

[TRANSLATION]

Citation: *A. L. v. Canada Employment Insurance Commission*, 2015 SSTGDEI 192

Date: November 11, 2015

File number: GE-15-139

**GENERAL DIVISION
Employment Insurance Section**

Between:

A. L.

Appellant

and

Canada Employment Insurance Commission

Respondent

Decision by: Aline Rouleau, Member, General Division - Employment Insurance Section

Hearing held by teleconference in Quebec City on September 3, 2015, Province of Quebec

REASONS AND DECISION

PERSONS IN ATTENDANCE AND FORM OF HEARING

[1] The Tribunal conducted a hearing by teleconference on September 3, 2015 for the reasons stated in the hearing notice dated July 20, 2015, namely, given that credibility is not anticipated to be a prevailing issue, gaps in the information may lead to additional questions and the fact that the appellant is represented.

[2] The Appellant, A. L., was present and represented by the firm Gabrielle Milliard, Ménard Milliard Caux, Partners.

[3] The Respondent Commission did not appear at the hearing.

[4] It was agreed that all of the Appellant's cases—files GE-15-139, GE-15-1971, GE-15-1973, GE-15-1974, GE-15-1976, GE-15-1977 and GE-15-1978—would be heard simultaneously.

INTRODUCTION – PRESENTATION OF FACTS AND PROCEDURES

[5] The benefit periods established for the Appellant were (in chronological order):

- Commencing May 31, 2009 in file GE-15-1971;
- Commencing May 30, 2010 in file GE-15-1973;
- Commencing May 29, 2011 in file GE-15-139;
- Commencing May 27, 2012 in file GE-15-1974;
- Commencing May 26, 2013 in file GE-15-1976;
- Commencing May 25, 2014 in files GE-15-1977 and GE-15-1978.

[6] An investigation by the Commission revealed and led to a determination, on the basis of the information obtained, that the residential address given by the Appellant when he filed his claims for benefit was located in the Quebec City region, not in the Gaspésie region.

[7] The Commission reconsidered the Appellant's claims for benefits under section 52 of the Act, in the belief that the Appellant had made a false or misleading statement.

[8] The Commission performed new calculations in accordance with sections 12(2), 14, and Appendix I of the *Employment Insurance Act* (the "Act"). The weekly rates of benefit and the number of weeks of entitlement consequently changed.

[9] The Appellant filed an application for a reconsideration of the Commission's decisions. Following the reconsiderations, the only warning given for a false or misleading statement, imposed in file GE-15-139, was cancelled, but decisions concerning the reconsiderations, the rate of benefit calculations and the number of weeks of entitlement were maintained.

[10] The Appellant is challenging the Commission's decisions before the Tribunal.

[11] A meeting was held in preparation for this hearing on June 16, 2015, and was attended by the Appellant and his representative, as well as the Commission's representative. The Tribunal learned at this preparatory meeting that the Commission had given decisions for more than one benefit period, and that the Appellant wished to challenge all of the decisions. The parties therefore confirmed the issues in dispute.

ISSUES

[12] Was the Commission correct to reconsider the Appellant's claims for benefits pursuant to section 52(5) of the *Employment Insurance Act* (the "Act")?

[13] Within the meaning of section 17 of the *Employment Insurance Regulations* (the "Regulations"), what was the Appellant's ordinary place of residence for the benefit periods established between May 31, 2009 and May 25, 2014?

[14] In the alternative, were the applicable regional unemployment rate, benefit rate and maximum number of weeks in which benefits were payable determined in accordance with the statutory provisions in effect at the time the Appellant's benefit periods were established?

THE LAW

[15] See Appendix A for the applicable law.

THE EVIDENCE

Evidence specific to file GE-15-1971

[16] For the benefit period established on May 31, 2009, the Appellant accumulated 853 hours of insurable employment (GD3-17) during his current qualifying period from June 1, 2008 to May 30, 2009

[17] The Appellant reported (GD3-4) that he was living at X, X Av. (emphasis ours), Paspébiac, in the economic region of Gaspésie-Iles-de-la-Madeleine (GD3-19), Region 10, where the unemployment rate was 17.4% (GD3-20 to GD3-22).

[18] Based on the address given by the Appellant, this economic region was part of a pilot project designed to increase the benefit rate in economic regions with a high unemployment rate (GD4-18 to GD4-20). Accordingly, all weeks of insurable employment included in the qualifying period were taken into account to determine the 14 best weeks used to calculate the benefit rate.

[19] The Appellant's total earnings during his 14 best weeks between June 1, 2008 and May 30, 2009 amounted to \$9,923 (GD3-18).

[20] Based on the number of hours of insurable employment accumulated and the applicable regional unemployment rate when the benefit period was established, benefits were payable for 43 weeks, including the five (5) additional weeks to which the Appellant was entitled (GD4-17 and GD4-18).

[21] Following investigation, the Commission determined that the address of the Appellant's residence was A-***, X de la X, Quebec. This address is located in the economic region of Quebec (GD3-125) where the unemployment rate was 4.4% (GD3-126 to GD3-128).

[22] The Commission recalculated the claim for benefit and, based on the new calculation, the Appellant's rate of weekly benefits should have been \$387 rather than \$390 and the number of weeks of benefits to which he was entitled was 21 rather than 43 weeks (GD3-129 and GD3-130).

[23] This decision by the Commission, given retroactively on September 22, 2014, generated an overpayment of \$3,218 (GD3-131 and GD3-132).

Evidence specific to file GE-15-1973

[24] For the benefit period established on May 30, 2010, the Appellant accumulated 826 hours of insurable employment (GD3-16) during his current qualifying period from May 31, 2009 to May 29, 2010.

[25] The Appellant had reported (GD3-4) residing at X, X Av. Ouest (emphasis ours), Paspébiac, in the economic region of Gaspésie-Iles-de-la-Madeleine (GD3-19), Region 10, where the unemployment rate was 16% (GD3-21 to GD3-23).

[26] Based on the address given by the Appellant, this economic region was part of a pilot project designed to increase the benefit rate in economic regions with a high unemployment rate (GD4-18 to GD4-20). Accordingly, all weeks of insurable employment included in the qualifying period were taken into account to determine the 14 best weeks used to calculate the benefit rate.

[27] The Appellant's total earnings during his 14 best weeks between May 31, 2009 and May 29, 2010, were \$10,532 (GD3-18 and GD3-19).

[28] Based on the number of hours of insurable employment accumulated and the applicable regional unemployment rate when the benefit period was established, the number of weeks in which benefits were payable was 40, including the five (5) additional weeks to which the Appellant was entitled (GD4-17 and GD4-18).

[29] Following investigation, the Commission determined that the address of the Appellant's residence was A-***, X de la X, Quebec. This address is located in the economic region of Quebec (GD3-126) where the unemployment rate was 4.9% (GD3-127 to GD3-129).

[30] The Commission recalculated the claim for benefit and, based on the new calculation, the Appellant's rate of weekly benefits should have been \$386 rather than \$414 and the number of weeks of benefits to which he was entitled was 20 rather than 40 weeks (GD3-130 and GD3-131).

[31] This decision by the Commission, given retroactively on September 22, 2014, generated an overpayment of \$3,330 (GD3-132).

Evidence specific to file GE-15-139

[32] For the benefit period established on May 29, 2011, the Appellant accumulated 875 hours of insurable employment (GD3-15) during his current qualifying from May 30, 2010 to May 28, 2011.

