Citation: *AB v Canada Employment Insurance Commission*, 2022 SST 817

Social Security Tribunal of Canada
Appeal Division

Decision

Appellant:	A. B.
Representative:	P. H.
Respondent:	Canada Employment Insurance Commission
Representative:	Anick Doumoulin

Decision under appeal:	General Division decision dated March 15, 2022 (GE-22-383)

Tribunal member:	Charlotte McQuade
Type of hearing:	Teleconference
Hearing date:	June 30, 2022
Hearing participants:	Appellant Appellant's representative Respondent's representative
Decision date:	August 26, 2022
File number:	AD-22-197

Decision

[1] The appeal is dismissed.

[2] The General Division did not make an error of jurisdiction.

[3] The General Division did not make an error of law in how it interpreted section 153.17 (1) of the *Employment Insurance Act* (EI Act).

Overview

[4] As a temporary measure associated with the pandemic, claimants could get a one-time credit of 300 insurable hours (hours) to start a claim for Employment Insurance (EI) regular benefits or 480 hours for special benefits.[1]

[5] A. B. is the Claimant. She collected regular benefits from October 11, 2020. She then asked the Canada Employment Insurance Commission (Commission) for 15 weeks of maternity benefits and 35 weeks of parental benefits. The Commission renewed her existing benefit period but it ended 10 weeks later. The Claimant asked the Commission to, instead, end her existing benefit period on July 17, 2021, and start a new benefit period on July 18, 2021.

[6] The Commission decided the Claimant didn't have enough hours to start a new benefit period. The Commission said, even though the Claimant didn't need the credit, the law required it to apply the credit of 300 hours to start the October 11, 2020, benefit period, and the credit could only be applied once. So, she couldn't have the credit to use to start another benefit period. The Claimant appealed the Commission's decision to the General Division who dismissed her appeal.

[7] The Claimant appealed the General Division's decision. She says the General Division either made an error of jurisdiction or an error of law when it interpreted

[1] See section 153.17 (1) of the *Employment Insurance Act* (EI Act) which is the section that describes the credit of hours. See sections 21 to 23.3 of the EI Act, which describes that special benefits include sickness, maternity, parental, compassionate care, and family caregiver benefits.

section 153.17 (1) of the EI Act to mean the credit of hours had to apply to the first initial claim made on or after September 27, 2020. She says section 153.17 (1) gives the Commission the discretion to apply the credit only if needed.

[8] I have decided that the General Division did not make an error of jurisdiction and it did not misinterpret section 153.17 (1) of the EI Act. So, I am dismissing the Claimant's appeal.

I will consider the Commission's new evidence

[9] I asked the parties to provide post-hearing submissions about what the word "deemed" meant in section 153.17 (1) of the EI Act.

[10] The Commission's post-hearing submissions refer to a "newswire" hyperlink to a News Release dated January 29, 2021, from Employment and Social Development Canada. It summarizes pandemic-related changes to the EI Act.

[11] The Commission's submissions also refer to a Government of Canada website hyperlink to a News Release dated September 25, 2020, from Employment and Social Development Canada. It explains changes to the EI program on September 27, 2020, following the ending of the Canada Emergency Response Benefit program.[2]

[12] The Commission relies on both these documents as relevant to the context and purpose of section 153.17 of the EI Act.

[13] Neither of these News Releases were before the General Division when it made its decision so they are new evidence. The Appeal Division generally does not accept new evidence. This is because the Appeal Division isn't rehearing the case. Instead, the Appeal Division decides whether the General Division made certain errors, and if so, how to fix those errors.

[14] I can only accept new evidence that the General Division didn't have when it made its decision, if that new evidence provides general background information only,

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[2] See AD9-2.

highlights findings that the Tribunal made without supporting evidence, or reveals ways in which the Tribunal acted unfairly.[3]

[15] I will consider the News Releases. They do not relate specifically to whether the Claimant has enough hours to qualify for benefits. Rather, they provide general background information, relevant to the pandemic-related changes to the EI Act, including section 153.17 of the EI Act. So, I will accept this new evidence as general background information.

Issues

[16] The issues in this appeal are:

a) Did the General Division make an error of jurisdiction or an error of law in how it interpreted section 153.17 (1) of the EI Act?

b) If so, how should the error be fixed?

