Court File No.: A-36-24

FEDERAL COURT OF APPEAL

REBECCA ABDO

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

MEMORANDUM OF FACT AND LAW

Jody Wells

James SM Kitchen
Barristers and Solicitors
7070e Farrell Rd SE, #1063
Calgary, AB T2H 0T2

T 250-319-1175
jody@jsmklaw.ca

Counsel for the Appellant

Andrew Kirk

Attorney General of Canada
Department of Justice Canada
ESDC Legal Services
140 Promenade du Portage
Phase IV, 11th Floor
Gatineau, QC K1A 0J9

T 819-360-5319
F 819-994-2291
andrew.kirk@hrsdc-rhdcc.gc.ca
NC-LS-SJ-Admin-GD@hrsdc-rhdcc.gc.ca

Counsel for the Respondent

TABLE OF CONTENTS

PART I: STATEMENT OF FACT 3
OVERVIEW 3
BACKGROUND 3
PART II: ISSUE 5
PART III: SUBMISSIONS 5
LAW 5
Standard of Review 5
The Reasonableness Standard 5
The *Employment Insurance Act* 7
The Law in the Context of Religion 7
ARGUMENT 9
Federal Court Applied Correct Standard Incorrectly 9
Only One Critical Argument 10
Employer Conduct and Policies 10
Tribunal's Mandate and Responsibility 11
Precedent 13
Critical Issue 18
Religion Includes Religious Belief and Religious Conduct: SCC 22
Religion Is Involuntary: SCC 22
Religion Not a Choice in Any Legislative Context, Including EI Context 22
Misconduct Must Be Voluntary in EI context 22
The SST Failed to Reasonably Apply SCC Law and Reflect Its Own Code 23
The Only Reasonable Decision 24
Conclusion 27
PART IV: ORDER SOUGHT 28
PART V: TABLE OF AUTHORITIES 29

PART I: STATEMENT OF FACT

OVERVIEW

1. The Appellant, Rebecca Abdo, appeals from the decision of the Federal Court dismissing her application for judicial review.

2. The Appellant's employment as a medical laboratory technologist at Canadian Blood Services ("CBS") was terminated due to her religious abstention from covid vaccination.

3. The Canada Employment Insurance Commission (the "Commission") denied the Appellant's application for employment insurance ("EI") benefits on the basis of "misconduct", a decision upheld by the General Division ("GD") of the Social Security Tribunal ("SST"). The Appeal Division ("AD") of the SST refused the Appellant leave to appeal the GD's decision.

4. The Federal Court dismissed the Appellant's application for judicial review of the SST AD's decision refusing leave to appeal.

BACKGROUND

5. The Appellant is religious.

6. On September 3, 2021, CBS implemented a workforce policy stating that all employees were required to receive covid vaccines unless unable due to "human rights grounds (e.g. religious reasons)"[1] (the "Policy"). The Policy further stated, "[I]n all cases requiring workplace accommodation, Canadian Blood Services will accommodate, in accordance with the relevant human rights legislation and the Human Rights in the Workplace - Discrimination Policy, to the point of undue hardship".[2]

7. On September 28, 2021, the Appellant submitted a request for accommodation, explaining why, in detail, she was unable to be vaccinated on the basis of her sincerely held religious beliefs. The Appellant also included a supporting letter from a pastor, as requested.[3]

---

[1] Affidavit of Rebecca Abdo ("Abdo"), Ex A, Appeal Book ("AB") at AB228.
[2] Abdo, Ex A, AB at AB228.
[3] Abdo, Ex B, AB at AB234.

8. On October 8 and 15, 2021, the Appellant met with Michelle Germaine of CBS's People, Culture and Performance department to discuss the Appellant's request for accommodation in greater detail.

9. On October 22, 2021, CBS denied the Appellant's request for accommodation on religious grounds, stating that it was "not disputing [her] individual religious beliefs" but would only consider a "prohibit[ion]" "imposed" by an "established stream of Christianity".[4]

10. On November 1, 2021, the Appellant was placed on a 10-day unpaid leave of absence. On November 16, 2021, the Appellant's employment was terminated. CBS recorded the termination as "dismissal with cause".[5]

11. On December 20, 2021, the Appellant applied for EI benefits, which the Commission denied on or about April 11, 2022, citing as its reason that the Appellant had lost her employment as a result of "misconduct".

12. On May 11, 2022, the Appellant applied to the Commission for reconsideration of the decision to deny her EI benefits. On July 10, 2022, the Commission maintained its decision to deny the Appellant EI benefits on the basis of "misconduct".[6]

13. On August 12, 2022, the Appellant appealed the decision of the Commission to the SST GD.[7] On November 23, 2022, the SST GD dismissed the Appellant's appeal.[8]

14. On December 23, 2022, the Appellant applied for leave to appeal to the SST AD, which was denied on March 18, 2023.[9]

15. On December 28, 2023, the Federal Court dismissed the Appellant's application for judicial review of the SST AD decision denying leave to appeal.[10]

---

[4] Abdo, Ex C, AB at AB236.
[5] Abdo, Exs D, E, AB at AB240, AB243.
[6] Abdo, Ex H, AB at AB255.
[7] Abdo, Ex I, AB at AB259.
[8] Decision of the GD, AB at AB203.
[9] Decision of the AD, AB at AB215.
[10] Decision of the Federal Court, AB at AB012.

PART II: ISSUE

16. The issue in this appeal is whether the Federal Court correctly applied the standard of review to the AD's decision, which is to say, correctly decided the AD's decision was reasonable.

PART III: SUBMISSIONS

LAW

Standard of Review

17. As the Federal Court of Appeal has recently stated:

> [T]he task of this Court is to determine whether the Federal Court (i) selected the correct standard of review, and (ii) correctly applied that standard of review: *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 S.C.R. 559 at para. 45. Effectively, this Court must step into the shoes of the Federal Court, and focus on the Appeal Division's decision.[11]

The Reasonableness Standard

18. All administrative decisions are subject to the reasonableness standard imposed in *Canada (Minister of Citizenship and Immigration) v Vavilov*.[12] Among other criteria, a reasonable decision must "meaningfully grapple" with the "key issues" and "central arguments" raised by the appellant; demonstrate the decision maker was "actually alert and sensitive to the matter before it"; demonstrate the decision maker "actually listened" to the appellant; discharge the "decision maker's responsibility" to "discern meaning and legislative intent, not to 'reverse-engineer' a desired outcome"; and "explain why [the] decision best reflects the legislature's intention" where the appellant's dignity hangs in the balance.