[33] The Appellant had reported residing at X, X Av. Ouest, Paspébiac, in the economic region of Gaspésie-Iles-de-la-Madeleine, where the unemployment rate was 14.2%.

[34] The Appellant's total earnings during his 14 best weeks between May 30, 2010 and May 28, 2011, amounted to \$9,836.

[35] Following investigation, the Commission determined that the address of the Appellant's residence was A-***, X de la X, Quebec. This address is located in the economic region of Quebec, where the unemployment rate was 6.9%.

[36] The Commission recalculated the claim for benefit and, based on the new calculation, the Appellant's rate of weekly benefits should have been \$382 rather than \$386 and the number of weeks of benefits to which he was entitled was 16 rather than 39 weeks (GD3-124 and GD3-125).

[37] This decision by the Commission, given retroactively on September 22, 2014, generated an overpayment of \$3,932 (GD3-126).

Evidence specific to file GE-15-1974

[38] For the benefit period established on May 27, 2012, the Appellant accumulated 857 hours of insurable employment (GD3-16) during his current qualifying from May 29, 2011 to May 26, 2012.

[39] The Appellant had reported (GD3-5) residing at X, X Av. Ouest, Paspébiac, in the economic region of Gaspésie-Iles-de-la-Madeleine, Region 10, where the unemployment rate was 14.5% (GD3-19 to GD3-21).

[40] According to the address given by the Appellant, this economic region was part of a pilot project designed to increase the benefit rate in economic regions with a high unemployment rate (GD4-18 to GD4-19). Accordingly, all weeks of insurable employment included in the qualifying period were taken into account to determine the 14 best weeks used to calculate the benefit rate.

[41] The Appellant's total earnings during his 14 best weeks between May 29, 2011 and May 26, 2012 was \$10,700 (GD3-17).

[42] Based on the number of hours of insurable employment accumulated and the applicable regional unemployment rate when the benefit period was established, the number of weeks in which benefits were payable was 39, including the five (5) additional weeks to which the Appellant was entitled (GD4-21).

[43] Following investigation, the Commission determined that the address of the Appellant's residence was A-***, X de la X, Quebec. This address is located in the economic region of Quebec (GD3-124), where the unemployment rate was 5.2% (GD3-125 to GD3-127).

[44] The Commission recalculated the claim for benefit and, based on the new calculation, the Appellant's rate of weekly benefits should have been \$400 rather than \$420 and the number of weeks of benefits to which he was entitled was 16 weeks rather than 39 weeks (GD3-128 and GD3-129).

[45] This decision by the Commission, given retroactively on September 22, 2014, generated an overpayment of \$5,360 (GD3-130 and GD3-131).

Evidence specific to file GE-15-1976

[46] For the benefit period established on May 26, 2013, the Appellant accumulated 845 hours of insurable employment (GD3-16) during his current qualifying from May 27, 2012 to May 25, 2013.

[47] The Appellant had reported (GD3-5) residing at X, X Av. Ouest, Paspébiac, in the economic region of Gaspésie-Iles-de-la-Madeleine, Region 10, where the unemployment rate was 17% (GD3-21 to GD3-23).

[48] According to the statutory provisions in force on April 7, 2013 (GD4-11), the 14 weeks reflecting the Appellant's highest insurable earnings were the weeks entered on the record of employment, with total insurable earnings of \$10,954, and the number of weeks in which benefits were payable was 38 weeks (GD4- 15).

[49] Following investigation, the Commission determined that the address of the Appellant's residence was A-***, X de X, Quebec. This address is located in the economic region of Quebec (GD3-126), where the unemployment rate was 4.6% (GD3-127 to GD3-129).

[50] The Commission recalculated the claim for benefit and, based on the new calculation, the Appellant's rate of weekly benefits should have been \$405 rather than \$430 and the number of weeks of benefits to which he was entitled was 16 rather than 38 weeks (GD3-130 and GD3-131).

[51] This decision by the Commission, given retroactively on September 22, 2014, generated an overpayment of \$5,479 (GD3-132).

Clarifications concerning files GE-15-1977 and GE-15-1978

[52] For file GE-15-1978, a benefit period was not initially established due to an insufficient number of hours of employment. However, based on the Commission arguments, an amended Record of Employment submitted in November 2014 showed that the claim is the same claim processed under file GE-15-1977 and established on May 25, 2014.

[53] Prior to the hearing, the Tribunal had no evidence that the benefit period had indeed been established on May 25, 2014 in file GE-15-1977 since the only decisions available to the Tribunal were a notice of initial decision dated September 22, 2014, stating that the weekly rate and number of weeks had been established as zero, and a reconsidered decision on November 13, 2014. These two decisions predated the amended record of employment dated November

26, 2014. As shown below, the Appellant admitted that a benefit period had been established on May 25, 2014.

Evidence specific to file GE-15-1978

[54] For the benefit period established on May 25, 2014, the Appellant accumulated 706 hours of insurable employment (GD3-15) during his current qualifying from May 26, 2013 to May 24, 2014.

[55] The Appellant had reported (GD3-6) residing at X, X Av. Ouest (emphasis ours), Paspébiac, in the economic region of Gaspésie-Iles-de-la-Madeleine.

[56] According to the statutory provisions in force on April 7, 2013 (GD4-11), the 14 weeks reflecting the Appellant's highest insurable earnings were the weeks entered on the record of employment, with total insurable earnings of \$14,243.

[57] Following investigation, the Commission determined that the address of the Appellant's residence was A-***, X de la X, Quebec. This address is located in the economic region of Quebec, where the unemployment rate was 4.7% (GD3-120 to GD3-121).

[58] The Commission recalculated the claim for benefit and, based on the new calculation, the Appellant's rate of weekly benefits should have been \$356, and the number of weeks of benefits to which he was entitled was 14 weeks.

Evidence arising from the Commission's investigation

Note to the Tribunal: The numbers referencing documentary evidence are the same as those shown in file GE-15-1971, unless otherwise specified

[59] The planning department of the town of Paspébiac reported (GD3-23) that the civic address X, X Avenue West does not exist. The property at X, X avenue East is owned by a Mrs. A. The property at X, X Avenue West belongs to Mr. S. D.

[60] The Commission obtained a copy of the lease signed by the Appellant in 2006 for a parking space at X3 De la X, Québec. On July 29, 2008, this lease was renewed in the Appellant's name (GD3-24 to GD3-26).

[61] The Commission obtained a breakdown of bank transactions from the Desjardins financial institution for the Appellant's account between June 1, 2008 and June 10, 2014 (GD3-27 to GD3-45) and transactions performed using the automatic teller machine (GD3-47 to GD3-108). This breakdown shows that most of the bank transactions were made in the Quebec region.

[62] The Commission's investigator visited the address at X, X avenue West in Paspébiac and took photos (GD3-109 to GD3-113). He also contacted the owner of this address, Mr. S. D., by telephone to speak with the Appellant, who was not present. The person who answered confirmed the Appellant's cell phone number, mentioned that he had not seen him for several days and said he was very difficult to reach (GD3-114).

[63] An investigation report (GD3-115 and GD3-116) shows that the investigator telephoned the Appellant to arrange to meet with him in New-Richmond on May 31, 2014. The Appellant said he could not meet him at this location on May 31, 2014 because he was in Quebec City to see his family physician. He mentioned he did not have a family physician in Gaspésie. An appointment was scheduled in New-Richmond for August 7, 2014 (GD3-117 and GD3-118).

