Federal Court  Cour fédérale

Date: 20140108

Docket: T-675-13

Citation: 2014 FC 22

Ottawa, Ontario, January 8, 2014

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

VIH HELICOPTERS LTD.

Applicant

and

MATTHEW RENNIE

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Douglas Matthew Rennie [Matthew Rennie] is a helicopter maintenance engineer. He maintained helicopters owned by VIH Helicopters Ltd. (formerly VIH Logging Ltd.) [VIH]. When it suited Matthew Rennie from a compensation, an income tax, or a spousal support perspective, he took the position with VIH, Revenue Canada, the British Columbia courts, and his former spouse, that he was self-employed. After his relationship with VIH ended, it suited him to say that he was an employee of VIH entitled to damages for unjust dismissal pursuant to the provisions of the

Canada Labour Code, RSC 1985, c L-2 [*Code*]. An adjudicator appointed under subsection 242(1) of the *Code* agreed with Matthew Rennie that he was an employee of VIH and awarded him damages for his unjust dismissal.

[2] For the reasons that follow, I find that the adjudicator erred in law. Consequently, he erred in rejecting the defence of VIH that Matthew Rennie was estopped from claiming, as against it, that he was an employee of VIH.

[3] The error of law was the adjudicator's refusal to admit into evidence two affidavits tendered by VIH: The affidavit of Douglas Matthew Rennie, the Respondent, sworn October 3, 2000, and its exhibits [the Contested Matthew Rennie Affidavit], and the affidavit of Clifford Charles Rennie, the Respondent's father, sworn May 9, 2001 [the Contested Clifford Rennie Affidavit]. Both of these affidavits had previously been filed in British Columbia courts in connection with a dispute between Matthew Rennie and his former spouse relating to his spousal support obligations.

Background

[4] VIH is a helicopter aviation company operating medium and heavy helicopters in Canada and internationally. Witnesses testified that when VIH engages a new person, it permits the individual to choose to work either as an employee or as an independent contractor. At the time of the adjudication hearing, VIH had 93 helicopter maintenance engineers; 80 of those engineers were employees and 13 chose to be treated as independent contractors.

[5] Matthew Rennie testified that he was out of work when VIH approached him in July or August 1993. When Matthew Rennie indicated an interest in maintaining its helicopters, the parties entered into negotiations. These negotiations centred on what Matthew Rennie would be paid and the nature of their relationship. Matthew Rennie testified that VIH preferred to hire him as an employee, but he suggested, and VIH agreed to, a contractual relationship:

> But I did ask him at the time whether he was interested in contract employees or full-time, and he told me at the time he preferred full-time employees. My suggestion to him then was that we try a contract employee basis and see how we liked each other and take it from there.

[6] I pause to note that throughout his testimony Matthew Rennie describes his arrangement with VIH to be that of a "contract employee." How Matthew Rennie describes his relationship with VIH in court is not determinative. It also does not provide any indication as to whether or not he represented to VIH that their relationship was something other than an employment relationship. I conclude, based on the record as a whole, that Matthew Rennie's characterization of being a "contract employee" was adopted in the proceeding to suit and advance his own purposes in claiming damages for unjust dismissal. I give this characterization of the relationship very little weight for the following reasons.

[7] First, all of the other witnesses described the "contract" between these parties as being an independent contractual relationship, including Matthew Rennie's father in an affidavit. Second, Matthew Rennie's phrase "contract employee," if it is not redundant and is to have any meaning other than that of an independent contractor, must mean something like a "dependent contractor," as that term is defined in the *Code*. However, the concept of a dependent contractor as defined in

subsection 3(1) of the *Code* applies only to the provisions affecting and relating to industrial relations in Part I. It does not apply to Part III which deals with standard hours, wages, vacations and holidays, including the unjust dismissal provisions in section 240: *Dynamex Canada Inc v Mamona*, 2003 FCA 248, 228 DLR (4th) 463, at para 49. Third, Matthew Rennie was well aware, as is outlined below, that the terms and conditions that VIH applied to him were different than those it applied to employees and it is therefore not credible that he would view himself as an "employee" of any sort. Fourth, in an earlier affidavit sworn by Matthew Rennie in a court proceeding (which I find the adjudicator ought to have admitted into evidence) Matthew Rennie represented to the British Columbia Supreme Court that the parties' relationship was not an employment relationship but that of an independent contractor. Fifth, Matthew Rennie always described himself to Revenue Canada as self-employed, and one is either self-employed or employed by another; one cannot be both with respect to the same relationship.