Analysis

The General Division did not make an error of jurisdiction

[17] The Claimant submits that the General Division made an error of jurisdiction or an error of law when it failed to interpret section 153.17 (1) of the EI Act to mean that the Commission had the discretion to apply the credit of hours, only if needed.

[18] An error of jurisdiction arises when the General Division didn't decide something it had to decide or it decided something it did not have the authority to decide.

[19] The General Division had to decide whether the Claimant could benefit from the credit of hours provided for in section 153.17 (1) of the EI Act and it did so. The General

[3] See *Sharma v Canada (Attorney General)*, 2018 FCA 48, which explains the test for accepting new evidence on judicial review. Given that the Appeal Division's role is to review errors the General Division may have made, I think the same reasoning applies to new evidence at the Appeal Division.

Division did not decide anything it didn't have authority to decide. So, the General Division did not make an error of jurisdiction.

[20] The type of error the Claimant raises concerns the interpretation of section 153.17 (1) of the EI Act. This is a potential error of law.

[21] I have to decide if the General Division made an error of law when it interpreted section 153.17 (1) of the EI Act. This means I have to decide if its interpretation is correct.

General Division decision

[22] The General Division interpreted section 153.17 (1) of the EI Act to mean that the Commission had to apply the credit of hours to the first benefit period after September 27, 2020, and the Commission had no discretion in the application of the hours.[4]

[23] Section 153.17 of the EI Act provides as follows:

> **153.17 (1)** A claimant who makes an initial claim for benefits under Part I on or after September 27, 2020, or in relation to an interruption of earnings that occurs on or after that date is deemed to have in their qualifying period
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> **(a)** if the initial claim is in respect of benefits referred to in any of sections 21 to 23.3, an additional 480 hours of insurable employment; and
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> **(b)** in any other case, an additional 300 hours of insurable employment.
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> **153.17 (2)** Subsection (1) does not apply to a claimant who has already had the number of insurable hours in their qualifying period increased under that subsection or under this section as it read on September 26, 2020, if a benefit period was established in relation to that qualifying period.

[24] The General Division relied on prior decisions of the Appeal Division interpreting section 153.17 (1) of the EI Act on similar facts as the Claimant's situation. The Appeal

[4] See section 16 of the General Division decision.

Division said in those decisions that section 153.17 (1) of the EI Act doesn't give any flexibility about when or how to apply the hours credit.[5]

[25] The General Division decided, following those cases, that the words of section 153.17 (1) of the EI Act were clear. The plain, simple meaning of the law did not give any flexibility about when and how to apply the one-time credit of hours.

[26] The General Division concluded that, even though the Claimant already had enough hours to qualify for EI benefits in October 2020, the law required the Commission to give her the hours credit anyway. So, the Claimant couldn't save the credit and use it to qualify for benefits to start a new benefit period.

The General Division did not make an error of law in how it interpreted section 153.17 (1) of the EI Act.

[27] The General Division interpreted section 153.17 (1) of the EI Act correctly.

[28] I recognize that the Appeal Division has consistently interpreted section 153.17 (1) to mean the credit must be applied when the first claim is made on or after September 27, 2020. Although I am not bound by those decisions, I do have to keep them in mind. I cannot depart from those decisions without a good reason.

[29] To interpret section 153.17 (1) of the EI Act, I also have to keep in mind some interpretive rules.

[30] I have to consider the words "in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament." [6]

[31] This means it is not enough to look at the text alone, to decide what section 153.17 (1) of the EI Act means. I also have to consider what section 153.17 (1)

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[5] The General Division referred to the following Appeal Division decisions: *DM v Canada Employment Insurance Commission*, 2021 SST 472 and *MM v Canada Employment Insurance Commission*, 2022 SST 5.

[6] See *Rizzo & Rizzo Shoes Ltd. (Re),* 1998 CanLII 837 (SCC), at paragraph 21 and *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, at paragraph 117.

means in the context of related provisions. As well, I have to consider the purpose of section 153.17 (1) and the EI Act.

[32] However, if the words used in a section of the law are “precise and unequivocal” (in other words, clear and straightforward) their ordinary meaning will usually play a more significant role when interpreting them.[7]

[33] But purpose is also very important. Legislation is supposed to be interpreted in a way that gives effect to its purpose.[8] It also has to be interpreted in a way that does not result in absurd consequences.[9]

[34] Laws like the EI Act, which are about providing benefits, are supposed to be interpreted liberally. This means if the wording is ambiguous (unclear), the interpretation should be resolved in favour of the person seeking benefits.[10]

– **Text**

[35] The General Division’s interpretation is consistent with the text.

