Federal Court of Appeal | Cour d'appel fédérale

Date: 20100708

Dockets: A-483-09

Citation: 2010 FCA 182

CORAM: **LÉTOURNEAU J.A.**
PELLETIER J.A.
STRATAS J.A.

BETWEEN:

ZORA S. GILL

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Vancouver, British Columbia, on June 2, 2010.

Judgment delivered at Ottawa, Ontario, on July 8, 2010.

REASONS FOR JUDGMENT BY: STRATAS J.A.

CONCURRED IN BY: LÉTOURNEAU J.A.
PELLETIER J.A.

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REASONS FOR JUDGMENT

STRATAS J.A.

[1] Under the *Employment Insurance Act*, S.C. 1996, c. 23 (the "Act"), claimants for employment insurance benefits who engage in misconduct, such as filing false information in support of a claim, face potential consequences. The Canadian Employment Insurance Commission can assess a penalty against them; they can also be prosecuted under the Act or the *Criminal Code*, R.S.C. 1985, c. C-46, and be found guilty.

[2] The question in this application for judicial review is one of statutory interpretation. When the Commission has assessed a penalty against a claimant or where the claimant has been prosecuted and found guilty of an offence, must the Commission also issue a "notice of violation" against the claimant? Or does the Commission have the discretion not to issue the notice?

[3] This matters a great deal. The general thrust of the Act is that a claimant must work a particular number of hours before being able to receive benefits. But when a notice of violation has been issued against the claimant, the Act regards the claimant as having "accumulated a violation." Those with a violation in the last five years must work more hours before they are able to receive benefits. Simply put, then, the issuance of a notice of violation imposes an additional sanction upon a claimant, over and above a penalty or a finding of liability for an offence, by increasing the number of "qualifying hours" that a claimant must have before being able to receive benefits. This additional sanction can be most severe: a claimant, put out of work, might have been able to obtain benefits but for the increase in qualifying hours.

[4] Seven decisions of this Court, described below, have touched upon or dealt with this issue. Unfortunately, these cases cannot be reconciled. Foremost of these cases is *Canada (Attorney General) v. Savard*, 2006 FCA 327, [2007] 2 F.C.R. 429, in which my colleague, Justice Létourneau, writing for the Court, examined four earlier cases and attempted to resolve the issue once and for all. In *Savard*, this Court ruled that the Commission does have the discretion whether or not to issue a notice of violation. But, says the respondent, two later decisions of this Court, dealing with the issue, conflict with *Savard*, and the ruling in *Savard* was *obiter*. In light of this, the

respondent says that the issue remains unsettled. The parties agree that the issue now arises squarely for decision in this case.

[5] In my view, *Savard* correctly states the law. Where a claimant has been assessed a penalty or has been prosecuted and found guilty of an offence, the Commission does have the discretion to decline to issue a notice of violation. Under subsection 7.1(4), a claimant does not automatically accumulate a violation and thereby bear the burden of increased qualifying hours. To work that result, clearer statutory wording would be required.

A. The facts

(1) The applicant's employment

[6] The applicant emigrated from India. He was illiterate and without formal schooling. Soon after his arrival in Canada, he worked on farms in the lower mainland of British Columbia, picking berries and vegetables. S&S Harvesting Ltd. was his employer.

(2) The applicant's employment insurance claim

[7] On November 12, 1997, after the applicant's employment ended, he filed a claim with the Commission for employment insurance benefits. In support of that application, he submitted a record of employment from S&S Harvesting Ltd. The record represented that the applicant had

worked 954 insurable hours, with $7,183.62 in insurable earnings. The applicant also made a representation during an interview with a Commission employee, and made further representations in 14 bi-weekly report cards submitted in support of his claim. As will be seen below, these representations, 16 in all, were later found to be false and misleading.

(3) The Act: sanctions imposed for misconduct

[8] The Act identifies and imposes sanctions for various forms of misconduct. In Part I of the *Employment Insurance Act*, S.C. 1996, c. 23, claimants who engage in certain forms of misconduct, including the filing of false or misleading information in support of a claim, can have certain sanctions assessed against them:

(a) There are warnings or monetary sanctions: section 38 and sections 40 to 41.1. The Act calls these “penalties.”

(b) Another sanction involves increasing, for a period of five years, the number of insurable hours that a claimant needs in order to qualify for employment insurance benefits. This sanction of increased qualifying hours is imposed in the case of “violations” in certain circumstances: see section 7.1.

