

Docket: 2000-2453(EI)

BETWEEN:

SERVICE AGRO MÉCANIQUE INC.,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeals of
**Jacques Tremblay (2000-983(EI)), Nadine Leblond (2000-985(EI)),
Benoît Roy (2000-2054(EI)), Sébastien Roy (2000-2055(EI)),
Martine Côté (2000-2057(EI)), Valère Jalbert (2000-2059(EI)),
Guy Rousseau (2000-2060(EI)), Stéphane Aubut (2000-2061(EI)),
Stéphane April (2000-2063(EI)), Alex Fournier (2000-2062(EI)),
Rémi Tremblay (2000-2064(EI)), Claude Tremblay (2000-2066(EI)),
Michel Tremblay (2000-2065(EI)), Denis Lévesque (2000-2067(EI))**
on September 8, 2003, at Rivière-du-Loup, Quebec.

Present: The Honourable Justice François Angers

Appearances:

Counsel for the Appellants: Jérôme Carrier

Counsel for the Respondent: Simon-Nicolas Crépin

JUDGMENT

The appeal is dismissed and the determination made by the Minister of National Revenue is confirmed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 10th day of February 2004.

"François Angers"
Angers J.

Translation certified true
on this 26th day of March 2009.

Brian McCordick, Translator

Docket: 2000-983(EI)

BETWEEN:

JACQUES TREMBLAY,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeals of
**Service Agro Mécanique inc. (2000-2453(EI)), Nadine Leblond (2000-985(EI)),
Benoît Roy (2000-2054(EI)), Sébastien Roy (2000-2055(EI)),
Martine Côté (2000-2057(EI)), Valère Jalbert (2000-2059(EI)),
Guy Rousseau (2000-2060(EI)), Stéphane Aubut (2000-2061(EI)),
Stéphane April (2000-2063(EI)), Alex Fournier (2000-2062(EI)),
Rémi Tremblay (2000-2064(EI)), Claude Tremblay (2000-2066(EI)),
Michel Tremblay (2000-2065(EI)), Denis Lévesque (2000-2067(EI))**
on September 8, 2003, at Rivière-du-Loup, Quebec.

Present: The Honourable Justice François Angers

Appearances:

Counsel for the Appellants: Jérôme Carrier

Counsel for the Respondent: Simon-Nicolas Crépin

JUDGMENT

The appeal is dismissed and the determination made by the Minister of National Revenue is confirmed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 10th day of February 2004.

"François Angers"

Angers J.

Translation certified true
on this 26th day of March 2009.

Brian McCordick, Translator

Docket: 2000-985(EI)

BETWEEN:

NADINE LEBLOND,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeals of
Service Agro Mécanique inc. (2000-2453(EI)),
Jacques Tremblay (2000-983(EI)), Benoît Roy (2000-2054(EI)),
Sébastien Roy (2000-2055(EI)), Martine Côté (2000-2057(EI)),
Valère Jalbert (2000-2059(EI)), Guy Rousseau (2000-2060(EI)),
Stéphane Aubut (2000-2061(EI)), Stéphane April (2000-2063(EI)),
Alex Fournier (2000-2062(EI)), Rémi Tremblay (2000-2064(EI)),
Claude Tremblay (2000-2066(EI)), Michel Tremblay (2000-2065(EI)),
Denis Lévesque (2000-2067(EI))
on September 8, 2003, at Rivière-du-Loup, Quebec.

Present: The Honourable Justice François Angers

Appearances:

Counsel for the Appellants: Jérôme Carrier

Counsel for the Respondent: Simon-Nicolas Crépin

JUDGMENT

The appeal is dismissed and the determination made by the Minister of National Revenue is confirmed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 10th day of February 2004.

"François Angers"

Angers J.

Translation certified true
on this 26th day of March 2009.

Brian McCordick, Translator

Docket: 2000-2054(EI)

BETWEEN:

BENOÎT ROY,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeals of
Service Agro Mécanique inc. (2000-2453(EI)),
Jacques Tremblay (2000-983(EI)), Nadine Leblond(2000-985(EI)),
Sébastien Roy (2000-2055(EI)), Martine Côté (2000-2057(EI)),
Valère Jalbert (2000-2059(EI)), Guy Rousseau (2000-2060(EI)),
Stéphane Aubut (2000-2061(EI)), Stéphane April (2000-2063(EI)),
Alex Fournier (2000-2062(EI)), Rémi Tremblay (2000-2064(EI)),
Claude Tremblay (2000-2066(EI)), Michel Tremblay (2000-2065(EI)),
Denis Lévesque (2000-2067(EI))
on September 8, 2003, at Rivière-du-Loup, Quebec.

Present: The Honourable Justice François Angers

Appearances:

Counsel for the Appellants: Jérôme Carrier

Counsel for the Respondent: Simon-Nicolas Crépin

JUDGMENT

The appeal is dismissed and the determination made by the Minister of National Revenue is confirmed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 10th day of February 2004.

"François Angers"

Angers J.

Translation certified true
on this 26th day of March 2009.

Brian McCordick, Translator

Docket: 2000-2055(EI)

BETWEEN:

SÉBASTIEN ROY,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeals of
Service Agro Mécanique inc. (2000-2453(EI)),
Jacques Tremblay (2000-983(EI)), Nadine Leblond (2000-985(EI)),
Benoît Roy (2000-2054(EI)), Martine Côté (2000-2057(EI)),
Valère Jalbert (2000-2059(EI)), Guy Rousseau (2000-2060(EI)),
Stéphane Aubut (2000-2061(EI)), Stéphane April (2000-2063(EI)),
Alex Fournier (2000-2062(EI)), Rémi Tremblay (2000-2064(EI)),
Claude Tremblay (2000-2066(EI)), Michel Tremblay (2000-2065(EI)),
Denis Lévesque (2000-2067(EI))
on September 8, 2003, at Rivière-du-Loup, Quebec.

Present: The Honourable Justice François Angers

Appearances:

Counsel for the Appellants: Jérôme Carrier

Counsel for the Respondent: Simon-Nicolas Crépin

JUDGMENT

The appeal is dismissed and the determination made by the Minister of National Revenue is confirmed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 10th day of February 2004.

"François Angers"

Angers J.

Translation certified true
on this 26th day of March 2009.

Brian McCordick, Translator

Docket: 2000-2057(EI)

BETWEEN:

MARTINE CÔTÉ,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeals of
Service Agro Mécanique inc. (2000-2453(EI)),
Jacques Tremblay (2000-983(EI)), Nadine Leblond (2000-985(EI)),
Benoît Roy (2000-2054(EI)), Sébastien Roy (2000-2055(EI)),
Valère Jalbert (2000-2059(EI)), Guy Rousseau (2000-2060(EI)),
Stéphane Aubut (2000-2061(EI)), Stéphane April (2000-2063(EI)),
Alex Fournier (2000-2062(EI)), Rémi Tremblay (2000-2064(EI)),
Claude Tremblay (2000-2066(EI)), Michel Tremblay (2000-2065(EI)),
Denis Lévesque (2000-2067(EI))
on September 8, 2003, at Rivière-du-Loup, Quebec.

Present: The Honourable Justice François Angers

Appearances:

Counsel for the Appellants: Jérôme Carrier

Counsel for the Respondent: Simon-Nicolas Crépin

JUDGMENT

The appeal is dismissed and the determination made by the Minister of National Revenue is confirmed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 10th day of February 2004.

"François Angers"

Angers J.

Translation certified true
on this 26th day of March 2009.

Brian McCordick, Translator

Docket: 2000-2059(EI)

BETWEEN:

VALÈRE JALBERT,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeals of
Service Agro Mécanique inc. (2000-2453(EI)),
Jacques Tremblay (2000-983(EI)), Nadine Leblond (2000-985(EI)),
Benoît Roy (2000-2054(EI)), Sébastien Roy (2000-2055(EI)),
Martine Côté (2000-2057(EI)), Guy Rousseau (2000-2060(EI)),
Stéphane Aubut (2000-2061(EI)), Stéphane April (2000-2063(EI)),
Alex Fournier (2000-2062(EI)), Rémi Tremblay (2000-2064(EI)),
Claude Tremblay (2000-2066(EI)), Michel Tremblay (2000-2065(EI)),
Denis Lévesque (2000-2067(EI))
on September 8, 2003, at Rivière-du-Loup, Quebec.

Present: The Honourable Justice François Angers

Appearances:

Counsel for the Appellants: Jérôme Carrier

Counsel for the Respondent: Simon-Nicolas Crépin

JUDGMENT

The appeal is dismissed and the determination made by the Minister of National Revenue is confirmed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 10th day of February 2004.

"François Angers"

Angers J.

Translation certified true
on this 26th day of March 2009.

Brian McCordick, Translator

Docket: 2000-2060(EI)

BETWEEN:

GUY ROUSSEAU,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeals of
Service Agro Mécanique inc. (2000-2453(EI)),
Jacques Tremblay (2000-983(EI)), Nadine Leblond (2000-985(EI)),
Benoît Roy (2000-2054(EI)), Sébastien Roy (2000-2055(EI)),
Martine Côté (2000-2057(EI)), Valère Jalbert (2000-2059(EI)),
Stéphane Aubut (2000-2061(EI)), Stéphane April (2000-2063(EI)),
Alex Fournier (2000-2062(EI)), Rémi Tremblay (2000-2064(EI)),
Claude Tremblay (2000-2066(EI)), Michel Tremblay (2000-2065(EI)),
Denis Lévesque (2000-2067(EI))
on September 8, 2003, at Rivière-du-Loup, Quebec.

Present: The Honourable Justice François Angers

Appearances:

Counsel for the Appellants: Jérôme Carrier

Counsel for the Respondent: Simon-Nicolas Crépin

JUDGMENT

The appeal is dismissed and the determination made by the Minister of National Revenue is confirmed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 10th day of February 2004.

"François Angers"

Angers J.

Translation certified true
on this 26th day of March 2009.

Brian McCordick, Translator

Docket: 2000-2061(EI)

BETWEEN:

STÉPHANE AUBUT,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeals of
Service Agro Mécanique inc. (2000-2453(EI)),
Jacques Tremblay (2000-983(EI)), Nadine Leblond (2000-985(EI)),
Benoît Roy (2000-2054(EI)), Sébastien Roy (2000-2055(EI)),
Martine Côté (2000-2057(EI)), Valère Jalbert (2000-2059(EI)),
Guy Rousseau (2000-2060(EI)), Stéphane April (2000-2063(EI)),
Alex Fournier (2000-2062(EI)), Rémi Tremblay (2000-2064(EI)),
Claude Tremblay (2000-2066(EI)), Michel Tremblay (2000-2065(EI)),
Denis Lévesque (2000-2067(EI))
on September 8, 2003, at Rivière-du-Loup, Quebec.

Present: The Honourable Justice François Angers

Appearances:

Counsel for the Appellants: Jérôme Carrier

Counsel for the Respondent: Simon-Nicolas Crépin

JUDGMENT

The appeal is dismissed and the determination made by the Minister of National Revenue is confirmed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 10th day of February 2004.

"François Angers"

Angers J.

Translation certified true
on this 26th day of March 2009.

