

Docket: 2004-3736(EI)

BETWEEN:

FERME JALNA INC.,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard from May 16 to 19, 2005, at Rivière-du-Loup, Quebec
Before: The Honourable Justice Alain Tardif

Appearances:

Counsel for the Appellant: Frédéric St-Jean

Counsel for the Respondent: Stéphanie Côté
Julie David

JUDGMENT

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

Signed at Ottawa, Canada, this 2nd day of December 2005.

"Alain Tardif"

Tardif J.

Translation certified true
on this 19th day of June 2008.

Brian McCordick, Translator

Docket: 2004-3735(EI)

BETWEEN:

JEAN-MARIE DUBÉ,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard from May 16 to 19, 2005, at Rivière-du-Loup, Quebec
Before: The Honourable Justice Alain Tardif

Appearances:

Counsel for the Appellant: Frédéric St-Jean

Counsel for the Respondent: Stéphanie Côté
Julie David

JUDGMENT

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

Signed at Ottawa, Canada, this 2nd day of December 2005.

"Alain Tardif"

Tardif J.

Translation certified true
on this 19th day of June 2008.
Brian McCordick, Translator

Docket: 2004-3771(EI)

BETWEEN:

DANY DUBÉ,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard from May 16 to 19, 2005, at Rivière-du-Loup, Quebec
Before: The Honourable Justice Alain Tardif

Appearances:

Counsel for the Appellant: Frédéric St-Jean

Counsel for the Respondent: Stéphanie Côté
Julie David

JUDGMENT

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

Signed at Ottawa, Canada, this 2nd day of December 2005.

"Alain Tardif"

Tardif J.

Translation certified true
on this 19th day of June 2008.

Brian McCordick, Translator

Dockets: 2004-3744(EI)
2004-3745(EI)

BETWEEN:

FRANCIS OUELLET,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeals heard from May 16 to 19, 2005, at Rivière-du-Loup, Quebec
Before: The Honourable Justice Alain Tardif

Appearances:

Counsel for the Appellant: Frédéric St-Jean

Counsel for the Respondent: Stéphanie Côté
Julie David

JUDGMENT

The appeals under subsection 103(1) of the *Employment Insurance Act* are dismissed and the decisions of the Minister of National Revenue are confirmed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 2nd day of December 2005.

"Alain Tardif"

Tardif J.

Translation certified true
on this 19th day of June 2008.

Brian McCordick, Translator

Dockets: 2004-3746(EI)
2004-3751(EI)

BETWEEN:

DENIS OUELLET,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeals heard from May 16 to 19, 2005, at Rivière-du-Loup, Quebec
Before: The Honourable Justice Alain Tardif

Appearances:

Counsel for the Appellant: Frédéric St-Jean

Counsel for the Respondent: Stéphanie Côté
Julie David

JUDGMENT

The appeals under subsection 103(1) of the *Employment Insurance Act* are dismissed and the decisions of the Minister of National Revenue are confirmed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 2nd day of December 2005.

"Alain Tardif"

Tardif J.

Translation certified true
on this 19th day of June 2008.

Brian McCordick, Translator

Dockets: 2004-3774(EI)
2004-3775(EI)

BETWEEN:

GHISLAIN CHASSÉ,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeals heard from May 16 to 19, 2005, at Rivière-du-Loup, Quebec
Before: The Honourable Justice Alain Tardif

Appearances:

Counsel for the Appellant: Frédéric St-Jean

Counsel for the Respondent: Stéphanie Côté
Julie David

JUDGMENT

The appeals under subsection 103(1) of the *Employment Insurance Act* are dismissed and the decisions of the Minister of National Revenue are confirmed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 2nd day of December 2005.

"Alain Tardif"

Tardif J.

Translation certified true
on this 19th day of June 2008.

Brian McCordick, Translator

Docket: 2004-3764(EI)

BETWEEN:

JOSEPH CHASSÉ,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard from May 16 to 19, 2005, at Rivière-du-Loup, Quebec
Before: The Honourable Justice Alain Tardif

Appearances:

Counsel for the Appellant: Frédéric St-Jean

Counsel for the Respondent: Stéphanie Côté
Julie David

JUDGMENT

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

Signed at Ottawa, Canada, this 2nd day of December 2005.

"Alain Tardif"

Tardif J.

Translation certified true
on this 19th day of June 2008.

Brian McCordick, Translator

Dockets: 2004-3769(EI)
2004-3770(EI)

BETWEEN:

BRUNO DIONNE,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeals heard from May 16 to 19, 2005, at Rivière-du-Loup, Quebec
Before: The Honourable Justice Alain Tardif

Appearances:

Counsel for the Appellant: Frédéric St-Jean

Counsel for the Respondent: Stéphanie Côté
Julie David

JUDGMENT

The appeals under subsection 103(1) of the *Employment Insurance Act* are dismissed and the decisions of the Minister of National Revenue are confirmed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 2nd day of December 2005.

"Alain Tardif"

Tardif J.

Translation certified true
on this 19th day of June 2008.

Brian McCordick, Translator

Dockets: 2004-3772(EI)
2004-3773(EI)

BETWEEN:

SERGE DIONNE,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeals heard from May 16 to 19, 2005, at Rivière-du-Loup, Quebec
Before: The Honourable Justice Alain Tardif

Appearances:

Counsel for the Appellant: Frédéric St-Jean

Counsel for the Respondent: Stéphanie Côté
Julie David

JUDGMENT

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Signed at Ottawa, Canada, this 2nd day of December 2005.

"Alain Tardif"

Tardif J.

Translation certified true
on this 19th day of June 2008.

Brian McCordick, Translator

Dockets: 2004-3765(EI)
2004-3766(EI)

BETWEEN:

DANIEL DUBÉ,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeals heard from May 16 to 19, 2005, at Rivière-du-Loup, Quebec
Before: The Honourable Justice Alain Tardif

Appearances:

Counsel for the Appellant: Frédéric St-Jean

Counsel for the Respondent: Stéphanie Côté
Julie David

JUDGMENT

The appeals under subsection 103(1) of the *Employment Insurance Act* are dismissed and the decisions of the Minister of National Revenue are confirmed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 2nd day of December 2005.

"Alain Tardif"

Tardif J.

Translation certified true
on this 19th day of June 2008.

Brian McCordick, Translator

Docket: 2004-3767(EI)

BETWEEN:

GUILDO DUBÉ,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard from May 16 to 19, 2005, at Rivière-du-Loup, Quebec
Before: The Honourable Justice Alain Tardif

Appearances:

Counsel for the Appellant: Frédéric St-Jean

Counsel for the Respondent: Stéphanie Côté
Julie David

JUDGMENT

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

Signed at Ottawa, Canada, this 2nd day of December 2005.

"Alain Tardif"

Tardif J.

Translation certified true
on this 19th day of June 2008.

Brian McCordick, Translator

Dockets: 2004-3761(EI)
2004-3763(EI)

BETWEEN:

DANIEL LAVOIE,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeals heard from May 16 to 19, 2005, at Rivière-du-Loup, Quebec
Before: The Honourable Justice Alain Tardif

Appearances:

Counsel for the Appellant: Frédéric St-Jean

Counsel for the Respondent: Stéphanie Côté
Julie David

JUDGMENT

The appeals under subsection 103(1) of the *Employment Insurance Act* are dismissed and the decisions of the Minister of National Revenue are confirmed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 2nd day of December 2005.

