

**Date: 20090526**

**Dockets: A-522-08, A-523-08, A-526-08,  
A-527-08, A-528-08**

**Citation: 2009 FCA 167**

**CORAM: EVANS J.A.  
LAYDEN-STEVENSON J.A.  
RYER J.A.**

**BETWEEN:** Docket A-522-08  
**JACIRA BRAGA** Applicant  
**and**  
**THE ATTORNEY GENERAL OF CANADA** Respondent

**BETWEEN:** Docket A-523-08  
**BRIAN BORGES** Applicant  
**and**  
**THE ATTORNEY GENERAL OF CANADA** Respondent

**BETWEEN:** Docket A-526-08  
**GRACA LOPES DOS SANTOS** Applicant  
**and**  
**THE ATTORNEY GENERAL OF CANADA** Respondent

Docket A-527-08

**BETWEEN:**

**MANUEL ALMEIDA**

**Applicant**

**and**

**THE ATTORNEY GENERAL OF CANADA**

**Respondent**

A-528-08

**BETWEEN:**

**MARIA AMORIM**

**Applicant**

**and**

**THE ATTORNEY GENERAL OF CANADA**

**Respondent**

Heard at Toronto, Ontario, on May 13, 2009.

Judgment delivered at Ottawa, Ontario, on May 26, 2009.

REASONS FOR JUDGMENT BY:

RYER J.A.

CONCURRED IN BY:

EVANS J.A.  
LAYDEN-STEVENSON J.A.

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Docket A-527-08

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**MANUEL ALMEIDA**

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**THE ATTORNEY GENERAL OF CANADA**

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A-528-08

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**MARIA AMORIM**

**Applicant**

**and**

**THE ATTORNEY GENERAL OF CANADA**

**Respondent**

**REASONS FOR JUDGMENT**

**RYER J.A.**

[1] Five applications for judicial review (A-522-08, A-523-08, A-526-08, A-527-08 and A-528-08) have been brought against five decisions of Umpire David G. Riche (CUB 71002, CUB 71001, CUB 70999, CUB 70998 and CUB 71000) which relate to claims by the Canada Employment Insurance Commission (the “Commission”) for the recovery of overpayments of benefits paid, pursuant to the *Employment Insurance Act*, S.C. 1996, c. 23 (the “Act”), to Jacira Braga, Brian Borges, Graca Lopes dos Santos, Manuel Almeida and Maria Amorim (the “Employees”) after their employment with Irwin Toy Limited (the “Employer”) was terminated as a consequence of its insolvency. The overpayments of benefits arose by virtue of the receipt of severance pay by the Employees after they had commenced receiving benefits under the Act.

[2] In response to the requests of the parties to each application, the Court agreed to hear the applications together on the basis that, as urged by counsel for the parties, the decisions under review are substantially identical and the differences in the factual circumstances in each situation are immaterial. As a matter of convenience at the hearing, references were made to the record in A-522-08 (Jacira Braga) and that practice will be followed in these reasons.

### **BACKGROUND**

[3] The employment of each Employee was terminated in late 2000 as a consequence of the insolvency of the Employer. No severance pay was received by any Employee at that time. However, each Employee applied for, and was granted, benefits under the Act. In each case, the benefit period commenced around the time of the severance.

[4] After the termination of the employment of the Employees, Ernst & Young LLP (the “Receiver”) was appointed to act as an interim receiver in respect of the affairs of the Employer.

[5] With the assistance of counsel, the Employees received severance payments from the Receiver. The first payments were received in early 2004 and the last in late 2005. These payments were made without any deductions by the Receiver, as required by subsection 46(1) of the Act. Under that provision, anyone making a severance payment to a person who might reasonably be considered to be receiving benefits under the Act, must ascertain whether the severance payment would give rise to an overpayment of benefits under the Act. If so, the payor is obligated to pay the

applicable amount of the severance payment to the Receiver General on account of the overpayment of benefits.

