

Docket: 2004-101(EI)

BETWEEN:

ANNE-MARIE LELIÈVRE,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent,

and

LES LOCATIONS A.M.L. INC.,

Intervener.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard jointly with the appeal of *Michel Lelièvre* (2004-102(EI))
on January 19 and April 18, 2005, at Québec, Quebec.

Before: The Honourable Justice Alain Tardif

Appearances:

Counsel for the Appellant: Sylvain L. Roy
Annie Lelièvre (author of the written argument)

Counsel for the Respondent: Anne Poirier

Counsel for the Intervener: Sylvain L. Roy
Annie Lelièvre (author of the written argument)

JUDGMENT

The appeal under subsection 103(1) of the *Employment Insurance Act* is dismissed on the grounds that the work performed by the Appellant for the

intervener during the periods in issue is excluded from insurable employment, in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 10th day of March 2006.

"Alain Tardif"

Tardif J.

Translation certified true
on this 2nd day of August 2006.
Monica F. Chamberlain, Reviser

Citation: 2006TCC112

Date: 20060310

Docket: 2004-101(EI)

BETWEEN:

ANNE-MARIE LELIÈVRE,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent,

and

LES LOCATIONS A.M.L. INC.,

Intervener.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR JUDGMENT

Tardif J.

[1] The decision under appeal concerns the insurable nature of the work performed by the Appellant *Anne-Marie Lelièvre* (2004-101(EI)) for *Les Locations A.M.L. Inc.* during the following periods: June 20 to November 27, 1999, from June 26 to October 28, 2000, from July 1 to November 30, 2001, and from June 22 to December 13, 2002.

[2] The decision in appeal relies on paragraphs 5(2)(i) and 5(3)(a) of the *Employment Insurance Act* (the "Act"). Those paragraphs read as follows:

5(2) Insurable employment does not include

...

(i) employment if the employer and employee are not dealing with each other at arm's length.

(3) For the purposes of paragraph (2)(i):

(a) the question of whether persons are not dealing with each other at arm's length shall be determined in accordance with the *Income Tax Act*;

...

[3] Although all employment in which the parties, that is the employer and the employee, are not dealing with each other at arm's length is excluded from insurable employment under this paragraph, the legislator nevertheless provided that such employment could be insurable. The exception provided for in paragraph 5(3)(b) reads as follows:

(b) if the employer is, within the meaning of that Act, related to the employee, they are deemed to deal with each other at arm's length if the Minister of National Revenue is satisfied that, having regard to all the circumstances of the employment, including the remuneration paid, the terms and conditions, the duration and the nature and importance of the work performed, it is reasonable to conclude that they would have entered into a substantially similar contract of employment if they had been dealing with each other at arm's length.

[4] The Federal Court of Appeal has rendered a number of decisions on the principles that must guide the Tax Court of Canada in disposing of appeals from a decision rendered under subsections 5(2) and 5(3) of the Act.

[5] In particular, those decisions include: *Tignish Auto Parts Inc. v. Canada*, no. A-555-93, July 25, 1994, [1994] F.C.J. No. 1130 (QL), *Minister of National Revenue v. Wrights' Canadian Ropes Ltd.*, [1945] Ex. C.R. 174, *Pérusse v. Canada*, no. A-722-97, July 12, 2001, 261 N.R. 150.

[6] My colleague, the Honourable Justice Pierre Archambault, has analyzed most of these decisions; he held as follows at paragraph 35 of the judgment in *Bélanger*, no. 2001-640(EI), January 11, 2005:

[35] The role vested in this Court is to carry out a two-stage analysis. It must first verify whether the Minister exercised his discretion appropriately. As stated in *Jencan*, to which Malone J. refers in *Quigley Electric*, the decision resulting from the exercise of the Minister's discretion can only be changed if the Minister acted in bad faith, failed to consider all of the relevant circumstances, or took into account irrelevant factors.¹ Where such a situation exists, the Court may decide that "the conclusion with which the Minister was 'satisfied' [no longer] seems reasonable"² and intervene by ruling on the application of subsection 5(3) of the Act.