Brian McCordick, Translator

Docket: 2000-2063(EI)

BETWEEN:

STÉPHANE APRIL,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeals of
Service Agro Mécanique inc. (2000-2453(EI)),
Jacques Tremblay (2000-983(EI)), Nadine Leblond (2000-985(EI)),
Benoît Roy (2000-2054(EI)), Sébastien Roy (2000-2055(EI)),
Martine Côté (2000-2057(EI)), Valère Jalbert (2000-2059(EI)),
Guy Rousseau (2000-2060(EI)), Stéphane Aubut (2000-2061(EI)),
Alex Fournier (2000-2062(EI)), Rémi Tremblay (2000-2064(EI)),
Claude Tremblay (2000-2066(EI)), Michel Tremblay (2000-2065(EI)),
Denis Lévesque (2000-2067(EI))
on September 8, 2003, at Rivière-du-Loup, Quebec.

Present: The Honourable Justice François Angers

Appearances:

Counsel for the Appellants: Jérôme Carrier

Counsel for the Respondent: Simon-Nicolas Crépin

JUDGMENT

The appeal is dismissed and the determination made by the Minister of National Revenue is confirmed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 10th day of February 2004.

"François Angers"

Angers J.

Translation certified true
on this 26th day of March 2009.

Brian McCordick, Translator

Docket: 2000-2062(EI)

BETWEEN:

ALEX FOURNIER,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

Appeal heard on common evidence with the appeals of
Service Agro Mécanique inc. (2000-2453(EI)),
Jacques Tremblay (2000-983(EI)), Nadine Leblond (2000-985(EI)),
Benoît Roy (2000-2054(EI)), Sébastien Roy (2000-2055(EI)),
Martine Côté (2000-2057(EI)), Valère Jalbert (2000-2059(EI)),
Guy Rousseau (2000-2060(EI)), Stéphane Aubut (2000-2061(EI)),
Stéphane April (2000-2063(EI)), Rémi Tremblay (2000-2064(EI)),
Claude Tremblay (2000-2066(EI)), Michel Tremblay (2000-2065(EI)),
Denis Lévesque (2000-2067(EI))
on September 8, 2003, at Rivière-du-Loup, Quebec.

Present: The Honourable Justice François Angers

Appearances:

Counsel for the Appellants: Jérôme Carrier

Counsel for the Respondent: Simon-Nicolas Crépin

JUDGMENT

The appeal is dismissed and the determination made by the Minister of National Revenue is confirmed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 10th day of February 2004.

"François Angers"

Angers J.

Translation certified true
on this 26th day of March 2009.

Brian McCordick, Translator

Docket: 2000-2064(EI)

BETWEEN:

RÉMI TREMBLAY,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeals of
Service Agro Mécanique inc. (2000-2453(EI)),
Jacques Tremblay (2000-983(EI)), Nadine Leblond (2000-985(EI)),
Benoît Roy (2000-2054(EI)), Sébastien Roy (2000-2055(EI)),
Martine Côté (2000-2057(EI)), Valère Jalbert (2000-2059(EI)),
Guy Rousseau (2000-2060(EI)), Stéphane Aubut (2000-2061(EI)),
Stéphane April (2000-2063(EI)), Alex Fournier (2000-2062(EI)),
Claude Tremblay (2000-2066(EI)), Michel Tremblay (2000-2065(EI)),
Denis Lévesque (2000-2067(EI))
on September 8, 2003, at Rivière-du-Loup, Quebec.

Present: The Honourable Justice François Angers

Appearances:

Counsel for the Appellants: Jérôme Carrier

Counsel for the Respondent: Simon-Nicolas Crépin

JUDGMENT

The appeal is dismissed and the determination made by the Minister of National Revenue is confirmed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 10th day of February 2004.

"François Angers"

Angers J.

Translation certified true
on this 26th day of March 2009.

Brian McCordick, Translator

Docket: 2000-2066(EI)

BETWEEN:

CLAUDE TREMBLAY,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeals of
Service Agro Mécanique inc. (2000-2453(EI)),
Jacques Tremblay (2000-983(EI)), Nadine Leblond (2000-985(EI)),
Benoît Roy (2000-2054(EI)), Sébastien Roy (2000-2055(EI)),
Martine Côté (2000-2057(EI)), Valère Jalbert (2000-2059(EI)),
Guy Rousseau (2000-2060(EI)), Stéphane Aubut (2000-2061(EI)),
Stéphane April (2000-2063(EI)), Alex Fournier (2000-2062(EI)),
Rémi Tremblay (2000-2064(EI)), Michel Tremblay (2000-2065(EI)),
Denis Lévesque (2000-2067(EI))
on September 8, 2003, at Rivière-du-Loup, Quebec.

Present: The Honourable Justice François Angers

Appearances:

Counsel for the Appellants: Jérôme Carrier

Counsel for the Respondent: Simon-Nicolas Crépin

JUDGMENT

The appeal is dismissed and the determination made by the Minister of National Revenue is confirmed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 10th day of February 2004.

"François Angers"

Angers J.

Translation certified true
on this 26th day of March 2009.

Brian McCordick, Translator

Docket: 2000-2065(EI)

BETWEEN:

MICHEL TREMBLAY,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeals of
Service Agro Mécanique inc. (2000-2453(EI)),
Jacques Tremblay (2000-983(EI)), Nadine Leblond (2000-985(EI)),
Benoît Roy (2000-2054(EI)), Sébastien Roy (2000-2055(EI)),
Martine Côté (2000-2057(EI)), Valère Jalbert (2000-2059(EI)),
Guy Rousseau (2000-2060(EI)), Stéphane Aubut (2000-2061(EI)),
Stéphane April (2000-2063(EI)), Alex Fournier (2000-2062(EI)),
Rémi Tremblay (2000-2064(EI)), Claude Tremblay (2000-2066(EI)),
Denis Lévesque (2000-2067(EI))
on September 8, 2003, at Rivière-du-Loup, Quebec.

Present: The Honourable Justice François Angers

Appearances:

Counsel for the Appellants: Jérôme Carrier

Counsel for the Respondent: Simon-Nicolas Crépin

JUDGMENT

The appeal is dismissed and the determination made by the Minister of National Revenue is confirmed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 10th day of February 2004.

"François Angers"

Angers J.

Translation certified true
on this 26th day of March 2009.

Brian McCordick, Translator

Docket: 2000-2067(EI)

BETWEEN:

DENIS LÉVESQUE,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeals of
Service Agro Mécanique inc. (2000-2453(EI)),
Jacques Tremblay (2000-983(EI)), Nadine Leblond (2000-985(EI)),
Benoît Roy (2000-2054(EI)), Sébastien Roy (2000-2055(EI)),
Martine Côté (2000-2057(EI)), Valère Jalbert (2000-2059(EI)),
Guy Rousseau (2000-2060(EI)), Stéphane Aubut (2000-2061(EI)),
Stéphane April (2000-2063(EI)), Alex Fournier (2000-2062(EI)),
Rémi Tremblay (2000-2064(EI)), Claude Tremblay (2000-2066(EI)),
Michel Tremblay (2000-2065(EI))
on September 8, 2003, at Rivière-du-Loup, Quebec.

Present: The Honourable Justice François Angers

Appearances:

Counsel for the Appellants: Jérôme Carrier

Counsel for the Respondent: Simon-Nicolas Crépin

JUDGMENT

The appeal is dismissed and the determination made by the Minister of National Revenue is confirmed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 10th day of February 2004.

"François Angers"

Angers J.

Translation certified true
on this 26th day of March 2009.

Brian McCordick, Translator

Citation: 2004TCC49

Date: 20040210

Dockets: 2000-2453(EI), 2000-983(EI),
2000-985(EI), 2000-2054(EI), 2000-2055(EI),
2000-2057(EI), 2000-2059(EI), 2000-2060(EI),
2000-2061(EI), 2000-2063(EI), 2000-2062(EI),
2000-2064(EI), 2000-2066(EI), 2000-2065(EI), 2000-2067(EI)

BETWEEN:

SERVICES AGRO MÉCANIQUE INC.,
JACQUES TREMBLAY, NADINE LEBLOND,
BENOÎT ROY, SÉBASTIEN ROY,
MARTINE CÔTÉ, VALÈRE JALBERT,
GUY ROUSSEAU, STÉPHANE AUBUT,
STÉPHANE APRIL, ALEX FOURNIER,
RÉMI TREMBLAY, CLAUDE TREMBLAY,
MICHEL TREMBLAY, DENIS LÉVESQUE,

Appellants,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR JUDGMENT

Angers J.

[1] These appeals involve 14 workers employed by the Appellant, Service Agro Mécanique Inc. (S.A.M.). Five of them are appealing from a determination by the Minister of National Revenue (the Minister) dated February 7, 2000, that their employment was not insurable on the ground that they would not have entered into a substantially similar contract of employment if they had been dealing with each other at arm's length, within the meaning of the *Unemployment Insurance Act* (UIA) or the *Employment Insurance Act* (EIA), as the case may be. The appellant workers affected by this decision are the Appellants Claude Tremblay, Jacques

Tremblay, Michel Tremblay, Rémi Tremblay and Nadine Leblond. The other nine appellant workers are appealing from a decision made by the Minister on the same date determining their insurable weeks, insurable hours and insurable earnings for the purposes of the UIA or the EIA, as the case may be, during their respective periods of employment in issue in this case, while they were working for S.A.M.

[2] For the purposes of the trial, therefore, the Appellants have been divided into two groups: one for which the issue was the non-arm's length relationship, and the other for which the issue was the period of insurable employment. The appeals were heard on common evidence.

[3] S.A.M. was incorporated on April 12, 1976. It operates a business selling and maintaining farm equipment at two locations: one in St-Clément, Quebec, and the other in St-Pascal, Quebec. The business operates year-round, but the peak period is between April and December. Depending on the period in issue, the shareholders were Gaétan Tremblay, now deceased, his wife Monique Roy and their sons Pierre, Claude, Rémi and Jacques Tremblay. It is admitted that the parties were not dealing with each other at arm's length in the five cases in which that is the issue. I will therefore deal with those five cases first.

Claude Tremblay

[4] Claude Tremblay was employed by the payor as a salesperson during the periods in issue, from May 9, 1993, to November 4, 1995, and from November 5, 1995 to December 31, 1996. In his letter dated February 7, 2000, the Minister determined that this Appellant's employment during those periods, while he was working for S.A.M., was not insurable within the meaning of the UIA and the EIA on the ground that the Appellant and S.A.M. would not have entered into a substantially similar contract if they had been dealing with each other at arm's length. In making his determination, the Minister relied on the following assumptions of fact, which were admitted or denied as indicated below. Subparagraphs (a) through (e) of paragraph 5 were admitted; they represent facts already set out in these Reasons and are therefore not reproduced here.

