

Dockets: 2005-4322(EI)  
2006-1808(EI)

BETWEEN:

LUC LÉTOURNEAU,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

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Appeals heard on common evidence, on February 8, 2007,  
at Québec, Quebec

Before: The Honourable Deputy Judge S.J. Savoie

Appearances:

Counsel for the Appellant: Jérôme Carrier

Counsel for the Respondent: Marie-Claude Landry

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### **JUDGMENT**

The appeals are dismissed and the decisions of the Minister are confirmed in accordance with the attached Reasons for Judgment.

Signed at Grand-Barachois, New Brunswick, this 3rd day of May 2007.

“S.J. Savoie”

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Savoie D.J.

Citation: 2007CCI204  
Date : 20070503  
Dockets: 2005-4322(EI)  
2006-1808(EI)

BETWEEN:

LUC LÉTOURNEAU,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

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### **REASONS FOR JUDGMENT**

Deputy Judge Savoie

[1] These appeals were heard on common evidence at Québec, Quebec, on February 8, 2007.

[2] The issue is the insurability of the Appellant's employment with Linda Kielbinski, doing business as Médailles et Porte-Clefs, the Payer, from June 29 to October 17, 2003 (docket 2006-1808(EI)) and from September 20 to November 26, 2004 (docket 2005-4322(EI)), the periods at issue.

[3] In docket 2006-1808(EI), the Minister of National Revenue (the “Minister”) informed the Appellant by letter dated June 1, 2006 of his decision to the effect that the Appellant did not hold insurable employment during the period at issue. The Minister made the same decision in docket 2005-4322(EI), informing the Appellant thereof in his letter dated September 14, 2005.

[4] The Minister based his decision in docket 2006-1808(EI) on the following assumptions of fact:

- a) the Payer’s company was registered on July 13, 1995; (admitted)

- b) the Payer operated a business selling medals, trophies, plaques, keychains, pins and promotional items; (admitted)
- c) the Payer's place of business is located at the residence of the Proprietor and the Appellant; (admitted)
- d) for the years 2001 to 2004, the Payer reported the following income:

	Gross income	Net income
2001	\$51,787	\$23,866
2002	\$88,092	\$14,684
2003	\$109,904	\$21,666
2004	\$96,809	\$8,482

(admitted)

- e) May through October constitutes the Payer's busiest period; (admitted)
- f) the Appellant had been working for the Payer since 2001; (admitted)
- g) the Appellant was in charge of bagging, which included the placement of stickers and ribbons on the medals, and transporting merchandise; (admitted)
- h) on April 20, 2003, the Appellant and the Payer signed an employment contract, and this was the only year in which the Appellant signed an employment contract with the Payer; (admitted)
- i) according to this employment contract, the Appellant was responsible for fulfilling the terms of the contract signed on March 23, 2003 with Fêtes de la Nouvelle-France, making deliveries, bagging 50,000 pieces, and renovating the basement office; (admitted)
- j) the duration of the contract was between 10 and 14 weeks, at 40 hours per week at an hourly rate of \$8.75; (admitted)
- k) the Appellant's hours of work were not recorded by the Payer; (denied)
- l) on February 28, 2006, the Payer stated to a representative of the Respondent that the Appellant did not need to be supervised at work because he knew what needed to be done; (denied)
- m) the Appellant was paid by cheque on a biweekly basis in the amount of \$700 gross, representing 80 hours at \$8.75 per hour; (admitted)
- n) the Appellant always received the same pay, regardless of the number of hours he actually worked during the pay period; (denied)

- o) on February 28, 2006, the Payer stated to a representative of the Respondent that if there was a rush, the Appellant would work longer hours, but he would only be paid for 40 hours; (denied)
- p) on February 28, 2006, the Payer stated to a representative of the Respondent that the Appellant was not paid for any overtime worked; (denied)
- q) on February 28, 2006, the Payer stated to a representative of the Respondent that the Appellant went to get the first box of medals for the Fêtes de la Nouvelle-France in the first week of May and the last box in early July; (denied)
- r) on February 28, 2006, the Payer stated to a representative of the Respondent that the Appellant went to Montréal two to three times a week to get the medals for the Fêtes de la Nouvelle-France; (admitted)
- s) from May to July 2003, the Appellant went two to three times per week from Québec to Montréal, transporting between 1,000 and 1,200 pounds of medals per trip; (admitted)
- t) on February 27, 2006, the Appellant stated to a representative of the Respondent that he made deliveries twice a week for the Payer throughout the year; (denied)
- u) the Appellant, not the Payer, determined the duration of employment with the Payer; (denied)
- v) on February 28, 2006, the Payer stated to a representative of the Respondent that if her husband had not been available to do the renovations she would have waited until he was; (denied)
- w) the Appellant used his own tools to do the renovation work; (admitted)
- x) most of the invoices for the basement renovation materials were dated outside of the period at issue; (denied)
- y) on February 5, 2004, the Payer gave the Appellant a record of employment showing June 29, 2003 as the first day of work and October 17, 2003 as the last day of work, the total number of insurable hours of employment as 640 hours and the total insurable earnings as \$5,600; (admitted)
- z) the Appellant rendered services to the Payer throughout the year; (denied)
- aa) the Appellant's record of employment does not reflect reality with respect to the periods of employment and hours worked; (denied)

