



## EMPLOYMENT INSURANCE

Earnings — Judicial review of decision of Social Security Tribunal, Appeal Division affirming General Division’s finding that payment to applicant of settlement funds for her wrongful dismissal claim resulted in overpayment of benefits previously paid to her during periods of maternity, parental leave — Appeal Division also determining no error in law in General Division’s interpretation of *Employment Insurance Act*, S.C. 1996, c. 23, s. 45, *Employment Insurance Regulations*, SOR/96-332, s. 36(9) — Applicant’s employment terminated during her pregnancy — Applicant receiving maternity, parental benefits — Later suing her former employer for wrongful dismissal, breach of contract — Parties settling suit, applicant receiving \$33,828.83 after deduction of legal expenses — Canada Employment Insurance Commission notifying applicant that settlement representing earnings, creating overpayment of her maternity, parental leave benefits — Act, s. 45 preventing “double-dipping” or “double-recovery”, requiring claimants in certain circumstances to return benefits to Receiver General — Applicant arguing Appeal Division misinterpreting s. 45, Regulations — Submitting, *inter alia*, Appeal Division’s interpretation not adequately taking into account her singular circumstances of employment, which included her “vested legal right to unpaid maternity and parental leave” when her employment terminated — Arguing Regulations, s. 36 contemplating that earnings to be allocated only to those weeks where claimant actually earned employment income — Whether Appeal Division’s interpretations of Act, s. 45, Regulations, s. 36(9) reasonable — Appeal Division reasonably interpreting those provisions — If claimant received benefits under Act, for same period received monies from settlement of wrongful dismissal claim, plain reading of s. 45 clear — S. 45 referring only to “benefits”, which includes any regular, special benefits, refers specifically to “damages for wrongful dismissal” as earnings — Presumption that award for wrongful dismissal or settlement funds “earnings” under Regulations, s. 35 — Plain reading of Regulations, s. 36(9) also clear — S. 45 read in conjunction with s. 36(9) operating so that once settlement monies received, applicant required to repay amount determined as overpayment of unemployment benefits regardless of period in respect of which earnings purported to be paid — Appeal Division demonstrably justifying its interpretation of s. 45, related Regulations while taking into consideration context surrounding applicant’s maternity leave, termination from employment — Applicant’s reliance on *Whelehan v. Laidlaw Environmental Services Ltd.*, 1998 CanLII 6137, 55 B.C.L.R. (3d) 129 (B.C.S.C.), *Wells v. Patina Salons Ltd.*, 2003 BCSC 1731, 29 C.C.E.L. (3d) 211, misplaced — Those cases standing for proposition that employer obligated to pay damages for wrongful dismissal not entitled to deduct from those damages whatever benefits received by terminated employee on maternity leave — Open to Appeal Division to conclude that applicant required to apply monies received from settlement to pay back special benefits she received — In context of facts before it, Appeal Division properly considering pertinent aspects of text, context, purpose of s. 45, related Regulations — Application dismissed.

COURT V. CANADA (ATTORNEY GENERAL) (A-100-19, 2020 FCA 199, Rivoalen J.A., reasons for judgment dated November 16, 2020, 22 pp.)