---

[11] *Kuk v Canada (Attorney General)*, 2024 FCA 74 [*Kuk*] at para 4 [**TAB 9**].
[12] 2019 SCC 65 [*Vavilov*] [**TAB 4**].

19. A decision maker's decision will not be reasonable if the decision maker has failed to "meaningfully grapple with key issues or central arguments" raised.[13] A decision maker must demonstrate it was "*actually* alert and sensitive to the matter before it".[14]

20. "Justification and transparency require that an administrative decision maker's reasons meaningfully account for the central issues and concerns raised"[15] in order to prove it has "*actually* listened".[16] If the decision "cannot be said to exhibit the requisite degree of justification, intelligibility and transparency", it will be unreasonable:[17]

> [A] reasonable decision is one that is justified in light of the facts…The decision maker must take the evidentiary record and the general factual matrix that bears on its decision into account, and its decision must be reasonable in light of them…The reasonableness of a decision may be jeopardized where the decision maker has *fundamentally misapprehended or failed to account for the evidence* before it.[18]

21. A decision will not be reasonable if it is not "justified in relation to the constellation of law and facts that are relevant to the decision…Elements of the legal and factual contexts of a decision operate as constraints on the decision maker".[19]

22. A decision will not be reasonable if it involves an "irrational chain of analysis":[20] "The internal rationality of a decision may be called into question if the reasons exhibit clear logical fallacies, such as circular reasoning, false dilemmas, unfounded generalizations or an absurd premise".[21]

23. A decision will not be reasonable if the decision maker strayed from the purpose and intent of the statute: "It [is] impossible for an administrative decision maker to justify a decision that strays beyond the limits set by the statutory language it is interpreting".[22]

24. A decision will not be reasonable if the decision maker reasoned backward from a conclusion: The decision maker "cannot adopt an interpretation it knows to be inferior –

---

[13] *Vavilov* at para 128.
[14] *Vavilov* at para 128.
[15] *Vavilov* at para 127.
[16] *Vavilov* at para 127.
[17] *Vavilov* at para 100.
[18] *Vavilov* at para 126.
[19] *Vavilov* at para 105.
[20] *Vavilov* at para 103.
[21] *Vavilov* at para 104.
[22] *Vavilov* at para 110.

albeit plausible – merely because the interpretation in question appears to be available and is expedient. The decision maker's responsibility is to discern meaning and legislative intent, not to 'reverse-engineer' a desired outcome".[23]

25. *Vavilov* states: "The principle of responsive justification means that if a decision has particularly harsh consequences for the affected individual, the decision maker must explain why its decision best reflects the legislature's intention. This includes decisions with consequences that threaten an individual's life, liberty, dignity or livelihood".[24]

The *Employment Insurance Act*

26. According to section 30(1) of the *Employment Insurance Act*,[25] "A claimant is disqualified from receiving any benefits if the claimant lost any employment because of their misconduct". The *Act* does not define "misconduct", but the jurisprudence prescribes wilfulness of conduct as a necessary element to find "misconduct".

The Law in the Context of Religion

27. The Supreme Court of Canada has both defined religion[26] and declared religion an immutable characteristic.[27]

28. The SCC states in *Amselem* that an individual's religious belief is established where the individual has shown

> (1) he or she has a practice or belief, having a nexus with religion, **which calls for a particular line of conduct**, either by being objectively or subjectively obligatory or customary, or by, in general, subjectively engendering a personal connection with the divine or with the subject or object of an individual's spiritual faith, irrespective of whether a particular practice or belief is required by official religious dogma or is in conformity with the position of religious officials; and (2) he or she is sincere in his or her belief.[28]

---

[23] *Vavilov* at para 121.
[24] *Vavilov* at para 133.
[25] SC 1996, c 23 [**TAB 14**].
[26] *Syndicat Northcrest v Amselem*, 2004 SCC 47 [*Amselem*] [**TAB 12**].
[27] *Corbiere v Canada (Minister of Indian and Northern Affairs)*, 1999 CanLII 687 (SCC), [1999] 2 SCR 203 [*Corbiere*] [**TAB 5**].
[28] *Amselem* at para 56. [Emphasis added.]

29. Religious belief governs conduct[29] and religious infringement is established when a policy interferes with conduct-governing beliefs in a way that is beyond trivial or insubstantial.[30]

30. *Amselem* is clear that no confirmation of the belief or practice by a religious leader is necessary;[31] no proof of the established practices of a religion is necessary;[32] no mandatory doctrine of faith supporting the belief is necessary;[33] neither a government body nor a tribunal is in a position to interpret the content of an individual's subjective understanding of his or her religious obligations;[34] the role of a tribunal is to assess mere sincerity of belief, not validity of belief;[35] and sincerity of belief simply implies an honesty of belief.[36] *Amselem* also declines to endorse an objective standard and speaks to the appropriate nature of the inquiry: "[C]laimants seeking to invoke freedom of religion should not need to prove the objective validity of their beliefs in that their beliefs are objectively recognized as valid by other members of the same religion, nor is such an inquiry appropriate".[37]

31. Further, *Amselem* rejects the idea that personal beliefs ought or even can be severed from the religious beliefs of the religious person, characterizing religion as inherently involving "personal convictions or beliefs", "personal or subjective conception", "personal autonomy", "personal sincerity", "personal notions of religious belief, 'obligation', precept, 'commandment', custom or ritual", "profoundly personal beliefs", "intensely personal" beliefs and "personal religious 'obligations'".[38] *Amselem* confirms that religious belief *is* personal belief.

32. The SCC states in *Corbiere* that **religion is "constructively immutable" because it is "changeable only at unacceptable cost to personal identity"**[39] and again affirms this principle in *Quebec (Attorney General) v A*,[40] the latter of which has also "firmly

---

[29] *Amselem* at paras 41, 49, 56, 134.
[30] *Amselem* at para 59.
[31] *Amselem* at para 56.
[32] *Amselem* at para 54.
[33] *Amselem* at para 49.
[34] *Amselem* at para 50.
[35] *Amselem* at para 52.
[36] *Amselem* at para 51.
[37] *Amselem* at para 43.
[38] *Amselem* at paras 39, 41-2, 47, 49, 54, 134, 191.
[39] *Corbiere* at para 13. [Emphasis added.]
[40] 2013 SCC 5 [*Quebec v A*] [**TAB 10**].

rejected" the notion that protected characteristics vary across legislative contexts: "**they are not deemed immutable in some legislative contexts and a matter of choice in others**".[41] In other words, while the SST has a "narrow and specific role to play in the legal system", it does not have its ***own*** legal system capable of redefining as a "choice" that which the SCC has already decided is immutable—which is to say, by definition, not a "true choice".[42]

ARGUMENT

Federal Court Applied Correct Standard Incorrectly

33. The Federal Court selected the correct standard of review, being reasonableness, but failed to correctly apply that standard by failing to notice the Appeal Division had failed to reasonably decide the key issue and central concern the Appellant brought before it.

