Docket: 2004-3436(EI)

BETWEEN:

AGNEAU DE L'EST INC.,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on June 7, 2005, at Matane, Quebec
Before: The Honourable Justice Alain Tardif

Appearances:

Counsel for the Appellant:	Gaétan Gauthier
Counsel for the Respondent	Marie-Claude Landry

JUDGMENT

The appeal under subsection 103(1) of the *Employment Insurance Act* (the Act) is dismissed in accordance with the attached Reasons for Judgment on the basis that the work done by Lucienne Lévesque during the period commencing January 1, 2002, and ending October 7, 2003, was under a genuine contract of service within the meaning of paragraph 5(1)(*a*) of the Act.

Signed at Ottawa, Canada, this 28th day of July 2005.

"Alain Tardif"

Tardif J.

Certified true translation
On this 30th day of January, 2006.
Garth McLeod, Translator

Docket: 2004-3438(EI)

BETWEEN:

LUCIENNE LÉVESQUE,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on June 7, 2005, at Matane, Quebec.
Before: The Honourable Justice Alain Tardif

Appearances:

Counsel for the Appellant: Gaétan Gauthier

Counsel for the Respondent: Marie-Claude Landry

JUDGMENT

The appeal under subsection 103(1) of the *Employment Insurance Act* (the Act) is dismissed in accordance with the attached Reasons for Judgment on the basis that the work done by Lucienne Lévesque during the period commencing January 1, 2002, and ending October 7, 2003, was under a true contract of service within the meaning of paragraph 5(1)(*a*) of the Act.

Signed at Ottawa, Canada, this 28th day of July 2005.

"Alain Tardif"

Tardif J.

Certified true translation
On this 30th day of January, 2006.
Garth McLeod, Translator

Citation: 2005TCC401
Date: 20050728
Dockets: 2004-3436(EI)
2004-3438(EI)

BETWEEN:

AGNEAU DE L'EST INC.,
and
LUCIENNE LÉVESQUE,

Appellants,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR JUDGMENT

Tardif J.

[1] The two appeals in the instant case pertain to the performance of the same work; the first appeal is by Agneau de l'Est Inc., and the second is by Lucienne Lévesque. The parties agreed that both appeals would proceed on common evidence.

[2] The issue is whether the work of the Appellant Lucienne Lévesque, during the period of January 1, 2002, to October 7, 2003, was performed under a contract of service or as a self-employed worker.

[3] At the outset, counsel for the Appellants explained that the vast majority of the facts were not in dispute and that the issue turned essentially on the evaluation

and characterization of the nature of the contractual relationship between the parties.

[4] The determinations were based on several assumptions of fact, but, among them, only two identical paragraphs — paragraph 22(n) of the Reply to the Notice of Appeal in Docket No. 2004-3436(EI) (Agneau de l'Est Inc.) and paragraph 25(n) in Docket No. 2004-3438(EI) (Lucienne Lévesque) — were denied. Both paragraphs state as follows:

> [TRANSLATION]
>
> The worker almost always worked in the presence of Marielle C. Deschênes, from whom she received instructions and advice.

[5] All the other facts were admitted. Since the facts in both cases are the same, I will reproduce only the facts in the matter of Lucienne Lévesque (2004-3438(EI)):

> [TRANSLATION]
>
> (a) The payor, incorporated on February 14, 2001, is a lamb marketing agent for more than 100 sheep producers.
>
> (b) The payor liaises between lamb producers and buyers (wholesalers and grocery stores).
>
> (c) The payor sold lambs outside the Rimouski area, mainly in Québec and Montréal.
>
> (d) The lambs delivered by the payor were slaughtered at the Luceville slaughterhouse, located roughly 15 km from Rimouski.
>
> (e) The slaughterhouse is not related to the payor.
>
> (f) Marielle C. Deschênes was the payor's sole shareholder.
>
> (g) In 2002, the payor's sales were more than $2,500,000, and in 2003, its sales were approximately $2,000,000.
>
> (h) The payor operates throughout the year and generally has three peak periods: Christmas, Easter, and late June to early August.
>
> (i) During the period in issue, the Appellant was an office worker.

(j) The Appellant worked mainly at the payor's office, which was located in the home of Marielle C. Deschênes.

(k) Occasionally, the Appellant worked from home.

(l) When doing so, the Appellant used the payor's calling card for her long-distance calls.

(m) The Appellant's principal duties can be summarized as follows:

- filing;
- taking care of the mail and paying accounts;
- invoicing customers; and
- making deposits and preparing account statements.

(n) The Appellant almost always worked in the presence of Marielle C. Deschênes, from whom she received instructions and advice.

(o) The Appellant used the payor's materials and equipment to carry out her duties.

(p) The Appellant was paid a percentage of the payor's sales.

(q) She was paid by cheque weekly.

(r) The Appellant's employment was completely integrated into the payor's everyday operations.

[6] In support of their appeals, the Appellants called Marie-Josée Deschênes, her mother, Marielle C. Deschênes (the sole shareholder of Agneau de l'Est Inc.) and the Appellant Lucienne Lévesque as witnesses.

