

CANADA / JUDGMENT

Pelletier v. Canada (Attorney General)

2025 FC 730

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T-1313-24 Citation: 2025 FC 730 [ENGLISH TRANSLATION REVISED BY THE AUTHOR] Ottawa,
Ontario, April 24, 2025 PRESENT: Mr. Justice Sébastien Grammond BETWEEN: SAMANTHA
PELLETIER Applicant and THE ATTORNEY GENERAL OF CANADA Respondent JUDGMENT AND
REASONS

- [1] This is an application for judicial review of a decision of the Employment Insurance Commission [the Commission] dated May 2, 2024, denying Ms. Pelletier's request for a write-off of an employment insurance overpayment, made under section 56 of the Employment Insurance Regulations, SOR/96-332 [the Regulations].
- [2] For the reasons that follow, the application for judicial review is granted. The Commission failed in its duty to justify its decision and respond to Ms. Pelletier's key arguments, rendering the decision unreasonable. I. Background [3] Full-time students are generally ineligible for employment insurance as they are presumed to be unavailable for work during their studies, which is contrary to the eligibility requirement set out in paragraph 18(1)(a) of the Employment Insurance Act, SC 1996, c 23 [the Act]. However, section 25 of the Act carves out an exception to this ineligibility where a designated authority refers a claimant to a training program. In that case, the claimant is presumed to be available for work while in school and is therefore eligible for employment insurance. The New Brunswick Employment Insurance Connect Program [NB-EI Connect] is an authority designated by the Minister of Employment and Social Development to refer claimants to a training program.
- [4] On October 2, 2020, Ms. Pelletier filed an application for regular employment insurance benefits, in which she stated that she had begun a full-time master's degree program on September 8, 2020. Ms. Pelletier filed an application with NB-EI Connect at the same time. The application was approved by the Commission and Ms. Pelletier received employment insurance benefits from October 2, 2020, to September 4, 2021.

- [5] In reality, however, NB-EI Connect never received Ms. Pelletier's request because an NB-EI Connect officer apparently gave her the wrong email address. The same officer reportedly informed her that she had to file her employment insurance application and her NB-EI Connect application simultaneously, that the payment of employment insurance benefits would confirm her eligibility, and that she did not need to follow up with NB-EI Connect. Ms. Pelletier explained that when she started receiving benefits, she assumed that her NB-EI Connect application had been received and accepted.
- [6] On October 14, 2021, the Commission notified Ms. Pelletier that it was undertaking a verification of her eligibility for the benefits paid. It was at that point that Ms. Pelletier learned that NB-EI Connect had never received her application. On November 16, 2021, NB-EI Connect confirmed to Ms. Pelletier that she would have been [translation] "eligible for an authorization" if she had sent her application to the correct email address.
- [7] On November 17, 2021, the Commission determined that because Ms. Pelletier had not received approval from NB-EI Connect when she filed her employment insurance application, she was not eligible, and she had an overpayment of \$21,539.89. The Commission subsequently upheld its decision on reconsideration.
- [8] Ms. Pelletier appealed to the General Division of the Social Security Tribunal [General Division]. The General Division initially allowed the appeal on July 29, 2022. The Commission then appealed the decision, and the Appeal Division of the Social Security Tribunal [Appeal Division] allowed that appeal on December 30, 2022.
- [9] The matter was therefore referred back to the General Division, which dismissed Ms. Pelletier's appeal on June 8, 2023. The General Division found that the wording of section 25 of the Act suggested that the application to NB-EI Connect should have preceded the application for employment insurance, and that even retrospective recognition of eligibility for NB-EI Connect would not be sufficient to cure the defect in the employment insurance application. Ms. Pelletier then sought to take her case to the Appeal Division, which refused her application for leave to appeal on August 30, 2023. Ms. Pelletier filed an application for judicial review, which she subsequently discontinued.
- [10] Ms. Pelletier filed a request for a write-off with the Commission, which was denied on May 2, 2024. The Commission found that Ms. Pelletier had erred because she had indicated that she had been approved by a designated authority to take her training course when she submitted her application, which was not true. That decision is the subject of this application for judicial review. II. Analysis [11] For the reasons that follow, I find that the Commission's decision was unreasonable. In *Vavilov*, the Supreme Court explained that it wanted to develop and strengthen "a culture of justification in administrative decision making": *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paragraph 2, [2019] 4 SCR 653 [*Vavilov*]. A fundamental aspect of this culture is the requirement for an administrative decision maker to account for the key arguments raised by the parties: *Vavilov* at paragraphs 127-128. However, having read the reasons for the

decision, I cannot discern any consideration of the main arguments put forward by Ms. Pelletier in her request for a write-off. The absence of sufficient justification therefore renders the decision unreasonable.