(4) The false and misleading representations

[9] Following an investigation of S&S Harvesting Ltd., it was discovered that the applicant had worked only 676 insurable hours, with $5,090.28 in insurable earnings.

[10] As a result of this, three things happened. First, on April 20, 2000, the Commission rejected the applicant's claim for employment insurance benefits, as he had not worked the minimum 910 hours of insurable employment. He had worked only 676 insurable hours, not 954 hours. Second, the applicant had been receiving benefits; the rejection of the applicant's claim meant that there was an overpayment to the applicant of $5,352. Third, in accordance with the statutory framework of sanctions, described above, the Commission imposed 16 penalties totalling $2,189 against the applicant for providing false or misleading information in the 16 representations he made. It also issued a notice of violation against him.

(5) The applicant's appeal

[11] The applicant appealed to the Board of Referees. The Board of Referees confirmed that the applicant was not entitled to employment insurance benefits. It also dismissed his appeal against penalty but reduced the amount of the penalty to $1.00. It allowed his appeal against the notice of violation and set it aside.

[12] The drastic reduction in the penalty and the setting aside the notice of violation was prompted by new mitigating factors. The applicant was suffering a number of ailments, including dementia. A significant penalty would have serious consequences for his family. The Board of Referees also accepted the applicant's evidence concerning the reprehensible actions of his employer and the vulnerability of the farmworkers in this employment relationship.

(6) The Commission's further appeal

[13] The Commission appealed to the Umpire. Before the Umpire, the Commission did not challenge the existence of mitigating and humanitarian grounds and the reduction of the penalty to $1.00. The Commission appealed only on the issue of whether the Board of Referees could set aside the notice of violation. This turned on whether or not a notice of violation was mandatory or automatic under the opening words of subsection 7.1(4) of the Act, which reads as follows:

Violations	*Violations*
7.1. (4) An insured person accumulates a violation if in any of the following circumstances the Commission issues a notice of violation to the person:	**7.1.** (4) Il y a violation lorsque le prestataire se voit donner un avis de violation parce que, selon le cas :
(*a*) one or more penalties are imposed on the person under section 38, 39, 41.1 or 65.1, as a result of acts or omissions mentioned in section 38, 39 or 65.1;	*a*) il a perpétré un ou plusieurs actes délictueux prévus à l'article 38, 39 ou 65.1 pour lesquels des pénalités lui ont été infligées au titre de l'un ou l'autre de ces articles, ou de l'article 41.1;
(*b*) the person is found guilty of one or more offences under section 135 or 136 as a result of acts or	*b*) il a été trouvé coupable d'une ou plusieurs infractions prévues à l'article 135 ou 136;

omissions mentioned in those sections; or	
(*c*) the person is found guilty of one or more offences under the Criminal Code as a result of acts or omissions relating to the application of this Act.	*c*) il a été trouvé coupable d'une ou plusieurs infractions au *Code criminel* pour tout acte ou omission ayant trait à l'application de la présente loi.

[14] If subsection 7.1(4) makes a notice of violation mandatory or automatic whenever the circumstances in paragraphs (*a*), (*b*), or (*c*) are present, then in this case the Board of Referees had no jurisdiction to set aside the notice of violation; the notice of violation had to issue, and upon its issuance, the applicant accumulated a violation and bore the burden of an increase in qualifying hours. If, on the other hand, subsection 7.1(4) makes the issuance of a notice of violation a discretionary matter for the Commission, then the Board of Referees did have the jurisdiction to set aside the notice of violation. That result would have left the applicant with no violation; the number of qualifying hours would have remain the same.

[15] The Umpire allowed the Commission's appeal. The Umpire concluded that subsection 7.1(4) makes a notice of violation mandatory or automatic, and so the Board of Referees had no jurisdiction to set it aside. In the end result, the applicant was to pay a nominal $1.00 penalty owing to his strained circumstances, but for the next five years the number of hours he would need to qualify would be higher. Under the Act, his violation was classified as "serious" and so the increase in the number of hours was significant.

[16] In this Court, the applicant has applied for judicial review of the Umpire's decision.

B. Analysis

[17] Is the issuance of a notice of violation under subsection 7.1(4) of the Act mandatory and automatic? Or does the Commission have a discretion?

