Federal Court of Appeal | Cour d'appel fédérale

Date: 20240318

Docket: A-71-23

Citation: 2024 FCA 46

CORAM: **STRATAS J.A.**
LASKIN J.A.
ROUSSEL J.A.

BETWEEN:

LEANNE MOLCHAN

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Vancouver, British Columbia, on October 4, 2023.

Judgment delivered at Ottawa, Ontario, on March 18, 2024.

REASONS FOR JUDGMENT BY: ROUSSEL J.A.

CONCURRED IN BY: STRATAS J.A.
LASKIN J.A.

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REASONS FOR JUDGMENT

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I. Overview

[1] The applicant, Ms. Molchan, seeks judicial review of a decision of the Appeal Division of the Social Security Tribunal dated February 10, 2023 (2023 SST 139).

[2] In February 2020, Ms. Molchan stopped working because of injuries caused in a car accident. As her sickness benefits were about to expire in June 2020, Ms. Molchan contacted the Canada Employment Insurance Commission to indicate that she had not yet recovered and could not return to work. Believing that she was acting on the advice of the Commission, she made a claim for regular benefits and reported that she was capable of and available for work. The Commission approved her application and she collected regular benefits for an additional 25 weeks.

[3] On March 4, 2021, the Commission contacted Ms. Molchan to discuss her availability for work. She confirmed to the Commission that she was not capable of working during the period she collected regular benefits. When asked why she reported being capable of working, she responded that she had done so on the advice of the two Service Canada agents to whom she had explained her situation in June 2020 (Applicant's record at 161).

[4] On March 11, 2021, the Commission retroactively reconsidered Ms. Molchan's entitlement to regular benefits and decided that she was not capable of and available for work, thereby creating an overpayment (Applicant's record at 172). Ms. Molchan sought reconsideration, but the Commission upheld its decision (Applicant's record at 183).

[5] Ms. Molchan appealed the Commission's decision to the General Division of the Social Security Tribunal, arguing that the Commission has no authority to reconsider a decision on availability unless presented with new facts. She maintained that she had been truthful and forthcoming about her situation and availability status from the beginning and that there were no

new facts to justify reconsideration of her availability. She insisted that the Service Canada agents had exercised their discretion to determine she was eligible for regular benefits and had told her to declare in her biweekly reports that she was available for work even though she was not. She further argued that the Commission had not followed its reconsideration policy, which provides that the Commission will not retroactively review decisions about availability if the Commission incorrectly paid benefits.

[6] The General Division dismissed Ms. Molchan's appeal (2022 SST 1625). In its decision dated May 30, 2022, the General Division began by indicating that it believed Ms. Molchan had received misleading advice about how to claim benefits after her sickness benefits ended. It then held that the Commission's authority under section 52 of the *Employment Insurance Act*, S.C. 1996, c. 23 (EIA) to retroactively reconsider Ms. Molchan's entitlement to benefits is a discretionary decision and found that the Commission had exercised its discretion judicially. As it was uncontested that Ms. Molchan was not capable of working during the period she received benefits, the General Division concluded that Ms. Molchan had not demonstrated she was entitled to regular benefits (Applicant's record at 246-253).

[7] The Appeal Division dismissed Ms. Molchan's appeal. It agreed with the parties that the General Division erred when it decided that the Commission only had to show that it reconsidered Ms. Molchan's claim within the statutory time limit to prove it exercised its discretion properly. The Appeal Division then substituted its decision for that of the General Division and found that the Commission had not exercised its discretion judicially because it had failed to consider relevant factors as required by the case law.

[8] The Appeal Division subsequently examined whether discretion should be exercised to reconsider the claim. After noting several factors arguing against reconsideration, the Appeal Division found that Ms. Molchan's false statements were pivotal to the Commission's assessment of her availability for work. Noting that the Commission's reconsideration policy lists false statements as one of the grounds in favour of reconsideration, the Appeal Division considered whether the policy should apply given that the Commission's agents had directed Ms. Molchan to make the false statements. After considering that a claimant cannot rely on misinformation from the Commission to be relieved of an overpayment, the Appeal Division reached the same conclusion as the Commission and maintained the overpayment.

