

Federal Court



Cour fédérale

**Date: 20251205**

**Docket: T-2529-23**

**Citation: 2025 FC 1931**

**Ottawa, Ontario, December 5, 2025**

**PRESENT: The Honourable Mr. Justice Régimbald**

**BETWEEN:**

**ALICE GIANG**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] Ms. Alice Giang [Applicant] seeks judicial review of a decision of the Canada Employment Insurance Commission [Commission] refusing her request to write-off her employment insurance [EI] debt because it arose from misrepresentations on her EI application and reporting forms.

[2] The Commission held that the Applicant had misrepresented her ability to work during a period for which she received EI benefits and therefore received payments for which she was not entitled to. An overpayment under the *Employment Insurance Act*, SC 1996, c 23 [*EI Act*] was established and a Notice of Debt in the amount of \$16,115 was issued to the Applicant. A challenge of that decision was dismissed by the General Division of the Social Security Tribunal, and an application for leave to appeal of that decision was dismissed by the Appeal Division of the Social Security Tribunal. The Applicant did not appeal or seek judicial review of that decision.

[3] Instead, the Applicant sought a write-off from the Commission under section 56 of the *EI Regulations*, SOR/96-332 [*EI Regulations*]. The Commission dismissed that request because the conditions set out under section 56 had not been met, particularly due to the Applicant's misrepresentation. That decision is subject to judicial review in this case.

[4] For the reasons that follow, the application for judicial review is dismissed.

## II. Background Facts

[5] The Applicant worked in retail and as a lunch monitor for the Calgary Board of Education [BOE]. She left the BOE position in April 2020 as a result of the COVID-19 pandemic and the school closure.

[6] The Applicant initially received payments through the Canada Emergency Response Benefit program.

[7] In the fall of 2020, when the Applicant was due to return to her position at the BOE, she took a leave of absence for one month for medical reasons. After the initial one-month period of leave, the Applicant extended her leave of absence until February 2021.

[8] The Applicant did not return to her position with the BOE in February 2021. At the beginning of the following school year, in September 2021, she still had not returned and the BOE terminated her position because she had been absent for over one year.

[9] During her absence between the fall of 2020 and February 2021, the Applicant received sickness benefits under the *EI Act*. During that period, the Applicant completed her e-reports for the Commission and indicated that she was not available for work. These amounts are not in dispute.

[10] After February 2021, and until October 2021, the Applicant continued to complete her e-reports and indicated that she was available for work. However, she did not work during this time at the BOE or anywhere else.

[11] In November 2021, she contacted the Commission advising that she was unable to work because of an injury to her arm.

[12] The Commission interviewed the Applicant to determine the dates that she was unable to work for medical reasons, including the previous medical reasons and the more recent arm injury.

[13] The Commission found that the Applicant was not available for work for 32 weeks from February 2021 to October 2021. The Commission also found that the Applicant made misrepresentations regarding her availability for work for the same period. Finally, the Commission found that the Applicant did not reasonably look for work elsewhere during that period.

[14] The Commission therefore established an overpayment in the amount of \$16,115, as the Applicant was not eligible for EI benefits because she was not available for work between February 2021 to October 2021. The Commission issued a Notice of Debt in the same amount because the Applicant had made misrepresentations regarding her availability to work.

[15] The Applicant asked the Commission to consider writing-off a portion of her debt. The Commission issued a decision maintaining the full amount of the debt on the basis that the Commission did not have the power to write-off the debt as the Applicant misrepresented her availability to work during the period for which she received EI benefits.

[16] The Applicant also appealed the Commission's decision to the General Division of the Social Security Tribunal, which dismissed the appeal. The General Division found that the Applicant was not available nor capable of work from February 21 through October 2, 2021, due to complex medical issues, and had not made enough efforts to find a suitable job. The General Division also held that it did not have the authority to write-off an overpayment but that the Applicant could request the Commission to consider writing-off her debt.

[17] The Appeal Division did not grant leave to appeal, finding that her appeal had no reasonable chance of success.

[18] The Applicant did not appeal or seek judicial review of the Appeal Division decision.

### III. Issues and Standard of Review

[19] The sole issue is whether the Commission’s decision to not write-off the Applicant’s debt is reasonable.

[20] The applicable standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 25 [Vavilov]; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at paras 7, 39–44 [Mason]). To avoid judicial intervention, the decision must bear the hallmarks of reasonableness – justification, transparency and intelligibility (*Vavilov* at para 99; *Mason* at para 59). The decision must be read holistically and contextually, in light of the evidence, the submissions and the context in which it was rendered (*Pepa v Canada (Citizenship and Immigration)*, 2025 SCC 21 at para 47 [Pepa]; *Vavilov* at paras 94, 97). A decision may be unreasonable if the decision maker misapprehended the legal constraints of the evidence before it (*Vavilov* at paras 99, 101, 105, 108, 111, 125-128; *Mason* at para 73). However, the reviewing Court must refrain from “reweighing and reassessing the evidence considered by the decision maker” (*Vavilov* at para 125). In determining reasonableness, the reviewing Court must not create its “own yardstick” and use it to measure what the decision maker did (*Pepa* at para 48; *Vavilov* at para 83, and *Canada Post Corp. v Canadian Union of Postal Workers*, 2019 SCC 67 at para. 40). Reasonableness review is not a

“rubber-stamping” exercise, it is a robust form of review (*Vavilov* at para 13; *Mason* at para 63). The party challenging the decision bears the onus of demonstrating that the decision is unreasonable (*Vavilov* at para 100). Any alleged flaws must be “sufficiently central or significant to render the decision unreasonable” or cause the “reviewing court to lose confidence in the outcome reached” (*Vavilov* at paras 100, 106; *Pepa* at para 49).

