

Docket:2004-1265(EI)

BETWEEN:

WAVERLEY AMATEUR ATHLETIC ASSOCIATION,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

Appeal heard on common evidence with the appeals of Waverley Amateur Athletic Association 2004-1266(CPP), 2004-1267(EI), 2004-1268(CPP), 2004-1269(EI), 2004-1270(CPP), 2004-1271(EI), 2004-1272(CPP), 2004-1273(EI), 2004-1274(CPP), 2004-1275(EI), 2004-1276(CPP), 2004-1277(EI), 2004-1278(CPP), 2004-1279(EI), 2004-1280(CPP), 2004-1281(EI) and 2004-1282(CPP) on April 12 and 13, 2005 at Halifax, Nova Scotia

Before: The Honourable Justice L.M. Little

Appearances:

Counsel for the Appellant: Bruce S. Russell, Q.C.

Counsel for the Respondent: Martin Hickey

JUDGMENT

The appeal is allowed and the decision of the Minister is varied in accordance with the attached Reasons for Judgment.

Signed at Vancouver, British Columbia, this 13th day of June 2005.

"L.M. Little"

Little J.

Docket:2004-1266(CPP)

BETWEEN:

WAVERLEY AMATEUR ATHLETIC ASSOCIATION,

Appellant,

And

THE MINISTER OF NATIONAL REVENUE,

Respondent.

Appeal heard on common evidence with the appeals of Waverley Amateur Athletic Association 2004-1265(EI), 2004-1267(EI), 2004-1268(CPP), 2004-1269(EI), 2004-1270(CPP), 2004-1271(EI), 2004-1272(CPP), 2004-1273(EI), 2004-1274(CPP), 2004-1275(EI), 2004-1276(CPP), 2004-1277(EI), 2004-1278(CPP), 2004-1279(EI), 2004-1280(CPP), 2004-1281(EI) and 2004-1282(CPP) on April 12 and 13, 2005 at
Halifax, Nova Scotia

Before: The Honourable Justice L.M. Little

Appearances:

Counsel for the Appellant: Bruce S. Russell, Q.C.

Counsel for the Respondent: Martin Hickey

JUDGMENT

The appeal is allowed and the decision of the Minister is varied in accordance with the attached Reasons for Judgment.

Signed at Vancouver, British Columbia, this 13th day of June 2005.

"L.M. Little"

Little J.

Docket:2004-1267(EI)

BETWEEN:

WAVERLEY AMATEUR ATHLETIC ASSOCIATION,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

Appeal heard on common evidence with the appeals of Waverley Amateur Athletic Association 2004-1265(EI), 2004-1266(CPP), 2004-1268(CPP), 2004-1269(EI), 2004-1270(CPP), 2004-1271(EI), 2004-1272(CPP), 2004-1273(EI), 2004-1274(CPP), 2004-1275(EI), 2004-1276(CPP), 2004-1277(EI), 2004-1278(CPP), 2004-1279(EI), 2004-1280(CPP), 2004-1281(EI) and 2004-1282(CPP) on April 12 and 13, 2005 at Halifax, Nova Scotia

Before: The Honourable Justice L.M. Little

Appearances:

Counsel for the Appellant: Bruce S. Russell, Q.C.

Counsel for the Respondent: Martin Hickey

JUDGMENT

The appeal is allowed and the decision of the Minister is varied in accordance with the attached Reasons for Judgment.

Signed at Vancouver, British Columbia, this 13th day of June 2005.

"L.M. Little"

Little J.

Docket:2004-1268(CPP)

BETWEEN:

WAVERLEY AMATEUR ATHLETIC ASSOCIATION,

Appellant,

And

THE MINISTER OF NATIONAL REVENUE,

Respondent.

Appeal heard on common evidence with the appeals of Waverley Amateur Athletic Association 2004-1265(EI), 2004-1266(CPP), 2004-1267(EI), 2004-1269(EI), 2004-1270(CPP), 2004-1271(EI), 2004-1272(CPP), 2004-1273(EI), 2004-1274(CPP), 2004-1275(EI), 2004-1276(CPP), 2004-1277(EI), 2004-1278(CPP), 2004-1279(EI), 2004-1280(CPP), 2004-1281(EI) and 2004-1282(CPP) on April 12 and 13, 2005 at
Halifax, Nova Scotia

Before: The Honourable Justice L.M. Little

Appearances:

Counsel for the Appellant: Bruce S. Russell, Q.C.

