Docket: 2010-2423(EI)

BETWEEN:

AGENCE OCÉANICA INC.,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on July 8, 2013, and April 15 and 16, 2014,
at Montréal, Quebec.

Before: The Honourable Justice Gaston Jorré

Appearances:

Counsel for the appellant:	Riad Brahimi
Counsel for the respondent:	Nancy Azzi

JUDGMENT

In accordance with the attached Reasons for Judgment, the appeal is dismissed and the decision of the Minister of National Revenue dated April 28, 2010, for the 2005, 2006 and 2007 taxation years is confirmed.

Signed at Ottawa, Ontario, this 29th day of June 2015.

"Gaston Jorré"

Jorré J.

Translation certified true
On this 7th day of October 2015

Margarita Gorbounova, Translator

Citation: 2015 TCC 168
Date: 20150629
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REASONS FOR JUDGMENT

Jorré J.

[1] The appellant is appealing from three assessments, all of the notices of which are dated September 2, 2008, for the 2005, 2006 and 2007 taxation years. The three assessments were for employment insurance premiums respecting 189 people whose names are listed in Appendix A of the Reply to the Notice of Appeal. The Minister's position is that these people were engaged in insurable employment.[1]

[2] Riad Brahimi is the sole shareholder of the appellant. As part of its activities, the appellant sends nurses to work on the premises of its clients such as CHSLDs, CLSCs, the Manoir Outremont and Château Vincent d'Indy as well as some private homes. At CLSCs, the nurses often worked on the Info-Santé telephone line.

[3] The fact that this is a placement agency is not disputed.[2]

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[1] At the start of the first day of the hearing, the appellant claimed that the appeal also included 2004 and 2008. I concluded that this was not the case because this was an appeal from the decision dated April 28, 2010, in respect of 2005, 2006 and 2007. See second page of the Notice of Appeal and the decision attached to the Notice of Appeal.

[2] At the start of the trial, it seemed like this was disputed. After the close of the case, the appellant's representative informed the Court that he did not dispute that it was a placement agency. In any case, the evidence was very clear that what the appellant did was place individuals with clients so that they would work for the clients.

[4] The relevant provision of the *Employment Insurance Act* is section 5, which at the time read as follows:

> 5(1) Subject to subsection (2), insurable employment is
>
> . . .
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> (*d*) employment included by regulations made under subsection (4) or (5); . . .

[5] Paragraph 6(*g*) of the *Employment Insurance Regulations* was adopted under these provisions and sets out the following:

> 6 Employment in any of the following employments, unless it is excluded from insurable employment by any provision of these Regulations, is included in insurable employment:
>
> . . .
>
> (*g*) employment of a person who is placed in that employment by a placement or employment agency to perform services for and under the direction and control of a client of the agency, where that person is remunerated by the agency for the performance of those services.

[6] Section 7 of the *Insurable Earnings and Collection of Premiums Regulations* should also be taken into consideration:

> 7. Where a person is placed in insurable employment by a placement or employment agency under an arrangement whereby the earnings of the person are paid by the agency, the agency shall, for the purposes of maintaining records, calculating the person's insurable earnings and paying, deducting and remitting the premiums payable on those insurable earnings under the Act and these Regulations, be deemed to be the employer of the person.

[7] Because it is not disputed that this is a placement agency, that the various places where the nurses worked were the appellant's clients and that the people in question were remunerated by the appellant, the key issue is whether the nurses in question provided services to the clients "under the direction and control of . . . [the] client[s]" pursuant to paragraph 6(*g*) of the *Employment Insurance Regulations*.

[8] The appellant considers the nurses to be self-employed.