- bb) the Appellant and the Payer entered into an arrangement concerning the Appellant's period of employment; (denied)

[5] The Appellant and the Payer are related persons within the meaning of the *Income Tax Act* (the "Act") because:

- A) Linda Kielbinski is the sole proprietor of the Payer's company; (admitted)
- B) Linda Kielbinski has been married to the Appellant since 1976; (admitted)
- C) the Appellant is related to the Payer by marriage; (admitted)

[6] Moreover, the Minister determined that the Appellant and the Payer were in a non-arm's length relationship in the context of the employment and that it was not reasonable to infer that they would have entered into a substantially similar contract of employment if they had been dealing with each other at arm's length, taking the following circumstances into account:

- a) in 2001, the Appellant worked from September 17 to November 23; in 2002, the Appellant was not hired by the Payer; in 2003, the year at issue, the Appellant worked from June 29 to October 17; and in 2004, the Appellant worked from September 23 to November 26; (admitted)
- b) during the year at issue and the other years, the Appellant's alleged period of employment did not correspond with the Payer's busiest season; (denied)
- c) the Appellant and the Payer had entered into an agreement with respect to the start, end and duration of the Appellant's employment; (denied)
- d) the Appellant rendered services to the Payer and did not report any earnings; (denied)
- e) the Appellant's record of employment does not reflect the actual number of hours worked or the actual period worked; (denied)
- f) the period allegedly worked does not match the period during which the Appellant actually worked; (denied)
- g) a person in an arm's length relationship would not have had a duration of employment or conditions of employment similar to those of the Appellant; (denied)

[7] The Minister based his decision in docket 2005-4322(EI) on the following assumptions:

- a) on July 13, 1995, the Payer registered her company under the name Médailles et Porte Clefs; (admitted)
- b) the Payer operated a business selling medals, trophies, plaques, keychains and pins; (admitted)
- c) the Payer's main suppliers were CFGF in Montréal, PDU in Toronto and Catellina in Québec; (admitted)
- d) the company's place of business was located in the personal residence of the Payer; (admitted)
- e) the Payer operated her business throughout the year, but there was a busy period starting in late July and ending in early September, owing to soccer season, and a lull during the winter; (denied)
- f) the Payer was the only person who made decisions on behalf of the company and the only person with signing authority for the company bank account; (admitted)
- g) the Appellant started rendering services to the company during the 2001 season (from September 17 to November 23); (admitted)
- h) the Worker was hired to go pick up the medals from the suppliers in Montréal and Toronto; he was responsible for having the medals engraved and attaching the ribbons; (denied)
- i) in 2004, during the period at issue, the Worker travelled once to Toronto and did the Québec-Montréal run approximately fifteen times; (admitted)
- j) there was no written employment contract between the parties; (admitted)
- k) the Worker worked in part on the road and in part at the Payer's place of business; (admitted)
- l) the Worker was not entitled to 4% vacation pay and the Payer did not offer him any benefits package; (denied)
- m) the Worker's hours of work were not recorded by the Payer and, because of the differing versions received, it is difficult to determine the hours actually worked by the Worker during the period in question; (denied)
- n) the Worker's hours of work varied a great deal, but during the period in question he received a fixed gross salary of \$700 every two weeks for allegedly 40 hours per week even though he asserted that he was being paid \$10 an hour; (denied)

- o) the period of employment indicated on the record of employment issued to the Worker by the Payer does not reflect the busiest period of the Payer's company. (denied)

[8] The Appellant and the Payer are related persons under the Act because:

- a) the Payer was the sole proprietor of the company; (admitted)
- b) the Worker is the Payer's spouse; (admitted)
- c) the worker is related to a person who controls the Payer's company. (admitted)

