[TRANSLATION]

Citation: *SC v Canada Employment Insurance Commission*, 2025 SST 537

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	S. C.
Representative:	D. C.
Respondent:	Canada Employment Insurance Commission
Representative:	Érélégna Bernard

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (443793) dated June 6, 2022 (issued by Service Canada)

Tribunal member:	Normand Morin
Type of hearing:	Teleconference
Hearing date:	January 17, 2025
Hearing participants:	Appellant Appellant's representative Respondent's representative
Decision date:	February 24, 2025
File number:	GE-22-2356

Decision

[1] The appeal is dismissed.

[2] I find that the Appellant's application for a stay of proceedings is not justified.

[3] I find that the Canada Employment Insurance Commission (Commission) is justified in asking the Appellant to pay back the amount of money he was overpaid as an advance payment of the Employment Insurance (EI) Emergency Response Benefit (ERB) (overpayment).[1] The Appellant has to pay it back.

Overview

[4] The Appellant worked as a cook for restaurant X (X or employer) from May 3, 2010, to March 16, 2020. On March 19, 2020, the Appellant filed an initial claim for Employment Insurance benefits (regular benefits).[2] A benefit period was established effective March 15, 2020, so that the Appellant could receive EI ERB benefits.[3]

[5] On October 8, 2021, Employment and Social Development Canada (ESDC) sent a notice of debt to the Appellant.[4] It said that the Appellant was no longer entitled to the Canada Emergency Response Benefit (CERB) advance payment that he received. The result was an overpayment of $2,000.00.[5]

[6] On October 21, 2021, the Commission told the Appellant that in spring 2020, he received an initial CERB payment of $2,000.00, saying that it was an advance payment of four weeks to get money to him as quickly as possible. It explained to him that the maximum amount he should have received was $500.00 per week during the full period he was eligible for the CERB. It told him that according to information it had on file,

---

[1] See sections 43, 44, 47, 52, 153.6(1)(a), 153.1301, and 153.1303(1) of the *Employment Insurance Act* (Act).
[2] See GD3-3 to GD3-12.
[3] See GD3-1 and GD4-1.
[4] See the document entitled "Notice of Debt / Avis de dette," issued by Employment and Social Development Canada, dated October 8, 2021—GD2-12 to GD2-14.
[5] See the document entitled "Notice of Debt / Avis de dette," issued by Employment and Social Development Canada, dated October 8, 2021—GD2-12 to GD2-14.

which included his statements, he was paid more benefits than the amount he was eligible for. It told him he had a notice of debt that provided the amount he had to repay and information on repayment measures, as needed.[6]

[7] On June 6, 2022, after a request for reconsideration, the Commission told the Appellant that it was upholding the October 8, 2021, [*sic*] [October 21, 2021],[7] decision about his benefit overpayment (advance payment – recovery of lump sum payment).[8]

[8] On July 15, 2022, the Appellant challenged the Commission's reconsideration decision before the General Division of the Social Security Tribunal of Canada (Tribunal).[9]

[9] In his notice of appeal, the Appellant says that on November 17, 2021, in addition to requesting a reconsideration of the Commission's decision, he submitted a request to ESDC to gain access to the information in his file about the notice of debt that it sent to him on October 8, 2021.[10]

[10] On April 18, 2024,[11] the Appellant applied for a stay of proceedings in his appeal and requested that the Commission write off the $2,000.00 amount that it said he owed for benefits he was overpaid, given the delay in processing his access to information request. He said the delay was unreasonable and caused him prejudice.[12]

[11] Regarding the Commission's request that he pay back the $2,000.00 amount for overpaid benefits, the Appellant says it misled him by saying that he was entitled to the EI ERB when he inquired. He also says that he should not have to pay for the Commission's administrative error and its representatives' lack of professionalism when he asked them if he was entitled to the EI ERB.

---

[6] See GD2-16 and GD3-74.
[7] The notice of debt is dated October 8, 2021, and the Commission's decision is dated October 21, 2021.
[8] See GD2-37, GD2-38, GD3-92, and GD3-93.
[9] See GD2-1 to GD2-38.
[10] See GD2-1 to GD2-38.
[11] Date the document was received by the Tribunal.
[12] See GD32-1 to GD32-6.

Preliminary matters

[12] At the hearing, the Appellant's representative (representative) confirmed that the Appellant applied for a stay of proceedings, which he served in an email to the Tribunal on April 18, 2024,[13] and reiterated during the case conferences on May 31, 2024, and November 1, 2024.

[13] During the case conference on November 1, 2024, the representative also said that before the end of December 2024, he would provide written arguments to the Tribunal about the application to stay the proceedings.

[14] The representative explains that even though he did not provide written arguments on this matter, he maintains the application to stay the proceedings in the Appellant's case.

[15] With that in mind, I will begin by deciding on the Appellant's application to stay the proceedings, then determine if the Commission is justified in asking him to pay back an amount for overpaid benefits (overpayment).

Issues

[16] I must decide if the Appellant has shown that his application to stay the proceedings is justified.

[17] I must also decide if the benefits that were overpaid to the Appellant have to be paid back.[14]

Analysis

Application to stay the proceedings

[13] Date the document was received by the Tribunal—GD32-1 to GD32-6.
[14] See sections 43, 44, 47, 52, 153.6(1)(a), 153.1301, and 153.1303(1) of the Act.

[18] I find that the Appellant hasn't shown that his application to stay the proceedings in his case is justified.

[19] In *Abrametz*, the Supreme Court of Canada established three specific steps to test for whether delay in an administrative process amounts to an abuse of process.[15]

[20] The three steps are as follows:

- The delay must be inordinate.
- The delay must have caused significant prejudice.
- The court or tribunal is to conduct a final assessment as to whether abuse of process is established.[16]

[21] In my analysis, I consider the steps established by the Supreme Court of Canada in *Abrametz* to test for whether an application for a stay of proceedings is justified.[17]

[22] I find that based on these steps, the Appellant's application to stay the proceedings isn't justified.