[TRANSLATION]

- (f) On May 10, 1993, the payor issued a record of employment to the Appellant showing that the first day of work was April 13, 1992, and the last day was May 7, 1993. (**admitted**)

- (g) The record of employment was allegedly issued because of a shortage of work, but the Appellant continued to perform services for the payor. **(denied)**
- (h) On May 10, 1993, the Appellant applied for and received employment insurance benefits. **(admitted)**
- (i) On November 3, 1995, the payor issued a second record of employment to the Appellant showing that the first day of work was July 19, 1993, and the last day was November 3, 1995. **(admitted)**
- (j) The payor issued that record of employment allegedly to enable the Appellant to take parental leave, but he did not stop working. **(denied)**
- (k) On November 6, 1995, the Appellant applied for and received parental benefits. **(admitted)**
- (l) The periods of employment shown on the Appellant's two records of employment do not correspond to the actual periods of employment. **(denied)**
- (m) The Appellant and the payor entered into an arrangement so that the Appellant could obtain benefits to which he was not entitled and the payor could have a salesperson year-round at little expense. **(denied)**

[5] During the periods in issue, Claude Tremblay was a salesperson selling cowshed and dairy farm equipment. He has worked for S.A.M. since 1980. During the periods in issue, his office was in St-Clément. He received a salary of \$500 per week for a 44-hour week. His work consisted in soliciting customers, finding new customers, travelling and organizing demonstrations on site or on a producer's premises. He testified that during the periods when he was unemployed his brother Pierre worked at S.A.M. as a salesperson. However, he admitted that when a customer called during those periods, a message was taken and he called the customer back himself. According to Mr. Tremblay, the customers trusted the salesperson who had solicited them and he looked after his customers himself.

[6] On May 7, 1993, his father decided to terminate his employment. The record of employment shows that there was a shortage of work. The witness admitted that he went back to S.A.M. after he was laid off. He testified that he went back to stay

in touch with his employer. He went in to solve problems, even though that was not arranged, and also to close sales. He explained that this did not take much of his time because the preliminary work had already been completed. He was not paid for that work.

[7] The Appellant Claude Tremblay lives a few doors away from his employer and did not work at the St-Pascal branch during the periods in issue.

[8] Contradicting Claude Tremblay's testimony that his father had decided to lay him off, the minutes of a meeting of the S.A.M. board of directors (Exhibit I-1) dated May 6, 1993, show that this was a decision of the board of directors. Item 2 in the minutes reads as follows:

[TRANSLATION] Claude will receive his record of employment for May 10 and Jacques will receive his at the end of the summer.

[9] The minutes of a second meeting of the S.A.M. board of directors dated June 14, 1993 (Exhibit I-2), again at item 2, read as follows:

[TRANSLATION] Claude is still in a period of unemployment; Jacques will be unemployed at the end of the summer.

[10] It is admitted by S.A.M. that it pleaded guilty on May 25, 2000, to 29 counts of issuing false records of employment to a large majority of the Appellants, contrary to the UIA and the EIA. One of the counts referred to the second record of employment issued to the Appellant Claude Tremblay and related, in particular, to the date of the first day of work, July 19, 1993. The Appellant is aware of this fact but did not admit the error.

[11] Claude Tremblay's employee identification number at S.A.M. is 6. The Respondent introduced two notebooks containing a number of invoices on which the Appellant's number is shown and the dates fall within his two periods of unemployment. Other invoices issued during the same periods bear the Appellant's initials. Although the last day of work stated on his first record of employment was May 7, 1993, there is an invoice dated May 10, 1993, showing his number, and he admits that the customer called him on that date and he went to run an errand for S.A.M. in Rivière-du-Loup. He was not paid for that. There are similar documents for the second period of employment. At the end of cross-examination, the Appellant admitted that he performed some services in 1993, 1994 and 1995, during his periods of unemployment, without being paid, and that his availability

cards did not show that he had worked. In fact, in his statement, he admitted that when he was receiving benefits in 1993 and 1995, he carried on his activities for S.A.M., but at a slower pace. He called this part-time work, since he was no longer prospecting. The Appellant had a vehicle year-round and had his travel expenses reimbursed during his periods of part-time work.

[12] The Respondent called Bruno Arguin, an appeals officer at the Canada Customs and Revenue Agency since 1994. His work consists in examining determinations made by the Department of Human Resources Development regarding the insurability of employment. In this case, he declared the employment of the Appellant Claude Tremblay to be not insurable because he was not dealing with the employer at arm's length. He prepared a table (Exhibit I-6) showing the periods of unemployment of the Appellant Claude Tremblay and showing, for each day of the week during those periods, the number of documents that bore either the Appellant's employee number or his initials. For example, for May 10, 1994, there are four documents attributable to the Appellant, which are found in Exhibits I-4 and I-5. Certain documents clearly show that Claude Tremblay was present, since there are hours of work allocated to him in the documents. The table also shows the amounts he was paid, based on the payroll book. The table shows documents attributable to the Appellant for nearly every day during his periods of unemployment.

[13] Mr. Arguin said that from this exercise he was able to conclude that the Appellant was present on the employer's premises nearly every day, and that based on the number of documents found and the employer's written statements, a lot of work was done on a volunteer basis. In addition, the Appellant Claude Tremblay had the use of a motor vehicle year-round, and a credit card for gasoline, and Mr. Arguin relied on this to conclude that the employment had never really ceased to exist and that services were still performed during the periods of unemployment. The guilty plea entered by S.A.M. was not considered by Mr. Arguin, because the plea was entered after February 7, 2000, the date on which the Minister's determination was made. This in fact applies to all of the cases. On the question of the extent of the work done by the Appellant at S.A.M., Mr. Arguin was of the opinion that the role of salesperson involves numerous responsibilities, since the salespeople are the ones who generate income for the company, and so a salesperson is a key person at S.A.M.

Michel Tremblay

[14] The periods covered by Michel Tremblay's appeal are July 5 to November 26, 1993, June 6 to September 16, 1994, May 1 to September 29, 1995, May 6 to September 20, 1996, and May 12 to October 17, 1997. In his letter dated February 7, 2000, the Minister determined that the employment of the Appellant Michel Tremblay during those periods was not insurable within the meaning of the UIA and the EIA on the ground that the Appellant and S.A.M. would not have entered into a substantially similar contract if they had been dealing with each other at arm's length. In making his determination, the Minister relied on the following assumptions of fact, which were admitted or denied as indicated below. The facts already set out in these Reasons are not repeated here.

[TRANSLATION]

- (g) On November 26, 1993, the payor issued a record of employment to the Appellant showing that the first day of work was July 5, 1993, and the last day was November 26, 1993. **(admitted)**
- (h) The record of employment was allegedly issued because of a shortage of work, but the Appellant continued to perform services for the payor. **(denied)**
- (i) On May 3, 1994, the Appellant applied for and received unemployment insurance benefits. **(admitted)**
- (j) On September 19, 1994, the payor issued a second record of employment to the Appellant showing that the first day of work was June 6, 1994, and the last day was September 16, 1994. **(admitted)**
- (k) The record of employment was allegedly issued because of a shortage of work, but the Appellant continued to perform services for the payor. **(denied)**
- (l) On or about September 16, 1994, the Appellant applied for and received unemployment insurance benefits. **(admitted)**
- (m) On October 3, 1995, the payor issued a third record of employment to the Appellant showing that the first day of work was May 1, 1995, and the last day was September 29, 1995. **(admitted)**

- (n) The record of employment was allegedly issued because of a shortage of work, but the Appellant continued to perform services for the payor. **(denied)**
- (o) On October 4, 1995, the Appellant applied for and received unemployment insurance benefits. **(admitted)**
- (p) On September 20, 1996, the payor issued a fourth record of employment to the Appellant showing that the first day of work was May 6, 1996, and the last day was September 20, 1996. **(admitted)**
- (q) The record of employment was allegedly issued because of a shortage of work, but the Appellant continued to perform services for the payor. **(denied)**
- (r) On September 23, 1996, the Appellant applied for and received employment insurance benefits. **(admitted)**
- (s) On October 17, 1997, the payor issued a fifth record of employment to the Appellant showing that the first day of work was May 12, 1997, and the last day was October 17, 1997. **(admitted)**
- (t) The record of employment was allegedly issued because of a shortage of work, but the Appellant continued to perform services for the payor. **(denied)**
- (u) On October 20, 1997, the Appellant applied for and received employment insurance benefits. **(admitted)**
- (v) The periods of employment shown on the Appellant's five records of employment do not correspond to the actual periods of employment. **(denied)**
- (w) The Appellant and the payor entered into an arrangement so that the Appellant could obtain benefits to which he was not entitled and the payor could have a salesperson year-round at little expense. **(denied)**

[15] The Appellant Michel Tremblay was employed by S.A.M. as a farm machinery salesperson. He held shares in S.A.M. until 1993. He continued to be employed by S.A.M. although from 1993 to 1999 he operated a snow removal business. He lives in St-Clément and his home is a three-minute walk from S.A.M.'s place of business. According to the documents submitted, the Appellant

was unemployed during periods from the end of October or November to May of the following year, and sometimes from the end of September until early June, depending on the claim.

[16] During the first period in issue, the Appellant worked 40 to 45 hours a week. He met with the sales manager, his brother Pierre Tremblay, every morning, to plan his day. He was laid off on November 26, 1993, as his father and his brother Pierre had agreed. He admitted that during his period of unemployment he met with customers he had solicited during the summer. He said that because he knew he could earn income amounting to 25 percent of his weekly benefits without that income being deducted from his benefits, he reported the income he earned during that period. He added that he continued to perform services for S.A.M. and to see his brother Pierre at S.A.M. during his periods of unemployment.

[17] When the Appellant Michel Tremblay worked, he reported it on his unemployment cards. The same scenario was played out during 1995, 1996 and 1997, for approximately the same periods.

[18] The Appellant's salary at S.A.M. was based on total sales the previous year, that is, overall performance for the year, which therefore included sales made outside the period of employment.

[19] The records of employment (Exhibit I-7) show that the reason for the termination of employment was a shortage of work. The Appellant stated that in his case there was a significant reduction in the work, in that 85 percent of his sales were made in the spring and fall.

[20] According to a table prepared by Mr. Arguin (Exhibit I-10) and the corresponding documents (Exhibit I-8), the Appellant made sales which are attributed to him because of his initials or signature on purchase orders or invoices prepared outside the periods of employment in all of the periods in issue. The Appellant said that he was aware of the investigation by Human Resources Development Canada and the charges laid against S.A.M., including four relating to his periods of employment, but said he did not know the details of all that.

[21] In his statutory declaration, the Appellant Michel Tremblay said that starting when he paid himself a weekly salary from his own business he longer recorded the hours he worked for S.A.M., because in any event his business was paying him. He later added that he worked an average of zero to five hours per week for S.A.M. in the winter.

[22] In relation to this appeal, Bruno Arguin produced a table similar to the one prepared in the case of Claude Tremblay. He referred to documents prepared outside the periods of employment, for all the periods in issue, on which there was an indication that they were attributable to the Appellant, and he reproduced all of the monthly sales by the Appellant and the S.A.M. payroll book. As an example, Mr. Arguin noted an S.A.M. sale made on December 1, 1993, and attributed to the Appellant, when the record of employment shows that his employment with S.A.M. ended on November 26, 1993. The tale also shows that according to the payroll book, the Appellant was paid \$204.80 on December 4, 1993, and received no salary for the following weeks. However, for the week of December 12, there were eight sales or contracts with indications that they were attributable to him. The Appellant made \$68,552 in sales in April 1994 but received no salary, according to the payroll book. Mr. Arguin concluded that the Appellant continued to perform services for S.A.M. after his employment terminated without being paid. He considered the services performed by the Appellant to be significant, since they were performed at S.A.M.'s place of business, and so the employment relationship between the Appellant and S.A.M. was never really terminated.

