

Docket: 2007-2451(EI)

BETWEEN:

LES PROPRIÉTÉS BELCOURT INC.,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent,

and

LINA VACCARO,

Intervener.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeals of
**Les Propriétés Belcourt Inc. (2007-3762(EI), 2007-3765(EI),
2007-3766(EI), 2007-3767(EI), 2007-3768(EI), and 2007-3769(EI)),**
on April 21 and April 22, 2008, at Montréal, Quebec

Before: The Honourable Justice Réal Favreau

Appearances:

Counsel for the Appellant:	Pierre-Luc Beauchesne
Counsel for the Respondent:	Christina Ham
For the Intervener:	The Intervener herself

JUDGMENT

The appeal under subsection 103(1) of the *Employment Insurance Act* is dismissed and the decision of the Minister of National Revenue is confirmed, in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 26th day of September 2008.

"Réal Favreau"

Favreau J.

Translation certified true
on this 11th day of November 2008.

Brian McCordick, Translator

Docket: 2007-3762(EI)

BETWEEN:

LES PROPRIÉTÉS BELCOURT INC.,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent,

and

DONALD TAILLEFER,

Intervener.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeals of
**Les Propriétés Belcourt Inc. (2007-2451(EI), 2007-3765(EI),
2007-3766(EI), 2007-3767(EI), 2007-3768(EI), and 2007-3769(EI)),**
on April 21 and April 22, 2008, at Montréal, Quebec

Before: The Honourable Justice Réal Favreau

Appearances:

Counsel for the Appellant:	Pierre-Luc Beauchesne
Counsel for the Respondent:	Christina Ham
For the Intervener:	The Intervener himself

JUDGMENT

The appeal under subsection 103(1) of the *Employment Insurance Act* is dismissed and the decision of the Minister of National Revenue is confirmed, in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 26th day of September 2008.

"Réal Favreau"

Favreau J.

Translation certified true
on this 11th day of November 2008.

Brian McCordick, Translator

Docket: 2007-3765(EI)

BETWEEN:

LES PROPRIÉTÉS BELCOURT INC.,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent,

and

SUKHY BASRA,

Intervener.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeals of
**Les Propriétés Belcourt Inc. (2007-2451(EI), 2007-3762(EI),
2007-3766(EI), 2007-3767(EI), 2007-3768(EI), and 2007-3769(EI)),**
on April 21 and April 22, 2008, at Montréal, Quebec

Before: The Honourable Justice Réal Favreau

Appearances:

Counsel for the Appellant:	Pierre-Luc Beauchesne
Counsel for the Respondent:	Christina Ham
For the Intervener:	The Intervener herself

JUDGMENT

The appeal under subsection 103(1) of the *Employment Insurance Act* is dismissed and the decision of the Minister of National Revenue is confirmed, in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 26th day of September 2008.

"Réal Favreau"

Favreau J.

Translation certified true
on this 11th day of November 2008.

Brian McCordick, Translator

Docket: 2007-3766(EI)

BETWEEN:

LES PROPRIÉTÉS BELCOURT INC.,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent,

and

MARC G. RANGER,

Intervener.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeals of
**Les Propriétés Belcourt Inc. (2007-2451(EI), 2007-3762(EI),
2007-3765(EI), 2007-3767(EI), 2007-3768(EI), and 2007-3769(EI)),**
on April 21 and April 22, 2008, at Montréal, Quebec

Before: The Honourable Justice Réal Favreau

Appearances:

Counsel for the Appellant:	Pierre-Luc Beauchesne
Counsel for the Respondent:	Christina Ham
For the Intervener:	The Intervener himself

JUDGMENT

The appeal under subsection 103(1) of the *Employment Insurance Act* is dismissed and the decision of the Minister of National Revenue is confirmed, in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 26th day of September 2008.

"Réal Favreau"

Favreau J.

Translation certified true
on this 11th day of November 2008.