[9] Five people testified, including Mr. Brahimi, the owner of the appellant.[3]

[10] The Minister made the following assumptions of fact:

> [TRANSLATION]
> (a) The appellant was incorporated on February 26, 2002;
> (b) Riad Brahimi was the sole shareholder of the appellant;
> (c) The appellant operated a placement agency;
> (d) The appellant hired nursing staff for its clients;
> (e) Among the appellant's clients were CLSCs such as Rosemont/St-Michel and CHSLDs such as those of Lachine, LaSalle, St-Charles-Borromée, Jean De La Lande and Armand Lavergne;
> (f) The appellant had a list of nurses;
> (g) At the request of one of its clients, the appellant contacted one of the workers on its list and asked if he or she would provide the services requested by the client;
> (h) The workers agreed of their own free will to work on the appellant's clients' premises at a pay rate agreed upon with the appellant;
> (i) The workers provided services on the appellant's clients' premises;
> (j) The workers had to follow the work schedule provided by the appellant's client;
> (k) The workers had to provide the services requested and were supervised by the appellant's client;
> (l) The appellant paid the workers by cheque based on the number of hours worked for the appellant's client;
> (m) The workers did not provide services to the appellant;
> (n) The workers provided services to the appellant's clients under the supervision and control of the appellant's clients.

Testimony of Riad Brahimi

[11] The appellant was in business from 2002 to 2008.

[12] The appellant operated as follows: A client would contact Mr. Brahimi and ask whether the appellant could provide one or more nurses to work a shift on the client's premises. The appellant had a list of potential workers, and Mr. Brahimi would contact the workers to find nursing staff available and ready to work the shift.

[13] All of the workers are members of the Ordre des infirmières et infirmiers du Québec (the Order) or of the Ordre des infirmières et infirmiers auxiliaires du Québec.

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[3] Four people intervened, but withdrew from the proceedings before the hearing.

[14] The contacted worker was entirely free to accept or decline the proposed shifts; he or she could choose to accept a shift while declining another shift, but once the worker told the appellant that he or she would do the work, he or she had to follow the assigned schedule.[4]

[15] Mr. Brahimi managed everything by telephone. He did not travel to see the workers on the clients' premises. The appellant acted as an intermediary between the workers and the client. The appellant paid the workers, and the clients paid the appellant. The appellant and the workers had a verbal contract.

[16] According to Mr. Brahimi, all of the workers were self-employed, except for two or three workers. Thus, they worked when they wanted and had no contract with the clients. They negotiated their salaries, and they chose where they wanted to work as well as their schedule.

[17] The appellant sent T4A slips to the nurses whose services it had retained. The appellant made no source deductions for the workers who received T4As.[5]

[18] However, since the decision of Justice Lamarre (as she then was) regarding some individuals placed by the agency before 2005,[6] the appellant sent out T4 slips to the workers who worked for Info-Santé.[7]

[19] All the nurses had business cards and their own liability insurance.

[20] According to Mr. Brahimi, the workers planned their own tasks and received no orders. The appellant did not have liability insurance to cover the workers. The clients did not supervise the nurses except for quality control. According to Mr. Brahimi, [TRANSLATION] "the nurses supervise themselves, Your Honour, and especially, especially for the coordinators".[8]

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[4] Although Mr. Brahimi testified that, if a nurse no longer wanted to work for the client, [TRANSLATION] ". . . she doesn't need to give prior notice. She doesn't come in, that's all", and that the workers decided whether they wanted to come back the next day or which day they wanted to work (see the July 8, 2013 transcript, pages 45 and 46), it is clear from the context of his entire testimony that a worker who had agreed to work a shift could not simply not show up. It is when the appellant proposes a shift that the worker is free to accept or decline it.

[5] July 8, 2013 transcript, page 83. There is also a transcript from April 15, 2014, the second day of evidence.

[6] *Agence Océanica inc. v. M.N.R.*, 2006 TCC 14.

[7] Among the workers involved in the current appeal, four or five were also involved in Justice Lamarre's decision (M.C. Douyon, Claude Davilmar, Viviane Gaston Florestal, Roberte Jean and, possibly, Raymonde Joseph — in Ms. Joseph's case, it is unclear whether Mr. Brahimi agreed that this is the same person). See the July 8, 2013 transcript, pages 98 to 104.

[8] See pages 31 to 39 and 79 to 81, among others, of the July 8, 2013 transcript.

[21] The workers were not evaluated by the clients. They had no protocol to follow except what was written in the patients' files.

[22] The clients could not decide whether the workers would come back the following day. They could not impose disciplinary measures on them.

[23] The only restriction the workers had regarding the way they worked was to ensure they were complying with the Order's regulations. Otherwise, they could do as they saw fit when providing their services.