[23] The Appellant's representative makes the following arguments:

a) In November 2021, the Appellant made an access to information request to ESDC at the same time he received a repayment notice (notice of debt) in the amount of $2,000.00.[18]

b) The Appellant received no answers to his initial questions during the period from November 2021 to October 2024.

---

[15] See the Supreme Court of Canada decision in *Law Society of Saskatchewan v Abrametz*, 2022 SCC 29.
[16] See the Supreme Court of Canada decision in *Law Society of Saskatchewan v Abrametz*, 2022 SCC 29.
[17] See the Supreme Court of Canada decision in *Law Society of Saskatchewan v Abrametz*, 2022 SCC 29.
[18] See GD32-1 to GD32-6.

c) On April 8, 2024, the Commission sent the Tribunal a document longer than 500 pages[19] and on October 28, 2024, another document longer than 10,000 pages.[20]

d) The representative says he doesn't understand why it took so long to process a simple access to information request. He says that any citizen should be able to get a response to an access to information request in a reasonable time frame to make sure their rights have been respected.[21]

e) Regarding the Commission's argument that the Tribunal can't decide on the matter of an application to stay proceedings, the representative points out that all Canadian courts and tribunals are bound by the decisions of the Supreme Court of Canada. He says that in administrative matters, the Supreme Court of Canada has determined the basic principles that must be established and the criteria that must be met. The Appellant's case falls within those criteria.

f) The Tribunal's website describes the Tribunal as an independent body that makes decisions on social security appeals.

g) The representative says he agrees with the Commission's argument that the Supreme Court of Canada decision in *Jordan* doesn't apply to the Appellant's case.[22]

h) The representative argues that other Federal Court decisions apply to the Appellant's case and show that his application to stay the proceedings is justified.[23]

---

[19] See GD31-1 to GD31-595.
[20] See GD40-1 to GD40-10209.
[21] See GD32-2 to GD32-6.
[22] See the decision in *R v Jordan*, 2016 SCC 27, [2016] 1 SCR 631. See also GD32-6.
[23] See the Federal Court decisions in the following cases: *Dragan v Canada (Minister of Citizenship and Immigration)* (TD), 2003 FCT 211 (CanLII), [2003] 4 FC 189; and *Conille v Canada (Minister of Citizenship and Immigration)* (TD), 1998 CanLII 9097 (FC), [1999] 2 FC 33.

i) In *Dragan*, the criteria set out to determine what makes a delay unreasonable refer to long duration and absence of a reasonable explanation from the department to respond to access to information requests or provide information.[24]

j) In *Conille* (*Conille v Canada (Minister of Citizenship and Immigration)* (TD), 1998 CanLII 9097 (FC), [1999] 2 FC 33), the Federal Court sets out three requirements that must be met if a delay is to be considered unreasonable: "the delay in question has been longer than the nature of the process required, *prima facie*; […] the applicant and his counsel are not responsible for the delay; and […] the authority responsible for the delay has not provided satisfactory justification."[25]

k) The representative argues that the Appellant isn't responsible for the delay in processing his access to information request. The representative submits that he and the Appellant showed their good faith. They were present at all stages of the process for this application (for example, after receipt of the repayment notice to the Appellant, reconsideration proceeding before the Commission, appeal to the Tribunal). The Appellant or his representative always participated in each stage of the process and remained available to answer questions to get the requested information. The Appellant and his representative were patient about the way the access to information request was handled.[26]

l) On April 5, 2024, after a 28-month wait, information was received from ESDC, but not from the Canada Revenue Agency.[27]

m) Although the Commission argues that to justify a stay of proceedings, a high bar must be met, that bar must take into account the Appellant's specific situation.

---

[24] See the Federal Court decision in *Dragan v Canada (Minister of Citizenship and Immigration)* (TD), 2003 FCT 211 (CanLII), [2003] 4 FC 189.
[25] See *Conille v Canada (Minister of Citizenship and Immigration)* (TD), 1998 CanLII 9097 (FC), [1999] 2 FC 33.
[26] See GD32-2 to GD32-6.
[27] See GD32-2 to GD32-6.

n) In this case, the Appellant is a young man in his 20s with limited life experience. He's unfamiliar with government mechanisms. This was his first experience with social programs (for example, applying for benefits). He had seen his working hours reduced. He had financial obligations. He received an initial repayment notice of $500.00 (benefit overpayment for the week of March 22 to 28, 2020). This situation caused him stress. An amount of $500.00 for a young person who is starting out in life can seem huge. During the COVID-19 pandemic,[28] he struggled to adapt. He sought psychological help and support through a Quebec government program offering counselling services. On top of all that, he was very stressed about having to pay back an amount for overpaid benefits.[29]

o) Considering the Appellant's circumstances, he wasn't equipped to deal with the government, given his life experience. Financially, he was also unable to seek help from resources such as a lawyer.[30]

[24] The Commission makes the following arguments:

a) It explains that it objected to the application to stay the proceedings.[31]

b) It submits that the Tribunal does not have the authority to stay the proceedings.[32]

c) It explains that the Tribunal is created by legislation, and the remedies it can grant are limited by its governing statute, the *Department of Employment and Social Development Act* (DESD Act). Under section 54(1) of the DESD Act, the Tribunal's General Division may dismiss the appeal or confirm, rescind, or vary a decision of the Commission, in whole or in part, or give the decision that the Commission should have given.[33]