34. Put another way, the SST failed to reasonably decide the only critical issue before it: whether the EI test for misconduct was satisfied in light of the absence of voluntariness relating to the Appellant's immutable characteristic.

35. Accordingly, while the task of this court is to look at the Appeal Division's decision and intervene if it is convinced that decision was unreasonable in some respect,[43] the Appellant submits that cannot be done absent deciding what every other decision maker has thus far failed to decide: whether the law can possibly countenance a finding that immutable characteristics are voluntary, in light of the Supreme Court of Canada's holdings on the issue.

36. The finding of misconduct against the Appellant hinged on whether her conduct was voluntary, and her conduct was based solely on her immutable characteristic.

37. This Court, now stepping into the shoes of the Federal Court, cannot resolve the sole issue in this case absent resolving the question everyone else has failed to resolve: whether an immutable characteristic can possibly be voluntary at law, having regard to the Supreme Court of Canada's clear statements on the point. A decision failing to grapple with this—the single, solitary question posed to this Court—is no decision at all.

---

[41] *Quebec v A* at para 335. [Emphasis added.]
[42] *Quebec v A* at para 336.
[43] *Kuk* at para 5.

Only One Critical Argument

38. The central question, and the only critical question, is whether the misconduct test is satisfied in light of the legal requirement that misconduct be voluntary, the legal reality that immutable characteristics are not voluntary, and the fact the Appellant's conduct was a function of her immutable characteristic.

39. The Federal Court and the preceding decision makers were welcome to address any number of subordinate issues and arguments in addition to the central issue and central argument; but addressing those subordinate issues and arguments did not relieve the decision makers of the obligation to meaningfully grapple with the central issue and produce a cogent analysis in the reasons for their decisions.

40. Addressing subordinate issues to the exclusion of the central issue rendered those decisions unreasonable, pursuant to *Vavilov*.[44]

41. There was, and is, only one critical question in this case. Responses to subordinate arguments—or worse, phantom arguments the Appellant has never even made—that leave the single critical question unanswered fall short of a reasonable decision.

Employer Conduct and Policies

42. It is no answer to say the test for misconduct focuses on the employee's conduct, because the Appellant's key issue and central argument ***is*** the employee's conduct—specifically, the involuntary nature of the employee's conduct.

43. It is no answer to say the test for misconduct does not focus on the employer's conduct, because the Appellant's key issue and central argument is not the employer's conduct, rather the employee's conduct—specifically, the involuntary nature of the employee's conduct.

44. It is no answer to say the test for misconduct does not focus on the reasonableness of the employer's policy, because the Appellant's key issue and central argument is not the employer's policy, rather, the involuntary nature of the Appellant's conduct.

---

[44] *Vavilov* at paras 127-8.

45. It is no answer to say the SST's role is not to adjudicate whether an employer's policy was reasonable, because the Appellant's key issue and central argument is not whether the employer's policy is reasonable, rather, the involuntary nature of the Appellant's conduct.

46. It is no answer to say mandatory workplace policies do not limit an employee's ability to make a personal or voluntary choice, because the Appellant argues only that her immutable characteristic prevents her from making the "voluntary" "choice" called for by the mandatory workplace policy.

47. It is no answer to say the SST's role is not to adjudicate whether an employer wrongly denied an accommodation request, because the Appellant's key issue and central argument is not whether the employer wrongly denied an accommodation request, rather, the involuntary nature of the Appellant's conduct.

48. It is no answer to say the decision maker reasonably noted the employer's obligation to institute policies for the health and safety of its employees, because as the Tribunal argues with near inexhaustible fervour throughout all of its decisions, the reasonableness or lack thereof of employer policies is never at issue in EI cases.

49. It is no answer to say that *Astolfi*[45] fails to apply. Apart from the Court's flawed analysis of the application of *Astolfi* by way of ignoring the firmly established principles around "adverse impact", *Astolfi* is by no means the basis of the Appellant's central argument.

Tribunal's Mandate and Responsibility

50. It is no answer to say that administrative decision-makers are not required to respond to every argument or line of possible analysis, because the argument the Appellant has made is central to the issue.

51. It is no answer to say the decision maker is not required to make an explicit finding on each constituent element, however subordinate, because the element in question is in no way subordinate but is rather central.

52. Absolutely central to the issue of whether the Appellant engaged in misconduct is the test for misconduct, including the element of voluntary conduct, and whether Supreme Court

[45] *Astolfi v Canada (Attorney General)*, 2020 FC 30 [*Astolfi*] [**TAB 1**].

of Canada precedent—which is to say precedent binding on the SST, the Federal Court, and this Court—has eliminated any possibility that element is met.

53. The Appellant's central issue cuts right through the law of misconduct in the EI context and is clearly addressed by the Supreme Court of Canada.

54. It is no answer to say the Tribunal is not required to address all the Appellant's arguments, because in fact the Tribunal failed to address the Appellant's central and only critical argument.

55. The decision maker had access to, and claims to have heard, the audio recording of the Appellant's hearing before the GD, in which the Appellant and her counsel argued exhaustively that her immutable characteristic eliminated the element of "choice": twenty pages of the corresponding transcript feature some disambiguation of the Appellant's religious requirements and the law around religion; approximately half of those are wholly devoted to the topic.[46]

56. The Appellant argues that a requisite element of the misconduct test has not been met, and the Appellant makes this argument with reference to binding Supreme Court of Canada precedent. This is not some tangential argument the decision-makers are excused from analyzing.

57. It is no answer to say the Tribunal is not required to address arguments that fall outside the scope of its mandate, because the Appellant's central argument falls squarely within the Tribunal's mandate: figuring out if the elements of misconduct are met, with regard to all the relevant law and particularly the most relevant law from the highest court.

58. It is no answer to say the Tribunal's role is not to determine whether a claimant's dismissal was in accordance with human rights or employment law, because the Appellant's central argument is not about human rights or employment law, rather the EI law requirement that misconduct be voluntary conduct.

59. It is no answer to say the decision maker's failure to weigh the evidence in the manner the appellant would have preferred does not create unreasonableness, because a) the Appellant's actual argument with respect to weighing was that the decision maker did not

[46] Transcript of November 1, 2022 hearing before the GD, pp 6-7, 10-2, 24-9, 35-9, 44-6, 48, AB at AB475-6, AB479-85.

weigh the evidence at all, and b) the Appellant's key issue and central argument is that immutable characteristics are not voluntary.