[9] Before this Court, Ms. Molchan submits that the Appeal Division erred in concluding, first, that the Commission could retroactively reconsider her availability in the absence of new information and, second, that she had made false statements within the meaning of the Commission's reconsideration policy. In the alternative, she claims that the Appeal Division erred in concluding that the Commission had exercised its discretion judicially.

II. Analysis

A. *Standard of Review*

[10] The parties agree that the Appeal Division's decision is reviewable on the deferential standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65; *Page v. Canada (Attorney General)*, 2023 FCA 169 at para. 48; *Canada (Attorney*

General) v. Hull, 2022 FCA 82 at paras. 12-13; *Hillier v. Canada (Attorney General)*, 2019 FCA 44 at para. 12).

[11] When the standard of reasonableness applies, the Court's focus is on "whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov* at para. 99). It must be internally coherent, and display a rational chain of analysis (*Vavilov* at para. 85). The burden is on the party challenging the decision to show that it is unreasonable and the Court "must be satisfied that any shortcomings or flaws relied on … are sufficiently central or significant to render the decision unreasonable" (*Vavilov* at para. 100).

[12] One of the relevant constraints is subsection 58(1) of the *Department of Employment and Social Development Act*, S.C. 2005, c. 34 (DESDA). The Appeal Division can only intervene if the General Division (a) failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction; (b) erred in law in making its decision, whether or not the error appears on the face of the record; or (c) based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it. Paragraph 58(1)(*c*) of the DESDA does not allow the Appeal Division to overturn a decision of the General Division on the basis that it would have weighed the evidence differently (*Sibbald v. Canada (Attorney General)*, 2022 FCA 157 at para. 27; *Uvaliyev v. Canada (Attorney General)*, 2021 FCA 222 at para. 7).

[13] Once the Appeal Division finds there is a legitimate reason to intervene, it may proceed to decide questions of fact that are necessary for the disposition of the appeal (*Nelson v. Canada (Attorney General)*, 2019 FCA 222 at para. 17) and give the decision the General Division should have given or refer the matter back for reconsideration in accordance with any directions it considers appropriate (DESDA, subsection 59(1)).

B. *Reconsideration of Ms. Molchan's claim*

[14] At the outset, it is useful to set out the statutory and policy framework relevant to this application.

(1) Relevant Framework

[15] Employment insurance benefits are payable to claimants who meet the statutory requirements. To receive benefits, claimants must first qualify to receive benefits. They must demonstrate that they have suffered an interruption of earnings from employment and that they have had a minimum number of hours of insurable employment in a period preceding the claim (EIA, ss. 7, 8).

[16] Claimants must also not be disentitled to receive benefits. Pursuant to paragraph 18(1)(*a*) of the EIA, a claimant is not entitled to benefits if the claimant fails to prove that they were capable of and available for work and unable to obtain suitable employment.

[17] Subsection 52(1) of the EIA provides that the Commission may reconsider a claim for benefits within 36 months after benefits have been paid or would have been payable. 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, the Commission may seek repayment of the monies overpaid under subsections 52(2) and 52(3) of the EIA. If the Commission is of the opinion that a false or misleading statement or representation was made in connection with the claim, the Commission has an additional 36 months within which to reconsider the claim (EIA, subsection 52(5)).

[18] In exercising its discretion to reconsider a claim, the Commission is guided by a number of principles set out in its *Digest of Benefit Entitlement Principles.* Chapter 17 of the *Digest* addresses among other things, error correction and reconsideration. Sections 17.3.2.2, 17.3.3 and 17.3.3.2 are relevant to this application.

[19] Section 17.3.2.2 provides that a Commission error will occur when the Commission has all the relevant information needed to make a decision, but the information does not support the final decision. If benefits were incorrectly paid, the Commission will correct the error currently and no overpayment will be created. However, if the error resulted in a decision that is contrary to the structure of the EIA, the Commission will correct the error retroactively and an overpayment will occur.

[20] Additionally, section 17.3.3, entitled “Reconsideration policy”, provides that the Commission has developed a policy to ensure a consistent and fair application of section 52 of

the EIA and to prevent creating debt when a claimant was overpaid through no fault of their own. It further states that a claim will only be reconsidered when (1) benefits have been underpaid, (2) benefits were paid contrary to the structure of the EIA, (3) benefits were paid as a result of a false or misleading statement, and (4) the claimant ought to have known there was no entitlement to the benefits received. Section 17.3.3.2 specifies that decisions on availability are not decisions that run contrary to the structure of the EIA.

