

Docket: 2000-2354(EI)

BETWEEN:

VARINDER KAUR KANG,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

Appeal heard during the course of 71 days between November 3, 2003 and
June 8, 2004 at Vancouver, British Columbia.

Before: The Honourable D.W. Rowe, Deputy Judge

Appearances:

Agent for the Appellant: Darshen Narang

Counsel for the Respondent: Johanna Russell
Selena Sit

JUDGMENT

The appeal is dismissed and the decision of the Minister is confirmed in
accordance with the attached Reasons for Judgment.

Signed at Sidney, British Columbia, this 12th day of January 2005.

"D.W. Rowe"

Rowe, D.J.

Citation: 2005TCC24

Date: 20050112

DOCKETS: 2000-2354(EI); 2000-2357(EI); 2000-2356(EI); 2000-2359(EI);
2000-2319(EI); 2000-2366(EI); 2000-2370(EI); 2000-2322(EI); 2000-2321(EI);
2000-2367(EI); 2000-2368(EI); 2000-2362(EI); 2000-2363(EI); 2000-2360(EI);
2000-2365(EI); 2000-2329(EI); 2000-2335(EI); 2000-2323(EI); 2000-2342(EI);
2000-2334(EI);

and

DOCKETS: 2000-2324(EI); 2000-2325(EI); 2000-2328(EI); 2000-2144(EI);
2000-2653(EI); 2000-2332(EI).

BETWEEN:

VARINDER KANG, VARINDER JASSAL, HARBANS KANG,
JASWINDER BASSI , TARO BASSI, BAKHSHISH THANDI,
GIAN S. THANDI, JASWINDER CHEEMA, GURMAIL CHEEMA,
AJMER K. GILL, RAVJIT GILL, INDERJIT S. ATWAL,
SHARINDER BAGRI, HARBANS K. PUREWAL, PARMJIT REHAL,
GURCHARAN JOHAL, PRABHJOT MINHAS, GURBACHAN GILL,
SUKHWINDER K. TOOT, DIDAR MEHAT,

Appellants,

and

BHAGWANT GREWAL, AMARJIT GREWAL,
SUKHWINDER HUNDAL, SHARDA JOSHI, GURMAIL SINGH GILL,
JATINDER LIDHRAN,

Appellants,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

REASONS FOR JUDGMENT

Rowe, D.J.

[1] Each appellant appealed from a decision issued by the Minister of National Revenue (the “Minister”) on February 23, 2000. Each decision was specific to the individual named therein and dealt with a particular period within 1996, with the exception of one appeal which involved a few days of alleged employment in January, 1997.

[2] Johanna Russell and Selena Sit appeared as counsel for the respondent. Darshen Narang, assisted by Rajwinder Narang, acted as agent for the 20 appellants listed in the first grouping in the above style of cause. The appellants listed in the second grouping were either represented by another agent or appeared in person.

[3] On February 21, 2003, the Honourable Judge Little of this Court issued an Order – in response to a Notice of Motion by counsel for the Respondent – that the appeals named in said Notice of Motion be heard together on common evidence pursuant to section 10 of the *Tax Court of Canada Rules of Procedure* regarding appeals files under the *Employment Insurance Act* (the “Act”). The appeals were set down for hearing at Vancouver, British Columbia, commencing November 3, 2003. The style of cause in the Order of Judge Little commenced with the appellant Taro Bassi, followed by Gurmail Cheema and Jaswinder Cheema and other appellants who were represented by Darshen Narang, agent. The appellants who were represented by other agents, or appeared in person, were also subject to the Order of Judge Little concerning the common evidence procedure and agreed that the appeals of the workers represented by Darshen Narang would proceed first.

[4] I decided to discontinue the style of cause utilized earlier in these proceedings and – instead – have listed appellants in the order of their appearance before me. During the period between the Order of Judge Little and the commencement of the hearing, four appellants died, all of whom had been represented by Darshen Narang. Narang advised the Court he had received instructions from the lawful representatives of the estate of each deceased appellant to discontinue the particular appeal. During the course of the hearing – occupying a total of 71 days - the appeals of some appellants were dismissed for want of prosecution and/or withdrawn with the result the parties named in the within style of cause are those who had live issues before the Court at the close of each party’s case.

[5] Most of the appellants testified in the Punjabi language and the questions and answers and other aspects of the proceedings were interpreted by Russell Gill, a certified court interpreter fluent in English and Punjabi. In addition to interpreting oral testimony, Gill – on many occasions – had to translate – contemporaneously - written documents and transform the printed word into speech. Some of the documents - contained in the numerous binders filed as exhibits – contain hundreds of pages and there were numerous interviews attended by the appellants during which answers were provided to specific questions. The interpretation of the spoken word and translation of the written material by Gill – sometimes under difficult circumstances in the course of a lengthy proceeding - was performed in an efficient manner and to such a high standard that I am satisfied there was a full opportunity afforded to all Punjabi-speaking appellants to present fully the relevant facts pertaining to their case and to comprehend the nature and extent of the proceedings. In addition, Darshen Narang, agent for the first group of appellants, is fluent in spoken Punjabi and English. Other agents or those appellants who chose to present their own appeals were also capable of proceeding in English. On occasion, Punjabi-speaking appellants testified in English but Russell Gill was present in Court in order to assist from time to time in interpreting certain words or phrases.

[6] Throughout the hundreds of documents forming part of the material entered as exhibits in these proceedings, including reports of interviews, transcripts, Records of Employment (ROEs), T4 slips, pay statements, etc., the names of some individuals have been spelled in different ways. Punjabi is a syllable-based language and the conversion to the English alphabet will sometimes produce a somewhat different spelling of the same name, particularly if the person recording the name has done so phonetically.

[7] The employer/payer in all cases was SR Contractors Ltd. In the course of testimony and in some documentation, this company is referred to as S & R, SR Inc. and/or SR Contractors. However, during the testimony of most of the workers, the employer was described as Bant or Shindo and, less often, as Rana. Bant is Bant Suran, Surinder (Shindo) Suran is his wife. Manjit Rana is the sister of Surinder Suran and the brother-in-law of Bant Suran. In these reasons, all parties agree there is only one employer regardless of the names used by various appellants in their testimony. As a result, when I refer to SRC, it is intended to identify the corporate employer in the within appeals unless the context requires otherwise. In many instances, appellants were not able to identify the work places – usually farms – where they alleged services were performed for the benefit of SRC, a labour contractor. As a result, there are references to work locations such as Khakh Farms,

Mike's Farm, the Chinese Farm, Purewal Farms, and so on. The ROE, a document issued by an employer following layoff, is required prior to applying for unemployment benefits pursuant to the *Act*. Many witnesses referred to a "weeks paper" and whenever that term was used in testimony, it was accepted that it pertained to an ROE.

[8] The names of the relevant ministries, agencies and departments changed over the course of time. For example, certain functions performed at Canada Employment Centre - within Employment and Immigration Canada – were undertaken by Human Resources Development Canada (HRDC) and the role played by Revenue Canada in issuing determinations under the *Act* was subsequently performed by Canada Customs and Revenue Agency (CCRA). On June 30, 1996, the *Employment Insurance Act* replaced the *Unemployment Insurance Act* with certain provisions coming into force January 1, 1997, January 5, 1997 and January 1, 1998. Some transitional provisions are relevant to one or two of the within appeals and will be referred to later. For the purposes of this judgment, the term "Unemployment Insurance", commonly referred to as "UI", is interchangeable with "Employment Insurance" or "EI" in relation to benefits. The most significant features of the legislative reform accomplished by the coming into force of the new *Act* include the following:

- entitlement to benefits based on hours worked instead of weeks worked, with no minimum hourly requirement per week;
- a benefit rate that takes into account the number of weeks of benefits received in the past by a claimant;
- a reduction in the maximum insurable earnings;
- a reduction in the total period during which benefits could be received;
- higher penalties for false statements.

[9] The effect of the new regime – based on hours – placed a worker in the position of having to accumulate sufficient time within a relatively short period in order to qualify for benefits following the end of the farming season. In the within appeals, although the benefits were still calculated in terms of weeks for those workers who had begun their employment prior to July 1, 1996 – pursuant to the transitional provisions – a great deal of time and energy was expended in relation to attempts by several appellants to demonstrate not only that they had worked the hours – as alleged – but also that they had been remunerated for those hours. The latter is extremely important because the calculation of "insurable earnings" under the *Regulations* pursuant to the *Act* – for the most part – is based on the amount actually paid by the employer to the worker for the performance of services.

[10] The within appeals fell within three categories. First, there were those cases where the Minister decided a particular worker had worked a certain number of insurable weeks within a specified period and had been compensated for said work, which resulted in a finding that a specific amount constituted insurable earnings. The position of the appellants in this group was – basically – that they had either worked more hours than recognized by the Minister or had been paid additional amounts in wages in the form of cash or otherwise that the Minister had refused to take into account when establishing the amount of insurable earnings. Second, there were several cases where the Minister had accepted that the named worker had provided services to SRC - within the particular period – but had not been satisfied the worker had been paid by that employer. As a result, the Minister’s decision concluded that the said worker’s insurable earnings were nil. Third, there were some appeals in which the issue concerned whether an appellant had performed services within a certain period, as alleged, or at all. In those instances, the Minister issued a decision stating there had been no insurable employment - by the named party - with SRC. Overall, the Minister’s position was that the circumstances under which SRC carried on business during 1996 – as revealed by the documentation, including interviews with appellants and others – clearly disclosed that SRC was perpetrating a sham and had fabricated records to give the appearance that certain persons had worked for the company and had been paid a particular amount for their efforts when the worker had either never worked the period - as alleged - or at all, and had not been paid the amount – as alleged – or at all.

[11] All decisions issued by the Minister were pursuant to section 93 of the *Act*, based on paragraph 5(1)(a) of said *Act*. The equivalent provision in the *Unemployment Insurance Act* - paragraph 3(1)(a) - in effect until July 1, 1996, used the same definition of employment. Paragraph 5(1)(a) of the *Act*, reads:

(a) employment in Canada by one or more employers, under any express or implied contract of service or apprenticeship, written or oral, whether the earnings of the employed person are received from the employer or some other person and whether the earnings are calculated by time or by the piece, or partly by time and partly by the piece, or otherwise;

[12] Pursuant to subsection 90(1) of the *Act*, Canada Employment Insurance Commission (Commission) had requested a series of ruling with respect to persons claiming to have been employees of SRC during 1996, and an officer of the Canada Customs and Revenue Agency (CCRA) was authorized by the Minister to issue rulings in relation to certain questions. Once those rulings were issued, each person

concerned with the effect of a ruling – including the Commission – had the right to appeal - to the Minister – within 90 days, pursuant to section 91 of the *Act*. In accordance with section 93 of the *Act*, the Minister decided each appeal and issued a decision relevant to each worker. Those workers who appealed a decision of the Minister to the Tax Court of Canada - and maintained that course of action - are those persons named in the within style of cause.

[13] Counsel for the respondent advised the Court the Minister was not seeking any finding in respect of any appellant that would have the effect of worsening that person's position regarding either the period of employment or the amount of insurable earnings as stated in the decision issued by the Minister.

[14] In the course of issuing rulings, the Rulings Officer – Janet Mah – sent questionnaires to each appellant. During the appeals process, another questionnaire was utilized by the Appeals Officer – Bernie Keays – as part of his decision-making process. In the course of the investigation conducted by HRDC, most of the appellants were interviewed, some more than once. Throughout the hearing of the within appeals, there were numerous references to those questionnaires and to interviewers' notes and other documents relevant to the interviews. During the hearing, questionnaires were commonly identified as either a Rulings Questionnaire or – in the case of a subsequent questionnaire - an Appeals Questionnaire. Unless there is a need to do so, I will not identify whether the particular questionnaire pertaining to a specific appeal was generated during the rulings stage or the appeals process and will refer to the relevant document by tab number within a specific exhibit.

[15] Although the periods of employment and other facts differ from appellant to appellant, the following assumptions of fact, extracted from the Reply to the Notice of Appeal (Reply) of Varinder Kang (2000-2354(EI)) apply to each appellant in the within proceedings and are as follows:

- a) the Payer was a corporate entity, incorporated on February 26, 1996 and 100% of the issued shares were held by Manjit Rana;
- b) the Payer was in the business of providing farm labourers to farms located in the Lower Mainland and in addition, sold Records of Employment ("ROE");
- c) the Payer, in addition to providing farm labour, operated a blueberry business;

- d) the Payer maintained one bank account only and this account was at the Toronto Dominion Bank at 49th and Fraser Street, Vancouver (the "Bank Account") and all transactions went through this Bank Account;
- e) the Payer never made any withdrawals of cash from the Bank Account;
- f) the T4 summary completed by the Payer indicated gross wages of \$795,358.00 for 108 employees for the 1996 taxation year;
- g) the total deposits to the Payer's bank account were \$414,466.95 for the period April, 1996 to December 31, 1996;
- h) the total payroll deductions at source per the Payer's T4 summary including the Payer's share of employment insurance and Canada Pension Plan contributions were \$160,642.51;
- i) the Payer remitted to the Receiver General for Canada \$3,724.74 on August 15, 1996 and no other payments on account of deductions at source were remitted;

[16] Notwithstanding that proceedings were based on common evidence and that the majority of exhibits filed – as set out in detail later – applied to most appellants, it is important to state that each appeal depends on its own particular facts and will receive an independent analysis of the evidence relevant to that matter. The evidence often concerned details such as start and end dates of employment, method of transportation to and from work, amounts and timing of payment(s), nature of work alleged to have been performed and the location thereof. Because there was often no paper trail to support certain vital aspects of an appellant's case, it became apparent credibility would be a major issue in nearly every instance. Therefore, there was a great deal of testimony concerning matters one might otherwise tend to relegate to the category of trivia or minutiae, but were significant in the context of these cases. By way of example, the testimony of several appellants - through the interpreter - including examination-in-chief, cross-examination and re-examination, occupied two or three days. Although the benefits were still calculated in weeks for those appellants who commenced employment prior to July 1, 1996, the issue of hours of work was an overriding component of these appeals because the majority of appellants maintained they had been hired to pick berries - or to perform other services – on the basis of receiving an hourly wage. The Minister's position - with respect to those appellants alleging they were paid an hourly rate for berry picking –

is that the actual remuneration paid by SRC to workers - during 1996 - was based on piecework at a certain amount per pound or per flat of berries – in accordance with industry practice - and that no workers were compensated for picking berries by way of an hourly wage, at the minimum established by provincial law, or otherwise. One must examine the testimony of each appellant - and of other witnesses - in relation to relevant documents, previous statements – whether under oath at Examination for Discovery (Discovery) or during an HRDC interview – and attempt to make sense of the business operations carried out by SRC during the relevant periods. When I deal with the evidence as it pertains to each appellant, there will be apparent redundancy but the nature of each worker’s case is such that it must be dealt with on an individual basis with close regard to the facts applicable to his or her appeal. The onus is on each appellant to prove his or her case on a balance of probabilities and that requirement was repeated several times during the course of the proceedings in an effort to ensure each appellant was aware of the importance in presenting to the Court all relevant facts and to disclose – fully - the circumstances of their employment including details of the work performed such as hours, location, method of payment and identity of co-workers. In the course of proceedings, the impact of the assumptions of fact relied upon by the Minister, as set forth in the Reply applicable to each appellant, was explained to those appellants represented by agents other than Darshen Narang or those appearing on their own behalf.

[17] Counsel for the respondent and Darshen Narang - agent for the first group of appellants – consented to the introduction of a large number of exhibits, the majority of which were in binders containing numerous documents. In the course of completing the process of Discovery, each appellant had been provided with a binder of documents pertaining specifically to his or her own appeal. The appellants represented by other agents and/or those self-represented – at some point – either had advised counsel for the respondent they agreed said exhibits could be filed with the Court or - at the outset of proceedings or upon making an appearance for the purpose of providing testimony – consented to filing of the following exhibits, described as:

- R-1 – Respondent’s Book of Documents – Vol. 1, tabs 1-35, inclusive;
- R-2 – Respondent’s Book of Documents – Vol. 2, tabs 36-62, inclusive;
- R-3 – Respondent’s Book of Documents – Vol. 3, tabs 63-79, inclusive;
- R-4 – Respondent’s Supplementary Book of Documents – Vol. 1, tabs 1-135, inclusive;
- R-5 – Respondent’s Supplementary Book of Documents – Vol. 2, tabs 136-275, inclusive;
- R-6 – Respondent’s Supplementary Book of Documents – Vol. 3, tabs 276-389, inclusive;

- R-7 – Respondent’s Supplementary Book of Documents – Vol. 4, tabs 390-444, inclusive.
- R- 8 – Respondent’s Miscellaneous Book of Documents – tabs 1-31, inclusive;
- R-9 – Respondent’s Book of Documents re: Inderjit Singh Atwal (Docket # 2000-2362), tabs 80-106, inclusive;
- R-10 – Respondent’s Book of Documents re: Sharinder Bagri (#2000-2363), tabs 80-106, inclusive;
- R- 11 – Respondent’s Book of Documents re: Jaswinder Bassi (#2000-2359), tabs 80-118, inclusive;
- R-12 – Respondent’s Book of Documents re: Taro Bassi (#2000-2319), tabs 80-106, inclusive;
- R-13 – Respondent’s Book of Documents re: Gurmail Cheema (#2000-2321), tabs 80–108, inclusive;
- R-14 – Respondent’s Book of Documents re: Jaswinder Cheema (#2000-2322), tabs 80-110, inclusive;
- R-15 – Respondent’s Book of Documents re: Ajmer Gill (#2000-2367), tabs 80-108, inclusive;
- R-16 – Respondent’s Book of Documents re: Gurbachan Gill (#2000-2323), tabs 80-111, inclusive;
- R-17 – Respondent’s Book of Documents re: Gurmail Singh Gill (#2000-2653), tabs 80-107, inclusive;
- R-18 – Respondent’s Book of Documents re: Ravjit Gill (#2000-2368), tabs 80-112, inclusive;
- R- 19 – Respondent’s Book of Documents re: Varinder Jassal (#2000-2357), tabs 80-108, inclusive;
- R-20 – Respondent’s Book of Documents re: Gurcharan Johal (#2000-2329), tabs 80-111, inclusive;
- R-21 – Respondent’s Book of Documents re: Karmjit Johal (#2000-2331), tabs 80-112, inclusive;
- R-22 – Respondent’s Book of Documents re: Harbans Kang (#2000-2356), tabs 80-112, inclusive;
- R-23 – Respondent’s Book of Documents re: Varinder Kang (#2000-234), tabs 80-108, inclusive;
- R-25 – Respondent’s Book of Documents re: Didar Mehat (#2000-2334), tabs 80-113, inclusive;
- R-26 – Respondent’s Book of Documents re: Prabhjot Minhas (# 2000-2335), tabs 80-106, inclusive;
- R-27 – Respondent’s Book of Documents re: Harbans Purewal (#2000-2360), tabs 80-117, inclusive;

R-28 – Respondent’s Book of Documents re: Parmjit Rehal (#2000-2365), tabs 80-115, inclusive;

R-29 – Respondent’s Book of Documents re: Bakhshish Thandi (#2000-2366), tabs 80-114, inclusive;

R-30 – Respondent’s Book of Documents re: Gian Thandi (#2000-2370), tabs 80-116, inclusive;

R-31 – Respondent’s Book of Documents re: Sukhwinder Toot (#2000-2342), tabs 80-116, inclusive;

R-34 – Respondent’s Book of Documents re: Bhagwant Grewal (#2000-2324), tabs 80-109, inclusive;

[18] As the relevant testimony of each appellant is reproduced in detail in these reasons, I will identify a particular binder - labelled Respondent’s Book of Documents and marked with a specific Exhibit number - applicable to that appellant and, thereafter, unless otherwise noted, a tab number will refer to documents located within that binder.

VARINDER KAUR KANG

[19] Varinder Kaur Kang testified in Punjabi and the questions and answers and other aspects of the proceedings were translated from English to Punjabi and Punjabi to English by Russell Gill, interpreter. The respondent’s Book of Documents relevant to the appellant’s appeal – 2000-2354(EI) - is Exhibit R-23. She appealed from the decision of the Minister concerning the insurability of her employment with SRC during the period from October 6 to December 28, 1996. The Minister decided the appellant was not employed in insurable employment because she was not employed under a contract of service pursuant to paragraph 5(1)(a) of the *Act*. The appellant’s position is that she was employed under a contract of service during said period and had insurable earnings in the sum of \$4,410. The Minister relied on the following assumptions of fact set forth in paragraphs 4 (j) to (n), inclusive, of the Reply to the appellant’s Notice of Appeal:

- j) the Appellant delivered her second child on August 30, 1996;
- k) the Appellant required 12 weeks of insurable employment to qualify for employment insurance benefits during the 1996 taxation year;
- l) the Appellant gave conflicting statements to authorities with respect to the method of pay and the timing of same, the duties of employment, the days and hours of work, the location of the farms,

the identity of fellow workers, the childcare arrangements and the transportation method;

- m) the records provided, for example, the ROE, the T4 slip, the employee earnings record, the cash receipt, in regards to the Appellant, were fabricated to give the appearance that the Appellant worked for and was paid by the Payer and these records were a sham;
- n) the Appellant did not perform any duties for the Payer during the Period.

[20] The appellant stated she began working for SRC on October 6, 1996 and continued to provide services to that employer until her layoff on December 28, 1996. She acknowledged having received an ROE following layoff, a copy of which appears at tab 93 and identified her Social Insurance Number (SIN) thereon, amended by someone in reference to the last three digits, as correct. The appellant recalled having attended an interview in which numerous questions were put to her by an official – Janice Morrow - employed by HRDC. At tab 96, the appellant identified her signature which appears on the last page of a 13-page document entitled Supplementary Record of Claim which recorded – in the handwriting of Morrow – the contents of the interview conducted on May 26, 1997. Kang stated she arrived in Canada on October 8, 1993 and is not proficient in the English language. Throughout the interview, she was assisted by a Punjabi/English interpreter. If a question was asked that she did not understand, then she would call upon the interpreter to explain it to her in Punjabi and her answer - in Punjabi – would be interpreted – in English – to the interviewer. At tab 98, Kang identified her signature on a document entitled Statutory Declaration to the Commission, dated September 10, 1997, although she does not recognize the handwriting thereon. At tab 107, Kang identified a document headed "Questionnaire To Be Completed By Worker" that she had completed in her own handwriting but stated the answers provided therein had been dictated to her by an employee of an organization called Progressive Intercultural Community Services Society (PICS) (see Exhibit R-8, tab 1, p. 2) that assists immigrants with respect to various matters. Kang stated she was issued a T4 for 1996 and filed an income tax return for that year.

[21] In cross-examination by Johanna Russell, counsel for the respondent, Varinder Kaur Kang stated she is 29 and following her arrival in Canada lived in Montréal until moving to Surrey, British Columbia in August, 1994. In February, 1992, she had married Baldev Singh Kang. Her maiden name was Mahli and her mother is Balvir Kaur Malhi, a co-appellant in the within appeals. The appellant's parents, a

brother and two sisters, one of whom – Ranjit Kaur Malhi – also worked for SRC in 1996, came to Canada in May, 1996. Her mother-in-law - Harbans Kaur Kang is a co-appellant and her father-in-law - Harbhajan Singh Kang - was one of the van drivers transporting SRC workers during 1996. The appellant stated she has three children, born in February, 1995, on August 30, 1996 and in September, 2000. Kang stated she completed Grade 11 in India and in the course of her schooling had studied English – as a subject – for 4 or 5 years. In Montréal, she attended English as Second Language (ESL) classes for two months. After moving to Surrey in August, 1994, she went to ESL instruction for another two or three months. At tab 91, Kang identified her signature at the bottom of a form entitled "Insurable Employment Questionnaire". She stated she understood that the form - dated 06/01/97 (January 6, 1997) – related to her unemployment insurance (UI) benefits. Kang agreed with counsel's suggestion that she had also completed the relevant application forms for her mother and sister but added that even though her handwriting appears on those documents, she had received assistance from other persons – at different times - in completing them. Kang recognized – at tab 86 – a document described as a Questionnaire which had been completed in her own hand with answers provided with the assistance of her husband. In order to complete the worker's Questionnaire – tab 107, dated October 18, 1999 – Kang stated she had relied on assistance provided by a male official or volunteer at PICS, although she did not know his name and had not attempted to ascertain this information prior to completing the Questionnaire. The appellant stated she had learned about PICS through a Punjabi-language radio broadcast. Counsel referred the appellant to an answer provided at Discovery – November 29, 2001 – in which she had been referred to the said Questionnaire and agreed she had not mentioned having received any assistance from anyone at PICS. During 1996, the appellant's husband - Baldev Singh Kang – was employed as a taxi driver, working an 8 hour or 9-hour shift - 5 days per week – starting at 6:00 p.m. The appellant's mother also lived in Surrey, about 5 minutes – walking - from the appellant's residence and her brother and sister were both attending high school in 1996. Kang obtained her British Columbia Driver's Licence in 1996, prior to her employment with SRC and had worked for two months at a plant nursery and also at a chocolate factory for 4 months where she had been laid off upon her employer learning of her pregnancy. Prior to her lay off, she had been provided with information concerning EI maternity benefits. When applying for said benefits, the appellant stated she had considered she might be short one week of work within the period needed to qualify. In 1996, Kang stated she had a joint account with her husband at a branch of Canada Trust in Surrey. Turning to the circumstances of the appellant's hiring by SRC, Kang advised counsel that a friend of her mother was working at SRC and mentioned to management that the appellant was looking for work. Later, during a telephone conversation, Kang spoke with Surinder (Shindo)

Suran and Bant Suran whom she considered to be the owners of the SRC business. Kang stated Bant drove a van that transported workers to various job sites and that Shindo was not only a driver but also supervised workers. The appellant stated she had never met Manjit Rana although co-workers had informed her that Rana was Shindo's brother. Kang stated she recalled the interview – tab 95 – held at the HRDC office and agrees that – at Q. 1 - concerning what languages she could speak, read or write, she provided the Answer (A) as follows: English, Punjabi, Hindi. At Q. 2, inquiring as to the completion of the Application for Unemployment Insurance Benefits, Kang responded it had been “completed on her own”. Following the birth of her first child in February, 1995, the appellant admitted she had suffered back pain which had limited her work at the nursery to less than two months due to the need to lift heavy pots onto carts and that she had her gall bladder removed on December 3, 1996. As a result of that surgery – which had been scheduled for some time – she could not work for three days and the appellant agreed she may have missed some working days between October 6 and December 28, due to medical appointments, although she cannot recall the frequency or timing of these visits, if any. Kang's second child was born at the end of August, 1996, and due to some complications, the appellant had to rest for three weeks and was unable to breast-feed. During this period, child care was undertaken by her husband and a lady – Harbans – who lived upstairs. After school, her brother and sister came to the house and assisted in caring for the older child and the baby. Kang stated her mother – Balvir Kaur Malhi – took some time off work in order to care for the newborn. Counsel referred Kang to an answer she had provided during an HRDC interview – tab 96, p. 12 - headed “Child Care questions” in which Kang stated her mother had helped care for the baby one week in September. Kang responded that her mother had also helped during evenings – after work – by taking the baby to her own residence. The appellant stated that she rode to work in a brown van on her first day. The driver was Bhan Singh Sidhu who had been a teacher in India and – as a mark of respect – was referred to by the workers/passengers as “Master”. Fellow workers were addressed as “Uncle”, “Auntie”, or “Sister”. Kang stated she rode to work in the van together with her mother - Balvir Kaur Mahli – and her sister, Ranjit Kaur Mahli but had never travelled to work in the company of her mother-in-law Harbans Kaur Kang nor had she been transported to work in a van driven by her father-in-law, Harbhajan Singh Kang. She pointed out that the only drivers who had ever taken her to and from work were Bant, Shindo and/or Master. Kang stated both parents had worked for SRC at some point earlier in the 1996 season but was unsure of the exact periods of employment. Her father drove one of the vans owned by SRC and parked it overnight at a nearby gas station, perhaps a 15-minute walk from his residence. In October, 1996, her husband's parents went to India and took her eldest child (18 months) with them where they remained for 6 or 7 months. During the HRDC

interview – tab 96, p. 3, Q. 10 – the appellant was asked about details of travel to work whether by bus or van, description of the vehicle, identity of driver(s), consistency of vehicle use and other identifying details. The answer of the appellant – as recorded by the interviewer – is that she was “picked up always from home used to call him Master because he was a teacher in India drove the van the whole time”. Counsel referred the appellant to a similar question (#8) in the Questionnaire - tab 107 - about the identity of the van/bus driver to which she had responded by writing “Different Drivers”. At Q. 9 of said Questionnaire, in response to the query “Did you always have the same van/bus driver?” the appellant had written “No”. The appellant explained that Master had always driven the same brown van but that she had also been driven to work in a cream-coloured van. Also, Bant Suran and his wife, Shindo, had driven her to work in a white van and/or a small red car which held 5 passengers. The appellant stated she had never ridden to work in a bus but had ridden to work in the van with Master until almost the middle of November. Counsel referred the appellant to documentation indicating Master – Bhan Singh Sidhu – had been laid off by SRC on October 12, 1996 according to forms submitted to HRDC by Master himself when applying for benefits. Counsel suggested to the appellant that – now - she found herself in the position of having to invent other drivers during the remainder of her alleged employment since Master was no longer around following his layoff which occurred only 6 days after Kang’s purported first day of employment with SRC. Kang replied that she had understood the questions concerning drivers as relating to which person “mostly” had driven her to work. As for her last day of work, the appellant said she was certain that Shindo had been her driver. During the HRDC interview – tab 96, p. 3, Q. 9 – the appellant’s recorded answer to the second part of the written question “was the same method of transportation used for the entire period?” was “Van – always a van she went to work in”. Kang stated she had meant to say that she “mostly” had gone to work in a van as that was her understanding of the sense of the question. Counsel referred Kang to the first part of the last question in the Questionnaire at tab 86, namely “How did you get to the work site?” and the appellant’s response therein “in van from my home”. At tab 107, Q. 5, in response to the question, “How did you get to the job site each day?” Kang had written “S & R Contractor’s van and bus”. Kang stated she had not understood that she was being asked about how she had – personally – travelled to work and had provided that answer because she knew SRC also owned a bus which was used to transport workers to the fields. Counsel pointed out to the appellant that in the same Questionnaire - at Q. 7 – her response to the question “Were you picked up by van or bus?” Kang’s answer was “sometime van – sometime bus”. Kang explained the confusion therein must have arisen due to the PICS’ worker misunderstanding her answers or not recording – properly - her responses to those questions. The appellant reiterated she had travelled to work in the same van as her

mother and sister, Ranjit. Also, she recalled that her mother and sister had been laid off at different times. Counsel referred Kang to ROEs issued for her mother and sister indicating the last day of work for both was the same. Kang was referred to a response provided during an HRDC interview - tab 96 - in relation to a question - #13 - concerning how many persons were in the vehicle. The appellant's recorded answer was "8 people @ the most, sometimes less" and in December that there were "5 or 6 persons." When counsel reminded the appellant that during her examination-in-chief she stated 18-20 passengers had been transported in the van driven by Master, Kang replied this larger number was intended to refer only to peak times during the season. The usual van in which she rode to work had 3 or 4 wide seats, facing forward. Kang recalled the work day as beginning with the pick-up by the van driver between 5:30 a.m. and 6:30 a.m. and ending with the drop-off between 4:00 p.m. and 7:00 p.m. depending on the circumstances on a particular day. Referred by counsel to an earlier statement in her interview - tab 96 - the appellant agreed the usual time she returned home was between 5:00 p.m. and 6:00 p.m. despite having given an answer recorded as "btn (between) 5 & 6 p.m., always return home". Describing her first day at work - October 6 - Kang stated she separated blueberries - in flats - from leaves and other material and set aside the larger berries. This task occupied almost one week and was performed at two farms, both located in the Abbotsford area. The appellant stated she had informed SRC management that she could not perform heavy work and was permitted to work - outside - by herself. The second week of work involved cutting off dry branches from raspberry bushes. Again, this work was performed on a farm near Abbotsford with other workers whom she knew only as "Uncle, "Auntie" "Sister" and/or "Brother". The appellant stated the next work performed at two farms in Richmond - referred to by workers as "the Chinese Farm" and the "White Farm" - was in respect of vegetables, i.e., cauliflower, zucchini, potatoes, long white radishes (lo bok), turnips and peppers. The vegetable work consisted of pulling vegetables from the ground, washing them and placing them in a container and it occupied her time throughout the month of November. Peppers were the first to be picked, followed by harvesting of zucchini, lo bok, potatoes and turnips. Following that - at the beginning of December - Kang stated she worked on a farm where - together with other workers - she tied wires to branches on raspberry bushes. She had surgery on December 3 and later returned to work where she continued to tie vines and wash and pack vegetables until the end of her employment on December 28, 1996. Counsel referred the appellant to a report prepared by an expert in crops - including harvesting times - within the Lower Mainland area relevant to the within appeals. In said report, counsel advised the appellant the Minister was relying on the information contained therein to the effect that it was not possible to have picked peppers later than October 15 - in 1996 - as the season was finished by that date. Kang insisted - despite the opinion of the alleged

expert - she had picked different varieties of peppers and also picked zucchini throughout November and harvested other vegetables in December. Counsel advised Kang that the Min Ho (Chinese) Farms had reported its last sale of vegetables on November 24, to which the appellant responded that she may have been performing the vegetable work on the "White Farm". Counsel referred Kang to Qs. 328-330 of her Discovery where she had stated turnips were picked in December and she had also picked cauliflower and turnips for one or two days. Kang replied that she may have confused "picking" with "packing" in relation to vegetable work performed near the end of her employment in late December. Kang confirmed she had never picked any fruit during her employment with SRC and had only done the work as described in her testimony. Counsel referred Kang to tab 107, Q. 14 "What type of work did you do?" to which the appellant - in her own hand - had written "blueberry picker and vegetable person". Kang agreed that statement was not correct and "someone else" had instructed her to reply in that manner. During the HRDC interview - tab 96 - the appellant's recorded answer - to Q. 7 - concerning the type of work done for SRC throughout the course of her alleged employment, included a reference to working "sometimes strawberries, raspberries, blueberries but mostly vegetables", and in the same response to "berries just in beginning of work". Kang agreed she had mentioned strawberry work in the course of her HRDC interview but only in the context of that work having been done by workers other than herself. Counsel suggested to the appellant that she only mentioned the involvement of a PICS worker at a later date in order to attempt to explain away numerous inconsistencies in the Questionnaire at tab 107. Kang responded that she and her family had obtained a \$25 membership to PICS prior to applying for EI benefits. Although she had seen some persons - including Harbans Kaur Kang - with picking cards which she described as small, like recipe cards, the appellant stated she was paid the hourly rate of \$7 throughout her employment regardless of the task performed. She stated her mother was also paid by the hour and was not aware whether any co-worker had been remunerated for piecework, based on weight and/or volume but agreed they may have been paid in that manner. Counsel referred the appellant to her Statutory Declaration - tab 98 - signed on September 10, 1997. Kang agreed she had been accompanied by her friend, Harinder Singh, who was fluent in English and Punjabi and that he had assisted throughout the interview - on September 10, 1997 - with Janice Morrow, an HRDC employee. Kang stated she did not recall the declaration having been translated back to her for comment and the copy thereof handed over by Janice Morrow was retained by her friend. During the interview, Kang had stated she worked 8-9 hours per day for a maximum of 25-30 hours per week since there was less work in December. Counsel pointed out to the appellant that she had stated that only Bant and/or Shindo were her supervisors but at tab 107 - at Q. 30 - in response to the question "Who was your supervisor?" she had

written "Rana". Kang explained that she had been told that her supervisor was actually Rana notwithstanding her earlier opinion. Earlier in the Questionnaire – at Qs. 27 and 28 – the appellant had stated that her hours of work were recorded by Rana. Kang stated she had become aware that Rana was the owner of SRC and that she should use his name when answering questions of this sort, despite never having met – or even seeing – him. In response to questions put by counsel concerning her method of payment, the appellant explained that she had received a total of \$3,900 in wages from SRC. While working near the end of October, she received a cheque – in the sum of \$1,500 - representing her first payment of wages. However, she does not have a copy of the cheque but recalled it had been issued on the personal bank of account of Bant and/or Shindo – at the 49th Ave. and Fraser St. branch of the Toronto-Dominion (TD) bank - instead of the SRC account. Kang agreed she cannot prove this assertion but stated the money was used to pay rent for herself and family. The second payment in the sum of \$1,400 or – perhaps - \$1,500 was a cheque on the personal account of Bant/Shindo and – while working on vegetables - it was handed to her by a male co-worker, Jaswinder Singh. Again, she cashed the cheque at the same branch in Vancouver and drove there in her own car whereas in October her husband had driven her to the bank in order to cash the cheque. Kang stated her husband had advised her to attend at that TD branch to present the cheque in order to avoid incurring NSF charges on their own account if it turned out the cheque was no good. Kang stated she received her final payment for wages after receiving a phone call – on December 31 - instructing her to attend at Bant and Shindo's residence. On or about January 2, 1997, Kang and her husband went to the Bant/Shindo family home where she spoke to Shindo in the living room. Kang stated she had been told there would be more work available – at a cannery – but Shindo merely handed her \$900 in cash together with an ROE – tab 93 – pertaining to her period of employment with SRC. The cash was handed over to her husband and was in \$10, \$20, \$50 and \$100 denominations. The appellant stated she did not inquire whether the amount received represented all the wages to which she was entitled because she was satisfied that – at the rate of \$7 per hour – she had worked enough to earn the sum of \$3,900 after deductions even without understanding the amounts attributable to income tax, EI premiums or Canada Pension Plan (CPP) contributions. The appellant recalled her sister – Ranjit – receiving cash in payment of wages owing to their mother – Balvir Kaur Malhi – because money was required to buy some used furniture. In addition, the appellant recalled a cheque in the sum of \$3,000 issued in Ranjit's name in respect of her mother's wages but does not know who signed the cheque or the account upon which it was drawn. Kang explained that she did not discuss money matters with her parents because they were new arrivals to Canada and did not understand the system. Even today, the appellant advised she is uncertain whether her mother and/or sister were paid in full – by SRC – for their services. It

was not her policy to inquire into such matters and is unaware whether her mother-in-law - Harbans Kaur Kang – had received all her wages. Kang recalled she had telephoned the residence of Bant/Shindo in order to request the sum of \$500 owed to her mother because her parents needed money to buy groceries. Either Bant or Shindo informed her they did not have the money at the time and the wages would be paid at a later date and – subsequently – Master handed her \$500 in cash which she handed to her mother near the end of October. In order to obtain an explanation concerning this payment, Kang stated she spoke to either Bant or Shindo and was informed her parents had telephoned to ask for money owing for her mother, Balvir Kaur Malhi. Counsel pointed out that her mother was still employed at SRC at the end of October and asked why SRC management would hand her the money. The appellant replied that it was probably because she was the one who took her parents to buy groceries. Kang denied having returned any portion of her wages to any person involved with the business of SRC. During the HRDC interview on September 10, 1997, the appellant had stated she received “5 or 6 cheques and cashed them all at the employer’s bank”. She also told Janice Morrow – the interviewer – that she received a total of \$3,000 in cash and cheques. Kang explained that she had been “scared” by the interpreter because she should not have been paid in cash for working. Counsel pointed out the interpreter was her friend and – at that time – also a co-worker to which the appellant responded by stating it was the first time she had dealt with such a matter. In her Statutory Declaration - tab 98 – Kang stated she earned “approximately” \$3,000. In responding to the Questionnaire – tab 107 – at Qs. 32-34, inclusive, Kang had stated she was paid in cash but could not remember the amount paid in cash and/or by cheque nor could she recall the frequency or payment, whether weekly, bi-weekly, monthly or end of season. Kang explained she had been advised – at an earlier stage – not to mention any cash payments by SRC but – later – received different advice to the effect that she must disclose all payments received, regardless of the form. The appellant’s pay statement – tab 90 – prepared by SRC’s bookkeeper was shown to the appellant. It indicated she had earned the gross amount of \$4,410 with net pay - after deductions - rounded off to \$3,935. Counsel suggested to the appellant that as a result of having seen this particular pay statement - in the course of the Discovery process – she had adapted her recollections of payment to match this amount. Kang replied she had not seen this document until presented to her in Court and had received a T4 slip setting out her earnings. The notes of the interview with Kang - tab 96 - state she responded – at Q. 18 - to a query re: frequency of payment and amounts and a request for pay stubs, as follows: “every pmt (payment) by cheque – they said no to semi-monthly, only by the month, amts (amounts) paid were diff. (different) because of hrs worked, pd by personal cheque, no pay stub”. At tab 97, Morrow’s typed notes of the interview with the appellant on September 10, 1997 – p. 1, Q. 3 – indicate the appellant’s response to a question

concerning the method of payment, whether by cheque or cash as “I was paid by cheque, Bhunt (Bant) or his wife, Shindo, would give me my cheque”. The appellant’s recorded response to the next question concerning frequency of payment was “the time of payment varied, it was not always bi-weekly”. Still on p. 1 of the interview notes, the question put to Kang was “were you always paid by cheque?” to which she apparently responded “sometimes I would get advances and this would be in cash, otherwise it was always by cheque”. Confronted with these references to her former statements, the appellant stated that the cash received had been for part payment of wages owed by SRC to her mother, Balvir Kaur Malhi even though at Q. 33 of the Questionnaire – tab 107 – she had stated that she - personally – had been paid in cash. At Q. 29 of the interview – tab 96 – on May 26, 1997, the appellant was asked at which bank she had cashed or deposited her pay from SRC. Kang’s response was that she had a joint chequing account at Canada Trust with her husband and that cheques were “mostly deposited there”. She also mentioned a joint saving account at the Bank of Montreal but there was no reference to cashing any cheques at the TD bank at 49th and Fraser in Vancouver. Kang confirmed counsel’s assertion that a review of the appellant’s bank account statements do not disclose the transaction of any pay cheque having been deposited. However, she added that – in her view - she had been asked – by Morrow – where she “usually” did her banking and she responded accordingly because the cheques received were not from SRC but from Bant and/or Shindo. During the interview on September 10, 1997 – tab 97, p 2 – the appellant’s answer to a question about whether she cashed or deposited the cheques given to her by the employer and – if so – where and at what bank was “I cashed all my cheques at the employer’s bank because if I cashed them at my own bank they would put a ‘freeze’ on my account for a certain number of days and I needed the money right away”. A few questions later on that page, Morrow noted Kang’s replies to questions concerning the number and amounts of cheques received as “I got 5 or 6 cheques and cashed them all at the employer’s bank” and that they were “always about \$400 or \$500”. Kang admitted that statement was wrong and had been repeated in her Statutory Declaration – tab 98 - because she had received only two cheques from her employer and suggested Morrow must have made an error in recording her answers. Counsel referred Kang to a receipt – tab 89 – dated December 28, 1996 purporting that the sum of \$2,000 had been received from Varinder K. Kang and suggested that her signature appears at the foot thereof and that the money had been paid to purchase an ROE - from SRC - so the appellant could qualify for EI benefits. Kang stated that was not her signature and that she had never seen this so-called receipt until it was presented to her at the first HRDC interview. Counsel pointed out to Kang that her ROE is dated December 31, 1996, three days later. Kang – again – denied ever having paid any money to any person involved with SRC whether on her own or on behalf of her family or her husband’s family. At her first HRDC interview

– tab 96, p. 7, Q. 25 - she was asked why SRC had issued a receipt to her acknowledging payment in the sum of \$2,000. The response recorded by Janice Morrow is as follows:

...client stated yes that was her signature. Her in-laws borrowed \$ from the contractor in advance to go to India. They said client will work for you just deduct it from her. But client was pd full wages. So the \$2000 was balance of \$ in-laws owed contractor. Client pd it for them because (they were) in India.

[22] Kang agreed she had given that response but had re-attended at the HRDC office in order to correct the false impression left by her answer. She states she spoke to a female Punjabi-speaking HRDC employee in the front office and advised her that no money had ever been paid to SRC. The appellant stated she informed the HRDC employee that she had to leave abruptly because her children were waiting in the car. Counsel referred the appellant to statements provided by other SRC workers wherein they had admitted purchasing an ROE and advised Kang that Manjit Rana – sole shareholder of SRC – had admitted to HRDC investigators that the receipts – discovered in SRC records – represented acknowledgement of money paid to SRC for the purchases of ROEs. Kang replied that she did not know any of the workers who had made these confessions, as alleged by counsel, and had no knowledge of any such arrangement between workers and any principals or supervisors at SRC. Kang stated it should be kept in mind that the 1996 season was the first occasion during which either she or her mother and/or sister had ever worked on a farm and they were in no position to question the methods of payment or other labour practices employed by SRC. It had been difficult to obtain payment from Bant for work performed by her mother and she often received nothing more than excuses. Moreover, other workers had advised her not to raise the issue – with Bant – about receiving regular pay cheques. Counsel directed the appellant to the Statutory Declaration of her mother – Balvir Kaur Mahli – in Respondent's Book of Miscellaneous Documents - Exhibit R-8 – at tab 22. In said Declaration – dated August 22, 1997 – Mahli recited that when she began working for SRC she had only been in Canada 4 days and never discussed how much she would be paid. She then stated – in the second paragraph:

When I was laid off, I asked for my pay. I went to the home of the owner/driver & his wife (Bhunt [*sic*] & Shindo) in Vancouver. When I got there they gave me a record of employment and told me I could apply for Unemployment Insurance & I would get money from there.

SR Contractors never paid me any money, not by cash or cheque. The copy of the cheque for \$7,000 issued Nov 96, I did not sign and have never seen. This is the truth to the best of my knowledge.

[23] Counsel also referred the appellant to a statement made by her sister - Ranjit Kaur Mahli – at Exhibit R-8, tab 31 - during an HRDC interview wherein Ranjit had advised that her mother – Balvir Kaur Mahli – had never received any payment of wages from SRC and that she – personally - had been paid only one cheque in the sum of \$3,000 for her own work. Kang stated she accepted the fact that her mother had never been issued a cheque by SRC. Concerning the number of hours worked in November, counsel put before the appellant her ROE - tab 93 - indicating pay periods wherein sums varying between \$735 and \$784 had purportedly been earned by the appellant. However, according to the appellant's own testimony, she had worked only 25-32 hours per week due to the effect of bad weather. At \$7 per hour, the appellant would have needed to work between 105 and 112 hours - in a two-week pay period – in order to earn those amounts. Kang disagreed with counsel's suggestion that the ROE was inaccurate. Counsel referred her to an answer – at p. 5 of interview notes at tab 97 – where she had offered the explanation that her ROE showed more hours because her employer was “banking” hours for workers to be “used in weeks when the work was slow”. Kang replied that this answer was the version of her response as provided to her friend who was acting as interpreter but agreed the ROE was inaccurate in that she had not been paid bi-weekly.

[24] Varinder Kaur Kang was re-examined by her agent, Darshen Narang. She related her work history since 1995 when she had worked in a restaurant and then at a nursery. In 1996, she worked for another nursery and then at the chocolate factory until laid off - after 13 or 14 weeks - due to her pregnancy. When applying for UI benefits, she presented all the ROEs that had been issued to her by past employers. Since this was the first time she had applied for benefits based on maternity leave, she had no idea of the number of weeks of work needed to qualify. She was advised by HRDC that she did not have sufficient weeks in order to receive benefits and sought employment at SRC – commencing on October 6, 1996 - because she needed work. Due to her pregnancy resulting in the birth of her child at the end of August, she had not been able to work during the busy summer season. She and her husband sponsored the immigration to Canada of her parents and three siblings who arrived at the end of May. Her family required financial support which was provided by the appellant and her husband who rented a suite and purchased food and other necessities until her father and sister found employment and began earning income.

The appellant stated she supported her family for two or three months until they became self-sufficient. With reference to the Questionnaire – tab 107 – Kang stated she did not understand the purpose of returning the completed form to CPP/EI Appeals at a Vancouver address. She was aware that her sister – Ranjit – had received the same document. Kang stated her own Questionnaire was completed at PICS. At tabs 91 and 92, the documents relating to the appellant’s application for UI benefits, there was no mention of Kang having worked for any employers other than SRC. Kang explained there was some person in the EI office who assisted her to complete the forms and offered advice. Kang reiterated that she had been advised by the PICS worker to reveal the fact she had been paid some of her wages in the form of cash, despite having attempted to deny – or, at least minimize – that aspect during earlier interviews with HRDC officials. The appellant stated she recalled her T4 for the 1996 taxation year and that she would not have used it to file her income tax return if it had not been accurate. She had also provided a copy to the HRDC interviewer. Kang’s agent - Darshen Narang - referred her to the first page of the document at tab 95 which contained a warning that there are penalties for “knowingly making false or misleading statements”. Kang agreed she had been aware of the existence of penalties for not telling the truth and that it had been made clear at both HRDC interviews.

[25] In further cross-examination by counsel for the respondent, Kang stated she had not had any contact with Bant and/or Shindo since receiving the T4 in early 1997. Counsel put before the appellant her recorded answer – tab 97, bottom of p. 4 – that she “contacted the employer everyday about my mom's money and I still continue to do so, however, the employer keeps giving excuses as to why it has not been paid”. Kang stated this answer was not accurate as she had spoken with Bant and/or Shindo three or four times and had never contacted Manjit Rana.

[26] In response to questions from the Bench about the procedure followed – on two occasions - when cashing cheques at the employer’s bank, the appellant explained she had to show personal ID - her SIN card and Driver’s Licence - and paid a fee of \$5.

VARINDER KAUR JASSAL

[27] Varinder Kaur Jassal testified in Punjabi and the questions and answers and other aspects of the proceedings were translated from English to Punjabi and Punjabi to English by Russell Gill, interpreter. The respondent’s Book of Documents relevant to the appellant’s appeal - 2000-2357(EI) – is Exhibit R-19. The Minister decided the appellant had 16 weeks of insurable employment pursuant to a contract of service

with SRC from May 12 to October 26, 1996 and during that period had insurable earnings in the sum of \$7,000. The appellant's position is that her period of employment began on April 21 and ended on November 16, 1996. The Minister relied on the following assumptions of fact set forth in paragraphs 4(j) to 4(s), inclusive, of the Reply to the appellant's Notice of Appeal:

- j) the Appellant worked for the Payer during the Period as a farm labourer;
- k) the Appellant did not provide any services to the Payer before May 12, 1996;
- l) the Appellant did not provide any services to the Payer during the period starting June 28, 1996 and ending August 17, 1996;
- m) the Appellant did not provide any services to the Payer beyond October 26, 1996;
- n) the Appellant was paid \$7,000.00 by the Payer for farm labour duties during the Period;
- o) the Appellant did not receive any other remuneration from the Payer other than the \$7,000.00 admitted herein;
- p) the Payer did not withhold any amounts on account of payroll deduction or tax from the remuneration paid to the Appellant;
- q) the records provided, for example, the ROE, the T4 slip, the pay cheques and the Employee Earnings Record were fabricated to give the appearance that the Appellant provided services for the Payer before May 12, 1996 and beyond October 26, 1996 and that the Appellant was paid in excess of \$7,000.00 admitted, and these records were a sham;
- r) the Appellant required the weeks of insurable employment reflected on the ROE in order to qualify for unemployment/employment insurance benefits;
- s) the Appellant did not work for the weeks reflected in the ROE.

[28] The appellant was married in India on March 12, 1995 and her immigration to Canada on July 2, 1995 was sponsored by her husband. During 1996, she and her husband lived in Vancouver. She was looking for work and her father-in-law made

inquiries at the Sikh Temple and learned SRC was searching for farm labourers. The appellant had studied English as a subject for 6 or 7 years during her education in India which extended to Grade 11. Although she had applied for work in restaurants, SRC was her first employer and during her employment there, obtained her Driver's Licence. Jassal stated her first day of work was April 21 and that she planted seeds – by hand – at a farm in Richmond. She rode to work - with 5-7 other workers - in a van driven by Shindo. The seeding work continued for about two weeks and her next task was harvesting potatoes at a farm – known to her as Mike's Farm – located along #10 Highway. This work lasted for about one month and – in June – she did some clean-up at a strawberry farm - Khakh Farms – in Chiliwack in the Fraser Valley. Jassal stated there were about 40 other workers at that farm where she remained until June 28th when she left her employment with SRC and began working for a company providing janitorial services to a mall in Burnaby. Her employer lost the mall-cleaning contract and she was laid off on August 17. The next day, she went back to work at SRC as a result of her mother-in-law inquiring whether she could return to her former job. Following August 18, the appellant stated her first task involved picking blueberries at 3 different farms located in Abbotsford, Richmond and Mission. The blueberry work lasted about 6 or 7 weeks and was performed by approximately 40 workers. Workers were transported to work in white, khaki, and maroon vans driven by Bant, Shindo, and another driver. The vans carried between 10-20 people and she also went to work on a 40-passenger yellow bus driven by Harjit Gill. She was picked up between 5:00 a.m. and 7:00 a.m. and returned home between 6:00 p.m. and 7:00 p.m. because the van and/or bus stopped along the route at various residences and other locations to drop off workers. At the end of blueberry harvest, the appellant stated she began working at a farm in Richmond – Min Ho Farms - with about 10 other people, picking and packing vegetables in large boxes, including cauliflowers, potatoes, zucchini, peppers and lo bok. The appellant stated she and other workers were driven to work by Shindo and/or Binder Chahal. Jassal stated her pay was based on \$7 per hour throughout her entire employment with SRC regardless of the task performed and was never based on piecework. She was paid twice by cheques and once in cash. The cheques, in the sums of \$4,000 and \$3,000 - received in October and November, respectively for a total of \$7,000 - were deposited to her account at the TD bank at Fraser and 49th. Following her layoff on November 16, the appellant stated she received the sum of \$459 in final settlement of her wages. During her employment, the appellant had been informed by Shindo that if she needed money she could request it. Surjit Kaur Jassal, the appellant's mother-in-law, was also employed by SRC from the end of May to some point in October. Jassal stated she had not inquired whether her mother-in-law had been receiving her wages on a regular basis from SRC. While working at the cleaning job in the mall, the appellant had been paid \$7.00-\$7.25 per

hour and received a cheque every two weeks. While employed by SRC, the appellant stated she worked 8 hours per day, 7 days a week, with minor exceptions and estimated she was absent from work only 2-4 days. Although paid at an hourly rate, Jassal used picking cards so SRC could keep track of the amount of berries picked and/or the number of flats that had been filled. Workers took berries to a van driver and/or Shindo who weighed the container and then punched a hole in the card assigned to a particular worker. At night, the picking cards were collected and then handed back to the relevant worker the following morning. The appellant did not return to work for SRC in 1997 nor did she seek employment in the agricultural industry thereafter. In 1998, she began working at an industrial business in Burnaby and is still employed there. The appellant's agent referred her to a copy of a cheque in the sum of \$4,000 dated 10.10.1996 – tab 91 - signed by Manjit Rana and payable to Varinder Kaur Jassal. The cheque was drawn on the SRC account at the 49th Avenue and Fraser Street, branch. Another cheque in the sum of \$3,000 - tab 90 – was dated 11.11.1996. Again, it had been signed by Rana and was payable to the appellant. According to the ROE – tab 88 – issued by SRC on November 20, 1996, the appellant began working April 21, 1996 and her last day was November 16, 1996. Her total earnings as stated therein were in the sum of \$7,861. With respect to those statements of fact, Jassal confirmed the accuracy of the ROE which had been handed to her by Rana at his Vancouver residence. However, she pointed out she had not been paid every two weeks as shown thereon. The appellant stated she maintained her own record of hours worked and undertook a calculation of total hours and the amount of wages earned. She did not keep a copy once she had been paid her final settlement - \$459 in cash – on November 16, 1996. She returned to Rana's house three days later to collect the ROE so she could apply for UI benefits. Darshen Narang referred the appellant to an SRC pay statement – tab 89 – indicating her gross pay was \$8,645 with net earnings of \$7,459. Jassal stated she cannot recall having seen that pay statement prior to perusing it in Court. The appellant and her husband took her ROE from SRC - and the ROE issued to her with respect to her cleaning job - to the UI office where he completed the application for benefits – tab 96 - on her behalf. She signed the application on November 21, 1996 and did not understand – fully – the contents of the form but was content to rely on her husband's ability to complete it properly since he had lived in Canada for 10 years. The appellant was referred to tab 92 containing the Supplementary Record of Claim, a document used to record an interview conducted at the HRDC office and stated she recalled attending for that purpose. The Questionnaire – tab 99 – was signed by her on November 18, 1999 after it had been completed by her husband who asked her the questions and then recorded her answers. The Questionnaire – tab 85 – dated February 14, 1999, was completed in her own handwriting and she agreed there was no reference therein to receiving any cash in payment of wages and that her response

indicated she had been paid only by cheque. She thought she may have omitted to mention the cash since it had been spent rather than deposited to her bank account.

[29] The cross-examination of the appellant, Varinder Kaur Jassal was conducted by Selena Sit. Jassal stated she was 29 and was able to read English but cannot understand fully the sense of all the text. She finished Grade 12 in India followed by two years of a three-year Bachelor of Arts program at a college. As a result of not fulfilling the required study, Jassal stated her only certification of education is for having attained Grade 12. At college, she studied history, political science and other subjects; the language of instruction was mainly Punjabi and only one English textbook was required during pursuit of her university-level studies. Jassal stated that notwithstanding her advanced education, she still did not consider herself to be fully fluent in English, particularly in her ability to read and write and had failed her English course while at college. Her husband – Karamjeet Singh Jassal – can read, write and speak English reasonably well and had completed Grade 11 in India. In Canada, the appellant studied English through a program of ESL classes for immigrants. She attended two or three days per week for two months. The appellant acknowledged her signature on her Notice of Appeal – tab 108 – but advised it was written by her husband. The appellant recalled attending the HRDC interview - tab 92 – on October 22, 1997. She was accompanied by her husband who read the written warning on page 1 – concerning penalties for knowingly making false or misleading statements – and explained it to her in Punjabi. The appellant stated her mother-in-law had advised her about the UI system in Canada including the need to work 26 weeks in order to receive benefits. She denied counsel’s suggestion that she had mentioned this specific period when asking Shindo for a job. However, after hearing counsel read certain answers to questions put to her at Discovery, Jassal conceded she had informed Shindo that she needed 26 weeks of work because she wanted to be eligible for UI benefits and added that she must have misunderstood counsel’s earlier question. The appellant reiterated that Shindo had driven her to work – in a white van - on April 21, 1996, her first day of employment with SRC. Counsel advised Jassal that SRC records indicated Shindo’s first day of employment was May 12, 1996. Jassal responded by confirming it was Shindo who had driven her to work that day but pointed out SRC owned 3 vans so there had been other van drivers, including Bant and Binder Chahal. During the interview – tab 92 at Q. 10 – the appellant identified Shindo as the person who had driven her in a van “most all times” and Harjit Gill as the bus driver. In the Questionnaire – tab 85 – the written answer to the last question concerning details of transportation to the work site was “van and bus – Harjeet and Shindo” without any reference to Bant and/or Binder Chahal. Jassal explained she must have misunderstood that question as she had 4 drivers during her employment with SRC and agreed she had earlier stated – tab 99,

Q. 8 – that she had “three different drivers” but in doing so had probably forgotten about Bant. Counsel advised the appellant that according to several documents obtained from SRC records, the last day of work for Shindo was October 26, 1996 and Harjit Gill had been laid off on October 5 and could not have driven her to work after those dates. As a result, counsel suggested the appellant was now inventing other drivers – such as Binder Chahal – to cover that gap. Jassal stated it was Chahal who had driven her to work in a khaki van on her last day – November 16 – and had picked her up at her residence. No one else at her house worked for SRC but – on occasion – a couple of “turban guys” who lived nearby would also be picked up in front of her place. Concerning her work at the beginning of her employment, Jassal stated she seeded for two weeks at a Richmond farm by making rows with a special tool to soften the dirt and inserting seeds and watering them. She advised counsel she had picked only strawberries and blueberries despite having described in the Questionnaire – tab 99, Q. 42 - her berry picking as including “strawberrys, ras, blue”. The vegetable work at the end of the season including packing produce into large boxes and packaging was performed outside in the field rather than inside any structure. Most days were the same; harvesting began early in October and different vegetables were picked every day. Cauliflowers were cut from the stem and zucchini and peppers were cut from green vines and radishes and potatoes were dug out of the ground. Counsel advised the appellant the Minister relied on a report prepared by an agricultural expert that vegetable harvesting season in the Richmond area had concluded on October 15 for peppers and zucchini and November 1 for radishes and potatoes. Jassal replied that she was picking vegetables on November 15 and November 16, working a full 8-hour day, as usual. At Q. 17 of the Questionnaire – tab 99 – Jassal’s answer about hours of work was “8 to 10 hours a day”. At the HRDC interview – tab 92, Q. 14 – she had stated the work day was “usually 7-8 hours”. The appellant explained the discrepancy by advising the Court she had no idea of the purpose of said interview and – as a result – her answers may not have been accurate. She acknowledged having missed some days of work, probably to attend her doctor’s office, do some banking or just rest. However, she stated that work continued at all times even if it was raining heavily. Counsel advised her that at tab 99, Q. 26, she had answered that she missed work “once in a while” due to bad weather. The appellant stated that particular answer was not correct and that if it rained the vegetables in the boxes were protected with plastic covers. The appellant did not accept counsel’s suggestion that it had snowed on November 16th but recalled frost on the ground some mornings during the time she worked at the Min Ho vegetable Farms. At tab 99, Qs. 36-41, inclusive, dealt with the use of picking cards and the separate responses of the appellant – taken in total – indicate she had not used any picking cards and that she had been paid an hourly rate. The answer to Q. 41 “Did you use a picking card for every day of work?” was “No - Never”. The

appellant admitted that picking cards had been used and that – at the end of the work day – workers handed these cards to Shindo or whomever was their van driver. She recalls different coloured cards were used but she had never taken any picking cards home with her as she was always paid on an hourly basis and did not have to calculate any other form of payment of her wages. Although there had been no mention of cash payment in the Questionnaire - tab 85 – the answer to Q. 33, tab 99, referred to payment by “cash and cheque” and the reply to Q. 34 was “\$7,000.00 by cheque and \$459.00 by cash”. At the HRDC interview – tab 92, Q. 17 - the appellant admitted she had stated that she had been paid “always by cheque” and had not mentioned receiving any cash. Counsel asked “Why not mention cash?” Jassal’s response was to assert that her husband had obviously erred in interpreting her answer to that question. Counsel referred the appellant to her pay statement - tab 89 - wherein her net earnings were stated as \$7,459 and suggested the appellant – later - decided to add a cash payment in the sum of \$459 in order to make it conform with the pay statement. Jassal denied that she had become aware of the existence of this statement through the disclosure process in the course of the litigation and repeated that she has a clear, current recollection of receiving the sum of \$459 in her hand.

[30] In re-examination, Varinder Kaur Jassal stated the men or “turban guys” she referred to in her answers did not live in her premises where 3 people lived in the basement and 6 or 7 people lived upstairs. She was the only resident employed by SRC but the men who were picked up in front of her house did work for SRC and lived nearby. She confirmed that Shindo not only drove her to work the first day - April 21 – but remained at the field weighing berries and supervising and instructing workers. In filing her income tax return for the 1996 taxation year, Jassal stated she had T4s from SRC and Unico – her other employer for the cleaning job - and would have been aware of the gross and net earnings from each employment.

HARBANS KAUR KANG

[31] Harbans Kaur Kang testified in Punjabi and the questions and answers and other aspects of the proceedings were translated from English to Punjabi and Punjabi to English by Russell Gill, interpreter. The respondent’s Book of Documents relevant to the appellant’s appeal – 2000-2356(EI) – is Exhibit R-22. The Minister decided the appellant had been employed under a contract of service with SRC for 17 weeks from June 23 to October 19, 1996 and that her insurable earnings were \$6,071. The appellant’s position is that she started work on June 16, 1996 and earned \$6,800. The

Minister relied on the following assumptions of fact set forth in paragraphs 4(j) to 4(p), inclusive, of the Reply to the appellant's Notice of Appeal:

- j) the Appellant worked for the Payer during the Period as a farm labourer;
- k) the Appellant did not provide any services for the Payer before June 23, 1996;
- l) The Appellant's spouse, Harbhajan S. Kang, commenced work for the Payer on June 21, 1996 and drove the van that picked up other farm labourers;
- m) the Appellant commenced working for the Payer a few days subsequent to her spouse's first day of work and the Appellant commuted to the various farms in the van driven by her spouse;
- n) the records provided, for example, the ROE, the T4 slip, the cancelled cheques and the Employee Earnings Record were fabricated to give the appearance that the Appellant provided services for the Payer before June 23, 1996 and these records were a sham;
- o) the Appellant required the weeks of insurable employment reflected on the ROE in order to qualify for unemployment/employment insurance benefits;
- p) the Appellant did not work for the weeks reflected in the ROE.

[32] Kang testified she came to Canada 10 year ago, arriving in Montréal. After two months, she moved to Surrey, B.C. and the following summer began working - on farms - for a labour contractor. In India, she had not attended school nor worked outside of the family home. In the 6th month (June) of 1996, she began working with Bant, Shindo and Rana (SRC) and her husband, Harbhajan Singh Kang (not a party to the within appeals) was employed – later - as a driver and her daughter-in-law - Varinder Kaur Kang - also came to work there. The appellant stated she rode to work in a red van and her first task was to pick strawberries which were placed in buckets. Picking cards were used so supervisors could record the volume and/or weight of berries picked. The containers were handed in at the scale station and after weighing, the picking card was punched to record the weight of the berries and the card was returned to the worker to be presented again during the next visit to the scale to empty the container. Strawberry plants were in rows and the berries were

placed – first – into buckets and then into flats which were taken to the scale for weighing. The appellant stated it required 3 to 3.5 buckets to fill a flat (made of plastic) and she could carry two flats at a time to be weighed. Each night, workers handed in their picking cards to the driver. Kang stated her first picking work was done on the Khakh Farms at Chiliwack and that there were another 15 to 18 workers performing the same task. After one month of picking strawberries, the appellant related that the raspberry crop was ready and once that was finished it was time to pick blueberries. She finished off the growing season by working on a vegetable farm. Her driver on the first day of work and for the rest of that week was Master. Her only other driver was her husband, Harbhajan Singh Kang, who drove her to work most of the time thereafter. The appellant stated her husband had attended school in India but she did not know the level of education attained.

[33] Cross-examination of the appellant – Harbans Kaur Kang – was conducted by Johanna Russell. Counsel referred the appellant to - Exhibit R-22, tab 94 – an Application for Unemployment Benefits – dated April 1, 1997 – and bearing the signature “HK”. Kang identified those initials as her signature. Following her layoff on October 19, 1996, the appellant and her husband went to India for a 4-month vacation. The application for benefits was made after returning to Canada. Kang did not recall who assisted her in completing the form but stated it was not Varinder Kaur Kang. She recalled attending two interviews at an HRDC office and accepted counsel’s statement that the dates were June 18 and June 20, 1997, respectively. The interviewer on each occasion was Ted Bowerman and the appellant recalled a woman (Kal Brown) acting as a Punjabi/English interpreter during the interviews. Kang stated she did not remember details of those interviews but had spoken the truth when answering questions put to her by the HRDC official. During the interview on June 18, 1997 – tab 88 – the appellant was asked who completed the application for benefits and the response recorded was “My daughter-in-law Berinder” (Counsel for the respondent and Darshen Narang, agent for this appellant agree the reference – as recorded – was to Varinder (Kaur) Kang). The appellant pointed out that she had applied for UI benefits the previous year as a result of working for another labour contractor, so was familiar with the procedure to follow. When applying for benefits – on April 1, 1997 – the appellant and her husband lived in the same residence as her son Baldev Singh Kang and his wife, Varinder Kaur Kang. Although Kang cannot read nor write Punjabi, her husband is able to do so and she thought he had probably started – but did not finish - Grade 10. She does not speak, read nor write English and had not attended any ESL classes. In her opinion, her husband cannot speak, read nor write English nor had he studied English after arriving in Canada. The appellant identified the initials “H.K.” at the foot of the Questionnaire (tab 86) - dated March 14, 1999 - but cannot recognize her husband’s signature in his capacity as witness.

She cannot recall who handed her the form so she could sign it by writing her initials “H.K.” She also identified her signature – H.K. – on the last page of the Questionnaire – tab 110 – but cannot read the signature – in English – purporting to be that of her husband. The appellant stated she found out that Bant was hiring workers. She had not known Bant prior to working for SRC nor had she met Shindo or Manjit Rana. Counsel referred the appellant to two questions and answers (middle of page 5, tab 88) arising from her HRDC interview, as follows:

Q. You just said you did not know Manjit?

A. Yes, I do know Manjit.

Q. Why did you lie?

A. Because we were dealing with Bahnt [*sic*] but realized after that we were dealing with Manjit.

[34] The appellant stated she did not – and does not - know Manjit Rana. She never met him even though she told Ted Bowerman otherwise during the HRDC interview. Describing her farm work to counsel, the appellant stated she had worked very hard picking strawberries for one month, then raspberries for one month, blueberries for 7 or 8 weeks and finished the season by working at a vegetable farm. Concerning the use of picking cards, Kang stated the colour of picking cards varied between farms but the purpose remained the same and they were punched and/or marked after berries were weighed. She retained the card during the day and returned it to the van driver prior to boarding for the trip home. Often, her husband was the van driver in charge of collecting picking cards from his passengers. Kang stated she received a new picking card each day and the van driver handing out cards to the workers would write the name of the specific worker at the top of the card. The picking cards had 3 separate sheets so copies could be kept by SRC and/or the farmer. Kang stated she used a picking card every day regardless of the type of berry picked but had not seen any copies of her cards within her own residence and had not kept a copy for her own records. In any event, the appellant recalled there were no picking cards handed over to Bant and/or Shindo at the end of the season prior to settling up the final amount owed to her for wages. Kang stated her husband worked only as a driver and had not picked any berries. Counsel pointed to certain questions asked of the appellant and answers provided in writing at Qs. 36, 37, 40 and 41 of the Questionnaire – tab 110 – that had been signed by her and returned to CPP/EI appeals. In those answers, Kang had stated that no picking cards were used by her because she was paid hourly and that the volume of her work was not recorded by using picking cards. On four separate occasions therein, the appellant’s responses were that no picking cards were used by her in the course of her employment with SRC. The appellant stated she had used picking cards as described in the course of her testimony. She stated she

always worked 8 hours per day, 7 days per week and took off only one day during the entire season. She maintained she was paid \$7 per hour for her work. Counsel referred the appellant to the answer provided in the Questionnaire - tab 110, Q. 17 – about the number of hours worked each day. The answer was “sometime 7, sometime 9”. The answer to Q. 25 whether she had missed any days of work was “No.” Earlier – in responding to Q. 23 – about whether she worked on Sundays, the answer provided was “some Sundays.” With respect to the ability of Harbhajan Singh Kang – the appellant’s husband – to understand English, counsel referred the appellant to a document – Exhibit R-5, tab 194 – indicating her husband had attended English language classes at Kwatlon College from October 27, 1997 to February 20, 1998 Monday through Thursday between 9:00 a.m. and 3:00 p.m. and during the morning of every second Friday. The appellant replied she did not remember if her husband received this language instruction. As for the timing of their employment with SRC, Kang recalled she had started work “a day or so” before her husband but recalled they had been laid off the same day. After riding to work a few days with Master, her husband was her driver for the rest of the season. He always drove a red van that he parked at night either outside their house or nearby. Counsel referred Kang to answers given by her during Discovery in November, 2001, (p. 29, Qs. 223 and 224) where she stated her husband had started work – at SRC - two months after her. Again (p. 35, Qs. 268 and 269), the appellant was asked about her husband’s first day of work and her answer was unequivocal that he started work two months after she had begun working there. Kang denied having made that statement at Discovery even after counsel pointed out the question has been phrased in such a way as to relate to a previous statement made by Kang - during an HRDC interview – that she and her husband had both started work the same day. Counsel referred the appellant to the ROE (Exhibit R-1, tab 23, p. 45) of her husband – Harbhajan Singh Hang – issued by SRC indicating he had started work on August 25, 1996 and had worked until October 19, 1996. The appellant was also shown the Statutory Declaration - Exhibit R-5, tab 168 - of her husband – dated May 29, 1997 – in which he stated he had begun work in the “3rd week of June”. The witness replied that to the best of her recollection, her husband started working with SRC about June 16, 1996. Counsel advised the appellant that during the HRDC interview of June 18, 1997 - Exhibit R-22 at tab 88, p. 2 – she had informed the interviewer - Ted Bowerman – that her husband had been hired first and then she went with him to work. Kang replied she could not explain those discrepancies other than to confirm that she had worked very hard and it was difficult to remember details from “a long time ago”. In the Questionnaire – tab 110 at Q. 5 – the question was how the appellant got to work each day and the written response was she went by “van or bus”. At Q. 7, “sometime van or bus” was the answer provided to a question asking specifically whether she had been picked up by van or by bus. The appellant repeated her previous testimony

that she had never ridden to work in a bus and that her sole method of transportation to and from work was in a red van driven by her husband or the white-cream van driven by Master. The answer provided in the Questionnaire – tab 110, Q. 8 - concerning the identity of the van/bus driver was that it was “always different driver”. In 1996, the appellant and her husband had a joint account (copies of statement at tab 97) at Canada Trust in Delta, B.C. but her husband handled all transactions. The appellant stated she was paid a total of \$6,000 by SRC for her wages and thought it had been paid in two cheques. She was referred to a copy of a cheque - tab 91 - in the sum of \$6,000 drawn on the SRC account at TD bank. The cheque is dated 28.9.1996 (September 28) and the stamp indicates it was deposited on October 17, 1996 into an account at the Royal Bank. The signature “H.K.” appears on the copy of the back of said cheque. The appellant stated the second cheque that she received was about \$800 or possibly \$880. She was shown a copy of a SRC cheque - tab 90 - dated 19.10.1996 in the sum of \$879 with a stamp indicating it had been deposited to their Canada Trust account on October 24. The ROE – tab 92 – stated the appellant’s insurable earnings were \$7,000. The amounts shown on the appellant’s pay statement - tab 93 - for her gross earnings and net earnings were \$7,000 and \$6,071, respectively. Counsel asked Kang why she would have been paid a total of \$6,879 – as net earnings – when her pay statement showed she was entitled to only \$6,071. Kang surmised that the overpayment probably resulted from the fact that Bant often drank too much and made mistakes when calculating numbers. However, in her opinion, any so-called excess payment amounted to only \$79 as she had been owed the sum of \$800 in wages as at the date of her layoff. Counsel referred the appellant to answers given at Discovery – p. 42, Qs. 317-327, inclusive - where Kang had stated that she had been overpaid \$800 but that sum had been returned - later – to Bant in order to correct the error. Referring to the statement concerning the Canada Trust joint account – tab 97, second page – counsel pointed to a deposit – dated October 17, 1996 – in the sum of \$8,199 and asked Kang whether that sum included her cheque for \$6,000. Kang replied that she did not know. On October 17, two withdrawals – totalling \$4,000 – were made from that account and on October 24 a debit memo indicates the further sum of \$10,000 was taken from the account. The appellant stated a total of \$17,700 was taken from their joint account in order to travel to India and remain there for several months. Kang explained that she had informed Bowerman during the interview– tab 88 – that she had not received any money for her work because she had not seen those cheques for \$6,000 and \$879 until they were shown to her at that time. She received a T4-1996 – tab 101 - which she used to file her income tax return.

[35] Harbans Kaur Kang was re-examined by her agent, Darshen Narang. Regarding the Questionnaires – tabs 86 and 110 – the appellant stated she does not

know who completed those forms on her behalf nor does she recall the circumstances leading up to her placing her signature thereon. The appellant cannot count nor tell time by reading a watch or clock. In India, she lived in a village and rarely travelled to a larger city. She did not conduct any banking even though she held a joint account with her husband and attended with him only if it was an important matter to be transacted. At Discovery – on December 21, 2001 – she told the examining counsel that although the sum of approximately \$800 had been returned to Bant, she had played no part in any return of any amount and does not comprehend the difference in numbers. She is able to trace lines sufficiently to sign documents with her signature - H.K. – but does not appreciate the nature of what she has been requested to sign. The appellant stated that despite several inconsistencies arising in the course of proceedings, she had spoken the truth about the hard work performed for SRC.

JASWINDER SINGH BASSI

[36] Jaswinder Singh Bassi testified in Punjabi and the questions and answers and other aspects of the proceedings were translated from English to Punjabi and Punjabi to English by Russell Gill, interpreter. The respondent's Book of Documents relevant to the appellant's appeal – 2000-2359(EI) – is Exhibit R-11. The Minister decided the appellant had not been engaged in insurable employment with SRC from May 19 to December 28, 1996. The appellant's position is that he was employed pursuant to a contract of service during this period and had insurable earnings in the sum of \$4,557. The Minister relied on the following assumptions of fact set forth in paragraphs 4(j) to 4(n), inclusive, of the Reply to the appellant's Notice of Appeal:

- j) the Appellant gave conflicting statements to authorities with respect to the method of pay and the timing of same, the duties of employment, the days and hours of work, the location of the farms, the period of employment, the identity of fellow workers and the transportation method;
- k) the Appellant was out of the country from October 8, 1996 to November 27, 1996;
- l) the records provided, for example, the ROE, the T4 slip, the employee earnings record, in regards to the Appellant, were fabricated to give the appearance that the Appellant worked for the Payer and these records were a sham;
- m) the Appellant required the weeks reflected in the ROE to qualify for unemployment/employment insurance benefits;

- n) the Appellant did not perform any duties for the Payer during the Period.

[37] Jaswinder Singh Bassi testified he arrived in Canada – from India – with his parents and a brother in January, 1991. His sister sponsored their immigration. He completed Grade 10 in India but did not pursue further education – including ESL classes - in Canada. During his schooling, he studied English – as a course – beginning in Grade 6 and also studied Hindi for 6 or 7 years. He is able to read and write in Punjabi, and can read some Hindi but cannot write in that language. He stated he is unable to speak, read or write English. In India, he worked on a farm owned by his family. In 1991, the appellant worked for a labour contractor performing tasks on various farms and – in 1992 – was employed as a construction labourer. Following the end of the farming season in 1991, the appellant collected UI benefits but ill health prevented him from working a sufficient number of weeks in 1992 in order to qualify for UI. He was unable to work for the next two years and was supported by his family. During some period in 1995, he stated he was hired by Shindo - who was operating a labour contracting business – to do farm work. In 1996, he began working for SRC - on May 19 - and remained there until July 14. He went back to work for SRC on December 1 and worked until December 28. In the interim, he worked at another farm from July 15 until shortly before leaving for India on October 8. He returned to Canada on November 17. The appellant recalled his first day of work involved weeding and digging. Shindo drove him to work that day as well as on his last day of work - December 28 - at which time he had been picking carrots, turnips and radishes. During the berry picking season, he rode to work in a yellow bus driven only by Harjit Singh Gill. At other times, he went to work in a red van and/or grey van. While working for SRC in 1996, the appellant lived in a basement suite with his parents in Vancouver. His mother – Taro Kaur Bassi - also worked for SRC and is a co-appellant in the within appeals. For part of the time, he and his mother rode to work together, leaving home at 6:00 a.m. and returning home 12 hours later. The initial weeding work done at a farm in Chiliwack lasted two weeks. Then, the strawberry crop was ready and he picked for 3 weeks before picking the next crop – raspberries – until he left his employment at SRC on July 14. The usual work day was 7-8 hours including the period following December 1 when he had worked on a vegetable farm – Min Ho Farms – in Richmond and at another farm in that area he knew was owned by a “white person”. Bassi stated he was paid \$7 per hour for all work done and was never remunerated on the basis of piecework even though he used picking cards to record the weight and/or volume of product picked. He stated his hours of work were recorded – by his brother – in a book and picking cards were returned to the driver at the end of the working day. Following his layoff, he received a cheque in the sum of \$3,000 in payment of wages and also

received an amount in cash. Darshen Narang referred the appellant to a Questionnaire – tab 86 – dated May 12, 1999. Bassi identified his signature and stated his ability in English did not permit him to answer the questions so Lakhbinder Kalair completed the form on his behalf and witnessed the appellant's signature. The appellant identified his signature on the last page of the Questionnaire – tab 111 – which was completed with the assistance of his brother who interpreted the questions into Punjabi. Bassi states the answers provided are true and has a specific recollection of his brother translating the admonition that he had to “certify that the answers given in this Questionnaire are true in every respect” prior to signing the form. As to the manner and amount of payment of wages, the appellant's answer – Q. 34 – is that he received a cheque in the sum of \$4,000 and \$50 in cash. Bassi stated that this response was not correct because he had received more than \$50 in cash and assumes his brother must have misunderstood his answer since he did not review each question and answer with his brother prior to signing the form. Bassi estimated he received 4 or 5 cash payments - each in the sums of \$200 or \$300 - from Shindo, for a total of \$1,050. In response to Qs. 36 and 37 regarding picking cards, the appellant's recorded answers are that no picking cards were used to record hours or volume of work. The appellant explained he answered those questions in that manner because he had not retained those cards and once they had been handed over to the driver, he had no record of the information contained thereon. Narang pointed out to Bassi that – at Q. 35 of the Questionnaire, tab 111 – he certified the answer that he had been paid by Manjit Rana. The appellant replied this was – again – a mistake that his brother had made when filling out the form. Bassi stated he knew Rana was Shindo's brother and was aware SRC was owned by Rana. Although he had worked for Shindo in 1995, it was his understanding that the business was now operated by Rana through the corporation, SRC and that Bant also worked for the company. In 1995, he had been paid by cheque at the end of the season and could not recall whether he had received cash advances in the interim. Bassi identified the ROE – tab 92 – issued by Kalair Farms for the period July 15 to October 5, 1996. The ROE – tab 89 – issued by SRC was handed to him by Shindo. Bassi identified his signature on the application for benefits – tab 90 – dated January 14, 1997 and stated his friend – Lakhbinder Kalair – assisted him in completing the document by asking questions and then writing down the answers. The appellant recalled attending an interview - at an HRDC office on December 9, 1997 – and that a Punjabi-speaking interpreter (Kal Tarlal) was present. At that time, he explained his inability to work for two or three years was due to kidney failure and the need to attend dialysis three times per week. Bassi attended another HRDC interview - tab 99 – and Kal Tarlal acted as interpreter. He could not recall whether the warning printed in large print had been read out to him.

[38] The appellant – Jaswinder Singh Bassi - was cross-examined by Selena Sit. When applying for UI benefits – tab 90 – the appellant had marked a box (p. 3, area F) indicating he had an “incomplete” elementary education. He explained that – in India – schooling is carried out in a block from Grades 1 to 10, inclusive, and is not considered as higher education. Although he speaks some English, the appellant stated he cannot read English and even when using credit cards to make purchases often requires assistance from the retail clerks. In order to obtain his B.C. Driver’s Licence, he had to pass a written test but could not recall whether he had been assisted by a Punjabi interpreter and agreed it would have been difficult for him to pass an examination – in English – without help since the questions on the test were not translated into Punjabi. Despite being in Canada for 13 years, the appellant has not attempted to improve his English language skills through any course of study. However, his brother - Kulwinder Singh Bassi - is fluent in oral and written English and completed the Questionnaire at tab 111. Counsel referred the appellant to the notes of interview (Supplementary Record of Claim) dated December 9, 1997 - at tab 103 – and to the last page thereof following the paragraph headed Declaration & Signature. The appellant stated he did not recall the contents having been read to him but identified his signature. The interview was conducted at an HRDC office by Michel Fontaine and the questions and answers were translated from Punjabi to English by Kal Tarlal, another employee of HRDC. The appellant agreed he had signed his name at the bottom of each page of the Report of Interview – tab 102 – after the contents had been reviewed with Kal Tarlal. In June, 1995, he received a kidney transplant and had to attend subsequent medical appointments for a certain period thereafter. In 1995, his mother - Taro Kaur Bassi – had arranged for him to work at SRC but – in 1996 – the appellant stated he received a telephone call from Shindo asking if he wanted work. In the Questionnaire – tab 111, Q. 2 – in response to a question about how he found out about the job with SRC, Jaswinder Singh Bassi answered “I met Shindo Sran [*sic*] at Sikh Tempel [*sic*] and asked about work”. Counsel referred the appellant to answers given by him at Discovery on December 20, 2001, where he stated he and his mother both started work the same day, May 19, 1996. Bassi responded that he did not recall the first day he started at SRC but had not worked there between July 15 and November 30 because he worked for Kalair Farms - which was closer to his residence – until October 5, three days prior to leaving for India on a holiday. The appellant is not related to Sohan Kalair - owner of Kalair Farms - who had come from the same village in India as Taro Kaur Bassi. In that sense, Bassi explained he referred to Sohan Kalair as “Uncle” when completing the application for UI benefits – Q. 38 - but there is no blood relationship. While in India, he was married, although that had not been his intention prior to departure. On December 1, he went back to work for SRC after having telephoned Shindo the night before and inquiring about the availability of farm work. Bassi said

Shindo advised him she had some work on “two farms in Richmond”. Counsel inquired about his alleged first day of work on May 19, 1996. Bassi stated he had ridden to work – with Shindo – in a red van but cannot recall whether his mother – Taro Kaur Bassi – always went to work in that vehicle because sometimes workers were dropped off at one farm and the rest continued on to another location. Bassi stated Shindo had also driven him to work in a grey van but he did not pay much attention to the colours of the vans or how often each one was used. The appellant agreed that at p. 29, Q. 240 of his Discovery, he had stated his best recollection was that Shindo had driven only a red van but added that his present recall leads him to believe that Shindo drove two vans. During the berry picking season in June and up to July 14, Bassi – and his mother - rode to work in a yellow bus driven by Harjit Singh Gill. Bassi stated the bus was always driven by Gill who had not driven him to work in a van during the period when he was weeding – at the start of his employment with SRC – or working on the vegetable farms in December. Bassi conceded that at Discovery – p. 28 – he had stated that Gill had driven him to work – once – before the start of berry season. While working on vegetables, Bassi recalled Shindo was his only driver and that she drove – mostly – the red van but “possibly the grey one, but only once”. He acknowledged that at Discovery – p. 31, Q. 260 – he stated Shindo had driven only the red van during this time. Counsel pointed out to Bassi that according to various documents and statements received from Shindo, her last day of work – at SRC – was October 26, 1996. Regarding work done following May 19, Bassi recalled weeding strawberry plants by using a special hand tool and worked with a varying group of 10-12 workers for about 3 or 4 weeks until that task was finished. The work was done on farms at Chiliwack and Abbotsford. Strawberry season began on June 15 or 16 and - two weeks later - the raspberry crop was mature and he picked raspberries until July 14 when he left to work for Kalair Farms. Counsel referred Bassi to notes taken by Michel Fontaine – tab 103 – where – at Q. 7 – the answer recorded concerning the type of work performed for SRC included Bassi’s statement that - in May – he had planted cauliflower for “about 3 days”. Bassi replied that answer may be correct but – today – could recall weeding during the first part of his employment. While picking strawberries and raspberries, Bassi used picking cards and did not share a card with any other worker. Berries were placed into his own flat which was taken to the truck/weighing station and his card was punched to record the result. The picking card was in triplicate and all three copies were handed to the driver at the end of the day. At Qs. 36, 37 and 40 of the Questionnaire – tab 111 – the answers provided were clear that Bassi had not used picking cards for any purpose including recording hours or volume of work or at all. As for working at the “Chinese Farm” in Richmond in late December, counsel advised Bassi that her information revealed this farm had not grown potatoes in 1996 and that the last sale of produce was on November 24, 1996. Bassi reiterated that he

had worked on farms until December 28, 1996 and that the crops were carrots, potatoes, turnips and radishes and did not accept counsel's contention that in the opinion of an expert - relied on by the Minister - the season for said vegetables had ended on November 1 because he had washed and packed vegetables 7 days a week in December except for one or two days off during Christmas. During the interview with Fontaine - tab 103 at Q. 22 - the appellant's recorded answer is that he worked "Monday to Saturday in December" but had worked 7 days per week while picking berries. The appellant stated his current best recollection is that he worked 7 days a week in December but may have taken off one day after the first two weeks. In the Questionnaire - tab 111 - at Q. 25 the response provided was that the appellant could not remember whether he had missed any days of work. According to the appellant's pay statement - tab 93 - he worked 91 hours for the pay period ending December 28. Bassi stated his work during this time was performed inside a shed and also outside. The shed had wooden panels on the side which did not extend to the roof. He washed carrots and radishes inside this structure using a hose attached to a tap. He recalled there was snow near Christmas but could not recall snowfall earlier which had caused any cancellation of work. Bassi had consented - tab 101 - to a release of information authorizing Medical Services Plan of British Columbia (MSP) to issue details of medical services provided to him during 1996. A printout - tab 106, pp. 15 and 16 - showed Bassi visited a physician on May 21 and on May 23 attended the office of his kidney transplant surgeon. The record also revealed a visit to his family doctor on July 12 and another on December 3. On December 5, he had an appointment with his kidney specialist. In response to counsel's question as to how he was able to attend these medical appointments and still work, Bassi replied he would take his car to work and then leave for two to three hours in order to visit the doctor and would work later to make up for time missed. Counsel pointed out that the office of the kidney specialist was in downtown Vancouver and the appellant had been picking berries in Chiliwack, a return trip of nearly 4 hours or more. Bassi stated in that situation, he would see the doctor in the morning - as close to 8:00 a.m. as possible - and then drive to work afterwards arriving after noon. While working late, other pickers were also present, particularly those who lived in the cabins on or near the fields and did not have to travel home each night. In that scenario, Bassi agreed that no other SRC worker was present and no one from SRC was on site to supervise his work but stated Shindo had given him permission to make up time when he had to go to his medical appointments. The farm owner usually worked late - until 8:00 or 9:00 p.m. - and Shindo was satisfied he made up the missed hours. As for making up for time lost due to appointments in December, Bassi stated Shindo waited for him and then drove him home. Concerning the vehicle - a 1985 Toyota Corolla - used to drive to work on occasion, counsel referred Bassi to a document - Exhibit R-8, tab 6 - issued by Insurance Corporation of British Columbia (ICBC) indicating said

vehicle was insured by Kulwinder Singh Bassi. While responding to question 5 in tab 111, the appellant's answer – as recorded by his brother – is that he arrived at the job site each day “by contractor's van or bus” without any mention of using a private vehicle. Bassi replied that this was an oversight attributable to an error on the part of his brother who should have included information about the method of travel during those days when he had to attend a medical appointment. Counsel pointed out to Bassi that in responding to the Questionnaire - tab 86 - concerning transportation to work, the answer given was that the contractor provided either a van – driven by Shindo - or a bus driven by Harjit Singh Gill. Bassi stated the blame should fall on his friend – Lakhbinder Singh Kalair – who assisted him in completing that form, for not recording the answer correctly to make it clear that a private car had been used – on some occasions – to go to work. Bassi insisted he had raised – specifically – the matter of the car usage with Kalair who had - somehow – forgotten to write it down. Counsel returned to the issue of medical visits in December. Bassi stated that when he worked late, even though he had testified - earlier - that Shindo stayed behind to supervise him, he had intended to say that she drove all the other workers home and returned to the farm to supervise his work. Also, she did not have to drive him home because he had used his brother's car to get to the job. At Q. 30 of tab 111, the answer provided was that Manjit Rana was Bassi's supervisor. Bassi stated that was not correct during 1996 although Rana had fulfilled that role during 1995. The appellant – again - attributed the error to his brother. At the HRDC interview on December 5, 1997, Bassi had been shown a photograph of Manjit Rana and had responded by declaring he had never seen that person. Bassi stated he did not recall that exchange but noted that a person can look much different depending on the nature and quality of the photo. In 1996, Bassi stated he received a cheque and some cash in payment of wages, although - at tab 86 – he had not mentioned any cash receipt even though the question specifically referred to that form of payment. Bassi stated yet another error had been made by Lakhbinder Singh Kalair in not recording – faithfully – Bassi's response. The appellant stated he earned the sum of \$4,040 in 1996 and was issued a cheque in the sum of \$3,000 with the rest having been paid in cash. At Q. 34 of tab 111, the answer provided is that the appellant received a cheque in the sum of \$4,000 and \$50 in cash. Bassi replied that he had received \$1,050 in cash from Shindo and that the answer was recorded incorrectly by his brother when filling out that Questionnaire. Bassi advised counsel a total of \$1,050 in cash was received in the course of 3 or 4 payments but he cannot recall the timing of same except the cash was all received prior to layoff and the cheque was issued afterwards. At Q. 32 of tab 111, the answer given was that all payment of wages had been made at the end of the season. Bassi explained that this misstatement had occurred due to his brother's inability to comprehend that he had been referring only to the cheque – in the sum of \$3,000 – as being received at the end of the season. He stated that when

he left SRC's employment on July 14, he had been owed wages which he collected at the end of December. He had maintained a record of cash payments from Shindo but lost it when he moved to Surrey at the end of 1997. He advised counsel he had no record of any cash deposits and was aware no copy of the alleged \$3,000 cheque had been found in any of the SRC records nor any other proof the appellant had received such payment. Bassi stated he had no way of proving the payment other than by his testimony and ability to recall receiving the cheque and cash. The cheque received from Shindo in January, 1997, was deposited to his CIBC branch. Bassi agreed he appeared to have been overpaid by the sum of \$10 according to the pay statement issued by SRC. He maintained the only basis on which he had ever been paid was the hourly rate of \$7 and had never been remunerated based on volume - whether measured by pound or flat - when picking berries. During the HRDC interview - tab 103 - at Q. 17, the appellant's answer concerning method of payment was recorded as "Strawberries and Raspberries by the flat". Bassi stated that answer is not correct. As for the answer at Q. 18 that he had never been paid for his May, June or July work until his layoff at the end of December, the appellant stated that answer was not correct as he had been paid some cash earlier than that. At Q. 32 of the HRDC interview - tab 103 - the answer recorded is that Shindo gave Bassi a cheque in the sum of \$4,000 which he negotiated at CIBC at 49th and Fraser in Vancouver by depositing the entire amount into his account. Again, his statement is noted that he "did not receive any other payments throughout the year", including cash. Bassi stated that answer was incorrect because the cheque he received was in the sum of \$3,000 and cash had been paid to him from time to time. He stated he had provided that information to the interviewer but it had been recorded incorrectly. As recorded by Michel Fontaine on a report dated December 9, 1997 - tab 94 - of the interview with the appellant held on December 5, 1997, Bassi had produced a bank book with an entry of a \$3,000 deposit into his account on January 10, 1997. The notes indicate Fontaine reminded the appellant of an earlier answer that a \$4,000 cheque had been deposited. Bassi's noted response to Fontaine is that said answer was wrong because he had received a cheque in the sum of \$4,040 but had taken out \$1,040 in cash and deposited the balance of \$3,000. Counsel pointed out to Bassi that he had provided three different versions about receiving payment of wages during the course of the HRDC investigation and subsequent intervention by the Rulings Officer and the appeal process to the Appeals Officer. Bassi stated the version offered in Court was the truth, namely, he had received a cheque in the sum of \$3,000 and \$1,050 in cash. Bassi stated that even though an HRDC employee - Kal Tarlal - interpreted during his interview with Fontaine, she was not speaking "pure Punjabi but was using lots of English words". Counsel referred the appellant to copies of bank statements - tab 100 - and to an entry on the third page, dated January 10, 1997, of a deposit in the sum of \$3,000 followed by a withdrawal in the sum of \$3,300 on January 14, 1997. The

appellant confirmed the \$3,000 deposit represented the cheque received from Shindo and explained the withdrawal was made in order to repay his sister who had loaned him money so he could travel to India in October, 1996. Counsel pointed out his account balance was \$13,002.97 on September 30, 1996 and thereafter was \$11,000 – and more – and asked why he would have to borrow money from his sister in order to go to India. On September 24, the appellant had withdrawn \$1,500 and another \$400 had been taken out on September 27. Notwithstanding those withdrawals and the large balance in the account, Bassi stated he had borrowed the sum of \$3,300 from his sister in order to purchase a return airline ticket because he had been doing a lot of shopping in preparation for the trip and did not have time to attend at his own bank. Bassi denied paying any money back to Shindo or anyone at SRC as part of any scheme or arrangement. In the Questionnaire – tab 86 – two separate answers stated the appellant's 1996 employment with SRC had been from May 19 to July 14 and from October 6 to December 28. Bassi stated those answers are not correct and that the error appeared to have been perpetuated at Q. 1 of the Questionnaire at tab 111. In his opinion, his brother – Kulwinder Singh Bassi – had written those dates in error because it was always apparent – by referring to his passport – that he left Canada on October 8, 1996 for a holiday to India. With regard to the vegetable farms, the appellant could not recall whether there were any residences on the property and was unable to remember if there were other structures such as greenhouses or small buildings. The appellant stated he was well aware that – in order to qualify for UI benefits in 1996 – he needed 18 weeks employment.

[39] The appellant was re-examined by his agent, Darshen Narang. He stated he had not knowingly or intentionally misled anyone at HRDC and if the Questionnaire – tab 86 – had been read back to him by Lakhbinder Singh Kalair, he would have corrected those misstatements contained therein. He advised that – at said interview – he handed his Indian passport to Kalair and it should have been apparent that he was absent from Canada following October 8, 1996 until his return at the end of November. He stated he never attempted to conceal his absence from Canada during this period and cannot explain how this error was repeated when his brother completed the Questionnaire - tab 111 - because they were both living in the same residence and his brother had been provided with the appellant's passport in order to obtain the correct dates of his departure and return. Once the form had been completed, his brother handed it over and he signed it. During the HRDC interview, he had to ask Kal Tarlal to repeat some interpretation because he was unable to understand the content but she would merely offer the same version – in Punjabi – as before. The appellant acknowledged he was aware that he was required to speak the truth to the HRDC interviewer. He recalled the written test for his B.C. Driver's Licence – obtained in 1993 - had been available in Punjabi and his brother had

accompanied him to the motor vehicle bureau in order to deal with clerical staff. Bassi stated that because he had worked in 1995, he was aware he needed 18 weeks of employment in order to qualify for benefits in 1996. In his view, with the work done for Kalair Farms, he had enough time to qualify but returned to work for SRC in December because there was work. The appellant stated many farms did not have any signage to indicate ownership and many of them looked alike without any specific boundaries. Bassi stated there had been an earlier mistake concerning previous employment with another employer but it had been in 1997 - not 1996 – and the confusion had been corrected when he brought in his pay stubs to the subsequent interview on December 9, 1997.

TARO KAUR BASSI

[40] Taro Kaur Bassi testified in Punjabi and the questions and answers and other aspects of the proceedings were translated from English to Punjabi and Punjabi to English by Russell Gill, interpreter. The respondent's Book of Documents relevant to the appellant's appeal – 2000-2319(EI) - is Exhibit R-12. The Minister decided the appellant had been engaged in insurable employment with SRC for 7 weeks from June 10 to July 27, 1996 and had insurable earnings in the sum of \$3,000. The appellant's position is that she worked from May 19 to July 27 and accumulated insurable earnings in the sum of \$3,920 as stated in her ROE at tab 88 of Exhibit R-12. The Minister relied on the following assumptions of fact set forth in paragraphs 5(j) to 5(q), inclusive of the Reply to the appellant's Notice of Appeal:

- j) the Appellant worked for the Payer during the Period as a farm labourer;
- k) the Appellant did not provide any services for the Payer before June 10, 1996;
- l) a cheque dated July 6, 1996 for \$3,000.00 payable to the Appellant was negotiated on December 5, 1996;
- m) the Appellant did not receive any other remuneration from the Payer except for the \$3,000.00 admitted herein;
- n) the Payer did not withhold any amounts on account of payroll deduction or tax from the remuneration paid to the Appellant;

- o) the records provided, for example, the ROE, the T4 slip, and the Employee Earnings Record were fabricated to give the appearance that the Appellant provided services for the Payer before June 10, 1996 and that the Appellant was paid in excess of the \$3,000.00 admitted, and these records were a sham;
- p) the Appellant required the 10 weeks of insurable employment reflected in the ROE in order to qualify for unemployment/employment insurance benefits; and
- q) the Appellant did not work for the 10 weeks reflected in the ROE.

[41] The appellant stated she is illiterate in Punjabi and English but can recognize some numbers. She received a \$3,000 cheque – tab 90 – from SRC – dated July 6, 1996 – which was negotiated on December 5, 1996. Taro Kaur Bassi stated she arrived in Canada on January 3, 1991 and had received no education in India nor attended any ESL classes after immigrating. Born in 1940, she worked on a family farm in India owned and operated by her husband, his 4 brothers and her father-in-law. They grew wheat, rice, peppers and sugar cane. Currently, she lives in the Surrey area near her two sons and daughter who sponsored her to come to Canada. The appellant's first job – in 1991 - was working for a farmer who was also a farm labour contractor. Initially, the ruling – tab 81 – issued by Janet Mah - a Rulings Officer with CCRA – found the amount of insurable earnings to be \$3,540. The appellant recalled starting work in the middle of the 5th month (May) and thereafter worked 7 days a week except for some time off to attend to some urgent matter. Her first day was spent weeding around strawberry plants at the Gill Farms in Abbotsford and this work lasted for about 3 weeks. At a farm in Richmond, she worked planting cauliflower. One person drove a machine and 4 other workers followed and inserted small cauliflower and broccoli plants into the soil. Shindo was her only driver during her employment and drove her to work on the first day together with 6 or 7 other SRC workers. The appellant cannot recall whether her son – Jaswinder Singh Bassi – co-appellant rode with her that day but she remembered riding with Ajmer Kaur Gill – a co-appellant – and a female known to her as Gurdev Kaur. She recalled riding to work with her son on other occasions but the crews were sometimes divided into teams composed exclusively of males and/or females. At the Richmond farm, she picked potatoes and placed them in a bucket. The farm also grew vegetables and turnips and was located near a river. Three weeks after starting work, the season became busy and the red van - driven by Shindo – carried between 15 and 20 workers each day. The appellant stated she was paid \$7 per hour and at the end of each day Shindo or another driver would tell them the number of hours worked. The working days ranged between 7.5 hours and 9.5 hours. When hired by

Shindo, the appellant stated she was advised the pay period was every two weeks but that schedule had not been followed and she had to ask Shindo for money. One morning – in the van - during the 6th month (June), Shindo gave her \$500 in cash. She did not see any other worker receiving payment. The appellant did not sign any receipt and did not keep any personal record. Taro Kaur Bassi stated Shindo merely handed her the cash, saying “Sister, take the money”. Later, she requested additional wages from Shindo and – at the end of July – went to work for Kalair Farms. Although the cheque – tab 90 – is dated July 6, 1996, it was not received until December when she attended at Shindo’s house in order to collect her final pay and her ROE (tab 88). During the years 1991, 1992, and 1993, the appellant worked for farmers and/or labour contractors and was paid - by cheque – at least once per month. At some point in 1994, she began working for Shindo and considered her the employer then and again in 1995 and 1996. Other employers had paid her wages on a regular basis but she had to ask Shindo “again and again” for money which was not forthcoming until the end of the season. The cheque – tab 90 – was endorsed by the appellant and deposited into her account at the TD Bank – Vancouver – on December 5, 1996. She is certain the cheque had not been issued on July 6 as she would not have kept the cheque that long without attempting to cash it. She recalls quitting her SRC job on July 27 while raspberries were being picked. Her son - Jaswinder – had left about two weeks earlier. She states she was not paid every two weeks as shown on her ROE but did receive a 1996 T4 which was used to file her income tax return. During her 1996 employment, she was aware that she required 18 weeks of work in order to qualify for UI benefits. The appellant identified her signature on the application – tab 95 – and she provided HRDC with an ROE from Kalair Farms in respect of that employment where she earned \$8 per hour. She attended at the HRDC office and handed her papers over to a volunteer who helped her to complete the application. On that form, it was stated that Sohan Kalair was her brother. The appellant explained that Kalair was not her biological brother but was considered as a member of her extended family, although not through any formal adoption. Although neither Bant nor Shindo were at that office at this time, she recognized other SRC workers who were also applying for their benefits. Taro Kaur Bassi recalled attending two separate interviews at offices of HRDC, one in Burnaby and the other in downtown Vancouver. Her son – Jaswinder – attended the first interview – October 29, 1997 – and she identified her signature on an authorization – tab 91 - to act as her representative. The notes of her interview – tab 92 - were recorded on a Supplementary Record of Claim. The pay statement – tab 89 – issued by SRC shows the appellant’s net earnings as \$3,380. The Questionnaire – tab 85 – indicates Lakhwinder Kalair witnessed her signature and the appellant agreed he probably assisted her to complete that form. Another Questionnaire – tab 97 – was completed by her younger son – Kulwinder – but she cannot recall whether he asked

her the questions and wrote down – in English - her responses or just supplied the answers himself even though he was attending school in 1996 and did not work for SRC. In answer to Qs. 34 and 35 regarding method of payment the appellant stated she received a cheque for \$3,000 as well as \$380 in cash and that it was Manjit Rana who had paid her. Reminded by her agent - Darshen Narang – of earlier testimony that she had received \$500 in cash from Shindo, Taro Kaur Bassi confirmed that version was correct but she knew that Shindo and Rana lived in the same house and that Rana was her employer. In 1995, she worked for Bant/Shindo and since Rana resided in the same house, she considered there was no real difference. In said Questionnaire – tab 97 – at Qs. 27 and 28, the answer given is that the appellant’s hours of work were recorded “by employer & myself”. The appellant stated her son – perhaps – made a mistake when completing the form that way.

[42] In cross-examination by Selena Sit, Taro Kaur Bassi stated she did not recall details surrounding completion of the Questionnaire – tab 97 – but agreed her son - Kulwinder – must have asked her the questions – in Punjabi – because he had not worked for SRC. Counsel pointed out that the “second interview” the appellant recalled as having taken place in downtown Vancouver was not an interview but an Examination for Discovery. The appellant recalled that during the HRDC interview – tab 92 – on October 29, 1997 her son – Jaswinder – interpreted – into Punjabi - the questions asked by the HRDC officer and then stated – in English – her answers to said officer who wrote down the responses. Taro Kaur Bassi confirmed that her first day of employment – May 19 – was spent weeding around strawberry plants. At the Discovery on June 19, 2001 – p. 6, Q. 44 – the appellant had stated she could not recall what work she had done on her first day. Although, in the answers provided by her to a series of subsequent questions, the appellant had stated she had been picking, she explained that those answers were not correct because the berries were not ready for harvest at that time. Counsel referred the appellant to several instances in her Discovery where she mentioned picking strawberries at the beginning of her employment. Taro Kaur Bassi replied that she could not recall giving those answers which were obviously incorrect because – as an experienced farm worker in Canada – she knew those berries were not ready at that time. Counsel suggested to the appellant that she had come to realize she could not have been picking strawberries on May 19, so had changed her story to say she was really weeding – not picking – in order to give credence to her early starting date at SRC. The appellant responded by stating the evidence at Discovery is not correct and surmises “it must have been written down wrong.” Counsel referred the appellant to the typed notes – tab 82 - of Janet Mah – Rulings Officer – concerning a telephone conversation – June 17, 1999 - between Harby Rai, Rulings Officer and a female person – Navjot – who had acted as interpreter for the appellant. Taro Kaur Bassi agreed the number written in the

notes was her telephone number and that Navjot had lived in the basement of the Bassi family home in Surrey. Near the end of the paragraph headed Facts, the question was asked “what type of work did you do on the first day of work?” and the answer recorded – by Mah – is “I picked strawberries”. The appellant replied that she began picking berries on June 10, 1996. When her son – Jaswinder – worked at SRC, they usually rode to work together in the van but she recalled he drove a car sometimes. She has no specific recollection whether they rode together on her first day. Since the appellant had stated – in her examination-in-chief – that she recalled riding to work – the first day – with Gurdev Kaur, counsel referred her to a List of Employees by Dates Worked – Exhibit R-1, tab 5 – showing Gurdev Kaur Kandola – employee #22 – had not started work until June 2 and suggested the appellant could not have started work on May 19, as alleged. The appellant stated she had no knowledge of what was contained in any SRC documents, including any ROE issued in respect of that person’s employment. The appellant stated that when berry season began, she rode to work in a yellow bus driven by Harjit Singh Gill and all picking work was performed at Abbotsford and/or Chiliwack. When working on vegetables - or weeding in the early part of the season – Shindo drove the van. Counsel referred the appellant to the notes of Janet Mah – tab 82 – of the conversation between Harby Rai and Navjot, acting on behalf of the appellant. The answer apparently provided by the appellant – through Navjot – to the question – posed by Rai - about the identity of the driver for her first day of work was “I was picked up in a yellow bus by Harjit Gill”. Later in the series of questions posed by Rai, the answer recorded is that the appellant had been picked up by Gill “at a basement suite in Vancouver”. Taro Kaur Bassi replied that this answer had been given in the context of when the berries were being picked and that – indeed – she had been picked up by Gill who drove the yellow bus. However, she is clear that Shindo – using a van – drove her to work on first day of work. Concerning the picking of berries, the appellant recalled using picking cards for strawberries and raspberries and that the cards - with 3 attached sheets - were handed out by the drivers each morning and collected by them at the end of each working day. Each day, a new card was issued and the appellant agreed her name had probably been written on the card because she had not shared the card with any other worker. In the Questionnaire - tab 97 at Q. 40 – the appellant’s recorded answer to whether picking cards had been used was “did not use”. She explained that she answered in that way because the cards had not been retained by her for any purpose whatsoever. Boxes were used to pick strawberries and 3 of them would fill a flat. When a flat was taken to the weighing area, her picking card was punched to record the delivery. The same process was followed with respect to raspberries and workers would carry a flat on top of their heads to a scale mounted on a truck where the weighing was performed by the owners and/or managers of the farm and not by anyone from SRC. If a flat had been overfilled or was not full, then

the actual weight of the berries in the flat would be recorded on the picking card. Later, if odd amounts added up to a full flat, then the card would be punched accordingly. In her experience, the strawberry and raspberry flats each contained 18 pounds of berries. Taro Kaur Bassi recalled returning all of her picking cards to Shindo but cannot remember whether that was accomplished every few days or on a daily basis. In any event, the picking cards were not used to calculate her wages but the appellant considered they were important because SRC needed them in order to deal with the farm owners. She picked about 20 flats of strawberries per day or about 360 pounds. The same amount of raspberries were picked early in the season but – later – the number dwindled to between 12 and 15 flats but the pay was on an hourly basis regardless of the amount of berries picked. During the HRDC interview – tab 92 at Q. 17 – with Joann McInnes at which her son – Kulwinder – had acted as her interpreter/agent, the recorded answer regarding method of payment is that she was paid \$7 per hour for other work but the raspberry and strawberry picking was paid “by the flat” and blueberries were paid “by the pound”. The appellant stated she had been discussing the usual method of remunerating pickers. Counsel pointed out her son was present throughout the interview and had been interpreting the questions and her answers which were written down by Joann McInnes. The appellant responded “the things I am telling you today, if you asked me tomorrow, I would not remember”. At Discovery – Q. 47 – the appellant had stated she picked strawberries her first day and had not used picking cards. At Qs. 36, 37, 40 and 41 of tab 97, the answers provided stated no picking cards were ever used by the appellant for any purpose. The appellant responded that those answers – whether written down in the transcript of her Discovery or in the Questionnaire – were wrong and must have been the subject of error during the recording process. With regard to keeping any records of hours worked, the appellant stated she did not recall keeping any such records even though an answer had been given to McInnes during the HRDC interview that her hours had been recorded in a book kept at her residence. Although she quit work for SRC on July 27, the appellant stated she had not needed her ROE until after finishing work with Kalair Farms and when she asked Shindo for payment of wages – in addition to \$500 already received – the response was that there would be a final settlement when the ROE was prepared following the end of the season. At Shindo’s house – in December – the appellant received her ROE and a cheque which Shindo advised was calculated on the basis of an hourly rate of \$7. When referred – by counsel - to the Questionnaires - tab 85 and tab 97 – where answers had been provided that \$380 in cash had been received and that the only payment of wages was by cheque, the appellant stated those answers were not correct and that her son must have made a mistake when filling out those forms. If the pay statement – tab 89 - called for her to receive net pay only in the sum of \$3,380 and she had received \$3,500, the appellant agreed she must have been overpaid by Shindo. When

responding to Q. 18 of the HRDC interview – tab 92 – that she had been paid “every two weeks”, the appellant agreed that was not correct nor was her response – at Q. 29 – that she had received a total of \$500 in cash in several small payments. Instead, the appellant stated the truth of the matter is that she received one cheque for \$3,000 and one cash payment of \$500.

[43] In re-examination by her agent – Darshen Narang – Taro Kaur Bassi stated she recalled starting work “past the middle” of the 5th month (May). She is aware that her ROE – tab 88 – or “weeks paper” is important as it is required when applying for UI benefits. She stated she relied on the date of May 19, 1996 - used in the ROE handed to her by Shindo - as being her first day of employment with SRC. Narang referred the appellant to the ROE – Exhibit R-1, tab 23, p. 27 – of Gurdev Kaur Kandola and advised the home address for said worker is stated as 144 A Street in Surrey and that she worked for SRC between June 2 and October 5. The appellant stated she lived in Vancouver at this time and the female - Gurdev Kaur – who also lived in Vancouver and rode to work with her on the first day must have been a different person with another family surname.

BAKSHISH KAUR THANDI

[44] Bakhshish Kaur Thandi testified in Punjabi and the questions and answers and other aspects of the proceedings were translated from English to Punjabi and Punjabi to English by Russell Gill, interpreter. The Respondent’s Book of Documents relevant to the appellant’s appeal – 2000-2366(EI) – is Exhibit R-29. The Minister decided the appellant had been employed in insurable employment with SRC for 18 weeks during the period from June 24 and October 26, 1996, but found the amount of her insurable earnings to be nil. Counsel for the respondent advised the Court that although the Minister now accepted the appellant’s period of employment was from June 9 to October 26, 1996, her insurable earnings were nil. The appellant’s position is that she worked during said employment period but that her insurable earnings were in the sum of \$7,840. The Minister relied on the following assumptions of fact as set forth in paragraphs 4(j) to 4(p) of the Reply to the appellant’s Notice of Appeal:

- j) the Appellant worked for the Payer during the Period as a farm labourer;
- k) the Appellant did not provide any services to the Payer before June 24, 1996;

- l) the Appellant did not receive any remuneration from the Payer for the duties she performed for the Payer;
- m) the Appellant received a ROE from the Payer in lieu of wages;
- n) the records provided, for example, the ROE, the T4 slip, the non negotiated cheque dated October 26, 1996 in the amount of \$7,000.00 and the Employee Earnings Record were fabricated to give the appearance that the Appellant provided services to the Payer before June 24, 1996 and that the Appellant was paid, and these records were a sham;
- o) the Appellant required the weeks of insurable employment reflected on the ROE in order to qualify for unemployment/employment insurance benefits; and
- p) the Appellant did not work for the weeks reflected in the ROE.

[45] After providing the Registrar her name, address and occupation and completing the formalities of her affirmation to speak the truth, the first words from the mouth of Bakhshish Kaur Thandi were “I’m illiterate”. She then stated she had been in Canada 9 years but had never attended school in India and had not participated in any ESL education subsequent to arriving in Canada. Her immigration and that of her husband – Gian Singh Thandi, a co-appellant - was sponsored by her daughter – Maninder Kaur Mangat – and they lived in the Mangat family home. After only a few days in Canada she started working for a labour contracting business operated by Bant/Shindo. The first year – 1994 - she worked the entire season, picking strawberries, raspberries and blueberries and then worked on vegetable farms at the end of the growing year. That year, her husband collected her wages on her behalf and she qualified for UI benefits. In 1995, she worked for Bant/Shindo performing the same type of work and collected UI benefits following her layoff at the end of the season. After those two seasons, she went to the Temple and made inquiries about obtaining work as she had heard from others within her community that Manjit Rana was hiring farm workers. She requested her daughter to telephone Shindo’s home number in order to follow up on the possibility for employment. In 1996, SRC was the employer and the appellant stated she went to work in the 6th month (June) after Shindo had telephoned her at the Mangat residence to advise there was work available. The first day of work was spent picking strawberries by sitting on the ground, removing the berries and placing them in a basket. The usual working day was 8-9 hours, extending on rare occasions to 10 hours. Strawberry season lasted 3 weeks and she worked 7 days per week, unless some matter required her to miss a day. Even if the weather was not pleasant, the workers remained at their jobs. Picking

cards were used when recording flats of berries. Her husband – Gian Singh Thandi – worked with her and took flats to the scale to be weighed and handed in her picking card to be punched. The appellant stated her husband handled all affairs pertaining to money and collected some wages from time to time. The rate of pay was \$7 per hour. After picking strawberries, the appellant picked raspberries in the Abbotsford area, working on various farms. Following that crop, she picked blueberries in Richmond and – perhaps – Abbotsford. Bakhshish Kaur Thandi stated that following the berry season, she went to work on a vegetable farm in Richmond that grew turnips, radishes, cabbages and potatoes. The appellant recalled riding in a red van – driven by Shindo – on her first day of work and also riding in two other vans, one brown, the other white. While picking berries, she rode in a yellow bus driven by Harjit Singh Gill. The appellant stated there were about 13 passengers in the van on her first day of work but during the season there were occasions when a greater number of people were transported. She recalled riding in the van with workers one of whom she knew as Ajmer Kaur and another as Charanjit Kaur Bains. The van picked her up each morning between 5:00 a.m. and 7:00 a.m. and dropped her off between 7:00 p.m. and as late as 9:00 p.m. if the work had been performed at a distant location. At the end of a work day, the van driver would inform her husband of the number of hours worked and – at home – either her daughter or son-in-law recorded that number on a calendar and in a book. In the event her husband had been able to collect some wages from Shindo or had borrowed money by way of some sort of advance, he would tell her the amount received. The appellant stated her son-in-law is educated and can speak English and Punjabi and her daughter is also capable in both languages. Within the 9-year period following her arrival in Canada, the appellant and her husband went to England twice, and on one occasion remained for 6 months. The appellant stated she is able to write her name in English. Her agent – Darshen Narang – referred her to a document – tab 90 – consisting of certain writing on an unsigned SRC cheque dated October 26, 1996. The purported payee is Bakagha K. Thaadi and the sum payable is \$7,000. There is an X on the signature line below the heading SR Contractors Ltd. The appellant was referred to her ROE – tab 88 – indicating she had earned the sum of \$7,840 during her period of employment but did not recognize that document. She identified her signature – printed as B.K. Thandi – on the last page of her application for UI benefits – tab 103 – which was completed at the Fraser Street HRDC office on November 7, 1996. Her husband applied for benefits the same day and her daughter attended with them in order to complete the paperwork. The appellant was interviewed by Michel Fontaine on February 16, 1998 at the Fraser Street HRDC office. Kal Tarlal acted as interpreter. The appellant recalled she had been suffering from a fever that day and requested a postponement which was not granted. As for the quality of the interpretation performed by Tarlal, the appellant stated she had difficulty understanding her Punjabi but accepted that

one can only perform a task to the best of one's ability under the circumstances. The Questionnaire – tab 82 – dated March 18, 1999 was signed by the appellant and witnessed by her son-in-law Jhalman Singh Mangat who completed the form on her behalf. An entry on the last page of another Questionnaire – tab 106 - indicates her son-in-law acted as her interpreter for the purposes of completing that document. Although she could not recall specifically, the appellant agreed the answers to the questions were provided by herself or her husband and then recorded by Mangat. Bakhshish Kaur Thandi stated she had not returned any of her 1996 wages to Bant, Shindo or anyone at SRC as part of any arrangement to enable her to qualify for UI benefits.