¹ It is interesting to note the comments of Isaac C.J., at paragraph 30, in which he states that "the sheer number of appeals from ministerial determinations made pursuant to subparagraph 3(2)(c)(ii) since the *Tignish* decision suggests that the law requires further clarification." [Emphasis mine.] These comments are similar to those of Marceau J. in *Légaré*.

² To borrow the words used in *Légaré*, *supra*, at paragraph 4.

[7] The Court must therefore follow a particular path where a decision is rendered under these provisions.

[8] In the instant case, to explain and justify his decision, the Respondent made the following assumptions of fact:

[TRANSLATION]

18. ...

- (A) The payer was incorporated on May 12, 1987. **(admitted)**
- (B) Michel Lelièvre is the sole shareholder of the payer. **(admitted)**
- (C) The Appellant is Michel Lelièvre's spouse. **(admitted)**
- (D) The Appellant is related by marriage to Michel Lelièvre, who controlled the payer. **(admitted)**

19. ...

- (a) the payer operated a vehicle rental business on Anticosti Island and a secondary school bus operation with the school board; **(admitted)**
- (b) in 1999, the vehicles rented by the payer belonged to the Tilden corporation; since 2000, the vehicles have belonged to Location Sauvageau; **(admitted)**
- (c) the payer had 50 vehicles to rent, some 10 of which were rented from May to December; **(admitted)**
- (d) the payer's place of business was located in the Appellant's family residence; **(admitted)**

- (e) the payer paid Michel Lelièvre and the Appellant a rent, whereas the Appellant was not the owner of the residence, for the use of the premises for its place of business; **(admitted)**
- (f) since 1993, the Appellant had worked for the payer as an administrative officer; **(admitted)**
- (g) the Appellant's duties were to answer the telephone, make reservations, receive clients, complete contracts, inspect returning vehicles, complete weekly reports and do banking and secretarial work; **(admitted)**
- (h) the Appellant had no fixed schedule and worked odd hours seven days a week; **(admitted)**
- (i) the Appellant had been the payer's only employee since 2001; **(admitted)**
- (j) in 1999, the Appellant was entered in the payer's payroll with fixed remuneration of \$500 a week; in 2000, 2001 and 2002, the Appellant was entered with remuneration of \$550 a week; **(admitted)**
- (k) the payer's payroll journal did not report the number of hours worked by the Appellant for 1999, 2001 and 2002; for 2000, the Appellant was entered for 35 hours a week; **(no knowledge)**
- (l) on August 25, 2003, the Appellant told a representative of the Respondent that, in June and July, she had worked 60 to 70 hours a week, including Saturdays and Sundays; **(denied)**
- (m) during the periods in issue, the Appellant received fixed remuneration, regardless of the number of hours worked; **(admitted)**
- (n) on Anticosti Island, the deer hunting season runs from September 1 to December 15; **(no knowledge)**
- (o) outside tourist season, from mid-December to mid-April, the Appellant resided in Sept-Îles; **(admitted)**

- (p) on December 5, 1999, the payer issued the Appellant a record of employment showing June 20, 1999, as the first day of work and November 27, 1999 as the last day of work and stating 805 insurable hours and insurable earnings of \$11,500.00; **(admitted)**
- (q) on November 2, 2000, the payer issued the Appellant a record of employment showing June 26, 2000, as the first day of work and October 28, 2000, as the last day of work and stating 630 insurable hours and insurable earnings of \$9,900.00; **(admitted)**
- (r) on December 3, 2001, the payer issued the Appellant a record of employment showing July 1, 2001, as the first day of work and November 30, 2001, as the last day of work and stating 880 insurable hours and insurable earnings of \$12,100.00; **(admitted)**
- (s) on December 17, 2002, the payer issued the Appellant a record of employment showing June 22, 2002, as the first day of work and December 13, 2002, as the last day of work and stating 945 insurable hours and insurable earnings of \$13,750.00; **(admitted)**
- (t) the Appellant's records of employment are not consistent with the actual situation regarding the periods worked; **(denied)**
- (u) the Appellant rendered services to the payer before and after the periods in issue without reported remuneration; **(denied)**
- (v) a person not dealing at arm's length would not have rendered services to the payer on a volunteer basis; **(denied)**
- (w) the periods allegedly worked by the Appellant did not coincide with the periods actually worked; **(denied)**

[9] All the facts assumed were either admitted or denied; the Appellant simply had no knowledge of some. The appropriate notation appears in parentheses for each of the subparagraphs.