"Alain Tardif"

Tardif J.

Translation certified true
on this 19th day of June 2008.

Brian McCordick, Translator

Dockets: 2004-3756(EI)
2004-3760(EI)

BETWEEN:

MAURICE LÉVESQUE,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeals heard from May 16 to 19, 2005, at Rivière-du-Loup, Quebec
Before: The Honourable Justice Alain Tardif

Appearances:

Counsel for the Appellant: Frédéric St-Jean

Counsel for the Respondent: Stéphanie Côté
Julie David

JUDGMENT

The appeals under subsection 103(1) of the *Employment Insurance Act* are dismissed and the decisions of the Minister of National Revenue are confirmed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 2nd day of December 2005.

"Alain Tardif"

Tardif J.

Translation certified true
on this 19th day of June 2008.

Brian McCordick, Translator

Dockets: 2004-3753(EI)
2004-3754(EI)

BETWEEN:

BRIGITTE LORD,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeals heard from May 16 to 19, 2005, at Rivière-du-Loup, Quebec
Before: The Honourable Justice Alain Tardif

Appearances:

Counsel for the Appellant: Frédéric St-Jean

Counsel for the Respondent: Stéphanie Côté
Julie David

JUDGMENT

The appeals under subsection 103(1) of the *Employment Insurance Act* are dismissed and the decisions of the Minister of National Revenue are confirmed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 2nd day of December 2005.

"Alain Tardif"

Tardif J.

Translation certified true
on this 19th day of June 2008.

Brian McCordick, Translator

Docket: 2004-3749(EI)

BETWEEN:

JULIE LORD,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard from May 16 to 19, 2005, at Rivière-du-Loup, Quebec
Before: The Honourable Justice Alain Tardif

Appearances:

Counsel for the Appellant: Frédéric St-Jean

Counsel for the Respondent: Stéphanie Côté
Julie David

JUDGMENT

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

Signed at Ottawa, Canada, this 2nd day of December 2005.

"Alain Tardif"

Tardif J.

Translation certified true
on this 19th day of June 2008.

Brian McCordick, Translator

Docket: 2004-3750(EI)

BETWEEN:

CLAUDETTE MICHAUD,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard from May 16 to 19, 2005, at Rivière-du-Loup, Quebec
Before: The Honourable Justice Alain Tardif

Appearances:

Counsel for the Appellant: Frédéric St-Jean

Counsel for the Respondent: Stéphanie Côté
Julie David

JUDGMENT

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

Signed at Ottawa, Canada, this 2nd day of December 2005.

"Alain Tardif"

Tardif J.

Translation certified true
on this 19th day of June 2008.

Brian McCordick, Translator

Docket: 2004-3752(EI)

BETWEEN:

BERTRAND OUELLET,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard from May 16 to 19, 2005, at Rivière-du-Loup, Quebec
Before: The Honourable Justice Alain Tardif

Appearances:

Counsel for the Appellant: Frédéric St-Jean

Counsel for the Respondent: Stéphanie Côté
Julie David

JUDGMENT

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

Signed at Ottawa, Canada, this 2nd day of December 2005.

"Alain Tardif"

Tardif J.

Translation certified true
on this 19th day of June 2008.

Brian McCordick, Translator

Dockets: 2004-3742(EI)
2004-3743(EI)

BETWEEN:

MARIO OUELLET,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeals heard from May 16 to 19, 2005, at Rivière-du-Loup, Quebec
Before: The Honourable Justice Alain Tardif

Appearances:

Counsel for the Appellant: Frédéric St-Jean

Counsel for the Respondent: Stéphanie Côté
Julie David

JUDGMENT

The appeals under subsection 103(1) of the *Employment Insurance Act* are dismissed and the decisions of the Minister of National Revenue are confirmed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 2nd day of December 2005.

"Alain Tardif"

Tardif J.

Translation certified true
on this 19th day of June 2008.

Brian McCordick, Translator

Docket: 2004-3741(EI)

BETWEEN:

SYLVAIN OUELLET,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard from May 16 to 19, 2005, at Rivière-du-Loup, Quebec
Before: The Honourable Justice Alain Tardif

Appearances:

Counsel for the Appellant: Frédéric St-Jean

Counsel for the Respondent: Stéphanie Côté
Julie David

JUDGMENT

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

Signed at Ottawa, Canada, this 2nd day of December 2005.

"Alain Tardif"

Tardif J.

Translation certified true
on this 19th day of June 2008.

Brian McCordick, Translator

Dockets: 2004-3739(EI)
2004-3740(EI)

BETWEEN:

PAUL SOUCY,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeals heard from May 16 to 19, 2005, at Rivière-du-Loup, Quebec
Before: The Honourable Justice Alain Tardif

Appearances:

Counsel for the Appellant: Frédéric St-Jean

Counsel for the Respondent: Stéphanie Côté
Julie David

JUDGMENT

The appeals under subsection 103(1) of the *Employment Insurance Act* are dismissed and the decisions of the Minister of National Revenue are confirmed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 2nd day of December 2005.

"Alain Tardif"

Tardif J.

Translation certified true
on this 19th day of June 2008.

Brian McCordick, Translator

Docket: 2004-3738(EI)

BETWEEN:

CHANTAL THÉRIAULT,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard from May 16 to 19, 2005, at Rivière-du-Loup, Quebec
Before: The Honourable Justice Alain Tardif

Appearances:

Counsel for the Appellant: Frédéric St-Jean

Counsel for the Respondent: Stéphanie Côté
Julie David

JUDGMENT

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Signed at Ottawa, Canada, this 2nd day of December 2005.

"Alain Tardif"

Tardif J.

Translation certified true
on this 19th day of June 2008.

Brian McCordick, Translator

Docket: 2004-3737(EI)

BETWEEN:

SERGE THÉRIAULT,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard from May 16 to 19, 2005, at Rivière-du-Loup, Quebec
Before: The Honourable Justice Alain Tardif

Appearances:

Counsel for the Appellant: Frédéric St-Jean

Counsel for the Respondent: Stéphanie Côté
Julie David

JUDGMENT

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Signed at Ottawa, Canada, this 2nd day of December 2005.

"Alain Tardif"

Tardif J.

Translation certified true
on this 19th day of June 2008.

Brian McCordick, Translator

Citation: 2005TCC652

Date: 20051202

Dockets: 2004-3735(EI), 2004-3736(EI), 2004-3737(EI), 2004-3738(EI),
2004-3739(EI), 2004-3740(EI), 2004-3741(EI), 2004-3742(EI),
2004-3743(EI), 2004-3744(EI), 2004-3745(EI), 2004-3746(EI),
2004-3749(EI), 2004-3750(EI), 2004-3751(EI), 2004-3752(EI),
2004-3753(EI), 2004-3754(EI), 2004-3756(EI), 2004-3760(EI),
2004-3761(EI), 2004-3763(EI), 2004-3764(EI), 2004-3765(EI),
2004-3766(EI), 2004-3767(EI), 2004-3769(EI), 2004-3770(EI),
2004-3771(EI), 2004-3772(EI), 2004-3773(EI), 2004-3774(EI)
and 2004-3775(EI)

BETWEEN:

JEAN-MARIE DUBÉ, FERME JALNA INC.,
SERGE THÉRIAULT, CHANTAL THÉRIAULT, PAUL SOUCY,
SYLVAIN OUELLET, MARIO OUELLET, FRANCIS OUELLET,
DENIS OUELLET, JULIE LORD, CLAUDETTE MICHAUD,
BERTRAND OUELLET, BRIGITTE LORD, MAURICE LÉVESQUE,
DANIEL LAVOIE, JOSEPH CHASSÉ, DANIEL DUBÉ, GUILDO DUBÉ,
BRUNO DIONNE, DANY DUBÉ, SERGE DIONNE
and GHISLAIN CHASSÉ,

Appellants,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR JUDGMENT

Tardif J.