[46] Bakhshish Kaur Thandi was cross-examined by Johanna Russell. The appellant's daughter – Maninder Kaur Mangat - had been married in India in 1986 and immigrated to Canada in 1987. Maninder had completed Grade 9 or 10 in India but had not continued her education in Canada. Instead, she worked in a bakery and as a chambermaid in a motel. The appellant stated that although her daughter has some ability to speak and read in English, she thinks it is limited, particularly when compared to her son-in-law. Neither her daughter nor her son-in-law worked for SRC. During the 1996 season, the appellant stated she and her husband - Gian Singh Thandi – started work the same day, worked together throughout and were both laid off on the same day. While picking berries, the men and women were not separated into two groups. At the HRDC interview with Michel Fontaine, the appellant stated she was aware that she was obligated to tell the truth when responding to questions. She also recalled someone speaking to her daughter about her SRC employment and that she had promised to speak the truth when giving answers at a Discovery on November 6, 2001 in Vancouver. At Discovery, the appellant had stated her first day of work was the 9th day of the 6th month (June). She conceded that someone may have informed her that was the date shown on her “weeks paper” (ROE) as well as the last day, October 26, 1996. During her first year working in Canada, the appellant became aware of the UI benefits system and even though she had replied to questions at her Discovery that the employer - SRC – had informed her about the availability of benefits - in 1996 – she was aware she would qualify at the end of the season. The appellant stated she had been content to allow her husband to collect wages for both of them and that she saw money paid – by Shindo – to her husband, usually the day following a request for some payment. The appellant stated she thought some money received by her husband – from Shindo – may have been in the form of a loan and she thought Bant and/or Shindo recorded all amounts handed over in order to be used later when calculating the final settlement for both at the end of the season. Although she had not been present, in her opinion, following October 26, 1996, there was an accounting done between her husband and Shindo where the balance of wages due to

herself and her husband were paid. Counsel referred the appellant to the pay statement – tab 89 - and the purported cheque – tab 90 – with the writing thereon “I cash money give”. Counsel pointed out both use the name “Bakagha K. Thaadi”. Even the ROE – tab 88 – appears to have been written in that name originally and then revised to read “Bakhshish K. Thandi”. A T4-1996, issued by SRC in the name “Bakagha K. Thaadi” was used by the appellant when filing her 1996 income tax return and a correction was made to reflect her proper name. The appellant stated she usually signs her name as it appears on the Questionnaire – tab 82 – but may make an X if someone requested her to do so. She recalled some talk of a cheque for \$7,000 and believed she and her husband owed Bant the sum - borrowed earlier - of \$5,000 and the only method of repayment was for both of them to work for SRC. At the end, she thought that the loan had been paid in full and any extra wages had been paid. Counsel referred the appellant to a photocopy of a \$5,000 cheque – Exhibit R-30, tab 89 - paid to her husband - Gian Singh Thandi – which was dated September 15, 1996 and negotiated on December 16, 1996, by depositing it to their joint savings account at VanCity credit union. The appellant stated the endorsement on said cheque in the form of an X appeared to be that of her husband. A statement – Exhibit-30, tab 97 – of transactions on that account indicated there was a \$5,000 deposit on December 16, 1996, followed by a withdrawal of \$4,200 on December 24, 1996. Counsel pointed out the balance in said account – on July 20, 1996 – was \$13,850.33 just before a withdrawal of \$10,000 which the appellant identified as the amount required to repay a loan to a son living in England. Counsel referred the appellant to her recorded answer – to Q. 18 – given to Michel Fontaine during the HRDC interview – Exhibit R-29, tab 93 - where she had stated that she “received a cheque and they said cash it and give it back to us”. And, in the same answer that “they said go ahead deposit it in your bank and then give it back to us”. The appellant agreed her daughter – Maninder – was present during the interview and agrees she probably provided that answer but reiterated that she had a fever that day and “my mind was not working”. Fontaine’s notes of further discussions arising from Q. 18 continued on the next page and state that “Shindo told her to do this in 1996”. In response to the question posed by Fontaine “Why did you have to repay the money from the cheque to Shindo?”, the appellant’s recorded response was “Never questioned it because that’s what they told her to do. That’s what others were being asked to do.” In response to the question whether she had ever been paid any wages, the appellant responded that she had never been paid anything. Further in the questioning by Fontaine, the appellant’s answer – written down by Fontaine in his notes – to a question about why she would work for nothing is that she “just worked for the weeks”. When asked whether she had received \$7,000 in cash, the response by the appellant – again – was that she “only got the weeks”. In responding to these references from the HRDC interview, the appellant stated she could never have made such statements as alleged by

Fontaine in his notes. Counsel referred the appellant to her alleged pay statement – tab 89 – indicating she was entitled – at most – to payment of net earnings of \$6,764. During the interview, Fontaine – Q. 29 – had asked why she would have been paid the sum of \$7,000 which was in excess of her earnings and the answer recorded is that she agreed “they never would pay out that amount of money”. The appellant stated she could not recall having given that answer to Fontaine. Question 32 was posed in this manner: “If applicable, what were the circumstances which motivated you to participate with the employer in submitting a Record of Employment which you both knew to be false?” The appellant’s answer – noted by Fontaine – was she “thought that she had made the weeks. That’s how they were paid. Did not realize that not being paid the wages would be a problem. Got the Record of Employment for the number of weeks”. Near the end of the interview, Fontaine asked certain questions of the appellant’s daughter – Maninder – who – in the presence of the appellant – stated that her mother and father lived with her family in 1996 and was not aware that either her mother or father had been paid any money for their work and that when her father received money in the form of a \$5,000 cheque, she knew the sum of \$4,000 had been handed over – a few days later - to Bant when he attended the Mangat residence. According to Maninder, this same system had been used – in 1995 – when her parents had worked for Shindo. All they had ever received was their “weeks paper” so each could qualify for UI benefits. Maninder advised Fontaine that her parents both knew they would not be paid except by receiving ROEs to use when applying for UI benefits. The appellant denied ever having told Maninder about any such schemes but conceded Maninder had paid Bant the sum of \$4,000 which was to “pay back a loan.” In her opinion, her daughter would not have made such statements and no worker would ever work that hard “just for the weeks”. Counsel read certain portions of the transcript of the Discovery of Gian Singh Thandi (Qs. 250-258) wherein he had explained that the cheque in the sum of \$5,000 – Exhibit R-30, tab 89 – deposited in the VanCity account on December 16, 1996, had been issued to him in error – by Bant – and that the sum of \$4,000 had been returned because that portion represented the overpayment. During that exchange of questions and answers, Gian Singh Thandi had stated that Bant was both angry and drunk when issuing the \$5,000 cheque at his Vancouver residence during a meeting when Shindo was present. Gian Singh Thandi went on to explain that in his opinion the cheque had been made out in haste and he accepted it even though he had considered all wages – by that point – had been fully paid for both himself and Bakhshish Kaur Thandi. Later, according to the answers given at Discovery, he received a telephone call from Bant pointing out the overpayment and agreed that \$4,200 cash was withdrawn from the Thandi joint account – at VanCity – of which the sum of \$4,000 was paid to Bant. Counsel pointed out to the appellant that her husband’s version of events did not seem to correspond to her own explanation of the reasons for the payment to Bant.

The appellant stated the payment to Bant was to repay loans. Turning to the methods employed while picking various berries, the appellant explained to counsel that she and her husband both used picking cards every day and shared a flat while picking strawberries and raspberries and the cards were punched to record the number of flats picked. The measurement for blueberries was by the pound and the appropriate amounts were marked on the cards. At the end of the day, one sheet of the picking card went to the farm owner and one was handed over to Bant or Shindo. The appellant agreed she may have provided the answer to Q. 20 of her interview with Fontaine – tab 93 – that she “had picking cards. She threw them away once everything was settled”. However, the answer to Q. 36 of the Questionnaire – tab 106 – concerning the use of picking cards was “there was no picking cards. I was on hourly rate”. In answering Q. 41, the response was that she never used picking cards. The appellant stated that the answers provided during her HRDC interview were correct and that picking cards had been used and that her husband was more familiar with that aspect of their employment. Counsel advised the appellant that her husband in completing his own Questionnaire - Exhibit R-30, tab 109 – had also denied that picking cards were used by him while working for SRC. The appellant stated that answer is not correct because she and her husband worked together and shared picking cards and flats. The appellant pointed out that the Questionnaire had been completed by their son-in-law - Jhalman Singh Mangat – who had never done farm work and that those answers were somehow improperly written down. At the HRDC interview – on February 16, 1998 – at tab 93, Q. 17, the appellant’s answer concerning method of payment – whether by the flat/piece work - was noted – by Fontaine – that she thought she was “paid by the flat” and that the pay was “a different rate for different berries” but in any event was not on an hourly basis. In responding to Q. 24 of said interview, the appellant’s answer is that she was never told she would be paid hourly. Counsel pointed out that on three separate occasions she had stated – clearly – she had not worked on an hourly basis. The appellant replied that these answers were the result of a misunderstanding. Counsel advised the appellant that during the interview – tab 93 – she never mentioned working with vegetables and had only talked about working “from the time berries started until they finished”. At Q. 26, the appellant was asked what work was specifically performed on her last day of work and the answer – as noted – was “Richmond, blueberries”. The appellant had not been able to recall the name of the farm. The answer to Q.14 of the Questionnaire – tab 106 – included a reference to working on vegetables “for about 2 weeks”. The appellant was unable to explain why that answer would have been given if she had worked longer than that on the vegetable farms.

[47] In re-examination by her agent – Darshen Narang – Bakhshish Kaur Thandi recalled that her daughter – Maninder – did not speak much during the interview - tab

93 – but had been speaking Punjabi to an “East-Indian lady” while the interviewer kept on writing. The appellant cannot recall any questions being put to Maninder about whether she (the appellant) had informed her about not being paid by SRC. The appellant stated she and her husband had decided to let Maninder believe they had just worked “for the weeks” in 1995 and 1996 because they did not tell her everything about their own personal affairs. However, she and her husband did tell their daughter and son-in-law about receiving cheques. The appellant stated that – in her opinion - any information provided to the interviewer was incorrect because “what does a little girl know”. The appellant confirmed that she and her husband had not been paid in cash every two weeks but when cash was received they did not want to disclose that fact to their daughter. In order to hide that receipt of funds, they decided to tell their daughter they were working for SRC “just for the weeks”. With regard to answers provided in the Questionnaire - tab 106 – the appellant acknowledged she may have provided some information to her son-in-law and other responses probably came from her husband. In that Questionnaire – at Q 32 – the appellant’s answer was that she had been paid 4 times during the season, sometimes in cash and sometimes by cheque.

[48] In further cross-examination by Johanna Russell, Bakhshish Kaur Thandi denied ever telling Michel Fontaine she had worked for no pay and had only been paid by receiving the ROE. As for the final settlement, her son-in-law - Jhalman Singh Mangat – attended at the Bant/Shindo/Rana residence in order to obtain the ROEs for the appellant and her husband and at that time it should have been apparent cash had been received during the season.

GIAN SINGH THANDI

[49] Gian Singh Thandi testified in Punjabi and the questions and answers and other aspects of the proceedings were translated from English to Punjabi and Punjabi to English by Russell Gill, interpreter. The respondent’s Book of Documents relevant to the appellant’s appeal – 2000-2370(EI) – is Exhibit R-30. The Minister decided the appellant was employed in insurable employment with SRC for 18 weeks during the period from June 24 to October 26, 1996 and had insurable earnings in the sum of \$5,000. Counsel for the respondent advised the Court that while the layoff date and insurable earnings were correct, the Minister conceded the appellant’s first day of work was June 9. The appellant’s position is that he started work on June 7 and was laid off on October 26, 1996, during which period he had gross insurable earnings in the sum of \$7,840 as shown on his pay statement at tab 88. The Minister relied on the following assumptions as set forth in paragraphs 4(j) to 4(q), inclusive, of the Reply to the appellant’s Notice of Appeal:

- j) the Appellant worked for the Payer during the Period as a farm labourer;
- k) the Appellant did not provide any services to the Payer before June 24, 1996;
- l) the Appellant was paid \$5,000.00 by cheque dated September 15, 1996 and negotiated on December 16, 1996;
- m) the Appellant did not receive any other remuneration from the Payer other than the \$5,000.00 admitted herein;
- n) the Payer did not withhold any amounts on account of payroll deductions or tax from the remuneration paid to the Appellant;
- o) the records provided, for example, the ROE, the T4 slip, the non-negotiated cheque dated October 26, 1996 in the amount of \$4,000.00 and the Employee Earnings Record were fabricated to give the appearance that the Appellant provided services to the Payer before June 24, 1996 and was paid in excess of the \$5,000.00 admitted, and these records were a sham;
- p) the Appellant required the weeks of insurable employment reflected on the ROE in order to qualify for unemployment/employment insurance benefits;
- q) the Appellant did not work for the weeks reflected in the ROE.

[50] The appellant testified he arrived in Canada in June, 1994. Every year thereafter, he was employed as a farm worker and was laid off at the end of each growing season. Following layoff, he collected UI benefits except when he went to India on an extended vacation on two occasions. After arriving in Canada, the appellant and his wife – Bakhshish Kaur Thandi – lived with their daughter - Maninder Kaur Mangat - and her family. In 1994, he worked for a labour contractor and in 1995 and 1996 worked for Bant. Following his employment with SRC, the appellant worked for another farm labour contractor and is currently employed as a farm worker on a farm in the Lower Mainland. In 1994, his employer paid his wages in full at the end of the season after deducting cash advances which had been paid on request from time to time. Currently, he is paid - by cheque - on a regular basis but is still able to request a cash advance. For his work for Bant – whom he considered to be his employer in 1995 and 1996 – the appellant stated he was satisfied that he and

his wife had been paid their wages in full. Gian Singh Thandi stated he had been a farmer in India but had not been educated there and – to his regret – had not attended ESL classes in Canada. Within the past two or three years, he has learned how to sign his name in English but before that used to sign with an X. He is not able to read numbers in English but can tell time. The appellant identified the photocopy – tab 89 – of the cheque – in the sum of \$5,000 – that he received from SRC, endorsed by marking his “X”, and deposited into the Thandi joint account at VanCity credit union. He stated he is able to conduct banking transactions and to deal with financial matters. He recalled his first day of work – in 1996 – as occurring after the first week of the 6th month (June). That first month was not as busy as later in the season and he was able to take off one or two days per week. His first job was picking strawberries and that continued for 3 or 4 weeks. Next, he picked raspberries for 4-5 weeks and then blueberries for 5-6 weeks. Once blueberry season had ended, he worked on vegetable farms for another 6-7 weeks until laid off near the end of October. The appellant stated that his pay throughout was \$7 per hour regardless of the task performed. Picking cards – in triplicate - were used for all types of berries and he shared a card with his wife but cannot recall whose name was written on the card when issued by the driver each morning. Sometimes, the total working day was 14 hours since travel could occupy at least 3 hours because most strawberry farms were located in Chiliwack and raspberries and blueberries were grown in the Abbotsford area. The vegetable work at the end of the season was performed only in Richmond. During his employment, he was taken to work by three drivers, Shindo, Surjit and – rarely – Bant. Following his layoff, he received an ROE - tab 87 – dated October 27, 1996, indicating he had worked 20 weeks and had \$7,840 in insurable earnings. The appellant stated he did not know at that point the number of weeks required to qualify for UI benefits. From time to time during the seasons, the appellant saw Manjit Rana walking around the farms but did not know his status or function in relation to Bant. On November 7, the appellant applied for UI benefits and identified his mark “X” on the form which was completed at the Fraser Street HRDC office by a person – unknown to him – who also filled out the benefits application for Bakhshish Kaur Thandi. The agent for the appellant referred him to the \$5,000 SRC cheque – signed by Manjit Rana – which was dated September 15 but not deposited to the Thandi account until December 16, 1996, 6 weeks following his layoff. The appellant explained that – even now – he does not deposit cheques immediately after receipt. As for the unsigned “I Cash Money Give” cheque – tab 90 – payable to Gian S. Thandi in the sum of \$4,000, the appellant stated he had not seen that cheque earlier. The appellant recalled attending – with his wife and daughter - an HRDC interview on February 18, 1998. The appellant stated they were in a room with an HRDC investigator and a female Punjabi interpreter but did not understand – fully - her interpretation during the interview. The appellant signed the

Questionnaire – tab 82 – dated March 18, 1999 which had been completed by his son-in-law, Jhalman Singh Mangat. Another Questionnaire – tab 109 – sent during the appeals process, was completed by his son-in-law who identified himself thereon as the interpreter. The appellant recalled answering questions posed by his son-in-law who also completed – at the same time - the Questionnaires – in both instances – for Bakhshish Kaur Thandi. The appellant’s agent referred him to the comments of his daughter – Maninder - as contained in the notes of the HRDC interviewer – Exhibit R-29, tab 93 – to the effect that the appellant and his wife had not been paid for their work and that someone had told them what to say if and when they were questioned by authorities. The appellant stated he wished to disavow those statements made by his daughter and stated that SRC had paid him and his wife in full and that Maninder did not know all the facts because “we were hiding some things from her”. During the interview conducted by Michel Fontaine – tab 93 – on February 16, 1998 [dated 1997 in error], the appellant’s recorded answer to Q. 18 is that he was “paid every two weeks” and the note made by Fontaine is that the appellant did not remember getting a cheque and that Manjit gave him cash. Gian Singh Thandi stated he never had any dealings with Manjit Rana as all cash payments were made by Bant and/or Shindo after having requested some payment because he and his wife needed money for their household. Neither he nor his wife were asked by Bant and/or Shindo to sign any receipts for the cash payments. The appellant stated that even though his daughter and/or son-in-law recorded the hours of work performed by him and his wife, they did not tell them about cash payments received in the course of the season.

[51] The appellant – Gian Singh Thandi – was cross-examined by Johanna Russell. He stated that since their arrival in Canada, he and his wife have always lived with their daughter and son-in-law. They eat meals together but he does not know what either of them do for a living. In 1994, although he and his wife had begun working for another labour contractor, the appellant recalled that later in that season they went to work for Bant/Shindo and were employed by them the next two seasons, in 1995 and 1996. He stated Bant paid him some money - in June - but cannot remember the amount. Another payment was received from Bant near the end of the month. Neither payment was deposited to the VanCity account. The payments were intended to apply to the wages earned to date by the appellant and his wife. The third payment was received in July from either Bant or Shindo but the appellant could not remember the amount. Thereafter, cash was received from time to time from Bant and/or Shindo upon request but the appellant and his wife did not disclose to Maninder and her husband any of these payments and he cannot recall the total amount obtained. In early November, the appellant and his son-in-law went to Bant’s house for the purpose of settling up for the year. He handed Bant a record of hours worked by himself and Bakhshish Kaur Thandi and – in return – received an ROE

for himself and another one for his wife. No cash was received at that time but prior to attending at the Bant/Shindo (Suran) household, he believed he was owed approximately \$1,000 in wages. At that point, the appellant stated his son-in-law had become aware that cash had been received by the Thandis during the season. About one week later, he received a telephone call from Bant telling him to come over and get paid. He walked to Bant's residence where he noted Bant was "drunk, a little bit". Bant wrote out the \$5,000 cheque – tab 89 – and handed it to the appellant saying "Here, take this". The appellant stated Bant contacted him - by telephone – 5 or 6 days later to advise that – by mistake – there had been an overpayment of wages and Thandi should return some money. As a result, the appellant deposited the \$5,000 cheque into the joint account at VanCity and – personally – returned the sum of \$4,000 a few days later when he walked over to Bant's house for that express purpose. Commenting on the statements of his daughter – Maninder – during the HRDC interview that Bant had obtained the money at the Mangat family home, the appellant stated she was wrong. The appellant stated he did not know that his SRC cheque had been issued by Rana and could not recall why he would not have deposited the cheque until December 16, 1996. Counsel advised the appellant that his wife's version of the repayment of \$4,000 to Bant was that it represented repayment of a loan. Gian Singh Thandi replied that he was the one dealing with Bant and handling money matters. Counsel read certain portions of the appellant's Discovery - Qs. 203, 204, 210-212 – where the appellant had stated "sometimes Bant got a signed receipt for cash payment, sometimes not". The appellant stated he could not sign his name at that time except by marking an X. In response to Q. 204, he stated that he had kept a record throughout the season but had received \$11,000 from Bant and/or Shindo for himself and on behalf of his wife. As for the timing of cash payments received, at Qs. 210 and 211, the appellant stated the initial payment was \$2,000 followed by another - \$3,000 - received at the beginning of July, and a \$3,000 payment at the end of the month. Thereafter, SRC paid wages - as requested - until a total of \$11,000 had been received. Gian Singh Thandi stated the sum of \$6,000 received in July was used for expenses and – referring to his daughter and son-in-law - to "pay money to the kids". He agreed he had retained \$1,000 from the proceeds of the \$5,000 cheque he had deposited into the VanCity account and that he and his wife had received \$11,000 prior to that, for a total of \$12,000. The "I Cash Money Give" purported cheque – Exhibit R-30, tab 90 – in the name of the appellant and the other "I Cash Money Give" purported cheque - Exhibit R-29, tab 90 – in the name of Bakagha K. Thaadi are in the sums of \$4,000 and \$7,000, respectively, for a total of \$11,000. Counsel suggested the appellant had tailored his evidence - at Discovery – to match that total. Counsel referred Gian Singh Thandi to his pay statement – Exhibit R-30, tab 88 – and to his wife's pay statement – Exhibit R-29, tab 89 – indicating net earning – for each - in the sums of \$6,764 for a total of \$13,528. Since

– at most – the appellant’s calculation of payments did not exceed the sum of \$12,000, counsel suggested there is a shortage of \$1,258. Counsel referred to portions of the appellant’s Discovery where he stated he and his wife had received their ROEs from Bant – personally - at Maninder’s (Mangat) residence. The appellant stated the version offered during his testimony - in Court – was correct in that he received the ROEs at Bant’s house at the same time the \$5,000 cheque was handed to him. Counsel referred to the two “I Cash Money Give” purported cheques totalling \$11,000 and the \$5,000 cheque actually deposited by the appellant. In the event the purported cheques were intended to serve as receipts for cash payments made to the appellant and his wife - by SRC – then the overall amount would be \$16,000, in excess of the combined maximum net earnings - \$13,528 - of the appellant and his wife. The appellant agreed they had not earned \$16,000 after deductions. At the HRDC interview - tab 93 – on February 16, 1998, in response to Q. 29(b), the appellant’s recorded answer to the question “who gave you the cheque” – referring to the \$5,000 cheque dated September 16, 1996 – was “Manjit”. Michel Fontaine noted “Doesn’t remember when Manjit gave him the cheque”. The appellant denied giving that answer as well as the one – Q. 18 – that Manjit had given him cash. At Q. 29(g), when Fontaine asked the appellant “what happened to the \$5,000? How much of it did you have to repay to the employer?”, the appellant’s noted response is “Did not have to repay any money back to Manjit”. Asked by counsel why he would have made that reference to Manjit – rather than Bant with whom he had been dealing throughout – the appellant did not comment. In answering Q. 38, the appellant recalled telling Fontaine that he did not “know if Bant worked for Manjit” and further that “Bant has nothing to do with me”. Two days later, the appellant – with his daughter, Maninder – attended another interview with Fontaine – tab 96 – and, as noted at p. 3, was reminded that he had earlier denied repaying any money to his employer in order to obtain an ROE or “stamps” in order to qualify for UI benefits and that this denial was contradicted by his wife and daughter during an interview with Fontaine. The appellant’s response to Fontaine’s inquiry was that he kept \$1,000 of the \$5,000 cheque but, “the employer paid him the full \$4,000 back”. This repayment was apparently made in cash, although he could not remember the date. Confronted with these responses, the appellant stated that this answer was not true and that Bant had not repaid any of the \$4,000 that had been given to him from the withdrawal at VanCity following the deposit of the \$5,000 SRC cheque. According to the notes made by Fontaine, the appellant later stated that – in any event – whatever transpired between himself and Bant was “an arrangement between friends”. The appellant stated those answers had not been recorded correctly and denied that his daughter – Maninder – was present during the interview and - instead – insisted she was “on the other side of the wall”. During his first interview – tab 93, at Q. 7 – the appellant’s recorded answer to a question about the nature of work

performed for SRC was that he “started working about the fourth or fifth month – weeding, planting, pulling out grass”. At that time, he could not remember his last day of work or even the month when he was laid off. Responding to the Questionnaire – tab 109 – dated October 18, 1999 – at Q. 14 – the first line of the answer concerning the type of work done reads “weed picking, strawberry, raspberry, blueberry, vegetables. First two weeks pulling the weeds, then strawberries picked for 4 weeks, raspberries picked for 6 weeks, blueberries picked for 6 weeks, vegetables for 2 weeks”. Counsel pointed out to the appellant that in his examination-in-chief he had testified that he worked on the vegetable farms for 6 or 7 weeks. The appellant stated he and his wife had been driven to work by Binder (Balwinder Singh Chahal) on their first day and that they rode to work together every day thereafter. Counsel advised the appellant that according to employer records – Exhibit R-1, tab 5 – Binder Chahal had not started work for SRC until July 1, 1996. The appellant agreed that despite what the records show, Binder was their driver on that first day. Counsel advised the appellant that the ROE issued for Chahal, together with a Statutory Declaration – Exhibit R-5, tab 271 – in both English and Punjabi – signed by Chahal – indicate he worked from July 1 to November 16, 1996 and had driven only the grey van. The appellant replied that Chahal was wrong in making those statements. When answering Q. 10 of the interview – tab 93 – the appellant’s answer is noted to include the comment that he was “picked up in a red van” and later that he rode “mostly in a red van driven by Binder”. As part of the answer, he stated he rode – sometimes - in a white van. Gian Singh Thandi commented that Binder Chahal had driven three different vans. While employed at SRC, his drivers were Binder, Shindo and a male person called Surjit. Counsel referred the appellant to his answer – at Discovery – to Q. 350 where he said Shindo had driven him to work on his first day. During the HRDC interview – tab 93, Q. 21 – the appellant’s recorded answer is that “Bant did not drive him”. The appellant replied that Bant had driven him to work occasionally. He identified his mark – X – on his UI benefits application form – tab 106 – and recalled the form had been completed on his behalf by a stranger. Counsel pointed out that during the interview – tab 93, Q.2 – he told Fontaine that his grandson – Jasbir Mangat – had helped him. The appellant stated that he was able to recall it was a friend of his son-in-law who had completed that document but still did not know this person’s name. Despite having answered to the contrary when completing his Questionnaire – tab 109, Qs. 36, 37, 40, 41 - the appellant confirmed he had used picking cards and that strawberries and raspberries were measured in flats while blueberries were counted in pounds. At the end of each day, the picking card was handed to the driver but he could not recall whether a copy was retained at their residence. Counsel referred the appellant to his wife’s answer – Exhibit R-29, tab 93, Q. 17 – that she thought payment was by the flat and that there was a different rate, depending on the berry crop picked. The appellant replied that the pay for

himself and his wife was always based on the hourly rate of \$7 regardless of the nature of the tasks performed. He identified his T4 slip – tab 100 - in the sum of \$7,840 which he used to file his 1996 income tax return.

[52] In re-examination by his agent – Darshen Narang – Gian Singh Thandi recalled he had attended an information seminar at the PICS office and that there were discussions concerning the working conditions of farm workers. He stated he did not inquire about the official business structure of the enterprises operating as labour contractors that had hired him over the years.

JASWINDER KAUR CHEEMA

[53] Jaswinder Kaur Cheema testified in Punjabi and the questions and answers and other aspects of the proceedings were translated from English to Punjabi and Punjabi to English by Russell Gill, interpreter. The respondent's Book of Documents relevant to the appellant's appeal – 2000-2322(EI) – is Exhibit R-14. The Minister decided the appellant was employed in insurable employment with SRC for 17 weeks from June 21 to October 12, 1996 and had insurable earnings in the sum of \$7,000. The appellant's position is that she was employed for 26 weeks - from April 14 to October 12, 1996 - and earned \$7,637 as recorded on her ROE at tab 86 (duplicated at tab 95) (The appellant's Earnings Record – tab 90 – shows gross earnings in the sum of \$9,352 and net earnings of \$8,119.) The Minister relied on the following assumptions of fact as set forth in paragraphs 5(j) to 5(r), inclusive, of the Reply to the appellant's Notice of Appeal:

- j) the Appellant worked for the Payer during the Period as a farm labourer;
- k) the Appellant did not provide any services for the Payer before June 21, 1996;
- l) a cheque dated October 9, 1996 for \$3,000.00 payable to the Appellant was negotiated on October 21, 1996 at the Payer's Bank located at 49th and Fraser Street, Vancouver;
- m) a cheque dated October 12, 1996 for \$4,000.00 payable to the Appellant was negotiated on October 23, 1996 at the Payer's Bank located at 49th and Fraser Street, Vancouver;

- n) the Appellant did not receive any other remuneration from the Payer except for the \$7,000.00 admitted herein;
- o) the Payer did not withhold any amounts on account of payroll deductions or tax from the remuneration paid to the Appellant;
- p) the records provided, for example, the ROE, the T4 slip and the Employee Earnings Record were fabricated to give the appearance that the Appellant provided services for the Payer before June 21, 1996 and that the Appellant was paid in excess of the \$7,000.00 admitted, and these records were a sham;
- q) the Appellant required the 26 weeks of insurable employment reflected on the ROE in order to qualify for unemployment/employment insurance benefits; and
- r) the Appellant did not work for the 26 weeks reflected in the ROE.

[54] The appellant stated she came to Canada – from India - with her husband and two sons about 10 years ago. She had not been educated in India and did not take any ESL classes in Canada. In India, she did housework on their family farm. The first year in Canada, she worked - in Kelowna - picking apples. The following year, she worked for Bant/Shindo as a farm labourer. The appellant could not state – specifically – her starting date in 1996 when she went to work for SRC, but remembered it was before the 6th month (June) and she worked with plants in small containers for two or three weeks prior to picking strawberries for 3 or 4 weeks. Then, she picked raspberries, followed by blueberries with some overlapping of those two berry seasons near the end of the raspberry harvest. After berry season was finished, she worked cutting branches from berry plants but cannot recall where the farm was located. Her wages were paid with two cheques which she deposited into a bank account at Canada Trust operated jointly with her husband – Gurmail Singh Cheema – and her daughter-in-law. Her husband started working for SRC at the same time and both were paid the hourly rate of \$7 and neither of them used picking cards. She did not recall taking a day off during her employment. The appellant recalled picking strawberries at two different farms in Abbotsford and also picked blueberries at other farms also in Abbotsford. The work with the plants - in small pots - was performed on a farm in Richmond. The appellant identified her mark – X – on the endorsement line that she had placed on the cheque – tab 88 – in the sum of \$3,000 she cashed at the SRC 49th and Fraser St. – Vancouver - TD branch on October 21, 1996. Although the cheque is dated 10.9.1996 (September) she cannot recall the date upon which she received it. The appellant also received a cheque – tab 89 – in the sum of \$4,000 – dated 12-10-1996 (October) - and it was negotiated at the same TD

branch on October 23, 1996, only two days after the first one. Again, the appellant signed with her mark – X – in order to cash said cheque. On both occasions, after cashing the two cheques, she took the cash home. Both cheques had been handed to her - within two days – by Rana when her husband was present. As a result of receiving \$7,000 within a period of 3 days, they used some money to give to their son and some was retained by her husband but none of it was deposited to their joint bank account at Canada Trust. On August 19, 1997, the appellant signed a Statutory Declaration – tab 92 – in which she declared she worked at SRC for \$7 per hour and had not paid any money back to her employer. She adopted the contents of said declaration. She recalled a Questionnaire – tab 102 – dated October 24, 1999 being completed in her residence by her daughter-in-law - Gurbaksh Kaur Cheema - who interpreted the questions and wrote down the answers in English on the form, although she cannot specifically remember providing those responses. Prior to attending an HRDC interview – tab 96 – on August 19, 1997, with Gurbax Kaur (Randhawa) as her interpreter, she attended a meeting – in Surrey – at an office where several of her SRC co-workers were present. The appellant returned to the HRDC office on August 25, 1996 and brought in the T4-1996 slip issued by SRC and her Canada Trust bank book. She spoke to HRDC employee, Janice Morrow and Randhawa interpreted on her behalf. At that time, Morrow noted the appellant had advised that Rana - who she considered had been her employer - owed her \$1,200 and that he had told her she would be “paid soon”.

[55] The appellant – Jaswinder Kaur Cheema – was cross-examined by Selena Sit. The appellant stated that Gurbaksh Kaur Cheema had not worked at SRC during 1996. Counsel advised the appellant that her daughter-in-law had spoken with Janet Mah – Rulings Officer - during a telephone interview on June 4, 1999 and that the appellant’s answer – as interpreted by Gurbaksh Kaur Cheema – was that she had picked strawberries on her first day of work. The appellant agreed she may have provided that answer but cannot specifically recall the event. The appellant reiterated that her first day of work was on April 14, 1996 – as shown on her ROE, tab 86 – and that she started working the same day as her husband who had returned from India the day before. Counsel advised that documents in the possession of the Minister disclosed the return date of her husband was April 14th. The appellant agreed their first working day must have been April 15th. At Discovery – when represented by counsel who later ceased to act – the appellant had stated she was in India in 1996 and had returned to Canada during the second month (February). She stated she had been confused as she had not gone to India that year, although she had visited there previously. The appellant stated she rode to work every day with her husband in a van. Generally, they worked the same hours but – on occasion – they would be separated and she would perform a different task. Their driver on the first day was

Harbhajan Singh Kang. She recalled planting rows of seeds by hand for two or three weeks and then starting to pick strawberries. Counsel advised the appellant that the Minister relied on an expert witness – and other information – which indicated the strawberry crop was not ready at the beginning of May. The appellant stated she was unsure of her timing of the sequence of some work and could be in error. Counsel referred her to certain documents which showed Harbhajan Singh Kang's first day of work for SRC was June 21, 1996. Counsel also advised the appellant that Kang and his wife – Harbans Kaur Kang – both confirmed that start date to the Minister in the course of providing information at an earlier stage in the within proceedings and also repeated that date when speaking with HRDC investigators. The appellant replied that her first day of work was April 14th, but later acknowledged it was the 15th following her husband's return from India. She sat on the ground while picking strawberries and placed them in a bucket which was emptied into a flat - shared with her husband – who could carry 4 flats at a time to the scale to be weighed and emptied. She stated she never took any berries to be weighed. Counsel reminded the appellant she had stated – in her direct testimony – that she began picking strawberries right after she finished her planting work. The appellant replied she was not able to recall specific details of work other than picking berries.

GURMAIL SINGH CHEEMA

[56] Gurmail Singh Cheema testified in Punjabi and the questions and answers and other aspects of the proceedings were translated from English to Punjabi and Punjabi to English by Russell Gill, interpreter. The Respondent's Book of Documents relevant to the appellant's appeal – 2000-2321(EI) – is Exhibit R-13. The Minister decided the appellant was employed in insurable employment with SRC from June 21 to October 12, 1996 and had insurable earnings in the sum of \$6,000. The appellant's position is that he started working on April 15th and worked until October 12, 1996 during which period he had insurable earnings of \$7,574. The Minister relied on the following assumptions of fact as set forth in paragraphs 5(j) to 5(r), inclusive, of the Reply to the appellant's Notice of Appeal.

- j) the Appellant worked for the Payer during the Period as a farm labourer;
- k) the Appellant did not provide any services for the Payer before June 21, 1996;

- l) a cheque dated October 12, 1996 for \$4,000.00 payable to the Appellant was negotiated on October 23, 1996 at the Payer's Bank located at 49th and Fraser Street, Vancouver;
- m) a cheque dated October 12, 1996 for \$2,000.00 payable to the Appellant was negotiated on October 21, 1996 at the Payer's Bank located at 49th and Fraser Street, Vancouver;
- n) the Appellant did not receive any other remuneration from the Payer except for the \$6,000.00 admitted herein;
- o) the Payer did not withhold any amounts on account of payroll deductions or tax from the remuneration paid to the Appellant;
- p) the records provided, for example, the ROE, the T4 slip and the Employee Earnings Record were fabricated to give the appearance that the Appellant provided services for the Payer before June 21, 1996 and that the Appellant was paid in excess of the \$6,000.00 admitted, and these records were a sham;
- q) the Appellant required the 26 weeks of insurable employment reflected on the ROE in order to qualify for unemployment/employment insurance benefits; and
- r) the Appellant did not work for the 26 weeks reflected in the ROE.

[57] Gurmail Singh Cheema testified he is a greenhouse worker. He immigrated to Canada – from India – in 1994 with his wife and two sons. He had no formal education in India or Canada and had not attended any ESL classes. By using the services of a Punjabi-speaking interpreter, he obtained his B.C. Drivers Licence. Since arriving in Canada, he has returned to India 5 or 6 times including a visit which lasted from October, 1995 to April 14, 1996. After returning, he went to work – on April 15 - “for Rana” whom he regarded as the employer while Bant and Shindo were helpers. The appellant stated he received a telephone call – during the evening of April 14 – from Bhajan Kang (Harbhajan Singh Kang) who then attended at the Cheema residence to collect some items the appellant had brought from India for him. During their conversation, Kang suggested the appellant should come to work with him for SRC and the next day picked him up in a red van. The first day was spent working – with 4 or 5 other workers - inside a shed on a “Chinese person’s farm” - in Richmond - where seeds were planted in cups and fertilizer was added. He worked on that farm for 4 or 5 weeks and at one point worked removing grass – by hoeing and weeding – around certain plants. In the 6th month (June) the strawberries

were ready to be picked and he went to the Khakh Farms in Chiliwack where he picked for 3 weeks. Then, the raspberries were ready and he picked that crop, followed by blueberries, but for a period during the latter part of the raspberry season he picked both berry crops - on the same day - in different fields. He picked raspberries on farms in Abbotsford and blueberries near Mission. Once berry season was over, he worked pruning raspberry bushes. He stated he worked at all tasks for the same hourly rate - \$7 - and never used picking cards. He stated his usual procedure was to take two flats to the weighing station, leave them on the truck platform, pick up 5 or 6 empty flats and return to the field to resume picking. The truck with the scale would move along the rows as picking progressed in the field. The appellant stated he did not record the number of flats picked because it was not important. Blueberries were picked and placed in a bucket which was emptied into a flat containing 4 litres. Gurmail Singh Cheema stated his period of employment with SRC was identical to that of his wife and throughout the picking season he always brought the containers of berries to the weighing station. After working at the Chinese Farm in Richmond for a few days, Manjit Rana, Bant and Shindo all came to speak to him and during their talks, the hourly rate of \$7 was discussed. The appellant added other workers had warned him that wages from this employer were "always late" and this was confirmed later when - from time to time - he asked SRC for some money. He received his pay at the end of the season and received a cheque - tab 89 - dated October 12, 1996 - signed by Rana - in the sum of \$4,000 which he negotiated at SRC's TD bank on October 23, 1996 by taking out cash. He endorsed the cheque by signing his name in Punjabi. The appellant received another cheque - tab 90 - in the sum of \$2,000 but stated even though it was also dated October 12, 1996, it was not received the same day. The second cheque was cashed at the TD bank and none of the money from either cheque was deposited into the family joint account. The appellant stated he and his wife - on both occasions - were driven to the bank by Rana who instructed them where to go in order to cash their cheques. Afterwards, they left the bank without paying any of that money to Rana. The appellant's agent pointed out to the appellant that taking into account the 4 cheques cashed by him and his wife - within two or three days - they had \$13,000 in cash which was never deposited into their joint account. The appellant explained that the sum of \$4,000 had been sent to India and some money was given to their children with whom they had been living because they had just purchased a new home. Other money was spent on general living expenses. In addition to the two cheques - as described earlier - the appellant stated he received - about 15-20 days later - the sum of \$2,000 or \$2,100 in cash as representing the final settlement of his wages. This money was not deposited to any account. The ROE - tab 88 - was completed by Rana and handed to the appellant at Rana's house. The appellant stated he took the ROE to a seasonal HRDC office that catered to farm workers - mostly Indo-Canadian

– applying for UI benefits. His application – tab 95 – was signed by him – in Punjabi – but had been completed by a male person who appeared to be working for HRDC. The appellant recalled attending an interview – tab 87 – at an HRDC office where he was interviewed by Ted Bowerman. His cousin - Gurbax Kaur Randhawa – accompanied him for the purpose of acting as interpreter. Darshen Narang pointed out that the first question posed by Bowerman was whether the appellant had completed the UI application himself and the recorded answer is “No, Manjit Rana helped me”. Gurmail Singh Cheema replied that he had intended to say that Rana completed the ROE and not the application. Although his answer to Bowerman suggested Harbhajan Singh Kang was already at the Cheema residence when he returned from India, the appellant stated that was not correct. The appellant identified his signatures on Questionnaires at tab 84 and tab 100. The Questionnaire – tab 84 - was witnessed by his daughter-in-law - Gurbaksh Kaur Cheema – and the other one – tab 100 – was witnessed by Gurbax (Randhawa). The appellant stated he did not recall the circumstances surrounding the completion of either of those Questionnaires nor where they were filled out. At Q. 9 – tab 100 – the answer provided is that the appellant did not always have the same driver. The appellant explained that Harbhajan Singh Kang was his driver the first day and for nearly all the rest of his employment time except for one day when he travelled on a bus. The answer to Q. 14 refers to working with vegetables. The appellant stated this work was done – for about two weeks - in the middle of the growing season when he worked with his wife picking zucchini, peppers and other vegetables on the “Chinese Farm”. He stated he did not recall Gurbax reviewing the contents of the Questionnaire with him following completion and prior to signing.

[58] The appellant – Gurmail Singh Cheema – was cross-examined by Selena Sit. Counsel advised the appellant that the notes – tab 82 – made by Janet Mah - Rulings Officer – of a telephone conversation between herself and Gurbaksh Kaur Cheema – interpreting for the appellant – on June 3, 1999, indicated he identified Bhajan (Harbhajan) Kang as his only driver throughout the entire period of his employment. The appellant stated that answer was correct as he had returned from work on a bus – once - but had been taken to work that morning by Kang. The answer to Q. 7 – tab 100 – stated he rode to work, “sometimes van, sometimes bus”. The appellant reiterated that he had ridden the yellow bus only once to return home from work. The work performed in April and May was carried out at the vegetable farm (Min Ho Farms) in Richmond prior to picking berries. Counsel advised him the Minister relied on a statement from the owner of that farm that he had not hired any SRC labourers before July, 1996. Counsel read the appellant’s answer to a question – Q. 151 - concerning the type of work done on his first day as given at Discovery on June 20, 2001. There, the appellant stated his first work was with (picking) raspberries,

followed by blueberries. At Discovery, the appellant stated he had not picked strawberries as part of his duties for SRC. The appellant acknowledged he had given an affirmation to tell the truth at Discovery but stated this answer was not correct because he had picked strawberries for 4 or 5 weeks. During the interview – tab 87, p. 2 – the appellant stated his work involved “all kinds of berries” and – at p. 5 – there was a recorded reference by the appellant to picking raspberries and using flats. The appellant recited the order of tasks performed by him during his employment with SRC. First, he worked at the Chinese Farm picking vegetables, followed by picking strawberries at the Khakh Farms, raspberries for Jarnail Farm and raspberries and blueberries at Prem Farm, followed by pruning work at the end of the season. Counsel referred the appellant to notes of his December 16, 1997 HRDC interview – tab 87, p. 8 – concerning his work locations, where it states he named 4 farms - none of which included Khakh Farms - where he now maintains he picked strawberries. The appellant stated he recalled working on the Chinese Farm only twice and performed tasks relating to zucchini and chili peppers. Counsel advised the appellant that at his Discovery – June 20, 2001 – he had stated his last work performed was picking berries. The appellant replied that was not correct because the last portion of his work involved pruning and he believes he must have stated that at Discovery. Counsel informed the appellant that at Discovery, he had stated he did not pick vegetables in the course of his employment with SRC. He stated he did – in fact – pick vegetables and that he was paid an hourly rate - \$7 - for all tasks. The appellant stated that when he and his wife applied for UI benefits, their applications were completed by a Punjabi-speaking female at an office which operated for one month in order to handle the UI claims of farm workers (The office was not operated by HRDC nor any branch of the federal government but was staffed by people hired by the elders at the Sikh Temple). At Discovery, the appellant had stated Shindo filled out the application form and “the Punjabi girl looked at it”. He replied that Shindo had not prepared that form. Counsel referred the appellant to his Employee Earnings Record – tab 91 – indicating gross earnings of \$9,534 and reminded him that his wife – in her HRDC interview on August 25, 1997 – stated Rana still owed her \$1,200 in wages. The appellant replied he received a total of \$6,000 – in two separate cheques – and \$3,200 in cash which was handed to him at Rana’s house when settling up wages owed to himself and his wife. Although his wife was present, he thought she had forgotten that part of the transaction. Counsel pointed out his answer to Q. 33 of the Questionnaire - tab 100 – that he was paid “by cheque” and that he provided the same answer “cheque” during the interview – tab 87, p. 3 – when responding to the question how he was paid “cash or cheque?” The same answer was provided in the Questionnaire – tab 84 – dated April 7, 1999. At Discovery in June, 2001, the appellant had stated there was a balance of wages still owing to him but did not know the precise amount. Counsel suggested to the appellant that because he is aware that

his earnings statement – tab 91 – purports to show he earned a gross amount of \$9,534, he has to invent some cash payments in order to make up for the excess of the amount over the only provable amount - \$6,000 – he received in the form of two cheques. The ROE – tab 88 – discloses insurable earnings in the sum of \$7,574. The appellant stated he merely accepted whatever documents were handed to him and assumed they were correct. A CCRA print-out – tab 99 – indicates the appellant reported the sum of \$9,534 as income when filing his 1996 income tax return.

[59] Darshen Narang, agent for the appellant, advised the Court that the ROE – in box 15 – only required earnings for the last 20 weeks to be reported therein, regardless of the actual period of employment or the total amount earned.

[60] The appellant stated that – in India – he had not been involved in litigation nor had he ever been in any court.

AJMER KAUR GILL

[61] Ajmer Kaur Gill testified in Punjabi and the questions and answers and other aspects of the proceedings were translated from English to Punjabi and Punjabi to English by Russell Gill, interpreter. The respondent's Book of Documents relevant to the appellant's appeal – 2000-2367(EI) – is Exhibit R-15. The Minister decided the appellant was employed in insurable employment with SRC for 22 weeks from May 26 to October 26, 1996 and had insurable earnings in the sum of \$1,000. The appellant's position is that she was employed from May 26 to November 23 and had insurable earnings of \$7,931 in accordance with her ROE – tab 88 – issued by her employer. The Minister relied on the following assumptions of fact as set forth in paragraphs 4(j) to 4(q), inclusive, of the Reply to the appellant's Notice of Appeal:

- j) the Appellant worked for the Payer during the Period as a farm labourer;
- k) the Appellant did not provide any services to the Payer beyond October 26, 1996;
- l) the Appellant was paid \$1,000.00 by cheque dated August 1, 1996 by the Payer and this cheque was negotiated on August 28, 1996;
- m) the Appellant did not receive any other remuneration from the Payer other than the \$1,000.00 admitted herein;

- n) the Payer did not withhold any amounts on account of payroll deductions or tax from the remuneration paid to the Appellant;
- o) the records provided, for example, the ROE, the T4 slip, the non negotiated cheque dated November, 1996 for \$7,438.00 payable to Agurmal Kaur Gill and the Employee Earnings Record were fabricated to give the appearance that the Appellant provided services to the Payer beyond October 26, 1996 and was paid in excess of \$1,000.00 admitted, and these records were a sham;
- p) the Appellant required the weeks of insurable employment reflected on the ROE in order to qualify for unemployment/employment insurance benefits;
- q) the Appellant did not work for the weeks reflected in the ROE.

[62] The appellant stated she has been in Canada 10 years after immigrating with her son and husband from India. She had not received any education in India and subsequent to her arrival in Canada had not attended any ESL classes. She began working as a farm labourer – for Shindo – in 1993 and also worked for her in 1994, 1995. In 1996, she recalled her first day as either May 21 or May 24, a few days after returning from a holiday in India. On that first day, Shindo drove her - and 4 or 5 others – to work in a brownish-coloured van. Her first task was picking strawberries and she picked raspberries and blueberries as those crops became ready for harvest. At the end of the season, she worked on vegetable farms that grew zucchini, different types of peppers, and radishes. The appellant stated her pay was \$7 per hour regardless of the task performed. While picking berries, she used a picking card that was handed to her by Shindo or another driver each morning. Once a flat of berries was full, she would take it to the weighing station where a person would place it on the scale and then punch the appellant’s picking card to record the delivery. The same procedure was used with respect to all types of berries picked. At the end of the day, the driver would collect picking cards from the workers and would announce the number of hours worked that day. A new card would be handed to her the next morning. Some farms used different colours for their picking cards but all were in triplicate. The appellant recalled picking strawberries - at the Khakh Farms in Chiliwack – for about 3 weeks. Next, she picked raspberries at the “Mohinder Singh Farm” in Abbotsford and at another property she could not remember. This harvest lasted 5-6 weeks and she moved on to pick blueberries for another 6 or 7 weeks, including cleaning up. Once the berry season had finished, she began working in Richmond, on two different vegetable farms, one owned by “a white guy” and the other by “a Chinese guy”. She recalled Shindo driving her to work in a brown van

and sometimes in a white van that Pinder also drove now and then. The yellow bus was driven by Harjit Singh Gill. Although Bant was sometimes with Shindo, the appellant stated she never met Manjit Rana. In 1996, the appellant operated – with her daughter – a bank account at a branch of Hong Kong Bank of Canada. She can sign her name and – with some effort – can understand numbers written on cheques or other papers and demonstrated her ability to read time according to the clock on the courtroom wall. The appellant was referred to a photocopy of a cheque – tab 91 – dated August 1, 1996, in the sum of \$1,000, signed by Rana and issued on the SRC account at the TD bank in Vancouver. She identified her signature on the endorsement. She was referred to tab 90 and a purported SRC cheque – of the type earlier referred herein as a “I Cash Money Give Cheque” – dated November 11, 1996 except the signature of Manjit Singh Rana appears on the signature line. The name written in the payee space is Agurmail Kaur Gill and the amount is \$7,438. The appellant identified her signature – as an endorsement - on the reverse but stated it was not deposited into her account. Her ROE – tab 88 – is made out in the name of Agurmal K. Gill. The appellant explained Shindo sometimes called her Agurmail instead of Ajmer but the cheque was properly paid to her and the ROE – handed to her by Shindo – correctly states her earnings and period of employment with SRC. The ROE – dated November 28, 1996 - was used to apply for UI benefits and the application was completed by her daughter and son-in-law who went with her to the HRDC office on December 2, 1996. Ajmer Kaur Gill recalled attending an interview – tab 92 - at an HRDC office on October 30, 1997. She was accompanied by her son-in-law Jasbir Singh Sandhu who was authorized – tab 93 – to act on her behalf with respect to any dealings with HRDC. She could not recall whether any other Punjabi-speaking person was present and could not remember anyone asking her questions. She was referred to her recorded answer to Q. 8 concerning the type of work performed and to her response that she worked in a greenhouse where there was “little pots of soil”. The appellant stated she has no specific recollection of the interview or having provided that answer. Neither her daughter nor son-in-law worked for SRC. The appellant was referred by her agent to a further HRDC interview – tab 95 – on November 18, 1997 which she attended with Jasbir Singh Sidhu who acted as her interpreter. She stated she could not recall that event. Shortly after completing her application for UI benefits – tab 97 – she began receiving payments. When she cashed the \$1,000 cheque – tab 91 – at her branch of the Hong Kong bank, she was accompanied by her son-in-law. Neither Bant nor Shindo were present. The appellant stated she received a \$3,000 cash payment - from Shindo - early in the season and another one in the same amount later on followed by a balance of \$1,300 or \$1,400 in cash received after the final settling up of wages owed. The initial \$3,000 was requested because she needed money and the next \$3,000 was required because she had to send money to India. The first payment was

received at Shindo's residence as was the second, except on this occasion her son-in-law went with her. The appellant agreed that when she received the first \$3,000 she had not worked enough hours at that point to justify this payment and understood it was merely an advance against future earnings. The cash was received in mixed denominations but she counted the money and was satisfied that amount had been received. None of this money was deposited into her bank account. The appellant could not recall any circumstances pertaining to an unsigned Questionnaire at tab 100. She recalled her children had been instructed to record the number of hours she had worked each day. After working for SRC in 1996, the appellant continued to work as a farm worker for other labour contractors.

[63] The appellant – Ajmer Kaur Gill – was cross-examined by Johanna Russell. She recalled attending a Discovery on December 17, 2001 where she had become ill and unable to continue. She remembered returning for Discovery on January 30, 2002 and affirming to tell the truth. In India, she worked – mainly in the house - on the family farm and the first time she had earned money was in Canada. Her immigration to Canada was sponsored by her daughter and husband and she lived with them and their three sons in the Sandhu family home. She recalled a letter arriving which concerned her UI claim as it related to the work done for SRC. She had not encountered any question arising about her entitlement to benefits before that time, nor since. The appellant stated she could not recall her grandson - Randy Sandhu – speaking to Janet Mah as recorded in her notes – tab 82 – but agreed she must have produced her bank book – at some point – after having been requested to do so by an HRDC interviewer. Counsel pointed out that at Discovery, the appellant had been certain Shindo had driven only a brown van but during her direct examination had stated Shindo also used a white van to drive workers to the fields. The appellant confirmed that Shindo had used “kind of a white van” and drove her to work at the vegetable farms in Richmond, although Binder (Chahal) also drove her 4 times. Harjit Gill drove the yellow bus to Abbotsford and Chiliwack. The appellant was confident that Shindo had driven her to work both the first and last day. Counsel reminded her that – at Discovery – she had identified Binder as her driver on the last day, noting “it had been very cold”. Ajmer Kaur Gill replied she doubts she gave that answer and repeated her assertion that Shindo was her driver on the last day of work, which was – indeed – very cold. Counsel advised the appellant that Binder Chahal had stated in his Statutory Declaration – Exhibit R-5, tab 271 – that he started work on July 1 and was laid off on November 16, 1996 and drove the light grey van every day unless it was being repaired. The appellant's recorded answer to Q. 9 – tab 92 – concerning her mode of transportation to work indicates she identified her van drivers as Shindo and Harjit and stated that Manjit Rana drove the bus. The appellant advised counsel that was an error as she had never met Rana and it was Harjit – not

Manjit – who was the bus driver. At the second HRDC interview – tab 95, – on November 18, 1997, the appellant’s answer – at p. 3 - is recorded that “sometimes the clt (claimant) would go to where Manjit Rana was at to get her money if he was staying at a house where she could walk to”. Ajmer Kaur Gill replied that she could not have given that answer as she had never seen – let alone met – Rana. At Q. 35 of the Questionnaire – tab 100 – the answer given was that Manjit Rana had paid the appellant and - at Q. 27 – also had recorded her hours and - at Q. 30 – that Shindo and Rana had been her supervisors. The appellant stated she had not provided those answers to whomever had completed that form on her behalf and that the information therein was wrong. Counsel advised the appellant that certain documents – including an ROE and Shindo’s own statement to HRDC investigators – caused the Minister to accept that Shindo was laid off on October 26, 1996. The appellant replied that this date may be the one written on some papers but Shindo was her driver while working on vegetable farms in Richmond during late October and November. She recalled Harjit Gill had driven her to work – in the bus – during berry season. Concerning the first payment of \$3,000 in cash, she agreed it had been received about two weeks after starting work when she had probably not earned more than \$700. However, she thought that by the time the second payment of \$3,000 was received, she had worked enough to justify the total amount paid to her. Although her answers – at Discovery – were that her son-in-law had gone to Shindo’s house with her in order to collect the first payment of \$3,000, the appellant stated that was not correct since she was accompanied by him only during the second visit. She stated she could not recall the answers provided either at the HRDC interview – tab 92 – or at Discovery concerning the timing of her cash payments but agreed she made the statements recorded in the transcript of that proceeding - at Q. 251 - which indicated she received \$3,000 in cash after two weeks of work, followed by the \$1,000 cheque - tab 91 – received in August and a further sum of \$3,000 in cash in October and a final cash payment of \$1,400, plus or minus \$20, at the settling up meeting in Shindo’s house, for a total of \$8,400. Her earnings statement – tab 89 – indicates net earnings of \$8,438. At the HRDC interview – tab 95 – the appellant – at p. 3 – was not able to recall the amounts of the payments or when they were received stating “this was over a year ago now”. The appellant stated the inconsistency was due to the fact she had not prepared herself for the HRDC interview but had done so prior to attending Discovery. The appellant agreed that when she received the \$1,000 cheque - tab 91 – it was the only document ever issued by SRC that used her correct name because her ROE – tab 88 - and the “I Cash Money Give” purported cheque - tab 90 - were in the name of Agurm K. Gill and Agurm Kaur Gill, respectively. The appellant stated the usual working day was 8 hours, “sometimes less, sometimes more” and usually worked 6 days per week, perhaps 7 on occasion. Counsel referred her to the HRDC interview – tab 92 – and her answers – as recorded - to several questions concerning

hours and days of work at Qs. 17, 22 and 23 which indicate the appellant worked at \$7 per hour, 7 days per week, 10 hours a day and that maybe she had taken one day off. The appellant stated she had not provided those answers and advised the Court “what is written down there is a lie”. She added that she was told by the drivers she had worked 10 hours on certain days and stated it was obvious a person had to take a day off every now and then. Often, she rode in the same van as her co-worker (and co-appellant) Taro Kaur Bassi, although sometimes Bassi was dropped off at a different farm. Bhagwant Grewal lived across the street and rode in the same van. Counsel advised the appellant the pay records for Grewal - and statements to HRDC interviewers - indicated Grewal worked 10 hours per day, 6 days per week and always had one day off per week, mostly Sunday but the entries on the appellant’s pay statement - tab 89 – were based on 112 hours every two weeks or 56 hours for a single week. The appellant replied that she – and other workers - were upset at the need to attend HRDC interviews and discuss their employment at SRC because they had worked very hard. As a result of her distress, she was “unable to tell the truth at the interviews”. Counsel advised the appellant that some of her co-workers had testified they were paid by the flat or the pound for picking berries. The appellant confirmed she was always paid \$7 per hour for her work. Concerning her layoff, the answer recorded at the interview – tab 92, Q. 4 – was that Manjit Rana had told her “a couple days earlier while she was at work that she would be laid off”. The appellant stated it was Shindo who had made that statement – not Rana – and denied she had given that answer as noted. At Q. 18, the interviewer – Joann McInnes – wrote that the appellant had said she would “borrow money from Shindo or Manjit”. The appellant stated these answers were not accurate and had been written down incorrectly like on the occasion when she had allegedly named Rana as her bus driver. She reiterated she had never met Rana in 1996 and would not be mentioning him when discussing her work. Counsel advised the appellant the Minister had relied on information that the Min Ho Farms – often referred to by the workers as the Chinese Farm – had not grown any peppers during 1996 but only zucchini or daikon, also known as lo bok. The appellant stated she – and 4 or 5 other workers - picked peppers, cucumbers and zucchini and – inside a greenhouse - also packed some vegetables into boxes. The appellant agreed she was the only one in her household who had worked for SRC in 1996 and that there had been several answers written down in the Questionnaire - tab 100 – stating that no picking cards had been used by her during the course of her employment with SRC. The appellant stated those answers are not correct as she used picking cards nearly every day for 4 months while picking three different types of berries.

[64] In re-examination by her agent – Darshen Narang – the appellant - Ajmer Kaur Gill – stated she sometimes rode in a bus – from Vancouver to Abbotsford or

Chiliwack - with 40 or 50 other workers. At some farms, there was a large number of workers provided by other labour contractors. The appellant noted that while Gill is a common Indian family name and Ajmer is also quite common, she had never heard of the first name, Agurmal, written on her ROE.

RAVJIT GILL

[65] The appellant – Ravjit (Ravi) Gill – testified in English but the interpreter - Russell Gill – was in Court throughout his testimony in order to assist, as required. The respondent's Book of Documents relevant to this appeal - 2000-2368(EI) – is Exhibit R-18. The Minister decided the appellant was not employed in insurable employment - with SRC - during the period from June 16 to October 26, 1996 because he was not employed under a contract of service. The appellant's position is that he was employed in insurable employment during said period and had insurable earnings in the sum of \$7,392. The Minister relied on the following assumptions of fact as set forth in paragraphs 4(j) to 4(l), inclusive, of the Reply to the appellant's Notice of Appeal:

- j) the Appellant gave conflicting statements to authorities with respect to the method of pay and the timing of same, the rate of pay, the days and hours of work, the names of the farms, the identity of fellow workers and the transportation method;
- k) the records provided, for example, the ROE, the T4 slip, the employee earnings record, the pay cheques, in regards to the Appellant, were fabricated to give the appearance that the Appellant worked for and was paid by the Payer and these records were a sham;
- l) the Appellant did not perform any duties for the Payer during the Period.

[66] Ravjit Gill stated he was born in 1971 and arrived in Canada – in 1994 – with his parents and two sisters. Although he attended 300 hours of ESL classes during 1995 and 1996, he did not continue formal education which consisted of Grade 10 in India. Later in 1994, he started working for a flooring company until December when he went to India for a holiday. On his return in April, 1995, he began working at a convenience store in White Rock, B.C. and when it ceased operations, found employment in another store in the same chain at Coquitlam, B.C. where he remained for only a few weeks. In 1995, he did some work for Rana and after being laid off, attended the local UI office to locate other employment. He stated he worked

for Rana (SRC) from June 16 to October 26, 1996 until he was laid off. In 1997, he began driving taxi and still works in that occupation but currently owns his own vehicle. He was married in 2000 and he and his wife lived with his parents. In India, he had worked on their family farm. Early in June, 1996, he telephoned Rana inquiring about work and Rana advised he would let Gill know when work started and later telephoned to confirm a job was available. For the first two weeks, he drove his own vehicle – insured in the name of his sister - to work on a farm in Richmond where he performed tasks pertaining to onions, turnips, carrots and a long, white radish (lo bok). Later, he picked strawberries for between 10 and 12 days followed by raspberries and blueberries. He picked both strawberries and raspberries at the Khakh Farms and at other farms in the Chiliwack and Abbotsford areas. He estimated he picked raspberries for 10 days and blueberries for about 15 days. However, most of his work was done at the Min Ho Farms, Mike's Farm and McKenzie Farm, all in Richmond. At any given time on any of those farms, there were between 10 and 15 workers. The vans hauling them to work were not marked so it was difficult to differentiate between SRC workers and others who may have been supplied by other labour contractors. Ravjit Gill stated that - for the most part - he drove himself to work and would leave for home when informed the working day was over. He stated Rana – over the phone – had promised him \$8 per hour but when he did receive some pay, it was based on the hourly rate of \$7. He stated he never considered working on any basis other than by the hour. In his other jobs, he had been paid every two weeks but that was not the practice at SRC. He started working at 7:00 a.m. each day and quit between 4:00 p.m. and 5:00 p.m. and – each day - recorded the hours worked in a notebook. At some point, he handed in his hours to Rana but did not receive any pay therefrom. Later in the season, the appellant's father - Gurbachan Singh Gill – also worked for SRC as a van driver. However, he stated he did not have good relations with his father and chose not to ride to work in a red van driven by him. He preferred to use his car but if someone in his household needed that vehicle he rode to work in a greyish van – driven by Bhan Singh - about 15 to 20 times during his employment. Usually, between 7 and 10 people rode in the van but he preferred to drive himself to work because it allowed him to get some extra sleep and he accepted the cost of purchasing gas as a tradeoff. While working at a farm – in Richmond – he saw Bant - for about 20-30 minutes - giving instructions to some workers. He had not met him formally and knew Shindo was Bant's wife. The appellant identified his ROE - tab 89 – but advised he was not paid in accordance with the schedule set out therein. Instead, he received his first payment by cheque – tab 91 - dated September 22 - in the sum of \$3,000 - which he deposited to his Canada Trust account on September 27. Otherwise, the only other money paid to him was in small sums of \$15 or \$20 - on 4 or 5 occasions - which Rana seemed to consider as loans despite owing arrears in wages. The appellant identified a copy of his Canada Trust account

– tab 96 – and confirmed the entry – on p. 5 – representing the deposit of that \$3,000 cheque. The appellant stated he received another cheque – tab 92 – in the sum of \$2,000. The cheque - dated September 27, 1996 – was deposited to the appellant’s account on October 3, 1996. A final cheque – tab 93 – dated September 29, 1996 – in the sum of \$1,900 - was deposited into the appellant’s account on October 24, 1996. The appellant stated he received a total of \$6,900 in 3 cheques together with about \$200 in cash which had been received in small amounts from time to time from Rana who had also been repaid some of those amounts on occasion. The ROE – tab 89 – dated October 27, 1996 was signed by Rana and handed to the appellant at Rana’s residence. The appellant stated Rana told him there was no more work. On November 4, 1996, the appellant applied for UI benefits – tab 90 – and stated he received assistance - from a male person - to complete that form. Ravjit Gill stated he did not know Manjit Rana – personally – and never saw him driving any vehicle. As for the work schedule followed at SRC, the appellant stated he took a day off – sometimes - as a matter of choice and other times if the weather was bad. On occasion, workers were told to quit earlier than usual. The appellant recalled attending an interview – tab 95 – on August 27, 1997 when he was asked a series of questions by Janice Morrow, an HRDC employee. He also attended another HRDC interview – tab 101 – on February 11, 1998. On both occasions, the appellant was accompanied by his cousin, Satnam Aujla, who assisted by interpreting certain aspects of the matter into Punjabi, as required. Sometimes, the questions were translated – fully – into Punjabi and the answers by Ravjit Gill – in Punjabi – were interpreted in English to the interviewer by Aujla. The appellant stated that – in 1996 – he did not know that Bant and Rana were related but had learned afterwards that Rana is Bant’s brother-in-law. The appellant identified his signature on the Questionnaire – tab 104 – that he completed and returned to CPP/EI Appeals Vancouver office. The answer to Q. 7 concerning the mode of transportation to work is “Van and Bus Both (some days diff (different)) bus or van”. The appellant replied he had not considered it particularly significant to inform anyone that he had driven his own vehicle to work most of the time and - overall – did not pay a lot of attention when completing the Questionnaire. The appellant agreed he had responded to Q. 11 of the Questionnaire that he had ridden in a van which was greyish-white but added that “old vans look alike”. However, his best current recollection is that he rode to work in a “reddish” van, at least 10 or 12 times. Responding to Q. 31(c) of the Questionnaire, the appellant stated his pay was \$8 per hour. He explained that he considered that was his wage before any deductions for income tax. His answer to Q. 34 was that he did not remember how much he had received by cheque or in cash. The appellant stated that when he deposited each of the three SRC pay cheques to his own account, neither Bant nor Rana nor Shindo went with him nor was any principal

of SRC present at the UI office when he applied for benefits. Since working for SRC in 1996, the appellant stated he has had no contact with Rana.

[67] The appellant – Ravjit Gill – was cross-examined by Johanna Russell. The appellant stated the individual – Satnam Aujla – identified as a cousin at an HRDC interview is married to his sister – Amrit - who sponsored the appellant and his parents and his other two sisters to come to Canada. In 1994, he lived in a basement suite about a 5-minute walk from his sister’s house and in 1996 lived in a suite in her house until moving - in mid-farming season – to a new house in Surrey purchased by him and his parents. That property had a basement suite which was rented to a tenant and the balance of the mortgage payment each month was about \$600. The appellant stated that – in 1996 – he transferred the sum of \$2,664 from India to Canada through a private exchange and this amount was deposited to his account at Canada Trust as revealed by the entry – tab 96 p. 3 - on April 13, 1996. Although the vehicle – a 1986 grey, Hyundai Excel – that the appellant drove to work was insured in the name of his sister - Amrit Aujla – he stated he bought that car in 1995 or 1996 for \$1,500 or \$1,600. Because Amrit was entitled to receive a discount from ICBC – based on her lack of claims – the car was insured in her name and she paid the premium. Counsel advised the appellant that his father – and co-appellant – Gurbachan Singh Gill – at Discovery – had stated that there was only one car in the Aujla/Gill household at that time. Ravjit Gill replied that - in 1996 - Satnam Aujla owned a Toyota Corolla and at some point later, his sister acquired a car. While working for SRC, the appellant stated he had no interaction with Bant and/or Shindo. He performed the tasks required of him and – following layoff – applied for and received his UI benefits based on his ROE (tab 89). In his view, there was no reason to remember dates pertaining to the picking seasons of berries or details of the nature of work done at the vegetable farm. He admitted his lack of recall of events in 1995 and 1996 was probably due to “loss of memory from drinking too much”. Although he had not been asked any question by counsel requiring this sort of response, the appellant stated “I am the only son and even if I do stupid things, people listen to me”. In 1995 and 1996, he attended ESL classes for 3-4 hours per day for a total of 300 hours and explained his primary purpose for seeking that instruction was that he considered it an appropriate place to “find a girlfriend”. He drove to work in the Hyundai Excel on his first day and stated no one else from his household rode to work in that car. He estimated he rode to work 15-20 times in a van driven – mostly – by Bhan Singh and recalled riding with another man – unknown to him – who appeared to be about 50 years old. When he rode in a van, he recalled riding with Ravinder Singh Lali and another man he knew as Sandhu. Counsel advised the appellant that at Discovery – p. 58, Qs. 377, 378 – he stated Bhan Singh had picked him up at his home in Surrey and driven him to work. The appellant replied that he had driven to work that first day in

his own car and explained that he had been “careless” when giving answers at his Discovery. During the August 27, 1997 interview – tab 95, p. 1 – with Janice Morrow at the HRDC office, the appellant stated he drove his own car to work “all the time” and – at p. 2 – advised Morrow that he had never ridden to work in a van because “I always drove myself”. The appellant replied those answers were incorrect and he should not have used the word “never” because he had ridden to work in a van several times. During the interview – tab 101 – the appellant – at p. 5 – was asked by HRDC employee Gail Buckland whether he drove himself to work in the Hyundai Excel. The recorded answer by the appellant is, “sometimes my sister gave me a ride & sometimes I borrow car”. At p. 8, he told Buckland that his sister made the payments on the car. The appellant stated those statements were not correct since the car had been purchased outright in a private deal for \$1,500 or \$1,600 cash with money given to him by his sister, Amrit. He surmised the interviewer had made an error when writing down his response to that question. In responding to the Questionnaire – tab 104 – the written answer to Q. 5 concerning method of transportation to work each day was “the employer arranged it by his transport”. Ravjit Gill responded that he had driven himself to work most of the time rather than riding in a van and that he had completed that form without paying much attention. He acknowledged he had written answers to Q. 7 and Q. 12 indicating he had ridden to work in both a van and a bus and had been picked up at his own house. The appellant explained that although he can speak English fairly well, he does not always read with full understanding. He could not recall whether he had ever driven his father - Gurbachan Singh Gill – to Rana’s residence in Vancouver. He agreed he did not have a clear recollection of the tasks performed during his first couple of weeks. In his direct examination, he stated the first work was in relation to onions at the Richmond vegetable farm. At Discovery – Q. 71 - he stated that he picked strawberries his first day and agreed both answers could not be correct. He recalled that when picking strawberries and raspberries, he placed berries into flats which were taken to a cart pulled by a tractor. He was not always handed a picking card but was aware his flats were counted and remembered the raspberry flats were weighed but was uncertain whether that practice also applied to strawberries. He pointed out that he did not pay much attention because he knew he was being paid by the hour. He heard from other workers that some people were working on a piecework basis at different rates, depending on the berries being picked. He did not share a flat with any other worker but – from time to time – would add some of his berries to the flat of an older female worker in order to top up her container. When issued a picking card, he kept it in his pocket and a punch with an “*” was used to record weight of a flat if it seemed to be less than full when delivered to the station. During the interview – tab 101 – the appellant – at p. 12 – told Gail Buckland that he had not picked berries. However, he explained that in the context of those questions he

thought it was concerning the work done at the Chinese Farm where he had only worked with vegetable crops. Counsel reminded the appellant that during his interview – tab 95 – with Janice Morrow he had never mentioned picking any berries in the course of his employment with SRC and had provided information concerning only work done on farms in Richmond and when speaking to Gail Buckland later had not mentioned picking berries. The appellant replied he had not been asked – specifically – whether he had picked berries at any location other than at Richmond. The Questionnaire – tab 104 – was completed by the appellant in his own handwriting. Counsel referred him to the answer to Q. 4 where he was requested to provide details of where duties were performed. The appellant’s response was that he worked on “various farms” naming locations already identified as vegetable farms in Richmond. In responding to Q. 14, the appellant was invited to provide a detailed description of the type of work performed during each month of his employment. The appellant wrote that he was “working as a farm worker, lots of kinds vegetables” but added he did not remember all the locations. At Discovery, he mentioned working at three vegetable farms where he performed tasks pertaining to turnips, onions and zucchini. Counsel asked the appellant why he would not have mentioned picking berries. He replied his memory is not good and he cannot recall the months he picked certain types of berries. Further, he did not fully understand the purpose of the Discovery and agreed he had provided incorrect answers concerning his use of picking cards when he stated he had only used a card at the Khakh Farms. Counsel advised the appellant that all appellants had testified that strawberry flats were weighed and he conceded that was probably correct. At Discovery – Q. 519 – he stated he had not used any picking card for blueberries and when completing the Questionnaire - tab 104 – his response indicated – at Q. 40 – he had never used picking cards. He acknowledged that during the second HRDC interview – tab 101 – he was asked - at p. 12 – to name some of his co-workers but was unable to do so and explained to Gail Buckland the young women were referred to as “sister”, and the older females were called “auntie”. At Discovery, the appellant could not recall any full names of his co-workers. In direct examination, he stated he worked with Ravinder Singh Lali. Counsel referred the appellant to Exhibit R-1 - a list of SRC employees during 1996 – and advised that Lali’s name did not appear thereon. The appellant insisted he had worked with this person. He stated he had maintained his own record of hours but since discarded that paper. Counsel informed him his response to Gail Buckland – p. 7 of the interview tab 101 – to her query why he had not kept track of his hours was “I don’t need to”. The appellant acknowledged he had been careless when giving that answer. Concerning the three cheques received for his wages, the appellant stated the first two were handed to him – by Rana – during work at a farm and the last one was obtained at Rana’s house. The cheques totalled \$6,900 and the appellant stated he was “thankful Rana paid me”. He advised counsel he had

not seen his alleged pay statement – tab 94 – showing gross pay of \$7,392 and net earnings in the sum of \$6,376. He agreed that the calculations – if accurate – demonstrated Rana had overpaid him. He stated that after his layoff and while in the process of sleeping off a hangover, Rana telephoned his residence and indicated he wished to speak to him about some money - \$525 - the appellant supposedly owed to him. As a result of that demand, the appellant spoke to other workers who advised him to pay what Rana wanted. Two days after the initial telephone conversation, Rana called the appellant and the appellant agreed to pay Rana the sum of \$500 – rather than \$525 – and had bargained to get that discount on the basis of the inconvenience arising from the need to drive to Rana’s home – in Vancouver – just to repay the money. Counsel advised the appellant that – at Discovery – although his story about the phone calls was basically the same, he said – there – he returned the sum of \$525 even though he had argued with Rana about a discount. With regard to the timing of cheques received, the appellant stated he was unsure whether he received the last two before or after his layoff. At the HRDC interview – tab 95 – with Janice Morrow the appellant denied paying any money back to Rana. He explained he had not regarded the return of the overpayment of \$500 as paying money back to Rana. He could not specifically recall the warning issued by Morrow - immediately preceding that question – to the effect he must tell the truth about his work situation at SRC and that there were penalties for providing false information. During his interview with Gail Buckland – tab 101, p. 9 – the subject of overpayment was discussed and the appellant told Buckland that there might have been a mistake concerning his net pay which was \$524 more than shown on his earnings statement. When asked by Buckland if he would have returned that amount, he stated “maybe, if he gave me proof”. Counsel suggested to the appellant that he had returned – to Rana - all the money paid to him by the three cheques and had worked – if at all – in order to receive an ROE which entitled him to receive UI benefits. Counsel referred him to his banking records – tab 96 – and to an entry on September 28, 1996 of a withdrawal in the sum of \$1,000. On October 3, 1996, the SRC cheque – dated September 27, 1996 – was deposited into that account and on October 5, 1996, the sum of \$10,000 was transferred out of the account. The appellant stated that although he could not recall the purpose of the \$1,000 withdrawal, the sum of \$10,000 had been sent to India for purposes related to a house he owned there. The last SRC cheque – in the sum of \$1,900 – was deposited to the account on October 24. On November 1, the sum of \$800 was withdrawn followed by another withdrawal of \$2,000 on November 8. The appellant could not recall the purpose for either transaction but denied that he had participated in any scam with anyone at SRC and stated he had not received any money on behalf of his father - Gurbachan Singh Gill – for his wages nor had he returned any money to the contractor at the request of his father.

[68] The appellant – Ravjit Gill – was re-examined by his agent, Darshen Narang. He explained his poor performance during the HRDC interview – tab 95 – was due to his hangover and the fact he had consumed “a couple drinks to straighten up” prior to attending at the HRDC office. He stated he often referred to his brother-in-law – Satnam Aujla – as his cousin and regarded those terms as interchangeable. He acknowledged that during the next HRDC interview - tab 101 – Aujla is described as a “friend”. Ravjit Gill stated he had been drinking the night before that interview and would drink nearly every day if he had money. He stated he repaid about \$200 in loans to Rana which he received during his employment when he needed small amounts of money to buy gas or go drinking with his friends. He also repaid the sum of \$500 which – according to Rana - was an overpayment of wages but had not purchased his ROE as part of a scheme to fabricate employment.

INDERJIT SINGH ATWAL

[69] Inderjit Singh Atwal testified in Punjabi and the questions and answers and other aspects of the proceedings were translated from English to Punjabi and Punjabi to English by Russell Gill, interpreter. The respondent’s Book of Documents relevant to the appellant’s appeal – 2000-2362(EI) – is Exhibit R-9. The Minister decided the appellant was not employed in insurable employment with SRC during the period from December 29, 1996 to January 11, 1997 because he was not employed under a contract of service. The appellant’s position is that he was employed in insurable employment during said period and had insurable earnings in the sum of \$672. The Minister relied on the following assumptions of fact as set forth in paragraphs 4(j) to 4(o), inclusive, of the Reply to the appellant’s Notice of Appeal:

- j) the Payer ceased business operations prior to the Period referred to in the Appeal herein;
- k) the Appellant gave conflicting statements to authorities with respect to the duties performed, the method of pay, the identity of fellow workers and the days and hours of work and the locations of the work;
- l) the records provided, for example, the ROE, the T4 slip, the employee earnings record, in regards to the Appellant, were fabricated to give the appearance that the Appellant worked for the Payer and these records were a sham;

- m) the Appellant was not paid any amount by the Payer;
- n) the Appellant required the weeks reflected in the ROE in order to qualify for employment insurance benefits; and
- o) the Appellant did not perform any duties for the Payer during the Period.

[70] The appellant stated he was born on January 1, 1954 and arrived in Canada on February 23, 1993. In India, he went to school until Grade 4 and did not continue his schooling nor attend ESL classes in Canada after immigrating. He farmed in India – on leased land – and his entry to Canada was sponsored by his wife, Gurpal Kaur Atwal, who had come to Canada in 1990 after completing Grade 10 in India. He stated his wife could read and write some English and could understand English better than she could speak it. The appellant stated he cannot read, write, speak nor understand English and cannot read nor write in Punjabi. He stated he understands numbers – in English – and obtained a Driver's Licence by using the services of a Punjabi interpreter. He and his wife have a 10-year old daughter in Grade 4. After arriving in Canada, the appellant worked at an airport for one year until his employer lost the contract and he was laid off. He received an ROE which he took to a UI office but did not receive any benefits because he was hired by the new cleaning contractor – at \$8 per hour - and worked there until October, 1995. Following layoff, he applied for and – for the first time – received UI benefits. In 1996, he worked as a labourer for a labour contractor - Santokh Hothi - between June 1 and October 5, during which time he picked and sorted potatoes and packed them into boxes. He earned \$7.50 per hour and worked 10 or 11 hours each day. Upon receiving his ROE from Hothi, the appellant thought he needed between 18 and 20 weeks of employment in order to qualify for UI benefits. Shortly after finishing his work with Hothi, the appellant heard about a temporary cleaning job from a person who was going to England for a month. He applied for that position and worked for Zeacan at the mall in Richmond for 6 weeks. When the original worker returned from his holiday, the appellant was laid off and received his ROE. Following that layoff, the appellant stated he found work with Bant and/or Shindo and worked on December 29 and December 30, 1996 and from January 2 to January 11, 1997. He stated he cleaned up house construction sites by piling up material and covering it with a protective sheet. Prior to December 29, 1996 he had not worked for Bant and/or Shindo and/or Rana and/or SRC. Inderjit Singh Atwal stated he met Bant – whom he knew to be a labour contractor - at the Sikh Temple on December 27 and asked for work. The next day when he telephoned Shindo, she informed him there was some cleaning up to be done at various construction sites. The appellant stated he started

work and was driven to the jobsite each day. At the end of the work, he received a cheque in the sum of \$580 which he understood represented his wages – after deductions – from gross earnings of \$672, on the basis of \$7 per hour for 96 hours. The appellant stated he worked 11 days for Bant and arrived at Bant’s house each morning at 6:30 a.m. in order to be driven – in a brown van - to the work location. On occasion, Bant would remain and assist to stack drywall sheets. During his employment with Bant (SRC), the appellant worked at 5 or 6 different house construction sites where the houses were framed but had no doors installed. Until Bant drove him to a site, the appellant stated he did not know where the work would be performed. In the event he finished early, he waited until Bant arrived to pick him up and drive him directly to his residence. The appellant stated the work days ranged from 7.5 to 8.5 hours and Bant seemed to be capable of estimating the time required to complete each job. According to what Bant told him, the appellant thought the jobs were performed in Richmond. Even though there was some snow on the ground in January, 1997, it did not interfere with his cleanup work. After receiving the SRC cheque – in the sum of \$580 – the appellant went to the SRC branch of the TD bank and attempted to cash it but was informed by the teller there were not sufficient funds in the account. He returned the cheque to Bant and about 20 or 25 days later was paid the sum of \$580 – in cash – by Bant who also handed him an ROE – tab 87 - pertaining to the 11 days of work. Although the ROE is dated January 16, 1997, the appellant estimated he received it about January 26. He applied for UI benefits – tab 95 – and brought his other ROEs to the HRDC Fraser St. office, including those issued by Hothi, Scandinavian Cleaning and Zeacan. Later, SRC issued him a T4-1996 which he filed with his income tax return for the 1996 taxation year even though his payment had not been received until January, 1997. In 1997, he began receiving UI benefits based on the total time spent working at several jobs. The appellant identified a photocopy of the SRC cheque – at tab 4 of the Respondent’s Miscellaneous Book of Documents, Exhibit R-8 – dated January 11, 1997. After being told the cheque was no good, the appellant made a copy of the cheque before returning it to Bant. Although the cheque was signed by Rana, the appellant recalled Shindo had filled it out and handed it to him. He also recognized the photocopy of the Employee Earnings Record – tab 88 - indicating he was entitled to a net payment of \$584. Although the cheque is dated January 11, 1997 - his last day of work – the appellant did not receive it until two or three days later and the cash to replace that NSF cheque was received – together with the ROE – 20 to 25 days after that. The appellant recalled attending an HRDC interview – tab 82 – on June 12, 1997, after receiving a telephone call requesting him to bring in his Indian passport, issued in the name Inderjit Singh. The appellant changed his name from Inderjit Singh to Inderjit Singh Atwal and received a Change of Name certificate – tab 81 – dated February 5, 1997. He remembered being questioned by a “white guy”

(Michel Fontaine) and that an “Indian guy” (Sarb Sandhu) acted as Punjabi interpreter. During the interview, the appellant – at p. 6, tab 82 – informed Fontaine that Bant drove him to work in a “sky blue” older-model van. He explained the interpreter must have made a mistake because he recalled saying it was a brown van. At p. 9, the appellant had described seeing 40-50 workers seated in a yellow bus outside Bant’s house during June and July, 1996 even though he had not worked for SRC and/or Bant until December 29, 1996. The appellant did not clarify the purpose of that statement and agreed the Bant/Shindo employees had not worked with him while employed by Hothi - another labour contractor - who supplied workers to the Lohr Farm.

[71] The appellant – Inderjit Singh Atwal – was cross-examined by Selena Sit. The appellant recalled being asked questions about SRC during his HRDC interview with Michel Fontaine. The typed notes are at tab 82 and a handwritten document entitled Supplementary Record of Claim is in Exhibit R-9 at tab 89. Richard Blakely, an employee of Revenue Canada was also present. The following day – June 13, 1997 – the appellant was interviewed by Michel Fontaine and the Punjabi interpreter was Kal Tarlal, an HRDC employee. The notes of said interview are at tab 91. Michel Fontaine interviewed the appellant a third time on February 17, 1998 and the notes are at tab 93. The appellant stated he was aware he was under an obligation to speak the truth during these interviews but admitted some answers are wrong because he merely repeated some things Shindo told him to say. Prior to attending one of the interviews, because he had never had a problem arising from receiving UI benefits in previous years, he sought advice from Shindo concerning inquiries by HRDC – apparently related to his work for SRC – and his entitlement to UI benefits received in 1997. The appellant identified his signature on his application – tab 95 – dated February 8, 1997 for UI benefits. He had applied for benefits earlier – December 9, 1996 – but thought they had not been issued because he found work with SRC at the end of December. Counsel informed Atwal that according to calculations relied on by the Minister, he had required 26 weeks of employment – in 1996 – to qualify for UI benefits and his 18 weeks working for Hothi and the 6 weeks at Zeacan left him short two weeks. He confirmed that prior to December 29, 1996, he had not worked for SRC or any of the apparent principals of that company. During the interview, the notes - tab 93 - made by Fontaine state the appellant explained his failure to receive an ROE from Bant immediately after layoff was due to the fact “his stamps were not made”. The appellant denied making that statement. During his work for SRC, he picked up pieces of wire, bits of wood, sheets of drywall from inside the house which were moved outside to a sundeck or a garage, if there was one. Sawdust and dirt was swept up and placed into garbage cans or boxes and the walkway around the house was cleaned. Counsel advised the appellant that during the interview - tab 89 – on

June 12, 1997 he told Fontaine that the work was “always outside. It was cold but had raincoat” (Q. 8). The appellant denied giving that answer and stated he worked inside and outside depending on the task. Counsel referred to notes made by Fontaine of the appellant’s response to Q. 26 after being advised there was over two feet of snow on the ground during the period he claimed to have been working outside doing clean-up work. According to Fontaine’s notes, the appellant – after some hesitation – proceeded to describe how he installed large sheets of material on walls inside houses that were being built in Richmond. Inderjit Singh Atwal stated he did not recall giving that answer because all the work done in relation to drywall involved only picking up loose pieces and stacking them for more convenient storage. The next day, the appellant attended another interview – tab 93 – and identified photographs of Bant, Shindo and Manjit Rana. During said interview, he stated it was Manjit Rana who had telephoned him to advise there was some work and that Rana had handed over the ROE following layoff. During his discussions with Fontaine, the appellant’s statements were noted to the effect that he had worked near Manjit Rana – but not with him – when Rana would “set up cauliflower boxes at a farm on No. 3 Road”. Fontaine also noted the appellant explained working outside one day but the rest was performed inside when he packed cauliflowers and potatoes. The potatoes were packaged – in plastic bags - directly from a truck as they flowed down a chute into “some kind of machine”. Fontaine noted the appellant said he had “worked with two older ladies who primarily bagged the potatoes” but these ladies had not travelled to work with him in the same van. Counsel pointed out to the appellant that at one point in the interview – tab 91 – Fontaine had advised the appellant he had given three different versions of his employment with SRC. One was that he did clean-up work inside; second, when it was pointed out there had been a large snowfall, the appellant had explained he assisted Bant to instal drywall inside new houses and – third – that he performed farm labour work involving potatoes. The appellant stated the confusion was probably due to the difference in Punjabi dialects which can vary every 20 kilometers between villages and – perhaps - he had not understood the questions, as repeated to him by the interpreter. He denied telling Fontaine that his work in January, 1997 was all done on a farm and was not construction work. The appellant stated Bant had driven him to and from work every day for 11 days and – rarely – assisted him to move any sheets of building material. Counsel advised the appellant that in an interview – Exhibit R-1, tab 21 - Bant had advised an HRDC investigator that he had not driven the appellant to work and claimed he never saw him and that during this period - according to the ROE, Exhibit R-4, tab 20 – Bant had a full-time job with a seafood company. The appellant replied that Bant may have had a job but had still driven him to work each morning and back home each night for 11 days. Concerning the days allegedly worked, counsel referred the appellant to various versions supplied by him. His recorded answer to Q. 22 of the

interview - tab 89 – is that during the last week he worked Saturday and Sunday. Earlier in his testimony, the appellant stated he worked on December 29 but did not mention December 30 or December 31. According to the 1996 calendar - Exhibit R-32 - December 30 was on Monday and December 31 on Tuesday. The 1997 calendar was filed as Exhibit R-33. Counsel pointed out that if he had not worked one Saturday and one Sunday then his maximum possible employment would have been only 10 days – not 11 – and that at 7.5 to 8.5 hours per day he could not have worked a total of 96 hours, as claimed. The appellant stated the interviewer had improperly recorded his answer about not working on one of the two weekends during the period of his employment. The appellant stated he had recorded his hours each day on his own calendar – at home – but had discarded it since. Counsel referred the appellant to his recorded answer at tab 89, Q. 20, that he “had no time sheet” and that “Shindo used to write the hours”. The appellant stated he had not recorded the hours – personally – but his wife had performed that task and the reason that 1997 calendar was not available to be produced to the interviewer in June, 1997, was due to the fact it had been badly ripped and - therefore – discarded. However, during the interview – tab 91 – the appellant handed Fontaine a list - allegedly in Bant’s handwriting - of the days and hours he had worked. He identified the sheet – tab 90, p. 3 – as the one on which his days - and hours - had been recorded between December 29, 1996 and January 11, 1997, including 7 ½ hours on December 30 and 8 ½ hours on December 31, respectively. The appellant agreed he had not given HRDC a photocopy of the \$580 cheque - Exhibit R-8, tab 4 – to Fontaine during the interviews but had produced it pursuant to an undertaking following Discovery. Counsel asked the appellant to explain how he could find that cheque 4 and one-half years later but not in June, 1997. Inderjit Singh Atwal replied that he had two large suitcases full of all sorts of papers and it took a long time to locate it. When referring to a “receipt” during an interview, he explained he was talking about the Statement of Earnings (Exhibit R-8, tab 4). Concerning his attempts to negotiate the \$580 cheque at the TD bank, he recalled the teller “punching keys” and then advising him there was not enough money in the SRC account. Later, when Shindo gave him \$580 in cash - in return for the cheque – he spent the money without depositing any of it into his regular bank account. He did not sign any receipt for Shindo and acknowledged he had no way to prove he actually received that amount. During the interview - tab 89, Q. 25 – he apparently told Fontaine that the entire amount of the cheque was deposited to his Canada Trust account and provided the number to identify said account. The appellant confirmed that answer was wrong and explained he had intended to deposit the cheque into that account but when he noticed it was drawn on the SRC account at the TD bank, considered it would be better to cash it there.

[72] In re-examination by his agent – Darshen Narang – the appellant - Inderjit Singh Grewal – stated Bant – once - helped him move a full sheet of drywall over to the side on a wall inside a house in order to make space for cleanup. Some sheets were broken and pieces were picked up and placed into containers together with other construction debris.

SHARINDER SINGH BAGRI

[73] Sharinder Singh Bagri testified in Punjabi and the questions and answers and other aspects of the proceedings were translated from English to Punjabi and Punjabi to English by Russell Gill, interpreter. The respondent's Book of Documents relevant to the appellant's appeal – 2000-2363(EI) – is Exhibit R-10. The Minister decided the appellant was employed in insurable employment with SRC from May 5 to November 2, 1996 and had insurable earnings of \$2,000 during that period. The appellant agrees the Minister's finding with regard to the period of employment is correct but claims his insurable earnings were in the sum of \$7,840 as stated on his ROE at tab 88. The Minister relied on the following assumptions of fact as set forth in paragraphs 4(j) to 4(n), inclusive, of the Reply to the Appellant's Notice of Appeal:

- j) the Appellant worked for the Payer during the Period as a farm labourer;
- k) the Appellant was paid \$2,000.00 by cheque dated September 7, 1996 and negotiated on October 7, 1996;
- l) the Appellant was not paid any other remuneration by the Payer other than the \$2,000.00 admitted herein;
- m) the Payer did not withhold any amounts on account of payroll deductions or taxes from the \$2,000.00 paid to the Appellant;
- n) the records provided, for example, the ROE, the T4 slip and the non negotiated cheque, were fabricated to give the appearance that the Payer gave the Appellant wages in excess of the \$2,000.00 admitted, and these records were a sham.

[74] The appellant testified he was born in 1954 – in India – and immigrated to Canada in February, 1980. In India, he attended school for 4 or 5 years but cannot read nor write Punjabi. During 1985 – in Vancouver – he attended ESL classes for 6

months. He cannot read nor write English but can speak enough for purposes of his current employment as a janitor. In Canada, he worked – as a cleaner – at the Pearson International Airport in Toronto and moved to Vancouver in 1984 where he found employment over the next few years in a restaurant and at a fish company. Although he had no experience as a farm worker, he started working for SRC on May 5, 1996. On his first day, he worked with potatoes at a farm on #3 Road. This was the same location where he picked turnips on his last day of work on November 2, 1996. At the outset, the appellant thought his pay was \$8 per hour but was unsure whether his wages were calculated on that basis, although he was satisfied he had been paid in full at the end of the season. He recalled receiving payments on four occasions during 1996, as follows: \$1,000 in cash during the 6th month (June), \$4,000 in cash during the 9th month (September), a cheque in the sum of \$2,000 in October and a final sum of \$1,750 in cash in the 11th month (November). The appellant stated each payment – whether cash or cheque – was handed to him by Shindo. He stated the first payment - \$1,000 – was received in June at Shindo’s residence. Shindo wrote something in a large book and he signed it. The next payment of \$4,000 - in September – was received at Shindo’s house and he recalled her children were present. Again, he signed in the same book after receiving his money. The SRC \$2,000 cheque – tab 91 - dated Sep 7 (September) 1996 - was signed by Rana and negotiated at the TD bank at 49th and Fraser. About one week after his November 2, 1996 layoff, the appellant received the final payment of \$1,750 – cash – at Shindo’s house together with his ROE. The appellant stated that in all his other jobs – before and since – he had been paid every two weeks by cheque and he considered the SRC method of paying wages to be unusual. He started work on May 5 but after two weeks had not received any pay. He asked Shindo about it and was told money would be paid if needed but SRC had to wait to pay wages to employees until the company had been paid by those farmers to whom it had supplied labour. The appellant regarded this business practice as “strange” but accepted Shindo’s explanation – reluctantly – because he could not do anything about it. Shindo was his driver nearly all the time and at the end of each working day would announce the number of hours worked. Although since discarded, the appellant stated he recorded his hours - in a small book – at home. He worked 8 hours per day, 7 days per week and even if the actual working time on a given day was more than 8 hours – or less - the difference was only about one hour so work time was still recorded as 8 hours. Although he cannot recall what he did with the first \$1,000 in cash received from Shindo, the appellant stated he had to pay rent and buy groceries. With respect to the \$4,000 cash payment received in September, the appellant paid an intermediary that sum in order that it could be changed into rupees and delivered to his father – in India – who was very ill. The appellant stated he called a telephone number and an employee of the exchange arrived at his house and took the \$4,000. The appellant provided the name of his

father and the location of his residence in a village in India so the appropriate amount of rupees could be delivered in order to conclude the transaction. He had used the services of the intermediary on other occasions and when the rupees arrived at the village in India, his father would telephone to confirm the delivery. Although there were fees for changing the money and carrying out the delivery, the appellant could not recall the amount. He used the last payment of \$1,750 to buy furniture. The appellant did not deposit any cash - from the three payments - into a bank account. He endorsed the September 7, 1996 cheque – tab 91 – but did not sign “S. Bagri” on the signature line of the “I Cash Money Give” purported cheque at tab 90 – in the sum of \$4,000 – with the appellant’s name as payee. The appellant recalled attending at the HRDC office in Burnaby on November 7, 1997 for the purpose of answering certain questions. Following layoff, he applied – tab 96 – for UI benefits and his landlord - Gurbaksh Kaur Sandhu - helped him complete the form he had picked up at the HRDC office and taken home. He instructed her to write a note - on the application - that he had received WCB benefits due to an injury but could not recall the dates. He was accompanied to the interview – tab 92 – by the same person and she assisted in interpreting the questions into Punjabi. Another Punjabi interpreter - employed by HRDC – was also present. Even though Mrs. Sandhu was present - beside him – when asked – Q. 2 – who had assisted him to complete his UI application, his answer – as recorded by the interviewer – was that he could not recall. After receiving a letter from HRDC requesting him to attend an interview, he discussed this matter with Shindo who advised him not to mention her name. The appellant stated he had never been aware that SRC was Rana’s company and - like his co-workers - thought it was owned by Bant and Shindo. He recalled he had seen Rana at the Chinese Farm in Richmond and understood he could not drive a vehicle because he had lost his driving privileges. He saw Rana every day for more than two months while they both worked on a farm that grew zucchini and other vegetables. The appellant stated he could not recall a telephone conversation with Janet Mah nor any of the circumstances as noted by her at tab 82. He identified his signature on the Questionnaire – tab 85, dated April 5, 1999 – but is unable to remember details concerning its content or the manner by which it was completed. He stated that he rode to work in a van for the majority of the time and was transported to work in a school bus only when picking berries. The appellant stated he worked every day and did not pay any money to Shindo or anyone at SRC to receive his “weeks paper” (ROE) and that he had received payment for his work, as described in his testimony.

[75] The appellant – Sharinder Singh Bagri – was cross-examined by Selena Sit. He confirmed that his layoff from past employment had never created any problem when applying for – and receiving – appropriate UI benefits and he understood his work for SRC was raising questions at HRDC. During his previous employment in

Canada, all other employers had paid him every two weeks. His wife – who had completed Grade 10 in India - arrived in Canada in 1987 and worked as a seamstress. Counsel showed the appellant the pay statement – tab 89 – purporting to show he had gross earnings in the sum of \$10,192 and net earnings of \$8,788. The appellant stated he had not seen that document before and when he obtained the sum of \$1,000 from Shindo – in June - was not aware how much he had earned to that point. He agreed he had not made his own record of when he received the cash payments. He stated he requested money from Shindo on many occasions and had specifically asked to be paid the sum of \$4,000. As for the purported cheque - tab 90 – he stated he had not seen it until produced in Court during his testimony. Counsel read out an answer the appellant had given at his Discovery on November 9, 2001 to Q. 270. At that time, he said Shindo made him sign on a cheque – in the sum of \$4,000 - in September or October before paying him that sum in cash because his father was ill and he needed to send money to India. At that time, he identified his signature at the bottom of the “I Cash Money Give” purported cheque – tab 90 – where the payer would normally sign and went on to explain that Shindo had given him the sum of \$4,000. The appellant stated he did not recall giving those answers – at Discovery - but agreed he must have done so. In 1996, he operated a joint account – with his wife – at the Royal Bank and Fraser and 49th Avenue in Vancouver (A copy of transactions on that account is at Exhibit R-8, tab 5). Regarding the transfer of money to his father in India, the appellant had telephoned the number on a business card of an enterprise he thought was called Indian Exchange that operated in Toronto, Montréal and Vancouver. He had sent money through that company earlier and the exchange agent always attended at his house to pick up the money and obtain instructions regarding delivery of the rupees in India to the designated recipient and/or an alternative person. No receipt was issued by the agent but the appellant stated the system has changed and one can send money to India by depositing funds to a special account and having the Canadian funds changed to rupees for transfer to India. Sharinder Singh Bagri agreed he had no documents to support receipt of cash from Shindo – as alleged – nor did he have any paper to prove he had sent money to his father in India. He stated that when he sent money to India, he would receive a phone call from the recipient within one or two weeks to advise the funds had been received. Notwithstanding that during his other employment he had always received pay on a regular basis together with a proper pay stub setting out the various deductions, he accepted what he was told by co-workers that the farming industry was different and would only receive his full pay at the end of the season. The appellant stated his wife had calculated he had earned \$8,788 but had only received a total of \$8,750. He could not explain how his wife had arrived at that conclusion if she had never seen the pay statement at tab 89. At Discovery, the appellant explained he had mentioned the \$28 deficiency to Shindo but no further payment was received

from her. While answering Q. 18 at the HRDC interview – tab 92 – the appellant’s answer indicates he received “around \$9,000 total – cheque/cash, mostly asked for cash”. He recalled being driven to work by Shindo and that he had never used his own vehicle. Counsel pointed out that during the HRDC interview – at Q. 9 – he apparently told the interviewer that he used his own Toyota Corolla “once or twice” to go to work. The appellant agreed he owned that car during 1996 but stated he had not used it to travel to work. As for working in the rain, he recalled it was usual to continue working unless instructed by the farm owner - or Shindo - to stop and go inside a shed. When picking berries, the appellant used picking cards and would receive a new one – each morning – with his name written on it. A truck – with a scale - was situated in the field and a person would receive the flat of berries and punch his card. The flats weighed 18 pounds and if the weight was less, it was not counted as a complete flat until extra berries had been brought in later to make up the deficiency. Different farms used different colours for their picking cards but the colours did not have any linkage with the type of berries being picked. The cards had 3 copies and one was retained by the farmer, one by the driver and the appellant retained one copy which he took home. He threw away the cards later and did not turn them in to Shindo at the end of the season because his pay was based on an hourly rate. When answering Q. 5 of the interview – tab 92 – he stated he had been provided with Rana’s telephone number when looking for work. He admitted that answer was not correct but because Shindo had informed him it was Rana – not her – who was really his employer during 1996, he thought he should tell HRDC that Rana had hired him instead of Shindo.

[76] In re-examination by his agent – Darshen Narang – the appellant - Sharinder Singh Bagri – reiterated he had not repaid any of his wages to Bant and/or Shindo and/or Rana. Further, except for the small sum of \$28, he accepted he had been paid the wages due to him for his work during the 1996 season.

HARBANS KAUR PUREWAL

[77] Harbans Kaur Purewal testified in Punjabi and the questions and answers and other aspects of the proceedings were translated from English to Punjabi and Punjabi to English by Russell Gill, interpreter. The respondent’s Book of Documents relevant to the appellant’s appeal – 2000-2360(EI) - is Exhibit R-27. The Minister decided the appellant was employed in insurable employment with SRC for 7 weeks during the period from July 14 to August 24, 1996 and had insurable earnings in the sum of \$2,744. The appellant’s position is that she was employed from July 14 to December 7, 1996 and had insurable earnings in the sum of \$8,152 as stated in her ROE at tab

96. The Minister relied on the following assumptions of fact as set forth in paragraphs 4(j) to 4(q) of the Reply to the Appellant's Notice of Appeal:

- j) the Appellant worked for the Payer during the Peirod as a farm labourer;
- k) the Appellant did not provide any services for the Payer beyond August 24, 1996;
- l) the Appellant was paid \$2,744.00 by the Payer for farm labour duties during the Period;
- m) the Appellant did not receive any other remuneration from the Payer other than the \$2,744.00 admitted herein;
- n) the Payer did not withhold any amounts on account of payroll deductions or tax from the remuneration paid to the Appellant;
- o) the records provided, for example, the ROE, the T4 slip, the pay cheques and the Employee Earnings Record were fabricated to give the appearance that the Appellant provided services for the Payer beyond August 24, 1996 and was paid in excess of \$2,744.00 admitted, and these records were a sham;
- p) the Appellant required the weeks of insurable employment reflected on the ROE in order to qualify for unemployment/employment insurance benefits;
- q) the Appellant did not work for the weeks reflected in the ROE.

[78] The appellant stated she had not received any education in India nor in Canada following her arrival in 1992. She did not attend any ESL instruction and her first job in Canada was working for a labour contractor supplying workers to Purewal Farms. Because of eye surgery, she did not work for the next two years until the summer of 1996 when she was employed by SRC. She stated her hourly wage was \$7 and understood a pay cheque would be issued every two weeks. However, it was necessary to request money from Shindo who handed her two cheques in the sums of \$500 and \$6,000, respectively, followed by a cash payment of \$525 at the end of the season. The appellant stated she met Shindo at the Temple and agreed to work for SRC at \$7 per hour for all sorts of work. A few days later she started picking raspberries at the Gill Farms but did not know in which municipality it was located within the Lower Mainland. After two weeks at that farm, she picked raspberries at

other places and ended up the berry season by picking blueberries for about 8 weeks. Then, the appellant began working on two vegetable farms in Richmond that grew radishes, turnips, peppers, cucumbers, zucchini and cabbages which was the last crop picked. She recalled that Manjit Rana had driven her to work – in a maroon van - on her first day. Later, Shindo drove her 4 times and Bant was her driver 3 or 4 times but Bahjan (Harbhajan) Kang was her usual driver during the middle of the season. Kang drove a white van and the other drivers used the maroon van. Although she never rode to work in the yellow bus, she knew SRC used a school bus to take people to work in the fields. While picking berries, she used picking cards which were punched by Bant and/or Shindo or – sometimes – the farm owner, when flats were handed in to be weighed. At the end of the day, the picking card was handed back to Bant and/or Shindo and she did not keep a copy for herself. She recalled using a punch card even when picking different types of vegetables. Each day of work was recorded as 8 hours even though it was sometimes a bit more or less. The appellant stated she took off only one day during her period of employment. When picking raspberries, she placed the berries into an “ice-cream pail” and then emptied that container into a flat. It took 4 pails to fill the flat and if it was not full at quitting time, it was handed in and weighed. The picking cards were blue or yellow and had three separate sheets to each card. Even though each work day consisted of 8 hours, the appellant’s children kept a record of her hours. The appellant stated she had worked at a restaurant where she received her pay every two weeks but when she worked for a labour contractor- in 1992 or 1993 – she was paid every two to four weeks but not according to a precise schedule. She continued to work for SRC because she was confident Bant and Shindo would pay her in full by the end of the season. During this period, the appellant and her husband – who was ill – lived with their sons and daughter and grandchildren. Her son paid all living expenses. When she received a total of \$7,025 for her work, she assumed that amount was correct and did not undertake her own calculation. She received a T4 in that amount and used it to file her income tax return for the 1996 taxation year. The appellant recalled receiving her ROE – tab 96 – from Shindo. She took it to the UI office and – on December 12, 1996 - submitted an application – tab 97 – for benefits which was completed by either her daughter or daughter-in-law. Although the box – at Section F of the form – is checked to indicate she had an elementary school education, the appellant stated that was not correct. The appellant’s pay statement – tab 95 – indicates she worked 52.5 hours during her last week of employment ending December 14. At Section B of the application form the nature of the appellant’s occupation is described as a Farm Worker and the type of work performed as “berry picking”. The appellant stated it was an omission not to have mentioned picking vegetables at Richmond. The appellant identified a copy of a cheque – tab 94 – dated August 25, 1996, payable to herself in the sum of \$500 which she endorsed and negotiated at the TD bank at 49th

and Fraser. The cheque was signed by Rana and, even though she had an account at that branch, did not deposit the cheque but obtained cash. Another cheque – tab 93 – dated 9.10.1996 was issued by Rana but not negotiated by the appellant until December 12, 1996. The appellant could not recall when she received that cheque but stated it seemed she had cashed it at the earliest opportunity taking into account her work schedule. While cashing the \$6,000 cheque, neither Bant nor Shindo were present at that TD branch but she was accompanied by either her daughter or daughter-in-law when walking out of the bank with that amount of cash. The appellant recalled an interview – tab 90 – conducted at an HRDC office in Richmond on February 6, 1998. She identified her signature “H Kaur” at the foot of each page and recalled Charan Dhillon was the HRDC Punjabi interpreter. The appellant’s agent referred her to the question “How many hours per day?” – part-way on page 4 – and her answer that she worked “sometimes, 8, 9, 10 and there were times we worked 12 hours too”. The appellant stated that with travel time included during berry season the days were that long but it took only 45 minutes to travel to work at Richmond. She was unsure of her rate of pay, describing it as “\$7.00 or \$8.00 per hour. I think it was \$7.50, I think”. At one point – according to p. 6 of the notes taken by HRDC employee - Jeannie Suric - the appellant’s daughter – Perminder Kaur Sihota – was brought into the room and remained until the interview was finished. As noted by Jeannie Suric – at p. 7 – the appellant stated she had begun work in July and worked continuously for 6 or 7 weeks. She was shown her ROE indicating she had worked until December but Jeannie Suric assumed – at that time – the appellant had actually been in India (HRDC later accepted that was not the case since the appellant had travelled to India in 1995 and not 1996). At p. 7 of the notes taken by Suric, in answering a series of questions based on each of the later months of her alleged employment, the appellant – in sequence - stated she had not worked in each of the months of September, 1996, nor October, nor November, nor December, 1996. Earlier, the appellant’s answer is recorded that she worked “from July 14 to the end of August, 1996” and that she had declared “I am aware of the months of the year. I did not work in September, 1996”. The appellant stated there was confusion arising from HRDC believing she had been away on holidays in India when that was not true. Further, she was having difficulty understanding what was being asked and denied providing answers to the effect she had not worked during in September and thereafter until her layoff date in December. The appellant was referred to a Statutory Declaration – tab 91 – signed by her on February 6, 1998. She identified her signature “H Kaur” and agreed her daughter had been present and had written out – in English – the contents of said declaration. In that solemn declaration, the appellant stated, “I worked for Manjit Rana for a period of 7-8 weeks from approximately July 7/96 to the end of August, 1996 and not for the 21 weeks as indicated on my application for unemployment insurance benefits and the record of employment”.

Later, she states that “I did not work the months of September, October, November and December. I am not able to speak or read English”. The declaration concludes: “The above statement was given at my own free will, in the presence of my daughter, Perminder Sihota”. The appellant did not agree with the contents of that declaration and stated her daughter had not translated those statements into Punjabi nor did the “East Indian lady” present in the room offer any translation. On February 13, 1998, the appellant attended another interview - tab 88 – with Jeannie Suric whose notes indicate the meeting had been requested by the appellant because she “wanted to change her story”. The appellant was accompanied by Sonia Sandhu, a friend of her daughter. Mrs. Dhillon acted as the Punjabi interpreter. At this interview, the appellant advised Jeannie Suric she had worked from July 14 to December 7, 1996. She based her recollection on a piece of paper with those dates written on them that had been read out to her by her husband. She told Jeannie Suric she was not changing her story but wanted to bring in that piece of paper that she believed was an accurate record of the dates she had worked at SRC. Between the two interviews – a period of one week – the appellant denied talking to either Bant or Shindo. In answering the Questionnaire – tab 101 – at Qs. 15 and 16, she mentioned “picking strawberries”. The form was completed by her daughter – Perminder Sihota – and the appellant agreed she must have provided her with the answers since she had not worked for SRC. The appellant explained that the answer was wrong because she had picked raspberries during her first week of work. In answering Q. 32 concerning method and frequency of payment of wages, the answer provided was “End of season”. The appellant stated that answer is wrong and her daughter must have misunderstood because she had been paid two cheques and one amount in cash. The Questionnaire – tab 85 – was completed by her daughter – Jasbir Nijjer – and because this child – like the other daughter – was born in England and had never been to India, she is not fluent in Punjabi and cannot translate accurately from that language to English and, as a result, mistakes were made in that form, such as writing down that she was paid by cheque without any mention of cash. Notes – tab 83 – prepared by Janet Mah - Rulings Officer – of a June 29, 1999 conversation with Harjit Kaur Purewal - daughter-in-law and interpreter for the appellant – stated that on her first day of work the appellant said she picked strawberries but could not recall the task performed on her last day of employment with SRC. The appellant denied providing those answers and speculated “maybe I wasn’t home”.

[79] The appellant – Harbans Kaur Purewal – was cross-examined by Selena Sit. The appellant was born in 1942 and even though she lived for 37 years in England and has been in Canada 11 years, cannot speak, read or write English. In England, she worked 23 years spinning thread in a woolen mill and throughout her life there has not been any need for her to learn English. She and her husband had

three daughters and two sons. Counsel informed the appellant that during an HRDC interview, the date of December 7, 1996 was stated as her last day of work because it had been written on her ROE. The appellant replied that when the interviewer had threatened to call the police, in response she had instructed her to “go ahead and write whatever you want”. Counsel pointed out to Harbans Kaur Purewal that she had signed her name at the bottom of each page of the interview – tab 90 – and that her daughter – Perminder Sihota – had also signed as a witness. Further, counsel suggested each page had been translated from written English to oral Punjabi prior to signing. The appellant replied that she had merely signed the successive pages of the interview notes because she had been threatened by the interviewer – Jeannie Suric – and her daughter signed as a witness but did not understand the Punjabi translation and/or interpretation. The appellant stated she does not know the English words for months of the year and would not have told an interviewer that she had not worked in the months of September, October and November. She agreed her daughter had written the Statutory Declaration - tab 91 – but did not recall the contents of that statement being translated and then read aloud to her in Punjabi - as noted by Jeannie Suric at tab 90, p. 8 – and that she had not been aware – earlier – of the nature of that document until she listened to the interpretation provided – in Court – by Russell Gill. The appellant brought a piece of paper – tab 89 – to the HRDC upon which the alleged start and finish day of her employment with SRC were noted as 14-07-96 and 07-12-96, respectively. She stated those dates had been written on that paper by her husband who informed her “these are the dates that you worked”. She added that – in her view – this paper should be able to prove the dates of her employment. The appellant stated she was driven to and from work – by Shindo - in November and December even though counsel informed her that the ROE issued by SRC with respect to Shindo stated her last day of work was October 26, 1996. Even when there was snow on the ground, the appellant stated she still worked cutting cabbages from the ground by using a knife to sever the head just above the root. Counsel advised the appellant that the Minister relied on weather records that there had been extensive snowfall on the Lower Mainland in late November and early December, 1996 and that the agricultural expert’s opinion was that the cabbage harvest had been finished by mid-November. The appellant replied that she had worked until December 7. The appellant’s daughter – Perminder Sihota – wrote the answers in the Questionnaire - tab 101 – including those to Qs. 36, 37, 40, 41 concerning whether picking cards had been used by the appellant in the course of her employment. Each time, the answer was clearly expressed in the negative. In response to Q. 23 whether she had worked Sundays, the response was “Mostly yes, but there were times when Sunday was a day off”. As to missing work due to bad weather – Q. 26 – the answer was “Yes.” The appellant explained she had instructed her daughter to state picking cards had not been used to record her hours of work or the volume of her work because she

was paid by the hour and not by piecework. The correct answer was that she had – indeed - worked every Sunday and even continued to work during bad weather because she wore raingear. In her opinion, the confusion arose in several answers because her daughter had not worked for SRC nor did she live with the appellant and – as a result – was unaware of the working conditions and the purpose of picking cards. When she and her daughter-in-law – Daljit – were at Shindo’s house picking up the ROE, Shindo had offered Daljit some advice concerning the process of applying for UI benefits. With regard to the cheque - tab 94 - for \$500 received from Shindo and cashed at the TD bank on August 28, 1996, the appellant stated she had not returned any portion of that money to anyone at SRC nor did she repay any portion of the \$6,000 cheque – tab 93 – to any principal of the employer but gave money to her children with whom she and her husband resided. The final payment - \$525 in cash – was received two or three days after obtaining the ROE and the appellant stated she had a clear recollection of that event even after more than 7 years. Counsel referred her to a note made by Jeannie Suric - at tab 90, p. 4 - that the appellant stated she received “one big cheque and cash on two times. I received a total of \$8,000”. The appellant denied making that statement. On the following page, Suric recorded the appellant’s answer to a question about whether she had worked in December. The response noted is “I don’t know. All I know I received a little bit of money - \$500.00, then \$1,000.00 or \$2,000 cheque”. In response to Q. 33 of the Questionnaire – tab 101 – concerning the method of payment – whether by cheque or cash – the answer is “cheque” and there is no mention of any cash in the Questionnaire – tab 85 – where the method of payment is described as by “cheque”.

[80] The appellant’s agent did not re-examine the appellant.

PARMJIT KAUR REHAL

[81] Parmjit Kaur Rehal testified in Punjabi and the questions and answers and other aspects of the proceedings were translated from English to Punjabi and Punjabi to English by Russell Gill, interpreter. The respondent’s Book of Documents relevant to the appellant’s appeal – 2000-2365(EI) – is Exhibit R-28. The Minister decided the appellant was employed in insurable employment with SRC for 18 weeks from June 22 to October 19, 1996 and had insurable earnings in the sum of \$6,200. The appellant’s position is that she was employed from June 22 to December 7, 1996 and had insurable earnings in the sum of \$7,945 in accordance with the amount shown on her ROE at tab 89. The Minister relied on the following assumptions of fact as set forth in paragraphs 4(j) to 4(s), inclusive, of the Reply to the appellant’s Notice of Appeal:

- j) the Appellant landed in Canada on June 19, 1996;
- k) the Appellant worked for the Payer during the Period as a farm labourer;
- l) the Appellant did not provide any services for the Payer beyond October 19, 1996;
- m) the Appellant negotiated a cheque dated July 10, 1996 for \$1,000.00 on October 21, 1996, a cheque dated August 8, 1996 for \$1,200.00 on October 26, 1996, a cheque dated September 10, 1996 for \$2,000.00 on November 15, 1996 and a cheque dated November 12, 1996 for \$2,000.00 on November 27, 1996;
- n) the Appellant did not receive any other remuneration from the Payer other than the \$6,200.00 admitted herein;
- o) the Payer did not withhold any amounts on account of payroll deductions or tax from the remuneration paid to the Appellant;
- p) the records provided, for example, the ROE, the T4 slip and the Employee Earnings Record were fabricated to give the appearance that the Appellant provided services for the Payer beyond October 19, 1996 and was paid in excess of \$6,200.00 admitted, and these records were a sham;
- q) the Appellant required the weeks of insurable employment reflected on the ROE in order to qualify for unemployment/employment insurance benefits;
- r) the Appellant did not work for the weeks reflected in the ROE;
- s) the Appellant applied for maternity benefits under the *EI Act* with the due date of her child shown as January 20, 1997.