---

[28] Coronavirus 2019.
[29] See GD32-2 to GD32-6.
[30] See GD32-2 to GD32-6.
[31] See GD44-5.
[32] See GD44-2.
[33] See the *Department of Employment and Social Development Act*, SC 2005, c 34, section 54(1). See also GD44-2.

d) The General Division may not consider principles of equity or extenuating circumstances in order to provide relief from the application of the law.[34]

e) Some administrative tribunals can order a stay of proceedings where there has been an excessive delay in cases before human rights tribunals[35] and quasi-criminal disciplinary hearings.[36]

f) However, this remedy is not appropriate in the context of the Tribunal, which deals with legal matters related to specific social benefit programs (that is, the payment of certain amounts in the context of a federal social program).[37]

g) In *Norman*, the Federal Court of Appeal expressed strong reservations about ordering a stay of proceedings in the context of a delay before the Board of Referees, the administrative decision-maker that preceded the Tribunal's Appeal Division (Appeal Division).[38] *Norman* is binding on the General Division and stands for the proposition that the Tribunal does not have the authority to stay proceedings because of a delay. That is the Appeal Division's approach in *SW v Canada Employment Insurance Commission*, where the member found that, without clear legal authority for the Appeal Division to grant such remedy, it was unnecessary to analyze whether the high threshold for a stay of proceedings had been met.[39] The General Division should follow the analysis in *SW v Canada Employment Insurance Commission* and dismiss this ground of appeal because the Tribunal has no legal authority to stay the proceedings.[40]

---

[34] See the Federal Court decision in *Pike v Canada (Attorney General)*, 2019 FC 135 at 26. See also GD44-2.
[35] See the Supreme Court of Canada decision in *Blencoe v British Columbia (Human Rights Commission)*, 2000 SCC 44, [2000] 2 SCR 307. See also GD44-2.
[36] See the Supreme Court of Canada decision in *Law Society of Saskatchewan v Abrametz*, 2022 SCC 29. See also GD44-2.
[37] See GD44-2.
[38] See the Federal Court of Appeal decision in *Canada (Attorney General) v Norman*, 2002 FCA 423 at 29. See also GD44-3.
[39] See the Appeal Division's decision in *SW v Canada Employment Insurance Commission*, 2018 SST 672 at 20 and 21. See also GD44-3.
[40] See GD44-3.

h) According to the Commission, the Supreme Court of Canada decision in *Jordan* doesn't apply to this appeal.[41] The Commission says that the representative made a concession by explaining why the Supreme Court of Canada decision in *Jordan*[42] doesn't apply to the Appellant's case. For the other decisions that the Appellant referred to, the Commission says that it can't comment on them. According to the Commission, it's unclear whether the decisions in question apply to the Appellant's case, as it isn't possible to determine the context in which they were made.

i) The Commission explains that although the representative argues that the delay is unreasonable, it's important to understand that the reason for the delay is the access to information request.

j) It argues that in this case, the Appellant is the one who appealed, and he also requested access to documents through an access to information and privacy request (ATIP request).[43]

k) During a case conference, and after receiving a document longer than 10,000 pages,[44] the representative agreed to move forward with the proceedings (for example, submit arguments to the Tribunal and hold hearing in January 2025 rather than late 2024) in order to have more time to prepare for the hearing.

l) The representative appears to be confusing the Commission with the Department of Employment and Social Development (DESD) access to information process. The process for accessing information from the DESD branch differs from the functions of the Commission. There may be communication and information sharing between DESD and the Commission, but that's all.

---

[41] See the Supreme Court of Canada decision in *R v Jordan*, 2016 SCC 27, [2016] 1 SCR 631. See also GD44-3.
[42] See the Supreme Court of Canada decision in *R v Jordan*, 2016 SCC 27, [2016] 1 SCR 631.
[43] See GD44-3.
[44] See GD40-1 to GD40-10209.

m) The Commission has no control over the way information is obtained through an access to information request, or the delay in getting it. The only thing the Commission could do in the Appellant's case was follow up to get information and allow any extensions that this may involve.

n) Had the Appellant not requested access to information, the proceedings before the Tribunal would have continued without such a lengthy suspension. The representative insisted on suspending the proceedings, as he wanted to get the documents to prepare the appeal.

o) Neither the Commission nor the Tribunal is accountable for the time to process the Appellant's access to information request (ATIP request). This time is not specifically connected to the Commission's initial decision or to the appeal before the Tribunal, but rather to information about the Appellant's file.

p) The Commission says there is a specific complaints process for access to information requests that comes under the Office of the Information Commissioner of Canada, which has the relevant authority. It can investigate complaints about access to information requests for federal institutions under the *Access to Information Act*. The Commission says that if the representative has complaints and is dissatisfied about what happened with the Appellant's access to information request, then the representative needs to contact that organization.

q) The Appellant did not meet the high standard required to stay the proceedings.[45]

r) The Commission says that even if the Tribunal had the authority to stay the proceedings, it would not be justified in the circumstances. The Appellant is far

[45] See GD44-3.

from meeting the high threshold required to demonstrate that this “ultimate” remedy is appropriate in the circumstances.[46]

s) As the Supreme Court of Canada said in *Abrametz*, “a stay should be granted only in the ‘clearest of cases’, when the abuse falls at the high end of the spectrum of seriousness.”[47]

t) According to the Commission, even a delay causing the Appellant stress and anxiety would be insufficient to meet the threshold required to stay the proceedings. In *Norman*, the Federal Court of Appeal said that, even had the stay been possible, it would not have been justified to order it.[48]

u) The delay at issue in *Norman* was more than 3 years.[49] In *Abrametz*, the delay at issue was 71 months (more than 5 years). While the Supreme Court of Canada noted that the delay was concerning, it was not considered inordinate.[50]

v) In *KS v Canada Employment Insurance Commission*, the Appeal Division said the following: “An unacceptable delay may constitute an abuse of process in certain circumstances, even if the fairness of the hearing has not been impaired. Therefore, to constitute an abuse of process in cases where the fairness of the hearing has not been impaired, the delay must be clearly unacceptable and have directly caused significant prejudice. In addition to its long duration, the delay must have caused actual prejudice of such magnitude that the public’s sense of decency and fairness is affected.”[51]