[6] In the summer of 2006, the Commission wrote to the Employees, informing them of its decision (the “Allocable Earnings Decision”) that their severance pay constituted earnings received in their benefit periods that were required to be allocated in accordance with sections 35 and 36 of the *Employment Insurance Regulations*, S.O.R./96-332 (the “Regulations”). Such allocations are relevant for the purpose of calculating the amount of any deduction from benefits payable to the Employees, in accordance with subsection 19(2) of the Act, or any overpayment of benefits repayable by them, in accordance with section 45 of the Act. In its correspondence to the Employees, the Commission advised them of their right to appeal this decision to the Board of Referees (the “Board”).

[7] At the same time as it communicated the Allocable Earnings Decision to each Employee, or shortly thereafter, the Commission sent a Notice of Debt to each Employee that stipulated the amount of the overpayment of benefits that arose out of the related Allocable Earnings Decision and requested payment of the stipulated amount. Accompanying the Notice of Debt was a printed form (Braga Respondent’s Record at page 28) that advised that an appeal from the notice could be made to the Board.

## THE BOARD'S DECISION

[8] Counsel for the Employees filed notices of appeal to the Board in which the decision of the Commission that is the subject of the appeal is described as “A Notice of Debt of an overpayment of Employment Insurance Benefits”. This is further confirmed in correspondence from Employees’ counsel to the Commission, dated September 22, 2006, in which counsel states, “We have filed a Notice of Appeal to that Notice of Debt”.

[9] In the notices of appeal, the stated reason for the disagreement with the decision was that the Employees believed that the overpayment of benefits that resulted from their receipt of severance payments had been repaid by the Receiver and that the amounts received by the Employees were net of those repayments. This is apparent from a portion of the notice of appeal to the Board that was filed on behalf of Jacira Braga (Braga Respondent’s Record at page 20):

The employees’ representative counsel prepared and submitted claims on behalf of all the terminated employees including the appellant with the interim receiver of Irwin Toy (Ernst & Young, (“E&Y”). Those claims were ultimately accepted and the interim receiver made preparations to pay dividends from the estate to the employees based upon their claims. Prior to doing so, the appellant is advised that E&Y sent the proposed dividend payments to HRSDC for their review in order to determine whether any amount should be deducted by E&Y and paid to HRSDC directly on account of an EI overpayment with the balance remaining then being paid by E&Y to the employee. According to E&Y, HRSDC provided those amounts to E&Y which were subsequently deducted from each of the affected employees’ dividend entitlement and paid to HRSDC. As a result, E&Y made all the payments to HRSDC on behalf of employees directly and no employee should be required to now pay any further amount to HRSDC in respect to employment benefits received after being terminated by Irwin Toy. [Emphasis added]

[10] The Employees changed the focus of their attack upon the Notices of Debt in the memoranda of fact and law that were filed with the Board. Thus, according to counsel for the Employees, the issues became (Braga Respondent's Record at page 43):

- a) Should the Appellants be required to pay HRSDC because the Interim Receiver of Irwin Toy failed to abide by s. 46(1) of the *Employment Insurance Act*, as they are required to by law, and where such payments would now cause the Appellants severe financial hardship?
- b) Has HRSDC proven the debt it claims to be owed?

Importantly, those memoranda of fact and law do not contend that the amounts specified in the Notices of Debt were incorrectly calculated or that some other amount was the correct amount of the overpayments received by the Employees. Instead, the Employees contend that the onus of proving the amounts of the overpayments rests with the Commission and they effectively assert that the Commission should be "put to strict proof" of those amounts.

[11] The Commission's representations to the Board framed the issue as an appeal of the allocation of earnings pursuant to sections 35 and 36 of the Regulations, in essence an appeal of the Allocation of Earning Decision (Braga Respondent's Record at page 30).

[12] The Board framed the issue in the same way as the Commission, stating (Braga Respondent's Record at page 200) that:

The Issue Involved

The issue in this appeal is whether or not the claimant had earnings subject to allocation pursuant to Sections 35 and 36 of the *Employment Insurance Regulations*.



[13] The Board then referred to the notices of appeal and enunciated the stated reason for the Employees' disagreement with the Notices of Debt (Braga Respondent's Record at page 30), as follows:

The claimant appealed the notice of debt of \$3,719.00.