[82] The appellant was married – in India – on April 8, 1994 and she and her son came to Canada under the sponsorship of her husband. In India, she had studied for her Bachelor of Arts degree offered by the Punjab Education Board but transferred to a program of technical studies and later taught - in Punjabi - courses in cutting and tailoring for more than two years. Her own education had been in Punjabi. In Canada, she did not study English nor participate in ESL classes. Three days after landing in Canada, the appellant started working for SRC because her husband had visited the

Sikh Temple in order to arrange her employment. During the relevant period, the appellant and her husband and son lived in a suite – in Surrey - and the appellant's husband was not employed outside the home. He was studying to qualify as a life insurance agent and passed the examination in October or November, 1996. However, that venture did not prove to be a success and he currently drives a taxi. In India, the appellant performed housework, cared for some animals on rented land and cut fodder. After her marriage – in 1994 – she no longer worked outside the home. The appellant recalled she went to work – the first day - in a van driven by Harbhajan Kang. Later, she was driven by Shindo and by Harjit Gill who drove a yellow bus. She picked strawberries that first day at Khakh Farms and continued for about 3 weeks before picking raspberries at Gill Farms and other farms in the Abbotsford area for 3 more weeks. That crop was followed by blueberries and when berry season was finished, the appellant stated she worked at two vegetable farms in Richmond known to her as the Chinese Farm and Mike's Farm. The produce grown on those farms included cabbages, turnips, radishes, zucchini and peppers. Throughout her employment, she was paid \$7 per hour and did not use picking cards at any time. Both Rana and Shindo were her supervisors and Bant was present sometimes. Shindo explained the nature of the work to be performed and demonstrated how to pick strawberries. Although Shindo informed her she would be paid every two weeks, this did not occur and she had to ask Shindo for some wages as time went by. Often, Shindo would offer excuses and complain about the cash flow problems encountered by SRC. Usually, it would take 7 to 10 days following a request for money before Shindo would fulfil that demand. The appellant stated she was paid total wages of \$7,900. She received 4 cheques in the sums of \$1,200, \$2,000, \$2,000 and \$1,000, respectively, and a total of \$1,700 in three cash payments of \$500, \$1,000 and \$200. While picking berries, the appellant stated she did not use a picking card and did not see other workers using those cards. When she filled a flat, it was taken away by men and she did not have to take it to any weighing area. Shindo was present in the fields during picking. About 3 or 4 weeks after starting work, the appellant received her first payment of \$500, only after informing Shindo that her family needed funds. The appellant stated she worked until December 7, 1996, 33 days prior to the birth of her baby. During her pregnancy, she was healthy and worked 7 or 8 hours per day – outside – even when required to bend over to pick the cabbages. When weather was wet, she wore raingear and continued working. Although she cannot recall – specifically – the tasks performed during her last week of work, they were in relation to certain vegetables at one or other of the two farms in Richmond. Following the 1996 season, the appellant worked for other farm labour contractors and was paid on a regular basis. Since 1999, she operates her own tailoring business from her own home. On December 7 - at Richmond - Shindo handed the appellant her ROE – tab 89 – dated December 9, 1996 but did not mention the number of weeks required to

qualify for UI benefits. The appellant stated she had not realized the discrepancy in the dates and noted a mistake had been made in writing her SIN number – initially - on the ROE and assumes someone corrected it later. The appellant stated her first name is spelled Paramjit on her Social Insurance (SI) card and on her Indian Passport – tab 102 – but she uses the spelling “Parmjit” for everyday purposes. The application – tab 90 – for UI maternity benefits was filled out at the HRDC office and the appellant’s husband completed the form. At Box 16 on said form, the location of work – Richmond – is crossed out and the nature of the work performed is described as “canary (cannery), farm worker (cleaning & packing vegetables)”. New West (New Westminster) is named as a work location but the appellant noted that was not correct. After her husband completed the application form, she signed it and began receiving benefits which continued until she began working – as a farm labourer – in June, 1997. Because she had already started work, she returned two UI cheques to HRDC and following her layoff in December, 1997, applied for benefits and was paid her claim on a regular basis without question. Since that time, she has not been eligible for UI benefits because she is self-employed. During the HRDC interview – tab 101 – on July 10, 1997 her husband - Jaspal Singh Rehal - acted as interpreter. The appellant stated she was aware of the general nature of the investigation concerning SRC and that the interview was related to that inquiry. A copy of transactions on two accounts – tab 92 – one for an account in her own name and another operated jointly with her husband at Khalsa Credit Union in Clearbrook, B.C. indicates all 4 cheques received from SRC were deposited. The cheque – tab 93 – in the sum of \$2,000 – dated 11.12.1996 – was deposited on November 27, 1996 to their joint account. Another cheque – tab 94 – dated 9.10.1996, was deposited to the joint account on November 15, 1996. The cheque – tab 95 – in the sum of \$1,000 – although dated July 10, 1996 – was not deposited to her own account until October 21, 1996 because Shindo told her not to attempt to negotiate the cheque until instructed because SRC was short of funds. The cheque – tab 96 – in the sum of \$1,200 was dated 8.8.1996 but was not deposited until October 26, 1996. The appellant could not recall when said cheque was received but held it until Shindo - either in the van or in the field – informed her she could deposit it. The appellant stated she had some concerns about continuing to work while being owed back wages. Since her SRC employment was the only source of family income, her landlord was willing to wait – on occasion – for the rent. The appellant stated she can recall receiving the first cash payment - \$500 - during the first week of July and the last \$200 payment at Richmond - together with her ROE - but cannot remember the timing of the second payment of \$1,000. The appellant’s hours of work were recorded in a notebook which was discarded once she had received her final payment of wages. She responded to the Questionnaire – tab 103 – dated October 15, 1998 with her husband - Jasbal Singh Rehal - writing down her answers and returned it to

CPP/EI Appeals office in Vancouver. At Q. 2, she stated she found out about the SRC job “from friends and neighbours”. She named Rana as her supervisor when answering Q. 30 and stated he had paid her (Q. 35). The appellant stated she knew Rana and Shindo were brother and sister who lived in the same house and that Rana signed the SRC cheques even though they were handed to her by Shindo. The appellant stated she wished to make it clear that she did not return any money to Bant or Shindo or Rana in connection with her SRC employment and that she was satisfied - eventually – that she had been paid all the wages due for her hard work during the season.

[83] The appellant – Parmjit Kaur Rehal – was cross-examined by Johanna Russell. The appellant stated her husband was born in India but came to Canada in 1993. He had a Bachelor of Science degree and completed 3 years of civil engineering in India. The language of instruction was in English and Punjabi. The life insurance agent examination he was required to complete was written in English. The appellant stated that all the clients of her tailoring business are Indo-Canadians and she does not speak English in the course of dealing with them. She does not have to read patterns but relies on her own experience. She is the holder of a B.C. Driver’s Licence and was able to take the examination in Punjabi. She recalled picking vegetables at the Min Ho Farms in Richmond including the long, white radish (lo bok or daikon) as well as green bell peppers, hot peppers and zucchini. Counsel informed the appellant the Minister was relying on final harvest dates for various crops - as provided by an agricultural expert – and that turnips and daikon were harvested by November 1 and November 15, respectively. The appellant replied that – in 1996 - she was new to Canada and was not aware of harvest dates for different crops but had worked until December 7. She recalled there was no snow on the ground during her last day of work. Counsel advised the appellant that the owner of that vegetable farm had supplied documents to the Minister indicating that by November 24 the harvest was concluded, the ground was frozen and the last sale of produce had taken place. The appellant replied she also worked at Mike’s Farm in Richmond during the latter part of the season. Counsel advised the appellant there had been numerous instances during the course of the testimony and interviews of other SRC workers where they had confirmed the use of picking cards for various berry crops. The appellant stated she had not observed co-workers receiving cards from a van or bus driver nor did she see them hand back anything to that driver at the end of the day. She did not understand any need to use those cards if her pay was based on \$7 per hour. Because of that fixed rate, she did not count the number of flats picked per day and did not share a flat with anyone. When a flat was full, she found an empty flat and continued to pick while someone removed the full container and took it to a truck. She denied observing any procedure during which flats were weighed and/or counted. In relation

to the drivers employed by SRC, the appellant stated Harjit Gill was the only person who drove the yellow school bus but recalled that Harbhajan Singh Kang and Shindo drove different vans from time to time. Counsel referred the appellant to the notes – tab 84 – made by Janet Mah concerning a telephone conversation – on July 6, 1999 – between herself and Jasbal Singh Rehal who had advised he had permission to interpret for the appellant. During that telephone interview, Harbhajan Kang and Harjit Gill are the only drivers named by the appellant. Counsel advised the appellant that Harjit Gill had been laid off on October 6 and went to India on October 11, 1996 and that Harbhajan Kang had been laid off on October 19, 1996. The appellant replied that Kang had continued to drive her to work until the end of her employment. Counsel advised her that Kang left Canada – on October 24 – for an extended holiday in India. During the HRDC interview – tab 101 - with Ted Bowerman on July 10, 1997, the appellant - at p. 4 – told Bowerman that Kang and Gill had driven her to work at the vegetable farms in Richmond but had not mentioned Shindo. Counsel suggests the appellant had come to realize that Kang and Gill were unavailable after October 11 and October 19, 1996, respectively and could not have driven her to work during the balance of October, or thereafter until her layoff on December 7. The appellant agreed Shindo must have been her driver during the latter part of her employment. Counsel informed the appellant that Shindo’s ROE showed her last day of employment with SRC was on October 26. At the interview – tab 101 – the appellant – at p. 5 - denied taking any time off for any reason including sickness. During Discovery, the appellant stated she “occasionally took off a Sunday” and also another day off other than a Sunday from time to time. In order to do that, she would either ask Shindo for a day off or merely inform the van driver in the morning that she would not be going to work. The appellant agreed there was a contradiction in her previous answers and stated the version provided during Discovery was correct. With respect to the 3 cash payments – totalling \$1,700 – received from Shindo, the appellant agreed she had no proof that money had been received other than her own statements made under solemn affirmation. However, each time cash was received, she signed on a page in a book handed to her by Shindo and noticed her own name was written on that certain page. The appellant stated she recorded the cash payments on the same paper used to record her hours of work but it was discarded once her wages were paid in full. At the interview - tab 101, p. 4 – the appellant told Bowerman that Rana had paid her a \$500 cash payment “after 1 month, 2 months” and at Discovery (Q. 280) stated she was paid “after a month or so, after pleading for it” and that Rana had handed her the money which she used to pay rent. The appellant stated she recalled providing those answers but stated Shindo had been the person who gave her the \$500 initial payment of wages. The appellant’s pay statement – tab 97 – shows gross earnings of \$9,177 and net earnings in the sum of \$7,918. The appellant stated she had not seen that document nor the binder – Exhibit

R-28 – pertaining to her appeal prior to testifying in Court. She stated she is aware HRDC takes the position she was overpaid benefits and is seeking reimbursement of a certain amount she cannot recall. The CCRA printout – tab 105 – of the appellant’s 1996 income tax return states her earnings were \$9,177. Counsel suggested to the appellant that in order to earn this amount – at \$7 per hour – she would have had to work 8 hours per day for 163 days, for a total of 1,311 hours. The appellant replied that she had worked a sufficient period – 168 days – to accumulate that amount of hours.

[84] The appellant – Parmjit Kaur Rehal – was re-examined by her agent, Darshen Narang. She stated that her answer to counsel – 10 minutes earlier – was incorrect and that she recalled her husband had a book of documents - prior to her Discovery – relevant to her appeal and had translated and/or interpreted the contents thereof to her. With respect to the HRDC interview – tab 101 – on July 10, 1997, she stated she had been requested to produce her passport and photo identification and was aware there was some issues concerning her employment with SRC. She stated she was not prepared to provide some specific details and answered to the best of her ability through her husband who interpreted proceedings from English to Punjabi and Punjabi to English. Narang pointed out that – at p. 1 – her husband had answered directly and in English a question posed by Bowerman concerning the manner by which she had found employment with SRC. The appellant replied that she did not know if her husband had responded on her behalf – in English – to other questions. Concerning the identity of the payer for the first cash payment of \$500 received in the field, she stated it could have been Rana but had not paid much attention to that small detail because she knew Rana and Shindo were brother and sister – living in the same household – and was glad just to receive some overdue pay. The appellant stated she had expressed concern to her husband at one point but he advised her to keep on working because the family needed the money and – sooner or later – she would be paid. In India, she was paid once per month and expected some kind of regular payment of wages but that was not the case at SRC. However, once the first \$500 cash payment was received, she felt more confident about working for SRC. The appellant reiterated that Shindo had driven her to work during the last part of her employment ending December 7, 1996 and that another driver named Harjit – not Harjit Gill – also drove her to work during that period.

GURCHARAN KAUR JOHAL

[85] Gurcharan Kaur Johal testified in Punjabi and the questions and answers and other aspects of the proceedings were translated from English to Punjabi and Punjabi to English by Russell Gill, interpreter. The respondent's Book of Documents relevant to the appellant's appeal – 2000-2329(EI) – is Exhibit R-20. The Minister decided the appellant was employed in insurable employment for 17 weeks during the period from June 21 to October 12, 1996 and had insurable earnings in the sum of \$5,000. The appellant's position is that she worked from May 26 to October 12, 1996 and had insurable earnings of \$7,784 as stated in her ROE at tab 90. The Minister relied on the following assumptions of fact as set forth in paragraphs 5(j) to 5(q) of the Reply to the appellant's Notice of Appeal:

- j) the Appellant worked for the Payer during the Period as a farm labourer;
- k) the Appellant did not provide any services to the Payer before June 21, 1996;
- l) the Appellant was paid \$5,000.00, by way of cheque dated October 12, 1996 and negotiated on October 28, 1996 for her work during the Period;
- m) the Appellant did not receive any other remuneration from the Payer other than the \$5,000.00 admitted herein;
- n) the Payer did not withhold any amount on account of payroll deductions or tax from the remuneration paid to the Appellant;
- o) the records provided, for example, the ROE, the T4 slip and the Employee Earnings Record were fabricated to give the appearance that the Appellant provided services for the Payer before June 21, 1996 and was paid in excess of \$5,000.00 admitted, and these records were a sham;
- p) the Appellant required the 20 weeks of insurable employment reflected on the ROE in order to qualify for unemployment/employment insurance benefits;
- q) the Appellant did not work for the 20 weeks reflected in the ROE.

[86] The appellant stated she was born – in India – in August, 1948 and arrived in Canada in August, 1993. She attended school for 7 years but did not pursue further education in Canada nor did she attend ESL classes. In India, she and her husband

farmed 35 acres of land which they still own. She did inside work and he looked after the farm work. After moving to Canada, the appellant, her husband, and their daughter and son lived in Surrey. In 1994, she worked 7 or 8 months at a mushroom farm but did not work the following year. In 1996, she worked with Shindo but did not work in 1997. Later, she worked for another farm labour contractor but is unsure of the year. Currently, she cares for her grandson in the family home. After her layoff – in 1994 – from the mushroom farm, she applied for – and received – UI benefits. Her husband – Karmjit Singh Johal – also worked for SRC in 1996 and was a co-appellant in the within appeals (His appeal was dismissed – later - for want of prosecution). The appellant stated she was sitting in a park in Surrey during May and people were discussing the availability of work. She spoke to someone who was working for SRC and discovered her neighbours also worked for that company. Her husband spoke to Bant and/or Shindo about work and, although she started at SRC about two or three days later, he did not work for SRC until June. They were both laid off on October 12, 1996. While working together, the appellant and her husband usually travelled to work in the same vehicle but – later – were sent to different fields on occasion. She recalled her pay was based on an hourly rate but could not remember the exact amount. Her husband had informed her that she would be paid every 15 days. During the first few weeks, she worked at the Chinese Farm in Richmond, preparing the land and planting seeds for one or two days. Following completion of those tasks, she was taken to the Khakh Farms in Abbotsford where she picked strawberries for 3 or 4 weeks. Then, she picked raspberries – for 4 or 5 weeks - at the Lidder Farm and other farms in the same general area. After that, she picked blueberries at various farms, some larger than others in Abbotsford and Richmond and ended the berry season by doing clean-up work which involved re-picking berries left on the bush during the first harvest. The remaining smaller berries were picked over the course of 3 or 4 weeks – on a rotating basis – at several farms. She did not use a picking card and, although she saw them during subsequent employment, did not see them during her work with SRC. When picking strawberries, she placed the berries into a bucket which was emptied into a flat which – when full – was handed to the farm owner or – at some farms – taken to a truck towing a trailer. The farm owners would weigh the berries and appeared to have a method of recording the flats and the weight. She recalled it took 3.5 buckets to fill a flat of raspberries and 3 buckets to fill a strawberry flat. The appellant stated her first day of work was May 26 and rode to work in a grey van driven by either Bant or Shindo and for about another week. Then, she began riding to work with about 15 other workers in a brown van driven by Harbhajan Kang or with Master Singh in a reddish van. She recalled riding with Jasminder Kaur Cheema and Gurmail Singh Cheema, co-appellants in the within appeals. The hours of work – between 6 and 8 – were announced by the farm owners or Bant or Shindo at the end of each day. The

same workers rode to and from work each day and if it rained heavily they sat inside the van until work could be resumed. She was picked up before 7:00 a.m. and did not return home until nearly 5:00 p.m. and if a field was completed in the middle of the day, the workers would be taken to another farm to continue until quitting time. She recalled picking 14 or 15 flats of strawberries and 10 or 11 flats of raspberries on a good day. She estimated she picked about 15 large pails of blueberries each day. On one farm, a machine was used to pick raspberries but all strawberries had to be picked by hand. The appellant stated she received cash 4 or 5 times – from Bant - in addition to a cheque at the end of the season. She did not receive any money on account of wages owed to her husband and did not repay any of her wages to Bant or Shindo or Rana. Following a request for some money, she would receive a payment - from Bant - while working in a field but never signed any receipt. She had an account at Scotiabank and deposited a cheque – tab 93 – in the sum of \$5,000 to that account on October 28, 1996. The Statement of Earnings – tab 96 – was given to her by Bant at the end of the season and showed gross earnings and net earnings of \$7,784 and \$6,755, respectively. The appellant stated she did not recall the exact amount of cash received during the season. The appellant identified the photograph of Manjit Rana – tab 97 – together with those depicting Bant, Shindo and Harbhajan Kang but did not identify Binder Chahal. She identified a photocopy of her SIN card and her Indian Passport at tab 98. The appellant was driven by her daughter-in-law from Surrey to Bant and Shindo's home in Vancouver where the ROE – tab 90 – was handed to her by Shindo who instructed her to take it to the UI office and apply for benefits. The appellant identified her signature on her application – tab 92 – dated October 19, 1996 which was completed by her daughter-in-law. She recalled attending an HRDC interview - tab 95 – on December 18, 1997 with her son – Jagdip Singh Johal - where she was questioned by Gail Buckland and shown some photographs (tab 97). The Questionnaire – tab 104 – was signed by the appellant but had been completed by her daughter, Nina Johal. She could not recall the circumstances but agreed she must have provided the answers written down by her daughter. An earlier Questionnaire – tab 85 – was signed by the appellant but completed by her daughter-in-law Sarjit Johal who had not worked for SRC. In that form, there is no reference to receiving any cash - only a cheque - in payment of wages. The appellant stated that was – perhaps – an oversight but had no way of proving she was paid any wages in cash, so merely referred to the cheque. She recalled attending at PICS office along with other SRC workers who had received a letter from HRDC concerning their employment. She wanted some advice and information about the situation and had been informed by Bant and/or Shindo that she needed to work 20 weeks in order to qualify for benefits. She knew she had worked at the Chinese vegetable Farm in Richmond – picking zucchini corn, lo bok - for about a week after the blueberry season finally

ended. She could not recall taking time off during the season and stated she is pursuing her appeal because she did the work and has told the truth.

[87] The appellant – Gurcharan Kaur Johal – was cross-examined by Johanna Russell. The appellant agreed that at the HRDC interview – tab 95 – she named Harbhajan Khang (Kang) as her driver and told the interviewer she rode to work everyday in the “same van”. However, she stated she went to work – the first day – with Bant and/or Shindo in a grey van and after a week, started riding with Harbhajan Kang who became her usual driver except for 7 or 8 times when she rode with Bhan Singh Sidhu, referred to by most workers as Master. The appellant recalled attending a Discovery on July 19, 2001 but did not remember having seen a book or binder of documents – pertaining to her own appeal – similar to Exhibit R-20. Counsel pointed out that according to information provided to HRDC by Harbhajan Kang, his first day of work was sometime during the third week of June, 1996 and – therefore – could not have driven her to work during the first part of June, as she claimed. The appellant replied that Kang had driven the van after her first week of work. During the interview – tab 95 – the appellant – at Q. 26 – told Gail Buckland that “Bant sent a red van” to take her to work. She denied riding in a grey van (Q.29) and said Kang (mostly) drove her to and from work in the red van. Counsel suggested her memory might have been better – on December 18, 1997 – than during her current testimony and that in the course of her interviews she had only mentioned Kang as her driver. The appellant stated she had 4 different drivers during the course of her employment and – by way of example – had ridden with either Bant or Shindo from May 26 to June 21. Counsel pointed out that a few minutes earlier – during direct examination – she had stated Bant or Shindo had driven her to work for about a week. In the Questionnaire - tab 85 – concerning a question about how she got to work, the answer provided is that she rode in a “red van” and that Kang drove her. In providing answers to Qs. 7 and 8 of the Questionnaire – tab 104 – the appellant stated that she rode to work “sometime van, sometime bus” and that the van/bus driver was “always different driver”. The appellant stated she did not know why that answer would have been given since she had not ridden to work on the yellow bus. Counsel referred the appellant to answers given by her husband – Karmjit Singh Johal – during an HRDC interview to the effect Kang was “always the driver, except for a couple of times” when he and the appellant rode to work in a different van driven by a man named Nirmal. Counsel advised the appellant the Minister was relying on information received from the owner of Min Ho Farms that he had no SRC workers on his property until July 1, 1996. The appellant stated she had worked the first few weeks at that farm at the end of May and early in June until the strawberry crop – in Abbotsford – was ready for picking. While picking, the appellant stated she never shared a flat and men worked

with men and women with women. She reiterated that she did not see any worker using picking cards at Khakh Farms even though she worked with Harbans Kaur Kang who – counsel informed her - had testified she used cards and that many other SRC workers had provided detailed descriptions about the procedures surrounding the use of picking cards. Counsel referred the appellant to the notes – tab 82 – of Janet Mah in which there is a reference to “punch cards” from M & G Farms Ltd. showing the appellant had picked berries there for one day in July and two days in August. The appellant replied that her name might be on some cards but she had never used them – at any time - while picking berries. The appellant repeated her summary of the manner by which she received cash payments, totalling \$2,000; they were paid to her by Bant who also handed her the cheque at his house in final settlement of her wages at the same time she obtained her ROE. Counsel referred the appellant to her testimony at Discovery where she said it was Rana who had paid her cash in the amount of \$500 or \$600 each time but only after she had requested some money. She also explained – in answering Q. 103 – that Rana would usually bring the money to the field but sometimes she had to travel to his house to get it. The appellant recalled giving those answers but explained Rana, Bant and Shindo did the accounting from hours written down on her calendar. She explained giving those answers – at Discovery – because although Bant had handed her the cash payments – while at work in the fields – she did not know whether he got the money from Rana for the purpose of paying her some wages. Further, she had informed her daughter-in-law that cash had been received during the season but for some reason that information had not been written down properly when responding to the Questionnaires. Counsel informed the appellant that her net income was only \$6,755 – according to her T4 – but she claimed SRC had paid her a total of \$7,000. The appellant replied she had been paid by the hour and not by the pound or the flat and merely reported her income in accordance with the documents issued by SRC.

[88] The appellant – Gurcharan Kaur Johal – was re-examined by her agent, Darshen Narang. She stated she learned Rana was the legal owner of SRC but – at the beginning of her employment – had considered Bant and/or Shindo to be her employer. Throughout her employment, she never heard other workers refer to Rana as the owner of the business but everyone knew Bant and Shindo and Rana were – somehow – related to each other. The appellant stated she worked - as claimed – and wanted to present the facts in the course of her appeal even though HRDC was seeking a small repayment of only \$194 as an alleged overpayment of benefits.

PRABHJOT KAUR MINHAS

[89] Prabhjot Kaur Minhas testified in English but the interpreter – Russell Gill – was in Court throughout her testimony in order to assist, as required. The respondent's Book of Documents relevant to this appeal – 2000-2335(EI) – is Exhibit R-26. The Minister decided the appellant was in insurable employment with SRC for 12 weeks during the period from July 14 to October 5, 1996 and had insurable earnings in the sum of \$1,633. The appellant's position is that she worked from July 14 to November 30, 1996 and had insurable earnings of \$7,840 as stated in her ROE at tab 87. The Minister relied on the following assumptions of fact as set forth in paragraphs 5(j) to 5(u), inclusive, of the Reply to the appellant's Notice of Appeal:

- j) the Appellant gave birth to her first child on February 19, 1996;
- k) the Appellant worked for Breeza Cafe from July 17, 1996 to September 11, 1996 and performed dishwashing duties;
- l) the Appellant's total hours during the 8 week period that she worked at Breeza Cafe were approximately 220 hours;
- m) the Appellant worked for the Payer during the Period as a farm labourer;
- n) during the Period, the Appellant was picked up by the Payer between 6 and 7 a.m. and dropped off at home anywhere between 5 and 8 p.m. for 6 days each week and sometimes 7 days a week;
- o) the Appellant did not provide any services for the Payer beyond October 5, 1996;
- p) a cheque dated October 3, 1996 for \$1,633.00 payable to the Appellant was negotiated on October 3, 1996 at the Payer's Bank located at 49th and Fraser Street, Vancouver;
- q) the Appellant did not receive any other remuneration from the Payer except for the \$1,633.00 admitted herein;
- r) the Payer did not withhold any amounts on account of payroll deductions or tax from the remuneration paid to the Appellant;
- s) the records provided, for example, the ROE, the T4 slip, the non-negotiated cheque dated September 7, 1996 in the amount of \$4,000.00 and the Employee Earnings Record were fabricated to give the appearance that the Appellant provided services for the

Payer beyond October 5, 1996 and that the Appellant was paid in excess of the \$1,633.00 admitted, and these records were a sham;

- t) the Appellant required the 20 weeks of insurable employment reflected on the ROE in order to qualify for unemployment/employment insurance benefits; and
- u) the Appellant did not work for the 20 weeks reflected in the ROE.

[90] The appellant is employed as a residential care attendant and speaks English in the course of her employment. The appellant was born – in India – in 1971 and immigrated to Canada in 1991 where she subsequently married the man who sponsored her. She completed Grade 12 in India and during the course of her education took English classes from Grade 6 onwards. She enrolled in ESL classes in 1994 and continued thereafter to take further language instruction and currently attends classes on a part-time basis. During a term in 1999-2000, she completed a 9-month residential care attendant course at Vancouver Community College and has worked in that occupation for the past 4 years. Following her arrival in Canada, the appellant worked as a farm labourer from 1991-1994, inclusive, in Yarrow, B.C. and then moved to Vancouver. In 1995, she worked as a dishwasher/janitor at a restaurant. She did not work during 1997 and 1998 as she was caring for her two children born in February, 1996 and May, 1997. In 1996, she started working for SRC on July 14. The appellant stated her first task was to pick raspberries, then blueberries and finished her work – on November 30 – on vegetable farms - in Richmond – where she worked after the berry season was over. She was paid by the pound – 25 cents - for picking blueberries and \$4 per flat for raspberries but when the berry season was finished, she was paid the hourly wage of \$7 to work on the vegetable farms. There was a system to pay pickers for a partial flat of raspberries and – on a good day – the appellant was able to pick 15-20 full flats which generated between \$60 and \$80 income. She picked between 300 and 350 pounds of blueberries per day – at 25 cents – for a daily total of \$87.50. The usual work day ranged between 8 and 10 hours. The appellant stated she used a pink picking card for raspberries and a blue card for blueberries. The card – about 3 inches by 5 inches – was in triplicate and she wrote her name on each new one which was issued when all the spaces had been punched. The used card was handed in – at the scale - to the SRC representative or the farmer. She carried the card in her pocket and assumed picking cards were also issued to other workers. Other farms used different picking cards but the same card was used on various fields owned by the same farmer. Due to the height of the bushes, she was able to see only those pickers working beside her in the same row. Once a flat was full, the appellant took it to the scale where it was weighed by the farm owner or his representative and – sometimes – by Shindo. Blueberries

were placed – initially – into small pails which were then emptied into a large bucket weighing about 25 pounds. A full large bucket would be marked on her picking card and if one was less than full at day's end, the actual weight of the berries was noted on the card. Each day, the total amount of berries picked was marked on her card and she was aware of her daily production since one punch in the card equalled 25 pounds. The appellant stated she was paid \$4 for each flat of raspberries - about 25 pounds - and noted they were easier to pick than blueberries. The range in amount picked per day was within 2 or 3 flats. The appellant stated she never lost a picking card and retained a copy of each one until the end of the season. She also knew SRC and the farmer had a copy of the picking cards recording her personal production. The scale was mounted on a truck and would be moved when the distance from the pickers became too great. While working on the vegetable farms, she recorded her hours and even though the crops of carrots, zucchini, cabbages and turnips were weighed on a scale prior to being packed into a box, no picking cards were used by the workers. The appellant started working for SRC when her baby was 4 ½ months old. Her mother lived with her and her husband and cared for the baby. While working for SRC, she was pregnant with her second child and had to attend medical appointments once a month. She also worked as a dishwasher - part-time – in a café from July 17 to September 11, 1996 until the business went broke and she was laid off. Her shift was from 6:00 p.m. to 10:00 or 11:00 p.m., 4 days per week. After arriving home, she went to bed and was up by 5:00 a.m. in order to get ready to go to work for SRC. She was the only member of her household working for SRC and she inquired about the job because her husband had heard that company was hiring farm workers and telephoned the Bant/Shindo residence to make arrangements for her employment. The appellant was re-married in 1993 and her husband drove taxi despite having a Master of Business Administration from a university in India and a Bachelor of Science degree in agriculture. She rode to work - her first day – with 40 or 50 other people and assumed she would be paid by the flat and/or pound for picking berries as that had been the method of payment during her previous farm jobs over the past 4 years. Sometimes, Shindo picked her up in a blue van and – on occasion – the appellant used her own vehicle to drive to work but did not transport any other SRC worker. Although she was paid every two weeks at her restaurant job – until it went bankrupt - she had to request some wages from SRC after nearly one month had elapsed. Later, other cash payments were received but she did not sign any book or receipt because her husband went to Shindo's house on 4 or 5 occasions in order to collect her wages. The appellant received one cheque – tab 90 – in the sum of \$1,633. It was dated 3.10.1996 and she cashed it at the TD bank on October 3, 1996. The appellant was referred to a “I Cash Money Give” purported cheque - tab 91 – in the sum of \$4,000 payable to Prabhjot K. Minhas and appearing to have her signature – written as PraBhjot K. Minhas - on the signature line. The appellant

stated that was not her signature because she does not insert a capital B in the middle and had never seen that document before. She invited the Court to compare that alleged signature with the one she placed on her application – tab 95 – for UI benefits and pointed to the obvious difference. The appellant estimated she received \$4,000 in cash payments – from SRC - during 1996. She identified her signature on the Questionnaire – tab 99 – dated November 4, 1999 that was completed by her husband because her ability to write in English was still limited at that time. She did not review the contents of that form prior to signing but was satisfied her husband had responded correctly because he was aware of the nature of her work as a result of their discussions at home. The answer to Q. 31(c) regarding rate of pay was “6.50 per hour”. At Q. 7, the response to mode of transportation to work was “by school bus”. The appellant stated she knew she was being paid the hourly minimum wage for her vegetable work and assumed it was \$6.50 rather than \$7 at that time. She had stated – earlier in Q. 31 – that she was paid both by piecework and by the hour and that the rate of pay for picking blueberries was 25 cents per pound. An answer within the Questionnaire – tab 82 – sent to her by the Rulings Officer indicated she rode to work in a school bus driven by “Surjit Gill”. The appellant stated she could not recall the circumstances pertaining to the completion of this particular document. At one point, she received a telephone call requesting her attendance at an HRDC office for purposes of an interview. A Punjabi interpreter – Sarb Sandhu – was present and she utilized his services throughout. In her opinion, she provided truthful answers to the questions and was aware the interview was related to her employment – in 1996 – by SRC. At that time – June 25, 1997 – her ability to speak English was limited because she had just begun ESL classes. The warning - at the top of page 1 of the interview notes – concerning the existence of penalties for making false statements was translated to her by Sarb Sandhu. At tab 92, Q. 22, her answer – as recorded by the interviewer – is that she worked from “Saturday to Thursday - every Friday for 2–2 ½ months – after that it was either Sat or Sunday”. The appellant stated she was puzzled by that written response because she would work 5 or 6 days in a row and then have one or two days off but she did not necessarily work the same 5 days consecutively. At Q. 23, the answer provided is that she had not missed any days of work. The appellant stated that answer is wrong and would not have been given by her because she saw her doctor at least once per month. She stated other workers probably referred to her as “Lally” because she uses that name on an everyday basis. When completing her application – tab 95 – for UI benefits she had the ROE – tab 87 – issued by SRC but not the one from the café that had gone out of business. On the application – at Q. 35 – it indicates she was no longer working due to “shortage of work” and also “illness”. At Q. 41 of said form, the explanation was provided that due to her pregnancy she was “feeling pain while bending over”. The appellant stated she had not informed anyone at SRC about this discomfort but told her husband and

her doctor. However, when her pregnancy progressed, she told Shindo about the problem and was laid off on November 30, 1996. The appellant stated she was not related to Rana nor Bant nor Shindo - the apparent principals of SRC - nor had she repaid any of her wages to any of these people. She had no reason to inquire of her husband whether he had returned any of her wages. According to her calculations, she was still owed about \$1,100 at the end of the season and attempted – without success – to contact Shindo in order to collect the balance. Her husband filed her tax return for the 1996 taxation year in accordance with information supplied by SRC.

[91] The appellant – Prabhjot Kaur Minhas – was cross-examined by Selena Sit. The appellant stated that – in response to a request from Shindo - she had taken copies of her picking cards to Shindo’s house in order to carry out the final accounting. Concerning her driver on her first day of work, the appellant stated she believed it was Rana who had driven the yellow bus and had taken her to work several times thereafter in a van which Shindo also drove. She recalled Shindo took her to work many times but never drove the bus. She would use her own car only if she had an appointment with her doctor in the morning, following which she would go to work in time to put in 4 or 5 hours but if she had an afternoon appointment she would not work that day. The appellant stated her only drivers were Rana and Shindo and was certain she had never been driven to work by Harjit Gill. Her answer to Q. 7 in the Questionnaire – tab 92 – indicates she told the interviewer she was driven to work by “Harjeet”. There is a further reference to “Harjeet” in the answer to Q. 9. At Q. 10, her answer is noted that she was driven to work in a school bus and that her driver during the whole time was “Harjit”, a male person. The appellant stated she doubted she had given that answer in the form it was written as there had been other drivers. Counsel produced a photo of Manjit Rana - Exhibit R-18, tab 99 – and asked the appellant if she could identify that individual. The appellant replied that person was not her driver but had seen that individual – on occasion – and knew her husband had dealt with that person in connection with her employment. She stated she must have been confused about the proper name of her school bus driver but is now aware it was definitely not Manjit Rana but must have assumed Harjit had the family name of Rana. Counsel pointed out that in the Questionnaire – tab 82 – her driver was “Surjit Gill” and that there are no SRC records – or other documents – to substantiate any person with that name ever drove for SRC and that every other witness testifying thus far in these proceedings had identified Harjit Singh Gill as the bus driver. Counsel also informed the appellant she had never named Shindo as a van driver during the HRDC interview nor when completing the Questionnaires. The appellant stated she thought her husband knew the name of her bus driver and had written the name “Harjit Singh” in response to Q. 8 of the Questionnaire – tab 99 – concerning the identity of her bus driver. At Discovery on August 1, 2001, the appellant stated

she rode to work – the first day - on the school bus and went to work on that same bus most of the time except for once or twice in a van. She had also stated the driver of the bus was always the same person – Harjit Singh – and the driver of a light blue van was a male person whose name she did not know (The appellant requested the assistance of the interpreter – Russell Gill – to translate written answers at Discovery into oral form and he continued to assist her thereafter, from time to time, as required). The appellant replied she meant to say that she had ridden in a van one or two times per week. Counsel pointed out the appellant had never mentioned Shindo as her driver until giving evidence during her direct examination because she had learned Harjit Gill was laid off on October 5, 1996 and could not have been driving her to the vegetable farms in Richmond after that date. The appellant replied she rode to work at Mike's Farm in the yellow bus and that it was driven by different people from time to time. Counsel advised the appellant that according to Shindo's ROE, her last day of work was October 26, 1996. The appellant replied that might be so but Shindo continued to drive her to work until her layoff on November 30, 1996, although there were other drivers during that autumn period. She stated she picked zucchini on her last day of work. Counsel informed the appellant that according to information relied on by the Minister, the zucchini crop was finished by October 15. The appellant replied the last crop may have been cucumbers. Counsel advised her the Minister was also relying on information that the cucumber season was also over by the same date. Counsel referred the appellant to her answer as noted by the interviewer – to Q. 28, tab 92 – that her last day of work was performed at Mike's Farm where she had picked lo bok which she described as a "long, white radish". The appellant stated that although she worked with carrots, cucumbers and zucchini and chili peppers on the vegetable farms, she cannot recall which type of vegetable was picked during a specific period. She was aware of the number of weeks needed to qualify for UI benefits because she had received them at the end of previous seasons when laid off from her farm labourer jobs. According to her pay statement – tab 88 – the appellant's gross earnings and net earnings were in the sums of \$7,840 and \$6,760, respectively. The appellant stated she received the \$1,633 cheque – tab 90 – and a total of \$4,000 cash for a total of \$5,633 which is \$1,027 less than the full amount of her wages. She advised the pay statement was not correct in showing her wages as based on \$7 per hour throughout her employment because she had been paid by the flat or the pound for picking berries. Although the appellant had stated in her direct examination that her signature did not appear on the "I Cash Money Give" purported cheque – tab 91 – she agreed – at Discovery – that was her signature and explained she had signed in order to acknowledge receipt of a total of \$4,000 received in various payments during the season. The appellant repeated her earlier testimony – in direct examination – that the signature on this purported cheque was not her own and that she had never seen that so-called cheque until appearing in

Court. The appellant agreed she had never deposited any of her cash payments to any bank account but stated she used it to pay rent and other bills. In her view, this method of payment was not abnormal and had been followed by other farm employers in the past. She did not complain to the Employment Standards Branch about being owed some wages at the end of her employment and acknowledged her husband had reported her SRC income as \$7,840 on her income tax return even though she had received – according to her calculations – the sum of \$5,633.

GURCHARAN SINGH GILL

[92] Gurcharan Singh Gill testified in Punjabi and the questions and answers and other aspects of the proceedings were translated from English to Punjabi and Punjabi to English by Russell Gill, interpreter. The respondent's Book of Documents relevant to the appellant's appeal – 2000-2323(EI) – is Exhibit R- 16. The Minister decided the appellant was not in insurable employment with SRC during the period from September 1 to December 31, 1996. The appellant's position is that he was employed under a contract of service and had insurable earnings in the sum of \$9,680 as stated in his ROE at tab 89. The Minister relied on the following assumptions of fact as set forth in paragraphs 5(j) to 5(l) of the Reply to the appellant's Notice of Appeal:

- j) the Appellant gave conflicting statements to authorities with respect to the method of pay and the timing of same, the duties of employment, the identity of fellow workers, the days and hours of work and the transportation;
- k) the records provided, for example, the ROE, the T4 slip, the employee earnings record and the pay cheques, in regards to the Appellant, were fabricated to give the appearance that the Appellant worked for and was paid by the Payer and these records were a sham;
- l) the Appellant did not perform any duties for the Payer during the Period;

[93] The appellant stated he is employed as a security guard. He was born – in India – in 1939 and arrived in Canada in the summer of 1994. He attended school for 12 years and studied English as a subject since Grade 6. He admitted to being not only spoiled by his parents but that he was a bad student who failed to graduate from college. In India, he worked on the 30-acre farm which his family still owns and leases to tenants. He and his wife have 5 children, one in India and four others living in the Lower Mainland. He and his wife and a son – Ravjit Gill – and two daughters

were sponsored by a married daughter who had arrived in Canada 3 years earlier. His son is a co-appellant and testified earlier in the within appeals. The appellant stated his wife and children are educated and, although he can read English, his skill level is not the same as in Punjabi. Even in the course of his current employment as a security guard, he is not required to speak English on a regular basis. In the event he has to contact an emergency operator, he speaks English only to request his call be transferred to a Punjabi-speaking dispatcher. His employer has hired a Punjabi-speaking supervisor to manage the security guards. In Canada, the appellant attended government-sponsored ESL classes for about 8 months as well as a job-finding class. In March, 1996, he obtained his Class 4 Driver's Licence which permitted him to drive a taxi, passenger van and other larger vehicles. The instruction was in both English and Punjabi but even though he had a licence, never worked as a cab driver. He also participated in training approved by the UI office but the security guard training was not approved by HRDC and would have affected the amount of benefits being received. The matter was resolved when he obtained permission to take that course on the basis he paid the cost of instruction. In 1994, he worked as a farm labourer for a contractor operating from Surrey. He picked strawberries, raspberries, blueberries and – later – vegetables. In 1995, he worked for another farm labour contractor performing - more or less – the same tasks in sequence as the crops were ready. Both years, his wife and daughters worked with him but his son – Ravi – did not. In 1994 and 1995, the appellant stated they used picking cards upon which the number of flats of berries and/or pounds were recorded but payment for working on the vegetable farms was on an hourly basis. Because he and his family were new to Canada, they just worked and accepted cheques when issued - on an irregular basis - 3 or 4 times during the season. In 1996, after finishing his ESL classes at the end of August, he began working for SRC on September 1. He stated he was hired by Manjit Rana to work as a driver at a salary of \$10 per hour. His current pay – as a security guard – is \$10 per hour and he is paid – by cheque – every two weeks. The appellant stated he received one cheque – tab 94 - dated September 27, 1996 which he deposited to his Canada Trust account but it was NSF and had to be taken into account at the end of the season during the settling-up process when he was paid the balance of his wages, in cash. He could not recall signing any receipt. The appellant also received a cheque – tab 92 – dated October 25, 1996 in the sum of \$1,300 which he deposited to his Canada Trust account on October 31. Another cheque – tab 93 – in the sum of \$3,000 dated 30.11 (November 30, 1996) 1996 was deposited to his account on December 2. A cheque – tab 95 – dated September 17, 1996 in the sum of \$2,000 was deposited to the joint account at Canada Trust. A purported “I Cash Money Give” – tab 91 – names the appellant as payee and the amount of \$2,000 appears in handwritten and numerical form. The appellant recognized his signature on the reverse - as it appears in the middle of the photocopied page – but stated the

rest of the so-called cheque was not in his handwriting. The appellant had previously operated a joint account with his wife and/or daughter but opened his own account in July, 1996. However, all cheques received from SRC were deposited into the earlier joint account which had been opened on July 28, 1994 at the Delta branch (Statements from both accounts are at tab 96). The statement for the joint account – ending with the number 87 - shows a deposit of \$1,300 (same amount as the cheque at tab 92) on October 31, another deposit of a \$3,000 (same amount as the cheque at tab 93) on December 2 as well as another deposit in the sum of \$2,126.66 on September 24, 1996. The appellant stated he always deposited his SRC cheques and must have added another small amount to the \$2,000 cheque – tab 95 – dated September 17, 1996 which cleared through the SRC TD bank account on September 25, 1996. The entry concerning the return of the \$1,900 NSF cheque – tab 94 - is dated October 9. The appellant had been charged a \$20 fee by his branch for having to return the cheque. He took the NSF cheque to Rana who explained SRC had a cash flow problem which would be rectified in the future. The appellant's pay statement – tab 90 – indicates gross earnings of \$9,680 and net earnings in the sum of \$8,560. The appellant stated he considered he was paid in full when laid off on December 31, 1996. The appellant stated his son - Ravi – with whom he did not have a good relationship, had been working for SRC but was laid off earlier. The appellant stated he had obtained his own job – as a driver – by telephoning Rana and receiving a call two or three days later that he was hired. He wanted to earn \$12 per hour but Rana would only pay \$10. Although SRC owned 3 vans and one yellow bus - which he saw parked - he drove only a grey van with a standard transmission. He recalled one van was green and another was a light colour. The appellant stated that he began picking up workers in an alley intersecting with 49th Street in Vancouver. He drove to Surrey, picked up more people and took them to their work location. Sometimes - during the day - he drove some workers to another location. He was paid the sum of \$10 per hour based on an 8-hour day and stated there was no increased amount paid per hour for any overtime. He was required to maintain the van, keep it clean to make certain deliveries during the day in accordance with instructions received from his SRC supervisors . However, he was not expected to perform any farm labour. Although he transported 15 passengers on a regular basis, he did not record their names but would drive any worker home if he or she boarded his van at the end of the day. As a result, sometimes there were more passengers on the ride home than in the morning. The appellant noted that women preferred to ride in his van because he played devotional songs on the sound system. The appellant stated he worked 7 days per week and recounted the names of 4 or 5 farms where he had delivered workers. In September, he usually transported 18 workers but that number was reduced to between 10 and 12 by December because it had snowed and there was less work. Shindo was the supervisor and recorded the hours of work performed each day. On

occasion, even though it was not within his job function, he handed out picking cards – blue – to workers and wrote the name of the recipient on it. Shindo would hand him about 25 cards and he would distribute one to each worker. At the end of the day, he would collect the cards from the workers only if Shindo and/or Rana were not on location at quitting time. He stated he would check fuel and other fluid levels in the van, but Rana and/or Shindo re-fuelled the vehicle. He recalled transporting Taro Bassi, Lally (Prabhjot) Minhas and a man named Didar Singh. He stated he drove workers to farms in Richmond where they picked blueberries or worked at clean-up or – later – with various types of vegetables. About one week prior to December 31, he was informed by Rana and/or Shindo that work was coming to an end because it was snowing. He was advised that if there was work available next season, he would be called. He recalled receiving his ROE – tab 89 – at Rana’s house a few days after his layoff. On January 3, 1997, he submitted an application – tab 88 – for UI benefits that had been completed by an individual working in the PICS office. On the application – at box 23 – his earnings are stated to be \$560 per week, based on a 56-hour week with earnings of \$240 - box 24 - the last week of employment. According to his pay statement – tab 90 – he only missed one day of work during the period covered by his ROE. After receiving all of his UI benefits, he discovered a problem may have arisen in respect of his claim and recalled attending an interview at a HRDC office – tab 87 – where he was questioned by Ted Bowerman in the presence of a Punjabi interpreter. He received a letter and telephone call informing him of the date and time of said interview and prior to attending on January 30, 1998, sought advice from the PICS office. Later, he attended a meeting of a group he considered to be a union representing farm workers where he complained about his treatment during the HRDC interview. Specifically, he complained that during the interview he had been threatened with the loss of his Driver’s Licence, as well as his licence to work as a security guard and could also run the risk of deportation. In order to establish his identity at the beginning of the interview, he produced his Indian passport, SIN card and B.C. Driver’s Licence. The appellant stated he was not complaining about the warning given to him at the beginning of the interview concerning the penalties arising from making false statements but only about the threats made at the conclusion when he refused to withdraw his assertion that he had been paid - legitimately - by SRC for his work. At page 8 of the interview, the appellant was asked whether any of his relatives worked for SRC and he responded in the negative even though his son – Ravi – was employed by that company in 1996. The appellant replied that he did not consider his sons and/or daughters as relatives in the usual sense. The Questionnaire – tab 103 – is not in his own handwriting and he assumed it had been completed by someone at PICS. The answer to Q. 7 concerning method of transport to and from work is “sometimes van, sometime bus”. The appellant stated that answer is not correct because he was driven to Rana’s house – at

49th Street in Vancouver – to pick up the grey van in order to drive people to work. On some occasions, he would take public transit from Surrey to Vancouver – a 45 minute trip – to collect the SRC van. The appellant was referred to the answers to Qs. 18 and 19, which appeared to indicate he worked in the fields from early morning until late evening. He explained that he did not read over the Questionnaire before signing it because he trusted the people at PICS to do it properly. There were about 40 or 50 people at the PICS meeting but Bant and Shindo refused to attend. He recalled there were 4 or 5 meetings in total and he purchased a membership in an association of farm workers and not a certified union. On occasion, lawyers spoke to the group and suggested each worker should contribute to legal fees in order to pursue appropriate legal action. The appellant stated that when he did not receive his 1996 T4, he telephoned Rana who said it had been mailed. It never arrived and the CCRA office in Burnaby provided him with a T4 which he used to file his income tax return, relevant details of which are provided in the print-out - tab 102 – showing earnings of \$9,680 and other income - \$8,120 - attributable to UI benefits received in 1996 prior to commencing work for SRC (The total EI premiums deemed paid is \$285.50 and the employer's contribution is 1.4 times that amount).

[94] The appellant – Gurcharan Singh Gill – was cross-examined by Johanna Russell. He agreed he had received letters from HRDC concerning his employment with SRC and it was seeking re-payment of the sum of \$8,976 - including penalties and interest - as of October 18, 1999. He stated he is not related to Manjit Rana nor is any member of his family related to that individual. During 1996, the appellant and his wife lived in a basement suite with their son - Ravi – and two daughters but later purchased a house and the mortgage was in the names of himself, his wife and Ravi. The appellant stated he was able to take his Class 5 Driver's Licence test in Punjabi but the written examination for the Class 4 Licence and the study book were in English. He also acquired a chauffeur's permit from the Coquitlam Police. The security guard licensing test was in English as well as some of the instruction. In the course of his job, he is required to write daily reports – in English – describing what actions – if any – were taken in response to certain situations encountered during his shift. The appellant stated most of the report can be completed by checking off certain boxes in a standardized form and the first step taken is always to alert the Supervisor and the complex reports are written by that person. Although the appellant stated – in his direct testimony – that it was not the warning concerning false statements given to him at the start of his interview that caused him to feel threatened, he stated he did feel somewhat upset by that admonition due to the tone of voice used when explaining it to him. He explained he was under stress and had not been prepared for the interview but still attempted to answer as truthfully as possible. He agreed Ravi owned an old grey Hyundai Excel in

1996. At Discovery on August 23, 2001, the appellant stated either his daughter – or her husband - owned a car. The appellant explained that his daughter – Amrit – was living nearby and – sometimes – drove him to 49th Street in Vancouver so he could pick up the SRC van and begin hauling workers to their jobs. He stated Ravi and Amrit drove different cars and agreed he should have explained – at Discovery – that the car Ravi drove was registered in Amrit’s name only for insurance purposes. The appellant received UI benefits in respect of his farm work performed during the 1994 and 1995 seasons and his SRC employment in 1996. He stated he had not been aware of the number of weeks needed to qualify – in 1996 – for benefits and since then has never collected UI because he has only been without employment for one week. The appellant stated he did not recall the conversation with Janet Mah – on June 8, 1999 - as recorded in her notes at tab 82. He agreed the answer recorded therein is correct to the effect he picked up workers in Vancouver and Surrey and drove them to a farm in Richmond near a golf course. Certain answers were noted by Mah that the appellant had informed her that he “picked blueberries and vegetables”. According to her typed notes, he also identified Kang as another van driver and had stated he was paid \$10 per hour and deposited all his cheques to his Canada Trust account. He also apparently informed Mah that his son – Ravi – was in India and – therefore – was unavailable to speak to her. The appellant replied that he had never picked berries and/or vegetables and would never have made such a statement. He expressed doubt this telephone conversation - with Mah - had ever taken place and denied stating his son was in India. Turning to the Questionnaire – tab 103 – the appellant identified his signature on the last page and even though he maintained it had been completed by someone at PICS, agreed there was no indication on the form that he had been provided with assistance. Counsel referred to Q. 14 which called for a detailed answer of the type of work performed during each month of employment. By way of explanation, the appellant stated he “gave them a rough idea and they prepared it and I came in and signed the form the next day”. The appellant pointed out that he had struck out the words “sometimes bus” in the answer to Q.7 because he had never ridden to work in a bus, only in a van. He agreed – at Discovery – he stated he had given careful thought to the answers in the Questionnaire but advised that response was not correct because he had only looked at it - “roughly” – before signing. He agreed both versions could not be correct and that he had been subject to a solemn affirmation on both occasions. The appellant drove the same van during his employment but could not recall the name of the manufacturer. He stated that is not unusual because even though he owns a used car and has recorded the licence number, he does not know the brand name. He recalled picking up a woman - Lally – at Rana’s house and also at her own residence on two or three occasions and driving her to work. He stated Rana had informed him there was no need to know the names of the workers he was transporting to work because some of them might be receiving

benefits from welfare or UI or on some sort of pension. He recalled driving Jaswinder Bassi to work and identified a photograph - Exhibit R-20, tab 97 - of Shindo whom he knew to be Bant's wife as well as his supervisor. He recalled driving a female to work that he knew only as Balvir Kaur as well as other workers named earlier and a female he knew as Charan Kaur. He did not recall where these individuals lived except he thought Balvir Kaur lived on "King George, the other side of 88th". In addition to the general admonition from Rana, the appellant stated Rana also told him to report if any official from CCRA inquired about the identity of his passengers. The appellant explained it was normal for people to use nicknames - such as Lally - or to identify themselves by naming the villages where they were born. Counsel pointed out that during the interview - p. 6, tab 87 - he told Bowerman that he could not remember the names of any of his passengers. In answering Q. 38 of the Questionnaire - tab 103 - the names of Taro Bassi, Deol, Lali, Kulwant and many others (including one name that is illegible) are listed as co-workers. Counsel informed the appellant that according to the ROE, other documents and based on other information, Taro Kaur Bassi had worked between May 19 and July 27, 1996 whereas his first day of alleged employment was September 1, after she had been laid off. The appellant replied that some people who were supposedly laid off still went to work and that - perhaps - she had ridden in the van with her son. Counsel advised the appellant that at Discovery - Q. 143 - he stated clearly that Taro Kaur Bassi had been a passenger in his van. Further, counsel advised that Jaswinder Singh Bassi had already testified that Shindo and Kang had been his only drivers. The appellant stated he usually picked up the van at Rana's house but - on occasion - would keep the van in an alley near his own house if he had to pick up workers in Surrey. He estimated he kept the van in that location between 10 and 15 times in a period of 4 months but the rest of the time had to travel from his home - in Surrey - to Rana's house - in Vancouver - in order to pick up the vehicle. He could not recall whether the van used gasoline or diesel and was not responsible for buying fuel. The appellant stated he used public transit or Amrit drove him - on occasion - in a car he thought belonged to Ravi but never drove himself to Rana's residence. He stated he may have obtained a ride - to Rana's house - with other people but used public transit most of the time and estimated he had ridden there with Amrit about 30 times in 4 months. The appellant stated - as a last resort - Ravi had driven him to Rana's residence but that was rare because Ravi usually went to work later. He also rode back home with Ravi "a very few times". Counsel read a portion of the transcript of Ravi's testimony in the within proceeding where he stated he had never driven his father - the appellant - to work or - at least - was sure - in his own mind - he had not done so. The appellant replied he had only ridden with Ravi only if it had been an emergency and that one should bear in mind "Ravi is not a truthful son". He recalled most of the Vancouver workers were picked up at Rana's house and the Surrey workers stood in the street

near their homes and waited for him to arrive in the van. Harbahjan – Bajan – Kang and a man known to him as Binder were also van drivers and Harjit Gill drove a yellow school bus which was not in operation when he began working on September 1. The appellant stated Shindo and an unknown male also drove the van; now and then the van was driven by Rana. The appellant recalled SRC owned 3 vans: red, grey and another one, khaki or light-coloured. He remembered driving out to the Min Ho Farms in Richmond but added it was not on a regular basis. Counsel pointed out that at the HRDC interview – tab 87 – on January 30, 1998 - the appellant – at p. 2 – stated he drove a light-brown van whereas in his testimony in Court, he maintained he drove a grey van every day for 4 months. The appellant confirmed he drove the grey van as stated earlier. Counsel informed the appellant the Minister relied on statements, other documents and interviews – on some occasions – with Shindo, Harjit Gill, Bhan Singh (Master), Harbhajan Kang and Binder Chahal during which none of them ever mentioned the appellant had worked as a van driver for SRC. Counsel advised the Appellant that Kang quit working for SRC on October 19th and went to India on October 24th and that Gill’s last day of work was October 5th and he left for India on October 11, 1996. Further, Counsel advised the appellant that Balwinder (Binder) Chahal stated during an HRDC interview – also adopted within a Statutory Declaration (Exhibit R-5, tab 271) – that he drove the grey Dodge gas-powered van but worked as a driver for only two weeks during September and October because work had slowed down. As a result, Bant and Shindo assumed the role of drivers which forced him to work in the fields. Counsel read out portions of interviews with Chahal in which he stated Kang and Master were the only drivers from Surrey and Harjit (sometimes called Surjit) Gill drove the school bus. Chahal also advised that Bant and Shindo also drove workers to the site. Counsel further put to the appellant that not one worker had ever mentioned he had been their driver while employed by SRC. The appellant stated “all these people are wrong”. He stated there might be some confusion because he - Gurcharan Singh Gill – was sometimes referred to by the nickname “Bajan” which was also used to identify Harbhajan Singh Kang. Counsel advised the appellant the Minister relied on statements from other drivers that they kept the vans at their own home and did not travel from Surrey to Vancouver just to pick up a vehicle in order to turn around and drive back to Surrey. Counsel further informed the appellant that Binder, Kang, Master and Harjit Gill had all advised HRDC they had paid for gas for the vehicles driven by them and were later reimbursed upon producing a receipt to Bant and/or Shindo. The appellant agreed he “might have bought fuel for his van” but stated he wished to abide by his former statements that he had “never” fuelled that vehicle in the course of his employment. Counsel reminded the appellant that during the HRDC interview – tab 87 – when shown a photo of Harjit Gill, he was unable to recognize that person. The appellant replied that people look differently when they are working than in other

settings and it makes it difficult to recognize them, particularly if they are not wearing a turban. Counsel informed the appellant that during the interview he had described Ban (Bhan) Singh as a “young East-Indian male about 40 yrs but looks younger”, but was unable to identify Bhan Singh from a photograph. Counsel advised the appellant that Bhan Singh was 55 years old in 1996. The appellant explained he had been under a great deal of pressure at the time of the interview and had visited a physician the day before in relation to a medical problem. At the interview, the appellant stated he had not taken the van home “every night” and did not mention that – sometimes – he had kept the van at – or near – his own residence. The appellant stated he was under pressure and not in his “right mind” during the interview when he told the interviewer – Bowerman – that he rode to 49th and Main in Vancouver with Bhan Singh and 10 other people so he could pick up his van in an alley and meet his passengers who were gathered nearby. He confirmed that his testimony during direct examination was the truth and that he had – indeed – travelled to Rana’s house by bus or had obtained a ride with Amrit or – rarely – with Ravi. Counsel provided the appellant with a resumé of the statements and/or testimony of other workers, which – taken as a whole – never indicated that he had driven any of them to work at any time. For example, Prabhjot (Lally) Minhas testified her drivers were Shindo and Harjit Gill and – possibly – another male driver who was not the appellant. Balvir Kaur Mahli identified Bant, Shindo and Bhan Singh (Master) as her only drivers. The appellant agreed a conflict existed between the statements made by various people – including other drivers – and his own testimony. He recalled driving a female – Manjit Johal – as well as a woman he knew only as Charan Kaur. He also remembered a male passenger named Didar Singh. Counsel informed the appellant the only person with those names that appeared on the SRC employee list was a co-appellant - Didar Singh Mehat – who lived in Richmond. The appellant confirmed he had not picked up any worker in that municipality and stated he was not familiar with the boundaries of the cities and towns in the Lower Mainland. Regarding the nature of the tasks performed for SRC, counsel referred to statements made by the appellant – at Discovery – that he was hired strictly as a driver and was not required to do any other work. The appellant stated that was mostly correct except he had to maintain the van in a clean condition and used his free time during the day to walk on the roads outside the farm or sat in the van and listened to the radio or read a newspaper. He agreed he forgot to mention – at Discovery – that he handed out picking cards, on occasion. Counsel advised the appellant other drivers had stated - to HRDC – they sometimes picked berries, worked at the scale weighing berries, delivered berries to the cannery or carried water to workers in the fields. Further, counsel pointed out some workers had testified that van drivers handed out and collected picking cards each morning and night, respectively, and – generally – fulfilled the role of Supervisor. The appellant

explained his own job fell into a different category because he had advised SRC he could not perform regular farm labouring work due to the condition of his health. In his view, it is within the discretion of an employer to accord preference to a particular worker. He also knew Bant liked to drink and ensured there was a steady supply of liquor in the van available to Bant during the day. The appellant accepted the accuracy of his pay statement – tab 90 – and confirmed he had been paid the sum of \$8,300 in wages - \$6,300 in cheques and \$2,000 or \$2,200 in cash - which he considered as payment in full despite a shortfall of between \$60 and \$260. Counsel referred the appellant to Q. 223 - at Discovery - when he was asked about how much cash he received for final pay and to his response that he received “approximately \$3,000, \$3,300 or \$3,400 in cash” and that he had counted the money before putting it in his pocket. He also had described the denominations as \$50s, \$100s, \$20s and \$10s. Counsel reminded the appellant his testimony in Court – repeatedly – was he had received \$2,000 or – perhaps \$2,200 in cash at the end of the season. The appellant agreed he had provided that answer at Discovery but suggested it was merely an estimate. Counsel referred to the appellant’s bank statement – tab 96 – for the account ending in the digits 87 and to the deposit of \$2,126.66 on September 24, 1996 (assumed to include the \$2,000 SRC cheque dated September 17, 1996) and to a withdrawal three days later for \$2,000. Counsel also pointed to entries showing deposits of \$1,300 on October 31 of the cheque – tab 92 – dated October 25, 1996 and two cash withdrawals on November 13 and November 30, in the sums of \$400 and \$2,000, respectively. Further, there is an entry indicating a deposit - in the sum of \$3,000 – on December 2, 1996 of the cheque – tab 93 – dated November 30, 1996. On December 9, 1996 there is a withdrawal of \$2,200, a return entry in the same amount dated December 20 and a withdrawal of \$1,800 on December 31, 1996. The appellant stated he did not know the reason for the withdrawals of cash but assured counsel he had not paid any of that money to Bant and/or Shindo and/or Rana and speculated some of the money may have been used to repay various persons who had loaned money to enable his family to complete the purchase of a house in 1996.

[95] In an attempt to clarify the somewhat startling revelation by the appellant that he carried favour with Bant by ensuring there was a steady supply of liquor available through the day, the following exchange took place and this excerpt of the transcript has been edited only to correct syntax, grammar or to eliminate word and/or phrase repetition within a sentence and/or routine words to acknowledge a person had finished speaking.

Court:

So, Mr. Gill, did you drive to the liquor store and buy it for him during the day or did you have it in the van?

Gill:

I have told you that and I mean I have been sworn here to tell the truth... the thing is he had a weakness and I understood that weakness and so I did that, and not only that, I mean he wanted to become my partner the next time.

Court:

But I'm just asking, did you have to leave the farm and drive to the closest liquor store during the day or did you already have some in the van?

Gill:

I can explain it to you. The thing is, I belong to the District of Amritsar in Punjab and the way we deal there is that we offer liquor to anyone and I have seen that once you offer liquor to people, the work that they're not even going to do, they start doing it. Maybe this decision is against me but just listen to one thing. In the City of Amritsar, I went to the court once to give ... I was a witness, but I went there to testify which was wrong. The judge that was there, he had a relationship with us. We handed out a piece of paper and they called us inside. When I testified, the judge started saying that I could end up seven years in the prison if I gave a false -- if I testified wrong. So, I said to the judge that you belong to the same community as we do. Once you eat somebody's -- once you drink with someone or you have eaten with someone, then you can actually go and die for that person, or you can kill any other person ...

The Interpreter:

The Interpreter missed something in the end.

Court:

I don't think it's important. All I asked - a very simple question - is whether you had to leave the field and go to the nearest liquor store or whether you had a bottle in the van. I didn't need a history of Amritsar.

Gill:

I have alcohol at my home all the time and in that van I used to have alcohol, as well as those other salty, those chips stuff.

[96] The appellant – Gurcharan Singh Gill – was re-examined by his agent, Darshen Narang. The appellant recalled he delivered a certified cheque in the sum of \$10,000 to a law firm in connection with the purchase of a family residence in October, 1996. Although his family opened an account at a branch of the Laurentian Bank in order to pay the mortgage on a monthly basis, that arrangement was not in place to cover the first one or two payments and cash – approximately \$1,500 – was taken to the bank for that purpose. Other funds were borrowed from relatives and a total of \$24,000 was deposited to the account – tab 96 – during the month of October. In 1997, the appellant worked as a van driver for another labour contractor and did not have to apply for UI benefits following layoff because he found another job. The appellant stated he came to suspect – little by little – that some passengers were hiding and/or disguising their identity for a variety of reasons in order to avoid disclosing their employment. He agreed some of his passengers – from time to time – may have worked without ever appearing on employer records or other documents. Narang advised the appellant of a decision issued by a Board of Referees – Exhibit R-6, tab 345, p. 2 – that a man had worked for SRC – in 1996 - without receiving an ROE because his hours were added to those of his wife in order to increase her eligibility for subsequent benefits. The appellant stated that did not surprise him because “everything was happening there”.

[97] In further cross-examination by counsel for the Respondent - Johanna Russell – the appellant was asked why he would be required to withdraw the sum of \$1,500 to make the monthly mortgage payment if other members of the family were also contributing to that obligation. The appellant replied that he was the major partner and had to buy groceries for the family and that his son – Ravi – was not “contributing that much”. Counsel referred to his statement during the interview – tab 87, p. 5 - where he said “I share the house with my son, I pay \$600 to my son every month and he pays the mortgage.” The appellant stated this answer was not correct because – at that time – he had been under severe stress.

SUKHWINDER KAUR TOOT

[98] Sukhwinder Kaur Toot testified in Punjabi and the questions and answers and other aspects of the proceedings were translated from English to Punjabi and Punjabi

to English by Russell Gill, interpreter. The respondent's Book of Documents relevant to the appellant's appeal – 2000-2342(EI) – is Exhibit R-31. The Minister decided the appellant was employed in insurable employment with SRC for 18 weeks during the period from May 26 to September 30, 1996 and had insurable earnings in the sum of \$5,000. The appellant's position is that she worked from April 14 to October 12, 1996 and had insurable earnings of \$7,294 as stated in her ROE at tab 87. The Minister relied on the following assumptions of fact as set forth in paragraphs 5(j) to 5(r) inclusive, in the Reply to the appellant's Notice of Appeal:

- j) the Appellant worked for the Payer during the Period as a farm labourer;
- k) the Appellant did not provide any services for the Payer before May 26, 1996;
- l) the Appellant did not provide any services for the Payer beyond September 30, 1996;
- m) the Appellant was paid \$5,000.00, by way of cheque dated August 20, 1996 and negotiated on October 23, 1996 at the Payer's Bank located at 49th and Fraser Street, Vancouver;
- n) the Appellant did not receive any other remuneration from the Payer other than the \$5,000.00 admitted herein;
- o) the Payer did not withhold any amounts on account of payroll deductions or tax from the remuneration paid to the Appellant;
- p) the records provided, for example, the ROE, the T4 slip and the Employee Earnings Record were fabricated to give the appearance that the Appellant provided services for the Payer before May 26, 1996 and beyond September 30, 1996 and that she was paid in excess of \$5,000.00 admitted, and these records were a sham;
- q) the Appellant required the 26 weeks of insurable employment reflected on the ROE in order to apply for unemployment/employment insurance benefits; and
- r) the Appellant did not work for the 26 weeks reflected in the ROE.

[99] The appellant stated she had not attended school in India and cannot read nor write – in Punjabi or English - and cannot count. As a result, she has no method of knowing in what month something occurred nor does she have a sense of years or

dates, including her own date of birth (A document – tab 94 – establishes her date of birth in 1949). She came to Canada in September, 1995 and did not participate in any ESL instruction. In India, she worked inside the home while the men performed outside tasks on the farm. She recalled working for Bant and Rana packing strawberries, raspberries and blueberries. The following season she worked for another farm labour contractor. The appellant's entry to Canada – with her husband, son and daughter - was sponsored by an older daughter who was married – with one child – and lived in Surrey. Her husband – Swarn Singh Toot – worked with her in 1996. She recalled hoeing and cleaning out grass around plants prior to picking strawberries but cannot remember how long that sort of work lasted. She estimated the berry crop took about one month, followed by raspberries and then blueberries which occupied about the same amount of time to complete the picking. At one point during the blueberry season, she picked radishes (lo bok) and turnips. She recalled working at a vegetable farm but does not know whether it was owned by the Chinese man or the white man. Each day, she rode to work in a van driven by Master (Bhan Singh) or Bajan (Harbhajan Kang) and never rode in a yellow bus. The appellant was seated in the courtroom while the previous witness - Gurbachan Singh Gill – was in the witness box and stated he had never been her driver. The appellant stated Master drove different vans and Kang drove a white van. She stated she was paid \$7 per hour for all of her work and would get cash when she required money but her husband collected her wages from Rana. After her employment was finished, the appellant stated she received a cheque – tab 90 – dated August 20, 1996, in the sum of \$5,000. On October 23, 1996, she and her husband were driven to the TD bank by Harbhajan Kang – a distant relative through marriage - and they went inside the bank where she cashed the cheque. She stated the money was used to repay her daughter and other relatives who had helped her family. The appellant stated she did not repay any of that money to Bant and/or Shindo and/or Rana. In terms of knowing the number of hours worked in a day, the appellant stated the driver announced the total at the end of the day. She demonstrated she can tell time – by reading the clock in the courtroom – but cannot calculate the passage of time – for example the number of hours elapsed between 9:00 a.m. and 3:00 p.m. – but her husband wore a watch and could verify the hours worked in a particular day. She recalled riding to and from work in the same van, although there might have been a different driver for the return trip. The appellant remembered working at Khakh Farms and at another farm owned by Sutti (phonetic) in addition to the vegetable farm. She could fill 5 or 6 buckets of blueberries a day at the start of the season, increasing to between 6 and 8 buckets at the peak and dwindling to only two buckets at the end when the berries were sparse. She estimated the buckets had a 20-litre capacity. On her last day of employment – October 12 – the appellant stated she picked the last of the blueberries. She recalled starting and ending work the same time as her husband whose ROE – Exhibit R-1,

tab 23, p. 34 – indicates he started on April 14 and was laid off on October 12, 1996. After her layoff, the appellant applied for UI benefits – tab 88 – at the HRDC Surrey office. The appellant was referred to notes of an interview – tab 93 – on August 20, 1997 at an HRDC office where she was accompanied her son - Satnam Toot – who acted as interpreter and to an addendum – tab 96 – and to notes of another interview – tab 101 – on March 11, 1998. She stated she had no recollection of attending an interview with her son. Darshen Narang provided the appellant with details concerning her Discovery - including some questions asked and answers given by her – but she was unable to recall that event. Narang also read out the first 9 questions and answers - as noted by Janice Morrow - of the appellant’s interview – tab 93 – but the appellant stated she did not recall the interview nor that she was requested to bring in her bank book at a later date.

[100] In light of the difficulty experienced by the Sukhwinder Kaur Toot in recollecting events, counsel for the respondent – Selena Sit – advised the Court forthcoming witnesses might provide information relevant to this appeal. The Court granted counsel’s request to reserve the right to cross-examine the appellant later, if necessary.

DIDAR SINGH MEHAT

[101] Didar Singh Mehat testified in Punjabi and the questions and answers and other aspects of the proceedings were translated from English to Punjabi and Punjabi to English by Russell Gill, interpreter. The respondent’s Book of Documents relevant to the appellant’s appeal – 2000-2334(EI) – is Exhibit R-25. The Minister decided the appellant was employed in insurable employment with SRC for 15 weeks from June 10 to September 21, 1996 but found his insurable earnings were nil. On May 31, 2004, counsel conceded the correct period of insurable employment was from June 10 to November 9, 1996, but advised the Minister’ position was unchanged regarding the amount – nil - of insurable earnings. The appellant’s position is that he was employed in insurable employment during the expanded period conceded by the Minister but had insurable earnings in the sum of \$7,056. The Minister relied on the following assumptions of fact as set forth in paragraphs 5(j) to 5(n), inclusive, of the Reply to the appellant’s Notice of Appeal:

- j) the Appellant worked for the Payer during the Period as a farm labourer;
- k) the Appellant did not provide any services for the Payer beyond September 21, 1996;

- l) the Appellant did not receive any remuneration from the Payer;
- m) the records provided, for example, the ROE, the T4 slip, the Employee Earnings Record and the non negotiated cheque were fabricated to give the appearance that the Appellant provided services for the Payer beyond September 21, 1996 and that he received remuneration from the Payer, and these records were a sham; and
- n) the Appellant required the weeks of insurable employment reflected on the ROE in order to qualify for unemployment/employment insurance benefits.

[102] The appellant's entry to Canada – in 1992 - with his wife and two daughters was sponsored by his oldest daughter and – after two weeks - found work in house construction which lasted for several months. He had not received much education in India but can read – but not write – Punjabi and can write his own name and a few other words in English. His wife found work as a child caregiver and two daughters went to night classes after work. They were educated in India; one had a B.A. degree and the other finished Grade 11. The eldest daughter – with a Grade 10 education - had been married in India and worked pressing clothes while her husband was a house builder. The appellant stated he had not been employed by his son-in-law while working as a construction labourer but had collected UI benefits after being laid off by that employer. During the 1993, 1994, 1995 and 1996 farming seasons, he worked for Rana and Bant. First, the labour contracting business was operated under Bant's name and then by Rana, Bant's brother-in-law. Bant's wife – Shindo – also worked in the business. The appellant stated he is not related to any of the principals of SRC nor is any member of his extended family related to them. After 1996, the appellant worked for other farm labour contractors. In 1996, his first task was picking strawberries for about 4 weeks followed by raspberries for 4 weeks, blueberries for 6 weeks and – finally – vegetables. He picked strawberries at Khakh Farms and at another farm in the Chliwack area. He recalled travelling to a farm near the United States/Canada border where he picked raspberries as well as at a farm owned by the Lidhran family. He remembered picking berries on farms owned by individuals known to him as Preem and another operated by Mohinder Singh. He picked vegetables at two farms - in Richmond – known to him as the Chinese Farm and Mike's Farm. His wife also worked for SRC during 1996 and even though he could not recall her start and end dates, in previous years working for Bant, they normally started and ended work at the same time. The appellant described the method used to pick strawberries which was to place them in a bucket and empty it into a flat which

held 12 smaller, individual, plastic containers firmly attached to the inside of the flat. He recalled it took about 3 buckets to fill a flat which – when full – was taken to a scale to be counted. At the weighing station, a person punched the picking card handed to him by the driver earlier that morning. The flat weighed 18 pounds and numbers were printed on the cards to correspond with weights. When the picking was good, he filled 14 or 15 flats per day but as the season progressed, his daily production was about 10 flats. Two workers would pick all the ripe berries in a row and leave the green berries which would be collected during the next round of picking. The same procedure was used for raspberries and blueberries and the farmer would notify the labour contractor when pickers were needed to pick the newly ripened berries. Sometimes, workers would attend the same field 3 or 4 times in order to pick all the berries. He estimated he picked 10 flats during the first day of his employment and the system followed at Khakh Farms was that only full flats were counted. As a result, the appellant kept some berries in a bucket in order to top up a flat prior to quitting time. On occasion, he handed in only a partial flat at the end of the day and was not paid for those berries. In order to avoid that situation, he would borrow some berries from a co-worker in order to fill a flat. However, if he and his wife were working side-by-side, they could make up a full flat between them at quitting time. During the day he and/or his wife would remember the number of flats they had picked and wrote that number on a calendar after returning home. The picking cards were handed out - by the driver – each morning to each worker and were collected every evening. At some farms – not Khakh Farms – if the flat was overfilled, any weight in excess of 18 pounds was recorded on the reverse of the picking card. The appellant stated he was paid \$7 per hour for picking raspberries and blueberries, but when he and his wife worked for Bant in previous years, they were paid by the pound. He was able to pick 14 or 15 flats of raspberries per day during the most productive part of the season but only 10 flats per day towards the end. Again, berries were placed into buckets and then flats before taking them to the scale where a picking card was punched. The appellant stated he could pick 20 flats of blueberries on a good day and 12 or 13 was the minimum. The flat weighed about 18 pounds and some farms wrote the actual weight on the reverse of the picking card whether it was over or under. He did not use picking cards when working on the vegetable farms and was paid an hourly wage of \$7, increased to \$8 during the latter part of his employment. The appellant stated Bant and Shindo were told - before the start of their employment - that he and his wife would work only if paid an hourly wage because they were both experienced pickers. When he discovered – from talking to other workers - that the remuneration for picking strawberries was on a piecework – per flat – basis, he complained to Bant and Shindo during a meeting in their residence and by the time he and his wife began picking raspberries, was satisfied both of them were going to be paid an hourly wage. The appellant stated his

wife usually picked more flats per day than he could during an 8 or 9-hour day. The hours worked – per day – were the same to each person who had ridden to work in the same van. He could not recall how many days he did not work. When the season ended, the appellant and his wife took their calendar to Bant/Shindo/Rana's house for the "settling-up" meeting at which their final wages were calculated. Earlier, he had asked Bant for money for his own wages and those earned by his wife, and – after repeated demands – Rana paid them in cash, usually \$200 or \$300. The appellant noted it was harder to collect wages from Bant than it had been in earlier years. During a slack period when he was working – for SRC - on the vegetable farms, through his own efforts, he found two weeks employment – with another employer – on a cranberry farm in the Richmond area. His wife did not accompany him to that job. He recalled Shindo drove him to work in a red van on his first day. Later, he rode with Binder and Kang but not in the yellow school bus. He recalled working in the strawberry field with between 20 and 25 people in his range of vision and at the end of the first week Shindo informed him that the pay for him and his wife would be at an hourly rate. Later, he assumed that Shindo had converted his pay to an hourly rate from the beginning even though – for a certain period – it had been calculated on the basis of payment per flat. He identified his signature on an application – tab 101 – for UI benefits dated November 15, 1996. His ROE – tab 100 – indicates he did not work for SRC from September 22 to October 26, a portion of which was spent working at the cranberry farm. He received an ROE from that employer together with a cheque which he deposited in his bank account. He identified his signature on the Questionnaires at tab 102 and tab 82. He attended an HRDC interview - tab 96 - with Jeannie Suric and was accompanied by his son-in-law – Suki – who assisted with the interpretation into Punjabi. He agreed he had been under an obligation to tell the truth at the interview. At the vegetable farm, he picked cabbages and turnips by cutting them off with a knife but – at p. 2 of his interview – his answer is recorded that he "planted" zucchini, cabbages and cucumbers. The appellant confirmed that response was correct and that this task was performed between the strawberry and raspberry season. During the interview, he agreed he told Suric he had been paid only by cheque but stated he had actually been paid in a combination of cheque and cash. Following his layoff, he met with Rana and Shindo and was accompanied by his wife and daughter, Ranjit. He estimated they were paid about \$300 or \$400 in cash at that time. The appellant was referred to a purported cheque – tab 98 – with the writing "I Cash Money Give" in the sum of \$6,000 and dated September 30, 1996. He stated he did not comprehend the nature of the alleged transaction connected with that piece of paper. The appellant stated that following the HRDC interview, he went to see Shindo and inquired about obtaining receipts for the cash payments made to him. She handed him two pieces of paper – tab 91 – each with "SRC" written on the upper portion and the sum of \$500 and the appellant's signature written thereon. He took

those two documents - that he considered to be proof he had received some money – to the HRDC office. He stated he wished his pay would have been in the form of cheques - rather than cash – but it was no different than when he worked for Bant in previous seasons. The Questionnaire – tab 102 – was completed by his son-in-law – Suki – but the appellant did not recall any aspect of this event, including the written answer to Q. 34 that he had been paid “cash only” by Rana. The appellant identified a copy of his account statement – tab 95 - issued by VanCity Credit Union for the period from June 1 to December 31, 1996. He also identified the document – tab 92 – pertaining to the joint account – with his wife - at Richmond Savings & Credit Union. A bundle of documents pertaining to Surjit Kaur Mehat containing three cheques in the sums of \$3,000, \$3,000 and \$1,000 for a total of \$7,000 was filed as Exhibit R-39.

[103] The appellant – Didar Singh Mehat – was cross-examined by Johanna Russell. The appellant recalled that he attended an HRDC interview - tab 96 – where he produced his SIN card and Indian passport. He was accompanied by his daughter – Ravinder Shergill – who had been in Canada since 1992. Counsel referred to a portion of the typed notes of the interviewer - Jeannie Suric – which describes the voluntary disclosure by Ravinder that she had not really been living with her father – in 1996 – as stated earlier during an attempt to vouch for her father’s employment at SRC but was in Edmonton at that time, and that she telephoned home nearly every day and was told by a member of her family that they went to work every day in a red van. The appellant stated his daughter was wrong in providing information about when she moved to Edmonton and her error was probably due to the fact she was nervous. At p. 6 of the interview notes, the appellant was asked to confirm that Binder and Shindo were his only drivers and he replied “No one else, just the two of them”. The appellant agreed that – at Discovery – he identified Binder and Shindo as his only drivers and had not mentioned Kang and/or Rana. He acknowledged the answer to Q. 8 of the Questionnaire – tab 102 – named Bhajan (Harbhajan) Singh Kang as one of his drivers. Counsel advised the appellant the Minister relied on various business records of SRC and a statement from Shindo that she rode in the bus – driven by Harjit Gill – to the strawberry fields in Abbotsford and that Binder’s first day of work was July 1, 1996, according to his Statutory Declaration in Exhibit R-5, tab 271. The appellant replied that he had no control over the statements of Shindo or anyone else. He recalled working with Gurmail Singh Gill and had worked with him during earlier seasons. He stated SRC owned several vans and these vehicles were parked away from the fields and the workers walked to the work site. He rode in a red van and – on occasion – a white one but did not know the maximum passenger capacity of each except there were 3 or 4 rows of forward-facing seats. The appellant confirmed that the van driver handed out a picking card which he kept in his pocket

until quitting time when he would hand it back to the driver. Counsel referred to answers given by the appellant at Discovery to Qs. 200 and 201, that he received a picking card with numbers of pounds printed thereon, the card was punched at the scale and that he took his copy of the card home with him each night where he stored it in a safe place – together with his other cards and his wife’s picking cards - until the end of the season. Counsel pointed out he must have had up to 180 picking cards – in total – in his home if he had actually followed this procedure and commented that both versions could not be correct. The appellant stated his memory – sometimes – is bad. Counsel suggested he attempted to hide - during his direct testimony – any retention of picking cards because he wanted the Court to believe he had been paid – throughout – on an hourly basis regardless of the task performed. The appellant explained he had taken picking cards to the meeting at Rana’s house at the end of the season but they were only for strawberries which were picked during the first few days of his employment before he complained to Shindo about not wanting to be paid on a per flat basis. Counsel reminded him that – during his direct examination – he had stated – emphatically – that he never took a picking card home because he – and/or his wife – was able to remember the number of flats picked on any given day. The appellant acknowledged the correct answer was that he retained the picking cards for only the first week. At Discovery – Q. 223 – the appellant stated he knew he had to retain picking cards in order to return them to Rana. He went on to say that when working with the vegetables he was paid by the hour according to the amount announced by the driver. The appellant replied that the reason he distinguished between the berry picking and the vegetable work was in the context of the first week of employment. Counsel read an answer to Q. 104 of his Discovery where he explained that if needed elsewhere – while picking berries – he and other men would be transported to another work location to perform tasks such as hoeing or loading cabbages onto trucks and would be paid on an hourly basis for that work. Counsel suggested to the appellant that his answer demonstrated – clearly – he understood the difference in pay methods between picking berries where he was paid by the flat and other work pertaining to vegetables. Counsel also read out the appellant’s answers to Qs. 241, 266 and 273 where he had stated their picking cards were taken to Rana for an accounting and that Rana had taken “some time to look over all the cards” before looking at the appellant’s record of hours written on a calendar. Counsel informed the appellant the Minister relied on information received from various farms – including M & G Bros. Farms Ltd (Gill Bros.) - to indicate SRC had provided about 50 workers in July and August and retained a copy of picking cards on which the pickers’ names and dates and hours worked were recorded. In addition, the information provided showed Gill Bros. paid SRC \$5.35 per 20-pound pail of blueberries picked and \$4.35 per flat of raspberries and that an average worker picked between 14 and 17 pails of blueberries per day. Counsel suggested it was not

reasonable for the appellant to be paid \$7 per hour for 8 or 9 hours per day if he only picked 14 or 15 flats of raspberries because SRC would only receive – at most - from Gill Bros the sum of \$65.25 whereas the total of his hourly pay would be \$63. Therefore, when the appellant picked only 10 flats during an ordinary day, SRC would be losing money by paying him an hourly wage. Counsel further advised the appellant that his co-worker - Gurmail Singh Gill – informed HRDC that he had been paid by the weight and/or flat for all the berries picked – in 1996 - just as in those previous years when he worked for Bant. The appellant repeated his assertion that he was paid an hourly rate regardless of the arrangement in effect between SRC and Gill Farms or any other farmer. The appellant’s pay statement – tab 99 – is based on an hourly rate of \$7 until the end of his employment. At Discovery, the appellant answered Q. 259 by stating he and his wife and Rana had “settled on \$8.00 per hour before we started” because that was a condition of their agreement to work for SRC. During the interview – tab 96, p. 2 – the appellant’s answer is recorded that his rate of pay was \$8.00 per hour. The appellant stated he could not recall giving that answer and advised he “forgets things” from time to time. The appellant’s pay statement indicates he was working 56 hours per week consistently to the end of his employment whereas during his HRDC interview he told Suric that he worked two or three days a week at the Chinese Farm or Mike’s Farm in Richmond. The appellant agreed it was possible towards the end of the season that SRC was rotating workers on the basis of two or three days per week but the berry work had been performed 10 hours per day, 7 days a week even though the pay statement shows only 112 hours every two weeks. According to his pay statement – tab 99 – his net earnings were \$6,088 and his wife’s net pay – according to Exhibit R-39, tab 1 – was \$6,023. However, the 3 cheques she received – tabs 14, 15 and 16 of that exhibit - totalled \$7,000. Counsel pointed out the appellant’s position was that he and his wife had been paid a total of \$13,000 for their work but their net pay - added together – amounted to \$12,111, indicating they had been overpaid by \$889. The appellant stated he could only attribute any such overpayment to a bonus paid by Bant and Shindo because he and his wife were good workers or because their daughter was about to be married. Two of the cheques issued to the appellant’s wife – Surjit Kaur Mehat – were negotiated on October 21, 1996, even though one cheque was dated October 1, 1996. The appellant stated he was not aware of the dates when those cheques were received and/or deposited. During the interview – tab 96 at p. 2 - the appellant’s answer – as noted by the interviewer – is that he received “a total of \$8,000 in cash and cheques”. A few questions earlier, he told Suric he was “paid by cheques only”. He also explained to Suric that the cheques were deposited to the joint account he and his wife had at the Richmond Savings & Credit Union on Cambie Street. At p. 6, - again – he referred to depositing a cheque to his account. He also said he received \$100 in cash from Rana whenever he asked for some money. The

appellant stated he could not explain why he had provided those answers concerning the receipt and deposit of those cheques. During the interview, Suric pointed out to the appellant that the \$6,000 purported "I Cash Money Give" cheque – tab 98 – was dated September 30 but to that point had earned only \$5,426.58. The appellant replied "I don't know I am uneducated". When informed by Suric there were no cancelled cheques in the SRC records to prove he had ever been paid and no proof of deposits of any cheques into his account, the appellant stated he did not remember if he was paid by cheque but had not worked for free. The appellant referred to the purported cheque – tab 98 – and explained he had deposited that cheque to his account but it had "bounced" so he and his wife and daughter-in-law went to the bank a few days later to discuss the situation (I informed the appellant the evidence was clear this so-called cheque had never been issued by SRC, was not signed by Rana, and had never been deposited into any account. The appellant stated his family had told him the story about a cheque being N.S.F. and he assumed it was that \$6,000 cheque). During the telephone conversation between Janet Mah and the appellant's son-in-law who, according to the notes – tab 83 – had been granted permission to interpret for him, the information was relayed that the appellant was paid "\$7 per hour, cash". When Mah asked whether the money was deposited to the appellant's bank account, the interpreted answer was "you know my father-in-law, he kept the cash to spend, because his daughter was getting married". Counsel pointed out to the appellant that his daughter was not married until December, 1996 and that – at Discovery – the answer to Q. 354, upon being shown the purported cheque – tab 98 – was that he had never received a cheque from Rana and had gone to the Bant/Shindo/Rana residence in order to inquire about that omission. The appellant was referred to the notes – tab 90 – concerning his visit to the HRDC office with his daughter - Ranjit Lidhar – where he produced two pieces of paper signed by D. Mehat and apparently gave an explanation that he had received the sum of \$500 on two occasions – in January and February, 1996 – because his daughter had been married in December, 1995 and he had no money left. He explained further - according to the notes – that he requested the advance payments because he and Rana both knew he would be working during the upcoming farming season. The notes continue concerning the \$6,000 cheque which the appellant said had been returned NSF and that Rana had given him cash to replace it. The appellant denied making those statements or providing those explanations. Counsel referred the appellant to Exhibit R-39, tabs 14-16, inclusive, containing copies of three cheques in the sums of \$1,000, \$3,000 and \$3,000 issued to his wife, Surjit Kaur Mehat. All cheques were cashed at the Richmond Savings & Credit Union rather than deposited into their joint account, as verified by the account statement - Exhibit R-25, tab 92 – which shows only one deposit of \$412.00 between May 31 and December 31, 1996.

[104] The appellant – Didar Singh Mehat – was re-examined by his agent, Darshen Narang. He stated his daughter – Ravjinder Shergill – was unreliable when telling the HRDC interviewer that she had been living in Edmonton during the summer of 1996 and – therefore - could not verify her father’s employment with SRC. He stated the truth of the matter is that she had been in Edmonton for only a short period of time but returned to live at home – in Surrey – during 1996, before being married on December 25.

[105] Darshen Narang advised the Court he would call witnesses on behalf of the appellants represented by him after the remaining appellants - whether represented by other agents or appearing on their own behalf - had the opportunity to testify in support of their own appeal.

GURMAIL SINGH GILL

[106] Gurmail Singh Gill testified in Punjabi and the questions and answers and other aspects of the proceedings were translated from English to Punjabi and Punjabi to English by Russell Gill, interpreter. The appellant was represented by his agent, Sadhu Tiwana. The respondent’s Book of Documents relevant to the appellant’s appeal – 2000-2653(EI) – is Exhibit R-17. The Minister decided the appellant was employed in insurable employment with SRC for 17 weeks during the period from June 23 to October 19, 1996 and had insurable earnings in the sum of \$3,151. The appellant’s position is that he was employed from June 23 to November 2, 1996 and had insurable earnings in the sum of \$7,448 in accordance with his ROE at tab 98. The Minister relied on the following assumptions of fact as set forth in paragraphs 3(j) to (q) of the Reply to the appellant’s Notice of Appeal:

- j) the Appellant worked for the Payer during the Period as a farm Labourer;
- k) the Appellant did not provide any services for the Payer after October 19, 1996;
- l) the Appellant was paid \$1,165.00 by way of cheque dated September 19, 1996 and negotiated on November 29, 1996 and \$1,986.00 by cheque dated October 18, 1996, which cheque was negotiated on October 30, 1996, for his work during the Period;

- m) the Appellant did not receive any other remuneration from the Payer other than the \$3,151.00 admitted herein;
- n) the Payer did not withhold any amounts on account of payroll deductions and tax from the remuneration paid to the Appellant;
- o) the records provided, for example, the ROE, the T4 slip and the Employee Earnings Record were fabricated to give the appearance that the Appellant provided services for the Payer after October 19, 1996 and was paid in excess of \$3,151.00 admitted, and these records were a sham;
- p) the Appellant required the weeks of insurable employment reflected on the ROE in order to qualify for unemployment/employment insurance benefits;
- q) the Appellant did not work for the 19 weeks reflected in the ROE.

[107] The appellant stated he arrived in Canada in 1993. He was unable to provide his telephone number or residential address to the Registrar because he is not familiar with English numbers. Although he was uncertain of his exact age, he knew he was older than 66. Four months after coming to Canada, he began working as a farm labourer and - in 1996 - started working for a labour contracting business operated by Bant, Shindo and Rana. He was paid some wages in cash and also received a cheque but did not have a bank account in 1996. He stated he had no way of proving he had been paid in cash. The appellant thought one cheque had been returned - NSF - by SRC's bank but agreed he was referring to the \$4,000 "I Cash Money Give" purported cheque at tab 94. The cheque - tab 95 - dated September 19, 1996 - in the sum of \$1,165 - was endorsed by the appellant by placing his mark "X" thereon and cashing it at the TD Bank on November 29, 1996. The same procedure was followed in order to cash the cheque - tab 96 - dated 18.10.1996 (October 18) at TD bank on October 30, 1996. On both occasions, his son and brother-in-law drove him to the bank. The appellant stated he received \$4,000 in cash and assumes that is the reason for placing his mark "X" on the signature line of the purported cheque at tab 94. He stated he received cash in small amounts - \$200 - from time to time after requesting some money from either Rana or Shindo and the balance of his wages was paid - in cash - at Rana's residence on November 5, 1996, the same day he obtained his ROE. He did not sign any receipts for the cash. Although his wages were paid on an irregular basis and only after he requested some money, the appellant stated he was satisfied SRC management was not going to "rip him off" and - as he anticipated - eventually received his wages in full.

[108] The appellant – Gurmail Singh Gill – was cross-examined by Johanna Russell. Concerning the appellant’s statement – in direct examination – that he did not operate a bank account in 1996, counsel referred to his answers – at Discovery – to Qs. 319 and 320 where he stated he had an account – with his son, Balbir Singh Gill - at a certain branch of the Royal Bank that had been opened after he arrived in Canada. The appellant agreed he had a joint account at the Royal Bank and – through his agent – provided a copy of his bank book pertaining to account activities from July 23 to December 31, 1996 (That document is located at tab 8 of Exhibit R-8, Respondent’s Miscellaneous Book of Documents). The appellant stated that before that date, he turned over all his income and earnings to his son. The appellant recalled the circumstances of his interview – Exhibit R-17, tab 91 – with Jeannie Suric - at the Richmond HRDC office – on January 21, 1998. He signed “X” on the last page of the notes taken by Suric and acknowledged he had been under an obligation to tell the truth and stated he had been truthful in his responses. At p. 15 – near the bottom – the appellant’s answer concerning whether the two cheques – tabs 94 and 95 – were deposited was that they had been deposited at the Royal Bank - #3 and Williams Branch – into an account that was his own account and not a joint account with his son as Suric had suggested in a follow-up question. The appellant denied he had provided this answer and when he had given the answer – in direct examination – about not having a bank account in 1996, he had understood the question to have been whether he had his own personal account rather than another form of account such as the joint account he operated with his son, Balvir. The appellant stated he has lived with Balvir and his family since coming to Canada. Balvir is educated and speaks English. After being informed by counsel that a document showed his date of birth in July, 1935, the appellant agreed he was 61 while working for SRC during the 1996 season. He worked for Bant during three previous seasons when Bant was operating a labour contracting business under a name other than SRC. During the interview – tab 91 – he told Suric he had worked with Manjit Rana on some farms in Lytton, B.C. during 1995 and Rana had asked if he was interested in working - the following season - for a company that Rana was forming. The appellant stated he had been picking ginseng roots on farms in the Lytton area but had never worked there with Rana although he had picked berries with him at some point in 1995. In 1994 and 1995, while working for Bant, he was paid by the pound for picking blueberries and by the flat for strawberries and raspberries and received an hourly rate when working with vegetables. In 1996, he stated he was paid 25 cents per pound for blueberries, \$3.00 per flat for both strawberries and raspberries and \$6 per hour for performing tasks on vegetable farms after October 19. The rates per flat and per pound had not changed since 1993. He used picking cards which came in triplicate so one copy could be handed to the farmer, one to the labour contractor and one retained by the worker. He received a new card each day and although different

farms used a different card, the colours used were yellow for raspberries, blue for blueberries and red for strawberries. Full strawberry and raspberry flats weighed 20 pounds but the contents – berries – were recorded on the basis that 18 pounds was a full flat. He did not share a picking card with any other worker. Blueberries were placed into boxes and any extra weight in excess of the standard was recorded and included in calculations at the end of the day. The appellant stated he was not aware of anyone in the berry-picking industry being paid by the hour rather than on a piecework basis and in his experience had observed this rule was applicable to everyone while picking berries. An hourly rate – in his view – was applicable only when working on vegetable farms and he kept track of his hours when performing tasks at those locations because there were occasions when he worked 11 hours to fill an order that needed to be shipped to a customer. When picking berries in the Chiliwack area, he was picked up at 5:30 a.m. and arrived at work nearly three hours later because other workers were collected along the way and returned home around 8:30 p.m. The travel time was less when he worked on farms in the Abbotsford area and he could pick until 7:00 p.m. before boarding the van to be driven home. In the Chiliwack region, he recalled picking both strawberries and raspberries at Khakh Farms and strawberries at Gill Farms in addition to two or three other locations. He picked blueberries at several farms in Richmond and at Gill Farms in Abbotsford. He never rode to work in the school bus, although he saw that vehicle hauling co-workers to the same fields where he was picking. When working on the vegetable farms, the van drivers would announce the hours worked that day and – sometimes – the workers disagreed with that number. He instructed his daughter-in-law to write down his hours - in a book - some of which were spent working on farms where he picked potatoes or pumpkins or corn. He stated Bajan (Harbhajan) Singh Kang was his van driver only during the berry season. While working on vegetable farms, he was driven by Shindo and different male drivers. Counsel pointed out to the appellant that - at tab 91, p. 4 - his answer is recorded that he was “certain” Rana drove him to work in a red van. He stated this answer was not correct. He stated all drivers – including Kang - worked picking berries. The farm owners/managers gave instructions to workers. Even if berries were not ripe on a certain day during the season, he did not take a day off but was transported to work on a vegetable farm. Only later in the overall farming season did he work less than 5 consecutive days and agreed that SRC would “rotate the workers” between the vegetable farms. At the end of the strawberry season, he used his copy of the picking cards to calculate how much he had earned. He followed the same procedure with respect to raspberries but calculated his blueberry-picking earnings by the pound. On a good day, he picked between 20 and 22 flats of strawberries but production would be as low as 14 or 15. Raspberry production ranged from a high of 13 to a low of 8 or 9 flats. A productive day picking blueberries would yield 225 pounds. The appellant stated he earned

- sometimes - only \$30 for a 10-hour day – including travel – for picking berries and commented that raspberries were less rewarding for pickers than other berry crops. Counsel referred the appellant to his pay statement – tab 97 – which showed his hourly salary as \$7 throughout the entire period of his employment. It indicated he had worked every day and earned gross pay of \$7,448 and net pay of \$6,424. The appellant stated the pay statement is false in that he was not paid on the basis of \$7 per hour and did not work exactly 8 hours per day. The appellant confirmed he had cashed the two cheques – tabs 95 and 96 – in the sums of \$1,165 and \$1,986, respectively, for a total of \$3,151, the amount of insurable earnings accepted by the Minister in issuing the decision. Counsel pointed out that if he received \$200 in cash – at some point – as well as the lump sum of \$4,000 in cash, he would have received a total of \$7,351 even without taking into account other small cash payments allegedly received from time to time and that total would exceed the net earnings according to the pay statement. During the HRDC interview – tab 91, pp.7-8 – the appellant’s answer is noted – by Suric – that – after working only two months – he received \$4,500 in cash because his brother – in India – was ill and needed money. The appellant recalled that answer and added his son had arranged to send the money to India. Counsel asked the appellant to explain why – if he had received \$4,500 after only two months – he would be entitled to receive a further cash payment of \$4,000 in addition to the two cheques cashed at the TD bank. The appellant replied “I am illiterate” and added that he was also collecting wages for his son’s brother-in-law and mother-in-law who also worked for SRC. Counsel referred the appellant to various answers provided during the HRDC interview - tab 91 – that he was driven to work – by Rana – in a red van and – sometimes – in a white van. Suric advised the appellant that Rana did not have a driver’s licence, to which he responded “I don’t know, he picked me up and he did drive”. The appellant agreed he had identified a picture of Rana at the interview and stated the correct version of events is that Rana did drive him to work even though he had denied it earlier in his testimony during direct examination and cross-examination. He continued to explain that had he known at the HRDC interview that his answers would be used – later – in a court case he would not have given some of them. During the telephone discussion – tab 85 – between Janet Mah and the appellant’s son – Balbir Singh Gill – the appellant’s response – through his son - to the question concerning the identity of his driver on his last day of work was that he did not remember because it was “a long time ago”. The only driver referred to during that interview is Harbhajan Singh Kang. Counsel asked the appellant why he never mentioned Shindo as his driver since Kang’s last day of work was October 19 and if the appellant had worked until November 2 – as he alleged – then Kang could not have been his driver. The appellant stated Shindo drove him to work at the vegetable farms and had “lied to the government” about her purported layoff on October 26.

[109] (Sadhu Tiwana – agent for the appellant – was advised of his right to attend at a later date for the purpose of cross-examining witnesses called by the respondent, particularly those whose testimony was expected to relate to the appellant specifically as well as any other witness, including other appellants.)

BHAGWANT KAUR GREWAL

[110] Bhagwant Kaur Grewal testified in Punjabi and the questions and answers and other aspects of the proceedings were translated from English to Punjabi and Punjabi to English by Russell Gill, interpreter. The appellant appeared on her own behalf. The respondent's Book of Documents relevant to the appellant's appeal - 2000-2324(EI) – is Exhibit R-34. The Minister decided the appellant was not employed in insurable employment with SRC during the period from June 9 to October 26, 1996 because she was not employed pursuant to a contract of service. Counsel informed the Court the Minister's position had changed and, although it was acknowledged the appellant had been in insurable employment with SRC from July 14 to September 2, 1996, the Minister still did not accept there had been any insurable earnings during that period. The appellant's position is that she was employed from June 9 to October 26, 1996 and had insurable earnings in the sum of \$7,840 as shown on her ROE at tab 88. The Minister relied on the following assumptions of fact as set forth in paragraphs 5(j) to 5(m), inclusive, of the Reply to the appellant's Notice of Appeal:

- j) the Appellant did not perform any duties for the Payer during the Period;
- k) the Appellant gave conflicting statements to authorities with respect to the duties, the locations of the farms, the method of payment, the period of employment and the days and hours worked;
- l) records provided, for example, the ROE, the T4 slip, the employee earnings record, the pay cheques, in respect to the Appellant, were fabricated to give the appearance that the Appellant worked for and was paid by the Payer and these records were a sham;
- m) the Worker required the weeks reflected on the ROE to qualify for employment/unemployment insurance benefits.

[111] The appellant stated she went to the Sikh Temple and spoke with a man who told her Bant had some work. A few days later she started to work for SRC and rode in a red van driven by Shindo. The first tasks – digging out grass from around cauliflower – were performed at Richmond, for a few days before the start of strawberry season. She stated her pay was \$7 per hour and she worked between 10 and 15 days at Khakh Farms. Then, raspberry season started and she picked at the Lidher Farm. She travelled to work by van and bus. The van was driven by Shindo and the big, yellow bus was always driven by Harjit Gill. She could recall the names of three farms but worked on others. Following the raspberry season which lasted 4 to 6 weeks, she picked blueberries at Gill Farm and on a farm in Richmond owned by a white female. She stated that after finishing some clean-up work at the end of the blueberry season, she started work on a vegetable farm – the Chinese Farm – in Richmond where the crops were zucchini, peppers, lettuce and radishes. During the berry season, she also worked from time to time at a vegetable farm. The appellant telephoned Rana to find out why the van had not picked her up for 3 or 4 days and was told there was no more work and that she should attend at his place to pick up her “weeks paper” (ROE). She went with her daughter to collect the ROE – tab 88 - dated October 27, 1996 and received a cheque – tab 90 – dated 7.7.96 (July 7, 1996) in the sum of \$2,000 which was cashed at SRC’s bank on November 4, 1996. The appellant identified her signature – in Punjabi – as well as her SIN which was noted on the endorsement area. The appellant stated she had an account at the Royal bank on Fraser Street but needed the money to give to her children who were in the process of opening a grocery store business. She stated that money was received during the season and she received \$400 or \$500 from either Shindo or Rana a few days after requesting some of her wages. Usually, the money would be handed to her by Shindo when picking her up in the van. The appellant stated she did not receive the “I Cash Money Give” purported cheque - tab 91 – in the sum of \$5,000 and that it was not her signature thereon. She stated she had also received a cheque in the sum of \$1,000 at the beginning of the season. According to her pay statement – tab 89 – she had gross earnings of \$7,840 and net pay in the sum of \$6,764. She recalled receiving between \$500 and \$700 in cash when she received her ROE. Her children kept track of her hours worked and marked down the time according to her instructions. Before 1996, she had worked for Bant and Shindo and Rana had not been involved with the business. Since arriving in Canada – in 1992 – she had worked for other farm labourer contractors and had been paid – by cheque – every 15 days. She identified her signature on her October 30, 1996 application – tab 98 – for UI benefits. The appellant stated she used picking cards when picking the different berries even though she was paid on an hourly basis. The drivers handed out picking cards which came in 3 copies. The card was returned to the driver at night and workers would be told – by the driver – how many hours had been worked that day

so they could write down that number. The appellant stated Shindo was her only van driver and, although a different van was used on occasion, it was usually the red one. The appellant recalled providing answers to her daughter – Pinder – who interpreted the questions and wrote down her answers in order to complete the Questionnaire – tab 102 – dated November 1, 1999. At Qs. 36 and 37, 40 and 41, the written answers are clear that the appellant never used any picking cards. The answer to Q.8 is “there was a different driver every day”. The appellant stated her daughter made those mistakes while recording answers to those questions. She speculated the errors may have occurred because the picking cards were used only when picking berries and not when she worked on vegetable farms.

[112] The appellant – Bhagwant Kaur Grewal – was cross-examined by Johanna Russell. She confirmed she had waited 3 days before phoning Rana to inquire why the van was no longer picking her up for work. Counsel referred the appellant to her answers – at Discovery on July 5, 2001– where she said that after being picked up for work one morning, Rana had informed her - and 10-15 other workers – the work was finished. The appellant agreed she had given that answer and that it was correct. However, she had telephoned Rana – later – to inquire whether there was more work available because she understood Rana had informed the vanload of workers that “maybe this is your last day or maybe there is another 3 or 4 days of work”. She stated that is why she stood on the street – with a packed lunch – for another few days hoping the van would still pick her up for work. None of her children worked for SRC and she is not related to Amarjit Kaur Grewal, another appellant in these proceedings. She identified her signature on the last page of notes taken during an HRDC interview – tab 93 – on November 10, 1997. She agreed the warning - about penalties for providing false information – was interpreted by her son who remained with her throughout the interview. She could not recall the circumstances relating to the Questionnaire – tab 85 – signed by her and witnessed by Harjinder Grewal on March 22, 1999. During 1996, the appellant lived in Vancouver and was picked up and dropped off at her residence on East 62 Avenue. Counsel pointed out to the appellant that she had named Shindo and Harjit Gill as her only drivers but at Q. 10 of the interview – tab 93 – she had described a 40-45 year old male – known to her only as Binder - as an occasional driver of the red van while Shindo “drove the grey one”. The appellant stated she does not know any person named Binder and reiterated her only van driver was Shindo. She explained the confusion arose because there were other drivers employed by SRC and one of them may have been someone named Binder. During the interview – at Q. 7 – she described the work performed and her son - Manjinder Singh Grewal - was interpreting her answers from Punjabi to English so they could be recorded by the interviewer. The response is that she “did not pick blueberries or raspberries” and

continued to describe her work in relation to vegetables including a description of the types of vegetables and the nature of tasks performed. The appellant stated the answer – as recorded – is not correct because she did not pick those berries nor is the notation that she was not sure whether she had ever worked in Chiliwack. The appellant stated her son arrived in Canada in 1992 and attended ESL classes. He finished part of Grade 12 in India and worked in construction and in a family-owned grocery store so was able to speak English. The appellant stated she cannot recall the details of the first cheque – in the sum of \$1,000 – she received from Shindo but was sure she deposited it to her account at the Royal bank. The cheque – tab 90 – in the sum of \$2,000 was handed to her at Shindo/Bant/Rana's house on the day when her wages were "settled up" but Shindo asked her to hold on to the cheque "for a while" because SRC did not have enough money in the TD account. In answering Q. 18 during the HRDC interview, the appellant's response is noted that she was given a cheque after the first two weeks of work and the next cheque – after one to one and one-half months – was in the sum of \$2,500 and both had been cashed at the employer's bank. The appellant agreed she had given that answer but explained her first cheque – in the sum of \$1,000 - was NSF so she obtained a cheque later that included this amount. The appellant denied telling the interviewer that she "got 4 or 5 cheques", attended at the TD bank to cash them but discovered there was not sufficient money in the account. Then, she continued to describe how she telephoned Rana to complain about this default and how she would later be paid in cash by Rana at his house. The appellant denied giving these answers and blamed her son – Manjinder – whom she noted did not know enough English at this time to act as her interpreter as his ability in that language was only enough just "to get by". Continuing to answer Q. 18 at said interview, the appellant's recorded explanations include the notation that "the employer owed her \$3,000 which was unpaid after her last day of work" and that this debt was repaid in "small amounts of cash". The appellant denied – emphatically – providing that answer and stated she was "astonished" at what had been written down. She stated she did not know HRDC wanted her to produce bank statements because her son had never told her about that request even though he was present throughout the interview, - where he acted as her interpreter – lived in the same household and was present in Court. The appellant was referred to a copy of a bank statement – tab 94 – pertaining to an account at the Royal Bank she assumed belonged to her grandson (Entries therein begin on July 25, 1996 but do not support the proposition that the \$1,000 cheque was deposited to that account and subsequently dishonoured due to lack of funds in the SRC account.). The appellant stated she had no recollection of telling the HRDC interviewer that she handed NSF cheques back to the employer but agreed she may have provided that response. At Discovery – Q. 30 – the appellant stated she cashed the \$2,000 cheque – tab 90 - "right away" after she received it on July 7 or within a month of that date.

Counsel referred the appellant to the bank stamp indicating the cheque was not cashed until November 4, 1996. In answering questions in both Questionnaires – tab 85 and tab 102 - concerning amounts and method of payment of wages, the responses on both occasions were that the appellant was paid a total of \$3,500 by cheques and \$4,340 in cash and that the cash was not deposited in the bank. Counsel pointed out to the appellant that if these amounts were correct, then the total net pay received by her would be in the sum of \$7,840, the same amount shown as her gross earnings on the pay statement at tab 89. The appellant agreed she did not receive that sum and did not accept she had ever provided those responses to her son and/or daughter when they assisted her to complete those Questionnaires. At Discovery, the appellant explained she had taken her picking cards to Rana's house where he did the tally and gave her the ROE that had already been prepared. After the settling-up process was concluded, she stated Rana handed her a \$2,000 cheque and requested her not to cash it right away. Counsel referred to the appellant's earlier testimony during her direct examination that she had received cash for the final payment. The appellant replied that she and her daughter had taken the \$2,000 cheque to the TD branch and cashed it there. Concerning hours of work, the appellant stated she worked 9 or 10 hours per day and was paid an hourly rate whether picking berries or working on the vegetable farms. She disagreed with the workers – including Gurmail Singh Gill – who testified the basis for payment was per flat for strawberries and raspberries, per pound for blueberries and hourly only for vegetable work. The appellant's answer to Q. 19 of the HRDC interview – tab 93 – concerning hours of work each day is noted as “worked 10 hours per day, normal” and “mostly had Sundays off, sometimes a week day”. The appellant denied giving that answer and – in any event – did not agree it was correct. She stated her daughter completed the application – tab 98 – for UI benefits but at Q. 2 of the interview, the appellant's answer - as noted - is that the application was completed “with Shindo's help at Shindo's house”. The appellant agreed that answer may be correct. The appellant recalled the zucchini crop lasting until the end of October. Counsel referred her to the answer to Q. 42 of the Questionnaire – tab 102 – where she described her “final clean-up” work after the berry season had finished. The appellant stated the answer was not complete because she continued working – at the Chinese Farm - with vegetables, including lettuce, turnips and radishes.

AMARJIT KAUR GREWAL

[113] Amarjit Kaur Grewal testified in Punjabi and the questions and answers and other aspects of the proceedings were translated from English to Punjabi and Punjabi to English by Russell Gill, interpreter. The appellant was represented by her agent, Param Grewal (no relation), Manager of Progressive Intercultural Community

Services Society, referred to earlier in these reasons as PICS. The respondent's Book of Documents relevant to the appellant's appeal - 2000-2325(EI) - is Exhibit R-35. The Minister decided the appellant was employed in insurable employment with SRC from June 9 to October 12, 1996 and had insurable earnings in the sum of \$4,000. The appellant accepts the finding regarding the period of her employment but asserts her insurable earnings are in the sum of \$7,056. The Minister relied on the following assumptions of fact as set forth in paragraphs 4(j) to 4(n), inclusive, of the Reply to the appellant's Notice of Appeal:

- j) the Appellant worked for the Payer during the Period as a farm labourer;
- k) the Appellant was paid \$4,000.00 by cheque dated October 12, 1996 and negotiated on October 17, 1996;
- l) the Payer did not withhold any amounts on account of payroll deductions and tax from the \$4,000.00 remuneration paid to the Appellant;
- m) the Appellant was not paid any other amounts on account of salary or wages by the Payer other than the \$4,000.00 admitted herein; and
- n) the records provided, for example, the T4 slip, the Employee Earnings Record and the ROE were fabricated to give the appearance that the Appellant was paid in excess of \$4,000.00 by the Payer and these records were a sham.

[114] The appellant stated she worked for SRC during the relevant period and, upon being laid off, received an ROE – tab 86 – which she assumed was correct because she cannot read, write nor speak English. Her first task on June 9 was to pick strawberries and she continued for about 15 days until that season was over and then picked raspberries for 15 or 16 days. She stated she was paid \$4 per flat for strawberries and on a good day could pick 35 flats. However, during the last 4 or 5 days of the season when the berries were sparse, production fell to 10 or 11 flats. The rate per flat for raspberries was \$4.50 and she could pick 30-35 flats per day during peak periods of the season. After raspberry season ended, the appellant picked blueberries for 2 to 2 1/2 months and was paid 24 cents per pound. During the 15 to 18-day period - representing the main part of the season - when berries were plentiful, the appellant picked between 400 and 450 pounds per day. However, at the beginning of the season and – again – at the end, daily production ranged from a low volume of 150-200 pounds to a high of 250-300 pounds depending on the nature of the crop. The appellant stated she considers herself to be an excellent picker and

averaged at least 250 pounds per day during the course of the entire blueberry season. The flats of strawberries and/or raspberries were recorded and blueberries were counted by the bucket – containing 25 pounds – and a record was made every 100 pounds of production. Each day, the driver handed out a picking card and she retained her individual copy of each card until the batch was handed in at Shindo's house prior to receiving her ROE. The appellant stated work started between 7:00 a.m. and 7:30 a.m. but she was picked up at her house at 5:45 a.m. and other workers were already in the vehicle. Some days, the work lasted 12 hours while others were shorter if it rained. She rarely took a day off during her employment and following the end of blueberry season in late September, she began working on the vegetable farm in Richmond known to her as the Chinese Farm. She also worked on another Richmond vegetable farm - owned by a "white man" – where she worked on radishes and turnips. For this type of work, she was paid the hourly rate of \$7 and estimated that during the entire season she worked between 1,100 and 1,200 hours and earned approximately \$7,000. She received a cheque – tab 89 – in the sum of \$4,000. The cheque - dated October 12, 1996 - was endorsed by her and cashed at the TD bank on October 17, 1996. During the season, the appellant estimated she received cash - 3 or 4 times – from Bant. The appellant was asked why she took the cheque to the employer's bank (TD) rather than her own. She replied "they sent us there". She described the final or settling-up process as follows: first, she received a message that her "weeks paper" was ready. Then, Harbhajan Singh Kang drove her and 4 or 5 other workers to Rana's house where other SRC workers were gathered. She was handed the \$4,000 cheque – by Shindo - and instructed to go – with Kang - to the 49th Avenue TD Bank and cash the cheque. Upon returning with cash, Shindo would hand the appellant her ROE. The appellant and 4 or 5 other workers were driven – by Kang - to the bank and the appellant cashed her cheque. She returned to Rana's house and handed over the entire sum of \$4,000. She stated she was very upset but merely followed instructions. She assumed other workers also handed back their pay but could not recall their names. There had been no calculation of any amount properly due to her for wages earned during her period of employment. On October 21, 1996, she went to the Surrey office where her daughter - Sukhwinder Baran - helped her to complete the application – tab 87 – for UI benefits. Her daughter had not worked for SRC and the appellant observed "it was me who got involved in all this mess". She stated she was able to retain only \$2,000 or – perhaps – as much as \$2,500 of the money paid to her for working during the relevant period but had re-paid the sum of \$4,000 representing proceeds of the cheque at tab 89. The appellant stated she agreed to that payment in order to receive her ROE and considered she was "powerless" to do otherwise. The appellant stated she arrived in Canada on June 13, 1994 and worked as a farm labourer in 1994 and 1995 and in years following 1996. Other than working for SRC, she had always been paid the proper amount for her work except

the wages were paid on an irregular basis until the final payment at the end of the season. The appellant agreed she told the HRDC interviewer that she had been paid on an hourly basis for picking berries even though that was incorrect. She stated she was merely following the instructions of Bant and Shindo who told her not to mention using any picking cards and to take the position her pay was always on an hourly basis. The appellant stated she was worried that if she told the truth she would lose her “weeks money” and would have to repay money to the government already received in the form of regular UI benefits. As for Rana’s position with SRC, she stated he worked in the fields and “no one ever thought he was the boss”. In an effort to reconstruct her earnings, the appellant estimated she picked 350 flats of strawberries – in 15 days – and was entitled to the sum of \$1,400. In her view, she earned another \$1,400 from picking raspberries for 15 days and then picked between 13,000 and 14,000 pounds of blueberries – at 24 cents per pound – in order to earn another amount ranging from \$3,120 to \$3,360. Following the end of berry season, her hourly work at the vegetable farms made up the balance of wages earned in the course of her entire employment.