#### IV. Analysis

[21] Employment insurance benefits are payable to claimants who qualify pursuant to the *EI Act*. Claimants must demonstrate that they have suffered an interruption of earnings from employment, that they have had a minimum number of hours of insurable employment in an applicable period, and that they were capable and available for work but they were unable to obtain suitable employment during the period (*EI Act*, ss. 7, 8, 18(1)(a); *Molchan v Canada (Attorney General)*, 2024 FCA 46 at paras 15, 16 [*Molchan*]).

[22] When seeking benefits, claimants must report every two weeks to the Commission and answer yes to the question, “Were you ready, willing and capable of working each day, Monday through Friday, during each week of this report?” If a claimant answers no to this question, they will not be entitled to EI benefits for the applicable period.

[23] An overpayment is established pursuant to section 43 of the *EI Act* when a claimant is paid benefits for which they are not entitled. The overpayment becomes a debt owed to the Crown under section 47 of the *EI Act*.

[24] Subsection 52(5) of the *EI Act* permits the Commission to reconsider an employment insurance claim within 72 months where a false or misleading representation has been made in connection with a claim. 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 must calculate the amount of the monies overpaid under subsections 52(2) and 52(3) of the *EI Act* (*Molchan* at para 17).

[25] Subsection 56(1) of the *EI Regulations* allow the Commission to write-off a debt in some circumstances. Section 56 of the *EI Regulations* operates in two steps: the first is determining the eligibility of an applicant to obtain relief; and the second is determining whether and how the Commission should exercise its discretion. The test is conjunctive; the first step must be met before the Commission can exercise its discretion (*Maheshwari v Canada (Attorney General)*, 2022 FC 253 at para 17 [*Maheshwari*]). Additionally, this Court has emphasized that writing off a debt is exceptional and intended only for very specific cases (*Maheshwari* at para 18).

[26] In this case, the Court must first analyze whether the Applicant meets the first step and is eligible for a write-off of her debt under subsections 56(1) and 56(2) of the *EI Regulations*. The Commission concluded that the Applicant did not meet the first step. The Court's task is therefore to determine whether this assessment was reasonable (*Maheshwari* at para 19).

[27] In *Maheshwari*, Justice McVeigh held that the text of section 56(1)(e) of the *EI Regulations* did not grant the Commission any discretion to consider whether a write-off is appropriate when the error is due to misrepresentation, regardless of whether the debtor knew the

representation to be false or misleading (at paras 15-17, 22-27; *Pelletier c Canada (PG)*, 2025 CF 730 at para 13).

[28] Justice McVeigh's conclusion in *Maheshwari* is apposite in this case and reflects the clear text of section 56(1)(e) of the *EI Regulations*. The Commission found that the Applicant had misrepresented her availability for work, and that conclusion was upheld by the Social Security Tribunal. In the circumstances, paragraph 56(1)(e) of the *EI Regulations* precludes a write-off because the overpayment was made as a result of an error or a false or misleading declaration made by the debtor, whether the debtor knew the declaration to be false or misleading or not.

[29] Moreover, because of the Applicant's misrepresentation, the Commission is also unable to grant the Applicant's request for a write-off because the benefits were received more than 12 months before the Commission notified her of the overpayment. Pursuant to subsection 56(2) of the *EI Regulations*, a write-off may be considered for benefits received more than 12 months before the notification of overpayment only when, *inter alia*, the overpayment does not arise from an error or as a result of a false or misleading declaration by the debtor, regardless of whether the debtor knew that the declaration was false or misleading or not.

[30] In this case, the EI benefits were received in 2021, and the Notice of Debt only issued in October 2023. Since the Applicant provided a false declaration and the benefit was paid more than 12 months before the issuance of the Notice of Debt, the Commission does not have the authority to write-off the overpayment.

[31] Consequently, the Commission's interpretation of its authority, and that the Applicant was not eligible for a write-off of her debt on the facts of this case, is reasonable. The Applicant's write-off request could not meet the first step of the two-step assessment. The Commission lacked the conditions precedent to its discretionary exercise in granting a write-off, which meant it was obligated to deny the request.

[32] Finally, as stated by the Applicant at the beginning of the hearing, the factual issues and conclusions made by the General Division of the Social Security Tribunal and for which an application for leave to appeal of that decision was dismissed by the Appeal Division of the Social Security Tribunal are not in dispute in this judicial review. This Court only has jurisdiction to judicially review the Commission's decision relating to the Applicant's request for a write-off of the debt, not of her eligibility to EI benefits or any error made by the Social Security Tribunal.

[33] For the reasons noted above, the Commission's decision is reasonable in that regard. In the circumstances, this Court cannot grant the remedy sought by the Applicant.

[34] However, and as noted by the Respondent, another recourse exists for taxpayer relief; that recourse is found at page 255 of the Application Record.

## V. Conclusion

[35] The Application for judicial review is dismissed, without costs.

**JUDGMENT in T-2529-23**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is dismissed, without costs.

"Guy Régimbald"

---

Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-2529-23

**STYLE OF CAUSE:** ALICE GANG v ATTORNEY GENERAL OF CANADA

**PLACE OF HEARING:** VIDEOCONFERENCE

**DATE OF HEARING:** DECEMBER 2, 2025

**JUDGMENT AND REASONS:** RÉGIMBALD J.

**DATED:** DECEMBER 5, 2025

**APPEARANCES:**

Alice Giang

FOR THE APPLICANT  
(ON HER OWN BEHALF)

Sandra Doucette

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Attorney General of Canada  
Gatineau (Québec)

FOR THE RESPONDENT