[64] At his meeting with the investigator on August 7, 2014, the Appellant said (GD3-119 to GD3-123):

- a) He is a seasonal worker employed from November to April each year by the Ministère des Transports. He has held this job for the past 15 years. His work consists of monitoring cameras on the City of Quebec road system. He works for the winter team, responsible for snow removal, and another work crew takes over in summer.
- b) He listed his mailing and residential address as X, X avenue West in Paspébiac because this location is his residential address. The Quebec address belongs to his daughter, and the rental lease is in his daughter's name. He gave the Quebec address to his employer for the purpose of having mail from his employer, such as records of employment, sent to this address.

- c) He confirmed that the residence at X, X Avenue West in Paspébiac belongs to Mr. S. D., the claimant's nephew. He lives in both locations—Quebec City and Paspébiac—because he works six (6) months in Quebec City and spends six (6) months in Paspébiac.
- d) He stated that when he entered the Paspébiac address on his claims for benefit, he did not know it would increase his unemployment rate and number of weeks of benefits.
- e) During the administrative review, the Appellant mentioned (GD3-135) that he would provide proof of residency in Gaspésie, a list of people who could attest to his residency in Gaspésie, copies of municipal and school tax accounts in his name, the location of his land in Gaspésie and proof that he lives in a trailer.
- f) The Appellant stated (GD3-139) that he has lived in his trailer from April to October every year for the past 15 years or so. The address is X, Boulevard X in New- Carlisle. The witnesses named on the list can certify that he lives at X, Boulevard X in New- Carlisle from April to October every year.
- g) The Appellant asserts (GD3-140 and GD3-141) that when he purchased the residence in New Carlisle, he was living in Paspébiac but never changed his address because the home in Paspébiac was the family home that belonged to his cousin, who died approximately two (2) years ago. The apartment in Quebec City is in the name of his mother, who died six (6) years ago. He went to live with his mother when she was ill. After she died, he kept the apartment.

[65] A certain lady by the name of R., representing the owner of the apartment at X, X, confirmed (GD3-123) that the Appellant resides in the apartment ***-A at this address, and has lived there for several years. He comes in person to pay the rent every month. The lady sees and meets with the Appellant often, but does not know whether the Appellant's daughter or another person lives there.

[66] The Appellant provided the following documents:

- a) A copy of the Municipality of new Carlisle municipal tax bill (GD3-136). This tax bill is addressed to X, X, Apartment A-***, Quebec City.
- b) A statement of account from the National Bank of Canada (GD3-137) showing payment of his taxes. The Appellant's contact information on this statement shows his Quebec address.
- c) A list of witnesses (GD3-138).
- d) Decisions by the Umpire in CUB 75060, CUB 69529, CUB 66469, CUB 61554, CUB 34043A (GD6-1 to GD6-19).
- e) Photos (GD10-1 to GD10-7) of the property at X, X, New Carlisle, for which the Appellant and his mother are listed as owners on the municipal tax bill issued by the Municipality of New-Carlisle (GD6-20).

Appellant's Evidence at the Hearing

[67] It is generally agreed that a benefit period was established on May 25, 2014, the period covered by files GE-15-1977 and GE-15-1978, as the Commission submitted in its arguments concerning these cases.

[68] For the purposes of the hearing, the Appellant's counsel has asked to make file GE- 15-1973 the file of reference. Request granted.

[69] The Appellant's testimony has added the following:

[70] The Appellant asserts, contrary to the information reported in GD3-121, that he never told the investigator that his daughter lived in the apartment which he identified as his mailing address.

[71] The Appellant states that the property at X X in New-Carlisle belongs to him and his mother, and that the apartment in Quebec City was also his mother's. The lease is still in her name. He uses this apartment when he works in Quebec City. His home at X X is furnished.

[72] He often spends time in Quebec City to visit with friends, see his physician and run errands. He states that in summer, he spends less time in Quebec City. He gave the address in Paspébiac when he filed his claims for benefits because the Commission's mail had always been delivered to his location, not to New Carlisle, because it is far from his home. He entered the X, X avenue, address shown on his claim by mistake. He never alleged that he owned the property at X, X avenue. The property is a family property, and he goes there every summer. This is why he gives this this address as his primary residence. He received mail in Gaspésie and in Quebec City for convenience and according to the season.

[73] He never filed a claim for benefits using an address in Quebec City since he has been employed. He sees nothing unusual in the fact that the Quebec City rental agent said she saw him often considering that he was caregiver to his mother who lived in Quebec City. His visits were dictated by his mother's health, but he never stayed for long periods.

[74] He tried to provide the Commission's investigator with evidence of his primary residence in Gaspésie by asking him to meet with the owners of X, X Avenue West. He also provided a list of witnesses for questioning, but the Commission chose to disregard this list of ten or so witness names.

[75] He never claimed to live in a trailer in Gaspésie. He owns a trailer, which is parked on his property in New Carlisle and which he uses for recreational purposes. He said he has lived at the New Carlisle property since he purchased it approximately 15 years ago, but that he simply neglected to change his address, which is why his Gaspésie address is still listed as Paspébiac.

[76] In response to a question by the Tribunal, the Appellant said that his employment in Quebec City was a permanent position. He retired in January 2015.

ARGUMENTS

[77] The Appellant underscored the following:

- a) The Commission did not conduct its investigation properly.
- b) During the reconsideration, the Commission told him he was not living in Gaspésie although he had been receiving his mail in Paspébiac for at least fifteen (15) years.

- c) The Quebec address appeared on the bank statement and tax bill because the notices were dated February. Had he given the New Carlisle or Paspébiac address, he would not have received them in time since he was living in Quebec City from October until the following spring.
- d) He votes in Quebec City because he was living there when elections took place in fall or spring.

[78] The important thing to take away from the Appellant's testimony is that he was not working in Quebec City by choice. He had tried to obtain a transfer to the Gaspésie area, as he previously informed the Commission. A lot of people face the same situation and are forced to work seasonally in Quebec City and then return to the Gaspésie region.

[79] When identifying the region in which a claimant is ordinarily resident, a distinction must be made between the place of work and the place of residence. The fact that the Appellant did not simply move to Quebec City permanently, but purchased and property and returned to the area every summer for the past 25 years, confirms his interest in continuing to live in the Gaspésie region. He returned to Quebec City each year only to work. In the roughly five (5) years since the Appellant's mother died, he has actually spent little time in her apartment in Quebec City.

[80] As mentioned in the Commission's arguments, place of residence changes when a person leaves one region with the intention of permanently residing elsewhere, and in doing so, takes all of possessions along in the process. The Appellant has personal property in the Gaspésie region. He never had any clear intention of moving completely to Quebec City. The property in the apartment in Quebec belonged to his mother, and was left there and used by the Appellant for convenience.

[81] The Commission uses a few items of evidence to establish that the Appellant's place of residence is in Quebec City. The first such item of evidence is that he works five (5) months in Quebec City. Pursuant to section 17 of the Act and the case law, a clear distinction must be made between a place of residence and a place of work, which can be in two (2) different locations.