Counsel for the Respondent: Martin Hickey

JUDGMENT

The appeal is allowed and the decision of the Minister is varied in accordance with the attached Reasons for Judgment.

Signed at Vancouver, British Columbia, this 13th day of June 2005.

"L.M. Little"

Little J.

Docket:2004-1269(EI)

BETWEEN:

WAVERLEY AMATEUR ATHLETIC ASSOCIATION,

Appellant,

And

THE MINISTER OF NATIONAL REVENUE,

Respondent.

Appeal heard on common evidence with the appeals of Waverley Amateur Athletic Association 2004-1265(EI), 2004-1266(CPP), 2004-1267(EI), 2004-1268(CPP), 2004-1270(CPP), 2004-1271(EI), 2004-1272(CPP), 2004-1273(EI), 2004-1274(CPP), 2004-1275(EI), 2004-1276(CPP), 2004-1277(EI), 2004-1278(CPP), 2004-1279(EI), 2004-1280(CPP), 2004-1281(EI) and 2004-1282(CPP) on April 12 and 13, 2005 at Halifax, Nova Scotia

Before: The Honourable Justice L.M. Little

Appearances:

Counsel for the Appellant: Bruce S. Russell, Q.C.

Counsel for the Respondent: Martin Hickey

JUDGMENT

The appeal is allowed and the decision of the Minister is varied in accordance with the attached Reasons for Judgment.

Signed at Vancouver, British Columbia, this 13th day of June 2005.

"L.M. Little"

Little J.

Docket:2004-1270(CPP)

BETWEEN:

WAVERLEY AMATEUR ATHLETIC ASSOCIATION,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

Appeal heard on common evidence with the appeals of Waverley Amateur Athletic Association 2004-1265(EI), 2004-1266(CPP), 2004-1267(EI), 2004-1268(CPP), 2004-1269(EI), 2004-1271(EI), 2004-1272(CPP), 2004-1273(EI), 2004-1274(CPP), 2004-1275(EI), 2004-1276(CPP), 2004-1277(EI), 2004-1278(CPP), 2004-1279(EI), 2004-1280(CPP), 2004-1281(EI) and 2004-1282(CPP) on April 12 and 13, 2005 at
Halifax, Nova Scotia

Before: The Honourable Justice L.M. Little

Appearances:

Counsel for the Appellant: Bruce S. Russell, Q.C.

Counsel for the Respondent: Martin Hickey

JUDGMENT

The appeal is allowed and the decision of the Minister is varied in accordance with the attached Reasons for Judgment.

Signed at Vancouver, British Columbia, this 13th day of June 2005.

"L.M. Little"

Little J.

Docket:2004-1271(EI)

BETWEEN:

WAVERLEY AMATEUR ATHLETIC ASSOCIATION,

Appellant,

And

THE MINISTER OF NATIONAL REVENUE,

Respondent.

Appeal heard on common evidence with the appeals of Waverley Amateur Athletic Association 2004-1265(EI), 2004-1266(CPP), 2004-1267(EI), 2004-1268(CPP), 2004-1269(EI), 2004-1270(CPP), 2004-1272(CPP), 2004-1273(EI), 2004-1274(CPP), 2004-1275(EI), 2004-1276(CPP), 2004-1277(EI), 2004-1278(CPP), 2004-1279(EI), 2004-1280(CPP), 2004-1281(EI) and 2004-1282(CPP) on April 12 and 13, 2005 at Halifax, Nova Scotia

Before: The Honourable Justice L.M. Little

Appearances:

Counsel for the Appellant: Bruce S. Russell, Q.C.

Counsel for the Respondent: Martin Hickey

JUDGMENT

The appeal is allowed and the decision of the Minister is varied in accordance with the attached Reasons for Judgment.

Signed at Vancouver, British Columbia, this 13th day of June 2005.

"L.M. Little"

Little J.

