Federal Court of Appeal | Cour d'appel fédérale

Date: 20260303

Docket: A-431-24

Citation: 2026 FCA 46

CORAM: **DE MONTIGNY C.J.**
ROUSSEL J.A.
PAMEL J.A.

BETWEEN:

DAROLD STURGEON

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Vancouver, British Columbia, on March 3, 2026.
Judgment delivered from the Bench at Vancouver, British Columbia, on March 3, 2026.

REASONS FOR JUDGMENT OF THE COURT BY: DE MONTIGNY C.J.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Vancouver, British Columbia, on March 3, 2026).

DE MONTIGNY C.J.

[1] Mr. Sturgeon lost his job at British Columbia Interior Health ("Interior Health") on November 16, 2021, as a result of his refusal to get a COVID-19 vaccine. Pursuant to an Order issued by the Provincial Health Officer requiring all health workers to receive a COVID-19 vaccination, Mr. Sturgeon was required by Interior Health to receive the vaccine by November

15, 2021. His request for accommodation on the basis of his sincerely held religious beliefs was refused, and he was terminated after having been placed on unpaid leave.

[2] Mr. Sturgeon's application for Employment Insurance ("EI") benefits was denied by the Canada Employment Insurance Commission (the "Commission") on May 11, 2022, on the basis that he had lost his employment "due to his own misconduct" in not complying with his employer's policy. His application for reconsideration was similarly dismissed.

[3] Mr. Sturgeon then appealed to the Social Security Tribunal – General Division (the "General Division"), arguing that what he did could not amount to misconduct because the burden for misconduct is high, that his single act of not consenting to receiving COVID-19 vaccines had no impact on his ability to carry out his duties, that he had personal safety concerns and sincerely held religious beliefs that should have been considered by the employer in the enforcement of its policy, and that the vaccination policy was not in place when he was hired.

[4] Relying on the case law, the General Division ruled that its jurisdiction was limited to determine whether the denial of EI benefits complied with the *Employment Insurance Act*, S.C. 1996, c. 23 (the "Act"). Pursuant to subsection 30(1) of the Act, a claimant will be disqualified from receiving any benefits if the claimant lost their employment because of their "misconduct". This term is not defined by the Act, but has been interpreted as any conduct that the claimant knew or ought to have known could get in the way of carrying out their duties toward their employer, and that there was a real possibility of being let go because of that; *Mishibinijima v. Canada (Attorney General)*, 2007 FCA 36 at para. 14. In other words, the focus of the

Commission must be the act or omission of the employee, not on whether the employer's policy is reasonable or fair. On the basis of these principles, the General Division had no trouble concluding that Mr. Sturgeon knew about the vaccination policy, and that his choice to not get vaccinated was conscious, deliberate, and intentional. Not being in compliance with his employer's policy, he could not go to work and carry out his duties, and that is misconduct.

[5] More importantly for our purpose, the General Division also rejected Mr. Sturgeon's arguments that his refusal to get vaccinated cannot be construed as misconduct because he was following his religious beliefs. Mr. Sturgeon had argued that his employer's policy is an infringement of his right to religious freedom and bodily autonomy as enshrined in the *Canadian Charter of Rights and Freedoms – Part I of the Constitution Act, 1982* being Schedule B to the *Canada Act 1982*, 1982, c. 11 (U.K.) (the "Charter"). On that specific issue, the General Division wrote:

> [65] These laws [the Charter, the Canadian Bill of Rights, the Canadian Human Rights Act, and other provincial laws that protect rights and freedoms] are enforced by different courts and tribunals. This Tribunal can consider whether a section of the Employment Insurance Act (or its regulations) infringes the rights that are guaranteed by the Charter. The Appellant hasn't stated that he is challenging any part of the *Employment Insurance Act*. Rather, he feels that his employer's policy infringed the Charter or human rights.
>
> [66] It is beyond my jurisdiction (authority) to consider whether an action taken by an employer violates the Charter or human rights legislation. The Appellant would need to go to a different court or tribunal to address those types of issues.

[6] Mr. Sturgeon then sought leave to appeal that decision before the Social Security Tribunal – Appeal Division (the "Appeal Division"), on the basis that he had been denied procedural fairness and that the General Division had erred in not accepting his post-hearing submissions containing a Notice of Application for judicial review in an unrelated matter. On

July 14, 2023, the Appeal Division refused leave to appeal because Mr. Sturgeon's appeal had no reasonable chance of success. In its view, Mr. Sturgeon's right to procedural fairness (which was the focus of his submissions) was not infringed, and he could not succeed in arguing that the General Division erred because it did not accept his post-hearing submissions. Since Mr. Sturgeon had not identified any errors upon which the appeal might succeed, leave to appeal was refused.