Rémi Tremblay

[23] The periods covered by this appeal are March 21, 1993, to February 28, 1998, and March 1 to December 31, 1998. In his letter dated February 7, 2000, the Minister determined that the employment of the Appellant Rémi Tremblay during those periods was not insurable within the meaning of the UIA and the EIA on the ground that the Appellant and S.A.M. would not have entered into a substantially similar contract if they had been dealing with each other at arm's length. In making his determination, the Minister relied on the following assumptions of fact, which were admitted or denied as indicated below. The facts already set out in these Reasons are not repeated here.

[TRANSLATION]

- (f) On March 22, 1993, the payor issued a record of employment to the Appellant showing that the first day of work was July 8, 1991, and the last day was March 19, 1993. **(admitted)**
- (g) The record of employment was allegedly issued because of a shortage of work, but the Appellant continued to perform services for the payor. **(denied)**

- (h) On March 23, 1993, the Appellant applied for and received employment insurance benefits. **(admitted)**
- (i) On March 2, 1998, the payor issued a second record of employment to the Appellant showing that the first day of work was June 7, 1993, and the last day was February 27, 1998. **(admitted)**
- (j) The payor issued that record of employment allegedly to enable the Appellant to take parental leave, but he did not stop working for the payor. **(denied)**
- (k) On March 3, 1998, the Appellant applied for and received parental benefits. **(admitted)**
- (l) The periods of employment shown on the Appellant's two records of employment do not correspond to the actual periods of employment. **(denied)**
- (m) The Appellant and the payor entered into an arrangement so that the Appellant could obtain benefits to which he was not entitled and the payor could have a manager year-round at little expense. **(denied)**

[24] The Appellant was employed by S.A.M. as a parts clerk and then as "service manager". His employment was in St-Clément and he lived about eight miles from his place of work. He was laid off because of a shortage of work on March 19, 1993. He returned to work on June 7, 1993, and worked until February 27, 1998. He stopped working on that date to take parental leave, and a second record of employment was issued. The Appellant stated that his employer did not require that he be present while on leave, but said that he went in of his own accord at various times. He therefore admitted performing services for his employer and going to the employer's premises to do that. On cross-examination, he could not specify, for either of the two periods in issue, the exact number of hours for the services he performed. He contended that the services were performed on a volunteer basis. His employee number is 333.

[25] As in the two previous cases, a series of documents was introduced on which the Appellant's identification number or signature appears, for periods when he was not an employee of S.A.M. There are credit card statements in his name and the name of S.A.M., for purchases made during the Appellant's periods of unemployment. He explained this by saying that he may have run errands for S.A.M. and that he bought gasoline for it. He admitted that he prepared other

invoices on the employer's premises, but said that other employees may also have written his identification number on them. His signature appears on a Purolator waybill dated outside his period of employment. He therefore admitted performing services for S.A.M., but stated that they were performed of his own free will.

[26] Bruno Arguin prepared a table (Exhibit I-35) based on which he concluded that a number of documents attributed to the Appellant were prepared during his periods of unemployment in the two periods in issue. The payroll book shows that the Appellant was not paid for any of that work. For example, Mr. Arguin noted that for March 22, 1993, there are 11 documents that bear the Appellant's number, 333. He therefore concluded that the period of the Appellant's employment did not correspond to what was shown on the record of employment and that the reason for this situation was that the parties were not dealing with each other at arm's length.

Jacques Tremblay

[27] The periods covered by this appeal are January 30, 1994, to November 16, 1996, and November 17, 1996, to December 31, 1997. In his letter dated February 7, 2000, the Minister determined that this Appellant's employment during those periods was not insurable within the meaning of the UIA and the EIA on the ground that the Appellant and S.A.M. would not have entered into a substantially similar contract if they had been dealing with each other at arm's length. In making his determination, the Minister relied on the following assumptions of fact, which were admitted or denied as indicated below. The facts already set out in these Reasons are not repeated here.

[TRANSLATION]

- (l) The Appellant drew employment insurance benefits until March 15, 1997. **(admitted)**
- (m) From January 30, 1994, to December 31, 1997, the Appellant never stopped working for the payor. **(admitted)**
- (n) The Appellant received unemployment insurance or employment insurance benefits, as the case may be, while he was performing services for the payor on an ongoing basis. **(denied)**
- (o) The Appellant and the payor entered into an arrangement so that the Appellant could obtain benefits to which he was not entitled. **(denied)**

[28] During the periods in issue, the Appellant was employed by S.A.M. as a representative, and he held that position until December 1998. He was also the manager of the St-Pascal branch. In January 1994, because business was rather slow, the Appellant testified, his father decided that he would be laid off on January 28, 1994. The record of employment shows the reason as a shortage of work. The second record of employment shows that the Appellant returned to work on May 7 of that year. During his period of unemployment he was not replaced. For the second period of unemployment, from November 15, 1996, to March 15, 1997, he was replaced by the Appellant Denis Lévesque. During the periods of unemployment, S.A.M. continued to provide Jacques Tremblay with a car, and during the first period it continued to provide him with accommodation.

[29] The Appellant testified that he received his instructions from his father, but said that during the periods of unemployment he received no instructions. However, he admitted that he had a cellular telephone and that S.A.M.'s customers had his personal telephone number, and so he was contacted by them during his periods of unemployment. He said he worked only when needed, because S.A.M.'s business had slowed down. He stated that he performed services of his own free will, in order to maintain personal relationships with customers, and most importantly to retain their trust.

[30] His employee number is 26. Exhibits I-15 and I-16 contain a series of documents on which his number appears, and which represent various S.A.M. transactions during the Appellant's periods of unemployment. An annual association fee was paid by S.A.M. during his first period of unemployment.

[31] The Respondent produced three other excerpts from the minutes of meetings of the S.A.M. board of directors. The January 10, 1994, minutes, at item 15, say that for unemployment that winter, Jacques was next on the list. The Appellant was at that meeting, but says he was not aware of the list in question. He said that this simply meant that he was the next one to be unemployed.

[32] In the minutes of the S.A.M. board of directors meeting on May 6, 1993, there is a discussion of unemployment in which it is said that Claude would receive his record of employment for May 10, while Jacques would receive his at the end of the summer. In the minutes of June 14, 1993, it says that Claude was still in a period of unemployment and that in Jacques' case he was scheduled to be unemployed at the end of the summer. When the Appellant was questioned about these statements, he said it showed foresight on the part of the board of directors.

He also admitted that the minutes indicate that it was the board of directors who decided layoffs, and not their father.

[33] The Respondent produced three books of documents showing the Appellant's employee number. According to Mr. Arguin, those documents show that the Appellant was regularly present at S.A.M. During his periods of unemployment, he could be reached by cellphone and had a car provided by S.A.M., and during the first period he also had accommodation provided. The Appellant's statements and the number of transactions on which his number appears led Mr. Arguin to conclude that the Appellant never stopped working for S.A.M.

Nadine Leblond

[34] The period covered by this appeal is April 14 to June 21, 1997. The Minister determined that the employment of the Appellant during those periods was not insurable within the meaning of the EIA on the ground that the Appellant and S.A.M. would not have entered into a substantially similar contract if they had been dealing with each other at arm's length. In making his determination, the Minister relied on the following assumptions of fact, which were admitted or denied as indicated below. The facts already set out in these Reasons are not repeated here.

[TRANSLATION]

- (e) The Appellant is the spouse of Jacques Tremblay. **(admitted)**
- (f) The Appellant was paid \$10 an hour. **(admitted)**
- (g) On June 23, 1997, the payor issued a record of employment to the Appellant showing that she had worked 186 hours and received earnings of \$1860 during the period from April 14 to June 20, 1997. **(admitted)**
- (h) The record of employment does not reflect reality in terms of the period worked, the number of hours and the remuneration paid. **(denied)**
- (i) In fact, the Appellant worked for the payor from January 7 to June 20, 1997, for a total of 265 hours, and was paid \$2650. **(denied)**

- (j) From January 7 to April 13, 1997, the Appellant drew employment insurance benefits. **(admitted)**
- (k) The Appellant's alleged period of work does not coincide with the period actually worked by the Appellant. **(denied)**
- (l) The Appellant and the payor entered into an arrangement so that the Appellant could obtain benefits to which she was not entitled. **(denied)**

[35] The Appellant is the spouse of Jacques Tremblay and was employed by S.A.M. as a secretary. Ms. Leblond did not testify. According to Jacques Tremblay, the Appellant was employed by S.A.M. in 1997, although he seemed not to recall the exact year. According to the record of employment, she started on April 14 and finished on June 20, 1997, and worked 186 hours during that period. Another record of employment shows that she worked for CRDI-KRTB from July 22 to November 26, 1996, and another shows that she worked for the Commission scolaire Jean Chapais from October 17, 1996, to June 24, 1997, for a total of 130.22 hours. It is admitted that from January 7 to April 13, 1997, she received employment insurance benefits.

[36] The Appellant's statutory declaration was submitted in evidence. In the declaration she admits that she performed services for S.A.M. during her period of unemployment and did not report it on her employment insurance cards. In fact, she recorded the time she spent at S.A.M. during the period from January 7 to April 13, 1997, using the time clock. In her declaration, she explains the situation by saying that she was not performing the same duties during the period when she filled out the time cards as when she did not fill them out. She added that when she was simply doing a favour, she was not paid. However, she admitted that the first day of work shown on the record of employment issued by S.A.M. was false.

[37] Mr. Arguin submitted a table showing a series of documents and deposit slips that can be connected with the Appellant, and also a series of time cards showing the hours the Appellant spent at S.A.M. while she was receiving employment insurance benefits. Those facts are the basis on which the Minister determined that her employment was excluded from insurable employment because she was not dealing with the employer at arm's length and because she was regularly present at the premises of S.A.M. Mr. Arguin counted 265 hours of work done during the period when she was receiving employment insurance benefits.

[38] Pierre Tremblay is the sales manager and a representative at S.A.M. He has been employed by S.A.M. since 1980, and has seen its sales rise from \$1.2 million to \$10 million today. He is the person who entered a guilty plea to the 29 charges laid against S.A.M. in relation to false records of employment. He stated that in reality, S.A.M. had been misled, in that the circumstances in which the guilty plea was entered were, according to S.A.M., that the employees' return dates meant their permanent return, and that was why it pleaded guilty.

[39] Pierre Tremblay reiterated that his brothers and Ms. Leblond were not paid by S.A.M. during their periods of unemployment and that they worked on a volunteer basis. He explained that there was no list of employees who were to be unemployed, and that Janel April, the internal bookkeeper, often used odd expressions in writing up the S.A.M. minutes.

[40] According to Pierre Tremblay, his brothers and Ms. Leblond were treated like the other employees, except for the fact that they were provided with vehicles. He explained that the employees' presence on the employer's premises during their periods of unemployment was because S.A.M. is like the local gathering place, where people get together.

[41] On cross-examination, he admitted that there is a personal relationship between an employee and the customers, particularly in the case of his brother Jacques, and he acknowledged that even during a period of unemployment there were still duties associated with the position. He also admitted that Guy Rousseau and Valère Jalbert, two employees who are appellants in this case, came by the S.A.M. office and performed services during their periods of unemployment. He denied that hours were banked while the employees were unemployed, but said there was a little system in place to bank hours for employees so they could take an occasional break.