[8] Matthew Rennie testified that as a contractor (to use a more neutral term) to VIH, he was paid an hourly rate that was greater than that which VIH paid to its employees. He initially invoiced VIH for his services through his unincorporated business, Matt Rennie Engineering. He knew that employees of VIH received benefits from VIH, including paid vacation. Further, employees had income tax, employment insurance premiums, and Canada Pension Plan contributions deducted from their pay, which deductions were remitted to Revenue Canada by VIH along with its own contributions towards the same. Matthew Rennie knew that from the beginning of his relationship until it ended, he received no such benefits or had any deductions taken from the amounts paid for his services. That was his choice. Furthermore, Matthew Rennie, when submitting invoices,

charged VIH GST for the fees he charged for services rendered, knowing that employees did not do so.

[9] From the inception of his relationship with VIH, Matthew Rennie described himself on his income tax returns as "self-employed" and claimed advantageous business expense deductions.

[10] On September 4, 1996, some three years after the parties commenced their relationship, VIH wrote to Matt Rennie Engineering regarding the "status of your company's contract with VIH." VIH noted that the current unwritten arrangement between them did not comply with its accountant's guidelines "for a contractor" (emphasis added). The letter set out the terms required in order to be a "valid contractor:"

> -valid resignation letter
> -an incorporated company
> -a contract between [VIH] and the new company for the services to be provided
> -to receive payment for services the new company must:
> -invoice [VIH]
> -provide a Revenue Canada number for GST,
> -and provide evidence of WCB coverage or an alternative.

[11] A similar letter was sent again on January 19, 1998. All of these terms were complied with, except that no resignation letter from Matt Rennie Engineering was ever provided. The adjudicator appears to have given significant weight to the absence of the resignation letter, saying: "It is noteworthy that although he was requested twice to resign as an employee, he never did so" (emphasis added). In my view, the adjudicator's statement unreasonably mischaracterizes the evidence before him. That letter does not ask Matthew Rennie to "resign as an employee," nor does it state or imply that Matthew Rennie was an employee; rather, it asks Matt Rennie Engineering to

submit a "valid letter of resignation" coincident with the incorporation of a company that would replace it as the entity doing business with VIH. Furthermore, a letter from Matthew Rennie personally resigning would have been nonsensical since at all times, it was Matt Rennie Engineering that had contracted with VIH.

[12] Blue Stone Engineering Ltd. [Blue Stone] was incorporated by Matthew Rennie's father, Clifford Rennie, its sole shareholder. Blue Stone entered into a "Consulting Agreement" with Matt Rennie Engineering as at July 1, 1997, pursuant to which Matt Rennie Engineering, the Consultant, agreed to "carry out and provide services" to Blue Stone at a "rate of pay of $250.00 per day for days work performed." Blue Stone provided Matthew Rennie's services to VIH and invoiced VIH at that hourly rate, plus GST. Over time, the amount per day charged to VIH increased; however, the rate Blue Stone paid to Matt Rennie Engineering stayed the same. Blue Stone kept the overage as retained earnings, apparently to be paid to Matthew Rennie as required [the Standby Funds]. It does not appear from the record that Matthew Rennie accessed the Standby Funds until the relationship with VIH ended.

[13] By letters dated October 15, 2008 to Blue Stone, VIH advised it that "in accordance with paragraph 10 of the Contract [dated January 1, 2008] we are hereby providing you with 14 days advance notice of termination of the Contract" and it further advised that it did not require Blue Stone to provide engineering services over those two weeks.

[14] In addition to the two-week termination clause, the January 1, 2008 contract between VIH and Blue Stone contained the following provisions of note:

> WHEREAS the Company [VIH] wishes to engage the services of qualified maintenance engineer in its helicopter operations.
>
> AND WHEREAS the Contractor [Blue Stone] is in the business of supplying aviation related services and has agreed to supply to the Company the services of a maintenance engineer on the terms and conditions set forth herein:
>
> …
>
> 6. The parties agree that the Contractor is providing the Engineer Services [i.e. the services of a "duly licensed, experienced and qualified helicopter Maintenance Engineer"] hereunder as an independent contractor. The Contractor is solely responsible for the payment of its employees, the hiring and firing of its employees, the supervision of its employees, and the remittance of payroll taxes including income taxes, Canada Pension Plan contributions and Employment Insurance contributions on behalf of their employees. The Contractor agrees to indemnify and save the Company harmless from any loss, claim, assessment, expenses, and actions suffered or brought against the Company arising from or related to the Contractor's payment, hiring and firing of its employees and the Contractor's failure to remit employee payroll deductions including withholding income tax, Canada Pension Plan, Workers Compensation Agreement and Employment Insurance remittances and any other form of tax.
> [emphasis added]

[15] Soon after VIH terminated its agreement with Blue Stone, Matthew Rennie filed his complaint of unjust dismissal against VIH.