Her counsel, Koskie Minsky (KM) states that the claimant should not be required to pay HRSDC any payment because Ernst & Young (E&Y) had paid HRSDC directly on behalf of the claimant.

[14] The Board found that the Receiver did not in fact deduct and remit any amount in respect of the overpayment of benefits to the Employees. As such, the Board squarely addressed the reason given in the notices of appeal as to why the Employees disagreed with the Notices of Debt.

[15] The Board further stated (Braga Respondent's Record at page 201) that:

Counsel for the claimant did not contest the amount of \$12,030.77 constituting earnings subject to allocation, as stated in the second letter of the Commission in Exhibit 6, dated July 19, 2006.\*

[\* This letter is the Allocation of Earnings Decision.]

[16] The Board thus concluded that the Employees had essentially conceded the allocation of earnings issue that the Board considered to have been before it. As a result, the Board dismissed the appeals of the Employees.

[17] However, the Board also acknowledged the new arguments raised by counsel for the Employees in their memoranda of fact and law and their requests that the Board order the

Commission to pursue collection of the overpayment of benefits from the Receiver or to write-off the debt owing by the Employees, stating (Braga Respondent's Record at page 203) that:

In conclusion, Counsel for the claimant submits that the appropriate Order of the Board of Referees in this case should be that the Commission either pursue E&Y to pay a penalty equal to the amount of the overpayment claimed by the Commission, or alternatively that the Commission writes off the debt.

[18] With respect to the new arguments, the Board found that the Receiver's failure to deduct the required amounts from the severance payments caused financial hardship to the Employees. In addition, the Board found that the Commission did not prove the quantum of the overpayments of benefits that were made to the Employees and the Commission's responses to information requests in respect of the amounts of the overpayments were incomplete and unclear.

[19] Despite these findings, the Board declined to order the Commission to write-off the overpayments, stating (Braga Respondent's Record at page 206):

At issue before the Board of Referees is an allocation of earnings and the resulting overpayment, and in light of the lack of jurisdiction of the Board in intervening on the amount of overpayments, the Board has no choice but to dismiss the appeal. Our intervention is limited to recommendations.

[20] The Board of Referees thus recommended that the Commission write-off the overpayments that were made to the Employees and impose a penalty on the Receiver of an amount equal to the total of those overpayments. In that regard, the Board stated that it was unfair for the Receiver to escape any consequences for its failure to meet its obligations.

[21] The Board's recommendation to write-off the overpayments was considered by the Commission. It asked for additional information with respect to the financial circumstances of the Employees, so as to ascertain whether the Employees had suffered financial hardship as a consequence of the failure of the Receiver to comply with subsection 46(1) of the Act. No such information was provided and the matter was, at the date of the hearing, held in abeyance.

### **THE UMPIRE'S DECISION**

[22] The Employees appealed the Board's decision to the Umpire. In the notices of appeal, the Employees allege that the Board failed to observe a principle of natural justice or erred in law. The basis of the appeal was limited, as stated in correspondence from Employees' counsel to the Commission, dated August 7, 2008, as follows:

We will confine our appeal to comment #1 in the Notice of Appeal: that the Board of Referees erred in not dismissing the Commission's claim after finding that the Commission had not proven its debt claimed against the appellants (fact #8 in the Board of Referees Decision).

[23] The Umpire determined that the Board erred by not dealing with the allocation of earnings issue. For that reason, he allowed the appeals and remitted the matter to a newly constituted Board of Referees for re-hearing. In view of that conclusion, he did not consider, in any detail, the question of whether the Commission was prevented from collecting the overpayments in absence of proof of those amounts. However, he did observe that the Employees had never objected to the specific amounts that they were requested to repay.

## **RELEVANT STATUTORY PROVISIONS**

[24] The relevant statutory provisions are subsections 19(2), sections 43 to 47 and 52 of the Act. Those provisions are reproduced in the appendix to these reasons.