(2) Absence of New Information

[21] Ms. Molchan submits that the Appeal Division erred in finding that the Commission could reconsider her availability in the absence of any new information. She argues that allowing retroactive reconsideration in the absence of new information undermines the central object and purpose of the employment insurance scheme, which is to provide financial security to those put out of work through no fault of their own. She further argues that the power to retroactively reconsider a claim is an exceptional one and should be construed strictly.

[22] Ms. Molchan has failed to persuade me that the Appeal Division erred in this regard.

[23] The Appeal Division concluded that the Commission had the authority to reconsider Ms. Molchan’s claim for benefits, even in the absence of new information. In reaching this conclusion, the Appeal Division compared the Commission’s authority to reconsider a claim for benefits under section 52 of the EIA with its authority to rescind or amend a decision under section 111 of the EIA. The Appeal Division noted that, under section 111, the Commission has the authority to rescind or amend a decision given in any particular claim if new facts are

presented, or if it is satisfied that the decision was given without the knowledge of, or was based on a mistake as to, some material facts. In contrast, section 52 applies despite section 111 and is not limited to situations of new facts or mistakes of material facts. On this basis, the Appeal Division held that the reconsideration authority under section 52 was much broader than what Ms. Molchan advanced (AD Decision at paras. 67-69).

[24] While finding that new facts are not required for the Commission to exercise its reconsideration authority under section 52 of the EIA, the Appeal Division nonetheless agreed with Ms. Molchan that the absence of new facts is a relevant factor for the Commission to consider, as it goes to the finality of a decision. However, it added that other factors are equally relevant. One such factor, under the Commission's reconsideration policy, is false statements (AD Decision at paras. 75-76).

[25] The Appeal Division went on to add that, if it was wrong and new facts are indeed required for the Commission to exercise its authority under section 52 of the EIA, reconsideration of Ms. Molchan's claim was appropriate given that the overpayment did not arise because the Commission changed its mind on the same facts. While the Commission may have mistakenly decided that Ms. Molchan was initially entitled to benefits, her ongoing entitlement was assessed based on the information she provided in her bi-weekly reports, which was different from that initially reported verbally to the Commission.

[26] The Appeal Division explained that, starting the week of June 21, 2020, Ms. Molchan consistently answered "yes" in her biweekly reports when asked whether she was "ready, willing

and capable of working each day, Monday through Friday, during each week of this report". The Appeal Division found that this information was different from the information that she had previously provided to the Commission (AD Decision at paras. 79-81).

[27] Indeed, the record shows that, on June 19, 2020, the Commission formed the view that Ms. Molchan could transition to regular benefits on the premise that she was available for and capable of working, but not capable of doing the same work as in her previous employment because she could not sit for an extended period (Applicant's record at 152). This information is different from the information she gave to the Commission on March 4, 2021 when she confirmed to the agent that she could not work at all (Applicant's record at 161). On this basis, I am satisfied that the Appeal Division could reasonably conclude that there was new information justifying reconsideration of the claim.

[28] In any event, I find that the Appeal Division's conclusion that new facts or information are not required under section 52 of the EIA for the Commission to reconsider a claimant's entitlement is reasonable. First, subsection 52(1) of the EIA begins with the words "Despite section 111" ("*Malgré l'article 111*"). These words clearly suggest that the scope of subsection 52(1) is much broader than the power of rescission or amendment found in section 111 of the EIA, which is limited to the presentation of new facts. Second, the Appeal Division's interpretation is also consistent with this Court's decision in *Brière v. Canada (Employment and Immigration Commission)*, [1989] 3 F.C. 88, 57 D.L.R. (4th) 402 (F.C.A.), where the Court found that the equivalent of these provisions served different purposes (*Brière* at 112-114).

(3) False statements

[29] Ms. Molchan also submits that the Appeal Division could not reasonably find that she gave false information when she specifically reported what she was told to report.

[30] The Appeal Division accepted Ms. Molchan's submission that she was following the advice she received from the Commission's agents. However, it found that the statements made in the biweekly reports were nonetheless inaccurate (AD Decision at para. 84). The Appeal Division noted that a decision about capability and availability is not a onetime decision binding for the life of the benefit period and added that claimants must prove they are capable of and available for work for every working day in the benefit period (AD Decision at para. 85).