(1) Previous decisions of this Court

[18] As mentioned above, this is not the first time that this issue has come before this Court. Seven decisions have dealt with or have touched upon this issue. Of these, for reasons set out below, *Savard* is the most significant of the seven. Therefore, in analyzing these cases, I shall divide them into three categories: the four cases before *Savard*, the *Savard* case, and the two cases after *Savard*.

(a) The four cases before Savard

[19] Before *Savard*, there were four decisions that touched on this issue. In each of these cases, a fully adversarial context was not present: a benefits claimant, who was unrepresented by counsel, was pitted against the Crown, who was represented by counsel. In three of these cases, *Geoffroy*, *Limosi* and *Piovesan* – all of which *Savard* later corrected – the Court dealt with this issue very briefly and in passing, without a full examination of the statutory framework and the purposes of the Act. Here are the four decisions:

(a) *Canada (Attorney General) v. Geoffroy*, 2001 FCA 105, 272 N.R. 372. In brief, eight paragraph reasons that did not examine the full statutory context, the Court decided that a "violation" is automatic.

(b) *Canada (Attorney General) v. Limosi*, 2003 FCA 215, [2003] 4 F.C. 481. In this case, the claimant argued that he had not accumulated a "violation" because the notice of violation had not been delivered to him. In the course of rejecting the claimant's argument, this Court observed that a "violation" is automatic. This observation was made in passing and was not necessary to the outcome of the appeal.

(c) *Canada (Attorney General) v. Szczech*, 2004 FCA 366. The issue before this Court was whether the five year period for a "violation" runs from the date of commission of the "violation" or when the Commission issues the notice of violation. This Court held that the period runs from the time that the Commission issues a notice of violation. Although not explicitly stated in *Szczech*, this holding would be consistent with a view that a "violation" is not automatic but happens if and only if the Commission decides to issue a notice of violation – *i.e.* the Commission has a discretion whether or not to issue a notice of violation.

(d) *Canada (Attorney General) v. Piovesan*, 2006 FCA 245. The issue before the Court was whether the giving of a warning, instead of the imposition of a monetary

> penalty, triggered an increase in the number of qualifying hours. This Court answered in the affirmative. In the course of its brief, five paragraph reasons, it observed (at paragraph 4) that "a person accumulates a violation if the Commission issues a notice of violation."

(b) The Savard *case*

[20] In *Canada (Attorney General) v. Savard*, 2006 FCA 327, [2007] 2 F.C.R. 429, this Court considered whether a notice of violation must be served on the claimant, as opposed to merely being issued, in order for the sanction of increased qualifying hours to be applied. This Court answered that question in the negative.

[21] The Court in *Savard* went further. Taking advantage of the presence of opposing parties represented by counsel, it systematically and exhaustively dealt with the prior four cases in light of the structure of the penalty/violation provisions of the Act. It asked itself whether the earlier jurisprudence was "manifestly wrong" under the test in *Miller v. Canada (Attorney General)*, 2002 FCA 370, 220 D.L.R. (4th) 149 and required correction. The Court in *Savard* answered that in the affirmative – after finally receiving the benefit of full argument and full information (at paragraph 4, *per* Létourneau J.A.), it concluded that *Geoffrey*, *Limosi* and *Piovesan* should be corrected.

> Of the five challenges that have been initiated, I must say that this is the first in which, thanks to Quebec Legal Aid, the claimant is represented by counsel, *i.e.* Mr. Jean-Pierre Marcotte. We were therefore able to have the advantage of some enlightenment that had been absent up to the present, in the absence of adversarial proceedings. I have been

> convinced, in the light of new arguments made to the Court and of the new documentation filed by the respondent's counsel [the Human Resources and Social Development Canada *Digest of Benefit Entitlement Principles*, chapter 18], of the need to revisit the four other previous decisions. I am persuaded that three of these decisions [*Geoffroy*, *Limosi* and *Piovesan*], in some aspects, would not have been the same if this enlightening additional information could have been brought to the attention of the members of the various panels that rendered them. This is a situation that meets the test propounded in *Miller v. Canada (Attorney General)* [citation omitted], and it is warranted to make the necessary corrections to those decisions.