Brian McCordick, Translator

Docket: 2007-3767(EI)

BETWEEN:

LES PROPRIÉTÉS BELCOURT INC.,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent,

and

LOUISE DINEEN LABRECQUE,

Intervener.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeals of
**Les Propriétés Belcourt Inc. (2007-2451(EI), 2007-3762(EI),
2007-3765(EI), 2007-3766(EI), 2007-3768(EI), and 2007-3769(EI)),**
on April 21 and April 22, 2008, at Montréal, Quebec

Before: The Honourable Justice Réal Favreau

Appearances:

Counsel for the Appellant:	Pierre-Luc Beauchesne
Counsel for the Respondent:	Christina Ham
For the Intervener:	The Intervener herself

JUDGMENT

The appeal under subsection 103(1) of the *Employment Insurance Act* is dismissed and the decision of the Minister of National Revenue is confirmed, in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 26th day of September 2008.

"Réal Favreau"

Favreau J.

Translation certified true
on this 11th day of November 2008.

Brian McCordick, Translator

Docket: 2007-3768(EI)

BETWEEN:

LES PROPRIÉTÉS BELCOURT INC.,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent,

and

WILLIAM BUMBRAY,

Intervener.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeals of
**Les Propriétés Belcourt Inc. (2007-2451(EI), 2007-3762(EI),
2007-3765(EI), 2007-3766(EI), 2007-3767(EI), and 2007-3769(EI)),**
on April 21 and April 22, 2008, at Montréal, Quebec

Before: The Honourable Justice Réal Favreau

Appearances:

Counsel for the Appellant:	Pierre-Luc Beauchesne
Counsel for the Respondent:	Christina Ham
For the Intervener:	The Intervener himself

JUDGMENT

The appeal under subsection 103(1) of the *Employment Insurance Act* is dismissed and the decision of the Minister of National Revenue is confirmed, in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 26th day of September 2008.

"Réal Favreau"

Favreau J.

Translation certified true
on this 11th day of November 2008.

Brian McCordick, Translator

Docket: 2007-2769(EI)

BETWEEN:

LES PROPRIÉTÉS BELCOURT INC.,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent,

and

ROBERT BAILLARGEON,

Intervener.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeals of
**Les Propriétés Belcourt Inc. (2007-2451(EI), 2007-3762(EI),
2007-3765(EI), 2007-3766(EI), 2007-3767(EI), and 2007-3768(EI)),**
on April 21 and April 22, 2008, at Montréal, Quebec

Before: The Honourable Justice Réal Favreau

Appearances:

Counsel for the Appellant:	Pierre-Luc Beauchesne
Counsel for the Respondent:	Christina Ham
For the Intervener:	The Intervener himself

JUDGMENT

The appeal under subsection 103(1) of the *Employment Insurance Act* is dismissed and the decision of the Minister of National Revenue is confirmed, in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 26th day of September 2008.

"Réal Favreau"

Favreau J.

Translation certified true
on this 11th day of November 2008.

Brian McCordick, Translator

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Dockets: 2007-2451(EI), 2007-3762(EI),
2007-3765(EI), 2007-3766(EI),
2007-3767(EI), 2007-3768(EI),
2007-3769(EI)

BETWEEN:

LES PROPRIÉTÉS BELCOURT INC.,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent,

and

LINA VACCARO, DONALD TAILLEFER,
SUKHY BASRA, MARC G. RANGER,
LOUISE DINEEN LABRECQUE,
WILLIAM BUMBRAY, ROBERT BAILLARGEON,

Interveners.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR JUDGMENT

Favreau J.

[1] These are seven appeals from decisions in which the Minister of National Revenue ("the Minister") determined that Lina Vaccaro, Donald Taillefer, Sukhy Basra, Marc G. Ranger, Louise Dineen Labrecque, William Bumbrey and Robert Baillargeon ("the Workers") were employed by the Appellant in insurable employment during their respective periods, that is to say, in Ms. Vaccaro's case, from November 1, 2004 to November 4, 2005, and in the other Interveners' cases, from January 1 to December 31, 2004, and from January 1, 2005 to May 25, 2006. The appeals were heard on common evidence.