[10] As most of the facts were admitted, it is useful to cite only them:

[TRANSLATION]

18. ...

- (A) The payer was incorporated on May 12, 1987. **(admitted)**
- (B) Michel Lelièvre is the sole shareholder of the payer. **(admitted)**
- (C) The Appellant is Michel Lelièvre's spouse. **(admitted)**
- (D) The Appellant is related by marriage to Michel Lelièvre, who controlled the payer. **(admitted)**

19. ...

- (a) the payer operated a vehicle rental business on Anticosti Island and a secondary school bus operation with the school board; **(admitted)**
- (b) in 1999, the vehicles rented by the payer belonged to the Tilden corporation; since 2000, the vehicles have belonged to Location Sauvageau; **(admitted)**
- (c) the payer had 50 vehicles to rent, some 10 of which were rented from May to December; **(admitted)**
- (d) the payer's place of business was located in the Appellant's family residence; **(admitted)**
- (e) the payer paid Michel Lelièvre and the Appellant a rent, whereas the Appellant was not the owner of the residence, for the use of the premises for its place of business; **(admitted)**
- (f) since 1993, the Appellant had worked for the payer as an administrative officer; **(admitted)**
- (g) the Appellant's duties were to answer the telephone, make reservations, receive clients, complete contracts, inspect returning vehicles, complete weekly reports and do banking and secretarial work; **(admitted)**
- (h) the Appellant had no fixed schedule and worked odd hours seven days a week; **(admitted)**
- (i) the Appellant had been the payer's only employee since 2001; **(admitted)**
- (j) in 1999, the Appellant was entered in the payer's payroll with fixed remuneration of \$500 a week; in 2000, 2001 and 2002, the

Appellant was entered with remuneration of \$550 a week;
(admitted)

...

(m) during the periods in issue, the Appellant received fixed remuneration, regardless of the number of hours worked;
(admitted)

...

(o) outside tourist season, from mid-December to mid-April, the Appellant resided in Sept-Îles; **(admitted)**

(p) on December 5, 1999, the payer issued the Appellant a record of employment showing June 20, 1999, as the first day of work and November 27, 1999, as the last day of work and stating 805 insurable hours and insurable earnings of \$11,500.00;
(admitted)

(q) on November 2, 2000, the payer issued the Appellant a record of employment showing June 26, 2000, as the first day of work and October 28, 2000, as the last day of work and stating 630 insurable hours and insurable earnings of \$9,900.00; **(admitted)**

(r) on December 3, 2001, the payer issued the Appellant a record of employment showing July 1, 2001, as the first day of work and November 30, 2001, as the last day of work and stating 880 insurable hours and insurable earnings of \$12,100.00;
(admitted)

(s) on December 17, 2002, the payer issued the Appellant a record of employment showing June 22, 2002, as the first day of work and December 13, 2002, as the last day of work and stating 945 insurable hours and insurable earnings of \$13,750.00;
(admitted)

[11] The Appellant, spouse of Michel Lelièvre, the sole shareholder of "Les Locations A.M.L. Inc.", performed the work for that corporation during all the periods in issue.

[12] Although the appeal of the Appellant *Anne-Marie Lelièvre* (2004-101(EI)) was heard separately from that of her spouse *Michel Lelièvre* (2004-102(EI)), the Appellants agreed that the testimony heard in each of the cases would be considered as also having been heard in the other.

[13] The Appellant, a native of Anticosti Island, left her birthplace during the periods in issue to reside on the mainland from mid-December to mid-April.

[14] The various records of employment show periods of work ranging from 18 to 25 weeks depending on the year. The Appellant's stay on Anticosti Island was therefore spread over periods of more or less 39 weeks, within which the periods in issue were situated.