[1] In these many appeals, all of the Appellants agreed to proceed on common evidence.

[2] During the periods in issue, the payor operated a very large sugar bush with more than 100,000 taps at three different sites.

[3] The maple trees were in three different locations identified as Pic de sable, Petit Canada and Rang 7; each location had about the same number of maple trees.

[4] The three locations covered a distance of about 15 kilometres. The location described as Rang 7 was distinctive in that the ground there was the most uneven; there were significant differences in its level.

[5] Each of the three locations had its own maple sap collection centre. Certain operations took place there, but the finished product was made at only one place; the collected maple sap, whether in its raw state or after being processed by osmosis, therefore had to be transported to complete all the steps, or part of them, before becoming the finished product, maple syrup.

[6] The sap was transported from one place to another in a tank truck driven by Jean-Marie Dubé. This was an industrial production process; the finished product was placed in 45-gallon barrels and then sold.

[7] Starting in 1997, the business expanded rapidly and significantly. It went from 56,000 taps in 1997 to 88,600 in 1999 and 111,000 in 2000.

[8] All of the appeals relate to the number of hours of work performed in operating this huge sugar bush. In three cases, namely those of Chantal Thériault (2004-3738(EI)), Joseph Chassé (2004-3764(EI)) and Claudette Michaud (2004-3750(EI)), the Respondent determined that the records of employment were convenience records because, in his view, the Appellants had not done any work for the payor. In all the other cases, the issue is whether the number of insurable hours of work is the number shown on the records of employment or the number calculated by the Respondent, a calculation vigorously contested by the Appellants.

[9] The work for which the number of hours is contested in the appeals was performed for Jean-Marie Dubé, Ferme Jalna Inc., also an Appellant, or both of them.

[10] To make the judgment easier to read, the Court will use the expression “the payor” to refer to Jean-Marie Dubé and Ferme Jalna Inc., since Mr. Dubé was the employer during some periods and the company was the employer during other periods. Mr. Dubé owned 49 percent of the company's voting shares; Marcelle Dionne, his spouse, owned 49 percent and Stéphane Dubé owned 2 percent.

[11] All of the Appellants testified except Serge Thériault, Maurice Lévesque and Claudette Michaud. In addition to the Appellants' testimony, the evidence consisted of the testimony of Marcelle Dionne, secretary, Éric Garon, Pascal Lord, Donald Beaulieu, agricultural consultant (expert witness), Benoit Michaud, Serge Picard, Alain Landry, Yvan Harton, Daniel Michaud (investigator), Réginald Côté (interpretation officer) and Guy Savard (major investigation officer). Daniel Michaud and Guy Savard testified as investigators.

[12] The periods in issue were described very clearly in a well-constructed table showing the names of all the Appellant workers whose number of hours of work had been revised (Exhibit A-4). That table reproduced, in a very accessible manner, the information about the work periods found in the records of employment and made it possible to see that information quickly.

[13] At the three places where the maple trees were located, a network of tubes connected all the taps so the maple sap could flow through small pipes to a central collection site; that type of network of PVC tubes is commonly referred to as "tubing".

[14] Jean-Marie Dubé, who ran the business during all the periods in issue, briefly explained and described the work requirements for such a business. He was very wary and uncooperative; I had to intervene several times to obtain answers that were rarely clear and explicit.

[15] Generally speaking, the work in which the Appellants were involved was carried out in the order described below. The trees were usually tapped in January using gas-powered tappers; each tap was then connected to the network of tubes that ultimately carried the maple sap to tanks adjacent to a sugar shack, where

certain operations to concentrate the sap took place. The maple sap could also simply be directed to tanks and then collected by a tank truck, delivered and processed to its final state at the main facility, which produced maple syrup that was ready to be sold.

[16] Tapping the maple trees could take a few weeks. Preferably, everything had to be finished by the date the maple sap started flowing, which could not be predicted and which could vary from one year to the next.

[17] While the maple trees were being tapped, some workers could be assigned to clear the pipes of snow and branches that had fallen in bad weather. Some breaks had to be repaired, and parts of pipes occasionally had to be replaced. Other networks of pipes could be added from time to time if new maple trees that had become tappable were used.

[18] When the work done in this type of business was described, much was also said about the repair of leaks caused largely by squirrels.

[19] Along with the tapping, cleaning and repair work, it was necessary to prepare the places where the maple sap was boiled so it could ultimately become maple syrup; finally, the pipes, equipment and buildings used to make the maple syrup had to be cleaned. All these activities normally lasted from mid-January to mid-May.

[20] Jean-Marie Dubé provided a rather confused explanation of how he had managed the business. To explain and justify the fact that he had no information about the start and end of the employees' work periods even though there had been very many employees and both their hours and their days of work had been discontinuous, he stated that he loathed all paperwork.

[21] Despite the obvious difficulty of knowing who had done what and when, Mr. Dubé could not explain how he had been able to complete all the records of employment challenged by the Respondent except by stating repeatedly that he had fully trusted the workers to record their hours of work. Despite many questions, he never provided any reliable information or details about this fundamental aspect of the cases.

[22] He did not control or verify the hours of work. He repeated that employees must be trusted. The employees indicated the number of hours they had worked,

and his wife prepared the corresponding cheque. In principle, they worked or were supposed to work 45 hours a week.

[23] Since he was clearly always on the defensive, he answered only the questions he considered valid. He gave confused and very vague answers to the other questions.

[24] In other words, Mr. Dubé had little to say, was deliberately hesitant and was often very vague. At times, he refused to answer or gave answers that had nothing to do with the questions. His hesitation, reticence and discomfort were due not to nervousness but to his obvious determination to say only what he wanted to say.

[25] In response to the many questions about his knowledge of the work descriptions of the persons who had been issued records of employment, he referred to the periods of employment and provided a description based on the work that had to be done during the various stages of producing maple syrup. Although some of the work required a certain level of skill, he was never able to clearly say who had done what.

[26] When it became difficult to explain or describe in detail the nature of the work performed, he relied on an all-purpose answer, namely that there was always work to be done in a sugar bush as large as the one he ran.

[27] For the most part, Mr. Dubé's testimony did not provide any details or concrete information about the way the Appellants' hours of work had been recorded. He basically stated that they had worked exactly the number of hours shown on the records of employment issued to them.

[28] He constantly repeated that he had had no system or records and had trusted his employees, even though he acknowledged that work had not been performed continuously because of the great variations in weather; intense cold and storms were some of the constraints with which they had to deal, along with the fact that the sap flow varied from none to very heavy.