[31] In my view, the Appeal Division's reasoning is both factually reasonable and consistent with paragraph 18(1)(*a*) of the EIA and the relevant case law. Although her biweekly reports indicated the contrary, Ms. Molchan admitted that she was not capable of and available for work during the period she collected regular EI benefits.

[32] That said, the Appeal Division nonetheless considered whether it should refrain from applying the Commission's reconsideration policy given that Ms. Molchan was directed by the Commission to make the false statements (AD Decision at para. 113). Relying on the decision of this Court in *Canada (Attorney General) v. Buors*, 2002 FCA 372, the Appeal Division held that Ms. Molchan could not rely on the Commission's misinformation to avoid an overpayment.

[33] While Ms. Molchan may not agree with the Appeal Division's interpretation of the Commission's authority to reconsider her claim, she has not persuaded me that the Appeal Division's findings are unreasonable.

C. *Judicial exercise of discretion*

[34] In her memorandum of fact and law, Ms. Molchan submits that the Appeal Division erred in concluding that the Commission had exercised its discretion to reconsider the claim judicially. However, it is not what the Appeal Division concluded. It found the contrary.

[35] Nonetheless, Ms. Molchan argues that the Appeal Division misconstrued this Court's decision in *Buors*. She also contends that the Appeal Division unreasonably determined that financial hardship and delay were not relevant factors to the Commission's exercise of discretion to retroactively reconsider the claim. Finally, she is of the view that the Appeal Division unreasonably concluded that her claim should be retroactively reconsidered in all of the circumstances.

[36] Ms. Molchan's arguments must fail.

[37] First, the Appeal Division reasonably applied this Court's decision in *Buors* to find that Ms. Molchan could not rely on the Commission's misinformation to avoid the application of the Commission's reconsideration policy.

[38] Ms. Molchan had argued that her situation was distinguishable from the situation in *Buors* because that case involved a decision about a benefit rate, which rate was set by law and went to the structure of the EIA. The Appeal Division disagreed, finding instead that the decision in *Buors* was about the allocation of unreported earnings, which did not run contrary to the structure of the EIA, as defined by the Commission. The Appeal Division found that, in both cases, the overpayments had arisen due to misinformation about how to complete the reports. As a result, it felt bound by the direction of this Court in *Buors* (AD Decision at paras. 119-122).

[39] I find that the Appeal Division's findings are consistent with this Court's decision in *Buors*, which followed the majority decision in *Granger v. Canada Employment and Immigration Commission*, [1986] 3 F.C. 70, 29 D.L.R. (4th) 501 (F.C.A.) (*Granger*), later upheld by the Supreme Court of Canada in *Granger v. Canada (Canada Employment and Immigration Commission)*, [1989] 1 S.C.R. 141. This Court held in *Granger* that "the Commission and its representatives have no power to amend the law, and … therefore the interpretations which they may give of that law do not themselves have the force of law. … any commitment which [they] may give, whether in good or bad faith, to act in a way other than that prescribed by the law would be absolutely void and contrary to public order" (*Granger* at 77). The Appeal Division's findings are also consistent with this Court's decision in *Paxton v. Canada (Attorney General)*, 2002 FCA 360 at paragraphs 14-15. The Appeal Division could not ignore this relevant case law.

[40] Second, I am satisfied that the Appeal Division's treatment of financial hardship and delay was reasonable.

[41] After deciding to substitute its decision for that of the General Division, the Appeal Division examined which factors are relevant to the Commission's exercise of discretion to reconsider a claim. It began by noting that the EIA is silent on what factors are relevant to the exercise of discretion under section 52 of the EIA, but indicated that another decision of the Appeal Division, *M.S. v. Canada Employment Insurance Commission*, 2022 SST 933, had previously examined the issue in detail. The Appeal Division observed that in *M.S.*, another member had found that factors that help resolve the tension between claimants' ability to rely on the finality of decisions and the Commission's interest in their accuracy are relevant to the exercise of discretion. The member had determined that the factors set out in the Commission's reconsideration policy address this tension and are therefore relevant. However, it had added that, while the Commission should consider the factors in the policy, it is not necessarily bound to apply them (AD Decision at paras. 43-48).