[9] Moreover, the Minister determined that the Appellant and the Payer were in a non-arm's length relationship in the context of the employment and that it was not reasonable to infer that they would have entered into a substantially similar contract of employment if they had been dealing with each other at arm's length, taking the following circumstances into account:

- a) the Worker received a set remuneration regardless of the hours actually worked; (denied)
- b) in 2001, the Worker was on the Payer's payroll from September 17 to November 23, in 2002 he did not render any service, in 2003 he was on the payroll from early July to mid-October, and in 2004, from September 20 to November 26; (admitted)
- c) the Worker rendered services and was remunerated by the Payer irrespective of the company's busiest periods (from late July to early September); (denied)
- d) the Worker was not on the Payer's payroll in May and August 2004 while the company was making its biggest sales; (denied)
- e) the Worker was rendering services to the Payer during periods when he was not on the Payer's payroll. (denied)

[10] It must be observed that the two cases are similar. What differentiates them is the period at issue and the Appellant's duties.

[11] I shall begin by examining docket 2006-1808(EI) and the Minister's assumptions denied by the Appellant and the Payer. It was established that the

Appellant's hours of work were not recorded. In his statement to the investigators, the Appellant said that he had presumed the Payer, his wife, was keeping track of his hours. For her part, the Payer confirmed that the hours of work were in fact not recorded anywhere.

[12] As the Minister stated in his assumptions, the Payer stated that the Appellant did not need any supervision because he [TRANSLATION] "knew what he was supposed to do." On the other hand, the Appellant stated that the Payer regularly supervised him and approved his work because she was working 50 to 60 hours a week at the company.

[13] Moreover, the Payer informed the Minister that the Appellant usually worked Monday to Friday from 8:00 a.m. to 4:30 p.m., but that if there was a rush, he would work longer hours, although he would only be paid for 40 hours. He worked weekdays or weekends, as circumstances required. The Payer confirmed that the Appellant rendered services and was not paid for any overtime he did.

[14] The Appellant's wage, according to the Payer, was \$8.75 an hour for 40 hours a week. He was paid by cheque every two weeks.

[15] The Appellant revealed to the Minister's investigator that his duties involved bagging, which includes putting stickers and ribbons on the medals. He also had to go to Montréal twice a week to pick up merchandise. He stated that he transported between 1,000 to 1,200 lbs of medals per trip and that he was responsible for deliveries all year long, about twice a week. He also revealed to the investigators that he was doing renovations in the basement, which he divided into two rooms, one for the office and the other for storage. He also explained that he laid carpet, hung wallpaper and installed a suspended ceiling. He stated that this work was done over a three-week period of intense work, at a rate of 40 hours per week.

[16] The Minister contends that the Payer hired the Appellant according to his availability and willingness to work. Indeed, Ms. Kielbinski stated to the investigators on February 28, 2006 that if the Appellant had not been available to do the renovations, she would have waited until he was. For his part, the Appellant said that he asked the Payer for a job because he needed 40 hours to qualify for employment insurance benefits.

[17] Exhibit I-4, introduced at the hearing, revealed that most of the invoices for the basement renovation materials are dated outside the period at issue. The purchase of the carpet, for instance, was made on January 30, 2002, whereas the renovation



work was supposedly carried out in September and October 2003. The explanation provided by the Payer, i.e., that the Appellant was not available to do the work, is hardly credible since it has been established that it was during the busiest period of the Payer's year that this renovation work was performed.

[18] The Minister determined therefore that the Appellant and the Payer had entered into an agreement regarding the start, end and duration of the Appellant's employment. Moreover, the Minister contends that the record of employment does not reflect the actual number of hours worked or the actual period worked. And further, the Minister is of the view that the alleged period of employment was not the Appellant's actual period of employment.

[19] The Minister illustrated these assertions by means of the tables set out below:

38. Print-outs from CRA's RAPID System (option C) showing business income reported in years 2000 to 2004 inclusive:

<b><u>Year</u></b>	<b><u>Gross Income</u></b>	<b><u>Net Income</u></b>
<b>2000</b>	<b>\$80,611</b>	<b>\$25,702</b>
<b>2001</b>	<b>\$51,787</b>	<b>\$23,866</b>
<b>2002</b>	<b>\$88,092</b>	<b>\$14,684</b>
<b>2003</b>	<b>\$109,904</b>	<b>\$21,666</b>