[15] According to the Appellant and her spouse, the durations of the periods of work were essentially those stated on the records of employment.

[16] "Les Locations A.M.L. Inc." rented motor vehicles, mainly trucks, through a franchise. The rentals were subject to specific circumstances and requirements.

[17] The business had been renting vehicles for a number of years. After operating a Tilden franchise, the business dropped the franchise in 2000 to continue with Groupe Sauvageau. Following the change, turnover increased, but the Appellant's conditions of employment and remuneration remained appreciably the same.

[18] In addition, given the particular characteristics of the road system and the virtual absence of any gas stations, with the exception of the one in Port-Meunier, where all services were centralized, the vehicles had to be equipped with radios enabling users to request assistance in the event of any kind of problem.

[19] The unpaved roads meant that the vehicles were highly vulnerable to tire punctures, which were so numerous that every vehicle was equipped with two spare wheels, not one. The vehicles were also more likely to be damaged and to break down, as the roads were not very passable at certain locations.

[20] When lessees took possession of the rented vehicles, they were given a presentation and instructions, and when the vehicles were dropped off, a careful examination was made of the condition of the vehicle and reported in writing.

[21] At the end of each season, all the vehicles were returned to the mainland by ferry and returned the following spring. The vehicles normally left the island in November and December and returned in April and May, with the rate and number of vehicles transported depending on the number of available spaces on the ferry.

[22] Before the season started in mid-June, most of the vehicles were leased to a public agency, the Société des établissements de plein air du Québec ("S.É.P.A.Q."). That agency took an active part in the economy of the island, which mainly depended on tourism.

[23] The Appellant and her spouse contended that the work to be done before and after the work periods described in the records of employment was very limited and unimportant and represented at most a few hours of work per week, very often done by the owner of the business, the Appellant's spouse, who, it should be borne in mind, devoted 70 to 80 hours a week to lobster-fishing.

[24] To substantiate and justify their claims, the Appellant and her spouse particularly emphasized the virtual absence of activities on Anticosti Island before mid-June, since the roads are barely passable before mid-May.

[25] The Appellant's spouse put great emphasis on the circumstances and specific situation of Anticosti Island, described as a particular socio-economic environment, with an unemployment rate that can reach more than 80 percent during the winter season. As a result of that situation, he stated that it was a real problem to recruit skilled labour.

[26] The Appellant and her spouse stated that the tourist season ran from Saint-Jean-Baptiste Day, on June 24, to the end of October. Outside that period, there were few activities, with the exception of those related to the proper operation of the economic and social infrastructure.

[27] When asked to describe and justify the work during the periods reported on the records of employment, the Appellant's spouse emphasized that it was not only the work performed that should be taken into consideration to justify the remuneration. He placed considerable emphasis on the need to be available, a fundamental component of the job description and a quality essential to the proper operation of the business. In his view, availability was particularly important since the business followed the policy of customer satisfaction above all.

[28] Michel Lelièvre, the sole shareholder of the corporation for which the Appellant worked, also held a lobster-fishing licence. He personally took part in that demanding activity from May to mid-July. The fishing was done approximately 85 kilometres from Port-Meunier, and the road was also very difficult.

[29] According to his records of employment, the Appellant's spouse worked 70 to 80 hours a week in activities related to lobster fishing in May, June and part of July.

[30] The Appellant's main duties were set out as follows: answering the telephone, receiving customers, preparing contracts, delivering vehicles, receiving vehicles at the end of the rental periods, checking the condition of the vehicles on return, writing the cheques, making the deposits, doing the correspondence and making the entries in the various records. Apart from these duties, another element was described as fundamental and was greatly insisted upon by the Appellant's spouse: essential availability, a prime component in the factors considered for a contract of employment.

[31] The presence of a responsible, reliable person and able to respond to the clientele was clearly a fundamental part of the job description. The Appellant [Michel Lelièvre] moreover stated on a number of occasions that the priority of his business was customer service and commitment, a guarantee of success and development for the business, particularly since there could be emergency calls at any time as a result of the very difficult road conditions. There was therefore an availability requirement on which the Appellant's spouse greatly insisted.

