

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20250521**

**Docket: A-294-24**

**Citation: 2025 FCA 98**

**CORAM: RENNIE J.A.  
LASKIN J.A.  
GOYETTE J.A.**

**BETWEEN:**

**DONALD TASAKA**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

Heard at Vancouver, British Columbia, on April 7, 2025.

Judgment delivered at Ottawa, Ontario, on May 21, 2025.

**REASONS FOR JUDGMENT BY:**

**GOYETTE J.A.**

**CONCURRED IN BY:**

**RENNIE J.A.  
LASKIN J.A.**

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**REASONS FOR JUDGMENT**

**GOYETTE J.A.**

[1] Mr. Tasaka seeks judicial review of a decision of the Social Security Tribunal of Canada (Appeal Division) finding that he did not qualify for employment insurance fishing benefits. This Court's task is to determine whether the decision, which involved the exercise of statutory interpretation, was reasonable: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at paras. 23, 83, 86, and 115; *Canada (Attorney General) v. Hull*, 2022 FCA 82 at

para. 12. This task is made more difficult by the complexity of the legislative regime involved. Therefore, these reasons begin by providing some legislative background.

### I. Legislative Background

[2] Part I of the *Employment Insurance Act*, S.C. 1996, c. 23 establishes a scheme pursuant to which eligible unemployed persons may obtain income support, known as employment insurance benefits. Section 153 of the *Employment Insurance Act* allows for the making of regulations establishing a scheme of employment insurance for self-employed persons engaged in fishing that differs from the scheme established in the *Employment Insurance Act* for other employees. The resulting regulations—the *Employment Insurance (Fishing) Regulations*, SOR/96-445 (the Fishing Regulations)—provide a framework for determining when a fisher qualifies for employment insurance benefits (EI Fishing Benefits) and the rate of those benefits.

[3] To qualify for EI Fishing Benefits under the Fishing Regulations, a fisher must prove that (a) they do not qualify for regular benefits and (b) they have accumulated, since the beginning of the qualifying period, the minimum amount of insurable earnings from fishing employment set out in the schedule: subsection 8(2). In the present case, this amount is \$2,500. The “qualifying period” during which the earnings must be accumulated is the 31-week period before the fisher applied for EI Fishing Benefits: subsection 8(4). If a fisher proves the two aforementioned elements, a “benefit period” will be established (subsection 8(1)) and the fisher will receive EI Fishing Benefits during that period. The fisher’s rate of weekly benefits will be based on their earnings as a fisher during the qualifying period and the regional rate of unemployment: section 8.1.

[4] In 2020, the *Employment Insurance Act* was amended for the stated purpose of mitigating the economic effects of COVID-19: *Interim Order No. 10 Amending the Employment Insurance Act (Employment Insurance Emergency Response Benefit)*, Canada Gazette, Part II, Vol. 154, No. 21, S.O.R./2020-208. The amendments included four new provisions that concern EI Fishing Benefits: sections 153.1922 to 153.1925.

[5] Section 153.1922 reads:

**153.1922** A fisher who does not meet the conditions under paragraph 8(2)(b) of the [Fishing Regulations] may receive benefits under section 8.1 of those Regulations if the fisher has received such benefits during any of the periods referred to in subparagraphs 153.1923(1)(a)(ii) or (iii) ...

**153.1922** Le pêcheur qui ne remplit pas les conditions prévues aux alinéas 8(2)b) ou (7)b) du *Règlement sur l'assurance-emploi (pêche)* peut recevoir les prestations prévues à l'article 8.1 de ce règlement si, pendant toute période visée aux sous-alinéas 153.1923(1)a)(ii) ou (iii) [...]