[2] In determining that the Workers were employed by the Appellant under a contract of service, the Minister relied on the assumptions of fact set out in paragraphs 14 or 15 (as the case may be) of the Reply to the Notice of Appeal in each appeal. For example, paragraph 15 of the Reply to the Notice of Appeal in the appeal of Sukhy Basra reads as follows:

[TRANSLATION]

- (a) The Appellant is a real estate developer that specializes in the construction and sale of condominiums.
- (b) Approximately 50 people worked for the Appellant.
- (c) Those people were either regular employees (office and construction workers) or sales agents, including the Worker, whom the Appellant considered self-employed.
- (d) There was no written work contract between the Appellant and the sales agents.
- (e) The Appellant retained the services of several sales agents to sell its units.
- (f) Essentially, the agents' main duties were to greet potential clients of the Appellant's and provide them with brochures promoting the Appellant's products.
- (g) The agents did promotional work by presenting the Appellant's products and showing model condos, but they did not look after condo unit sales, which were the real estate agents' responsibility.
- (h) The Worker rendered services to the Payor as sales agent for roughly ten years.
- (i) The Worker had no precise work schedule to comply with.
- (j) The Worker rendered her services at the Appellant's various sales offices in accordance with the Appellant's designations or assignments.
- (k) The Appellant set the Worker's schedule based on the business hours of the various points of sale.
- (l) The Worker had to comply with the schedule set by the Appellant.
- (m) The Worker made no investment in the Appellant's business and had no financial responsibility over the business.
- (n) The Worker had to justify her absences to the Appellant, who was responsible for replacing her.
- (o) The Worker could not personally hire assistants to assist her in her work for the Appellant.
- (p) The Appellant supervised the Worker's work.
- (q) The Appellant provided the Worker with all the equipment required to carry out her tasks (telephone, fax, brochures, etc.)
- (r) The Appellant did not supply business cards bearing the Worker's name.
- (s) The Worker assumed her driving and cell phone expenses herself.
- (t) The Worker determined her work schedule herself.
- (u) The Worker was paid an hourly rate for each hour that she worked, and she did not receive any commission.

- (v) The Worker was on the Appellant's payroll and was paid regularly by bi-weekly direct deposits.
- (w) The Worker received fixed remuneration based on the hours that she actually worked, and had no chance of profit or risk of loss in the performance of her work.
- (x) The Worker had to go to the Appellant's sales offices to perform her services, and the Appellant had the power to control and supervise her work.
- (y) The Appellant had the right to dismiss the Worker at any time if it was not satisfied with her work.

[3] The witnesses were Penny Glen, the Appellant's Vice-President, Sales and Marketing; Stéphane Joannette, the Appellant's Director of Finance; and Donald Taillefer, Robert Baillargeon, William Bumbray, Marc Glen Ranger, Louise Dineen Labrecque, Lina Vaccaro and Sukhy Basra.

[4] The Appellant's representatives explained that the industry practice was to hire self-employed workers to look after the sale of condominium units because the amount of time required to sell the units at a given site could not be predicted. They claim that the parties' mutual understanding was that the Workers were self-employed. The Appellant's conduct clearly shows that the Workers were considered self-employed: T4A slips were issued, there were no source deductions, there were no fringe benefits, there was no vacation pay, etc. However, Ms. Vaccaro and Ms. Basra both deny having been self-employed.