[22] Fortuitously, a majority of the panel in *Savard* – Décary, Létourneau and Nadon JJ.A. – had first-hand knowledge of some the cases it was correcting. Décary J.A. authored the unanimous reasons in *Geoffroy* and *Piovesan*. Létourneau J.A. wrote the unanimous reasons in *Limosi*, and Décary J.A.was part of that panel too. A majority of the panel in *Savard* were revisiting their own previous decisions – assisted, for the first time on this issue, by counsel on both sides and by new information.

[23] Writing for the unanimous Court, in *Savard*, Létourneau J.A. examined the words of subsection 7.1(4), the relevant scheme of the Act (namely sections 7.1, 38, 40, 41.1, 125 and 135), and the purpose of the Act. This was an approach to interpretation consistent with that prescribed by the Supreme Court of Canada in *Bell ExpressVu Limited Partnership v. Rex*, [2002] 2 S.C.R.559, 2002 SCC 42 at paragraphs 26 and 27. As a result of its examination, this Court concluded that indeed the Commission does have the discretion to decide whether or not to issue a notice of violation. Put another way, the Commission *may* issue a notice of violation as an additional sanction, but it is not mandatory. The Court put it this way in *Savard* (at paragraph 25):

> If the act or omission is serious enough, the Commission may decide it is appropriate to impose an additional sanction and find that there has been a violation within the meaning of section 7.1. This sanction takes the form of the issuance of a notice of violation under subsection 7.1(4).

Later in its reasons, the Court added (at paragraphs 37-38):

> The Commission has discretion to impose sanctions when one or more of the acts or omissions set out in subsection 38(1) have been committed. It also has the discretion, within the limits provided by the Act, to choose the deterrent measure(s) appropriate in the circumstances, should more than one punitive measure prove necessary to fulfil the purposes of the Act. Instead of imposing a monetary penalty, it may choose, as section 41.1 allows it to do, to give the claimant a warning, which *may* be followed by a notice of violation as defined in section 7.1
>
> …
>
> *On the other hand, if the circumstances of the perpetration of the act or omission require, in the Commission's opinion, more than a monetary sanction, the Commission may reinforce or augment the monetary sanction by issuing a notice of violation pursuant to subsection 7.1(4).* The violation then arises as of the day when the notice is issued and the date of this violation is the date on which the notice is issued. [emphasis added]

(c) The cases after Savard

[24] Immediately after *Savard*, this Court decided two more cases and made comments consistent with *Geoffroy*, *Limosi* and *Piovesan*, and inconsistent with *Savard*. These cases did not mention *Savard*; *Savard* was not cited to the Court in argument. Just as in *Geoffroy*, *Limosi* and *Piovesan*, the discussion of the issue in these two cases was brief, in passing, and without a full examination of the statutory framework and the purposes of the Act. Just as in *Geoffroy*, *Limosi* and *Piovesan*, a fully adversarial context was not present: a benefits claimant, who was unrepresented by counsel, faced the Crown, who was represented by counsel. These two post-*Savard* cases are:

(a) *Canada (Attorney General) v. Kaur*, 2007 FCA 287. The issue was whether the Umpire could reverse the Commission's decision to impose a penalty, issue a warning instead, and cancel a notice of violation. This Court held that the Umpire could not freely substitute his decision for that of the Commission. In the course of its reasons, at paragraph 34, this Court observed in passing that under subsection 7.1(1) of the Act, "a notice of violation follows when a penalty is imposed under subsection 7.1(4) of the Act" and "neither the Commission nor the Umpire has any discretion in this regard." The benefits claimant was unrepresented by counsel.

(b) *Patry v. Canada (Attorney General)*, 2007 FCA 301. In the course of determining a judicial review from a decision of the Umpire under the Act, the Court observed in passing (at paragraph 9) that a "notice of violation…was a mandatory consequence of the imposition of the penalty under subsection 38(1) of the Act." Whether or not the notice of violation was mandatory does not appear to have been the focus of the applicant's judicial review proceeding.

(2) The parties' submissions in this case

[25] The applicant submitted that this Court's decision in *Savard* is the governing authority, and the four decisions before it and the two decisions after it should not be followed. In his view,

subsection 7.1(4) of the Act, properly interpreted, gives the Commission the discretion not to issue a notice of violation.