[6] Paragraph 153.1923(1)(a) reads:

**153.1923 (1)** The rate of weekly benefits under section 8.1 of the [Fishing Regulations] shall be calculated using the highest of the following earnings:

**(a)** in the case of an initial claim for benefits under subsection 8(1) of those Regulations,

**(i)** if applicable, the earnings that would be used to calculate the fisher's rate of weekly benefits,

**(ii)** the earnings that were used to calculate the fisher's rate of weekly benefits for

**153.1923 (1)** Le taux des prestations hebdomadaires prévu à l'article 8.1 du *Règlement sur l'assurance-emploi (pêche)* est calculé à partir de la rémunération la plus élevée suivante :

**a)** s'agissant d'une demande initiale de prestations visée au paragraphe 8(1) de ce règlement :

**(i)** s'il y a lieu, la rémunération qui serait utilisée pour calculer le taux des prestations hebdomadaires du pêcheur,

**(ii)** la rémunération qui a été utilisée pour calculer le taux des prestations hebdomadaires

the benefit period that was established for the fisher under subsection 8(1) of those Regulations during the period beginning on September 29, 2019 and ending on June 20, 2020, and

(iii) the earnings that were used to calculate the fisher's rate of weekly benefits for the benefit period that was established for the fisher under subsection 8(1) of those Regulations during the period beginning on September 30, 2018 and ending on June 15, 2019; and

...

du pêcheur pour la période de prestations qui, en application du paragraphe 8(1) de ce règlement, a été établie en sa faveur pendant la période commençant le 29 septembre 2019 et se terminant le 20 juin 2020,

(iii) la rémunération qui a été utilisée pour calculer le taux des prestations hebdomadaires du pêcheur pour la période de prestations qui, en application du paragraphe 8(1) de ce règlement, a été établie en sa faveur pendant la période commençant le 30 septembre 2018 et se terminant le 15 juin 2019;

[...]

[7] The provision in issue in this appeal is subsection 153.1923(2). Mr. Tasaka refers to it as the “One-Time Only Rule”. It reads:

**153.1923 (2)** A fisher may have a benefit period established once under paragraph (1)(a) ...

**153.1923 (2)** Une période de prestations peut être établie en faveur du pêcheur une fois au titre de l'alinéa (1)a) [...]

[8] Finally, section 153.1924 provides:

**153.1924** For the purposes of the [Fishing Regulations] the earnings determined under subsection 153.1923(1) are the insurable earnings for the qualifying period.

**153.1924** Pour l'application du *Règlement sur l'assurance-emploi (pêche)*, la rémunération retenue au titre du paragraphe 153.1923(1) est la rémunération assurable pour la période de référence.

## II. Factual Background

[9] Mr. Tasaka is a fisher.

[10] During the 2018, 2019 and 2020 summer fishing seasons, he had insurable earnings of \$18,305.78; \$2,987.66; and \$5,756.81, respectively.

[11] In 2020, when Mr. Tasaka applied for EI Fishing Benefits, he had accumulated earnings above the \$2,500 threshold required to establish a benefit period under subsection 8(2) of the Fishing Regulations. Thus, he did not need to resort to section 153.1922 of the *Employment Insurance Act*, which offers an alternative way of qualifying for EI Fishing Benefits to claimants *without* sufficient earnings.

[12] The Canada Employment Insurance Commission determined that Mr. Tasaka was eligible for EI Fishing Benefits for 2020. As for the weekly rate of these benefits, the Commission determined it by relying on subsection 153.1923(1) of the *Employment Insurance Act*. More precisely, the Commission used Mr. Tasaka's earnings from his 2018 summer fishing season—the highest of the earnings in subparagraphs 153.1923(1)(a)(i) to (iii). This resulted in a higher benefit rate than would have resulted from a calculation using Mr. Tasaka's fishing earnings from the 2020 summer fishing season.

[13] The following year, 2021, Mr. Tasaka had no insurable earnings from fishing and so he could not qualify for EI Fishing Benefits using the regular rules set out in the Fishing

Regulations. On the understanding that he could use the COVID-19 measures to qualify, he applied for EI Fishing Benefits. The Commission denied his application based on its view that the One-Time Only Rule barred the claim. Put differently, the Commission took the position that because Mr. Tasaka had benefited from paragraph 153.1923(1)(a) in 2020, subsection 153.1923(2) prevented him from benefiting from this paragraph again in 2021.