[5] Based on the evidence that was adduced, there were two categories of staff responsible for sales: the hosts (called "hosts and hostesses"), who greeted the customers; and the "closers", who signed contracts of sale. The Workers who were hosts included Mr. Taillefer, Mr. Bumbray and Ms. Labrecque, and the Workers who were closers included Ms. Basra and Ms. Vaccaro (who was also a host) as well as Mr. Ranger and Mr. Baillargeon. The work done by the hosts was relatively easy: greet the customers; show them the premises; provide them with information about the project as a whole, the features of the various available units, the choice of materials and the various options and prices; take the customers' contact information and \$1,000 deposits if they wanted to reserve a unit; and, lastly, put them in touch with a closer. The closers were generally more experienced in the real estate field and their work essentially consisted in helping customers fill out pre-sale contracts for condominium units, and hypothecary finance applications. Both types of Workers were paid a negotiable hourly rate, not a commission. The hosts were not given any special training, but they sometimes had the benefit of working with other hosts at a given location. The Workers were given information concerning the real estate projects, and they were also given the promotional material. In addition, the closers got training from more experienced people.

[6] The Appellant prepared the Workers' schedules after receiving information about their availability. The work schedules normally covered two-week periods and specified the building sites where the Workers were to report. According to the Appellant, the Workers were free to accept or decline what they were proposed. If they were ill or absent, the Workers had to find a replacement and tell the Appellant who that person was. The replacements were normally chosen from the list of the Appellant's workers.

[7] The Workers met the customers at the sites and filled out a daily activity book that was available to the other Workers and the Appellant. The book contained information about the number of visitors, the potential customers, the visitors' reactions to the advertising campaigns, the number of calls, the price changes, etc. The Workers' work was not supervised by the Appellant, and they did not have to produce written reports. However, every Sunday after 7 p.m., the Workers had to report orally to the Appellant's president, Mr. Zunenshine, with respect to the weekend visits and the sales and reservations that had been made.

[8] In the performance of their work, the Workers used the Appellant's promotional material and had access to the Appellant's sites by means of keys that were provided to them. Occasionally, the Workers worked at more than one location during a given day or week. They were not reimbursed for travel or for cellular phone use.

Analysis

[9] In addition to the applicable statutory provisions and certain scholarly articles, counsel for the Appellant referred to the decisions in *D & J Driveway Inc. v. Canada*, 2003 FCA 453; *Ayotte v. M.N.R.*, 2005 TCC 617; *Gendron Communication Inc. v. Vidéotron Ltée*, 2005 CanLII 42217 (QCCS); *Tremblay v. 9080-8460 Québec Inc.*, 2003 CanLII 10259 (QCCQ); and *Les Constructions Marcel Fugère Inc. v. Beaulieu*, C.Q. Frontenac, No. 235-02-000389-872, November 14, 1990, *per* Bossé J.

[10] The rules applicable to written or oral contracts entered into in Quebec are determined by the *Civil Code of Québec* ("the *Civil Code*"). These rules are set out in the articles of the *Civil Code* that pertain to the "contract of employment" (articles 2085 to 2097) and the "contract of enterprise or for services" (articles 2098 to 2129). The articles most relevant to the instant dispute are articles 2085, 2098 and 2099, which read as follows:

2085. A contract of employment is a contract by which a person, the employee, undertakes for a limited period to do work for remuneration, according to the instructions and under the direction or control of another person, the employer.

2098. A contract of enterprise or for services is a contract by which a person, the contractor or the provider of services, as the case may be, undertakes to carry out physical or intellectual work for another person, the client or to provide a service, for a price which the client binds himself to pay.

2099. The contractor or the provider of services is free to choose the means of performing the contract and no relationship of subordination exists between the contractor or the provider of services and the client in respect of such performance.

[11] In *9041-6868 Québec Inc. v. Canada*, 2005 FCA 334, Décary J.A. remarked, at paragraph 11:

There are three characteristic constituent elements of a "contract of employment" in Quebec law: the performance of work, remuneration and a relationship of subordination. That last element is the source of the most litigation. . . .

[12] In the same paragraph, Décary J.A. adopted the remarks of Robert P. Gagnon in *Le droit du travail du Québec*, 5th ed. (Éditions Yvon Blais, 2003) at pages 66-67. Here are some excerpts from the text that he quoted:

. . . it is a characteristic of an employment contract, subject to its terms, that the employee personally perform the agreed upon work under the direction of the employer and within the framework established by the employer.