Issues

[16] VIH raises four issues:

1. Whether the adjudicator fettered his discretion and failed to observe procedural fairness by refusing to admit into evidence the two contested affidavits;

2. Whether the adjudicator erred in finding that Matthew Rennie was an employee of VIH;

3. Whether the adjudicator erred in determining that Matthew Rennie was not estopped from alleging he was an employee of VIH in light of his earlier conduct; and

4. Whether the adjudicator erred in finding that funds paid out of the Standby Fund from Blue Stone to Matthew Rennie following the termination of the contract with VIH should not be offset against the damages awarded?

[17] In my view, two of these issues are determinative of this application: The refusal to admit the two contested affidavits into evidence, and the finding vis-à-vis VIH, that Matthew Rennie was not estopped from asserting that he was its employee. In light of my findings on these issues, the other issues relating to the true nature of the relationship between the parties and the damage award do not arise.

1. *The Contested Affidavits*

[18] The parties submitted a Joint Book of Documents to the adjudicator. Two documents were marked as "Not agreed to as to truth of contents." They were the following:

(1) Item 106: The Contested Matthew Rennie Affidavit attached to which, as exhibits, are the following:

- Exhibit "A" the draft copy of the relevant pages of Matthew Rennie's 1999 income tax return;
- Exhibit "B" the affidavit of Clifford Rennie dated August 10, 2000 attached to which, as exhibits, are the following:
    - Exhibit 1A: A letter dated September 4, 1996 from VIH "addressed to Matt Rennie Engineering as an independent contractor."

- Exhibit 1B: A letter dated January 19, 1998 from VIH "addressed to Matt Rennie, Blue Stone Engineering Ltd when Matt Rennie was working as a sub-contractor for Blue Stone Engineering Ltd."
- Exhibit 2: "Certificate of Incorporation for Blue Stone Engineering Ltd. dated November 06, 1997."
- Exhibit 3A: "Notes on the Formation of Blue Stone Engineering prepared on December 15, 1998."
- Exhibit 3B: Management fees of $500 annually charged in 1998 – 2000 to Blue Stone by Clifford Rennie.
- Exhibit 3C: Accounting fees of $1000 annually charged in 1998 – 2000 to Blue Stone by Betty Rennie (Clifford Rennie's spouse).
- Exhibit 4: Documentation of a loan of $25,000 from the Bank of Montreal on January 7, 1998 to Blue Stone guaranteed by Clifford Rennie and by the assignment of a life insurance policy on the life of Clifford Rennie.
- Exhibit 5: "[A] copy of the Agreement between [VIH] and Blue Stone Engineering Ltd that pertains to the services provided to [VIH] by Blue Stone Engineering Ltd."
- Exhibit 6A: "[A] copy of the Agreement between Blue Stone Engineering Ltd. and Matt Rennie Engineering whereby Matt Rennie agrees to provide sub-contract services at a set rate of $250 per day worked plus expenses." This exhibit was subsequently agreed by both parties to be admitted into evidence.
- Exhibit 6B: "[A] truck lease between Blue Stone Engineering Ltd and Matt Rennie whereby Matt Rennie agrees to pay $620 per month for the use of Blue Stone's truck."

- Exhibits 7A, 7B, 7C, 7D, 8A, 8B, and 8C: "[S]ummaries of the Invoices submitted to [VIH] from Blue Stone Engineering Ltd for 1997, 1998, 1999 and 2000 to June 30th for contract time worked and for expenses for the same periods which include meals, travel and purchases on behalf of [VIH]."
- Exhibit 9A, 9B, 9C, 10A, 10B, and 10C: "[S]ummaries of Invoices submitted to Blue Stone Engineering Ltd. by Matt Rennie for sub-contract work and expenses for subcontract time worked for calendar years 1998, 1999, 2000 to June 30th and for sub-contractors [*sic*] expenses for the same periods."
- Exhibit 11A, 11B, and 11C: "[C]opies of Blue Stone Engineering Ltd Income Tax Returns for the fiscal years ending January 31, 1998, January 31, 1999 and January 31, 2000 including financial statements for each year."