[82] The landlord's statement does not prove that the Appellant was residing permanently in Quebec City. Furthermore, the statement was reported by a third-party, the investigator, in circumstances that deprived the Appellant of an opportunity to call witnesses of his own. The testimony of people from Quebec is no more conclusive than that of others from the Gaspésie that the Commission may have interviewed.

[83] According to the Commission, the Appellant spends more time in Paspébiac than in New Carlisle. No one can be forced to go to one location rather than another. It has no impact on the place of residence. During its investigation, the Commission deliberately ignored the fact that the Appellant has a furnished property in New Carlisle. The Paspébiac address created confusion, but the Appellant explained his reasons for giving the address in question. Whether his address is in New-Carlisle rather than Paspébiac is of no consequence for employment insurance purposes.

[84] The Commission contends that the test for establishing a claimant's ordinary place of residence involves subjective and objective considerations. For the Appellant, one subjective fact concerned his voiced sense of belonging. The Commission had failed to consider subjective information, which was no less important than the bank statements.

[85] The submitted case law concerns persons who had to travel, as the Appellant did. More specifically, CUB 61554 refers to s. 17 of the Act and its interpretation tends to favour the claimant in cases of doubt.

[86] The Commission's reconsideration was unnecessary given that the Appellant had not made false statements.

[87] The Commission Respondent argued that (GD4s):

- a) When the investigator made an appointment with the Appellant for August 7, 2014 in New-Richmond, the Appellant did not know where the new Service Canada Centre was located.

- b) The Appellant was unable to provide any evidence to show that he lived in Paspébiac on a regular basis. Various items of information in the Appellant's files showed that the region in which he ordinarily resided was Quebec City, not the Gaspésie region.
- c) We are confronted with false statements considering that the Appellant reported Paspébiac, in the Gaspésie region, as his place of residence, when in fact his place of residence had always been Quebec City.
- d) The Commission reconsidered the claims on September 22, 2014, within the 36-month limitation period, and/or the 72-month limitation period in cases involving false declarations. The fact that the warning was cancelled does not prevent the Commission from applying the 72-month limitation period provided in section 52(5) of the Act. The Commission was justified in reconsidering the benefit claim under section 52 of the Act.
- e) The location where persons who are single or who have no family obligations move is considered the region in which they ordinarily reside, and any time spent in another location, regardless of the length of time, does not alter this fact.
- f) Various key factors support the presumption that the Appellant's place of residence was Quebec City, not the Gaspésie region. He told the investigator that he occasionally lived in his nephew's home in Paspébiac, although during an administrative review, he said he owned a home in New Carlisle. In the Commission's opinion, the New-Carlisle residence is more pointedly a secondary residence, considering that the tax bill for it is sent to Quebec City. The breakdown shows that bank transactions were four (4) times more numerous in Quebec than in Gaspésie.
- g) Although the Appellant provided a list of witnesses, the Commission disregarded the list, given its potential subjectivity. The Commission was obliged to review the claims for benefit.
- h) Concerning files GE-15-1971, GE-15-1973, GE-15-139 and GE-15-1974: the address of the Appellant's residence is in the Quebec region, which is not included in the best 14 weeks pilot project areas. The qualifying period for determining the weekly rate of benefits is the period from June 1, 2008 to April 4, 2009. It was determined that the denominator

would be 22 since it was the greater of the number of weeks in the rate calculation period in which the Appellant received insurable earnings, and the number provided in the Table in section 14(2). The rate calculation is insurable earnings during the rate calculation period ÷ 22 (denominator) = average weekly insurable earnings X 55% = benefit rate. The number of weeks payable was established in accordance with s. 12(2) of the Act and Appendix I.

- i) In files GE-15-1976, GE-15-1977 and GE-15-1978: Based on the unemployment rate of the region where the address of the claimant's residence is located, the best number of weeks required for calculating the benefit rate is shown in the Table in s. 14(2) of the Act. The rate of benefit was calculated as follows: The highest insurable earnings ÷ denominator = average weekly insurable earnings × 55% = benefit rate. The number of weeks payable was established in accordance with s. 12(2) of the Act and Appendix I.

ANALYSIS

[88] Given that the events in the Appellant's cases are identical, one decision will apply *mutatis mutandis* to all.

[89] The principles of the Act will be outlined and enhanced by the case law for each of the issues.

Concerning the Commission's reconsideration

[90] Section 52 of the Employment Insurance Act provides that a decision concerning a claim for benefit may have to be modified or corrected retroactively to ensure that claimants receive only those benefits to which they are entitled. Subsection 52(5) allows the Commission to reconsider a case within 72 months from the moment that benefits were paid or became payable if it believes that false or misleading statements were made to obtain the payment of benefits.

[91] In *Dussault* 2003 FCA 372, where the Federal Court of Appeal established that in order to avail itself of the benefit of s. 52(5), the Commission is not required to establish that a false or misleading representation was made knowingly, or that it was subject to a penalty. This burden is imposed in connection with penalties. All that Parliament requires in s. 52(5) is that that "in

the opinion of the Commission,” a false or misleading statement was made. *“Of course, in order to arrive at this conclusion the Commission must be reasonably satisfied that ‘a false or misleading statement or representation has been made in connection with a claim,’*” (paragraph 12 of the decision), and it must explain why it considers the statement to be false. In this case, the Commission provided its explanations, after the investigation was conducted and documents filed, for believing that a false statement had been made. The alleged falsehood related a determination of the Appellant’s ordinary region of residence, which the Commission believes to be Quebec City, whereas the Appellant declared Gaspésie as his ordinary region of residence in his initial claims for benefits.

[92] The Tribunal is satisfied that the Commission could reconsider the Appellant’s files within the limitation period specified in s. 52(5) of the Act.

Concerning the region in which the claimant was ordinarily resident

[93] The applicable legislation and regulations do not define the “region in which the claimant was ordinarily resident,” specified in s. 17 of the Regulations. To the Tribunal’s knowledge, the Federal Court of Appeal has not examined the definition of these terms. However, we find a few decisions by Umpires who have examined some of the criteria used to define the region in which a claimant was “ordinarily resident.”

[94] We see that a determination of “the region in which the claimant was ordinarily resident” involves an interpretation of facts. The term “normal place of residence” has been used by the legislator to distinguish a customary place of residence from a temporary one (CUB 61554). The test for establishing the region in which a claimant is “ordinarily resident” involves considering both subjective and objective facts. Such a location refers to the place that a claimant is in the habit of regularly and consistently choosing to reside, this being the most important factor in determining whether the location in question is the claimant’s usual residence (CUB 64683). The number of residential locations is not the only test for determining place of residence for Employment Insurance purposes (CUB 72469A).

[95] The objective evaluation criteria entered into evidence includes the following information:

- a) In the claims filed by the Appellant to establish each of the benefit periods in question, the Appellant provided the address of a property he does not own in Paspébiac, and in the claim starting in 2014, he provided a non-existent address. The Appellant declared that he purchased a property in New Carlisle in or about the year 2000, but had forgotten to change his address. For most of these claims, the Appellant said that his residential address was the same as his mailing address. The Appellant also declared to the Commission that he lived in a trailer located on his New Carlisle property, but during the testimony at his hearing, he stated that the trailer in question was used for recreational purposes.
- b) His records of employment, between April 2008 and April 2011, specify the Paspébiac address, but starting in April 2012, the address on his records of employment is the Quebec address.
- c) His municipal tax bill for the New Carlisle property was sent to Quebec City. The address used for the bank savings account in the Appellant's name for municipal tax payments was the Quebec address.
- d) His bank transactions were mostly and usually performed in Quebec City.