. . . Consequently, subordination came to include the ability of the person who became recognized as the employer to determine the work to be performed, and to control and monitor the performance. Viewed from the reverse perspective, an employee is a person who agrees to integrate into the operational structure of a business so that the business can benefit from the employee's work. In practice, one looks for a certain number of indicia of the ability to control (and these indicia can vary depending on the context): mandatory presence at a workplace; a somewhat regular assignment of work; the imposition of rules of conduct or behaviour; an obligation to provide activity reports; control over the quantity or quality of the services, etc. . . .

[13] Counsel for the Appellant submitted that the parties' intention upon the formation of the oral contract with the Workers was clear, and that the indicia of the ability to control pointing to the absence of a relationship of subordination were as follows:

- the Appellant did not have control over the Workers;
- there was no training;
- there was no exclusivity; and
- a Worker could get someone to replace him or her.

[14] Counsel for the Respondent submitted that the parties' intention was not really clear because Ms. Vaccaro and Ms. Basra disputed their self-employed status. Ms. Vaccaro thought that she was an employee, and she reported her income from the Appellant as employment income. In addition, she alleged that

- (a) the Workers were required to report to the workplaces designated by the Appellant in accordance with the schedule set by the Appellant;
- (b) the Workers received training on the products offered by the Appellant, and used the Appellant's sales and promotional material;
- (c) the Workers had to make reports in the activity book that was kept on the premises, and had to report orally to the Appellant's president every Sunday evening.

[15] My assessment of the facts and the evidence is that the Minister's allegations were well founded and that, based on those allegations, the Minister was justified in determining that the Appellant's contracts with the workers were contracts of employment.

[16] It seems to me that, in practice, the Workers' ability to have others replace them was limited to the other workers on the Appellant's list. Given the requisite knowledge concerning the building development sites and the numerous available options, only experienced people could serve as replacements.

[17] The absence of exclusivity is rather theoretical as well, since the Workers essentially worked for the Appellant full-time (e.g., Robert Baillargeon) or had been working for the Appellant for many years (e.g., Ms. Basra).

[18] It should also be noted that the Appellant exercised quality control by reviewing and signing the documents prepared by the closers. Those people did not generally have the authority to sign the said documents bearing the Appellant's name.

[19] The application of the principles from the decision in *Wiebe Door Services Ltd. v. M.N.R.*, [1986] 3 F.C. 553 (C.A.), namely, ownership of work tools, chances of profit and risk of loss, and integration into the Appellant's activities, tends to confirm that the Workers were governed by contracts of employment.

[20] For these reasons, the Appellant's appeals in respect of the Workers are dismissed.

Signed at Ottawa, Canada, this 26th day of September 2008.

"Réal Favreau"

Favreau J.

Translation certified true
on this 11th day of November 2008.

Brian McCordick, Translator

CITATION: 2008 TCC 534

COURT FILE NOS.: 2007-2451(EI), 2007-3762(EI),
2007-3765(EI), 2007-3766(EI),
2007-3767(EI), 2007-3768(EI),
2007-3769(EI)),

STYLES OF CAUSE: Les Propriétés Belcourt Inc. and M.N.R. and
Lina Vaccaro, Donald Taillefer, Sukhy Basra,
Marc G. Ranger, Louise Dineen Labrecque,
William Bumbray, Robert Baillargeon

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: April 21 and April 22, 2008

REASONS FOR JUDGMENT BY: The Honourable Justice Réal Favreau

DATE OF JUDGMENT: September 26, 2008

APPEARANCES:

Counsel for the Appellant:	Pierre-Luc Beauchesne
Counsel for the Respondent:	Christina Ham
For the Intervenors:	The Intervenors themselves

COUNSEL OF RECORD:

For the Appellant:

Name:	Pierre-Luc Beauchesne
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For the Respondent:

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

Name:	
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