The law

[42] The Appellants' onus in the appeals discussed above is to establish, on a balance of probabilities, that the Minister exercised his discretion inappropriately when he determined that, having regard to all the circumstances, the payor and the Appellants would not have entered into a substantially similar contract of employment if they had been dealing with each other at arm's length. As the Federal Court of Appeal held in *Canada v. Jencan Ltd.*, [1997] F.C.J. No. 876 (Q.L.), [1998] 1 F.C. 187, the Appellants must establish that the Minister acted in bad faith or for an improper purpose or motive, or failed to take into account all the

relevant circumstances, as expressly required by subparagraph 3(2)(c)(ii) of the *Unemployment Insurance Act* and paragraph 5(3)(b) of the *Employment Insurance Act*, or took into account an irrelevant factor, as the case may be.

[43] The description of the roles of the Minister and the Court was stated by the Federal Court of Appeal in *Légaré v. Canada*, [1999] F.C.J. No. 878 (Q.L.). Mr. Justice Marceau summarized the situation as follows, at paragraph 4:

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.

[44] The Federal Court of Appeal reiterated its position in *Pérusse v. Canada*, [2000] F.C.J. No. 310 (Q.L.). Referring to the passage from *Légaré* quoted above, Mr. Justice Marceau added, at paragraph 15:

The function of an appellate judge is thus not simply to consider whether the Minister was right in concluding as he did based on the factual information which Commission inspectors were able to obtain and the interpretation he or his officers may have given to it. The judge's function is to investigate all the facts with the parties and witnesses called to testify under oath for the first time and to consider whether the Minister's conclusion, in this new light, still seems "reasonable" (the word used by Parliament). The Act requires the judge to show some deference towards the Minister's initial assessment and, as I was saying, directs him not simply to substitute his own opinion for that of the Minister when there are no new facts and there is nothing to indicate that the known facts were

misunderstood. However, simply referring to the Minister's discretion is misleading.

Analysis

[45] The common denominator in the cases in this category is the fact that each record of employment explains the Appellants' layoff as resulting from a shortage of work, with the exception of two records of employment in which the reason shown for the termination was parental leave, and that in all cases the Appellants continued to perform services for their employer during their periods of unemployment. The frequency with which they were present at the employer's premises and the number of services performed are therefore the nub of the issue between the parties. In fact, counsel for the Appellants argued that the Minister did not take the investigation far enough, and so his conclusions regarding the nature of the work performed during the periods of unemployment are based solely on assumptions. Counsel argued that the Minister has to present sufficient and convincing evidence, and that in this case the evidence is insufficient for the Minister to conclude that the Appellants were present at the S.A.M. workplace to an extent sufficient to support the conclusion that they continued to work there.

[46] The Appellants' testimony did not satisfy me that they were present at the S.A.M. workplace just to do a few hours of work on a volunteer basis, or to serve certain customers they had met during their periods of employment. They also did not satisfy me that they were acting of their own free will. In my opinion, each of them tried to minimize their involvement in S.A.M.'s business, when the evidence appears to show that things went on as if there had been no layoffs. The number of business transactions conducted by each of the appellants, as Mr. Arguin's testimony and the documentary evidence he submitted show, prove conclusively that the Appellants were present at S.A.M. during their periods of unemployment. There may have been occasions when another employee used one of the Appellants' employee numbers, but I do not believe that this could have happened very often when measured against the volume of documents and transactions identified by Mr. Arguin.

[47] In the case of the Appellant Claude Tremblay, there are two periods of unemployment. During both periods, he continued to use the car and credit card provided by his employer. His first period of unemployment, from May 10, 1993, to July 19, 1993, was right in the middle of S.A.M.'s peak period. It is therefore difficult to claim a shortage of work. In his case and in the case of the Appellant Jacques Tremblay, the minutes of the S.A.M. board of directors meetings (see

paragraphs 8 and 9 of these Reasons) prompt us to ask whether the layoffs of these Appellants were genuinely because of a shortage of work.

[48] In the case of the appeal by Michel Tremblay, there were several periods of unemployment. That Appellant admitted that during each period he performed services for S.A.M. Michel Tremblay was a salesperson and his salary was based on total sales for the previous year, which therefore included the sales he made outside his periods of employment. The evidence presented by Mr. Arguin clearly shows that this Appellant made sales for S.A.M. during his periods of unemployment, and that he did so without being paid, with the exception of one paycheque he received on December 4, 1993. There was a significant volume of sales during certain months when he was not paid. In my opinion, these are not normal terms and conditions of employment that can support entitlement to claim under the UIA or EIA scheme.

[49] The Appellant Rémi Tremblay had two periods of unemployment. The first was because of a shortage of work and the second was for parental leave. As in the preceding cases, there are a number of documents connecting this Appellant to business transactions conducted for S.A.M. during those periods, and there are also documents showing credit card purchases made on behalf of S.A.M. Given the volume of transactions discovered in the course of the investigation, it is difficult to accept the Appellant's explanation that this was work done on a volunteer basis. In a family business, work may be done on that basis when a person has seasonal employment that has particular characteristics. In my opinion, that is not the case here. Rather, this is a situation in which advantage was taken of the employment insurance system to have the company's employees paid during periods when it was less busy.

[50] The case of the Appellant Jacques Tremblay is similar. There are two periods of unemployment where he kept the car provided by his employer and continued to have accommodation provided by the employer, and the use of a cellphone. In this case, we also have the same minutes relating to the periods of unemployment as we saw in the case of the Appellant Claude Tremblay, and we also have documentary evidence similar to what was submitted in the other cases to establish the activities the other Appellants engaged in at S.A.M.

[51] The Appellant Nadine Leblond did not testify. Her statutory declaration admits that she performed services during her period of unemployment and that the first day of work shown on her record of employment is false. A time card on

which the hours she worked for S.A.M were recorded, during the period when she was receiving employment insurance benefits, confirms her presence at work.

[52] Having regard to all of the facts heard at the trial, it is impossible for me to conclude that the Minister's determination was not reasonable. The Appellants' testimony is not sufficient to constitute new evidence from which I could conclude that the Minister failed to have regard to those factors. In this case, there is sufficient concrete evidence that it is impossible to conclude that the Minister exercised his discretion solely by relying on assumptions. In the circumstances, the Minister's determination still appears to be reasonable. For those reasons, the appeals by the five Appellants referred to in the preceding paragraphs are dismissed.

The nine other cases

[53] The parties agreed that two typical cases would be used to dispose of all of the appeals in the nine cases in question. Four of the nine Appellants testified.

Guy Rousseau

[54] The Appellant Guy Rousseau is appealing from the determination made by the Minister on February 7, 2000, informing him that his employment at S.A.M. was insurable but that the insurable weeks, insurable hours and insurable earnings, for the purposes of the UIA and the EIA, were as follows:

<u>Periods of work</u>	<u>Insurable earnings</u>	<u>Insurable weeks</u>
Jan.1 to Dec. 31, 1993	12,691	52
Jan.1 to Dec. 31, 1994	15,994	52
Jan.1 to Dec. 31, 1995	15,744	52
Jan.1 to Dec. 31, 1996	15,708	52

[55] The facts on which the Minister relied are set out in the Amended Reply to the Notice of Appeal, and were admitted or denied as indicated below.

- (a) The payor was incorporated on April 12, 1976, and operates a farm machinery sales and maintenance business. **(admitted)**
- (b) The payor has two places of business, one in St-Clément and the other in St-Pascal, and employs 25 people. **(admitted)**

- (c) The payor operates year-round, with its busiest period being between April and December each year. **(admitted)**
- (d) The Appellant was employed by the payor as a parts clerk. **(admitted)**
- (e) There are invoices and time cards on which the Appellant's name, initials or employee number appear that are dated outside the periods shown on the records of employment. **(denied)**
- (f) The records of employment do not represent the actual periods of work. **(denied)**
- (g) The records of employment do not represent the actual number of insurable weeks or hours. **(denied)**
- (h) The records of employment do not represent the actual insurable earnings. **(denied)**
- (i) The Appellant continued to perform services for the payor outside the periods shown on the records of employment. **(denied)**
- (j) On December 17, 1993, the payor issued a record of employment to the Appellant showing that the first day of work was June 7, 1993, and the last day of work was December 17, 1993, that the period of work consisted of 28 insurable weeks and that insurable earnings totalled \$8,301.00 for the last 20 weeks. **(admitted)**
- (k) In 1993, the Appellant actually worked from January 1 to December 31, and that period consisted of 52 insurable weeks with insurable earnings of \$12,691.00. **(denied)**
- (l) On December 20, 1994, the payor issued a record of employment to the Appellant showing that the first day of work was May 2, 1994, and the last day of work was December 16, 1994, that the period of work consisted of 33 insurable weeks and that insurable earnings totalled \$8,968.00 for the last 20 weeks. **(admitted)**
- (m) In 1994, the Appellant actually worked from January 1 to December 31, and that period consisted of 52 insurable weeks with insurable earnings of \$15,994.00. **(denied)**
- (n) On December 15, 1995, the payor issued a record of employment to the Appellant showing that the first day of work was May 8, 1995, and the last day of work was December 15, 1995, that the

period of work consisted of 32 insurable weeks and that insurable earnings totalled \$8,940.00 for the last 20 weeks. **(admitted)**

- (o) In 1995, the Appellant actually worked from January 1 to December 31, and that period consisted of 52 insurable weeks with insurable earnings of \$15,744.00. **(denied)**
- (p) On December 6, 1996, the payor issued a record of employment to the Appellant showing that the first day of work was May 20, 1996, and the last day of work was December 6, 1996, that the period of work consisted of 29 insurable weeks and that insurable earnings totalled \$9,546.00 for the last 20 weeks. **(admitted)**
- (q) In 1996, the Appellant actually worked from January 1 to December 31, and that period consisted of 52 insurable weeks with insurable earnings of \$15,708.00. **(denied)**
- (r) On December 22, 1997, the payor issued a record of employment to the Appellant showing that the first day of work was December 23, 1996, and the last day of work was December 19, 1997, that the period of work consisted of 1,420,50 insurable hours and that insurable earnings totalled \$16,232.30. **(admitted)**
- (s) In 1997, the Appellant actually worked from January 1 to December 19, and for that period had insurable earnings of \$15,557.00. **(denied)**

[56] The Appellant's records of employment correspond to paragraphs (j), (l), (n), (p) and (r) above. In spite of the fact that he was paid at an hourly rate, his weekly salary was fixed and corresponded to a 40-hour to 45-hour week. According to the Appellant, he worked full weeks when he was at work. During periods of unemployment, he regularly did part-time work and was paid. He reported everything on his unemployment cards. He admitted that he also performed services without being paid during his periods of unemployment. When he was on the premises, he sometimes accepted deliveries and performed services. He always worked at the head office in St-Clément and he lived 20 kilometres from his place of work. The Appellant had recorded his hours on a time card using the time clock, four times a day, since he started working at S.A.M.