[26] The respondent Crown submitted that this Court's comments in *Savard* concerning this issue were *obiter*. As a result, this Court should revisit the issues in *Savard*. In its view, the Commission has no discretion whether or not to issue a notice of violation. This result, it says in its memorandum, is consistent with the Act's purpose: "to deter abuse of the employment insurance scheme by imposing an additional sanction on claimants who attempt to defraud the system." The respondent did not refer the Court to any material, such as *Hansard* or legislative history, which might evidence the purpose it posited. Such material has been found to be useful in interpreting social benefits legislation: *Finlay v. Canada (Minister of Finance)*, [1993] 1 S.C.R. 1080 at pages 1105 to 1113.

(3) Is Savard *obiter?*

[27] It is true that the issue in *Savard*, narrowly construed, was whether a notice of violation must be served on the claimant in order for the sanction of increased qualifying hours to be applied. Its finding, that service is not required, did not require the Court to determine whether issuance of a notice of violation is mandatory or automatic. I agree with the respondent that that determination in *Savard* was not legally necessary for its decision. In that most strict legal sense, it was *obiter*. However, I do not agree with the respondent that this Court's comments in *Savard* should be disregarded. Far from it.

[28] The doctrine of "*obiter dictum*" used to hold sway in Anglo-Canadian jurisprudence. Under that doctrine, later courts were not bound, and indeed could ignore, rulings and observations that, strictly speaking, were unnecessary for the case to be decided. But, in recent decades, this doctrine has held much less sway. For example, in *Hedley Byrne & Co. Ltd. v. Heller & Partners Ltd.*, [1964] A.C. 465, [1963] 2 All E.R. 575 (H.L.), the plaintiff alleged that the defendant bank was negligent when it provided an opinion of creditworthiness. But the bank escaped liability because of an exculpatory clause. Strictly speaking, the House of Lords did not have to rule on whether negligent misstatement could give rise to liability, but did so, and confirmed that liability could indeed arise. Ever since that time, Anglo-Canadian courts have applied that ruling, a ruling that was indisputably *obiter*.

[29] Today, many decisions of our Supreme Court advance propositions that, strictly speaking, are not central to the disposition of the case, yet those propositions often are cited with appropriate force in later cases.

[30] The real question is the extent to which a later court should consider itself bound by earlier *obiter*. Some *obiter* is purely gratuitous in the circumstances and is not grounded on the full submissions of opposing parties. However, some *obiter* is prompted by circumstances of strong practicality and justice, and is informed by full submissions from adverse parties represented by counsel.

[31] In my view, we should consider ourselves bound by the *obiter* determination in *Savard*. That Court was prompted by strong practicality and justice and had the benefit, a rare one in this context, of full submissions by adverse parties who were represented. For the first time, it was "in a position to describe finally, and with…some coherence, the [employment insurance] system adopted by Parliament and how it works" (at paragraph 18). This enabled it to examine previous case law that was not informed by adversarial submissions advanced by opposing lawyers and to correct that case law if it turned out to be "manifestly wrong": *Miller, supra* at paragraph 10. Letting this opportunity slip by might have left the shortcomings of earlier jurisprudence to continue to be applied in future cases, with detrimental results. Further, as noted above, a majority of the panel in *Savard* had sat on panels in the earlier cases and felt the need to review and correct its previous decisions. In my view, in these circumstances, *Savard* truly determined this matter for all practical intents and purposes.

(4) Was Savard *correctly decided?*

[32] The respondent Crown argued that *Savard* was incorrectly decided and should not be followed. To assess this submission, I examined the reasoning and result in *Savard* in light of the language of subsection 7.1(4), the scheme of the Act, and the purpose of the Act.

[33] In my view *Savard* is correct for the reasons it offered. Therefore, I adopt the reasoning and result in *Savard* and apply it to this case. In my view, the Commission does have discretion under

subsection 7.1(4) of the Act to issue a notice of violation or not to issue a notice of violation, depending on the circumstances.

[34] In addition to the reasoning and result in *Savard*, and with the benefit of the full submissions that the Court received from the parties before us who were both represented, I offer four further reasons in support of my conclusion that *Savard* was correctly decided and that the Commission has this discretion under subsection 7.1(4).

I

[35] Parliament could have drafted the legislation to require that the Commission must issue a notice of violation upon the happening of any circumstance described in section 7.1. It did not do so. Subsection 7.1(4) states that a person accumulates a violation "*if* in any of the following circumstances the Commission issues a notice of violation to the person" [emphasis added].