[32] He thus explained that she had to be able to meet expectations and respond to unforeseen situations at any time so as to ensure continuous and efficient operations.

[33] The rental operations required work when the reservations were taken, the trucks received and so on. However, the Appellant's work periods started after operations began, which thus raises the following question: who discharged those responsibilities in May and June? Was it the Appellant's spouse, the sole shareholder of the business, who worked 70 to 80 hours a week on lobster fishing where the greatest activity took place at the same time, that is from mid-May to mid-July?

[34] The Appellant's spouse admitted, no doubt as a result of this obvious point, that the work period should have started earlier, thus acknowledging the implausible nature of the claim made in the records of employment.

[35] The witnesses Michel Fournier and Michel Laplante established that the Appellant had always been present, always available and, in particular, always

physically involved in everything concerning reservations, inspections, rental vehicle deliveries, administration and related management.

[36] The evidence adduced was moreover consistent with the answers provided through a questionnaire (Exhibit I-13). Some passages from that questionnaire are cited below:

[TRANSLATION]

...

Who is responsible for the activities of Location AML?

... For the important decisions, both of us. ...

In Mr. Lelièvre's absence, are you authorized to transact all the company's business?

... I could do it, but I leave that to him. If he isn't there, I can get by.

...

What other benefits did Location AML give you?

The car belongs to Location AML, and that's the car we always use as a family car. ...

...

Who does the transactions for Location AML from December to June every year?

... Our telephone line is transferred to Sept-Îles so that we can take reservations during that period ... It starts in May and June, and I do the reservations, four or five reservations a week. I'm not paid ... My full-time job starts during the Saint-Jean-Baptiste weekend, and I start getting paid.

[My emphasis]

...

Why did you not inform the Commission that you were taking courses in English as a second language in January 2000?

... That course was related to my work. The courses were paid for by AML because they were for my work. I rarely have any Anglophones, but it's practical, and, since it was for my work, I had it paid for by AML.

...

The company's documents show that you continued your duties outside your periods of employment with AML. Why did you not provide that information on your claimant report cards?

That's not work; it's just for invoices that we don't have the choice of forwarding. There are things I don't have a choice of doing. There are bills that arrive in winter, telephone bills, for example. I don't report the work in May and June just because I'm there to help out. For the May and June contracts, that's one or two contracts, I take care of them as a favour. I'm not paid; that's why I don't report it. It takes five minutes to complete a computer contract and 10 minutes per contract for a contract by hand at the airport, for the time to enter it in the computer. But, in May and June, it's at most four or five contracts a week.

[My emphasis]

How long have you been a shareholder of Pêcheries?

... It's Michel that handles that entirely.

...

I don't handle that company at all, and I'm not involved in it.

Why did you invest in that company?

Michel wanted to have shareholders, and that's why I invested. He doesn't tell me about the things he buys for the boat.

Kevan Martin worked for Location in 1999; what did he do?

...

In 2001, he went fishing more often, 75 percent fishing, 25 percent rentals. When he got his record for Pêcheries, he didn't come to Location at all.

In 2000, in the first two weeks of August, he worked for AML on Saturdays and on other duties during the week. I was the boss.

...

When Kevan worked for AML, were you always there?

... In 1999, Kevan started with me, but I don't remember what work he did.

...

[37] The Respondent, for his part, filed documentary evidence discrediting the argument that the work done before and after the periods in issue was negligible. That documentary evidence stemmed mainly from various writings, reports, determinations, entries and so on required in the context of the rental activities.

[38] Thus it was possible to note the Appellant's participation in the activities required when the season opened and closed, which, in both cases, took place at moments in no way coinciding with the start or end of the employment periods.

[39] In light of all these facts, there can be no doubt that the Appellant was directly involved in the necessary, indeed essential, activities before and after the periods described in the records of employment.

[40] The argument that the Appellant performed quite negligible work before and after the periods in issue was totally discredited by the testimony of persons who came to testify at the request of the Appellant herself. The evidence of the Appellant herself established unequivocally that the work was essential to and inseparable from the fundamental activities of the business.