[57] He therefore admitted that services were performed without pay and he considered it all to be work done on a volunteer basis. Gaétan Tremblay, the father of the Tremblay Appellants, was the person who decided when the Appellant would be paid. The Appellant's employee number is 44.

[58] The Respondent submitted five books each containing a series of invoices and other documents, over 400 in total, on which the Appellant's employee number or signature appears. The documents show dates that correspond to the Appellant's periods of unemployment during the years 1993 to 1997, inclusive. The Appellant explained this by saying that he was on the S.A.M. premises and he signed purchase orders [TRANSLATION] "on the fly", as he put it. He also explained that another employee may have used his employee number, just as he himself may have used another employee's number.

Valère Jalbert

[59] The Appellant Valère Jalbert is appealing from the determination made by the Minister on February 7, 2000, informing him that his employment with S.A.M. was insurable but that the insurable weeks and insurable earnings for the purposes of the UIA and the EIA were as follows:

<u>Periods of work</u>	<u>Number of weeks</u>	<u>Insurable earnings</u>
Mar. 19, 1995, to Jan. 27, 1996	41 weeks	\$15,227
Jan 28, 1996, to Jan. 25, 1997	52 weeks	\$14,187
Jan 26, 1997, to Dec. 31, 1997	52 weeks	\$17,277

[60] The facts on which the Minister relied are set out in the Amended Reply to the Notice of Appeal and were admitted or denied as indicated below.

- (e) Invoices and time cards on which the Appellant's name, initials or employee number appear are dated outside the periods shown on the records of employment. (denied)
- (f) The records of employment do not represent the actual periods of work. (denied)
- (g) The records of employment do not represent the actual number of insurable weeks or hours. (denied)
- (h) The records of employment do not represent the actual insurable earnings. (denied)
- (i) The Appellant continued to perform services for the payor outside the periods shown on the records of employment. (admitted)

- (j) On November 10, 1995, the payor issued a record of employment to the Appellant showing that the first day of work was April 3, 1995, and the last day of work was November 10, 1995, that the period of work consisted of 31 insurable weeks and that insurable earnings totalled \$9,600.00 for the last 20 weeks. **(admitted)**
- (k) On October 30, 1996, the payor issued a record of employment to the Appellant showing that the first day of work was May 13, 1996, and the last day of work was October 25, 1996, that the period of work consisted of 24 insurable weeks and that insurable earnings totalled \$10,000.00 for the last 20 weeks. **(admitted)**
- (l) On January 25, 1997, the payor issued a record of employment to the Appellant showing that the first day of work was December 11, 1996, and the last day of work was January 24, 1997, that the period of work consisted of 25 insurable hours and that insurable earnings totalled \$200.00. **(admitted)**
- (m) In fact, the Appellant performed services for the payor on an ongoing basis from March 19, 1995, to December 31, 1997. **(denied)**
- (n) the Appellant's insurable earnings totalled \$15,227.00 for 1995, \$14,187.00 for 1996 and \$17,277.00 for 1997. **(admitted)**

[61] The dates shown on this Appellant's records of employment correspond to the dates shown in paragraphs (j), (k) and (l) above. He worked about 40 hours a week and was paid at an hourly rate. The Appellant stated that during his periods of unemployment he worked at the request of S.A.M., and sometimes of his own free will, as a favour. He added that he worked between five and 30 hours a week during his periods of unemployment. He said he worked a minimum of five hours, because he worked more or less all the time. He added that from 1995 to 1997 he took no vacation.

[62] He was supervised by Gaétan Tremblay and used the time clock punch-in system. His employee number was 1.

[63] On cross-examination, he stated that the dates on the records of employment might not be accurate. He recognized his initials on a work summary that appears on page 4 of Exhibit I-33, which corresponds to an invoice that appears on page 1 of Exhibit I-33. He admitted that he was not paid for the work week that

corresponds to the hours shown on the summary and could not say whether he was in fact paid for that work.

[64] In another book, Exhibit I-34, there are hours worked in March and April 1996 and invoiced in October 1996. In March 1996, the Appellant was not on the payroll. Exhibits I-33 and I-34, as well as the tables prepared by Bruno Arguin, the appeals officer, show that the Appellant Valère Jalbert worked hours in weeks that were outside the period of employment shown on the records of employment, for which he was not paid or was paid very little, considering the number of hours worked. His employment was thus extended, according to the invoices and purchase orders that appear in Exhibits I-33 and I-34.

Stéphane April

[65] Stéphane April's appeal also relates to the number of insurable weeks and insurable earnings for the purposes of the UIA and the EIA while he was employed by S.A.M. The Minister determined the insurable periods, weeks and earnings, in his determination dated February 7, 2000, to be as follows:

<u>Periods of work</u>	<u>Insurable weeks</u>	<u>Insurable earnings</u>
May 9, 1994, to Jan. 6, 1995	35 weeks	\$18,850, of which \$11,350 was for the last 20 weeks
May 1 to Nov. 3, 1995	27 weeks	\$17,550, of which \$13,000 was for the last 20 weeks
May 13 to Dec. 20, 1996	32 weeks	\$17,957.39, of which \$11,200 was for the last 20 weeks

[66] The facts on which the Minister relied are set out in the Amended Reply to the Notice of Appeal and were admitted or denied as indicated below.

- (d) The Appellant was employed by the payor as a truck driver. **(admitted)**
- (e) On January 6, 1995, the payor issued a record of employment to the Appellant showing that the first day of work was May 9, 1994, and the last day of work was January 6, 1995, that the period of work consisted of 35 insurable weeks and that insurable earnings totalled \$11,350.00 for the last 20 weeks. **(admitted)**

- (f) On November 3, 1995, the payor issued a record of employment to the Appellant showing that the first day of work was May 1, 1995, and the last day of work was November 3, 1995, that the period of work consisted of 27 insurable weeks and that insurable earnings totalled \$11,300.00 for the last 20 weeks. **(admitted)**
- (g) On December 23, 1996, the payor issued a record of employment to the Appellant showing that the first day of work was May 13, 1996, and the last day of work was December 20, 1996, that the period of work consisted of 32 insurable weeks and that insurable earnings totalled \$11,200.00 for the last 20 weeks. **(admitted)**
- (h) The Appellant performed services for the payor in some weeks before and after the periods shown on the records of employment but for less than 15 hours per week, and the weekly earnings were less than \$156.00 in 1994, \$163.00 in 1995 and \$150.00 in 1996. **(denied)**

[67] The Appellant Stéphane April has been employed by S.A.M. since April 14, 1994. He stated that he sometimes worked for his employer when he was unemployed. He said he reported his income in those cases. In his statutory declaration (Exhibit A-20), he admitted that the first day of work, May 9, 1994, shown on the first record of employment, is incorrect, because he had worked a few hours before the date in question. He stated that Rémi Tremblay was the one who controlled his time when he did not punch in using the time clock, and that the first day of work shown on the records of employment for 1995 and 1996 was incorrect. He sometimes made trips outside those periods for S.A.M. In fact, he worked almost every week while he was receiving unemployment insurance benefits, but he did not want to receive more than he was entitled to, so he sometimes did a favour for his employer, just as the employer might also do him a favour. For example, he explained, he might make a trip for his employer with one of his friends and the employer only paid for his meals, just as he might take his employer's snow blower to clear his driveway.

[68] The appeals officer examined the records of employment and the payroll to determine whether this Appellant's employment was insurable during certain periods, having regard to the number of hours of work done per week and the earnings paid. Based on this, he adjusted the earnings paid during the periods of employment, and the result of that exercise is in the letter from the Minister submitted as Exhibit I-40.

Martine Côté

[69] This Appellant is the spouse of Pierre Tremblay. Her employment with S.A.M. is insurable and the appeal relates to the number of insurable weeks, insurable hours insurable earnings for the purposes of the UIA and the EIA. The Minister determined the insurable periods, weeks and earnings, in his determination dated February 7, 2000, to be as follows:

<u>Periods of work</u>	<u>Insurable earnings</u>	<u>Insurable weeks</u>
Jul. 4 to Sept. 11, 1993	3,788.31	10
Sept. 19 to Nov. 6, 1993	2,267.51	7
Nov. 14 to Dec. 31, 1993	2,267.51	7
Jun. 19 to Jan. 13, 1995	9,717.50	30
May 28, 1995, to Jan. 1, 1996	10,689.69	33
May 26 to Nov. 23, 1996	9,488.98	26
Dec. 1, 1996, to Jan. 4, 1997	1,619.65	5
Jan. 5 to Jan. 24, 1997	971.79	
Feb. 16 to Mar. 8, 1997	81.00	
Mar. 16 to Apr. 12, 1997	139.00	
Apr. 20 to Dec. 31, 1997	10,045.28	

[70] The facts on which the Minister relied are set out in the Amended Reply to the Notice of Appeal, and were admitted or denied as indicated below.

- (d) The Appellant was employed by the payor as a secretary. **(admitted)**
- (e) On January 5, 1994, the payor issued a record of employment to the Appellant showing that the first day of work was July 5, 1993, and the last day of work was December 31, 1993, that the period of work consisted of 24 insurable weeks and that insurable earnings totalled \$7,027.00 for the last 20 weeks. **(admitted)**
- (f) For the period referred to in the preceding paragraph, the Appellant was engaged in insurable employment: **(denied)**

Periods of work	Insurable earnings	Insurable weeks
July 4, 1993, to September 11, 1993	\$3,788.31	10 weeks
September 19, 1993,	\$2,267.51	7 weeks

to November 6, 1993		
November 14, 1993,	\$2,267.51	7 weeks
to December 31, 1993		

(g) On January 16, 1995, the payor issued a record of employment to the Appellant showing that the first day of work was June 20, 1994, and the last day of work was January 13, 1995, that the period of work consisted of 30 insurable weeks and that insurable earnings totalled \$6,478.00 for the last 20 weeks. **(admitted)**

(h) For the period referred to in the preceding paragraph, the Appellant was engaged in insurable employment: **(denied)**

Periods of work	Insurable earnings	Insurable weeks
from June 19, 1994, to January 13, 1995	\$9,715.50	30 weeks

(i) On January 12, 1996, the payor issued a record of employment to the Appellant showing that the first day of work was May 29, 1995, and the last day of work was January 12, 1996, that the period of work consisted of 33 insurable weeks and that insurable earnings totalled \$6,479.00 for the last 20 weeks. **(admitted)**

(j) For the period referred to in the preceding paragraph, the Appellant was engaged in insurable employment: **(denied)**

Periods of work	Insurable earnings	Insurable weeks
from May 28, 1995, to January 12, 1995	\$10,689.69	33 weeks

(k) On January 27, 1997, the payor issued a record of employment to the Appellant showing that the first day of work was May 27, 1996, and the last day of work was January 24, 1997, that the period of work consisted of 34 insurable weeks and that insurable earnings totalled \$7,221.00 for the last 20 weeks. **(admitted)**

(l) For the period referred to in the preceding paragraph, the Appellant was engaged in insurable employment: **(denied)**

Periods of work	Insurable earnings	Insurable weeks
from May 26, 1996, to November 23, 1996	\$ 988.98	26 weeks

from December 1, 1996 to January 4, 1997	\$1,619.65	5 weeks
from January 5, 1997 to January 24, 1997	\$ 971.79	