60. It is no answer to say the issue is not whether the Appellant's religion is misconduct, because the issue absolutely is whether the Appeal Division was reasonable in deciding the Appellant's conduct—being her religious abstention—was voluntary, and voluntary conduct is requisite to a finding of misconduct.

Precedent

61. It is no answer to say there is no reviewable error where the issue of misconduct has been decided solely within the parameters set out by the Federal Court of Appeal, because relevant precedent from a court higher than the Federal Court of Appeal has set parameters which are binding on the Federal Court of Appeal in the circumstances of this case.

62. It is no answer to say the Federal Court relied on *Francis*,[47] because the issue of the immutability of religion across all legislative contexts with reference to binding Supreme Court of Canada precedent was a) not before the Federal Court of Appeal in *Francis*, and b) not ruled on by *Francis*.

63. It is no answer to say similar arguments were presented in *Francis*, because the only argument that matters was not presented in *Francis*.

64. It is no answer to say *Francis* dismissed a similar set of arguments, because *Francis* did not deal with this specific argument.

65. It is no answer to say the Federal Court was bound by the Federal Court of Appeal decision in *Francis*, because the only argument and case law that matters were not before the *Francis* court, and the *Francis* court therefore did not consider them.

66. It is no answer to say the Federal Court dismissed the Appellant's argument with reference to *Francis*, because abstention from vaccination as a function of an immutable characteristic with specific reference to the binding Supreme Court of Canada precedents

[47] *Francis v Canada (Attorney General)*, 2023 FCA 217 [*Francis*] [**TAB 7**].

Corbiere and *Quebec v A* was not before the *Francis* court. It was, however, squarely before the Federal Court in *Abdo*, wherein counsel for the Appellant stated:

> My plan is to begin with a very brief overview…followed by a discussion of M[r]s. Abdo's key issue and central concern.
> …
> Mrs. Abdo is a woman of deep religious faith, and Mrs. Abdo was, as a matter of her religious faith, compelled to abstain from Covid vaccination.
> …
> Mrs. Abdo is a devout Christian. The truth of this has permeated every stage of the proceedings, and there are complexities around that which have at all times been before the SST, but which the SST has never meaningfully addressed and perhaps not even fully comprehended. To date, no one has addressed Mrs. Abdo's key issue and central concern which is that her religion, religion being both conduct-governing and an immutable characteristic, is not misconduct. The Commission has not, the General Division has not, and the Appeal Division has not meaningfully grappled with whether a conduct governing immutable characteristic can rightly be characterized as wilful…
> …
> "Religion" has a meaning at law; "immutable characteristic" has a meaning at law. And that meaning does not change depending on the legislative context. We know this because the Supreme Court of Canada ruled in a case called *Quebec (Attorney General) v. A* that the legal meaning of a protected characteristic does not change depending on legislative context, and immutable characteristics are not a true choice. And that can be found at *Quebec (Attorney General) v. A* at paragraphs 335 to 337.
>
> The leading SCC case on religion, *Syndicat Northcrest v. Amselem* discloses that…religious beliefs call for a particular line of conduct. Religious beliefs are conduct governing. Religious belief is inseparable from the conduct it governs pursuant to *Amselem*. And all of that is at paragraph 56 of *Amselem* and, in fact, throughout the entire *Amselem* decision.
>
> So it is vital to understand that religion and all of its component parts, whether thought, belief, manifestation, adherence, conduct—are not a true choice as the law contemplates religion, in any legislative context. Mrs. Abdo can no sooner cease adhering to her religious beliefs than she can cease believing her religious beliefs.
>
> Further, the Supreme Court of Canada has ruled that religion is an immutable characteristic. The SCC states in *Corbiere v. Canada* that religion is constructively immutable because it is changeable only at unacceptable cost to personal identity. And that is found at paragraph 13 of *Corbiere*. The SCC again affirms this principle in *Quebec v. A*, which has

also, quote, "firmly rejected" the notion that protected characteristics vary across legislative contexts. Mrs. Abdo can no sooner cease adhering to her religious beliefs than she can cease being a person of colour. This is of course what "immutable" means.

Mrs. Abdo's conduct governing an immutable characteristic of religion and its intersection with her former employer's policy is at the heart of this case. It has been Mrs. Abdo's principal argument from the start. It was her counsel's principal argument at the hearing before the General Division. And yet it is the one idea that seems to have eluded any meaningful and comprehensive analysis thus far.

Given what we know about religion from the law, and what we know about immutable characteristics from the law, and the transcendence of those concepts in all legislative contexts, the implication of the Appeal Division's decision is that it decides by default that religion is misconduct. If the Appeal Division decision effectively endorsing the General Division's decision is reasonable, then it is reasonable to decide that immutable characteristics are misconduct.

…

[I]t was incumbent on the Appeal Division to correct the General Division when it clearly failed to grapple with Mrs. Abdo's key issue and central concern, by granting leave to appeal.

…

Mrs. Abdo testified that taking this vaccine would, for her, be sin. Sin separates the Christian from God. Separation from God is an intolerable state of affairs for the Christian. No one has meaningfully grappled with Mrs. Abdo's reality in that regard. Mrs. Abdo and her counsel placed these issues squarely before the tribunal when they argued that Mrs. Abdo's religion is not misconduct, holding forth at length about the leading law on religion, and Mrs. Abdo's religious beliefs, and providing examples of what misconduct is in the context of past EI precedents.

…

The conduct must be wilful. The conduct must breach a duty the employee owes to the employer.

…

It is vital to remember that at law in every legislative context, religion is both religious belief and religious conduct.

…

Moving now to the wilfulness element of misconduct, this goes back to *Corbiere* and the immutability of religion, religion including both religious belief and religious adherence or religious conduct. This also goes back to *Quebec v. A* and the SCC's holding that protected characteristics, whether enumerated or analogous, are not a true choice in any legislative context. That which is not a true choice cannot be voluntary. It cannot be wilful.

Moving now to the requirement of breaching a duty owed to the employer to make out misconduct, first, it cannot be credibly argued that Mrs. Abdo, in adhering to her religious beliefs, breached a duty owed to the employer, because no employee owes a duty to an employer to do the impossible—that is, to extinguish an immutable characteristic. Accordingly, while we answer the Appeal Division's position about whether Mrs. Abdo breached her employer's policy in the negative for other reasons as well, the Appeal Division's position that Mrs. Abdo could have breached the employer's policy in any event is tenuous by virtue of Mrs. Abdo's immutable characteristic preventing her vaccinating.