II

[36] Interpreting subsection 7.1(4) as imposing a mandatory or automatic sanction would sit in startling contrast with the rest of this administrative regime. This is an administrative regime that, at every step, bestows administrative discretion of the widest sort to the Commission. The Commission has the discretion whether to proceed with a penal process or an administrative process: section 40 and subsection 135(2) of the Act. If a penal process is chosen, the Commission has the discretion to prosecute under subsection 135(1) of the Act or under the *Criminal Code*. If an administrative process is chosen, the Commission has the discretion under section 41.1 of the Act to

impose a monetary sanction, or just a warning. If a pecuniary sanction is chosen, the Commission has the discretion under subsection 38 concerning the amount, up to the maximum under the Act. In the midst of this sea of discretion, did Parliament really intend to create an anomalous island of mandatory and automatic sanction, and a tough sanction at that? In my view, given the framework of this administrative regime, only the clearest of words would make that so.

III

[37] The overall purpose of the Act is "to create a social insurance plan to compensate unemployed workers for loss of income from their employment and to provide them with economic and social security for a time, thus assisting them in returning to the labour market": *Tétreault-Gadoury v. Canada (Employment and Immigration Commission)*, [1991] 2 S.C.R. 22 at page 41. In the case of social benefits legislation such as this, "any doubt arising from the difficulties of the language should be resolved in favour of the claimant": *Abrahams v. Attorney General of Canada*, [1983] 1 S.C.R. 2 at page 10 and see also *Finlay v. Canada (Minister of Finance)*, *supra* at page 1113 to 1115. To the extent that subsection 7.1(4) is ambiguous on the issue of whether the Commission has the discretion not to issue a notice of violation, that ambiguity should be resolved in favour of the claimant.

[38] In this regard, as noted above, the respondent Crown has asserted that the purpose of section 7.1 is "to deter abuse of the employment insurance scheme by imposing an additional sanction on claimants who attempt to defraud the system." I agree that that is the purpose of section 7.1. But that is the purpose that underlies the rest of the sanctioning regime in the Act too. As we have seen, the

sanctioning regime in the Act is suffused with multiple administrative discretions. The purpose that the Crown posits for section 7.1 does not necessarily lead to the conclusion that when one of the circumstances in section 7.1(4) is present, a notice of violation is, unlike all of the other sanctions in this sanctioning regime, automatic.

IV

[39] Interpretations that give rise to unexpectedly harsh or inequitable consequences should be avoided unless clearly required by the wording, structure and purposes of the Act: *Re Rizzo & Rizzo Shoes Ltd.*, [1998] 1 S.C.R. 27 at paragraph 27. In a scholarly and helpful article, "Les sanctions administratives de l'assurance-emploi: entre solidarité, assurance et répression" (2009) 50 *Les Cahiers de Droit* 825, Professor Pierre Issalys addresses the harshness of interpreting subsection 7.1(4) as imposing a mandatory "sur-sanction," a severe sanction on top of another sanction.

[40] In my view, the Crown's interpretation of subsection 7.1(4) would impose an unexpectedly harsh or inequitable consequence. Suppose that, as in the case at bar, the Commission has levied the smallest of penalties against a claimant ($1.00) in response to mitigating circumstances and out of humanitarian concern. The Crown's interpretation of subsection 7.1(4) would require the claimant to accumulate a greater number of hours before qualifying for benefits and for many that might be an extremely tough sanction. Such an interpretation would have a particularly severe impact upon those who must claim benefits periodically due to the nature of their employment, such as seasonal workers. In my view, to effect such a result, clearer language in subsection 7.1(4) is necessary.

(5) Applying the conclusions to the facts of this case

[41] It follows from the foregoing that the Commission did have the discretion under subsection 7.1(4) of the Act whether or not to issue a notice of violation. A notice of violation is not mandatory or automatic under subsection 7.1(4). To the extent that this Court's decisions in *Geoffroy*, *Limosi*, *Piovesan*, *Kaur* and *Patry* suggest otherwise, they should not be followed.

[42] I conclude that the Board of Referees did have the jurisdiction to set aside the notice of violation. The Umpire erred in holding to the contrary.

C. Proposed disposition

[43] Therefore, I would grant the application for judicial review, quash the decision of the Umpire, and restore the decision of the Board of Referees.

"David Stratas"

J.A.

"I agree
Gilles Létourneau J.A."

"I agree
J.D. Denis Pelletier J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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