(m) From July 4, 1993, to January 24, 1977, the Appellant performed services for the payor ~~in some weeks~~ before and after the periods shown on the records of employment but for less than 15 hours a week, and the weekly earnings were lower than \$149.00 in 1993, \$156.00 in 1994, \$163.00 in 1995 and \$150 in 1996 for the following periods: (denied)

from March 21, 1993, to July 3, 1993
 from January 23, 1994, to February 5, 1994
 from February 20, 1994, to February 26, 1994
 from April 3, 1994, to April 9, 1994
 from May 1, 1994, to June 18, 1994
 from January 29, 1995, to February 11, 1995
 from February 19, 1995, to March 11, 1995
 from March 26, 1995, to April 15, 1995
 from April 23, 1995, to May 13, 1995
 from February 4, 1996, to February 10, 1996
 from February 25, 1996, to March 2, 1996
 from March 17, 1996, to March 30, 1996
 from April 7, 1996, to May 25, 1996

(n) On January 21, 1998, the payor issued a record of employment to the Appellant showing that the first day of work was February 20, 1997, and the last day of work was January 16, 1998, that the period of work consisted of 1,067 insurable hours and that insurable earnings totalled \$8,597.47. **(admitted)**

(o) ~~In fact,~~ regarding the period referred to in the preceding paragraph, the Appellant was actually engaged in insurable employment ...: **(denied)**

Periods of work	Insurable earnings
from February 16, 1997 to March 8, 1997	\$ 81.00
from March 16, 1997 to April 12, 1997	\$ 139.00
from April 20, 1997 to December 31, 1997	\$ 10,045.28

(p) The Appellant was not employed by the payor in the following periods: (denied)

from September 12, 1993, to September 18, 1993
from November 7, 1993, to November 13, 1993
from January 2, 1994, to January 22, 1994
from February 6, 1994, to February 19, 1994
from February 27, 1994, to April 2, 1994
from April 10, 1994, to April 30, 1994
from January 15, 1995, to January 28, 1995
from February 12, 1995, to February 18, 1995
from March 12, 1995, to March 25, 1995
from April 16, 1995, to April 22, 1995
from May 14, 1995, to May 27, 1995
from January 14, 1996, to February 3, 1996
from February 11, 1996, to February 24, 1996
from March 3, 1996, to March 16, 1996
from March 31, 1996, to April 6, 1996
from November 24, 1996, to November 30, 1996
from January 26, 1997, to February 15, 1997
from March 9, 1997, to March 15, 1997
from April 13, 1997, to April 19, 1997

[71] The Appellant stated that she worked an average of 35 hours a week during her periods of employment, for all of the years in issue, that is, from 1993 to 1997. She worked full-time in May and June of each year. Because she lived a few doors away from S.A.M.'s place of business, she occasionally performed services outside her periods of employment, when she went for a walk. For example, she handled the mail for S.A.M. or lent a hand when she went by, if it was busy. She did not punch in on those occasions, and was not paid. Her statement said that she was on standby during the periods when she was working part-time and she did not record her time with the time clock. The hours during which she performed services without being paid were not reported on her unemployment cards.

[72] The appeals officer did the same exercise as in the case of the Appellant Stéphane April. After examining the records of employment and the payroll, he adjusted the periods of work, the earnings and the insurable weeks. The result is what is shown in the letter from the Minister dated February 7, 2000 (Exhibit I-41).

Denis Lévesque

[73] This appeal deals with the Appellant's number of insurable weeks, for the purposes of the UIA and the EIA, while he was employed by S.A.M., from

December 22, 1996, to October 31, 1997. In his determination dated February 7, 2000, the Minister determined the insurable weeks for the period in issue, relying on the following assumptions of fact, which are admitted or denied, as the case may be.

- (d) The Appellant was employed by the payor as a parts clerk. **(admitted)**
- (e) There are invoices and time cards on which the Appellant's name, initials or employee number appear and which are dated outside the periods shown on the records of employment. **(denied)**
- (f) The records of employment do not represent the actual periods of work. **(denied)**
- (g) The records of employment do not represent the actual number of insurable weeks or hours. **(denied)**
- (h) The records of employment do not represent the actual insurable earnings. **(denied)**
- (i) The Appellant continued to perform services for the payor outside the periods shown on the records of employment. **(denied)**
- (j) On December 23, 1996, the payor issued a record of employment to the Appellant showing that his last day of work was on December 20, 1996. **(admitted)**
- (k) On October 30, 1997, the payor issued a second record of employment to the Appellant showing that the first day of work was April 14, 1997, and the last day of work was October 31, 1997. **(denied)**
- (l) The payor issued the records of employment (~~allegedly because of a shortage of work~~) although the Appellant continued to work for the payor (~~until October 31, 1997~~) between December 20, 1996, and April 14, 1997. **(denied)**

Stéphane Aubut

[74] The Appellant is appealing from the determination made by the Minister on February 7, 2000 informing him that his employment with S.A.M. was insurable for the period from March 4, 1996, to January 3, 1997, consisting of 44 insurable weeks with insurable earnings of \$17,814.30, and for the period from January 6 to

December 31, 1997, in which his insurable earnings were \$22,807.90. In making his determination, the Minister relied on the following assumptions of fact, which were admitted or denied as indicated below.

- (d) The Appellant was employed by the payor as a dairy equipment technician. **(admitted)**
- (e) There are invoices and time cards on which the Appellant's name, initials or employee number appear and which are dated outside the periods shown on the records of employment. **(denied)**
- (f) The records of employment do not represent the actual periods of work. **(denied)**
- (g) The records of employment do not represent the actual number of insurable weeks or hours. **(denied)**
- (h) The records of employment do not represent the actual insurable earnings. **(denied)**
- (i) The Appellant continued to perform services for the payor outside the periods shown on the records of employment. **(denied)**
- (j) On March 4, 1996, the payor issued a record of employment to the Appellant showing that the first day of work was December 1, 1990, and the last day of work was March 1, 1996, that the period of work consisted of 52 insurable weeks in the 52 weeks preceding March 1, 1996, and that insurable earnings totalled \$9,476.00 for the last 20 weeks. **(admitted)**
- (k) On March 5, 1996, the Appellant applied for and received unemployment insurance benefits. **(admitted)**
- (l) In fact, the Appellant continued to perform services for the payor after March 1, 1996, while he was receiving unemployment insurance benefits. **(denied)**
- (m) On January 6, 1997, the payor issued a record of employment to the Appellant showing that the first day of work was April 15, 1996, and the last day of work was January 3, 1997, that the period of work consisted of 38 insurable weeks and that insurable earnings totalled \$9,362.00 for the last 20 weeks. **(denied)**
- (n) On or about January 3, 1997, the Appellant applied for and received employment insurance benefits. **(admitted)**

- (o) In fact, the Appellant continued to perform services for the payor after January 6, 1997, while he was receiving employment insurance benefits. **(denied)**

Alex Fournier

[75] This Appellant is appealing from the determination made by the Minister on February 7, 2000, informing him that his insurable periods, weeks and earnings while he was employed by S.A.M. were as shown below.

<u>Insurable periods in 1996:</u>	July 1 to August 3
	August 18 to October 26
	November 3 to 9
	November 24 to December 7
	December 15 to 21

[76] These periods totalled 19 insurable weeks for which there were insurable earnings of \$5,280.

[77] <u>Insurable periods in 1997:</u>	February 16 to March 1
	March 23 to 29
	April 6 to 12
	April 27 to December 26

Insurable earnings during these periods were \$11,813.

[78] In making his determination, the Minister relied on the following assumptions of fact, which were admitted or denied as indicated below.

- (d) The Appellant was employed by the payor as a mechanic. **(admitted)**
- (e) On October 14, 1996, the payor issued a record of employment to the Appellant showing that the first day of work was July 1, 1996, and the last day of work was October 11, 1996, that the period of work consisted of 13 insurable weeks and that insurable earnings totalled \$4,576.00. **(admitted)**
- (f) On December 24, 1997, the payor issued a second record of employment to the Appellant showing that the first day of work was November 25, 1996, and the last day of work was December 26, 1997, that the period of work consisted of 2 insurable weeks and

insurable earnings totalled \$704.00 for the 1996 portion and 1,461 insurable hours and insurable earnings of \$11,688.00 for the 1997 portion. **(admitted)**

(g) There are invoices and time cards on which the Appellant's name, initials or employee number appear and which are dated outside the periods shown on the records of employment. **(denied)**

(h) No documentary evidence showing the worker's presence was found for the periods: **(denied)**

August 4, 1996, to August 17, 1996
October 27, 1996, to November 2, 1996
November 10, 1996, to November 23, 1996
December 8, 1996, to December 14, 1996
December 22, 1996, to February 15, 1997
March 2, 1997, to March 22, 1997
March 30, 1997, to April 5, 1997
April 13, 1997, to April 26, 1997
December 27, 1997

(i) The records of employment do not represent the actual periods of work. **(denied)**

(j) The records of employment do not represent the actual number of insurable weeks or hours. **(denied)**

(k) The records of employment do not represent the actual insurable earnings. **(denied)**

(l) The Appellant continued to perform services for the payor outside the periods shown on the records of employment. **(denied)**

(m) In 1996, the Appellant actually worked from July 1 to August 3, from August 18 to October 26, from November 3 to 9, from November 24 to December 7, and from December 15 to 21, and those periods consisted of 19 insurable weeks with insurable earnings of \$5,280.00. **(denied)**

(n) In 1997, the Appellant actually worked from February 16 to March 1, from March 23 to 29, from April 6 to 12 and from April 27 to December 26, and those periods consisted of 1,477 insurable hours with insurable earnings of \$11,813.00. **(denied)**

Benoît Roy

[79] This appeal relates to the periods of work, number of weeks and insurable earnings while the Appellant was employed by S.A.M. In his determination, the Minister concluded as follows on those issues:

<u>Periods of work</u>	<u>Number of weeks</u>	<u>Insurable earnings</u>
from February 28, 1994 to August 6, 1994	23 weeks	\$8,173.74
from August 14, 1994, to October 8, 1994	8 weeks	\$2,843.04
from October 23, 1994, to October 29, 1994	1 week	\$ 355.38
from November 6, 1994, to November 12, 1994	1 week	\$ 355.38
from November 20, 1994, to December 31, 1994	6 weeks	\$2,132.80
from January 1, 1995, to July 29, 1995	30 weeks	\$6,061.20
from August 6, 1995, to August 26, 1995	3 weeks	\$ 606.12
from September 3, 1995, to December 23, 1995	16 weeks	\$3,232.64
from December 31, 1995, to April 6, 1996	14 weeks	\$2,752.40
from April 14, 1996, to May 4, 1996	3 weeks	\$ 589.80
from May 12, 1996, to July 6, 1996	8 weeks	\$1,572.80
from July 14, 1996, to July 20, 1996	1 week	\$ 196.60
from July 28, 1996, to August 31, 1996	5 weeks	\$ 983.00
from September 8, 1996, to December 28, 1996	16 weeks	\$3,145.60
from December 29, 1996, to May 24, 1997		\$2,710.26
from June 1, 1997, to June 28, 1997		\$ 516.24
from July 6, 1997, to July 19, 1997		\$ 258.12
from July 27, 1997, to December 27, 1997		\$2,839.32
from December 28, 1997, to March 13, 1998		\$7,260.00