The Appellants each testified in turn

Francis Ouellet

[29] A well-built man, he was obviously not the type to give in to anyone. He was always in perfect control of the situation. He flatly and firmly denied making certain statements in the interviews conducted during the investigations, thus suggesting that the investigator who had written everything down had made up certain passages.

[30] Following the periods in issue, he and a certain Nelson Dubé became co-owners of the company that operates the sugar bush. He testified that Jean-Marie Dubé was a very good friend with whom he went hunting. He also stated that, had it not been for his cooperation, he could never have become the owner of the sugar bush with Nelson Dubé.

[31] He admitted that he had provided services without pay to the business run by Jean-Marie Dubé. Disputing this would have been difficult, since his signature was on several invoices the dates of which corresponded to periods when he was receiving employment insurance benefits.

[32] With regard to a cheque received from Jean-Marie Dubé, he explained that it was a loan made to him by Mr. Dubé. He also admitted that the end dates for two work periods were not consistent with the nature of the business or the type of work done; he explained these inconsistencies by referring to illness and the birth of a third child.

[33] He also admitted that his return to work might have coincided with the time when his employment insurance benefits ran out. Following the interview with the investigators, he agreed to sign his statutory declaration after making changes to it, which he initialled. Finally, he firmly denied taking part in an hour-banking system.

Daniel Dubé

[34] He refused to sign the record of his explanations prepared by the investigators who questioned him during the investigation.

[35] He also denied participating in an hour-banking system. He explained that one of his work periods had ended because of a family separation.

[36] Like his coworker Francis Ouellet, he admitted providing services without pay while receiving employment insurance benefits after the evidence showed that his signature appeared on several invoices.

[37] In reply to questions from his counsel, he downplayed the significance of the unpaid work he had done while on employment insurance. Finally, he said that, in the area, it was normal, customary and legitimate for people to help one another for free.

Bruno Dionne

[38] Bruno Dionne, Jean-Marie Dubé's brother-in-law and a painter by trade, testified that he did his painting work as an independent contractor or self-employed worker. His testimony about the work done for the payor's business was marked by total confusion and great forgetfulness.

[39] Several of his explanations were totally incoherent. He stated several times that he did not understand the questions, that some of his previous statements meant nothing and that he could have said anything because he forgot everything after each season.

Brigitte Lord

[40] During the sugaring-off season, the Appellant moved into one of the shacks where the osmosis took place. She took part in the initial operations that were to lead to the finished product; this was one of her main tasks.

[41] Like all the others, she said that she had always worked 45 hours a week, never less, never more. She stated that she had also cut down trees, picked up rocks and been responsible for the osmosis.

[42] She said that she had lived on site and been busy with the initial operations involved in processing the maple sap. When her 45 hours were done, she immediately stopped working; someone came to replace her, no matter when this happened. When asked exactly what work she had done, she stated and repeated that [TRANSLATION] "It depended on what work had to be done"; Jean-Marie Dubé was the one who decided.

[43] She could not specify her hours of work each day, adding that Jean-Marie Dubé had looked after this. Like others, she claimed that she did not understand certain questions. To explain certain ambiguities, she said that she did not remember and that there might have been some inconsistencies, which, she said, could be explained by her great nervousness. To explain the contradictions, she said that she had been mistaken.

[44] She also stated that Jean-Marie Dubé had recorded her hours of work. This was surprising, since Mr. Dubé had clearly and expressly stated during his testimony that he had trusted his employees to calculate their hours of work.

Julie Lord

[45] Ms. Lord, the spouse of the Appellant worker Ghislain Chassé, testified that she had tapped maple trees, plugged leaks, made preparations for the osmosis processing and cleaned up after the season was over. She avoided looking me in the eye; her testimony was sprinkled with words such as [TRANSLATION] "*maybe; that can happen; it depended; I don't understand the question*".

[46] During conversations or interviews at the time of the investigation, she did not remember working during a certain period in the fall and thus outside the sugaring-off season.

[47] She stated that she did not know what work her spouse Ghislain Chassé had done for the sugar bush, where he had worked or even whether he had worked. To explain why she had been absent in the middle of the busy period, she simply stated that it must no doubt have been too cold.

Daniel Lavoie

[48] Mr. Lavoie stated that he was now a longshoreman after working for many years as a maple worker for several different sugar bush owners.

[49] Saying that he did not know how to read or write, he testified that he had done all the various works except those related to cleaning at the end of the season. Since he had considerable expertise, he showed various employees how to do the work needed to operate a sugar bush.

[50] There were many contradictions between his testimony and the answers he had given in interviews conducted during the investigation.

[51] He testified that he had been intimidated and very uncomfortable during the investigation, which, he said, explained the contradictions. At one point, he said that he had not put his hand on the bible when making the declarations, so his explanations might not be true.

[52] With regard to what he had said during a conference call with several participants, he testified that things had gone strangely.

[53] He admitted that he had provided services without pay during periods when he was receiving employment insurance benefits: in this regard, several invoices with his signature on them were filed in evidence.

[54] He described Jean-Marie Dubé as an extremely generous man who was very uncompromising when calculating his employees' hours of work. He even gave an example to illustrate Mr. Dubé's firmness and rigour in order to show that Mr. Dubé had been adamant about the accuracy of the hours of work for which he paid his employees.

[55] Thus, he totally contradicted the testimony of Jean-Marie Dubé, who had repeatedly stated that he had trusted his employees completely with regard to their hours of work and that they had not kept any records to prove those hours. If the work had been performed regularly and continuously for nine hours a day over periods of five days, this might have been more understandable, but the reality was very different.

[56] Mr. Dubé's rigour and firmness in managing his business, as described by Daniel Lavoie, are not really consistent with having no records or other documents to control his many employees' hours of work.

[57] The Appellant also stated that the start and end dates of the work periods had been determined by whether or not employment insurance benefits could be received. At all times during his testimony, he had his hand on the bible.

Sylvain Ouellet

[58] The Appellant stated that he generally worked at a sawmill and that the period at issue was the first time he had had a paying job at a sugar bush; he had no experience and little knowledge in that field except from hearing about it and from seeing a few times how the work was done in a small sugar bush owned by a relative.

[59] Despite his lack of experience, he maintained that he had always worked alone and had not seen anyone in the area where he was working. He stated that he had tapped maple trees and plugged leaks.

[60] He also testified that he had worked only 45 hours a week. He worked more some days than others; he worked up to 18 hours some days when, according to him, it was still light outside.

[61] With regard to the tapping period, that is, the time when that work began and ended, the Court was treated to explanations that were vague, confused and totally implausible coming from someone who had worked alone his first and only time at a sugar bush.

[62] The difficulty of situating work that is done every year for several years may account for certain problems in remembering exactly what was done each year, especially since, thanks to Mother Nature, the work may be done at different times. This is not the case for the tapping period, which cannot vary much, since no one can predict when the sap will start to flow; thus, sugar bush owners do not want to take the chance of not being ready when the sap first starts to flow. The tapping period, especially in a very large sugar bush, must therefore be the same every year.

Denis Ouellet

[63] The Appellant Denis Ouellet, aged 58, described himself as a logger who had several strings to his bow, including mechanics.