[36] The Claimant argues that section 153.17 (1) is not clear. She says it can be interpreted to mean the credit is only to be applied by the Commission if a claimant needs the hours to start a benefit period.

[37] The Claimant says section 153.17 (1) refers to **“an”** initial claim for benefits, not a “first” initial claim for benefits, to receive the credit of hours. She says this means the credit is not limited to the first initial claim.

[38] The Claimant argues further that the word **“deemed”** is not clear. She says it can be interpreted to mean the Commission has discretion to only apply the credit if needed. She points out that common dictionary meanings of “deemed” are, “alleged, assumed, regarded, considered, had, estimated, seemingly thought, conjectural,

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[7] See *Canada Trustco Mortgage Co. v Canada*, 2005 SCC 54, at paragraph 10.
[8] See section 12 of the *Interpretation Act*, R.S.C., 1985, c. I-21.
[9] See *Rizzo & Rizzo Shoes Ltd. (Re),* [1998] 1 SCR 27, at paragraph 27.
[10] See *Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 CanLII 837 (SCC).

hypothetical." So, she says, "deemed" doesn't necessarily mean that the hours have to be applied.

[39] The Claimant relies on a case from the Tribunal's General Division, *SS v Canada Employment Insurance Commission,* 2021 SST 885, where the General Division decided section 153.17 (1) should be interpreted to mean the credit was to be applied only if a claimant needs the hours. The General Division said that, to interpret section 153.17 (1) otherwise would be contrary to the legislative intent of that section which was to help people access benefits.

[40] The Commission disagrees that section 153.17 (1) is unclear. The Commission says the ordinary meaning of section 153.17 (1) is that the one-time credit of hours is automatically applied when the conditions set out in that section are met. The credit is applied when **"an"** initial claim is made on or after September 27, 2020.

[41] The Commission says the word **"deemed**" is also clear and removes any discretion on the part of the Commission. The Commission says according to the Black's Law Dictionary, "deem" means, "To hold; consider; adjudge; condemn." According to the Oxford English Dictionary, the ordinary meaning of the word "deem" is: to regard or consider in a specified way. According to Merriam-Webster Unabridged English Dictionary and Cambridge English Dictionary, the word "deemed" is "the past tense of the verb deem, a word that means to consider, regard, or judge something in a particular way."[11]

[42] The Commission submits that the Appeal Division has previously interpreted the word "deem," as it is defined in the Oxford English Dictionary, Online version, to mean, "to regard or consider in a specified way."[12]

[43] The Commission also points out that the General Division decision the Claimant relies on was overturned by the Appeal Division. The Appeal Division decided the

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[11] See AD9-2.
[12] See AD9-2 where the Commission refers to *TG v Minister of Employment and Social Development*, 2016 SSTADIS 372.

General Division's interpretation was not correct because the General Division had not interpreted section 153.17 (1) in the context of section 153.17 (2) of the EI Act.[13]

[44] The Commission says all the prior decisions of the Appeal Division have interpreted section 153.17 (1) of the EI Act the same way the General Division did, with similar fact situations to the Claimant's situation.[14]

[45] I agree with the Commission that the ordinary and plain meeting of the text of section 153.17 (1) is that the credit applies when the first initial claim is made on or after September 27, 2020.

[46] The definition of "initial claim for benefits" in the EI Act just says that it is "a claim for the purpose of establishing a claimant's benefit period."[15] It doesn't refer to a "first initial claim."

[47] However, the term "initial claim for benefits" is preceded by the word **"an."** In my view, the use of the article "an" in front of the term "initial claim for benefits" suggests it is the first initial claim that is being referred to.

[48] If the intention had been to include subsequent claims, I think there would have been some clarifying language suggesting that. However, there is nothing in the section 153.17 or elsewhere in the EI Act limiting the triggering of the hours, once a first initial claim has been made, to a claim only where the hours are needed.

