

subsection 12(3) of the Act, the applicable number of weeks referred to in subsections 12(3) to (6) of the Act; and

(b) in any other case, in respect of the number of hours of insurable employment in the claimant's qualifying period set out in column I of the table to this subsection, the corresponding number of weeks set out in column II of that table.

visées au paragraphe 12(3) de la Loi, le nombre de semaines applicable prévu aux paragraphes 12(3) à (6) de la Loi;

b) dans tout autre cas, le nombre de semaines qui est prévu à la colonne II du tableau du présent paragraphe selon le nombre d'heures d'emploi assurable du prestataire dans sa période de référence, indiqué à la colonne I.

TABLE**TABLEAU**

	Column I	Column II		Colonne I	Colonne II
Item	Number of Hours of Insurable Employment	Number of Weeks of Benefits	Article	Nombre d'heures d'emploi assurable	Nombre de semaines de prestations
...			[...]		
41	1,820 or more	36	41	1820 - ou plus	36

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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GENERAL OF CANADA

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HECKMAN J.A.

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APPEARANCES:

Hong Zhou ON HER OWN BEHALF

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