## **ISSUE**

[25] The issue in this application is whether the Umpire erred in law by failing to correctly identify and decide the question that was before him.

## **ANALYSIS**

### **Did the Umpire correctly identify and address the legal issue before him?**

[26] The identification of the issues raised in an appeal to an Umpire from a decision of a Board of Referees is a question of law, which is to be reviewed on the standard of correctness (see *Budhai v. Canada (Attorney General)*, 2002 FCA 298). Accordingly, this Court must ensure that the Umpire correctly identified the issues that were before him in the applications under consideration.

[27] The Umpire determined that the issue before him was whether the Board properly dealt with the question of whether, as a result of having received severance payments, the Employees had earnings subject to allocation under sections 35 and 36 of the Regulations. He concluded that the Board failed to deal with that issue and quashed its decisions dismissing the Employees' appeals, and referred those matters to a newly constituted Board of Referees for reconsideration.

[28] In my view, the Umpire erred in law by misconstruing the issue that was before the Board and consequently, the issue that was before him. In effect, the Umpire determined that the appeals before the Board were against the Allocable Earnings Decisions, when in fact those appeals were taken against the Notices of Debt.

[29] The Umpire's error is perhaps understandable in that the Board stated, in the first page of its reasons, that the issue was one of allocable earnings (See Braga Respondent's Record at page 199). Nonetheless, the Umpire should have recognized that the appeals before the Board were directed at the Notices of Debt.

[30] This is evident from both the notices of appeal and the memoranda of fact and law that were before the Board. The Employees did not argue that their severance payments were not earnings subject to allocation. Rather, their notices of appeal alleged that the amounts they received were net of the requisite deductions on account of overpayments. This argument presupposes the existence of allocable earnings. Accordingly, it should have been evident to the Umpire that the Board was not confronted with any issue with respect to the Allocable Earnings Decision.

**What was the legal issue before the Board?**

[31] In its memoranda of fact and law, the Crown took the position that the Notices of Debt were not appealable decisions of the Commission. However, at the hearing, the Crown abandoned this position in light of subsection 52(2) of the Act. In those decisions, the Commission determined that

the Employees received benefits to which they were not entitled and specified the amounts that were repayable by them. It is clear that the Notices of Debt were put in issue before the Board.

[32] However, the basis upon which the Notices of Debt were challenged before the Board is not as clear, and a review of the Employees' arguments before the Board will be undertaken.

*Receiver Paid the Overpayments*

[33] The notices of appeal contain allegations that overpayments were in fact paid by the Receiver. Those allegations were not pressed by the Employees before the Board and the Board made factual findings to the contrary, which have not been further contested by the Employees.

*Receiver Wrongfully Failed to Pay Overpayments*

[34] The Employees argued that because the Receiver failed to honour its obligations under subsection 46(1) of the Act, the Receiver should be penalized by an amount equal to the total of all of the overpayments. The basis of this contention was apparently that to collect the overpayments from the Employees would cause them financial hardship.

[35] The Board considered this argument and concluded that it had no jurisdiction to order the Commission to write-off the overpayments, as had been requested by the Employees. Instead, the Board recommended that the Commission write-off those amounts. This finding of the Board was not pressed by the Employees before the Umpire, although it was a ground of their appeals to him.

In my view, the Board correctly determined that it had no jurisdiction to make the order that was requested of it.

*Onus of Proof of Overpayments*

[36] The Employees' third argument before the Board was that the amounts stipulated in the Notices of Debt to be payable by the Employees were unenforceable because the Commission had failed to prove those amounts, in accordance with the standard of proof that is applicable to the enforcement of contractual debts at common law in Ontario.

[37] The Board made factual findings that the Commission did not prove the quantum of the overpayments and its attempts to explain its calculations to the Employees were incomplete, unclear and inconclusive. However, the Board did not conclude that these findings rendered the overpayments uncollectible by the Commission.

[38] The Employees argue that the Board erred in not reaching that conclusion and that the Umpire erred in not intervening to correct the Board's error.