[24] The workers also had to follow the schedule and work on the floor they had agreed on with the client. They could not leave during their shift, unless there was an emergency. If the worker was unable to work his or her shift because of illness, the worker had to inform the appellant and both the worker and the appellant would try to find a replacement.[9]

[25] The work was on-call; thus, the workers could decline.

[26] The workers were free to take a break and to choose their meal times provided that the patients' safety was ensured.[10]

[27] The nurses worked on the clients' premises. They did not need to sign in when they arrived.[11] At the end of their shift, the workers had to make a report for the worker who would be taking the next shift.[12]

[28] The workers were in charge of their own professional development. They did not take part in any meetings on the client's premises. Rather, they took courses given by the Order.

[29] They nurses did not work exclusively for the appellant.

[30] Regarding the work tools, the workers provided their own scrubs and shoes. They also brought their own stethoscopes, thermometers, spirometers and blood pressure monitors for hygiene reasons even though these tools were available on site.

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[9] July 8, 2013 transcript, pages 126 and 127.
[10] July 8, 2013 transcript, pages 35 and 114.
[11] July 8, 2013 transcript, page 39.
[12] July 8, 2013 transcript, page 80.

[31] It is important to note that, although he has worked as a nurse in the past, Mr. Brahimi managed the appellant during the period at issue. He was not on the clients' premises with the workers provided by the appellant.

Other testimony

M.C. Douyon

[32] Ms. Douyon has been a nurse since 1989. She was hired by the appellant to work at CLSCs (Info-Santé). The work she obtained through the appellant was exclusively for Info-Santé.

[33] Mr. Brahimi contacted Ms. Douyon by telephone or e-mail to propose shifts to her. Ms. Douyon was not obliged to work the shift requested. However, if she agreed to do so and was later unable to, she had to inform the appellant as early as possible, giving minimum two hours notice in order to find a replacement.

[34] She did not remember whether the appellant prohibited her from working elsewhere.[13] She also did not remember whether the appellant made source deductions from her salary.

[35] When she came to the CLSC, there was an assistant on site to meet agency workers. She also helped them if they had questions. She also signed in when she arrived. Her name was already entered.

[36] In her work, Ms. Douyon answered calls regarding health questions. She had to fill out call sheets on the computer; a call sheet is similar to a patient's file. She had to fill in the reason for the call, state of health, complaints, recommendations given, etc. The telephone conversations were recorded. The assistant could not assign her other tasks than answering calls, except for home visits, which she could have the assistant assign to her.

[37] Ms. Douyon testified that there was no difference between her tasks and those of a CLSC employee.[14]

[38] The nurses had to adhere to protocols during their shifts. The protocols were created by doctors, scientists and nurses.[15] For example, a protocol might say that,

[13] July 8, 2013 transcript, page 204.
[14] July 8, 2013 transcript, page 175.
[15] July 8, 2013 transcript, pages 160 and 161.

after 72 hours of fever, a child should be taken to the doctor. The protocols provided for the majority of cases and indicated circumstances in which a patient should be sent to see a doctor and those in which it would be fine to wait.

[39] Ms. Douyon had to follow the established work schedule. She could leave earlier in case of an emergency with permission. If she was asked to remain at work after completing her shift, she was not obliged to do so, but she could do so voluntarily.

[40] The CLSC planned breaks and lunchtime in advance.

[41] No dress code was in effect.

[42] With respect to salary, the appellant proposed an amount to Ms. Douyon and she accepted it. She did not remember if the salary had been negotiated. There was one time when she asked the appellant to pay her in advance and was paid in advance.

[43] The work tools were provided by the CLSC. She used the CLSC's computer with an assigned password, telephone and headset.

Yves Beaudet

[44] Mr. Beaudet is a caregiver and a retired nurse. He worked as a nurse mainly at the CHSLD Saint-Charles-Borromée and sometimes at the Manoir de l'âge d'or or at the Manoir De La Lande. Most of the time, he worked at Saint-Charles-Borromée because he was a long-term replacement for almost a year.

[45] He described the appellant as a placement agency. When he worked for the appellant, he did not work for other agencies at the same time.