[49] I also find it significant that the text refers to a credit of a fixed number of hours. The credit is for 300 or 480 hours, depending on the type of benefits being claimed. The amount of the credit is not tied directly to the hours a person has earned or needs to qualify. Whether a person has one hour or a thousand hours, the amount of the credit is

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[13] See *Canada Employment Insurance Commission v SS* 2022 SST 283.
[14] See AD9-3. The Commission refers to *Canada Employment Insurance Commission v NK*, 2021 SST 601, *DM v Canada Employment Insurance Commission*, 2021 SST 472, and *Canada Employment Insurance Commission v SS*, 2022 SST 383.
[15] See section 6(1) of the EI Act.

the same. This argues against the Claimant's interpretation that the application of the credit is linked to the need of a claimant.

[50] However, the critical word in the text of section 153.17 (1) of the EI Act is the word "**deemed."**

[51] The word "deemed" creates a presumption. There are two kinds of presumptions in the law: a rebuttable presumption and a conclusive presumption.

[52] The purpose of a rebuttable presumption is to establish something as a fact without the benefit of evidence. A rebuttable presumption is a presumption that can be rebutted by providing evidence that shows the presumption is false.[16]

[53] A "conclusive presumption" is a type of legal fiction that creates a rule. It cannot be rebutted by evidence. In other words, if certain facts exist, then a result must follow.

[54] Whether the use of the word "deemed" establishes a conclusive or a rebuttable presumption depends largely upon the context in which the word is used, the purpose to be served and the necessity of ensuring that the purpose is served.[17]

[55] Essentially, the Claimant's position is that "deemed" in section 153.17 (1) creates a rebuttable presumption. Her position is that the presumption that the credit of hours is to be applied can be rebutted by evidence showing a claimant does not need the hours to qualify.

[56] The Commission's position is that "deemed" creates a conclusive presumption. Once the first initial claim is made on or after September 27, 2020, the result that follows is the credit is applied.

[57] I find that the word "deemed" in section 153.17 (1) of the EI Act operates as a conclusive presumption. I find this for several reasons.

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[16] See the text, *The Construction of Statutes,* 7th Ed., Ruth Sullivan, Chapter 4, at page 32.
[17] See *Cabot v. The Queen*, 1998 CanLII 477 (TCC).

[58] First, the context in which the presumption is used does not suggest it is rebuttable. Nowhere in the section 153.17, or in Part VIII.5 of the EI Act, where section 153.17 is found, or anywhere in the EI Act is there any qualifying language or reference to circumstances in which the deeming would not apply.

[59] Second, the way the Claimant says the presumption can be rebutted is not consistent with how rebuttable presumptions operate. With a rebuttable presumption, the fact that is being presumed has to be rebutted by evidence. For example, if a law presumes a person to have received a document by a certain date, that presumption could be rebutted by the person providing evidence that they actually received the document on another date.

[60] But the presumption in section 153.17 (1) of the EI Act doesn't operate that way. I will explain why.

[61] Assume a claimant makes an initial claim with X number of hours. Section 153.17 (1) presumes they have X hours plus either 300 or 480 hours, depending on the type of claim they make.

[62] But there is no way to rebut this presumption with evidence. To rebut the presumption, a claimant would have to show they didn't have X plus 300 or 480 hours. But that is not possible to do. The claimant will always have X plus 300 or 480 hours.

[63] The Claimant is suggesting the presumption can be rebutted by the hours a claimant actually has or the hours they need. But it is the fact being presumed that must be rebutted by evidence (in other words, that the person has X plus 300 or 480 hours). The hours a claimant actually has or needs doesn't rebut that fact.

[64] The way the presumption operates in section 153.17 (1) of the EI Act is consistent with a conclusive presumption. In other words, if a person makes an initial claim on or after September 27, 2020, the result that follows is the credit of either 300 or 480 hours.

[65] So, having regard to the use of the article “an” before the term “initial claim,” the fixed amount of the credit and that “deemed” in section 153.17 (1) operates as a conclusive presumption, I find, as the General Division did, that the text is clear. The Commission must apply the credit of hours once the first initial claim has been made on or after September 27, 2020.

[66] Since the text is clear, it plays a significant role in the interpretation. However, I also have to consider whether the General Division’s interpretation is consistent with the context and purpose.

– **Context**

[67] The General Division’s interpretation of section 153.17 (1) is consistent with the context in which it operates.

[68] The Commission argues that the section 153.17 (1) must be read in context with section 153.17 (2). The Commission says, when read together, it is clear that the credit will only apply to the first initial claim made on or after September 27, 2020.