The General Division erred in law by finding the applicant should have known her conduct could get in the way of carrying out her duties to the employer, and the Appeal Division's endorsement of that error is not reasonable because the applicant can owe no duty to renounce her faith, her immutable characteristic, and the applicant can have no knowledge, at least no legitimate knowledge, that her inability to expunge her immutable characteristic can possibly breach a duty to her employer, because it cannot.

Neither was the Appeal Division reasonable in concluding the issue of whether the applicant could have breached a duty arising from her employment contract, was not before the General Division. This issue hovered over the entire proceeding before the General Division. Not only is the breach of a duty owed one of the required elements that must be made out to find misconduct in the first place, Mrs. Abdo's counsel repeatedly held forth concerning Mrs. Abdo's immutable characteristic of religion and how her religion cannot be misconduct. Moreover, Mrs. Abdo's counsel made specific mention of the breach issue before the General Division, and that's on page 72 of the transcript.
…
Whereas the SST found the *Francis* claimant failed to raise certain aspects of his religious beliefs with the employer, Mrs. Abdo held forth on every conceivable facet of her religious beliefs and spiritual life with her employer. While the SST found that the *Francis* claimant failed to comply with the policy for his own personal reasons, the SST never took issue… with Mrs. Abdo's reasons being religious reasons. The General Division simply failed to comprehend the immutability of religion in all legislative contexts.
…
Additionally, Mrs. Abdo is not aware of whether the *Francis* applicant argued the immutability of religion per the Supreme Court of Canada in *Corbiere*, its conduct-governing nature per the SCC in *Amselem*, its status as not a true choice per the SCC in *Quebec v. A*, and its transcendence of all legislative contexts, also pursuant to *Quebec v. A*.
…

> Mrs. Abdo's argument that she did not engage in wilful conduct was before the tribunal. Mrs. Abdo's argument that there was no breach of a duty owed to the employer was before the General Division, both implicitly and explicitly, contrary to the Appeal Division's assertion. Counsel's explicit…reference is found at page 308 of the applicant's record. Again, I've already told you page 72 of the transcript at lines 3 through 8.
> …
> Mrs. Abdo's argument that she could not renounce her faith, an immutable characteristic, was before the tribunal, counsel having held forth at length concerning Mrs. Abdo's religious inability to vaccinate. To say the tribunal failed to meaningfully grapple with this argument is an understatement. It would be far more accurate to say the tribunal failed even to notice it. The General Division failed to address, meaningfully or otherwise, Mrs. Abdo's key issue and central concern, and the Appeal Division failed to notice the General Division's failure. This with nothing else renders the Appeal Division's decision to refuse leave to appeal unreasonable.
>
> Both levels of the tribunal failed to meaningfully grapple with the key issue and central argument Mrs. Abdo raised, which is her religious inability to vaccinate. That religious inability being specifically provided for in the employer's policy, that religious inability having been specifically argued in counsel's submissions before the General Division, that religious inability specifically being an immutable characteristic which transcends all legislative contexts.
> …
> I would submit there is no binding case law that finds religion is misconduct. And I would submit there is no binding case law that finds an immutable characteristic is misconduct, and I say that not to reargue anything, but just to respond to something my friend just said a few minutes ago about not considering this part of Mrs. Abdo's submission -- her key concerns, her central arguments -- was that they were just relying on years of case law, and they didn't have to. But I don't believe there's any binding case law that would find that religion is misconduct.[48]

67. There is only one argument accompanied by two cases in this appeal, none of which were before the *Francis* court, let alone the key issue, central concern and predominant argument. For further certainty, the *Francis* applicant did not argue the immutability of religion as that concept is understood in the law; the *Francis* applicant did not cite the

[48] Transcript of November 8, 2023 hearing before the Federal Court (“FC Hearing”), p 5, lines 19-22; p 6, lines 12-5; p 8, lines 4-16, 19-26; p 9, lines 1-26; p 10, lines 1-26; p 11, lines 1-7; p 14, lines 23-6; p 16, lines 13-23; p 17, lines 6-8; p 20, lines 6-8, 22-6; p 21, lines 1-26; p 22, lines 1-18; p 47, line 26; p 48, lines 1-10; p 52, lines 13-20; p 53, lines 15-23; p 54, lines 16-26; p 55, lines 1-13; p 80, lines 7-18.

cases supporting the proposition, being *Corbiere* and *Quebec v A*; and the *Francis* applicant did not place any of the aforementioned front and centre.

68. It is no answer to say, pursuant to *Francis*, that the test for misconduct was not open to revision, because the Appellant at no time argued for any revision of the misconduct test. Any suggestion she did is false and can only serve as a red herring.

69. It is no answer to say that individuals must consider how the exercise of their freedoms creates consequences and impacts upon the rights of others pursuant to paragraph 62 of *Amselem*, because that passage does not decide an immutable characteristic is voluntary; rather, it speaks to whether the infringement of a right will be justified.

70. With or without that justification, immutable characteristics do not cease to be involuntary. A mother of four cannot change her family status and a gay man cannot alter his sexual orientation—irrespective of whether legal protection ensues.

71. This is not a religious rights case; this case is about the test for misconduct. The Appellant's conduct does not meet the test for misconduct because her immutable characteristic is not voluntary.

Critical Issue

72. The common thread running through the foregoing is that it responds either to subordinate arguments, to the exclusion of the central and only crucial argument, or worse, it responds to invented arguments the Appellant never made. Neither is a recipe for a reasonable decision, as *Vavilov* explains.[49]

73. Those "arguments" have no bearing on the key issue and central concern placed squarely before the Tribunal and the Court: the Appellant's immutable characteristic is the sole reason for the Appellant's abstention from vaccination; immutable characteristics are not voluntary; and voluntariness is requisite to a finding of misconduct.

74. It is neither a misstatement nor an overstatement to say the decision makers have decided the Appellant's religion is misconduct. The decision makers cannot be saying otherwise, because they have simultaneously a) understood that the Appellant's abstention from vaccination is a function of her religion, and b) stated that the Appellant's abstention

[49] *Vavilov* at paras 100, 105, 126-8.

from vaccination is misconduct. This is not a particularly difficult line of reasoning to follow, but for further certainty:

- The Supreme Court of Canada says religious conduct is as much religion as religious belief.
- The Appellant's abstention from vaccination is religious conduct.
- The Appellant's abstention from vaccination is as much the Appellant's religion as is the Appellant's religious belief.
- The decision makers have decided the Appellant's abstention from vaccination—the Appellant's religious conduct—is misconduct.
- Therefore, the decision makers have decided the Appellant's religion is misconduct.