[42] The Appeal Division agreed with the reasoning in *M.S.* and applied it to Ms. Molchan's situation. It added that there may be additional relevant factors aside from those listed in the policy, but specified that relevant factors are those that relate to finality and accuracy (AD Decision at para. 49).

[43] Applying these principles, the Appeal Division agreed with Ms. Molchan that, in exercising its discretion to reconsider the claim, the Commission had overlooked certain factors that the Commission's reconsideration policy identifies as relevant. Specifically, it noted that the Commission had failed to consider the impact of the Commission's error on Ms. Molchan as well as the absence of fault on Ms. Molchan's part. The Appeal Division also found that the

Commission had failed to take into account a factor which relates to the finality of the decision, namely that Ms. Molchan's reliance on the initial mistaken decision had led her not to pursue other possible pandemic-related benefits (AD Decision at paras. 97-100). Likewise, the Appeal Division noted that the Commission had not considered Ms. Molchan's honesty in dealing with the Commission (AD Decision at para. 103).

[44] However, the Appeal Division disagreed with Ms. Molchan on the relevance of other factors. Ms. Molchan had argued that the Commission's delay in addressing her entitlement had created a large debt and put her in a difficult financial situation in having to repay it. The Appeal Division found that the argument of delay was not relevant, as the Commission had acted within the statutory period (AD Decision at para. 102). The Appeal Division further found irrelevant that the Commission had not considered Ms. Molchan's financial hardship. The Appeal Division observed that financial hardship does not go directly to either of the factors of finality or accuracy; rather it is meant to be taken into account in the context of the write-off procedure provided in the legislation, in particular at subparagraph 56(1)(*f*)(ii) of the *Employment Insurance Regulations*, S.O.R./96-332 (AD Decision at para. 102). In the end, the Appeal Division concluded that the Commission had not exercised its discretion judicially when it failed to consider all relevant factors (AD Decision at para. 104).

[45] Having reached this conclusion, the Appeal Division then proceeded to give the decision the General Division should have given and considered whether discretion should be exercised to reconsider the claim. After noting several factors arguing against reconsideration, the Appeal Division found that Ms. Molchan's false statements, albeit made innocently, were pivotal to the

Commission's assessment of her availability for work. Had she accurately declared that she was not capable of work, the Commission could have corrected its initial error and Ms. Molchan would have stopped receiving benefits. Despite noting that the Commission's reconsideration policy lists false statements as a ground for reconsideration, the Appeal Division nonetheless considered whether the policy should be applied given that Ms. Molchan was directed to make false statements by the Commission. The Appeal Division felt bound by this Court's decision in *Buors* and determined that the claim was to be reconsidered, meaning that the overpayment remained.

[46] Ms. Molchan relies on this Court's decision in *Canada (Attorney General) v. Schembri*, 2003 FCA 463 to argue that financial hardship is a relevant factor when the Commission exercises its discretion.

[47] It does not appear from the record that *Schembri* was raised directly before either the General Division or the Appeal Division.

[48] In any event, I find that the *Schembri* decision is distinguishable.

[49] The issue in *Schembri* was whether the Commission was bound to take into account the claimant's financial circumstances when determining the penalty to impose. The claimant in that case had failed to report his earnings and collected unemployment benefits for several months. The Commission had calculated that the claimant had received a benefit overpayment of $4,130, which it sought to recover. It had also assessed a penalty under section 38 of the EIA, because

the claimant had received unemployment benefits by knowingly misreporting his income contrary to paragraph 38(1)(*c*) of the EIA. In determining the amount of penalty payable, the Commission considered the claimant's gambling addiction and his efforts to deal with it, and reduced the penalty by 25% to $3,097. The Board of Referees later exonerated the claimant from any penalty. The Umpire then found that the Commission had erred when it failed to undertake, on its own initiative, an inquiry into the claimant's financial circumstances and whether it would cause the claimant undue hardship to pay the proposed penalty. The Umpire reduced the penalty imposed by the Commission from 75% to 10% of the amount of the overpayment.

[50] On judicial review, this Court held that the Commission was not required to initiate its own inquiries into a person's financial circumstances before it imposed a penalty, noting that claimants have ample opportunities to request a reduction of the penalty on the ground of financial hardship at various stages of the process: before the penalty is imposed, on request for reconsideration and on appeal to the Board of Referees (*Schembri* at para. 14). Since the claimant had not raised the issue with the Commission and the Board of Referees, this Court decided that the Umpire should have held that the Board had no basis to interfere with the penalty.