[69] The Commission points out that in the Appeal Division noted above, the Appeal Division reasoned that, read on its own, section 153.17 (1) could suggest that a claimant is deemed to have the additional hours applied to all initial claims made on or after September 27, 2020. However, the limitation in section 153.17 (2) then clarifies that the credit will only apply to the first initial claim.[18]

[70] The Claimant says 153.17 (2) simply means you can’t have the credit twice. It doesn’t mean that the credit in section 153.17 (1) has to be applied to the first initial claim.

[71] I agree with the Claimant that section 153.17 (2) doesn’t necessarily narrow the credit to the first initial claim made on or after September 27, 2020. The fact the credit can’t be applied twice is consistent with both the Claimant’s interpretation and the

[18] See *Canada Employment Insurance Commission v SS*, 2022 SST 383.

General Division's interpretation. In both cases, the credit is only being applied once to establish a benefit period.

[72] However, I must also consider what section 153.17 (1) means in the context of section 153.171 of the EI Act. This section provides as follows:

> **153.171** A claimant who qualifies to receive benefits under section 7 and who received the additional 300 hours of insurable employment under paragraph 153.17 (1)(b) may make a claim for benefits under section 21 to 23.3 even if they are not a major attachment claimant, as defined in subsection 6(1).

[73] A "major attachment claimant" is defined as one who qualifies to receive benefits and has 600 or more hours of insurable employment in their benefit period.

[74] Prior to September 25, 2021, a claimant had to be a "major attachment claimant," to qualify for EI maternity and parental benefits (special benefits). So they required 600 hours to qualify.[19]

[75] Section 153.171 was one of the temporary amendments added to the EI Act on September 27, 2020. This provision appears to provide an exception to the 600-hour requirement for those claimants who had a credit of 300 hours applied to a claim for regular benefits.

[76] From September 27, 2020, to September 25, 2021, the minimum unemployment rate remained at 13.1%.[20] This meant claimants of regular benefits during that period were only required to have 420 hours to qualify.[21]

[77] The practical effect of section 153.171 is that if a claimant has already received the credit of 300 hours to establish a claim for regular benefits, they can qualify for special benefits even if they have only earned 420 hours.[22]

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[19] See section 22(1) of the EI Act in effect from August 12, 2018, to September 25, 2021, and see section 23(1) of the EI Act in effect from March 18, 2019, to September 25, 2021.
[20] See section 153.16 of the EI Act.
[21] See section 7(2) of the EI Act as it from September 27, 2020, to September 25, 2021.
[22] See section 6(1) of the EI Act.

[78] So, section 153.171 specifically addresses what happens where a subsequent claim is made for special benefits (which include maternity and parental benefits) after a claim for regular benefits was made and the credit was applied.

[79] Considering, section 153.17 (1) in the context of section 153.171 of the EI Act, it is clear the credit in section 153.17 (1) is intended to apply only to the first initial claim made on or after September 27, 2020. It is not intended to be applied to subsequent claims.

[80] Instead, section 153.17 (1) contemplates that, where the credit has been applied to a claim for regular benefits, a reduced amount of hours is required to qualify for special benefits on a subsequent claim.

[81] I also have to consider section 153.17 (1) in the context of how benefit periods operate in the EI Act.

[82] Typically, a benefit period runs for 52 weeks.[23] A benefit period can end before 52 weeks, if a claimant is paid their maximum weeks of benefits, or if the Commission cancels the benefit period.[24] It can also end if a claimant requests that the benefit period end and makes a new initial claim for benefits and qualifies to establish that new claim for benefits.

[83] For benefit periods starting between September 27, 2020, and September 25, 2021, the maximum number of weeks of regular benefits was 50 weeks.[25]

[84] The maximum allowed weeks of combined regular and special benefits was 50 weeks.[26]

[85] Once a benefit begins, it continues to run. If a person collects less than the maximum weeks of benefits and returns to work and then needs benefits again, the

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[23] See section 10(2) of the EI Act.
[24] See section 10(6) of the EI Act, which explains how a benefit period can be cancelled. See section 10(8) of the EI Act, which explains when a benefit period ends.
[25] See section 12(2.1) of the EI Act.
[26] See section 12(6) of the EI Act.

existing benefit period is renewed and continues until the maximum weeks are paid, or 52 weeks is reached. A claimant can only start a new benefit period if they end their existing benefit period and have earned enough hours since the start of their last benefit period to do so.