[115] The appellant – Amarjit Kaur Grewal – was cross-examined by Johanna Russell. The appellant estimated the end of the blueberry season usually arrives at the beginning of September with a variance of a few days either way. She recalled picking strawberries at Khakh Farms and at other farms whose names she cannot remember and was driven to work in a van. She picked raspberries at the Lidher Farm and blueberries at Gill Farms. During this period, Harbhajan Singh Kang was her driver and she rode to work with his wife – Harbans Kaur Kang – and with Sukhwinder Kaur Toot and her husband, Swarn Singh Toot. The appellant identified her signature on the last page of the Questionnaire – tab 101 – that she believes was completed by her daughter, although she cannot currently recall the circumstances surrounding that particular document. However, she remembered receiving instructions from Bant and Shindo that she should say no picking cards were used and that her pay was \$7 per hour. At one point, she was driven – by Kang - to a meeting attended by several other workers - who were and/or remain appellants in the within proceedings - including Sukhwinder Kaur Toot, Swarn Singh Toot, Karmjit Singh Johal, Gurcharan Kaur Johal, Gurmail Singh Cheema, Bhagwant Kaur Grewal and Jaswinder Kaur Cheema. The appellant stated she thought the meeting was held in Kang’s house. Counsel advised the appellant that her answers to the Questionnaire – tab 101- were identical to the other workers she had just named. The appellant stated she and the other workers were “pressured” to answer questions in a certain way and the Questionnaires were completed by Kang and other “educated people” who were explaining the type of answers - concerning their employment with SRC - that should be provided to the government.

[116] The appellant – Amerjit Kaur Grewal- was re-examined by her agent, Param Grewal. She reiterated her lack of knowledge regarding the contents of the Questionnaire and signed her name only because others at the meeting instructed her to do so. Bant and Shindo were not at the meeting and the appellant stated she considered Kang was the main spokesman who directed the flow of the meeting. Her daughter did not attend the meeting and the appellant has no specific recollection of receiving the Questionnaire in its blank form. She acknowledges she may have received it at her home and brought it to the meeting or – perhaps – was provided with it at the meeting when told to sign her name on the last page.

SHARDA KAUR JOSHI

[117] Sharda Kaur Joshi appeared on her own behalf. The respondent's Book of Documents relevant to the appellant's appeal – 2000-2144(EI) – is Exhibit R-36. The Minister decided the appellant was not employed in insurable employment with SRC during the period from June 9 to October 12, 1996. The appellant's position is that she was so employed during that period and had insurable earnings in the sum of \$7,000. The Minister relied on the following assumptions of fact as set forth in paragraphs 3(h) to 3(m), inclusive, of the Reply to the appellant's Notice of Appeal:

- h) during the Period the Appellant lived in Abbotsford, British Columbia;
- i) the Appellant was one of only two individuals who lived in the Abbotsford area and to whom the Payer issued ROE's;
- j) the Appellant delivered a baby on March 28, 1996 and alleged that during the Period her spouse and her father cared for the baby during her absence;
- k) the Appellant did not perform any duties for the Payer during the Period;
- l) the Appellant gave conflicting statements to authorities with respect to the nature of the duties and the method and time of payment of wages;
- m) the records provided, for example, the ROE, the T4 slip, the employee earnings record, the pay cheques in regard to the

Appellant, were fabricated to give the appearance that the Appellant worked for and was paid by the Payer and these records were a sham.

[118] The appellant stated she did not feel confident enough to testify only in English and requested the services of Russell Gill to interpret on her behalf if she encountered difficulty in comprehending the spoken word and – more likely – understanding written English (The appellant relied on Russell Gill to interpret on several occasions throughout her entire testimony, including interpretation of written questions in Questionnaires, notes of her HRDC interview and any material read aloud – by counsel – such as answers given – by her - at Discovery).

[119] The appellant lives in Abbotsford, B.C. and is currently employed at a wire assembly plant. She came to Canada in February, 1993 and worked – in Abbotsford - for a farm labour contractor that summer. The following two seasons she worked for another labour contractor and – in 1996 – was hired by SRC through discussions between Bant’s driver and her father who later spoke to her husband who telephoned Bant. In India, she attended – but did not finish – Grade 12. During her education, she studied English – as a subject – since Grade 6. She recalled riding to work with her father on her first day – June 9 – and thereafter rode with her father or her husband to the worksite, the location of which was ascertained by them the previous evening. She weeded around plants for the first few days and then picked strawberries at farms in Abbotsford and Chiliwack owned by Khakh Farms. She understood her wage was \$7 per hour. Each morning she received a picking card from the farmer and the card would be punched throughout the day as berries were delivered. On a good day, the appellant estimated she picked 10-12 flats of strawberries and noted there is a slight overlap between that season and the start of the subsequent raspberry season. She recalled picking raspberries on two farms – in the Abbotsford area – until the end of August. Then, she picked blueberries at Gill Farms and at other farms in Abbotsford and – perhaps – Aldergrove. The appellant stated that after the end of berry season, she worked a few days on vegetable farms in Richmond where she worked with radishes and zucchini. She stated she received pay on an “as needed” basis during the berry season and Bant handed her some cash on two or three occasions. She used the money for rent and/or groceries. The appellant identified her signature on the endorsement area of the copy of the cheque - tab 89 – dated 10.9.1996 (September 9, 1996) in the sum of \$4,000 that she cashed at the TD bank at 49th Avenue and Fraser St. in Vancouver. She had a joint account at TD in Abbotsford but elected to cash her cheque at the employer’s bank because she was about to embark on a holiday to India and needed the cash for shopping. She stated she received her ROE – tab 87 – dated October 15, 1996, at Rana’s house in Vancouver and he handed her the \$4,000 cheque after calculating the proper amount

owed for the balance of her wages. He also handed her about \$300 in cash. She did not find this method of payment unusual because even when she worked for other labour contractors after 1996, she would obtain advances which would be recorded and deducted later in order to arrive at the proper amount of the final amount of wages due at the end of the season. While working for SRC, the appellant stated she recorded the number of hours worked – each day – throughout the course of her employment. She stated “we were like slaves” and assumed Bant’s explanations were correct and she – and other workers – were paid in full. The Employee Earnings Record – tab 88 – prepared in the appellant’s name shows gross earnings in the sum of \$7,000 and net pay in the sum of \$6,075. The appellant stated the signature on the “I Cash Money Give” purported cheque - tab 90 – was not her own and did not understand what purpose lay behind the creation of that document. The appellant explained her usual method of going to work was to get a ride with her husband – or father – to 0 Avenue where she was picked up by Shindo and then driven to work - in a van - along with other workers who were referred to as “uncle” or “auntie” in accordance with Indian custom. On October 17, 1996, her husband completed her application – tab 95 – for UI benefits at the Abbotsford office. She was familiar with the procedure as a result of collecting benefits following the 1994 and 1995 farming seasons. She stated she wanted to make it clear that she had not paid any money back to Bant and/or Shindo and/or Rana in order to receive her ROE. She had considered it normal to receive the bulk of her wages at the end of the season and accepted Bant’s explanation when he asked “how can I pay you when I have not been paid by the farm owners?” The appellant stated she worked directly for a farmer during the 1997 season and had never worked on a farm in India. Upon arriving in Canada, she was in a state of shock to discover she was required to pick berries in order to earn a living and to live in a basement suite. She added that this type of work and lifestyle did not conform with her expectations as a result of information about Canada while living in India. Her son was born on March 28, 1996 and her father and sister-in-law cared for the child so she could work.

[120] The appellant – Sharda Kaur Joshi – was cross-examined by Selena Sit. The appellant recounted her instruction in English which included second and third level ESL plus three months instruction at Fraser Valley College and classes – once or twice a week – at the church. In 2001, she took a Pest Technician Course while employed in a greenhouse. Currently, she can read, write and speak English for everyday purposes. She stated that – on reflection – she probably did not receive her ROE the same day as the \$4,000 cheque and is inclined to believe – now – that she obtained it a week or so later when she and her husband returned to Vancouver in order to do some shopping. Further, she amended her recollection concerning the receipt of \$300 in cash and stated she thinks this amount was paid to her when she

received the ROE and not when she was handed the \$4,000 cheque. The appellant noted that the events occurred 8 years ago and she was attempting to recall the sequence of events surrounding the last period of her employment. She stated her best opinion is that because her last day of work was October 12 - according to her ROE - she must have received the \$4,000 cheque before her layoff because it was cashed on October 7. In her view, it is reasonable to assume that she worked another week and was paid \$300 in cash for those hours when she received her ROE on October 15, 1996. She identified her signature on the last page of the notes of Barb Long's interview - tab 92 - dated May 26, 1997 and recalled her husband - Sanjay Joshi - acted as interpreter. She stated that during that three-hour interview, she attempted to give correct, truthful answers. The Questionnaire - tab 82 - dated June 27, 1999, was completed by her husband as she provided answers to the questions. Although she did not know the precise number of weeks of employment needed to qualify for UI benefits in 1996, she was familiar with seasonal work and the right to receive payments following layoff. Regarding the first few days of employment while waiting for the strawberries to ripen, the appellant recalled she picked grass around plants and did some pruning. Counsel read out the appellant's answer at Discovery on October 24, 2001 - to Q. 140 - concerning her first day of work when she stated she picked raspberries "all day" and described how she picked the berries and put them in a pail tied around her waist. The appellant stated she did other work - including weeding - that day. Counsel informed the appellant the Minister relied on expert advice that raspberries were not ready for picking until July 1. The appellant replied that this information may well be correct for the general industry but there are some farms where berries are picked early and sold in small quantities at a high price. She confirmed her earlier testimony that she picked strawberries - first - at some point in June and during final clean-up of that crop, the raspberries were ready to be picked. Then, just as the raspberry season is coming to a close, blueberries ripen and picking begins. Counsel referred the appellant to the question within the Questionnaire - tab 82 - concerning the location of farms where she had allegedly worked. The written response therein is "Do not remember. HRDC has all the records". The appellant agreed that - at this time - she had not known the names of the farms where she worked because she was dropped off by the van without being told any further details. However, in preparing for her Discovery, she telephoned various people in order to determine the locations - and identity - of farms where she worked and requested assistance from her husband to make these inquiries. In addition, even after living in Abbotsford for more than 10 years, the appellant acknowledged she did not have a good grasp of the streets and locations. The appellant stated her mother worked with her at Lidhran Farms along with workers supplied by other labour contractors. At Discovery - p. 17, line 208 - the appellant stated she worked at Mike's Farm. In her application - tab 95 - for UI benefits, there

is no mention of any work done in Richmond and the only work locations listed are Abbotsford, Mission and Aldergrove. Counsel pointed out to the appellant that during the HRDC interview – tab 92 – in answering Q. 22, she mentioned only Aldergrove and Abbotsford as work locations and, in describing her duties throughout her period of employment - in response to Q. 7 - did not make any reference to working with vegetables. Further, there was a reference in the Questionnaire – tab 82 – to working in a greenhouse whereas the answer to Q. 8 of the Questionnaire – tab 92 – was that she had “always worked outside - never inside”. The appellant explained her husband had driven her to work in Richmond and she was driven in a van to the other work locations. She agreed she had never performed any greenhouse work for SRC and that the answer provided was wrong. She recalled working 5, 6 or 7 days a week while picking berries and knew SRC paid 8 hours per day regardless of the actual time worked which did not include travel time. The appellant agreed she used picking cards and that the number of flats or pounds picked by her were recorded. She retained her copy of the card and took it home with her where it was thrown into a box together with other cards, including some from previous seasons. She stated she did not use the cards to calculate any wages because she was paid on an hourly basis, although she agreed it would be reasonable for some workers to be paid per flat or by the pound if they were fast pickers. She considered herself to be a competent picker and estimated she could have earned more on a piecework basis than by the hour but that choice had never been offered by SRC. In answering Q. 18 of the Questionnaire – tab 92 – the appellant stated she had been paid “every 2 weeks, mostly by cash” but had also received cheques. The written response to Q. 28 about where she cashed the \$4,000 cheque – tab 89 – was that it had been negotiated at the TD bank on the corner of Gladwin and South Fraser Way but could not recall the account number. The appellant replied that she had only received cash two or three times in 18 weeks and agreed she had received only one cheque. She explained that even though Bant did not require her to sign a receipt when handing her cash, he made a notation in his diary and she kept her own record once she returned home. She recalled receiving \$600 or \$700 in cash on one occasion and smaller sums thereafter totalling another \$1,000. Counsel referred the appellant to photocopies of two receipts – tab 111 – bearing dates of July 27, 1996 and August 1, 1996, respectively, each purporting to record a \$1,000 transaction with the notation “Cash Money Give” and the name Manjit Singh Rana appearing on the “Received From” line. The handwritten name – Sharda Joshi – appears on the bottom line of each receipt. The appellant stated she did not recognize those signatures to be her own. Counsel referred the appellant to the notes – tab 110 – of Barb Long, an HRDC employee, that those receipts had been brought to the HRDC office by the appellant herself in an attempt to prove she had been paid in cash by her employer. The appellant stated she had no recollection of

providing those receipts but added the signatures on those receipts – in comparison to her own regular signature – were “pretty close”. At Discovery – Q. 349 – the appellant stated she had some receipts and believed she had provided photocopies. The appellant estimated she received a total of \$6,300 from SRC even though her net pay – according to tab 88 – was only \$6,075. Counsel read portions of her Discovery concerning the receipt of her final wages at Bant’s house, including statements that she had only been there once and that Bant had done the accounting to determine how much she was owed. Further, the appellant stated – at Discovery – that the cheque had been cashed the same day. The appellant replied she thought – perhaps – her husband had returned – a few days later – to Bant’s house in order to obtain the ROE, pay statement and the final wage payment of \$300 representing her last week of work. Concerning her response to Q. 9 during the interview - tab 92 – that she was always picked up at her Abbotsford residence in a van driven by Bant, the appellant explained that it was Shindo who picked her up at Abbotsford and returned her to Lidhran Farms where her father worked and that she rode home with him. Counsel advised the appellant that Shindo had informed HRDC that she did not drive a van when working out in Abbotsford but - personally – rode the bus – driven by Harjit Gill – along with other workers. The appellant reiterated that Shindo had driven her to Abbotsford and – later in the season – to Richmond. Counsel referred to the SRC employee list – Exhibit R-1, tab 5 – which indicated only two workers were living in Abbotsford, namely the appellant and another person who later admitted she had never worked for SRC in 1996. As a result, the appellant was the only SRC worker living in that municipality. The appellant replied that she had ridden to work with either her husband or father, 90% of the time. Counsel referred the appellant to her answer to Q. 10 at the May 26, 1997, HRDC interview – tab 92 – concerning transportation to work. The notation is that the appellant initially stated she was picked up by two vans operated by two drivers but corrected it – immediately - to one van driven by two different drivers whom she described as Bant and another guy whose name she did not know. In the Questionnaire – tab 82 – the drivers are identified as Bant and another person she did not know. The two vans in which she apparently rode to work are described as “sometimes white, sometimes brown”. Counsel pointed out the appellant had never mentioned Shindo as her driver. The appellant stated Shindo had driven her but the male driver – other than Bant – had only driven her to work “less than five times”. At Discovery – Q. 112 – the appellant stated Bant drove her to work on her first day but during her testimony in Court she stated she rode to work with her husband. She confirmed her assertion that her husband had driven her to work that first day and added that when she was driven to work by a SRC driver, she always rode in a white van.

JATINDER KAUR LIDHRAN

[121] The appellant appeared on her own behalf. She testified in English but also speaks Punjabi. The respondent's Book of Exhibits relevant to the appellant's appeal – 2000-2332(EI) - is Exhibit R-37. The Minister decided the appellant was not employed in insurable employment with SRC during the period from August 25 to October 12, 1996. The appellant's position is that she was so employed during that period and had insurable earnings in the sum of \$2,415 as stated on her ROE at tab 89. The Minister relied on the following assumptions of fact as set forth in paragraphs 5(j) to 5(n) of the Reply to the appellant's Notice of Appeal:

- j) the Appellant provided conflicting statements to authorities with respect to the type of duties performed, the locations of the farms and the transportation method;
- k) the records provided, for example, the ROE, the T4 slip, the employee earnings record and the pay cheque, in regards to the Appellant, were fabricated to give the appearance that the Appellant worked for and was paid by the Payer and these records were a sham;
- l) the Appellant required 26 weeks of insurable employment in order to qualify for unemployment/employment insurance benefits ("Benefits");
- m) the Appellant had a ROE from a previous employer for 20 weeks of insurable employment and needed the ROE from the Payer in order to qualify for Benefits; and
- n) the Appellant did not perform any duties for the Payer during the Period.

[122] The appellant testified she is employed as a Civil Aviation Assistant. In 1996, she had been employed as a farm labourer in Abbotsford at Lidhran Farms, a business owned and operated by her father. She picked raspberries until the season was over just before the last week of August. Her father used a picking machine and also hired local workers. She stated she learned Rana was hiring workers and he came to her house in Surrey to discuss the terms of her employment, should she choose to accept. The pay was \$7 per hour – perhaps \$8 later – and the job entailed working on vegetable farms in Richmond. On her father's farm, the appellant had done pruning, fertilizing and picked berries but had no experience working with vegetable crops. The appellant stated she started work the day after Rana's visit and –

according to his instructions – waited outside her home – at 5:00 a.m. – until a white van arrived to pick her up. The female driver inquired whether she was Jatinder and the appellant boarded the van and was driven to a farm in Richmond owned by a Chinese man. On her first day, she picked blueberries, placed them in a bucket and also assisted in weighing berries. The pickers brought buckets to the scale and she weighed them and punched the appropriate number on the picking card. The usual weight was either 20 pounds or 30 pounds depending on the bucket. The appellant stated she was picked up by the same van the following day and there were about 20 people already inside the vehicle. That day, they went to another vegetable farm in Richmond where she worked inside a structure that seemed to be either a barn or shed. Inside the shed, there was a large tub hooked up to a supply of water used to wash the vegetables which included turnips, zucchini and daikon. Some workers washed the vegetables and others packed the produce into cardboard boxes of different sizes with the most common dimension similar to the typical blue, curbside recycling box. The appellant stated she did not know the destination of the worksite until arrival or whether she would be working inside or outside. While working outside, she washed vegetables in a tub but did not do any picking or cutting in the fields. The appellant stated she did not keep track of hours worked but recalled she arrived home between 6:00 p.m and 6:30 p.m. and rode in the same white van driven by a female person. One day, this driver informed her the work was coming to an end - soon - and October 12 would be her last day. The appellant stated she did not question the driver and did not work the following day. A few days later she received her ROE – tab 89 – with the date September 15, 1996 thereon, which she did not notice at that time. She identified a cheque – tab 90 – dated 9.9.1996 (September 9, 1996) in the sum of \$2,500 payable to Jatinder Kaur Sidhu. The appellant explained that Sidhu was her married name at that time. Because she did not have her own bank account, she deposited the cheque to her husband’s account at the Kingsway branch of the VanCity Savings and Credit Union on October 18, 1996. The appellant stated she could not recall whether she received the cheque together with the ROE but confirmed it had arrived through the mail. During the period prior to her layoff, the appellant stated she had not needed to ask SRC for some wages because her father had paid her a lump sum – at the end of the raspberry season – for her work during the early part of the summer. The appellant stated this particular period of her life was extremely stressful as she was very unhappy with her situation within an arranged marriage. Her husband took the \$6,000 in wages she had earned by working for her father at Lidhran Farms. In January, 1996, she gave birth to a son and her brother and sister cared for the child while she worked at Lidhran Farms and – later – when working at Richmond, her husband cared for the boy. She stated she hoped to keep the money earned from working for SRC but it did not turn out that way and she had to deposit the SRC cheque to her husband’s account. On October 16, 1996, she

completed an application – tab 92 – for UI benefits at the HRDC Surrey office. During the course of her employment with SRC, the appellant stated she did not mix with other workers and thought she had worked every day without a break. She stated “the only reason I worked was to get out of the house”. She arrived in Canada – at age 5 – and after completing Grade 12, attended college where she took various courses. Later, she began working for the Federal Department of Transport. In June, 1997 - soon after her daughter was born – she was called in for an interview – tab 95 - at the HRDC Surrey office. She was questioned by Ted Bowerman who explained the nature of the investigation being conducted concerning SRC and various workers. The appellant stated she had never seen the Employee Earnings Record – tab 91 – showing she had gross pay of \$2,415 and net pay in the sum of \$2,098. Later, she received a T4 slip which she used to file her 1996 income tax return. Following her layoff from SRC, the appellant went to the Youth Employment Centre nearly every day, even after her daughter was born. Later, she was hired to work – as an Employment Counsellor – at that Centre. The appellant stated she had never applied for UI benefits before October, 1996. She stated that if she realized she needed extra work in order to qualify for UI benefits, it would have been easier just to “beg” her father for some additional work on his own 40-acre farm rather than work for a “complete stranger”.

[123] The appellant – Jatinder Kaur Lidhran – was cross-examined by Selena Sit. She stated she attended Fraser Valley College for one year. Her first paying job was at her father’s farm, although she had done farm work – on a volunteer basis - at farms owned by family members. In 1996, raspberries were the only crop on Lidhran Farms. She weighed flats and performed other tasks and had not been aware that her father hired some SRC workers for whom he had issued cheques totalling \$17,000 (Exhibit R-1, tab 28). The appellant stated many pickers were local people but recalled a yellow school bus bringing workers to the farm. At the end of the raspberry season, the appellant stated she did not know she required another 6 weeks to qualify for UI benefits. She stated she had not repaid any of her wages to Bant and had no reason to believe her husband had done so. She had never been to Bant’s house and did not know where he lived. She never received any breakdown or statement of her pay and did not know why the cheque was in the sum of \$2,500. She reiterated she did not know the names of co-workers or her supervisors – if any – and stated that was the reason she had answered “No” at Q. 14 of the Questionnaire – tab 100 – when asked about the name of her supervisor. She explained no person seemed to act as a supervisor nor was anyone announced – to the workers – as fulfilling that role. She stated the reason for not keeping track of hours is that every day was “pretty much the same” and assumed someone at SRC was recording the time worked. She recalled speaking on the telephone with Janet Mah who recorded in her notes – tab

83 – that the appellant had stated “there were breaks in the period she worked, 1 to 2 days here and there, but did not work on weekends”. A further note indicated the appellant’s working hours were between 8:00 a.m. and 4:00 p.m. The appellant stated she did not recall providing that information to Mah because there was no scheduled day off and she did not have a recollection of the driver announcing the number of hours worked on a particular day. She did not remember the division of work between the two farms in Richmond nor the amount of time worked inside as opposed to outside. During the interview – tab 95 - with Bowerman on July 8, 1997, her response – according to Bowerman’s notes – is that she confirmed – at p. 3 - that all her work was done inside a shed. On July 8, 1997, the appellant completed a Statutory Declaration - tab 96 – in which she described being taken to a farm in Richmond where she cleaned and packed vegetables from 6:00 a.m. to various hours in the evening. She explained she had not mentioned picking blueberries in Richmond because that work had lasted only one day. She confirmed that she had only worked at one farm during a particular day but had worked – on other days – at other farms in Richmond, one of which she identified in the Questionnaire – tab 85 – as #3 Richmond Road. She recalled both farms seemed to be fairly close to each other and did not pay much attention to where she was working because her home life was in such a state that she was waking up, working and “getting through the days”. At Q. 3 of the Questionnaire – tab 100 – the appellant described her secondary duties as “sometimes, picked, weighed and packed blueberries”. She stated she could not recall if the blueberry work was done on the same farm where vegetables were grown. In completing her application – tab 92 – for UI benefits she mentioned – at box 16 – working with vegetables in addition to raspberry and blueberry picking. During the interview with Bowerman, the appellant was unable to identify a photograph of Rana – Exhibit R-20, tab 97 – and informed him she had never seen that person before. The appellant stated the man who came to her house to discuss her employment had identified himself as Manjit Rana. She had never seen Bant or even heard his name during her employment with SRC. The appellant described the crowded conditions of the van in which she rode to work and noted there was “no room to even move”. She crawled in the back door and found a place to sit during the drive to work. As for the obvious error in the date - September 15, 1996 - of her ROE, the appellant stated she thought Bowerman had pointed that out to her. As for the work performed, it was repetitive and the vegetables were in bins and a bucket and hose were provided to wash them. There was a small shed outside but less workers were required outside than inside the larger structure when the work was performed there. During her employment, she was never told to work in a field. The appellant stated she was upset because she had worked hard and the government now wanted her to repay a substantial sum by taking the position she had not been entitled to any UI benefits.

[124] (The appellant advised the Court she would not be calling any witnesses or presenting further evidence. She was advised of her right to cross-examine those witnesses produced by the agent(s) for other appellants as well as those called by counsel for the respondent and that this phase of the proceedings would be reached within a few days.)

SUKHWINDER KAUR HUNDAL

[125] Sukhwinder Kaur Hundal appeared on her own behalf and testified in Punjabi and the questions and answers and other aspects of the proceedings were translated from English to Punjabi and Punjabi to English by Russell Gill, interpreter. The respondent's Book of Documents relevant to the appellant's appeal – 2000-2328(EI) – is Exhibit R-38. The Minister decided the appellant was not employed in insurable employment with SRC during the period from November 17 to December 28, 1996. The appellant's position is that she was so employed during said period and had insurable earnings in the sum of \$2,282 as shown on her ROE at tab 88. The Minister relied on the following assumptions of fact as set forth in paragraphs 5(j) to 5(o), inclusive, of the Reply to the appellant's Notice of Appeal:

- j) the Appellant did not perform any duties for the Payer during the Period;
- k) the records provided, for example, the ROE, the T4 slip, the employee earnings record and the pay cheques in regards to the Appellant were fabricated to give the appearance that the Appellant worked for and was paid by the Payer and these records were a sham;
- l) the Appellant provided conflicting statement to authorities with respect to the type of work, the locations of the farms, the method of pay, the identity of the individuals and the hours and days of work;
- m) the Appellant required 26 weeks of insurable employment to qualify for unemployment/employment insurance benefits ("Benefits");
- n) the Appellant's previous employment consisted of only 20 weeks of insurable employment and the Appellant needed the 6 weeks

reflected in the ROE from the Payer in order to qualify for Benefits;
and

- o) the Appellant was not employed by the Payer in insurable employment.

[126] The appellant testified she arrived in Canada - on July 1, 1996 – with her husband and three daughters. Later, she learned – through a friend – SRC was hiring farm workers. She had worked on the family farm in India and was hired – at \$7 per hour – by Rana who drove her to work on her first day. She was not familiar with the area but went to a farm where she picked various vegetables - including turnips, radishes and sprouts – and placed them in boxes. Thereafter, she rode to work – with 10 to 15 other workers – in a van driven by Shindo. Rana would be at the worksite where he picked vegetables in the fields and gave instructions to other workers. She recalled working 7 or 8 hours a day at different farms with a day off - on occasion – only if it was too cold to work because the vegetables were washed outside and the water would freeze. Earlier in the season, the appellant worked a period of 20 weeks for Canwest Farms during which she picked blueberries until the first few days in October. Later, she worked packing berries into small boxes and was finally laid off on November 15. At Canwest Farms, she received cash advances and received a final wage settlement when she was laid off. As for her SRC employment, she stated she was laid off and received her ROE – tab 88 – from Rana on December 31, 1996 while working in the field. Rana paid her cash while they were standing outside the van and she stated she had not received any other wage payments earlier although Rana kept track of her hours. She accepted the payment from Rana on the basis the amount was correct and – later – her daughter calculated the wages due and was satisfied with the sum received. The appellant was referred to the “I Cash Money Give” purported cheque – tab 90 – in the sum of \$2,148 payable to Sukhwinder K. Hundal and to a signature on the lower part of the photocopied page. The appellant stated she could sign her own name – in English – but that the writing “S.K. Hundal” was not her signature. On January 3, 1997, she applied for UI benefits – tab 96 - and was assisted by Baljinder Uppal. The appellant stated she started working for Canwest Farms on July 2, 1996, the day after arriving in Canada and had never picked blueberries before. In 1996, she was 45 and felt compelled to work at that job because she and her husband had not brought much money to Canada and they needed to support the family. In India, she and her husband owned a 40-acre farm and hired workers. The value of that land – in 1996 – was approximately \$15,000 Canadian per acre but they leased the farm to their son rather than sell it. Compared to her situation in Canada, she considered herself to have been well off in India. However, while talking with other SRC workers she heard about a program

whereby the federal government would send money to people who became unemployed at the end of the season. Prior to 1996, she had never been employed and was not able to work afterwards due to ill health. In 1996, her daughters were in Grade 7 and Grade 4 and her eldest daughter – their sponsor - was married and living in Port Coquitlam. The appellant's husband picked berries and then found a job as a janitor for Skytrain where he is still employed. While working at the vegetable farms, the appellant stated she sometimes rode to work with the same people but at other times different workers were in the van. Most of them seemed to be between 40 and 50 years of age and were divided equally between men and women. The appellant stated Shindo drove her to work from the second day of her employment until the last day. After dropping off the workers at a farm, Shindo would leave and return at quitting time but Rana – usually – remained and worked in the fields. On rare occasions, the appellant saw Bant but he did not ride in the van driven by Shindo. She stated Bant did not work in the fields and seemed to “just look around and then leave”.

[127] The appellant – Sukhwinder Kaur Hundal – was cross-examined by Selena Sit. The appellant stated she worked at Canwest until the berry work was done and then found employment at SRC. Counsel informed the appellant that as a new entrant to the labour force she required 26 weeks of employment in order to qualify for benefits and that her 20 weeks at Canwest and 6 alleged weeks of work at SRC was exactly the amount of time she needed. The appellant recalled attending an interview – tab 94 – on May 26, 1997, at an HRDC office where she responded to questions from Mike Taylor. During the interview, her niece - Harjit Kaur Uppal – interpreted on her behalf. The appellant identified her signature on the Questionnaire – tab 85 – dated March 24, 1999, but could not recall who filled out the form. The notes – tab 82 – made by Janet Mah of a telephone discussion between Mah and Harjit Kaur Uppal concerning the appellant's employment with SRC indicate there was a subsequent visit to Mah's office where the appellant was accompanied by her daughter and provided an authorization – tab 84 – for Harjit Kaur Uppal to deal with Revenue Canada on her behalf. The appellant was referred to an undated, unsigned Questionnaire – tab 98 – that mentioned – at Q.2 – the worker had found out about the SRC job from “my husband's friend, Pritam Bhandwa”. Subsequent responses indicate the person who was the subject of the Questionnaire had been hired by Rana and worked “in different fields, different places”. The appellant agreed the answers therein were provided by her but could not recall the circumstances surrounding the completion of the form but considered it may have been filled out at a meeting attended by other SRC workers. Counsel pointed out that the answer - to Q. 38 - regarding identity of the appellant's co-workers included Harbans Kaur Kang who had gone to India on October 24, 1996. The appellant repeated she did not know who

filled out the form but agreed that answer was wrong. Regarding the cash paid to her - by Rana - on her last day, the appellant stated she could not remember the amount but took the money home where it was counted. She was certain the cash received was less than \$5,000. Counsel referred the appellant to her answer - to Q 18 - at her interview - tab 94 - where she apparently told the interviewer she was given "only one cheque, at the end of the six weeks when all the work was done." The answer continues to explain that the appellant went with Baljinder Uppal to pick up the cheque - at the home of the owner of SRC - and, although she did not know the amount of said cheque, had been told - by Uppal - it was in the sum of \$800. In answering the previous question, the answer - as noted - is that she was "paid by cheque." The answer to Q. 29 about whether she cashed or deposited her SRC cheque was noted as "she signed cheque and gave it to her husband, Kamaljit Hundal." The response to Q. 33 is noted as "no cash earnings - paid by cheque". As to the type of work performed during her employment, the interviewer noted the appellant "picked sprouts - that's all she did". The appellant recalled attending at Discovery on August 28, 2001 and stated she had told the truth when answering questions. Counsel read to the appellant questions and answers - Qs. 67-78 - in which she stated she had worked with sprouts, "little round sprouts", but was not picking them, only "cut them, shake them and fill up buckets". The appellant - at Discovery - confirmed she had not picked any other vegetable on her first day of work and had spent the 6 weeks of her employment working with Brussels sprouts and when that question was put to her again, confirmed she had only worked at that one task. Counsel referred to the notes - tab 82 - of Janet Mah concerning the face-to-face interview - on July 14, 1999 - when the appellant - through her niece - described the sprouts and stated she did no work during the period of her employment except in relation to Brussels sprouts. Counsel advised the appellant no other SRC worker had mentioned working with sprouts and that the Minister relied on an agricultural expert's opinion that all Brussels sprout crops were finished by November 15, 1996 because it was too cold in November and December to harvest. The appellant agreed she did not work on days when it was too cold. Counsel referred the appellant to her answer to Q. 10 at the interview - tab 94 - that she had been driven to work "in two vans, one green and one cream-coloured - same person, a man, regardless of van". Counsel also reminded the appellant that at Discovery - Q. 60 - she said Rana had always driven her to work. The appellant replied she was not able to explain the inconsistencies. Counsel suggested to the appellant she had changed her story because she now realized all male drivers had been laid off by November 17, 1996 and Shindo - according to her own ROE - was laid off on October 26. The appellant replied that Shindo had driven her to work throughout November until her last day.

[128] (The appellant advised the Court she would not be calling any witnesses or presenting further evidence. She was advised of her right to cross-examine those witnesses produced by the agent(s) for other appellants as well as those called by counsel for the respondent and that this phase of the proceedings would be reached within a few days.)

[129] Satnam Singh Toot (Satnam Toot) was called to the stand by Darshen Narang, agent for the appellant, Sukhwinder Kaur Toot (2000-2342(EI)). He testified he is the son of Sukhwinder Kaur Toot. During 1996, his father – Swarn Singh Toot - also worked for SRC but is not party to the within appeals. Satnam Toot stated he and his family arrived in Canada in September, 1995. He finished Grade 10 in India and continued with high school in Canada and attended ESL classes. Although he studied English for 6 years while living in India, he could not read a newspaper and required ongoing ESL instruction – including night classes - in order to improve his ability to speak, read and write English. By 1999, he was able to function in English at a level sufficient to permit him to study criminology at Douglas College in 2000 and 2001. He stated his mother could not speak English, never attended school and had worked only on the family farm prior to coming to Canada. During 1996, he was living with his parents and stated his recollection is that his mother began working for SRC in mid-April, 1996 - before his father started – and that they were both laid off the same day. He recalled his mother continued working until mid-October and because his family is related – distantly – to Harbhajan Singh Kang, they learned that work was available with SRC. Satnam Toot stated he recalled his mother returning home and talking about her work. He understood she was earning \$7 per hour and – initially – worked hoeing and pulling grass and then picked strawberries, raspberries and blueberries. She brought some home for the family and later in the season, returned home with cucumbers, long white radishes and hot green peppers. He saw a van stop in front of the house that took his mother to work early in the morning. Usually, the van was driven by Harbhajan Singh Kang but there was also another male driver. His father began working for SRC in July and rode to work in the same van. He stated he knew the function of a picking card but never saw any of them in his family home. He recalled his mother had taken off some days on an irregular basis - perhaps 7 days in total – during her employment with SRC. Her working hours were recorded - by her husband – on a piece of paper. Satnam Toot stated he never met Bant or Shindo or Rana. He recalled occasions when his parents returned home with some money “a few times” but Indian culture did not permit him to question them about their work. His mother had received an Appointment for Interview – tab 92 – and he went with her to an HRDC office where an interview – Exhibit R-31, tab 92 – was conducted on August 20, 1997 (Subsequent references to tabs will - unless otherwise specified – be located within that exhibit). He recalled producing his mother’s Indian passport and

her SIN card. He acted as her interpreter and recalled she identified her signature on her UI application at tabs 88 and 99. He informed the interviewer – Janice Morrow – that his mother was incapable of completing that form and that it had been filled out by his sister. Satnam Toot stated he had never been at an interview of that nature before and recalled it lasted about two hours. Throughout, he acted only as an interpreter for his mother and did not answer any questions on his own. He stated his mother knew the interview was about her work at SRC but did not know HRDC was investigating that company. He prepared – in English – a Statutory Declaration – tab 99 – which his mother signed. He stated the purpose and effect of that solemn declaration was not explained to him and while he did not recall any specific warning about providing false answers, recalled his mother had been asked if she was telling the truth and that she agreed she had been truthful in her responses. Satnam Toot recalled Janice Morrow had read out that portion of the Statutory Declaration advising it was being provided as though it was under oath pursuant to the *Canada Evidence Act* but – at that time – he did not understand the significance of the process in relation to that document. He stated he prepared the Statutory Declaration by summarizing the information provided by his mother and wrote therein that she worked from April to September, 1996, at \$7 per hour, received a cheque - in the sum of \$5,000 – which she cashed and handed the money to her husband. Satnam Toot stated that after completing the Statutory Declaration – in English – he told his mother – in Punjabi – what he had written but did not explain the pre-printed portion at the bottom of the form about that document being a solemn declaration. Although his mother was satisfied with his written description of her work, she was unable to identify a specific month of the year – August or September, for example – as such, in accordance with the English calendar and this inability was communicated to Janice Morrow in reference to his mother’s statement that she had performed a certain task in either the “8th or 9th month” but was not certain. According to Satnam Toot, Janice Morrow’s response was “pick one” and he chose the month of September. He stated the notes – tab 96 – were an accurate summary of his conversation with Janice Morrow – the following day – at the HRDC office where he provided a bank book - so it could be photocopied - and advised Morrow that his mother cashed the \$5,000 SRC cheque at the employer’s bank and gave the money to her husband who passed it on to a cousin from whom they had borrowed money previously. He recalled attending another HRDC interview – tab 101 - on March 11, 1998, where his mother was interviewed by Gail Buckland. Satnam Toot was referred to the \$5,000 cheque - tab 90 – and stated he had not seen that document prior to that moment. He recalled having seen the ROE – tab 87 – in their residence a couple of days after his mother’s work had finished. From family conversation, he understood his mother and sister had gone to the contractor’s residence in order to obtain that paper. Satnam Toot stated there was a male person interpreting on behalf of HRDC but - in his opinion – that interpreter was

not performing at a high level and, even though his own ability to speak English was limited in 1998, believed he could have done a better job in interpreting – into English - the conversation between Gail Buckland and his mother. He stated he complained to Buckland but she told him to cease interrupting the interview or he would be removed from the room. As a further example, he stated his mother was shown certain photocopies of photographs and the quality of reproduction was very poor. He was referred to a series of copies of photographs in Exhibit R-25, tab 97 and commented they were of better quality than the ones shown to his mother at the HRDC interview because “at least you can see their faces”. He stated his mother had poor eyesight and when asked whether she had ever seen a person in a copy of a photograph, if she said she could not recognize that person, the answer was recorded – by Buckland – as “No” and a reply by his mother, “ I don’t remember” was written down as “No”. Satnam Toot stated his mother was informed by the male interpreter “they know everything, why don’t you admit you paid back the money - you could be deported” and added the interpreter was not interpreting any words spoken by Buckland prior to that warning but seemed to be issuing that threat voluntarily. He identified the photocopies of the pages from the bank book – tab 98 – and stated the account was jointly operated by his sister, mother and father and that he also used the account to make deposits and withdrawals because it was a family account. He stated he explained to Buckland that his father controlled the money within the household and that his mother was very forgetful about details such as start and end days of her employment. As noted – tab 102 – he called HRDC to advise his parents were not available for an interview until March 3, 1998, because they were in India. He stated there had been a delay in obtaining certain documentation from the Indian passport office. They had gone to India for the wedding of their daughter which was an expensive celebration costing the equivalent of \$15,000 Canadian and preparations had begun in 1996 in accordance with Indian custom that dictates “when a daughter is born, preparations for the wedding begin”. Initially, his sister planned to be married in Canada during 1996 but the putative groom - discovered by the matchmaker - turned out to be less than expected and the wedding was cancelled. As a result, efforts were undertaken to find a replacement and his sister was married – in 1998 – but had to travel to India for the ceremony. Satnam Toot was referred to the Questionnaires – tab 82 and tab 108 – and stated he had not completed either of those forms but signed as a witness to his mother’s signature on the Questionnaire at tab 82. His best recollection was that the Questionnaire – tab 108 – was filled out at the PICS office by a Punjabi-speaking staff member or volunteer. In the Questionnaire – tab 82 – dated March 16, 1999, Sukhwinder Kaur Toot’s period of employment is stated as “April 1996 – Sep 1996”. He recalled attending at PICS in Surrey and understood it to be a community-based organization which assisted people in dealing with various aspects of their life and work. He did not recall any other SRC workers present at that time but he

informed the receptionist of the purpose of their visit and soon thereafter a Punjabi-speaking person undertook the process of completing the Questionnaire at tab 108. On occasion, Satnam Toot provided certain answers such as within Q.4 when there was a description of a farm “close to a golf course”. He explained his mother had told him about where the work site was located but would not know the words “golf course” or the meaning of that term. He recalled the PICS staff member had not pressed his mother for details of her employment and had not asked her to provide an account of the work performed each month during the course of her employment, as required by Q. 14. The effect of the answers to Qs. 32-35, inclusive, is that Sukhwinder Kaur Toot was paid a \$5,000 cheque – by Rana – at the end of the season. Satnam Toot stated his mother was a very forgetful person and this condition - perhaps made worse by her illiteracy according to the theory of one physician - had persisted for at least 10 years.

[130] The witness – Satnam Singh Toot – was cross-examined by Johanna Russell. He was referred to several answers in the Questionnaire – Exhibit R-31, tab 108 – that no picking cards were ever used by his mother, Sukhwinder Kaur Toot. He agreed he had been present at the HRDC interview with his father when Gail Buckland – the same person who interviewed his mother – asked certain questions and made notes – Exhibit R-4, tab 112 – of the responses. According to her notes, Swarn Singh Toot – at p. 4 – agreed picking cards were used and that he took the cards home at night or – perhaps – the contractor “got it” but in any event the cards were handed to the contractor at time of final payment. As for the Questionnaire – Exhibit R-4, tab 95 – pertaining to his father’s employment with SRC, counsel referred the witness to several answers which were identical to those contained in his mother’s Questionnaire. He replied his father had not visited the PICS office the same day as his mother and noted it appeared as though a different person had completed each questionnaire. He agreed his mother knew Amarjit Kaur Grewal and that his parents socialized with Harbhajan Singh Kang. Counsel advised Satnam Toot that Amarjit Kaur Gill testified she had been driven - by Kang – to a meeting with Jaswinder Cheema, the Johals and other SRC workers where Kang had played a major role in instructing the group on how to answer the questions in the Questionnaires. He replied the Questionnaires relevant to his mother and father had been completed at the PICS office and he was unaware of any meeting as described by Amarjit Kaur Grewal. He stated his mother cannot count and although he attempted to teach her how to use the telephone she could not – or would not – follow his instructions in order to perform that task. He stated he did not know how many weeks she needed to qualify for UI benefits in 1996 but understood the decision of the Minister relevant to his mother would have an impact on the finances of their family. He fixed the April starting date of his mother in relation to Vaisakhi – an important Indian festival - and was certain she began working prior to that event (Vaisakhi is held on April 13th except for a leap

year when it is celebrated on the 14th according to the Punjabi calendar). He agreed his mother had worked subsequent to 1996 although a contrary answer was provided to the interviewer – Exhibit R-31, tab 96 – and added he had not been permitted – by the interviewer – to correct that response and to provide correct information. Regarding the HRDC interview, he stated he felt “threatened” when the interpreter advised his mother “we know what happened and you are lying and you could be prosecuted and sent back to your country”. During the interview, he considered it necessary on several occasions to ask the interpreter for clarification since it was difficult to find the precise Punjabi equivalent to a certain English word or term. He agreed his mother’s responses tend to suggest she worked with her husband from her first day until they were both laid off. Satnam Toot stated he produced the entire bank book for the family account so it could be inspected by HRDC.

[131] Harbhajan Singh Kang (Kang) was called to the witness stand by Darshen Narang. He testified he worked as a van driver - for SRC - from June 21 to October 9, 1996. He arrived in Canada in June, 1994 under the sponsorship of his son who came to Canada in 1988. Kang stated he and his wife – Harbans Kaur Kang - lived in Montréal for the first two months, then moved to Surrey, British Columbia. In India, he and his brother were partners in an 8 acre-farm in Punjab and a larger one – 15 acres – in Uttar Pradesh. He operated the farm in Punjab and his brother managed the other property where rice and wheat were grown. He was born in 1940 and started working on the farm after completing Grade 10. He began studying English in Grade 6, learned to write his name and by the time he left school could speak a few simple phrases. Other than one subject in which English was taught, all other instruction was in Punjabi. He stated his wife was not educated and did not learn English after coming to Canada but he attended ESL classes – in Surrey - 3 or 4 days per week for 6 months under a program sponsored by HRDC. After arriving in Surrey during August, 1994, he was hired by a female labour contractor – Binder – operating as DBK Contractors (DBK) and was sent to work at a plant nursery in Pitt Meadows. He worked for the same contractor in 1995 and for a period in 1996. He also worked as a tree planter for two months and collected UI benefits after being laid off in 1994 and 1995. During his employment with Binder in 1994, he spoke with other workers and learned about certain benefits available to workers after layoff. In 1995, he obtained his B.C. Driver’s Licence by studying a book of instructions written in Punjabi and taking lessons from a professional driving instructor. At some point in late 1995 or early in 1996, he obtained a Class 4 licence that permitted him to operate a vehicle carrying a maximum load of 24 passengers. He stated he became a driver because other jobs such a tree planting or farm labourer were too difficult. His first job as a driver was with Bant (SRC) in 1996 and his assigned task was to pick up workers at their homes, drive them to the farms and return them at night. While working as a labourer for

DBK, he was paid \$7.00-\$7.15 per hour and received a cheque every two weeks. He and his wife picked berries and were paid by the hour for that work and for tasks performed at a nursery. Each night, the van driver would announce how many hours had been worked that day. In 1996, he knew Bant and his wife - Shindo – ran a labour contracting business that also involved Manjit Rana. Later, he learned the business was operated by the corporation, SRC. He telephoned Bant in order to advise that he had obtained his Class 4 licence and wanted a job driving a van. He went to Bant's house for an interview where Bant informed him SRC was not willing to pay a salary more than \$1,700 per month. This amount was higher than he could earn as a labourer so he accepted the offer and – about a month later – began working for SRC. The Minister decided Kang's first day of employment was June 21, 1996 and he did not appeal that finding. He stated Bant rode with him during his first day so he could learn where the workers lived in order to be able to pick them up in the morning. He drove a white/grey van with seats configured in rows with space for 4 persons on each of 4 rows and room for an extra person on the last row, in addition to the driver's seat and passenger's seat in the front. On occasion, extra people could be squeezed in to attain the maximum capacity of 24. He stated he worked 7 days per week for 2 ½ months, starting each day at around 5:00 a.m. and finishing after 6:00 p.m. or – sometimes – an hour later. At the end of the season, he discovered he was going to be paid only from June 21 - even though he had driving the van earlier – because the prior period of about 10 days was categorized - by Bant – as “unpaid training time”. Kang stated he started driving at the end of May and drove several days during the subsequent 3-week period until he began driving every day thereafter. However, he accepted Bant's decision because driving a van was a much easier way to earn a living and – after all - Bant had ridden with him for a few days at the beginning. He did not recall keeping a logbook in which he entered the names of the passengers carried each day but Bant had instructed him to record the names of the workers on a piece of paper and to hand over the list to him or Shindo. He was instructed – by Bant – to ask farm owners how many workers would be required to work the following day. For a 3-week period following June 21, he drove workers to the same location, sometimes following another SRC van. Because he did not carry a cell phone in his van, Bant and/or Shindo telephoned him at his house and gave him instructions. He was instructed to maintain fluid levels in the van and to purchase fuel from money provided by Bant. He kept receipts, handed them to Bant and obtained more cash - about \$200 – to purchase gasoline on a daily basis after the last worker had been dropped off. Repairs to the van were undertaken at a garage approved by Bant. Kang stated he drove a total of 3 vans during his employment, one grey, one white but the usual one was red. SRC had 3 or 4 vans, and 3 other vehicles, including a large 45-passenger bus driven by Harjit Gill, a smaller bus with a 24-passenger capacity and a pick-up truck that was used to haul berries. One of the vans – dark blue - capable of carrying 7 or 8

passengers was generally reserved for the personal use of Bant and/or Shindo but – sometimes – transported workers to farms in locations other than Chiliwack or Abbotsford. When workers were taken home after working on farms in Richmond, Shindo – on occasion – drove that van. Kang was referred to a photograph – Exhibit R-8, tab 3 – depicting a red/ brown van and stated it was either similar to the one driven by him or was – in fact - the same vehicle. He identified other vehicles appearing in photographs, including a Ford van with windows – on both sides – from front to rear. On occasion, Harjit Gill rode with him during the so-called “training period” as designated by Bant. Kang identified other SRC drivers, including Bhan Singh Sidhu – Master – Harjit Gill, Manjit Rana, Bant, Shindo and Gurbachan Singh Gill whom he thought may also have been referred to – by workers - as Bhajan Singh. He recited the names and locations of farms where he had transported workers during the course of his employment including Khakh Farms in Abbotsford and Chiliwack and other farms in the Abbotsford and Mission areas such as Gill Farms, Preem Farm, Satti Farm as well as other farms in Langley and Pitt Meadows. He stated he went to 6 or 7 farms in Richmond including Mike’s Farm which workers referred to as the “white man’s farm”. Pursuant to arrangements with farmers who owned small acreages, SRC workers picked blueberries which were hauled away in the small SRC pick-up truck and sold by SRC. The picking on the small parcels would take 2 or 3 days and then the workers would be hauled to another location in accordance with the instructions of either Bant or Shindo. He recalled taking workers to a farm on Steveston Road where they picked strawberries. Khakh Farms also grew strawberries and Kang stated he noted that when he drove 10–15 workers to the Abbotsford property at the end of May, the strawberries were not ripe and the workers removed grass from the area around the plants. He estimated SRC usually had between 70 and 90 workers, depending on whether it was the busy part of season. When working at Khakh Farms in Abbotsford, SRC transported workers in three 19-passenger vans, the large yellow bus – driven by Harjit Gill – and the smaller bus. Other labour contractors – including his former employer, DBK - also brought pickers to the fields and Kang estimated the total workforce exceeded 200 for a period of three weeks. During the picking season at Khakh Farms, Kang stated he drove the red van every day. Each SRC vehicle was full to capacity each morning and could have carried – in total – as many as 120 people to the farm. Each morning, drivers went to an area where an employee of Khakh Farms gave directions regarding the placement of their particular vanload of workers within the large field. Kang stated he handed out picking cards – each morning – to workers after obtaining the appropriate amount of cards from the farm owner/manager based on the number of passengers inside the van that morning. From the list of workers he had composed, he handed out cards to each member of his van who announced their name and were handed a card which was in triplicate. Some workers told him they had arranged with the contractor (SRC) to be

identified only by a number – such as 5 or 7 – instead of a name. Kang stated some workers who were husband and wife wanted to use a single card between them. He asked them why they would not each use a card like other workers and received a reply that an arrangement had been struck with SRC to proceed in this manner. Following that explanation, he agreed to hand out only one picking card to a husband and wife who were picking together. He stated he was informed by other people – not married to each other – that they – too – had made an agreement with SRC to use only one picking card between two of them. Some workers identified Rana as the person authorizing this system while others told Kang they had spoken with either Bant or Shindo. At the end of each working day, workers turned in their cards to him and he handed them to an SRC supervisor. He observed Bant handing a copy of the picking card to the farmer. Sometimes he received fewer picking cards at the end of the day than he handed out in the morning and reported the shortfall to either Bant or Shindo. When workers were picked up between 5:30 a.m. and 6:00 a.m. to work at Chiliwack, they arrived at about 8:00 a.m. and worked until 5:00 p.m. or – sometimes - as late as 6:00 p.m. and would not return home until 1 or 1 ½ hours later. In the morning after the last worker had been taken to a designated area, he moved the van to a less-congested area, parked it and went to sleep. During the day, he brought water to workers and if his wife was working nearby, had lunch with her in the field and picked berries with her for a while. He could not recall if he had his own picking card but the relatively small amount of berries picked by him were placed in his wife's flat. Kang stated that when a flat was full, it was taken to a truck and weighed on a scale by the farmer's own employees. If a flat was less than full, the actual number of pounds was recorded on the picking card. Later, a large truck hauled away a full load of flats. He observed a competent picker could pick between 20 and 25 flats per day if there was a good crop of berries at that time. However, one or two pickers – like Amarjit Kaur Grewal - among the group of workers carried in his van, could pick as many as 30 flats per day. In his opinion, based on the amounts recorded on the picking cards he collected each evening, the average worker picked 15 flats per day at the beginning of the season, increasing to 20-25 flats during the peak period. He recalled his van was only 50% full when he first began driving but after mid-June he transported a full load of workers - each day - until the end of August. He stated he hauled different workers at different times but was able to recall the names of those picked up in Richmond, including Gurcharan Singh Sidhu, Kirpal Singh Deol, Gurmail Singh Gill, Harbans Kaur Grewal, Baldev Singh Grewal, and Gian Singh Thandi and his wife. He recalled transporting females known to him only as Bakhshish Kaur, Surjit Kaur and Bhatti as well as Didar Singh Mehat. He identified those workers he picked up in Surrey, including his own wife – Harbans Kaur Kang – together with Gurmail Singh Cheema and his wife - Jaswinder Kaur Cheema, Karmjit Singh Johal, Manjit Kaur Johal, Gurcharan Kaur Johal, Manjit Kaur Johal, Amarjit Kaur Grewal, Swarn Singh Toot

and his wife - Sukhwinder Kaur Toot – Nirmal Singh Nagra and Singh Sanghera and his wife - Bakhshish Kaur Sanghera – and their 18-year old son. Harbhajan Singh Kang stated his daughter-in-law - Varinder Kaur Kang – worked for SRC but did not ride to work in his van. Each night, either Bant or Shindo told him if changes needed to be made to his scheduled route in order to pick up new workers or to bypass those who had quit. He received directions – and instructions - from Bant and/or Rana regarding the most efficient route to follow in order to collect new workers. Initially, he had difficulty but become more proficient as the season progressed. At times, he transported 24 passengers and when some were forced to sit on the floor - along the side of the van – he informed Bant and/or Shindo and/or Rana this practice was neither safe nor proper. He picked up Richmond workers first, then went to Surrey where he collected more workers prior to proceeding down the highway to Chiliwack. On occasion, he changed the order in which passengers were returned to their houses and if a worker planned to miss a day he would either be advised by that person or someone from SRC would inform him that a certain worker would be absent the following day. Sometimes, he went to a worker's house and finding no one out front, knocked on the door only to be told he or she did not intend to work that day. Kang stated he knew his wife - Harbans Kaur Kang – was paid on an hourly basis and assumed that applied to all other workers. Either the supervising person from SRC or the farmer announced the amount of hours worked on a given day but the usual work day consisted of 8 hours, although it was extended by another hour occasionally and – rarely – ended after 11 hours. The least number of hours worked were 4 if the work was interrupted by rain. Kang stated he was aware the holder of a Class 4 licence is required to maintain a log of passengers and – in 1996 – he entered information in a log including the odometer reading, the time the vehicle was started, fluid levels, as well as the licence plate of the vehicle he was driving and other items which had to be checked off on the form which was kept available for inspection by any peace officer. He clarified that there are two logs required, one pertaining to the condition of the vehicle and the other relating to the operation of that unit by a particular driver. SRC had not provided him with the appropriate log book but – later in the season - Harjit Gill instructed him how to fill out a log and advised him to keep it in a safe place inside the vehicle together with other important papers such as registration and insurance. He stated he is currently aware that a Farm Labour Contractor's Licence – issued by the provincial government – is required to be posted inside the vehicle together with a notice on which rates of payment for piecework - according to the type of berry picked – and/or the applicable hourly rate paid to workers must be displayed prominently. However, in 1996 he was not aware of those requirements nor was he aware of the number of weeks of work required to qualify for UI benefits following layoff. Kang stated he saw Rana work alongside other persons on a vegetable farm in Richmond and Rana helped Bant and Shindo weigh berries.

Kang stated he had to ask Bant for some wages and received payment – by cheque - on 3 occasions for a total of \$7,500. Also, he had to request additional money for the purchase of gas and oil for the van. Kang was referred to two cheques – Exhibit R-5, tab 178 – each in the sum of \$2,000 which were deposited at the Royal bank on August 14, 1996 and at Canada Trust on October 9, 1996, respectively. He stated his pay statement at the next tab – 179 – was not correct because his pay was based on a monthly salary of \$1,700 and not an hourly rate of \$12. It indicated his period of employment was from August 25 to October 19, 1996 with gross earnings of \$5,376 and net pay in the sum of \$4,651. Kang stated this error was perpetuated when SRC prepared his ROE and he had to convince HRDC that he had started work earlier. The Rulings Officer - Janet Mah – decided he had worked 23 weeks and had insurable earnings in the sum of \$4,725. He did not appeal that ruling to the Minister even though he had received another cheque – in the sum of \$3,500 – from SRC which he cashed at a Vancouver bank and used the proceeds to buy rupees at a money exchange prior to leaving for an extended holiday in India. The money was exchanged and he picked up the rupees - less the commission – in India at the exchange company's office. By following this procedure instead of using a commercial bank, he obtained two more rupees per Canadian dollar. According to Exhibit R-22 – tabs 90 and 91 - his wife - Harbans Kaur Kang – received two cheques in the sums of \$879 and \$6,000, respectively, for a total of \$6,879. Both cheques were deposited to the Royal bank account. The pay statement for Harbans Kaur Kang – Exhibit R-22, tab 93 – showed net pay of \$6,071.42 which was accepted by the Minister as constituting her insurable earnings. Upon his return from India on February 15, 1997, he completed an application – Exhibit R-5, tab 204 - for UI benefits and filled out a box thereon by stating his income was \$2,200 per month. In other spaces, the answers stated he worked 16 hours per day, 7 days per week and worked 70 hours during his last week of employment. Kang stated he could not recall who assisted him to complete that form but he received his UI benefits without any indication there was a problem until he was notified to attend an HRDC interview – Exhibit R-5, tab 166 - on May 26, 1997. He was interviewed by Ted Bowerman and a Punjabi interpreter – Tejinder Singh Bhandall – was present. Kang stated he provided truthful answers and agreed he told Bowerman it was his daughter-in-law - Varinder Kaur Kang – who assisted him to complete the application for UI benefits. He stated his answer was correct and now was able to recall Varinder being present at the UI office and an HRDC employee assisting her to complete his application. He confirmed his response to a question from Bowerman that he hauled berries to Purewal Farms cannery on two or three occasions by using the small SRC truck and that Bant had ridden with him. In September, SRC purchased blueberries directly from small farms in Richmond and the truck was used to haul up to 1,200 pounds of berries in containers which were loaded by SRC workers. At the cannery, the employees there unloaded the product

while Kang and Bant remained in the truck. Kang recalled Bowerman had accused him of not being truthful about his start date – in June – because the ROE showed his first day was August 25, 1996. However, Bowerman later acknowledged the ROE was incorrect and informed Kang the date of June 21, 1996 would be accepted by HRDC as his first day of work. Kang was referred to a Statutory Declaration – Exhibit R-5, tab 168 – written in English and another – tab 169 – in Punjabi which he identified as his own handwriting. He wrote that he worked 75 days consecutively without a break and was paid a salary of \$1,700 per month net. He pointed out the ROE was incorrect not only regarding his start date but in purporting to show he was paid on a bi-weekly basis (The Certified Court Interpreter – Russell Gill - confirmed to the Court that the English version of the declaration is an accurate translation of the one written in Punjabi.). Kang confirmed his red van was propane-powered and did not recall whether any SRC vehicles used gasoline. Darshen Narang referred Kang to a photocopy of his Canada Trust bank book – Exhibit R-5, tab 182 – that he provided to HRDC during a second interview – tab 170 of the same exhibit – on May 29, 1997. Kang pointed to entries showing the following deposits: July 24, 1996 - \$2,100; August 14, 1996 - \$2,000; October 9, 1996 - \$2,099.50; October 17, 1996 - \$8,199 and October 24, 1994 - \$879. On October 9, 1996 there was a withdrawal in the sum of \$3,000 followed by two withdrawals on October 17, 1996 in the sums of \$3,000 and \$1,000, respectively, and another withdrawal of \$2,000 on October 24, 1996. According to the stamp on the \$6,000 cheque – Exhibit R-22, tab 91 – payable to Harbans Kaur Kang, it was deposited to the Kang family account at Canada Trust on October 17, 1996. Kang stated he did not know the composition of the deposit made that day in order to create a total amount of \$8,199 but speculated it may have been money received from his son plus a GST rebate cheque in the sum of \$99. He stated the sum of \$10,000 was withdrawn on October 24, 1996 to purchase a term deposit which was later used to purchase a family home during the summer of 1997. He recalled the family required a lot of money for the India trip because three people were travelling there and he wanted to take enough money to paint his mother's house since she was now a widow. At that time, the sum of \$6,000 Canadian purchased about 150,000 Indian rupees but India was undergoing a period of inflation. During his third HRDC interview – Exhibit R-5, tab 171 – conducted on June 20, 1997, Kang was informed - by Ted Bowerman – that Harbans Kaur Kang had complained she had never been paid by SRC. Kang admitted he had deposited two cheques – payable to his wife – into the joint account and one cheque - \$6,000 – formed part of the \$8,199 deposit on that day, although he could not tell Bowerman the source of the remaining sum of \$2,199. Kang agreed he had collected and deposited another cheque – in the sum of \$879 – payable to his wife. During a fourth interview – Exhibit R-5, tab 172 – held on January 28, 1998, Kang told Bowerman – at p. 3 – that about two days before he started working, Harjit Gill went out with him to show him where to go each

morning. Earlier, Kang told Bowerman he started working “not the beginning about 2 or 3 weeks in June”. Kang stated he wanted to tell the truth and to advise Bowerman he had started driving at the end of May but – earlier - when he received a notice that he was required to attend an HRDC office for an interview, he took the letter to Bant who instructed him to tell a story that matched the August 25, 1996 starting date used on the ROE and the application for UI benefits. Kang stated it was apparent Bant did not want HRDC to know he was working full time for SRC as at June 21, 1996. Kang stated that each time he was notified of an impending HRDC interview, he spoke with either Bant or Shindo. He had grown somewhat angry that he had to attend these interviews but received an assurance – from Bant – that lawyers had been hired to deal with the situation and that he should not worry about it. Kang stated he told Bant he had been informed – by Bowerman – SRC had not remitted any of the worker’s income tax deductions to Revenue Canada and received the response that Bant – personally – had not hired any workers. Kang stated that by this stage of the HRDC investigation, he came to understand SRC had been doing something wrong when carrying out their labour contracting business during 1996. During the course of his employment, Kang stated he overheard workers complaining they were not being paid regularly and could not meet their living expenses. Kang estimated he was inside Bant’s house between 5 and 9 times during 1996. He recalled driving some workers to the TD bank at 49th and Fraser but had never driven any workers to an HRDC office so they could apply for UI benefits. The TD bank was about 8 or 9 blocks from the Bant/Shindo/Rana residence and one day – after the end of the berry season - Bant instructed him to drive Rana and 5 or 6 former SRC workers to the bank. Kang went inside the TD bank and sat on a chair. Rana went to the teller’s wicket with the workers. Kang stated he did not observe any of the workers handing any money to Rana. Kang stated he left Rana at the bank and drove his passengers to their homes. He recalled it was October 19, 1996 - his last day of work - but did not remember the names of his passengers except for Swarn Singh Toot. He returned the van to SRC a couple days later. Kang was shown copies of photographs and – despite the poor quality of some – correctly identified Shindo, Bant, Rana, and Harjit Gill. He stated he had not seen Rana since dropping him off at the TD bank on October 19, 1996 and had not seen Bant since before his last – or next-to-last – interview with Bowerman. His last contact with Shindo was following one of his earlier interviews with Bowerman and he stated she was not “helpful” in responding to his concerns. Kang was referred to a Notice to Report issued to him - by HRDC – regarding his May 26, 1997 interview. He stated this was probably the notice that prompted him to consult with Bant who told him what to say regarding certain dates significant to his employment. Kang stated he was aware – at that time – other workers – including his own wife – had already spoken to an HRDC official or were scheduled to attend an interview. Kang stated he had worked for Virk – a labour contractor – in 1997, but

Bowerman informed him that UI benefits stemming from that employment were going to be held in abeyance until his employment situation with SRC – in 1996 – had been clarified. Kang stated he had seen either Bant or Shindo – and perhaps Rana once or twice – hand small sums of cash - \$100 or \$200 – to workers who had requested some money. He observed money paid at the end of the work day while driving workers to and from Richmond. On one occasion, he noticed a worker receiving the sum of \$500 – cash – from Bant but never saw that person – or any other worker – sign a receipt nor did he notice Bant making any record of such payment. When Kang received money – from Bant - to purchase fuel, he did not sign any receipt but made his own record – at home – and always retained receipts of purchases which were given to Bant the next time fuel money was required. Kang recalled his daughter-in-law – Varinder Kaur Kang – began working for SRC near the end of the blueberry season.

[132] The witness – Harbhajan Singh Kang – was cross-examined by Johanna Russell. Kang confirmed his earlier testimony that the red van definitely used propane and that the other 19-passenger vans, white and grey, respectively, probably used the same fuel. Another blue van was also used to transport workers in addition to the two buses. The red van that he drove had rear doors but there was not enough space for anyone to sit there and if the seats were full, a worker would have to sit on the floor and occupy a small area near the last row of bench seats. He stated 5 thin people could squeeze together and sit on a bench seat designed for only 4 persons. Kang agreed he had no method of proving he had received another cheque – in the sum of \$3,500 – from SRC which he cashed at the TD branch at 49th and Fraser. Counsel referred Kang to a copy of the SRC bank statement - Exhibit R-1, tab 25 – for the period from March 19, 1996 to April 1, 1997, which did not disclose that any cheque in the sum of \$3,500 had cleared that account. Counsel referred Kang to earlier statements made by him during an interview - Exhibit R-5, tab 166 – held on May 26, 1997- about 7 months following his layoff from SRC – that he had received two cheques, one for \$2,500 and another for \$2,000 (Q.18). During another interview – same exhibit, tab 167 – he confirmed that statement and added one had been received in September and the other in October. When asked – by Bowerman – whether those were the only cheques received, he replied “Yes”. At that point in the interview, Bowerman produced copies of two cheques, each in the sum of \$2,000. Kang explained Rana knew that he had been working at another job earlier in the season and inquired how many weeks of employment he needed to qualify for UI benefits. When Kang told Rana the extent of his earlier employment, Rana prepared the ROE and inserted a start date – August 25 - that was sufficient to permit Kang to qualify for UI benefits and did not use the actual start date in mid-June, 1996 because he calculated Kang only needed another 8 weeks of employment to enjoy full benefits

at the end of the season. Counsel reminded Kang he never informed Bowerman during any interview that he received – and cashed – a cheque in the sum of \$3,500 near the end of the season. Kang agreed that was a large sum of money but stated he had been “nervous” and “weak” during the interviews and probably provided incorrect answers. Counsel pointed out he had been sufficiently lucid to convince Bowerman his correct start date was June 21, 1996 and that his T4 – Exhibit R-5, tab 183 – showed gross earnings in the sum of \$5,376 which was the amount used in the pay statement at tab 179 of the same exhibit (Counsel and Darshen Narang, agent for the first named group of appellants agreed – and the Court concurred – that both SRC cheques payable to this witness as well as the SRC cheques issued to his wife - Harbans Kaur Kang – were deposited to their Canada Trust account. Some confusion had arisen because it appears the Royal bank had been used as a clearing house since the Royal stamp also appears on the copies of the reverse of those cheques.). Counsel referred Kang to his answers during the interview – Exhibit R-5, tab 166 – where he stated – p. 6, Q. 17 – that he was paid “monthly, \$1,700 per month by cheque” and that those cheques were deposited into his Canada Trust account. Counsel pointed out that – again – there was no mention of any final cheque in the sum of \$3,500 and suggested that in order to earn the sum of \$7,500 net pay – in a 3-month period – he would have had to gross at least 20% more in order to account for the standard source deductions. Counsel referred Kang to a 1996 calendar – Exhibit R-32 – and advised him that there were 121 potential working days between June 21 and October 19, 1996, the period of his employment according to the decision of Janet Mah – Rulings Officer – which he had not appealed to the Minister. Counsel suggested that if his salary was \$1,700 per month – or \$57 per day, if reduced to a daily rate - he could not have earned more than \$6,897 – gross – even if he never took a day off. Kang agreed he had taken off some days due to a sore back. Kang stated the only explanation he could offer to resolve this matter was based on his belief that Bant operated another account and used that source to issue the final \$3,500 cheque. Kang stated he knew of another account that was used – by Bant – when buying berries from small farms. Counsel advised Kang that his wife – Harbans Kaur Kang – testified she had never seen him picking berries but his name appeared on picking cards from Gill Farms showing certain production – by him – on July 9 and July 10, 1996. Counsel also advised Kang that Gurmail Singh Gill had testified earlier in the within proceedings that he had seen Kang picking berries “quite often”. Kang agreed that statement – by Gill – was accurate. He agreed that picking cards were used even on the small farms but when responding to the Questionnaire – Exhibit R-22, tab 110 – concerning his wife’s employment with SRC, the written answers indicate no picking cards were ever used. Kang stated he was interpreting his wife’s answers and someone was writing them down in the Questionnaire. He confirmed picking cards were used by his wife and stated his understanding was that a farmer still needed to

measure the volume of crop picked each day regardless of how the contractor was paying the worker. Kang agreed that he drove 13 of the appellants to work during the 1996 season, including his wife and daughter-in-law. He stated he met other appellants from time to time at PICS office, at the store or the Temple. He stated Amarjit Kaur Grewal and her daughter visited his house to inquire about the SRC situation that was causing problems with UI benefits. Kang stated his first knowledge of any such problems was acquired – from Bowerman – during an interview on May 26, 1997. Kang stated he had no specific recollection of transporting workers - such as the Toots – from Surrey to Bant’s house but recalled driving several workers from Bant’s house to the TD bank while Rana rode “shotgun” in the front passenger seat. Counsel advised Kang that Amarjit Kaur Grewal testified he had driven her to Bant’s house and that 4 or 5 other workers had also described – to HRDC interviewers - how they had been driven – by him – to the Bant/Shindo/Rana residence. Kang replied that he did not disagree but had a clear recollection of driving to the bank because he had never been there before and had to rely on directions provided by Rana. Similarly, he could recall driving workers home after they left the bank. Counsel suggested to Kang that he was making up the story about not driving Rana back to his residence because he knew workers repaid money when they all returned to the house. Kang denied participating in any scheme to defraud UI, nor had he seen any workers paying back money to either Bant or Shindo or Rana and had no knowledge anything was wrong with SRC business affairs until so informed by Bowerman on May 26, 1997. Counsel referred Kang to his answer – to Bowerman – during the fourth interview – Exhibit R-5, tab 172, mid-way at p.5, – on January 28, 1998, where he apparently stated he “could not remember” whether he had been present at Rana’s house when certain SRC workers gave back money to Rana and then received their ROEs. When informed that some SRC workers stated they had seen him at that house, he replied “I took people to the bank and back to the house, I didn’t see anything”. He agreed that statement was correct. Counsel related the testimony of Amarjit Kaur Grewal where she described how Kang drove her – and other workers – from their homes to Rana’s house, then to the bank and back to Rana’s where she handed \$4,000 in cash to Kang who handed it to Shindo because she demanded it prior to handing Grewal her ROE. Counsel advised Kang several other former SRC workers had confirmed that – in Kang’s presence - they handed over money to Shindo and/or Rana after returning from the bank and did so in order to receive their ROEs. Kang stated Grewal’s testimony in this regard was wrong and denied touching any money, as described, or at all , and repeated his previous assertion that he had never seen any of his passengers hand back any of the money they had obtained at the TD bank a few minutes earlier. He stated he did not recall whether he drove Manjit Kaur Johal to the bank and then back to Rana’s house. He stated he considered himself to be nothing more than a driver and did not pay attention to other matters. Counsel suggested it was somewhat

strange he would not be able to recall the events on that day since he had never been to that TD branch before and it was a unique experience driving workers to that bank to cash their cheques. He replied that he could recall some details but had no recollection of others, including the identity of some people he is alleged to have driven to the bank. Kang agreed with counsel's suggestion that if he had cashed his \$3,500 cheque - at that TD branch - it must have been after October 19, 1996 because he would not have needed directions - from Rana - if he had been to that branch earlier. Counsel informed Kang there had been testimony from Amarjit Kaur Grewal that other SRC workers - some of whom were appellants in the within proceedings - were present at a meeting where he played a major role in directing workers to complete their Questionnaires in a particular manner. Counsel advised Kang that Amarjit Kaur Grewal testified she had felt pressured by others - at that meeting - to accept the answers suggested and permitted them to be inserted in her own Questionnaire which was later returned to Revenue Canada. Counsel also advised Kang that Amarjit Kaur Grewal testified he picked her up in a vehicle and drove her - together with other former SRC workers - to a meeting held in a house where the matter of completing the Questionnaires in a certain fashion was the main topic of discussion. Counsel further advised Kang that an examination of several Questionnaires revealed that the answers therein were almost identical even when the information was obviously incorrect and suggested it was not reasonable to assume that volunteers at PICS had made all these errors in several different Questionnaires. Kang responded by stating there was never any meeting held as described by Amarjit Kaur Grewal in which he participated, as described, and recalled only one meeting he attended at PICS when certain questions were directed to him by the PICS moderator because he had been a van driver and was able to provide certain information. Kang agreed he submitted an application for UI benefits - completed on his behalf by Varinder Kaur Kang - in which he stated he had worked 8 weeks for SRC, beginning August 25, 1996. Kang stated he did so in order to conform with instructions given to him by Bant earlier. Counsel suggested to Kang that the reason he stated he only had 8 weeks employment with SRC was because he had enough accumulated work time with another employer earlier in the year in order to qualify for UI benefits. Further, counsel suggested he only revealed - to Bowerman at HRDC - that he started driving around the end of May but was not paid for any work until June 21, because he became aware that some appellants in the within proceedings told HRDC they had been riding to work with him since May 25, 1996. Counsel informed Kang that some appellants - including the Johal couple and the Cheema couple - stated he had been driving them to work in April, 1996. Kang stated he did not drive for SRC in April but took them to work prior to June 21. Counsel reminded Kang he had never revealed to Bowerman during any of the interviews that he had performed services to SRC prior to June 21, 1996 when he had taken the trouble to convince Bowerman his true start

date was June 21 and not August 25 as shown in the faulty ROE issued by SRC. Counsel referred Kang to his answer – noted by Bowerman at Exhibit R-5, tab 167, at p. 1 – where he stated he started work in the third week of June and then added “before that, I didn’t work at all”. Kang confirmed he provided that answer to Bowerman because he was complying with the instructions of Bant to use that date as his first day of employment because he was not paid for any driving before then. Kang confirmed that during other HRDC interviews he maintained he started working “after the 18th” – in June - because there were no raspberries to be picked before that date. He had been laid off from his former job on May 17, 1996. Counsel pointed out that even during the fourth interview with Bowerman – Exhibit R-5, tab 172, p. 1 – on January 28, 1998, he still answered that he started working two or three weeks into June, without any mention of driving the van prior to that date during a so-called training period. Kang replied he was afraid of Bant and also of Bowerman even though he believed that at this stage of the investigation he had gained some respect from Bowerman as a result of attending three previous interviews (In response to a question from the Bench about what he thought Bant could have done to him had he chosen not to follow his instructions, Kang replied that because Bant was a labour contractor, he could tell other contractors Kang was not only unreliable but was a person inclined to tell the truth to government officials when questioned). Counsel pointed out that his own wife – Harbans Kaur Kang – testified she rode to work on her first day – and probably for the rest of that week - in a van driven by Bhan Singh Sidhu, known as Master (Harbans Kaur Kang asserted her start date was June 1, 1996; the Minister decided June 23, 1996 was her first day of her employment.). Kang agreed his wife rode with Master – as stated by her – because she was performing lighter tasks and the workers he transported at that stage of the season were doing harder work. Counsel referred to the notes of Janet Mah - Exhibit R-22, tab 83 – concerning a conversation with Jatinder Kaur Johal who was interpreting for Harbans Kaur Kang. The response noted is that Kang drove his wife to work on her first day. Counsel advised Kang that his wife had given the same answer at her Discovery on December 21, 2001 but further detail was supplied, namely, that he was driving a white van and – at another point in her discovery - p. 30, Q. 236 – answered “once my husband started, I went with him, before that Master picked me up”. At one point during Discovery, Harbans Kaur Kang confirmed an earlier answer that her husband – Kang – began working for SRC two months after her and became employed only because SRC was looking for a van driver. Kang stated his wife was probably confused about his start date because - at Discovery - his ROE showed the erroneous start date of August 25, 1996. He explained his wife’s memory and ability to recall sequences of events were badly affected ever since the 1990 death of their son – at 18 – in India. Regarding payment of wages to his wife - Harbans Kaur Kang - counsel advised Kang that during an interview – Exhibit R-22, tab 88, p.1, - on June 18, 1997,

she stated she had worked but did not receive any money and even when shown two cheques in the sums of \$6,000 and \$879, respectively, payable to her and deposited in their joint Canada Trust branch in Delta in October, 1996, she replied she had never seen those cheques before. Kang replied that response by his wife was strange because she knew – at that time – he had collected wages on her behalf. Counsel pointed out that his wife – at p. 4 of her interview – was aware Kang had collected his own pay cheques but said there were “none for me”. At Discovery on December 21, 1001, Harbans Kaur Kang stated she had been overpaid by Bant because she was not entitled to the total sum of \$6,879 she had received in two cheques but should have been paid only \$6,071 in accordance with her pay statement at Exhibit R-22, tab 93. She explained Kang had been drunk when he paid her and – therefore – made that mistake. Kang agreed Bant was a very heavy drinker but did not know his wife had been overpaid and that if it were so, it had been done to correct an overpayment and not to purchase a “weeks paper”. Kang stated that he and his wife were both paid in full after working for the entire season and did not repay any of their wages to anyone at SRC in order to obtain ROEs in order to qualify for UI benefits. Counsel referred Kang to his statement to Bowerman – Exhibit R-5, tab 170, p. 4 – on May 29, 1997 to the effect that his wife’s pay was included in his own. Kang replied he was attempting to explain that her pay was deposited into the same joint account together with his own cheques received from SRC. On June 20, 1997, only two days after his wife told the interviewer she had never been paid for working at SRC, Kang told Bowerman that his wife had received two cheques – totalling \$6,879 – and the money had been deposited to their Canada Trust account and suggested it was a matter “between a man and a wife”. Counsel informed Kang that no other witness had ever mentioned that SRC used a small bus to transport workers and suggested he invented that vehicle in order to cover the situation applicable to appellants who took the position they rode to work on a bus that – because of the limits created by his period of employment – could not have been driven by Harjit Gill. Kang did not respond. Counsel suggested Gurbachan Singh Gill had never been a driver for SRC. Kang replied he saw Gill driving a “greyish, whitish van” and saw him between 2 and 4 times during strawberry season – in July – and also at two or three farms in Abbotsford during raspberry season in July or August. Kang was advised by the Court that Gill’s own position was that he had not started working as a driver for SRC until September 1, 1996. Kang stated although he may be mistaken as to the time of year and that perhaps it was during blueberry season when he saw Gill driving workers in a van.

[133] The witness – Harbhajan Singh Kang – was re-examined by Darshen Narang, agent for the first group of appellants named in the within style of cause. Kang stated that following his own interview with HRDC on May 26, 1997, he told his wife about

certain aspects of the HRDC investigation. After Harbans Kaur Kang was interviewed - on June 18, 1997 - where she denied having received any wages, Kang stated she told him about those questions and her responses. Kang stated he told his wife he had received cheques on her behalf and when she was interviewed again - on June 20, 1997 - that was disclosed to Bowerman. Kang stated he told his wife at the end of the season he had collected her wages - in the form of cheques - and deposited the money to their account and repeated that information after his own interviews with Bowerman on May 26 and May 29, 1997. He stated he told his wife she should have informed Bowerman her wages had been collected by her husband. Concerning the various vehicles used by SRC during 1996, Kang recalled there were 4 vans, two buses, one pick-up truck and another van that he regarded as the Bant/Shindo/Rana family van used mainly for their own purposes. Two or three vehicles were parked in a driveway at their residence or in an alley or along 49th Street. Usually, he approached their residence from the rear and even though all of the vehicles were not there at the same time, over the course of his employment he had seen all of the SRC vehicles at one time or other. He recalled the large, yellow bus had no signs or lettering on it and neither did the smaller one nor any of the vans unlike the vehicle he subsequently operated in the course of his employment for another labour contractor. Although he had examined the registration papers of several of the SRC vehicles, he could not recall whether they were registered in the name of SRC or Bant and/or Shindo and/or Rana personally. Kang stated he had received a final cheque - in the sum of \$3,500 - and cashed it at the 49th Avenue and Fraser TD branch. He recalled receiving it from either Rana or Shindo - at the end of the season - at their house and assumed the cheque had been prepared in the correct amount to pay his wages in full. With regard to the HRDC investigation, Kang stated that after receiving his Notice to Report for the May 26, 1997 interview, he went to see Bant who informed him there would be questions asked about his work with SRC. Bant told him certain things to tell the interviewer but Kang could not recall specific details of that advice. After the interview, Kang stated he was upset at Bant for causing troubles and went to his residence to talk to him about it. At the house, Shindo answered the door and instructed him to "go to the back" but he refused and entered the residence. While he was there, two persons knocked on the door and spoke to Shindo. When they left, she returned and said to him "Uncle, they were asking about Rana". Kang stated he left the house shortly thereafter.

[134] Darshen Narang advised the Court he was closing the case on behalf of those appellants represented by him, subject to any rebuttal evidence that may be produced following presentation of the respondent's case.

[135] Other appellants, either self-represented or represented by agents other than Narang had closed their case in person at the conclusion of their own testimony.

[136] Johanna Russell commenced the case for the respondent by calling Mark Sweeney to the stand.

[137] Mark Sweeney stated he resides in the Abbotsford area and is employed by the British Columbia Ministry of Agriculture, Food and Fisheries. In 1977, he received his Bachelor of Science, specializing in horticulture, which he described as the science – and art – of growing extensive crops such as berries, vegetables and greenhouse produce. As a member of the British Columbia Institute of Agrologists - since 1981 – he is required to participate in professional development programs in order to upgrade his skills. In 1978, his first job with the Ministry was as a technician and after two years he qualified as a professional horticulturist specializing in vegetable crops. He remained at that post until 1998 when he was assigned the role of sole berry specialist in the entire province. Sweeney stated there is extensive interaction between his current role and his previous long-term position due to the inclination of many farmers to grow both berries and vegetables in the course of their business. He stated his main function is to apply research to practical growing operations for the betterment of the industry and to that end a variety of written material is published by the Ministry in which technical aspects of growing crops, including insect, disease and weed control, and difficulties in harvesting and marketing are discussed.

[138] Darshen Narang did not oppose the submission of Johanna Russell to qualify Mark Sweeney as an expert in the growth and harvesting of berries and vegetables and he was so qualified by the Court and permitted to offer opinion evidence within that discipline.

[139] Sweeney prepared a report – Exhibit R-41 – in which he set forth the approximate planting and harvesting dates in the Lower Fraser Valley for 1996. He noted therein that – in general – a cooler and wetter than normal weather pattern in the spring delayed planting and harvesting of most crops and although warm summer weather allowed some recovery, an early arctic outflow in late November ended the harvest of most winter vegetables. In his report, Sweeney stated that pre-planting work such as plowing, disking and other land preparation for vegetable and berry crops would generally begin in late February and continue through the spring and summer as weather permits. The preparation work of growing transplants would occur from December through May and noted the timing and extent of weeding would depend on the particular crop and the season but generally would begin shortly after first plantings in April and would continue into fall. Any pruning of blueberries and

raspberries is generally performed during the dormant period from November through March, although a small amount of pruning for removal of diseased wood could be done in the spring, summer and fall. Sweeney concluded his report by observing that field harvesting of Brussels sprouts, cabbages, parsnips, leeks and other hardy crops generally does occur in November and December but - in 1996 - harvesting of most crops was curtailed by a severe arctic outflow in late November. In paragraph 3 of his report, Sweeney set forth the normal planting and harvesting times for a variety of berries and vegetables - applicable to the 1996 growing season - within the geographical area relevant to the within appeals. The dates having the most significance are as follows:

Type of crop	Planting	Harvesting
Strawberries	April 15-July 1	June 15-July 15
Summer raspberries	February 20-May 30	July 1- August 10
Fall raspberries	February 20 – May 30	August 20 - October 15
Blueberries	April 1 – May 30 October 1 – November 15	July 7 – October 15
Turnips	April 15 – July 1	July 1 – November 1
Radishes	March 1 – August 1	May 1 – November 1
Cauliflower	April 15 – July 15	June 15 – November 15
Zucchini	May 1 – July 1	June 20 – October 15
Peppers	May 1 – June 15	June 20 – October 15
Daikon (lo bok)	March 1 – July 15	June 1 – November 15
Cabbage (green/red)	April 1 – July 1	June 15 – November 15
Broccoli	March 15 – August 1	June 15 – November 15

[140] In the course of preparing his report, Sweeney stated he looked at long-term data kept in Ministry records as well as information from various sources - including growers - pertaining to the 1996 season. He also referred to Daily Data Reports - Exhibit R-42 - for the period April 1 to December 31, 1996 gathered at the Vancouver International Airport in Richmond and at reports - for the same period - applicable to the Abbotsford area. Sweeney stated the Eastern portion of the Fraser Valley - including Chiliwack and Abbotsford - is warmer sooner than some other areas such as Richmond which is cooler due to its proximity to the ocean. In 1996, the normal start date for picking strawberries - in Sweeney's opinion - was June 15 but stated that can be affected by location, variety of berry and grower practice. However, any variations would be within a 7-10 day range and it would be highly unlikely that any strawberries had been ready for picking during the period from May 19 to June 2, 1996. In his view, June 9 was the earliest picking date for strawberries

and stated weather is the most significant factor in determining harvest dates, followed by the type of berry and farming methods employed by a particular farmer. Sweeney recalled speaking to Janet Mah - Rulings Officer – on June 8, 1999 and providing his opinion that the 1996 strawberry season started on June 10 and ended on July 15 for the June-bearing varieties. The ever-bearing type is harvested as late as September but is grown on about 50 acres in total and constitutes only a small percentage of total strawberry production in the Fraser Valley. Regarding the raspberry crop, Sweeney stated the end harvest dates for the summer-bearing variety was August 15, 1996 and any later picking would involve only the fall-bearing berries which can continue until October, weather permitting. However, this late-bearing berry comprised less than 3% of Fraser Valley production. Sweeney recited various types of blueberries including Duke - early-maturing – Bluecrop – maturing in late July – and Elliot which is harvested at the end of August through September until mid-October, at which time picking volumes are small. The Duke is a recent arrival in the Fraser Valley and the Bluecrop berry probably amounted to 60% of the acreage devoted to blueberry production in 1996. Sweeney described August as “blueberry month” and stated mid-September would be the last date for picking except for the Elliot variety – 5% of total – which could be harvested until mid-October. In his opinion, the majority of varieties of blueberries matured in late July, 1996 and continued through August during which time they were sold to processing plants. Any later crop would be sold to the fresh market in stores. He stated strawberries do not mature all at once and spoilage can occur in a matter of 3-4 days. As a result a freezing facility offers more flexibility to the grower since the berries can be frozen for future uses. Raspberries, however, are more perishable and tend to drop on the ground when ripe. Blueberries are least perishable of the three berry crops and offer more flexibility in picking times but the harvest must still be done in a timely manner particularly if the grower is selling to the processors. Sweeney stated the season can be extended if targeted consumers are supermarkets but in that case the grower must compete with berries from California and may not receive enough money per pound to make it profitable. He noted there is a small high-end boutique market but the late crop has to be sold at high prices and that market can be unpredictable. In preparing his report – Exhibit R-41- as it pertained to vegetable production, Sweeney relied on typical harvesting dates but noted temperatures fell to minus 5.4 C and minus 6.6 C on November 22 and November 23, 1996, respectively. Although most vegetables should have been harvested by October 15, any remaining crops of frost-sensitive vegetables such as cucumbers, squash, zucchini, peppers, corn and pumpkins – mainly a Halloween item - would have been killed instantly at those temperatures. In Sweeney’s opinion, cauliflower, onions, and carrots would have been badly damaged due to that amount of frost. Further, hardy vegetables like cabbages and Brussels sprouts could be marketable - if thawed out naturally - and

subsequently harvested. However, in order to avoid cold weather, the majority of growers aim to harvest all their vegetables by late October since a temperature of minus 0.2 C on October 30, 1996 – recorded 4.3 meters above the ground at the Vancouver International Airport - would probably translate to 0 C or less at ground level and October 31 was colder at 0.7 C In Sweeney's opinion, that would have been a killing frost - at ground level – for all cauliflower, cucumbers, chili peppers and bell peppers, but daikon may have survived although it is less tolerant of cold than Brussels sprouts. Turnips are the most hardy if exposed to temperatures lower than minus 6 C, they are no longer marketable and neither are radishes if there is frost damage to the upper portion. Potatoes can withstand temperatures as low as minus 6 C but most growers would have harvested that crop earlier. Since competent growers plant different varieties with different maturing times in order to enable an orderly, progressive harvest, some cabbages can be harvested as late as November 15 and although Brussels sprouts can be picked during November, Sweeney stated they would not be picked in late December when temperatures are minus 3 C to minus 12 C at night and only warm up to 1 C for a short period during the day. Buyers are not interested in purchasing produce harvested under those sorts of conditions because apart from the cold, the wind tended to desiccate the tissue of the sprout. Sweeney noted the latter part of November, 1996 was colder than normal. With respect to planting vegetables, Sweeney stated ordinary radishes can be planted up to August 1 while peppers are started in the period from mid-March to mid-April in greenhouses and transplanted in mid-May. Other crops are usually planted directly into the ground and most large growers use mechanical seeders or transplanters which reduce the number of workers needed during that part of the season. Sweeney stated planting dates are affected by rainfall so farmers search for a window of opportunity during which there is dry weather.

[141] The witness – Mark Sweeney – was cross-examined by Darshen Narang, agent for the first named group of appellants in the within style of cause. Sweeney stated a strawberry plant will last 3 years and the first year will not produce berries. Once the plant is mature, two or three crops can be expected from the plants and when they are finished another crop is planted in accordance with rotation practices. Sweeney estimated the average yield fell within a range of 4,000 lbs. to 12,000 lbs. per acre, with 8,000 lbs. representing normal production. He agreed the Juneberry variety of strawberries will produce one minor crop the first year but noted that most growers ignore that one as the amount obtained is not commercially viable and the berries are left on the ground. If the berries are sold, they might be picked as late as July 15. In his opinion – based on his observations in the area – 75% of strawberry plants do not

produce well in the first year. With respect to the 1996 growing season, Sweeney stated it began with a cooler, wetter spring and in order for crops to grow there has to be sufficient cumulative heat units not just one or two hot days. As recorded in the Daily Data Reports - Exhibit R-43 - the number of heat degree days is important as it advances the crop growth which is capable of measurement in accordance with a formula and a baseline. The ideal weather for growing strawberries in May features highs of 25 C during the day and a low of 20 C at night. Unfortunately, that sort of heat - normal in Oregon - does not arrive in the Lower Fraser Valley until later in the season. The Daily Data Report for May 1996 indicates it was a cold month with high temperatures ranging between 12.4 C – on May 2 – to 21.7 C – on May 24 - but the daily high was below 20 C for 28 days that month. Sweeney stated he had visited the Khakh Farms in the mid-1990's when he was working as a vegetable expert and recalled cauliflower, Brussels sprouts, corn, strawberries and raspberries were grown on the property. The strawberry farm operated by Khakh in the Yarrow area in the west part of the Chiliwack region produced an average yield of 8,000 lbs. per acre. Sweeney stated the average yield - for raspberries - is between 7,000 lbs. and 8,000 lbs. per acre if picked by hand and perhaps 9,000 lbs. to 10,000 lbs. per acre if harvested by machine. In 1996, most raspberries in the Lower Fraser Valley were harvested mechanically. Sweeney stated there were about 10 varieties of raspberries in production during the mid-1990's of which two - Meeker and Willamett, respectively - were the most popular. The life cycle of raspberry plants – at that time – had been reduced to 8 or 10 years. Normally, a raspberry bush is planted and the following year produces 50% of a normal crop, increasing to full production the next year and for the remainder of its life span. A variety known as Malahat is an early-maturing raspberry and is ready to pick about one week before the main crop but it represents only a small percentage of overall production within the industry. Another variety – Comox – can be picked during the last week in June which is about 15 days before the start for the Meeker variety. Sweeney recalled there was another similar variety – Chilcotin – but it was declining in popularity and – by 1998 - had fallen out of favour with growers. The early harvests were handpicked for the fresh market until packing plants began operating at full capacity about July 1 and continued until August 10. Sweeney was aware Khakh Farms sold raspberries on a fresh market basis and agreed some berries could be picked as late as August 15 and commented that a cooperative owned by a packing house often received fruit later than privately-owned operations. If a farmer uses a mechanical picker – featuring vibrating nylon fingers and a catcher plate – it will operate every two or three days – in the same field - from the beginning of the season until the harvest is done. With regard to blueberry plants, Sweeney stated they are slow to yield berries even in the hands of a competent grower and it might take 5 or 6 years to obtain decent production. It also might take 7-10 years before a high yield of 20,000 lbs. per acre could be achieved. Three years

after planting, a light crop of about 3,000 lbs. per acre could be expected but a 10-year old plant – now 5-8 feet high – could continue to produce for another 30 years and beyond if not affected by disease and if the variety remained commercially viable. In Sweeney's opinion, about 10% of blueberries were picked by machine in 1996. He considered July 7, 1996 was the date upon which significant berry harvest began - in order to supply packing houses - because any earlier harvest was destined for the small fresh market. Sweeney stated that – in 1996 – there were two agencies - licensed by a marketing board established by the provincial government – that purchased turnips and all growers had to be licensed by a regulatory authority. Other regulated crops included onions, some types of carrots, cauliflower, potatoes, cabbage – both red and green – and lettuce but did not encompass broccoli, corn, squash and some other types of vegetables. Unlicensed growers of regulated crops were permitted to sell their produce directly to the consumer, usually at roadside stands. Sweeney stated the dates used by him in preparing his report – Exhibit R-41 – were based on historical data with a view to paying attention to 1996 weather conditions. As for the effect of temperature on soil, he stated the ground is cooler than the air during summer and in winter the soil could often be warmer than air but only for a relatively short period because cumulative cold over a two or three-week period, will cause the soil temperature to drop. He added that air temperature damages crops because colder air sinks and remains close to the ground where it causes the most damage. As a result, if 1.1 C – by way of example – is the temperature recorded by a measuring device a few feet above the surface, the temperature at ground level would be colder but the soil would probably still be warmer. However, on November 22, 1996, the temperature in Richmond fell to minus 5.4 C which would freeze the ground up to one inch below the surface. With such temperatures, even hardy crops like daikon can be rendered unmarketable because the portion above the ground is damaged and it is too much trouble to cut off that portion and market the rest. Sweeney agreed that the temperatures up to November 15, 1996 would not have caused much crop damage. He recalled visiting Gill Farms where raspberries, strawberries and various vegetables were produced. On that farm – like many others – raspberries were also picked by machine but all strawberries were picked by hand. In Sweeney's experience, the entire fruit industry remunerates pickers on a piecework basis except for a few workers who may be paid by the hour for picking those berries sold in the top-end market. In the course of his employment, Sweeney visited the Purewal Farms blueberry fields and its packing house. He also visited Min Ho Farms – in Richmond – and recalled the proprietor grew a whole range of vegetables. The most common areas for vegetable production were Delta, Cloverdale, Abbotsford and Yarrow. Richmond was less important in terms of total volume because the farms tended to be smaller. Since costs, yield, and price received for product vary from year to year, the volumes produced must be high

because exceptional yields are often offset by lower world prices and the grower may incur a loss overall. Sweeney referred to Exhibit R-43 and pointed to recorded temperatures on November 11, 1996 – 16.3 C – and on November 18, 1996 when the maximum was only 1.4 C. From November 16 to 24 – due to an unusual arctic outflow - the highest daytime temperature was 4.9 C and a low of minus 6.6 C was recorded on November 23. In the Abbotsford area, between November 16 and November 23, there were accumulations of 5 cm. to 33 cm. of snow on the ground whereas the ground in the Richmond area was mostly clear except for a 3 cm. accumulation of snow on November 20th and 21st, reduced to 1 cm. by the 24th and disappearing the next day. In terms of agricultural practices, Sweeney stated the strawberry season moves from east to west in the Fraser Valley and 90% of all raspberries are grown in the Abbotsford area. Depending on the time of planting, radishes can be harvested within 3 to 5 weeks and a grower could plant radishes after August 1 and harvest 4 weeks later. If planted as early as March 1, they could be ready for picking by mid-April. Cucumbers that were transplanted are ready earlier than those seeded directly to the ground but even those can be picked at the end of July if seeded by May 15. Since the growing period for most vegetables is between 70 and 80 days, farmers do 3 plantings with the last one undertaken as late as July 1, although most growers would prefer to finish it earlier. Sweeney stated the planting and harvesting dates used in his report are “windows of time” during which various crops can be planted and harvested. The timetable therein is not intended to be referenced on a per-crop basis since 3 crops could be grown within that time frame. Turnips are often harvested, stored and sold later as market conditions permit but most growers attempt to harvest - and sell - all vegetables by the end of October since the unsold crops must be stored at temperatures of 2 C or 3 C.

[142] Michel Fontaine was called to the stand and questioned by Johanna Russell, counsel for the respondent. Fontaine testified he is an employee of HRDC working out of the Burnaby office. He is currently an Investigation and Interviewing Control Officer but earlier – including 1996 – he was an Investigation and Control Officer (ICO). He started working as an Insurance Agent – in 1981 - for the predecessor agency of HRDC. It was an entry level position involving calculation of claims, liaison, interviewing clients and after 18 months he assumed the role of Employment and Insurance Officer which incorporated his former function but added the responsibility for job searches. Between 1986 and 1994, he worked as an Insurance Officer – a higher position – and made decisions on various aspects of the unemployment insurance system as they related to entitlements for benefits including the reasons for termination of the employment of a claimant. In 1994, he was assigned the position of Interviewing Officer in which he adjudicated certain aspects of entitlements to benefits and in November, 1996, began working as an ICO. He

held that position throughout the period relevant to the determination of the within appeals. Prior to assuming that role, Fontaine had no previous experience with claims from farm workers and – early in 1997 – took some training relevant to his new position. Files were assigned to him at random – usually based on the last digit of a claimant’s SIN number – and he conducted wide-ranging investigations of employment situations in which he interviewed employers and employees. The first file involving a SRC worker – Exhibit R-1, tab 23, p. 119 - was referred to him by a Claims Officer due to certain peculiar factors such as the late end date of employment – January 17, 1997 - and the amount of weeks allegedly worked by the claimant which matched the minimum requirement in order to qualify for UI benefits. Fontaine stated he interviewed the claimant and contacted R.S. Bains, who operated a bookkeeping service retained by SRC to handle the paperwork concerning the employment of workers. Fontaine stated he was advised that all the documents pertaining to SRC operations had been transferred to a bankruptcy trustee - Gina Bollen - who was handling the bankruptcy of SRC. On February 26, 1997, he went to Bollen’s office, displayed his identification card – Exhibit R-44 - and pursuant to authority contained in *Employment Insurance Act* obtained boxes of SRC records which he transported to his office in Burnaby. Fontaine copied relevant documents in order to return originals to the trustee and stated that in the course of searching through the records, it became obvious that the total amount of wages - \$795,358 – allegedly paid to employees – by SRC – according to the T4 Summary of Remuneration Paid – Exhibit R-1, tab 3 - was nearly twice as much as the total revenue - \$414,459.96 - deposited to the SRC bank account between April 1 and December 31, 1996. According to that Summary, remittances in the sum of \$160,642.51 should have been sent to Revenue Canada but only \$3,724.74 had actually been paid by SRC. Fontaine prepared a Summary of Account Transactions – Exhibit R-1, tab 28 – together with other schedules in which deposits were summarized and the sources of cheques payable to SRC were listed. He also prepared a schedule of SRC employees – Exhibit R-1, tab 5 – from various sources including a handwritten list discovered in one of the boxes of SRC records. Fontaine stated he discovered other HRDC offices - in Surrey, Vancouver and as far away as Brampton, Ontario - had also received dubious claims from former SRC workers. As a result, he discussed with his superiors the advisability of referring the SRC matter to the Major Fraud Unit (MFU) that investigates claims arising from employment throughout British Columbia and Yukon. He contacted an individual at MFU only to be advised that agency was not willing to undertake any investigation regarding employment of farm workers – by SRC – and suggested he discuss the issue with Bernie Keays, an Appeals Officer employed by CCRA. Fontaine contacted Keays who referred him to Richard Blakely - a senior Rulings Officer - and Fontaine met with Blakely in order to discuss the SRC matter. Fontaine stated it was important to note that Blakely had

not issued any rulings leading to the within appeals as all of them were issued by Janet Mah. Fontaine stated he followed the suggestions of his MFU contact and – after obtaining approval from his superiors - communicated with other ICOs in the Lower Mainland in order to coordinate efforts in the course of an ongoing investigation of numerous claims. He obtained permission to transfer his regular workload to co-workers in order to devote his efforts on a full-time basis to the SRC matter. Even though he concentrated on that file, he had no authority over other ICOs or HRDC personnel assisting in the SRC investigation and – instead - fulfilled the role of coordinator/facilitator. Nearly all other local offices decided to deal with SRC claimants on a coordinated basis although each remained at liberty to pursue its autonomous right to decide a particular claim. He prepared an Employee List – Exhibit R-1, tab 7 - containing names of SRC workers and identifying those claiming UI benefits, which he distributed to other HRDC offices in the Vancouver area and to Edmonton, Alberta and Brampton, Ontario. A decision was undertaken to conduct simultaneous interviews - with 12-14 claimants – on May 27, 1997 at different HRDC offices. Although Manjit Rana was notified that HRDC wanted to interview him on that day, he did not appear. Copies of relevant documents had been obtained from the office of Bains Tax & Accounting Service (Bains Tax) in order to be available during interviews. In consultation with other ICOs, Fontaine drafted a series of questions – as a sort of template – to be used when interviewing but each ICO was free to pursue his or her line of inquiry. A system was designed to share key pieces of information with other ICOs either during a specific interview or after it was completed. After the May 27th series of interviews was completed, Fontaine reviewed certain admissions of irregularities made by some claimants and he passed this information to other investigators. Subsequently, he contacted MFU and disclosed the significant results of that round of interviews but – again – the management of that fraud investigation unit declined to pursue the matter, ostensibly due to a massive workload investigating persons suspected of obtaining SIN numbers fraudulently. Following the interviews on May 27, each ICO was free to decide whether to conduct further interviews with the same claimant and the complete notes of some entire subsequent interviews were forwarded to him by some ICOs while others merely sent him relevant portions thereof. He prepared a schedule – Exhibit R-1, tab 22 – on which he noted details of employees, dates worked, and identity of their drivers together with other relevant pieces of information obtained during interviews. That list formed part of material used during discussions held by 12 ICOs during their first formal meeting on December 2, 1996 (Exhibit R-3, tab 70). The consensus was to conduct further interviews with the SRC drivers and the investigators met on January 29, 1997 where certain strategy was discussed – Exhibit R-3, tab 79 – and sample follow-up questions – prepared by Fontaine – were submitted to the group. Fontaine stated the general mood shared by many ICOs was

to conclude the investigation because it was consuming time and resources otherwise required to deal with the regular work flow in their own offices. Included in the material at Exhibit R-3, tab 79, Fontaine prepared – at p. 49 – a paper in which he set forth his premise concerning the deterrent effect of the investigation on former SRC workers inquiry which seemed to reduce claims by 72.5% of those persons as compared to 1996. He found this statistic interesting in view of the fact the majority of those workers had been long-term claimants prior to 1997 and the estimated saving of \$109,000 justified continuing with the investigation. Fontaine stated he also considered the possibility - tab 79, p. 52 - that Bant and/or Shindo could be regarded as employers within the definitions contained in both the former *Unemployment Insurance Act* and its successor, the *Employment Insurance Act*. Fontaine also presented material concerning Operation Bluebird, an investigation conducted in Ontario by HRDC. Although Manjit Rana did not appear for his interview on May 27, 1997, he walked into the Burnaby HRDC office – without notice - the following day and was interviewed by Fontaine. Blakely – a CCRA Rulings Officer – joined the interview later. Fontaine took notes – Exhibit R-1, tab 31 – and Kal Tarlal, an HRDC employee acted as Punjabi/English interpreter. A Statutory Declaration was prepared – tab 32 – and Manjit Rana signed it after stating he started business activity as SRC on April 1, 1996 but did not conduct any business between February 26 and that date. At 3:30 p.m. Rana announced he was tired and wanted to leave, promising to return the following day. However, he did not re-attend and has not been interviewed since despite several attempts at serving an Appointment of Interview – Exhibit R-2 – tab 42 – scheduled for October 24, 1997 and another - at next tab – requesting an interview on May 25, 1998 that had been served upon an occupant of two different houses rather than on Rana who was not present. Fontaine stated he went with Kal Tarlal to an address on East 59th Street in Vancouver as well as another residence where the notices were accepted on the basis the recipients would pass them on to Rana if they saw him. On May 25, 1998, when calling at one address, a Caucasian male informed Fontaine and Tarlal that even though Rana lived at that residence, he was not home at that moment. Later, a letter was received from Grewal and Associates, Barristers and Solicitors - tab 47 of same Exhibit – advising Sukhjinder Singh Grewal was acting for Rana and enclosing an authorization – from Rana - permitting HRDC to disclose information to their firm. At tab 49 of the same Exhibit, Fontaine made notes of his conversation with Grewal wherein he advised him the interview with Rana would probably occupy three days and noted Grewal wanted the interview to be conducted at the HRDC Burnaby office. Fontaine described subsequent communications with Grewal as well as material – tab 52 – that he faxed to him, including the entire contents of a Questionnaire containing answers provided by Rana during his only interview. A final appointment – tab 55 - for an interview was scheduled for June 16 at the HRDC Fraser St. office in Vancouver.

Grewal wrote Fontaine a letter – tab 58 – on June 16, 1998 complaining about the pressure being placed on Rana and requesting additional time to prepare for the interview. On June 19, 1998, Grewal wrote a letter – tab 60 – to Fontaine stating Rana had no more documents in his possession. Fontaine stated he attempted twice – without success – to hold further discussions with Grewal. A Questionnaire – Exhibit R-2, tab 54 – dated June 15, 1998 was signed by Rana and returned to Fontaine’s office. Regarding his usual practice during interviews, Fontaine stated he made handwritten notes on sheets of paper as the interview progressed and then reproduced the answers within the formal Questionnaire – Exhibit R-1, tab 33 - the following day or – at the latest – the day after that. In anticipation of continuing his interview with Rana the next day, Fontaine prepared certain questions - Exhibit R-2, tab 62 – in order to assist him in probing matters at issue and other ICOs contacted Fontaine to request he put certain questions to Rana pertaining to the case of specific claimants whose files were under investigation by their particular HRDC office. Fontaine stated he interviewed Surinder Kaur Suran - Shindo – on October 17, 1997 and notes thereof are written on the form entitled Supplementary Record of Claim in Exhibit R-5 at tab 250. He took a photograph of Shindo who was accompanied to the interview by her daughter, Shelly Suran who interpreted on her behalf. Richard Blakely was present during the interview and Shindo produced a handwritten note of dates worked by her during her employment with SRC. Shindo re-attended the office on October 22, 1997 and produced receipts for cash she alleged had been received from Rana as well as a copy of her bank book – Exhibit R-5, tab 254 - pertaining to her Canadian Imperial Bank of Commerce (CIBC) account. Another interview was scheduled for July 8, 1998 at the Fraser Street office and an attempt was made to serve the Notice of Appointment For Interview – tab 255 – personally but she was not at home and it was left with an English-speaking Indian male who had answered the door and advised Fontaine he would hand it to her. Fontaine received a letter – tab 258 - dated July 2, 1998 from Avtar Dhinsi of the law firm of John Motiuk – Barrister and Solicitor – advising that he was acting for Surinder (Shindo) Suran and that she would not be attending any further interviews with HRDC officers. Fontaine stated Surinder Suran had never been an appellant in the within proceedings and received a ruling that her employment with SRC did not constitute insurable employment because of her non-arm’s length relationship with Rana, sole shareholder of SRC and the nature of their working relationship. Fontaine referred to notes - Exhibit R-1, tab 21 - of his interview with Bant on October 15, 1997, wherein Bant denied having anything to do with SRC and went on to explain that he had operated BL Farm Contractors Ltd. (BLF) between 1991 until 1995 when the corporation went bankrupt. As a result, he decided not to have any more involvement in the labour contracting business and had given away his bus and sold the only other vehicles he owned previously. Bant denied he assisted his brother-in-law, Manjit

Rana, to run the business and stated that if he had known Rana was going to start a contracting business, he would have advised him against it. Blakely – Rulings Officer – was present during the interview. Fontaine prepared a Case Presentation – Exhibit R-1, tab 2 – in which he noted that of the 108 alleged employees hired by SRC during 1996, 101 had filed claims for UI benefits and – at tab 7 of said exhibit – listed the names of claimants and recorded other pertinent information. At the following tab, Fontaine referred to a Chronology of Events he prepared in order to track the activities of Rana, beginning in 1995 when he was an employee of BLF, and of SRC, from the date of the incorporation – February 26, 1996 - until April 2, 1997, when the bank account at the TD bank was closed. On March 21, 1996, Rana applied to Revenue Canada for a business registration number which is required for remittances of employee deductions. The first day of business for SRC – according to a Workers Compensation Board (WCB) application form completed by Rana – was April 1, 1996 and by April 13, the report to WCB indicated SRC employed 20 workers and that the expected payroll for the year would be \$50,000. Fontaine referred to a Statement of Account for Current Source Deductions – Exhibit R-1, tab 14 - issued by Revenue Canada – to SRC - on September 20, 1996 in which it acknowledges receipt of information that SRC had no current employees and advising that if the company should have employees in the future, a certain form is required to remit deductions. According to the Farm Labour Contractor Licence – Exhibit R-1, tab 16 – issued by the Ministry of Labour, Employment Standards Branch of the Province of British Columbia on July 22, 1996, SRC was authorized to carry on the business of Farm Labour Contractor and could employ a maximum of 50 workers. Fontaine referred to the Bankruptcy Application Form – Exhibit R-1, tab 19 – in which Rana stated SRC ceased business operations on December 31, 1996. Fontaine stated that during the course of an interview, Rana said he had no time sheets and paid employees in accordance with their own record of hours worked. Rana also stated that SRC used about \$150,000 in source deductions to pay other operating expenses. Of the 108 alleged employees, all were interviewed by HRDC investigators at least once except for two who were no longer in Canada and one person who had died. The consensus gleaned from these interviews was that most workers and/or farm owners did not know Rana. Fontaine stated that as a result of the investigation of SRC employment practices, HRDC concluded 16 persons had received a total of 17 ROEs that were false in one manner or another in that 7 of the records stated inflated weeks of employment, others were issued in relation to 5 workers who either had never been paid or had returned part of their wages to SRC and another 5 ROEs were issued to individuals who ever worked for SRC. In addition, some workers admitted they had purchased their ROEs for amounts ranging from \$1,000 to \$3,000. Fontaine stated that during the interview - Exhibit R-1, tab 33 - when Rana was confronted with the issue arising from receipts – Exhibit R-1, tab

29 - issued to persons - some of whom confessed to having purchased their ROE - Rana admitted - at Exhibit R-1, tab 33, Q. 20 - that those receipts were issued to acknowledge payment received for the purchase of an ROE. However, when asked to state that information in the form of a Statutory Declaration, Rana recanted and stated not only were the receipts not issued for that purpose but denied ever saying that they were related to the issuance of ROEs. Fontaine stated he was able to track only \$343,232 in wages paid in the form of cheques that had cleared through the TD bank even though the payroll was alleged to have been in the sum of \$795,358 during the period from April 1, 1996 to December 31, 1996. During said period, deposits to the SRC bank account totalled \$414,466.95. Fontaine stated he reviewed information gathered during the HRDC investigation including statements by the majority of SRC employees to the effect they had not been paid any of their wages in the form of cash. Fontaine stated that according to the SRC T4 summary provided to Revenue Canada, a total of \$160,642.51 in payroll deductions - including the payer's share of EI premiums and CPP contributions - should have been remitted but only \$3,724.74 had been paid. Rana advised Fontaine that all payments to SRC were in the form of cheques and all payments - by SRC - came from that particular TD account. Fontaine stated the business records did not support the alleged net pay as stated on the payroll record prepared by Bains Tax but there had been a cash deposit in the sum of \$2,000 to the SRC account on May 29, 1996 as evidenced by a copy of the deposits slip (Exhibit R-1, tab 24, p.10). Fontaine stated a review of SRC business records and other documents revealed extensive discrepancies between dates used to record either the first day of work (FDW) or last day of work (LDW) and some claimants were not in Canada when they were supposedly laid off. Otherwise, start and finish dates did not match the alleged task performed with the type of crop at a certain point in the growing season. Further, the ROEs were based on hourly pay but all other SRC records indicated it was being paid - by the farmers - according to weight of berries picked. Fontaine stated he was not able to locate any SRC records that would substantiate that any work was done on vegetable farms in Richmond after the berry season had finished, although Shindo had told him - during her interview - that she drove people to Mike's Farm and to the Min Ho Farms in Richmond. Fontaine stated that after two or three hours of interviewing Rana, he had come to doubt Rana was the person who had been operating SRC since he was unable to answer simple questions about business matters. From reviewing various documents, Fontaine concluded the sale of blueberries to Purewal Farms was the source of 19% of total SRC revenue and payments had been in the form of cheques which were deposited to the SRC account at the TD bank. In the course of preparing his submission - Exhibit R-1, tab 2 - to Revenue Canada in which rulings were requested on the insurability of alleged employment of workers, Fontaine - at p. 6 - mentioned his interview with Mr. Ahn, the proprietor of Min Ho Farms. Fontaine

referred to his notes of that interview – Exhibit R-2, tab 37 – prepared on September 15, 1997. Fontaine recalled Ahn had stated he knew nothing about SRC but was able to identify a photograph of Manjit Rana who had worked alongside other workers even though he was a relative of Bant. Ahn told Fontaine – in the presence of Richard Blakely – that Bant had difficulty understanding the English language and often misunderstood Ahn’s instructions, causing workers to make errors when carrying out certain tasks. Ahn advised Fontaine that Surinder - Bant’s wife - also participated in the business. Bant supplied labour to Ahn in 1995 and Ahn advised that he thought he probably owed him for some services provided by workers during the 1996 season but Bant had agreed to wait for payment until after all the produce had been sold. Although unsure of the exact amount due to lack of records, Ahn advised Fontaine that he was paying Bant between \$8.50 and \$9 an hour for the services of a labourer. Fontaine stated that according to Ahn, the last sale of produce from his farm occurred on November 24, 1996 and a Sales Receipt book was produced to confirm that transaction. Ahn advised his main crops were zucchini and lo bok and stated he had not grown any cauliflower or potatoes in 1996. Fontaine advised he was not able to obtain any information from the proprietor of Mike’s Farm relevant to 1996 and the employment of workers involved in the within appeals. Fontaine stated he obtained copies of cheques issued by Purewal Farms to SRC as well as copies of delivery slips for the purchase of blueberries from SRC (Exhibit R-2, tab 39). In total, Purewal Farms paid SRC the sum of \$77,036.86. The bank records of SRC confirmed the deposit of that revenue except for the amount of \$7,208. Fontaine stated he also interviewed Peter Kliever, a farmer who issued cheques – to SRC - totalling \$13,250.53, in payment of labour services. Payment was based on total weight according to records made at the scales. According to Fontaine’s notes – Exhibit R-2, tab 40 – Kliever recalled Bant had provided about 20 workers who were driven to work – by Bant – in a brown van. Fontaine stated he contacted M & G Bros. Farms Ltd. – known as Gill Farms – and ascertained SRC provided labour which was remunerated according to weight of produce picked. Kanwal Gill - a Gill Farms employee - advised Fontaine the workers were brought to the farm by a bus in order to pick both raspberries and blueberries and between 30 and 60 workers were required. A total amount of \$40,395.06 in the form of cheques was paid to SRC for its labour supply, including a bonus in the sum of \$500. A summary was prepared by Fontaine at Exhibit R-2, tab 41, p. 9. Picking cards were retained by Gill Farms and copies were provided to Fontaine including those bearing the names of the following appellants in the within appeals: Bhagwant Grewal, Ajmer Kaur Gill, Taro Bassi and Gian Thandi. Fontaine stated that from records provided by 4 farms he contacted, he was able to calculate that blueberry sales had accounted for 35% of the gross revenue of SRC in 1996 and farm labour supply made up the balance although he could not reconcile the amounts to those alleged in

various SRC business documents. Fontaine stated he assembled a set of 112 ROEs – Exhibit R-1, tab 23 – issued by SRC. When issuing an ROE, the employer retains a copy and sends another to an HRDC office in Bathurst, New Brunswick. The remaining copy is given to the employee who must submit it when applying for UI benefits. Fontaine stated he interviewed Binder Chahal and Harjit Gill in relation to their tasks as drivers for SRC. He recalled Gill produced documents – including an Air India ticket – to prove he left Canada on October 11, 1996 and did not return until December 15, 1996. Fontaine stated because the budgets at local HRDC offices were limited, the decision was made to retain the services of court certified interpreters only for those interviews of persons deemed to be key to understanding the SRC situation. As a result, a lack of proper funding caused local HRDC offices to rely on the services of their own Punjabi-speaking employees or on interpreters provided by the claimants who attended with a friend or relative to assist them during an interview. With permission of the interviewee, Polaroid photos were taken.