[7] The evidence reveals that all three people had previously worked for the Noblesse cooperative. Marielle C. Deschênes started her business in October 1999. It was initially a registered business but was incorporated as Agneau de l'Est Inc. on February 14, 2001.

[8] The business was a lamb-marketing agency. It purchased sheep directly from producers, arranged for slaughtering and then sold the meat to the network of customers that it had developed.

[9] The owner, Marielle C. Deschênes, was the directing mind of the business. She participated in sheep producers' meetings and forums on sheep production. She had agreements with roughly 100 lamb producers, which sold her all or part of their production at prices that were generally determined at auctions.

[10] She had the lambs in question slaughtered and sold to various buyers, mainly in Québec and Montréal.

[11] Thus, there were two components to the business. The first was purchasing from producers. This work was done primarily by Ms. Deschênes' daughter Marie-Josée, who not only looked after payments to producers, but also ensured that each producer got what it was due when the animals were slaughtered.

[12] After the slaughtering process, the meat was sold to different customers. This second component, which required very close monitoring and rigorous administrative organization, was the Appellant Lucienne Lévesque's responsibility.

[13] The Appellant Lucienne Lévesque said that she had no background in lamb sales and learned from Ms. Deschênes and her daughter, notably by visiting slaughterhouses.

[14] With her knowledge of organization, controls and administrative management, and with the confidence of Marielle C. Deschênes, whom she knew well, Ms. Lévesque entered into an oral contract of self-employment with Marielle C. Deschênes.

[15] Both were aware of the effects and various implications of such a status; in fact, they bore all the consequences of it. The company did not issue any T4 slips and, her annual income tax return, the Appellant reported, as business income, the amounts that she received as sales commissions from Agneau de l'Est Inc.

[16] The Appellant had no benefits, vacation or health insurance, and no workers' compensation or EI premiums were paid. She was paid a commission equal to 0.45% of sales, which she declared as business income.

[17] The Appellant stopped working on account of illness, and, consistent with the way in which the work had been assessed, she made no health insurance or EI claims following her recovery.

[18] Her work schedules were organized based on slaughter days. In other words, the producers delivered the lamb when the slaughterhouse was free, generally on Mondays and Tuesdays.

[19] After the slaughter, Marielle Deschênes' daughter, Marie-Josée, ensured that the producers concerned were paid promptly in accordance with the quality and quantity of the livestock delivered to the slaughterhouse.

[20] Secondly, the meat obtained from the slaughter was delivered to the various customers. This was done very quickly with the Appellant's specific involvement.

[21] Thus, the work schedule was directly tied to the slaughtering. The hours of work were not calculated or recorded and could vary based on the quantity of meat, the number of customers, and customers' requirements.

[22] The Appellant said that if she had to be absent, she did not need to ask Marielle C. Deschênes; it was sufficient for her to come to an agreement with her daughter Marie-Josée, who would replace her. Marie-Josée had her mother's total confidence, to the point that she was authorized to sign cheques in her mother's absence.

[23] The non-exclusive nature of the Appellant's services was also raised. In this regard, the Appellant stated that she looked after the accounting for her husband's farm, which was once a dairy farm but later became a lamb production farm.

[24] The Appellant worked mainly at the company's place of business, a former school purchased from Marielle C. Deschênes' son. One classroom was used as an office, and the remainder of the school was used as a home.

[25] The Appellant said that she did work at her own home a few times. Everything she needed to do her work was supplied by the company.

[26] Marielle C. Deschênes stated that she trusted Ms. Lévesque totally and had asked for her services because of her knowledge of filing and records management. As far as her work description is concerned, she was responsible for invoicing, receiving payments, preparing deposits, paying invoices and mail. In other words, she ensured that all the operations and activities related to sales were monitored and followed up appropriately to allow for a quick response, notably in the event of payment problem.

[27] The system that the Appellant put in place also enabled the company's manager to check on the status of sales. In addition, the filing implemented by the Appellant made it possible to quickly and easily verify any problem raised by customers and therefore make corrections just as quickly.

[28] What was the nature of the work done by the Appellant Lucienne Lévesque? Since the issue of the relationship of subordination and the power to control is fundamental in determining the nature of the legal relationship between Agneau de l'Est Inc. and Lucienne Lévesque, I have given special attention to certain telling aspects of the testimony on this factor.

[29] For example, I noticed that Lucienne Lévesque's services were retained because she enjoyed the complete trust of the person who ran the company.

[30] Marielle C. Deschênes repeated several times and in various ways that she was particularly concerned about efficiency. In other words, almost everything was running perfectly, and she had no need to intervene; she was totally satisfied with the quality of the Appellant's work. This was, without a shadow of doubt, an *intuitu personae* relationship, i.e. one that is grounded in and fashioned on trust.

[31] Marielle C. Deschênes stated that she did not have to intervene because the work met her expectations. It is just as clear that she always had the authority and the power to intervene so that changes could be made, work could be done differently, new journals could be prepared, a job or task could be done more quickly, and so on. Nor can there be any doubt that Marielle C. Deschênes had, and continues to have, the power to reprimand.