- Exhibit "C" Copies of Matthew Rennie's "income tax assessments from 1984 to 1997 with the exception of a few years that are unavailable."

(2) Item 107: The Contested Clifford Rennie Affidavit.

[19] Paragraph 242(2)(c) of the *Code* provides an adjudicator with the same broad powers respecting the admission of evidence, as the Canada Industrial Relations Board has in paragraph 16(c) of the *Code*:

to receive and accept such evidence and information on oath, affidavit or otherwise as the Board in its discretion sees fit, whether admissible in a court of law or not;	accepter sous serment, par voie d'affidavit ou sous une autre forme, tous témoignages et renseignements qu'à son appréciation, il juge indiqués, qu'ils soient admissibles ou non en justice;

[20] Notwithstanding the breadth of discretion an adjudicator has to accept or exclude evidence, it is not without any boundary. In *Université du Québec à Trois Rivières v Larocque*, [1993] 1 SCR 471 at para 47, the Supreme Court of Canada, while accepting that an arbitrator "may chose to admit only the evidence he considers relevant to the case as he has chosen to define it," held that it is a reversible error if "the rejection of relevant evidence has such an impact on the fairness of the proceeding, [that it leads] unavoidably to the conclusion that there has been a breach of natural justice." In my view, the adjudicator's refusal to admit the Contested Affidavits in this case - relevant evidence going to the determinative issue - has such a significant impact on the fairness of the proceeding that it resulted in a breach of natural justice.

[21] The adjudicator offered five reasons in support of his decision not to admit the contested evidence. Most, if not all, appear to relate to the reliability of the evidence and none, in my view, withstand an analysis as to relevancy.

[22] First, he observed that "these affidavits were sworn approximately seven years prior to when the cause of action in these proceedings arose." The affidavits were sworn in 2000 and 2001 during the on-going relationship between Matthew Rennie and VIH and they speak directly of that relationship. There is no suggestion by Matthew Rennie, VIH, or the adjudicator that the nature of the relationship changed over time, save for the interjection of Blue Stone between VIH and Matt Rennie Engineering in 1997. The fact that evidence that speaks to the relationship is dated does not impact its veracity in this situation. It is relevant, and its age is not a basis to refuse to admit it. At best, the age of the affidavits would go to weight, not relevance.

[23] Second, the adjudicator observes that the purpose of the contested affidavits "in the family law matter was to assist the court in determining the extent of the [Matthew Rennie's] financial obligation to his spouse or partner." The evidence being tendered by VIH was two sworn affidavits. The purpose for which they were drafted is irrelevant given that the affiants have sworn their contents to be true. Again, the affidavits speak to the relationship between Matthew Rennie, Blue Stone, and VIH - the very issue before the adjudicator - and as such are relevant. The original purpose for which these affidavits were sworn, does not impact the facts therein which are sworn to be true. Its previous purpose does not impact its relevance.

[24] Third, the adjudicator notes that "[c]ase authorities already referred to by me on the issue of whether the complainant was an employee or an independent contractor at the time of his dismissal depends on the true nature of the employment relationship as analyzed and assessed under common-law principles and not on the parties' views, statements or understanding of the legal effect of such relationship." In rejecting this earlier evidence outlining the parties' perception of their relationship, the adjudicator is effectively saying that the evidence of the parties' view of their relationship is not relevant, because it is not conclusive. However, in so doing he ignores that their view is a relevant factor; it is merely not the determinative factor. The adjudicator noted this earlier in his reasons stating: "How the parties themselves characterize their working relationship i.e. employee or independent contractor is certainly a factor to be taken into consideration, however, either way, that is not fully determinative of the issue." The parties' views of their relationship are a relevant consideration. Further, it is directly relevant to the estoppel issue in dispute.

[25] Fourth, the adjudicator says that the affidavits of "Clifford Rennie in the family law case involve completely different issues from the matter before me." This ignores that evidence may be relevant to more than one issue. What is important when assessing the relevance of evidence is not the similarity of the issue for which it was originally tendered to the issue now at hand, but whether it is capable of proving or disproving a fact or issue now before the adjudicator. As noted earlier, the parties' view of their relationship is a relevant factor and, as such, the affidavits are relevant and go directly to an issue in dispute. That the issues in this case are different than the issues in the case for which the affidavits were originally sworn, is not a basis to refuse their admission into evidence.