---

[46] See the Supreme Court of Canada decision in *Law Society of Saskatchewan v Abrametz*, 2022 SCC 29 at 83, and *supra* at note 9. See also GD44-3.
[47] See the Supreme Court of Canada decision in *Law Society of Saskatchewan v Abrametz*, 2022 SCC 29 at 83, and *supra* at note 9. See also GD44-4.
[48] See the Federal Court of Appeal decision in *Canada (Attorney General) v Norman*, 2002 FCA 423 at 29 and 30, and *supra* at note 10. See also GD44-4.
[49] See the Federal Court of Appeal decision in *Canada (Attorney General) v Norman*, 2002 FCA 423 at 16.
[50] See the Supreme Court of Canada decision in Law *Society of Saskatchewan v Abrametz*, 2022 SCC 29 at 108, and *supra* at note 9. See also GD44-4.
[51] See the Appeal Division’s decision in *KS v Canada Employment Insurance Commission*, 2024 SST 160 at 27. See also GD44-4.

w) The Commission explains that the Appellant made an access to information request (ATIP request) in November 2021.[52] Later, on July 15, 2022, he filed an appeal before the General Division.[53] The Commission agreed several times to extend the time until the Appellant received an answer to his request for information, and even agreed to act as an intermediary with ESDC's access to information and privacy (ATIP) services to get these documents. The Commission can't be held accountable for the delay in processing the access to information request, as it has no control over the time needed to process such requests.[54]

x) When the Appellant argued that the case should be suspended, his request for information had been processed in part. The first part of the documents was shared with him on April 5, 2024,[55] and the last part on October 24, 2024.[56]

y) During a case conference on November 1, 2024, the Appellant was invited to make additional submissions in December 2024 after having a chance to consult the documents received. The Appellant made no submissions. Furthermore, he agreed to proceed with a hearing scheduled in January 2025.[57]

z) According to the Commission, nothing in the facts of this case supports a finding that the length of the delay caused actual prejudice of such magnitude that the public's sense of decency and fairness was affected.[58]

aa) The Commission argues that staying the proceedings does not mean the General Division allows or dismisses the Appellant's appeal. The stay and the resulting abortive appeal before the Tribunal would mean that the Commission's

---

[52] See the Appellant's letter dated April 18, 2024—GD32-3.
[53] See the Appellant's notice of appeal dated July 15, 2022—GD2-1 to GD2-38.
[54] See GD44-4.
[55] See the supplementary representations of the Commission dated April 8, 2024—GD31-1 to GD31-595.
[56] See the supplementary representations of the Commission dated October 24, 2024—GD40-1 to GD40-10209. See also GD44-4 and GD44-5.
[57] See GD44-5.
[58] See GD44-5.

reconsideration decision in which it found that the Appellant owes $2,000.00 would continue to be in place.

bb) The Commission submits that in the case examples the representative referred to, these are individuals who are being prosecuted or subject to legal proceedings. In this case, it's the Appellant who wants to set aside proceedings in which he himself is the appellant. According to the Commission, this would be contrary to his real intention.

The Tribunal's authority with respect to an application to stay proceedings

[25] Regarding the parties' arguments about the Tribunal's authority to decide an application to stay proceedings, I find that it has such authority.

[26] I find that an application to stay proceedings is an appropriate recourse before the Tribunal.

[27] I don't accept the Commission's argument that the Tribunal has no authority to stay proceedings[59] or that there is no legal authority for it to do so.[60]

[28] The Commission doesn't refer to any specific statutory provision specifying that the Tribunal has no authority in this matter.

[29] There is no legal authority or specific statutory provision stating that the Tribunal doesn't have the jurisdiction or the authority required to handle applications to stay proceedings.

[30] The Tribunal is an independent administrative tribunal.[61]

[31] Its role includes interpreting and applying the rules so that the appeal process is simple, quick, and fair, while considering the parties' particular circumstances.[62]

---

[59] See GD44-2.
[60] See GD44-3.
[61] See section 2 of the *Social Security Tribunal Rules of Procedure.*
[62] See section 6 of the *Social Security Tribunal Rules of Procedure*.

[32] In *Abrametz*, the Supreme Court of Canada refers to an administrative process to establish the three steps of the test to determine if, through such a process, a delay amounts to an abuse of process.[63]

[33] I find that the steps set out by the Supreme Court of Canada in that decision don't distinguish between the types of tribunals to which those steps apply, or exclude an independent administrative tribunal such as the Social Security Tribunal of Canada.

[34] I also find that a number of decisions by the Appeal Division and the General Division show that the Tribunal exercised its jurisdiction by deciding on the merits of an application to stay proceedings.[64]

[35] The Commission did not appeal those decisions.

[36] The Tribunal's authority with respect to the applications to stay proceedings that it has previously decided has not been challenged.

[37] I find that the Tribunal has the jurisdiction required to decide applications to stay proceedings.