39. Print-out from general ledger account: Sales Revenues (year 2004):  
(document provided by Payer)

<b>January</b>	\$3,358
<b>February</b>	\$4,606
<b>March</b>	<b>\$8,850</b>
<b>April</b>	\$7,307
<b>May</b>	<b>\$23,608</b>
<b>June</b>	\$8,180
<b>July</b>	\$4,541
<b>August</b>	<b>\$13,012</b>
<b>September</b>	\$8,398
<b>October</b>	\$5,334
<b>November</b>	\$6,508
<b>December</b>	\$3,102

40. Print-out from general ledger account: Sales Revenues (year 2002) :  
(document provided by Payer)

<b>January</b>	\$5,954
<b>February</b>	\$1,783
<b>March</b>	\$3,925
<b>April</b>	<b>\$14,399</b>
<b>May</b>	\$9,379
<b>June</b>	<b>\$19,093</b>
<b>July</b>	\$6,293
<b>August</b>	<b>\$11,174</b>
<b>September</b>	\$4,407
<b>October</b>	\$4,448
<b>November</b>	\$4,815
<b>December</b>	

N.B. According to 2002 GST report available in CRA's GST system, December sales revenues were \$2,430.

41. Print-out from general ledger account: Sales Revenues (year 2001) :  
(document provided by Payer)

<b>January</b>	\$3,863
<b>February</b>	\$4,694
<b>March</b>	<b>\$6,298</b>
<b>April</b>	\$1,066
<b>May</b>	<b>\$7,197</b>
<b>June</b>	\$3,581
<b>July</b>	\$5,746
<b>August</b>	\$5,682
<b>September</b>	<b>\$6,697</b>
<b>October</b>	\$1,990
<b>November</b>	\$2,750
<b>December</b>	\$2,221

42. Print-out from CRA's GST report (year 2003) :

According to this print-out, the year's highest revenues were achieved in July, August and September 2003.

[20] It should be emphasized that the above tables were produced from the data found in the Payer's documents.

[21] As for docket 2005-4322(EI), the evidence revealed that, based on a statement made by the Payer to the investigators, her business runs all year long but that in the winter there is a slow period because the company does not have any contracts to make hockey medals; on the other hand, as of late July and until early September,

there is a lot of work, owing to soccer tournaments. The Payer also stated to the investigators that the Appellant had been hired to pick up and transport the medals from the suppliers in Montréal and Toronto because they were too heavy to be shipped by mail. In 2004, he went to Toronto once and did the Québec–Montréal trip approximately 15 times. The Appellant was also the one who transported the medals to get them engraved. As well, he was responsible for attaching the ribbons to the medal and, occasionally, putting stickers on the back.

[22] The Respondent established in evidence that the Appellant was not covered by any benefits plan, apart from his contributions to the Employment Insurance scheme, which were deducted at the source. It was established that the Payer kept no record of the Appellant's hours of work.

[23] In her statement to the investigators, the Payer asserted that the Appellant was required to work a minimum of 35 to 40 hours per week, that he sometimes worked three days non-stop and that he might work 70 hours over the course of a week. On June 30, 2005, she stated to the investigator that her husband had worked between 60 and 75 hours the previous week. She added that he was not paid for overtime, adding, [TRANSLATION] "other people wouldn't work for nothing." She stated that the Appellant was paid by cheque and received \$400 gross per week, regardless of the number of hours he actually worked. She added that it would have been different with a third party, who would not have worked for so little pay. For his part, the Appellant stated to the investigators that he was required to work a minimum of 80 hours every two weeks. He testified at the hearing that, initially, he had been supposed to earn an hourly wage of \$10, but it was later cut to \$8.75.

[24] In her call report, exhibit I-2, France Vigneault wrote that when she had contacted the Appellant the first time to set up an appointment for a telephone interview, he had informed her that during the period at issue he might work 12 hours one week and 15 hours another week, that sometimes he worked many more hours than that, but that he was always paid for 40 hours a week. Ms. Vigneault stated that when she actually conducted the telephone interview with the Appellant, she reminded him of what he had said previously; at that point, he told her to disregard what he had said and told her that he was required to work 80 hours a week during his biweekly pay period.

[25] Repeatedly throughout her testimony, the Payer stated that a third party would not have worked for the wage she was paying the Appellant. Among other things, she stated:

[TRANSLATION]

“A stranger wouldn’t have worked for nothing.”

“A stranger wants to get paid for the work he does.”

“He’s my husband; it’s to save money.”

“He [the Appellant] often helps me for no pay.”