[26] Fifth, the adjudicator states that "Clifford Rennie died several years ago [and it] is therefore not possible for either party to cross examine on these affidavits to clarify Clifford Rennie's statements in the context of these proceedings." Even if the statements of Mr. Clifford Rennie require clarification, and it is not at all clear that they do as his statements are unambiguous, this is a matter that goes to weight, not relevance.

[27] Furthermore, the Contested Matthew Rennie Affidavit does not suffer from the impediment that cross-examination of the affiant is impossible. Indeed, Matthew Rennie was cross-examined on the Contested Matthew Rennie Affidavit. He attached to his own affidavit, an affidavit of his father (not the Contested Clifford Rennie Affidavit) by attesting as follows: "I include the Affidavit of my father sworn the 10th day of August, 2000 for the Court of Appeal, as Exhibit "B", since I believe it may contain information of interest to this Court, in determining a fair and reasonable Judgement" (emphasis added). The period between Clifford Rennie's affidavit and Matthew Rennie's affidavit is less than two months. There is no evidence that Matthew Rennie, at that time, contested or took

exception to any of his father's statements, nor did he resile from them at the hearing before the adjudicator.

[28] Witnesses must be presumed, when providing evidence under oath, not to be engaging in an attempt to mislead the Court or in providing false evidence because doing either is perjury. Matthew Rennie must be presumed to have offered his father's affidavit to the Court as the truth. If not, then how can it be said to assist in "determining a fair and reasonable Judgement?" Accordingly, the affidavit of Clifford Rennie, which Matthew Rennie attached to his own affidavit, is relevant because it discloses Matthew Rennie's own view of his relationship with both VIH and Blue Stone at that time - a time when it did not necessarily suit his purpose to declare that he was an employee of VIH.

[29] Both of the contested affidavits, most particularly the Contested Affidavit of Matthew Rennie, were relevant evidence. Moreover, they were evidence that went directly to two issues being raised by VIH. They spoke to the parties' views of their relationship which is a relevant factor to examine and consider when determining the true nature of their relationship. More importantly, they spoke directly to how Matthew Rennie viewed his relationship with VIH and Blue Stone prior to his unjust dismissal complaint. As such, it was clearly relevant to the issue of whether he ought to be estopped from asserting, as against VIH, that he was an employee.

[30] The Contested Affidavit of Matthew Rennie attaches his father's affidavit, filed with the Court of Appeal for British Columbia, in which he swears the following:

> 1. I am the father of the Appellant [Douglas Matthew Rennie], and I am the sole shareholder of a private company, BLUE STONE

> EMGINEERING LTD, incorporated in British Columbia, contracting services to resource based companies, including [VIH], and provide the services to [VIH] through a sub-contractor Douglas Matthew Rennie. I have personal knowledge of the facts and matters herein deposed to, except where stated to be based on information and belief, and where so stated, I verily believe them to be true.
>
> 2. I attach copies of two letters (Exhibit 1A and Exhibit 1B) from [VIH], the first dated September 4, 1996 addressed to Matt Rennie Engineering as an independent contractor and the second dated January 19, 1998 addressed to Matt Rennie, Blue Stone Engineering Ltd when Matt Rennie was working as a sub-contractor for Blue Stone Engineering Ltd. These letters verify the requirements of [VIH] for all contractors to have formal agreements with [VIH], and were the main reasons for incorporating Blue Stone Engineering Ltd.
> …
> 4. I attach a copy of Notes on the Formation of Blue Stone Engineering prepared on December 15, 1998 (Exhibit 3A) for a previous submission to the Court for the Appellant.
> [emphasis added]

[31] Exhibit 3A reiterates and confirms much of the information sworn in the August 10, 2000 affidavit:

> Matthew Rennie is a helicopter engineer, qualified to service both light and heavy helicopters used in helilogging. He has over 20 years experience and has worked on contract to several helicopter operations in Canada and overseas. Blue Stone Engineering have [*sic*] contracted engineering services to Vancouver Island Helicopters, who require contractors to be incorporated, and have subcontracted the servicing to Matt Rennie Engineering on a per diem basis.
> …
> All of the above are good reasons for establishing Blue Stone Engineering as a capital pool with minimal taxation and maximum writeoff.

[32] Exhibit 5 to the Clifford Rennie affidavit attached to the Contested Matthew Rennie Affidavit is a document from VIH to Blue Stone dated January 1, 1999, which states, in part: "We

confirm that you were engaged by us in 1998 as an Independent Contractor and that we have paid you in full for your 1998 services." The document is signed by Clifford Rennie on behalf of Blue Stone with the statement: "The undersigned confirms the foregoing this 1st day of January, 1999."