Length of delay

[38] I find that despite the representative's arguments for applying to stay the proceedings, the representative didn't show that the delay between the time the Appellant made an access to information request on November 17, 2021,[65] and the time the Commission sent the documents to him in October 2024,[66] further to that request, is

---

[63] See the Supreme Court of Canada decision in *Law Society of Saskatchewan v Abrametz,* 2022 SCC 29.
[64] See the Appeal Division's decisions in the following: *VA v Canada Employment Insurance Commission* – Social Security Tribunal of Canada, 2018 SST 783; and *Canada Employment Insurance Commission v RT* – Social Security Tribunal of Canada, 2015 SSTAD 48. See the General Division's decision in *DB v Canada Employment Insurance Commission* – Social Security Tribunal of Canada, 2016 SSTGDEI 108.
[65] See GD2-9, GD2-20, and GD32-2.
[66] See GD40-1 to GD40-10209.

inordinate in the circumstances, to the extent that it warrants a stay of the proceedings in question.

[39] While close to 36 months elapsed between November 2021 and October 2024 before the Appellant received information from the Commission about his access to information request, neither the Commission nor the Tribunal can be held accountable for this delay.

[40] I find that in this case, neither the Commission nor the Tribunal is responsible for the delay in processing the Appellant's file following his access to information request.

[41] The Tribunal, like the parties to the proceedings (the Commission and the Appellant), was dependent on the outcome of the Appellant's access to information request.

[42] I note that the Commission gave the Appellant as much information as possible about his access to information request.

[43] The Tribunal delayed the hearing at the Appellant's request, as he was waiting for information through his access to information request. I find that the Tribunal was ready and available to hear the appeal based on the evidence already on file.

[44] I also find that it wasn't until April 18, 2024,[67] that the Appellant applied to stay the proceedings in his case, more than 10 days after the Commission sent him a document longer than 500 pages in response to his access to information request.[68]

[45] I also find that the Commission wasn't obligated to follow up on the Appellant's file when the parties were waiting for the outcome of that request.

[67] Date the Tribunal received the email from the Appellant's representative—GD32-1 to GD32-6.
[68] See GD31-1 to GD31-595.

[46] With respect to the Tribunal, I find that the *Social Security Tribunal Rules of Procedure* don't set out a time frame for hearing cases, except to make sure that the appeal process is as simple and quick as fairness allows.[69]

[47] I find that despite the length of the delay, the Appellant had the opportunity to argue his case through this process.[70]

[48] I also find that the substantive issue under appeal isn't particularly complex. It involves determining if the Commission is justified in asking the Appellant to pay back an amount of money for overpaid benefits. In my opinion, this issue could be decided based on the relevant sections of the Act, without needing to look at any potential related government policy. Such policy is not law.

[49] In *Abrametz*, the Supreme Court of Canada determined that to conclude an abuse of process, the "delay must be inordinate."[71] It also said that the passage of time alone is insufficient to find that there has been an unreasonable delay in administrative law.[72]

[50] In *Blencoe*, the Supreme Court of Canada also said that "… delay, without more, will not warrant a stay of proceedings as an abuse of process at common law."[73]

[51] In *Norman*, the Federal Court of Appeal also said that delay, without more, will not constitute an abuse of process that warrants a stay of proceedings.[74]

[52] I find that following his access to information request, the Appellant did not show that there was an unacceptable delay that may constitute an abuse of process.

---

[69] See section 8(1) of the *Social Security Tribunal Rules of Procedure.*
[70] See section 8(1) of the *Social Security Tribunal Rules of Procedure*.
[71] See the Supreme Court of Canada decision in *Law Society of Saskatchewan v Abrametz*, 2022 SCC 29.
[72] See the Supreme Court of Canada decision in *Law Society of Saskatchewan v Abrametz*, 2022 SCC 29.
[73] See the Supreme Court of Canada decision in *Blencoe v British Columbia (Human Rights Commission)*, 2000 SCC 44, [2000] 2 SCR 307.
[74] See the Federal Court of Appeal decision in *Canada (Attorney General) v Norman*, 2002 FCA 423.

[53] This delay was neither inordinate nor abusive in the circumstances.

Prejudice caused by the delay

[54] I also find that the representative hasn't shown that the delay resulting from the Appellant's access to information request caused him significant prejudice.[75]

[55] The representative hasn't presented convincing evidence in this respect.

[56] While considering the particular situation of the Appellant, a young man in his 20s, and his life experience, I find that this factor doesn't justify his application to stay the proceedings.

[57] Although the Appellant may have experienced stress on account of fewer working hours during the COVID-19 pandemic and because of his financial obligations, it remains that he was not denied Employment Insurance benefits.

[58] The amount of money that the Commission says he owes concerns benefits that were overpaid to him. After he appealed before the Tribunal, the Appellant didn't have to pay back the amount he owed because the resulting debt was suspended, with no interest accruing on the amount. This means that the Appellant benefits from the delay in processing his case, rather than being disadvantaged or suffering any financial hardship.

[59] In *Abrametz*, the Supreme Court of Canada said that the delay, without more, must have caused significant prejudice to warrant a stay of proceedings.[76] It also said that it is only where there is detriment to an individual that a tribunal will conclude that there has been an abuse of process.[77]

---

[75] See the Supreme Court of Canada decision in *Blencoe v British Columbia (Human Rights Commission*), 2000 SCC 44, [2000] 2 SCR 307. See also the Federal Court of Appeal decision in *Canada (Attorney General) v Norman*, 2002 FCA 423.
[76] See the Supreme Court of Canada decision in *Law Society of Saskatchewan v Abrametz*, 2022 SCC 29.
[77] See the Supreme Court of Canada decision in *Law Society of Saskatchewan v Abrametz*, 2022 SCC 29.

[60] In *Blencoe*, the Supreme Court of Canada also said that where there is no prejudice to hearing fairness, the delay must be clearly unacceptable and have directly caused a significant prejudice to amount to an abuse of process.[78]

[61] In *Norman*, the Federal Court of Appeal also said that delay, without more, will not constitute an abuse of process that warrants a stay of proceedings, and that to justify a stay in the administrative law context, proof that significant prejudice has resulted from an unacceptable delay is required.[79]

[62] I find that the Appellant hasn't shown that he experienced significant prejudice resulting from the delay caused by his access to information request.