[96] In terms of subjective tests, the Appellant argued that there was never any clear intention to move permanently to Quebec considering that his property was in Gaspésie and the Commission had disregarded the Appellant's sense of belonging to the Gaspésie.

[97] The Appellant was born in the Paspébiac region but worked for 25 years as road crew labourer in Quebec City. People from this area of the Gaspésie region usually speak with a thick accent, but the Tribunal noted that the Appellant does not have such an accent. This tends to suggest that he has been away from the region long enough to have lost his accent.

[98] The Appellant argued that there had been lot of confusion surrounding his address. The Tribunal considers that the Appellant contributed significantly to creating this confusion. He was selective in making his changes of address, for example, by failing to change his address when he purchased a property in New Carlisle, although he had asked his employer to enter his

Quebec address on his records of employment starting in 2012. He said that his residential address was the same as his mailing address, yet he gave an address in Paspébiac at a time when, as he proved, he owned a property in New Carlisle. And although he owned a property in New Carlisle, he declared that he was staying with his nephew in Paspébiac.

[99] It is relatively unusual for a person to make mistakes in his residential address, the place deemed most important based on the person's habit of choosing regularly and consistently to reside there.

[100] The Appellant argued that he had an address in Quebec City for work reasons only, and that when he was unemployed, he would visit Quebec City to see his friends, run errands and visit his family doctor. These situations point to a social network or support system plainly rooted in Quebec City. He also developed a connection to this City based on the fact that his mother lived there prior to her death, where the Appellant also cared for her. He had permanent employment in Quebec and he retired in January 2015. He did not provide any evidence that he now resides permanently, since his retirement, in the Gaspésie region, a situation that would have corroborated his assertions concerning the years in dispute during which he was working, and when he says his usual place of residence was in Gaspésie.

[101] The one constant concerning the Appellant's ordinary residence and address invariably leads us back to Quebec City. Although the Appellant may have a property in New Carlisle which may perhaps be his secondary residence, the Tribunal believes that the residence of greatest importance to the Appellant is the one in Quebec City. Otherwise, he would not have opened accounts at this location, would not have asked that important documents be sent there, would not have made his regular bank transactions there, would not have a family physician there, and would not have friends there whom he traveled to see during his periods of unemployment.

[102] Based on his actions, the residence of greatest importance to the Appellant was in Quebec City, and his testimony lacks sufficient credibility to contradict the documentary evidence.

Concerning the benefit rate and number of weeks payable

[103] Under the terms of section 77.7 of the Regulations, pilot project 11 was not applicable to the Quebec City region for the purposes of calculating the benefit rate.

[104] The number of weeks of benefits payable is determined under s. 12(2) of the Act, based on the Table in Appendix I, by reference to the regional unemployment rate applicable to the claimant and the number of hours for which he held insurable employment during his qualifying period. The Table in Appendix I has been amended over time. The current version and a previous version are shown in Appendix A attached hereto. These two, different versions cover the benefit periods established for the Appellant.

[105] Section 14 of the Act was amended on April 7, 2013. These amendments altered the method used to calculate the benefit rate. Benefit rates are calculated according to the method set out in the version of s. 14 in force at the time that the benefits were payable. Accordingly, for files GE-15-1971, GE-15-1973, GE-15-139 and GE-15-1976, the benefit rate must be calculated according to the version of s. 14 prior to April 7, 2013.

Calculation method prior to April 7, 2013

[106] Section 14(3) of this version of the Act determines insurable earnings during the rate calculation period.

[107] The rate calculation period lasted the time specified in s. 14(4.1), i.e., 26 weeks **OR**, if the qualifying period started less than 26 weeks before the Sunday of the week in which the rate calculation period ends, the number of weeks between those Sundays.

[108] Weekly insurable earnings are calculated by dividing insurable earnings by the larger of, **either**, the number of weeks during the rate calculation period in which the claimant had insurable earnings **OR** the number provided in the Table in s. 14(2) by reference to the applicable regional rate of unemployment.

Calculation method after April 7, 2013

[109] Section 14(3) of this version of the Act determines insurable earnings during the calculation period.

[110] Section 14(4) defines the calculation period and corresponds to the number of weeks in the claimant's qualifying period [consecutive or not] mentioned in the table in section 14(2) [in reference to the applicable regional unemployment rate] when insurable earnings were highest.

[111] Weekly insurable earnings correspond to insurable earnings in the calculation period divided by the number of weeks determined in accordance with the table in 14(2), by reference to the applicable regional rate of unemployment.

[112] In all of the files herein, the rate of weekly benefits according to s. 14(1) is 55% of weekly insurable earnings.

[113] Because the Appellant had reported his place of residence to be located in the Gaspésie region, the Commission calculated the benefit rate and number of weeks of benefits payable on the basis of pilot project 11. However, after determining that the region in which the Appellant ordinarily resides was the Quebec region, new calculations had to be made.

[114] In file GE-15-139, the Commission's explanations are unclear. The new benefit rate and number of weeks of benefits payables calculations seem wrong. For example, we read that the Appellant's qualifying period included 875 hours of insurable employment and that the applicable unemployment rate was 6.9%. Based on these figures and the Table in Appendix 1 of the Act, the Appellant was entitled to 23 or 18 weeks of benefits, depending on the applicable version applicable of the said Appendix, but the Commission states that this number of weeks payable is 16. The Tribunal is asking the Commission to perform the appropriate calculations again for this case, and to correct the established overpayment amount accordingly.

[115] In all of the other files subject to this decision, the Commission provided explanations about the new calculations made. These calculations are consistent with application of the Act and Regulations in effect at the time these benefit periods were established

[116] The Federal Court of Appeal has upheld the principle that the Act cannot be rewritten or interpreted in a manner that runs counter to its original meaning [*Canada (AG) v. Knee* 2011 FCA 301].

CONCLUSION

[117] Subject to the recalculations required in file GE-15-139, the appeal is dismissed in respect of all of the issues in each of the files under appeal.



Aline Rouleau
Member, General Division
Employment Insurance Section

APPENDIX A

APPLICABLE LAW

[1] Section 7 of the *Employment Insurance Act* (the “Act”) states:

7 (1) Unemployment benefits are payable as provided in this Part to an insured person who qualifies to receive them.

(2) An insured person, other than a new entrant or a re-entrant to the labour force, qualifies if the person

(a) has had an interruption of earnings from employment; and

(b) has had during their qualifying period at least the number of hours of insurable employment set out in the following table in relation to the regional rate of unemployment that applies to the person.

TABLE

Regional Rate of Unemployment	Required Number of Hours of Insurable Employment in Qualifying Period
6% and under	700
more than 6% but not more than 7%	665
more than 7% but not more than 8%	630
more than 8% but not more than 9%	595
more than 9% but not more than 10%	560
more than 10% but not more than 11%	525
more than 11% but not more than 12%	490
more than 12% but not more than 13%	455
more than 13%	420

(3) An insured person who is a new entrant or a re-entrant to the labour force qualifies if the person

(a) has had an interruption of earnings from employment; and

(b) has had 910 or more hours of insurable employment in their qualifying period.