[46] The appellant contacted Mr. Beaudet to give him the time and location of work. The appellant did not instruct him on how he should do his work.

[47] Mr. Beaudet was free to accept or decline a proposed shift. He had no obligation to accept.

[48] When he arrived at the client's workplace, Mr. Beaudet met the head nurse for the evening team, who explained to him what the evening team had done. He

then followed the work plan to the extent possible. The work plan could be modified based on the information obtained from the head nurse;[16] it was more of a frame of reference. The work plan was provided by the establishment where he worked. It contained general directives on the procedures to follow during the shift. Mr. Beaudet described the work plan as a [TRANSLATION] "compass", which he tried to follow to the extent possible.

[49] There were also binders describing the techniques and the care to be given to patients. There was a binder with the patient's name, room number and detailed procedure to follow. When he accepted the work, he accepted to work within the place's frame of reference. Mr. Beaudet worked within the framework of the work plan and the Order's standards.

[50] When he arrived for his shift, Mr. Beaudet also met the coordinator for his shift. Mr. Beaudet referred to the coordinator if he had questions. Mr. Beaudet also described him as his "boss". The coordinator passed along any specific information. The coordinator could add things to the work plan when there were any particularities. The coordinator could ask Mr. Beaudet to respond to an emergency, and he would have to go and help out on another floor, for example. He was obliged by the Order to comply with the request.

[51] Mr. Beaudet had to fill out forms concerning the care given to patients and then give them to the coordinator.

[52] At Saint-Charles-Borromée, he was the only nurse on the floor. There were two attendants on the floor. The coordinator and the head nurse were also available.

[53] Mr. Beaudet was entitled to attend training given by the client. For example, he received training to learn what to do with a respirator during a power outage. He also received training from the Order that he had to pay for himself.

[54] There was no difference between the tasks of a nurse hired by an agency and a nurse employed by the CHSLD.

[55] Mr. Beaudet had to follow the work schedule established by the client. Meal and break times were also determined by management, but Mr. Beaudet could agree with the others to have lunch or a break at a different time depending on the

[16] Transcript of July 8, 2013, page 270.

patients' condition. However, they tried to follow the work plan as much as possible because this simplified their work.

[56] Based on the Order's standards, he could not leave if there was a shortage of staff. He could even have to stay after his shift according to the Order. In case of an emergency, if he wanted to leave before the end of his shift, he had to be authorized to do so by the coordinator because the floor could not be left without a nurse. The coordinator would try to find a replacement to allow Mr. Beaudet to leave.

[57] The appellant determined Mr. Beaudet's salary.

[58] He had liability insurance with his nursing licence. The appellant provided no benefits.

[59] The establishment provided blood pressure monitors, sphygmomanometers, forceps and dressings. He had his own uniform, except in special cases when the client provided the uniform (a special garment for isolation, scrubs in a particular case). He owned a blood pressure monitor and a stethoscope, which he had needed when he did his training. At work, he preferred to use his own stethoscope.

Hélène St-Onge

[60] Ms. St-Onge is a nurse who was hired by the appellant to work in different health institutions such as CHSLDs, CLSCs and hospitals.

[61] The appellant proposed shifts at various institutions. It also proposed an hourly rate. In order to get paid, Ms. St-Onge had to keep track of her hours and send them to the appellant.

[62] The appellant did not instruct her on how to do her work.

[63] She was free to accept or decline a proposed shift. She had to follow the work schedule provided, and the institution scheduled meal times and break times.

[64] At first, the appellant did not make source deductions but started to do so in 2007.

[65] Ms. St-Onge worked for CLSCs and CHSLDs.

[66] At a CLSC, she did three types of work. She sometimes provided [TRANSLATION] "routine care", sometimes, [TRANSLATION] "walk-in nursing" and sometimes Info-Santé, a telephone advice service.

[67] For Info-Santé, she took a course paid by the appellant about five months after she had begun working for the appellant. The training explained how to use the computer tool, follow protocols and keep statistics.

[68] Protocols are created to ensure that all Quebec nurses give the same advice. It is mandatory to follow the protocols. A person who did not follow them could not continue to work for Info-Santé.

[69] Calls were recorded.

[70] During a call, a variety of information had to be entered into the electronic file.