Docket:2004-1272(CPP)

BETWEEN:

WAVERLEY AMATEUR ATHLETIC ASSOCIATION,

Appellant,

And

THE MINISTER OF NATIONAL REVENUE,

Respondent.

Appeal heard on common evidence with the appeals of Waverley Amateur Athletic Association 2004-1265(EI), 2004-1266(CPP), 2004-1267(EI), 2004-1268(CPP), 2004-1269(EI), 2004-1270(CPP), 2004-1271(EI), 2004-1273(EI), 2004-1274(CPP), 2004-1275(EI), 2004-1276(CPP), 2004-1277(EI), 2004-1278(CPP), 2004-1279(EI), 2004-1280(CPP), 2004-1281(EI) and 2004-1282(CPP) on April 12 and 13, 2005 at
Halifax, Nova Scotia

Before: The Honourable Justice L.M. Little

Appearances:

Counsel for the Appellant: Bruce S. Russell, Q.C.

Counsel for the Respondent: Martin Hickey

JUDGMENT

The appeal is allowed and the decision of the Minister is varied in accordance with the attached Reasons for Judgment.

Signed at Vancouver, British Columbia, this 13th day of June 2005.

"L.M. Little"

Little J.

Docket:2004-1273(EI)

BETWEEN:

WAVERLEY AMATEUR ATHLETIC ASSOCIATION,

Appellant,

And

THE MINISTER OF NATIONAL REVENUE,

Respondent.

Appeal heard on common evidence with the appeals of Waverley Amateur Athletic Association 2004-1265(EI), 2004-1266(CPP), 2004-1267(EI), 2004-1268(CPP), 2004-1269(EI), 2004-1270(CPP), 2004-1271(EI), 2004-1272(CPP), 2004-1274(CPP), 2004-1275(EI), 2004-1276(CPP), 2004-1277(EI), 2004-1278(CPP), 2004-1279(EI), 2004-1280(CPP), 2004-1281(EI) and 2004-1282(CPP) on April 12 and 13, 2005 at Halifax, Nova Scotia

Before: The Honourable Justice L.M. Little

Appearances:

Counsel for the Appellant: Bruce S. Russell, Q.C.

Counsel for the Respondent: Martin Hickey

JUDGMENT

The appeal is allowed and the decision of the Minister is varied in accordance with the attached Reasons for Judgment.

Signed at Vancouver, British Columbia, this 13th day of June 2005.

"L.M. Little"

Little J.

Docket:2004-1274(CPP)

BETWEEN:

WAVERLEY AMATEUR ATHLETIC ASSOCIATION,

Appellant,

And

THE MINISTER OF NATIONAL REVENUE,

Respondent.

Appeal heard on common evidence with the appeals of Waverley Amateur Athletic Association 2004-1265(EI), 2004-1266(CPP), 2004-1267(EI), 2004-1268(CPP), 2004-1269(EI), 2004-1270(CPP), 2004-1271(EI), 2004-1272(CPP), 2004-1273(EI), 2004-1275(EI), 2004-1276(CPP), 2004-1277(EI), 2004-1278(CPP), 2004-1279(EI), 2004-1280(CPP), 2004-1281(EI) and 2004-1282(CPP) on April 12 and 13, 2005 at
Halifax, Nova Scotia

Before: The Honourable Justice L.M. Little

Appearances:

Counsel for the Appellant: Bruce S. Russell, Q.C.

Counsel for the Respondent: Martin Hickey

JUDGMENT

The appeal is allowed and the decision of the Minister is varied in accordance with the attached Reasons for Judgment.

Signed at Vancouver, British Columbia, this 13th day of June 2005.

"L.M. Little"

Little J.

Docket:2004-1275(EI)

BETWEEN:

WAVERLEY AMATEUR ATHLETIC ASSOCIATION,

Appellant,

And

THE MINISTER OF NATIONAL REVENUE,

Respondent.