75. The deduction is valid as a matter of logic and sound as a matter of Supreme Court of Canada precedent.

76. But the finer point is simply that the Federal Court of Appeal has required misconduct to be voluntary conduct and the Supreme Court of Canada has ruled that immutable characteristics are not voluntary. Add that the Supreme Court of Canada has decided religion is an immutable characteristic and religious belief is inseparable from the conduct it governs, and there is only one lawful way to decide the issue of whether the Appellant's religious abstention was voluntary: it was not. It cannot be. Involuntary conduct is not voluntary. This is not controversial.

77. It is no answer to say the narrow issue to be decided is whether the Appellant's choice not to follow a policy was misconduct, because the Appellant's immutable characteristic is not a choice, as the Supreme Court of Canada makes plain.

78. It is no answer to say the Appellant refused to comply or made any sort of deliberate decision or choice, because the Appellant's immutable characteristic removed the element of choice.

79. Words like "choice", "decision" and "refusal" are the words of voluntary action or voluntary omission. Those words do not belong anywhere near an immutable

characteristic. The law does not say people can stop being gay, stop having a family status, or stop being religious. Neither does the law impose on gay people to stop engaging in the activities associated with being gay, on women with children to stop behaving like mothers, or on religious people to stop conducting themselves in accordance with their religion. These characteristics go to the core of identity.

80. One cannot choose to no longer have an immutable characteristic, as binding Supreme Court of Canada precedent makes plain.

81. It is no answer to say the Appeal Division reasonably applied the test for misconduct developed by this Court, because the test for misconduct developed by this Court requires that conduct be voluntary, and the high court decisions by which this Court is bound hold that religious conduct is not voluntary.

82. It is no answer to say the Appellant's conduct impaired the performance of duties owed to the employer, because the Appellant owed no duty to the employer to change the unchangeable.

83. Immutable characteristics, by definition, cannot be extinguished. Obviously, no one owes a duty to anyone to do the impossible. No gay person owes a duty to quit being gay. No religious person owes a duty to quit being religious. No Ethiopian person owes a duty to quit being Ethiopian. No woman owes a duty to change her family status. Whether immutable or constructively immutable, immutable characteristics are inextricably linked to personhood. They are not voluntary.

84. It is no answer to say that religious belief does not restrict free will, because the Supreme Court of Canada disagrees. Were it otherwise, religious belief would not be an immutable characteristic, and the Supreme Court of Canada explicitly says it is.

85. The point is that the Appellant's conduct is not misconduct because misconduct must be voluntary, and immutable characteristics are not voluntary. Religion is an immutable characteristic.[50] Religion includes both religious belief and religious conduct.[51] The Appellant's religious belief drove her abstention from vaccination—which is to say, the Appellant's religious belief drove her religious conduct. This was not voluntary as the Supreme Court of Canada has defined voluntariness vis-à-vis immutable characteristics.

---

[50] *Corbiere* at paras 13-4.
[51] *Amselem* at para 56.

The Supreme Court of Canada says an immutable characteristic, which religion is,[52] does not constitute a "true choice"[53] in any "legislative context"[54]:

> By definition, analogous grounds are "personal characteristic[s] that [are] immutable or changeable only at unacceptable cost to personal identity" (*Corbiere v. Canada (Minister of Indian and Northern Affairs)*, 1999 CanLII 687 (SCC), [1999] 2 S.C.R. 203, at para. 13). This Court has firmly rejected the context-dependency of analogous grounds: they are not deemed immutable in some legislative contexts and a matter of choice in others.

86. In other words, religion, a constructively immutable characteristic, is not deemed immutable in some legislative contexts and a matter of choice in the EI context.

87. The Appellant's key issue and central argument is that the SST unreasonably ignored that the Appellant's immutable characteristic is not voluntary in any legislative context. Since voluntariness is requisite to a finding of misconduct, and the Appellant's immutable characteristic is a) not voluntary and b) the entire reason for her abstention from vaccination, the Appellant did not engage in misconduct by virtue of her abstention from vaccination.

88. The high court decisions by which this court is bound explicitly hold that religion is not voluntary. Specifically, the high court decisions by which this court is bound explicitly hold that religion includes religious conduct;[55] that religion is an immutable characteristic;[56] and that immutable characteristics are not considered immutable in some legislative contexts and a matter of choice in others.[57]

89. The only argument that matters is the Appellant's conduct was not voluntary because the Supreme Court of Canada said in *Amselem*, *Corbiere* and *Quebec v A* respectively that religious conduct is an immutable characteristic which is not voluntary in any legislative context.

[52] *Corbiere* at para 13.
[53] *Quebec v A* at para 336.
[54] *Quebec v A* at para 335.
[55] *Amselem* at para 56.
[56] *Corbiere* at paras 13-4.
[57] *Quebec v A* at para 335.

Religion Includes Religious Belief and Religious Conduct: SCC

90. Religion is a subjective, personal, sincere, religious belief which governs the religious adherent's conduct: *Amselem*.[58] This means that at law, religious belief is inseparable from the conduct it governs. Religion, which includes both religious belief and religious conduct, prescribes things a religious person must do and things a religious person must not do. Religious conduct is as much religion as religious belief, according to the Supreme Court of Canada.

Religion Is Involuntary: SCC

91. Religion is an immutable characteristic: *Corbiere*.[59] This means that at law, a person can no sooner change her religion than, for example, her sexual orientation.

92. Immutable characteristics, by definition, cannot be altered. This means that at law, a person possessing an immutable characteristic does not have a *choice* to extinguish it.

Religion Not a Choice in Any Legislative Context, Including EI Context

93. Immutable characteristics are immutable across *all legislative contexts*: "'[P]ersonal characteristic[s] that [are] immutable or changeable only at unacceptable cost to personal identity'…are not deemed immutable in some legislative contexts and a matter of choice in others".[60]

94. This means that immutable characteristics are immutable in the legislative context of employment insurance. For further certainty, this means that immutable characteristics are immutable under the *Employment Insurance Act*.

Misconduct Must Be Voluntary in EI context

95. Misconduct must be voluntary in the employment insurance context. This means that the Appellant's immutable characteristic of religion,[61] which includes both religious belief and religious conduct,[62] and which does not cease to be an immutable characteristic in the

---

[58] At para 56.
[59] At para 13.
[60] *Quebec v A* at para 335.
[61] *Corbiere*.
[62] *Amselem*.

context of employment insurance,[63] cannot be misconduct pursuant to the *Employment Insurance Act*.