(4) An insured person is a new entrant or a re-entrant to the labour force if, in the last 52 weeks before their qualifying period, the person has had fewer than 490

(a) hours of insurable employment;

(b) hours for which benefits have been paid or were payable to the person, calculated on the basis of 35 hours for each week of benefits;

- (c) prescribed hours that relate to employment in the labour force; or
- (d) hours comprised of any combination of those hours.

(4.1) An insured person is not a new entrant or a re-entrant if the person has been paid one or more weeks of special benefits referred to in paragraph 12(3)(a) or (b) — or, as a self-employed person under Part VII.1, one or more weeks of benefits referred to in paragraph 152.14(1)(a) or (b) — in the period of 208 weeks preceding the period of 52 weeks before their qualifying period or in other circumstances, as prescribed by regulation, arising in that period of 208 weeks.

(5) For the purposes of subsection (4), an hour that is taken into account under any of paragraphs (4)(a), (b) or (c) may not be taken into account under the other..

(6) An insured person is not qualified to receive benefits if it is jointly determined that the insured person must first exhaust or end benefit rights under the laws of another jurisdiction, as provided by Article VI of the *Agreement Between Canada and the United States Respecting Unemployment Insurance*, signed on March 6 and 12, 1942.

[2] Section 12 of the Act provides:

12 (1) If a benefit period has been established for a claimant, benefits may be paid to the claimant for each week of unemployment that falls in the benefit period, subject to the maximums established by this section.

(2) The maximum number of weeks for which benefits may be paid in a benefit period because of a reason other than those mentioned in subsection (3) shall be determined in accordance with the table in Schedule I by reference to the regional rate of unemployment that applies to the claimant and the number of hours of insurable employment of the claimant in their qualifying period.

(2.1) to (2.4) [Repealed, 2009, c. 30, s. 2]

(3) The maximum number of weeks for which benefits may be paid in a benefit period

- (a) because of pregnancy is 15;
- (b) because the claimant is caring for one or more new-born children of the claimant or one or more children placed with the claimant for the purpose of adoption is 35;
- (c) because of a prescribed illness, injury or quarantine is 15;
- (d) because the claimant is providing care or support to one or more family members described in subsection 23.1(2) is 26; and
- (e) because the claimant is providing care or support to one or more critically ill children described in subsection 23.2(1), is 35.

(4) The maximum number of weeks for which benefits may be paid (a) for a single pregnancy is 15; and (b) for the care of one or more new-born or adopted children as a result of a single pregnancy or placement is 35.

(4.01) If a claim is made under this Part in respect of a child or children referred to in paragraph (4)(b) and a claim is made under section 152.05 in respect of the same child or children, the maximum number of weeks of benefits payable under this Act in respect of the child or children is 35.

(4.1) Even if more than one claim is made under this Act, at least one of which is made under section 23.1 — or even if more than one certificate is issued for the purposes of this Act, at least one of which is issued for the purposes of section 23.1 — for the same reason and in respect of the same family member, the maximum number of weeks of benefits payable under this Act in respect of that family member is 26 weeks during the period of 52 weeks that begins on the first day of the week referred to in paragraph 23.1(4)(a).

(4.2) If a shorter period is prescribed for the purposes of subsection 23.1(5), then that shorter period applies for the purposes of subsection (4.1).

(4.3) When a shorter period referred to in subsection (4.2) has expired in respect of a family member, no further benefits are payable under section 23.1 in respect of that family member until the minimum prescribed number of weeks has elapsed.

(4.4) Even if more than one claim is made under this Act, at least one of which is made under section 23.2 — or even if more than one certificate is issued for the purposes of this Act, at least one of which is issued for the purposes of section 23.2 — for the same reason and in respect of the same critically ill child, the maximum number of weeks of benefits payable under this Act in respect of that child is 35 weeks during the period of 52 weeks that begins on the first day of the week referred to in paragraph 23.2(3)(a).

(4.5) Even if more than one claim is made under this Act, at least one of which is made under section 23.2 — or even if more than one certificate is issued for the purposes of this Act, at least one of which is issued for the purposes of section 23.2 — for the same reason and in respect of the same children who are critically ill as a result of the same event, the maximum number of weeks of benefits payable under this Act in respect of those children is 35 weeks during the period of 52 weeks that begins on the first day of the week referred to in paragraph 23.2(4)(a).

(5) In a claimant's benefit period, the claimant may combine weeks of benefits to which they are entitled because of a reason mentioned in subsection (3), but the maximum number of combined weeks is 50. If the benefit period is extended under subsection 10(13), the maximum number of combined weeks equals the maximum number of weeks in the benefit period calculated under subsection 10(15) less two weeks.

(6) In a claimant's benefit period, the claimant may, subject to the applicable maximums, combine weeks of benefits to which the claimant is entitled because of a reason mentioned in subsections (2) and (3), but the total number of weeks of benefits shall not exceed 50.

(7) [Repealed, 2000, c. 14, s. 3]

(8) For the purposes of this section, the placement with a major attachment claimant, at the same or substantially the same time, of two or more children for the purpose of adoption is a single placement of a child or children for the purpose of adoption

[3] Section 14 of the Act, based on the version prior to April 7, 2013, read as follows:

Section 14 of the Act:

14 (1) The rate of weekly benefits payable to a claimant is 55% of their weekly insurable earnings.

(1.1) The maximum weekly insurable earnings is

(a) \$750 if the claimant's benefit period begins during the years 1997 to 2000; and

(b) if the claimant's benefit period begins in a subsequent year, the maximum yearly insurable earnings divided by 52.

(2) A claimant's weekly insurable earnings are their insurable earnings in the rate calculation period divided by the larger of the following divisors:

(a) the divisor that equals the number of weeks during the rate calculation period in which the claimant had insurable earnings, and

(b) the divisor determined in accordance with the following table by reference to the applicable regional rate of unemployment.

TABLE

Regional Rate of Unemployment	Divisor
not more than 6%	22
more than 6% but not more than 7%	21
more than 7% but not more than 8%	20
more than 8% but not more than 9%	19
more than 9% but not more than 10%	18
more than 10% but not more than 11%	17
more than 11% but not more than 12%	16
more than 12% but not more than 13%	15
more than 13%	14

(3) Insurable earnings in the rate calculation period shall be established and calculated in accordance with the regulations and include earnings from any insurable employment, regardless of whether the employment has ended.

(4) The rate calculation period is the period of not more than 26 consecutive weeks in the claimant's qualifying period ending with the later of

(a) the week

(i) before the claimant's benefit period begins, if it begins on the Sunday of the week in which the claimant's last interruption of earnings occurs, or

(ii) in which the claimant's last interruption of earnings occurs, if their benefit period begins on the Sunday of a week that is after the week in which the claimant's last interruption of earnings occurs, and

(b) the week before the claimant's benefit period begins, if the claimant has an insurable employment at the beginning of that period.

(4.1) The rate calculation period is 26 weeks, unless the claimant's qualifying period begins on a Sunday that is less than 26 weeks before the Sunday of the week in which the rate calculation period ends under subsection (4), in which case it is the number of weeks between those Sundays.

[4] The current version of section 14 of the Act stipulates:

14 (1) The rate of weekly benefits payable to a claimant is 55% of their weekly insurable earnings.

(1.1) The maximum weekly insurable earnings is

(a) \$750 if the claimant's benefit period begins during the years 1997 to 2000; and

(b) if the claimant's benefit period begins in a subsequent year, the maximum yearly insurable earnings divided by 52.