[64] During all of the periods in issue, the Appellant mainly did forestry work. He testified that he had done very little work at the sugar bush except in one of the buildings commonly called "sugar shacks".

[65] That work was rather indirect; he prepared the places where the maple trees were located by doing various types of cleaning and thinning-out work. He first stated that he had never worked without pay and had worked 45 hours a week, never more, never less.

[66] After stressing the regularity of his hours of work, in keeping with the various records of employment, he admitted that he had run many errands for Jean-Marie Dubé; this was established by his recognition of his signature on eight invoices from 1997, eleven from 1999 and twenty from 2000 and 2001.

[67] A large number of those invoices were for the purchase of mechanical parts, and several of them were for the purchase of many items. All the invoices were signed during periods when the Appellant was receiving employment insurance benefits. When the Court asked him whether he had used his mechanical skills for the payor, the Appellant answered that Jean-Marie Dubé himself had done the mechanical work on his many vehicles (snowmobile, skidder, trucks, tractors and so on).

[68] He could not provide any explanation whatsoever for any of the 39 invoices; the only thing he said about them was that he recognized his signature.

Mario Ouellet

[69] The Appellant described himself as a trucker. Like the other workers, he explained that he had done some work related to the operation of the sugar bush, namely maintaining the tubing and levelling the major pipes.

[70] The Appellant was nervous and uncomfortable; parts of his testimony were inconsistent with what he had said during the investigation.

[71] Of all the witnesses heard, the Appellant was the one who stated the most simply and clearly that he had stopped working not because of a shortage of work but because he had accumulated enough stamps to obtain employment insurance benefits. To explain why his period of employment had ended, he expressly stated that he had left to make way for another person who did not have enough stamps to receive employment insurance benefits.

Serge Dionne

[72] The Appellant was Jean-Marie Dubé's brother-in-law. His testimony consisted of very general statements, particularly concerning the nature of the work performed during the periods in issue.

[73] He was cross-examined about his previous declarations, some parts of which did not correspond to the version he gave in court; he simply denied the content of his previous declarations recorded in writing by the investigators.

Dany Dubé

[74] The Appellant stated that this was the first time he had worked in the maple syrup industry. Referring to the table (Exhibit A-4) showing the start and end of the work periods in issue, he said that he might have repaired tubes or leaks.

[75] In 2001, he was involved in cleaning the pipes, but he did not do that work until the end. However, generally speaking, he confirmed the content of his statutory declaration prepared during the investigation.

Ghislain Chassé

[76] The Appellant, now an annuitant, explained that hip and knee problems had forced him to cut short his career. Like all the other workers, he stated loudly and clearly that he had always worked 45 hours a week, no more and no less; in answer to a question from his counsel, he added that there had been no banking of hours in the business.

[77] Mr. Chassé, Julie Lord's spouse, stated that his physical condition had caused him some problems when performing certain tasks.

[78] Despite this major physical disability, he stated that he had repaired leaks at all the locations, some of which had very uneven ground. He stated that his disability had caused him more problems starting in 2000. In spite of this, he generally worked alone under difficult conditions. Since his spouse, Julie Lord, had testified that she knew very little about his work, Ghislain Chassé simply stated that they were both independent and that they had gone to work using their own means of transportation.

[79] To explain why he had been absent for two weeks during one of the periods in issue, he maintained that it had probably been because of the cold. Like several others, he explained certain inconsistencies by saying that he did not have with him the documents he needed to provide a specific answer.

[80] He also confirmed the existence of a policy whereby each person could get his or her "stamps": after accumulating enough hours or weeks to receive employment insurance benefits, the period of employment was terminated to give another worker an opportunity to get his or her stamps.

[81] He said something quite surprising, namely that he had not known that his niece, Chantal Thériault, also an Appellant, had worked for the payor; he said that he had never run into her and that he had learned of this by chance at a social gathering.

Bertrand Ouellet

[82] The Appellant was constantly on the defensive, usually answering "yes" or "no". When several inconsistencies between the various versions he gave during the investigation and his testimony in court were pointed out to him, he constantly repeated all-purpose answers such as [TRANSLATION] "*because Jean-Marie Dubé told me; I don't remember; it's possible*".

[83] He expressly admitted that he had changed his testimony based on the dates and periods shown on the records of employment. He is the father of Francis and Mario Ouellet, two other Appellants.

[84] At certain times during the investigation, he stated that he had been involved in the post-season cleaning; at others, he said that he had not done that type of work. His cross-examination brought out significant differences between his versions. According to him, the explanations he gave in court were the correct ones or the ones that should be accepted despite the passage of time, which generally has a devastating effect on memory.

[85] When asked about the nature of his work, since he could not describe it, he answered as follows: [TRANSLATION] "*I did what had to be done, I have no explanations*".

[86] To explain the end of one period of employment, he stated that Jean-Marie Dubé had simply told him to leave. To explain a week's absence, he

referred to the cold. He could not explain why other workers had worked that same week in March if it had been so bitterly cold. In short, he stated that his work had involved tapping trees, repairing leaks and cleaning the lines.

Paul Soucy

[87] Paul Soucy also talked about his work description by referring to the table showing the periods in issue, the number of hours and the insurable amounts.

[88] Following an interview, he refused to sign a statutory declaration written by the investigators responsible for the case. When asked to accept, deny or say he had no knowledge of the content of the document prepared by the investigators, he denied several passages, claiming that he had never said certain things that appeared in that report.

[89] However, at the end of the interview, when the document was read to him, he requested that certain corrections be made and initialled those corrections. He firmly denied several other passages even though he had not clearly expressed his disagreement during the meeting.

[90] He also constantly stated [TRANSLATION] "*I never said that*", "*I can't answer*" and "*I don't remember*". The only clear part of his testimony related to working 45 hours each week, never more, never less, and not being involved in an hour-banking system.

Guido Dubé

[91] Describing himself as a forestry worker, he testified that he had worked 70 hours a week: 10 hours a day, 7 days a week. He was the only Appellant who hunted squirrels, which, according to the payor, caused considerable damage to the PVC pipes.

[92] He described his other duties in vague terms. Rather oddly, he said that he believed the maple sap began flowing in February, but he could not say when the tapping work began.

[93] His memory was also very faulty; to explain why he could not answer, he said that he was not a computer. He was one of the only Appellants who had seen several workers in the woods, but he was unable to name them, let alone to say what work each of them had done.

Joseph Chassé

[94] Joseph Chassé, Ghislain's brother, lived mainly in the Montréal area but was born in the Lower St. Lawrence area. He knew the payor well and therefore asked him whether he had any work.

[95] His request led to a job offer. The work was initially supposed to last two to three weeks and involved brush cutting using a stripper.

[96] This was very unusual work for someone who had been living in a major urban centre for several years. Since he had left the area many years earlier and was therefore very far removed from any type of work in the forest, he should have been able to remember exactly when he had worked and, above all, he should have been able to describe that work in very precise terms.

[97] He stated that he had worked for only two weeks. When confronted with a duly signed statutory declaration in which the work description differed completely from the one given verbally in court, he became uncomfortable and clumsily tried to reconcile the irreconcilable.

[98] In a statutory declaration (Exhibit I-16), he stated the following:

[TRANSLATION]

...