[143] Fontaine referred to his interview with Bhagwant Kaur Grewal - Exhibit R-34, tab 93 – on November 10, 1997 and recalled her son had interpreted on her behalf. Fontaine stated he recorded answers as they were provided through the interpreter including the one to Q. 10 in which she stated Harjit Gill drove the bus, Binder drove the red van and the grey van was driven by Shindo. Fontaine stated he recorded Grewal's answer to Q. 7 in which she said she had not picked blueberries or raspberries and had "mostly worked with vegetables". Fontaine noted Grewal stated she had not worked in Abbotsford or Chiliwack when responding to Q. 8 and recorded her explanation concerning method of payment – Q. 18 – that she received a cheque after two weeks of work and was given 3 or 4 other cheques which she took to the SRC bank – TD – but was unable to cash them due to insufficient funds in the account. Fontaine stated he wrote down her explanation that she was owed approximately \$3,000 on her last day of work and was paid small amounts of cash thereafter until paid in full about 4 months later. Grewal's answer to Q. 19 about her hours of work is noted as "worked 6 days per week. Mostly had Sundays off, sometimes a week day. Always had one day off per week".

[144] Fontaine referred to his interview – Exhibit R-29, tab 91 – with Bakhshish Kaur Thandi on February 16, 1998. The interview was conducted in the presence of Kal Tarlal, a Punjabi-speaking HRDC employee. The warning - tab 92 – was interpreted by Tarlal to Thandi who produced her Indian passport as identification. Later, Thandi's daughter – Maninder – was brought into the interview room and confirmed that her mother had not been paid for her work. The ROEs for both Bakhshish Kaur Thandi and her husband – Gian Singh Thandi – show insurable earnings in the sum of \$7,840. Fontaine recorded the statement by Maninder that

neither of her parents were aware they were doing anything wrong by working only to obtain their “weeks paper” in order to qualify for UI benefits. On February 20, 1998, Fontaine sent Bakhshish Kaur Thandi a copy of his interview notes – Exhibit R- 29, tab 102 – in accordance with a practice he had developed as the investigation progressed. Fontaine stated HRDC policy is to terminate an interview if the person wants to leave, and Thandi – who was complaining of a fever – was so advised. Fontaine stated he was not aware of any interpretation difficulties arising between that appellant and Kal Tarlal during the course of the interview. Fontaine stated he recorded Thandi’s response – to Q. 18 – that she received a cheque, cashed it and gave the money back to the employer and that she had worked the whole season just to “get the weeks”. Fontaine stated he was careful to note her statements since she was the first SRC worker to admit they had worked only for the ROE and had not been paid. Fontaine recalled that during the interview, Thandi had repeated in different context on several occasions - including the answer to Q. 32 - that she had not been paid for her work and those assertions were confirmed by her daughter, Maninder who advised Fontaine she was responsible for her parents’ finances and was not aware of any loans by Bant. Fontaine noted Thandi’s answer – to Q. 20 – where she agreed she used picking cards but threw them away “once everything was settled”. At Q. 17, she stated the payment was based on the flat which was at a different rate for different berries. Fontaine noted she said she worked only at picking berries without mentioning any work done on vegetable farms. He requested that she bring in statements for the VanCity account which were produced later – tab 96 – in the context of her husband’s appeal.

[145] On February 16, 1998, Fontaine interviewed the appellant, Gian Singh Thandi. Kal Tarlal was present and interpreted the proceedings into Punjabi. Fontaine stated Gian Singh Thandi was informed of the purpose of the interview and advised he was free to leave the room at any time. The warning - Exhibit R 30, tab 92 - concerning the potential application of penalties or prosecution for knowingly making false statements was interpreted by Tarlal. At the conclusion of the interview – tab 93 – the contents were reviewed with Thandi who stated he had nothing to add. In responding to Q. 18, Thandi stated he was paid every two weeks - in cash - by Manjit Rana. Further along in the interview, Thandi said Rana had given him a \$5,000 cheque but could not recall whether it had been received before or after he stopped working for SRC. In answering Q. 29(g), he stated he did not pay any money back to Rana. On February 18, 1998, Fontaine interviewed Thandi and confirmed the accuracy of his notes - Exhibit R-30, tab 96 – which recorded that Thandi’s daughter - Maninder Mangat – was present and Kal Tarlal acted as interpreter. Fontaine stated he reviewed some of the questions and answers from the interview two days earlier and pointed out certain inconsistencies compared to information obtained during

interviews with his wife and daughter. Concerning the cheque – tab 89 – for \$5,000, which was not negotiated until December 16, 1996, even though it was dated September 15, 1996, Thandi stated he cashed that cheque at the 49th and Fraser TD bank. He advised Fontaine that he kept the sum of \$1,000 and paid \$4,000 to Bant. He then told Fontaine that Bant repaid him that sum of \$4,000 – in cash – at some future point which he could not recall. Fontaine stated he asked Thandi why he stated he was paid every two weeks when that was obviously not true and Thandi replied – at p. 5 – that he was “ dizzy” at the time and intended to talk about the UI payments he received every two weeks. He agreed SRC did not pay him every two weeks.

[146] Fontaine stated he interviewed Inderjit Singh Atwal in relation to his alleged employment from December 29, 1996 to January 11, 1997. The interview took place on June 12, 1997, and the notes are in Exhibit R-9 at tab 89. Sarb Sandhu - certified court interpreter – interpreted the questions into Punjabi and the answers into English. Fontaine stated he had reviewed Atwal’s file and noted Atwal had a total of 24 weeks employment from two different employers but needed 26 weeks to qualify for UI benefits. Fontaine stated Atwal signed a Statutory Declaration - tab 90 – before Claire Turgeon rather than him because his own Commissioner of Oaths appointment had not been issued at that point. During the interview, Atwal told Fontaine he worked with his driver – Bant – at various locations and rode to work in a bluish van. He said he worked Saturday and Sunday and did not record his hours of work. He told Fontaine that he always worked outside and wore a raincoat. When informed by Fontaine that two feet of snow had fallen during this period, Atwal replied that all the work was done indoors and he helped Bant install drywall in the new houses. On June 13, 1997, Atwal attended at the HRDC office to advise he could not find a copy of the cheque received from SRC. Kal Tarlal acted as interpreter and Fontaine took notes – tab 91 – of the discussion during which Atwal submitted a list of days and hours worked that had been given to him by Rana. When showed a photograph of Rana, Atwal initially stated it was Rana but then said it was Bant. Fontaine pointed out to Atwal that he had offered up several versions of the work allegedly performed for SRC during that short period of employment. At p. 4, Fontaine recorded an explanation from Atwal that he had performed farm labour work – in January – and not construction. Fontaine interviewed Atwal again on February 17, 1998 – Exhibit R-9, tab 93 – and Kal Tarlal interpreted the questions and answers. During this interview, Atwal stated he picked potatoes for SRC for a two-week period earlier than December, 1996, but did not receive an ROE for that particular employment. Fontaine stated that according to the ROE issued by Territory Seafoods to Bant Suran he worked for that company full time from December 5, 1996 to May 5, 1997 and had worked 28.5 hours for the period ending January 11, 1997, including January 3rd, 5th, 6th, 9th, 10th and 11th, days when Atwal

maintained Bant had either been driving him to work and back home and/or working with him on occasion. Fontaine stated there is a threshold of insured hours worked which gives rise to an entitlement to UI benefits and that only the last 20 weeks of work are used to calculate the amount of the benefit payment.

[147] Fontaine stated he interviewed Jaswinder Singh Bassi on December 5, 1997, and took notes (Exhibit R-11, tab 102). Another interview took place on December 19, 1997 and Fontaine recorded Bassi's answers on a Supplementary Record of Claim at the following tab. Kal Tarlal acted as interpreter and interpreted the warning to Bassi. At the conclusion of the interview, Tarlal reviewed the contents with Bassi – in Punjabi – and Bassi signed at the last page of the document. During the interview, Bassi stated he planted cauliflower for 3 days and worked outside. He said he worked 7 days a week when picking berries but worked Monday to Saturday in December. Fontaine stated the answers were recorded accurately as the interpretation was provided to him by Tarlal. Fontaine showed Bassi a photograph of Rana but Bassi was not able to identify him. During the interview – tab 103 – in answering Q. 17, Bassi stated he was paid by the flat for picking strawberries and raspberries but was paid by the hour for working on the vegetable farms. At Q. 32, Bassi told Fontaine he received a cheque - in the sum of \$4,000 – from Shindo and cashed it at the CIBC bank, also located at 49th and Fraser in Vancouver. Bassi also stated in the same answer that he had not received any cash. According to Bassi's pay statement – Exhibit R-11, tab 93 – he earned \$4,040 after deductions. During an interview – tab 94 – on December 9, 1997, where Kal Tarlal interpreted, Bassi told Fontaine he was mistaken when he said - at an earlier interview – he had deposited a \$4,000 SRC cheque to his account. Instead, he stated he had received a cheque in the sum of \$4,040 and took out \$3,000 cash and deposited only \$1,040. He told Fontaine the cash was used to pay rent - \$700 – and to buy groceries. Fontaine referred to an entry on the photocopy of a CIBC bank statement for Bassi's account which indicated there was a \$3,000 deposit on January 10, 1997 followed by a \$3,300 withdrawal two days later. Fontaine stated no such cheque – in the sum of \$4,000 or \$4,040 - was ever located when searching through SRC records, including statements on the TD account which was the only one used by that company.

[148] Fontaine stated he calculated the amount of work needed to qualify for UI benefits for various appellants in the within appeals together with the amount of overpayment - according to HRDC – and the amount of the penalties imposed

administratively by the relevant Insurance Officer in accordance with the provisions of the *Act*, as follows:

Name of appellant	Weeks to qualify	Overpayment	Penalty	Total
Sharinder Singh Bagri	17	\$2,582	\$1,601	\$4,183
Ajmer Kaur Gill	26	\$4,784	\$1,664	\$6,448
Bhagwant Kaur Grewal	17	\$2,752	\$1,576	\$4,328
Varinder Kaur Jassal	26	\$4,862	\$1,497	\$6,359
Prabhjot Kaur Minhas	20	\$5,934	\$1,935	\$7,869
Bakhshish Kaur Thandi	17	\$4,320	\$1,404	\$5,724
Gian Singh Thandi	17	\$980	\$544	\$1,524

[149] Fontaine pointed out that in the case of Prabhjot Kaur Minhas, she needed 20 weeks employment if her claim for UI benefits was based on maternity leave. Overall, 98 files were submitted to CCRA for a ruling. Other files were decided within a particular HRDC office because there was proof that the ROE issued by SRC was false or other factors had caused a decision to be made that the employee was not engaged in insurable employment. Fontaine stated that when requesting a series of rulings, he forwarded material to Janet Mah which included notes made by Richard Blakely - CCRA Rulings Officer – when he participated in interviewing some appellants. Fontaine stated all 98 rulings were issued by Janet Mah and his contact with her was sporadic and only for the purpose of ascertaining the progress of the rulings process. In a similar fashion, when the rulings issued by Mah were appealed to the Minister, the appeals were conducted by Bernie Keays - Appeals Officer - and Fontaine stated he had spoken to Keays on the telephone during April or May, 1997 and had no contact since. Fontaine stated he created the document - Exhibit R-47 – in which he listed – in schedule form – the results of the rulings issued by Janet Mah from time to time in batches. As a result of the rulings, the Insurance Agents/Officers in various HRDC offices made decisions based thereon including calculation of overpayment of UI benefits and/or whether a penalty should be imposed and if so, in what amount. A penalty of \$186,000 was imposed by an adjudicator against SRC and Rana, jointly and severally pursuant to the provisions of the *Act* but a policy decision was made not to proceed against Bant and/or Shindo on the basis that they had held themselves out to be an employer while working with SRC.

[150] The witness – Michel Fontaine – was cross-examined by Darshen Narang, agent for the appellants first named in the within style of cause. Fontaine stated he worked as a sales representative prior to joining the federal public service in 1981. He received training in the course of his first assignment as an Insurance Agent.

Later, when occupying the position of Insurance Officer, he studied material over the course of several weeks in order to become familiar with the relevant case law as it applied to the exercise of his jurisdiction and to learn how to write decisions concerning contentious issues such as entitlement to benefits in circumstances where a worker had quit a job or in situations where it was required to determine the extent of benefits, perhaps flowing from a claim based on illness or maternity leave. As an Insurance Officer, he decided whether a person was justified in leaving his or her employment and, if not, to determine the period of disqualification – if any – before the claimant was entitled to UI benefits. In the course of making such a decision, Fontaine stated he reviewed the relevant ROE, obtained a statement from the claimant and delved into the issue that allegedly caused the worker to leave his or her employment, often some course of conduct attributable to the employer. Fontaine stated he also reviewed documents such as pay stubs, statements from co-workers and other relevant information and – on occasion – had to create an interim ROE because the employer had either not supplied one or simply refused to do so under the circumstances. There were other circumstances in which an employer had gone bankrupt or merely closed down a business and it was necessary to create ROEs for employees based on available records including bank statements, deposit slips, pay records and similar documentation. In November 1996, Fontaine assumed the role of ICO and received special training in January, June and July, 1997, in the context of in-house training carried out in Vancouver. Fontaine stated he had some experience dealing with farm workers during the course of his earlier employment at HRDC but that group occupied less than 5% of his workload. While undergoing training as an ICO, Fontaine stated he was required to pay attention to details disclosed within the ROE and the subsequent application for UI benefits and to determine whether the claimant and employer were related and to examine the circumstances relevant to termination of the employment in question. He also looked at the start and end dates of the employment to determine whether they matched the nature of the work done as – by way of example – one would not expect someone to be working as a lifeguard on a Vancouver beach during the month of November. On some occasions, it turned out a claimant was working while collecting UI benefits or he might be called upon to verify employment if a claimant had since moved to another province and filed the claim in that jurisdiction. Now and then, a claim had to be adjusted because the recipient was also receiving CPP benefits. Fontaine stated he spoke with senior investigators in order to obtain advice and discussed certain matters with his supervisor. In the course of carrying out his duties as ICO, he issued, when required – to banks, employers, accountants - a document entitled Requirement to Provide Information which imposed a legal obligation on the person or entity receiving said notice to produce certain documents listed therein. Fontaine stated various sections of the *Act* permitted ICOs to issue demands for information in order to discharge a

particular function within their jurisdiction. Fontaine explained that even though the new *Employment Insurance Act* came into force on July 1, 1996, certain transitional provisions permitted the ongoing use of the specific number of weeks worked - for purposes of qualifying for UI benefits - until December 31, 1996. However, the new regime required work to be measured in hours and no minimum number of hours per week or month was any longer required in order to accumulate insurable hours of employment. Fontaine recalled that a claimant – in 1996 – needed 26 weeks of work to become eligible for UI benefits except for claims based on maternity entitlement or illness or other special circumstances peculiar to economic conditions within a particular region. Concerning contact between himself and employees of CCRA, Fontaine stated he had some interactions with Rulings Officers between 1981 and 1986 in the context of requesting rulings but between 1986 and 1994 – while employed as an Insurance Officer – he was not required to deal with that agency. Fontaine stated he began working on the SRC matter in February, 1997 after his office received a referral from an Insurance Agent concerning a particular file. The ROE for this particular claimant – Exhibit R-7, tab 428 – purported that a worker had been employed – by SRC – as a farm worker for 17 days in January, 1997. An application for UI benefits – tab 444 of same exhibit – was filed but an Insurance Officer issued a Stop Pay to suspend benefits pending further investigation. Fontaine stated he interviewed the worker (not an appellant in the within appeals) but the larger-scale investigation of SRC did not commence until records obtained from the bankruptcy trustee not only failed to substantiate the claim of the worker in question but pointed to the need for a wider investigation. Fontaine stated his contact with Bains Tax -because that entity was named on the ROE – led to the office of the bankruptcy trustee where he was able to obtain originals of various documents. Fontaine stated he continued to work on other files until the end of April, 1997, when he was assigned to work full time on the SRC investigation. Fontaine stated he attempted to contact Rana on May 1, 1997 by sending an Appointment for Interview – Exhibit R-1, tab 30 – requesting him to attend the HRDC Burnaby office on May 8, 1997. He also attempted to contact Rana by contacting a pager number he had discovered while searching through documents in the boxes obtained from the trustee. Fontaine stated he was aware Rana had made a claim for UI benefits based on his employment with Bant in 1995. As a result of the information accumulated and in becoming more familiar with the scope of the SRC situation, Fontaine spoke to his Supervisor – Tom Ksik – who accompanied him to a meeting – in late April, 1997 - with officials of the MFU where Fontaine made his submission - based on a case summary he had e-mailed earlier – designed to obtain a commitment from MFU to assume conduct of the SRC investigation. Fontaine stated the refusal by MFU to assume responsibility for the SRC matter led him to contact other HRDC offices in the Lower Mainland and to provide them with certain material relevant to a specific

person who had been questioned during the first round of 14 interviews conducted on May 26, 1997, at various HRDC offices. He reviewed notes of most of the interviews and e-mailed other ICOs at other offices in order to keep them current and to receive reports and copies of other interviews conducted subsequently. Fontaine estimated the ICOs conducted over 100 interviews and he perused notes pertaining to between 45 and 60 of those sessions. When reviewing the ROE – Exhibit R-7, tab 428 – for a certain worker, Fontaine noted the contact telephone number was for R.S. Bains at Bains Tax even though the form had been signed by Rana. Fontaine made notes – Exhibit R-4, tab 3 - of his interview with Ranjit S. Bains, owner of Bains Tax and also of his discussions with Amanjit Kaur Dhesi, an employee of that entity. Fontaine noted that Bains stated his firm did the payroll for SRC at the end of the year and – on January 15, 1997 – submitted a final invoice in the sum of \$3,210 but the SRC cheque – tab 5 – was returned NSF. Amanjit Dhesi told Fontaine she calculated workers' earnings at the end of the working season based on time records provided by Rana who had recorded hours in a "blue book". Dhesi stated she used software in her computer to calculate earnings and produce a pay statement in accordance with the information she inserted into the program. Dhesi stated she produced an ROE only when requested by Rana. The bankruptcy application – Exhibit R-1, tab 19 – was in the name of Manjit Rana – personally - and Fontaine spoke with Gina Bollen, a member of the firm David G. Kanester & Associates Inc. – Trustee of Bankruptcy – in order to discuss certain matters. In the application, Rana stated he operated SRC from January 11 to December 31, 1996. Bollen advised Fontaine that Rana owed \$4,000 in taxes and approximately \$61,000 in GST which led Fontaine to assume the personal bankruptcy – as opposed to the dissolution of SRC, the corporation – was in contemplation of personal liability flowing from his position as sole director of SRC. A Certificate of Official Receiver of Appointment of Trustee – Exhibit R-1, last page of tab 19 – was issued on March 14, 1997, in respect of Manjit Singh Rana. Fontaine stated that Rana did not attend the interview scheduled for May 26, 1997 but showed up – without notice – the following day when he was interviewed - Exhibit R-1, tab 33 – and answered questions Fontaine had prepared in advance. Blakely – from CCRA – was present during this interview and made his own notes (Exhibit R-3, tab 67). Kal Tarlal acted as interpreter and the interview lasted from 10:30 a.m. until 3:00 p.m. when Rana asked to conclude the interview the following day. Fontaine recalled Blakely arrived in the interview room following Q. 6 in the template and in order to keep him current, Fontaine returned to Q.1 and asked the next 5 questions again and Blakely made his own notes of the responses provided by Rana. Fontaine estimated he asked about 90% of the questions but Blakely did pose some from time to time. Rana stated there were no additional invoices to produce but – perhaps – had some papers in the basement of his mother's house. Fontaine stated he had learned at an earlier point that Rana was Shindo's brother. During the interview, Fontaine noted

Rana's responses were very slow, guarded, contradictory, and vague to the point where Rana was asked if he had been drinking that morning. Fontaine agreed with Darshen Narang that he had been asked about that matter during Discovery and had not been able to recall whether Rana responded to that question. Fontaine stated he was sitting about 3 feet from Rana and did not recall noticing any odor of alcohol. As a result of the strange answers provided by Rana, Fontaine suggested to Rana it was obvious he was not the real owner/operator of SRC but Rana asserted he was the owner. Fontaine stated Rana did not return to complete the interview on May 28, 1997 and was never in contact thereafter with any HRDC employee despite further attempts to notify him concerning scheduled interviews. Fontaine agreed that MFU was advised of the results of the May 26th round of interviews and – again – declined to pursue the matter. Fontaine agreed there may have been additional SRC records somewhere and did not request any payroll information from the British Columbia Employment Standards Branch. Fontaine stated the second round of interviews was intended to pursue matters arising from the ROEs issued by SRC since admissions had been obtained from several workers either that no work had been done or, if done at all, then not to the extent shown on those records. In essence, HRDC was searching for information to corroborate the claims submitted by workers who had provided no time cards, picking cards, time sheets, calendars, notebooks or – in most cases – bank records to substantiate that work was performed and/or payment was received. Fontaine stated he did not have much faith in the accuracy of the pay statements – such as the one in Exhibit R-29, tab 89, re: Bakhshish Kaur Thandi – prepared by Bains Tax. Fontaine stated he knew Rana was the sole shareholder of SRC but the nature of the answers provided by Rana during the interview caused him to suspect others had actually operated the company. However, Rana took the position at Q. 2 of a Questionnaire - Exhibit R 2, tab 54 – dated June 15, 1998 and forwarded by his lawyer to Fontaine - that Bant “has no role in the company and is not a share holder”. In responding to the next question about the role played by Surinder Suran, Rana stated, “she was an employee. She used to drive the van and worked there”. In that Questionnaire, Rana confirmed he was the sole signing authority on the corporate bank account and denied selling ROEs to any individuals. Fontaine recalled he contacted Bernie Keys at some point because it was apparent following the first round of interviews on May 26, 1997, that it would become necessary for HRDC to request rulings from CCRA as to whether the SRC workers had been engaged in insurable employment. Fontaine stated he was aware that some HRDC offices took the position they would not send those files to CCRA for a ruling where the claimant had admitted - to an ICO and/or Insurance Agent - that the ROE was false because the work either had not been done as stated therein or that the ROE had been purchased outright in order to permit the person to claim UI benefits at the end of the farming season. Fontaine stated his Burnaby office decided to send all files

for a ruling including those where the claimant had admitted the ROE was incorrect and/or had conceded that they participated in a deception with respect to the weeks of work or the amount of payment actually received. By the fall of 1997, the investigation encompassed all employees of SRC. Fontaine stated although the discrepancies became more blatant, the further the investigation progressed, he knew the decisions on insurability would be made by a Rulings Officer who would be free to investigate further in accordance with his or her own methods prior to arriving at a conclusion. According to Exhibit R-1, tab 1, Fontaine submitted 98 files for a ruling. Fontaine stated he knew other ICOs had spoken with Blakely during the course of their own investigations, particularly before interviewing the 8 SRC drivers as identified on the list at Exhibit R-8, tab 2. Fontaine stated he interviewed Shindo and Binder Chahal, once alone and another time in the presence of Jeanie Suric. Chahal informed Fontaine that SRC also carried on a farming operation, including a leased farm in Ladner. Fontaine stated he had been aware that about 25% of total SRC revenue was due to blueberry sales to Purewal Farms cannery and accepted that some workers may have worked on properties farmed by SRC through some sort of arrangement with the landowners. The nature of that aspect of the business was not clarified by Rana who stated – through his lawyer – that no more documents were available and in the Questionnaire stated he sold blueberries for cash and paid some workers in cash. Fontaine stated he decided not to issue any formal Requirement to Provide Information because there was no proof that other documentation existed. Fontaine stated Chahal had been a good source of information since he had worked for Bant in 1995 and was able to identify people from a series of photos shown to him during interviews which occupied nearly two days. Fontaine stated his personal view with respect to Chahal's situation was that he was not engaged in insurable employment because he was unable to demonstrate that he had been paid for his work. With respect to Fontaine's notes of the interview of Inderjit Singh Atwal – Exhibit R-9, tab 89 – on June 12, 1997 also attended by Blakely, Fontaine agreed his notes seem to indicate different questions and answers than those recorded by Blakely at tab 82. Fontaine agreed he did not record Atwal's responses verbatim but noted details of the three different versions of his employment offered up by Atwal during his interviews. Fontaine stated that in his opinion it was perfectly clear that Atwal knew he was being questioned about the two weeks of work allegedly done at the end of December, 1996 and into January, 1997 and that it had nothing to do with any farm work that may or may not have been done in June. Fontaine stated he drew the conclusion Atwal was not telling the truth. Fontaine stated he contacted various farmers in order to obtain confirmation that certain types of work had been done during a particular period as alleged by some workers. As a result, he was satisfied the last vegetable sale by Min Ho Farms was on November 24, 1996. He also tracked deposits and cheques and the flow of money in and out of the SRC bank account at

TD in Vancouver. Transactions through that account were followed until a zero balance was attained in January, 1997. Fontaine agreed the deposit slip – Exhibit R-1, tab 24, p. 8 – indicated the \$6,000 deposit on April 22, 1996, was comprised of two cheques from Rana. He also agreed a subsequent slip – at p. 11 – showed a total deposit - in the sum of \$2,150 on June 5, 1996 that was composed of three cheques, one from Rana for \$1,500, one from Bant for \$600 and one from Shindo for \$50. On July 22, 1996, the deposit slip – p. 13 – showed a deposit of \$21,000 and indicated the source was “Manjit.” Fontaine stated he thought that sum may have been obtained as a result of cashing in some sort of term deposit or savings certificate. Fontaine agreed the records indicated Rana deposited the sum of \$31,834 of his own funds to the SRC account. Fontaine confirmed his previous calculation that Min Ho Farms paid \$13,000 to SRC during the 1996 season but added Ahn had been dealing with Bant just as he had done during the previous year when Bant was operating as B.L. Farm Contractors Ltd. Fontaine agreed SRC could have provided workers to the Min Ho Farms up to November 24, 1996, the last day produce was sold but relied on Ahn’s statement that he grew only zucchini and lo bok and not any cauliflower or potatoes in 1996. Fontaine stated although no recording devices were used during any interviews, usually he typed up his notes within a day or two and – rarely – if later, within one week. When interviewing Peter Kliever, Fontaine stated he confirmed Kliever paid SRC according to the weight of berries picked and that the total paid for labour was \$13,253.32. Fontaine stated that his inquiries at Purewal Farms led him to conclude that this entity had purchased only blueberries from SRC and had not purchased any labour. SRC sent Purewal Farms 3 invoices for berries, the first dated July 25, 1996 and the last one September 13. One invoice indicated the rate was \$1.00 per pound and another was calculated at 85 cents per pound. Fontaine stated he did not inquire about hours of work when speaking with farmers but picking cards were later produced to Janet Mah in the course of the rulings process. SRC had been issued a GST number and included GST in its invoices to Purewal Farms. He also confirmed that Gill Farms advised him they had paid SRC by the pound for berries picked by its workers. Fontaine recalled the December 2, 1997 meeting was attended by several ICOs – and some supervisors - from various local HRDC offices, and by Blakely and a representative from MFU. The typewritten material - Exhibit R-3, tab 70 – prepared by Fontaine summarized the events and the consensus of the meeting to conduct further interviews of claimants. Possible rulings scenarios – tab 79, p.1 of same exhibit - were crafted by Blakely and formed part of the material discussed at the meeting including the admonition at the top of the page that “each case must be judged on its own merits” and that “there is no such thing as a blanket ruling by RCT” (Revenue Canada Taxation) that would apply to all workers. The agenda for the subsequent meeting – tab 79, p. 48 of said exhibit – held on January 29, 1998, was prepared by Fontaine who acted as coordinator. Fontaine stated he had

some discussion with Janet Mah about the appropriate date to submit the large number of files for a ruling and the probable time needed to issue those rulings.

[151] Counsel for the respondent did not re-examine.

[152] Richard Blakely was called to the stand and examined by Johanna Russell. For the past 20 years he has been a CPP/EI Rulings Officer and has been employed by CCRA and/or its predecessor equivalent for 30 years. He does not speak Punjabi but has been involved in wider scale situations where numerous rulings were issued with respect to the same employer. Blakely created the 15-page document - Exhibit R-3, tab 74 – as a chronology of his involvement in the SRC matter beginning with an entry dated April 24, 1997 to record his initial contact with HRDC. Blakely stated his supervisor asked him to contact Michel Fontaine who had requested that a resource person from the rulings office be available to assist HRDC in respect of a large-scale investigation. Blakely stated he considered his role was to provide advice about the type of relevant material that should be submitted to a Rulings Officer in the event rulings were requested after the investigation was concluded. He responded to telephone calls from Fontaine and attended meetings and interviews with claimants, when requested. Blakely stated it was abundantly clear from the outset that he would not be participating in any manner whatsoever if and when HRDC requested a ruling on insurability in respect of the claimants who were subjects of the investigation. In 1996, there were 15 Rulings Officers in the Vancouver office – where he worked – including Janet Mah who issued all the rulings in the within appeals. Blakely stated that once HRDC submitted its request for rulings, his involvement with the SRC matter ended. On May 26, 1997, he attended the HRDC Burnaby office in order to participate in the scheduled interview with Manjit Rana but Rana did not appear. However, Rana showed up at that office the next day and Blakely responded to a phone call from Fontaine to attend and participate in the interview. Blakely stated he made notes on a Supplementary Record of Claim form – Exhibit R-3, tab 67 - supplied to him by Fontaine. Blakely stated he took notes as the interview progressed and attempted to record information that was relevant. Later, he typed up notes – tab 71 of same exhibit – pertaining to the interview, including his observation that Fontaine asked Rana if he had been drinking and Rana’s reply that he had not. Blakely noted Rana’s speech was so indistinct that even the interpreter had difficulty understanding him and when answers were given, often they were not responsive to the question. Blakely recorded Rana’s response to Q. 20 of the interview – tab 67 – concerning the 14 receipts - acknowledging payment of money by 12 SRC employees – discovered among the SRC business records. Blakely noted that Rana admitted the money was paid to buy ROEs and added there could be more people who bought ROES but he would “have to check”. However, when Fontaine asked

Rana to repeat his statements within the context of a Statutory Declaration, Rana refused and then denied saying what he had previously stated about selling ROEs. Blakely recalled the interview moved so slowly it occupied most of the day. Rana failed to return the following day when he was supposed to bring some SRC books and records and complete the interview. At Exhibit R-3, tab 71, Blakely noted he asked Rana questions he considered were relevant from the RCT (Revenue Canada Taxation) point of view and Fontaine's inquires related to the concerns of HRDC. Blakely stated the interview of Inderjit Singh Atwal was the only one involving an appellant in the within appeals that he attended. Fontaine questioned Atwal while utilizing the services of Sarb Sandhu, Punjabi interpreter. Blakely took handwritten notes of the interview and one or two days later used them as a basis for a set of typed notes (Exhibit R-9, tab 82). Blakely recalled Atwal stating he was able to work outside – in the cold – because he wore a raincoat. Blakely recalled that when Fontaine pointed out there was up to two feet of snow on the ground, Atwal replied he worked inside houses - doing cleanup - during that period. Blakely noted Atwal described working with Bant, installing sheets of material inside new houses at three locations during a period of two weeks. Blakely recalled Atwal told Fontaine that Bant drove him to work every day in a light blue van. When informed by counsel that Atwal had provided different answers in his testimony in Court, such as the colour of the van – which he said was brown – and his assertion Bant had never worked with him and only drove him to and from work, Blakely replied that his notes of the Fontaine's interview with Atwal were accurate. Blakely also recorded – at p. 8 of his typewritten notes at tab 82 – Atwal's answers where he described seeing a crowd of people waiting for a yellow bus in June or July of the previous year (1996) and his estimate that 40 or 50 people could be seated within that bus. During the interview, Atwal stated he thought Shindo must have written down his hours of work according to what Bant told her each night. Counsel referred Blakely to his notes - Exhibit R-3, tab 74, p. 11 – where he recorded that Mike Vaupotic - proprietor of Mike's Farm – did not attend the scheduled interview at the Burnaby HRDC office. As a result, Blakely went with Fontaine to interview Min Ho Ahn in Richmond. Blakely noted Ahn was able to identify Rana from a photograph and that Ahn had no records or invoices pertaining to the labour supplied by SRC. On October 15, 1997, Blakely attended the interview with Surinder (Shindo) Suran and made handwritten notes from which he produced a typed version (Exhibit R-5, tab 240). Shelly Suran – Shindo's daughter – interpreted on her behalf pursuant to an authorization – tab 242 – signed by Surinder Suran. Blakely recalled attending a meeting on December 2, 1997 where he advised Fontaine and other ICOs about matters relevant to any future rulings that might be issued by CCRA, including the warning that every case would be judged on its merits. He attended another meeting on January 29, 1998, at the Burnaby HRDC office where he offered the group a presentation in which he

outlined possible rulings scenarios – Exhibit R-3, tab 79, pp. 1 and 2 - he had prepared earlier. Blakely stated he was informed - later – by Fontaine that Rana never appeared for any further interview.

[153] The witness – Richard Blakely – was cross-examined by Darshen Narang. He confirmed his involvement with the SRC matter commenced with the receipt of a 4-page facsimile – Exhibit R-3, tab 66 – sent to him by Fontaine who outlined therein the situation relating to the SRC supply of labourers during 1996. Later, Fontaine showed him some of the “I Cash Money Give” cheques and other documents. Blakely stated he regarded his role as that of a resource person but did not attend any interview with any ICO other than Fontaine. He stated he wanted to provide advice to ICOs concerning the sort of information in the form of documentation or otherwise that would be relevant to a Rulings Officer. Blakely stated his Vancouver office dealt with hundreds of rulings every year from HRDC offices throughout the Lower Mainland. In the past, occasionally, he had received a telephone call from a less-experienced ICO who sought advice pertaining to the type of material that should be included when requesting a ruling. Blakely stated he perceived Fontaine’s role as a coordinator of the SRC investigation and met - or otherwise communicated – with him, as required. He received notice that Fontaine had arranged for the ICOs to conduct 14 separate interviews on May 26, 1997. Blakely stated that in his experience, HRDC may refer several files pertaining to workers of one particular business, particularly if there are concerns about the methods of operation of that entity. Otherwise, a request for a ruling on insurability may involve a single worker and – often – the issue is whether the worker was in a non-arm’s length relationship with the employer in accordance with the provisions of the legislation. Another subject matter of rulings is whether farm workers had provided services under a contract of service. Blakely stated he had issued more than 100 rulings affecting farm workers and during the course of arriving at those decisions, had examined relevant documents, including copies of HRDC interviews with the claimants and others, bank statements, pay stubs, payroll statements, picking cards and any other reliable documentation. In his experience, the employment situation applicable to farm workers was a “mish-mash” in that sometimes picking cards or cancelled cheques were produced to substantiate payment of wages but other times the workers claimed to be paid – usually on an irregular basis – by a combination of cash and cheques. Darshen Narang questioned Blakely about the claim of the appellant, Bakhshish Kaur Thandi and referred him to Thandi’s ROE in Exhibit R-29 at tab 88. Based on the information contained in Box 15 on said form, Blakely stated one would expect the worker actually had been paid every two weeks. However, in his experience, that is not normal within the agricultural industry as it is not uncommon for pay to be irregular for most of the season. During his career as a Rulings Officer, he dealt with

cases where the employer paid advances to the worker from time to time in amounts of \$1,000 or more and a large cheque would be issued at the end of the season to settle the wage account in full. Blakely agreed many workers recorded their hours on a calendar in their homes but usually were able to produce pay stubs or some other documents in order to substantiate payment of their wages. Blakely was referred to the "I Cash Money Give" purported cheque at tab 90 of Exhibit R-29, in the sum of \$7,000. He commented that he has seen various receipts for cash payments to workers and encountered circumstances where no receipts had been given for cash received but had not expected that anyone would use an actual blank cheque as some sort of receipt. Blakely stated the usual receipt issued by the recipient of cash would be in the standard form as those in Exhibit R-1, tab 29. In the past, Blakely stated he reviewed receipts on which the employee's deductions had been recorded but had never seen anything like the "I Cash Money Give" purported cheques. Blakely stated that when he was in the process of issuing a ruling in the case of a farm worker, he expected to receive an ROE from HRDC together with the claimant's application for UI benefits, cancelled cheques, notes of interviews and any other relevant material with a bearing on the issue to be decided. Blakely was referred to a 15-page document in Exhibit R-3, tab 74, p. 2, and stated he had created that memorandum for his own purposes and could not recall whether that material had been forwarded to Fontaine. Blakely stated his own experience led him to expect the berry season to begin in June and to end in October. He agreed some pre-season was required in February and March - well before the start of berry season - but that sort of work was sporadic over a short period, like the tasks performed post-season. He stated he was aware of some farming operations that provided greenhouses or nurseries in order that work could be carried out inside. Darshen Narang referred to the notes - Exhibit R-2, tab 37 - made by Fontaine of his visit to Min Ho Farms and the conversation with Min Ho Ahn, particularly in respect of the observation recorded by Fontaine that "initially, Mr. Ahn appeared to be upset by Richard Blakely's and my presence on his property". Blakely replied he had no recollection that would accord with that comment but recalled Ahn seemed to be rambling in the course of his discussion with Fontaine. He remembered Ahn stating that his main crops were zucchini and lo bok and that he had obtained labour services from Bant in 1995, but did not recall him producing any sales receipt to Fontaine. Blakely stated he joined the interview with Rana after Fontaine had reached Q. 6 on the prepared form. Kal Tarlal was present and acted as interpreter and he thought the interview either started over at the first question or the questions already asked and answers given were reviewed by way of an oral summary delivered by Fontaine. Blakely stated that Revenue Canada (CCRA) preferred to receive all requests for a ruling on insurability - with respect to the same employer - in one batch. He stated he could not recall speaking with Janet Mah at any point during the rulings process and cannot recall any contact with Bernie Keays,

Appeals Officer. Blakely stated that when a Rulings Officer is dealing with a situation where the employer is no longer available, he or she has to search for pay records, remittances, bank deposits and statements from co-workers in an effort to corroborate the position advanced by the claimant. To that end, he agreed a Rulings Officer might contact an ICO concerning some points, perhaps in relation to missing documentation or to clarify some aspect of the submission for ruling. Once a ruling had been issued, a Rulings Officer might speak with an ICO in order to explain the rationale for the decision. Blakely identified the document in Exhibit R-29, tab 86, as the typical form one would receive from HRDC when a ruling was requested on the insurability of the subject employment situation. He was referred to the material at the next tab and stated it was not abnormal for that sort of submission to be submitted to the Rulings Officer or for the ICO to include a recommendation that the Rulings Officer arrive at a desired conclusion. Blakely stated that when discharging his function as a Rulings Officer, he is not swayed or disturbed by any such recommendation or request from the submitting official at HRDC.

[154] Counsel for the respondent did not re-examine.

[155] Counsel for the respondent called Janice Morrow to the stand. Morrow testified she has been employed by HRDC since 1984 and held the position of ICO at the Surrey office since 1995 but is currently on leave. Earlier in her career at HRDC, she was an Insurance Officer and in that position exercised an adjudication function in addition to fact-finding duties. In the normal course, she was assigned some files involving SRC workers but continued to handle her regular caseload. In the course of her employment at HRDC, she worked on files involving farm workers. She does not speak Punjabi. Morrow recalled receiving a template of questions that could be used when interviewing a claimant but was aware that she was free to pursue her own lines of inquiry. She stated the SRC workers she interviewed usually brought a friend or relative to act as interpreter. Otherwise, a Punjabi-speaking member of the HRDC office fulfilled that role. In the event the interviewee signed a Statutory Declaration, he or she received a copy since the form used for that purpose was capable of producing two copies.

[156] Morrow was referred to Exhibit R-14, tab 95, pertaining to the appellant, Jaswinder Kaur Cheema whom she interviewed on August 19, 1997. Morrow stated she made handwritten notes and then created a typewritten version – tab 96 – immediately after the interview ended. A woman identified herself as Gurbax Kaur had stated she was a distant relative of Cheema and was prepared to serve as interpreter. Following the interview, Cheema signed a Statutory Declaration - tab 92 – and was provided with a copy. Morrow referred to her notes – tab 97 – in which

she recorded details of the visit by Gurbax Kaur to the HRDC office on August 25, 1997 during which she provided Cheema's T4 slip and bank book from Canada Trust so they could be photocopied – tab 94 - and returned.

[157] Morrow was referred to Exhibit R-18, pertaining to the appellant, Ravjit Singh Gill whom she interviewed on August 27, 1997, when Gill attended at the HRDC Surrey office with Satnam Aujla whom he identified as his cousin. Morrow stated the typewritten notes – tab 95 – were prepared soon after the interview was finished. She recalled Gill spoke English quite well and there was no indication he was suffering from any illness or hangover from a previous night of drinking. At p. 1 of her interview notes, Morrow stated she recorded Gill's answers to her question as to how he went to work and noted he told her that he "drove his car to work all the time. I could have received a ride on one of the vans but I would have had to get up earlier". According to Morrow's notes – at the top of p. 2 - Gill repeated his assertion that he never rode in the van, although he was aware SRC had two or three vans, including one grey and one red. On the same page, Morrow noted Gill – again – stated he never took anyone in the car with him and that he was "in my own car by myself". He told Morrow he was paid \$7 per hour and could not remember the names of any co-workers. During that interview, Gill told Morrow he was always paid by cheque and had received "maybe 3 or 5 cheques each in amount of \$1,500 or \$2,000". Morrow was referred to tab 91 and the cheque - dated September 22, 1996 – in the sum of \$3,000 which was deposited to Ravjit Gill's account at Canada Trust on September 27, 1996 and to two other cheques at tab 92 and tab 93, respectively, one dated September 27, 1996 – in the sum of \$2,000 - which was deposited to the same account on October 3, 1996 and the other - in the sum of \$1,900 - which was deposited to said account on October 24, 1999, for a total amount of \$6,900 paid to Gill by cheque. Morrow stated she had seen those cheques together with Gill's earnings statement – tab 94 – indicating he had net earnings in the sum of \$6,376. Morrow noted – at the last page of her notes, tab 95 – that she asked Gill if he ever paid any money back to Rana and Gill replied "No, I never paid any money back to him".

[158] Morrow was referred to Exhibit R-35, pertaining to the appellant Amarjit Kaur Grewal whom she interviewed on August 26, 1997 at the HRDC office in Surrey. Grewal was accompanied by her daughter – Sukhwinder Barn - who acted as interpreter. Morrow took notes and prepared a typewritten version - tab 91 – in which she recorded the questions asked by her and answers given by Grewal through the interpreter. During the interview, Grewal told Morrow she had earned a total of \$7,000 from her employment with SRC and received a total of \$3,000 in cash and a cheque in the sum of \$4,000 at the end of the season. Grewal produced her

bankbook, and a photocopy – tab 97 – was made of entries during the relevant period. Morrow noted – at the 4th page of tab 91 – that Grewal was adamant she had been paid \$7,000 and had not paid back any of that money to anyone at SRC. Following the termination of the interview, Grewal signed a Statutory Declaration – tab 92 – prepared by her daughter – in English - in which she repeated her assertion that she was paid \$7,000 for her work.

[159] Morrow was referred to Exhibit R-23, pertaining to the appellant, Varinder Kaur Kang whom she interviewed on May 26, 1997. Morrow's handwritten notes are at tab 95 and tab 96 of said exhibit. Morrow noted Kang's response that she spoke English, Punjabi and Hindi and agreed there was no indication a Punjabi interpreter was present during the interview. Morrow stated she was satisfied she had accurately recorded the answers given by Kang to the questions contained in the template provided by Fontaine to be used by all ICOs during the first round of interviews held at various offices on May 26, 1997. Kang's response - to Qs. 9 and 10 - concerning the method of transportation to get to work was that she always rode to work in a van that was always driven by Master (Bhan Singh Sidhu). In responding to Q.7 concerning the nature of her work, Kang referred to working with "strawberries, raspberries, blueberries but mostly vegetables – berries just in beginning of work". With respect to child care for her baby born August 30, 1996, Morrow noted Kang's explanation that her mother – Harbans Kaur Kang – helped for one week in September and that her husband's sister and brother – aged 16 and 18, respectively - also helped after returning home from school and her husband – who worked a shift ending at 4:00 a.m. – also cared for the child during the day. Kang told Morrow she was paid by the hour and attributed that factor to having been kept on the payroll longer than others who worked on a piecework basis. Kang mentioned working with berries from time to time between October and December but stated that kind of work was done only inside a building. In the course of answering Qs. 17 and 18, Kang explained that she was paid only by cheque - every month rather than semi-monthly - and that she was paid by a personal cheque and did not receive a pay stub. Morrow asked Kang - at Q.29 - about which bank account to which her cheques were deposited and noted her answer that she had a savings account at Canada Trust and a joint account with her husband at a branch of the Bank of Montreal which was used once or twice to deposit her pay cheques. Morrow stated that during the interview with Kang she showed her the receipt – tab 89 – in the sum of \$2,000 upon which the signature "V.K. Kang" appeared on the bottom line and asked her – at Q. 25 of tab 96 – why she had issued that receipt. The answer recorded by Morrow was that Kang admitted that was her signature on said receipt and that her in-laws had borrowed money from the contractor (SRC) in advance to go to India and the arrangement had been made that Kang would work for SRC and the amount of the

loan would be deducted from her wages. However, as Kang went on to explain to Morrow, she received her wages in full but \$2,000 of her in-laws' loan from SRC was outstanding and she paid it on their behalf because they were in India at that time. Upon being informed by counsel that Varinder Kaur Kang testified she had returned to the HRDC office the following day, Morrow stated any such attendance would have been noted in the normal course of business by an employee of HRDC. Morrow stated she interviewed Kang again on September 10, 1997 and prepared a typewritten version – tab 97 – from notes handwritten during the course of the interview. A friend, Harinder Singh, acted as interpreter even though Kang was able to speak and understand some English. During this interview, Kang mentioned she received some cash advances in addition to the cheques mentioned during the earlier interview. However, Kang denied that she had provided the explanation recorded by Morrow concerning the receipt in the sum of \$2,000 and the details about paying the money on behalf of her in-laws who were in India. Instead, Kang told Morrow that on May 26, 1997, when the interpreter asked her about the receipt, she had replied that she would check with her in-laws and husband to determine if any money was given to the employer and if so, for what reason, and then return to the HRDC office and inform an official about the results of her inquiry. Kang told Morrow that she returned to the office two or three days later and spoke to an East Indian woman working at the counter but was told the HRDC office would be in touch with her later and she was advised to either write a letter or phone in that information. In her notes, Morrow expressed disbelief at this version offered by Kang.

[160] Morrow was referred to Exhibit R-31, pertaining to the appellant Sukhwinder Kaur Toot, whom she interviewed - August 27, 1997, at the HRDC Surrey office – in the presence of her son, Satnam Toot, who acted as interpreter. Morrow noted that Satnam Toot advised her he was able to read, write and speak English and that his mother spoke only Punjabi and had never attended school. Morrow stated that in the event any difficulty had arisen in communicating with Satnam Toot, she would have obtained the assistance of a Punjabi-speaking HRDC employee in the Surrey office. During the interview, Sukhwinder Kaur Toot identified the cheque – tab 90 – in the sum of \$5,000 that was cashed at the TD bank on October 23, 1996.

[161] Morrow stated she went on leave from her employment beginning September, 1997 and her absence is ongoing in accordance with a particular program available to HRDC employees occupied with raising children.

[162] The witness – Janice Morrow – was cross-examined by Darshen Narang. She stated that after leaving university in 1984, she began working for HRDC in a clerical position but later became an Insurance Agent and then an Insurance Officer prior to

assuming the role of ICO. She received on-the-job training for that position and received advice from a mentor within the Surrey office. In addition, she participated in any formal training offered from time to time to ICOs in the Lower Mainland. She estimated she had dealt with 40 files of farm workers during her career and agreed many of them involved the issue whether the work was done, as alleged, or at all. She stated she was assigned files of certain SRC workers in accordance with standard office practice of using the last digit of the SIN number of a claimant. Within her Surrey office, Gail Buckland and Ted Bowerman also had files involving persons who claimed to have worked for SRC during 1996. Morrow stated her first interview was with Varinder Kaur Kang and prior to commencing same, had been aware there were concerns about the validity of Kang's employment. The template of questions she used during that interview had been received – probably by fax – from Fontaine and the same general format was used to question other SRC workers. She was provided with certain cancelled cheques and the receipt – Exhibit R-23, tab 89 – in the course of her involvement with the SRC matter. She stated she thought the receipt and the pay statement – tab 90 – had been faxed to her about May 7 or May 8 because those documents and Kang's application for UI benefits and her ROE were available prior to the interview. Morrow agreed the "Fontaine template" had not been used when interviewing Ravjit Gill - Exhibit R-18, tab 95 – and added that each claimant's situation is different and specific questions must be asked to fit the circumstances. However, even under those circumstances, the standard form prepared by Fontaine was still available as reference material. When interviewing Ravjit Gill, Morrow agreed she could have inquired about his first day of work, the location thereof, and the type of work performed and about his last day of employment. However, she did not do so and did not inquire about his duties on a month-by-month basis. She recalled Gill was a younger person than other workers and spoke adequate English when responding to her questions.

[163] With respect to her interview with Sukhwinder Kaur Toot, Exhibit R-31, tab 93 – she stated the Statutory Declaration – tab 99 – was written by Satnam Toot who explained it – in Punjabi – to his mother before she signed it. Morrow stated she did not recall any discussion with Satnam Toot concerning whether an event occurred during the 9th month or 10th month in 1996 and would not have forced Sukhwinder Kaur Toot to choose a date if it was not the truth. Morrow did not recall that there was any confusion arising over months of the English calendar. Morrow stated that mere negotiation by a purported employee of a cheque issued by a purported employer is not necessarily sufficient to establish insurable employment and ICOs often want to rely on other documents – sufficient to create a paper trail - to corroborate the work was performed within a genuine employment relationship.

[164] Counsel for the respondent did not re-examine.

[165] Counsel for the respondent called Ted Bowerman to the stand. Bowerman stated he is currently employed – as an ICO – by HRDC, where he began working in October, 1993. In December, 1996 he worked in the Surrey office and became aware there was an investigation being undertaken by the Burnaby HRDC office as it related to the employment of farm workers by a labour contractor. Bowerman stated he was assigned SRC worker files in addition to his regular workload. Earlier in his career, he had dealt with files concerning farm workers but had not participated in an investigation as large in scope as the one involving SRC. He does not speak Punjabi. Bowerman attended the December 2, 1996 meeting of ICOs and others and assisted in the preparation of certain questions to be put to claimants during interviews. When claimants were interviewed – later – in the Surrey office, he attempted to use the services of an in-house Punjabi interpreter rather than rely on a friend or relative of the interviewee and – on some occasions – was able to obtain the services of a certified interpreter. Prior to interviewing a claimant, he had access to various relevant documents relating to the employment with SRC. After completing all the interviews, Bowerman submitted a request to CCRA for a ruling on insurability of employment with respect to each of the files that had been assigned to him.

[166] Bowerman was referred to Exhibit R-13, pertaining to the appellant Gurmail Singh Cheema whom he interviewed on December 16, 1997. His typed notes – tab 87 – were prepared from a handwritten version taken during the interview at which Gurbax Kaur Randhawa – a relative of Cheema – interpreted on Cheema's behalf. Bowerman noted Cheema told him that Rana had helped to complete his application for UI benefits. Bowerman stated his practice was to separate the application from the ROE when presenting one or the other to a claimant for questioning. He stated his notes of the interview were accurate and that he recorded – correctly - Cheema's answers to the questions, including the one - near the bottom of p. 1 – as to how Cheema met Harbhajan Singh Kang. Bowerman noted Cheema responded “When I came home from India on April 14, 1996, I went to my son's home, basement. Mr. Kang was there”. Cheema later conceded his ROE – tab 88 - was incorrect because he did not start work until the next day, April 15, 1996. Bowerman noted Cheema said he was paid by cheque.

[167] Bowerman was referred to Exhibit R-14, pertaining to the appellant Jaswinder Kaur Cheema whom he interviewed on March 12, 1998. Bowerman stated he took notes during the interview – tab 99 – and the questions and answers were interpreted by Mohinder Herar, a certified interpreter who successfully completed the Court

Interpreting Certificate Program – English/Punjabi - in June, 1996 and had received a Certificate from Langara College (Exhibit R-53). Bowerman stated he was satisfied his notes of the interview were accurate.

[168] Bowerman was referred to Exhibit R-16, pertaining to the appellant Gurbachan Singh Gill whom he interviewed on January 30, 1998 while utilizing the services of the interpreter, Mohinder Singh Herar. Bowerman typed notes - tab 87 – of the interview and recorded Gill's answers that he had met Rana in Vancouver where Rana showed him a light-brown van capable of carrying 20 passengers. Gill told Bowerman that when driving for SRC, he followed other SRC vans, red and grey. In his notes, Bowerman recorded Gill's answers that he rode in a van - driven by Master – to an alley behind 49th and Main in Vancouver, where he would find his van – with a full gas tank – and a bunch of passengers waiting to be driven to work but was not able to recall their names. Counsel advised Bowerman that when Gill testified in Court, he said Bowerman threatened him – at the end of his interview – by telling him he could lose his security guard licence as well as other rights and privileges. Bowerman replied he advised Gill the investigation would continue and if it turned out criminal charges were laid, then any person subsequently convicted of offences such as fraud would be subject to deportation and – in Gill's case – he would lose the right to hold said security guard licence.

[169] Bowerman was referred to Exhibit R-22, pertaining to the appellant Harbans Kaur Kang whom he interviewed on June 18 and June 20, 1997 in the presence of Kal Brown - HRDC employee – who acted as Punjabi interpreter. Bowerman typed up notes – tab 88 – of the interview and recorded Kang's answer that her daughter-in-law – Berinder – completed the UI application on her behalf. Kang maintained she had not been paid for her work even when Bowerman presented her with proof that two SRC cheques payable to her in the sums of \$879 and \$6,000, respectively, had been deposited at the Canada Trust branch at Scott and 72nd Street in Delta, B.C. where she and her husband had a joint account. Bowerman noted Kang's comment that she had never seen those cheques before. However, Kang returned to the HRDC office on June 20, 1997 and Bowerman stated he recorded in his typed notes – tab 89 – that Kang advised she had talked to her husband about her pay from SRC and discovered he had deposited two cheques – payable to her – into their joint account. She stated she still thought she should have been paid more for her work. Bowerman stated he confronted Kang about the complete reversal of what she had told him two days earlier but Kang did not reply. When Bowerman inquired about the loan from their son to take a trip to India, Kang affirmed there had been a loan but did not offer any details.

[170] Bowerman was referred to Exhibit R-37, pertaining to the appellant Jatinder Kaur Lidhran, whom he interviewed on July 8, 1997 and prepared typed notes - tab 95 – and on March 12, 1998 – tab 93 – when he took handwritten notes. Both interviews were conducted without an interpreter since Lidhran spoke good English. The ROE – Exhibit R-49 – was issued by Lidhran Farms in the name of Jatinder Sidhu - Lidhran’s former married name – in respect of her employment between April 1 and August 17, 1996. During the interview – tab 95 – Lidhran mentioned working only at one vegetable farm in Richmond. Bowerman stated that Lidhran also mentioned only working on one farm when writing out her Statutory Declaration – tab 96 – which she signed on July 8, 1997.

[171] Bowerman was referred to Exhibit R-28, pertaining to the appellant Parmjit Kaur Rehal whom he interviewed on July 10, 1997, in the company of her husband - Jaspal Singh Rehal – who acted as interpreter. Bowerman took handwritten notes – tab 101 – of the questions asked and the answers provided by Parmjit Kaur Rehal through her husband. At p. 5 of his notes, Bowerman recorded her response that she had not taken any days off during her employment with SRC. With respect to payment of wages, Bowerman wrote down her explanation that she received money from Rana about 4 times including the sum of \$500 – and “a thousand a couple of times and cheques also”. Continuing with her answer, Parmjit Kaur Rehal referred to 3 cheques in the sums of \$1,000, \$2,000 and \$1,200, respectively, to the best of her recollection.

[172] Bowerman interviewed Harbhajan Singh Kang - husband of the appellant, Harbans Kaur Kang – 4 times, beginning on May 26, 1997. An HRDC employee - Tejinder Bhandall – acted as interpreter. Bowerman used the “Fontaine template” prepared on the Supplementary Record of Claim form – Exhibit R-5, tab 166 – to ask questions and record Kang’s answers, including the explanation - at Q. 18 – that he received his first payment of \$2,500 – from Shindo - after working two months and was paid another \$2,000 after another two months. In answering Q. 26, Kang stated his pay was \$1,700 per month despite the fact his ROE showed a gross salary of \$2,688 per month. At tab 167, p. 3, Bowerman noted Kang said he received a final cheque of \$2,500 in October. Bowerman stated he pointed out to Kang there were 3 different versions of his pay being offered up and that he had stated – earlier – he received only two cheques. In answering Q. 17 at tab 166, Kang stated he used to deposit his pay cheques into the account at Canada Trust and added he could not remember the bank used by SRC to issue cheques. He also stated his wife started working in June. On May 29, 1997, Bowerman interviewed Harbhajan Singh Kang and took notes – tab 170 – of the questions and answers that were interpreted by Tejinder Bhandall. At that interview, Kang produced the bank book for the Canada

Trust account – tab 182 – and referred to entries he had underlined. Bowerman noted Kang stated he had collected his wife’s pay for the work she had done from June to October. Bowerman interviewed Kang again on June 20, 1997, and prepared typed notes – tab 171 – of the session at which Kal Brown acted as Punjabi interpreter. Bowerman noted Kang advised he wished to speak with Bowerman as a result of certain matters raised during Bowerman’s interview with his wife - Harbans Kaur Kang - on June 18, 1997. Kang advised Bowerman that he had withdrawn the sum of \$5,700 from the Canada Trust account in order to buy rupees for their trip to India and that the further sum of \$3,000 had been withdrawn on October 9, 1996 to buy airplane tickets. He explained that other withdrawals of \$1,000 and \$3,000 on October 18 and October 24, 1996, respectively, were for the purpose of buying clothes and paying household expenses. Bowerman stated he told Kang he believed Kang had paid money back to his employer for the purchase of ROEs for himself and his wife but Kang denied this and stated he was telling the truth and had not given any money back to the employer. Bowerman stated that during this particular interview he pointed out to Kang that when asked – during the second interview – about the source of the deposit of \$8,199 to the Canada Trust account on October 17, 1996, he had explained it was a loan from his son so he could take a trip to India and that Kang now wanted Bowerman to accept the version that this deposit was composed of a \$6,000 cheque payable to Harbans Kaur Kang and another sum of \$2,199 which he could not identify. Bowerman asked Kang why he “lied” about his matter but received no reply. Bowerman interviewed Kang - for the last time – on January 28, 1998 and prepared typed notes – tab 172 – of the interview which was attended by Mohinder S. Herar who acted as interpreter. Again, Kang stated he started working “about 2 or 3 weeks into June”. He did not mention returning any sum to the employer whether due to an alleged overpayment of wages – in the sum of \$800 - to his wife wages or otherwise. During this interview, Kang stated he drove the red van and in the course of proving answers – at p. 3 – referred to only one training day where he was taken out to Chiliwack by Harjit Gill. At p. 5, Bowerman advised Kang information was obtained by HRDC that Kang was present at Rana’s house in Vancouver when people gave money back to Rana and then received their ROEs. Bowerman noted Kang’s reply “I cannot remember”, and when Bowerman stated others had already said Kang was present, Kang stated “I took people to the bank and back to the house, I didn’t see anything”. Bowerman stated he was confident in the accuracy of all the notes he took during the interviews with Harbhajan Singh Kang.

[173] Bowerman stated he prepared a schedule – Exhibit R-50 – with respect to the number of weeks of employment each named appellant required to qualify for UI benefits together with a calculation therein of the amount of overpayment of

benefits as defined by HRDC and the administrative penalties imposed. Bowerman explained that individuals who have been in the workforce longer require less weeks than new entrants due to certain factors relating to circumstances defined as “workforce attachment”. Bowerman summarized the information with respect to the following appellants:

- Jaswinder Kaur Cheema was a new entrant in the labour force and required 26 weeks of employment in order to qualify for UI benefits. The Minister decided Cheema had worked only 17 weeks and HRDC decided the overpayment of benefits amounted to \$4,623 and imposed an administrative penalty of \$1,608.

- Varinder Kaur Kang was a repeat claimant and required 16 weeks in order to qualify. She filed two other ROEs with her application for UI benefits, including 11 weeks of employment at Brachman’s Chocolate and 3 weeks for DBK. The Minister decided Kang had not been employed by SRC and an HRDC adjudicator subsequently decided Kang had been overpaid \$3,548 in benefits and – therefore - imposed a penalty in the sum of \$1,378.

- Parmjit Kaur Rehal applied for special benefits and required 20 weeks employment in order to qualify. Her only employment was with SRC and the Minister decided she had worked only 18 weeks. The HRDC adjudicator decided Rehal had been overpaid the sum of \$5,400 and imposed a penalty of \$2,163.

- Jatinder Kaur Lidhran was a new entrant in the labour force and required 26 weeks of employment to obtain UI benefits. Apart from her alleged employment with SRC, Lidhran had worked 20 weeks for Lidhran Farms. The Minister decided Lidhran was not employed under a contract of service with SRC and - as a result – had received benefits in the sum of \$6,240 to which she was not entitled. A penalty of \$1,976 was imposed.

- Harbans Kaur Kang required only 18 weeks of work in order to qualify for UI benefits. She had no other employment other than SRC. The Minister decided Kang had worked only 17 weeks and was overpaid benefits in the sum of \$3,281 which led to the imposition of a penalty – by HRDC – of \$1,062.

- Gurbachan Singh Gill needed only 16 weeks of employment in order to receive UI benefits because he had participated – earlier – in the labour force. He did not file any other ROEs in support of his application. The Minister decided Gill had not been employed in insurable employment with SRC. Subsequently, HRDC determined Gill was overpaid by \$5,520 and imposed a penalty of \$3,456.

- Gurmail Singh Cheema – a new entrant in the labour force – needed 26 weeks of employment to qualify for UI benefits. The Minister decided he had 18 weeks - for SRC – as stated in his application but reduced his insurable earnings which affected the weekly payment of benefits. As a result, HRDC calculated an overpayment in the sum of \$4,554 and a penalty of \$1,414 was imposed.

- Amarjit Kaur Grewal needed 17 weeks work to qualify for benefits. She worked 18 weeks for SRC and the Minister confirmed that period of employment but reduced the amount of insurable earnings which affected the weekly benefit paid to her. The amount of overpayment - calculated by HRDC - was \$1,159 and a penalty of \$589 was levied.

[174] Bowerman stated that Harbhajan Singh Kang, although not an appellant in the within appeals, received a decision from the Minister increasing his weeks of employment from 8 – as stated in the original ROE issued by SRC – to 18. However, Kang's insurable earnings were reduced and an overpayment of \$684 was calculated by HRDC but no penalty was imposed.

[175] Bowerman stated that he thought seasonal workers would be more aware of the number of weeks needed to qualify for UI benefits than people involved in traditional employment and added that economic factors in a defined region can affect the qualifying period for new entrants.

[176] The witness – Ted Bowerman – was cross-examined by Darshen Narang. Bowerman recited his earlier employment, including three years with Immigration Canada between 1990 and 1993. From 1987 to 1990, he worked for the Canadian Grain Commission on the Vancouver waterfront. Before that, he was a Vancouver policeman for 13 years. Before becoming a police constable he had worked for BC Hydro – as a trucker – and was a Military Policeman in the Royal Canadian Air Force for 6 years. During his service as a Vancouver police constable, Bowerman stated he was on general patrol for two years, motorcycle patrol for another 2 years and then assigned to the serious accident investigation squad. In the course of his duties with that specialized unit, he was required to take copious notes and retained his numerous notebooks for as long as 6 or 7 years. It was common practice to type

up notes by using the notebooks as a source. During his work with Immigration, he attempted to locate persons – primarily refugee claimants – who disappeared from official tracking. He conducted interviews and took notes but his main function was to find people, arrest them and bring them back before the relevant tribunal for a hearing. Bowerman stated he typed up his notes – usually – the same day and if the handwritten notes had a link to a potential prosecution, greater care was taken to make them more legible for others who might read them subsequently. He advised Narang there had been no particular reason why some of his notes of interviews with some appellants in the within appeals were typed and others were not. Bowerman stated he had attended farms earlier in the course of his career as an ICO in order to interview employers and obtain certain records and had investigated employment situations pertaining to farm labourers in which he had to search for documents in order to verify the number of hours worked and the wages paid to a worker. In his experience, he discovered some employers were difficult to locate in order to obtain documents needed to establish the entitlement to UI benefits by a worker. Bowerman stated that – as an ICO – he wants to know where the work was done, what duties were performed, and also how, when and how much the worker was paid together with proof of payment. Some workers produce calendars - with hours and days of work noted thereon – and some bring in banking records to verify payment of wages by the employer. Bowerman stated that the usual course of action is to obtain proof of payment from the employer and to ascertain the reason – if any – for any discrepancies between that amount and the one claimed by a worker. Bowerman stated that within his HRDC Surrey office, the workload of some fellow ICOs prevented them from being assigned any SRC files. Prior to interviewing a claimant, Bowerman used a Polaroid camera to take a photograph and at the outset, the interviewee was presented with his or her ROE and application for UI benefits. The letter sent earlier concerning the scheduled interview at the HRDC office advised the claimant to bring in a calendar or other record of hours worked, if available. Bowerman recalled that Gurbachan Singh Gill was warned at the commencement of his interview about the potential penalties for knowingly providing false information and agreed he had repeated this admonition at the conclusion of the interview as “food for thought”. Bowerman recalled issuing a similar warning at the outset of his interview with Gurmail Singh Cheema. Bowerman stated that if he interviewed an SRC worker and in the course of obtaining answers received an admission that the work had not been done - either as alleged or at all – he would not – ordinarily – send that file to CCRA for a ruling on insurability. Bowerman stated that due to the scope of the SRC investigation, he was aware Fontaine had scheduled an interview with Rana and that other ICOs intended to submit questions to Fontaine to be posed on their behalf. He stated that following the request for rulings – from CCRA – on September 9, 1998, he played no further role in the SRC matter. During the course of

his involvement, Bowerman met with Richard Blakely whom he knew was a Rulings Officer employed by CCRA. Bowerman stated he considered Blakely to be a resource person fulfilling the function of advising 20 or 25 HRDC employees of the requirements to support a request for ruling on insurability with respect to a worker. Bowerman stated he was aware that ICOs from various local offices were submitting requests for rulings within the same approximate time frame. He could not recollect – specifically - any contact with the Rulings Officer unless there was some communication requiring clarification of material submitted or a request for a document. Bowerman stated he had no need to contact Bernie Keays – Appeals Officer – and – instead – followed through on what he considered constituted his own mandate, namely, to obtain facts from the claimant – and others – in order to determine the truth about the employment at issue. Bowerman agreed with Narang’s suggestion that even though most farm workers are paid their final wages - by cheque - at the end of the season, there may be other smaller payments during the season and conceded that most ROEs for farm labourers are inaccurate when they purport to show payments of wages every two weeks on a regular basis because any wage payments during the season are generally sporadic. With respect to the appellant, Parmjit Kaur Rehal, Bowerman was referred to Rehal’s ROE - Exhibit R-28 tab 89 - and to the space at Box 8 where the type of pay period can be inserted. The form indicated payments of wages were bi-weekly and details were provided in the space at Box 15. Bowerman stated he would expect those wage payments to have been made as stated in the ROE. Since the payment for the last pay period must be listed first, Bowerman agreed the payment of \$343 listed on the ROE should have been made. He pointed out that whether or not wages were paid every two weeks as stated in her ROE – or any ROE – this does not affect UI benefits since the amount is based on insurable earnings once the qualifying threshold of weeks of employment has been attained. The ROE issued to Rehal indicated her insurable earnings were in the sum of \$7,945. Bowerman stated this sum should correspond with the number recorded in a payroll ledger or other record. He agreed the amounts shown on Rehal’s ROE did not match those listed in her Employee Earnings Record – tab 98 – which did not include any total. He pointed out it is not the function of an ICO to calculate claims and stated that insurable earnings are gross earnings – as defined by the relevant regulations – up to a certain level. Bowerman was referred to his notes - Exhibit R-28, tab 101 - of his interview with Parmjit Kaur Rehal on July 10, 1997 where he discussed the discrepancy in earnings. Rehal produced copies of cheques – totalling \$6,200 – that were deposited to her account but her ROE showed insurable earnings in the sum of \$7,945 whereas an SRC payroll document indicated her gross earnings were \$9,177. When submitting his request for a ruling – tab 88 – Bowerman summarized the discrepancies and stated that Rana failed to provide further documentation or offer explanations to clarify the differences. Bowerman also stated

his opinion that Rehal's bank account statements indicated there were withdrawals 24 hours after depositing a cheque which led him to believe money had been returned to the employer. Near the end of the interview with Rehal, Bowerman noted her response to his question whether she had paid money back to Rana. She said "No. I work hard". Bowerman stated that he sent Fontaine a copy of his notes – Exhibit R-5, tab 167 – pertaining to the interview with Harbhajan Singh Kang. At p. 4, Bowerman recorded Kang's explanation that Rana inquired about how many weeks Kang had worked at a previous employment and then inserted only enough weeks working at SRC so Kang would qualify for UI benefits by combining both employments in a subsequent UI application. Bowerman stated when he began interviewing claimants he used the Fontaine template but discovered it did not provide enough space to record longer and full answers. Bowerman stated he has not had any dealings with the unit – MFU - within HRDC that investigates suspected fraudulent transactions and/or employment schemes.

[177] Counsel for the respondent did not re-examine.

[178] The witness – Gail Buckland – was called to the stand by Johanna Russell, counsel for the respondent. Buckland stated she is employed - as an ICO – by HRDC and works out of the Surrey office. She started working for HRDC in 1985 and after performing clerical duties for 3 years, moved on to assess claims for 6 months. Later, she was an Insurance Agent for 2 years and a Supervisor of Inquiry Clerks for 2 years. In 1993, she began working as an ICO in Surrey. She does not speak Punjabi. Buckland stated she had dealt with files pertaining to farm workers but not on the same large scale as those involved in the SRC investigation. She was assigned SRC files in the context of her normal caseload and divided up that work among other ICOs in her office who were willing to participate. Michel Fontaine had provided Buckland's supervisor with copies of relevant documents pertaining to the claims being investigated by the Surrey office. She also received photographs of Bant, Shindo and Rana as well as a template of questions that could be asked during an interview. Buckland stated she followed the format of the template during the initial interview with a worker but posed her own questions during any follow-up sessions with the same person. She contacted Fontaine from time to time as the investigation continued. She stated every attempt was made to use court-certified Punjabi interpreters in the beginning but later relied on the services of Punjabi-speaking HRDC employees or permitted claimants to bring a friend or relative to act as interpreter. Buckland was referred to Exhibit R-11, pertaining to Jaswinder Kaur Bassi, and – specifically – to tab 107, which she identified as a Request to Provide Information – dated February 14, 1998 - that she issued to a named official employed by the British Columbia Medical Services Plan in Victoria. The purpose of

that document was to obtain information concerning medical visits by Bassi during the period from January 1, 1995 to the date of the most current data recorded in 1998. A print-out – tab 196 – was provided in response to the request.

[179] Buckland was referred to Exhibit R-18, pertaining to the appellant Ravjit Gill. Buckland took notes – tab 101 – of her interview with Gill and recalled Satnam Aujla attended with Gill. Buckland noted – near the bottom of p. 5 – that Gill said he drove himself to work in a Hyundai Excel during 1996 but “sometimes my sister give me a ride & sometimes I borrow a car.” At pp. 7-8 when asked why his father – Gurbachan Singh Gill – apparently rode to work in a van but he did not, Ravjit Gill’s answer – noted by Buckland – was “he doesn’t like me sometime”. At p. 8, Buckland wrote down Gill’s statement that payments on the Hyundai Excel were made by “my sister”. She stated that she showed Ravjit Gill photographs of Harjit Gill, Bhan Singh Sidhu (Master) and Balwinder (Binder) Chahal – all of whom worked as drivers for SRC – but he was not able to identify any of them. Gill also was not able to identify Shindo from a photograph shown to him and advised Buckland he did not know that person and doubted he had ever seen her. From a photograph, Gill recognized Bant as someone he had seen with Rana but did not know what work Bant did for SRC. At p. 6 of her notes, Buckland recorded Gill’s response concerning the nature of work performed; Gill stated he did not pick berries and only worked with vegetables “mostly on the Chinese farm”. Buckland stated she had read the notes of Janice Morrow - fellow ICO – concerning an earlier interview with Gill where Gill stated he had no need to keep his own record of hours worked. After Gill told her he kept – at home – a record of hours worked, she pointed this out to Gill who denied he had given that answer because Morrow had not asked that question. Concerning his pay and the amount of net earnings - \$6,376 - shown on his pay statement – tab 94 – Buckland stated she pointed out the discrepancy between that amount and the amount - \$6,900 - he had allegedly received in the form of three cheques at tabs 91, 92 and 93 of Exhibit R-18. Buckland stated she advised Gill it appeared as though Rana had overpaid wages to him and the excess was in the sum of \$524. She noted Gill’s response that he had not paid any money back and his comment “maybe, it was a mistake, it was the accountant’s mistake or his mistake”. Buckland stated she asked Gill if he would have returned the extra money to which Gill replied “maybe, if he gave me proof”. Buckland stated there was no other explanation offered by Gill about any further contact with Rana on this matter or about any circumstance concerning the repayment of any sum to Rana.

[180] Buckland was referred to Exhibit R-20, pertaining to the appellant, Gurcharan Kaur Johal whom she interviewed on December 18, 1997. Johal’s son - Jagdip Singh Johal – acted as interpreter. Buckland prepared typewritten notes - tab 95 – of the

interview. In responding to Qs. 26 – 33, inclusive, Johal stated she rode to work in a red van, driven mostly by “Khang” (Harbhajan Singh Kang), never rode in a grey van but then stated she rode “mostly” with the same person every day but if not with that person, still did not ride with any other driver. At Q. 39, Johal told Buckland she rode home with Kang in the red van. Buckland stated Johal did not mention being driven to work by all 4 drivers employed by SRC. At Q. 41, Johal recognized photographs of Kang and Binder Chahal whom she stated was “another driver but not mine”. She also recognized Master and stated he drove a van and although she had seen him “a couple of times” did not know his full name was Bhan Singh Sidhu. At Q. 18, Buckland noted Johal had not been able to identify Rana from the photograph shown to her. She stated her husband knew Rana and that – in response to Q. 19 – the owners of SRC were Bant and Shindo. With respect to the nature of the work performed – Q. 23 – Buckland stated she recorded – accurately – the detailed explanation provided by Johal through her son acting as interpreter. When asked – Q. 53 – how often she was paid, Buckland stated Johal replied that she received “only the one cheque when I was finished and some cash before when I asked for it, about a total of \$1,200 of \$1,500”. Johal stated the person paying her the money did not ask for a receipt but recorded the transaction in a small diary. Buckland conceded she made an error in the course of preparing her submission for a ruling – tab 88 – when she commented – near bottom of p. 2 - that “the claimant could recognize no one from the pictures shown to her”.

[181] Buckland interviewed the appellant - Sukhwinder Kaur Toot - on 11/03 1998 and took handwritten notes – Exhibit R-31, tab 101 – of their conversation. The appellant’s son – Satnam Toot – interpreted on her behalf. Buckland stated although the certified interpreter – Mohinder S. Herar – was not scheduled to act as interpreter during the Toot interview, she requested that he attend and he was present throughout the interview. Buckland stated she could not recall Satnam Toot complaining to her or Herar about the quality - from time to time - of the interpretation provided by Herar. Buckland stated she wanted answers from Sukhwinder Kaur Toot directly – albeit interpreted by her son – and did not pose questions directly to Satnam Toot about his mother’s employment nor did she threaten him in any way. She had other contact with Satnam Toot when he attended the HRDC interview with his father - Swarn Singh Toot – and subsequently with respect to a request for receipts of purchases allegedly made the same day as SRC pay cheques were cashed.

[182] Buckland stated she prepared the following information including the number of weeks of employment required by several appellants in order to qualify for

UI benefits together with calculations concerning the amount of overpayment of benefits - as determined by HRDC - and the administrative penalties imposed:

- Jaswinder Singh Bassi needed 16 weeks of employment to qualify for UI benefits and HRDC determined the amount of his overpayment was \$4,488 and imposed a penalty in the sum of \$1,590.

- Sukhwinder Kaur Toot required 26 weeks of employment in order to obtain UI benefits; the amount of her overpayment was \$4,393 and a penalty in the sum of \$1,528 was imposed.

- Ravjit Singh Gill needed 17 weeks of employment and HRDC considered he had been overpaid UI benefits in the sum of \$4,066. As a result, a penalty of \$2,247 was imposed.

- Gurcharan Kaur Johal needed 17 weeks of employment to qualify for UI benefits; HRDC decided she had been overpaid the sum of \$240 and imposed a penalty of \$158.

[183] The witness – Gail Buckland – was cross-examined by Darshen Narang. Buckland stated she received 4 weeks of training at the HRDC Regional Office in Vancouver prior to assuming her ICO position. During that time, she learned how to conduct interviews and studied fact-finding techniques in a group setting where case studies formed part of course material. As an ICO at the Surrey office, she estimated she had handled more than 50 files involving farm labourers and had submitted - more than 10 - ruling requests to CCRA in the course of which she forwarded relevant documents including the application for UI benefits, ROE, payroll information, cancelled cheques and similar documentation. Previously, she investigated an employment situation that she referred to MFU for further action. Buckland stated she discussed the SRC matter – by telephone - with Fontaine on several occasions and met with other ICOs at two scheduled meetings. Buckland stated that at one point - probably in 1997 - HRDC entered into an arrangement with PICS to handle the intake of farm labour claimants and to provide assistance to individuals wanting to submit claims for UI benefits. Buckland stated that PICS - earlier - had provided only information and assistance to claimants but had not been authorized to receive applications for UI benefits as an agent of HRDC. Narang referred Buckland to Exhibit R-20, and to her typed notes – tab 95 – of her interview

with Gurcharan Kaur Johal on December 18, 1997. Buckland agreed Johal had also worked for an entity - S & K - in 1997 but stated it was clear from Johal's answers to Qs. 16 and 17 that she worked for SRC in 1997 and for S & K in 1997. Buckland agreed she had not asked follow-up questions to clear up the obvious confusion arising from the answers to Qs. 28-32, inclusive, regarding the identity of Johal's drivers. Buckland stated it seemed that when a Punjabi-speaking claimant used the word "mostly", it was not intended to convey the same ordinary meaning assigned to it - in English - because, to some people, "mostly" appeared to mean "sometimes" when used in a particular context. Buckland estimated her Surrey office was handling the claims of 40 SRC workers and the investigation was shared with Morrow and Bowerman. From time to time, their supervisor inquired about progress of the matter. Buckland stated she interviewed Ravjit Singh Gill in order to clear up various inconsistencies arising from his previous interview with Janice Morrow when it appeared he had been paid prior to the end of his work and there were discrepancies surrounding his mode of transportation to work. Narang pointed out that she took 13 pages of notes - Exhibit R-18, tab 101 - during this particular interview on February 11, 1998 and suggested she was not merely intending to clear up some discrepancies. Buckland conceded she had pursued other avenues of inquiry, including asking him - at p. 12 - point-blank whether he had picked berries, to which Gill replied "No, only vegetables". Buckland agreed that within the farming industry in the Lower Mainland, even though ROEs - and other documentation - often purport that wages were paid bi-weekly in order to conform with provincial labour standards, that is rarely done as payments are larger and irregular. Buckland stated that if an admission had been obtained from a claimant that no work was done for SRC - as purported in an ROE - that information was forwarded to an HRDC adjudicator who dealt with the matter "in-house" by voiding the claim and that file would not have been referred to CCRA for a ruling on insurability. Buckland stated she had on file the 4 photos of SRC drivers that she showed to Gill during his interview as well as the only photograph of Rana - Exhibit R-20, tab 97 - that had been provided to her and matched the one in Exhibit R-18 at tab 99. Buckland stated the photographs of Kang and Master were better quality but not as clear as the ones of Bant and Shindo and - on occasion - originals of photographs were used but copies had to be made in order to provide them to the ICOs participating in the course of carrying out the coordinated scheme on May 26, 1997, when 14 claimants were interviewed at various HRDC offices. Buckland recalled that Richard Blakely and a representative of MFU were at the December 2, 1996 meeting where the SRC matter was discussed by various ICOs and other persons employed by HRDC. Buckland agreed she could have referred certain files of SRC workers directly to the HRDC adjudicator but concurred with the overall strategy discussed with Fontaine which was to submit all SRC files to CCRA for a ruling on insurability. She stated she could not recall any

contact with Janet Mah – Rulings Officer – after submitting a request for rulings and that although she has spoken with Bernie Keays – Appeals Officer – from time to time, it was not with regard to the SRC matter.

[184] Jeannie Suric was called to the stand and examined by Johanna Russell. She stated she is employed – as a Subrogation Officer – by HRDC where she started working in 1981, as a Claims Assessor. Later, she fulfilled other roles until assuming the position of ICO in 1992 where she remained until September, 2000. She participated in the SRC investigation and worked on certain files at HRDC offices in Richmond and Vancouver. Although she had handled files concerning farm workers in the past, she had not been involved previously in an employer-wide investigation of the sort undertaken with respect to SRC. The SRC files were assigned – by the Team Leader - to her and two other ICOs in the Richmond office as part of their regular caseload and Suric acted as coordinator with respect to SRC files assigned to ICOs in the Vancouver office. She received photocopies of certain documents and photographs from Fontaine together with a template of questions to be used during a scheduled round of interviews with claimants. She recalled receiving a summary of the information provided by certain claimants that named their alleged drivers during the course of their employment. Suric stated she does not speak Punjabi and relied on HRDC employee Charan Dhillon to interpret her questions and the subsequent answers provided by SRC workers. Suric attended the meeting on December 2, 1997 and the one on January 29, 1998, where the SRC matter was the focus of group discussion. Suric recalled obtaining admissions from claimants that they had not worked for SRC as alleged in the ROE – or at all – and referred those files to the HRDC adjudicator in her Richmond office. Counsel referred Suric to her handwritten notes – Exhibit R-17, tab 91 – of the interview with Gurmail Singh Gill on January 21, 1998, during which Charan Gill acted as interpreter. At p. 15, Suric noted Gill told her he deposited his pay cheques at the Royal Bank - at #3 and Williams - and – in response to her query whether that was a joint account – stated it was his own account and “not a joint account with my son”. Suric stated her notes were accurate and that – at p. 3 – she recorded Gill’s answers that he worked with Rana on farms in Lytton. B.C. and during this period of working together, Rana had asked Gill if he was interested in working for a company Rana was going to start up. Suric stated she noted – at p. 7 – that Gill told her he received two cheques, one for \$1,950 and another in the sum of \$500 and that the rest of his wages were paid in cash. As recorded in her notes at p. 8, Suric stated she explained to Gill that he had only earned \$3,136 at the point where he alleged he had been paid \$4,500 and asked why Rana would have paid him more than he earned. Gill replied he needed extra money and asked Rana for some but did not have to give Rana a receipt for that cash. When referred to the “I Cash Money Give” purported cheque - Exhibit R-17, tab 94 –

Gurmail Singh Gill told Suric the “ X” on the signature line was his own but later stated he did not remember. Suric stated she wrote down Gill’s answers - at p. 4 of her notes – that he was driven to work by “Mindo” (Shindo) in a red van and by Rana who also used the red van but sometimes drove a white van. When Suric advised Gill – tab 91, p. 5 of her notes – that Rana had no Driver’s Licence and did not drive, Gill replied, “I don’t know, he picked me up and he did drive”. Suric noted Gill could identify Rana and Shindo from photographs but could not recognize any of the 4 SRC drivers in a series of other photographs.

[185] Suric was referred to Exhibit R-25, pertaining to the appellant, Didar Singh Mehat, and to her notes – tab 96 – of her interview on May 14, 1998 where Mehat was accompanied by his daughter – Ravjinder Kaur Shergill – who acted as interpreter. Suric noted – at p. 7 - that Mehat’s son-in-law – Suki Singh Lidhar - arrived and interpreted all questions and answers from that point until the end of the interview. Suric stated Mehat had been warned at the outset that he was required to answer questions truthfully. On p. 4 – near the top – Suric noted Mehat’s response that he “planted vegetables, zucchini, cabbage, cucumber, and I picked strawberries, raspberries and blueberries”. He also stated he was paid \$8 per hour and not by the pound for picking berries. When asked by Suric how much money he received, his answer was “I received a total of \$8,000 in cash and cheques”. He went on to explain that Rana would give him cash – about \$100 – every time he asked for some money. However, earlier in her notes – still at p. 2 – Suric had recorded Mehat’s response to her question about how he had been paid, whether “by cash, by cheque or both”, as “ I was paid by cheques only.” Mehat then added he had received 3 cheques but could not remember the amounts because he was not “educated”. Suric noted – at the bottom of p. 3 – that Mehat’s daughter – Ravjinder Kaur Shergill – advised she wished to vouch for her father because she was living with him at the time and knew he worked full time – in 1996 – 5 or 6 days a week and that Manjit (Rana) picked him up. Suric stated she then asked about the colour of the van and Shergill responded by stating she had not been living with her father at the time since she was already living in Edmonton but telephoned home every day and her family told her that her father worked every day. Suric stated she wrote down the continuing explanation by Shergill that she had not seen the van but her family had told her it was red. Suric asked what would cause her to phone from Edmonton to ask about the colour of the van in which her father rode to work and why her family would be telling her that Rana drove her father to work. Suric stated Mehat intervened at this point to assert that he was driven by Shindo and Binder. Suric stated that – as noted – she cautioned Ravjinder Kaur Shergill that penalties could be imposed if she was trying to mislead the investigation and from that point on, formed the impression Shergill did not remember much. Suric stated she was confident her notes correctly

recorded the circumstances pertaining to the interview and the questions asked and answers given. With regard to working in Richmond, Suric – near the bottom of p. 6 – noted Mehat told her he worked at a Chinese farm and also at Mike’s farm. During the interview, Suric pointed out to Mehat that he maintained he had been paid a total of \$8,000 but was only entitled to receive net earnings of \$6,088 according to his pay statement. Further, she informed him that the only cheque was the “I Cash Money Give” so-called cheque (tab 98) and that it was not cashed nor was there any record of any cheques to Mehat clearing the bank account of SRC. Mehat advised Suric he would bring in his bank records in order to substantiate deposits of pay cheques into his account. On May 28, 1998, Mehat returned to the HRDC Richmond office and spoke with Suric who typed up a note – tab 93 - of their conversation wherein Mehat advised he did not have his bank records since the bank needed time to produce them. However, Mehat advised Suric that the bank confirmed he deposited 3 cheques and he stated he would bring in the records as soon as they were received. Suric typed notes – tab 90 – of a conversation with Mehat on June 9, 1998 when he and his daughter attended at the Richmond office and produced two receipts – signed by Mehat – each in the sum of \$500 with the name SRC appearing on both. Suric noted the explanation provided that Mehat received these amounts – from Rana - in January and February, 1996, because his daughter had been married in December, 1995, he had no money left and approached Rana for an advance. During that meeting, Suric stated Mehat told her that in September, 1996, Rana gave him a cheque for \$6,000 which was deposited into Mehat’s account at Richmond Savings and Credit Union. However, the cheque was returned NSF so he went to Rana’s house and Rana gave him that amount in cash. Suric confronted Mehat with the fact his own banking records – tab 92 and tab 95 - did not verify this alleged transaction, and noted - at tab 93, p. 2 - his reply “what the bank is telling you is not true. The cheque came NSF and Rana gave me cash”. Suric stated she interviewed Surjit Kaur Mehat, wife of Didar Singh Mehat and took notes – Exhibit R-39, tab 10 – of that interview during which three cheques – totalling \$7,000 – at tabs, 14, 15 and 16 payable to Surjit Kaur Mehat were shown to have been cashed – rather than deposited - at Richmond Savings & Credit Union and subsequently cleared through the SRC account at the TD bank.

[186] Suric was referred to Exhibit R-27, pertaining to the appellant Harbans Kaur Purewal and to notes – tab 90 – prepared on the Report of Interview form pertaining to her interview with Purewal on February 6, 1998. Charan Dhillon interpreted and at one point, the appellant’s daughter – Parminder Kaur Sihota - joined the interview and may have participated thereafter in interpreting for her mother. Purewal signed a Statutory Declaration – tab 91 – prepared by her daughter after the contents had been translated from the written word and interpreted – orally –

to Purewal by her daughter. Harbans Kaur Purewal signed “H Kaur” both on the declaration and at the last page of the interview notes. Suric stated Purewal made the solemn declaration in which she admitted working only 7-8 weeks for Rana - beginning July 7, 1996 – and not for 21 weeks as stated in her application for UI benefits and ROE. In Suric’s notes – at p. 6 – she wrote Purewal’s response that she “worked about six or seven weeks”, starting in the middle of July. Counsel advised Suric that Purewal had denied – during her testimony – ever making those statements. Suric replied that her notes were accurate and that Purewal – at p. 7 – commented that she was aware of the months of the year and did not work in September, nor October, nor November in 1996. Suric also stated she noted Purewal’s acceptance of the error on the ROE issued to her by SRC because she had not worked until December 7, 1996 as stated thereon. With regard to working hours, Suric stated she was told that Purewal worked 7 days per week for 8, 9, 10 and – sometimes – 12 hours a day but was unsure whether her hourly rate was \$7, \$8 or \$7.50. At the bottom of p. 5 of her notes, Suric recorded the response by Purewal that she received \$500 in cash, then a \$1,000 or \$2,000 cheque. Suric stated there were two cheques payable to Purewal – tab 93 and tab 94 – one in the sum of \$6,000 and the other for \$500, both of which cleared the SRC bank. However, the Minister decided Purewal’s insurable earnings were only \$2,744, based on 7 weeks work - from July 14 to August 24, 1996 - pursuant to her admission during the interview with Suric and repeated in her solemn declaration, a copy of which was presented to her at the conclusion of said interview. On February 13, 1998, Harbans Kaur Purewal attended at the HRDC Richmond office and spoke with Suric. She was accompanied by Sonia Sidhu, a friend of her daughter. Suric took notes – tab 88 – of the discussion to the effect Purewal wanted to change her story and produced a piece of paper stating she started work on July 14, 1996 and her last day of work was December 7, 1996. Suric noted Purewal would not disclose who had written those dates on that paper but stated it was done two years ago.

[187] Suric stated she prepared the following information including the number of weeks of employment required by several appellants in order to qualify for UI benefits together with calculations concerning the amount of overpayment of benefits - as determined by HRDC - and the administrative penalties imposed:

- Gurmail Singh Gill needed 17 weeks of employment; HRDC determined he was overpaid the sum of \$1,805 in UI benefits but did not impose a penalty.

- Didar Singh Mehat also needed 17 weeks of employment to qualify for UI benefits. HRDC calculated his overpayment as \$6,180 and imposed a penalty of \$779.

- Harbans Kaur Purewal needed 16 weeks of employment to receive UI benefits. HRDC decided she was overpaid by \$4,928 and imposed a penalty of \$1,680.

[188] The witness – Jeannie Suric – was cross-examined by Darshen Narang. Suric stated she had worked on about 15 SRC files and had undertaken numerous investigations in the past of claimants who had performed farm labour. In the course of her duties, she attempted to locate picking cards, cancelled cheques and bank deposits in order to verify payment of wages and conceded that this task is very difficult in the majority of cases. Suric stated she would still send a file to CCRA for a ruling if the issue concerned the extent of employment or the amount of insurable earnings but not if the claimant had admitted the work was never done. Suric stated that although each file was looked at separately in order to determine whether a rulings request would be submitted, files tended to be submitted - in batches – to CCRA for rulings if – like the SRC matter – there was a wider investigation of the employer involving several employees. Suric stated she did not meet Janet Mah until 2004, never met Bernie Keays and spoke – on the phone – with Richard Blakely only with regard to the need to ask specific questions in order to satisfy requirements for a CCRA ruling on the insurability of employment of certain SRC workers. In response to Narang’s question why she would contact Blakely - a Rulings Officer – when she had previous experience in such matters, Suric replied her query was related to the lack of records, some of which were ordinary documents that impinged upon the proof of payment of wages or other relevant matters. She agreed Fontaine had supplied her with some cancelled cheques, payroll statements and other documentation but she preferred to review banking records, picking cards and/or time sheets to corroborate the claimant’s assertion his or her wages had been paid by the employer. Suric agreed she had the authority to issue a demand on financial institutions, accountants or others to produce documents - assuming that would bring about the desired results - but stated there was no legal basis permitting ICOs to compel an employer to attend an interview. Suric stated she considered investigations to be case-specific and in some instances the employer may be the first person interviewed. She wanted to review picking cards but none were ever produced that were relevant to the claimants whose files she had been assigned. She communicated with Fontaine as the investigation progressed and responded to his earlier request that ICOs advise him of the details if and when they obtained an admission from a claimant that no work had been performed for SRC. Suric stated ICOs from various offices shared information concerning these admissions as they were received. She stated CCRA is involved only after a request for a ruling on insurability has been submitted and any subsequent contact would be limited to inquiring whether a ruling

had been issued and if not, the probable date on which the ruling could be expected. Suric stated she understood that a Rulings Officer was independent and at liberty to arrive at his or her own conclusion. With respect to Harbans Kaur Purewal, Suric stated she was prepared to remit the file to the HRDC adjudicator based on the information in Purewal's Statutory Declaration that she had only worked 7 weeks but the appellant attended the HRDC office soon thereafter to assert the ROE was correct and that she had worked until December 7, 1996 according to the dates on the piece(s) of paper she presented to Suric as verification. Suric stated she had reviewed documents obtained from Bains Tax – the SRC bookkeeper – in which Revenue Canada and WCB had been advised SRC had no employees during the period from September to December, 1996. Narang referred Suric to notes - tab 102 – apparently made by Bernie Keays concerning a telephone conversation he had with her on February 15, 2000, about Harbans Kaur Purewal and the initial confusion surrounding whether Purewal was in India during 1996 as well as Purewal's admission that she did not work from September to December, 1996. Suric stated she had no recollection of that conversation but was aware an Appeals Officer was entitled to conduct an independent review with respect to any ruling issued by a Rulings Officer. With respect to her interview with Didar Singh Mehat, Suric stated Mehat's daughter volunteered the information that she had not really been living at home in 1996 but was already living in Edmonton. Suric agreed it is difficult to recognize the colour of a van from a black and white photocopy and stated she showed these sorts of photocopies to claimants to identify a style of van rather than any colour. Concerning the interview with Harbans Kaur Purewal, Suric stated she was satisfied the appellant understood the months of the year at issue and only signed the Statutory Declaration after her own daughter explained it to her. Further, Mrs. Charan Dhillon was present throughout and could have assisted in explaining matters in Punjabi.

[189] Counsel for the respondent did not re-examine.

[190] Joann McInnes was called to the stand and examined by Johanna Russell. McInnes stated she was employed by HRDC from 1975 until 1978, returned in 1982 and has worked there since then. She assumed the role of ICO in 1997 and worked in the Burnaby office until May, 1998 when she transferred to Surrey. In 1982, she worked as a Claims Adjudicator/Insurance Officer, a position that required fact finding in addition to adjudicating farm labour claims. She does not speak Punjabi. McInnes stated her Supervisor assigned 13 files - pertaining to former SRC workers – to her and requested she assist Fontaine with the SRC investigation. Fontaine handed her a template of questions he had prepared and she elected to use that form during her interviews of Taro Kaur Bassi and Ajmer Kaur Gill. McInnes interviewed

Bassi on October 29, 1997, and made handwritten notes – Exhibit R-12, tab 92 – during the interview. Taro Kaur Bassi signed an authorization – tab 91 – permitting Kulwinder Singh Bassi to act as her representative when dealing with HRDC. McInnes stated Taro Kaur Bassi spoke only Punjabi and did not understand English. Therefore, McInnes asked Kulwinder Singh Bassi to interpret her questions to the appellant into Punjabi and to interpret the answers into English. Since Taro Kaur Bassi had worked earlier in 1996 for her brother Sohan Kalair, operating as Kalair Farms, the ROE – Exhibit R-51 - issued in respect of that employment formed part of her application for UI benefits. In answering Q. 17, Taro Kaur Bassi stated she was paid by the flat for picking raspberries and strawberries, by the pound for picking blueberries and at the hourly rate of \$7 for the rest of the work. McInnes noted – at Q. 18 – Bassi’s answer that she was paid a total of \$3,500 by “cash or cheque”. In responding to Q. 29, Bassi identified a cheque – Exhibit R-12, tab 90 – dated July 6, 1996 – in the sum of \$3,000 - that was negotiated on December 3, 1996 at the CIBC in Vancouver. Later, Bassi added that she was paid about \$500 in small amounts of cash prior to receiving said cheque. McInnes stated her notes were accurate and she had adhered to her usual practice of providing an opportunity to Punjabi-speaking claimants to have the interview – including both questions and answers - explained in Punjabi before requesting them to sign the form at the end of the interview. Bassi was asked to sign but declined. McInnes advised the Court that when taking notes, she abbreviates the word “claimant” by writing “clt”.

[191] McInnes was referred to Exhibit R-15, pertaining to the appellant, Ajmer Kaur Gill, and to her handwritten notes – tab 92 – of an interview on October 30, 1997. Pursuant to the authorization at tab 93, Jasbir Singh Sandhu acted as interpreter. Sandhu advised McInnes that he helped Gill prepare her application for UI benefits on December 2, 1996. McInnes noted that the appellant - in responding to Q. 8 concerning details of the work performed – stated she always worked outside, except when planting seeds in little pots of soil as that task was carried out inside a greenhouse. In answering Q. 9, Gill stated she rode in a yellow bus driven by Manjit Rana. McInnes stated she was careful to ensure the exact spelling of names given to her during an interview because many names sounded similar. Even when she thought the answer was wrong, she recorded the precise words used by the person answering the question and did not add information from her own knowledge nor amend the answer so it would conform with the facts known to her. McInnes stated Gill named Shindo as the person who drove her to work in a brown van. At Q. 18, Gill stated she thought she had been paid “two or three times” but borrowed money from Shindo or Rana for her needs and also obtained a loan from her daughter. McInnes noted Gill’s explanation that she was paid \$1,000 in August or September, 1996 and received a final cash payment in November. Gill’s answer – as noted by

McInnes – to Q. 17, was that she worked 7 days a week at \$7 per hour and – at Q. 23 – stated she may have taken one day off but cannot specifically recall. Gill – at Q. 19 – informed McInnes that she worked up to 10 hours and is certain of that number because she and other workers were informed by the bus driver how long they had worked on a given day. Concerning her layoff, the explanation recorded by McInnes to Q. 4, was that Rana had advised Gill a couple of days earlier – probably while working at the Chinese Farm – she would be laid off soon. McInnes interviewed Gill again on November 18, 1997 and photocopied pages of entries – tab 96 – in the bank book pertaining to her account at the Bank of British Columbia. At p. 3 of her notes, McInnes wrote that “sometimes the clt (claimant) would go to where Manjit Rana was at to get her money if he was staying at a house where she could walk to”. Counsel informed McInnes that Gill testified in Court that she never met Rana in 1996. McInnes responded by asserting her belief that her notes were accurate. McInnes stated she calculated Gill needed 26 weeks of employment in order to qualify for UI benefits and that HRDC determined Gill had been overpaid the sum of \$4,784 and imposed a penalty of \$1,664. McInnes also obtained information pertaining to Taro Kaur Bassi which disclosed Bassi required only 16 weeks of employment to obtain UI benefits. In her case, HRDC decided she had been overpaid the sum of \$4,497 and imposed a penalty of \$1,190.

[192] The witness – Joann McInnes – was cross-examined by Darshen Narang. She stated she received 5 days training prior to occupying her position as an ICO. Prior to conducting interviews, she reviewed relevant material such as ROEs, applications for UI benefits, cancelled cheques and certain calculations performed by internal staff. She did not have the pay statement – tab 89 – that pertained to Ajmer Kaur Gill in her file. McInnes stated it was usual practice to take a photograph of an interviewee after obtaining his or her consent. While interviewing Taro Kaur Bassi and/or Ajmer Kaur Gill, she did not have any photographs of Rana or SRC drivers available to show them. With respect to the interpretation from Punjabi to English provided by Kulwinder Singh Bassi, on behalf of Taro Kaur Bassi, McInnes recalled she had some difficulty understanding him. McInnes agreed she had not asked follow-up questions in order to obtain information from the appellant about the nature of work performed on a month-by-month basis. When interviewing Ajmer Kaur Gill, McInnes stated she was “faithful to the template” and asked Q. 1 and recorded the answer even though she was already satisfied Gill could not speak or understand English.

[193] Counsel for the respondent did not re-examine.

[194] Barb Long was called to the stand and examined by Johanna Russell. She testified she had been employed as an ICO at the HRDC Abbotsford office since 1993. Earlier, she was an Immigration Officer and in that position was accustomed to carrying out fact-finding tasks and interviewing people in relation to various situations including extensions of work permits. She does not speak Punjabi. She was assigned two files relating to SRC farm workers. One was dealt with quickly when the worker admitted the work had not been performed as alleged in the ROE issued by SRC. The other matter concerned the appellant Sharda Kaur Joshi. Long stated about 80% of her workload involved farm labourers and - earlier in her career as an ICO - had participated in an investigation concerning between 5 and 10 employees of the same employer. Long stated she spoke with Fontaine and reviewed other files where SRC had been named as the employer. She had not attended either of the two meetings where Fontaine and other ICOs discussed the SRC situation. Long was referred to Exhibit R-36 and to her handwritten notes - tab 92 - of her interview with Sharda Kaur Joshi on May 26, 1997. Joshi was accompanied by her husband - Sanjay Singh Joshi - who interpreted on her behalf. At the conclusion of the interview, Joshi signed on the last page of the form. The pay statement - tab 88 - showed net earnings in the sum of \$6,075 resulting from gross pay of \$7,000. When asked - at Q. 7 - to provide details of her work, Long stated Joshi recited the tasks performed, all of which related to picking berries without any mention of any vegetable work. In response to Q. 28, Joshi said she negotiated her \$4,000 cheque - tab 89 - at the Gladwin and South Fraser Way branch of the TD bank. Long pointed out the bank stamp on said cheque proves it was cashed at the SRC bank at 6544 Fraser Street in Vancouver on October 7, 1996. Regarding the method and frequency of payment, Long stated Joshi said she was paid every two weeks, mostly by cash as well as by cheque, details of which she could not recall. Long noted - at Q. 9 - Joshi's answer that "Bant picked me up in a van. Always picked up in a van". Long referred to her notes - tab 93 - where Joshi attended the HRDC office in order to provide two receipts for cash allegedly paid to her by SRC and to advise that the \$4,000 cheque - tab 89 - had been negotiated at the employer's bank and not deposited to her account, as stated earlier. The photocopy of two receipts - tab 111 - indicates each is in the sum of \$1,000 and are dated July 27, 1996 and August 1, 1996, respectively. The signature "Sharda Joshi" appears on both. Long stated a memo - tab 107 - was made by an HRDC employee to record that Sanjay Singh Joshi brought in a T4 for Sharda Kaur Joshi as well as some bank statements. Long stated Joshi needed 18 weeks of employment in order to qualify for UI benefits. However, because the Minister decided she had not been employed in insurable employment with SRC, HRDC subsequently determined she had been overpaid benefits in the sum of \$2,925 and imposed a penalty of \$1,126. The rulings request - tab 86 - in respect of Joshi was submitted by Fontaine.

[195] The witness – Barb Long – was cross-examined by Darshen Narang. She stated she received 3 weeks training prior to beginning as an ICO. Her caseload of 50-60 files is 80% farm related and is composed of various scenarios including those where the employer and employee are related. At the outset she worked with a mentor and reported to a Supervisor. Prior to the SRC matter, she had not been involved with such a large-scale investigation nor worked with MFU on any file. While working as an Insurance Officer, she decided on the correct amount of a benefit overpayment and decided the appropriate penalty – if any – to be imposed.

[196] Counsel for the respondent did not re-examine.

[197] Clare Turgeon was called to the stand and examined by Johanna Russell. She stated she is employed – by HRDC - as a Program Officer in the Abbotsford office. She started working as an ICO - in 1995 – at the Burnaby office and was assigned files of SRC workers. Earlier in her public service career, she had been an Enforcement officer at Canada Immigration and before that served 9 years as an RCMP officer in Richmond. While working at Canada Immigration, she investigated cases concerning individuals suspected of being in Canada illegally and/or working without authorization. In that capacity, she had powers of arrest and the position required her to conduct numerous interviews. Turgeon stated she interviewed two SRC workers but neither of them are appellants in the within proceedings. Because Fontaine had a large caseload of SRC workers, she volunteered her services to assist him in assuming some duties related to that investigation. Turgeon stated she and another HRDC employee – Patti Lintick - interviewed Amanjit Dhesi – an employee of Bains Tax – on May 26, 1997, at the Bains Tax office and took notes – Exhibit R-4, tab 6 - contemporaneously. Turgeon stated Dhesi advised that she prepared payroll, WCB forms, Revenue Canada remittances and ROEs for SRC. Turgeon was present when Patti Lintick interviewed Ranjit Bains and prepared typed notes – tab 7 – of that interview. Turgeon stated ICOs are authorized to receive Statutory Declarations pursuant to a ministerial authorization and she attended to the signing of the declaration by Inderjit Singh Atwal – Exhibit R-9, tab 90 – on June 12, 1997 because Fontaine had not received authority pursuant to subsection 18(4) of the *Employment and Immigration Department and Commission Act, 1976-1977 C. 54, s. 2* to administer oaths and/or affirmations to persons making a solemn declaration. Turgeon stated she had a specific recollection of Manjit Rana signing a solemn declaration before her on May 27, 1997, wherein he stated SRC did not have any business activity before February 23, 1996, and described his behaviour that day as “confused and out of sorts”.

[198] The witness – Clare Turgeon – was cross-examined by Darshen Narang. She stated she has extensive experience conducting investigations and had acted as lead investigator in some matters. However, those earlier cases were not as large in scope as the SRC matter which involved over 100 ROEs that had been issued by SRC. Turgeon stated Amanjit Dhesi advised that she completed ROEs for SRC by using a program on her computer and inputting the hours worked and that the earnings statements were completed at the end of the work cycle by referring to a book, her own bi-weekly calendar and the hours worked by a particular worker. Dhesi told Turgeon she had not seen any SRC cheques to indicate how often workers had been paid and merely calculated payments on a bi-weekly basis for a particular period of employment relevant to a specific ROE. Turgeon stated her notes of the interview with Dhesi recorded the response – at Q. 32 - that Rana signed each ROE in front of her.

[199] Counsel for the Crown did not re-examine the witness.

[200] Sharon Belanger was called to the stand and examined by Johanna Russell. She stated she started at HRDC in 1971 and after working as an Insurance Officer for several years, became an ICO in 1996. She does not speak Punjabi. At the request of Fontaine and with the concurrence of her supervisor, she interviewed Harjit Singh Gill – in English - using a template of questions supplied by Fontaine in the form of a diskette which she inserted in her computer. As each question was asked, she took notes – Exhibit R-4, tab 401 – of the answers given by Gill. The ruling request – Exhibit R-4, tab 394 – was submitted by Fontaine and she had no subsequent contact with Gill.

[201] In cross-examination by Darshen Narang, Turgeon stated she was waiting for Gill to provide certain documents prior to formally signing off on her interview. She stated she had intended to enter her handwritten notes into the template - in a file in her computer - on which the prepared questions were already located so she could print out a copy of the prepared questions and Gill's responses in order to provide him with an accurate copy of the interview. Turgeon agreed Gill returned to the HRDC office on May 27, 1997 to drop off a copy of his airline ticket to India and a T4 slip. Turgeon referred to her notes – tab 403 – indicating Gill could not find his T4 issued by SRC and agreed to bring in his entire income tax return at a later date.

[202] Counsel for the respondent did not re-examine.

[203] Joan Sykes was called to the stand and examined by Johanna Russell. She stated she started working for HRDC in 1972 and was an ICO between 1975 and 1980 when she left that position to work as an adjudicator. In 1992, she returned to her former ICO position and worked out of the Burnaby office. Currently, she is a Team Leader in charge of supervising other ICOs and does not carry a case load. She does not speak Punjabi. In 1998, she was Acting Team Leader and had a supervisory role with respect to those ICOs in her office – including Fontaine – working on SRC files. She attended one meeting – either in December, 1996 or January, 1997 - at which Fontaine and other ICOs were present, some of whom offered to participate in the investigation concerning SRC and its employment practices during 1996. Sykes stated her notes – Exhibit R-10, tab 92 – indicate she interviewed Sharinder Singh Bagri on November 7, 1997 but has no specific recollection of that event. She stated her usual practice when conducting an interview is to allow the interviewee to read over her notes and to record any comments about the contents of the written material and/ or any revisions or clarifications of any answer given previously. Her notes indicate a friend of Bagri attended with him and – probably - interpreted for him. Sykes noted Bagri’s answer to Q. 9 about mode of transportation to work was that he rode the van/bus mostly but sometimes – once or twice - used his own vehicle, a Toyota Corolla. Sykes stated she conducted the interview but Fontaine submitted the request – tab 86 – of a ruling on Bagri’s insurability.

[204] Sykes was referred to Exhibit R-26, pertaining to the appellant Prabhjot Kaur Minhas and to the notes – tab 92 – of her interview with Minhas on June 25, 1997. The questions and answers were interpreted by Sarb Sandhu, Certified Court Interpreter. Sykes stated that apart from looking at her notes, she has only a vague recollection of this interview. Sykes noted that she recorded that appellant’s answer to Q. 22 - concerning days of work – as “Saturday to Thursday – every Friday, 2-2 1/2 months – after that it was either Sat or Sunday...”. Answering the next question, Minhas stated she had not missed any work during her employment with SRC. Sykes was referred to a photocopy of the ROE – tab 87 - issued by SRC which indicated that she was laid off due to a shortage of work, as signified by the entry of “Code A” in the relevant space at Box 19. Sykes stated she noted the appellant’s response – to Q. 30 – that she was laid off because SRC advised her there was “no work for us”. Sykes stated she considers her notes of that interview to be accurate, including the response to Q. 7 where Minhas described her work and said she was picked up at her home and driven by “Harjeet” to the “veg/berry area”. Sykes stated she wrote down the answer given to Q. 9 that – as previously stated by Minhas – Harjeet picked her up, although occasionally she or her husband would drive. Regarding Q. 20, Sykes recorded the appellant’s answer that she did not sign a time sheet but would write down her hours after returning home and that Harjit – the bus

driver – also kept a record. While answering the next question, Sykes noted Minhas said she never reported to anyone. At Q. 28, Minhas told Sykes she worked during November at Mike’s Farm in Richmond. Sykes stated the request for a ruling on the insurability of employment – tab 85 – was submitted by Fontaine.

[205] Sykes stated she retrieved information from HRDC files pertaining to the appellant Sukhwinder Kaur Hundal which indicated she needed 26 weeks of employment to qualify for UI benefits and although HRDC decided she had been overpaid in the sum of \$5,425, there was no record that any penalty had been imposed.

[206] The witness – Joan Sykes – was cross-examined by Darshen Narang. Sykes stated it was usually within the discretion of an ICO whether a request for a ruling on insurability would be submitted to CCRA. However, she was aware there was a coordinated investigation with respect to SRC involving a large number of workers alleged to have been employed by that company. Further, she knew Fontaine was the coordinating ICO and that he had prepared a template of questions to be used during interviews of claimants. Sykes stated the usual HRDC practice when a Punjabi-speaking claimant attends an interview accompanied by someone, is to inquire about the relationship of that individual to the claimant and to ensure this person is capable of understanding – in both English and Punjabi - the context of the interview. Sykes stated her practice was to pose a question in English which the interpreter put to the claimant in Punjabi and after receiving an answer – in Punjabi – would tell Sykes – in English – what had been said. She added it is usual to provide a copy of her notes to the interviewer but could not recall whether a copy had been given to Sharinder Kaur Bagri. Sykes stated she recorded the answer given by Bagri – Exhibit R-10, tab 92, Q. 18 – that she had been paid \$2,000 - by one cheque - and that the rest of her wages were received in cash for a total of about \$9,000.

[207] Sykes was referred by Darshen Narang to the notes of her interview with Prabhjot Kaur Minhas - Exhibit R-26, tab 92 – that had been interpreted by Sarb Sandhu, a Certified Court Interpreter. Sykes stated it was preferable to use a certified interpreter but it depended on availability of funds within her office that could be allocated for that purpose. Sykes recalled Minhas said her co-workers probably knew her as “Lally” which was the nickname she used for everyday purposes. Sykes stated that in her opinion Minhas would not have been able to comprehend – fully - the interview if it had been conducted wholly in English. Sykes recalled the interview had to be interrupted in order to permit Minhas to breastfeed her infant and stated this point was relevant because – in answering Q. 19 – Minhas said she did not breastfeed her first child as she knew she was going to be working.

Sykes agreed she had not followed her normal practice of recording the times at which the interview began and ended and whether there was any interruption for a particular reason. Sykes stated she had no further involvement with the Bagri or Minhas files following completion of those interviews. She had no contact with either Janet Mah or Bernie Keays or Richard Blakely, although she knew Blakely was a Rulings Officer.

[208] Counsel for the respondent did not re-examine.

[209] Mohinder Singh Herar was called to the stand and examined by Johanna Russell. He stated he was employed by HRDC for 35 years and retired in November, 1999. During his career, he never worked as an ICO but occupied administrative positions in addition to serving as an Insurance Officer from 1972 to 1981, prior to moving to Coquitlam. From 1989 until retirement, he worked as a Public Liaison Officer and communicated in English and Punjabi— via different forums, including television - with the Indo-Canadian community in order to explain the workings of the UI – later EI – system, particularly during periods of change to the regime with respect to such matters as insurability, benefits, availability of new programs and job search technology. In that role, he was required to educate and facilitate but did not exercise any adjudication function. In 1996, Herar completed a court interpretation course and was approached by ICOs to assist them in conducting interviews with Punjabi-speaking claimants – and others – in relation to an investigation of farm labour employment. Herar stated he was born in Punjab – in 1938 – where he completed 10 years of school followed by 4 years at college where he obtained his Bachelor of Arts with a major in English and an elective in Punjabi. At college, the math and science courses were taught in English. In addition to Punjabi and English, Herar is able to speak, read and write Hindi, a language that is written totally different than Punjabi. He arrived in Canada in 1960 and began working at HRDC in 1964. Herar stated that in order to obtain his certificate from the Vancouver Community College program in interpretation, he had to pass three different entrance examinations and then took courses which were divided into three parts, one of which required attendance in court to observe the proceedings. He studied legal terminology and had to pass further exams in order to receive the certificate as a Court Certified Interpreter. Although he received that designation in June, 1996, and had intended to retire from his employment, he remained at HRDC for another 3 years. Following retirement, he interpreted in various courts exercising both criminal and civil jurisdiction and provided his services to several hospitals – including Surrey – two days a week in order to interpret for Punjabi-speaking persons who wished to access the healthcare system. He took a course in medical terminology to enhance his ability to communicate in that specialized field.

Currently, Herar provides his services to a commercial entity offering interpretation services to the public. Since arriving in Canada, Herar has visited India – with his family – every two or three years and since retirement has been able to travel there every year and stay 6 weeks. Herar stated that when he was interpreting at an HRDC interview he never asked his own questions or added any comments. If necessary, he would inform the interviewer that he had to clarify the answer given and would attempt to do so but until the meaning of the response was clear, he would not interpret it - into English – for the interviewer. Herar stated he has no specific recollection that he was the interpreter during HRDC interviews conducted with Jaswinder Kaur Cheema, Gurbachan Singh Gill, Sukhwinder Kaur Toot or Harbhajan Singh Kang. Herar stated his role as an interpreter is merely to act as a conduit between persons to overcome the language barrier.

[210] Monhinder Singh Herar was cross-examined by Darshen Narang. Herar stated he never lived in a village in India and had not worked there following graduation from college, although he had the opportunity to visit many farms - including the one owned by his grandfather – because his father was involved in a farm-related business. He began learning English in Grade 5 and even though most courses were taught in English, teachers and students spoke to each other in Punjabi. Herar stated he has spoken with people from various economic and social backgrounds and has not encountered any serious difficulties in carrying out the function of interpreting Punjabi to English and vice-versa since he completed the interpreting program in 1996. Narang referred Herar to the interview of Gurbachan Singh Gill - Exhibit R-16, tab 87 – and to the questions therein. Herar stated his practice was to take a question and break it down into segments in order to ensure the interviewee understood. He was aware that the people were farm workers and if he sensed someone did not understand the question – as interpreted in Punjabi – would obtain permission from the interviewer to attempt to clarify the meaning. Herar stated he interprets an answer as closely as possible even if there is an obvious error – such as a place name or product – contained in a response. He stated there are Punjabi equivalents for the English words and/or phrases, such as “always”, “never”, “seldom”, “now and then”, “once or twice” but in his experience they are not used with precision. Herar stated he is not familiar with the Punjabi calendar but is aware farm workers often rely on a calendar produced and distributed by VanCity Credit Union which also shows the months according to the Punjabi version.

[211] In re-examination by counsel for the respondent, Mohinder Singh Herar stated he would not substitute his own estimation of the equivalent month on the English calendar if a person referred to a certain month in accordance with the Punjabi calendar. Instead, he would provide a literal interpretation of the response.