(2) A claimant's weekly insurable earnings are their insurable earnings in the calculation period divided by the number of weeks determined in accordance with the following table by reference to the applicable regional rate of unemployment.

TABLE

Regional Rate of Unemployment	Number of Weeks
not more than 6%	22
more than 6% but not more than 7%	21
more than 7% but not more than 8%	20
more than 8% but not more than 9%	19
more than 9% but not more than 10%	18
more than 10% but not more than 11%	17
more than 11% but not more than 12%	16
more than 12% but not more than 13%	15
more than 13%	14

(3) Insurable earnings in the calculation period are equal to the total of the following amounts established and calculated in accordance with the regulations:

(a) the claimant's insurable earnings during the calculation period including those from insurable employment that has not ended but not including any insurable earnings paid or payable to the claimant by reason of lay-off or separation from employment in the qualifying period; and

(b) the insurable earnings paid or payable to the claimant, during the qualifying period, by reason of lay-off or separation from employment.

(4) The calculation period of a claimant is the number of weeks, whether consecutive or not, determined in accordance with the table set out in subsection (2) by reference to the applicable regional rate of unemployment, in the claimant's qualifying period for which he or she received the highest insurable earnings.

(4.1) [Repealed, 2012, c. 19, s. 604]

[5] Section 17 of the *Employment Insurance Regulations* (the "Regulations") establishes:

17 (1) The regional rate of unemployment that applies to a claimant is

(a) in the case of regions described in sections 2 to 11 of Schedule I, the average of the seasonally adjusted monthly rates of unemployment for the last three-month period for which statistics were produced by Statistics Canada that precedes the week referred to in subsection 10(1) of the Act or, if Statistics Canada does not publish the relevant rate for a region for reasons of confidentiality, the average that Statistics Canada has determined based on the minimum number of unemployed persons required to allow it to publish the rate; and

(b) in the case of regions described in sections 12 to 14 of Schedule I, the greater of the average that would arise under subparagraph (i) and the average that would arise under subparagraph (ii):

(i) the average of the seasonally adjusted monthly rates of unemployment for the last three-month period for which statistics were produced by Statistics Canada that precedes the week referred to in subsection 10(1) of the Act or, if Statistics Canada does not publish the relevant rate for a region for reasons of confidentiality, the average that Statistics Canada has determined based on the minimum number of unemployed persons required to allow it to publish the rate, and

(ii) the average of the seasonally adjusted monthly rates of unemployment for the last 12-month period for which statistics were produced by Statistics Canada that precedes the week referred to in subsection 10(1) of the Act or, if Statistics Canada does not publish the relevant rate for a region for reasons of confidentiality, the average that Statistics Canada has determined based on the minimum number of unemployed persons required to allow it to publish the rate.

(1.1) The regional rate of unemployment referred to in subsection (1) is

(a) for the purposes of sections 7, 7.1, 12 and 14 and Part VIII of the Act, the rate produced for the region in which the claimant was, during the week referred to in subsection 10(1) of the Act, ordinarily resident; and

(b) for the purposes of sections 7, 7.1 and 14 and Part VIII of the Act, if the claimant was, during the week referred to in subsection 10(1) of the Act, ordinarily resident outside Canada, the rate produced for the region in which the claimant was last employed in insurable employment in Canada.

(2) If a claimant referred to in paragraph (1.1)(a) ordinarily resides so near to the boundaries of more than one region that it cannot be determined with certainty in which region the claimant resides, the regional rate of unemployment that applies to that claimant is the highest of the regional rates that apply in respect of each of those regions.

(3) If a claimant referred to in paragraph (1.1)(b) was last employed in insurable employment in Canada so near to the boundaries of more than one region that it cannot be determined with certainty in which region the claimant was employed, the regional rate of unemployment that applies to that claimant is the highest of the regional rates that apply in respect of each of those regions.

(4) The seasonally adjusted monthly rate of unemployment referred to in subsection (1) shall be obtained by using the regional rates of unemployment produced by Statistics Canada that incorporate an estimate of the rates of unemployment for status Indians living on Indian reserves

[6] Appendix I of the Act reads as follows (version dated January 23, 2014):

TABLE OF WEEKS OF BENEFITS

Regional Rate of Unemployment

Number of hours of insurable employment in qualifying period	6% and under	More than 6% but not more than 7%	More than 7% but not more than 8%	More than 8% but not more than 9%	More than 9% but not more than 10%	More than 10% but not more than 11%	More than 11% but not more than 12%	More than 12% but not more than 13%	More than 13% but not more than 14%	More than 14% but not more than 15%	More than 15% but not more than 16%	More than 16%
420–454								26	28	30	32	
455–489							24	26	28	30	32	
490–524						23	25	27	29	31	33	
525–559					21	23	25	27	29	31	33	
560–594				20	22	24	26	28	30	32	34	
595–629			18	20	22	24	26	28	30	32	34	
630–664		17	19	21	23	25	27	29	31	33	35	
665–699	15	17	19	21	23	25	27	29	31	33	35	
700–734	14	16	18	20	22	24	26	28	30	32	34	36
735–769	14	16	18	20	22	24	26	28	30	32	34	36
770–804	15	17	19	21	23	25	27	29	31	33	35	37
805–839	15	17	19	21	23	25	27	29	31	33	35	37
840–874	16	18	20	22	24	26	28	30	32	34	36	38
875–909	16	18	20	22	24	26	28	30	32	34	36	38
910–944	17	19	21	23	25	27	29	31	33	35	37	39
945–979	17	19	21	23	25	27	29	31	33	35	37	39
980–1014	18	20	22	24	26	28	30	32	34	36	38	40
1015–1049	18	20	22	24	26	28	30	32	34	36	38	40
1050–1084	19	21	23	25	27	29	31	33	35	37	39	41
1085–1119	19	21	23	25	27	29	31	33	35	37	39	41
1120–1154	20	22	24	26	28	30	32	34	36	38	40	42
1155–1189	20	22	24	26	28	30	32	34	36	38	40	42
1190–1224	21	23	25	27	29	31	33	35	37	39	41	43
1225–1259	21	23	25	27	29	31	33	35	37	39	41	43
1260–1294	22	24	26	28	30	32	34	36	38	40	42	44
1295–1329	22	24	26	28	30	32	34	36	38	40	42	44
1330–1364	23	25	27	29	31	33	35	37	39	41	43	45
1365–1399	23	25	27	29	31	33	35	37	39	41	43	45
1400–1434	24	26	28	30	32	34	36	38	40	42	44	45
1435–1469	25	27	29	31	33	35	37	39	41	43	45	45

Regional Rate of Unemployment

Number of hours of insurable employment in qualifying period	6% and under	More than 6% but not more than 7%	More than 7% but not more than 8%	More than 8% but not more than 9%	More than 9% but not more than 10%	More than 10% but not more than 11%	More than 11% but not more than 12%	More than 12% but not more than 13%	More than 13% but not more than 14%	More than 14% but not more than 15%	More than 15% but not more than 16%	More than 16%
1470–1504	26	28	30	32	34	36	38	40	42	44	45	45
1505–1539	27	29	31	33	35	37	39	41	43	45	45	45
1540–1574	28	30	32	34	36	38	40	42	44	45	45	45
1575–1609	29	31	33	35	37	39	41	43	45	45	45	45
1610–1644	30	32	34	36	38	40	42	44	45	45	45	45
1645–1679	31	33	35	37	39	41	43	45	45	45	45	45
1680–1714	32	34	36	38	40	42	44	45	45	45	45	45
1715–1749	33	35	37	39	41	43	45	45	45	45	45	45
1750–1784	34	36	38	40	42	44	45	45	45	45	45	45
1785–1819	35	37	39	41	43	45	45	45	45	45	45	45
1820–	36	38	40	42	44	45	45	45	45	45	45	45