[14] Mr. Tasaka unsuccessfully appealed the Commission's decision to the Social Security Tribunal's General Division (GE-22-1179) and to the Social Security Tribunal's Appeal Division: 2024 SST 970 (Decision). As mentioned, Mr. Tasaka seeks judicial review of the Appeal Division's decision.

### III. Analysis

[15] The crux of Mr. Tasaka's argument is that, because he had sufficient earnings in 2020, the *benefit period* for his 2020 claim was not established under the COVID-19 measure found in paragraph 153.1923(1)(a) of the *Employment Insurance Act*. Rather, the Commission relied on paragraph 153.1923(1)(a) to determine the *benefit rate* for his 2020 claim. Consequently, the One-Time Only Rule in subsection 153.1923(2), which provides that "a fisher may have a *benefit period* established once under paragraph 153.1923(1)(a)", does not apply to deny his 2021 claim (emphasis added). Thus, the Appeal Division's decision concluding otherwise is unreasonable.

[16] I disagree.

A. *The Appeal Division's decision*

[17] The Appeal Division carefully considered Mr. Tasaka's argument but found that it does not accord with the text, context and purpose of the relevant statutory and regulatory provisions.

[18] With respect to text, the Appeal Division noted that the language of paragraph 153.1923(1)(a), particularly the word "shall", makes clear that this provision applies to calculate the rate of weekly benefits regardless of whether a claimant qualifies for EI Fishing Benefits under the regular rules in subsection 8(2) of the Fishing Regulations or the alternative way in section 153.1922 of the *Employment Insurance Act*: Decision at paras. 29, 31–35. The Appeal Division further noted that the plain meaning of subsection 153.1923(2) is that paragraph 153.1923(1)(a) can only be used once to establish a benefit period: Decision at para. 41. The Appeal Division found that Mr. Tasaka's 2020 benefit period was established using paragraph 153.1923(1)(a) since it was established using his earnings from 2018. This explains why his benefit rate for 2020 was higher than it would have been without this provision: Decision at para. 20. Thus, based on the plain meaning of the provisions, Mr. Tasaka could not benefit from paragraph 153.1923(1)(a) again in 2021: Decision at para. 41.

[19] The Appeal Division opined that the context and purpose of the relevant provisions confirmed its conclusion following the plain meaning analysis.

[20] Regarding purpose, the Appeal Division first observed—although under its plain meaning analysis—that if the COVID-19 measures had been intended to limit the use of an earlier period's earnings to claimants who needed the alternative way in section 153.1922 to

qualify for EI Fishing Benefits, the One-Time Only Rule would have been set out in section 153.1922, not in section 153.1923: Decision at para. 39. The Appeal Division further observed that the COVID-19 measures were intended to assist fishers whose earnings had been impacted by the pandemic by allowing them—through paragraph 153.1923(1)(a)—to use their previous years’ earnings to receive a higher rate of weekly benefits. Regardless of whether paragraph 153.1923(1)(a) was used to calculate the rate of weekly benefits for a fisher who qualified under the regular rules in subsection 8(2) of the Fishing Regulations or for a fisher who qualified under the alternative measure in section 153.1922 of the *Employment Insurance Act*, subsection 153.1923(2) provides that paragraph 153.1923(1)(a) can only be used once: Decision at paras. 42–45.

[21] As for context, the Appeal Division referred to section 153.1924, which says that for purposes of the Fishing Regulations, the earnings determined under subsection 153.1923(1) are the insurable earnings for the qualifying period. The Appeal Division reasoned that if the previous earnings are higher than the current year’s, those earnings become the earnings for the qualifying period under subsection 153.1923(1). Since the qualifying period serves to establish a benefit period under subsection 8(2) of the Fishing Regulations, it follows that subsection 153.1923(1) is used to establish a benefit period once, with the consequence that it cannot be used again: Decision at paras. 47–49.

[22] Upon completion of its statutory interpretation analysis, the Appeal Division concluded that because Mr. Tasaka’s 2018 earnings were used to establish his benefit period in 2020

pursuant to subsection 153.1923(1), subsection 153.1923(2) prevents him from using earnings from prior years to establish another benefit period: Decision at paras. 50, 55.