[39] Whether or not the Commission is required to prove the debt in accordance with common law principles is a question of law, reviewable by this Court on the standard of correctness. In my view, the Board committed no legal error in declining to place that onus on the Commission and the Umpire committed no legal error in declining to intervene in the Board's decision on this issue, although the Umpire's consideration of this issue was cursory at best.

[40] The ability of the Commission to reconsider its decisions to grant benefits is found in section 52 of the Act. That provision is somewhat analogous to the “reassessment” provisions in the *Income Tax Act*, R.S.C. 1985, c. 1 (5<sup>th</sup> Supp.). Of particular relevance are subsections (2) and (3), which read as follows:

52. (2) If the Commission decides that a person

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

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

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

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

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

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

[Emphasis added]

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

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

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

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

[Je souligne]

[41] It is clear to me that the Notices of Debt are decisions of the Commission that fall within subsection 52(2) of the Act and are therefore appealable to the Board. Subsection 52(3) of the Act provides that the amount of an overpayment specified in a Notice of Debt becomes repayable, under



section 43 of the Act, on the date of the notification of the amount of the overpayment. Under section 44 of the Act, a person who receives an overpayment of benefits is required to return the amount of the overpayment without delay. These provisions have the effect of creating an enforceable debt obligation in the amount specified in the Notice of Debt. That amount is a debt due to Her Majesty and is recoverable in accordance with the provisions of section 47, subject to the prescription period in subsection 47(3) of the Act.

[42] In my view, the common law with respect to the enforcement of contractual debts, as described in *Corning Inc. v. Trent*, [1996] O.J. No. 4438 and *Second Skin and Otis Ltd. v. 1035816 Ontario Inc.(c.o.b. Willys)*, [1997] O.J. No 4015, has no relevance to the collection of overpayments of benefits, as specified in Notices of Debt issued pursuant to section 52 of the Act. Support for this conclusion appears in *Canada (Attorney General) v. Laforest* (1989), 97 N.R. 95 at 100, wherein Lacombe J.A., who was dealing with earlier versions of sections 45, 47 and 52 of the Act, stated:

... This power to find there has been an overpayment of benefits is conferred on the Commission by s. 57 [now s. 52], and only that section is linked to s. 49 [now s. 45 and 47] of the Act: s. 102 is not. The decision taken by the Commission creates a debt which becomes executory against the claimant as soon as he is notified of the amount to be repaid. The Commission's right to establish its debt and recover it results from the interaction of ss. 49 and 57. [Emphasis added]

[43] This statement and the language of subsection 52(3) of the Act satisfy me that the amount of an overpayment of benefits that is specified in a Notice of Debt becomes repayable on the date the Commission notifies the recipient of the overpayment of the specified amount. In my view, if the debt becomes repayable on the date of notification, it follows that the amount of the debt is established on that date to the extent necessary to permit collection of that amount under the Act. It

follows that where the Notice of Debt is appealed, the appellant bears the onus of demonstrating the inaccuracy of the amount specified therein.

[44] This interpretation is consistent with the decision in *Harjinder Sahota*, [2000] CUB 48293. In that case, Umpire Hugessen found that where an appellant contests the amount of an overpayment, that is to say, where there are competing calculations of the amount in issue, the Board is required to determine which of the competing calculations must be accepted. However, no such issue was before the Board or the Umpire in the present case and none was presented to this Court. Simply put, the Employees did not specifically contest the amounts that were stipulated in the Notices of Debt or attempt to show that some other amount was correct. Instead, the issue was framed by them as one of onus of proof.

[45] While the Board found that the Commission failed to prove the amounts specified in the Notices of Debt, in my view, that finding is inconsequential because the Commission was under no obligation to prove those amounts. If those amounts were to be questioned, it was incumbent upon the Employees to do so by evidence of erroneous calculations or other errors. The Employees made no such allegations and provided no such evidence.

## **DISPOSITION**

[46] For the foregoing reasons, I would allow the applications for judicial review, set aside the decisions of the Umpire and refer the matters back to the Chief Umpire, or his designate, for determination on the basis that the appeals from the decisions of the Board should be dismissed. A

copy of these reasons, which apply in relation to each of the five applications for judicial review, should be placed in the files for each of those applications.