[26] The Payer told the investigators that the Appellant was laid off on November 26, 2004 because business had slowed down and the snow removal contract had started. He also stated to the investigators that in September, the soccer tournaments were over and business normally slowed down after Labour Day and she is able to handle things on her own. The investigator asked her why then she waited until November 26 to lay her husband off. The Payer, Ms. Kielbinski replied, [TRANSLATION] “I don’t know. He must have had something to do.” And then she added, “It’s been a year; I don’t remember.”

[27] As an explanation, the Appellant entered exhibit A-2 to prove the real need for his services in October and November 2004. However, the Payer’s documents examined by the Respondent do not reveal any unusual work for that period. Below are the relevant data:

2004	
May 2004	\$23,608
August 2004	\$13,012
September 2004	\$8,398
October 2004	\$5,334

[28] In testimony, the Appellant’s and the Payer’s versions regarding the Appellant’s 4% vacation pay were confusing. It was asserted that vacation time was paid to the Appellant, then it was asserted that it was not paid to him, and then, finally, it was asserted that it was included in his pay.

[29] The Appellant maintained that he carried out renovations in the Payer’s building in September and October 2003. According to the Appellant’s testimony, this work necessitated three weeks of intensive labour at the rate of 40 hours per week. As for the Payer, he stated first of all that the renovation work was carried out from mid-September until late October 2003. He then stated that it lasted one month. Finally, he stated that it lasted two months. Regarding the purchase of materials for this work, many were made long before the work started; for instance, some of the work was done in May 2003 and the carpet was purchased in January 2002.

[30] It should be pointed out that the Appellant's period of employment, both in 2003 and 2004, does not correspond with the Payer's busiest season. That fact was demonstrated in the table shown above.

[31] The Appeals Officer noted in her report, exhibit I-1, that she pointed out to the Payer the fact that the Appellant's period of employment was quite different in 2003 and 2004. She asked the Payer for an explanation. Ms. Kielbinski replied, [TRANSLATION] "It depends when he is available."

[32] In her testimony, Ms. Kielbinsky stated that she worked for her company 50 to 60 hours per week and paid herself a certain amount of salary as needed. However, exhibits I-7 and I-8, being her reported income for the years 2003 and 2004, do not indicate any salary paid to her or the Appellant. On the other hand, exhibit I-7 contains a statement that a commission of \$6,075.65 was paid. Ms. Kielbinsky, in her testimony, was unable to name the person to whom this commission was paid.

[33] At the hearing, the Appellant introduced some new evidence that he had not previously revealed to the investigators regarding the Payer's use of volunteer services. This was offered to explain why the Appellant did not work for the Payer in 2002. According to the Appellant, members of the soccer team and the Appellant's children worked on a volunteer basis for the Payer that year.

[34] It should be noted that the figures produced at the hearing do in fact demonstrate the company's precarious financial situation, but at the same time, they raise the question as to why the company did not use volunteers after 2002, preferring instead to pay the Appellant a salary.

[35] According to the Appeals Officer, the numerous contradictions revealed over the course of the investigation justify the recommendation she made to the Minister in these dockets.

[36] On the basis of these recommendations, the Minister determined that the Appellant's employment was not insurable during the two periods at issue because he did not meet the requirements of a contract of service under paragraph 5(1)(a) of the *Employment Insurance Act*. The Minister also determined that the Appellant's employment was excluded from insurable employment because of the non-arm's length relationship between the Appellant and the Payer pursuant to sections 251 and 252 of the *Income Tax Act* and paragraphs 5(2)(i) and 5(3)(b) of the *Employment Insurance Act*.

[37] The issue is the insurability of the employment. The parties to the contract are related persons according to the definition set out in the *Income Tax Act*, paragraphs 251(1)(a) and 251(2)(a):

251. Arm's length.

(1) For the purposes of this Act,

(a) related persons shall be deemed not to deal with each other at arm's length;

[...]

(2) for the purpose of this Act, "related persons," or persons related to each other, are

(a) individuals connected by blood relationship, marriage or common-law partnership or adoption;

[38] Moreover, employment in which the employer and the employee are not dealing with each other at arm's length is excluded from insurable employment under the *Employment Insurance Act*. Thus, paragraph 5(2)(i) stipulates 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.

[39] Under such circumstances, the *Employment Insurance Act* prescribes, in paragraph 5(3)(b) of the Act, the manner in which the Minister must exercise his discretion to determine whether or not the employment is insurable:

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

[...]

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.