96. Immutable characteristics are not a choice.[64] This means that immutable characteristics are not voluntary. This means the Appellant's religious abstention— religious belief and religious conduct being immutable and therefore not voluntary—is not misconduct.

The SST Failed to Reasonably Apply SCC Law and Reflect Its Own Code

97. The Appellant could not possibly have more clearly conveyed to the GD that she had no choice in the matter of her abstention from vaccination as a matter of her religious belief. Counsel for the Appellant similarly held forth concerning how the Appellant's religious belief foreclosed any possibility of the Appellant's vaccination. The Appellant's immutable characteristic was the reason for her abstention, and the Appellant's immutable characteristic is not misconduct, because misconduct must be voluntary, and immutable characteristics are not voluntary at law.

98. The SST holds itself out as an "expert" Tribunal.[65] Part of being an expert Tribunal is knowing how to apply the law in a variety of circumstances. As a Tribunal that deals with numerous claims around loss of employment, the SST had a responsibility to apprise itself of the intersection of the law with immutable characteristics and the concept of misconduct. As decision makers in a relatively more inquisitorial than adversarial process, the Tribunal is expected to play a relatively more active role than would a court in finding out what it needs to know to render a supportable decision. Whereas a court occupying the position of arbiter in an adversarial system relies on applicants/appellants and respondents to supply the appropriate law and argumentation, the Tribunal, as expert, is presumed to assist the process, or as the Code puts it, "[M]embers have a duty to be proactive".[66]

99. The low-resolution view of this appeal taken by the Tribunal does not disclose a body of members who are "experts in what they do", nor members who "constantly improve their knowledge and skills".[67] Claimants ought not be expected to bear the brunt of the

---

[63] *Quebec v A*.
[64] *Corbiere*; *Quebec v A*.
[65] Social Security Tribunal member code of conduct, section 5.
[66] Social Security Tribunal member code of conduct, section 5.3.
[67] Social Security Tribunal member code of conduct, section 5.1.

Tribunal’s lack of knowledge and expertise where novel situations arise. If the Tribunal proves ill-equipped to manage a claim involving immutable characteristics and render a reasonable decision that accords with established SCC jurisprudence by which the Tribunal is bound every bit as much as the FCA jurisprudence with which it is more familiar, the Court needs to step in.

100. The SST is not at liberty to ignore “elements of the legal and factual contexts”; these “operate as constraints on the decision maker”,[68] as *Vavilov* states. A decision will not be reasonable if it is not “justified in relation to the constellation of law and facts that are relevant to the decision”.[69] Part of being “constrain[ed]” by the “elements of the legal and factual contexts” is the inability to simply disregard binding law that has an effect on other law. The FCA has for four decades interpreted wilfulness as being requisite to a finding of misconduct. The SCC has ruled that immutable characteristics are not voluntary in any legislative context. These legal realities restrained the SST in what it could decide about the Appellant’s conduct. Ignoring them was in no way reasonable.

101. *Vavilov* further declares that a reasonable decision, which is to say a justified, transparent, intelligible decision, cannot be based on a logical fallacy such as an “absurd premise”.[70] It would be difficult to come up with a premise more absurd than “something involuntary is voluntary”. Yet, this is the precise implication of a decision that finds religious adherence, an immutable characteristic, could somehow have been muted.

102. The AD failed to grapple with the GD’s legal error of deciding the Appellant made a “choice” not to change that which is unchangeable at law.

The Only Reasonable Decision

103. The Appellant went out of her way to place before the Federal Court the principles elucidated in *Vavilov* guiding the task before it:

> *Vavilov* stipulates that the SST's failure to consider a key element of a provision's purpose which might have led to a different result is not reasonable. Further, where an appellant's dignity hangs in the balance, *Vavilov* prescribes explaining why the decision best reflects Parliament's intention. Nothing like that occurred despite Mrs. Abdo having made no

[68] *Vavilov* at para 105.
[69] *Vavilov* at para 105.
[70] *Vavilov* at paras 103-4.

> secret of the fact the decision was of sufficient moment to impact her dignity, as the hearing transcript reveals, as the audio recording reveals, which the Appeal Division stated it had heard. *Vavilov* is also clear that a decision that does not meaningfully grapple with an appellant's key issues and central concerns will not be reasonable. And I highlight the phrase "meaningfully grapple". And I highlight the word "meaningfully". Because that mandate appears to have been lost here. Meaningfully grappling is a world apart from a cursory mention. That's at paragraph 128 of the *Vavilov* decision which states: (as read) "A decision maker's failure to meaningfully grapple with key issues or central arguments raised by the parties may call into question whether the decision maker was actually alert and sensitive to the matter before it". And at paragraph 127 of *Vavilov*: (as read) "The principles of justification and transparency require that an administrative decision maker's reasons meaningfully account for the central issues and concerns raised by the parties. Reasons are the primary mechanism by which decision makers demonstrate they have actually listened to the parties".[71]

104. Not only was the SST's decision unreasonable and not only did the Federal Court err in signing off on it; there is only one reasonable decision.

105. The law leaves only one path to only one reasonable conclusion. Parliament dictated that "misconduct" disqualifies a terminated employee from receiving benefits. The Federal Court of Appeal decided that such "misconduct" must be voluntary, which is to say, conduct must be voluntary in order to qualify as "misconduct". The Supreme Court of Canada decided that religion includes religious conduct, religion is an immutable characteristic, and immutable characteristics are not voluntary in any legislative context. The Supreme Court of Canada has "firmly rejected" the "context-dependency" of "personal characteristic[s] that [are] immutable or changeable only at unacceptable cost to personal identity".[72] All legislative contexts necessarily includes the employment insurance legislative context.

106. This means the Appellant could not have committed "misconduct" based exclusively on her religious abstention from vaccination.