The last job I had in the Lower St. Lawrence area was from 1997 until the fall of 1998 with the municipality of St-Juste-du-Lac. It was an EI program (beach maintenance). . . .

From 2-6-99 to 17-10-99, I worked for Mikes in Montréal doing deliveries. I left to go and work in the Lower St. Lawrence area, but I did not find anything. . . .

and I started a job for Laminage MES Inc. on 6-6-2000. . . .

When I arrived in the Lower St. Lawrence area, I stayed at a rooming house for two weeks and then with my brother (Ghislain Chassé). I worked for Mr. Dubé at the sugar bush for two weeks when I arrived in the area. I applied and Mr. Dubé called me to work. I think that it was after the holidays, two to three months after I left Mikes restaurant. I installed the pipes and connectors at the sugar bush. I do not remember the people I worked with. It changed every day. I do not know why people say they did not see me working. When I was hired, he told me that it was for

only one to three weeks. I do not know why I was laid off and the others kept working. I worked for two weeks, about 45 hours a week from Monday to Friday. I think I was paid \$450 a week, and I was paid by cheque. . . .

[99] Yet the record of employment he filed in support of his claim for benefits indicates that the work period was October 25 to November 6, 1999.

[100] If this had been work done for several weeks by a forestry worker over the course of many years, such a gross error would be plausible given the limits of human memory.

[101] Here, the work described in the record of employment was exceptional in both its nature and type for the person by whom it was done. The Appellant's attempt to change his version therefore makes his claims quite simply implausible. Indeed, I told him from the bench that I believed absolutely nothing about his story.

Chantal Thériault

[102] Chantal Thériault had been working for the payor as a secretary-receptionist for a short time. She explained that she had worked during two periods. The first one was at the sugar bush, and her work involved putting pills in the taps to stimulate and prolong the flow of sap. She said that she had done that work alone. Jean-Marie Dubé picked her up in the morning and told her the area she had to cover; in the evening, he drove her home.

[103] With regard to the second period, she said that she had again worked alone, at home. Her work involved preparing drop lines to be installed. According to her, she and her employer, Jean-Marie Dubé, were the only ones who knew that she put pills in the taps because this practice was prohibited by the authorities regulating maple syrup production.

[104] Her testimony about her work description was very different from the version she had given the investigators. She maintained that the content of her statutory declaration was not consistent with reality.

[105] Overall, she maintained that she did not remember the entire content of her statutory declaration because, during the meeting at which the declaration was written, she had been under the influence of many medications she had been required to take following a work accident. She stated that she had taken morphine

the day she made her declaration before doing very painful physiotherapy exercises.

[106] Despite the highly disturbing effects of certain medications, she admitted that she had gone to and returned from the meeting with the investigators alone behind the wheel of her car. She also stated very clearly that it had been strongly suggested to her that she say certain things in her declaration. She even said that she did not recognize her signature.

[107] Yet her statutory declaration contains very specific facts, including the names of the persons with whom she dealt and worked.

[108] The Appellants Serge Thériault, Maurice Lévesque and Claudette Michaud did not testify. The Court was therefore unable to assess their testimony.

[109] The Respondent called Pascal Lord, Daniel Lavoie, Benoit Michaud, Serge Picard, Daniel Michaud, Réginald Côté, Guy Savard, Alain Landry and Yvan Harton as witnesses. All of them participated either in the investigation or in the analysis that led to the determinations under appeal. The Respondent also called Donald Beaulieu as an expert on maple syrup production recognized by the Court.

[110] Pascal Lord's testimony brought out a whole series of facts that had undoubtedly triggered the huge investigation into the business run by Jean-Marie Dubé.

[111] Mr. Lord, Jean-Marie Dubé's nephew, worked for the payor for three years in a row. Following a dispute with his employer, he decided to contact the Department of Human Resources. During the days that followed, he made a forceful declaration about the way the business was managed and the various practices used with the employees.

[112] It is appropriate to reproduce that entire declaration, which was signed on May 30, 2001 (Exhibit I-18):

[TRANSLATION]

An investigation officer met me at 3 Rang 7 in Lots-Renversés. I identified myself using my Quebec health insurance card. I worked for Jean-Marie Dubé of Lots-Renversés in 1998, 1999 and 2000. I was either paid \$8.00 an hour under the table or I was on the payroll at \$10.00 an hour.

When I was on the payroll, I always received my full pay even though I did not always work full weeks, but I gave him back the hours when I was on unemployment. Jean-Marie Dubé decided when my stamps began and when they ended so I could file my unemployment claim. As he said, he was the boss, he was in charge. I did things that way even though I knew it was not right because I had to pay support and I had to do things his way in order to work for him. In the end, I could not take it any more and I left. He owed me 107½ hours at the end, and he settled up with me for a \$600 debt to his grocery store in Lots-Renversés (Dépanneur Chez Sylvie). I recognize my signature on my claims for benefits made on 2/7/99 and 4/7/2000. Records of employment A 64013409, A 66529919, A 68429580 and A 68851631 are false, since the first and last days worked are not correct, the number of insurable hours is wrong and the insurable earnings are also wrong. I wrote down my hours of work in a yellow notebook every day, and you can see that I worked regularly for him during the period of 11/05/98 to 17/05/2000. I was not the only one who did things this way. Jean-Marie Dubé's cousin, Yvon Dubé, who receives disability insurance, works and receives stamps for his girlfriend, Brigitte Lord, whom he lives with. She works a little looking after a pumping station but not enough to get her stamps. Ghislain Chassé gets his stamps and then gets stamps for his spouse, Julie Lord, who also does not work enough to get all her stamps. Daniel Dubé and Francis Ouellet are boilers. The payroll shows that they have a lot of stamps, but they actually get much fewer. Florent Dubé, Jean-Marie Dubé's brother, drives the sap truck and taps trees. Jean-Marie drives the second truck. Nelson Dubé, Francis Ouellet's brother-in-law, apparently worked in 2001. Mario Ouellet, Francis' brother, apparently did not work that year. Manon Potvin of Rang 4 sud in St-Juste looks after the pumping station in front of her home. Currently, Jean-Marie Dubé is staying in a house, and the people who work there are Jean-Guy Rodrigue, Denis Ouellet, Sébastien Lord and Yvon Dubé. Jean-Guy Rodrigue is the one who assembled the house piece by piece in the garage. Éric Garon worked with me in 1999. He is Denis Ouellet's son-in-law. I do not know Carmel Moreault. The investigation officer has read me my declaration; it is accurate and consistent with the facts.

[113] In court, Pascal Lord was very nervous. He testified in the presence of most of the Appellants. He tried to qualify some of the statements he had made to the investigators, and it is easy to understand why.

[114] His disclosure and declaration caused much tension and turbulence in the community where all of the Appellants lived, to the point where, he said, no one talked to him and everyone was angry with him.

[115] Mr. Lord described himself as depressive and deeply destabilized by drug use. After a while, he could see all the consequences of his declaration. He

therefore sought to water down some of the details on various pretexts, such as that he had acted in this way to seek revenge.

[116] Following Pascal Lord's disclosure of violations that were numerous, serious and widespread, the responsible authorities took the matter seriously and took steps to verify the situation. They met with all the Appellants and then tried to piece together the work based on the type of activity involved.

[117] Daniel Michaud, an investigator, and Guy Savard, a major investigation officer, took the Appellants' declarations as part of a very large investigation.