[86] The General Division's interpretation is consistent with the general rule that benefit periods continue until either the maximum weeks are paid or 52 weeks is reached. This because if a first initial claim is made, the credit is given and a benefit period established, no further credit would be required. The benefit period would be expected to run until its end.

[87] The Claimant's situation is an exception to the general rule. She wants to end an existing benefit period and start a new benefit period for maternity and parental benefits. But I find this exception is contemplated by section 153.171 of the EI Act, which requires a reduced number of hours to establish the new claim.

[88] So, I find the General Division's interpretation of section 153.17 (1) is consistent with the context of section 153.171 and the context of how benefit periods operate in the EI Act.

– **Purpose**

[89] The General Division's interpretation is also consistent with the purpose of section 153.17 (1) and the overall purpose of the EI Act.

[90] The Claimant argues that the purpose of section 153.17 (1) was to support EI claimants who, because of the ongoing impact of the pandemic, could not obtain enough hours of insured employment to start a benefit period during the one-year period section 153.17 was in effect. She argues the application of the credit in section 153.17 (1) was not intended to be limited to the first initial claim in that period.

[91] In asserting this purpose, the Claimant relies on a Backgrounder from Employment and Social Development Canada explaining changes to the EI Act, effective September 27, 2020.[27]

[92] The Backgrounder states in part that,

> "The Government of Canada recognizes that the pandemic has prevented many Canadians from accumulating the number of insurable hours that is normally required, and is taking action to address this. To help individuals qualify with a minimum of 120 hours of work, EI claimants will receive a one-time insurable hours credit of: 480 insurable hours for claims for special benefits (sickness, maternity/parental, compassionate care or family caregiver). The hours credit will be available for new EI claims for one year, in recognition that labour market conditions remain uncertain and will take time to stabilize."

[93] The Claimant argues that the General Division's interpretation is inconsistent with this purpose because rather than helping claimants qualify for benefits, it harms them. She points out she had enough hours to qualify on October 11, 2020, so didn't need the credit. Giving her the credit when she didn't need it prevented her from using the credit when she did need it to start a new benefit period.

[94] The Claimant also relies on the wording of the prior version of section 153.17 (1) in effect from August 10, 2020, to September 26, 2020. That version said that if a person had fewer than 600 hours of insurable employment in their qualifying period, the number of hours shall be increased by 480.[28]

[95] The Claimant maintains there is no reason to conclude that the change in wording meant a change in the purpose as the pandemic situation didn't change.

[96] The Commission argues that the purpose of section 153.17 (1) was to help claimants affected by the pandemic prior to September 27, 2020, and who did not have enough hours to establish a claim after the Canada Emergency Response Benefit

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[27] See GD2-7.
[28] See section 153.17 (1) of the EI Act, in effect from August 26, 2020, to September 26, 2020.

(CERB) ended on September 27, 2020. The Commission says the temporary measures were intended to be transitional measures and the credit was to assist with the establishment of the first benefit period on or after September 27, 2020, not a subsequent benefit period.

[97] The Commission, referring to the News Release information it provided as new evidence, says that, after the CERB ended, the government anticipated that many people would still require income support and the temporary measures were intended to address that circumstance. The Commission points out that approximately 2.8 million CERB recipients were transitioned to EI regular benefits, including over 400,000 workers who would not have qualified for EI without these measures.[29]

[98] I find that the purpose of section 153.17 (1) of the EI Act was to provide a credit of hours to help establish the first benefit period on or after September 27, 2020. In this regard, I find the timing of the measure, following directly upon the ending of the CERB program to be significant. The provision was put in place as a temporary transitional provision following the ending of the CERB program.

[99] According to the Backgrounder, the government recognized that the market conditions were still uncertain and would take time to stabilize. However, I cannot conclude from the recognition of ongoing instability that the purpose of section 153.17 (1) was to assist in the ending of an already existing benefit period and the starting of a subsequent one.

[100] In that regard, I see nothing in the Backgrounder, or the News Release information, which suggests that. In fact, the Backgrounder information the Claimant relies on suggests otherwise. It says, “The hours credit will be available for new EI claims for one year, in recognition that labour market conditions remain uncertain and

[29] See AD9-1, which refers to the News Release from Employment and Social Development Canada dated January 29, 2021, and a News Release dated September 25, 2020, from Employment and Social Development Canada.

will take time to stabilize."[30] The use of the word **"new"** implies that the intention is to assist the "first" initial claim in that one-year period.