- [12] Employment insurance benefits paid to a claimant who is not entitled to them are debts due to the Crown. However, section 56 of the Regulations creates an exception to this general rule: it allows the Commission to write off an overpayment if certain conditions are met, which vary depending on when the claimant was notified of the overpayment. For the purposes of this case, it is sufficient to specify that one of these conditions is that the overpayment is not due to an error by the claimant.
- [13] This Court has interpreted section 56 as setting the conditions for exercising the discretion to write off: *Bernatchez v Canada (Attorney General)*, 2013 FC 111 at paragraph 30; *Maheshwari v Canada (Attorney General)*, 2022 FC 253 at paragraph 27 [Maheshwari]. In other words, if an employment insurance claimant does not meet the criteria set out in section 56 of the Regulations, the Commission cannot even consider exercising its discretion to grant a request for a write-off.
- [14] The respondent essentially reiterates the Commission's reasoning. Since the overpayment was allegedly due Ms. Pelletier's error—she sent her NB-EI Connect application to the wrong email address and falsely stated that she was eligible for NB-EI Connect in her employment insurance application—the Commission could not even consider exercising its discretion in her favour.
- [15] However, this does not respond to Ms. Pelletier's submissions, who rightly criticizes the Commission for ignoring her arguments.
- [16] In her request for a write-off, Ms. Pelletier explained that the General Division and the Appeal Division had recognized the unique character of her case. In support of this, Ms. Pelletier cited the following excerpt from the General Division's decision of June 21, 2023:
- [72] But, as I explained at the hearing, even though the Tribunal also doesn't have jurisdiction to grant a request to write off an overpayment, the Appellant can ask the Commission to cancel the overpayment of benefits. To do this, the Claimant has to explain her reasons directly to the Commission, since only the Commission can make a decision about cancelling an overpayment. A payment arrangement can also be made with the Commission.
- [17] Ms. Pelletier also referred to the following excerpt from the Appeal Division's decision of August 30, 2023:
- [23] Permission to appeal is refused. The appeal will not proceed. Still, given the particular facts of the case, I would invite the Commission to consider how it might assist the Claimant.
- [18] Also noteworthy is the following excerpt from the General Division's decision of July 2022:

- [74] I find that the Commission wasn't faced with false or misleading statements in connection with the Appellant's claim. In my view, it hasn't shown this.
- [75] The factor for benefits being paid as a result of a false or misleading statement doesn't apply to the Appellant. I find that she was always honest about her training and her availability for work, whether on her application for benefits or on her claimant reports.
- [19] Relying on *AF v Canada Employment Insurance Commission*, 2022 SST 687, Ms. Pelletier explained that the situation was out of her control, that the accommodations implemented during the pandemic delayed the detection of the error, and that the error was not hers but rather that of a third party, NB-EI Connect.
- [20] In its reasons, the Commission simply indicated that it was refusing the request for a write-off because Ms. Pelletier had erred. The Commission's reasoning can be summed up in one line: [translation] "When you submitted your application for benefits, you indicated that you had been approved by a designated authority to attend your training course, but you had not". These reasons fall short of the "discipline of reasons" that should characterize administrative decision making: *Vavilov* at paragraph 80.
- [21] I cannot conclude that the Commission considered the arguments Ms. Pelletier put forward. In particular, there is no mention of the above excerpts from the Social Security Tribunal's decisions or of her argument that a third party—NB-EI Connect—made the error, which therefore could not be attributed to Ms. Pelletier for the purposes of section 56 of the Regulations. I am, of course, aware that the Commission is not bound by the Social Security Tribunal's comments, but it nevertheless had to give them serious consideration and, if necessary, explain why it was departing from them.
- [22] The respondent relies on *Singh Mangat v Canada (Attorney General)*, 2012 FC 1409, and *Maheshwari* to argue that the error in this case was Ms. Pelletier's. In those cases, however, it was clear that the applicants could not ignore the misleading nature of the statements made to the Commission. Here, on the contrary, the respondent conceded at the hearing that Ms. Pelletier had acted in good faith throughout the process.
- [23] While the foregoing is sufficient to render the Commission's decision unreasonable, I would add that Ms. Pelletier's allegations regarding NB-EI Connect's error are supported by the record. For example, the NB-EI Connect application form states that [translation] "An NB-EI Connect Program Application can only be submitted after you have an active EI claim or have applied for EI through Service Canada". Thus, Ms. Pelletier raised serious arguments that were ignored by the Commission.
- [24] Ms. Pelletier also submits that her language rights were violated because her lawyer had to speak with a unilingual Service Canada employee in English. Ms. Pelletier may have recourse under the Official Languages Act, RSC 1985, c 31 (4th Supp), but this Court cannot intervene until the process set out in that statute has been followed. I express no opinion on this. In some cases, a breach of language rights may give rise to a breach of procedural

fairness. In the present case, I have no evidence that counsel for Ms. Pelletier was unable to make her case in her conversation with the unilingual employee.

[25] For these reasons, the application for judicial review is granted, with costs against the respondent. The matter is accordingly referred back to the Commission for reconsideration. JUDGMENT in T-1313-24 THIS COURT'S JUDGMENT is as follows: The application for judicial review is granted. The decision of May 2, 2024, made by the Employment Insurance Commission in respect of the applicant is set aside. The matter is referred back to the Employment Insurance Commission for redetermination. The Attorney General of Canada is ordered to pay costs. "Sébastien Grammond" Judge FEDERAL COURT SOLICITORS OF RECORD Docket: T-1313-24 STYLE OF CAUSE: SAMANTHA PELLETIER v THE ATTORNEY GENERAL OF CANADA PLACE OF HEARING: FREDERICTON, NEW BRUNSWICK DATE OF HEARING: APRIL 14, 2025 JUDGMENT AND REASONS: GRAMMOND J DATED: APRIL 24, 2024 APPEARANCES: Samantha Pelletier SELF-REPRESENTED Érelégna Bernard FOR THE RESPONDENT SOLICITORS OF RECORD: Attorney General of Canada Ottawa, Ontario FOR THE RESPONDENT

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