[51] In my view, this Court's findings in *Schembri* do not extend to the reconsideration of a claimant's entitlement to benefits. The overpayment in *Schembri* was not in dispute, only the amount of penalty the claimant would have to pay. Subsection 38(1) of the EIA specifies the acts or omissions for which a claimant may be subject to a penalty and subsection 38(2) sets the maximum penalties the Commission may impose. Under section 41 of the EIA, the Commission

may rescind the imposition of a penalty or reduce it, on the presentation of new facts or on being satisfied that the penalty was imposed without knowledge of, or on the basis of a mistake as to, some material fact. Furthermore the Commission may issue, under section 41.1, a warning instead of setting the amount of a penalty for an act or omission under subsections 38(2) and 39(2) of the EIA. The Commission thus enjoys a wide discretion in assessing the amount of penalty and may consider financial hardship to the claimant as a mitigating factor.

[52] This is consistent with the Commission's policy regarding penalties, which mentions financial hardship as a possible mitigating circumstance when determining penalties (*Digest of Benefit Entitlement Principles*, section 18.5.2.2). It appears from the record that the Commission did not apply a penalty in Ms. Molchan's case despite her false statements (Applicant's record at 130, 173, 178).

[53] In contrast, the Commission's exercise of discretion under section 52 of the EIA is tied to a claimant's qualification for, or entitlement to, benefits and is guided by the factors set out in the Commission's reconsideration policy and those that relate to finality and accuracy. The Commission's policy does not list financial hardship as a factor. While the Appeal Division acknowledged that there may be other relevant factors, I have not been persuaded that financial hardship goes directly to either finality or accuracy.

[54] When the Commission finds, upon reconsideration, that the claimant was not entitled to receive benefits, it is required under subsection 52(2) to calculate the amount to which the claimant was not entitled and notify the claimant. Pursuant to subsection 52(3), the amount

calculated is repayable under section 43 of the EIA, which provides that a claimant is liable to repay an amount paid by the Commission as benefits and to which the claimant was not entitled. An amount payable under this provision becomes a debt due to His Majesty under subsection 47(1) of the EIA. Although the Commission has the discretion to reconsider the claim within a specified period, the Commission enjoys no discretion in setting the amount to be repaid since liability arises directly from a determination that the claimant was disentitled from receiving benefits (*Canada (Attorney General) v. Lévesque*, 2001 FCA 304 at para. 2). This is different from the Commission setting the amount of penalty a claimant should pay.

[55] In my view, the Appeal Division's comments regarding Ms. Molchan's ability to seek a write-off of her debt are consistent with the legislation, which sets out a specific procedure, a write-off, for undue hardship cases. Subparagraph 56(1)(*f*)(ii) of the *Employment Insurance Regulations* explicitly provides the Commission with the authority to write off an amount payable under section 43 of the EIA if repayment of the amount due would result in undue hardship to the claimant.

[56] That said, I am nonetheless of the view that the Appeal Division was clearly cognizant of and empathetic to the financial hardship to Ms. Molchan in having to repay her debt. Like the General Division, the Appeal Division implored the Commission and the Canada Revenue Agency to consider any request by Ms. Molchan to write off her debt, given the circumstances in which the overpayment arose. The Appeal Division even went as far as providing in a footnote the telephone number where she could call to seek relief.

[57] Finally, Ms. Molchan also contends that the Appeal Division unreasonably concluded that her claim should be retroactively reconsidered in all of the circumstances. I find that she is essentially asking the Court to reassess the relevant factors and the weight afforded to them in order to reach a different outcome. That is not this Court's role on judicial review.

[58] To conclude, despite her counsel's able submissions, I am satisfied that the Appeal Division's decision is reasonable. It is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and the law it was required to apply in the circumstances (*Vavilov* at para. 85). Although I am sympathetic to Ms. Molchan's unfortunate situation, I am unable to find any basis upon which to intervene.

[59] Accordingly, I would dismiss the application for judicial review. The respondent did not seek costs and none will be awarded.

"Sylvie E. Roussel"
J.A.

"I agree.
David Stratas J.A."

"I agree.
John B. Laskin J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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