107. Given there is only one reasonable conclusion to be drawn relating to whether the Appellant's religion constitutes misconduct—it does not—there is no principled reason

[71] FC Hearing, p 15, lines 4-26; p 16, lines 1-12.
[72] *Quebec v A* at para 335.

for this Court to send the matter back to the SST for reconsideration: *Vavilov*, *Chu*, *Groia*, *Burke*, *D'Errico*.[73]

108. In addition to the inevitable outcome of this matter once the Federal Court of Appeal jurisprudence and the Supreme Court of Canada jurisprudence are properly applied, both divisions of the SST already had a fair crack at following the law:

> [T]here are limited scenarios in which remitting the matter would stymie the timely and effective resolution of matters in a manner that no legislature could have intended: *D'Errico v. Canada (Attorney General)*, 2014 FCA 95, at paras. 18-19 (CanLII). An intention that the administrative decision maker decide the matter at first instance cannot give rise to an endless merry-go-round of judicial reviews and subsequent reconsiderations. **Declining to remit a matter to the decision maker may be appropriate where it becomes evident to the court, in the course of its review, that a particular outcome is inevitable and that remitting the case would therefore serve no useful purpose**: see *Mobil Oil Canada Ltd. v. Canada-Newfoundland Offshore Petroleum Board*, [1994] 1 S.C.R. 202, at pp. 228-30; *Renaud v. Quebec (Commission des affaires sociales)*, [1999] 3 S.C.R. 855; *Groia v. Law Society of Upper Canada*, 2018 SCC 27, [2018] 1 S.C.R. 772, at para. 161; *Sharif v. Canada (Attorney General)*, 2018 FCA 205, 50 C.R. (7th) 1, at paras. 53-54; *Maple Lodge Farms Ltd. v. Canadian Food Inspection Agency*, 2017 FCA 45, 411 D.L.R. (4th) 175, at paras. 51-56 and 84; *Gehl v. Canada (Attorney General)*, 2017 ONCA 319, at paras. 54 and 88 (CanLII). Elements like concern for delay, fairness to the parties, urgency of providing a resolution to the dispute, the nature of the particular regulatory regime, **whether the administrative decision maker had a genuine opportunity to weigh in on the issue in question**, costs to the parties, and the efficient use of public resources may also influence the exercise of a court's discretion to remit a matter, just as they may influence the exercise of its discretion to quash a decision that is flawed: see *MiningWatch Canada v. Canada (Fisheries and Oceans)*, 2010 SCC 2, [2010] 1 S.C.R. 6, at paras. 45-51; *Alberta Teachers*, at para. 55.[74]

109. Both the Appellant and her counsel delivered fulsome argumentation on her reality as an adherent to her religion with the attendant legal implication that her conduct was involuntary. Having sidestepped or failed to understand these submissions the first time, there is no reason to believe the SST would reach the only reasonable conclusion this

---

[73] *Vavilov* at para 142; *Canada (Attorney General) v Chu*, 2022 FCA 105 [*Chu*] at para 9 [**TAB 3**]; *Groia v Law Society of Upper Canada*, 2018 SCC 27 [*Groia*] at para 161 [**TAB 8**]; *Canada (Attorney General) v Burke*, 2022 FCA 44 [*Burke*] at para 117 [**TAB 2**]; *D'Errico v Canada (Minister of Human Resources and Skills Development)*, 2014 FCA 95 [*D'Errico*] at para 16 [**TAB 6**].

[74] *Vavilov* at para 142. [Emphasis added.]

time. This Court has found that redeterminations likely to repeat "substantive shortcomings" should be avoided:

> As well, it would be unfortunate if we were to remit the application for redetermination, the redetermination were to repeat some of the substantive shortcomings in the decisions of the firearms officers in this case, and the Federal Court or this Court were forced to quash the redetermination for substantive unreasonableness and order yet another redetermination. The parties would be forced to ride "an endless merry-go-round of judicial reviews and subsequent reconsiderations": *Vavilov* at para. 142. This we must avoid.[75]

110. Accordingly, the Appellant requests this Court decide the matter and order the release of her EI benefits.

Conclusion

111. The Appellant placed her immutable characteristic of religion squarely before the GD. Given the Appellant's evidence at her hearing before the GD, there can be absolutely no doubt the GD understood the Appellant's immutable characteristic of religion left her no choice but to abstain from vaccination. The GD gave no consideration to and provided no analysis around how an immutable characteristic could possibly be voluntary. That was a legal error. The AD had an obligation to correct that error pursuant to its mandate under the *Department of Employment and Social Development Act*,[76] based on the ground of appeal enumerated at section 58(1)(b) of the same.

112. The AD decision cannot stand because it is not reasonable. It was not reasonable for the SST to decide that an unchangeable characteristic is changeable. It was not reasonable for the SST to decide the Appellant's unchangeable characteristic was "voluntary". Voluntary conduct being essential to a finding of misconduct, it was not reasonable for the SST to find the Appellant's involuntary conduct to be misconduct.

113. **The Federal Court of Appeal is aware that it is bound by the Supreme Court of Canada. The Supreme Court of Canada has decided that religious conduct is an immutable characteristic and that immutable characteristics are not voluntary in any legislative context. The EI regime is a legislative context. Accordingly, the EI regime is a legislative context in which immutable characteristics are not voluntary.**

---

[75] *Sexsmith v Canada (Attorney General)*, 2021 FCA 111 at para 31 [**TAB 11**].
[76] SC 2005, c 34 [**TAB 13**].

The *EI Act* requires that conduct be voluntary in order to find misconduct. The Appellant looks forward to the Federal Court of Appeal's reasons on this incredibly narrow issue <u>with specific reference to the relevant Supreme Court of Canada jurisprudence, being *Corbiere* and *Quebec v A*</u>.

PART IV: ORDER SOUGHT

114. The Appellant seeks an order

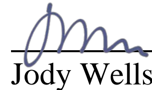
a) quashing the decision of the AD denying leave to appeal the GD's decision;

b) declaring she was not dismissed due to misconduct;

c) directing the Canada Employment Insurance Commission to release to her the employment insurance benefits to which she is entitled; and

d) awarding costs of this appeal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 24th day of April, 2024.



Jody Wells

PART V: TABLE OF AUTHORITIES

JURISPRUDENCE	
TAB 1	*Astolfi v Canada (Attorney General)*, 2020 FC 30
TAB 2	*Canada (Attorney General) v Burke*, 2022 FCA 44
TAB 3	*Canada (Attorney General) v Chu*, 2022 FCA 105
TAB 4	*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65
TAB 5	*Corbiere v Canada (Minister of Indian and Northern Affairs)*, 1999 CanLII 687 (SCC), [1999] 2 SCR 203
TAB 6	*D'Errico v Canada (Minister of Human Resources and Skills Development)*, 2014 FCA 95
TAB 7	*Francis v Canada (Attorney General)*, 2023 FCA 217
TAB 8	*Groia v Law Society of Upper Canada*, 2018 SCC 27
TAB 9	*Kuk v Canada (Attorney General)*, 2024 FCA 74
TAB 10	*Quebec (Attorney General) v A*, 2013 SCC 5
TAB 11	*Sexsmith v Canada (Attorney General)*, 2021 FCA 111
TAB 12	*Syndicat Northcrest v Amselem*, 2004 SCC 47
LEGISLATION	
TAB 13	*Department of Employment and Social Development Act*, SC 2005, c 34
TAB 14	*Employment Insurance Act*, SC 1996, c 23