[212] Tejinder Bhandall was called to the stand and examined by Johanna Russell. She stated she is currently employed - by HRDC - as a Service Delivery Representative but began as a clerk-assistant – in 1991 – at the New Westminster office. She also worked as an Immigration Clerk for about 6 months prior to returning to HRDC where she occupied the position of clerk for the Board of Referees in the Vancouver office. She has not worked as an ICO. During 1997 and 1998, Bhandall worked as a Customer Service Representative and also assisted with Punjabi interpretation at HRDC and Immigration Canada. Each year during farming season, she participated in group information sessions which were held two or three times a day for a 6-8 week period. Information was provided in both Punjabi and English at various locations including PICS, rented premises or within an HRDC office, space permitting. The sessions were carried out in a classroom setting and were attended by about 30 people who would be provided with certain government forms pertaining to their employment and the various questions therein and the types of responses thereto were discussed – in Punjabi - one by one. Bhandall stated she explained the rights and obligations of workers to the group and provided pamphlets in Punjabi explaining the mechanics of the UI/EI system including reporting requirements and rights of appeal. She also explained the proper method of completing an application for UI benefits. She has acted as an interpreter for ICOs during an interview as well as speaking Punjabi to people at the front desk in reception or on the telephone in order to either receive or provide information. On occasion, she translated written material from Punjabi to English. She was born in Punjab and lived there until age 16 when she completed Grade 9. She is fluent in English and Punjabi, reads and writes both languages and speaks Hindi. She stated she speaks Punjabi every day and teaches that language to her children. She has a lot of relatives in India and speaks to them regularly during telephone calls. She visited India recently for the first time since 1992 and stated she had no difficulty communicating with people there. She had lived in a village for 15 years and was aware some communities had a different word to describe something but the differences did not affect an entire sentence so as to make it incomprehensible. She did not know Fontaine and stated she only interpreted the questions posed by the ICOs and the answers given by an interviewee without asking anything or providing any response of her own volition. In the event she perceived a lack of understanding on the part of the person being questioned, she would ask the ICO if he or she wanted to ask other questions for the purpose of clarification. She stated she had not encountered any difficulty in interpreting references to months of the year and in her experience cannot recall any occasion when someone ever stated a month based on the Punjabi calendar. Bhandall stated she had no specific recollection of interpreting the interview with Harbhajan Singh Kang conducted by Bowerman on May 26, 1997

although she met Kang later in a social setting. She did the translation into English of the Statutory Declaration - Exhibit R-5, tab 168 – written in Punjabi by Kang.

[213] Tejinder Bhandall was cross-examined by Darshen Narang. She stated her work has required daily use of Punjabi for the past 10 years. When interpreting at an interview, sometimes she had a template of questions in front of her to use as a reference, particularly if the questions asked are not in the context of ordinary subject matter. At the beginning of each interview conducted by an ICO, she interprets the warning concerning potential penalties for knowingly providing false information. If required, she will break a question into segments and interprets the answer faithfully even if it appears to make no sense. Prior to anyone signing a solemn declaration, it is her practice to read the contents aloud in Punjabi. However, with respect to an entire interview, usually she would not review – with the interviewee - the entire contents of the notes taken by the ICO. Bhandall stated that in her opinion although there is some variation between village and urban usage in the Punjabi language, it is mostly in terms of accents and that does not pose a problem nor is any barrier created by a generation gap between speakers.

[214] Harby Rai was called to the stand and examined by Johanna Russell. She stated she is employed by CCRA as a CPP/EI Rulings Officer in Vancouver and has held that position since November, 1992, although she is currently carrying out a supervisory function in respect of complex files, generally involving employment of farm labourers. She did not issue any rulings with respect to any SRC workers. Rai was born in Punjab, India but came to Canada at age 9. She did not enrol in any formal Punjabi language instruction thereafter but her parents lived with her aunt and uncle and her mother speaks only Punjabi. She lived at home until age 28 and then married a man who immigrated to Canada from India. His first language was Punjabi and his parents came to live in Canada and they spoke only Punjabi. As a result, Rai stated she spoke Punjabi every day. In 1995, she went to India for a wedding and had no difficulty communicating with people there. She does not read nor write Punjabi. In 1992, she was the only Punjabi-speaking person in her office and began assisting other Rulings Officers. In her experience dealing with Punjabi-speaking claimants and others, she cannot recall any person using the Punjabi calendar to refer to a month of the year. Instead, they say either “June” - for example – or will state that such and such happened during the “6th month”. Rai recalled asking questions of Sharinder Singh Bagri and Taro Kaur Bassi following a request for assistance from Janet Mah. Rai stated that some Rulings Officers will write out the questions they wish her to ask while others rely on her own experience as a Rulings Officer and permit her to pursue her own line of inquiry.

[215] The witness – Harby Rai – was cross-examined by Darshen Narang. Rai agreed she probably conducted the telephone interviews of Sharinder Singh Bagri - Exhibit R-10, tab 82 – and Taro Kaur Bassi – Exhibit R-12, tab 82 – and recorded their responses which were passed on to Mah who typed up her own notes. Rai stated Mah was one of 17 Rulings Officers working out of the West Pender office in Vancouver and has assisted Mah on other occasions with Punjabi interpretation. Rai could not recall why she would have spoken to someone called Navjot who had apparently obtained permission from Bassi to transmit – on her behalf - answers to questions when she could have spoken directly to Bassi in Punjabi. Rai stated she used “sugmal” when speaking to Bagri and informed Mah that it meant radish or turnip. Rai agreed with Narang’s suggestion that technically “sugmal” is defined as “turnip” in English.

[216] Counsel for the respondent did not cross-examine.

[217] Kal Brown was called to the stand and examined by Johanna Russell. She stated she has worked for HRDC since March, 1990, in various positions involving deliver of service to clients. She speaks Punjabi and began interpreting shortly after starting work at HRDC but is not able to translate written material from Punjabi to English or English to Punjabi. She has never worked as an ICO but has experience in interpreting during interviews conducted by ICOs. She was born in Singapore and arrived in Canada at age 11. She regards English as her number one language, followed by Malay, Chinese (Fukien dialect) and Punjabi. Her mother and father spoke Punjabi at home and although her mother was born in Singapore, her parents spoke Punjabi in social situations. Brown stated she spoke to her brother and sister in Fukien but used Malay in conversation with friends. Instruction in school was all done in English. Brown stated she cannot read nor write Punjabi. She has not encountered any difficulty in understanding Punjabi speakers that could not be resolved quickly by merely continuing the conversation in order to arrive at an understanding of the words spoken. In her experience working at HRDC and interpreting on numerous occasions, she has never had any Punjabi-speaking person use a Punjabi calendar in order to describe a month of the year. Brown stated she would faithfully interpret – to the interviewing ICO - the answer given even if it was “I don’t understand the question”. Brown stated she had no specific recollection of interpreting the interviews – by Bowerman - of Harbans Kaur Kang nor of Bowerman’s interview with Harbhajan Singh Kang.

[218] The witness – Kal Brown – was cross-examined by Darshen Narang. She stated she has no ongoing opportunity to converse in the Fukien dialect or in Malay but does meet daily with friends and family who speak Punjabi. She stated she began

assisting ICOs about 6 months after starting work at HRDC and converted English questions to Punjabi and Punjabi answers to English, as required. Brown stated that at the beginning of an interview, she introduces herself, explains her role and waits for the interviewer to ask the first question. At some point, the claimant is advised of his or her rights in respect to appeals within the HRDC system. If a warning is interpreted, she inquires whether the significance of that admonition is understood and if she receives a negative response, seeks direction from the interviewing ICO about providing additional explanation. In Brown's experience interpreting the responses of claimants, Punjabi speakers refer to ROEs by using the English words "stamps" or "weeks paper" – rather than a Punjabi word – only they pronounce it with a Punjabi accent as in "veeks paper". When showing a claimant a cheque, she explained the date and the amount shown thereon. If an ICO wanted the interviewee to sign the form at the close of the session, she translated that request but the entire interview was not read back to the individual prior to signing.

[219] Counsel for the respondent did not re-examine.

[220] Charan Sader Dhillon was called to the stand and examined by Johanna Russell. Dhillon states she is employed – by HRDC – as an ICO and works out of an office in Vancouver. She began working for HRDC – as a filing clerk – in 1987 and later assumed the position of Insurance Officer. She became an ICO in 1997 and took some formal training in 1999. She speaks Punjabi and soon after starting work at HRDC began assisting Punjabi-speaking people who had dealings with her office. In 1989, she was approached by an ICO who requested assistance with interpretation for an interview and she went on to perform the same service for other ICOs prior to receiving her own appointment to that position. Dhillon was born in Malaysia and moved to Canada - at age 14 – with her family. Both her parents were born and raised in India so Punjabi was the language spoken in their home. However, when her parents were away, she and her siblings conversed mostly in English but also spoke some Fukien as well as Bahasa Malaysia, the official language. She completed Grade 7 in English and after coming to Canada, Punjabi remained the language of their household. In addition, she speaks Punjabi at weddings, other social functions and at Temple. Dhillon stated some English words such as "subway" cannot be interpreted into Punjab since there is no equivalent technology there. She spent 6 weeks in India in 1994 and has visited there 5 times since coming to Canada, most recently in March, 2004. She stated that people in Punjab are able to understand her when she speaks Punjabi but are somewhat amused because they detect a Malaysian accent. In the course of her work as an ICO, she refers people to a calendar to assist them in fixing a date significant to their claim and in her experience has noted that her clients either understand the months of the

English calendar or use a numerical reference such as the “ third month” or the “ tenth month”. Dhillon stated that when interpreting during an interview, she interprets the question – as asked – as well as the answer, as given. If the person does not understand, she informs the ICO and it is then within the discretion of that ICO to repeat that question in a different form or to pose different questions. She does not keep any notes of an interview and merely serves as interpreter. Dhillon stated she had no specific recollection of interpreting the interview with Gurmail Singh Gill nor the one with Didar Singh Mehat. She recalled the interview of Harbans Kaur Purewal conducted by Jeannie Suric and was referred to the notes – Exhibit R-27, tab 90 – taken by Suric. Dhillon remembered that Purewal attended the interview with her daughter - Parminder Sihota – who prepared the Statutory Declaration – tab 91 – in English, then explained it - in Punjabi - to Harbans Kaur Purewal before she signed it before Suric who administered the affirmation. Dhillon stated that at the Richmond office, the ICOs requested her to read the Report to Claimant to the interviewee in English and Punjabi and to note any clarifications and/or additions. With respect to the interview of Harbans Kaur Purewal, Dhillon stated the Report of Interview - tab 90 – was read by Parminder Kaur Sihota who interpreted the contents to her mother in Punjabi and then advised Suric her mother was satisfied it was accurate. Once the Statutory Declaration was completed, a copy was provided to the appellant in accordance with usual HRDC practice. Counsel informed Dhillon that Harbans Kaur Purewal testified she had been advised in a threatening manner - during the interview – that various dire consequences would befall her if she did not give certain answers. Dhillon stated she would have recalled such an event if it had occurred.

[221] The witness – Charan Sader Dhillon – was cross-examined by Darshen Narang. Regarding the Statutory Declaration – tab 91 – Dhillon stated that Parminder Kaur Sihota interpreted the interview notes to her mother and then Dhillon explained – in Punjabi – to Sihota and her mother, the nature and effect of a Statutory Declaration and its significance. Then, in accordance with usual HRDC practice, Harbans Kaur Purewal was asked if she wished to provide such a declaration. Had she refused, that would have been the end of it but she indicated she wished to do so and her daughter prepared it for and then interpreted the contents to her before it was signed. Dhillon stated the interview commenced with the introduction of Jeannie Suric, then herself, and identification was produced to confirm identities of Purewal and her daughter. Purewal’s application for UI benefits was presented to her and explained. The rights and obligations of Purewal – as a claimant – were interpreted by Dhillon who explained that she proceeded with her interpretation one sentence at a time and did not proceed until she obtained an acknowledgement that Purewal understood the earlier statement. Dhillon stated Purewal was also advised that she was obligated to answer questions truthfully and that penalties could be imposed in

the event she knowingly provided false information to Suric in her capacity as ICO. Dhillon referred to the document entitled NOTE contained in Exhibit R-11, tab 99 and stated the content was disclosed to a person prior to commencing the actual interview. Consequences of a conviction following prosecution for knowingly providing false or misleading statements are explained, including the potential imposition of a fine or a sentence of imprisonment but no one is ever threatened with deportation from Canada. She conceded it is somewhat difficult to translate certain terms into Punjabi such as “prosecution” but explains it by using other terms. Dhillon recalled that Purewal consulted with her daughter on several occasions during the delivery of this warning. Dhillon stated HRDC policy is not to use any device to record an interview but would not object if a person wished to do so. In some instances, an individual will produce a piece of paper with information thereon and Dhillon will read it aloud and ask for confirmation that what she has spoken is correct. She confirmed she has not encountered anyone who did not know months of the year according to the standard calendar used in Canada but during her career has observed that people tend to use a significant event as a point of reference, perhaps a trip to India, or Vaisakhi, the Sikh festival, as a means of fixing a start or end date to their employment. She agreed some Punjabi-speaking workers without formal education find it difficult to comprehend large numbers. Dhillon stated she interprets an answer as given even if it is not responsive. In such case, the question is interpreted again but if the same answer is received then it is included – in that form – into the notes of the interviewing ICO. By way of example, Dhillon referred to Exhibit R-27, tab 88 – notes of an interview – by Suric – with Harbans Kaur Purewal on February 13, 1998. At the bottom of p. 3, the question was, “who else was in the van with you?” but Purewal responded “There was a yellow bus but I never went in it”.

[222] Counsel for the respondent did not re-examine the witness.

[223] Julie Dong was called to the stand and examined by Johanna Russell. She testified she is the Manager of the Driver Services Centre for ICBC and works out of an office in Vancouver. She stated a Class 5 licence permits a person to drive any 2-axle vehicle - except a bus, taxi or motorcycle – and is regarded generally as an ordinary licence. In order to qualify, it is necessary to pass an examination as well as a road test. In 1997, the Motor Vehicle Branch (MVB) within a ministry of the provincial government still issued driver’s licences but that function was assumed subsequently by ICBC. Dong stated that – in 1992 – a person could take the written knowledge examination in Punjabi and before that was permitted to take that test by utilizing the services of an approved translator. The driving test is conducted in English but requires comprehension of only a few words or phrases. Dong stated a

Class 4 licence is divided into two groups; one is unrestricted and permits the holder to operate any motor vehicle, including a taxi, limousine, or bus, provided it has a maximum capacity of 25 people and the other one is unrestricted and allows the person to operate a motor vehicle such as taxi, limousine or special vehicle with up to 10 seats. Dong stated that private driving training businesses - prior to December 1, 1999 - could certify that an individual had qualified as a Class 4 driver – in the unrestricted category - and MVB would issue a licence based on that information. Dong stated the study material for a Class 4 licence is available only in English and that the written examination is also in English during which the person is not permitted to receive any assistance from an interpreter/translator.

[224] The witness – Julie Dong – was cross-examined by Darshen Narang. She agreed that prior to 1997, there were not as many steps involved in obtaining an unrestricted Class 4 licence – such as a screening for Criminal Code of Canada convictions - but there was still the requirement of a knowledge test, a vision test, pre-trip inspection and a road test.

[225] Audrey J. Bartsch was called to the stand and examined by Johanna Russell. Bartsch testified she is the Assistant-Manager, Personal Finance Services, at the Royal Bank branch at 6505 Fraser Street, Vancouver. Bartsch was referred to the Respondent’s Book of Miscellaneous Documents - Exhibit R-8 – and to tab 5, containing a copy of Royal bank records pertaining to the account of the appellant, Sharinder Singh Bagri. Bartsch explained that Bagri had a bank-book account and it had to be re-created line-by-line from the microfiche and – therefore – it has the appearance of a “cut and paste” document. The statement was prepared on a monthly basis and each page shows the account number, the name of the account holder – Bagri – together with relevant codes in relation to types of transactions, dates and balances in the account at a particular date. She was referred to the document – Exhibit R-54 – and agreed it set out various transaction codes used by the Royal bank. Referring to p. 1 of the bank statement within tab 5, she noted the transaction code “51” was used in relation to a transaction on January 5, 1996 indicating the balance in the account was \$379.70. A code 41 and/or 51 indicates a credit and/or deposit but on the reproduction created by the Royal bank, Barstch advised there was a batching of deposits and that a deposit could be composed of multiple items. However, even though each daily transaction would appear on the statement, it would not record a transaction where the account holder attended at the Royal to cash a cheque - payable to him or her - and merely took the money and left. She added it would require an actual deposit to the account for that transaction to appear on a subsequent statement. Bartsch was referred to Exhibit R-10, pertaining to the appellant Sharinder Singh Bagri and to tab 91, containing a copy of an SRC cheque –

dated Se (September) 7, 1996 - payable to Bagri in the sum of \$2,000. She noted Bagri endorsed the cheque and there is a teller stamp indicating the transaction occurred on October 7, 1996 at the Fraser and 49th Avenue branch of the Royal bank. Bagri's account number is written on the reverse of said cheque and the cheque was sent to the clearing centre which – in the normal course of business – forwarded it to the TD bank at 6544 Fraser Street and 49th Avenue for payment by debiting the SRC account on which the cheque had been drawn. Bartsch stated this transaction would not appear on Bagri's bank statement because it had not been deposited to either of his accounts at the Royal. She explained the notation of Bagri's account number on the reverse of the cheque merely indicated he was a customer of Royal and had the privilege of being able to just cash a cheque and take the money without being required to deposit it into his account and await confirmation it had cleared the issuing bank. Bartsch stated her bank probably would have telephoned the TD bank in order to ensure there was sufficient money in the SRC account to clear Bagri's cheque. She added that – in 1996 – tellers did not note – on the reverse of a cheque - the denominations of bills handed to the customer but there was a separate transaction record on which that information was recorded.

[226] Darshen Narang did not cross-examine the witness.

[227] Gary Yee was called to the stand and examined by Johanna Russell. Yee testified he is Assistant-Manager of Banking Services at Coast Capital Savings and Credit Union (Coast Capital) and had worked at Richmond Savings and Credit Union (Richmond Savings) until it merged with Coast Capital and harmonized its banking procedures. Yee was referred to the bank statement – Exhibit R-25, tab 92 - pertaining to the account of Didar Singh Mehat at Richmond Savings for the period May 31 to December 31, 1996. Yee stated the Account Balance Sheet is a statement of all assets and liabilities of Mehat at Richmond Savings under that specific account number. Yee stated that according to banking procedures at Richmond Savings, if Mehat had cashed a cheque and received money without depositing any portion of those proceeds to his account, there would be no record of that transaction. Yee was referred to a photocopy of a cheque – Exhibit R-39, tab 15 – in the sum of \$3,000, payable to Surjit Kaur Mehat. The signature “S.K Mehat” appears on the reverse of the cheque as well as the imprint of the teller stamp of Richmond Savings – bearing the date October 21, 1996 - and the number of the Mehat account. With respect to the cheque – tab 16 – in the sum of \$3,000, also payable to Surjit Kaur Mehat, Yee stated it had been endorsed by the payee and cashed on October 21, 1996. The teller affixed the stamp and noted the number of the statement – tab 5 – pertaining to the Mehat joint account which does not include any deposits of those cheque amounts during that period. Yee referred to the \$1,000 cheque – tab 14 – also payable to Surjit Kaur

Mehat and stated the stamp showed the cheque was cashed on September 10, 1996 at Richmond Savings – Cambie Branch – and then forwarded to a clearing house which sent it to the TD bank at 49th Avenue and Fraser Street for payment through the SRC account. Yee confirmed the photocopy provided did not contain the signature - of the payee – as an endorsement but attributed that absence to the poor quality of the copy. Further, he noted the stamp “Deposit to the Credit of ...” is used – generally – only if all or part of the negotiated cheque is being deposited to an account in Richmond Savings. Yee stated that if no signature by Surjit Kaur Mehat was obtained prior to handing her the cash, that would have been an error in banking procedure. He agreed the lack of endorsement and the deposit stamp were two indicia consistent with a deposit transaction.

[228] The witness – Gary Yee – was cross-examined by Darshen Narang. Yee confirmed the sum of \$2,948.33 was the highest balance in the Mehat joint account during the period covered by the statement. He agreed that a signature is not required when a cheque is deposited to an account and stated there is no requirement that the cheque be held until it clears the issuing bank since it is within the discretion of the teller to negotiate the cheque. Usually, if cheques from the same payer had been negotiated successfully in the past, most tellers will continue to accept them and hand over cash in exchange for an endorsement by the customer. In his experience, if a deposit stamp had been affixed in error, it would have been crossed out. Denominations of bills were not recorded on the reverse of the cheque since there is a machine that records them. Yee noted the same teller stamp - #4 – was used on both cheques – tab 15 and tab 16 – and the SRC cheques bore numbers 0031 and 0032. Since both cheques were cashed the same day - October 21, 1996 – one could conclude that Surjit Kaur Mehat received the total sum of \$6,000 in cash from the same teller.

[229] Guprem Monga was called to the stand and examined by Johanna Russell. Monga required the assistance of Russell Gill who interpreted the questions into Punjabi and the answers into English. Monga stated he is the owner of G. Monga Farms which is owned jointly with his wife, Paramjit Monga. In 1996, they lived in town and farmed 12 acres of raspberries at 0 Avenue and bought a 10-acre blueberry farm on Hallert Road before the beginning of the blueberry season. Monga identified a copy of a fax – Exhibit R-3, tab 79 p. 102 – that he sent to Janet Mah together with an invoice – p. 101 – showing the payment - by his farm business – of the total sum of \$17,633.60 to SRC. The breakdown was as follows: \$13,632 for raspberries calculated at 40 cents per pound for 34,080 pounds; \$1,888 for blueberries at 40 cents per pound for 4,720 pounds; 120 hours labour at \$8 per hour for \$960. GST in the sum of \$1,153.60 was added. Monga stated he hired a labour contractor – SRC – to

provide workers in May, 1996 to perform various tasks such as hoeing, cutting back new growth and thinning but also hired workers – personally - to work on the farm. Between May and August, SRC provided a total of 120 hours labour to his farm. Monga stated the usual work day was 8 hours but during berry season could extend to 10 hours. When SRC supplied workers, Monga did not mark their names down but merely made a notation - on a calendar – such as “3 workers (SRC) at 8 hours each = 24 hours”. As listed on the invoice – tab 79, p. 101 – he has copies of the 4 cancelled cheques issued to SRC.

[230] (Counsel for the respondent pointed out that when Fontaine prepared his summary of cheque deposits to the SRC account – Exhibit R-1, tab 28, p. 3 – he missed the G. F. Monga cheque in the sum of \$4,633.60 – within tab 24 – issued on October 26, 1996 with the result his total was \$13,000 instead of \$17,633.60.)

[231] Monga identified photocopies of the front and back of 4 cheques - Exhibit R 55 – as those he had issued to SRC. In 1996, he had hired only SRC to provide labourers and its workers used picking cards when working on the Monga Farms. Monga presented a box – Exhibit R-56 – containing numerous bundles of picking cards in different colours which he stated had no significance except that different contractors used different coloured cards. Monga stated he supplied the picking cards – in triplicate form - to SRC and each morning handed over a stack of cards to be distributed among the workers. Monga’s brother - Balwinder Monga – worked as a Supervisor for Monga Farms because Guprem Monga had a full-time job at a mill and could only attend at the farm property after finishing a shift or before reporting for work. Guprem Monga stated that a new card was handed out – usually – each day but – sometimes – a worker forgot to turn in a card at the end of the previous day and – as a result – used the same one during the next day. At the end of the day, Monga – or his brother - would tear off a copy of the picking card and retain it or otherwise ensured that Monga Farms received copies of picking cards that had been kept at the scale when workers lined up to empty their containers during the day. Monga stated the procedure followed can vary but the main point is that he had to separate and retain his copy of each picking card - identified with the word “Grower” - from the others labeled “Contractor” and “Picker”. In 1996, Monga stated he used peach-coloured cards for raspberries and paid SRC by the flat for each one picked. The flats contained 12 small boxes - as inserts – which cannot be removed. Orange-coloured cards were used to record the amount of blueberries picked and Monga paid SRC by the pound for the berries which were placed into either a 12-pound plastic flat - for the fresh market - or a 16-pound flat for produce destined for the cannery. In the event a picker turned in a flat that held only 8 pounds, then the numbers 5 + 2 + 1 would be punched on that worker’s card to account for

the total of 8. If a flat of raspberries was not full, the actual weight was noted on the back of the picking card and/or each full small basket - inside the flat - could be recorded - by punching the card – and counting it as containing 1.5 pounds of berries.

Monga stated he is aware of large farms where 3 or 4 scales were used to weigh berries but on his farm he used only one scale for each type of berry picked and sometimes moved the scale - by truck – to different locations. In the event a truck was not available, flats were stored on the ground. Pickers used either a 5-pound or 10-pound pail to pick blueberries and when the container was full, it was emptied into a pail/bucket capable of holding 20 pounds of berries. Because blueberries are not as fragile as raspberries, they can be scaled later in the day rather than as soon as they are picked. The known weight of any berry container is subtracted from the reading of total weight obtained at the scale. Monga stated his farm shipped berries to the fresh market by the flat or in small boxes but bins were used to ship to the cannery. He stated he paid SRC by the pound for production and did not concern himself with breaks or rest periods for workers which would have been an issue if he had been paying workers by the hour. When compensating workers at an hourly rate, Monga stated he directs the 15-minute rest periods which are scheduled every 4 hours in addition to a lunch break and an additional break in the afternoon. Monga estimated that a good picker - during the busy part of the raspberry season - could pick 360 pounds a day. Generally, picking at the height of the season and during good weather began at 7:00 a.m. and finished at 6:30 or 7:00 p.m. but picking times varied according to the weather since raspberries can be picked in the rain but not blueberries as the packing plants will not accept them if picked wet. In the event it rained at his farm, the workers might be transported elsewhere. Monga stated there were pickers on his farm 7 days per week during some portions of the berry season. Berries sold to the fresh market are picked every day but during the busy season SRC provided between 20 and 30 workers per day, transporting them in 3 vans. Sometimes, only two vans were needed depending on the progress of the harvest since the raspberries were finished – usually - by the middle of August. Monga stated blueberry season began at the end of July - during the latter part of raspberry season – and members of his own family personally gave directions to workers or transmitted instructions to a representative of the labour contractor who spoke with the workers. Monga stated a worker who is picking blueberries for the fresh market will pick less berries per day than another person - picking berries for shipment to the cannery - who can pick up to 400 pounds of berries per day. There are 4 pickings per season and in his experience, Monga did not observe much difference in volume between the different picking periods except the first crop of raspberries tends to be less so that even a good picker will harvest only 10-15 flats – 12 pounds each – compared to as many as 30 flats later in the season. In 1995, Monga obtained farm labour from Bant Suran and – in 1996 – did not recall having any contact with Manjit Rana in

connection with the workers supplied by SRC. Monga stated he issued cheques of \$4,000, \$3,000 and \$6,000 earlier in the season which he handed – personally – to Bant so he could pay the pickers. Monga issued the final cheque in the sum of \$4,633.40 after calculating the final amount owed to SRC according to his own records and the information obtained from his copies of the picking cards. Monga prepared the invoice – Exhibit R-3, tab 79, p. 101 – from those records and issued the cheque to pay the final amount due to SRC. Monga stated Bant came to the farm many times during the season and he discussed different matters with him concerning the supply of labour. He observed several yellow school buses carrying pickers to destinations in his area - including berry farms operated by his neighbours - but not necessarily to his own property.

[232] The witness – Guprem Monga – was cross-examined by Darshen Narang. Monga stated he sold the 10-acre blueberry farm following the end of the 1997 season but – in 1996 - had operated it together with the 12-acre raspberry farm. The blueberry farm had mainly mature Bluecrop plants, capable of producing between 40,000 and 50,000 pounds of berries and between 80,000 pounds and 90,000 pounds of berries were harvested on the raspberry farm. In 1996, Monga Farms had 4 or 5 employees but retained only SRC as a labour contractor. Its own employees were paid by the hour. He stated there was lots of work to be done during April on the blueberry farm. Monga stated he never saw any licence or even a business card pertaining to the SRC business and was able to prepare an invoice, as though it had been issued by SRC to G. Monga Farms – Exhibit R-3, tab 79, p. 101 – in which he set out the address of Bant’s Vancouver residence as the business address of SRC. Monga recalled he had visited Bant’s house on one occasion for some reason or other and wrote down the address and – at some point - Bant had provided the SRC GST number to Balwinder Monga. A sheet - Exhibit R-57 – dated September 30, 1996 - was prepared by Balwinder Monga on which dates and hours worked by various workers were listed so that the total amount of \$16,480 for supply of labour plus GST - in the sum of \$1,153.60 – exactly matched the total amount paid by Monga Farms to SRC during 1996. Monga stated he was advised by Bant that SRC wanted to pay workers by the hour and in order to satisfy that request, instructed his brother – Balwinder – to prepare the sheet – Exhibit 57 – in accordance with Bant’s instructions. Monga stated he was not present when that sheet was prepared but noted it had columns headed “Date”, “Total People”, “Total Hours Per People”, “Total Hours” followed by one entitled “Total Amount”. Guprem Monga stated Bant supplied him with workers – in 1995 – under the name B & L Farm Contractors and – in 1996 – he assumed Bant was operating the same company. However, prior to issuing the first cheque - on August 10, 1996 – to pay for labour, he was instructed by Bant to make it payable to SRC because Bant had changed the name of his business

since 1995. Monga identified photographs of both Bant and Shindo from those found in Exhibit R-20, tab 97, at p. 1. When shown the photograph of Rana in Exhibit R-31, tab 95, Monga stated, although he was not certain, that – probably - he had never seen Rana before. The name “M.S. Rana” appeared at the bottom of the sheet - Exhibit R-57 – but Monga did not inquire about that prior to sending a copy of that document to Janet Mah. He stated his own workers were paid by the hour regardless of duties performed. He agreed to prepare a sheet for Bant that converted the amount paid to SRC – based on flats or pounds – to an hourly rate for workers. Monga paid his own workers \$8 per hour and stated they picked most of the blueberry crop in 1996 since SRC was paid only for picking 4,720 pounds. Monga stated that if he needed farm labourers, he telephoned Bant – at night – to inform him of the number of workers needed the following day. Although the fresh market berries are worth 10-15% more than berries used for processing, Monga stated it was difficult to find people to pick them because they could not earn enough income on the basis of earning revenue on a piecework – by the pound – basis. The fresh market berries were delivered either by himself, his wife or his brother. Monga stated family members were paid a salary only at the end of the season but non-related workers were given advances from time to time – as requested – and paid a final cheque according to the calculations undertaken at the end of the season. Because his business was part of a cooperative, Monga was paid for product sold through this entity only after sales had been made, but private companies purchasing berries paid him sooner. As a result of the delay in obtaining payment for produce, Monga injected his own funds into the business from time to time. He explained the entire system is based on trust in that pickers trust that growers will pay them in full at the end of the season and – in turn – growers have faith in the entities purchasing their products. Monga stated SRC probably provided between 5 and 10 pickers for the blueberries which may have been picked during the first week in September – depending on the variety – but none of the Monga Farms blueberry crop was picked as late as October. In 1996, Monga shipped berries to two or three processors and during the season a good picker was able to pick a minimum of 50-100 pounds per day and up to 300 or 400 pounds when picking the best part of the crop. If only 5 pickers were used, they could pick every day and Monga estimated it had taken a maximum of 5 days to pick his blueberry crop in 1996. Based on total production of 1,000 pounds per day for 4.7 days in order to equal the total amount – 4,720 pounds - picked by SRC workers, Monga stated it would have required either 5 workers picking an average of 200 pounds each per day or as many as 10 workers picking for only 3 days. Monga agreed SRC was providing labour to his farm as late as September 11, 1996 but pointed out the workers may have been at his farm for only an hour or so before being taken away to work for another farmer. When raspberries are picked, Monga stated they are put into either a 12-pound flat – sold to the fresh

market – or a 16-pound flat which is shipped to the processing plant. Regardless of the destination of the berries, Monga paid his workers on the basis of 15 pounds per flat on the supposition that it averaged out over the course of the day. He stated his practice was to write down a worker's name on the picking card when that person brought berries to the scale for weighing. If a worker did not have a card, one was available at the scale. Monga stated he and his family did not verify the identity of any worker because the same pickers did not show up each day. His business practice did not require anyone to count the number of picking cards handed out each morning and it was assumed all the cards would be turned in each night. Monga agreed the first entry on the sheet – Exhibit R-57 – shows SRC provided labourers on July 15, 1996 but cautioned that a review of the picking cards - Exhibit R-56 – might reveal some work had been done earlier. When preparing the invoice – from SRC to G Monga Farms – he checked over the picking cards but merely inserted the dates of May 31 to August 1, 1996 as “rough dates” sufficient for the purpose.

[233] Counsel for the respondent did not re-examine the witness.

[234] Kal Tarlal was called to the stand and examined by Johanna Russell. Tarlal testified she is employed – as an ICO – by HRDC where she has been employed since 1992. After working 6 years in Vancouver in various capacities – as an Insurance Officer and ICO - she became a member of the Agricultural Compliance Team (ACT) and remained there during 2000 and 2001. Tarlal speaks Punjabi and, even while functioning in a clerical role, began interpreting within her office, as requested. As a member of ACT, she spoke Punjabi to farm workers during visits to the fields and – in 1998 – participated in group information sessions designed to assist Punjabi-speaking workers, many of whom were farm workers. During these seminars, Tarlal stated she did not encounter any difficulty communicating with her Punjabi audience but recalled that – on occasion – she was teased about her choice of words and then provided with the correct one within the intended context. Although born in England, Tarlal came with her parents to Canada when she was a baby. Her mother cannot speak English and her father – also born in India – communicated with the immediate family and other relatives in the Punjabi language. When she was in her early teens, Tarlal took a course in order to learn how to read and write Punjabi and although some of those reading skills have diminished, Tarlal estimates she could understand 70% of the material contained in a typical Punjabi language newspaper. She had visited India twice and had not encountered significant problems when speaking with people from different regions in Punjab. When interpreting for an ICO during an interview with a Punjabi-speaking individual, Tarlal stated if the subject matter was in relation to certain months of the year, she always received responses in which the speaker identified a month by the English name or by a

numerical reference, such as “the 7th month”. On occasion, if it seemed necessary to clarify a response, Tarlal stated she would advise the interviewing ICO accordingly.

[235] Tarlal was referred to Exhibit R-9, tab 91, containing the notes of Fontaine concerning his interview with the appellant, Inderjit Singh Atwal and agreed she had provided interpretation but has no specific recollection of that event nor of interpreting the warning contained in the document at tab 92. She did not recall interpreting during the interview with Atwal on February 17, 1998, although the notes – tab 93 – made by Fontaine indicate she was present.

[236] Tarlal was referred to Exhibit R-11, and to the notes - tabs 102 and 103 – made by Fontaine during two interviews with the appellant, Jaswinder Singh Bassi on December 5, 1997 and December 9, 1997, respectively. Tarlal stated she could not remember having interpreted for these interviews.

[237] Tarlal was referred to Exhibit R-29 and to the notes – tab 91 – of the interview conducted by Fontaine with the appellant Bakhshish Kaur Thandi. Tarlal stated even though Thandi’s daughter entered the interview room later and assumed the role of interpreter in order to assist her mother that she would have remained throughout the interview in order to ensure the accuracy of the interpretation.

[238] Tarlal stated she had no recollection that she interpreted during the interviews – by Fontaine - of the appellant Gian Singh Thandi on February 16, 1998 and February 18, 1998. She was referred to Fontaine’s notes – Exhibit R-29, tabs 91 and 92 – and identified a memo – tab 95 – she wrote concerning a visit to the HRDC office by Maninder, daughter of Bakhshish Kaur Thandi and Gian Singh Thandi.

[239] Tarlal recalled making notes – Exhibit R-19, tab 95 - of a conversation with the appellant Varinder Kaur Jassal on April 24, 1998 during which Jassal advised Tarlal that she had worked full time for SRC, although the hours varied from day to day. She remembered interpreting the interview with Rana but does not recall the relevant questions asked and/or any answers given by Rana. Tarlal stated she had no recollection of the interview – by Fontaine - of the SRC driver Balwinder (Binder) Chahal.

[240] The witness – Kal Tarlal – was cross-examined by Darshen Narang. She stated she visited India – at age 18 – and remained for 3 weeks. Two years later - in 1990 – she returned to India for 4 weeks during which she visited the large city of Chandigarh as well as some villages in Punjab. Her father could speak English and Punjabi.

Tarlal stated she was accustomed to receiving advance notice when her services would be required during an interview scheduled by an ICO but sometimes - as in the case of Rana – she was called upon – without warning - to interpret for someone who attended the HRDC office without an appointment and wished to speak about some particular subject. Tarlal described the usual procedure which was for the ICO to introduce himself or herself and that formality would be interpreted into Punjabi. Even if an interviewee attended with a Punjabi-speaking friend or relative to interpret on his or her behalf, an HRDC employee capable of speaking and understanding Punjabi remained in the room. Tarla stated that in her experience, the questions and answers were reviewed at the end of the interview and the interviewee had the right to advise Tarlal of any additions, revisions, deletions or corrections which she would interpret to the ICO. At the conclusion of an interview, most claimants were asked to sign on the last page of the notes. When interpreting the standard warning to someone, Tarlal stated she did not use only one word to convey the concepts inherent in the single English words such as “verification”, “omission”, “prosecution” or “misleading”. In order to satisfy herself that interviewees understood the import of the warning, she asked them to state what they understood based on what she had told them. As to other significant aspects of an interview, Tarlal referred – as an example – to Exhibit R-11, tab 91 - the application for UI benefits submitted by Jaswinder Singh Bassi - and stated her practice was to explain the nature of that document and to point to a signature and inquire if the person was prepared to acknowledge it was their own. Tarlal stated some people answer quickly so the interview will proceed at a rapid pace. She stated she would not recall - 6 years later – whether someone had been asked if they had been drinking or under the influence of some other substance when attending an interview but added it was extremely rare that an individual would show up - obviously impaired – at an HRDC office. Tarlal stated she would use the English word “April” when speaking in Punjabi and if she perceived a lack of understanding would repeat the phrase in question but substitute “the 4th month” for April. Tarlal conceded she could not use higher numbers in Punjabi and uses other methods to explain those figures.

[241] The witness – Kamwal Gill – was called to the stand and examined by Johanna Russell. She testified she is a bookkeeper and was employed by M & G Bros. Farms Ltd. Gill Farms – in 1996. The business is owned by Mohinder Singh Gill and Gurdev Singh Gill, Kamwal Gill's father-in-law. Kamwal Gill is not a director or officer of the corporation. Her duties – in 1996 – included making ledger entries, payroll, supervising farm operations, including handing out picking cards,

distributing flats, weighing berries and issuing instructions to a foreman/employee of Gill Farms who communicated the details to a representative of the labour contractor. In 1996, Gill Farms had 23 employees on the payroll during the season and many of them carried out tasks such as picking and weeding in addition to other duties. The corporation farmed a 35-acre parcel it owned together with an 85-acre adjacent property that it leased to create a total acreage of 120 which was devoted to the production of raspberries. The company also leased an 80-acre parcel in Langley of which 25 acres was composed of blueberry plants at various stages of maturity. Gill Farms also owned an 18-acre raspberry farm in Abbotsford and leased another 35 acres on Huntingdon Road where the crop consisted mainly of raspberries. Gill stated her duties included issuing payments to labour contractors. In 1996, she prepared 3 cheques payable to SRC – Exhibit R-2, tab 41, p. 6 – as follows: July 14, 1996 - \$4,000; August 3, 1996 - \$4,000; October 14, 1996 – the final cheque – in the sum of \$32,895. Gill stated Gill Farms dealt with SRC in accordance with the terms of the Farm Contractor Licence - Exhibit R- 2, tab 41, p. 8 – issued on July 22, 1996. She had no dealings with Manjit Rana. She identified the sheet – same tab, p. 9 – on which she wrote details of blueberries and raspberries picked by SRC workers. She calculated the amount owing based on \$5.35 per pail for blueberries, \$4.35 per flat for raspberries and then added a bonus of \$500. There was no hourly rate paid in respect of any worker supplied by SRC. The total payment by Gill Farms – to SRC – was \$40,395.06 in 1996. Kamwal Gill mailed a complete set of picking cards for the 1996 season to Janet Mah and they were returned later. Prior to sending them to Mah, she separated them into blueberry and raspberry cards and Mah inserted pieces of yellow paper – at various places - for her own purposes prior to returning them. Kamwal Gill stated the picking card – in triplicate – that was used for blueberries had the address of the Gill corporation at the top and the three copies of a card were for the benefit of the farmer, the contractor and the picker, respectively. The name of the picker was written at the top of the card. If it was the first time a worker brought a container to the scale for weighing, Gill stated she asked for his or her name and wrote it on the card. Other times, workers lined up on their own accord and provided her with their names, one by one. A new card was provided each day and was distributed – usually – to the workers by Mohinder Singh Gill. The picker retained the same card throughout the day and at quitting time handed it to the contractor who turned over the Farmer’s copy to a representative of Gill Farms. Cards for blueberries were separated horizontally and vertically for raspberries. Kamwal Gill stated blueberries were packed into larger pails or flats – each containing 20 pounds of berries – so the form of container was not particularly significant since each picking card recorded only the net weight of berries brought to the scale regardless of the nature of the container, whether a large, plastic pail or a flat with a 12-compartment insert. In the event a pail or a flat was not full, then the card was punched to record

either 1/4, 1/2 or 3/4 to reflect the most accurate assessment of the partial contents. Raspberry flats also had 12 interior compartments and the flat held 16 pounds of berries when full. If a flat was handed in that contained either less or more than that weight, the difference was noted with either a plus or a minus sign on the card itself or on some other cards, the fraction best representing the amount of the variation would be punched. Gill stated that during the busy season she received berries – at the scale – continuously throughout the day but if not as many pickers were working during slower periods, only one scale was used and she would weigh berries at 10:00 a.m. and again at noon and every two hours thereafter until quitting time. When only one scale was in operation, it was mounted on a truck and moved from place to place. Berries were dumped into totes or large bins until they could be hauled to the processing plant. Gill estimated SRC supplied as many as 40 workers during the busy part of the picking season in order to supplement the labour force of 20 to 30 workers employed by Gill Farms. The blueberries were all picked by hand. At the end of the season, by referring to picking cards, Gill calculated the total amount earned by SRC - based on a certain amount per pound of berries picked by its workers – deducted the sum of \$8,000 paid in the form of two advances, added GST, and arrived at an amount which was the subject of a final cheque issued to SRC. Gill stated seasonal employees of Gill Farms were also paid on a piecework basis but year-round employees were paid a salary. Gill recalled a telephone conversation with Janet Mah and was referred to Mah's notes – Exhibit R-3, tab 79, p. 118 – indicating Gill had advised her that an average worker would pick approximately 15 flats of raspberries a day, depending on the crop, and between 14 and 17 - 20-pounds - pails of blueberries per day. Gill agreed she had provided those numbers to Mah and added that one worker had picked 26 pails of blueberries in one day and some workers could pick up to 30 flats of raspberries per day in the course of an unofficial spirit of competition between competent pickers. During the season, pickers arrived at the farm between 8:00 and 8:30 in the morning and worked until 6:30 p.m. if it was a nice, sunny day. If it rained hard, picking had to be halted – sometimes – but if the blueberries being harvested were going to be sold in the fresh market, picking continued and the berries were dumped into large totes (bins) which were covered with plastic. Gill stated pickers work 7 days per week during a season in which different berries ripen at various times. Raspberries may be ready as early as June 15th but even if the harvesting begins later, it is sometimes necessary for Gill Farms to hire labourers through a contractor. She could not recall the types of vehicles used to transport workers to the properties operated by Gill Farms since they were parked far away or merely dropped off some workers and continued to another destination.

[242] The witness – Kamwal Gill – was cross-examined by Darshen Narang. She stated she has been employed by Gill Farms since 1984 but works in the fields only

during berry season. She took accounting courses at Fraser Valley College in order to handle the payroll requirements of the corporation. In 1996, employees of Gill Farms were paid bi-weekly in accordance with provincial employment standards and were paid an hourly rate except for pruning which was remunerated by the row. Gill stated that when picking berries, Gill Farms employees, although still paid by the pound, receive a different rate than the one used to pay labour contractors for berries picked by their own employees. She added that picking rates will vary from year to year and in 1996, Gill Farms paid SRC \$5.35 for each flat of blueberries and \$4.35 for each flat of strawberries. That year, no blueberries were grown on any of the Gill Farms properties in Abbotsford. She recalled providing answers to questions posed by Janet Mah during a telephone conversation and for part of the time, Mohinder Singh Gill was present in the office and provided some answers. In 1996, Gill Farms had crops on a total of 173 acres. The company employed 23 of its own pickers who were hired about the same time as SRC was contacted to provide additional workers for the harvest. Gill Farms operated 50 trucks at that time and there were usually one or two in a field because they were required to haul two or three truckloads of berries from the field each day. The cannery was about 10 minutes away from the raspberry field. Gill stated that when a raspberry-picking machine was used, it operated – usually - in a different field, although it has been used side by side with human workers. Raspberries are quite plentiful and fields are picked as circumstances require so that an average field will be picked 7 or 8 times and – sometimes – as many as 10. Blueberries are picked only 3 or 4 times. Gill stated that blueberry picking is more time-consuming and there is an overlap of about 15 to 20 days with the raspberry season. There is a different rate for strawberries, raspberries and blueberries and production can vary from day to day. However, the rate established by the provincial government for picking blueberries is \$2 or \$3 more per flat than for picking raspberries. Narang pointed out to Gill that according to the invoice she prepared, SRC was paid 27.18 cents per pound for raspberries and 27.65 cents per pound for blueberries. Gill replied that her calculations were based on flats rather than pounds. She reviewed the picking cards and tallied the amounts picked according to flats. If a picker lost a picking card, no payment would be made for any berries picked. Kamwal Gill stated Gill Farms also owns a processing plant but she did not provide any bookkeeping services to that entity. Gill was referred to Exhibit R-59, an extract from the *British Columbia Gazette - Part 11* setting forth the minimum wage for farm workers – in 1996 – employed on a piece work basis pursuant to regulations issued under the *Employment Standards Regulation*. The applicable rate at that time was as follows: raspberries - \$.275 per pound; strawberries - \$.265 per pound; blueberries \$.305 per pound. Gill agreed her family company paid its own workers less than the rate billed by SRC but believes it was in accordance with the applicable government minimum rates. Gill stated company employees either came to work

using their own transportation or she picked them up and dropped them off at night in a van. Some workers lived in cabins on the property. Gill had no recollection of speaking to Fontaine but had sent him some cancelled cheques and the relevant invoice referred to earlier.

[243] Mohinder Singh Gill testified in Punjabi and the questions and answers were translated from English to Punjabi and Punjabi to English by Russell Gill, interpreter. Mohinder Singh Gill agreed the information contained in the corporate search – Exhibit R-3, tab 79, p. 120 – was correct and that – in 1996 - he was the President - and a Director - of M. & G. Bros. Farms Ltd. and his brother – Gurdev Singh Gill – was Secretary and also a Director. They still occupy those positions and the corporate structure permits their children to hold shares. Gill recalled the picking machine was used in 1996 for some raspberries and black currants and was operated by members of his family and corporate employees. A large 80-acre field next to his family residence was not used in 1996 but had been in production the previous year. In 1996, the Gill business farmed 35 acres on the home property and 8 adjacent acres, a 12-acre parcel on Ross Road, a 20-acre raspberry farm on Huntingdon Road, 70 acres in Langley, of which 25-28 acres were planted in blueberries with the remainder in black currant. The 2 acres of Bluecrop berries on the Ross Road parcel produced only 1,000 pounds of berries. Gill stated the raspberry season generally starts between June 15 and July 1 and if blueberries ripen during this period, pickers are taken - from the raspberry fields - to pick blueberries and the picking machine takes over harvesting the raspberry crop. Gill recalled his dealings with Bant the previous year when he supplied labourers to Gill Farms. In 1996, he was advised – by Bant – that the name of the business had been changed and the current Farm Contractor Licence was issued in the name of SRC. Gill stated Gill Farms has to ensure that a labour contractor is licensed prior to entering into any business arrangement. In 1996, he was aware Bant was related to Rana but always dealt with Bant. Gill stated that - in his experience – a labour contractor will not attend at a field every day but will appear to pick up a cheque or for some other business reason. Gill was referred to a photograph (of Rana) - Exhibit R-18, tab 99 – and stated he could not put a name to that face but had seen that person going to the fields during the summer of 1996. SRC was the only labour contractor hired by Gill Farms that year and – in 1997 – Gill waited for Bant to show up but he failed to do so, and information was received later that SRC had gone broke. Gill stated SRC used the same van and the same old, yellow bus in 1996 that Bant used in 1995 when he was operating as B & L Farm Contractors. SRC also operated a white van and a reddish van to drop off workers at various farms. Gill stated he knew Bant operated his own blueberry farm in Richmond and that some producers offered a different rate for picking so a labour contractor often divided the work force into various groups. Weather played a part in

the harvest since blueberries hauled to the cannery had to be dry. As for numbers of workers, Gill stated he was willing to accept 10 extra pickers if their help was needed to harvest the crop. He explained the system of annual bargaining – prior to the start of the season - whereby a labour contractor offers to pick different berries at a particular rate and the farmer decides whether to accept that rate or to make a counteroffer which may or may not result in a contract. However, once the rate is agreed to by both parties, it is not increased during the season and any bonus paid at the end of the season is solely within the discretion of the grower as was the case in 1996 when he instructed Kamwal Gill to add a bonus of \$500 to the final amount due to SRC. Regarding the issuance of picking cards to workers, Gill stated that if the SRC driver could not write, he instructed Kamwal Gill to record the names of workers when they presented berries for weighing at the scale. Although the picking cards handed to SRC workers were in triplicate, the ones used by Gill Farms own employees were only in two copies, one for the company and one for the worker and at the end of the day, the cards would be separated into two piles, one for Gill Farms workers and the other for those pickers employed by SRC. At the end of the season, Kamwal Gill tallied the picking cards – in Mohinder Sign Gill’s presence – and calculations were undertaken to determine the balance owing to SRC. Gill stated he understood that Bant purchased berries from growers farming small parcels and shipped the product to Purewal cannery. In order to pick the berries, Bant transported workers to those small holdings – in Richmond – and also took workers to that area where they worked on a vegetable farm.

[244] The witness – Mohinder Singh Gill – was cross-examined by Darshen Narang. Gill stated he has farmed since 1970 and began entering into verbal contracts with labour contractors in 1974 but Gill Farms had reached the point where the combination of machines and regular employees were sufficient to handle the harvest. Currently, two machines are used to pick 52 acres of raspberries. Gill stated a yield of 8,000 pounds per acre is an average harvest and estimated that 225 workers would be required to pick 75 acres of raspberries. In 1996, SRC workers picked 3,593 flats of raspberries but less than 50 human pickers were utilized that year because machines harvested the major portion of that crop. In 1996, there was no machine capable of picking blueberries although one has since been developed. Gill stated his blueberry plants are currently in much better condition than during 1996 and the farms can produce 5 tons per acre compared with 3 tons in 1996. In 1996, according to records compiled by Kamwal Gill, between 50 and 60 tons of blueberries were harvested of which SRC workers picked 41. Blueberry production was calculated on the basis of 20 pounds per flat and SRC workers picked 4,134.5 flats or 82,690 pounds. Gill stated his family did not attempt to verify the identity of any worker. He arrived in Canada - in 1969 - at age 29 and soon came to know 4

other men named Mohinder Singh Gill. In the past, he once prepared 3 ROEs for 3 different female workers with exactly the same name. As a result, HRDC investigated the matter but was satisfied the three workers were real people – with different SIN numbers - who lived at different addresses. He confirmed SRC had not presented Gill Farms with its own invoice for services provided. Gill stated there were never any blueberries on the Huntingdon Road property. Gill stated many government officials and people from universities have visited his farming operation over the course of many years.

[245] Counsel for the respondent did not re-examine.

[246] Peter Kliewer was called to the stand and examined by Johanna Russell. He stated he lives in Richmond and is a retired farmer. In 1996, he and his wife - Elizabeth – operated Kliewer Farms, consisting of one 6-acre parcel on #6 Road. That year, 4 acres of blueberries were in production including the Bluecrop variety – comprising 65% of total - and two other types. In 1996, he and his wife entered into a contract with Bant Suran to provide labour and obtained Bant's address, telephone number and pager number. Kliewer was referred to a photocopy of two cheques – Exhibit R-3, tab 79, p. 106 – in the sums of \$12,383.68 and \$866.85, respectively, payable to SRC (This total payment of \$13,250.53 matched the one traced by Fontaine and noted in Exhibit R-1, tab 28, p. 3, line 17). Kliewer stated SRC was paid according to the weight of blueberries picked and a record was maintained by using picking cards in triplicate. At the end of the season, the cards were reviewed and tallies were made of the total volume picked. Kliewer produced a package of original picking cards – Exhibit R-60 - printed to include the name Peter Kliewer and the address and phone number of the farm together with a tally sheet – Exhibit R-61 – used to record the total volume picked each day. The picking cards are stuck together at the edge and Kliewer explained that a hole is punched at the side of the card so a picker can use a safety pin or other fastener to affix it to his or her clothing because the card will be used all that day to record the amount of berries picked. Kliewer noted the first picking card was dated August 8, 1996 and the last one was dated September 17, 1996. Kliewer Farms used plastic pails with a 20-pound capacity as receptacles for blueberries. If a pail was only partially full, then the actual weight was recorded at the bottom of the picking card and at the close of each day, the shortfalls and overages in weight were tallied and accounted for on the relevant picking card. Kliewer recalled Shindo – Bant's wife – was often at the scale where picking cards were handed out each morning – to each picker - when the first pail of berries was presented for weighing. He added that she seemed to be present most of the time and dealt with the workers. Pickers were permitted to take breaks for lunch or otherwise at their own discretion. Kliewer stated his wife separated copies of the

picking cards and retained the contractor's copies. Sometimes, two persons - assumed to be husband and wife - used one card. After the berries were cleaned, they were hauled to Purewal Blueberry Farms Ltd. (Purewal Farms). Kliewer Farms paid SRC 32 cents for each pound of blueberries picked which was the rate agreed upon between the Kliewers and Bant at the beginning of the season. In 1996, the entire crop was picked by SRC workers and the starting time was flexible since it depended - to some extent - on the weather. Kliewer recalled the picking was underway - usually - between 8:00 a.m. and 9:00 a.m. and continued until 7:00 p.m. if the weather was good. He stated the SRC workers arrived in a brown van and, although the same crew did not come to work every day, it made no difference to him so long as the crop was picked. Kliewer stated he had enjoyed a good relationship with Bant in previous years and regarded him as an honest person in the context of their business relationship. Kliewer stated he and his wife did not like to work on Sunday because they attended church. However, if it was necessary to pick that day due to time constraints in terms of completing the harvest, he and his wife permitted picking to be done but only in the afternoon following church services. Kliewer stated he never received any invoice from Bant. Instead, he and his wife tallied amounts from the picking cards and calculated the amount owing to SRC. Kliewer recalled speaking with Fontaine and confirmed the content of Fontaine's notes - Exhibit R-2, tab 40 - that he hired Bant - in 1997 - to provide approximately 9 pickers to harvest the blueberry crop. Kliewer Farms paid Bant - through an entity called Loomis Enterprises - the sum of \$5,896.96 plus \$412.79 GST for those services. During that conversation with Fontaine, Kliewer recalled he had been unable to locate Bant in order to provide pickers during the 1998 season and - after encountering some difficulty - finally found another contractor to provide some workers. Kliewer stated he accepted - as correct - the statement - Exhibit R-3, tab 79, p. 107 - by Purewal Farms setting out various purchases of blueberries from Kliewer Farms in 1996.

[247] The witness - Peter Kliewer - was cross-examined by Darshen Narang. Kliewer stated that during more than 25 years of farming, he had used the services of several labour contractors but cannot recall their names. Each year, he and his wife would be visited by several contractors who offered the services of their business to pick the berry crop that season. Discussions would take place concerning the piecework price, the experience of the contractor and the number of workers that could be provided. Kliewer stated he found Bant to be very reliable and only paid him - once - at the end of the season for the labour provided by his company. In 1996, Bant advised he had changed the name of his business. Kliewer stated he recalled having trouble - in 1997 - finding pickers and remembered 9 pickers were found eventually but did not recall - specifically - telling Fontaine that Bant had been involved in that arrangement. Kliewer stated he did not time have to transport

workers and observed that some arrived in their own vehicles or were driven to work by someone. There was ample room to park on the Kliewer property. Kliewer stated he and his wife made a cleaning machine - using a belt-shaker - to permit them to separate out green and/or mushy berries in order to receive a first-grade rating - and a higher price - from Purewal Farms when product was shipped there in containers - known as "lugs" - that held 40 pounds of berries. SRC workers did not help to clean the berries. Kliewer recalled speaking with Janet Mah and agreed he probably told her that sometimes one or other workers were absent due to illness. He recalled that most of the 10 or 12 pickers were elderly and it seemed some were related. Kliewer stated that when he handed out picking cards, if a worker could write names in English, he permitted that person to record the names of other pickers on their respective cards because he could not understand the workers when they spelled out their names. Kliewer agreed there may have been as many as three pickers using one card but thought that would have been unusual. Instead, a husband and wife would use one card between them. A field was picked two or three times per season and Kliewer stated that without referring to dates noted on picking cards, he has no independent recollection of the start and/or end of any season, including 1996. He was referred to the Farm Labour Contractor Licence and stated he could not recall having seen that document but remembered obtaining the GST number - from Bant - that was written on a small piece of paper. Kliewer agreed the tally sheet - Exhibit R-61 - recorded that 1,419 pounds of blueberries were picked on September 17, 1996, the final day of the Kliewer Farms season. The yield on the previous day was only 103 pounds and two weeks earlier - on September 2 - the workers picked 518 pounds. Kliewer stated he hauled - at night - one load of berries to Purewal Farms using a 3/4 ton truck but could not recall the number of "lugs" hauled at one time. The berries were stacked 5 bins to a pallet and offloaded at the Purewal Farms plant which received berries 24 hours a day during the busy season. Kliewer stated Kliewer Farms had a GST number and confirmed he and his wife had hired SRC to provide labour only for picking.

[248] The witness - Elizabeth Kliewer - was called to the stand and examined by Johanna Russell. She stated she was a partner - with her husband - in the blueberry farming business and that they had dealt with Bant - as a labour contractor - for 4 or 5 years prior to 1996. She knew Surinder (Shindo) Suran was Bant's wife and that she drove the brown van and stayed with the pickers all day while Bant usually showed up about noon. She could not recall ever seeing Manjit Rana and, although she had heard the name "Manjit", it had not been connected to the family name "Rana". Elizabeth Kliewer stated she directed pickers to new rows and inspected plants to ensure all the ripe berries had been picked and also weighed the berries when handed in at the scale. She identified the picking cards - Exhibit R-60 - as the

ones handed out each morning when each picker collected a bucket to start the day. In her experience, there was always a worker who could speak and write in English so that person would write pickers' names on the cards. At the end of each day, Elizabeth Kliewer separated the copies of the card, retained one and handed the other to the representative of SRC. She weighed berries 4 times a day during the peak of the season but - usually - only twice or - perhaps - three times was sufficient. At the height of the season, berries were weighed at 11:00 a.m, noon, 4:00 p.m. and at the end of the day, around 7:00 at night. Kliewer stated that - sometimes - a married daughter would share a picking card with her mother and - on occasion - family members who had driven a picker to work would stay and help to pick but the berries accumulated by the group would be weighed and marked on the picking card that had been issued to the SRC employee. She stated that to the best of her knowledge, only persons who were related shared a picking card. When weighing berries, Kliewer attempted to attain an exact weight of 20 pounds in the large pail and used a scoop to pick up enough berries from a small bucket in order to add to the larger container to make up any small shortage. She stated pickers often carried a small container around their waist and she would remove any excess berries from the large container and put them into that smaller receptacle. The scale was moved from time to time to the end of the rows closest to the pickers. During the day, some pickers emptied their pails on an irregular basis in order to avoid lining up at the scale during regular weighing times. Elizabeth Kliewer stated she and her husband insisted that picking stop at 7:00 p.m. even if the weather was nice because they had their own work to do after the pickers went home. She was referred to the comment within the notes - Exhibit R-2, tab 40 - of Fontaine that Bant - in 1997 - had been paid by Kliewer Farms - through the entity Loomis Enterprises - for providing 9 workers. She stated she did not think that information was correct but recalled Bant told them he had some sort of problems in his business and that some former employees had burned his bus. She recalled that a woman arrived at their farm - in 1997 - and offered to provide some pickers. That offer was accepted and the pickers were paid every two weeks.

[249] The witness - Elizabeth Kliewer - was cross-examined by Darshen Narang. She stated other labour contractors had been hired prior to 1993 but they contracted with Bant in 1993 and thereafter each year until the end of the 1996 season. She stated she regarded Bant as a "good man" and was not aware of any problem concerning lack of payment by his company to any of the pickers. Each year when Bant visited their farm, they discussed the forthcoming season and details of the proposed contract including price and timing of the services to be provided. Usually, the Kliewers attempted to give Bant about one week's notice that pickers would be needed. She recalled that many pickers were elderly and she had to lead them - on occasion - back to a bush to show them that some berries had been missed. Any

other complaints concerning quality of work were directed to Bant. Elizabeth Kliewer stated some blueberries were sold directly to friends and acquaintances from a small shed on the property but there was no selling to the general public. She stated that if some berries had to be thrown away later for some reason, they did not charge that amount back to any of the pickers but merely accepted the loss. The picking rate for blueberries was 32 cents per pound and Kliewer estimated a good picker could pick 300 pounds per day but the average daily production per picker was probably about 150 pounds. However, towards the end of the season, a worker might not be able to pick more than 40 pounds in a day as the berries were quite sparse. A field was picked every 2 1/2 weeks until the season was over and Bluecrop berries were picked three times as opposed to the Rancocus variety which was picked only twice. Kliewer stated the picking season depends on the weather and speculated that – in 2004 – it would begin one week earlier. However, the berries are usually ready about August 1 or within that first week. She was referred to the tally sheet – Exhibit R-61 – indicating no berries were picked between September 2 and September 16. She stated that appeared to be abnormal and could not recall the reason for that gap. She knew Bant had rented a place to grow the Rancocus variety of blueberry. According to her recollection, most of the pickers showed up each day except one or two might be ill or unable to attend because of a medical appointment or some similar reason. She recalled there were about 12 workers at their farm every day during the 1996 picking season. The picking began with the Bluecrop variety and the Rancocus – grown in a different field - was next but at the beginning there were a lot of green berries which made picking more difficult.

[250] Counsel for the respondent did not re-examine.

[251] Sukhdev (Dave) Khakh was called to the stand and examined by Johanna Russell. Khakh testified he has been the sole shareholder in K.B.F. Enterprises Inc. since it was incorporated on May 22, 1990. He is sole Director and President and occupied those positions in 1996. Khakh stated this corporation carries on a farming business (referred to earlier in these Reasons for Judgment as Khakh Farms) by entering into leases on various parcels of land, some of which are not renewed. Another corporation – Khakh Farms Ltd. - was incorporated in 1993 and various members of his family serve as Directors and Officers. However, it is not an active company and the main reason for its incorporation was to protect the family name – Khakh – within the agricultural industry for marketing purposes. Khakh stated he did not recall a telephone conversation with Janet Mah concerning the extent of the Khakh Farms operation in 1996. He was referred to notes - Exhibit R-3, tab 79, p. 108 – made by Mah and confirmed that his farming business grew strawberries on 140 acres of land – Cartmell Road - in Chiliwack and also grew

different varieties of strawberries on other leased land. About 40 acres of raspberries were grown on a 140-acre farm – at Parr Road - in Chiliwack and the corporation leased other smaller pieces of land comprising more than 130 acres in total. Vegetables, including broccoli, corn, cauliflower, peas and Brussels sprouts were grown on the Cartmell Road property in Chiliwack. Mostly strawberries were produced on 60 acres at Prairie Road in Chiliwack but there were also some vegetables grown on that property. Another 40-acre parcel – North Parallel - in Abbotsford grew strawberries, cauliflower and corn. Khakh Farms also leased a 25-acre blueberry farm on #3 Road in Abbotsford but it had only small plants in 1996 and did not produce a large crop that year. Khakh stated this property also had an outdoor nursery that occupied about 15 acres which was used to grow various trees and shrubs as well as peas, beans and other vegetables. The 5 ½-acre home parcel at King Road in Abbotsford was used to produce raspberries and blueberries and it had a greenhouse which was used to propagate cauliflowers in order to enable an early planting. Khakh stated some properties such as the one at Cartmell Road were separated by trees so as to create different fields. The #3 Road property had a vegetable processing facility where crops were cooled, iced, graded, packed into containers and shipped to customers. No berries were grown on that land. In 1996, Khakh estimated the breakdown of revenue for the corporation would be as follows: Strawberries – 50%; Raspberries – 30%; Vegetables – 20%. In 1996, Khakh Farms had between 10 and 15 employees and relied on workers provided by labour contractors to perform most of the work on various parcels of land. Khakh was referred to Exhibit R-62, a letter dated May 5, 2004 from Joe Gill & Associates - Chartered Accountants – to Johanna Russell enclosing copies of cheques from K.B.F. Enterprises Inc. to SRC. He confirmed that his corporation issued one cheque – in the sum of \$8,000 on October 17, 1996 and another – in the sum of \$9,004.98 – on November 15, 1996 for a total payment of \$17,004.98. The notation “Strawberry Picking Labour” appears on the memo line of the \$8,000 cheque. Khakh stated that on some days during the busy part of the picking season, there may be 700 workers on one of his farms provided by various farm labour contractors. He was shown the list prepared by Janet Mah - Exhibit R-3, tab 79, p. 109 – and stated he assumed those were the names and amounts provided to her during their conversation but could not specifically recall. Khakh stated that pickers are generally paid by weight but if some circumstances arise during a “strange year”, it may be necessary to pay an hourly wage. If required to pick on a difficult parcel, workers may insist on an hourly wage capable of producing 10% more revenue than if they were picking in an ordinary field. Khakh explained the life cycle of the strawberry plant encompasses only 2 to 5 years and there are many variables within that period. When strawberries were picked for Khakh Farms, the workers were provided with picking cards – in triplicate – and examples of the “Farmer” copy of the card were filed as

Exhibit R-63. Khakh stated his farming business used one picking card for all types of berries and the numbers printed thereon can be used to record full flats as well as fractions thereof. During the day, the picker retained the card. With regard to picking strawberries, Khakh stated the berries are placed in buckets, then in flats containing compartments of different sizes depending on the nature of the market. Generally, a flat holds 16 pounds of berries but a particular processor may request less weight per flat or a fresh market – niche market – vendor may want less berries in the flat in order to prevent them from becoming squishy. When sending berries to this special market, Khakh Farms used experienced pickers in order to fill the special orders of customers who requested different weights of flats. During the peak of the picking season, there is a steady stream of pickers carrying berries to the scale. Any excess berries over the desired weight are handed back to the picker who places them in a small container or the overage is assessed as constituting a certain fraction of a full flat and the card is punched accordingly. Khakh stated raspberries were also placed in flats - with a 12-section insert – and some were filled only to 12 pounds in order to satisfy the requirements of the fresh market which amounted to between 10 and 15% of total raspberry sales. Khakh stated a bonus could be paid to a good picker by punching his or her card to record an extra 1/2 flat. The blueberry flats used by Khakh Farms varied from 12 to 16 pounds. During the blueberry harvest, there were pickers employed by various labour contractors working in the same field and they would all bring berries to the same weighing stations. Khakh stated that 4 scales may be used in one field and are operated by a family member or a Khakh Farms employee although – sometimes – a representative of the labour contractor would operate a scale. Other than picking cards, there were no separate list of workers or records of amounts picked by any of them. The scales were portable and could be lifted onto the back of a truck or placed on the ground. In order to permit the scale operators to have a break, Khakh Farms attempted to schedule a regular lunch hour and breaks were also taken if the rain was heavy enough to suspend picking. Because it would take about two days to pick a good row, some pickers showed up early in order to choose one that had plentiful berries. Picking was done 7 days per week. On occasion, work extended to 8:30 p.m. or slightly later in order to finish a field. Khakh stated he is required to attend at different farms operated by his business and has to attend to many details during the day. The last date when SRC provided workers was prior to November 15, 1996, since that is the date a cheque had been issued to that company for payment of labour. Khakh Farms also hired labour contractors to provide workers for weeding, transplanting cauliflower and sprouts, and to pick vegetables. Strawberry and raspberry plants also required weeding from time to time depending on the state of weed control during a particular season. If workers were hired to perform these sorts of tasks, Khakh Farms paid them an hourly rate as recorded by one of its own employees and or/by the contractor. Khakh Farms did not

record names of individual workers, only the total number present on a particular day. The hours of work depended on the nature of the tasks performed and weather conditions. During picking season, Khakh Farms employees picked berries but were also required to carry water to workers and to assist with loading and off-loading berries. Khakh Farms employees are paid by the hour and the only exception is if someone has been hired only to pick berries, in which case, he or she is compensated according to the applicable rate for the weight of berries picked. In 1996, Khakh Farms used a machine to pick raspberries and blueberries but strawberries still had to be picked by hand, sometimes as many as 4 times in one season. During the busy season, thousands of flats of berries were picked in one day and Khakh put in long days sometimes sleeping only two or three hours. Khakh stated he could not recall meeting Manjit Rana and, although he recognized the name indicated he probably would not know Bant Suran if he saw him. This was confirmed when he could not identify Rana nor Bant nor Shindo from photographs shown to him by counsel. Khakh stated he does not pay a contractor for labour supplied unless that entity produces a valid Farm Labour Contractor Licence. Some years, contractors visit farms seeking work while other times the growers are seeking – sometimes, desperately – enough pickers to harvest their crops.

[252] The witness - Suhkdev Khakh – was cross-examined by Darshen Narang. Khakh stated the corporation operating Khakh Farms leases 3 parcels of land owned by his father. In 1996, the business had 150 acres planted in strawberries compared with about 80 acres in 2004. The Cartmell and Prairie Road properties are about 30 kilometers apart and during peak periods, those properties produced about 1,000 flats for a total weight of 75 tons. Khakh stated it takes about one week to pick a larger field and that there may be a hiatus in picking at some point in the overall season. Strawberries destined for the fresh market are picked during the first week of May and some are marketed at the Khakh Farms berry stand alongside #3 Road or sold to local stores. During this period, the berries are expensive compared to those shipped to the processors beginning the last week of May or first week of June. The Chiliwack fields mature about two weeks earlier than those in Langley but sometimes even those early berries are not ready until the second week of June. Strawberry plants are planted – usually – in late April or early May. Khakh explained that the mother plant will produce berries the first year but not the others known as “runners”. In the past, strawberry plants lasted about 5 years but currently seem to have a shorter lifespan. A first-year plant, if placed in the ground by late April, can produce berries in July. In order to plant 100 acres of strawberries, 10 workers are required and – weather permitting – can complete that task in approximately two weeks. Khakh stated his farming operation is one of the largest in the Fraser Valley and Khakh Farms has obtained yields of up to 8 tons per acre, an amount double the

average yield in that area. In a good year, his farming business – operated by 8 or 9 family members and 10 or 12 non-related employees – can produce 1.2 million pounds of strawberries. Khakh described the picking season as very busy with lots of traffic to the farm sites including vans, yellow buses and private vehicles. The vehicles were parked in whatever space was available and Khakh Farms owned and operated several smaller trucks in addition to those that towed 53-foot semi-trailers used to haul berries to the customer. Loading – through a side door - was done by using a pallet jack and 4 people inside the truck stacked the containers. On occasion, berries were stacked on the ground because the trucks were already busy hauling to the processing plant. Khakh estimated workers could pick at least 10 flats of strawberries per day although some might pick as many as 15 or 20 flats. Khakh stated he tends to use the same labour contractors each year and – in 1996 – the main one had been Star Labour that supplied a workforce in return for payment of over \$175,000. Regarding 1996, Khakh stated he had no specific recollection of entering into any business arrangement with Bant or anyone representing SRC and expressed the opinion that SRC may have been brought in by another contracting entity to supplement its own pickers. In any event, Khakh Farms did not verify the identity of workers nor of the labour contractors except when issuing payments based on a summary of the information contained in picking cards. Khakh referred to the list of payments made to contractors – Exhibit R-3, tab 79, p. 109 – and stated that most of that hired labour would have worked on the strawberry fields although some hours may have been devoted to vegetable work. Khakh noted the cheque in the amount of \$8,000 and dated October 17, 1996 – Exhibit R-62 – had been issued for “strawberry picking labour”. The pickers employed directly by Khakh Farms are paid an hourly rate, at or near the provincial minimum wage but the amount per hour paid to a labour contractor is usually \$3 or \$4 more. Khakh recalled his farm operations had been visited by an HRDC compliance team that performed certain inspections, including examination of employment records and related documents.

[253] Counsel for the respondent advised the Court that a schedule - Exhibit R-64 - was prepared by reviewing the picking cards retained by Gill Farms. Counsel further advised the Court that a schedule of picking cards relating to Kliewer Farms had been prepared – based on the cards in Exhibit R-60 – and said schedule was filed as Exhibit R-65. A review was also undertaken of picking cards - Exhibit R-56 – issued by Monga Farms and a summary was prepared and filed as Exhibit R-66. Counsel advised those schedules included details of all workers named in the picking cards, not just the appellants in the within proceedings.

[254] Counsel advised the Court that following a thorough review of the picking cards issued by the different farms named above, the Minister was prepared to concede certain aspects of the decisions concerning insurable employment that were issued in respect to these appellants:

- Didar Singh Mehat: the relevant period of employment is from June 10 to November 9, 1996, however the Minister holds firmly to the previous decision that Mehat's insurable earnings during said period were nil.

- Bhagwant Kaur Grewal: the correct period of employment is from July 10 to September 17, 1996, but her insurable earnings remain nil.

- Harbans Kaur Purewal: the correct period of employment is from July 7 to August 27, 1996 and her insurable earnings were in the sum of \$2,744.

- Bakhshish Kaur Thandi: the correct period of employment is from June 9 to October 26, 1996 but her insurable earnings remain nil.

- Gian Singh Thandi: the correct period of employment is from June 9 to October 26, 1996 and his insurable earnings remain in the sum of \$5,000.

[255] Bernie Keays was called to the stand and examined by Johanna Russell. He testified he has been employed by CCRA – and its predecessors – since 1981. Currently, he is a Litigation Officer. He was assigned to the Appeals Division in 1991 and remained there for 11 years. As an Appeals Officer, he worked out of the Dunsmuir Street, Vancouver office under the supervision of John Morgan. Keays stated that about 50% of his workload dealt with farm workers including issues concerning the working relationship between non-arm's length payers and employees. In the past, he has handled files in which up to 10 workers had been employed by the same payer. He does not speak Punjabi. Regarding the 98 rulings issued by Janet Mah with respect to SRC workers, 47 were appealed to the Minister and Keays was assigned the task of handling those matters in accordance with the relevant provisions of the *Act*. He issued 46 decisions after working exclusively on the SRC matter, the largest case he had worked on during his career. Keays stated he was assigned the appeals – from rulings - in September, 1999, and reviewed notes of interviews involving those made by Richard Blakely, a Rulings Officer who had participated to some extent in the investigation carried out by HRDC. Keays stated he was provided – also - with those files concerning HRDC workers whose admissions

led to internal action being taken by HRDC without the need to refer those files to CCRA for a ruling on insurability. Keays was referred to the document in Exhibit R-3, tab 79, p. 46 – headed Table of Contents – and agreed that in the process of making his decisions, he had access to the documents described therein. As an example of the type of decision issued with respect to SRC workers, Keays identified a report – Exhibit R-9, tab 80 - he prepared concerning the appellant Inderjit Singh Atwal. This recommendation formed part of the Master Report in Exhibit R-8, tab 1. The decision letter - Exhibit R-9, tab 102 – issued to Atwal on February 23, 2000 – and to all other persons who appealed the rulings issued by Janet Mah - was signed by John Morgan in his capacity as Team Leader. Keays explained the process followed by CCRA is to have the decision letters signed by a Team Leader who has been authorized by the Minister to issue such letters on behalf of the Minister. Keays stated that – in December, 1999 – he was contacted by the Legal Services Society and received a letter – part of Exhibit R-68 – advising it represented certain SRC workers. At this point, the individuals had already filed their own appeals from the rulings issued by Mah. Keays explained his role as an Appeals Officer which demands that – initially - he reviews the material on file and decide whether he should gather additional information. This process is undertaken only after he has satisfied himself an appeal is valid in terms of time limits and that the person submitting said appeal has proper standing. Keays stated he gathers additional information by sending out questionnaires and by conducting interviews, most of which are done via telephone, although – rarely - some are held in person, due to the fact the Vancouver Appeals Office handles UI/EI appeals for the entire province and it is more efficient to use the telephone. Typically, an appeal file occupies between 7 and 12 hours of an Appeals Officer's time. Keays estimated he spent double that amount on the SRC files and designed a Questionnaire appropriate to address areas of concern common to SRC workers. Keays was referred to the Questionnaire - Exhibit R-37, tab 100 – completed by the appellant Jatinder Lidhran and described it as typical of the one used in the ordinary course of deciding on the nature of a recommendation to the Minister. Keays referred to the Questionnaire in Exhibit R-13, tab 100, completed by the appellant, Gurmail Singh Cheema, and described it as one he had created specifically to address issues of concern in the SRC matter. Keays stated he mailed out Questionnaires to the addresses shown on the notices of appeal sent to the Minister and provided sufficient time for the recipients to consult with someone capable of reading and writing both English and Punjabi. In the course of reviewing material, Keays noted inconsistencies in answers provided by various workers at various stages, including information provided to HRDC during interviews with ICOs or when responding to queries from Janet Mah, Rulings Officer. A Questionnaire was sent to SRC but no response was received. Keays stated that at one point, he telephoned Mr. Mann at PICS in order to ascertain the

nature of that organization and to clarify its function since several workers had referred to PICS as having been involved in the completion of their Questionnaires. Keays stated he took note of the fact that many Questionnaires had the exact wording in their answers even to the point of repeating the same spelling mistakes. By way of example, Keays referred to the Questionnaire – Exhibit R-35, tab 101 – completed on behalf of Amarjit Kaur Grewal in which he discovered answers identical – or nearly so – to those contained in Questionnaires returned on behalf of Karmjit Singh Johal, Swarn Singh Toot, Sukhwinder Kaur Toot and Gurcharan Kaur Johal. Keays stated he made notes - Exhibit R-35, tab 98 – of his conversation with Sukhwinder Kaur Toot’s daughter – Sukhwinder Kaur Barn - in which she stated the Questionnaires were the same because several workers went to “ the Centre” where they “ got together and completed questions.” Keays said he was provided with a phone number that he called and discovered the “Centre” was PICS. Keays stated he received a call later from Barn who advised that her mother’s Questionnaire had been completed by Barn’s husband but almost immediately thereafter, revised that statement to tell Keays she – and not her husband - had completed the Questionnaire for her mother. Keays stated he made notes - Exhibit R-67 – of his conversations with Avtar Dhinsa, a lawyer who was acting for some SRC workers who had appealed to the Minister for reconsideration of the ruling issued by Mah. Keays noted that he and Dhinsa discussed the situation in January, 2000 but no further action was taken by Dhinsa who had moved to another law firm. Keays also contacted Gina Bollen, bankruptcy trustee for Manjit Rana who was an un-discharged bankrupt at that time. Keays recalled the only conversations he had with Michel Fontaine were when he suggested Fontaine contact CCRA rulings office in order to obtain advice from someone in that unit and – later – when Fontaine telephoned to ascertain which rulings – by Mah - had been appealed. In the course of arriving at his own decisions, Keays stated he contacted Janet Mah only for purposes of clarifying something she had written by hand or in relation to some other piece of information. Keays stated there was a change in the regime on July 1, 1996 when the new *Employment Insurance Act* replaced the former *Unemployment Insurance Act*, so the relevant provisions of both were referred to in the decision letters sent to appellants but there was no need to refer to the number of insurable hours of employment because that method of calculation was applicable only to those applications for UI benefits filed after January 1, 1997.

[256] Keays stated his decision - Exhibit R-9, tab 80 - to recommend to the Minister that Inderjit Singh Atwal was not employed during the period from December 29, 1996 to January 11, 1997, was based – partly – on the strange nature of the responses provided by Atwal during various interviews. In Keay’s perception, Atwal did not

know where he had worked and could not provide any proof of payment of wages. Later, following Discovery, a cheque was produced by Atwal but no evidence could be found to establish that this cheque had ever cleared the SRC account so the position of the Minister remained unchanged.

[257] Keays recommended – and the Minister so decided – that Sharinder Singh Bagri’s period of employment with SRC started on May 5 and ended on November 2, 1996 and that his insurable earnings were in the sum of \$2,000 according to the cheque – Exhibit R-10, tab 91- that cleared the SRC account at TD bank. In his report – Exhibit R-10, tab 80 – Keays noted he had not received any Questionnaire back from Bagri and decided no weight could be given to the “I Cash Money Give” purported cheque – tab 90 – nor was there any evidence such as additional cancelled cheques, receipts for cash payments, payroll deductions and remittances. Keays stated he searched for documents that would enable him to be satisfied that a worker had been paid wages, as alleged. He adopted the position that if he could trace an SRC cheque – payable to a worker – as having actually cleared the SRC bank account, he accepted that payment of wages – in that amount – had been made. Keays pointed out that this policy applied only to those situations where he was satisfied there was a true employment relationship between SRC and the worker, not just that someone had received – and cashed – a cheque from SRC because – without more – that did not demonstrate there had been any insurable employment. With respect to Bagri’s situation, Keays noted the pay statement – tab 89 – purported to show exactly the same hours of work – 112 – for every two-week pay period. In Keays’ view, this was unreasonable in the context of the berry industry and was aware this sector of the agricultural business remunerated pickers on the basis of piecework and not according to an hourly rate. Keays stated he formed the opinion when looking at the various pay statements issued to SRC workers that they were not prepared in order to accord with reality but merely to conform with the requirements of some piece of software that was used to produce them. Keays stated he also noted that remittances of income tax had not been made by SRC and while some farm labour employers ignore tax deductions from employees due to their low seasonal earnings, most of them deduct – and remit – amounts attributable to UI/EI premiums and CPP contributions. When Keays checked into that aspect of the matter, he discovered SRC had sent in the appropriate forms to CCRA and WCB stating it had no employees after a certain period, early in 1996. Keays referred to the T4 summary – Exhibit R-1, tab 3 – showing the sum of \$160,642.51 in purported deductions due in respect of the SRC payroll of which only \$3,724.74 had been remitted. Concerning Bagri’s appeal to the Minister, Keays stated he did not agree with the ruling issued by Janet Mah where she not only recognized the validity of the \$2,000 cheque paid to Bagri but added in the further sum of \$1,403.36 in other

purported deductions - according to the earnings statement in Exhibit R-10 at tab 89 – that were based on alleged gross earnings in the sum of \$10,192. Keays stated he took the position that the earnings statements were flawed and unreliable and one could not count deductions that were only notionally connected with a larger sum attributable to alleged gross earnings that remained unproven. Keays stated Mah followed the same procedure with respect to all of the rulings issued by her in which she was able to find a period of insurable employment and that some wages were proven to have been paid by SRC, in order to constitute insurable earnings. Again, Keays did not agree with that method since Mah was giving credit to the full amount of those deductions as though that amount had actually been paid to the worker. Keays stated he appreciated it was not the responsibility of any worker to ensure that his or her employer actually remitted the source deductions to CCRA but the state of SRC records and other documentation provided by workers was so inadequate he could not rely on them for purposes of determining the amount of insurable earnings, apart from those instances - mentioned earlier – where he could trace a cheque through the SRC bank account. Keays agreed that one approach might be to take the amount of proven insurable earnings, then calculate the source deductions on that amount and add it to the first sum in order to arrive at the correct insurable earnings applicable to the period of employment either as accepted by the Minister or as determined by this Court.

[258] With respect to the appellant – Jaswinder Singh Bassi – Keays stated he came to the conclusion there was no contract of employment with SRC and – therefore – no insurable employment. In his report – Exhibit R-11, tab 80 – he noted Bassi’s story changed at various stages and that the period of employment of those drivers he described taking him to work did not jibe with the details he provided on several occasions. Further, there was no proof of payment except for his statement he was paid at the end of the season and Bassi appeared not to know details such as the timing of certain tasks or the identities of co-workers until he completed the Questionnaire.

[259] Keays decided that Taro Kaur Bassi started work on June 10, 1996 and not on May 19th as shown on her ROE – Exhibit R-12, tab 88. He stated he reviewed several pieces of information including the information provided by Mark Sweeney of the British Columbia Ministry of Agriculture that June 10th was the first day of strawberry picking in 1996. Since Bassi had stated she picked strawberries on her first day of work, Keays stated it made sense to find that day as her first day of employment. Janet Mah had located a picking card from Gill Farms indicating Bassi

had worked there one day in August but Keays disregarded it because it did not conform with the previous requirements of the *Unemployment Insurance Act* which required a minimum of 15 hours of work per week to constitute insurable employment and he thought the transitional provisions continued that threshold until January 1, 1997 when the new legislation was in force fully and completely. Keays accepted Bassi had been paid the sum of \$3,000 by the cheque – tab 90 – which cleared the TD bank. However, he did not accept Mah’s approach when she added in the sum of \$540 for deemed deductions on gross amounts not proven to have been paid. On the other hand, Keays agreed that he did not allow any increase in insurable earnings by virtue of adding sums attributable to deductions in respect of EI premiums and CPP contributions which – according to the terms of the relevant legislation – deem those amounts to have been paid by the employer - for the benefit of the employee - regardless of whether any funds were remitted.

[260] Keays was referred to his report – Exhibit R-13, tab 80 – with respect to the appellant Gurmail Singh Cheema. The position taken by Keays in his recommendation to the Minister was that Cheema had been employed from June 21 to October 21, 1996 and had insurable earnings in the sum of \$6,000. Keays stated that during his conversation with Cheema on December 12, 1999 – via a Punjabi interpreter – he had been advised that Cheema had a different driver taking him to work. Keays made notes – tab 96 – of his comment to Cheema that he had told Janet Mah his driver was Harbhajan Sing Kang and of Cheema’s reply “Long time ago – I don’t remember”. Keays stated he relied on the Statutory Declaration in which Kang stated he had not started work until the third week in June. For that reason, Keays decided Jaswinder Kaur Cheema had been employed from June 21 to October 12, 1996, the same period as her husband – Gurmail Singh Cheema – because she also identified Kang as her only driver. Keays accepted she had been paid the sum of \$7,000 by the two cheques at tabs 89 and 90.

[261] Concerning the appellant – Ajmer Kaur Gill – Keays stated he was unable to locate proof that she had been paid any wages in excess of the sum of \$1,000 paid by cheque – tab 91 - and disregarded the “I Cash Money Give” purported cheque.

[262] Keays reviewed material relevant to the appeal of Gurbachan Singh Gill including documents in Exhibit R-16. Keays stated he took into account that Gill had changed his story several times about driving a van for SRC and did not know the names of his alleged passengers. Further, Keays found it unreasonable that Gill

would take public transit from Surrey to Vancouver to pick up a van – near Rana’s house – in order to turn around and drive to Richmond. Keays stated he also found it difficult to accept that Gill had been driving a van – 7 days a week – in November and December. Keays stated he was aware that a cheque – tab 92 – dated October 25, 1996, in the sum of \$1,300 had been deposited into the Gill account at Canada Trust on October 31, 1996 and then cleared through the SRC account. Notwithstanding this apparent payment, Keays stated the overwhelming evidence available to him caused him to conclude there had been no real contract of employment between Gill and SRC.

[263] With respect to Gurmail Singh Gill, Keays’ report – Exhibit R-17, tab 80 – stated his conclusion was that Gill was employed from June 23 to October 19, 1996 and had insurable earnings in the sum of \$3,151 based on the two negotiated cheques at tabs 95 and 96. Keays stated he did not accept Gurmail Singh Gill’s version about working until November 2, 1996 nor did he believe the story about receiving an advance payment of several thousand dollars from Rana - in order to send money to India – before he had earned anywhere near that sum.

[264] Keays stated he reviewed the appeal of Ravjit Gill and concluded in his report – Exhibit R-18, tab 80 – that Gill was not employed in insurable employment with SRC, as alleged or at all. Keays stated he considered that 3 cheques – tabs 91, 92 and 93 – payable to Ravjit Gill and totalling \$6,900 had been negotiated prior to his last day of work and amounted to \$500 more than his alleged net pay according to the statement at tab 94, without taking into consideration several cash payments alleged to have been received by Gill from time to time over the course of his employment. Gill had provided answers earlier to HRDC - and to Mah - that he was paid near the end of his work and had never used picking cards. Keays noted several other significant discrepancies relating to mode of transportation to work and other work-related matters and – on balance – concluded there had not been any contract of service between Ravjit Gill and SRC.

[265] Concerning the appeal to the Minister by Amerjit Kaur Grewal, Keays recommended – Exhibit R-35, tab 80 – that a finding be issued that she was employed in insurable employment from June 9 to October 12, 1996 and had insurable earnings in the sum of \$4,000. At this point, Keays was not aware Grewal had returned \$4,000 to Rana/Bant/Shindo at their residence in exchange for her ROE, as she admitted later during her testimony in Court.

[266] Keays stated he came to the conclusion that Bhagwant Kaur Grewal had not been employed by SRC as alleged in her ROE – Exhibit R-34, tab 88 – or at all.

Although there was a cheque – tab 90 – issued to Grewal in the sum of \$2,000 and it had cleared the TD bank on November 4, 1996, Keays concluded Mah's ruling was correct because there was reason to believe that money had been returned to SRC in exchange for an ROE. Keays acknowledged the Minister had conceded that Grewal had been employed by SRC from July 10 to September 17, 1996 – based on a review of picking cards – but still maintained she had no insurable earnings.

[267] Keays concluded in his report – Exhibit R-38, tab 80 – that Sukhwinder Kaur Hundal had not been employed pursuant to a contract of service. Apart from the so-called “I Cash Money Give” cheque, there was no other reliable documentation or other evidence to prove she had received any wages. Keays stated he took into account the period of her alleged SRC employment – 6 weeks – which, in addition to her other, permitted her to qualify for UI benefits. Further, he was aware there had been a lot of cold weather and snow within the period from November 17 to December 28, 1996 and she alleged that she was picking vegetables and sprouts - even when it was snowing - but did not know the location of the farm. Further, Hundal's alleged co-workers had all finished work before her purported starting date of November 17. She was the only SRC worker living in Coquitlam and Keays considered it did not make sense for SRC to dispatch a van just to pick up one worker. There was no proof of payment other than the assertion by Hundal – rejected by Keays - that the “I Cash Money Give Cheque” was utilized as a form of receipt acknowledging a cash payment to her from someone at SRC.

[268] Keays stated he recommended in his report – Exhibit R-19, tab 80 – that the Minister issue a decision to Varinder Kaur Jassal finding that her employment was from May 12 to October 26, 1996 and that she had insurable earnings in the sum of \$7,000. Keays stated he did not accept the dates shown in her ROE – tab 88 – indicating she started work on April 21 and finished on November 16. The factors leading to his recommendation included an ongoing inconsistency in naming drivers and Keays stated he fixed Jassal's start date to correspond with Shindo's period of employment since she had started work on May 12, 1996 - according to the ROE issued by SRC – and Jassal had stated earlier she was driven to work by Shindo on her first day. Keays accepted Jassal had been paid a total of \$7,000 by cheques - tabs 90 and 91 – issued to her. Keays agreed Jassal had been given credit for deductions – including \$791.67 in income tax – according to the print-out - tab 98 – of her 1996 T1 income tax return and that this situation would remain unchanged since it was too late for the Minister to reassess.

[269] Concerning the appellant Gurcharan Kaur Johal, Keays was satisfied in his report on appeal to the Minister – Exhibit R-20, tab 80 – that she was employed by

SRC from June 21 to October 12, 1996 and had insurable earnings of \$5,000. He stated he did not accept the start date of May 26 shown on her ROE because she told HRDC that Kang was her driver. Therefore, Keays used Kang's start date of June 21 to determine Johal's first day of employment. He also noted her answers to questions 25, 26, 32, 33, 34, 35, 38 and 39 in the Questionnaire – tab 104 – were identical in most respects with those found in the Questionnaires returned by other SRC workers.

[270] Keays stated he concluded in his report – Exhibit R-36, tab 80 – that Sharda Kaur Joshi had not been engaged in insurable employment with SRC. Despite numerous calls to the Legal Services counsellor and – later – to Joshi's husband, the Questionnaire was never completed and returned to his office. Keays stated he knew a cheque – tab 89 – payable to Joshi - in the sum of \$4,000 – had been cashed at the TD bank on October 7, 1996. According to her ROE – tab 87 – she started work on June 9 and was laid off on October 12, 1996. Keays stated he took into account Joshi had a baby at the end of March, 1996 and was living in Abbotsford during the time she was alleged to have worked at the vegetable farms in Richmond. Keays relied on information indicating another person - also living in Abbotsford – had admitted that the ROE issued to her – by SRC – was false. Keays stated that meant Joshi was the only SRC worker living in Abbotsford and considered it did not make any sense that SRC would send a van to Abbotsford in order to pick her up and return her at night just so she could pick vegetables in Richmond. In answering Q. 7 of her interview – tab 92 – Joshi told Barb Long - ICO – that she began weeding in June, picked raspberries in July - after picking strawberries in June – and then picked blueberries at the end of July and through August. Keays stated he was aware of that response but was unable to find other material capable of corroborating that statement.

[271] When considering the appeal to the Minister by Harbans Kaur Kang, Keays noted in his report – Exhibit R-22, tab 80 – that although her ROE showed a start date of June 16, 1996, he determined it was probable she had not started until June 23 because she told HRDC her husband – Harbhajan Singh Kang – had started working at SRC first and then she was hired. She also told HRDC that she rode to work with her husband on both her first and last day of work because he was a van driver. Keays stated the date of June 21, 1996 was chosen by the Minister as Harbhajan Singh Kang's first day of work when issuing a decision to him and that decision has not been appealed to the Tax Court of Canada. Keays stated he was satisfied two cheques – tabs 90 and 91 – had cleared the SRC bank account after being deposited to the credit of the Kang's account at Canada trust. However, the total amount - \$6,879 - of those cheques exceeded the net earnings of \$6,071 as shown on the pay statement of Harbans Kaur Kang at tab 93. As a result of that discrepancy, Keays

decided he could not allow more than the net pay amount as insurable earnings and recommended the Minister issue a decision accordingly.

[272] Keays stated he was not satisfied Varinder Kaur Kang had been employed pursuant to a contract of service and so advised the Minister in his report in Exhibit R-23, tab 80. The ROE – tab 93 – issued to Kang showed her dates of employment as encompassing the period from October 6 to December 28, 1996. In rejecting the validity of that document, Keays stated he considered that Kang’s version of work performed had changed several times and that she maintained she started work – in a labour intensive occupation – only 5 weeks after the birth of her baby. She had also stated that her only driver was Bhan Singh Sidhu (Master). Keays reviewed various scenarios surrounding alleged payment of wages to Kang and found no proof to support Kang’s contentions except for the receipt – tab 89 – dated December 28, 1996, that she presented to him. Keays pointed out the wording of the receipt was such that it appeared as though the sum of \$2,000 had been received from her and not paid to her. Because – at one point – Rana had admitted – but later recanted - to selling ROEs, Keays stated he doubted that piece of paper was reliable proof that she had been paid that amount in wages. During her first HRDC interview, Kang stated she repaid the sum of \$2,000 to SRC because she had to repay the balance of a loan made earlier to her in-laws so they could travel to India. During that interview, she also denied having seen the receipt at tab 89. She also told the interviewer that she only worked 26-32 hours a week in November and thought her employer was “banking her hours”. Since Master’s last day of work was October 12, 1996, Keays decided she could not have been riding with him thereafter, particularly because she had informed HRDC that Master was her only driver.

[273] Keays stated he recommended in his report – Exhibit R-37, tab 80 – that the Minister find Jatinder Lidhran had not been engaged in insurable employment with SRC from August 25 to October 12, 1996, as shown on her ROE at tab 89. Keays recalled Legal Services Society – at one point – represented Lidhran but were no longer acting for her when he had a telephone conversation with her on February 15, 2000 and made notes of her answers – tab 99 – to the questions posed. A cheque – tab 90 – in the sum of \$2,500 had been deposited to Lidhran’s joint account at the Kingsway VanCity branch on October 18, 1996. Notwithstanding that payment, Keays stated he took into account that Lidhran had only earned - after deductions – the sum of \$2,098 according to the employee earnings record - at tab 91 - and it seemed odd she would be paid \$2,500. Keays stated Lidhran told him the cheque had arrived by mail and she thought the extra amount was a bonus. Keays stated he was troubled by the lack of clarity in Lidhran’s answers on issues such as the identity of her driver and noted her ROE is dated September 15, 1996, more than a month prior

to her alleged layoff. He also reviewed the answer in Box 18 of her application – tab 92 – for UI benefits where she described her work as including raspberry and blueberry picking. He thought this was strange because she told HRDC and Janet Mah – later – her only work for SRC was in connection with vegetables in Richmond. Keays also noted her 7-week period of employment with SRC was precisely enough to enable her to qualify for UI benefits when added to her previous work done at Lidhran Farms.

[274] Keays stated he was aware counsel for the respondent had conceded that Didar Singh Mehat was employed by SRC from June 10 to November 9, 1996 but still maintained his insurable earnings were nil. Keays stated he was unable to find any proof Mehat had been paid wages. There was a story about an NSF cheque being redeemed by a cash payment and Keays was aware that an “I Cash Money Give” purported cheque – Exhibit R-25, tab 98 - in the sum of \$6,000 had been created by someone for some purpose. Keays stated he had no faith in the alleged receipts – tab 91 – and there were a lot of inconsistencies in Mehat’s statements concerning his rate of pay and timing of cash payments.

[275] Keays recommended in his report – Exhibit R-26, tab 80 – that the Minister decide Prabhjot Kaur Minhas was engaged in insurable employment with SRC from July 14 to October 5, 1996 and had insurable earnings in the sum of \$1,633 based on the cheque – tab 90 – that had cleared the SRC account at TD bank. Keays stated he reviewed the Rulings Report prepared by Janet Mah as well as notes of HRDC interviews and concluded the employment of Minhas had to coincide with that of Harjit Singh Gill since she mentioned riding to work on a school bus and Gill was the only person who drove that bus. Gill’s last day of work was October, 5, 1996. As he had done in the past with respect to other appellants, Keays ignored the “ I Cash Money Give” purported cheque - at tab 91 – in the sum of \$4,000.

[276] Keays stated he was aware counsel for the respondent – based on a review of picking cards – had conceded Harbans Kaur Purewal was employed in insurable employment with SRC from July 7 to August 27, 1996 rather than from July 14 to August 24, 1996, as decided earlier by the Minister in accordance with Keays’ recommendation in Exhibit R-27 at tab 80. He read her Statutory Declaration - tab 91 – dated February 6, 1998 – prepared by her daughter - wherein she stated she worked only 7-8 weeks and did not work during the months of September to December, inclusive. Keays stated he was aware two cheques in the sums of \$6,000 and \$500, respectively - at tabs 93 and 94 – had cleared the SRC account. Because of her admission that she had only worked 7 or 8 weeks, Keays considered those payments did not correspond with her limited earnings at \$7 per hour, as alleged, or on the

basis of the applicable rates for piecework within the berry industry. The ROE – tab 96 – issued to Harbans Kaur Purewal showed her last day of work was December 14, 1996. Keays stated the original confusion surrounding whether Purewal was in India during the relevant period had been cleared up and played no part in his recommendation. Keays stated that although there was no proof of payment, he accepted she had worked 56 hours a week for 7 weeks at \$7 per hour and – therefore – had insurable earnings in the sum of \$2,744. He acknowledged that was a rough method of arriving at a number for purposes of fixing the amount of insurable earnings but considered there had been no alternative due to lack of documentation.

[277] Keays referred to his report – Exhibit R-28, tab 80 – concerning Parmjit Kaur Rehal. He was satisfied Rehal had been employed in insurable employment with SRC for a period of 17 weeks from June 22 to October 19, 1996 and had insurable earnings in the sum of \$6,200. The ROE – tab 89 – issued to Rehal showed her last day of work as December 7, 1996. Keays stated he reviewed earlier statements by Rehal that her only drivers were Harjit Singh Gill and Harhajan Singh Kang, and neither one worked after October 19, 1996. Keays determined insurable earnings on the basis of 4 cheques – tabs 93, 94, 95, 96 – totalling \$6,200 all of which were deposited to Rehal’s account at Khalsa Credit Union and had cleared the TB bank.

[278] Keays stated he was aware counsel for the respondent had conceded that Bakhshish Kaur Thandi’s correct period of insurable employment was from June 9 to October 26, 1996. However, the Minister did not amend the decision so as to recognize any insurable earnings which were stated as nil in the original decision issued on February 23, 2000. Once again, Keays disregarded a “I Cash Money Give” purported cheque – Exhibit R-29, tab 90 - as having no significance because it did not establish any payment of wages to Thandi. Keays stated he reviewed the admissions by Thandi – to Fontaine - in the presence of her daughter as contained in the notes – tab 91 and tab 93 – prepared by Fontaine that she had worked only for the “ weeks” in order to obtain an ROE which would entitle her to receive UI benefits. Keays also noted the statement by Thandi’s daughter that her father had paid money to SRC. Keays stated he knew Thandi’s name was on picking cards issued to her by Gill Farms but she had told HRDC she had not used them and repeated that assertion when responding to the Questionnaire at tab 106.

[279] Keays stated he knew of the concession by counsel for the respondent that the Minister accepted Gian Singh Thandi had been engaged in insurable employment from June 9 to October 26, 1996 - the same period as his wife, Bakhshish Kaur Thandi – and that he had insurable earnings of \$5,000. Keays stated he had accepted that Gian Singh Thandi had been paid the sum of \$5,000 by cheque – Exhibit R-30,

tab 89 – which, although dated September 15, 1996 was not deposited until December 16, 1996. Keays reviewed the bank statement – tab 97 – and noted the sum of \$4,200 was withdrawn on December 24th which was consistent with the statement by his daughter – Maninder Thalman – that he had paid money back to Rana and/or Bant. According to the pay statement at tab 88, Gian Singh Thandi was entitled to receive only \$6,764 in net earnings yet he purported to have received cash in the same amount as the “I Cash Money Give” purported cheque of \$4,000 – at tab 90 – which, if true, meant he was paid a total of \$9,000, an amount that exceeded even his purported gross earnings in the sum of \$7,840.

[280] Regarding the appeal to the Minister by Sukhwinder Kaur Toot, Keays’ advice as set forth in his report – Exhibit R-31, tab 80 – was that the Minister find she was employed in insurable employment from May 26 to September 30, 1996 and had insurable earnings in the sum of \$5,000 to accord with the cheque - tab 90 – which had cleared the TD bank. Keays stated he was not persuaded that the ROE – tab 87 – was correct when it showed Toot’s employment began on April 14 and ended on October 12, 1996. Keays reviewed statements made by Toot during an HRDC interview as well as her response in a Questionnaire – tab 85 – completed during the rulings stage and decided she had not worked past the “9th month” as she had stated to ICO Gail Buckland during her interview. The Statutory Declaration – tab 99 – prepared by Toot’s son – Satnam Toot – contained the statement that she worked from April through September. Keays stated he accepted she worked until September 30 but could not find any support for her contention that she had begun working as early as April 14 because Harjit Singh Gill was the first driver hired by SRC in 1996 but that was not until May 5 so Master and/or Harbhajan Kang could not have driven Toot to work in April, as she claimed. Keays stated he considered Toot needed 26 weeks of employment to qualify for UI benefits and that it was this precise period which was covered by her ROE. In terms of insurable earnings, he was unable to discover any documentation to support Toot’s assertion that she had deposited some SRC pay cheques into her account at Canada Trust.

[281] The witness – Bernie Keays – was cross-examined by Darshen Narang. Keays stated the number of appeals – from rulings - by SRC workers was the second-largest he had handled in the course of his career. He estimated that 50% of his usual caseload of about 150 files a year would concern farm workers. Keays pointed out he had been the Appeals Officer - in 1993 – when 76 employees of Narang Farms had appealed their rulings. He stated he has had experience dealing with files involving labour contractors who have employed up to 10 workers and - in his experience – 95% of all farm labourers in the Lower Mainland are Indians or Indo-Canadians. He stated that when someone appeals a ruling, he wants to see payroll records and any

other documents that are capable of substantiating that wages were paid. Keays explained his role as an Appeals Officer permits him to gather additional information as he deems fit or to rely on the information contained in the material forwarded by the Rulings Officer. He commented that in the SRC matter, there was extensive information on file, including documentation and reports of HRDC interviews, banking records, cancelled cheques and so on. He confirmed with Gina Bollen – Bankruptcy Trustee – that Rana had not been discharged as of September, 1999 with respect to his personal bankruptcy filed in accordance with the summary administration procedure deemed appropriate for persons without assets. Keays confirmed his earlier view that he did not have the power to compel Rana to attend an interview and did not attempt to persuade Gina Bollen to use her authority to compel Rana to provide certain information. Keays stated he reviewed about 100 files after the SRC workers' appeals were assigned to him. By perusing the Admissions/Discrepancy Summary – Exhibit R-1, tab 20 - he ascertained that 4 SRC workers who were the subject of 5 ROEs issued by SRC admitted – to HRDC – they had performed no work whatsoever. Another 7 workers – who were issued 7 ROEs in total – admitted they had worked less than shown on their ROEs. Further, 4 workers – who between them received 5 ROEs – admitted that all or part of their wages were repaid to the employer. Keays noted there were another 10 UI claims where people had purchased an ROE and Rana - prior to recanting – agreed he had sold 10 ROEs and issued receipts to the purchasers. The remainder – concerning 76 workers who had been issued a total of 82 ROEs – contained substantial discrepancies, according to paragraph 5 of the Summary. While performing his duty as an Appeals Officer with respect to the rulings issued by Mah, Keays stated his only contact with Mah was to clarify her handwriting or her method of calculating insurable earnings. She did not forward him any picking cards but listed the cards she had reviewed personally and he was confident she had seen the originals. He had no contact with Richard Blakely. With regard to keeping track of hours worked, Keays stated that in his experience 30% to 40% of workers keep a record on a calendar while others prepare their own time sheets. He conceded there is a problem in producing such records since his duties as an Appeals Officer are not carried out until several months or more than a year after the employment has ended. Keays stated his understanding of picking cards was that they permitted the farmer, a worker and – sometimes – also a labour contractor to record production of each type of berry picked. The amount picked daily by a specific worker could be monitored and workers – at the end of the season – could compare their copies of the picking cards with those retained by their employer in order to arrive at a final settlement of their wages. Keays agreed he would have preferred to question Rana but - in view of Rana's track record in refusing to attend additional interviews at HRDC or to provide further information – soon decided it was unlikely Rana would attend at his office for

questioning. Keays stated he will attempt to follow up by telephone if a Questionnaire is not returned. The Questionnaire used with respect to SRC workers was somewhat different than normal in that Keays designed specific questions to elicit information regarding matters at issue. Keays stated time is limited to issue a recommendation on an appeal from a ruling and he does not leave the office to visit a worker but any person with relevant information can attend his office at any time. Keays observed that about 80% of Indian workers cannot speak English so he is forced to rely on a member of a worker's family - or a friend - to interpret the questions and complete the Questionnaire. Keays agreed some labour is supplied to farms in April but considered June, July and August were the only busy months as work started to slow down in September until it came to an end in October each season. He stated he relies on the opinions of experts to fix harvesting dates in a particular year but is aware - generally - that strawberries are picked in June and raspberries in July, although they overlap to some extent with blueberries which are harvested through August into September. Keays conceded he is not as familiar with probable harvest dates for various types of vegetables but when confronted with a situation where workers claim to be picking vegetables in November and December, will pursue the matter to determine if that is reasonable. Keays agreed the pay statements issued by SRC - at the end of the season - were not accurate because no worker had been paid bi-weekly. Keays stated that this lack of proper records was not unusual within the agricultural industry during 1996 and earlier but the creation of ACT - the farm inspection unit - had an impact and brought about more conformity with provincial employment standards and record-keeping requirements for purposes under federal jurisdiction such as income tax, CPP and EI. Keays stated he was accustomed to handling files where a worker received cash payments as "advances" in the sense these payments - whether by cash or cheque - would be deducted at the end of the season from the total amount earned by a worker prior to a final cheque being issued. At the end, source deductions should be calculated by the employer on the entire amount earned during the period of employment and not just with respect to the final payment. In Keays' experience, it was normal for employers to use a standard receipt book to record cash payments to workers. However, he had never seen anyone use - as a form of receipt - the method of preparing the numerous "I Cash Money Give" purported cheques found in the documentation pertaining to the SRC case. Keays stated it is not a difficult concept to expect that both a worker and employer should maintain sufficient records in order to demonstrate that payment of wages was made. He stated he was not concerned with the form of a receipt which, in his experience, was often signed by both the recipient and the payer but looked for some reliable record that proved an employee received certain funds. Keays stated he relied on the start and end date of SRC drivers as set out in their ROEs originally - or as in the case of Harbhajan Singh Kang corrected, later - together with information

that was cross-referenced in order to provide a time frame capable of providing a schedule of dates in order to verify whether the statement of a worker that he or she had been driven by a particular person was really true. He accepted the employment of 4 SRC drivers was legitimate including that of Harbhajan Singh Kang who worked from June 21 to October 19, 1996. Start and end dates for Surinder (Shindo) Suran, Harjit Singh Gill and Bhan Singh Sidhu (Master) were accepted as accurate, particularly since there was an absence of any reliable information to the contrary. Once starting dates had been adjusted to conform with the facts either before or at the rulings stage, none of the drivers appealed the decisions issued to them by the Minister concerning either their period of employment or insurable earnings. As a result, that fact taken in conjunction with other information, led him to rely on those dates of employment. Keays stated he did not accept that Rana was a driver since less than 5% of the workers named him and he did not have a Driver's Licence at that time. Keays was satisfied Shindo's last day of work was October 26, 1996 and made several recommendations based on it because some workers stated they rode only with Shindo. During the rulings stage and thereafter, Keays pointed out that many of the original decisions issued by the Minister had been amended to conform with reliable information provided – or discovered – later. With respect to the total - 109 - ROEs issued by SRC in 1996, 101 claims for UI benefits were filed. Keays confirmed it had never been an issue whether any worker had supplied services as an independent contractor since it was abundantly clear to everyone that they were employees within the legal definition of that term. With respect to the appeal of Inderjit Singh Atwal, Keays pointed out Rana had advised his bankruptcy trustee that the last day SRC carried on business was December 31, 1996. Therefore, it seemed rather odd that Atwal would be working for SRC in January, 1997 and - overall – considered his various stories about working to be bizarre since they did not accord with his own earlier statements let alone any independent source of information. Keays stated he can recommend that a certain decision be issued by the Minister concerning insurability of employment but the calculation of weeks of entitlement, amount of benefits and related matters is within the jurisdiction of an adjudicator. He stated he considered he had been generous in recognizing periods of employment – even in the absence of hard proof - provided that the work alleged to have been done conformed with the sort of tasks one would expect to be carried out during that particular period. As an example, if a worker asserted he or she had picked berries in June, July and August and there was proof of payment, he accepted that information on the basis it was true. Keays stated the end dates of employment for SRC drivers – in 1996 - were as follows: Harjit Singh Gill - October 5; Bhan Singh Sidhu (Master) – October 12; Surinder (Shindo) Suran - October 26; Harbajan (Bajan) Kang – October 19; and Balwinder (Binder) Singh Chahal – the last one laid off - November 16.

[282] With respect to his report – Exhibit R-18, tab 80 – concerning the appeal by Ravjit Gill – Keays recommended the Minister find Gill had not been employed pursuant to a contract of service. Keays stated he was concerned with a number of inconsistencies in details provided by Gill about his work. At one point, he maintained he always drove his own car to work and stated he had been paid 3 to 5 times during the season and obtained his ROE at Rana’s house. However, Gill’s answer to Q. 4 and Q. 8 of the Questionnaire – tab 104 – indicated he rode to work in both the van and bus driven by “an older guy”. He also said he did not use any picking cards and was paid \$8 per hour and had received his wages both in the form of cheques and cash. The three cheques – tabs 91, 92 and 93 – totalling \$6,900 were deposited into Gill’s account at Canada Trust. According to Gill’s pay statement – tab 94 – he was entitled to receive only \$6,376 in net earnings. Keays agreed the bank statement – tab 96 – did not show any large withdrawals subsequent to the deposits of those cheques on September 27, October 3 and October 24, respectively, that might give rise to suspicions some money had been repaid to the employer. Keays stated the amount of overpayment to Gill – just in cheques – without taking into account the cash he allegedly received was sufficient to question the validity of Gill’s employment with SRC.

[283] Keays stated that when dealing with the appeal by Harbans Kaur Kang, he noted in his report – Exhibit R-22, tab 80 – that she had been paid \$6,879 – by cheque – but had net earnings of only \$6,071. As a result, he felt he could not allow an amount greater than that when determining insurable earnings. Although he had doubts about the accuracy of all the pay statements issued on behalf of SRC, he used the figure of \$7,000 as representing the maximum amount earned by the worker and made an effort to arrive at the amount of insurable earnings based on that gross amount. Narang referred Keays to Kang’s ROE – tab 92 – showing insurable earnings in the sum of \$7,000. Since Keays recommended the start date for Kang be advanced one week to June 23, 1996, Narang suggested it would have been possible merely to deduct one week’s wages - \$392 – from the gross amount of \$7,000 in order to arrive at insurable earnings in the sum of \$6,608. Keays stated he had chosen his own method – albeit somewhat imprecise – to arrive at his recommended amount.

[284] Concerning the appeal by Harbans Kaur Purewal, Keays stated he relied on the Statutory Declaration – Exhibit R-27, tab 91 – which reiterated in solemn form earlier statements by Purewal to Jeannie Suric during the interview. He telephoned Suric and made notes – tab 102 – of his conversation during which he received confirmation that the information in the declaration and interview notes was correct namely, that Purewal had not worked for SRC from September through December.

[285] Keays stated he did not accept that Parmjit Kaur Rehal had worked until December 7, 1996 as shown on her ROE – Exhibit R-28, tab 89 – because the drivers named by her had not worked after October 19, 1996. When responding to the Questionnaire – tab 103 – Rehal stated – at Q. 8 – that she had different drivers. In view of that response, Keays stated he chose the last day of work by Kang as representing the last date of Rehal’s employment. Keays agreed that when calculating the amount of her insurable earnings he did not include amounts of income tax deductions since he knew only a small amount of total deductions had been remitted by SRC and there was no deeming provision - with respect to income tax deductions – that could benefit the worker. Keays stated he was not influenced by the fact Rehal arrived in Canada and started working for SRC two days later.

[286] Keays recommended in his report – Exhibit R-20, tab 80 - that the Minister should decide the start date of the employment of Gurcharan Kaur Johal was June 21, 1996 in order to correspond with the first day of Harbhajan Singh Kang’s employment as a driver. Keays agreed with Narang’s suggestion that she could have ridden with Master as early as May 26th - the date used in her ROE - or with Shindo, who started work on May 12.

[287] Keays stated he relied on the Statutory Declaration – Exhibit R-31, tab 99 – of Sukhwinder Kaur Toot that she worked until September, 1996 but could not accept her assertion that she started in April because during the interview with Janice Morrow – tab 93 – she stated she went to work with her husband on the first day but he did not start until July. Toot also told Janice Morrow they were driven to work by someone whom Morrow recorded as “Bajein Singh”. Keays decided the reference was to Bhan Singh Sidhu (Master) and chose his first day of work as the one also applicable to Toot. Keays stated he decided to recognize payment by cheque - tab 90 - issued to Sukhwinder Kaur Toot even though he considered it somewhat odd that it was cashed at the employer’s TD bank.

[288] Keays stated he reviewed the material with respect to the appeal - from a ruling – by Taro Kaur Bassi. In his report – Exhibit R-12 – tab 80 – he referred to Bassi’s statement to Mah that she picked strawberries on her first day of work. Keays stated he relied on expert advice to establish the date of June 10 as the first day strawberries were picked in 1996. Keays conceded that Bassi, during her HRDC interview - tab 92, Q. 7 – was asked to provide details of her work beginning at the first day. The recorded response is that she dug up potatoes left over from last season, then washed vegetables before picking three types of berries. Keays agreed Bassi’s recital of her duties first mentioned “weeding” when answering Q. 14 of the

Questionnaire – tab 97 – which requested her to begin by describing duties during each month of employment.

[289] Keays stated he could not accept that Varinder Kaur Jassal started work on April 21, 1996, as shown on her ROE at tab 88 of Exhibit R-19 because Jassal stated Shindo drove her to work on her first day and Shindo did not start work until May 12, 1996. He noted Jassal had named only Shindo and Harjit Gill as her drivers. For similar reasons linked to the dates of employment of drivers named by certain workers, Keays stated he concluded Prabhjot Kaur Minhas must have finished work on October 5, 1996 since she had named Harjit Gill as her only driver and October 5 was his last day. Further, Ajmer Kaur Gill told HRDC that she had been driven to work by Shindo and/or Harjit Gill after they had been laid off and there was no independent proof that Rana had ever driven anyone to work, let alone Ajmer Kaur Gill.

[290] Keays stated he rejected the information provided by Gurbachan Singh Gill and determined he had not been employed by SRC. The details of his so-called work did not make any sense and he changed his story on several occasions.

[291] Keays estimated that – overall – perhaps 5% of the ROEs issued by SRC accurately stated the facts regarding the employment of a particular worker.