[118] All the interviews were conducted over a one-week period by various teams made up of two investigators. The explanations provided about the form and substance of the investigation work, which involved obtaining the versions of the persons concerned, did not point to any criticisms, mistakes or irregularities that could discredit the quality of the investigation work.

[119] Despite the many criticisms made by the Appellants, the main ones being last-minute appointments, late hours, an intimidating atmosphere, veiled threats, constant suggestions, failure to provide a copy of the declaration and the absence of documents enabling them to determine the periods of employment, whether during the examination in chief or the cross-examination, I did not note or find any breaches of ethical or other rules that could invalidate the quality of the information obtained during the interviews.

[120] Because of the many inconsistencies, the lack of details, the vague and confused explanations and, finally, the numerous contradictions, the investigators concluded that the facts described by Pascal Lord were obviously true. Based on that situation and the circumstantial evidence from which plausible conclusions could be drawn, the investigators reconstructed the hours of work based on the information they considered reasonable and plausible.

[121] Aside from the fact that anyone who is under investigation is generally a little more nervous or under stress than usual, I did not note anything during either the examination or the cross-examination that could lead me to conclude that the investigators and auditors/analysts were guilty of serious violations.

[122] The persons in charge of the investigations, like the Court, were unable to obtain information or documents with an acceptable level of reliability; I am

referring in particular to personal notes, reports, records or any other documents that might support, confirm or corroborate the Appellants' explanations.

[123] Given the lack of reliable information, the investigators tried to establish the number of hours and weeks worked by the Appellants on the basis of what they had at their disposal.

[124] In light of the situation and its many constraints, the assessment of the number of insurable hours of work could not be anything other than arbitrary unless it was assumed that the hours of work were as indicated in the Appellants' declarations and the records of employment issued by the payor.

[125] The information about the hours and weeks of work was examined and reviewed after numerous contradictions and inconsistencies were found in the explanations provided. The lack of reliable records such as daily reports thus raised strong doubts about the plausibility of the information found in the records of employment.

[126] Such an exercise was certainly not ideal, but it was the only one possible in the circumstances given that there was no reliable information on which to base conclusions.

[127] If the evidence had shown capricious behaviour or questionable motives, the Court would have had to carry out the exercise again. The evidence did not show any such flaws or weaknesses.

[128] In addition, need I point out that the arbitrariness of the assessment of insurable hours essentially resulted from the complete absence of reliable and acceptable information?

[129] Certainly, the testimony, if credible, could have raised certain questions or even made it possible to rebut the Respondent's conclusions.

[130] Not only was this not the case, but, on the contrary, the Appellants' testimony made it possible to conclude that the work done by the Respondent's representatives was sound and of good quality.

[131] To make verification possible, records must be kept on any remunerative work for which premiums must be paid under the *Employment Insurance Act* and

which creates a right to benefits when the employee stops working or loses his or her job temporarily or permanently.

[132] When the parties to a contract of employment decide or agree to proceed otherwise, they run the risk of having to deal with undesired consequences while making it very difficult to discharge their burden of proof.

[133] Discharging such a burden of proof through testimony alone requires that the testimony be faultless, consistent on the whole, plausible in terms of the explanations provided and in keeping with customs and practices in the economic field involved.

[134] In light of the testimony given by all the Appellants, it is obvious that they conferred with one another to ensure that they would all give roughly the same version of the facts.

[135] With a document before them that had been very carefully prepared and was very clear about the work periods, all of them, relying on that document, explained in vague and imprecise terms the work they had done based on the seasons shown in the table prepared using their records of employment.

[136] The Appellants whose records of employment showed a work period in January or February stated that they had tapped maple trees. If the work was closer to March (when the sap started flowing), they plugged leaks caused by breakage resulting mainly from squirrels but also from fallen trees or branches.

[137] Starting in mid-March, they were involved in activities related to the making of maple syrup. Starting in mid-April and in May, they cleaned the facilities and PVC pipes used to collect the maple sap.

[138] At the same time, they may have done cleaning and brush-cutting work in the forest where the tapped maple trees were located.

[139] Outside the period commonly known as the "sugaring-off season", the work involved thinning out the forest where the maple trees were located to ensure the highest possible yield and the normal development of the maple trees.

[140] Nearly all of the Appellants worked 45-hour weeks; none of them participated in an hour-banking system. If their testimony differed from or contradicted a previous declaration, this was because of mistakes,

misunderstandings or misinterpretations caused by nervousness, stress or the threatening and inquisitorial behaviour or attitude of the investigators.

[141] Quite surprisingly, the most scathing and caustic criticisms were made by Appellants who, in light of their obvious self-assurance when they testified in court, were not the type to give in or be intimidated. Rather, they themselves were intimidating.

[142] The work to be done in a sugar bush is subject to factors that are completely uncontrollable, since the weather is central to all activities. Thus, during very intense cold periods or major storms, no work is usually done.

[143] Later in the season, the maple trees start producing sap once the temperature is above the freezing point during the day. The trees do not produce sap when the temperature is below the freezing point. When the temperature is above 0°, the maple trees produce sap; the collected sap must be processed quickly. If the mild weather continues, the flow of sap may be heavy; it thus becomes necessary to do as much processing as possible, and processing operations often have to continue for long, uninterrupted periods unless the sugar bush has very large tanks; even then, the shelf life of maple sap is very short.

[144] All of these factors and uncertainties mean that workers in this industry often have irregular working hours and may sometimes have no work to do. However, when the maple sap processing begins, the workers assigned to it may and often must work long hours on a continuous basis. Despite this inescapable reality, none of the Appellants had any records or simple notes that could establish precisely what they had done and when and for how many hours they had done it.

[145] Some of them maintained that Jean-Marie Dubé had recorded the hours of work every day. Mr. Dubé simply stated repeatedly that he had had to trust his employees and that he had not had any records he completed daily. The workers said that the payor had looked after this and that they had trusted him.

[146] In addition to these facts, which were surprising, to say the least, there were the very numerous memory lapses, the highly evasive answers that were the main feature of most of the testimony and the many contradictions in the Appellants' testimony. All in all, I attach no credence to the evidence submitted by the Appellants because of the many inconsistencies and contradictions between the explanations given during the investigation and those given in court, but also because of the way those contradictions and inconsistencies were explained.

[147] The burden of proof was on the Appellants. To discharge such a burden, each of them had an obligation to submit credible, plausible evidence based on clear, coherent explanations.

[148] This was not an impossible task or insurmountable challenge; it was a reasonable, realistic exercise, at least for a few of the Appellants.

[149] Instead, they chose to stand together in presenting a farfetched, inconsistent and totally implausible version. Some of them went so far as to provide bizarre and completely ridiculous explanations. This was their own choice, and they must accept the consequences of it.

[150] I have no doubt that the vast majority of the Appellants were involved and took part in the activities required to operate the huge sugar bush. However, I am convinced that the payor was a very accommodating employer when it came to records of employment and took advantage of the vulnerability of certain workers.

[151] In fact, everyone got something out of it. The payor could depend on having a workforce available at all times, and the workers were certain that, at the end of the period, they would receive a record of employment that met their expectations and gave them access to employment insurance benefits.