Appeal heard on common evidence with the appeals of Waverley Amateur Athletic Association 2004-1265(EI), 2004-1266(CPP), 2004-1267(EI), 2004-1268(CPP), 2004-1269(EI), 2004-1270(CPP), 2004-1271(EI), 2004-1272(CPP), 2004-1273(EI), 2004-1274(CPP), 2004-1276(CPP), 2004-1277(EI), 2004-1278(CPP), 2004-1279(EI), 2004-1280(CPP), 2004-1281(EI) and 2004-1282(CPP) on April 12 and 13, 2005 at Halifax, Nova Scotia

Before: The Honourable Justice L.M. Little

Appearances:

Counsel for the Appellant: Bruce S. Russell, Q.C.

Counsel for the Respondent: Martin Hickey

JUDGMENT

The appeal is allowed and the decision of the Minister is varied in accordance with the attached Reasons for Judgment.

Signed at Vancouver, British Columbia, this 13th day of June 2005.

"L.M. Little"

Little J.

Docket:2004-1276(CPP)

BETWEEN:

WAVERLEY AMATEUR ATHLETIC ASSOCIATION,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

Appeal heard on common evidence with the appeals of Waverley Amateur Athletic Association 2004-1265(EI), 2004-1266(CPP), 2004-1267(EI), 2004-1268(CPP), 2004-1269(EI), 2004-1270(CPP), 2004-1271(EI), 2004-1272(CPP), 2004-1273(EI), 2004-1274(CPP), 2004-1275(EI), 2004-1277(EI), 2004-1278(CPP), 2004-1279(EI), 2004-1280(CPP), 2004-1281(EI) and 2004-1282(CPP) on April 12 and 13, 2005 at
Halifax, Nova Scotia

Before: The Honourable Justice L.M. Little

Appearances:

Counsel for the Appellant: Bruce S. Russell, Q.C.

Counsel for the Respondent: Martin Hickey

JUDGMENT

The appeal is allowed and the decision of the Minister is varied in accordance with the attached Reasons for Judgment.

Signed at Vancouver, British Columbia, this 13th day of June 2005.

"L.M. Little"

Little J.

Docket:2004-1277(EI)

BETWEEN:

WAVERLEY AMATEUR ATHLETIC ASSOCIATION,

Appellant,

And

THE MINISTER OF NATIONAL REVENUE,

Respondent.

Appeal heard on common evidence with the appeals of Waverley Amateur Athletic Association 2004-1265(EI), 2004-1266(CPP), 2004-1267(EI), 2004-1268(CPP), 2004-1269(EI), 2004-1270(CPP), 2004-1271(EI), 2004-1272(CPP), 2004-1273(EI), 2004-1274(CPP), 2004-1275(EI), 2004-1276(CPP), 2004-1278(CPP), 2004-1279(EI), 2004-1280(CPP), 2004-1281(EI) and 2004-1282(CPP) on April 12 and 13, 2005 at Halifax, Nova Scotia

Before: The Honourable Justice L.M. Little

Appearances:

Counsel for the Appellant: Bruce S. Russell, Q.C.

Counsel for the Respondent: Martin Hickey

JUDGMENT

The appeal is allowed and the decision of the Minister is varied in accordance with the attached Reasons for Judgment.

Signed at Vancouver, British Columbia, this 13th day of June 2005.

Little J.

Docket:2004-1278(CPP)

BETWEEN:

WAVERLEY AMATEUR ATHLETIC ASSOCIATION,

Appellant,

And

THE MINISTER OF NATIONAL REVENUE,

Respondent.

Appeal heard on common evidence with the appeals of Waverley Amateur Athletic Association 2004-1265(EI), 2004-1266(CPP), 2004-1267(EI), 2004-1268(CPP), 2004-1269(EI), 2004-1270(CPP), 2004-1271(EI), 2004-1272(CPP), 2004-1273(EI), 2004-1274(CPP), 2004-1275(EI), 2004-1276(CPP), 2004-1277(EI), 2004-1279(EI), 2004-1280(CPP), 2004-1281(EI) and 2004-1282(CPP) on April 12 and 13, 2005 at
Halifax, Nova Scotia

Before: The Honourable Justice L.M. Little

Appearances:

Counsel for the Appellant: Bruce S. Russell, Q.C.

Counsel for the Respondent: Martin Hickey

JUDGMENT

The appeal is allowed and the decision of the Minister is varied in accordance with the attached Reasons for Judgment.