[33] Exhibit 5 also contains an agreement dated to be effective as of January 1, 1999, between Blue Stone and VIH, with respect to helicopter maintenance services which states that the "parties agree that the Contractor [Blue Stone] is providing the Engineering Services hereunder as an independent contractor" and that any "engineer who provides the Engineering Services hereunder shall be and remain an employee of the Contractor."

[34] In my view, there can be no doubt that refusing to admit this evidence (subject to any consideration of weight) was a breach of natural justice. VIH wished to present evidence that both VIH and Matthew Rennie considered him to be an independent contractor and not an employee. As such, VIH says that this creates a classic case of estoppel which was described by Lord Denning in *Combe v Combe*, [1951] 1 All ER 767 as follows:

> [W]here one party has, by his words or conduct, made to the other a promise or assurance which was intended to affect the legal relations between them and to be acted on accordingly, then, once the other party has taken him at his word and acted on it, the one who gave the promise or assurance cannot afterwards be allowed to revert to the previous legal relations as if no such promise or assurance had been made by him, but must accept their legal relations subject to the qualification which he himself has so introduced, even though it is not supported in point of law by any consideration, but only by his word.

[35] In the context of a hearing where it is essential to the defence of estoppel to explore the words, actions, and conduct of Matthew Rennie regarding his relationship with VIH, it is a breach

of natural justice to refuse to admit relevant evidence that speaks to that issue and most especially when that evidence reflects his position prior to the current litigation.

2. *The Estoppel Finding*

[36] The adjudicator rules against the estoppel defence raised by VIH stating that Matthew Rennie had not "clearly, unequivocally and consistently" maintained that he was an independent contractor. In fact, the adjudicator finds, based on the evidence that he admitted, that "[Matthew Rennie] has always maintained that he was an employee and has never changed his position."

[37] In my view, once the Contested Affidavits are admitted, the adjudicator's ruling is unreasonable and cannot be upheld.

[38] First, there is no evidence, other than Matthew Rennie describing himself in his testimony as a "contract employee," that he ever considered himself to be an employee during the period when Matthew Rennie Engineering was invoicing VIH. He specifically had asked that he not be an employee of VIH and knew that he was not paid as an employee. In my view, the record supports only one conclusion - Matthew Rennie led VIH to understand that their relationship was not that of employer-employee but was that of an independent contractor. As a result, VIH changed its position - it paid Matt Rennie Engineering, and later Blue Stone, a greater sum than it would have had Matthew Rennie been an employee, and it made no deductions for income tax, Canada Pension Plan or employment insurance premiums, nor made any contributions toward the same, as it was legally required to do if the relationship was one of employment.

[39] The contested affidavit evidence affirms that from and after the creation of Blue Stone, Matthew Rennie's status vis-à-vis VIH remained unchanged. Blue Stone contracted with VIH, in the place of Matt Rennie Engineering, and Matt Rennie Engineering contracted with Blue Stone.

[40] In my assessment of the evidence, that was and ought to have been admitted, it is unreasonable for the adjudicator to have found that Matthew Rennie maintained throughout vis-à-vis VIH, that he was an employee. Rather, the only reasonable conclusion that can be reached on that evidence is that Matthew Rennie always represented to VIH that theirs was not an employment relationship. Accordingly, VIH was entitled to raise and had established the defence of estoppel as a valid defence to Matthew Rennie's claim to have been an employee of VIH, and it ought to have been accepted by the adjudicator.

Conclusion

[41] The adjudicator erred in law in rejecting relevant evidence (the contested affidavits). That rejection impacted the fairness of the proceeding and leads to the conclusion that there has been a breach of natural justice.

[42] Had the rejected evidence been admitted, the adjudicator's conclusion that Matthew Rennie had always maintained that he was an employee of VIH is unreasonable and cannot stand. In fact, the only reasonable conclusion that could have been reached based on a proper analysis of the evidence that ought to have been admitted was that Matthew Rennie had always maintained that he was not an employee of VIH, but was self-employed as an independent contractor.

[43] For these reasons, the application is allowed and the decision of the adjudicator is set aside with costs payable to VIH fixed, as agreed to by the parties, at $3,000.00.

JUDGMENT

THIS COURT'S JUDGMENT is that the decision of the adjudicator under section 240 of the *Canada Labour Code*, dated March 19, 2013, is quashed and remitted back to the adjudicator for a decision in keeping with these Reasons, and the Applicant is entitled to its costs fixed at $3,000.00.

"Russel W. Zinn"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-675-13
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