[292] The witness – Janet Mah – was called to the stand and examined by Johanna Russell. Mah testified she is employed – by CCRA – as an Appeals Officer. She began her career – in 1991 – as a General Inquiries Clerk and later worked as a Rulings Officer from November, 1992 until October, 2000, when she took up her current position. She stated she did not work as an Appeals Officer until several months after Bernie Keays had concluded his review of her rulings with respect to SRC workers and the letters of decision had been issued by the Minister. While working as a Rulings Officer, Mah worked out of the West Pender office in Vancouver. Mah stated Richard Blakely was a fellow Rulings Officer but worked mainly from his own home pursuant to a tele-work program in effect at that time. Prior to undertaking the process of issuing rulings in the SRC matter, Mah stated she had never been involved in such a large-scale situation as her work usually concerned cases affecting two or three workers and often required a ruling in respect of a non-arm's length issue. Mah does not speak Punjabi. She stated she began working on the SRC rulings in February, 1999 and began issuing them – in a series of batches – commencing June, 1999. Overall, she had 96 to 98 requests for rulings and each file contained the relevant ROE, application for UI benefits, notes of HRDC interviews and documentation for SRC books and records. Mah was referred to sheets in Exhibit

R-3, tab 79, pp. 46 and 47 – Table of contents - and acknowledged she had reviewed those documents in the course of issuing her rulings. She did not recall whether she read the notes – Exhibit R-3, tab 67 – taken by Blakely of the HRDC interview with Rana and stated that if she had, she was not aware they had been made by him. Mah stated the usual form of contact with both the worker and the employer is by telephone and no Questionnaire is used. An ordinary ruling will occupy from 2 to 4 hours but in the SRC matter, she prepared a Questionnaire and sent one to each worker - named in the HRDC Request for Ruling – at the address provided within that request. The Questionnaires were sent via Express Post and Canada Post provided confirmation of delivery. Mah stated she contacted – or attempted to contact – every worker by telephone and made handwritten notes of telephone conversations which she later typed and saved to the relevant file in her computer. In the event a worker spoke only Punjabi, Mah provided her telephone number and asked that someone call her back or she requested a Punjabi-speaking co-worker to speak to that person. When someone called back - on behalf of a worker – Mah stated she asked certain questions designed to confirm the identity of the person to whom the Questionnaire had been sent and to verify that the caller was prepared to act as an interpreter to facilitate the process. Mah stated she never had any contact with Rana because a registered letter sent to the proper address was returned as “undeliverable”. Acting on certain other information, she made other attempts to locate Rana at a certain address but received a response that he was not there. She also asked the former SRC workers if they knew where Rana was living but did not receive any information in that regard. On April 28, 1999, Mah spoke to Grewal - Rana’s lawyer – who advised he was no longer acting for Rana and provided – later – a letter of confirmation. Mah contacted Gina Bollen – Rana’s bankruptcy trustee – in an attempt to find a “blue book” allegedly used by Rana to record workers’ hours, according to information received from Amarjit Dhesi at Bains Tax. Mah stated she called the office of Bains Tax on March 5, 1999 and was told SRC was no longer a client. Then, on March 31, 1999, she spoke with Amarjit Dhesi – former employee of Bains Tax – who stated she could not recall much of her previous work and had no specific recollection of events concerning SRC as she had done payroll work for various payers. Mah sent out a letter to Surinder (Shindo) Suran containing a Questionnaire but the letter was returned by Canada Post. She made other attempts – via telephone calls and searches – to locate Shindo but was not successful. Mah stated she contacted Mark Sweeney and was advised that although strawberry season generally begins in mid-June, it was earlier in 1996 and June 10th was a suitable date to use as the beginning of the season. She stated that prior to receiving the requests for rulings she had not met Fontaine but telephoned him on March 8, 1999 to advise that she had been assigned all the SRC files. On June 29, 1999, she telephoned Fontaine to inform him that 4 former SRC workers had died. Fontaine replied that he

still wanted a ruling to be issued with respect to those persons. She recalled that Fontaine attended at her office after all the rulings had been issued to the workers, the employer and HRDC, to collect some binders of material. Mah stated she never spoke to Blakely about the SRC files nor did she have any contact with Bernie Keays before or during the rulings process. Later, when Keays was exercising his function as an Appeals Officer in respect to rulings issued by her, Mah recalled receiving a call from Keays concerning some points arising from his inability to read her handwriting or with respect to a date and/or an amount. Mah prepared a list in which she summarized her contacts with various people during the rulings process, including searches at Land Titles Office, corporate searches, information received from ICBC and all the farms where SRC workers had been dispatched as listed in Exhibit R-3, tab 79, pp. 62-68. Mah stated she obtained information from several business entities described – for convenience – as Purewal Farms, Dhillon Farms, Monga Farms, Kliever Farms, Khakh Farms, Bhullar Farms, Gill Farms, Lidhran Farms, GM Farms, Min Ho Farms, and attempted to locate the proprietor of Mike's Farm in Richmond. She obtained confirmation of payments made by various growers to SRC and ascertained that out of the total amount paid by Purewal Farms to SRC, only \$6,736.61 was attributable to the supply of labour and the remainder was for the purchase of blueberries from Bant. Mah received faxes of cancelled cheques issued by other farms and was able to track payments to SRC. On some occasions, she recorded information contained on picking cards, as relayed to her over the telephone by a representative of a particular farming business. Mah stated she spoke to a person at Gill Farms and obtained information concerning the number of pails of blueberries or flats of raspberries that one would expect to be picked by an average worker in one day. She ascertained that Gill Farms paid SRC \$5.35 for every pail of blueberries and \$4.35 for each flat of raspberries picked by its workers. Gill Farms sent Mah copies of picking cards. Mah stated she made notes – Exhibit R-3, tab 79, p. 67 – of her conversation with Min Ho Ahn during which he informed her that he had grown only zucchini and daikon (lo bok) in 1996. Mah stated she spoke to Gurdaver Singh Hothi who appeared to be an employee of Min Ho Farms and he told her that no work had been done after October, 1996 because there was frost on the ground. He also corroborated the statement of Min Ho Ahn that the only crops grown on that farm in 1996 were zucchini and daikon. Mah stated she did not retain any picking cards that had been sent to her but if details from a card or several cards had been recorded, that indicated she had reviewed the card(s) at some point. Mah was referred to her Rulings Report – Exhibit R-10, tab 81 – pertaining to Sharinder Singh Bagri. A cheque – tab 91 – in the sum of \$2,000 - payable to Bagri – had cleared the SRC bank and according to the earnings statement – tab 89 – a total of \$1,404 in deductions for income tax, UI/EI premiums and income tax had been retained by SRC. Mah stated she added the sum of \$1,404 to the proven amount paid - \$2,000 –

in order to arrive at insurable earnings in the sum of \$3,404. Mah used the same formula – where applicable – for rulings issued by her but conceded she should have only added the amount for a deduction of income tax that was attributable to the wages actually paid rather than basing it on the amount of the alleged gross earnings shown in the statement. Mah stated she had obtained technical assistance from the appropriate unit within CCRA and had followed its advice to credit the worker with the amount of CPP and UI/EI deductions and the deductions for income tax because the worker should not be penalized because the employer had failed to remit them, as required by law.

[293] The witness – Janet Mah – was cross-examined by Darshen Narang. Mah stated the rulings issued by her with respect to SRC workers were the first ones in her career requiring consideration of whether certain employments were an outright sham and/or if others were tainted by suspicious records and/or other fraudulent documentation. Generally, she issued rulings with respect to one or two workers and the issues usually concerned the number of weeks of employment, the status of the worker as an employee as opposed to an independent contractor, or the amount of insurable earnings. Mah confirmed that once she had been assigned the SRC files in February, 1999, she worked exclusively on them until the last batch of rulings was issued to the relevant parties. Files arrived on her desk in batches and she processed them accordingly and sent out rulings. Mah stated she had no contact with MFU. Mah stated that when a request for a ruling is received from an ICO, there may be a recommendation therein but she exercises an independent function when arriving at a decision concerning the insurability of employment of a worker. In her experience, many requests for a ruling are submitted by a worker or an employer directly without any intervention by HRDC. Mah stated that in those submissions, there is often a recommendation - akin to a prayer for relief in pleadings - that she issue a ruling to accord with said request. Mah stated she has encountered other situations where the employer has disappeared and she was forced to review whatever facts she could gather and examine available documentation in order to arrive at the best decision possible under the circumstances. Mah confirmed that all the rulings – whether 96 or 98 – were done by her on an individual basis. She was referred to Exhibit R-3, tab 79, p. 1 – the document prepared by Blakely regarding possible rulings scenarios – and stated it may have been provided to her but could not recall having seen it. Until notified by her supervisor, Mah was not aware the SRC files would be assigned to her. She stated that once she began reviewing the material, it became apparent that many of the employment scenarios were suspicious and she was aware that some purported workers - who had been issued ROEs by SRC – admitted subsequently they had never been so employed. Mah pointed out that any decision made by her is independent of any position previously taken by HRDC although she reviewed

material including notes of interviews by ICOs in order to arrive at a decision with respect to a particular matter at issue. If a worker – such as Taro Kaur Bassi - stated during an interview or when providing answers within a Questionnaire that she picked strawberries during the first day of work then Mah chose the starting date of strawberry season – as obtained from the agricultural expert, Sweeney – to represent the commencement of that person’s employment with SRC. Mah admitted she had not pursued the discrepancy with respect to Bassi by attempting to reconcile the answer provided by Bassi that she started work on May 19, 1996 and had dug up potatoes. She added that – usually – when two versions or more were presented by the worker she would inquire which scenario the worker wanted to adopt as correctly describing the employment. Mah stated that if she initiated a telephone call and discovered the individual responding did not speak sufficient English, she would ask Harby Rai to take over the call and speak to the person in Punjabi, sometimes posing questions written by Mah – in English - on a piece of paper. Often, a son or daughter of a worker would return Mah’s telephone call and speak to her about their family member’s employment with SRC. Mah stated she relied on the specific advice received from Mark Sweeney about the start of the strawberry season but for raspberries, blueberries and certain vegetables, she referred to a document issued by the British Columbia Ministry of Agriculture in which the probable harvest dates were listed. Mah stated her understanding for the omission of strawberries within that information sheet is that the start of this season is subject to greater variation than other berries which ripen later in the summer when weather is more consistent. Mah agreed that without a paper trail, it is difficult for a worker to verify that he or she received some cash payments. There were no SRC records capable of substantiating payments of cash to workers and they did not – usually – provide any receipts nor any bank statements to indicate any cash had been deposited into an account. Mah agreed that even though the 3 cheques issued to Ravjit Gill had cleared the SRC bank account, she was not satisfied he had worked for SRC. Mah summarized her rulings – Exhibit R-3, tab 79, p. 26 – in which she noted that she accepted 7 ROEs – out of a total of 98 – as accurate. Some workers had been issued more than one ROE. Mah stated she was satisfied the dates of employment for the SRC drivers – as stated in her rulings - were accurate and could be used as a reference when comparing these periods with information provided by workers as to the identity of their drivers. Mah reviewed the summary of account transactions – Exhibit R-1, tab 28, p. 1 - prepared by Fontaine and relied on that information for her own purposes, as required. As agreed earlier, she contacted Fontaine every two weeks to inform him of the progress made in terms of the rulings already issued or about to be issued. Mah stated she reviewed information – in SRC records - indicating Min Ho Ahn paid \$8 per hour for each worker. Mah agreed it appeared as though Min Ho Ahn was issuing cheques to other persons at a time when he maintained he did not have enough money to pay

SRC the balance of the money owed but did not pursue that avenue of inquiry. Mah stated that she was confronted with a mass of contradictions arising from one or more interviews by an ICO at HRDC and/or answers provided to her in the Questionnaire. Depending on circumstances, she stated she attempted to resolve these inconsistencies – on her own – without relying on any other person at CCRA except those specialists providing technical advice.

[294] Counsel for the respondent advised the Court that despite numerous efforts to locate Min Ho Ahn, his current whereabouts are unknown. The former property leased by Ahn has been sold and the telephone number on file for Ahn is no longer in service. Further, a corporate and personal property search yielded no results and Ahn has not filed an income tax return since 1995. A search of Telus revealed no listing for Min Ho Ahn. Counsel informed the Court of efforts to locate Mike Vaupotic, proprietor of Mike's Farm. The corporation operating that business was dissolved on February 28, 1998. The only contact with Vaupotic was through delivery – by someone – of an envelope containing delivery slips and a note from M. Vaupotic. Details of the receipt of the envelope were set forth in Exhibit R-46, a memorandum from Alan Scott to Michel Fontaine. Counsel advised that she contacted the British Columbia Marketing Commission and spoke to the General Manager who stated he was aware that Mike Vaupotic operated a farm under the trade name M & N Farms and had dealt with him over the years but understood the land had been sold. No income tax return was filed for Vaupotic since the 1997 taxation year. Counsel stated that further data base searches provided information which led her to believe Vaupotic had died on October 5, 2002.

[295] Counsel for the respondent informed the Court the respondent's case was closed.

[296] Darshen Narang, agent for the first-named group of appellants in the within style of cause, stated he was not presenting any rebuttal evidence.

[297] As noted earlier, none of the other appellants – whether represented by an agent or self-represented – appeared in Court to present any further evidence.

[298] Darshen Narang advised the Court that he preferred to reserve any arguments and submissions until he had received a copy of the written submissions from counsel for the respondent.

[299] Prior to adjourning the cases pending receipt of written submissions, I indicated to counsel for the respondent that it seemed there was a middle position between that taken by Janet Mah when issuing her rulings and the one adhered to by Bernie Keays – Appeals Officer – in arriving at his recommendations to the Minister. My point was that Keays conceded the relevant legislation deemed the employer to have paid EI/UI premiums and/or CPP contributions whether those remittances had been sent in, as required. The position of the respondent throughout was that there was a link between the workers and the employer’s decision not to deduct income tax and that – somehow – they should bear joint responsibility for this omission on the part of SRC either as willing participants or through a liberal application of the doctrine of willful blindness.

[300] The written submissions of counsel for the respondent contained a concession that where the Minister was satisfied – or proven later to the satisfaction of this Court – that an appellant had been paid a certain amount capable of constituting insurable earnings this amount should be “grossed up” to reflect the amount of EI/UI premiums and CPP contributions deemed to have been paid by the employer on behalf of a particular worker together with the relevant amount of income tax that should have been deducted – at source, and remitted by SRC - on the wages paid. Counsel further advised that the respondent was prepared to adopt the method of calculation I suggested at the close of proceedings in Court which was to utilize a formula based on the same ratio as that applicable to the amount of gross earnings as alleged in the relevant pay statement or earnings record. In other words, if the pay statement issued by Bains Tax on behalf of SRC alleged that a worker earned \$7,000 and income tax deductions were \$600, then if an appellant was unable to prove that he or she had been paid more than \$3,500, the Minister was willing to accept that the proper amount of income tax would be 50% of \$600 – or \$300 – in order to adhere to the same percentage applicable to the larger amount. As discussed in Court, there may be some inaccuracy in employing this method but it would be small because all – or nearly all – of the appellants in the within appeals would not be paying income tax on any income subject to a higher marginal rate and any slight impact on any refundable tax credits and/or other allowances linked to income by various provisions of the *Income Tax Act* would probably be miniscule and in any event, the period for reassessment by the Minister for purposes of income tax has passed. As a result, counsel for the respondent prepared a chart of the amounts the Minister was willing to concede could be added to the amounts proven to have been paid in order to augment the amount of insurable earnings. That chart forms part of the respondent’s written submissions and is located in Respondent’s Submissions, vol. 2 at tab 28. Any exception to this general policy - with respect to a particular appellant - has been

otherwise addressed in the submissions of the respondent and will be referred to in the course of the analysis of the evidence applicable to that person.

[301] The position of the respondent is that the documents created by or on behalf of SRC – such as the ROEs, payroll records, T4 slips, or the “I Cash Money Give” cheques - are not reliable nor are they capable of proving what they purport. Counsel submitted that the evidence adduced at trial established that several SRC employees had admitted their ROE was false because they had never worked for SRC. Other SRC workers admitted to HRDC – or since – that they had not worked for the period shown on their ROE or had not earned the amount indicated therein and some workers admitted they had worked for no wages at all but only to receive their ROE, often referred to as a “weeks paper”. The position of the respondent is that the evidence adduced established that the records are unreliable in many respects including details of days and hours worked and amount of wages paid. Counsel referred to several Statutory Declarations signed by SRC workers - including some by appellants in the within proceedings – in which it was admitted that an ROE was false in some material aspects. As for the purported cheques, counsel submitted they are totally worthless and incapable of proving any aspect of any appellant’s case for a variety of reasons. First, many workers – including some appellants in the within appeals – stated they had never seen these so-called cheques prior to being referred to them during HRDC interviews or at Discovery or in Court. Second, the accounting of revenue earned by SRC during 1996 established SRC was incapable of paying out the wages as purported by the various documents such as the payroll records and/or “I Cash Money Give” purported cheques. SRC records indicated it paid out gross wages of \$795,358.00 whereas the total deposit to its only bank account was \$414,466.95. The net amount of the payroll – after source deductions – should have been \$658,632.00 but the records indicated less than 50% of this sum had been paid by cheques negotiated in a financial institution and – therefore – SRC purported to have paid the remaining balance of wages - \$342,400 – in cash to the workers. The respondent submits there is no evidence that SRC operated any bank account than the one at the TD at 49th Avenue and Fraser Street in Vancouver and the statements on that account do not support the proposition that Rana made any cash withdrawals from said account in order to pay wages to workers. Although SRC had revenue from sales of blueberries, the respondent submits not only was there no evidence adduced to support the theory that cash was received but the testimony of Michel Fontaine confirmed that all of the funds received by SRC from Purewal Farms for blueberry sales were deposited into SRC’s corporate account at the TD bank. Counsel’s submissions also dealt with the issue whether the workers were paid by weight for picking berries as opposed to the hourly rate – during the entire period of employment – as shown on the payroll records. The respondent submitted the SRC

payroll records are not reliable because many of them reported the employee worked exactly 112 hours every two-week pay period or 56 hours every one-week pay period throughout their entire employment with SRC, an assertion not borne out by the testimony of several SRC workers as well as other evidence in relation to payment practices within the farming industry. The respondent submitted the evidence of workers and farm owners demonstrated that the number of hours worked by berry pickers may change from day to day due to the state of the crops – in terms of maturity or whether it is plentiful or sparse – and weather conditions. As a result of many factors disclosed by the evidence adduced in Court, the respondent takes the position it is clear the only method of remuneration used to compensate the appellants for their berry-picking work was on a piecework basis according to rates which varied depending on the type of berry. Even when working on the vegetable farms late in the season, the respondent submitted the hours of work would not have been so consistent and some appellants testified they worked less hours per day or fewer days per week because SRC was utilizing a rotation system to spread the work among several people due to an overall shortage of work.

[302] Counsel submitted argument in respect of the issue arising from the negotiation of SRC cheques at SRC's TD bank or even when either cashed at - or deposited in - a financial institution in which an appellant maintained an account. There was a reference to the testimony of Amarjit Kaur Grewal who stated she was taken by Harbhajan Singh Kang – together with other workers - to the TD bank where she cashed a \$4,000 SRC cheque and returned to Rana's house where she was required to return the sum of \$4,000 to SRC in order to obtain her ROE. She testified other SRC workers were present at the bank and also returned to Rana's house in the van driven by Harbhajan Singh Kang. Counsel pointed out that Kang denied being present when any money was returned and did not recall driving Grewal back home nor whether he took other workers to the TD bank on other days prior to departing for India on October 28, 1996. Counsel pointed out that Gurmail Singh Cheema and Jaswinder Kaur Cheema – both of whom lived in Surrey – each cashed two cheques at SRC's bank on October 21 and October 23, 1996, respectively, and that Manjit Rana was at the bank on both occasions. The cheques were numbered in sequence and the respondent argued even when the evidence indicated SRC cheques were negotiated at the TD bank and cash was obtained in exchange, it still does not constitute reliable proof that the employee retained those funds as payment of wages. In respect of certain cheques negotiated at the employee's own financial institution, counsel referred to the admission by Bakhshish Kaur Thandi in the presence of her daughter – Maninder – during an HRDC interview that although the \$5,000 cheque issued by SRC to her husband - Gian Singh Thandi – was deposited into their personal account, the sum of \$4,000 was withdrawn shortly thereafter and repaid to

SRC. The position of the respondent is that even when cheques were shown to have been deposited into the personal account of an employee, there was evidence – in many cases – to support the view that a portion or – in some cases – all of the money had been returned to someone at SRC so as to render the alleged employment a sham.

[303] Counsel made submissions with respect to the standard method of payment to berry pickers within the industry and referred to the testimony of four farm owners who hired SRC pickers in 1996 and paid SRC by the weight for the strawberries, raspberries and blueberries picked. The revenue earned by SRC from supplying pickers to these 4 farms constituted a significant proportion of the total amount earned by SRC. When SRC sold its own blueberries to Purewal Farms, in order to earn \$70,000 of the total revenue of more than \$77,000 received from that entity, the price was based on weight. Payment to SRC by Gill Farms, Monga Farms, Khakh Farms and by Kliewers and other growers were always based on weight of berries picked and these deposits represent more than 50% of SRC's total revenue. The respondent's position is that the larger farmers such as Gill Farms and Khakh Farms could reasonably be expected to pay pickers in accordance with the prevailing practice in the farming industry and if they paid by the weight it is fair to conclude that the smaller growers used the same method to compensate their pickers. Counsel referred to the testimony of several appellants and to statements made by others during HRDC interviews or when responding to Questionnaires that they had been paid by the weight when picking berries for SRC and that they thought all other workers were paid the same way. The evidence of Mark Sweeney – expert agriculturalist – was that the industry standard is for contractors to provide berry pickers in return for payment by weight and that provincial labour legislation established a minimum piecework for picking certain types of berries, including strawberries, raspberries and blueberries. The respondent relied on the existence of picking cards and submitted the only reasonable inference to be drawn is that this method is used on berry farms to facilitate payment by weight from the farmer to the labour contractor. Each picking card has three copies, one for the farmer, one for the contractor and one for the worker. Most cards are labeled accordingly so the proper copy can be retained by the relevant party. The system requires a new picking card to be issued each day and the name of the worker is written on the card along with the date. That information appears on all three copies of the card. The evidence established that workers do not share a picking card unless they are related; otherwise, the amount of berries picked by each worker is weighed and the picking card is punched to record the weight of berries picked by that person on that day. Counsel referred to the abundant evidence that each card is separated at the end of the day so the farmer, contractor and picker can retain the appropriate copy. Later, the

farm owners paid the contractor by calculating the total weight picked based on the information gathered from the picking cards of each and every worker. Some SRC workers provided information that they retained their copies of picking cards until the end of the season so there could be a settlement of final wages owed based on those cards. The position taken by the respondent is that it is obvious that the entity providing workers to perform the labour-intensive berry picking can only be compensated according to weight and that it – in turn – must pay workers according to that same unit of measurement as to do otherwise – such as an hourly rate – would result in a daily loss in most instances. Counsel referred to an example as revealed by an exchange during the hearing of the appeals in respect of a scenario where the farmer compensated SRC at the rate of \$4.35 per flat for 10 flats picked by a worker. At that rate, the worker earned SRC the sum of \$43.50 but if he or she worked 8 hours - or more – at \$7 per hour, he or she would have earned \$56 – or more – without taking into account holiday pay and the amount of CPP contributions and the employer's share of EI/UI premiums let alone the cost associated with WCB coverage or the operational costs associated with running a business and transporting that worker to and from the fields. Even if a picker could produce 20 flats per day at \$4.35 per flat, that gross revenue paid to SRC would be only \$87 and if the worker was paid for even 8 hours at \$7 per hour - \$56 – that would not leave much profit for the contractor considering that rate of production was rare and limited to a few pickers during the height of the season. Overall, the respondent submits it would not make sense to spend time and money to follow a procedure involving the systematic use of picking cards to record volumes of crop harvested if the labour contractor was paid by the hour for each worker supplied and it would not make any sense for that contractor to pay the worker on a different basis for picking those berries. Counsel referred to the testimony of Didar Singh Mehat where he explained he did not make any decent money picking berries because he was paid on a piecework basis and only earned a reasonable amount per day when he was working on the vegetable farms and was rewarded for his efforts by receiving an hourly wage from SRC. Counsel referred to the *British Columbia Employment Standards Act*, RS Chap. 113 and to the *Employment Standards Regulations* both enacted on November 1, 1995. Generally, the minimum wage was fixed at \$7 per hour - throughout 1996 - except for farm workers which was governed by section 18 of the *Regulations* permitting a minimum wage to be paid to those workers who were employed on a piecework basis and hand harvested raspberries, strawberries and blueberries. An Order-in-Council came into effect on February 14, 1996 which increased the piecework rates for those berries so that the new rates applied – on a per-pound basis - as follows: raspberries - \$.275; strawberries - \$.265; blueberries - \$.305. On August 1, 1996 another Order-in-Council came into force which provided that those farm workers hand harvesting fruit and berry crops could be compensated differently than other workers for

working on statutory holidays or for vacation pay if their payment on a piece-rate basis was calculated by multiplying the applicable piece rate by 1.076. Therefore, the respondent's position is that any piecework payment could be increased by that factor in lieu of paying statutory holiday pay and vacation pay on the usual basis otherwise applicable to non-farm workers.

[304] Counsel submitted that the definitions of insurable earnings under the *Act* and/or pursuant to certain *Regulations* – which I will refer to later in these reasons – dictate that any appellant who was not engaged in insurable employment with SRC during the relevant period cannot have any insurable earnings because any amounts received must be paid to the recipient by that person's employer in respect of an employment. Counsel also submitted that none of the appellants was able to have any unpaid wages considered as insurable earnings because there is a prerequisite that an employee file a complaint with a federal or provincial labour authority in respect of such amounts pursuant to subsections 2(1) and 2(2) of the *Insurable Earnings and Collection of Premiums Regulations*, enacted pursuant to the *Act*. Counsel pointed out there was no evidence that any complaint had been filed by any appellant with the result that any wages remaining unpaid - by SRC - could not be considered as insurable earnings.

[305] Counsel dealt with the issue of transitional provisions as a result of the *Act* coming into force – generally - on June 30, 1996 but also providing for certain provisions to take effect only on January 1, 1997. These transitional and interim provisions provided the transition from the former regime under the *Unemployment Insurance Act* pursuant to which insurable employment was measured in weeks, to the revised method under the new *Act* where it was calculated on the basis of every hour worked without reference to any minimum threshold. Counsel prepared a chart – Respondent's Book of Submissions, vol. 2, tab 29 - that indicates whether each appellant's decision will be governed by the new hours regime under the *Act* or pursuant to the former provisions. Counsel submitted the evidence before the Court established that 24 appellants are governed by the former regime under the *Unemployment Insurance Act* and only Harbans Kaur Kang and Inderjit Singh Atwal are subject to the regime of hours as created by the new *Act*. Kang did not begin receiving UI benefits - in respect of her employment with SRC – until 1997 although it had been performed – completely - within 1996. Therefore, the “beginning of benefit period” as defined by the *Act* required her benefits to be calculated on the basis of the new legislation. Atwal alleged he had been employed by SRC until January 11, 1997 and was covered by the new regime. Even in the case of those two appellants, counsel advised the Minister is able to translate the effect of my decision

– as it applies to them – in order to conform with the hours regime in the *Act* by utilizing the relevant legislative provisions designed for that purpose.

[306] There are numerous other submissions on various points contained in the material prepared by counsel for the respondent and they will be referred to later in these reasons when relevant to a discussion of a particular subject matter or the employment of a specific appellant.

[307] Darshen Narang, agent for the first-named group of appellants in the within style of cause, filed two binders of submissions containing arguments with respect to the evidence applicable to appellants as individuals. In a general sense, he submitted it was not as clear as counsel for the respondent would have the Court believe, that SRC had not charged an hourly rate for the services of its labourers. Narang submitted that the testimony of Guprem Singh Monga and the documentary evidence pertaining to the relationship between Monga Farms and SRC disclosed that Monga Farms had two types of records, once calculated by the piece and the other based on an hourly rate paid in respect of the total hours of labour supplied by SRC. Narang submitted that if one were to examine the Schedule of Picking Cards - Exhibit R-66 - the total number of days worked – 211 – by all the named workers - if calculated at 8 hours per day - amounted to 1,688 hours. If those workers received \$7 per hour, the total labour bill to SRC for their efforts would be in the sum of \$11,816. However, Monga Farms paid SRC the sum of \$16,480 plus GST, thereby producing a profit of \$4,664 from this customer. Narang submitted that if one were to look at the Schedule of Pick Cards – Exhibit R-64 – pertaining to the work done by SRC workers at Gill Farms, it would reveal that a total of 647 person-days labour had been supplied at 8 hours per day for a total of 5,176 hours. If these workers were paid \$7 per hour, the total payroll for that work would be in the sum of \$36,232. However, Gill Farms paid SRC the sum of \$40,395.06 – including \$2,642.67 in GST – which would have produced a gross profit of \$1,520.39 from this source (The figure used – incorrectly in Narang’s submission - was \$40,895.06 so I have corrected it in the course of outlining his submission on this point).

[308] Further submissions by Narang were – generally – in respect of specific appellants and will be referred to in due course.

[309] Prior to embarking on an analysis - case-by-case – of the evidence as it pertains to the fact situation specific to the determination of an issue or issues pertaining to an individual appellant, there are some matters I can deal with at this point that apply to all parties. The proceedings were based on the principle that common evidence would be applied – where relevant – to all appellants regardless of

the manner by which it had been adduced. Therefore, I wish to deal with the following subject matters, as follows:

“I Cash Money Give” Purported Cheques:

[310] It is difficult to fathom what the purpose of these documents was or when they were created and by whom. There is no consistency to the stories advanced by various appellants as to whether a signature appearing on the bottom line was made by them or not and some stated they had never seen that so-called cheque until it was presented to them during an interview or at Discovery or during their testimony in Court. These ersatz “cheques” may have been designed to fulfil the function of a receipt but even that purpose was not borne out by the testimony - in general – of appellants nor by any other evidence, documentary or otherwise. These pieces of paper were not signed by Ranjit Mana, the sole signing authority on the SRC bank account. The evidence adduced before me plainly established that in some instances the amounts written on the purported cheque exceeded the net wages shown on the payroll statement, as in the case of Bakhshish Kaur Thandi. Because there was such a great disparity between the amount of the alleged payroll of SRC in 1996 and the amount of funds deposited to the TD bank account, it is reasonable to assume that those persons intimately involved in the operation of SRC during the summer of 1996 created these pieces of paper in order to reduce that shortfall by making it appear as though large amounts of cash had been paid to several workers as payment of wages.

Whether unpaid wages can be included in the calculation of insurable earnings:

[311] Section 2 of the *Insurable Earnings and Collection of Premiums Regulations* made under the *Act* reads as follows:

Earnings from Insurable Employment

2. (1) For the purposes of the definition “insurable earnings” in subsection 2(1) of the Act and for the purposes of these Regulations, the total amount of earnings that an insured person has from insurable employment is

(a) the total of all amounts, whether wholly or partly pecuniary, received or enjoyed by the insured person that are paid to the person by the person’s employer in respect

of that employment, and

(b) the amount of any gratuities that the insured person is required to declare to the person's employer under provincial legislation.

(2) For the purposes of this Part, the total amount of earnings that an insured person has from insurable employment includes the portion of any amount of such earnings that remains unpaid because of the employer's bankruptcy, receivership, impending receivership or non-payment of remuneration for which the person has filed a complaint with the federal or provincial labour authorities, except for any unpaid amount that is in respect of overtime or that would have been paid by reason of termination of the employment.

[312] No appellant established that he or she had ever filed any complaint – with either the federal or provincial authorities - concerning any unpaid wages - as required, in order to preserve the capacity for any unpaid balance to be regarded as insurable earnings. Further, there was no evidence that even if there were any unpaid wages - as alleged by some appellants – this non-payment of remuneration was due to the employer's bankruptcy or receivership. It was Manjit Rana who filed for bankruptcy, not SRC – the corporation -who was the undisputed employer of all appellants in the within proceedings. Probably, Rana as the sole Director of SRC, was contemplating personal liability arising from that role when he filed for bankruptcy and listed liabilities such as amounts owing to Revenue Canada for income tax and GST as well as a potential debt to WCB for assessments in respect of employees. Therefore, even if there was credible evidence that SRC owed wages to an appellant at the end of his or her employment, that amount cannot be considered for inclusion when calculating insurable earnings.

Employment dates of 5 SRC drivers as established by CCRA rulings which were not appealed:

[313] Counsel for the respondent submitted that the start and end dates of the following drivers – as set forth in Exhibit R-69 - could be accepted as conclusive proof that they had worked only within that period - not before nor after – because none of them had appealed the particular decision issued by Janet Mah. The relevant dates for the named drivers are:

Harjit Singh Gill – May 5 to October 5, 1996

Surinder (Shindo) Kaur Suran – May 12 to October 26, 1996

Bhan Singh (Master) Sidhu – May 26 to October 12, 1996

Harbhajan (Bhajan) Singh Kang - June 21 to October 19, 1996

Balwinder (Binder) Singh Chahal – July 1 to November 16, 1996

[314] In my view, the lack of appeal by any of these individuals is cogent, although not irrefutable, proof that those dates are reliable insofar as they affect only those individuals because they have all accepted the accuracy of those periods of employment as set forth in the decision of Janet Mah that was issued to each of them, personally. Those dates are important to the respondent because they act as barriers to prevent appellants from demonstrating they were driven by a certain driver either before or after those fixed dates. On the basis of those rulings and in conjunction with other relevant evidence, including the testimony of Fontaine - and/other ICOs – I am satisfied those dates are accurate and have properly defined the period of employment for each of those persons except Shindo Suran. I am prepared to leave the question open for the time being as to whether she continued to drive SRC workers to the vegetable farms in Richmond even though she had supposedly been laid off once she had accumulated enough weeks to qualify for UI benefits. Similarly, I will decide later whether Gurbachan Singh Gill was employed as a driver by SRC for the period alleged or at all. However, considering all the evidence before me, I find that Manjit Rana did not drive any workers to or from their employment with SRC in 1996.

Were SRC pickers paid on a piecework basis or by the hour when picking strawberries, raspberries and blueberries?

[315] The evidence is overwhelming that remuneration paid to SRC by the growers was always based on a unit of measurement such as a flat or the pound whether the flat was used to contain strawberries or raspberries or a pail or other container was used for blueberries. The testimony of Guprem Singh Monga, Sukhdev Khakh, Peter Kliewer, Elizabeth Kliewer and Monhinder Singh Gill was uncontradicted that payment was made to SRC on the basis of weight or flats of berries picked by its workers. Monga testified that he acceded to the request – from Bant – that the payment by Monga Farms to SRC be calculated on a sheet – Exhibit R-57 – in order to arrive at a total which would conform with the amount paid - \$16,480 plus \$1,153.60 GST – for a total of \$17,633.60 of which the sum of \$4,000 had been the subject of an advance payment. Monga testified that he instructed his brother - Balwinder – to prepare the sheet in accordance with the wishes of Bant. The

submission of Darshen Narang is that one can calculate the person-days from various sets of picking cards and then make the assumption that each person worked exactly 8 hours per day. There is no evidence to substantiate the work day was that consistent and the payroll statements which purport to show each appellant worked exactly 112 hours every two-week pay period are unreliable in that sense. Simply put, that regularity does not conform with the reality of picking berries which is dependent on the state of the crop and weather conditions. There was evidence that workers were taken to different farms on the same day and the evidence was consistent that they were not compensated for any traveling time to and from their homes and – probably – were not paid when being transported from one farm to another because during that hiatus SRC was not generating any income as a result of their presence in the van or bus. It is clear on the evidence that growers paid SRC on the basis of weight of berries picked. Gurmail Singh Gill, Didar Singh Mehat, Prabhjot Kaur Minhas and Amarjit Kaur Grewal all testified they were paid by weight or by the flat of berries picked and not by the hour. The denial by many appellants either during their HRDC interviews or when completing Questionnaires that they had used picking cards does not accord with the facts as disclosed by the evidence of many credible witnesses including Mark Sweeney, agricultural expert and berry specialist, who stated pickers are paid by piecework within the industry. Even if a labour contractor started out with the intention of never remitting any source deductions for the workers, it would appear to be foolhardy to base payment to workers on a minimum hourly wage rather than on actual production as recorded on picking cards. It is not possible to accept that SRC was paid on a piecework basis for the berries harvested by its employees but remunerated those same pickers on the basis they had worked exactly 8 hours every day, 7 days every week at \$7 per hour. The evidence established that picking cards were used to record berry production by each worker. Obviously, there is a good reason for utilizing that system since it facilitates payment by weight from the grower to the contractor and then from the contractor to the picker based on the information contained on that card. The cards were in triplicate and there was a copy designated for the grower, the labour contractor and the picker, the three parties to the arrangement. The cards had the names of the workers written on them and a new card was issued every day barring a few exceptions due to lapse of memory by either the worker – the previous night – in forgetting to hand in the card or by the person handing out the new cards in the morning. It is not reasonable that growers would undertake the process of recording – on picking cards - the weight and/or number of full and partially-filled flats and/or pails of berries and thereafter depend on that information to calculate payment to a labour contractor based on the volume of berries picked at the applicable rate for a specific type of berry. There were too many inconsistencies in the testimony of those appellants who attempted to assert they had always been paid by the hour for picking berries rather than in accordance with the

normal, industry-wide practice of paying by the weight. Although the flats used to hold the berries are counted when handed in by pickers, the contents are weighed because some flats shipped to certain buyers weigh less than normal in order to conform with the specifications of those customers. It is clear that it was not important to Monga Farms whether the payment to SRC was structured – later - in terms of hours in order to accommodate Bant who wanted – for his own purposes - some document from a farmer in which there was a calculation of labour services based on an hourly rate. That does not change the reality of the basis for the payment already made to SRC by Monga Farms. Like all other growers referred to in these appeals, Monga Farms remunerated SRC on the basis of weight and/or the number of flats and/or pails of berries picked by its workers, as recorded on the picking cards. As Guprem Monga testified, he created the invoice – Exhibit R-3, p. 101 – on behalf of Bant. In that document, Monga calculated the amount owing in respect of raspberries and blueberries according to the same rate of 40 cents per pound. Since there had been 120 hours of labour performed by SRC workers – billed out at \$8 per hour – in relation to tasks other than picking berries, the amount of \$960 was added to the picking costs and the period during which that labour had been supplied was identified on the invoice as between “April-August 1996”. Monga stated it was not important for his own business purposes to identify precisely when that labour commenced or ended since he had recorded the total hours – 120 – performed by SRC workers within that time frame. However, he stated it was probable the first SRC workers would not have been on his farm until May. Again, Monga testified that while workdays are usually 8 hours in duration, during berry-picking season they can last up to 10 hours. Because payment was made to SRC on the basis of weight or number of flats, Monga did not concern himself with matters such as lunch breaks or rest periods and in the course of his testimony specifically differentiated between that scenario and the one where he is paying workers by the hour in which case he determines the breaks during the day.

The matter of administrative penalties imposed with respect to the calculation of overpayment of UI benefits:

[316] In his written submissions, Darshen Narang referred to the imposition of administrative penalties under the *Act* and noted the amounts appeared to vary from zero – in the case of Harbhajan Singh Kang - to 65.75% when applied to the overpayment to Gurcharan Kaur Johal which was only calculated to be in the sum of \$640. At the same time, HRDC decided Didar Singh Mehat had been overpaid UI benefits in the sum of \$6,180 but the penalty imposed amounted to only 12.6% of that amount. Penalties for other appellants ranged from 26.5% to 55.5%, a rate imposed on overpayments to Ravjit Gill and Gian Singh Thandi. Narang’s position is

that there does not seem to be any logical explanation for those variations and that they appear to be unjust – for the most part – unless one were to accept there was a vast conspiracy – in 1996 - between these workers and SRC to defraud the UI/EI system.

[317] I do not have jurisdiction to deal with this matter. When a ruling on insurability is requested pursuant to subsection 90(1) of the *Act*, the assigned Rulings Officer – in accordance with the terms of said provision - is authorized to issue a ruling in respect of the following questions:

(1) An employer, an employee, a person claiming to be an employer or an employee or the Commission may request an officer of the Canada Customs and Revenue Agency authorized by the Minister to make a ruling on any of the following questions:

- (a) whether an employment is insurable;
- (b) how long an insurable employment lasts, including the dates on which it begins and ends;
- (c) what is the amount of any insurable earnings;
- (d) how many hours an insured person has had in insurable employment;
- (e) whether a premium is payable;
- (f) what is the amount of a premium payable;
- (g) who is the employer of an insured person;
- (h) whether employers are associated employers; and
- (i) what amount shall be refunded under subsections 96(4) to (10).

[318] Once the ruling has been issued, any person affected by it can appeal to the Minister within 90 days. The Minister exercises jurisdiction in accordance with section 93 of the *Act* and issues a decision to the affected persons. Thereafter, an appeal can be launched to the Tax Court of Canada pursuant to the provisions of section 103 of the *Act* and the Court – in accordance with paragraph 103(3)(a) “may

vacate, confirm or vary a decision on an appeal under section 91 or an assessment that is the subject of an appeal under section 92”. Any appeals from the imposition of administrative penalties imposed under the *Act* or pursuant to *Regulations* made under said *Act*, must follow a different path which involves the Board of Referees and – thereafter – an Umpire. Even if the matter is finally dealt with by a court with respect to issues perhaps involving the *Charter of Rights and Freedoms* or issues of natural justice or whether a decision has been made in accordance with principles expressed in the jurisprudence applicable to administrative tribunals, those concerns will be addressed by the Federal Court of Canada and not by this Court.

Adverse inference where appellants fail to call the payer as witness:

[319] The written submissions of counsel for the respondent contained a plea that this Court draw an adverse inference against the appellants because they failed to call the payer – whether represented by Rana, Bant, Shindo or any combination of that trio – because the dates of employment and amount of wages received were at issue. Counsel referred to the decision of Margeson, T.C.J. in the case of *MacIntyre v. Canada (Minister of National Revenue – M.N.R.)*, [1998] T.C.J. No. 181. At paragraph 418 of the decision, Judge Margeson stated:

The Court draws an unfavourable inference against each and every one of the Appellants here because of their failure to call the Payor. He was available, he sat outside the Court room for several days. There was no explanation offered for his failure to testify except that his evidence would have been unfavourable to each of the appellants.

[320] In the within appeals, I will not draw that adverse inference as the circumstances are totally different. It appears as though Rana, Bant and Shindo have disappeared. Perhaps they are not in Canada. A considerable amount of effort was expended by Fontaine and other ICOs in attempting to locate these individuals subsequent to the initial interview with each of them. Janet Mah – Rulings Officer – and Bernie Keays – Appeals Officer – received no response to their letters and notices. I accept the statement by Darshen Narang that he attempted to locate Manjit Rana and Bant Suran and Shindo Suran but was unable to do so. HRDC officials questioned several appellants about the whereabouts of these individuals and did not receive any reliable information that would permit them to be located. Fontaine visited one or more residences in Vancouver and left messages and/or formal notices directed to Rana’s attention but he was never seen again by Fontaine or any other employee of HRDC since that sole interview at the end of May, 1997. I take judicial notice that the Internet provides ample opportunity to find someone and that

telephone directories are accessible on-line together with thousands and thousands of other registries and banks of information. At various stages of the proceedings before me, discussions were held concerning the potential for one or more of the SRC trio to be called by one party or other as a witness. The response was always the same: there was no information about where they were residing.

[321] After reviewing the testimony of all the witnesses and having ruled on certain issues common to all appellants, I am prepared to decide these appeals one by one. First, I will deal with the appeals of those appellants represented by Darshen Narang. In each instance, I will state the decision of the Minister and - where applicable - any subsequent concessions by counsel. Next, I will summarize the submissions of the agent for the particular appellant and/or the position advanced by an appellant on his or her own behalf and then decide the appeal. Due to the nature of concessions by the Minister with respect to grossing up insurable earnings by adding in the prorated amount of deductions with respect to UI/EI premiums, CPP contributions and the relevant amount of income tax, adjustments will be required in those instances and in any other case where I determine the decision of the Minister must be varied to find insurable earnings are greater than the sum stated in the decision of the Minister. The formal wording of any variance of the Minister's decision issued to an appellant will be drafted at the end of these reasons but the result will be apparent at the end of each segment of these reasons that pertain to an individual appellant.

VARINDER KAUR KANG:

RELEVANT BOOK OF DOCUMENTS: EXHIBIT R-23

MINISTER'S DECISION:

[322] The Minister decided Kang was not employed in insurable employment with SRC from October 6 to December 28, 1996.

APPELLANT'S POSITION:

[323] The appellant maintains she was so employed and had insurable earnings in the sum of \$4,410.

SUBMISSIONS:

[324] The appellant's agent - Darshen Narang - submitted that Kang gave descriptive answers to questions concerning her duties, the rate and amount of her

pay and provided accurate details concerning her work as well as the identity of co-workers and arrangements she made for the care of her children in order to permit her to continue her employment.

[325] Counsel for the respondent submitted Kang was unable to adduce credible evidence to support her claim that she had been employed by SRC during the relevant period. Counsel pointed out that Kang - at her first HRDC interview on May 26, 1997 - stated her only driver was Bhan Singh Sidhu, whom she called Master. However, Master's last day of employment was October 12, 1996. Counsel referred to a statement by Kang - to ICO Janice Morrow - that the same driver - Master - had taken her to work in December. Counsel conceded that Kang in her testimony before this Court, had explained that she meant to say Master had "mostly" driven her to work until the middle of November and that Shindo Suran and Bant Suran had also driven her in a van and/or small car and that Shindo had taken her to work on December 28, 1996, her last day of employment. Counsel pointed out this answer contradicted the one given to Morrow at the HRDC interview because Kang said at that time that she always rode to work in a van and this answer was repeated in the rulings Questionnaire which was filled out by Kang in her own handwriting after receiving assistance from her husband. Regarding the nature of duties allegedly performed by Kang, counsel submitted the testimony of Kang was not credible for several reasons. First, she was the only SRC worker to state she had been given the task of "sorting" blueberries during her first week of work in October. Second, the overwhelming evidence provided by the growers, most SRC workers as well as the expert opinion of Mark Sweeney, supported the conclusion that the blueberry harvest was finished by mid-September. Third, counsel pointed out that Kang's description of subsequent tasks allegedly performed during November and December such as tying raspberry bushes in Abbotsford or harvesting of vegetables was either vague or contrary to common sense because the severe weather impacted on any remaining vegetable harvest and the evidence of Sweeney was that the only vegetable able to be harvested after the end of October would be Brussels sprouts. Counsel submitted there were numerous other inconsistencies affecting the overall credibility of this appellant and that she had not discharged the burden of proving her employment was genuine.

ANALYSIS:

[326] Prior to her alleged employment with SRC, Varinder Kaur Kang had been working at a nursery and then at a chocolate factory. However, her advanced pregnancy caused her to be laid off and she intended to apply for EI maternity benefits but realized she might be one week short of the period needed to qualify.

Kang testified she heard SRC was looking for workers and was hired by Bant and/or Shindo whom she considered to be owners of the labour contracting business. Kang's child was born at the end of August, 1996 and her mother - Balvir Kaur Malvi - cared for the newborn for a week in September and other family members cared for an older child. It is clear that Kang, during the HRDC interview - tab 96 - in describing her first day of work stated she was driven by Master in a brown van. During her testimony, Kang stated she had also been driven by Bant and Shindo and that she had ridden - sometimes - in a cream-coloured van as well as in a small, red 5-passenger car. Kang was certain Shindo had driven her to work on December 28, 1996, the last day of her employment. Kang described her work in November as "pulling vegetables from the ground", washing them before placing them in a container. At the beginning of December, Kang stated her duties included tying raspberry bushes for a brief period and - following surgery on December 3 - after returning to work, she washed and packed - as opposed to picked - vegetables, until laid off on December 28. During cross-examination, Kang confirmed she had never picked any berries during her employment with SRC even though she had stated in an interview that she was a "blueberry picker and vegetable person". Kang conceded that answer was wrong and stated she had given that response because "someone" had instructed her to provide that reply. During the interview with Morrow - tab 96 - Kang stated she had picked strawberries, raspberries and blueberries but had worked - mostly - with vegetables. Kang's explanation for that answer was that she was attempting to describe the sort of work performed by SRC workers other than herself. Other than through her testimony, Kang was unable to prove she had been paid any wages. She testified she received a cheque - in the sum of \$1,500 - that had been written on a personal bank account of Bant and/or Shindo at the 49th Avenue and Fraser Street TD bank where she cashed that cheque and another SRC cheque - for approximately the same amount - issued to her later. Kang explained she relied on her husband's advice to cash those cheques at this TD bank rather than deposit them into their own joint account in order to avoid the risk of any bank charges if the cheques turned out to be NSF. Kang stated she received the sum of \$900 in cash when obtaining her ROE from Shindo on or about January 2, 1997. Following receipt of that payment, Kang stated she was satisfied she had received all wages due to her and that the total payment of \$3,900 had been properly calculated to conform with her hourly rate of \$7, after deductions. Concerning cash advances during the course of her employment, Kang testified they were part payments of wages owed to her mother - Balvir Kaur Malhi - and that when she referred - during HRDC interviews - to receiving cash, she intended to convey that information within the context of her reply. During the interview on May 26, 1997 - tab 96 - Kang had not mentioned cashing any SRC cheques at the TD bank but had described depositing cheques at Canada Trust. During cross-examination, Kang explained that she thought Janice

Morrow had been asking where she “usually” did her banking and – therefore - told her it was Canada Trust. She also mentioned a joint savings account at the Bank of Montreal. Later in the same interview, Morrow recorded Kang’s response that she “got 5 or 6 cheques and cashed them all at the employer’s bank.” Kang conceded – during cross-examination – that this answer was not correct even though she had repeated it when signing the Statutory Declaration at tab 98. Kang also explained the receipt – tab 89 - in the sum of \$2,000 - that appeared to have been issued by SRC and signed by her – was connected to a repayment of a loan made by SRC to her in-laws in order to permit them to travel to India. According to Kang’s explanation to Morrow, the intent had been that this sum would be deducted from her wages but when it turned out she was paid in full, it was necessary to return the \$2,000 sum to SRC and she repaid it on behalf of her in-laws because they were still in India. In Court, Kang agreed she had given that explanation to Morrow but stated she had returned soon afterwards in order to correct that false impression and told a female Punjabi-speaking employee in the front office that no money had been returned to SRC.

[327] The burden is on the appellant to establish on a balance of probabilities that she was employed under a contract of service with SRC during the period alleged or at all. The testimony of Kang is riddled with inconsistencies. It should not be a complicated process to speak the truth whether during interviews with HRDC officials or when testifying in Court. When one looks at the total evidence adduced on behalf of this appellant, it does not fit with facts otherwise established during the course of receiving evidence common to all appellants in the within appeals. The description of her work does not jibe with reality when viewed in the context of the season and the weather conditions. She was certain Master was her driver but upon learning he had been laid off on October 12, 1996 - shortly after she alleged her work started – she realized she needed to name other drivers who could have continued taking her to work until December 28, 1996. Necessity is truly the mother of invention and each time Kang found herself in a jam, she produced another version of events that she hoped would be more saleable. Unfortunately for her, I am not buying those explanations. The persistent lack of consistency beginning with answers provided to Morrow and as provided – later - in Questionnaires, when considered in the context of her testimony, leads me to conclude she is not a credible witness. One does not seek perfection when considering these matters, particularly when dealing with events that have taken place years earlier but the most recent statements by someone should – ordinarily – be the most reliable because they are the freshest. Kang’s interview on May 26, 1997, only 5 months after she was supposed to have finished working for SRC, should have been the most accurate. However, each time I looked for some independent support for yet another version of events proffered by

Kang, it was not there. Where the evidence of Kang conflicts with that of Morrow with respect to the accuracy of an answer or any event occurring within the context of an interview, I reject Kang's testimony and accept Morrow's version.

CONCLUSION:

[328] Having regard to all the relevant evidence, I find the appellant has not discharged the burden of proof necessary for me to conclude that the decision of the Minister was incorrect. As a result, the decision of the Minister is confirmed. Even if I had been able to find there was a certain period of insurable employment, the appellant was not able to prove she had been paid for her work and I would have been unable to find any insurable earnings.

VARINDER KAUR JASSAL:

RELEVANT BOOK OF DOCUMENTS: EXHIBIT R-19

MINISTER'S DECISION:

[329] The Minister decided Varinder Kaur Kassal was employed in insurable employment for 16 weeks from May 12 to October 26, 1996 and had insurable earnings in the sum of \$7,000. Counsel for the respondent conceded that ordinarily the insurable earnings should be increased by the amount of deductions attributable to those earnings in accordance with the chart in Respondent's Book of Submissions, vol. 2, tab 28 (Chart). However, counsel submitted the increase in insurable earnings should be limited in this particular instance to the additional amount of \$861 - for a total of \$7,861 - because that sum was the total amount of insurable earnings reported in her ROE based on her last 20 weeks of employment.

APPELLANT'S POSITION:

[330] Varinder Kaur Jassal asserted she was employed from April 21 to November 16, 1996 and is entitled to have her insurable earnings calculated on the basis of her pay statement - tab 89 - which shows gross earnings in the sum of \$8,645 and net earnings in the sum of \$7,861.

SUBMISSIONS:

[331] Darshen Narang - agent for the appellant - submitted the Minister had accepted that Jassal was employed during those dates which conformed with the periods of employment established by the Minister for those drivers identified by her as having transported her to and from work. However, Narang submitted it was not reasonable to fix the end date of her employment merely by referring to the alleged last day of work – October 26 – of Surinder (Shindo) Suran since she acted throughout as a principal of SRC and it is reasonable to assume she continued driving workers to the vegetable farms after she was supposedly laid off in her capacity as employee. Narang pointed out the dates of employment claimed by Jassal conformed with the evidence of Mark Sweeney, the agricultural expert, in that planting of certain crops is undertaken in April and most vegetables can be harvested until mid-November - even in 1996 - because the severe arctic outflow arrived later that month.

[332] Counsel for the respondent submitted there is no basis upon which I should allow any increase to the amount of insurable earnings already conceded on behalf of the Minister. As I have already found, any remuneration for picking berries was not based on the hourly rate of \$7 – as alleged by Jassal – but on the basis of piecework depending on the type of berry picked. In any event, counsel submitted the appellant's insurable earnings should be limited to \$7,960.86, an amount based on the sum of \$7,000 - proven to have been paid to her in the form of two cheques - together with the extra amount of \$960.86 attributable to the pro-rated UI/EI, CPP and income tax source deductions. Counsel pointed out that during her HRDC interview Jassal had not mentioned receiving any cash nor when completing the Questionnaire at the rulings stage and only brought up that subject when submitting the Questionnaire to Bernie Keays during the appeals process and during her direct examination when she stated she had been paid the sum of \$459 in cash upon settling up with SRC and receiving her ROE. Counsel submitted the information received from Min Ho Ahn, proprietor of Min Ho Farms, as related to Janet Mah during a telephone conversation, should be accepted when he stated SRC did not supply any workers to his farm until July 1, 1996. Counsel relied on the expert opinion of Mark Sweeney that potatoes were not ready for harvesting until June 20, 1996.

ANALYSIS:

[333] The difference between the parties at this stage is not great. The issue is whether the appellant has proven to my satisfaction that she started work on April 21 and worked until November 16, 1996 and that she was paid another \$459 in cash upon receiving her ROE so her net earnings match the amount shown on her pay statement. Jassal stated in her direct examination that she had a clear recollection of

receiving that sum of money in her hand at the settling up meeting at Rana's house on November 16. She stated she returned 3 days later to pick up her ROE. Jassal testified she was driven – by Shindo - on April 21 to a farm in Richmond where she planted seeds, by hand. She described riding in a van with 5 to 7 other workers and stated that after two weeks of planting, she was taken to Mike's Farm – also in Richmond – where she harvested potatoes until she started working thereafter at Khakh Farms in Abbotsford, which was not disputed by the Minister. Jassal conceded during cross-examination - by Selena Sit – that at Discovery she informed Shindo she needed 26 weeks of work in order to qualify for UI benefits. Although the appellant had stated in the Questionnaire - returned to Keays - that no picking cards were ever used, she admitted that was not correct. During her testimony she described how the cards were handed out in the morning and collected by the drivers at the end of the day. She stated she did not retain any of her copies of the cards because she was paid by the hour. Jassal stated Binder Chahal had driven her to work on November 16, her last day. However, when completing the Questionnaire – tab 85 – she had identified only Harjit Gill and Shindo as her drivers, stating Gill drove the yellow bus and Shindo drove the van. There was no reference to Bant nor Chahal. During her testimony, Jassal explained away those inconsistencies as well as the contradictions arising from her statements during the HRDC interview, by stating she had not understood the purpose of said interview and her answers – therefore – may not have been accurate. Varinder Kaur Jassal is well-educated and can speak, read and write English at a level sufficient for her to have understood the import of the questions - particularly as interpreted - in Punjabi - by her husband – and should have been able to provide consistent and reliable information about her employment during the relevant period. There was no independent record to corroborate her hours of work and during late October, until her alleged layoff on November 16, it is not reasonable to accept that she worked exactly 8 hours every day, 7 days a week because the work at that time of year would not have been that demanding. Other SRC workers testified they worked on an informal rotation basis whereby they worked a few days and then had some time off until notified they were going to be picked up one morning to be taken to a farm. I am not relying on the information provided by Min Ho Ahn to Janet Mah that he did not hire any SRC workers until July 1, as that is hearsay and was not tested during cross-examination. For various reasons, I consider this statement is not particularly reliable due to the apparent state of confusion in many respects of his business operation as disclosed by his rambling interview with Michel Fontaine when he was unable to recall ordinary details and could not produce records which had apparently been kept by his wife who had since left the matrimonial home. Further, I am not basing my decision solely on the alleged start date of Shindo as disclosed by her ROE. It is possible that she drove Jassal to work on April 21 even though her first day of employment is shown as May 12. It is

also possible that Chahal drove Jassal to work on her last day of employment, November 16. However, it is not probable when viewed in the context of all the evidence relevant to the determination of this issue, including previous statements by Jassal not only during interviews or when completing Questionnaires but also during her testimony in Court. I find it extremely doubtful that Jassal received the exact sum of \$459 during the settling up meeting at Rana's house and consider it likely the receipt of this precise amount was invented by her following disclosure of documents – including her pay statement – in order to conform with the amount shown therein. As admitted by Jassal at Discovery, she was looking for 26 weeks of employment in order to qualify for UI benefits in the late fall of 1996. I find that she attempted to stretch the facts attributable to her legitimate period of employment so as to create an extra phantom period to cover the shortfall between 20 weeks - the period of employment recognized by the Minister - and her target of 26 weeks.

CONCLUSION:

[334] The appellant has failed to demonstrate on a balance of probabilities that she is entitled to any further relief. The decision of the Minister establishing the dates of her insurable employment is confirmed. However, as conceded by counsel, her insurable earnings will be increased by \$861 and the corrected total amount is \$7,861.

HARBANS KAUR KANG:

RELEVANT BOOK OF DOCUMENTS: EXHIBIT R-22

MINISTER'S DECISION:

[335] Counsel for the respondent conceded Harbans Kaur Kang was employed in insurable employment from June 23 to October 19, 1996 and that her insurable earnings were \$6,877 based on the net wage of \$6,071 shown on her pay statement together with the pro-rated amounts - attributable to source deductions - totalling \$805.72, as shown on the Chart, referred to earlier.

APPELLANT'S POSITION:

[336] The appellant claimed she started work on June 16, 1996 and that her insurable earnings were in the sum of \$7,000, representing the amount of her gross earnings as shown on her pay statement. She relied on the proven fact she was paid a total of \$6,879 by two cheques that were negotiated at the SRC bank.

SUBMISSIONS:

[337] Narang submitted the evidence established the appellant's husband - Harbhajan Singh Kang – had worked as a driver for SRC on an unpaid training basis – as declared unilaterally by Bant – prior to his official start date of June 21, 1996, as decided by the Minister. Because, the appellant testified she and her husband started within a day or two of each other, she could have been working on June 16 as stated on her ROE, particularly because she described riding to work with Master during her first week and thereafter with her husband who drove her to work until they were both laid off on October 19, 1996.

[338] Counsel for the respondent submitted it was clear from all the evidence that the appellant started work before her husband. Since June 21, 1996 was the date established by the Minister – and never changed through any subsequent process – as the first day of her husband's employment, counsel submitted it was reasonable to decide that her employment started two days later on June 23. Counsel referred to the testimony of the appellant which conformed to that finding in that she was certain her husband began working one or two days earlier. Counsel submitted that even though the pay statements produced by Bains Tax for SRC were generally unreliable when they purported to show exactly the same hours of work per pay period and attempted to show payments to workers were based on an hourly rate, the net earnings shown thereon could serve as a ceiling for the insurable earnings for the appellant. As a result, counsel submitted the appellant was not entitled to any amount in excess of that conceded by the Minister.

ANALYSIS:

[339] I appreciate there was some confusion concerning the start date for the appellant's husband - Harbhajan Singh Kang - because he had worked some days where Bant had ridden with him which were classified as unpaid training days but there are no grounds for varying the decision of the Minister as it pertains to the dates of employment. At various times, the appellant stated different times for the commencement of her employment and at one point thought her husband had started working two months after her start date. However, that error can be traced to the erroneous dates inserted in Harbhajan Singh Kang's original ROE which were considered to be correct until the Minister was convinced otherwise as the matter progressed. There is no solid evidence on which I can find that Harbans Kaur Kang started working on June 16, 1996, instead of June 23, as decided by the Minister. The choice of June 23, 1996 is reasonable under the circumstances.

[340] As indicated earlier, I reject the notion that Harbans Kaur Kang was paid by the hour for picking berries. There is no doubt the appellant received a total of \$6,879 in the form of cheques which cleared the SRC bank account. Her net pay - according to the pay statement which she accepted as accurate – was only \$6,071 and her gross earnings were shown as \$7,000. The explanation offered concerning the apparent overpayment lurched from the sublime to the ridiculous. One version was that Bant was drunk when he calculated the final amount of wages due to her at the end of the season. Kang stated Bant due – presumably - to sober second thought called her husband to advise he was aware of the overpayment and wanted the excess returned to him. At Discovery, the appellant was clear that the overpayment was in the sum of \$800 and that it had been returned to him. When testifying in the within appeals, Harbans Kaur Kang stated the extra payment was only \$89 because she had been owed \$800 in wages at the end of the season and she and/or her husband had not paid any money back to anyone at SRC. Until her husband finally disclosed that SRC had paid her wages to him and that the cheques – payable to her - had been deposited into their joint account, the appellant was convinced she had never been paid for her work. During an interview with Bowerman, she complained to him that her wages remained outstanding. Whether or not the extra \$879 was repaid to Bant, it is clear this money was paid in error and, as a matter of law, money paid through mistake of fact is recoverable by the payer. In any event, the definition of insurable earnings – set forth earlier in these reasons - does not include an amount paid in error because it has to be paid to a person by that person’s employer “in respect of that employment.” The employer’s pay statement indicates the most money the appellant could have earned was \$7,000 and a net payment of \$6,879 was obviously too much, taking into account the usual deductions. The only reliable method of calculating the insurable earnings of the appellant is the one suggested by counsel for the Minister in accordance with the concession referred to at the beginning of this part as it pertained to Harbans Kaur Purewal.

CONCLUSION:

[341] The appellant is not entitled to any further relief in addition to the concessions of the Minister, as noted herein.

JASWINDER SINGH BASSI:

RELEVANT BOOK OF DOCUMENTS: EXHIBIT R-11

MINISTER’S DECISION:

[342] The Minister decided the appellant was not employed in insurable employment with SRC during any period from May 19 to December 28, 1996. As a result, his insurable earnings were nil.

APPELLANT'S POSITION:

[343] The appellant asserted he was employed from May 19 to July 14 and again from November 30 to December 28, within the relevant period and had insurable earnings in the sum of \$4,557.

SUBMISSIONS:

[344] Narang submitted the appellant received a cheque in the sum of \$3,000 which had been deposited to his account and had received additional sums in cash to account for the balance of gross earnings. Narang submitted Bassi's testimony regarding his earnings was confirmed by a T4 issued to him – which was used to file his income tax return – together with his ROE and information contained in the payroll statement.

[345] Counsel for the respondent submitted the appellant's testimony was not credible and that he failed to establish he had worked for SRC, as alleged. Counsel submitted Bassi's testimony was not believable when he stated he started weeding at a farm in Chiliwack and that after two weeks he picked strawberries for three weeks before picking raspberries until he left his job with SRC on July 14. As for Bassi's claim that he returned to SRC and performed tasks on vegetable farms during the month of December, counsel submitted the evidence – overall - did not support that contention as there was no work to be done at that time considering the usual end to the vegetable season let alone the exceptionally harsh weather conditions in 1996. Counsel referred to the evidence of Mohinder Singh Gill - representing Gill Farms – that there was no strawberry crop on their farm in 1996. In addition, counsel submitted the appellant's description – in Court – of the work performed directly contradicted statements made by him during his initial HRDC interview.

ANALYSIS:

[346] Jaswinder Singh Bassi testified Shindo drove him to work on his first day - May 14 – as well as on his last day, December 28. He lived in a basement suite in his parents' home in Vancouver and his mother – Taro Kaur Bassi – is a co-appellant in the within appeals. He maintained he was paid an hourly rate of \$7 for picking berries even though he used picking cards to record the weight and/or volume picked.

I do not accept that he – like any other SRC worker – would have been paid on any basis other than piecework as explained earlier in these reasons. Counsel for the respondent submitted Bassi had testified that he weeded around strawberry plants at Gill Farms when the evidence disclosed no strawberries were grown by that business in 1996. However, my view of Bassi’s testimony is that he was taken – by Shindo – to “a farm in Chiliwack” where he did weeding for two weeks. However, Bassi stated he picked strawberries for two weeks at that farm – beginning about June 14 - and then picked raspberries. It is apparent that any picking of strawberries was not done at Gill Farms and the schedule of picking cards – Exhibit R-64 - does not include Bassi as a worker although his mother - with whom he said he worked – is recorded as having picked raspberries and/or blueberries at various times between July 9 and August 10, 1996. He testified he did not share a flat or a picking card with any other worker. At his HRDC interview, Bassi stated he started work on May 19 when he planted cauliflower for 3 days before starting to pick strawberries. As for working on the Min Ho vegetable Farm, Bassi stated Shindo was always his van driver and despite being informed by counsel that the Minister had information potatoes were not grown there in 1996, insisted he had worked on potatoes as well as carrots, turnips and radishes and did not accept that the vegetable season had ended prior to him starting work on November 30. He maintained that he worked 7 days a week for the first two weeks in December and then may have taken off one day. He testified he washed vegetables – outside - using a hose attached to a tap. With respect to payment of wages in the form of a \$3,000 cheque, Bassi offered up different versions surrounding that receipt. He told Michel Fontaine during an interview - tab 94 – on December 5, 1997 that he had not deposited a cheque in the sum of \$4,000 – contrary to what he told Fontaine during an earlier interview – but had received a cheque in the sum of \$4,040 of which he had taken out \$1,040 in cash and deposited the rest. He produced a bank statement – tab 100 – confirming a deposit of \$3,000 on January 10, 1997. There was an entry indicating a withdrawal of \$3,300 on January 14, 1997, which Bassi stated was made in order to repay his sister who had loaned him money to travel to India in October, 1996, even though he had more than \$13,000 in his account at that time. Bassi explained he had been busy shopping for his trip and did not have time to attend at his own bank in order to withdraw travel funds. Bassi agreed he had been aware that he needed 18 weeks of employment to qualify for UI benefits. There are no records to corroborate Bassi’s testimony concerning the hours worked and it is difficult to accept he made up the time missed due to medical appointments by staying behind to pick berries when all other SRC workers had left the farm for the day.

[347] With respect to the issue of payment, there is no cancelled SRC cheque to support the appellant’s contention that he was paid the sum of \$4,040 or any other

amount for his work. On one occasion, Bassi told the HRDC investigator that he had not received any cash and had received only one cheque – in the sum of \$4,000 – at the end of his employment which was deposited – entirely - into his own bank account. He stated he received the cheque together with his ROE when Shindo dropped them off at his house. During his cross-examination, Bassi denied giving those answers to Fontaine. In responding to the Questionnaire sent by Keays, Bassi stated he had been paid the sum of \$4,000 by cheque and \$50 in cash. In his testimony, he stated he had received a cheque in the sum of \$3,000 and a total of \$1,050 in cash which had been paid to him in small amounts from time to time during the course of his employment. As for contradictions in his statements to Fontaine, Bassi blamed the quality of the interpretation provided by Kal Tarlal.

CONCLUSION:

[348] I do not accept Bassi's contention that he was employed by SRC as alleged or at all. His version of events does not conform with reality. He could not have been picking strawberries prior to the end of the first week in June. Although he could not identify specifically the farm - in Chiliwack - where he was working, he testified he worked with his mother – after riding to work with her – and her evidence was that she worked at Gill Farms weeding around strawberry plants. Therefore, it is safe to assume Jaswinder Singh Bassi was referring to Gill Farms when describing the same kind of work, beginning on May 19, the same day his mother alleged she began working at SRC. If the appellant picked berries with his mother, why are there no picking cards in his name? He described the process whereby his picking card was punched – at the scale - in order to record the full flat of berries. Bassi denied he told the HRDC interviewer that he was paid by the flat for picking strawberries and raspberries and that when he left SRC on July 14 to work for Kalair Farms he had been owed wages which were not collected until the end of December after he had finished his second stint at SRC. When responding to the Questionnaire – tab 111 – Bassi blamed his brother – whom he admitted was fluent in English – for having written incorrect answers to questions even though his brother had not worked for SRC and would not know details of working conditions unless the information had been provided by the appellant. Bassi agreed with the proposition that except for his own testimony, there was no other proof he had received wages by cheque – in the sum of \$3,000 – in addition to \$1,050 in cash. He stated he maintained a record of cash payments but lost it when he moved to Surrey at the end of 1997. Where one or more versions of events related by Bassi conflict with one or more scenarios described by Fontaine concerning the circumstances of an interview and the answers recorded, I prefer the testimony of Fontaine. In order to accept Bassi's story that he was working 8 hours a day, 7 days a week - during December - washing vegetables

on the Min Ho Farms – which sold its last produce on November 24 - or that any other farm in Richmond still required him to wash vegetables as late as December 28, it would have required me – recently - to have fallen off the back of a turnip truck. That event did not occur and I do not accept the evidence of Bassi that he was employed – at all – by SRC during the relevant period. Even if I had been able to find he was employed for some period, I would not have been able to conclude that he had any insurable earnings as defined by the relevant provisions of the *Regulations* made pursuant to the *Act*. The decision of the Minister is confirmed.

TARO KAUR BASSI:

RELEVANT BOOK OF DOCUMENTS: EXHIBIT R-12

MINISTER'S DECISION:

[349] The Minister decided the appellant had been engaged in insurable employment with SRC for 7 weeks from June 10 to July 27, 1996 and had insurable earnings in the sum of \$3,000. Counsel conceded the appellant's insurable earnings should be increased by the applicable pro-rated amount of \$413.07 attributable to source deductions, thereby increasing said earnings to \$3,413.07.

APPELLANT'S POSITION:

[350] The appellant claimed she worked from May 19 to July 27, 1996 and accumulated insurable earnings in the sum of \$3,920 as stated on her ROE at tab 88.

SUBMISSIONS:

[351] Narang submitted the appellant had demonstrated she was engaged in insurable employment during the relevant period and had been paid for her work.

[352] Counsel for the respondent submitted the credibility of the appellant was severely affected by her insistence that she was remunerated on an hourly basis even though she used picking cards every day when picking strawberries and raspberries. Counsel referred to the appellant's testimony concerning the method of receiving the

cards at the start of each day and handing them back to the driver at night. When responding to the Questionnaire – tab 97 – the appellant denied using picking cards and that statement was reinforced by her answers at Discovery. Concerning the calculation of insurable earnings, counsel pointed out the Minister had allowed earnings based on the payment to the appellant of the sum of \$3,000 which was the only amount proven to have been paid to her by SRC.

ANALYSIS:

[353] Taro Kaur Bassi testified she received the \$3,000 cheque – tab 90 – dated July 6, 1996 and negotiated it on December 5, 1996. She stated she started working for SRC near the middle of the 5th month and her first day was spent weeding around strawberry plants at a farm in Abbotsford operated by Gill Farms. She described working 7 days per week at this task for about 3 weeks but also worked - planting cauliflower – at a farm in Richmond. Shindo was her only driver throughout the course of her employment which lasted until July 27. She could not recall whether her son – Jaswinder Singh Bassi – had ridden to work with her on the first day but recalled riding with him on other occasions. Taro Kaur Bassi stated she was not paid on a bi-weekly basis and had to ask Shindo for money and that one day - in June – Shindo paid her \$500 in cash. Taro Kaur Bassi left SRC to work for Kalair Farms but was not paid for her SRC work until December when she went to Shindo's house to collect her cheque and the ROE. She was aware she needed 18 weeks of employment in order to qualify for UI benefits. When responding to the Questionnaire – tab 97 – she stated she had received the sum of \$380 in cash – from Rana – in addition to the \$3,000 cheque. She clarified that response by explaining that she knew Rana, Bant and Shindo all lived in the same house so considered there was no real difference between them in operating the SRC labour contracting business. She agreed if she had received \$3,500 when her pay statement – tab 89 - showed she was entitled to only \$3,380, then she must have been overpaid.

[354] The main issue in this appeal is whether it has been proven by the appellant that she started work on May 19. During her testimony, she provided contradictory answers ranging from her description of weeding around strawberries her first day to planting cauliflower on a farm in Richmond. At Discovery – on June 19, 2001 – she could not recall – initially – the work done on her first day but a subsequent series of questions elicited answers that indicated her first task was picking strawberries. During cross-examination, the appellant rejected those answers and stated they were obviously incorrect because – as an experienced farm worker – she was well aware strawberries were not ready to pick on May 19. The appellant maintained her answers – at Discovery – must have been recorded incorrectly by the reporter,

including those responses where she denied having used picking cards at any time. During her direct examination, the appellant described picking potatoes at a Richmond farm but this period seemed to occupy the same time frame as the one during which she alleges she weeded around strawberry plants at Gill Farms. In the opinion of Mark Sweeney, as contained in his report – Exhibit R-41 – potatoes in the Richmond area would not have been ready for harvesting until June 20, 1996. Sweeney also testified that strawberries were ready – generally - for picking by June 15th and added it was possible that some farms could have begun harvesting by June 9th or 10th. However, due to the weather conditions earlier that year, he considered it was highly unlikely that any strawberries were ripe before June 2.

[355] The appellant is illiterate in both Punjabi and English. However, at each stage of the lengthy process whether completing the application for UI benefits, attending at HRDC interviews, responding to Questionnaires, giving answers at Discovery or testifying in the within appeals, she had access to qualified interpreters and translators who explained the import of the questions to her by ensuring they were explained to her in Punjabi. Her son attended an interview with her and Lakhwinder Kalair assisted her to complete a Questionnaire that was returned to Janet Mah. The Questionnaire – tab 97 – was completed on her behalf by her younger son who could read and write English. With regard to the various inconsistencies throughout the process, the appellant stated, “the things I am telling you today, if you asked me tomorrow, I would not remember.”

CONCLUSION:

[356] Having regard to all the evidence applicable to this particular appeal, I remain unconvinced that Taro Kaur Bassi started working for SRC on May 19, 1996. There were no strawberry plants to weed at Gill Farms and the potatoes in Richmond were not ready for harvesting. She provided several versions of her duties and then denied that she gave certain answers – at Discovery – which indicated clearly she knew that she was being asked about what task was performed on her first day of work. In response, she stated that she picked strawberries. Probably, the weeding story was invented to breach the gap when the appellant became aware she had provided answers about picking berries during a period when they were not ripe, a fact she should have known based on her previous farm experience. The evidence of Mohinder Singh Gill was that the only work done by SRC workers in 1996 - at Gill Farms - was picking raspberries and blueberries and there was no strawberry crop there in 1996. Unless the appellant lived within a parallel universe or had the ability to slip through barriers of time, it is difficult to comprehend how she could have been weeding around strawberry plants at Gill Farms in May, 1996, unless it was on a

volunteer basis and she had brought her own plants. The testimony of Taro Kaur Bassi is unreliable and where it conflicts with another witness on a material point concerning statements made during an HRDC interview or in respect of responses provided in a Questionnaire, I reject Bassi's version.

[357] Obviously, the appellant did not work for SRC between May 19 and June 9, 1996. Her only period of employment was the one decided by the Minister and her insurable earnings – pursuant to the grossing-up effect of the Minister's concession – are in the sum of \$3,413.07.

BAKSHISH KAUR THANDI:

RELEVANT BOOK OF DOCUMENTS: EXHBIT R-29

MINISTER'S DECISION:

[358] The Minister decided the appellant was engaged in insurable employment with SRC for 18 weeks during the period from June 24 to October 26, 1996 and that her insurable earnings were nil. Following a review of picking cards from various farms, counsel for the respondent conceded the appellant had been employed from June 9 to October 26, 1996, but the Minister adhered to the previous decision that her insurable earnings were nil.

APPELLANT'S POSITION:

[359] The appellant agreed the Minister had – finally – decided on the correct period of employment but asserted she had insurable earnings in the sum of \$7,840.

SUBMISSIONS:

[360] Narang submitted that merely because Bakhshish Kaur Thandi had been paid her wages in cash, a common practice within the farming industry, she should not be denied her right to be included in insurable employment based on insurable earnings. He pointed out that her husband also worked for SRC and had done all the banking and that she testified she had not returned any part of her wages to anyone connected with operating the SRC business.

[361] Counsel for the respondent submitted the payroll statement in respect of Thandi is unreliable. It purports that she had \$7,840 in gross earnings and net pay of \$6,764. Since the records of SRC did not contain any cancelled cheques payable to

the appellant, the only piece of paper pertaining to Bakhshish Kaur Thandi was a “I Cash Money Give” purported cheque in the sum of \$7,000 with the name “Bakagha K. Thaadi” inserted in the payee space. Counsel submitted it was very clear from the notes made by the ICO during an interview - where Kal Tarlal interpreted the questions into Punjabi - that the appellant stated she had worked for no pay but only for the “weeks” and that her only compensation was to receive an ROE at the end of the season.

ANALYSIS:

[362] The sole issue in the appeal of Bakhshish Kaur Thandi is whether she had any insurable earnings in the course of her employment with SRC. During the appellant’s interview with Michel Fontaine – tab 93 – she described an arrangement with SRC whereby she received a cheque, cashed it and returned the money. When the appellant’s daughter joined the interview, and Fontaine continued to inquire about the subject of payment, Bakhshish Kaur Thandi stated she never questioned being required to return money - from a cheque – to Shindo because that is what she had been asked to do. She clearly understood the import of Fontaine’s questions whether she had received any payment of wages and provided answers indicating she had been paid nothing and only worked to receive an ROE which would entitle her to future UI benefits. During the interview with Fontaine, the appellant was shown one of those notorious “I Cash Money Give” purported cheques, this one with the sum of \$7,000 appearing thereon. Fontaine pointed out to the appellant that her net pay was only \$6,764 and she agreed that SRC would “never pay out that amount of money”, referring to the excess payment if the payroll information was correct. The bank statement of the account of the appellant and her husband - Gian Singh Thandi – indicated a \$5,000 deposit on December 16, 1996, followed by a withdrawal of \$4,200 on December 24, 1996. The appellant’s daughter - Maninder Kaur Mangat – during the interview told Fontaine that her mother and father lived with her and her family in 1996 and that she was not aware either of any wages having been paid to them for their work. She also told Fontaine about Bant coming to their house and obtaining the sum of \$4,000 cash. Maninder advised Fontaine that this same procedure had been followed in 1995 when her parents had worked for Shindo and not received any wages but only their ROEs at the end of the season. The appellant testified she had not given those answers to Fontaine and that the sum of \$4,000 had been paid to Bant in order to repay a loan. She denied that Maninder would have told Fontaine that she had worked only for the “weeks” because the work was very hard. Counsel referred the appellant to an explanation given by her husband – Gian Singh Thandi – at Discovery about having returned the sum of \$4,000 to Bant because it was an overpayment due to a mistake by Bant who had been both drunk and angry

when making out a cheque for \$5,000 at the end of the season. Bakhshish Kaur Thandi maintained her position that the payment to Bant was to discharge an outstanding loan. The appellant – during re-examination by her agent – testified she and her husband had decided not to tell Maninder and her husband about receiving cheques from SRC - in payment of their wages - and that any information provided by Maninder to Fontaine was incorrect because, after all “what does a little girl know.” In order to hide the fact they were really being paid by SRC for their work, the appellant stated she and her husband thought an appropriate stratagem would be to tell her that they were only “working for the weeks.”

CONCLUSION:

[363] The truth of the matter was revealed by the appellant and confirmed by her daughter during the interview with Fontaine. I find that she worked for the “weeks” and received only the ROE in return. The story about returning money to Bant which had been loaned at some point is not credible. She only started work for SRC in June and on July 20, 1996, there was a balance of over \$13,000 in the joint account of her and her husband. The sum of \$10,000 was transferred to a son living in England but thereafter the balance was always more than \$3,700. It is clear that the appellant understood Fontaine’s questions – as interpreted by Kal Tarlal and/or Maninder Mangat, her own daughter – and that she expressed clearly what she wanted to say at that time, namely that she was not paid and worked just to receive the magic piece of paper that would produce UI benefits throughout the winter and spring. The appellant’s explanation for numerous inconsistencies concerning a wide variety of topics ranging from her method of payment to details of alleged payment of wages was that she was illiterate. The appellant has not provided any credible evidence upon which I could find – on a balance of probabilities – that the Minister was wrong when deciding that although she was employed during the relevant period, she had not been paid and - therefore – had no insurable earnings, as defined in the legislation.

[364] The decision of the Minister will be varied only to take into account the concession concerning the start date – June 9, 1996 - of the appellant’s employment.

GIAN SINGH THANDI:

RELEVANT BOOK OF DOCUMENTS: EXHIBIT R-30

MINISTER’S DECISION:

[365] The Minister decided the appellant was employed in insurable employment with SRC for 18 weeks during the period from June 24 to October 26, 1996, and had insurable earnings in the sum of \$5,000. Counsel conceded the start date should be June 9, 1996, but did not revise the amount of insurable earnings.

APPELLANT'S POSITION:

[366] The appellant agrees with the decision of the Minister regarding the period of employment but claims he had insurable earnings in the sum of \$7,840 as shown on his pay statement at tab 88.

SUBMISSIONS:

[367] Narang submitted that the appellant had received cash for his own wages and for his wife – Bakhshish Kaur Thandi – in addition to the \$5,000 cheque that had been accepted by the Minister on the basis it had cleared the SRC bank account. Narang also pointed out that as the matter unfolded in Court, it was apparent Gian Singh Thandi handled all money matters and chose not to disclose to his daughter and son-in-law that SRC had been paying wages to them during their employment.

[368] Counsel for the respondent submitted that subsequent revelations during the course of this litigation established the Minister should not have decided Gian Singh Thandi had insurable earnings in the sum of \$5,000 – based on the cheque that cleared the SRC bank account – because the sum of \$4,000 had been returned to Bant in pursuance of a scheme similar to the one entered into with Shindo in 1995. Counsel advised that if I decided the appellant was entitled to insurable earnings - based on the payment of the \$5,000 cheque - those earnings should be grossed up by the sum of \$686.11 in accordance with the calculations set forth on the Chart.

ANALYSIS:

[369] Since there is no dispute over the period of employment or the fact the appellant was employed by SRC, the only issue concerns the proper amount of his insurable earnings.

[370] Gian Singh Thandi testified that the salary for him and his wife was based on \$7 per hour. The \$5,000 cheque - dated September 15, 1996 - was not deposited into the Thandi joint account at VanCity until December 16, 6 weeks after his layoff. He disavowed the statements made by his daughter – Maninder – to Fontaine during the interview with Bakhshish Kaur Thandi and stated that both he and his wife had been paid in full by SRC for their work. Thandi stated he did not have any dealings with Rana and all cash payments were made by Bant and/or Shindo, following a request because he and his wife needed money for their household. He recalled receiving some money in June – on two occasions – but could not remember the amounts. None of this money was deposited into the VanCity account. The appellant testified that money was received from time to time and at the end of the season he considered SRC owed him approximately \$1,000 in wages. However, when Bant wrote out the cheque – tab 89 – it was in the sum of \$5,000 and Bant merely told him to “take it.” According to the appellant, about 5 or 6 days later, Bant telephoned to advise there had been a mistake and the excess money had to be returned. Gian Singh Thandi testified he had deposited the \$5,000 cheque into the VanCity account and – personally – returned the sum of \$4,000 by walking over to Bant’s house and handing him the money. The appellant denied the repayment had been made at his daughter’s residence (the Mangat household) where he and his wife lived or that the return of the money to Bant had any connection with any loan. He stated that he was the one responsible for money matters and he knew what had taken place. He recanted his answers – given at Discovery – that the ROEs for him and his wife were delivered to the Mangat residence by Bant and stated the correct version is that he obtained those ROEs at Bant’s house when the \$5,000 cheque was handed to him. When counsel pointed out to the appellant that the total of the two “I Cash Money Give” purported cheques was \$11,000 and when added to the \$5,000 cheque that had been cleared through the SRC bank account, the result was that the sum of \$16,000 would have been paid to him and his wife. Gian Singh Thandi agreed that amount was in excess of their combined net earnings of \$13,258, as shown on their individual pay statements. At one interview with Fontaine, the appellant stated Bant had nothing to do with him. When interviewed again – by Fontaine - two days later, the appellant was confronted with the information obtained by Fontaine – in the interim - from his wife and daughter concerning the repayment of \$4,000 to Bant and their statements that he and Bakhshish Kaur Thandi had worked for SRC only to receive ROEs so they could collect UI benefits. At this second interview, Maninder Mangat was present and Gian Singh Thandi told Fontaine that he kept the sum of \$1,000 from the \$5,000 cheque that he had received from Bant but “the employer” paid him back – later – that same sum in cash. During cross-examination, the appellant stated that particular answer – as recorded by Fontaine – was not true because Bant had not repaid any of the \$4,000 which had been handed back to him to correct the mistake

arising from the overpayment of wages when finalizing matters in December. He also denied that his daughter was present during the interview and described her as being “on the other side of the wall.”

CONCLUSION:

[371] The appellant – Gian Singh Thandi – is not a credible witness. The story about the alleged overpayment of wages is ludicrous. The truth of the matter is that the only wages he ever received were represented by the sum of \$1,000 which he retained from the \$5,000 cheque deposited into the VanCity account, of which the sum of \$4,000 was repaid to Bant a few days later. The overpayment ploy may have seemed brilliant to Bant after a few shots of spirits but it is pretty amateurish because the other player in the scenario – Gian Singh Thandi – could never keep his stories straight. Also, they forgot to count on the honesty of their daughter who was present to confirm the admission made by her mother to Fontaine that she had never been paid any wages and had worked only to receive an ROE. Only when subjected to the influence of her husband did Bakhshish Kaur Thandi withdraw that admission and deny it had ever occurred. Where the evidence of Gian Singh Thandi conflicts with that of Fontaine concerning the accuracy of the statements made by Thandi during any interviews, I accept the evidence of Fontaine and reject the version of the appellant. The appellant is fortunate because the position taken by counsel for the respondent was that no appellant in the within proceedings would be worse off as a result of having pursued an appeal in this Court. Barring this concession, I would have found that Gian Singh Thandi’s insurable earnings were \$1,000 plus the appropriate amount of deductions attributable to source deductions, as discussed earlier in relation to other appellants. However, it is not unreasonable for the Minister to have taken that position since it is common in income tax appeals where the jurisdiction supports the proposition that appellants can never walk out of Court owing more tax than when they came in to argue an appeal from an assessment. However, I am not prepared to gross up that \$5,000 amount by adding in the pro-rated amount for deductions because the appellant never received that amount for wages in respect of his employment and that is a necessary component of insurable earnings.

[372] The period of employment – as conceded by the Minister – will be included in the revised decision but the insurable earnings will remain at \$5,000.

JASWINDER KAUR CHEEMA:

RELEVANT BOOK OF DOCUMENTS: EXHIBIT R-14

MINISTER'S DECISION:

[373] The Minister decided the appellant was employed in insurable employment with SRC for 17 weeks from June 21 to October 12, 1996 and had insurable earnings in the sum of \$7,000. Pursuant to the concession by the Minister, that amount is increased to match the sum of \$7,637, as stated in her ROE which was based on 20 weeks of insurable earnings. Therefore, there is no need to add in the prorated amount - \$922.90 - in source deductions pursuant to the Chart because the 20-week limit is the one used to calculate insurable earnings upon which payments of UI benefits are based.

APPELLANT'S POSITION:

[374] The appellant is content with the decision of the Minister regarding the amount of insurable earnings but claimed she was employed for 26 weeks, from April 15 to October 12, 1996. The appellant conceded the date of April 14 as stated in her ROE was incorrect.

SUBMISSIONS:

[375] Narang submitted that the appellant had established through her testimony that she worked for the entire period claimed.

[376] Counsel for the respondent submitted the start date of June 21, 1996 is correct because the appellant stated she was driven to work on her first day by Harbhajan Kang and rode only with him thereafter. Kang's first day of work – as established earlier – was June 21. Counsel referred to the response by the appellant - to Janet Mah - where she said her first task was to pick strawberries, which would not have been possible in the middle of April. Counsel admitted the information from Min Ho Ahn that he had not hired any SFRC labourers prior to July, was not tested in Court due to the fact he could not be located to be called as a witness. However, she submitted it was reasonable to accept that there was no planting work performed by the appellant in Richmond and that the appellant's first task was exactly as she had claimed earlier, namely, picking strawberries on June 21.

ANALYSIS:

[377] The appellant testified she went to work for SRC some time before the 6 month (June) and put plants into small containers for about 3 or 4 weeks before

picking strawberries for 3 or 4 weeks. The Minister did not take issue with the berry picking work done by the appellant thereafter until her layoff on October 12. When Janet Mah was conducting her investigation prior to issuing a ruling on the insurability of the appellant's employment, she telephoned the appellant and asked certain questions which were interpreted by Gurbaksh Kaur Cheema. Mah noted that the appellant stated she picked strawberries on her first day of work. During cross-examination by Selena Sit, the appellant agreed she may have provided that answer but could not recall – specifically – that conversation. She stated her driver was Kang on her first day and that she worked with her husband - Gurmail Singh Cheema – and rode with him every day in the same van. The appellant agreed she had difficulty recalling details of work other than picking berries except for the planting which she thought had lasted two or three weeks. When speaking to Janice Morrow during the HRDC interview on August 25, 1996, the appellant brought in her T4 slip and a bank book pertaining to her Canada Trust account. At that time, she told Morrow that SRC owed her the sum of \$1,200 but had received a promise that this amount would be “paid soon.” Regarding this point, any amount of wages outstanding after layoff can only be included in insurable earnings if certain conditions are met. Those requirements were discussed earlier in these reasons and do not apply to this appellant because she did not file a complaint with the proper authorities exercising jurisdiction over labour standards.

CONCLUSION:

[378] The period of employment as ascertained by the Minister is correct. Even if the appellant worked two or three weeks – somewhere – planting something or other, that would only move her start date back to about the first of June since her next task – according to her testimony - was picking strawberries. She is mistaken when she recalled starting work the day after her husband's return from India on April 14th. She was clear that Kang drove her to work on her first day. Even if one accepted that Kang was driving earlier on an unpaid basis prior to being placed on the official SRC payroll, that interim status did not extend further back than a week at the most. Kang testified he thought he drove the appellant and her husband to work earlier than June 21 but was absolutely clear he had not been working for SRC during the month of April and had not started driving until the end of May when he drove the van on some days during the next 3 weeks in order to learn the routes to the farms and where workers lived. The evidence adduced by the appellant is not sufficient to cause me to revise the findings of the Minister either as to the period of employment or the amount of insurable earnings, in excess of that conceded earlier by counsel for the Minister.

GURMAIL SINGH CHEEMA:

RELEVANT BOOK OF DOCUMENTS: EXHIBIT R-13

MINISTER'S DECISION:

[379] The Minister decided the appellant was employed in insurable employment with SRC from June 21 to October 12, 1996 and had insurable earnings in the sum of \$6,000. Pursuant to the subsequent concession based on the pro-rated amount attributable to source deductions, the Minister agreed the insurable earnings should be increased by the sum of \$791.66 as shown on the Chart. As a result, the total insurable earnings are increased to the sum of \$6,791.66.

APPELLANT'S POSITION:

[380] The appellant claimed he worked from April 15 to October 12, 1996 and had insurable earnings in the sum of \$7,574 based on two cheques totalling \$6,000 and further cash payments.

SUBMISSIONS:

[381] Narang submitted the appellant had done the work – as alleged – and had been paid for his efforts.

[382] Counsel for the respondent submitted the Minister based the calculation of insurable earnings on the amount proven to have been paid to the appellant in the form of two cheques and by adding in the pro-rated amount pertaining to source deductions. Other than that, counsel submitted there was no credible proof the appellant had received any cash for his wages.

ANALYSIS:

[383] Apart from the usual litany that he was paid by the hour and never used picking cards, Gurmail Singh Cheema also testified he returned from India on April 14, 1966 and received a call from Harbhajan Singh Kang advising there was work available at SRC. Cheema stated Kang picked him up the next day in a red van and took him to work along with 4 or 5 others and they went to a Chinese farm in Richmond where they planted seeds into cups and added fertilizer. He described his next tasks as hoeing and weeding around certain plants and started picking strawberries only in the 6th month when he went to Khakh Farms in Chiliwack. He

stated he received his pay at the end of the season in the form of two cheques - totalling \$6,000 – but also received the sum of \$2,000 or \$2,100 - in cash - about 15-20 days later in final settlement of his wages. This money was not deposited into any account and the two cheques had been cashed at the TD bank at 49th Avenue and Fraser St. together with two cheques payable to his wife - Jaswinder Kaur Cheema – for a total of \$13,000 in cash – within 3 or 4 days - that was not deposited to their joint account. Cheema agreed he had always been driven to work by Kang but had returned home once on the yellow bus driven by Harjit Gill. He stated he worked during April and May at the Min Ho Farms. At Discovery, he said his first day of work was picking raspberries and when that crop was done he moved to the blueberry fields. Cheema acknowledged he had been bound by an affirmation to tell the truth but stated that answer was wrong as he had picked strawberries for 4 or 5 weeks. At Discovery, the appellant stated the last work performed was picking berries. During his testimony in Court, he stated he ended the season by doing some pruning work and could only recall working once or twice - at that time of year - at Min Ho Farms where he performed tasks in connection with zucchini and chili peppers. When responding to the Questionnaire – tab 100 – the appellant stated he was paid by cheque. He gave this same response during an HRDC interview and – at Discovery – in June, 2001, where he stated there were some wages still owing to him but was unsure of the amount.

CONCLUSION:

[384] The appellant tied his first day of work to his return from India and to being contacted by Kang and taken to work the next day in a van driven by Kang, who remained his driver throughout except for one return trip at the end of a day. He could not have been driven to work by Kang on April 14th because Kang did not start driving – even as a so-called unpaid trainee – until the end of May even if one completely accepts Kang’s versions of events. There was no credible evidence adduced by the appellant to corroborate his allegation that the work was done at Min Ho Farms or elsewhere in Richmond. Unfortunately, he hitched his star to the Kang wagon and it did not leave the corral until the first of June, even on a casual and occasional basis. It is apparent from all the evidence that the Minister’s decision concerning the appellant’s period of employment is reasonable and conforms with the facts.

[385] The next issue is whether the appellant has demonstrated he was paid additional amounts of wages so as to increase his insurable earnings. The short answer is: No, he has not. I do not accept that he was paid any amount in cash at any time. However, he had to invent some cash payments in order to approximate the

gross earnings shown on his pay statement because he only received \$6,000 by cheque. If one is going to make up something, it is best it were done quickly and not later when confronted with several previous statements to the contrary.

[386] The appellant's insurable earnings are in the sum of \$6,791.66.

AJMER KAUR GILL:

RELEVANT BOOK OF DOCUMENTS: R-15

MINISTER'S DECISION:

[387] The Minister decided the appellant was employed in insurable employment for 22 weeks from May 26 to October 26, 1996 and had insurable earnings in the sum of \$1,000. Pursuant to the methodology utilized in creating the Chart, counsel for the respondent conceded the appellant's insurable earnings should be increased by the sum of \$137.02.

APPELLANT'S POSITION:

[388] The appellant claims she was employed from May 26 to November 23 and had insurable earnings in the sum of \$7,931 as stated in her ROE.

SUBMISSIONS:

[389] Narang submitted the evidence adduced on behalf of the appellant conformed with the expert opinion of Mark Sweeney and that it was reasonable to conclude she had worked until November 23 because the severe arctic outflow arrived later. Narang further submitted that receiving payment of wages in cash is common in the agricultural industry and the appellant should not be denied the proper amount of her insurable earnings.

[390] Counsel for the respondent submitted the credibility of the appellant suffered when she insisted she had been paid on an hourly basis even though she used picking cards to record her daily production. Counsel pointed out the Minister had recognized – as insurable earnings - the only SRC cheque issued to the appellant which had cleared through the SRC bank account and that the only other so-called proof of payment was in the form of the "I Cash Money Give" purported cheque. As for the end date of her employment, counsel submitted the evidence favoured a finding that

she was not so engaged after the end of October because the drivers she named were no longer on the SRC payroll and weather conditions were such that it was extremely doubtful any vegetable work could have continued as late as November 23.

ANALYSIS:

[391] The first issue is whether the appellant has demonstrated that she worked until November 23, 1996. After berry season was finished, the appellant testified she worked on two vegetable farms in Richmond. She stated Shindo drove her to work in a brown van and a male driver – Binder Chahal – also drove her now and then. During cross-examination, the appellant stated she was confident Shindo had driven her to work both on her first and last day. Counsel produced her answer – at Discovery – where she had identified Binder as her driver on the last day and had added that it was “very cold”. Notwithstanding that response, the appellant repeated her assertion that Shindo had driven her to work that last day when - indeed – it had been cold. Binder Chahal was laid off on November 16 and according to Shindo’s ROE, her last day of employment was October 26. The evidence of Mark Sweeney was that one would expect only daikon would have been harvested as late as November 15. He stated Richmond is cooler than other parts of the Lower Mainland due to its proximity to the ocean and expected most vegetables to have been harvested by October 15 and in his opinion any frost-sensitive vegetables would have been mostly destroyed by the cold temperatures on November 22 and the following day. Sweeney stated that his research indicated temperatures fell to below freezing on October 30 and October 31 at the Vancouver International Airport - situated in Richmond - and that temperature – recorded 4.3 meters above the ground – would have produced a killing frost at ground level for all cauliflower, cucumbers, chili peppers and bell peppers, although daikon and Brussels sprouts probably survived until November 22. The appellant testified she worked inside a greenhouse and packed vegetables into boxes but this task was performed only after she had finished picking peppers, cucumbers, daikon and zucchini.

[392] There was only one cheque – in the sum of \$1,000 – payable to Ajmer Kaur Gill that cleared the SRC bank account. During her direct examination, the appellant identified her signature on a “I Cash Money Give” purported cheque in the sum of \$7,438. Her ROE was made out in the name of “Agurmail K. Gill”. The appellant explained that Shindo sometimes called her “Agurmail” instead of by her proper name. With regard to payments received from SRC, Gill stated she received the sum of \$3,000 in cash from Shindo early in the season followed by another equal payment and then received \$1,300 or \$1,400 in cash after the settling up had been finalized. None of this money was deposited into her bank account. She agreed with

her agent's suggestion that when the first payment of \$3,000 was received from Shindo, she had not worked enough at that point to justify that amount if it were attributable only to wages. Gill explained that it was an advance against future earnings. In cross-examination, Gill estimated that by the time she received the second payment of \$3,000, she had worked enough to justify the total amount of \$6,000 received to that point. She stated her son accompanied her to Shindo's house to collect the second cash payment. Gill adopted her answers – at Discovery – that the \$1,000 cheque was received between the two cash payments of \$3,000 each and those amounts together with the final payment - received at Shindo's house - totalled \$8,400. Her payroll statement – tab 89 – shows net earnings in the sum of \$8,438. Gill explained the inconsistencies in her statements during the HRDC interview were due to the fact she was not prepared to answer questions involving those sorts of details but had informed herself prior to attending at the Discovery. Gill stated she was aware the "I Cash Money Give" purported cheque was not intended to be negotiated at a bank and regarded it as a sort of statement by which she acknowledged having received cash in the amount - \$7,438 - shown thereon. At the HRDC interview on October 30, 1997, where Ajmer Kaur Gill was accompanied by her son-in-law who acted as interpreter, she described borrowing money from Rana or Shindo or from her daughter in order to meet her needs. At the next HRDC interview on November 18, 1997, she was unable to provide specific details concerning the timing and amounts of cash payments received and pointed out to Joann McInnes – ICO - that it was difficult to recall events which had occurred one year earlier. It must be noted that the appellant's memory underwent a remarkable transformation afterwards because at Discovery and during her testimony in these appeals, she was able to recite the timing and amounts of the cash payments and provided details of the circumstances surrounding those receipts.

[393] A review of the schedule – Exhibit R-64 - of picking cards from Gill Farms shows numerous entries for Ajmer Gill. Her production of raspberries ranged from a high of 24 ½ flats on July 9 to a low of 4 ¼ on August 12. Mohinder Singh Gill testified SRC was paid the sum of \$4.35 for each flat of raspberries and \$5.35 per pail for blueberries. Gill's maximum blueberry production was 23 pails on August 14 but the average was much lower than that and on September 3, she picked only 2 ¾ pails. One can see that the most SRC ever received for her work was \$106.57 in a day and the least amount attributable to her efforts was \$14.71 for picking less than 3 pails of blueberries. Her average production was about 11 flats of raspberries per day for which SRC could bill Gill Farms the sum of \$47.85. However, her wages at \$7 per hour, 8 hours per day would amount to \$56 in addition to the amount of source deductions required to be paid by the employer. When one considers the overhead of paying drivers and operating vans and taking into consideration other business

expenses, SRC would have lost between \$20 and \$30 every day just by employing Ajmer Kaur Gill to pick raspberries. SRC fared somewhat better when Gill picked blueberries but not much. She picked an average of 12.26 pails per day for which SRC was able to bill Gill Farms the sum of \$65.59. The appellant's wages and SRC's share of her UI/EI premiums and CPP contributions – setting aside for the moment the overhead associated with the overall business operation – would have put SRC at or near the breakeven point for each pail of blueberries picked by the appellant.

[394] It is unfortunate if the appellant actually received some cash from Shindo but the circumstances are such that it is difficult to accept her testimony in this regard. Her story changed several times and her testimony is fraught with other inconsistencies. By sticking to her claim that she was paid \$7 per hour for picking berries, it makes it less likely her other assertions are true. She stated she lived with her daughter and borrowed money from her, as needed. When workers are forced to rely solely on their own word that wages were paid to them - in cash - it creates a problem of proof. That problem can be overcome – in varying degrees – by producing records of corresponding bank deposits, bill payments, loan payments, receipts for purchases and any other relevant documentation. Perhaps, another worker may have witnessed the cash payment(s) or received some money at that same time from the employer. It is unfortunate that a worker employed by SRC was facing such an uphill battle from the beginning of the HRDC investigation in order to demonstrate receipt of wage payment(s) under circumstances where the Minister had accepted there was a valid period of employment. However, there is nothing of substance to support a finding that wages were paid in cash other than the shaky credibility of the appellant. Having regard to the overall method by which SRC operated, I find it highly unlikely that Shindo would have made a large payment of \$3,000 to the appellant at a time when she had earned only about \$700. The evidence of nearly all the appellants in the within proceedings was that they had to badger Shindo, Bant and Rana for small amounts of cash and that as often as not, they received promises instead of payments.

CONCLUSION:

[395] The appellant has not satisfied me that she worked later than October 26, 1996. I am unable to conclude on the evidence that she received any payment for her work other than the \$1,000 cheque. As a result, her insurable earnings are based on that payment and the grossed-up amount is \$1,137.02.

RAVJIT GILL:

RELEVANT BOOK OF DOCUMENTS: R-18

MINISTER'S DECISION:

[396] The Minister decided the appellant was not employed in insurable with SRC during the period from June 16 to October 26, 1996.

APPELLANT'S POSITION:

[397] The appellant claims he was employed pursuant to a contract of service during the relevant period and that his insurable earnings were in the sum of \$7,392.

SUBMISSIONS:

[398] Narang submitted that notwithstanding various inconsistencies in statements made by Gill to HRDC interviewers and his general demeanour throughout the course of the SRC matter, he was paid the sum of \$6,900 in the form of 3 cheques that cleared the SRC bank. Narang pointed out the Minister had accepted – as insurable earnings – payments made to every other appellant provided the cheques had cleared through the SRC bank account.

[399] Counsel for the respondent submitted the appellant suffered from a serious lack of credibility. She referred to several versions he had provided to HRDC including the one at his second interview when he stated unequivocally that he had never picked any berries and had only worked on the vegetable farms. Counsel pointed out that the total amount of \$6,900 paid to Ravjit Gill exceeded – by the sum of \$524 - the amount of net earnings shown on his payroll statement and would have been an overpayment. In her view of the evidence, the subsequent stories by Gill about this excess amount were not believable. Further, counsel submitted there had been unexplained withdrawals from the appellant's account following deposits of SRC cheques and the mere fact cheques had cleared the SRC account was not enough in this instance to support a finding that the appellant's employment was real.

ANALYSIS:

[400] Ravjit (Ravi) Gill testified he had worked on the family farm in India prior to immigrating to Canada with his family in 1994. He has a good command of English and currently owns and operates his own taxi. He testified that - in 1996 - he was hired – over the telephone – by Rana to work as a farm labourer. He stated he worked the first two weeks at a farm in Richmond and drove there in a vehicle owned by him

even though it was registered in the name of his sister for insurance purposes. He understood from Rana that his pay was to be \$8 per hour but – later – discovered his payments were based on \$7 per hour. He explained that he used his car rather than riding in the SRC vehicles so he could sleep later in the morning and arrive home earlier. However, there were times when he rode in a van driven by Master, perhaps 10 or 20 times during the course of his employment. When working at other jobs before starting at SRC, Gill stated he had been paid by cheque every two weeks. He did not receive any wages from SRC until handed the cheque – tab 91 – in the sum of \$3,000 and dated September 22, 1996 which he deposited to his Canada Trust account on September 27. Gill stated the only other amounts he received were small sums of \$15 or \$20 on 4 or 5 occasions that Rana apparently regarded as loans. Gill received another SRC cheque – tab 92 – in the sum of \$2,000 dated September 27, 1996 and deposited it to his account on October 3. The final cheque – tab 93 – in the sum of \$1,900 and dated September 29, 1996 was deposited into Ravjit Gill's account on October 24. The appellant testified that he picked strawberries for 10 or 12 days at Khakh Farms and at other farms in the Abbotsford and Chiliwack areas. He stated he picked raspberries for 10 days and blueberries for about 15 days but the majority of his work was performed in Richmond at Min Ho Farms, Mike's Farm and McKenzie Farms.

[401] During cross-examination, Ravjit Gill explained some of the strange statements he had made to HRDC interviewers by confessing he drank too much in 1996 and 1997 and had suffered a loss of memory. He attributed some of his behaviour to the fact he was the only son and stated that status afforded him some leeway to do "stupid things". Gill admitted he had been "careless" when giving answers at his Discovery. He agreed he used the word "never" when questioned by Gail Buckland whether he had ever ridden to work in a van. When responding to the Questionnaire – tab 104 – Gill admitted he answered questions in a manner that indicated he rode to work each day in transportation provided by the employer. Gill agreed that – at Discovery – when he stated he had picked strawberries on his first day of work, this answer contradicted his testimony that he started his employment on June 16 by working on a vegetable farm in Richmond. He agreed both answers could not be correct and stated the correct version was the one presented in Court, namely, that he worked with onions in Richmond. The appellant explained he told Gail Buckland he never picked berries because he thought she was talking about his work at the Chinese Farm in Richmond where the only work done was with respect to vegetable crops. Gill conceded he had not mentioned picking berries when describing the nature of his duties, whether when speaking to Buckland or when completing a Questionnaire. Even at Discovery, he described working only at 3 different vegetable farms and could not explain why he would have omitted details

of picking berries, except to reiterate his memory was not good. At Discovery, Gill related the same story about returning the overpayment - by driving to Rana's house – and handing Rana the sum of \$525. During his testimony in Court, Gill stated he repaid Rana the sum of \$500 and retained the balance of \$25 as compensation for the inconvenience of having to drive to Rana's house. Gill stated he had not explained that situation to Buckland during the HRDC interview because he did not consider the repayment of the excess wages as being in the same category as returning money to an employer pursuant to some arrangement. Gill denied that the cash withdrawals of \$800 and \$2,000 on November 1 and November 8, respectively, were connected in any way to his employment with SRC and denied that he had participated in any scheme to create a false employment.

[402] A review of the schedule – Exhibit R-64 – of picking cards from Gill Farms does not reveal the name of Ravjit Gill, although he stated during direct examination that he picked raspberries there and also at Khahk Farms. When completing the Questionnaire which he returned to Bernie Keays, there was no mention of any berry work. I commented to Ravjit Gill during his testimony that I found it strange that someone rising from a comfortable bed at 7:00 in the morning, driving out to Abbotsford, then squatting on the ground under a hot sun to pick strawberries all day would have this experience erased from his memory. Gill testified that when picking strawberries and raspberries, he placed them in flats which were taken to a cart that was pulled by a tractor. He was sometimes handed a picking card and knew his raspberry flats were counted. Gill stated he did not pay much attention to this practice because he was being paid by the hour. When issued with a picking card, he recalled it was punched at the scale. Gill's name does not appear on the other schedules – Exhibit R-65 and Exhibit R-66 - of picking cards for Monga Farms and Kliever Farms. However, SRC was buying blueberries from small holdings and used its own employees to do the picking. SRC also supplied labourers to other raspberry farms in the area for which no picking cards were produced. In contrast to other SRC workers, Gill maintained he worked for 16 weeks – out of a total of 19 – at the vegetable farms. Counsel for the respondent invited me to rely on the statements of Min Ho Ahn - to Janet Mah - that he had not hired any SRC workers until July 1. That may be correct but Gill stated he also worked at other farms in the area. Gill stated he worked with various crops at the Min Ho Farms including turnips, daikon, carrots, onions, cabbages and zucchini. Ahn and/or an employee apparently told Mah – during a telephone conversation – that only zucchini and daikon were grown on that farm in 1996. There are too many people testifying otherwise and I do not accept this information is correct in the absence of any documentation, business records or evidence adduced through other witnesses. Gill stated he was paid for exactly 8 hours

per day even if he worked more or less because it evened out over the course of the summer.

[403] Counsel for the respondent pointed out that the last cheque to Gill - in the sum of \$1,900 - was dated September 29, nearly one month before he was laid off. One cannot draw any rational conclusions from the dates inserted on cheques issued by SRC. Often, workers were handed one or more cheques – bearing different dates – on the same day. I am more interested in the date of the deposit. It does not make sense that the appellant would deposit his final pay cheque on October 24, 1996 and then work an additional two days before his official layoff but many things do not make sense in SRC-land, a fantasy land in its own right.

[404] The issue is whether I accept the testimony of Ravjit Gill notwithstanding his egregiously cavalier attitude to the HRDC investigation as revealed by his answers to Buckland. There is no doubt that his responses were properly recorded by her. There is no doubt that his demeanour was irritating, to say the least. He seemed to regard the inquiry by HRDC as nothing more than a nuisance which cut into his party time. However, he testified in Court and was put through a severe and thorough cross-examination by Johanna Russell. In my view, Gill in 1996 and probably thereafter until his marriage in 2000, was a charming rogue who cared little for anyone except himself and his own convenience. He knew he occupied an exalted position within his family even though he and his father - Gurbachan Singh Gill – barely spoke to each other most of the time. Much of what he stated in Court rings true. He is not the sort of fellow to get up early and ride the bus with other workers – most of whom were older females – when he could hitch a ride with his sister - on occasion - or drive himself to work. He did not strike me as someone who would work and then repay money to the alleged employer. He had been employed at other jobs prior to working at SRC and was aware of certain employment standards. Gill came across as a person who was careless in the use of language when responding to questions he considered to be unimportant. I am extremely reluctant to convert the suspicions harboured by the Minister - concerning the withdrawals from Gill's bank account - into a proven fact that he repaid some of his wages to someone at SRC. There was a large withdrawal of \$10,000 in order to send money to India but he had other funds in his account and there was no pattern of cash withdrawals capable of supporting the allegation that money was returned to SRC from the deposit of the 3 cheques. As pointed out by Narang, all other appellants were allowed insurable earnings based on cheques proven to have cleared the SRC bank. However, the applicable caveat is that in those situations, the Minister was satisfied there had been a valid contract of service constituting insurable employment. I am aware there is no obligation on the respondent to prove fraud on the part of the appellant. However, in the face of his

testimony and drawing appropriate inferences from the totality of the evidence, I find there was a shift in the evidentiary burden towards the respondent within the context of the overarching requirement that the appellant prove his case on a balance of probabilities. For the appellant, the scale does not have to tip past that point. In this particular appeal, Ravjit Gill's discharged the traditional burden - albeit to a degree capable of measurement only by a micrometer - and is entitled to succeed. On balance and on the basis of having observed Gill closely in Court during his testimony, I find he was employed by SRC as claimed. Ironically, that period of employment is among the few claimed by appellants that conform with the position taken by counsel for the respondent based on the expert opinion of Sweeney and the testimony of several growers and other appellants. Despite receiving a total of \$6,900 in cheques, Ravjit Gill's net pay should have been only \$6,376 and he testified the overage - whether \$500 or \$525 - had been returned to Rana. Therefore, his insurable earnings must be based on the sum of \$6,376 together with the applicable amount attributable to source deductions. The total deductions - in the sum of \$1,015.67 - shown on Gill's pay statement were based on gross earnings of \$7,392. Therefore, the credit for source deductions must be calculated by applying the result of the ratio of \$6,376 to \$7,392 - 86.25% - to the sum of \$1,015.67 in order to produce the sum of \$876.01 which - when added to the sum of \$6,376 - produces the sum of \$7,252.01.

[405] I find Ravjit Gill was employed in insurable employment with SRC from June 16 to October 26, 1996 and that he had insurable earnings in the sum of \$7,252.01.

INDERJIT SINGH ATWAL:

RELEVANT BOOK OF DOCUMENTS: EXHIBIT R-9

MINISTER'S DECISION:

[406] The Minister decided the appellant was not employed in insurable employment with SRC during the period from December 29, 1996 to January 11, 1997 because he was not employed under a contract of service.

APPELLANT'S POSTION:

[407] The appellant claimed he was employed during said period and had insurable earnings in the sum of \$672.

SUBMISSIONS:

[408] Narang submitted the appellant had established that he worked during the relevant period. Narang pointed out Atwal had received a SRC cheque in the sum of \$580 and when it was returned NSF by the TD bank, obtained cash from Shindo to redeem it. He also submitted the appellant had not needed the extra work at SRC in order to qualify for UI benefits and that HRDC had erred in that regard.

[409] Counsel for the respondent submitted the appellant had not proven his case because his testimony was not credible. The appellant had 18 weeks employment with Hothi Farm Labour Supply and applied for UI benefits based on that ROE. On December 19, 1996 he was advised another 6 weeks of insurable employment was required to attain the total of 26 weeks needed to qualify for UI benefits. As a result, Atwal obtained an ROE from Zeacan Cleaning covering his 6 weeks employment there. Counsel pointed out the appellant still needed an additional two weeks insurable employment to reach the 26-week threshold and entered into an arrangement with Bant to create sham employment to fill that gap. Counsel submitted that even if the appellant was found to have been in insurable employment with SRC during the relevant period, he had not established that he was paid for his efforts and – therefore – his insurable earnings were nil.

ANALYSIS:

[410] Inderjit Singh Atwal testified he was hired by Bant – whom he knew to be a labour contractor – to work cleaning up construction sites. He stated Bant drove him to a site on December 29 and left him there to pile up material and cover it with sheets. He stated Bant drove him to the worksite each day and – on occasion – remained to assist him to stack sheets of drywall. Atwal described working at 5 or 6 different construction sites where the houses had been framed but no doors were installed. He stated that the snow on the ground – in January – had not interfered with his work. Atwal testified he was laid off on January 11 and received a SRC cheque in the sum of \$580. He took it to the TD bank but was informed by the teller there were insufficient funds in the SRC account. He stated he received cash from Shindo about 20-25 days later to redeem the cheque. Atwal stated he recalled being questioned by

“a white guy” (Fontaine) and an “Indian guy” (Sarab Sandhu) acted as interpreter. When informed that he had described riding to work in a “sky-blue older van”, Atwal stated the interpreter must have made a mistake because he recalled telling Fontaine it was a brown van. He also mentioned seeing 40-50 workers seated in a yellow bus outside Bant’s house in June or July, 1996 even though he had not worked for Bant and/or SRC until December 29. Atwal was interviewed – by Fontaine – on 3 separate occasions and each time a Punjabi interpreter was present. The appellant stated he was aware of his obligation to tell the truth at those interviews but admitted some answers were wrong because Shindo told him what to say about certain matters. During an interview – tab 89 – on June 12, 1997, Atwal told Fontaine that the work was “always outside” and that it was cold but he wore a raincoat. At that point, Fontaine advised Atwal there was two feet of snow on the ground at that time. Atwal then told Fontaine that he had installed large sheets of material on walls inside houses. The following day, Atwal was interviewed again by Fontaine and described how he was hired by Rana – via the telephone - and that Rana had handed him the ROE following layoff. He described working outside one day and then performing the balance of his work inside where he packed cauliflowers and potatoes that flowed from a truck, down a chute, into plastic bags. At that point, Fontaine pointed out to Atwal that this was the third version of his work during the short period of employment. Atwal testified the confusion in this regard must have arisen due to the interpretation provided by the interpreter and advised that dialects can change between neighbouring villages in India. Atwal agreed he had not provided HRDC with a photocopy of the \$580 NSF cheque – Exhibit R-8, tab 4 - but produced it following Discovery. He stated it was Shindo who had given him \$580 in cash to replace the cheque and he spent all the money without depositing any to his account.

CONCLUSION:

[411] The appellant only had to keep his story straight enough to cover 11 days of employment – within a 13-day period - which would have entitled him to receive UI benefits. Unfortunately, he was unable to do so and offered up 3 substantially different versions of his duties during that short period. Weather data from the Vancouver International Airport – located in Richmond – indicated it snowed 41 centimeters (cm.) on December 29 and 16 cm. remained on the ground. The data also revealed there were accumulations of 35 cm. and 25 cm. of snow on December 30 and December 31, 1996, respectively. Until informed by Fontaine about the extent of the snowfall at that time, Atwal had provided details of work such as picking up items from the ground while Bant used a shovel. According to the testimony of Fontaine and as recorded in his notes of the first interview with Atwal, the appellant described helping Bant install large sheets of material on the wall. Atwal denied that

he gave those answers and stated he had never done any installation work with Bant, although Bant may have helped him move a few sheets of material and lean them against some walls. He added that Bant only dropped him off at work and picked him up again in late afternoon in order to drive him home. One can see two radically different versions emerge during the first interview with Fontaine. During the interview with Fontaine the following day, Atwal described working with cauliflower and potatoes. It is not reasonable to conclude that – at this point – Atwal was confused about the purpose of the questioning – by Fontaine – concerning his employment with SRC during the relevant period. He knew he was being asked about his alleged employment with Bant/SRC and understood the interviews had nothing whatsoever to do with his previous employment with Hothi from July 3, to November 9, 1996. There was also inconsistency in Atwal's testimony concerning the hours and dates worked. He testified the only days he took off were December 31, 1996 and January 1, 1997 because of the holidays. He stated he worked between 7.5 and 8.5 hours each day for a total of 96 hours prior to layoff. However, he told Fontaine – at the first interview – that during one of the two weeks of his employment he did not work Saturday or Sunday. During cross-examination, Atwal denied giving those answers.