Signed at Vancouver, British Columbia, this 13th day of June 2005.

"L.M. Little"

Little J.

Docket:2004-1279(EI)

BETWEEN:

WAVERLEY AMATEUR ATHLETIC ASSOCIATION,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

Appeal heard on common evidence with the appeals of Waverley Amateur Athletic Association 2004-1265(EI), 2004-1266(CPP), 2004-1267(EI), 2004-1268(CPP), 2004-1269(EI), 2004-1270(CPP), 2004-1271(EI), 2004-1272(CPP), 2004-1273(EI), 2004-1274(CPP), 2004-1275(EI), 2004-1276(CPP), 2004-1277(EI), 2004-1278(CPP), 2004-1280(CPP), 2004-1281(EI) and 2004-1282(CPP) on April 12 and 13, 2005 at Halifax, Nova Scotia

Before: The Honourable Justice L.M. Little

Appearances:

Counsel for the Appellant: Bruce S. Russell, Q.C.

Counsel for the Respondent: Martin Hickey

JUDGMENT

The appeal is allowed and the decision of the Minister is varied in accordance with the attached Reasons for Judgment.

Signed at Vancouver, British Columbia, this 13th day of June 2005.

"L.M. Little"

Little J.

Docket:2004-1280(CPP)

BETWEEN:

WAVERLEY AMATEUR ATHLETIC ASSOCIATION,

Appellant,

And

THE MINISTER OF NATIONAL REVENUE,

Respondent.

Appeal heard on common evidence with the appeals of Waverley Amateur Athletic Association 2004-1265(EI), 2004-1266(CPP), 2004-1267(EI), 2004-1268(CPP), 2004-1269(EI), 2004-1270(CPP), 2004-1271(EI), 2004-1272(CPP), 2004-1273(EI), 2004-1274(CPP), 2004-1275(EI), 2004-1276(CPP), 2004-1277(EI), 2004-1278(CPP), 2004-1279(EI), 2004-1281(EI) and 2004-1282(CPP) on April 12 and 13, 2005 at Halifax, Nova Scotia

Before: The Honourable Justice L.M. Little

Appearances:

Counsel for the Appellant: Bruce S. Russell, Q.C.

Counsel for the Respondent: Martin Hickey

JUDGMENT

The appeal is allowed and the decision of the Minister is varied in accordance with the attached Reasons for Judgment.

Signed at Vancouver, British Columbia, this 13th day of June 2005.

"L.M. Little"

Little J.

Docket:2004-1281(EI)

BETWEEN:

WAVERLEY AMATEUR ATHLETIC ASSOCIATION,

Appellant,

And

THE MINISTER OF NATIONAL REVENUE,

Respondent.

Appeal heard on common evidence with the appeals of Waverley Amateur Athletic Association 2004-1265(EI), 2004-1266(CPP), 2004-1267(EI), 2004-1268(CPP), 2004-1269(EI), 2004-1270(CPP), 2004-1271(EI), 2004-1272(CPP), 2004-1273(EI), 2004-1274(CPP), 2004-1275(EI), 2004-1276(CPP), 2004-1277(EI), 2004-1278(CPP), 2004-1279(EI), 2004-1280(CPP) and 2004-1282(CPP) on April 12 and 13, 2005 at Halifax, Nova Scotia

Before: The Honourable Justice L.M. Little

Appearances:

Counsel for the Appellant: Bruce S. Russell, Q.C.

Counsel for the Respondent: Martin Hickey

JUDGMENT

The appeal is allowed and the decision of the Minister is varied in accordance with the attached Reasons for Judgment.

Signed at Vancouver, British Columbia, this 13th day of June 2005.

"L.M. Little"

Little J.

Docket:2004-1282(CPP)

BETWEEN:

WAVERLEY AMATEUR ATHLETIC ASSOCIATION,

Appellant,

And

THE MINISTER OF NATIONAL REVENUE,

Respondent.