### **Duration of Employment**

[40] The Appellant has worked for the Payer since 2001. His periods of employment for each of these have been as follows:

2001: from September 17 to November 23  
2002: the Appellant did not work for the Payer  
2003: from June 29 to October 17  
2004: from September 20 to November 26

[41] The Payer explained to the investigators that the Appellant's periods of employment depended on his availability. Ms. Kielbinski also informed the investigators that the period from late July to early September was very busy. There was a lot of work. Following that, she revealed that the months of August and September were very busy as well. Finally, she said that after Labour Day business is slow and she can handle things on her own.

[42] It is reasonable to doubt that an employee working at arm's length with his employer would have enjoyed such privileges and then worked during such a slow period.

### **Remuneration Paid**

[43] The Appellant was paid \$700 gross every two weeks by cheque regardless of how many hours he actually worked. He sometimes worked as much as 70 hours a week but was not paid for more than 40 hours. He was not paid for overtime. The Appellant stated that in 2003: [TRANSLATION] "we sat around on weekends with our camping buddies and had fun putting ribbons or stickers on the medals." He added that Linda Kielbinski's daughter also worked on a volunteer basis.

### **Nature and Amount of Work and Conditions of Employment**

[44] According to the Payer, the Appellant transported products related to the fabrication and distribution of medals. He went to pick up the medals, according to the Payer, in the first week of May. This was in 2003. However, his employment commenced on June 29. The Appellant also did product deliveries throughout the year. Regarding the renovation work he did in 2003, several different versions

were given as to the period in which it was done, and the purchase dates for certain materials he used in the renovation cast doubt on the period alleged.

[45] The Payer also stated that if her husband had not been available to do the work, she would have waited until he was.

[46] According to the Appellant, the busiest time of year for the Payer was May to October, but according to the Payer, the Appellant's employment periods depended on his availability.

[47] The sales revenue account in the Payer's general ledger establishes that the Appellant was hired at a time in 2004 that did not correspond with the busiest months of the year, and the same in 2001. It is also noteworthy that the Appellant was hired in 2001, whereas in 2002, he was not. Indeed, there were no employees in 2002, yet sales for 2002 exceeded sales in 2001 by \$36,000.

[48] There is no doubt that such working conditions would not have existed in an arm's length employment relationship.

[49] It is clearly unreasonable to believe that a third party would have been granted working conditions similar to those enjoyed by the Appellant. Accordingly, the Appellant's employment during the two periods at issue is excluded from insurable employment under paragraph 5(2)(i) of the *Employment Insurance Act*.

[50] The Court has analyzed the facts of this case in the light of the legislative provisions reprinted above.

[51] The Court also examined the Minister's exercise of discretionary power conferred upon him by Parliament.

[52] In *Légaré v. Canada (Minister of National Revenue)*, no. A-392-98 [1999] F.C.J. no. 878, Marceau J.A. of the Federal Court of Appeal, in a judicial review of the Minister's decision, wrote as follows at paragraph 4 with respect to the power conferred upon the Minister:

The Act requires the Minister to make a determination based on his own conviction drawn from a review of the file. The wording used introduces a form of subjective element, and while this has been called a discretionary power of the Minister, this characterization should not obscure the fact



that the exercise of this power must clearly be completely and exclusively based on an objective appreciation of known or inferred facts. And the Minister's determination is subject to review. In fact, the Act confers the power of review on the Tax Court of Canada on the basis of what is discovered in an inquiry carried out in the presence of all interested parties. The Court is not mandated to make the same kind of determination as the Minister and thus cannot purely and simply substitute its assessment for that of the Minister: that falls under the Minister's so-called discretionary power. However, the Court must verify whether the facts inferred or relied on by the Minister are real and were correctly assessed having regard to the context in which they occurred, and after doing so, it must decide whether the conclusion with which the Minister was "satisfied" still seems reasonable.

[53] At the conclusion of this analysis, the Court is of the view that the Minister exercised his power in accordance with the legislation and the case law.

[54] Moreover, I find that the facts inferred or relied on by the Minister were real and correctly assessed having regard to the context in which they occurred, and the conclusion with which the Minister was satisfied still seems reasonable.

[55] Accordingly, the appeals are dismissed and the decisions of the Minister are confirmed.

Signed at Grand-Barachois (New Brunswick), this 3rd day of May 2007.

\_\_\_\_\_  
"S.J. Savoie"

Savoie D.J.

Translation certified true,  
this 25th day of September 2007  
Stefan Winfield, Translator

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COURT FILE NOS: 2005-4322(EI), 2006-1808(EI)  
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