[71] On her arrival at the CLSC, she had to report to the head nurse, the "ASI", then confirm her presence and sign in. The ASI informed her of her meal times and break times. The ASI also told her what workstation to use.

[72] The ASI supervised her and Ms. St-Onge could ask the ASI if she had questions about the protocols. Typically, she consulted the ASI about three times per shift.

[73] She did the same work as the employees hired by the CLSC. This was the case for Info-Santé as well as for routine care.

[74] If she worked a routine care shift, she received a list of clients to see.

[75] For routine care, if she had to leave early, she had to have the ASI's permission.

[76] Equipment was supplied by the CLSC. At Info-Santé, the computer, software, telephone and the workstation were provided by the client.

[77] At Info-Santé, wearing scrubs was encouraged, but not mandatory, while for routine care, it was mandatory.

[78] In routine care, there was a file for each patient, and Ms. St-Onge had to follow the patient's care plan. The ASI supervised her. If she had questions, she asked the ASI.

[79] In routine care, she could be asked to stay if, for example, a nurse who was supposed to work the next shift did not show up.

[80] However, if she had to leave early, she had to get permission from the ASI.

[81] When she worked at a CHSLD, she signed in when she arrived, went to see the head nurse who gave her her list of patients and met the nurse who worked the previous shift to get the patient reports with their medical files and the treatment plan she had to follow. There were protocols to follow for treatments.

[82] The ASI supervised her. The ASI made the rounds during the shift or phoned.

[83] Ms. St-Onge had to enter a variety of information into the patients' files, including any nursing actions she had taken.

[84] If she had questions, she asked the ASI, who could assign her other tasks and other patients.

[85] She could leave early only with the permission of the head nurse. She could be obliged to remain after the end of her shift, if needed, to ensure that the patients were not without a nurse. That is a professional obligation.

[86] The appellant decided on her salary.

Michaël Bien-Aimé Cimbert

[87] The last witness was Ms. Cimbert, a nurse since 1981.

[88] She was hired by the appellant mainly to work at the CHSLD. In addition to the work she did where the appellant hired her, she was employed full time at a rehabilitation institution and part time at a CLSC.

[89] Like others who were hired by the appellant, she was free to accept or decline a proposed shift. She had negotiated her salary with the appellant based on the workplace and on whether it was a holiday or not.

[90] The appellant did not instruct her on how to do her work.

[91] Like the other nurses, she had insurance through the Order.

[92] At the CHSLD, she was not evaluated by anyone and was never sanctioned. However, if the CHSLD no longer wanted her to work for them because, hypothetically speaking, it was not satisfied, the CHSLD could simply tell the appellant that it did not want her to come back.

[93] Once, the appellant advanced her two days of pay.

[94] The equipment was mainly supplied by the establishment, but she used her own scrubs and shoes.

[95] The establishment could not force her to work after the end of her shift, but her professional ethics did not allow her to leave her patients without a nurse. Consequently, if, for example, her replacement did not show up, she had to stay until the establishment found a replacement.

[96] The appellant did not prevent her from accepting other contracts.

[97] On her arrival at the CHSLD, she signed in and could be told that she was working on a different floor than originally planned.

[98] She had to follow each patient's care plan and enter some information into the patient's file.

[99] As for the organization of work, that is, the tasks that were not part of the care plans, she described the situation differently from the other witnesses, except for Mr. Brahimi. According to Ms. Cimbert, she knew what tasks to do and she did them provided the care plans were followed. For example, during breaks and meal times, she was free to choose when to take her break if it did not bother the organization or anyone else.

Analysis[17]

[100] The contract of employment is defined in article 2085 of the *Civil Code of Québec* as follows:

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

[101] This article contains three components:

(a) a person who undertakes to do work
(b) for remuneration
(c) under the direction or control of another person.