Appeal heard on common evidence with the appeals of Waverley Amateur Athletic Association 2004-1265(EI), 2004-1266(CPP), 2004-1267(EI), 2004-1268(CPP), 2004-1269(EI), 2004-1270(CPP), 2004-1271(EI), 2004-1272(CPP), 2004-1273(EI), 2004-1274(CPP), 2004-1275(EI), 2004-1276(CPP), 2004-1277(EI), 2004-1278(CPP), 2004-1279(EI), 2004-1280(CPP) and 2004-1281(EI) on April 12 and 13, 2005 at Halifax, Nova Scotia

Before: The Honourable Justice L.M. Little

Appearances:

Counsel for the Appellant: Bruce S. Russell, Q.C.

Counsel for the Respondent: Martin Hickey

JUDGMENT

The appeal is allowed and the decision of the Minister is varied in accordance with the attached Reasons for Judgment.

Signed at Vancouver, British Columbia, this 13th day of June 2005.

"L.M. Little"

Little J.

Citation: 2005TCC375

Date:20050613

Dockets: 2004-1265(EI), 2004-1266(CPP),
2004-1267(EI), 2004-1268(CPP),
2004-1269(EI), 2004-1270(CPP),
2004-1271(EI), 2004-1272(CPP),
2004-1273(EI), 2004-1274(CPP),
2004-1275(EI), 2004-1276(CPP),
2004-1277(EI), 2004-1278(CPP),
2004-1279(EI), 2004-1280(CPP),
2004-1281(EI), 2004-1282(CPP)

BETWEEN:

WAVERLEY AMATEUR ATHLETIC ASSOCIATION,

Appellant,

And

THE MINISTER OF NATIONAL REVENUE,

Respondent.

REASONS FOR JUDGMENT

Little J.

A. FACTS:

[1] The Appellant is a charitable organization as defined in the *Income Tax Act* (the "Act").

[2] Some of the funds required by the Appellant to finance its charitable activities were obtained by operating a bingo operation under the name of Bonanza Bingo.

[3] Bonanza Bingo was operated seven nights per week throughout the year (except for three holidays per year) in the Settle Room at Cole Harbour Place in Cole Harbour, Nova Scotia.

[4] The Appellant hosted Bonanza Bingo at Cole Harbour Place on Monday, Wednesday and Saturday nights throughout the year.

[5] Cole Harbour Foundation hosted Bonanza Bingo at Cole Harbour Place on Tuesday, Thursday and Sunday nights throughout the year.

[6] Bel Ayr Hockey Association hosted Bonanza Bingo at Cole Harbour Place on Friday night throughout the year.

[7] The profits from the Bonanza Bingo Operations that were operated seven nights per week were shared by the above organizations, i.e. the Appellant received 3/7's of the profits, Cole Harbour Foundation received 3/7's of the profits and Bel Ayr Hockey Association received 1/7 of the profits.

[8] The Bonanza Bingo Operations were staffed with 12-14 workers per night. The staff included the night manager, a bingo caller and floor workers. The floor workers sold bingo cards and checked bingo cards filled in by customers.

[9] The night manager supervised the bingo caller and the floor workers. The night manager also found replacement workers for the regular workers when required.

[10] All of the bingo workers worked pre-scheduled shifts.

[11] The workers were supposed to wear a uniform, (either a sweater or shirt) containing the name "Bonanza Bingo". However, the evidence indicated that this requirement was frequently ignored by some of the workers.

[12] The Appellant paid the workers a pre-determined amount based on their particular job, i.e. the night manager and the bingo caller were each paid \$65.00 per night and the workers who acted as floor workers were paid \$25.00 per night.

[13] After a discussion in 1995 between Mr. Garner, Secretary of the Appellant and an official of Revenue Canada (now known as the Canada Revenue Agency ("CRA")) the Appellant took the position that the workers were not employees and therefore there was no requirement to deduct and withhold payments under the *Unemployment Insurance Act* (now known as the *Employment Insurance Act*) and the *Canada Pension Plan*.

[14] On December 17, 2003 the Minister of National Revenue (the "Minister") issued a decision regarding the insurability and pensionability of the workers.