[47] In reaching this conclusion, I note that the hardship deliberations of the Commission are in progress and should be pursued to their conclusion. In so stating, I am of the view that the requirements that must be met in order to obtain the desired relief from the Commission are not limited by any evidence that was before the Board or any factual findings with respect to financial hardship that the Board may have made.

“C. Michael Ryer”

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J.A.

“I agree  
John M. Evans J.A.”

“I agree  
Carolyn Layden-Stevenson J.A.”

**APPENDIX**

***Employment Insurance Act, S.C. 1996, c. 23, subsection 19(2), sections 43 to 47 and 52.***

**19. (2)** Subject to subsections (3) and (4), if the claimant has earnings during any other week of unemployment, there shall be deducted from benefits payable in that week the amount, if any, of the earnings that exceeds

- (a) \$50, if the claimant's rate of weekly benefits is less than \$200; or
- (b) 25% of the claimant's rate of weekly benefits, if that rate is \$200 or more.

**43.** A claimant is liable to repay an amount paid by the Commission to the claimant as benefits

- (a) for any period for which the claimant is disqualified; or
- (b) to which the claimant is not entitled.

**44.** A person who has received or obtained a benefit payment to which the person is disentitled, or a benefit payment in excess of the amount to which the person is entitled, shall without delay return the amount, the excess amount or the special warrant for payment of the amount, as the case may be.

**45.** If a claimant receives benefits for a period and, under a labour arbitration award or court judgment, or for any other reason, an employer, a trustee in

**19. (2)** Sous réserve des paragraphes (3) et (4), si le prestataire reçoit une rémunération durant toute autre semaine de chômage, il est déduit des prestations qui lui sont payables un montant correspondant à la fraction de la rémunération reçue au cours de cette semaine qui dépasse 50 \$, ou vingt-cinq pour cent de son taux de prestations hebdomadaires si celui-ci est de 200 \$ ou plus.

**43.** La personne qui a touché des prestations en vertu de la présente loi au titre d'une période pour laquelle elle était exclue du bénéfice des prestations ou des prestations auxquelles elle n'est pas admissible est tenue de rembourser la somme versée par la Commission à cet égard.

**44.** La personne qui a reçu ou obtenu, au titre des prestations, un versement auquel elle n'est pas admissible ou un versement supérieur à celui auquel elle est admissible, doit immédiatement renvoyer le mandat spécial ou en restituer le montant ou la partie excédentaire, selon le cas.

**45.** Lorsque le prestataire reçoit des prestations au titre d'une période et que, soit en application d'une sentence arbitrale ou d'un jugement d'un tribunal,

bankruptcy or any other person subsequently becomes liable to pay earnings, including damages for wrongful dismissal or proceeds realized from the property of a bankrupt, to the claimant for the same period and pays the earnings, the claimant shall pay to the Receiver General as repayment of an overpayment of benefits an amount equal to the benefits that would not have been paid if the earnings had been paid or payable at the time the benefits were paid.

**46.** (1) If under a labour arbitration award or court judgment, or for any other reason, an employer, a trustee in bankruptcy or any other person becomes liable to pay earnings, including damages for wrongful dismissal or proceeds realized from the property of a bankrupt, to a claimant for a period and has reason to believe that benefits have been paid to the claimant for that period, the employer or other person shall ascertain whether an amount would be repayable under section 45 if the earnings were paid to the claimant and if so shall deduct the amount from the earnings payable to the claimant and remit it to the Receiver General as repayment of an overpayment of benefits.

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

soit pour toute autre raison, l'employeur ou une personne autre que l'employeur — notamment un syndic de faillite — se trouve par la suite tenu de lui verser une rémunération, notamment des dommages-intérêts pour congédiement abusif ou des montants réalisés provenant des biens d'un failli, au titre de la même période et lui verse effectivement la rémunération, ce prestataire est tenu de rembourser au receveur général à titre de remboursement d'un versement excédentaire de prestations les prestations qui n'auraient pas été payées si, au moment où elles l'ont été, la rémunération avait été ou devait être versée.