[7] On judicial review before the Federal Court, the main issue was whether the Social Security Tribunal (both at the General Division and at the Appeal Division) was required to apply Charter values in interpreting the concept of "misconduct" in the Act. Applying the standard of reasonableness, the Federal Court found that the Appeal Division had not erred in denying leave to appeal. On the basis of the extensive case law with respect to the denial of EI benefits for failure to comply with an employer's COVID-19 policies, the Court stressed the narrow role played by the Social Security Tribunal in those matters, and reiterated that the focus must be the conduct of the employee and not the justification for the employer's policy or its compliance with the Charter.

[8] Much as he did before the Federal Court, Mr. Sturgeon argued before this Court that there is a crucial distinction between his case and the other case law, because he is not seeking to challenge the employer's policy but rather the failure of both divisions of the Social Security Tribunal to interpret the concept of "misconduct" in light of the freedom of religion guaranteed by paragraph 2(a) of the Charter.

[9] In an appeal from a Federal Court judicial review decision, this Court's role is to determine if the lower court identified the correct standard of review and, if so, whether it properly applied that standard (*Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at paras. 45-47; *Northern Regional Health Authority v. Horrocks*, 2021 SCC 42 at paras. 10-12). For all intents and purposes, we must step into the Federal Court's shoes and focus on the administrative decision that was reviewed, which in this case is the Appeal Division decision to refuse leave to appeal. In the case at bar, the Federal Court correctly identified reasonableness as the applicable standard of review, as it did in many other cases concerning EI benefits, misconduct, and vaccination policies even when Charter values are engaged; *Cecchetto v. Canada (Attorney General)*, 2023 FC 102 at para. 20, *Milovac v. Canada (Attorney General)*, 2023 FC 1120 at para. 19, *Zagol v. Canada (Attorney General)*, 2025 FCA 40 at para 13.

[10] In our view, neither the Appeal Division nor the Federal Court erred by declining to consider the appellant's Charter arguments. As noted by the Federal Court, Mr. Sturgeon did not advance any Charter claim in his appeal submissions to the Appeal Division, focusing instead on procedural fairness arguments. Neither the form completed by Mr. Sturgeon to launch his appeal to the Appeal Division nor his written submissions on the appeal mentioned the Charter arguments he had presented to the General Division, or ask the Appeal Division to reconsider the interpretation of the term misconduct. It is too late, on judicial review, to raise new arguments that were not raised before the administrative tribunal (see, for example, *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61 at paras. 22-23; *Zoghbi v. Air Canada*, 2024 FCA 123 at para. 30; *Tan v. Canada*, 2026 FCA 36 at para. 36).

[11] Moreover, even before the General Division Mr. Sturgeon did not raise the argument, let alone articulate that the notion of misconduct as found in the Act must be interpreted in light of the Charter. As paragraphs 65 and 66 of that decision show, Mr. Sturgeon's argument was rather aimed at the validity of the employer's policies, not at the interpretation of the Act itself.

[12] In light of the foregoing, we are of the view that the decision of the Appeal Division was reasonable. It considered the appellant's argument that he was denied procedural fairness by the Commission not attending the General Division hearing, and by the General Division not accepting his post-hearing submissions, and came to the conclusion that neither of these arguments had a reasonable chance of success. Like the Federal Court, we find that the Appeal Division's decision was reasonable in light of Mr. Sturgeon's arguments, the General Division decision, the law, and the facts. Mr. Sturgeon had the opportunity to put forward his Charter argument by filing a Notice of Constitutional Question and initiating the Social Security Tribunal's Charter appeal process, or at least by raising it in his application to the Appeal Division. He did not. It was not for the Appeal Division to do it on his behalf or, to use the language used by the Federal Court, "to conjure up every conceivable Charter right or value that might be affected by their decision" (at para. 56).

[13] Accordingly, the appeal will be dismissed, without costs.

"Yves de Montigny"
Chief Justice

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-431-24
STYLE OF CAUSE:	DAROLD STURGEON v. ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	VANCOUVER, BRITISH COLUMBIA
DATE OF HEARING:	MARCH 3, 2026
REASONS FOR JUDGMENT OF THE COURT BY:	DE MONTIGNY C.J. ROUSSEL J.A. PAMEL J.A.
DELIVERED FROM THE BENCH BY:	DE MONTIGNY C.J.

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