[15] The decision of the Minister which was sent to the Appellant regarding the workers reads in part, as follows:

It has been decided that these employments were insurable and pensionable. After considering all the terms and conditions of the employment, the Minister of National Revenue is satisfied that the workers were employed under a valid contract of service

[16] The Appellant filed Notices of Appeal on its own behalf and on behalf of each of the workers. The Period in question (the "Period") is from January 1, 2000 to December 31, 2001.

B. ISSUES:

- [17]1. Were the workers engaged in insurable employment during the Period for the purposes of the *Employment Insurance Act*?
2. Were the workers engaged in pensionable employment during the Period for the purposes of the *Canada Pension Plan*?

C. ANALYSIS:

[18] At the conclusion of the evidence counsel for the Respondent noted that the Minister had taken the position that the workers were determined to be employees of the Appellant for the purposes of the *Employment Insurance Act* and the *Canada Pension Plan* during the Period for seven nights per week. Counsel for the Respondent stated that based on the evidence that was presented to the Court he is satisfied that if the workers are considered to be employees of the Appellant they were employees of the Appellant only for three nights per week and not seven nights per week as assessed by the Minister.

[19] The appeals will be allowed and the reassessment will be varied so that the workers are not to be treated as employees of the Appellant for the purpose of the *Employment Insurance Act* and the *Canada Pension Plan* during those three nights per week when Bonanza Bingo was hosted by Cole Harbour Foundation and

during the one night per week when Bonanza Bingo was hosted by Bel Ayr Hockey Association.

[20] I must now determine if the workers were "employees" of the Appellant for the purposes of the *Employment Insurance Act* and the *Canada Pension Plan* during those nights when Bonanza Bingo was hosted by the Appellant.

[21] In order to determine if the workers were employees of the Appellant I have referred to a number of Court decisions.

[22] In *Precision Gutters Ltd. v. Canada (Minister of National Revenue)*, [2002] F.C.J. No. 771, Mr. Justice Sexton, speaking for the Federal Court of Appeal said at paragraphs 15 to 19:

15. ... The four criteria of the four-in-one test are (1) the degree or absence of control exercised by the employer; (2) ownership of the tools; (3) chance of profit; (4) risk of loss (see *Mirichandani v. Canada (Minister of National Revenue)* [2001] F.C.J. 269 and *Wiebe Door Services, supra* at p. 5028).

16. The issue has been dealt with more recently by the Supreme Court of Canada in *Sagaz Industries Canada v. 67112 Ontario Limited*, [2001] S.C.J. No. 61. In that case Mr. Justice Major, speaking for the Court, reviewed the various tests for determining whether a person is an employee or an independent contractor. He agreed with MacGuigan J.A.'s statement of a four-in-one test as set out in *Wiebe Door, supra*. Major J. said:

47. Although there is no universal test to determine whether a person is an employee or an independent contractor, I agree with MacGuigan J.A. that a persuasive approach to the issue is that taken by Cooke J. in *Market Investigations, supra*. The central question is whether the person who has been engaged to perform the services is performing them as a person in business on his own account. In making this determination, the level of control the employer has over the worker's activities will always be a factor. However, other factors to consider include whether the worker provides his or her own equipment, whether the worker hires his or her own helpers, the degree of

financial risk taken by the worker, the degree of responsibility for investment and management held by the worker, and the worker's opportunity for profit in the performance of his or her tasks.

17. The passage relied upon by Major J. in *Market Investigations, Ltd. v. Minister of Social Security*, 9 [1968] 3 All E.R. 732 is as follows:

The observations of LORD WRIGHT, of DENNING L.J. and of the judges of the Supreme Court in the U.S.A. suggest that the fundamental test to be applied is this: "Is the person who has engaged himself to perform these services performing them as a person in business on his own account?" If the answer to that question is "yes", then the contract is a contract for services. If the answer is "no" then the contract is a contract of service. No exhaustive list has been compiled and perhaps no exhaustive list can be compiled of considerations which are relevant in determining that question, nor can strict rules be laid down as to the relative weight which the various considerations should carry in particular cases. The most that can be said is that control will no doubt always have to be considered, although it can no longer be regarded as the sole determining factor; and that factors, which may be of importance, are such matters as whether the man performing the services provides his own equipment, whether he hires his own helpers, what degree of financial risk he takes, what degree of responsibility for investment and management he has, and whether and how far he has an opportunity of profiting from sound management in the performance of his task. [Emphasis added]

18. Thus Major J. has indicated that the central question to be decided in cases such as these is whether the person who has been engaged to perform the services is performing them as a person in business on his own account or is performing them in the capacity of an employee. In order to make this determination the four criteria set out in *Wiebe Door* are factors to be considered.