[80] The facts on which the Minister relied are as follows. They were admitted or denied by the Appellant as indicated below:

- (d) The Appellant was employed by the payor as a dairy equipment technician. **(admitted)**
- (e) On August 1, 1994, the payor issued a record of employment to the Appellant showing that the first day of work was February 28, 1994, and the last day of work was July 29, 1994, that the period of work consisted of 22 insurable weeks and that insurable earnings totalled \$12,600.00 for the last 20 weeks. **(admitted)**
- (f) On August 18, 1995, the payor issued a record of employment to the Appellant showing that the first day of work was March 6, 1995, and the last day of work was August 18, 1995, that the period of work

consisted of 15 insurable weeks and that insurable earnings totalled \$9,900.00. **(admitted)**

- (g) On December 13, 1996, the payor issued a record of employment to the Appellant showing that the first day of work was September 9, 1996, and the last day of work was December 13, 1996, that the period of work consisted of 14 insurable weeks and that insurable earnings totalled \$9,240.00. **(admitted)**
- (h) On March 16, 1998, the payor issued a record of employment to the Appellant showing that the first day of work was October 27, 1997, and the last day of work was March 13, 1998, that the period of work consisted of 960 insurable hours and that insurable earnings totalled \$13,200.00. **(admitted)**
- (i) From 1994 to 1998, the payor issued incorrect records of employment to the Appellant. **(denied)**
- (j) There are invoices and time cards on which the Appellant's name, initials or employee number appear and which are dated outside the periods shown on the records of employment. **(denied)**
- (k) The records of employment do not represent the actual periods of work. **(denied)**
- (l) The records of employment do not represent the actual number of insurable weeks or hours. **(denied)**
- (m) The records of employment do not represent the actual insurable earnings. **(denied)**
- (n) The Appellant continued to perform services for the payor outside the periods shown on the records of employment. **(denied)**
- (o) In 1994, the Appellant actually worked ...

Periods of work	Number of weeks	Insurable earnings
from February 28 to August 6, 1994	23 weeks	\$8,173.74
from August 14 to October 8, 1994	8 weeks	\$2,843.04
from October 23 to October 29, 1994	1 week	\$ 355.38
from November 6 to November 12, 1994	1 week	\$ 355.38
from November 20 to December 31, 1994	6 weeks	\$2,132.80

- (p) In 1995, the Appellant actually worked ...

Periods of work	Number of weeks	Insurable earnings
from January 1 to July 29, 1995	30 weeks	\$6,061.20
from August 6 to August 26, 1995	3 weeks	\$ 606.12
from September 3 to December 23, 1995	16 weeks	\$3,232.64

(q) In fact, the Appellant actually worked ...

Periods of work	Number of weeks	Insurable earnings
from December 31, 1995, to April 6, 1996	14 weeks	\$2,752.40
from April 14 to May 4, 1996	3 weeks	\$ 589.80
from May 12 to July 6, 1996	8 weeks	\$1,572.80
from July 14 to July 20, 1996	1 week	\$ 196.60
from July 28 to August 31, 1996	5 weeks	\$ 983.00
from September 8 to December 28, 1996	16 weeks	\$3,145.60

(r) In fact, the Appellant actually worked ...

Periods of work	Insurable earnings
from December 29, 1996, to May 24, 1997	\$2,710.26
from June 1 to June 28, 1997	\$ 516.24
from July 6 to July 19, 1997	\$ 258.12
from July 27 to December 27, 1997	\$2,839.32
from December 28, 1997, to March 13, 1998	\$7,260.00

Sébastien Roy

[81] This appeal relates to the same issues, that is, the Appellant's insurable weeks, hours and earnings while he was employed by S.A.M. In his letter of February 7, 2000, the Minister informed the Appellant of his determination that his periods of work and insurable earnings for the purposes of the UIA and the EIA were as follows:

<u>Periods of work</u>	<u>Insurable earnings</u>
Sept. 6 to Dec. 31, 1994	\$ 585
Jan. 1 to Dec. 30, 1995	\$13,248

Dec. 31, 1995, to Dec. 28, 1996	\$10,761
Dec. 29, 1996, to Dec. 27, 1997	\$15,718
Dec. 28, 1997, to June 26, 1998	\$8,305.30

[82] The facts on which the Minister relied are as follows; they were admitted or denied by the Appellant as indicated below.

- (d) The Appellant was employed by the payor as a parts clerk. **(admitted)**
- (e) There are invoices and time cards on which the Appellant's name, initials or employee number appear and which are dated outside the periods shown on the records of employment. **(admitted)**
- (f) No documentary evidence showing the Appellant's presence was found for November 25, 1995. **(denied)**
- (g) The records of employment do not represent the actual periods of work. **(denied)**
- (h) The records of employment do not represent the actual number of insurable weeks or hours. **(denied)**
- (i) The records of employment do not represent the actual insurable earnings. **(denied)**
- (j) The Appellant continued to perform services for the payor outside the periods shown on the records of employment. **(denied)**
- (k) On November 24, 1995, the payor issued a record of employment to the Appellant showing that the first day of work was November 28, 1994, and the last day of work was November 24, 1995, that the period of work consisted of 43 insurable weeks and that insurable earnings totalled \$6,480.00 for the last 20 weeks. **(admitted)**
- (l) In 1994, the Appellant actually worked from September 6 to December 31, and for that period had insurable earnings of \$585.00. **(denied)**
- (m) In 1995, the Appellant actually worked from January 1 to December 31, and for that period had insurable earnings of \$13,248.00. **(denied)**
- (n) On January 27, 1997, the payor issued a record of employment to the Appellant showing that the first day of work was July 1, 1996, and

the last day of work was January 24, 1997, that the period of work consisted of 30 insurable weeks and that insurable earnings totalled \$7,500.00 for the last 20 weeks. **(admitted)**

- (o) In 1996, the Appellant actually worked from January 1 to December 31, and for that period had insurable earnings of \$10,761.00. **(denied)**
- (p) On July 17, 1998, the payor issued a record of employment to the Appellant showing that the first day of work was February 18, 1997, and the last day of work was June 26, 1998, that the period of work consisted of 2,158.25 insurable hours and that insurable earnings totalled \$15,647.31. **(admitted)**
- (q) In 1997, the Appellant actually worked from January 1 to December 31, and for that period had insurable earnings of \$15,718.00. **(denied)**
- (r) In 1998, the Appellant actually worked from January 1 to June 26, and for that period had insurable earnings of \$8,305.30. **(denied)**

[83] The appeal by S.A.M. deals with the same issues as are raised in each of the other cases under appeal. I will therefore not reproduce the assumptions of fact on which the Minister relied in the case of S.A.M. None of the last five Appellants testified.

Analysis

[84] In the nine cases in issue, the issue is not whether there was insurable employment, but what the insurable earnings, number of weeks and periods of work were for each of the Appellants.

[85] Each of the Appellants in this second category who testified admitted working without being paid during his or her periods of unemployment. Some of them reported the maximum income they were entitled to earn without a reduction in their benefits on their unemployment cards. However, all of them admitted that the dates on their records of employment were false. Most of them considered the services they performed without pay to have been volunteer work.

[86] The position of counsel for the Appellants is that in assessing the cases, the Minister failed to take into consideration the part-time work a person is entitled to do while receiving employment insurance benefits. In his submission, the effect of that anomaly was to diminish the reliability of the Minister's determination

regarding the insurable weeks and periods worked, since the Minister should have made the necessary distinction in his calculations. In counsel's opinion, the records of employment are not actually false. He reiterated that his client had pleaded guilty to the 29 counts, believing that the issue was the determination of the periods of employment on the basis of complete weeks, and not the inclusion of the part-time work. He concluded by saying that his client did not engage in any banking of hours.

[87] In my opinion, the voluminous evidence submitted by the Respondent clearly shows that the Appellants, and in particular Guy Rousseau and Valère Jalbert, performed numerous services for S.A.M., on a regular basis and at all times, during their periods of unemployment, and that this went beyond the hours of part-time work for which they were paid. It is difficult to understand how they could describe this work, which they in fact admit having done, as volunteer work, in the context of an employer-employee relationship where the parties are dealing with each other at arm's length. In my opinion, there had to be an incentive somewhere to motivate these employees to continue performing services for their employer without being paid. There is evidence to suggest that S.A.M. had a practice of banking hours for certain employees. The minutes of a board of directors meeting held on February 25, 1992, filed as Exhibit I-8, suggest that hours were being banked so that certain employees could stay home during less busy periods.

[88] A table prepared by Mr. Arguin in the case of the Appellant Valère Jalbert (Exhibit I-38) clearly shows that he worked long hours during certain weeks, and the payroll book shows that he was not paid for those hours.

[89] These things were not explained. Was the banking of hours the incentive that persuaded an employee to devote time to his or her employer without getting paid? It seems logical to me to say that it was, and some scenario of the sort must have been involved.

[90] The Appellants all admitted working without pay during their periods of unemployment. They all attempted to minimize the time they spent at work in those periods. Given the evidence produced by the Respondent, I cannot agree with their testimony, because in my opinion they did much more than they suggested. I also cannot disregard the fact that the Appellant S.A.M. admitted guilt on 29 counts of providing false information on its employees' records of employment, including those for the Appellants in this case. If we believe Pierre Tremblay's

explanation of the reasons why S.A.M. entered a guilty plea, there might be grounds for asking to change the plea.

[91] The Appellants have the onus of establishing on a balance of probabilities that the Minister's determination is incorrect. It is not sufficient to deny the assumptions of fact on which the Minister relied in making his determination. Evidence to the contrary must be presented from which I could conclude that the decision was wrong. In this case, there is insufficient evidence to tip the balance in the Appellants' favour, and I must accept the determination made by the Minister. For these reasons, all of the appeals are dismissed.

Signed at Ottawa, Canada, this 10th day of February 2004.

"François Angers"

Angers J.

Translation certified true
on this 26th day of March 2009.

Brian McCordick, Translator

CITATION: 2004TCC49

COURT FILE NOS. 2000-2453(EI), 2000-983(EI), 2000-985(EI),
2000-2054(EI), 2000-2055(EI),
2000-057(EI), 2000-2059(EI),
2000-2060(EI), 2000-2061(EI),
2000-2063(EI), 2000-2062(EI),
2000-2064(EI), 2000-2066(EI),
2000-2065(EI) and 2000-2067(EI)

STYLES OF CAUSE: SERVICES AGRO MÉCANIQUE INC.,
JACQUES TREMBLAY,
NADINE LEBLOND, BENOÎT ROY,
SÉBASTIEN ROY, MARTINE CÔTÉ,
VALÈRE JALBERT, GUY ROUSSEAU,
STÉPHANE AUBUT, STÉPHANE APRIL,
ALEX FOURNIER, RÉMI TREMBLAY,
CLAUDE TREMBLAY, MICHEL TREMBLAY
and DENIS LÉVESQUE and M.N.R.

PLACE OF HEARING: Rivière-du-Loup, Quebec

DATE OF HEARING: September 8, 2003

REASONS FOR JUDGMENT BY: The Hon. Mr. Justice François Angers

DATE OF JUDGMENT: February 10, 2004

APPEARANCES:

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