[41] The importance of the work performed by the Appellant outside the periods stated on the records of employments is beyond any doubt and is confirmed by the fact that her spouse, the sole shareholder of the payer, was not very free to devote himself to his business in May and June, since he was engaged in full-time lobster fishing, which was very demanding work, since his records of employment show 70 to 80 hours of work a week during the period from May to the end of July. That statement was moreover confirmed by the testimony of Mr. Méthot, also a fisherman, who was a fishing co-worker; he enumerated and described the demands fishermen face.

[42] The Appellant's evidence highlighted elements that leave no doubt that she performed her work in accordance with very particular terms and conditions, undeniably arising from the fact that she was the spouse of the sole shareholder of the corporation for which she worked.

[43] Furthermore, the evidence did not underscore any serious failures that might indicate that the Respondent improperly used his discretion. The Respondent noted a certain number of benefits that an unrelated person would clearly not have received: transportation expenses, the use of a vehicle and credit card, paid English courses and \$2,000 received in respect of rent.

[44] Certain facts were not decisive in themselves. However, all the facts suggest that the Appellant's working conditions were very different from those that an unrelated person would have enjoyed in the same context and circumstances.

[45] The relevant facts submitted to the Court correspond to those that were considered in the Minister's decision; the facts were carefully analyzed and the resulting conclusion is entirely reasonable.

[46] The decision that resulted from the assessment of the facts was adequate and appropriate. The fact that the work performed by the Appellant was determined to be insurable on a number of occasions does not have any impact on the periods concerned by the appeal, except that the Appellant clearly assumed that her work was insurable; what is more, she believed that the appeal was merely a formality due to the fact that the decisions appealed from were the result of overzealous auditors.

[47] Contrary to the Appellant's claims, the evidence shows that she performed a significant amount of work before and after the periods of employment described in the records of employment.

[48] While the quantity of work was perhaps not comparable to that in July and August, that work was necessary to, and indeed essential for, the proper operation of the business. Did the Appellant's spouse not place considerable emphasis on availability as a fundamental component of the contract of employment?

[49] According to the documentary evidence (the payroll and records of employment), the Appellant worked 35 hours a week, whereas she in fact worked many more hours. She had to be available seven days a week and, in practice, more than 12 hours a day, since she had to be able to respond to customers, who were

particularly numerous in July and August, especially since emergency calls could be made at any time.

[50] In May and June, her spouse was, in practice, not very available, since he was a full-time fisherman. The conditions were particularly difficult as a result of the intense nature of the 70-day period and of the isolation of the fishing site.

[51] The Appellant was not paid for her many overtime hours in July and August, when she performed as many overtime as regular hours.

[52] The Appellant enjoyed very special working conditions in that she clearly held power that only an owner or co-owner enjoys.

[53] Furthermore, what appeared to be a genuine contradiction was confirmed by a question by the Court. First of all, the Appellant stated on a number of occasions, and in various ways, that her workload had considerably increased starting in 2000 when the truck from Sauvageau arrived and the number of trucks increased appreciably. The number of hours stated on the records of employment does not reflect that fact.

[54] The Appellant answered her counsel's questions clearly and properly; matters somewhat deteriorated in the cross-examination, when a number of answers were confused and vague. Her selective memory, the many hesitations and certain contradictions discredit the Appellant's claims.

[55] According to the Appellant, she performed no work from the time she arrived on the island until the start of the work period entered in the record of employment. However, the documentary evidence showed unequivocally that she was involved in all the activities, such as errands, telephone calls, contracts, deliveries, communications with Sauvageau, receipt of e-mails, receipt of trucks, payments, truck status reports, taking possession of trucks in the spring, returning trucks in November and so on.

[56] The Appellant claimed that a fax containing all the reservations, approximately 100, had been transmitted to her and that she had done the entries and preparations in the first few days of work entered in the record of employment. Both Michel Fournier, the director of the operations of S.É.P.A.Q. d'Anticosti, and Michel Laplante, from Sauvageau, two witnesses who came to testify at the Appellant's request, contradicted that statement.