[63] Despite the delay, his situation didn't reach a point that would justify his application to stay the proceedings.

Abuse of process

[64] I also find that the representative hasn't shown that the delay resulting from the access to information request may have compromised the fairness of the Appellant's hearing.[80]

[65] I find that the delay didn't create an injustice toward the Appellant, nor did it undermine the proceedings in his appeal or compromise hearing fairness, or bring the administration of justice into disrepute.

[66] The Appellant had the opportunity to present his case and to be heard by the Tribunal during an appeal process that was as simple and quick as fairness allows, as set out in the *Social Security Tribunal Rules of Procedure*.[81]

---

[78] See the Supreme Court of Canada decision in *Blencoe v British Columbia (Human Rights Commission*), 2000 SCC 44, [2000] 2 SCR 307.
[79] See the Federal Court of Appeal decision in *Canada (Attorney General) v Norman*, 2002 FCA 423.
[80] See the Supreme Court of Canada decision in *Blencoe v British Columbia (Human Rights Commission*), 2000 SCC 44, [2000] 2 SCR 307, and the Federal Court of Appeal decision in *Canada (Attorney General) v Norman*, 2002 FCA 423.
[81] See sections 6 and 8(1) of the *Social Security Tribunal Rules of Procedure.*

[67] In *Norman* [*sic*], the Federal Court of Appeal stated that a stay is not the only remedy available for abuse of process in administrative law proceedings and a respondent asking for a stay bears a heavy burden.[82]

[68] The Appellant hasn't discharged his burden of showing that there was an abuse or a procedural defect that would justify his application to stay the proceedings in his case.

[69] He hasn't shown that the passage of delay owing to his access to information request was inordinate or unreasonable. He also hasn't shown that he suffered significant prejudice as a result of this delay or that hearing fairness was compromised.

[70] The application to stay the proceedings is denied.

[82] See the Federal Court of Appeal decision in *Canada (Attorney General) v Norman*, 2002 FCA 423.

Payment of EI ERB to the Appellant

[71] Because of COVID-19, changes were made to the *Employment Insurance Act*, including to create the EI ERB.[83] People can receive the EI ERB for different reasons. This type of benefit is not just for those who have stopped working for reasons related to COVID-19.

[72] A person can receive the EI ERB if, for example, their benefit period could have been established for Employment Insurance regular or special benefits (sickness benefits), among other things, during the period from March 15, 2020, to October 3, 2020, inclusive.[84] However, during that period, no benefit period was to be established with respect to Employment Insurance regular or special benefits (for example, sickness benefits).[85]

[73] The EI ERB benefit amount was $500.00 per week.[86] However, the Commission decided to pay four weeks of benefits in advance ($2,000.00) to individuals who applied for the EI ERB for the first time. The Act authorized the Commission to pay the EI ERB in advance of the customary time for paying it.[87]

[74] The Commission planned to recover this advance payment by holding back four weeks of benefits later on—usually the 13th, 14th, 18th, and 19th weeks of benefits claimed.

[75] In this case, the Commission refers to both the CERB and the EI ERB that were paid to the Appellant. As for the Appellant and his representative, they refer to the CERB when discussing these benefits.

[76] Although they can be considered similar, the EI ERB and the CERB are two different benefit types. During the period in which these benefit types were available,

---

[83] Part VIII.4 of the Act sets out the rules applicable to the Employment Insurance Emergency Response Benefit.
[84] See sections 153.5(2)(b), 153.5(3)(a), 153.7(1), and 153.8 of the Act.
[85] See sections 153.5(3)(a) and 153.8(5) of the Act.
[86] See section 153.10(1) of the Act.
[87] See section 153.7(1.1) of the Act.

that is, from March 15, 2020, to October 3, 2020, inclusive, individuals who normally would have been entitled to Employment Insurance benefits (regular or special benefits) received EI ERB benefits, and those who normally would not have been entitled received CERB benefits, if they were eligible. In both cases, the amount paid was $500.00 a week.

[77] In this case, while the Appellant and his representative refer to the CERB to describe the type of benefits the Appellant received, he actually received the EI ERB, based on the information the Commission provided.[88] The Commission says the Appellant was entitled to the EI ERB.[89]

[78] For this reason, I will refer to the benefits that the Appellant received during the period in question as the EI ERB.

[79] These are the benefits he was entitled to for the period in question, after he applied for benefits on March 19, 2020.[90]

[88] See GD4-4 to GD4-11.
[89] See GD4-7.
[90] See Part VIII.4 of the Act.

Requirement to repay an overpayment of benefits

[80] The amount of money representing the benefits that were overpaid to the Appellant must be paid back.

[81] The Act says that if a person received Employment Insurance benefits they weren't entitled to or were disqualified from, they are required to pay back those benefits or the resulting overpayment.[91]

[82] The Commission has 36 months to reconsider any claim for benefits paid or payable to a claimant, including the EI ERB. That period is 72 months if the Commission is of the opinion that a false or misleading statement or representation has been made in connection to a claim.[92]

[83] Under the *Employment Insurance Regulations* (Regulations), the Commission may write off an amount owing under specific conditions.[93] Write-off means cancelling or waiving a debt or an amount owing (for example, an overpayment).