[101] It is true that the legislature could have used the word "shall" in section 153.17 (1), which clearly would have signalled an intention that the hours had to be applied to establish the first benefit period.[31] However, I find the legislature signalled its intention by significantly changing the wording from the prior version.

[102] The *Interpretation Act* says an amendment does not imply a change in the law. However, that rule is subject to a contrary intention appearing.[32]

[103] In my view, the very significant change in the wording of the credit provision from the prior version where the credit was only applied if a claimant had fewer than the required hours, along with the addition of section 153.171 at the same time, signifies a contrary intention. It signifies that the credit was to be applied to establish the first benefit period on or after September 27, 2020, even if it wasn't needed.

[104] The title to Part VIII.5 of the EI Act is "Temporary Measures to Facilitate Access to Benefits." The title is fairly broad but I don't think that means the purpose of section 153.17 (1) was to assist any initial claim made on or after September 27, 2020.

[105] I cannot read too much into the title because Part VIII.5 includes many amendments made to the EI Act as of September 27, 2020. The title is not specific to section 153.17 (1) of the EI Act.

[106] Further, the broad title does not mean that there are not limits on the temporary measures found in Part VIII.5.

[107] As the Federal Court of Appeal has said, the EI Act is "… a contributory scheme providing social insurance for those who lose their jobs…"[33]

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[30] See GD2-7.
[31] See section 22 of the *Interpretation Act*.
[32] See section 3(1) of the *Interpretation Act*.
[33] See *Canada (Attorney General) v Lesiuk*, 2003 FCA 3.

[108] So, while the intent of the EI Act is to assist those who lost their jobs, it is also a contributory scheme with qualifying requirements. Section 153.171 clearly points out there are qualifying requirements for individuals in a situation such as the Claimant's.

[109] The General Division's interpretation is consistent with the purpose of section 153.17 (1) which is to assist claimants establish their first benefit period on or after September 27, 2020. It is also consistent with the overall purpose of the EI Act to provide assistance to those claimants who qualify.

– The General Division's interpretation does not have an absurd result

[110] The Claimant points out the harshness of the result that arises from the General Division's interpretation. She ends up with only 10 of the 15 weeks of maternity benefits she claimed and none of the 35 weeks of parental benefits she claimed.

[111] The Claimant says this result is inconsistent with the purpose of section 153.17 (1) of the EI Act, which is to help workers who can't earn enough hours due to the ongoing impact of the pandemic establish a claim for benefits.

[112] There is no doubt the Claimant is in a difficult situation. But I cannot conclude the General Division's interpretation has an absurd result.

[113] No claimant who qualifies for benefits with more than the required hours can use those extra hours to establish a subsequent benefit period. The extra hours are lost. So, the fact the Claimant had extra hours resulting from the application of the credit to her first benefit period, that were of no use to her, is not absurd when considered in that context.

[114] Although the Claimant cannot have the credit to establish a subsequent benefit period that result is only absurd if the purpose of section 153.17, (1) is to assist claimants in establishing any benefit period for the one-year period section 153.17 was in effect. However, as above, that is not the purpose. The purpose is to help claimants establish a first benefit period on or after September 27, 2020.

– **The General Division's Interpretation was correct**

[115] I find the General Division's interpretation to be consistent with the text, the context and the purpose of section 153.17 (1) of the EI Act and the EI Act as a whole. The General Division did not err in law with its interpretation.

[116] I recognize this result is going to be disappointing for the Claimant. I also recognize this is not an academic exercise for the Claimant. Her ability to support her child is at stake.

[117] As the Federal Court of Appeal has said, rigid rules can give rise to some harsh results but however tempting it may be in such cases, adjudicators cannot rewrite legislation nor to interpret it in a manner that is contrary to its plain meaning.[34]

[118] As sympathetic as I am to the Claimant's situation, I cannot intervene in the General Division's decision.

Conclusion

[119] The appeal is dismissed. The General Division did not make an error of jurisdiction or an error of law.

Charlotte McQuade
Member, Appeal Division

[34] See *Canada (Attorney General) v. Knee, 2011 FCA 301.*