[23] I will now consider the four tests referred to in the above cases:

- Control

[24] Mr. Bob MacDonald was the President of the Appellant during the relevant Period. Mr. MacDonald had been a very successful and highly regarded automobile dealer in Halifax. Mr. MacDonald testified that he attended at each Bonanza Bingo Operation hosted by the Appellant and he also attended the Bonanza Bingo operations hosted by Cole Harbour Foundation and Bel Ayr Hockey Association. Mr. MacDonald said that he would arrive at Cole Harbour Place before Bonanza Bingo commenced i.e. at around 6:00 p.m. and leave at 8:00 p.m. or 9:00 p.m. Mr. MacDonald said that he wanted to make sure that everything was operating properly. Mr. MacDonald also said that he was there to talk to the customers and make decisions regarding gifts, prizes and other methods of promoting bingo in the future. Mr. MacDonald said that the actual nightly supervision of the bingo operation was handled by the night manager.

[25] Based upon the evidence that was presented I have concluded that control of the bingo operation hosted by the Appellant was exercised either by the night manager (an employee of the Appellant) or by a combination of the night manager and Mr. MacDonald (the President of the Appellant).

- Ownership of Tools

[26] The main "tool or piece of equipment" in this situation was the machine used by the bingo caller to call out the numbers. The evidence was that this piece of equipment was provided to the Appellant, at no extra cost, by the distributor that supplied the bingo cards. While the evidence indicated that the machine was supplied by the distributor of the cards, the equipment was supplied to the Appellant and operated by the Appellant. In this situation I find that the Appellant provided the equipment used in the bingo operation during the three nights per week that bingo was hosted by the Appellant.

- Chance of Profit or Risk of Loss

[27] The evidence indicated that each of the workers was paid a predetermined amount for each night that they worked. While it was suggested that a small \$10.00 bonus was occasionally paid to a worker for exceptional work, the workers were not required to assume any portion of a loss that might result. I am satisfied that in this situation the workers did not have a chance of profit or a risk of loss.

Conclusion

[28] Based on an analysis of the above tests, I have concluded that each of the workers were employees of the Appellant for the purpose of the *Employment Insurance Act* and the *Canada Pension Plan* during those three nights per week when the Appellant hosted Bonanza Bingo.

[29] The appeals are allowed to recognize that the workers were not employees of the Appellant during those nights when Bonanza Bingo was hosted either by Cole Harbour Foundation or by Bel Ayr Hockey Association.

Signed at Vancouver, British Columbia, this 13th day of June 2005.

"L.M. Little"

Little J.

CITATION: 2005TCC375

COURT FILE NOS.: 2004-1265(EI), 2004-1266(CPP), 2004-1267(EI),
2004-1268(CPP), 2004-1269(EI), 2004-1270(CPP),
2004-1271(EI), 2004-1272(CPP), 2004-1273(EI),
2004-1274(CPP), 2004-1275(EI), 2004-1276(CPP),
2004-1277(EI), 2004-1278(CPP), 2004-1279(EI),
2004-1280(CPP), 2004-1281(EI), 2004-1282(CPP)

STYLE OF CAUSE: Waverley Amateur Athletic Association and
The Minister of National Revenue

PLACE OF HEARING: Halifax, Nova Scotia

DATE OF HEARING: April 12 and 13, 2005

REASONS FOR JUDGMENT BY: The Honourable Justice L.M. Little

DATE OF JUDGMENT: June 13, 2005

APPEARANCES:

Counsel for the Appellant: Bruce S. Russell, Q.C.

Counsel for the Respondent: Martin Hickey

COUNSEL OF RECORD:

For the Appellant:

Name: Bruce S. Russell, Q.C.

Firm: McInnes Cooper

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