[152] This conclusion is not based on intuition. It emerges from a coherent set of facts that is consistent with such a conclusion. I am referring, *inter alia*, to the following:

- The assertion that Jean-Marie Dubé, a shrewd businessman operating a very special type of business, did not think it necessary to have a strict records system to manage his many employees' hours of work because he trusted those employees is totally implausible, especially since one of his employees and friends, Daniel Lavoie, stated unequivocally that Mr. Dubé was a generous man who was accommodating in his life but uncompromisingly rigid and strict in business. Moreover, that rigour and strictness are consistent with the Court's perception of the type of employer the payor was.
- The vast majority of the sugar bush employees allegedly always worked 45 hours a week, never more, never less; this was totally implausible in this type of agricultural operation.

- Most could not say what their coworkers had done. Several claimed that they had always worked alone. Julie Lord, Ghislain Chassé's spouse, even said that she did not know what work he had done or when he had worked, even though they had had to use a car to get to work.
- Several claimed that they had been intimidated when questioned; they said that the atmosphere had been threatening and very stressful. Some of those who made these criticisms were not the type to give in to anyone. Indeed, the fact that several of them refused to sign the record of their explanations shows, at least in part, that the atmosphere and the setting were very different from those described by some of the Appellants.
- Several Appellants denied certain facts and information they had provided during the investigation. Others changed their versions; some said that they did not remember; finally, others admitted that it was possible that they had said what had been noted down, but they testified that the real version was the one they were giving in court.
- Obviously, all the criticisms, implausibilities and vague, confused and farfetched explanations cannot be attributed to each Appellant without exception. However, those who testified very briefly did not provide evidence whose quality could have made it possible to find that they were an exception.
- None of the Appellants was able to explain simply, clearly and precisely what work he or she had done and when, except by referring to the table prepared for the hearing, which was based on the information found in the records of employment.

[153] I remain convinced that some Appellants could have presented acceptable evidence and been able to prove, at least in part, that their number of hours of work was higher than the number established by the Respondent.

[154] This was the burden of proof resting on them. Rather than submitting such evidence concerning their own appeal, they preferred to confine themselves to simplistic explanations that could more easily be adjusted to the strategy of uniformity adopted by the group, claiming that the records of employment were perfectly accurate.

[155] No doubt for reasons of solidarity or for fear of being criticized or blamed by their coworkers, they chose to rally around an overall, collective solution that was vague and imprecise and that did not have the minimum characteristics needed to discharge the burden of proof resting on them.

[156] The requirements for discharging such a burden of proof, namely submitting credible, reasonable and convincing explanations, were not met. On the contrary, the Appellants chose to provide vague, questionable explanations, thus confirming the plausibility of the information disclosed by their coworker, Pascal Lord.

[157] In a case that involves so many people who choose to present common evidence, there may be some inconsistencies without the quality of the evidence necessarily being discredited, since the Court is able to make allowances and understand that a fact is not always described or assessed the same way by different people.

[158] Rather than adopting the strategy of openness, which is never perfect in any event, the Appellants chose to submit evidence that was simplistic, insufficient and incomplete and some parts of which were simply not credible. The fact that several people say exactly the same thing does not necessarily mean that it is true. On the contrary, in the context of work like that in issue in these cases, it has the opposite effect.

[159] The Appellants' evidence might be summarized as follows:

(a) for the workers

- I worked – which is admitted.
- I was paid – which is admitted.
- The number of hours assigned by the Respondent is arbitrary, and I maintain that the number of hours shown on my records of employment is correct.

(b) for the payor

- There was work to do, it was done and I trusted my employees with regard to the number of hours they worked.

[160] Had it not been for the cross-examination, which brought out the hesitations, ambiguities, vague assertions, inconsistencies and contradictions, all of the evidence could have been summarized by the few lines in the previous paragraph.

[161] The weight of the evidence is that, beyond a doubt, the Appellants conferred with one another to ensure that they would provide similar versions. There were several obvious signs of this strategy; I am referring in particular to the following:

- The work week was always 45 hours, no more and no less.
- There was no banking of hours.
- In the vast majority of cases, the Appellants worked alone; if other persons were present, the Appellants did not remember their names or did not know them. I note that the sugar bush was located not in the suburbs of Montréal where people do not know one another but in a very small community where everyone knows everyone and people are often related.
- None of the Appellants had any information whatsoever about the method used to calculate their hours of work, which were not always the same each day. The 45 hours of work were performed over a period of seven days.

[162] As a result of the strategy used, it seems clear that some Appellants will be penalized because they chose to stand behind an actual system that was obviously organized by Jean-Marie Dubé.

[163] I have no doubt that the payor had established an actual system from which the payor benefited. As parties to and participants in that system, everyone preferred the law of silence, which was not the best policy and which was, above all, a very bad strategy when the burden of proof was on the Appellants.

[164] Establishing and being involved in such a system could have had far more serious consequences in terms of entitlement to receive employment insurance benefits. This is not the question I must answer. The appeals basically concern the Respondent's determinations on the number of insurable hours.

[165] In this regard, I conclude that the weight of the evidence supports and justifies all of the determinations. All of the appeals are therefore dismissed, and the Respondent's determinations are confirmed as being well-founded in fact and in law.

Signed at Ottawa, Canada, this 2nd day of December 2005.

"Alain Tardif"

Tardif J.

Translation certified true
on this 19th day of June 2008.

Brian McCordick, Translator

CITATION: 2005TCC652

COURT FILE NOS.:

2004-3735(EI), 2004-3736(EI), 2004-3737(EI), 2004-3738(EI), 2004-3739(EI), 2004-3740(EI), 2004-3741(EI), 2004-3742(EI), 2004-3743(EI), 2004-3744(EI), 2004-3745(EI), 2004-3746(EI), 2004-3749(EI), 2004-3750(EI), 2004-3751(EI), 2004-3752(EI), 2004-3753(EI), 2004-3754(EI), 2004-3756(EI), 2004-3760(EI), 2004-3761(EI), 2004-3763(EI), 2004-3764(EI), 2004-3765(EI), 2004-3766(EI), 2004-3767(EI), 2004-3769(EI), 2004-3770(EI), 2004-3771(EI), 2004-3772(EI), 2004-3773(EI), 2004-3774(EI) and 2004-3775(EI)

STYLES OF CAUSE:

Jean-Marie Dubé, Ferme Jalna inc., Serge Thériault, Chantal Thériault, Paul Soucy, Sylvain Ouellet, Mario Ouellet, Francis Ouellet, Denis Ouellet, Julie Lord, Claudette Michaud, Bertrand Ouellet, Brigitte Lord, Maurice Lévesque, Daniel Lavoie, Joseph Chassé, Daniel Dubé, Guildo Dubé, Bruno Dionne, Dany Dubé, Serge Dionne and Ghislain Chassé v. M.N.R.

PLACE OF HEARING: Rivière-du-Loup, Quebec

DATES:

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|-----------------------------------|-----------------|
| Hearing: | May 16-19, 2005 |
| Appellants' written submissions: | June 30, 2005 |
| Respondent's written submissions: | July 25, 2005 |
| Appellants' reply: | August 15, 2005 |

REASONS FOR JUDGMENTS BY: The Honourable Justice Alain Tardif

DATE OF JUDGMENTS: December 2, 2005

APPEARANCES:

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