[102] These three components exist in situations covered by paragraph 6(*g*) of the *Employment Insurance Regulations*. However, although there are only two parties in article 2085, the employer and the employee, under paragraph 6(*g*), the employer's role is divided between the placement agency, which hires and pays the person, and the client, who exercises the direction and control of the worker.[18]

[103] As I stated at the beginning, it is not disputed that the appellant hires and remunerates the workers. The issue is whether the workers provide their services "under the direction or control" of the client.[19]

[104] It is well established that the concept of control includes not only strict or classical subordination, but also legal subordination in the broad sense. In *Le droit du travail du Québec*, sixth edition, Robert Gagnon wrote the following:

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[17] After the evidence was closed and at the start of final arguments, the appellant informed the Court that it would no longer dispute the decision with respect to the work done for Info-Santé and that it did not dispute the cases of Ms. St-Onge and Ms. Douyon. I will, nonetheless, examine all of the situations.

[18] See paragraphs 20 to 22 of Justice Lamarre (as she then was) in *9105-6432 Québec inc. v. M.N.R.*, 2005 TCC 215.

[19] Mr. Brahimi considers the workers to be self-employed. Ms. Cimbert considered herself a worker when she was hired by the appellant.

However, even if there was a common intention between the appellant and all the workers that they were self-employed, this would change nothing for two reasons.

First, although intention plays an important role when it must be determined whether it is a contract of employment or a contract of enterprise, the intention to have a contract of enterprise is not determinative if objective reality is that it is a contract of employment. See *1392644 Ontario Inc. (Connor Homes) v. Canada*, 2013 FCA 85. Here, given the indicia of supervision present, objective reality is that there is legal subordination. See the rest of the judgment.

Second, the question here is not whether there is a contract of employment, but whether the factors required by paragraph 6(*g*) of the *Employment Insurance Regulations* are present. The only controversial issue here is whether there is "direction" and "control" by the client.

> [TRANSLATION]
>
> 92 - Concept - Historically, the civil law initially developed a "strict" or "classical" concept of legal subordination that was used for the purpose of applying the principle that a master is civilly liable for damage caused by his servant in the performance of his duties (article 1054 C.C.L.C. and article 1463 C.C.Q.). This classical legal subordination was characterized by the employer's direct control over the employee's performance of the work, in relation to the nature of the work and the way it was performed. This concept was gradually relaxed, giving rise to the concept of legal subordination in the broad sense. The reason for this is that the diversification and specialization of occupations and work methods often made it unrealistic for an employer to be able to dictate or even directly supervise the performance of the work. Consequently, subordination came to include the ability of the person who became recognized as the employer to determine the work to be performed, and to control and set the conditions of the performance. Viewed from the reverse perspective, an employee is a person who agrees to integrate into the operational structure of a business so that the business can benefit from the employee's work. In practice, one looks for a certain number of indicia of the ability to control (and these indicia can vary depending on the context): mandatory presence at a workplace; a somewhat regular assignment of work; the imposition of rules of conduct or behaviour; an obligation to provide activity reports; control over the quantity or quality of the services, ownership of the tools, chance of profit and risk of loss, etc. The fact that a person works at home does not mean that he or she cannot be integrated into a business in this way.[20]

[105] What are the facts in this case? I will begin by noting that, with respect to what happens at the health establishments, I prefer the testimony of the four witnesses to that of Mr. Brahimi. They were on site; Mr. Brahimi was not. When I speak of what took place at the health establishments, I am referring solely to the testimony of the four witnesses, not that of Mr. Brahimi.

[106] It is clear that these four individuals were free to either accept or decline a proposed shift. Once they had agreed to work, they had to honour their commitment. For example, they could leave earlier than planned only with the establishment's permission.

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[20] In *Grimard v. Canada*, 2009 FCA 47, at paragraph 36, the Federal Court of Appeal adopted the equivalent excerpt from the fifth edition of the book.

These indicia of supervision are, in practice, very similar to the tests used in the common law provinces. See, *inter alia*, *Wiebe Door Services Ltd. v. M.N.R.*, [1986] 3 F.C. 553 (FCA).

[107] The fact that they were free to accept or decline a shift does not help us determine whether they were under the control of the client, that is, the establishment in question.[21]

[108] There are several indicia of supervision present.

[109] The four witnesses had to all sign in when they arrived at the establishment. If they had to leave early because of an emergency, they had to get the establishment's permission.

[110] It is true, as stated by the appellant, that the workers could not be obliged to stay later than planned by the establishment except in circumstances where their code of ethics obliged them to stay to ensure that the patients had a nurse. This is no different than a day employee hired for a set day.