**46.** (1) Lorsque, soit en application d'une sentence arbitrale ou d'un jugement d'un tribunal, soit pour toute autre raison, un employeur ou une personne autre que l'employeur — notamment un syndic de faillite — se trouve tenu de verser une rémunération, notamment des dommages-intérêts pour congédiement abusif ou des montants réalisés provenant des biens d'un failli, à un prestataire au titre d'une période et a des motifs de croire que des prestations ont été versées à ce prestataire au titre de la même période, cet employeur ou cette autre personne doit vérifier si un remboursement serait dû en vertu de l'article 45, au cas où le prestataire aurait reçu la rémunération et, dans l'affirmative, il est tenu de retenir le montant du remboursement sur la rémunération qu'il doit payer au prestataire et de le verser au receveur général à titre de remboursement d'un versement excédentaire de prestations.

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

toute autre modalité prévue par la présente loi.

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

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

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

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

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

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

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

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

(2) If the Commission decides that a person  
(a) has received money by way of benefits for which the person was not qualified or to which the person was not entitled, or  
(b) has not received money for which the person was qualified and to which the person was entitled,  
the Commission shall calculate the amount of the money and notify the claimant of its decision and the decision is subject to appeal under section 114.

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

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

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

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

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

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

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

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

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

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

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

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-522-08

**(APPLICATION FOR JUDICIAL REVIEW OF A DECISION OF THE UMPIRE, DAVID G. RICHE, DATED AUGUST 22, 2008, CUB NO. 71002)**

**STYLE OF CAUSE:** JACIRA BRAGA v.  
ATTORNEY GENERAL OF  
CANADA

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** MAY 13, 2009

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

**CONCURRED IN BY:** EVANS J.A.  
LAYDEN-STEVENSON J.A.

**DATED:** MAY 26, 2009

**APPEARANCES:**

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Adam Rambert FOR THE RESPONDENT

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**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-523-08

**(APPLICATION FOR JUDICIAL REVIEW OF A DECISION OF THE UMPIRE, DAVID G. RICHE, DATED AUGUST 22, 2008, CUB NO. 71001)**

**STYLE OF CAUSE:** BRIAN BORGES v.  
ATTORNEY GENERAL OF  
CANADA

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** MAY 13, 2009

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

**CONCURRED IN BY:** EVANS J.A.  
LAYDEN-STEVENSON J.A.

**DATED:** MAY 26, 2009

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**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-526-08

**(APPLICATION FOR JUDICIAL REVIEW OF A DECISION OF THE UMPIRE, DAVID G. RICHE, DATED AUGUST 22, 2008, CUB NO. 70999)**

**STYLE OF CAUSE:** GRACA LOPES DOS SANTOS v.  
ATTORNEY GENERAL OF  
CANADA

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** MAY 13, 2009

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

**CONCURRED IN BY:** EVANS J.A.  
LAYDEN-STEVENSON J.A.

**DATED:** MAY 26, 2009

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**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-527-08

**(APPLICATION FOR JUDICIAL REVIEW OF A DECISION OF THE UMPIRE, DAVID G. RICHE, DATED AUGUST 22, 2008, CUB NO. 70998)**

**STYLE OF CAUSE:** MANUEL ALMEIDA v.  
ATTORNEY GENERAL OF  
CANADA

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** MAY 13, 2009

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

**CONCURRED IN BY:** EVANS J.A.  
LAYDEN-STEVENSON J.A.

**DATED:** MAY 26, 2009

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**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-528-08

**(APPLICATION FOR JUDICIAL REVIEW OF A DECISION OF THE UMPIRE, DAVID G. RICHE, DATED AUGUST 22, 2008, CUB NO. 71000)**

**STYLE OF CAUSE:** MARIA AMORIM v.  
ATTORNEY GENERAL OF  
CANADA

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** MAY 13, 2009

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

**CONCURRED IN BY:** EVANS J.A.  
LAYDEN-STEVENSON J.A.

**DATED:** MAY 26, 2009

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