[23] The Appeal Division's reasons are transparent, intelligible and justified in light of the facts and the law. The decision is also supported by an internally coherent and rational chain of analysis, and it is within the range of possible outcomes: *Vavilov* at paras. 15, 85–86, 90 and 99–107. As a result, the Appeal Division's decision is reasonable.

[24] Mr. Tasaka resists this conclusion, essentially relying on three arguments.

B. *The Appeal Division failed to consider relevant jurisprudence*

[25] Mr. Tasaka's first argument is that the Appeal Division failed to follow jurisprudence from the Social Security Tribunal which supports his position or to explain its departure from this jurisprudence.

[26] This argument cannot succeed.

[27] The Appeal Division did consider the decision that Mr. Tasaka brought to its attention. However, it found the decision not relevant to the matter as it did not contain any analysis of the COVID-19 measures. The Appeal Division further noted that it was not bound by the decision because it was issued by the General Division.

[28] The additional jurisprudence that Mr. Tasaka brought to this Court's attention suffers from the same flaws and cannot support his position.

C. *The Appeal Division's interpretation leads to an absurd result*

[29] Mr. Tasaka's second argument is that the Appeal Division's interpretation of section 153.1924 leads to an absurd result as it would prevent a fisher from claiming EI Fishing Benefits both in 2020 and 2021. To illustrate his point, Mr. Tasaka gives the example of a fisher having \$50,000 of earnings in both 2020 and 2021. Presumably, the example is based on the premise that the \$50,000 earnings in 2020 were higher than the earnings in 2018 and 2019 and, therefore, the highest earnings for purposes of paragraph 153.1923(1)(a). Mr. Tasaka says that in such a situation, the Appeal Division's interpretation would lead to the absurd conclusion that the One-Time Only Rule in subsection 153.1923(2) prevents the fisher from claiming EI fishing Benefits in 2021.

[30] The Appeal Division addressed this argument where it concluded that while the COVID-19 measures were in effect, a claimant who had a benefit period established once using section 153.1923, like the fisher in Mr. Tasaka's example, would have to qualify under the regular rules found in the Fishing Regulations for subsequent claims: Decision at para 51. In Mr. Tasaka's example, the fisher would not rely on paragraph 153.1923(1)(a) a second time in 2021 but would nonetheless qualify for EI Fishing Benefits under subsection 8(2) of the Fishing Regulations.

[31] There is nothing absurd in this result.

D. *The Appeal Division's interpretation renders certain words meaningless*

[32] Finally, Mr. Tasaka argues that the Appeal Division's interpretation renders the words "if applicable" in subparagraph 153.1923(1)(a)(i) of the *Employment Insurance Act* meaningless. To Mr. Tasaka, the only way to give meaning to the words "if applicable" is to interpret paragraph 153.1923(1)(a) as applying only when a claimant has a benefit period established under the alternative way provided by section 153.1922.

[33] With respect, Mr. Tasaka's interpretation itself renders subparagraph 153.1923(1)(a)(i) meaningless. Qualifying under section 153.1922 necessarily entails that a claimant did not meet the conditions to qualify for EI Fishing Benefits under the regular rules (*i.e.*, did not have sufficient earnings in their current qualifying period), but that they had sufficient earnings to qualify for benefits in previous years. In such a situation, the current year's earnings in subparagraph 153.1923(1)(a)(i) are not "applicable". The current year's earnings become "applicable" and are considered in determining the claimant's highest year of income under paragraph 153.1923(1)(a) only when the claimant qualifies for benefits under the regular rules set out in the Fishing Regulations. In other words, if paragraph 153.1923(1)(a) only applied when a claimant relied on section 153.1922 to qualify—as Mr. Tasaka suggests—there would be no need for subparagraph 153.1923(1)(a)(i) of the *Employment Insurance Act*.

[34] In light of the above, I would dismiss the application for judicial review. The Attorney General does not seek costs and so I would not award costs.

"Nathalie Goyette"

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J.A.

"I agree.

Donald J. Rennie J.A."

"I agree.

J.B. Laskin J.A."

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

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LASKIN J.A.

**DATED:** MAY 21, 2025

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