[7] Schedule I of the Act reads as follows (version dated January 1, 2010):

SCHEDULE I (*Subsection 12(2)*)

TABLE OF WEEKS OF BENEFITS

Regional Rate of Unemployment

Number of hours of insurable employment in qualifying period	6% and under	More than 6% but not more than 7%	More than 7% but not more than 8%	More than 8% but not more than 9%	More than 9% but not more than 10%	More than 10% but not more than 11%	More than 11% but not more than 12%	More than 12% but not more than 13%	More than 13% but not more than 14%	More than 14% but not more than 15%	More than 15% but not more than 16%	More than 16%
420–454								31	33	35	37	
455–489							29	31	33	35	37	
490–524						28	30	32	34	36	38	
525–559					26	28	30	32	34	36	38	
560–594				25	27	29	31	33	35	37	39	
595–629			23	25	27	29	31	33	35	37	39	
630–664			22	24	26	28	30	32	34	36	38	40
665–699		20	22	24	26	28	30	32	34	36	38	40
700–734	19	21	23	25	27	29	31	33	35	37	39	41

Regional Rate of Unemployment

Number of hours of insurable employment in qualifying period	6% and under	More than 6% but not more than 7%	More than 7% but not more than 8%	More than 8% but not more than 9%	More than 9% but not more than 10%	More than 10% but not more than 11%	More than 11% but not more than 12%	More than 12% but not more than 13%	More than 13% but not more than 14%	More than 14% but not more than 15%	More than 15% but not more than 16%	More than 16%
735-769	19	21	23	25	27	29	31	33	35	37	39	41
770-804	20	22	24	26	28	30	32	34	36	38	40	42
805-839	20	22	24	26	28	30	32	34	36	38	40	42
840-874	21	23	25	27	29	31	33	35	37	39	41	43
875-909	21	23	25	27	29	31	33	35	37	39	41	43
910-944	22	24	26	28	30	32	34	36	38	40	42	44
945-979	22	24	26	28	30	32	34	36	38	40	42	44
980-1014	23	25	27	29	31	33	35	37	39	41	43	45
1015-1049	23	25	27	29	31	33	35	37	39	41	43	45
1050-1084	24	26	28	30	32	34	36	38	40	42	44	46
1085-1119	24	26	28	30	32	34	36	38	40	42	44	46
1120-1154	25	27	29	31	33	35	37	39	41	43	45	47
1155-1189	25	27	29	31	33	35	37	39	41	43	45	47
1190-1224	26	28	30	32	34	36	38	40	42	44	46	48
1225-1259	26	28	30	32	34	36	38	40	42	44	46	48
1260-1294	27	29	31	33	35	37	39	41	43	45	47	49
1295-1329	27	29	31	33	35	37	39	41	43	45	47	49
1330-1364	28	30	32	34	36	38	40	42	44	46	48	50
1365-1399	28	30	32	34	36	38	40	42	44	46	48	50
1400-1434	29	31	33	35	37	39	41	43	45	47	49	50
1435-1469	30	32	34	36	38	40	42	44	46	48	50	50
1470-1504	31	33	35	37	39	41	43	45	47	49	50	50
1505-1539	32	34	36	38	40	42	44	46	48	50	50	50
1540-1574	33	35	37	39	41	43	45	47	49	50	50	50
1575-1609	34	36	38	40	42	44	46	48	50	50	50	50
1610-1644	35	37	39	41	43	45	47	49	50	50	50	50
1645-1679	36	38	40	42	44	46	48	50	50	50	50	50
1680-1714	37	39	41	43	45	47	49	50	50	50	50	50
1715-1749	38	40	42	44	46	48	50	50	50	50	50	50
1750-1784	39	41	43	45	47	49	50	50	50	50	50	50
1785-1819	40	42	44	46	48	50	50	50	50	50	50	50
1820-	41	43	45	47	49	50	50	50	50	50	50	50

[8] Pilot project 11 was established under s. 77.7 of the Regulations and reads as follows:

77.7 (1) Pilot Project No. 11 is established for the purpose of testing whether paying benefits based on calculating the rate of weekly benefits using the insurable earnings from a claimant's 14 highest weeks of insurable earnings in the qualifying period would encourage claimants to accept all available work.

(2) Pilot Project No. 11 applies in respect of every claimant whose benefit period is established in the period beginning on October 26, 2008 and ending on October 23, 2010 and who is ordinarily resident in a region described in Schedule I that is set out in Schedule II.8, other than a claimant in respect of whom the *Employment Insurance (Fishing) Regulations* apply.

(3) For the purposes of Pilot Project No. 11,

- (a) subsections 14(2), (4) and (4.1) of the Act do not apply;
- (b) the reference in subsection 14(3) of the Act to "the rate calculation period" shall be read as a reference to "the qualifying period";
- (c) the references in section 24.1 of these Regulations to "the rate calculation period" shall be read as references to "the qualifying period";
- (d) section 24.2 of these Regulations does not apply;
- (e) the insurable earnings in a claimant's qualifying period shall be the aggregate of
 - (i) the insurable earnings from the 14 highest weeks of insurable earnings in that period, not including any insurable earnings paid or payable to the claimant in the qualifying period under section 24.1, and
 - (ii) any insurable earnings paid or payable to the claimant in the qualifying period under section 24.1; and
- (f) a claimant's weekly insurable earnings shall be determined by dividing the insurable earnings in the claimant's qualifying period, determined in accordance with paragraph (e), by 14.

(4) If a claimant's insurable earnings have been reported on the record of employment by pay period, the Commission shall

- (a) allocate the amount of insurable earnings proportionately over the pay period; or
- (b) if the claimant or the employer provides evidence of the amount of insurable earnings actually earned by the claimant in any week within the pay period, allocate the amount of insurable earnings proportionately over the other weeks in that pay period

[9] The economic regions included in the pilot projects, as presented in s. 77.7 of the Regulations, are as follows:

Table 1 - Schedule II.8 – Regions included in pilot projects

Region Number	Region Name
01	St-John's
02	Terre-Neuve/Labrador
03	Île-du-Prince-Édouard
04	Est de la Nouvelle-Écosse
05	Ouest de la Nouvelle-Écosse
08	Madawaska-Charlotte, N.-B
09	Restigouche-Albert, N.-B.
10	Gaspésie-Îles-de-la-Madeleine, Qué.
12	Trois-Rivières
17	Centre du Québec
18	Nord-ouest du Québec
19	Bas-Saint-Laurent-Côte- Nord, Qué.
21	Chicoutimi-Jonquière, Qué.
26	Oshawa (Nouveau)
31	Niagara (Nouveau)
32	Windsor (Nouveau)
34	Huron (Nouveau)
38	Nord de l'Ontario
41	Nord du Manitoba
45	Nord de la Saskatchewan
48	Nord de l'Alberta
55	Nord de la C.-B.
56	Yukon
57	Territoires du Nord-Ouest
58	Nunavut