[57] According to the witnesses Fournier and Laplante, they communicated with the Appellant Anne-Marie Lelièvre quite regularly as required, starting in the first days following their arrival on the island in April.

[58] It is difficult to determine whether a contract of employment entered into between persons not dealing with each other at arm's length was, when it was reached, similar or comparable to one that persons dealing with each other at arm's length would have entered into in the same context and circumstances.

[59] The difficulty resides mainly in the fact that imagination and subjectivity occupy an important place in such an analysis. Fortunately, some aspects cause no confusion and are subject to no interpretation. I refer, in particular, to the work similar to that here under analysis that was performed before and after the remunerated periods.

[60] That is one of the most decisive factors. The performance, in whole or in part, of similar work for a single employer that is remunerated at certain times (period described in a record of employment) and not remunerated at others (before or after the period referred to in the records of employment) has an effect on the very nature of the contract of employment; in those situations, it is no exaggeration to conclude that matters would not have been the same if the contract had been entered into by persons dealing with each other at arm's length.

[61] It is neither an exaggeration nor unreasonable to say that every person is entitled to be paid for work performed and can demand to be paid. This is less obvious where parties are not dealing with each other at arm's length. Arrangements are easier since they benefit both parties: the worker receives an income, that is employment insurance benefits, and the payer's payroll is thus reduced by the same amount. These kinds of arrangements, even accommodations, are much more difficult, if not impossible, where the parties to a contract of employment are not related to each other.

[62] Furthermore, when the work performed is unpaid, the generous worker generally receives employment insurance benefits, which obviously reduces the payer's payroll, in this case that of the Appellant's spouse.

[63] The parties to this kind of employment contract thus derive mutual benefit from the employment insurance program, the ultimate purpose of which is not to assist SMEs, regardless of where they do business; it is a program or social measure put in place to protect, support and assist those who really lose their jobs.

[64] In its wisdom, the legislator wanted to avoid all discrimination against those who work for a person with whom they are not dealing at arm's length.

[65] To prevent abuses facilitated by complicity, generosity or family flexibility, the legislator has provided that the Minister may determine whether contracts of employment entered into by persons not dealing with each other at arm's length have been influenced by that non-arm's length relationship.

[66] Between persons who do not deal with each other at arm's length, it is generally easier and more tempting to enter into arrangements that are advantageous to both parties, since funds from the employment insurance system are an attractive financial contribution that can facilitate complicity or, at least, generosity.

[67] In the instant case, the evidence adduced by the Appellant proved to be consistent with all the information and facts considered by the Minister at the time of the decision. The analysis was made judiciously, and the decision is entirely reasonable. I therefore confirm the decision's validity.

[68] The appeal is accordingly dismissed.

Signed at Ottawa, Canada, this 10th day of March 2006.

"Alain Tardif"

Tardif J.

Translation certified true
on this 2nd day of August 2006.
Monica F. Chamberlain, Reviser

CITATION: 2006TCC112

COURT FILE NO.: 2004-101(EI)

STYLE OF CAUSE: Anne-Marie Lelièvre v. The Minister of National Revenue and Les Locations A.M.L. Inc.

PLACE OF HEARING: Québec, Quebec

DATES

Hearings: January 19 and April 18, 2005

Appellant's submissions: September 15, 2005

Appellant's cases: September 19, 2005

Respondent's notes and authorities: October 14, 2005

REASONS FOR JUDGMENT BY: The Honourable Justice
Alain Tardif

DATE OF JUDGMENT: March 10, 2006

APPEARANCES:

Counsel for the Appellant: Sylvain L. Roy
Annie Lelièvre (author of the written argument)

Counsel for the Respondent: Anne Poirier

Counsel for the Intervener: Sylvain L. Roy
Annie Lelièvre (author of the written argument)

COUNSEL OF RECORD:

For the Appellant:

Name: Annie Lelièvre

Firm: Bernier, Beaudry

City: Sainte-Foy, Quebec

For the Respondent: John H. Sims, Q.C.
Deputy Minister of Justice and Deputy Attorney
General of Canada
Ottawa, Canada