[412] There are numerous inconsistencies throughout the testimony of this appellant and he was not able to adduce proof that he had been paid for his alleged employment. He is not a credible witness. Obviously, he discovered HRDC required him to have 26 weeks of insurable employment in order to qualify for UI benefits. Perhaps, that information provided to him was wrong, because he had never applied for UI before but he knew the position taken by HRDC was that he needed another two weeks of employment. Bant was working full time during this period at a seafood company. We do not know his working hours and it is possible he may have been able to drop off Atwal at these sites and pick him up after his own work had finished for the day. However, after taking into account the weather conditions, the mass of inconsistencies and outright contradictions contained in Atwal's descriptions of work, and considering there was evidence that SRC was not operating after December 31, 1996 – certainly not in the construction business – I conclude the appellant fabricated his employment with the connivance of Bant. The NSF cheque by which the appellant purports to prove there was real employment is of very little probative value. As for any lack of comprehension by Atwal during the interviews with Fontaine, one must bear in mind that Sarb Sandhu is an experienced court certified interpreter with many years experience. It is absurd to believe he was incapable of properly interpreting the questions posed by Fontaine and the responses of Atwal. I accept the evidence of Fontaine concerning the contents of his interviews with Atwal and am satisfied the notes made by him are accurate.

[413] The appellant has failed to discharge the burden of proof and the Minister's decision is confirmed.

SHARINDER SINGH BAGRI:

RELEVANT BOOK OF DOCUMENTS: EXHIBIT R-10

MINISTER'S DECISION:

[414] The Minister decided the appellant was employed in insurable employment with SRC from May 5 to November 2, 1996 and had insurable earnings in the sum of \$2,000. By adding in the pro-rated amount of source deductions - \$275.45 - in accordance with the Chart, counsel for the respondent conceded the insurable earnings should be \$2,275.45.

APPELLANT'S POSITION:

[415] The appellant agrees the Minister correctly decided the period of employment but claimed insurable earnings in the sum of \$7,840 during said period, as stated in his ROE.

SUBMISSIONS:

[416] Narang submitted the appellant had received cash in addition to the \$2,000 cheque and should be credited with those payments because it was common within the agricultural industry to make cash advances - against a final cheque - throughout the season.

[417] Counsel for the respondent submitted the appellant maintained he was paid at an hourly rate throughout his employment when it is apparent that is not true. His name appears on picking cards from both Monga Farms and Kliewer Farms on which the volume of berries picked by him was recorded. Counsel referred to the evidence which demonstrated that even though the appellant admitted using picking cards every day and kept copies of his cards at home, he did not take them to Rana's house

at the end of the season in order that his final wages could be calculated. Because the appellant was unable to establish he had been paid any amount other than by a cheque for \$2,000, counsel submitted the Minister's decision was reasonable and should be confirmed.

ANALYSIS:

[418] Sharinder Singh Bagri testified that he thought he was to be paid \$8 per hour and was unsure how his wages were calculated by SRC at the end of the season but was satisfied he had been paid in full. Since moving to Canada in 1980 – at the age of 26 – he worked as a cleaner at Pearson International Airport in Toronto and after moving to Vancouver – in 1984 – was employed in various jobs including in a restaurant and at a fish company. He is currently employed as a janitor. He had no experience as a farm worker until he started working for SRC on May 5, 1996. He testified he performed tasks involving potatoes at a farm on #3 Road, the same location where he worked on his last day, November 2. Bagri recalled receiving payments on 4 occasions, as follows: \$1,000 in cash in June; \$4,000 in cash in September; \$2,000 – by cheque – in October and a final cash payment of \$1,750 in November when he was laid off. Bagri stated all payments were made by Shindo and the first cash payment was handed to him at her residence and that she wrote in a large book where he signed upon receiving his money. According to the appellant, the next payment of \$4,000 was received at Shindo's house and he signed the book at her request. The \$2,000 cheque – tab 91 – dated September 7, 1996 was cashed at the TD bank at 49th Avenue and Fraser St. on October 7, 1996. The appellant stated the final cash payment of \$1,750 was received at Shindo's house when he obtained his ROE. Bagri testified that in all his other jobs he had been paid by cheque every two weeks but when SRC did not pay him after that period, he asked Shindo about it and was told SRC only paid money to workers upon request because it had to wait until the farmers paid the company. Bagri stated he was not happy with that explanation but needed the work. Shindo was his driver nearly every day and each working day was recorded as 8 hours even if it was an hour more or less. Bagri recalled using the \$4,000 cash – received in September – to buy Indian rupees through a money exchange in order to provide funds to his father - in India – who was extremely ill. He did not deposit any of his cash payments into his bank account and stated he had not been aware of the “ I Cash Money Give” purported cheque – tab 90 – in the sum of \$4,000 until it was shown to him in Court and he stated he had not written “S. Bagri” on the signature line. Bagri stated he assumed SRC was owned by Bant and Shindo because he worked with Rana nearly every day for two months at a vegetable farm in Richmond that grew zucchini and other vegetables. He knew Rana had lost his driving privileges.

[419] During cross-examination by Selena Sit, Bagri stated he never had problems receiving UI benefits in the past. Counsel showed the appellant his pay statement - tab 89 – indicating he had gross earnings in the sum of \$10,192 and net earnings of \$8,788. Counsel read to the appellant certain answers given by him at Discovery on November 9, 2001 where he said Shindo made him sign on the signature line of the \$4,000 “ I Cash Money Give” purported cheque before she would give him any money which he needed in order to send funds to India. Bagri could not recall those answers but agreed he must have given them if they were written down. Bagri agreed he had no receipts or any other documentation to support his contention that he received \$4,000 in cash from Shindo. The money exchange company he used to send money to India did not provide him with a receipt and he stated the arrangement was based on trust. Narang indicated he was attempting to contact the Indian money exchange in order to obtain some documentation acknowledging the transaction described by Bagri but nothing was presented in evidence, although Narang advised he was certain that – at some point - he had seen the phone number of that exchange in his files. Bagri stated he was surprised to learn from his co-workers that the farming industry was different than other employment and that he would be paid the balance of wages at the end of the season. Bagri stated his wife calculated he had earned a total of \$8,788, although she had never seen the pay statement at tab 89. Bagri denied repaying any money to anyone at SRC and considered he had been paid in full, although perhaps not at \$8 an hour, the rate he expected when hired.

[420] The appellant is an individual who has worked steadily since arriving in Canada and with the exception of 1996, has always been employed in regular employment where he was paid – by cheque – every two weeks and received a pay stub showing his deductions. Before 1996, he had not worked as a farm labourer and I accept he needed the job and decided not to complain about the apparent breach of labour standards but it seems odd he would not have recorded the specific dates of his alleged cash payments from Shindo. It is also somewhat baffling that he would not have taken steps to gather some proof that he sent money to India. Even though Bagri conceded – reluctantly – that he must have given answers at Discovery about signing the “I Cash Money Give Cheque”, he still had grave difficulty reconciling that fact with his own recollection of that event to the point where he explained that although he must have uttered those answers, “today, it’s just not coming in my brain”. Bagri admitted it was Shindo – not Rana – whom he regarded as his employer even though he told the HRDC interviewer he had been hired by Rana because Shindo wanted him to say that. The payroll record prepared by Bains Tax at the end of the season obviously used software designed to produce wage statements based on an hourly wage rather than varying piecework rates. They are unreliable even though

on some occasions portions of the information contained therein are the best source available and can be utilized in a limited context for a specific purpose in respect of an individual appellant. Bagri's attempt to match the amount of his alleged payments to his gross earnings - by describing how his wife calculated the amount due to him – is not credible. He could not explain how she was aware of the amount of source deductions and the actual basis for his wages in order to arrive at an amount only \$28 shy of the one contained in the payroll statement. The appellant was unable to produce any record of hours worked and explained he had thrown away the small book in which he had written his hours.

CONCLUSION:

[421] In order to allow any or all the cash payments, I would have to accept that Bagri's testimony is credible on that point. The problem is that he testified he was paid an hourly rate when it was obvious he was not remunerated on that basis because he used picking cards and was aware of their purpose. He knew if a flat was not full it would not be counted as such until extra berries were added to bring it up to the required weight. He retained his copies of picking cards on which his daily production was recorded. His explanation as to being unable to recall his previous answers – at Discovery – about signing his name on the signature line of the purported \$4,000 cheque is not credible. There is some level of believability attached to his description of sending the sum of \$4,000 Canadian to India in the form of rupees but the problem is those funds probably came from other sources and not from Shindo in payment of wages. The evidence of Royal bank employee Audrey Bartsch confirmed that Bagri had not deposited any SRC cheque into any of the two accounts he had at that branch. As a result, the only wage payment that meets the requisite standard of proof is the one in relation to the \$2,000 cheque which was properly negotiated through the SRC bank account.

[422] The proper amount of the appellant's insurable earnings during the relevant period is \$2,275.45.

HARBANS KAUR PUREWAL:

RELEVANT BOOK OF DOCUMENTS: EXHIBIT R-27

MINISTER'S DECISION:

[423] The Minister decided the appellant was employed in insurable employment with SRC for 7 weeks during the period from July 14 to August 24, 1996 and had

insurable earnings in the sum of \$2,744. Later, counsel for the respondent conceded the correct period of employment was from July 7 to August 27, 1996 but advised the insurable earnings remained the same because in arriving at that sum, Bernie Keays – Appeals Officer – had added back the sums attributable to source deductions on her proven earnings.

APPELLANT’S POSITION:

[424] At the outset, the appellant claimed she was employed from July 14 to December 7, 1996 but accepts the Minister decision insofar as it concerns the start date – July 7 - of her employment as a result of counsel having reviewed information on picking cards. However, the appellant maintained her insurable earnings were in the sum of \$8,152 as stated on her ROE.

SUBMISSIONS:

[425] Narang submitted the appellant became confused about the dates of her employment when the HRDC interviewer erroneously accused her of being in India at the time of her alleged employment. Even though that mistaken impression was cleared up later, Narang submitted the details provided by the appellant after the accusations were incorrect and were attributable to that error by the ICO.

[426] Counsel for the Respondent conceded that cheques in the total sum of \$6,500 – payable to the appellant – had cleared through a financial institution. However, beginning at her first HRDC interview on February 6, 1998, the appellant stated she had worked only 7 or 8 weeks and was very clear that she had not worked during the months of September to December, inclusive, even though she denied in her testimony that she gave those answers. Counsel pointed out that the appellant’s daughter joined the interview and probably participated in the interpretation of questions and answers, although Charan Sader Dhillon – HRDC employee – had been interpreting from the beginning. Counsel submitted the appellant understood the import of the questions and her answers clearly indicated she had not worked for SRC after the month of August.

ANALYSIS:

[427] Harbans Kaur Purewal testified she began working for SRC on the basis that she would be paid \$7 per hour and would receive a cheque every two weeks. It turned out this was not the case and she described having to ask Shindo for money.

She stated Shindo paid her in the form of two cheques - \$500 and \$6,000 respectively – together with a final cash payment of \$525 at the end of the season. When the appellant applied for UI benefits, she did not mention she had worked on a vegetable farm and described her work as “berry picking”. Purewal testified the cheques for \$500 and \$6,000 were negotiated at the SRC bank and that she took away cash on both occasions. The cheque - dated 9.10.1996 - was not cashed until December 12 and even though the appellant stated she had an account at the same branch, did not deposit that cheque. The appellant recalled her interview with Jeannie Suric at the HRDC office and agreed her daughter – Perminder Sihota – joined the interview and remained until the end. The Questionnaire – tab 101 – returned by the appellant after completion by her daughter stated she picked raspberries during her first week and that she received wages only at the “end of season”. Harbans Kaur Purewal stated those answers were wrong because she told her daughter that she had received two cheques as well as one amount in cash. During the rulings process, another daughter of the appellant interpreted on her behalf and according to the notes made by Janet Mah, told Mah that her first work was picking strawberries. The appellant denied giving that answer and speculated she probably was not even home that day.

[428] It is interesting to examine the content of the interview with Jeannie Suric. There is no doubt Suric was mistaken when stating to Purewal that her passport indicated she was in India during her alleged employment. In isolation, this assertion by Suric may have been the root of some confusion on the part of Purewal as her immediate reply to that assertion was “I worked about six or seven weeks”. However, once her daughter joined the interview, Suric put further questions to the appellant and asked specifically whether she had worked for Rana/SRC from July 14 to December 16, 1996. The appellant replied, “No”. Suric asked “when did you work for him?” and Purewal stated “I worked from July 14, 1996 to the end of August, 1996”. Suric then proceeded to ask Purewal whether she had worked in certain following months and inquired whether she understood the months of the year. Purewal responded by assuring Suric she was aware of the months and stated she did not work in September. Suric then asked her about October and Purewal replied “I did not work”. Suric then asked about whether she worked in November and the appellant replied “I did not work”. Suric asked about December and received the same reply. Purewal then told Suric that because she cannot read nor write English, she merely used the dates on her ROE when applying for her UI benefits. The appellant’s daughter then wrote a Statutory Declaration – tab 91 – in English and Suric testified that her notes indicated Sihota interpreted the contents thereof to Purewal before she signed it. In said declaration, Purewal stated she worked for Rana for a period of 7-8 weeks and not for the 21 weeks indicated in her application for UI benefits and as stated in her ROE. She repeated therein her earlier statements to Suric

that she had not worked from September to December, inclusive. During her testimony, Purewal stated she signed each page of the interview notes because she had been “threatened” by Suric and did not know the English months of the year and would not have said that she did not work in September, October, November and December. She also testified the contents of her declaration had not been translated and read aloud to her – in Punjabi – and that she had become aware of its contents only when it was interpreted to her – in Court – by Russell Gill. Shortly after the interview with Suric, the appellant showed up at the HRDC office with a piece of paper on which her husband had written the dates of her alleged employment and told her they represented the dates she had worked for SRC. In the Questionnaire – tab 101 – the appellant denied using picking cards. She stated her daughter, who had completed the Questionnaire, made errors when recording her answers. There was no mention of any cash payment in any of the answers provided in that Questionnaire. The appellant testified she worked - cutting cabbages off at the root - until December 7, 1996, even though there was snow on the ground. At the second HRDC interview on February 13, 1998 – also conducted by Suric – the appellant changed her story and said she had worked from July 14 to December 7, 1996 and produced the piece of paper on which her husband had written those alleged dates of her employment. In her testimony, the appellant stated she worked on two vegetable farms in Richmond and picked daikon, turnips, green peppers, zucchini, cucumbers, potatoes and cabbages, the last crop to be harvested before her layoff. This does not conform with the evidence of Sweeney who testified it was highly improbable that any vegetables – except for Brussels sprouts – would have been harvested during November, let alone until December 7 due to farming practices – generally – and – specifically – the weather conditions in 1996. I consider it improbable that Purewal took off only one day during her alleged 21-week period of employment and that she worked precisely 8 hours every day even when picking berries.

CONCLUSION:

[429] There is no doubt that two cheques totalling \$6,500 cleared the SRC bank account. However, insurable earnings are not based merely on the receipt of money from someone who happens to be an employer for a certain period of time, they must be in respect of that employment. It is astounding that an appellant would attempt to explain away not only statements made during the course of an interview conducted in the presence of a Punjabi-speaking interpreter - as well as her own daughter – but also the contents and effect of a Statutory Declaration that was explained to her – in Punjabi – prior to her signing it in front of Suric. The questions asked and answers given in response during the interview were clear. The contents of the declaration were clear. There was even care taken by Purewal’s daughter to use language that

specifically repudiated the 21-week period as stated in both the ROE and UI benefits application. The appellant lived for 44 years in England and Canada and claimed not to understand the months in the English calendar. It is inconceivable that anyone could expect the answers given to Suric - and backed up by a Statutory Declaration – would vanish simply by requesting a subsequent interview at which she presented a scrap of paper - created by her husband - and told a story to match the dates recorded thereon. The details of the alleged work do not conform with the evidence overall and the drivers she named were not working after October 26. The fact is that she told the truth initially about her period of employment and then attempted to change her story, probably after being instructed to do so by her husband, Harbhajan Singh Kang. She is not able to prove that any payment in excess of \$2,744 is attributable to her employment and any other payment does not have the requisite connection to her work so as to be eligible for inclusion into insurable earnings which Keays calculated on an hourly basis because he did not have access to all her picking cards and could not compute her income on the basis of weight of berries picked. This approach was reasonable under the circumstances without accepting that her remuneration was based on an hourly rate during her employment which was limited to picking berries. It was a rough and ready tool that was handy at the time and Keays used it accordingly.

[430] The appellant has not demonstrated that she is entitled to any insurable earnings or expanded period of employment other than as decided by the Minister initially and/or conceded – later - by counsel.

PARMJIT KAUR REHAL:

RELEVANT BOOK OF DOCUMENTS: EXHIBIT R-28

MINISTER'S DECISION:

[431] The Minister decided the appellant was employed in insurable employment with SRC for 18 weeks from June 22 to October 19, 1996 and had insurable earnings in the sum of \$6,200. Subsequently, counsel for the respondent conceded her insurable earnings should be increased by the pro-rated amount - \$850.40 – attributable to source deductions for total insurable earnings of \$7,050.40.

APPELLANT'S POSITION:

[432] The appellant claimed she was employed from June 22 to December 7, 1996 and had insurable earnings in the sum of \$7,945 in accordance with her ROE.

SUBMISSIONS:

[433] Narang submitted the appellant had received cash in addition to the four cheques that the Minister accepted had been paid to her on account of wages. He pointed out that although the other drivers had been laid off by November 16, Shindo could have continued to drive workers to the vegetable farms because she was – in essence – one of the principals of SRC.

[434] Counsel for the respondent submitted the appellant's credibility cannot survive her testimony that she was paid by the hour, never used picking cards and was paid \$7 per hour even while picking berries. As was the case with most other appellants, counsel submitted the payroll record was unreliable and did not accurately reflect the wages actually received. As for the appellant's testimony concerning receipt of cash payments for wages, counsel submitted she had provided contradictory explanations, including those at Discovery and during HRDC interviews. Counsel submitted it was extremely unlikely the appellant had continued working until December 7 because the harvesting would have been completed by then, particularly in view of the cold weather and the fact the only drivers named by the appellant had been laid off earlier.

ANALYSIS:

[435] Parmjit Kaur Rehal is well-educated and studied for her Bachelor of Arts degree in India before transferring to a course of technical studies. Following graduation, she became a teacher of cutting and tailoring. She came to Canada in 1994 and currently operates her own tailoring business. She testified she was driven to work on her first day by Harbhajan Singh Kang. Later, in the course of her employment she was driven to work – in a yellow bus – by Harjit Gill and by Shindo who drove a van. She stated she picked strawberries for 3 weeks at Khakh Farms and then picked raspberries for 6 weeks, of which period, 3 weeks was spent at Gill Farms. When that crop was finished, she picked blueberries and when the season ended started working at the Chinese Farm and Mike's Farm where cabbages, turnips, radishes, zucchini and peppers were grown. While picking berries - and later when working at the vegetable farms - the appellant maintained she was always paid \$7 per hour and Rana and Shindo were her supervisors. She testified she never used a picking card and did not see other workers using cards. She stated she worked at the vegetable farms until 33 days before the birth of her baby and worked outside even if it was wet because she was protected by raingear. From time to time, the appellant requested money and Shindo often provided excuses based on the cash flow problems affecting SRC. The appellant testified it would take about 7 to 10 days

following a request before Shindo paid her any money. She stated that during the course of her employment, she received 4 cheques for a total of \$6,200, as well as a total of \$1,700 in 3 cash payments of \$500, \$1,000 and \$200, respectively, from Shindo. The appellant recalled receiving the first cash payment in the first week of July and the last payment when she received her ROE in Richmond, but could not recall when she received the middle payment of \$1,000 in cash.

[436] During cross-examination by Johanna Russell, the appellant stated that despite the expert opinion of Sweeney concerning harvest dates of various crops, she had worked until December 7, 1996, and probably performed her last series of tasks at Mike's Farm rather than at Min Ho Farms. The appellant maintained her position that she had not used picking cards and had not seen the drivers handing out cards to fellow workers. She described picking berries, placing them in a flat and setting aside the flat when it was full. According to her testimony, someone picked up that flat and took it to a truck but she did not see it being weighed and/or counted. She stated this procedure was of no concern to her since she was being paid by the hour. When Janet Mah telephoned her to inquire about the conditions of her employment, the appellant provided answers through her husband who indicated he had the appellant's permission to act as her interpreter. The information provided in that manner was that Harbhajan Singh Kang and Harjit Gill had been her only drivers. Other evidence adduced during these appeals established that Gill was laid off on October 6 and went to India on October 11 and Kang was laid off on October 19. During the HRDC interview – tab 101 – with Ted Bowerman on July 10, 1997, the appellant stated she had been driven to work at the vegetable farms by Kang and Gill without mentioning Shindo until counsel pointed out to her these drivers were both laid off prior to October 20. At this interview, Parmjit Kaur Rehal denied taking off work for any reason. At Discovery, she admitted she took off a Sunday now and then, either by requesting permission from Shindo or merely informing the van driver she was not going to work that day. She stated the version given during Discovery was correct. At Discovery, the appellant explained how she had pleaded for some money and after about a month received \$500 from Rana. This was the same information provided during her HRDC interview on July 10, 1997, when she told Bowerman that Rana had given her a \$500 cash payment and then described 3 subsequent cash payments by stating they were "\$1,000, \$2,000, \$1,200, I forget exactly". The appellant testified she did not recall giving these answers but as far as she was concerned, because Rana and Shindo lived in the same house, she did not pay attention to which one of them had given her the first cash payment. She agreed with counsel's suggestion that except for her own testimony, there was no proof she had received the cash payments from Shindo. She recalled she had to sign in a book each time Shindo gave her cash. She testified she had maintained a record of cash payments in

a notebook but discarded it when she received her final pay. The appellant stated she was employed by SRC for 168 days and that was sufficient time during which to accumulate a total of 1,311 hours of work and - at \$7 per hour - that amounted to gross earnings of \$9,177, as shown on her pay statement.

[437] None of the schedules of the picking cards prepared by counsel for the respondent - and entered as exhibits - in respect of Gill Farms, Kliwer Farms and Monga Farms disclosed the name of Parmjit Kaur Rehal. That is strange since the evidence adduced in respect of the picking done at these farms established beyond any doubt that picking cards were the sole instrument by which production was recorded. Had the appellant admitted that others used picking cards but - for some reason or other - she was in a special category, there may have been some basis to consider whether she had a separate arrangement with SRC to pay her an hourly rate. As for her contention that she worked until December 7 at the vegetable farms, the evidence is clear that it snowed in Richmond from November 16 to November 23 and again two days later. There was 3 cm. of snow covering the ground on November 20 and November 21 and it snowed again on December 2. There were freezing temperatures - at ground level - as early as October 20. The documentation provided by Min Ho Ahn - to Fontaine - showed the last sale of produce from that farm was on November 24. The only drivers mentioned by the appellant at any time - including in her testimony - were Kang and Gill and only when informed by counsel that neither one was employed after October 19, did she recall being driven by Shindo. Earlier, she was clear in her testimony that Kang drove her to work on her last day. On reflection, that is probably true if - ironically - her last day of work really was October 19, 1996 and not December 7 as she claimed. The interpretation at the interview with Bowerman or during the questioning by Mah - via the telephone - was performed by the appellant's husband, a well-educated man who successfully completed his examination - in English - in order to qualify as a licensed life insurance agent. The answers given to Mah are clear that only Gill and Kang drove her to work in Richmond. After naming Kang, the appellant was asked whether she had any other drivers and she named Gill. Although the appellant had not identified Binder Chahal as her driver, Bernie Keys - Appeals Officer - inquired into that aspect and determined that Chahal was the last driver and had been laid off on November 16. One would expect that if the appellant had been driven - by Shindo - to the vegetable farms for 6 weeks, she would have recalled it during the HRDC interview and not only when confronted with the indisputable fact that the only drivers she ever named - until that point - had been laid off by October 19. During re-examination by her agent, the appellant reiterated Shindo had driven her to work during the last part of her employment as well as a male driver - Harjit, but not Harjit Gill - who had driven her to work some days until her layoff on December 7.

According to a list of SRC employees which was included in the material contained in one of the exhibits filed in these proceedings, the only other Harjit employed by SRC was “Harjit K. Grewal” and it is obvious “K” is an abbreviation of “Kaur” which signifies this person was a female. She also conceded her testimony – 10 minutes earlier – that she had not been aware of several documents within Exhibit R-28, was incorrect because she had seen a book of documents – similar to Exhibit R-28 – prior to her Discovery and her husband had translated/interpreted the contents to her.

CONCLUSION:

[438] I find the notes taken by Bowerman during his interview with the appellant accurately reflect the words spoken by her through her interpreter/husband and that the notes made by Janet Mah of the answers provided – through the appellant’s husband – to her questions are also accurate. The appellant’s story about receiving cash payments is not consistent and she could not recall the circumstance of the largest alleged payment of \$1,000 and identified both Shindo and Rana as the persons who paid her the first \$500 payment after she had pleaded for some money. Under those circumstances, one would expect the identity of the payer to be firmly implanted in the recipient’s memory bank. It is curious that the appellant’s ability to recall the amounts and timing of her cash payments were better in 2004 than in July, 1997, only 7 months after they were allegedly received. The appellant’s version of events does not match the rest of the evidence. If she was driven by Shindo during November and December then why not say so earlier? The answer is obvious: she had to rely on Shindo and a phantom male named Harjit in order to account for the fact that the only two drivers she had ever identified were proven to have been laid off before October 20. Even on her application - tab 90 – for UI maternity benefits, the location of her work “Richmond” was crossed out and the nature of her work was described as having been performed in a cannery and also as a farm worker cleaning and packing vegetables in New Westminster. The appellant testified that although her husband completed the application on her behalf and she had signed it, that information was incorrect.

[439] Overall, the testimony of the appellant is not credible that she was paid by the hour for picking berries or that she received some of her wages in the form of cash. I reject the appellant’s clumsy attempts to convince me she was driven to work by Shindo and the mystery driver – Harjit - after Kang and the real Harjit - Harjit Gill - had been laid off. The appellant had a burden of proof to establish that she worked until December 7 as alleged and that she is entitled to insurable earnings greater than the amount recognized by the Minister. She has failed to do so on both counts.

[440] The decision of the Minister insofar as it relates to the period of employment is confirmed and I find the appellant's insurable earnings are in the sum of \$7,050.40.

GURCHARAN KAUR JOHAL:

RELEVANT BOOK OF EXHIBITS: R-20

MINISTER'S DECISION:

[441] The Minister decided the appellant was employed in insurable employment for 17 weeks during the period from June 21 to October 12, 1996 and had insurable earnings in the sum of \$5,000. Pursuant to the subsequent concession by counsel for the respondent, the Minister accepted that the appellant's insurable earnings should be increased by the sum of \$657.72 – attributable to source deductions according to the Chart – and that the correct amount of her insurable earnings is \$5,657.72.

APPELLANT'S POSITION:

[442] The appellant claimed she was employed from May 26 to October 12, 1996 and had insurable earnings in the sum of \$7,784 - as stated in her ROE.

SUBMISSIONS:

[443] Narang submitted the appellant had provided details of her work during a period which conformed with the farming season - as relied upon by the Minister - and that she had been paid some of her wages in cash, a normal occurrence within the farming industry in the Lower Mainland.

[444] Counsel for the respondent submitted the Minister had given credit to the appellant for insurable earnings based on the \$5,000 SRC cheque that had cleared the account. However, counsel referred to the appellant's evidence that she received the sum of \$2,000 in cash which – if true - would have exceeded the amount of her net pay - \$6,755 - according to the pay statement. Counsel submitted the appellant had not mentioned being driven to work by anyone other than Harbhajan Singh Kang – in a red van – either during her HRDC interview or subsequently when completing Questionnaires. As a result, counsel submitted the Minister's decision to choose a starting date that conformed with Kang's first day of employment was reasonable.

ANALYSIS:

[445] Gurcharan Kaur Johal testified her husband – Karmjit Singh Johal – arranged for her to work for SRC. She stated she started work on May 26 and was joined by her husband – in June – and they both worked together until their layoff on October 12. She recalled riding to work the first day – and for the next week - in a grey van driven by either Bant or Shindo and then rode in a brown van driven by either Kang or Master. She and her husband usually travelled to work in the same vehicle. She recalled her pay was based on an hourly rate but did not know the amount. The appellant described her first few days of work involved preparing the land and planting seeds on the Chinese Farms in Richmond. After that, she went to Khakh Farms in Abbotsford and picked strawberries for 3 or 4 weeks. Later, she picked raspberries and blueberries at other farms and ended the berry season by picking the few remaining berries and then worked for about a week at the Chinese Farm in Richmond picking zucchini, corn and daikon. She described the method of picking berries but stated she never used a picking card, although the farmers weighed the flats and appeared to be using some method for keeping track of their weight and number. She recalled that – on a good day - she could pick 14 or 15 flats of strawberries, 10 or 11 flats of raspberries and 15 pails of blueberries. The numbers recorded on the schedules prepared from information recorded on her picking cards at Gill Farms and Monga Farms do not support that contention. Instead, at Gill Farms, the schedule – Exhibit R-64 - shows she picked 3 flats on July 14 and 9 1/2 pails of blueberries on August 16. According to the schedule – Exhibit R- 66 – based on her picking cards at Monga Farms, she picked 12 full flats and 5 small baskets on July 28, picked 9 full flats and 3 baskets on July 27 and 9 flats on July 30. She testified Bant paid her cash 4 or 5 times during the season – usually in a field - and that she received a cheque at the end of the season in full settlement of her wages. While completing a Questionnaire – tab 85 – during the rulings process, the appellant stated she had been paid only by cheque. In her testimony, she explained that because she knew she could not prove receipt of the cash payments, she decided to refer only to payment by cheque.

[446] During cross-examination by Johanna Russell, Gurcharan Kaur Johal conceded that during her HRDC interview – tab 95 – she named Kang as her driver and had stated that she rode to work every day in the “same van”. The appellant explained that she should have told the interviewer she went to work the first day - and for about a week afterwards – with Bant and/or Shindo until Kang became her usual driver thereafter, except for the 7 or 8 times during the season when she rode with Master. When informed by counsel that Kang’s first day of work was June 21, the appellant replied that she had ridden with him earlier than that. During the HRDC interview, Johal stated Bant sent a red van to take her to work and denied ever riding

in a grey van. She admitted she had never ridden to work in the yellow bus although the answers in her Questionnaire – tab 104 – stated she rode to work “sometime van, sometime bus” and that the van/bus driver was “always different driver”. The appellant could not explain why those answers had been provided. Even when shown picking cards from Gill Farms and Monga Farms with her name on them, together with other cards identifying her husband as a picker, she stated she never used the cards while picking berries even when working with Harbans Kaur Kang and other workers who admitted the cards were used to record their production. The appellant stated that when her daughter-in-law helped her to complete the Questionnaires, information about receiving cash for wages during the season had – somehow – been omitted. The appellant stated she considered either Bant or Shindo to have been her employer and knew they were related to Rana. As a result, she did not concern herself with the source of the money given to her or who had handed it over since they were all in the same family.

[447] During her HRDC interview, the appellant failed to mention that she performed any hoeing and planting work prior to picking strawberries but when asked whether she started picking strawberries in May, the appellant had responded “No, started picking in June. We picked zucchini too in Richmond and we went to Abbotsford and Chiliwack”. During her HRDC interview, Gail Buckland – ICO – carefully elicited answers from the appellant about the identity of her driver and the type of vehicle used to transport her to work. The appellant told Buckland that Kang drove her to work in the same old van and that she had not ridden in a grey van. Later, Johal told Buckland she rode “mostly” with Kang and “mostly” with the same person. But, when asked directly by Buckland if anyone else drove her to work, she replied “no other driver” and went on to say she went home with Kang in “the red van”. When Buckland showed her a photograph of Kang, the appellant recognized him and also identified Binder Chahal as a SRC driver, although not her driver. She identified Bhan Singh Sidhu as Master, a van driver whom she had seen a couple of times. Until Discovery, the appellant had not mentioned any other driver who took her to work between May 26 and June 20, 1996.

[448] With respect to the cash payments, at Discovery, the appellant was positive Rana paid her cash at a farm. In her testimony, she said it was Bant who had paid her. She could not recall the amounts or the timing of any payments and did not keep a record. I accept that Buckland’s notes of her interview with the appellant are correct including the notation that Johal stated she had received a total of \$1,200 to \$1,500 in cash from SRC. Johal’s son – Jagdip – interpreted for her and was a licensed electrician who had lived in Canada since 1989 and was able to speak, read and write

English. Even if the SRC pay statement prepared by Bains Tax was accurate as to the amount - \$6,755 – of Johal’s net pay, then if she had been paid \$2,000 in cash in addition to the \$5,000 cheque, that would have amounted to yet another overpayment by an employer that all the evidence indicates had to be badgered before it would pay even relatively small amounts of wages during the season.

[449] The appellant had the burden of proving that she worked from May 26 to October 12, 1996 and that she had insurable earnings in an amount greater than the sum - \$5,657.72 - accepted by the Minister. There is a slight possibility that she worked earlier than June 21 because she may have ridden with Kang during one or more days during his unpaid so-called training period but that would not have moved her employment back more than a week or so to a date at or near the beginning of the second week in June. However, that is only speculation and the evidence viewed in total cannot support a finding that the commencement date for her SRC employment was other than the one – June 21 – chosen by Minister. I find she has failed to establish her period of employment commenced on May 26. Her testimony is unreliable in many respects and she attempted to change her story - as she deemed necessary – in order to slip through gaps in her overall story that often were closed - to varying degrees - as a result of being tested against her previous statements and/or testimony – whether at Discovery or in Court – or when compared with her previous statements at the HRDC interview or her answers to the Questionnaires.

[450] The Minister’s decision is confirmed as to the appellant’s period of employment – June 21 to October 12, 1996 – and I find her insurable earnings are in the sum of \$5,657.72.

PRABHJOT KAUR MINHAS:

RELEVANT BOOK OF DOCUMENTS: EXHIBIT R-26

MINISTER’S DECISION:

[451] The Minister decided the appellant was in insurable employment with SRC for 12 weeks during the period from July 14 to October 5, 1996 and had insurable earnings in the sum of \$1,633. In accordance with the Chart, counsel conceded the

insurable earnings should be increased by the amount - \$224.85 - attributable to the pro-rated source deductions – to the sum of \$1,857.85

APPELLANT'S POSITION:

[452] The appellant claims she was employed from July 14 to November 30, 1996 and had insurable earnings in the sum of \$7,840, as stated in her ROE.

SUBMISSIONS:

[453] Narang submitted the appellant had established - through her testimony - that she worked during the period claimed by her and had been paid most of her wages in cash.

[454] Counsel for the respondent submitted the appellant had failed to adduce sufficient credible evidence to establish she worked for SRC, as alleged, and that she could not explain the numerous contradictions between her testimony and statements previously provided to HRDC, CCRA and/or during her Discovery. Counsel referred to the evidence proving that Harjit Gill was the only person who drove the yellow bus and that he was laid off on October 5, 1996. Since the appellant had advised the Appeals Officer that she rode to work only in the school bus, the date of October 5 was chosen by the Minister as the last day of her employment. With respect to the amount of insurable earnings, counsel submitted the appellant had provided contradictory explanations about receiving cash and pointed out that her ROE covered the precise period needed to qualify for UI benefits.

ANALYSIS:

[455] Prabhjot Kaur Minhas testified she uses the name Lally on an everyday basis and works as a residential care attendant where she speaks English in the course of her duties. After completing Grade 12 in India, she came to Canada in 1991 and took ESL instruction at different times over several years. She worked as a farm labourer from 1991 to 1994, inclusive, in Yarrow, British Columbia, before moving to Vancouver where she worked as a dishwasher/janitor at a restaurant. She had a child in February, 1996 and started working for SRC on July 14 after her husband had telephoned the Bant/Shindo/Rana residence to arrange for her employment. She testified she picked raspberries, then blueberries and finished her employment – on

November 30 – by picking vegetables at two farms in Richmond. She testified she was paid \$7 per hour only when working on those farms but when picking berries, was paid \$4 per flat for raspberries and 25 cents a pound for blueberries. A system was in place to pay pickers for a partial flat, and the appellant stated she was able to pick 15-10 flats - on a good day – in order to earn between \$60 and \$80. She estimated her blueberry production ranged from 300 to 350 pounds during the full part of the season and she earned between \$75 and \$87.50 on those good days. She described using the picking cards on which she wrote her name and explained the manner by which the triplicate sheets were separated at the end of the day and how they were punched at the scale. She retained her copy of each card until the end of the season. The appellant testified she had always been paid by the flat and/or pound during her 4 years as a farm labourer and assumed the same system would be utilized by SRC. While working for SRC, she also worked - 6:00 p.m. to 11:00 p.m. – as a dishwasher at a café from July 17 to September 11 when she was laid off because the business went broke. The appellant testified she rode to work – her first day – with 40 or 50 people in a bus and thereafter rode in the bus except on those occasions when Shindo drove her – in a blue van – or if she used her own car. After one month of working, the appellant had not been paid and asked for some money. She stated cash was received on 4 or 5 occasions throughout her employment when her husband went to Shindo’s house to collect wages on her behalf. She received one cheque – tab 90 – in the sum of \$1,633 and cashed it at the TD bank on October 3, 1996. Narang showed her the “I Cash Money Give” purported cheque – in the sum of \$4,000 – and the appellant stated the signature thereon, written as “PraBhjet K. Minhas” was not her signature because she does not insert a capital “B” in the middle of her name and pointed out her usual signature as it appeared on her application for UI benefits at tab 95. When completing the Questionnaire - tab 99 – on November 4, 1999 with the assistance of her husband, she stated her pay was \$6.50 an hour for vegetable work which she assumed had been the minimum wage at that time and that she was paid on a piecework basis for picking berries. In that document, she stated she rode to work in a school bus driven by “Surjit Gill.” The appellant stated she considered SRC owed her about \$1,100 wages at the end of the season when she was issued her ROE and still has not been able to collect that amount from Shindo.

[456] During cross-examination by Selena Sit, Prabhjot Kaur Minhas stated she took her copies of picking cards to Shindo’s house to be used during the final accounting. The appellant was referred by counsel to her responses in the Questionnaire – tab 92 – that she had been driven to work – the whole time – in a school bus driven by “Harjeet” and that this answer was different than the one given during her direct examination, namely, that her only drivers were Rana and Shindo. When shown a picture of Rana, the appellant stated that, although she had seen that person, he was

not her bus driver. The appellant accepted counsel's suggestion that she must have been mistaken earlier and that the male driver - referred to as "Harjeet" in her Questionnaire - was Harjit Singh Gill. However, in the Questionnaire, the appellant had stated that Gill was "mostly" her driver but that "sometimes" there was a different driver whose name she did not know. At Discovery, the appellant testified that Harjit Singh Gill had been her only bus driver but that she had ridden - once or twice - in a SRC van driven by a male driver whose name she could not recall. She was clear - at Discovery - that she had been picked up by a yellow school bus on her first day of work and rode to work every day thereafter in that same vehicle, except when picked up in a van. During her Discovery, she confirmed that the school bus was always driven by the same man and that his name was "Harjit Singh." In response to being confronted with those answers given at Discovery, the appellant stated she had meant to say that she rode in a SRC van once or twice per week, and not just once or twice during the entire season. When counsel pointed out that Harjit Singh Gill was laid off on October 5 and could not have driven her to work thereafter - when she was allegedly working on the vegetable farms in Richmond - the appellant stated she rode to work - at Mike's Farm - in a yellow bus that was driven by different people from time to time. As for her last day of work on November 30, the appellant stated she had picked zucchini. When applying for UI benefits, the appellant did not attribute her layoff to shortage of work but stated in her application that it was due to her pregnancy and the fact she experienced pain "while bending over."

[457] At Discovery - concerning the "I Cash Money Give" purported cheque in the sum of \$4,000 - the appellant had identified that cheque and acknowledged it was her signature on the bottom line. Then, she switched from English to Punjabi and provided an explanation through the court certified interpreter, as follows: Shindo made her sign the cheque - prepared in that manner - in order to acknowledge that she had already paid the appellant that amount of cash for her wages, which is why the cheque had "I Cash Money Give" written at the top. Then, Minhas stated that cheque was signed on September 7, 1996 at Shindo's house. The appellant was confronted with these answers from her Discovery which contradicted those given - during her direct examination - that she had not seen that purported cheque until it was shown to her in Court. During her HRDC interview, she had taken the same position, telling Ted Bowerman - ICO - that she did not know what that curious piece of paper represented and that the signature thereon was not her own. It should be noted that until testifying before me, the appellant had never mentioned that SRC still owed her about \$1,100 in wages for her work. The following calculation is

interesting. Since the only amount proven to have been paid – by cheque – was the sum of \$1,633, when one adds in the \$4,000 amount represented by the purported cheque, the resulting total of \$5,633 is \$1,027 less than her net earnings of \$6,760 as shown on her payroll statement. Therefore, unless the appellant has some explanation for that gap, there would be a glaring deficiency between her entitlement and the amount received. The appellant stated that she filed her income tax return – prepared by her husband - on the basis of her T4 slip showing gross earnings of \$7,840 even though she had only received - according to her calculations – the sum of \$5,633. In her testimony, the appellant stated she never deposited any cash payments to her bank account and used the money to pay rent and other bills. She did not regard the method of payment of wages – by SRC - unusual because other farm employers had done it that way during her previous employments as a farm labourer.

CONCLUSION:

[458] The first matter to be decided is whether the appellant worked until November 30, as claimed. First, it is obvious that all of her earlier answers tied her employment to the school bus driven by Harjit Gill. The evidence is conclusive that he was the only person who drove that school bus during 1996. He was laid off on October 5, 1996 and went to India the following week. He could not have driven her to Richmond after that and no other person was identified as the driver of the big, yellow bus. Her statements at Discovery contradicted those given in Court and only during her direct examination did she name Shindo as one of her drivers. Even at Discovery, the driver of the van that she rode in once or twice was identified only as a male. The appellant linked herself to Harjit Gill on numerous occasions by identifying him as the bus driver – either “always” or “mostly” - depending on the forum and there are numerous contradictions in respect of her claim about riding to work in a SRC van. The weather conditions were such that it is highly unlikely she was picking zucchini on November 30. According to the evidence of Sweeney, that crop would have been picked before then in accordance with normal industry practice and – in any event - would not have survived the frost and would not have been harvested while covered with snow especially in late November.

[459] The appellant has not presented sufficient credible evidence to permit me to find that she was employed by SRC any later than October 5, 1996, as decided by the Minister.

[460] The next question to be answered is whether the appellant had any insurable earnings greater than the sum conceded by counsel for the respondent. With regard to the purported cheque in the sum of \$4,000, at her Discovery – in 2001 - the appellant

not only stated she recognized it, but acknowledged her signature thereon and subsequently provided an explanation that she signed it at the request of Shindo to create a sort of receipt for cash payments made to her between July 14 and September 7. It is doubtful she could have earned that sum in less than two months because she did not work every day and earned between \$60 and \$87.50 during her best days. At best, she may have worked 50 days during that period and many days would have produced less income due to the state of the berry crop either at the beginning or the end of a particular picking cycle. She did not provide credible evidence concerning the receipt of cash payments. The appellant is a well-educated, articulate, hard-working, young woman who held down two jobs to support her family. Her husband is a university graduate with two degrees who could only find work driving taxi. It is impossible to believe that she would not have remembered - during her testimony – details provided earlier – at Discovery – concerning that bizarre “I Cash Money Give” cheque. One could understand her answer - in Court - that she had never seen such a peculiar document if she had not testified earlier that she had seen it and had acknowledged her signature thereon. There are too many inconsistencies throughout in her testimony to permit me to accept that she was paid any money other than the sum of \$1,633, represented by the cheque that cleared the SRC bank account. It should not be that difficult for a worker to recall basic details of a job – however boring – when questioned about it within a year or so. I fail to understand why this appellant was unable or – perhaps - unwilling to extricate herself from such a web of contradictions, inconsistencies and outright fabrications by acknowledging the existence of previous contradictory statements and providing some reasonable explanation. The only conclusion I can draw, having regard to all the evidence, is that she did not work for the period stated in her ROE and did not receive any wages except for the amount of the cheque that was cashed at the TD bank. Her story – overall - is not credible with respect to working on the vegetable farms until November 30 and/or receiving cash payments from Shindo from time to time. The appellant is not entitled to any further relief other than as conceded by counsel for the respondent with respect to her insurable earnings, which I find are in the sum of \$1,857.85.

GURBACHAN SINGH GILL:

RELEVANT BOOK OF DOCUMENTS: EXHIBIT R-16.

MINISTER’S DECISION:

[461] The Minister decided the appellant was not in insurable employment with SRC during the period from September 1 to December 31, 1996.

APPELLANT'S POSITION:

[462] The appellant claims he was employed during said period and had insurable earnings in the sum of \$9,680 as stated in his ROE.

SUBMISSIONS:

[463] Narang submitted SRC had issued 4 cheques to the appellant – totalling \$8,200 – and that those cheques were negotiated through the employer's bank account and should be recognized by the Minister as constituting insurable earnings during the course of his employment as a driver for SRC – albeit, under somewhat strange circumstances - since it appeared the workers did not know him by his full name.

[464] Counsel for the respondent submitted the appellant had not established that he was engaged under a contract of service, as alleged or at all. Overall, counsel submitted the testimony of the appellant was riddled with unexplained inconsistencies and that his description of his employment duties was impossible to believe.

ANALYSIS:

[465] Gurbachan Singh Gill testified he is currently employed as a security guard and that he was employed by SRC as a van driver in 1996. In March of that year, he obtained his Class 4 Driver's Licence because he no longer wanted to work as a farm labourer as he had done in 1994 and 1995. During those years, he and his wife worked together picking berries and on vegetable farms. He stated they were paid by the weight or number of flats for the berries and by the hour for working with vegetables. Gill testified that after finishing ESL classes at the end of August, he began working for SRC on September 1. He stated he was hired by Rana to work as a van driver at a salary of \$10 per hour. During the course of his employment, he negotiated SRC cheques totalling \$6,300 which were deposited to a joint account at Canada Trust. He also signed his name on the reverse of an "I Cash Money Give" purported cheque in the sum of \$2,000. Gill stated that on one occasion, he received a cheque in the sum of \$1,900 that was returned NSF and when he told Rana about it, Rana blamed it on a cash flow problem and promised the cheque would be redeemed. With respect to his duties as a van driver, Gill maintained that he left his house – in Surrey – each morning, took public transit to Vancouver to get the van - stored at Bant's house – drove workers to farms in Richmond where he spent the day until

quitting time, drove them home, returned the van back to Bant's house, and then rode the skytrain (LRT) to his residence in Surrey. On those occasions when he did not follow this procedure, Gill testified he obtained a ride from his daughter or his son – Ravjit Gill – or rode with Harbhajan Singh Kang. Gill stated he was not required to perform any farm labour but had certain duties to perform with respect to the operation and maintenance of the van. He described working 7 days of week and named 4 or 5 farms where he had delivered 10-12 workers in September but only 4 or 5 in December because it had snowed and there was less work. Even though it was not part of his job description, Gill stated he handed out picking cards sometimes and wrote the name of the picker on the card. In terms of his passengers, Gill specifically recalled transporting Taro Kaur Bassi, Prabhjot Kaur Minhas and a man known to him as Didar Singh. Gill testified he recalled attending an interview at an HRDC office where he was questioned by Bowerman. Gill stated he was threatened with the loss of his Driver's Licence, as well as his licence to work as a security guard and told he could be subject to deportation as a result of the problems arising from his employment with SRC. He told Bowerman that none of his relatives had been employed by SRC even though his son – Ravjit Gill – worked there and supposedly drove him to Vancouver - a couple of times - to pick up the van at Bant's house. Gill explained that he did not regard a son as a relative. He also characterized his son as someone who was "less than truthful." The appellant's completed Questionnaire – tab 103 – indicated he rode to work "sometimes van, sometimes bus." Gill explained that this answer was incorrect because he was either driven to Bant's house by someone or took public transit from Surrey – a 45-minute trip – in order to collect the van. Other answers in the Questionnaire stated he worked in the fields from early morning to late evening. Gill explained he had not read over the Questionnaire before signing it and trusted the people at PICS to have filled it out correctly.

[466] During cross-examination by Johanna Russell, Gurbachan Singh Gill agreed he should have explained – at Discovery – that even though his son – Ravi – owned the Hyundai Excel, it was registered in the name of his daughter – Amrit – for insurance purposes. Gill stated he could not recall his conversation with Janet Mah but agreed the answer – recorded in her notes – that he picked up workers in Vancouver and Surrey and drove them to a farm in Richmond – near a golf course – was correct. Also included in Mah's notes were statements – by Gill – that he "picked berries and vegetables" and that Ravjit Gill was in India and – therefore – could not speak with her. The appellant denied making those statements. Regarding the van that he used to drive workers, Gill stated he did not know the make or model and did not pay attention to learning the names of his passengers because Rana had informed him there was no need to know that information because some of them might be receiving benefits and/or payments from welfare or UI or a pension of some

kind. During the interview with Bowerman, Gill could not remember the names of any of his passengers but when answering the Questionnaire – tab 103 – he named several people, including Taro Kaur Bassi and Prabhjot Kaur Minhas whom he knew as Lali. During his employment, Gill estimated he kept the van at his home – in Surrey – between 10 and 15 times. He identified Harbhajan Singh Kang, Binder (Chahal) and Harjit Gill as SRC drivers as well as Bant, Shindo, another male and Rana, whom he said drove from time to time. When counsel confronted the appellant with portions of testimony of SRC workers - and/or statements made by them during HRDC interviews - to the effect that none of them had ever mentioned him as their driver, Gill replied they were all wrong and explained the confusion probably existed because he – Gurbachan – was sometimes referred to by the nickname “Bajan”, also used by many workers to identify Harbhajan Singh Kang. Gill admitted that although he might have purchased fuel for his van at some point, he preferred to stick with his earlier statements that he “never” fuelled that vehicle. He agreed he rarely rode with Ravi to pick up the van at Bant’s house because they did not have a good relationship. With respect to receiving wages, Gill testified he received between \$2,000 and \$2,200 in cash in addition to the sum of \$6,300 in cheques. When counsel pointed out that - at Discovery - Gill stated he received “approximately \$3,000, \$3,300 or \$3,400 in cash”, he replied those sums had been estimates and that he had a specific recollection of counting out either \$2,000 or \$2,200 – in various denominations of bills – and putting the money into his pocket.

[467] During re-examination by his agent, Gill stated he came to suspect some passengers were hiding or disguising their identity for a variety of reasons and that several were working without appearing on any employer records.

[468] The appellant appeared to have a special relationship with Bant and – through him - with SRC because he did not have to pick berries, hand out and collect picking cards on a regular basis, supervise workers or refuel the van. Gill explained that his health did not permit him to perform hard work and that he had a particular rapport with Bant because he kept him supplied with liquor that was always available in the van during the day. As a result, he was free to sleep, read newspapers, go for walks and listen to music. The evidence adduced during these proceedings established that other drivers picked berries – confirmed by picking cards – and assisted in weighing berries and punching picking cards. During an exchange with Gill at the end of his cross-examination, he explained his philosophy – learned in Amritsar, Punjab – to me, concerning the practice of supplying liquor to individuals in order to get them to do something and the special bond created between people who have eaten and drank together, to the point that “you can actually go and die for that person, or you can kill any other person ...”

[469] The appellant's story about travelling from Surrey – most of the time by public transit – to Vancouver to pick up a van in an alley behind Bant's house is a curious tale indeed. If he rode with his son – Ravjit – it was only once or twice and it was illogical that he would take the LRT to Vancouver when every other driver kept his van at home. The total time needed to go from Surrey to Vancouver in the morning and return at night is more than 90 minutes, without counting time waiting for the LRT to arrive. During his HRDC interview, he stated the only method he used to collect the van was by riding to Bant's house with Bhan Singh Sidhu. One also has to wonder why Gill was driving van until December 30 when all other SRC drivers – including Shindo – had been laid off before the end of October, except for Binder Chahal who remained until November 16. As discussed earlier, the harvesting of vegetables would have been completed by mid-November at the latest and it is not reasonable to conclude there was any farming work done on the vegetable farms in Richmond as late as December 30. According to Gill, the only driving he did was to take workers to and from Richmond. During HRDC interviews, no other driver ever mentioned Gurbachan Singh Gill as a fellow driver. There was evidence that the only drivers who lived in Surrey were Kang and Master. Kang – when testifying – attempted to help out the appellant by stating he saw Gill driving a SRC van to Khakh Farms during strawberry season as well as in Abbotsford during raspberry season. The problem with Kang's testimony is that even Gill does not purport to have started working for SRC until September 1, 1996. Perhaps Kang is a true visionary in the sense that he possessed the uncanny ability to predict that Gill would be creating a fantasy employment and – at some point – might need a lifeline. Sukhwinder Kaur Toot, an appellant who was sitting in Court while Gill was testifying about driving workers to vegetable farms in Richmond, later testified she had never seen Gill before. None of the appellants in these proceedings ever named Gill as his or her driver, whether during HRDC interviews, when completing Questionnaires, or while testifying at Discovery or in these appeals. In addition, none of the 100 workers interviewed by ICOs ever mentioned Gill as their driver. The difficulty faced by the appellant is that he claims to have been employed as a van driver for 4 months, hauling up to 15 people at a time in his vehicle, charming the ladies by playing tapes of religious music, walking about the fields, handing out picking cards from time to time, and yet not one person identified him as a van driver or worker – of any sort – for SRC during this extended period. The attempt by Kang to give Gill a helping hand by saying he saw him driving during June and July was just pathetic. Perhaps, its patent falsity was deliberate at some level because as Sigmund Freud is alleged to have observed, "there are no accidents." It is obvious Gill knew he was faced with the problem that no appellant was going to identify him as his or her driver and that - previously - he had never been named as a driver by any other SRC worker.

However, Gill was not prepared to admit defeat and came up with the novel - albeit, silly - ruse that people were confused because he was known by his nickname "Bajan" - a contraction, somehow - of Gurbachan and that workers had confused him with Bahjan Kang. In a way, that invented bit is so bad it is almost funny, like a notoriously-awful, Grade B movie that sticks in one's memory for no apparent good reason. Gill had other problems keeping his story straight, such as the colour of the van (grey) he apparently drove for 4 months, which - at the HRDC interview - was light brown. Information gathered by HRDC - not challenged by any appellant - was that only Binder Chahal drove the grey van.

[470] The appellant is an intelligent man with a good command of English both spoken and written. He passed his Class 4 Driver's Licence examination - in English - and obtained his licence as a security guard by passing two tests, again in English. He was able to read the answers contained in his Questionnaire prior to sending it back to CCRA. I reject Gill's explanation that he gave contradictory and/or inconsistent answers to Bowerman because he was "threatened". Gill admitted he was not intimidated at the outset when warned about the need to tell the truth and the possible imposition of penalties for knowingly failing to do so, although he did not like the "tone" of that admonition. Bowerman testified he told Gill about the possible consequences in the event fraud charges were laid and convictions obtained against persons who had participated in an illegal conspiracy to defraud the UI system and they included loss of a licence - such as one held by security guards - and that convicted persons could be subject to deportation.

CONCLUSION:

[471] The appellant has failed to establish that he was employed by SRC during any period whatsoever. His testimony is not credible. Even fiction - in order to be marketable - has to have a certain logic to it, because the story has to hang together until the end if the author wants to retain the reader's interest. When writing Gulliver's Travels, Jonathan Swift used a mechanism known as corroborative verisimilitude, which demands that when spinning a whopper of a yarn, you must ensure there is consistency and proportion throughout - even when providing seemingly-petty details - in order to buttress the central theme so it can be accepted as true. Gill is no Jonathan Swift. I do not accept the appellant's testimony that he drove a van for SRC and the evidence as a whole does not support this contention. Even if he had been so employed, his evidence about receiving cash in addition to the

\$6,300 in cheques, is not reliable. I suppose the question remains: why would SRC pay Gill the sum of \$6,300 in cheques? The answer is: I do not know except that it had nothing to do with any employment. There is no requirement on the part of the respondent to resolve this issue since the onus is on the appellant to demonstrate there was valid employment and that payments received from the purported employer were in respect of said employment. The appellant has failed on both counts and the decision of the Minister is confirmed.

SUKHWINDER KAUR TOOT:

RELEVANT BOOK OF DOCUMENTS: EXHIBIT R-31

MINISTER'S DECISION:

[472] The Minister decided the appellant was employed in insurable employment with SRC for 18 weeks during the period from May 26 to September 30, 1996 and had insurable earnings in the sum of \$5,000. Counsel for the respondent conceded the appellant's insurable earnings should be increased by the amount - \$658.19 - of pro-rated source deductions and that the correct amount was \$5,658.19.

APPELLANT'S POSITION:

[473] The appellant claimed she was employed from April 14 to October 12, 1996 and had insurable earnings in the sum of \$7,294, as stated in her ROE.

SUBMISSIONS:

[474] Narang submitted the testimony of the appellant and her son – Satnam Toot - established that the confusion over dates of employment had arisen due to the difficulty in interpreting her answers since she did not know the months of the year and was unable to count in either English or Punjabi. Narang submitted the evidence established that the appellant started work on April 14 and that despite her illiteracy and poor memory she was entitled to receive recognition for her work both in terms of duration and insurable earnings.

[475] Counsel for the respondent submitted the appellant had failed to produce any credible evidence to establish she had worked during the period claimed or that her insurable earnings were greater than the amount currently recognized by the Minister.

ANALYSIS:

[476] The appellant finds herself in the unenviable position of being illiterate in both Punjabi and English as well as being unable to count or to possess an ordinary sense of months, years or dates in order to fix – readily - a point in time in relation to an event. She testified that she worked for Bant and Rana picking 3 different crops of berries. Prior to picking strawberries, she stated she worked hoeing and cleaning out grass around plants. At one point during berry picking season, she went to a vegetable farm and picked lo bok and turnips. She testified that each day she worked, she rode to work in a van driven either by Harbhajan Singh Kang or Master. She did not know Gurbachan Singh Gill. She stated her wage was \$7 per hour for all types of work and her husband collected her wages from Shindo and/or Rana. She recalled working at Khakh Farms and at other farms in addition to the vegetable farm in Richmond. Regarding her berry production, the appellant stated she could fill 5 or 6 pails of blueberries a day at the start of the season, increasing to a maximum of 8 during peak season and then dwindling to only two pails near the end. Again, it is apparent that the farmer paid SRC \$5.35 per pail, so the maximum and minimum amounts the company earned from her efforts were \$42.80 and \$11.70, respectively, during a period when SRC and the appellant claimed she worked 8 hours every day at \$7 per hour - a daily cost of \$56 - without counting source deductions for EI/UI premiums, CPP contributions and holiday pay. Sukhwinder Kaur Toot had no recollection of having attended Discovery and could not recall any aspect of her interview with Janice Morrow at HRDC. The appellant stated she received a cheque – tab 90 – dated August 20, 1996 and recalled she and husband were driven to the TD bank by Harbhajan Singh Kang where they cashed the cheque. She denied that any portion of that money had been returned to Bant and/or Shindo and/or Rana.

[477] The appellant's son – Satnam Toot – testified and described attending the HRDC interview and interpreting on behalf of his mother. He complained about the manner by which the interview was conducted and stated that when his mother was unsure whether she had worked until the 9th or the 10th month, she was – in effect – ordered – by Buckland - to “pick one.” He prepared a Statutory Declaration – in Punjabi – and stated therein that the appellant had worked for SRC only until September instead of October 12, the date shown on her ROE. Satnam Toot stated he read the declaration to his mother - by summarizing it - and formed the opinion that she agreed it was accurate. Satnam Toot stated that the appellant told Buckland she

had worked for Rana from April to September, and that is what he wrote – in Punjabi – in the declaration. The rulings Questionnaire contained the statement that the appellant stopped work “in the 9th month, September”. The appeals Questionnaire stated she picked vegetables during her first week of work. It also indicated she was paid \$7 per hour for picking berries even though she and her husband – Swarn Singh Toot – had used picking cards. She recalled picking blueberries during the last two weeks of her employment but did not know the name of the farm or whether it was the Chinese Farm or Mike’s Farm.

[478] Satnam Toot also testified that the male interpreter - Mohinder Singh Herar – had intervened during the interview and advised the appellant that she should admit what she knew about the SRC scheme because HRDC “knew everything” and she could be deported. Both Buckland and Herar testified this exchange never took place. Herar is a certified court interpreter and explained that his role during any interpretation session is merely to act as a conduit between the parties to interpret the language and – therefore – remove the barrier to communication. During his long career at HRDC, he was never employed as an ICO and did not conduct investigations. With respect to this point of contention, I accept the version of Buckland and Herar.

[479] Satnam Toot stated he was certain his mother started work before the important Indian festival – Vaisakhi – which was celebrated on April 13. Ordinarily, this would be a significant point of reference by which one could link the occurrence of another important event, such as starting a new job. The problem rests in the lack of credibility on the part of this witness ranging from his description of the HRDC interview - including his allegations of misconduct by Herar in threatening his mother - and his claim that Herar’s ability to interpret from Punjabi to English was marginal, to the point where he considered Herar was no better at speaking English than he had been - in 1998 - when not yet at his current level of proficiency. The evidence established that the appellant and her husband used picking cards every day and Swarn Singh Toot stated – during his HRDC interview – that he took them home every night. Satnam Toot testified he never saw a picking card at home. Though he saw his parents with some cash from time to time, he could not confirm that they had received these funds from SRC for their wages. There is no other evidence to support the appellant’s allegation that she was paid cash and the only form of payment mentioned in the Questionnaire - returned to Keays - was by cheque. The only drivers named by the appellant during her testimony were Kang and Master and neither of them started working for SRC before May 26, 1996, the day Master was hired. As I commented to the appellant during her testimony, it seemed odd that she would not be able to recall additional details of her farm work – as a labourer –

because she had never done that sort of work in India where her family owned their own farm and had male workers to perform outside work while she managed the family home. The appellant blamed her lack of recall on the passage of time. Her son – Satnam Toot – testified his mother suffered from lack of memory and that it seemed to be getting worse.

CONCLUSION:

[480] The appellant has failed to demonstrate that she started working for SRC on April 14 and worked until her layoff on October 12, 1996. It is highly unlikely she was working on any vegetable farms at that time and if she was so employed then she could not have been driven by either Kang or Master – her only drivers – because they were not on the payroll at that point. It is also not probable that she worked until October 12 because blueberry season was over by the end of September. A review of the schedules of picking cards from Monga Farms, Kliewer Farms and Gill Farms does not disclose any picking after September 15 and the overwhelming majority of entries only record production up to the first few days of September, after which the picking was probably limited to cleaning up the remaining berries.

[481] There is no satisfactory proof that the appellant received any money in cash. There is a strong inference that after being driven to the bank by Kang, the money received – from cashing the \$5,000 cheque - was handed back to Shindo and/or Bant and/or Rana in exchange for her ROE. However, the Minister has not relied on that evidence and conceded the appellant had insurable earnings in the sum of \$5,658.19 as a result of her employment with SRC from May 26 to September 30, 1996. Having canvassed all the relevant evidence, I conclude I am unable to grant any relief to the appellant beyond the additional amount of insurable earnings conceded by the Minister.

DIDAR SINGH MEHAT:

RELEVANT BOOK OF DOCUMENTS: EXHIBIT R-25.

MINISTER'S DECISION:

[482] The Minister decided the appellant was employed in insurable employment with SRC for 15 weeks from June 10 to September 21, 1996 and that his insurable earnings were nil. Counsel for the respondent conceded the appellant's correct period

of employment was from June 10 to November 9, 1996 but continued to maintain that he had no insurable earnings.

APPELLANT'S POSITION:

[483] The appellant agrees the Minister's decision is correct with respect to his last day of employment but claims he started work on June 2, 1996 and had insurable earnings in the sum of \$7,056.

SUBMISSIONS:

[484] Narang submitted the appellant is an uneducated man who was confused about many aspects of his employment but had been paid in cash for his work.

[485] Counsel for the respondent submitted one of the main problems with the credibility of the appellant was that he testified he had been paid by the hour for picking berries even though he used picking cards every day and, as an experienced farm worker, was well aware that pickers were remunerated only by weight and/or flats. Counsel submitted further that the only evidence of payment of wages was the worthless "I Cash Money Give" purported cheque.

ANALYSIS:

[486] First, I will deal with the issue whether the appellant has proven that he started work on June 2, 1996, rather than on June 10th, the date chosen by the Minister. The appellant testified his first task was picking strawberries. The evidence of Sweeney and others adduced during these proceedings favour – by a wide margin – a finding that – in 1996, due to weather conditions - the earliest date strawberries were ready to be picked was June 10. At Discovery, the appellant stated Bant telephoned him about the 8th or 9th day of the 6th month (June) to tell him the strawberries were ready and he recalled starting work a couple of days after that. He was unable to name any other SRC worker who worked with him on June 2. There is no basis on the evidence to conclude that the appellant started working earlier than June 10, 1996.

[487] The other matter at issue is whether Didar Singh Mehat proved he had insurable earnings as a result of his employment with SRC. He testified that even though he and his wife had worked for Bant during previous seasons and had been

paid by the pound or flat in 1996, they told him they would only work if paid an hourly rate of \$7. Mehat stated he thought this rate had been increased to \$8 towards the end of his employment. He testified that when he discovered other SRC workers were being remunerated on a piecework basis, he confronted Bant and Shindo – at their residence – and reminded them that he and his wife were supposed to be paid on an hourly basis and that they agreed to do so. He testified that he and his wife – the better picker of the two – could remember the number of strawberry flats picked each day and upon returning home recorded the number on a calendar. However, by the time they began picking raspberries, the appellant stated they were satisfied SRC was paying them an hourly wage. The hours per day were always the same but they marked down – on a calendar – the days worked because they took some days off during the season. At the end of the season, the calendar was taken to Bant’s house for the settling-up meeting and he assumed Bant and Shindo had taken the number of strawberry flats picked by him and his wife during that first part of the season and converted it to hours. Mehat testified that it was harder to get money from Bant for wages in 1996 than in the past. When working on the vegetable farms during a slow part of the berry season, he found employment from September 22 to October 26 with another employer who operated a cranberry farm. He testified he did not understand the purpose of the “I Cash Money Give” purported cheque and attempted to obtain some receipts from Shindo in order to prove to HRDC that he had received cash during the season in small amounts of \$300 and \$400 on several occasions. During his testimony, the appellant testified that the initials “D.S.” on the purported cheque were not written by him. The so-called receipts allegedly obtained from Shindo for the purpose of proving SRC had paid him two payments of \$500 each are worthless since they were signed by himself and not by anyone from SRC. Further, Mehat explained to the ICO during the June 9, 1998 HRDC interview that Rana had given him two advances - each in the sum \$500 - in January and February, 1996, because his daughter had been married in December, 1995 and he was short of money. During the same interview, the appellant said he deposited a \$6,000 cheque – received from SRC – to his bank account at Richmond Savings and Credit Union but the cheque was NSF so he took it to Rana and obtained \$6,000 in cash to replace it. The bank statements on that account do not record this alleged transaction. During his testimony, the appellant changed his story and stated it had been his wife and daughter who had gone to Shindo’s house to obtain cash in exchange for the \$6,000 NSF cheque. Then, he stated the entire story about an NSF cheque had been told to him by members of his family and he had just assumed it was the one for \$6,000.

[488] The appellant testified he did not take picking cards to Rana’s house at the end of the season but – later - admitted he had taken the ones issued to him and his wife during the first week or so when they picked strawberries. However, during direct

examination, he had testified that he had no need to bring picking cards home because he and his wife could remember the number of flats they picked each day. There were some cheques issued by SRC to the appellant's wife but when reviewing those amounts, if the appellant's claim is true, then SRC overpaid them - as a couple - by thousands of dollars. This is hard to believe coming from an employer that workers had to beg, plead and pester to be paid even small amounts of wages already earned.

[489] Because the Minister was satisfied the appellant was employed from June 10 to November 9, 1996, I am reluctant to find that he was not remunerated for his work. He had worked for Bant in the past and had been paid and worked for other employers as well. His wife was paid and the Minister recognized a certain amount of insurable earnings from her employment with SRC. The problem is that there are numerous inconsistencies in the appellant's testimony – and in his Discovery - in addition to contradictory statements made during his HRDC interview or within the Questionnaires. What amount could I find had been paid to him, albeit in cash? His testimony is not believable on so many other points that it makes it extremely difficult to grant him any credibility on this issue. I cannot understand why the appellant would tell Jeannie Suric – during an HRDC interview – that he deposited pay cheques to his Credit Union account on Cambie Street and he could not explain that during his testimony. It is obvious that he was not paid by the hour for picking berries. When his daughter admitted to Suric that she could not vouch for her father's employment - in 1996 - because she was living in Edmonton at the time, the appellant dismissed that statement as being unreliable and stated his daughter did not know much because she had returned from Edmonton after only a short time and lived at home that summer before getting married on December 25, 1996. That bit of information is interesting because he testified earlier that the reason he received a total of \$1,000 in cash from Rana in two payments during January and February, 1996 – several months before he started working for SRC – was because he was broke due to his daughter's recent wedding in December, 1995. The onus is on the appellant to prove his case; there is no burden on me to solve the many unresolved riddles and mysteries in this bizarre tale.

CONCLUSION:

[490] The appellant has failed to prove that he had any insurable earnings as a result of his employment with SRC from June 10 to November 9, 1996.

GURMAIL SINGH GILL:

RELEVANT BOOK OF DOCUMENTS: EXHIBIT R-17

MINISTER'S DECISION:

[491] The Minister decided the appellant was employed in insurable employment with SRC for 17 weeks during the period from June 23 to October 19, 1996 and had insurable earnings in the sum of \$3,151. In accordance with the Chart, counsel for the respondent conceded this sum should be increased by the amount - \$433.11 – attributable to pro-rated source deductions and that the appellant's insurable earnings are \$3,584.11.

APPELLANT'S POSITION:

[492] The appellant claimed he was employed from June 23 to November 2, 1996 and had insurable earnings in the sum of \$7,448.

SUBMISSIONS:

[493] Sadhu Tiwana, agent for the appellant, submitted the appellant was entitled to recognition of an expanded period of employment and greater insurable earnings even though there were aspects of his testimony that were somewhat confusing.

[494] Counsel for the respondent submitted the appellant failed to establish on a balance of probabilities that he worked after October 19, 1996 or that he had insurable earnings in excess of \$3,584.11. Counsel referred to numerous instances where the appellant's testimony was contradictory and unresponsive to the issues.

ANALYSIS:

[495] The appellant testified he received two cheques for wages in 1996 but because he did not have a bank account, cashed them both at the employer's TD bank, one on October 30 and the other on November 30, 1996. He stated he was paid most of his wages in cash but had no way of proving it. He mentioned a cheque which he thought had been returned NSF but when shown the "I Cash Money Give" purported cheque in the sum of \$4,000, agreed it was the one to which he had referred. He identified the "X" on the signature line of the purported cheque and stated he received the sum of \$4,000 in cash - at Rana's residence - and assumed he was signing that piece of

paper in order to acknowledge the payment. He claimed he was paid small amounts – between \$200 and \$400 – by Shindo and/or Rana during the season but did not sign any receipts. The appellant stated he was worried about receiving his wages due to the slow payment by SRC but was satisfied he had been paid in full by the time he received his ROE.

[496] During cross-examination by Johanna Russell, Gurmail Singh Gill was referred to answers given during Discovery where he stated he had a joint account - with his son - at a branch of the Royal bank. He agreed that – subsequently - a copy of the bank book for said account had been produced, covering activity therein from July 23 to December 31, 1996. During the appellant's interview with Jeannie Suric, his answer is recorded that he deposited two SRC cheques into his own account at the Royal bank and not into the joint account. Gill denied having given that answer and explained that when he testified in his direct examination that he had no bank account in 1996, he had understood the question to have been whether he had his own personal account rather than some other banking arrangement. The appellant worked three seasons - prior to 1996 – for Bant who operated a labour contracting business under a name other than SRC. During 1995, the appellant worked with Rana and told Suric that Rana had invited him to work for a new company Rana would be operating in 1996. In earlier years, Bant paid Gill by the flat for picking both strawberries and raspberries, and by the pound for blueberries and at the rate of \$6 per hour for vegetable work. According to Gill, the rates for picking - \$3.00 per flat and 25 cents per pound - were the same in 1996 as in 1993. The appellant agreed his pay statement was false in that he had not worked exactly 8 hours per day and was not paid \$7 per hour for picking berries. Gill stated that in his experience no worker was paid an hourly rate to pick berries because the industry standard was to pay pickers on a piecework basis and to pay workers by the hour only for tasks performed at vegetable farms. Gill described the long days during berry season which were due in part to travel time to Abbotsford - more than 2 hours each way - because the van had to stop to pick up people along the route. He stated he wrote down his hours when working on the vegetable farms and instructed his daughter-in-law to transfer those numbers into a book that he kept at home. He stated when berry picking was slow, he was transported to work on a vegetable farm and that later in the season, the SRC workers were assigned days on a rotation basis and no longer worked 5 – or more - days consecutively. Although Gill told Suric during his HRDC interview – tab 91 – that he was positive Rana drove him to work in the red van, he admitted that answer was incorrect. However, within a few minutes, the appellant testified Rana had driven him to work in a red van and that if he had known his answers during the HRDC interview would be referred to later he would not have made certain statements . The only driver mentioned by the appellant during the telephone interview with Janet

Mah - at the rulings stage – was Kang. Gill stated Shindo drove him to work at the vegetable farm until November 2 and that she had “lied to the government” when she claimed to have been laid off on October 26. He agreed he told Suric that he received \$4,500 in cash after working only two months because his brother – in India – was ill and needed money. Counsel pointed out to the appellant that if he had received that advance of \$4,500 and small sums in cash in addition to the \$4,000 in cash received at Rana’s house, together with the sum of \$3,151 – by cheque - his net earnings would have been substantially in excess of the sum of \$6,424 shown on his pay statement. The appellant responded by stating “I am illiterate” and added that he had been collecting wages for his son’s brother-in-law and mother-in-law, both of whom also worked for SRC.

CONCLUSION:

[497] The first matter to be decided is whether the appellant established that he worked for SRC after October 19, 1996. I find he has failed in this respect due to his contradictory statements and the bizarre quality of his testimony where he insisted Rana had driven him after all, notwithstanding a clear denial a few minutes earlier that this prior statement to Suric about being “certain” Rana had driven him, was not correct. Certainly, Kang was not available to drive the appellant after October 19 and no other driver was named by Gill until he decided to throw Shindo into the mix in order to cover the remaining period of his alleged employment.

[498] Next, I must decide whether the appellant has proven that he is entitled to any insurable earnings greater than the amount accepted by the Minister. The appellant conceded he had no means by which to prove he had been paid in cash. Just because someone does not have receipts, other documents or corroboration of cash payments that hurdle is not insurmountable provided the proponent has some credibility. Here, the appellant’s testimony in this regard is completely unreliable as characterized by a plethora of inconsistencies and outright contradictions. As I commented to the appellant during his testimony, it seemed as though he was making it up as he went along in order to cover huge gaps in his story. The appellant seemed to have difficulty comprehending that the onus was not on the respondent to disprove the receipt of his alleged cash payments. The appellant’s insurable earnings are in the sum of \$3,584.11.

BHAGWANT KAUR GREWAL:

RELEVANT BOOK OF DOCUMENTS – EXHIBIT R-34

MINISTER'S DECISION:

[499] The Minister decided the appellant was not employed in insurable employment with SRC from June 9 to October 26, 1996. However, counsel for the respondent conceded the appellant had been employed in insurable employment from July 10 to September 17, 1996 but had no insurable earnings during that period.

APPELLANT'S POSITION:

[500] The appellant claimed she was employed from June 9 to July 10 and from September 18 to October 26, 1996 and had insurable earnings in the sum of \$7,840 as shown on her ROE.

SUBMISSIONS:

[501] The appellant appeared on her own behalf and submitted she had performed the work as claimed and had insurable earnings as stated in her ROE.

[502] Counsel for the respondent advised that following a review of picking cards, the Minister was satisfied the appellant had been employed by SRC. However, the position of the respondent was that the appellant had not adduced sufficient credible evidence to prove she had worked in excess of the period accepted by the Minister or that she had any insurable earnings.

ANALYSIS:

[503] The appellant testified she spent the first few days of employment at a vegetable farm in Richmond where she dug out grass around cauliflower and that a few days later she started picking strawberries at Khakh Farms. She stated her pay was \$7 an hour for all tasks - including picking raspberries and blueberries – even though she used picking cards. However, when completing the Questionnaire, the answers to several questions therein clearly stated she had not used picking cards. The appellant acknowledged this information was wrong and blamed it on her daughter who completed the form on her behalf. Following the end of berry season, the appellant stated she worked at the Chinese Farm where she performed tasks in relation to zucchini, peppers, lettuce and radishes. She stated Shindo was her only van driver and that when the SRC van no longer came by her house in the morning, she called Rana who told her to come to his house and obtain her ROE and final payment. Grewal received a cheque – from SRC - in the sum of \$2,000 and cashed it

at the TD bank on November 4, 1996, even though she had an account at the Royal bank, nearby, also on Fraser Street. She testified it was necessary to ask for money during the season and either Shindo or Rana would hand her \$400 or \$500 in cash from time to time and that she received a final cash payment of between \$500 and \$700 when receiving her ROE. She stated she was not aware of the “I Cash Money Give” purported cheque in the sum of \$5,000 and that the signature thereon was not her own.

[504] During cross-examination by Johanna Russell, Bhagwant Kaur Grewal recalled attending – with her son - the HRDC interview on November 10, 1997 and that she had signed on the last page of the notes written by the ICO. Counsel referred the appellant to her answer in the rulings Questionnaire where she named Shindo and Harjit Gill as her only drivers and pointed out that during her HRDC interview – with Michel Fontaine – she had described a 40-45 year old male - known to her as Binder – as another driver. The appellant replied that Shindo had been her only driver. Concerning payment of wages, the appellant testified she was certain she had received a cheque – in the sum of \$1,000 – from Shindo and deposited it to her account in the Royal bank. When reminded by counsel for the respondent that - at her HRDC interview - she had provided a detailed statement explaining that she had received a \$1,000 cheque that – after deposit - was returned by the Royal as NSF and that she was given a replacement in the same amount, Grewal stated that answer was correct. During the HRDC interview, Grewal also described how she had received another 3 or 4 cheques - in addition to the two \$1,000 cheques and the \$2,000 cheque - that cleared through the SRC bank account and how these other cheques were NSF and she had to take them to Rana’s house in order to exchange them for cash. When confronted with these answers, Grewal denied she had given them to the interviewer and blamed her son’s ability as an interpreter claiming he barely knew enough English to “get by” at that time. With respect to another one of her answers, Grewal stated she was “astonished” the interviewer had written down that SRC still owed her \$3,000 as at the date of her layoff and that this outstanding amount had been paid off in small amounts of cash over the next 3 or 4 months. She also claimed her son never told her that HRDC wanted her to produce bank statements on her account. In responding to her Questionnaires, the appellant claimed she had been paid a total of \$3,500 by cheque and \$4,340 in cash for a total of \$7,840, an amount that conforms with the amount of gross earnings shown on her pay statement. The appellant conceded that she did not receive that amount of money and was certain she had provided that answer to her son and/or daughter who had assisted her to complete the Questionnaires. She also had stated therein that her last work was cleaning up the remaining blueberry crop. Grewal agreed her application for UI benefits had been completed at Rana’s house with Shindo’s assistance.

CONCLUSION:

[505] The first matter to decide is whether the appellant worked before July 10 or after September 17, 1996. On this issue and in respect of the question whether the appellant had any insurable earnings, where there is a conflict between the testimony of the appellant and that of Fontaine, I choose Fontaine's version. It is highly unlikely the appellant worked until October 26 because the weather conditions were such that most farmers would have had the zucchini crop picked by mid-October - at the latest - and Sweeney testified there had been a killing frost on October 20. The appellant also has a credibility problem concerning her drivers since she gave Fontaine a detailed description of Binder and the van he drove. The appellant told Fontaine that she picked strawberries in Richmond for a few days only and had worked mostly with vegetables. She also said she did not pick blueberries or raspberries and went on to describe the tasks associated with vegetables, including picking, weeding and washing. During her testimony, when confronted with these answers, the appellant denied ever making such statements. The interview was conducted in 1997 and one would expect her recollection of work allegedly done as late as October, 1996, would have been fresher in her memory than during her testimony in 2004 when she testified she picked raspberries and blueberries – each for more than a month – following her work picking strawberries at Khakh Farms. If she did pick those berries at Khakh Farms, the start date of June 9 would accord with the evidence adduced in these proceedings. However, the appellant's lack of credibility in so many areas makes it unlikely she is telling the truth about this period of her employment. I can accept that she worked later in the season because it is verified by picking cards but I cannot find she was employed earlier merely on the basis of her unsupported assertion.

[506] I find the appellant has not established that she was engaged in insurable employment with SRC during any period greater than the one acknowledged by the Minister.

[507] With respect to the issue of insurable earnings, there was a \$2,000 cheque that cleared the SRC bank account. The pro-rated amount of source deductions is \$274.42, according to the Chart. There is no question the appellant has a severe credibility problem concerning her alleged payments and there is no proof that she ever deposited any cheques to her own bank account, or that one was returned NSF.

She gave many versions concerning alleged payments, most of which are not believable so it would not be prudent to choose one over the other. On the other hand, even though the Minister harbours certain suspicions in this respect, there is no evidence capable of sustaining a finding that the appellant returned any part of the proceeds of the \$2,000 cheque to her employer and therefore, I find she is entitled to insurable earnings based on that amount.

[508] I find the appellant was employed in insurable employment with SRC during the period from July 10 to September 17, 1996 and had insurable earnings in the sum of \$2,274.42.

AMARJIT KAUR GREWAL:

RELEVANT BOOK OF DOCUMENTS: EXHIBIT R-35

MINISTER'S DECISION:

[509] The Minister decided the appellant was employed in insurable employment with SRC from June 9 to October 12, 1996 and had \$4,000 in insurable earnings.

APPELLANT'S POSITION:

[510] The appellant agrees with the decision of the Minister in respect of her period of employment but asserts her insurable earnings are in the sum of \$7,056.

SUBMISSIONS:

[511] Param Grewal, agent for the appellant, pointed out the appellant testified she received certain cash payments in addition to the amount already accepted by the Minister.

[512] Counsel for the respondent submitted the appellant's appeal should be dismissed because she admitted during her testimony that she repaid the sum of \$4,000 to the principals of SRC at Rana's house. As a result, counsel submitted it is moot whether the appellant received additional payments in cash because the sum

would be less than the amount already recognized by the Minister and that under the circumstances there is no basis to add an amount for pro-rated source deductions.

ANALYSIS:

[513] The appellant's testimony was interesting and illuminating. She stated she was paid \$4 per flat to pick strawberries, \$4.50 for raspberries and 24 cents a pound to pick blueberries. She was probably the fastest picker on the SRC payroll and one of the few who consistently could produce enough daily revenue for SRC in order to earn the amount required to pay her wage if she had really been working at \$7 per hour, 8 hours a day, 7 days a week, as alleged by some appellants based on the pay statements prepared by Bains Tax for SRC. She also testified that some workdays were 12 hours long and others were shorter if it rained. She also worked at the Chinese Farm in Richmond where she was paid \$7 per hour for performing tasks relating to crops of radishes and turnips. She stated she received a cheque - in the sum of \$4,000 - from Shindo who instructed her to ride with Rana and 4 or 5 other workers - in a van driven by Kang - to the TD bank at 49th and Fraser where they went inside and cashed their cheques. Then, Kang drove her and the others back to Rana's house where, although she was upset by this requirement, she handed over the \$4,000 proceeds of the cheque she had just cashed in order to receive her ROE. She assumed the other workers who had accompanied her to the bank and then back to Rana's house, did the same. There had been no calculation of any amount due to her for wages earned during her employment. Amarjit Kaur Grewal testified she retained between \$2,000 and \$2,500 of the money paid to her during her employment. She stated she had been instructed by Bant and Shindo not to mention using any picking cards and to tell HRDC that she had been employed on an hourly basis. Counsel referred the appellant to a Questionnaire completed on her behalf in which the answers were almost identical to those returned on behalf of Sukhwinder Kaur Toot and her husband, Karmjit Singh Johal, Gurcharan Kaur Johal, Gurmail Singh Cheema, Jaswinder Kaur Cheema and Bhagwant Kaur Grewal. The appellant recalled having been driven by Harbhajan Singh Kang to a meeting attended by these individuals - some of whom are appellants in the within proceedings - where Kang played a major role in "pressuring" workers to agree to provide certain answers - about their SRC employment - in Questionnaires which had to be returned to the government. During this meeting, Kang and other persons, described by Grewal as "educated people" completed the Questionnaires and she signed her form without knowing the contents because others at the meeting instructed her to follow the directions of Kang.

CONCLUSION:

[514] Counsel for the respondent had advised the Court earlier that the Minister continued to accept the appellant had \$4,000 in insurable earnings notwithstanding her revelation that this sum had been repaid to the employer. That being the case, I am prepared to endorse that position but – obviously – the appellant cannot be given credit for any other amount of cash she claims to have received, whether it was \$2,000, \$2,500 or an amount in between, because even if I accepted that a further amount had been paid, it would be more than offset by the appellant’s repayment of the sum of \$4,000 to SRC.

[515] The appellant is a talented berry picker and a straightforward witness who allowed herself to go along with the plan - hatched by Bant and Shindo – to deceive HRDC about her working conditions at SRC in order to avoid losing her “weeks money” and having to repay a substantial portion of her UI benefits, already received and spent.

[516] The decision of the Minister is confirmed and the appellant’s appeal is hereby dismissed.

SHARDA KAUR JOSHI:

RELEVANT BOOK OF DOCUMENTS: EXHIBIT R-36

MINISTER’S DECISION:

[517] The Minister decided the appellant was not employed in insurable employment with SRC during the period from June 9 to October 12, 1996.

APPELLANT’S POSITION:

[518] The appellant appeared on her own behalf and claimed she was employed during said period and had insurable earnings in the sum of \$7,000.

SUBMISSIONS:

[519] The appellant submitted she had established that she was employed with SRC during the period, as alleged, and had been paid wages.

[520] Counsel for the respondent submitted the appellant’s testimony that she was paid by the hour was not credible and tainted other aspects of her evidence. Counsel

submitted the appellant's version of working on the vegetable farms after blueberry season was not credible and that she had not provided that information during her HRDC interview. With respect to the matter of insurable earnings, counsel advised the SRC records indicated one cheque – in the sum of \$4,000 – payable to the appellant had cleared the TD bank on October 7, 1996, and that in the event I found her to have been engaged in insurable employment and that this payment constituted insurable earnings, then said earnings should be increased by the amount - \$528.55 – attributable to pro-rated source deductions in accordance with the Chart.

ANALYSIS:

[521] Sharda Kaur Joshi testified she started working for SRC on June 9, 1996, and weeded around plants for the first few days before picking strawberries on properties - in Abbotsford and Chiliwack - owned by Khakh Farms. She testified her wage was \$7 per hour and that on a good day she picked 10-12 flats of strawberries, a volume for which SRC would have received between \$43.50 and \$52.20 from the grower. Her daily production was recorded on a picking card. The appellant stated she picked raspberries until the end of August at two farms in Abbotsford and then picked blueberries at Gill Farms and at other farms. After berry season, she stated she worked a few days on vegetable farms in Richmond that grew radishes and zucchini. She received a cheque in the sum of \$4,000 that she cashed at TD bank at 49th and Fraser even though she was a signatory to a joint account at a branch of TD in Abbotsford. She testified she elected to obtain cash at the employer's bank because she was about to leave for a holiday in India and needed money for shopping. In addition to the cheque, Joshi stated Rana handed her \$300 in cash together with her ROE. She had worked for other labour contractors and did not find the method of payment unusual in that the bulk of her wages had been paid only at the end of the season and any small advances paid earlier were taken into account. She testified she did not know the purpose behind the "I Cash Money Give" purported cheque with her name in the payee space and stated it was not her signature thereon. She stated she recorded her hours of work each day and assumed she had been paid in full even though – in her opinion – she and other SRC workers had been "treated like slaves." Joshi came to Canada in 1993 and described her shock upon realizing she was expected to earn a living by working as a farm labourer since she had never done that sort of work while living in India.

[522] During cross-examination by Johanna Russell, Sharda Kaur Joshi conceded she can read, write and speak English at a level sufficient for everyday purposes and had taken third level ESL classes prior to obtaining her licence to work as a Pest Technician. She amended her earlier testimony by stating the \$300 in cash was

received when she was handed her ROE about a week after she received the \$4,000 cheque at Rana's house. She assumed, because she cashed that cheque on October 7, that she probably worked until October 12 and Rana had paid her an additional \$300 for that period when handing her the ROE. At Discovery, the appellant stated she picked raspberries on her first day of work without mentioning any weeding. She explained that answer by stating she had picked and weeded on that day but had worked picking strawberries earlier and that even though the general crop of raspberries is not ready for harvesting until July 1, on some farms berries are ready earlier and are sold at a higher price. The appellant agreed she had not provided locations of farms where she had worked - when completing the Questionnaire - but while preparing for Discovery, had telephoned various people to determine the identity and address of the farms where she had worked. Joshi testified she received cash two or three times, and had a specific recollection that one sum was either \$600 or \$700 and that the other two added up to about \$1,000. She denied bringing in two receipts - tab 111 - to Barb Long at HRDC in an effort to substantiate she had been paid cash by Rana even though - at Discovery - she stated she had some receipts and believed she had provided photocopies thereof to HRDC. She estimated she received a total of \$6,300 from SRC even though her net earnings should have been only \$6,075 if her pay statement was accurate. The appellant testified that Shindo picked her up at her Abbotsford residence and drove her to the farms in that area and/or to Richmond later in the year. When counsel pointed out the appellant was the only SRC worker living in Abbotsford and that it made no sense for SRC to send a van and driver to pick her up and take her to work, the appellant's immediate response was that she had ridden to work with either her father or her husband about 90% of the time. When completing the Questionnaire, Joshi never mentioned Shindo as her driver. At Discovery, she stated she rode to work - her first day - in a van driven by Bant. In Court, she testified her husband drove her to work that first day and that - thereafter - she always rode to work in a white SRC van.

CONCLUSION:

[523] The appellant has a problem getting a grip on reality. She complained she would have made more money picking berries on a piecework basis rather than receiving an hourly wage based on an 8-hour day but that she had not been given any option except to work at \$7 per hour. Her own estimates of her daily production - even of good days - do not support this contention. She could not remember providing receipts to the HRDC office and stated several times in her testimony that when Bant gave her cash she had not signed any receipt. There are numerous inconsistencies in her explanations about the type of work done, the location thereof, the method of transportation to and from work, the identity of her drivers, the

location of the bank where she cashed her cheque and so on. It is extremely doubtful she ever worked on a vegetable farm in Richmond after the end of berry season. It would make no sense for SRC to send a driver all the way to Abbotsford – from Vancouver - in order to pick her up and take her to Richmond during a slow time when it was employing workers on a rotating basis. It was difficult to believe the appellant when she testified concerning material aspects of her employment. She did not tell the truth very often and on those rare occasions when she did, it may have been accidental or because her memory of past deception had failed her and she was unable to reiterate an earlier statement.

[524] The burning question is this: in spite of her unsatisfactory conduct throughout, does the evidence support a finding that she worked for SRC during a certain period and that she had insurable earnings in an amount calculated on the basis of the \$4,000 cheque that cleared the SRC bank account. I have reviewed the relevant evidence as it relates to the overall operation of SRC in general and to this appellant in particular. My decision is truly a judgment call in the popular sense of that term and is based to a large extent on her overall testimony and demeanour in Court. I make this finding in spite of my confidence that the statements recorded by Barb Long during the HRDC interview were made by the appellant. Despite the inconsistencies in the appellant's statements during said interview, or when completing Questionnaires, and/or in her testimony at nearly every stage of the process, I am satisfied she picked berries from June 9 until the end of the blueberry season and have chosen September 30, 1996, as the day to represent that event. It would have been so much easier to resolve this issue had Joshi not been so sparing with the truth and so careless when providing information to HRDC and CCRA.

[525] I find the appellant was engaged in insurable employment with SRC from June 9 to September 30, 1996 and had insurable earnings in the sum of \$4,528.55.

JATINDER KAUR LIDHRAN:

RELEVANT BOOK OF DOCUMENTS: EXHIBIT R-37

MINISTER'S DECISION:

[526] The Minister decided the appellant was not employed in insurable employment with SRC during the period from August 25 to October 12, 1996.

APPELLANT'S POSITION:

[527] The appellant claimed she was so employed during said period and had insurable earnings in the sum of \$2,415.

SUBMISSIONS:

[528] The appellant appeared on her own behalf and submitted she had worked hard and had been paid for those efforts.

[529] Counsel for the respondent submitted the appellant had not proved her case because she had such a limited recollection of relevant details pertaining to her alleged employment, including her description of riding to work in a white van and entering that vehicle through a rear door. Counsel referred to the testimony of other appellants who testified about their work at the vegetable farm and submitted her evidence conflicted with the majority of those descriptions of tasks performed. In the event the appellant was found to have been engaged in insurable employment, counsel submitted she would not be entitled to any grossing-up of insurable earnings - by adding pro-rated source deductions - because she had been overpaid and her maximum net earnings were only \$2,415, according to the pay statement.

ANALYSIS:

[530] The appellant is an intelligent, well-spoken, young woman. In 1996, she worked for her father's business – Lidhran Farms – as a berry picker until the season ended just before the last week in August. She discovered Rana was hiring workers and went to work for SRC at \$7 per hour and on her first day was taken in a white van to a farm – owned by a Chinese man - in Richmond where she picked blueberries. A picking card was used to record weight. The appellant testified she was picked up the following day in the same van – driven by a female - and that there were about 20 people inside. She described working inside a structure on a vegetable farm in Richmond where she washed vegetables, including turnips, zucchini and daikon while other workers packed vegetables into a blue box. She stated that until she started work each day, she did not know if she would be working outside or inside but when the work was performed outside it involved washing vegetables in a tub and she did not do any picking or cutting. She testified her driver told her she would be laid off on October 12 and that she received her ROE – in the mail - a few days later and that a cheque in the sum of \$2,500 - payable to Jatinder Kaur Sidhu, her married name at that time - was either in the same envelope or arrived – separately - a few days later. She deposited the cheque to her husband's account at VanCity Credit Union. During her HRDC interview with Bowerman, the appellant stated she had never seen her earnings record - tab 91 – indicating she had gross pay

in the sum of \$2,415 and net pay in the sum of \$2,098. She had not collected UI payments before and was unaware of the number of weeks of extra work needed to qualify for benefits.

[531] During cross-examination by Selena Sit, Jatinder Kaur Lidhran stated she did not know the names of any co-workers or supervisors since it seemed no one had fulfilled that role. In her recollection, every day was nearly the same and she could not remember many details about the extent of work performed on each of the two vegetable farms in Richmond. She stated that when completing a Questionnaire, she had not mentioned picking blueberries in Richmond because that work lasted only one day. The appellant testified she had been extremely unhappy at that time as a result of finding herself in an unsuccessful, arranged marriage and that the main reason she worked was to get out of the house. Although she was unable to identify a photograph of Rana as the person who had hired her, she confirmed that the man who came to her house to offer her employment had introduced himself as Rana. She recalled riding in crowded conditions inside the van and that she crawled inside a rear door and found herself space to sit inside an area that had no seats.

CONCLUSION:

[532] The appellant testified she only washed vegetables at the farms and did not do any picking or cutting. When she arrived in the morning, there were piles of vegetables – in big bins - to be washed and she performed her tasks without being told what to do. She is well-educated and experienced in farming so it is not surprising she did not have to be issued an instruction manual in order to wash vegetables every day. She was unable to identify a photograph of Shindo, even though she had named Shindo as her driver every day on the basis she knew a female had always driven the white van. It is apparent the appellant was living in a fog, a sort of trance, during that unhappy period. Earlier that summer, she earned about \$6,000 working for her father at Lidhran Farms but her husband appropriated that money, presumably for his own purposes. She has been in Canada since age 5 and after completing Grade 12 attended college. She is currently employed in a responsible position as a Civil Aviation Assistant. It is reasonable to assume that for the appellant to work at a menial job with much older people merely to escape her marital home, caused her to close off most of her memory banks because her days consisted of getting up early, riding in a crowded van, washing vegetables and returning home. She had a son, born in January, 1996 who she left behind each day in the care of her husband. I am not overly concerned about her awkward attempts to recall the configuration of the van, the extent of open space therein or the seating arrangement. When Harbhajan Singh Kang testified, he described how he had

complained to Bant/Shindo/Rana about the crowded and unsafe conditions inside the vans where people were forced to sit on the floor or jam themselves into small spaces between the seats or lean against the sides of the vehicle. As the appellant pointed out during her direct testimony, if she wanted to qualify for UI benefits she would have begged her father for another 6 or 7 weeks work. She also stated she had no idea why her pay cheque was in the exact sum of \$2,500. However, it is reasonable to conclude she would not have had much interest in that detail since it had to be deposited to her husband's personal account to be used at his discretion. One reason Lidhran's evidence concerning her tasks at the vegetable farms might seem to conflict with those described by other workers is that most of them had invented all or part of their tasks during part or all of their alleged employment and I have decided – earlier - that some of them never worked there, either as alleged, or at all. I accept the appellant's testimony concerning the duration of her employment.

[533] With respect to the appellant's insurable earnings, she received the sum of \$2,500 for her efforts. The earnings record shows her gross earnings as \$2,415 and – taking into account the circumstances of her employment - her insurable earnings cannot be greater than that sum.

[534] I find the appellant was employed in insurable employment with SRC from August 25 to October 12, 1996 and had insurable earnings in the sum of \$2,415.

SUKHWINDER KAUR HUNDAL:

RELEVANT BOOK OF DOCUMENTS: EXHIBIT R-38

MINISTER'S DECISION:

[535] The Minister decided the appellant was not employed in insurable employment with SRC during the period from November 17 to December 28, 1996.

APPELLANT'S POSITION:

[536] The appellant appeared on her own behalf and claimed she worked during said period and had insurable earnings in the sum of \$2,282, as shown on her ROE.

SUBMISSIONS:

[537] The appellant submitted she worked as described in her testimony and that it had been a difficult job which should have entitled her to receive UI benefits following layoff.

[538] Counsel for the respondent submitted the appellant had failed to establish on a balance of probabilities that she had worked during the period claimed and that she was unable to provide any reasonable explanation for the multitude of inconsistencies and contradictions between her testimony and the answers she had provided previously to HRDC and/or CCRA.

ANALYSIS:

[539] The appellant arrived in Canada on July 1, 1996, and started working for Canwest Farms the next day. She worked there until November 15 when the last blueberry work was finished. During her employment with Canwest Farms, she received cash advances against a final payment of wages. In India, the appellant and her husband owned a 40-acre farm that – in 1996, at \$15,000 Canadian per acre - was worth about \$600,000 but they decided to lease the farm to their son rather than sell it. Hundal stated she began working for SRC on November 17 and while talking with other workers learned about the government program whereby people could receive UI benefits following layoff. She testified she went to a farm and picked various vegetables, including turnips, radishes and sprouts and placed them in boxes. She recalled working 7 or 8 hours a day at different farms with a day off if it was too cold to wash the vegetables outside. The appellant was referred to the “I Cash Money Give” purported cheque in the sum of \$2,148 and to a signature thereon which she stated had not been written by her. She testified Rana paid her cash on her last day of employment and that she took the money home to be counted and although unsure of the amount, was certain it was less than \$5,000. During an HRDC interview, Hundal stated she was “given one cheque, at the end of six weeks, when all the work was done.” Another answer given by her at that time was that she signed the cheque and gave it to her husband. Another response was that she had not received any cash but only a cheque in payment of wages. At Discovery, the appellant asserted – on at least two occasions – that she spent the entire period of her employment picking Brussels sprouts. During a face-to-face interview with Janet Mah on July 14, 1999, Hundal stated she had performed tasks only in relation to the sprouts. Upon being advised by counsel that the expert evidence adduced on behalf of the respondent was that all Brussels sprouts crops were finished by November 15, and that no other SRC worker

had mentioned working that late on sprouts, the appellant agreed she had not worked on days that were cold. During the HRDC interview on May 26, 1997, Hundal told Mike Taylor – ICO – that she rode to work “ in two vans, one green and one cream-coloured” and that she was driven by “ the same person, a man, regardless of van.” However, at Discovery, the appellant testified that she had always been driven to work by Rana. She was unable to explain that inconsistency but it is reasonable to draw the inference that she found out all male drivers had been laid off by November 17 and attempted to regain lost ground by stating Shindo had driven her to work throughout November and until her layoff on December 28, 1996.

CONCLUSION:

[540] As I indicated to the appellant during her testimony, I did not doubt that she had picked berries for Canwest Farms but the issue was whether she had worked for SRC on the vegetable farms, as alleged. The SRC payroll record for Hundal indicates she worked an average of 55 hours a week even though she testified she took some days off when it was too cold. The weather was cold in November and December and there was a substantial amount of snow on the ground for several days at a time and it snowed again on December 28, her last day of work. According to the evidence of Sweeney, it is unlikely any vegetable other than Brussels sprouts would have been harvested after November 15, yet the appellant claims to have worked 55 hours a week picking and washing other sorts of vegetables. Sweeney also testified that even the hardier varieties of vegetables would have been destroyed or rendered unmarketable by November 23 due to extreme overnight temperatures in Richmond. There would have been no vegetables to pick or wash or pack after that date, because even Brussels sprouts would have been finished by that bout of bad weather even if they had survived earlier low temperatures in October. The answers provided by the appellant during the HRDC interview were interpreted by her niece whom she brought to the office for that purpose. A partial transcript of answers given by the appellant at Discovery clearly established that she described working on cutting Brussels sprouts, shaking them, and putting them in a bucket. She was asked pointblank whether she had picked any other vegetables not only on that first day but during the entire time she worked for Rana. She replied she had not done any other work and confirmed that she had picked Brussels sprouts for 6 weeks. The appellant changed her story that her driver had always been a man by stating Rana had ridden in the van with her but Shindo was the driver. When the appellant was confronted with the fact she had provided different answers to the effect that Rana always drove and then that Shindo always drove - both of which could not be true - she replied “ ... I just said it like just the way in India that, you know, he used to go with us and that’s the only person that we knew, so I named him.” In the appeals Questionnaire

submitted on her behalf, co-workers were named, including Harbans Kaur Kang who was laid off on October 19 and left for India on October 11 days later. Hundal agreed that information was incorrect as she did not know Harbans Kaur Kang.

[541] The appellant has not demonstrated on a balance of probabilities that she was employed by SRC during the period alleged or at all. The evidence points the other way and it is not difficult to conclude that her 6-week alleged employment was a sham and had been designed to provide her with a false ROE that – in addition to her previous employment at Canwest Farms – would entitle her to receive UI benefits.

[542] Even if I had found that the appellant was in insurable employment with SRC, she has not proven that she was paid any sum of money that could constitute insurable earnings. During her testimony, Hundal stated – on three separate occasions – that she was paid in cash only once on her last day of work. During the HRDC interview, she stated she was paid by cheque – in the sum of \$800 - and did not receive any cash. The appellant was unable to explain these contradictions except to complain that it had been a long time ago and she could not remember what she said at that time. There were no cancelled cheques among the SRC records nor any other reliable documentation upon which one could infer that the appellant had every been paid by SRC.

[543] The appellant has not adduced sufficient credible evidence to support her position that she was employed by SRC and/or that she was paid in respect of any employment. As a result, her appeal is dismissed.

[544] At this point, I want to comment on one aspect of these appeals. Over the past couple of decades, the expression “like nailing Jello to a wall” has been used to define the frustration arising from attempts to pin someone down to a specific version of events proffered in support of a particular proposition. That otherwise daunting task - when viewed in the context of making sense of some of the testimony presented in the within proceedings - seems like child’s play. It was more like trying to Scotch-tape fog to a stone fence. Often, a question elicited several different answers from the same witness whose response was often tailored to meet the perceived purpose of the question. Sometimes, the proceedings took on the aspect of that popular television game show where the host/questioner demands, “Is that your final answer?” It is not surprising that someone is unable to recall specific details in relation to one or more events which never occurred as it requires an exceptional memory in order to sustain an outright fabrication over an extended period because the devil is always in the details.

[545] The Honourable Judge Miller, Tax Court of Canada, encountered similar difficulties hearing the case of *Khunkhun c. Canada (Minister of National Revenue – M.N.R.)*, [2002] T.C.J. No. 483. The appeal involved whether the appellant had worked in insurable employment - in an orchard – during the summer of 2000, and, if so, what was the correct number of insurable hours. In the *Khunkhun* matter, the Agricultural Compliance Team had visited the orchard on a day when the appellant was not present. Also, the appellant had not maintained a record of her hours and her husband – whom it had been suggested had kept track of her hours – was not produced as a witness. Cheques had been made out – by the payer – to the worker on a more or less regular basis but the appellant had actually received payment all at once at the end of the growing season in October. Commencing at paragraph 12 of his judgment, Judge Miller commented as follows:

12. Was Ms. Khunkhun employed as an orchard worker on Mr. Nagra's farm for 961.5 hours in 2000? The Respondent's position is no, she was not. According to the Respondent, the ROE for 2000 and four October cheques were nothing more than a sham to give the appearance that the Appellant worked. The ROE was inconsistent with the evidence Ms. Khunkhun was paid partially by piece work. Ms. Khunkhun was not being truthful in suggesting she was present at the farm team visits. The cheques were made out at the same time. There is no evidence that two of them were ever deposited. Ms. Khunkhun could not verify how many hours she worked, nor how many days she missed. These are all factors that work against her position of 961.5 hours of insurable employment.

13. Are there factors that support her position? Her somewhat evasive answers about time actually worked gave little support to the figure of 961.5 hours; however, they still suggested to me that she has worked as an orchard worker. The pay stubs for 2001 provided some evidence of that. They also support the breakdown between piece work and hourly wages, albeit for the 2001 year and not the 2000 year. Another factor in support of Ms. Khunkhun's position is that Canada Trust's confirmation of the two deposits clearly represented two of the October 2000 cheques. I am satisfied that workers might not be paid until the end of the season. This does appear to be common practice. Finally, Mr. and Mrs. Bains supported Ms. Khunkhun's position as an orchard worker in 2000, but provided no evidence as to her hours.

14. What should I take from Mr. Nagra's presence but failure to testify? Is there a negative inference contrary to Ms. Khunkhun's position to be drawn? This was not suggested by the Respondent. Was he there in some way to intimidate? Again, I cannot say, but I

do find it curious. Presumably, he did not want to give evidence and certainly nobody wanted to force him to.

15. My overall impression of Ms. Khunkhun and Mr. and Mrs. Bains was that they exhibited a nervous, cautious almost fearful demeanour. This leads me to the conclusion that I have not heard the whole story of Mr. Nagra and his workers. I believe there are likely some liberties being taken with the truth of Ms. Khunkhun's employment. There is simply more going on than I can fully ascertain. I do not, however, believe that the whole thing is a sham as the Respondent would have me believe. Yes, there were inconsistencies; yes, testimony was at times vague; and yes, I believe Ms. Khunkhun lied about being present at the farm team visits. However, testimony was also supportive of Ms. Khunkhun's working and receiving some payment for that work. The truth I suggest lies somewhere between the sham suggested by the Respondent and the 961.5 hours suggested by the Appellant.

16. Having reached that conclusion, I am mindful of Judge Margeson's comments in *Narang v. M.N.R.* ([1997] T.C.J. No. 99) a case similar to this, where he stated:

Certainly if the Court should find that there was a "sham transaction" then there was no insurable employment, but the Respondent has no burden to establish that there was a "sham transaction".

The burden is on the Appellant and the Intervenors to establish on a balance of probabilities that there was work performed under a contract of service, that the workers worked the periods of time set out in the ROEs and that they were paid the amounts referred to therein.

I find that on the balance of probabilities, Ms. Khunkhun performed work under a contract of service for some period during 2000. However, I am not convinced that she worked the period of time set out in the ROE, nor that she was paid the full amount referred to therein. I do find that she received the payments of two of the October 2000 cheques totalling \$3,383.79. Based on the Respondent's assumptions of Mr. Nagra's deductions on Ms. Khunkhun's T4 slip, this would represent a gross pay of approximately \$4,380. At an hourly rate of \$10 this suggests 438 hours worked. While I recognize that this is a rough and ready approach to the problem, I am prepared to allow the appeal to this extent for the following reasons.

17. I am not satisfied that it is the worker who is wholly at fault here. As I have indicated, I suspect something is indeed rotten in the orchard business, though I am not sure exactly what, but to penalize the worker alone, the lowest spectrum of the fruit industry, does not seem just. My impression is that these seasonal workers, many who do not understand English, can be subjected to questionable labour tactics. Presumably, this is why these farm teams in British Columbia go to orchards, to in part educate the workers about their rights and responsibilities. The worker is wrong to fall into any trap for purported personal gain which involves deceiving the authorities. That is not tolerable. Neither is it acceptable that the most vulnerable bear an uneven burden and responsibility when deceit is uncovered. I believe Ms. Khunkhun worked for Mr. Nagra in 2000, but the hours reported by Mr. Nagra on the ROE are inaccurate. I am not prepared to reduce them to zero with the consequential adverse impact on Ms. Khunkhun. Neither am I prepared to allow Ms. Khunkhun's claim of having worked 961.5 hours based on the evidence she presented. I allow the appeal and refer the matter back to the Minister on the basis that Ms. Khunkhun worked 438 hours of insurable employment in 2000.

[546] The whole of the evidence leaves one with the distinct impression that Bant and Shindo knowingly operated a business that was used – for the most part – as a vehicle by which they could perpetrate a fraud against the unemployment insurance system. Even though Rana was the sole shareholder and director of SRC, he was a straw man and the business operation – at all material times - was under the direction of Bant and Shindo. SRC was the instrument chosen to continue the labour contracting business formerly operated by a corporation controlled by Bant. It is interesting to note that when Rana was working in the fields in 1995, he invited a fellow farm worker to work for him the following year because he was forming a corporation to carry on the labour contracting business. Throughout, the onus was on the appellants to establish on a balance of probabilities that they had been employed in insurable employment and had insurable earnings. There was not any burden on the respondent to prove that part or all of any appellant's putative employment was a sham. These appeals were not like those cases where the respondent simply makes a bald assertion in a Reply that certain employments are not genuine and hopes that – without more - it will be accorded the status attributable – in law - to an assumption of fact. In this instance, the Minister provided details not only in a general sense as they related to the SRC business operation but also set forth in each individual appellant's Reply particular assumptions of fact pertaining to certain troubling aspects of his or her employment. Therefore, it should have been apparent to the appellants that certain assumptions had to be rebutted in order that their appeals could

succeed. Throughout the conduct of these appeals, no matter how many times the concept of the onus was explained to the appellants, most of them seemed to believe that before they would have to repay any debt to HRDC – arising from the alleged overpayment of UI benefits - the respondent had to prove - to some degree approaching certainty – they had participated in creating a sham employment scenario or were otherwise major players in the overall scam perpetrated by SRC. As a result, it often led to several appellants adopting the erroneous philosophy that the less said about their SRC employment situation, the better, since any residual doubt about their entitlement to UI benefits would – somehow - be resolved in their favour.

[547] The impact of the SRC matter on the federal treasury was significant not only in respect of the loss of revenue in the form of unremitted source deductions and GST but also from HRDC having paid and/or overpaid UI benefits to individuals who were not qualified to receive either the specific amount of the benefits or any sum at all. The cost of the HRDC investigation, the CCRA rulings and appeals process, and the subsequent litigation – including the cost and inconvenience to the appellants – can be laid squarely at the door of Bant and Shindo and – to a lesser extent – Rana and those workers who willingly played along with their scheme. The method of operation employed by SRC was extremely unfair to other legitimate labour contractors because it is not difficult to obtain a competitive edge if there is no intention to remit source deductions or GST, or if workers are not paid their proper wages or if the sale of phony ROEs is a source of business revenue.

[548] The full-scale HRDC inquiry occurred because Michel Fontaine pressed on with his concerns after discerning a pattern was emerging in the course of reviewing claims by former SRC workers. The Major Fraud Unit within HRDC declined to pursue the matter – more than once – and one shudders to think about what other pressing business was occupying the time and talent of that specialized unit if the SRC matter was considered to be small potatoes. The coordination – by Fontaine – of the ongoing investigative efforts by other ICOs working out of several HRDC offices in the Lower Mainland enabled the matter to move forward at an orderly pace and led to requests to CCRA for rulings on the insurability of employment of nearly 100 workers. The practice of scheduling additional interviews for the same claimant served to elicit additional information that - sometimes – aided in establishing some significant component of his or her claim. Initially, I was concerned about the involvement of Richard Blakely – Rulings Officer – in the investigative process. It is one thing for Blakely to have assumed the role of resource person at the meetings attended by ICOs and their supervisors in order to explain the rulings process and to discuss with them the indicia generally considered important by a Rulings Officer in the course of arriving at a decision. However, it is another for him to have

participated in interviews with claimants. As the hearing progressed, it became apparent Janet Mah was the sole person responsible for issuing all the rulings for SRC workers and that she had no contact with Blakely during that lengthy process. Notwithstanding, I think it is difficult for outsiders to appreciate the compartmentalization within a CCRA office that is designed to permit an independent decision to be made. There had been initial contact between Fontaine and Bernie Keays – Appeals Officer – but only to the extent that Keays declined to participate in discussions and referred Fontaine to Blakely. The internal policy of CCRA required John Morgan, Team Leader, to sign – on behalf of the Minister – all decision letters issued to SRC workers even though they were based on the recommendations of Keays in accordance with his reports. It seems to me the better practice would be for the relevant Appeals Officer to sign and issue the letter of decision based on his or her own work so that responsibility for said decision is apparent at the outset. I appreciate that the HRDC branch offices – generally - and Fontaine’s in particular were confronted with a situation that was out of proportion to any previous investigations in that the SRC matter concerned a single-employer and involved a large number of workers who had allegedly been working at different locations over an extended period. Also, one must keep in mind that some policy and procedures were being developed as the matter unfolded and there was no handy instruction manual to follow in view of the scale of the investigation. Under the circumstances, the methodology developed by Fontaine was – in my opinion – fair and reasonable and afforded claimants a full opportunity to present facts in support of their position.

[549] In my view, the quality of interpretation services provided during HRDC interviews was sufficient under the circumstances and I am satisfied no appellant suffered as a result. In ordinary matters that will probably never be the subject of litigation, I do not see a problem if a claimant chooses to use a family member or friend as an interpreter. In the same context, if an HRDC employee interprets during an interview – either alone or in addition to the interpreter brought in by a claimant – that will be acceptable on most occasions. However, where there is reason to believe a matter will be contentious and it is reasonable to expect that a great deal of time and effort may be spent determining the precise words spoken, in my opinion, it is money well spent to retain the services of an independent court certified interpreter. In making that comment, I am aware this practice was followed as often as possible but that due to budgetary restraints within individual HRDC offices, the ability to do so on a consistent basis was limited.

[550] The hearing of these appeals was facilitated by the methodical presentation of exhibits and otherwise benefited from the overall organization of a large amount of

material in an orderly manner. The scheduling of witnesses adhered to a reasonable timetable and I am satisfied there was full and frank disclosure of all relevant evidence capable of having an impact on the appeal of any appellant. In this regard, all parties to the litigation were well served by the excellent quality and consistency of the Punjabi-English, English-Punjabi interpretation/translation undertaken by Russell Gill.

[551] Counsel for the respondent are to be commended for the quality of their submissions and their conduct throughout, especially for their assistance on many occasions whether in sorting through a mass of information to locate a significant reference or in preparing material such as schedules or charts.

[552] The efforts of Darshen Narang – agent for the first-named group of appellants – are appreciated in respect of his willingness to cooperate in terms of scheduling, his familiarity with the large amount of material contained within the exhibits and his representations on behalf of those appellants he represented.

[553] The other agents who appeared before me and those appellants who represented themselves did their best to advance their cause and documents relevant to their appeals - contained within a separate binder - were filed as exhibits in order that they could be referred to in the course of their testimony.

Signed at Sidney, British Columbia, this 12th day of January 2005.

"D.W. Rowe"

Rowe, D.J.

CITATION: 2005TCC24

COURT FILE NOs.: 2000-2354(EI), 2000-2357(EI),
2000-2356(EI), 2000-2359(EI),
2000-2319(EI), 2000-2366(EI),
2000-2370(EI), 2000-2322(EI),
2000-2321(EI), 2000-2367(EI),
2000-2368(EI), 2000-2362(EI),
2000-2363(EI), 2000-2360(EI),
2000-2365(EI), 2000-2329(EI),
2000-2335(EI), 2000-2323(EI),
2000-2342(EI), 2000-2334(EI),
2000-2324(EI), 2000-2325(EI),
2000-2328(EI), 2000-2144(EI),
2000-2653(EI), 2000-2332(EI)

STYLE OF CAUSE: Varinder Kaur Kang, Varinder Jassal,
Harbans Kaur Kang, Jaswinder Bassi,
Taro Bassi, Bakhshish Kaur Thandi,
Gian Singh Thandi, Jaswinder Cheema,
Gurmail Cheema, Ajmer Kaur Gill,
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Sharinder Singh Bagri,
Harbans Kaur Purewal, Parmjit Rehal,
Gurcharan Johal, Prabhjot Minhas,
Gurbachan Gill, Sukhwinder Toot,
Didar Mehat, Bhagwant Grewal,
Amarjit Grewal, Sukhwinder Hundal
Sharda Joshi, Gurmail Singh Gill,
Jatinder Lidhran, and M.N.R.

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: During the course of 71 days between
November 3, 2003 to June 8, 2004

REASONS FOR JUDGMENT BY: The Honourable D.W. Rowe,
Deputy Judge

DATE OF JUDGMENT: January 12, 2005

APPEARANCES:

Agent for the First Group of Appellants: Darshen Narang

For the Appellant Bhagwant Grewal The Appellant herself

Agent for the Appellant Amarjit Grewal Param Grewal

For the Appellant Sukhwinder Hundal The Appellant herself

For the Appellant Sharda Joshi The Appellant herself

For the Appellant Gurmail Singh Gill Sadhu S. Tiwana

For the Appellant Jatinder Lidhran The Appellant herself

Counsel for the Respondent: Johanna Russell
Selena Sit

COUNSEL OF RECORD:

For the Appellants:

Name:

Firm:

For the Respondent:

John H. Sims
Deputy Attorney General of Canada
Ottawa, Canada