[84] The representative makes the following arguments:

a) The representative explains that the Appellant acknowledges having received the $2,000.00 advance payment on April 6, 2020, and benefits for a seven-week period, from March 15, 2020, to May 9, 2020, excluding the week of March 22 to 28, 2020.[94]

b) When the Appellant received notice from the Commission that he owed money,[95] he was informed that he was no longer entitled to a given amount of money. The explanations in the letter to the Appellant were very vague.[96]

---

[91] See sections 43, 44, 47, 52, 153.6(1)(a), 153.1301, and 153.1303 of the Act.
[92] See sections 52 and 153.6(1)(a) of the Act.
[93] See section 56 of the Regulations.
[94] See GD4-7 and GD4-8.
[95] See the Commission's decision dated October 21, 2021—GD2-16 and GD3-73.
[96] See the Commission's decision dated October 21, 2021—GD2-16 and GD3-73. See also GD32-2 to GD32-6.

c) In the Appellant's benefit claim, the Commission sets out a claimant's rights and responsibilities. The document also states the Commission's rights and responsibilities (for example, to provide courteous service, give accurate information about a benefit claim).[97]

d) To find out the benefit entitlement criteria, including those under the EI ERB program, the Appellant relied on the people responsible for applying the criteria and the programs in place.[98]

e) He took steps to make sure he was entitled to EI ERB benefits.

f) On two occasions, July 4 and 9, 2020, the Appellant contacted the Commission to inquire about his entitlement to EI ERB benefits.[99]

g) During the calls, the Commission's representatives told him that he was entitled to them.

h) The Appellant was misled by the Commission's two representatives he spoke to. They should have known the benefit programs in place.

i) On June 4, 2020, a Commission representative told the Appellant that he was entitled to EI ERB benefits. During that call, which lasted more than an hour and a half (91 minutes), the representative told him that he would owe $500.00 for the week of March 22 to 28, 2020, because he was not entitled to EI ERB benefits during that time. The Appellant settled what he owed. The representative says that during the call, there was no mention of paying back the $2,000.00 advance payment that the Appellant had received.[100]

j) On June 9, 2020, the Appellant contacted the Commission to find out why an amount of $3,000.00 (benefits) had been deposited in his bank account (deposit

[97] See GD3-3 to GD3-12.
[98] See GD32-2 to GD32-6.
[99] See GD32-2 to GD32-6, and GD45-26.
[100] See GD3-72, GD32-2 to GD32-6, and GD45-26.

made on June 8 or 9, 2020).[101] The summary of that call, which lasted more than 2 hours (121 minutes), is not in the Appellant's file.[102]

k) The representative says he needed the summary of the June 9, 2020, call to show that the Commission representative misled the Appellant. During that call, the Commission representative confirmed to the Appellant that he was entitled to that money.

l) The Commission representatives made an administrative error. Their role is to provide accurate information to citizens about the programs in place.

m) The Appellant shouldn't have to pay for the lack of professionalism of the two Commission representatives he spoke with on June 4 and 9, 2020, about his entitlement to EI ERB benefits.

n) The Appellant took the necessary steps to avoid putting himself in a situation where he would have to pay back an amount of money for benefits overpaid.

o) The representative is asking the Commission to write off the $2,000.00 that it says the Appellant owes.[103]

[85] The Commission makes the following arguments:

a) The Appellant has to pay back the amount of money that he was overpaid in EI ERB benefits. The Commission's decision concerns only the $2,000.00 advance payment to the Appellant, not his entitlement to EI ERB benefits from March 15, 2020, until he returned to work on May 11, 2020, excluding the week of March 22 to 28, 2020.[104]

b) The Appellant filed an initial claim for benefits (regular benefits) on March 19, 2020. A benefit period was established effective March 15, 2020. The benefit

[101] See GD45-39.
[102] See GD45-26, GD45-38, and GD45-39.
[103] See GD32-6.
[104] See GD4-9 and GD4-10.

claim was converted to EI ERB benefits. All regular or special benefit claims were converted to EI ERB benefit claims between March 15, 2020, and September 26, 2020.[105]

c) The Commission paid the equivalent of 4 weeks of benefits, at $500.00 a week, in advance, for a total of $2,000.00.[106]

d) The Appellant received EI ERB benefits for a 7-week period, between March 15, 2020, and May 9, 2020, excluding the week of March 22 to 28, 2020, during which he worked 48 hours.[107]

e) On April 6, 2020, he also received an advance payment of $2,000.00 representing the equivalent of 4 weeks of benefits at $500.00 a week.[108]

f) This means that the Appellant received EI ERB benefits equivalent to a total period of 11 weeks, but was entitled to benefits for 7 weeks, and received a total of $5,500.00 including the $2,000.00 advance payment. This amounts to $785.71 a week in benefits, which is contrary to section 153.10(1) of the Act, according to which a claimant is entitled to $500.00 a week.[109]

g) The Appellant was overpaid $2,000.00.[110]

h) During the benefit period, the Appellant reported that he returned to work on May 11, 2020. As a result, he stopped receiving EI ERB benefits.[111]

i) Since the Appellant quickly returned to work, the amount of money representing the $2,000.00 advance payment could not be recovered (reconciled).[112]

---

[105] See GD4-7.
[106] See GD4-4, GD4-7, and GD4-9.
[107] See GD3-24, GD3-72, GD4-4, and GD4-7 to GD4-9.
[108] See GD4-4, GD4-8, and GD4-9.
[109] See GD4-9.
[110] See GD4-10.
[111] See GD4-4, GD4-8, and GD4-9.
[112] See GD4-4, GD4-8, and GD4-9.

j) The Commission explains that if the Appellant had continued to complete his claimant's reports and if he were eligible for EI ERB benefits, the $2,000.00 advance payment would have been recovered in benefit weeks 13 and 14, in the amount of $1,000.00, and then in benefit weeks 18 and 19, in the remaining $1,000.00.[113]

k) The provisions of the Act must be applied, regardless of the discussions that may have taken place between the Appellant and the people he spoke to (for example, Commission representatives), and that the Commission can neither confirm nor deny.