[111] It was mandatory for the workers to follow the patients' care plans, and the establishment could assign them different tasks than those planned beforehand. They also had to follow protocols for the care ordered.

[112] In general, they had to take their breaks and their meals at indicated times and they had to do the assigned tasks. Regarding this, I will comment on the testimony of Mr. Beaudet and Ms. Cimbert. Mr. Beaudet testified that the work plan was like a [TRANSLATION] "compass" that he tried to follow to the extent possible because this simplified his work. Ms. Cimbert said that she did the work by herself and that she could decide when to take her breaks provided it did not bother the organization or anyone else. The two workers mandatorily followed the care plans.

[113] Both Mr. Beaudet and Ms. Cimbert performed the assigned tasks. Neither one suggested that they did not perform the assigned tasks. However, there was flexibility with regard to the order in which some tasks could be performed and in the break and meal times, if this did not contravene care plans. That flexibility is doubtless needed to take into account any unforeseen events that could take place. In addition, with well-trained employees, it is common practice nowadays for employers to give employees some flexibility provided that the necessary tasks are accomplished.

[21] Moreover, an employee may be hired for the day although this was much more common in the past.

[114] Given that Ms. Cimbert had more than 30 years of experience, it should have been rare for her not to know the tasks she had to perform.

[115] Given the need to interact, it is doubtless simpler to try to follow the [TRANSLATION] "compass" as Mr. Beaudet stated. Otherwise, an effort must be made to coordinate with the other workers as Ms. Cimbert did when she said that she could choose the time of her meals provided that she did what she had to do and that it did not bother other people or the organization.

[116] At Info-Santé, there was a great deal of supervision.

[117] The work was done at the client's establishment, and equipment was, for the most part, provided by the client. The only things the workers provided were relatively inexpensive, namely, uniforms, shoes, and, for some, a stethoscope.[22]

[118] Those are strong indicia of supervision, and, overall, given the evidence, I do not see how I could find that the Minister was wrong in concluding that the workers were under the control and supervision of the clients.[23]

[119] For these reasons, the appeal is dismissed.[24]

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[22] I also note that these four individuals had no chance of profit or risk of loss.

[23] The appellant raised the fact that only a small number of workers testified. That is true, but the initial onus is on the appellant.

[24] I note that Justice Lamarre (as she then was) used a similar approach in considering what sort of supervision there was in *Agence Océanica inc. v. M.N.R.*, 2006 TCC 14, a decision that dealt with some employees for a period before the period in this case. Given the facts before her, Justice Lamarre found that there was subordination.

I also note the decisions of the Court of Québec and the Court of Appeal of Québec in *Agence Océanica inc. c. Agence du revenu du Québec*, 2012 QCCQ 5370 and 2014 QCCA 1385, where there is a different legal framework because there is nothing like paragraph 6(*g*) of the *Employment Insurance Regulations* in this case. In the appeals before the Quebec courts, the years at issue were 2007 and 2008; we do not know whether they dealt with the same workers; and they dealt with different legislation than in this case, namely, the *Taxation Act*, the *Act Respecting the Québec Pension Plan*, the *Act Respecting Parental Insurance*, the *Act Respecting the Régie de l'Assurance Maladie du Québec* and the *Act Respecting Labour Standards*.

Accordingly, the legal approach of the Court of Québec and the Court of Appeal of Québec decisions cannot apply directly to the context in this case where paragraph 6(*g*) of the *Employment Insurance Regulations* helps us avoid much of the debate that took place under the Quebec legislation. However, the Court of Québec and the Court of Appeal of Québec have both considered, among other things, the elements of legal subordination to arrive at their decisions.

Given the facts before it, the Court of Québec found that there was subordination. The Court of Appeal of Québec affirmed the decision and examined subordination, *inter alia*, at paragraphs 31 to 38 of its decision; the principles expressed in these paragraphs are valid for the facts before me.

Signed at Ottawa, Ontario, this 29th day of June 2015.

"Gaston Jorré"

Jorré J.

Translation certified true
On this 7th day of October 2015

Margarita Gorbounova, Translator

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