l) Regarding what the representative said about the Appellant being [translation] "misled" by Commission representatives, there may have been confusion between entitlement to EI ERB benefits and specifically being entitled to an advance payment.

m) Being entitled to EI ERB benefits does not automatically mean being entitled to the $2,000.00 advance payment. It's unclear to the Commission when the Appellant's benefit entitlement was discussed or how it was understood.

n) EI ERB benefits are paid to claimants who apply for them and who meet the eligibility criteria. Verifications are carried out at a later date.[114]

o) The Commission isn't questioning the Appellant's behaviour or good faith. It isn't accusing him of lying. The Appellant completed reports to get benefits. When an error was made, the reports were modified, and the Appellant paid back the benefits he was not entitled to (for example, week of March 20 to 28, 2020).

p) The representative says the Commission representatives' behaviour was unacceptable and appears to complain about the department, delays, or lack of clarification. According to the Commission, these are not relevant to the matter at

[113] See GD3-85.
[114] See GD4-7.

hand, as it is governed by the Act. Making no admission as to what the Commission representatives may have said or done, unaware of the information the representative is referring to, it says the Act is clear on this matter.

q) The Commission says that section 56 of the Regulations sets out provisions for writing off a benefit overpayment, for example, in the case of an administrative error or [translation] “bad advice.” However, the Tribunal doesn’t have jurisdiction to decide an issue involving writing off a debt pursuant to section 56 of the Regulations.

r) To argue his case on such a matter, the Appellant should instead apply to the Commission under that section. If applicable, the Commission will decide that specific issue, and the decision may be subject to judicial review before the Federal Court.

[86] Although the Appellant disagrees about having to pay back the $2,000.00 representing the advance payment he received in EI ERB benefits, he still has to pay it back. It represents an overpayment that must be paid back.

[87] The Appellant received a $2,000.00 advance payment in addition to receiving benefits over a seven-week period. The $2,000.00 that he received as an advance payment represents four weeks of benefits at $500.00 a week.

[88] This means that he received benefits for a period equivalent to 11 weeks, when he was entitled to receive them for 7 weeks, that is, from March 15, 2020, to May 9, 2020, excluding the week of March 22 to 28, 2020.

[89] The Commission was unable to recover the $2,000.00 advance payment during the Appellant’s EI ERB benefit period.

[90] The Commission explained that it could not recover the advance payment because the Appellant stopped receiving EI ERB benefits before then, as he returned to work on May 11, 2020.[115]

[91] Had the Appellant not returned to work at that time, and had he continued to receive benefits, the payment would have been recovered after the 12th and 17th weeks of his benefit period (recovery of 2 weeks of benefits in weeks 13 and 14, and of 2 other weeks in weeks 18 and 19).

[92] Therefore, the $2,000.00 advance payment that the Commission could not recover when it was paying EI ERB benefits to the Appellant is an overpayment that must be paid back.

[93] The Federal Court of Appeal has said that the overpayment amount specified in a notice of debt becomes repayable on the notification date and that a person who is overpaid benefits must return the overpayment amount without delay.[116]

[94] I find that the Commission exercised its right to ask the Appellant to repay the amount he was overpaid in EI ERB benefits.[117]

[95] Without presumption as to what was discussed between Commission representatives and the Appellant on June 4 and 9, 2020, when the Appellant was allegedly informed that he was entitled to EI ERB benefits, the fact remains that he was overpaid.

[96] The Federal Court of Appeal also tells us that, even if a Commission representative provides incorrect information to a claimant, that situation doesn't exempt the claimant from the requirements of the Act.[118]

---

[115] See GD4-10.
[116] This principle has been established or reiterated by the Federal Court of Appeal in the following decisions: *Faullem*, 2022 FCA 29; and *Braga*, 2009 FCA 167. See also sections 43, 44, 47, 52, and 153.6(1)(a) of the Act.
[117] See sections 52 and 153.6(1)(a) of the Act.
[118] This principle has been established or reiterated by the Federal Court of Appeal in the following decisions: *Lanuzo*, 2005 FCA 324; and *Shaw*, 2002 FCA 325.

[97] While the representative is requesting that the Commission write off the $2,000.00 that it says the Appellant owes, and argues that the Appellant shouldn't have to pay for an administrative error made by Commission representatives, I find that the Tribunal doesn't have the authority to decide a matter of writing off or rescinding an overpayment.[119] The Commission has that authority.

[98] The Appellant's situation can't exempt him from the obligation to repay what he owes for benefits that he was overpaid.

[99] While I am sympathetic to the Appellant's situation, the Federal Court of Appeal tells us that adjudicators, including the Tribunal, can't rewrite the law or interpret it in a way that is contrary to its plain meaning.[120]

[100] I can't rescind the Appellant's overpayment.[121] But the Commission can decide to write off an overpayment in certain situations, for example, if paying it back has caused undue hardship. This means the Appellant can ask the Commission to write off the overpayment. Otherwise, the Appellant can contact the Canada Revenue Agency to set up a payment arrangement.

[101] I find that the Commission is justified in asking the Appellant to pay back the overpayment. It is up to the Commission to determine how that amount is to be repaid.

Conclusion

[102] I find that the Appellant's application for a stay of proceedings is not justified.

[103] I find that the Appellant has to pay back the amount that he was overpaid in benefits, and that the Commission says he owes, in the manner determined by the Commission.

---

[119] This principle has been established or reiterated by the Court in the following decisions: *Villeneuve*, 2005 FCA 440, *Filiatrault* A-874-97, *Romero* A-815-96, and *Gagnon* A-676-96.
[120] This principle was established by the Court in *Knee*, 2011 FCA 301.
[121] See sections 153.1306, 153.1307, and 113 of the Act.

[104] This means that the appeal is dismissed.

Normand Morin

Member, General Division – Employment Insurance Section