[32] The Appellants' good faith regarding the characterization of the legal relationship is not in doubt at all. Indeed, the Appellants not only knew their rights and obligations but also bore the consequences, even though the existence of a contract of service undoubtedly favoured the company in that it simplified management considerably and possibly saved it money because the contributions associated with an employment contract did not have to be paid, source deductions and remittances did not have to be made, and so forth.

[33] As for the Appellant Lucienne Lévesque, the only advantage for her was that she could avail herself of certain benefits available to any business, namely the ability to deduct all expenses incurred to earn income. Of course, the major burden was that she could not get EI benefits, a burden that she accepted in its entirety because she did not claim such benefits when the legal relationship terminated.

[34] If the characterization of the legal relationship entered into by the parties were essentially a function of the parties' intent, I would have to end this analysis immediately and conclude that a contract of service or a contract for services existed. However, the parties' intent is not sufficient to determine whether the contract is a contract of service or a contract for services.

[35] The question as to whether or not an employment is insurable must be established based on the provisions of the *Employment Insurance Act*; however, the provisions of the *Civil Code of Québec* cannot be disregarded. The Quebec legislature expressly defined the two possible contracts involving the performance of work.

[36] Firstly, article 2085 reads as follows:

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

[37] Secondly, article 2098 reads as follows:

> 2098. A contract of enterprise or for services is a contract by which a person, the contractor or the provider of services, as the case may be, undertakes to carry out physical or intellectual work for another person, the client or to provide a service, for a price which the client binds himself to pay.

[38] Although the definitions are very precise, it is not necessarily easy to conclude that a contract of employment, as opposed to a contract of enterprise, exists; the fundamental distinction turns on the concept of whether one party has the right to control the other during the performance of the work.

[39] This is a complex concept, especially since one should always bear in mind the explanation given by the Honourable Justice Décary of the Federal Court of Appeal at paragraph 10 of *Charbonneau v. Canada (Minister of National Revenue – M.N.R.)*, [1996] F.C.J. No. 1337 (QL), 207 N.R. 299, and followed in *Jaillet v. Canada (Minister of National Revenue – M.N.R.)*, 2002 FCA 394:

> It is indeed rare for a person to give out work and not to ensure that the work is performed in accordance with his or her requirements and at the

> locations agreed upon. Monitoring the result must not be confused with controlling the worker.

[40] The parties in the case at bar agreed on the terms and conditions of the legal relationship that they wanted. These terms and conditions were followed and complied with. In other words, the parties acted consistently with the agreement governing the performance of the work. Can such an agreement or contract be set up against the Respondent? Can the Respondent question the parties' agreement and come to a different determination?

[41] Although the parties' intent in the case at bar is clear, is it sufficient in order for us to conclude that the contract does not meet the conditions of paragraph 5(1)(*a*) of the *Employment Insurance Act* (the Act), which reads as follows?

> **5.** (1) Subject to subsection (2), insurable employment is
>
> (*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;

[42] The concept of control is absolutely essential and determinative in distinguishing a contract of enterprise, or for services, from a contract of employment, or of services.

[43] In the case at bar, there is no doubt that the work performed by the Appellant, as described by the evidence, was not easily compatible with a contract for services. It was certainly important work, but it had to be carried out within precise parameters, and the widespread usages and customs in the business field suggest that this work is performed under a contract of employment.

[44] But there can be exceptions, such as the numerous people who provide bookkeeping and accounting services on an itinerant basis, calling on their clients periodically and charging a flat rate. Those people are clearly contractors who are independent of the businesses for which they work.

[45] Was the fact that the work was done in exchange for a percentage of the sales a significant element indicating that the Appellant was self-employed?

[46] The Appellant's work had no significant impact on sales growth. In other words, it was the boss, Marielle C. Deschênes, who was responsible for increasing the sales; the greater the sales, the more the Appellant worked, and not the reverse. The fact that her remuneration was a sales commission is not at all determinative. In fact, the provision contemplates such pay as one form of remuneration under a contract of employment.

[47] Since the Appellant was competent and very qualified to do her job, it was normal for her to take certain initiatives to implement an efficient and reliable system, which was one of the objectives of the person who ran the business. As long as that person was satisfied with the work, she did not have to intervene.

[48] Even though she did not actually intervene, this does not mean that she could not do so, or that she waived the right to do so. The Appellant had specific and defined work to do, and she did it in accordance with the employer's expectations within a genuine framework of control, even though she had some autonomy in managing her time.

[49] The work was done in a respectful and harmonious climate. If the Appellant needed to be away, she made an arrangement with the owner's daughter, whom the owner trusted so completely that she was authorized to sign cheques without a co-signer. The daughter knew what work had to be done and was able to replace the Appellant when she was absent. Would the Appellant have been allowed to select a third party as a replacement? I do not believe so.

[50] The situation was very different from that of many small businesses that entrust their accounting to external people who often do the work off-site and are not the same people who visit periodically to obtain the documentation needed to fulfill their contract.

[51] The Appellant also noted that she did not work exclusively for Agneau de l'Est Inc. The only other work she did was accounting work for her husband's farming business, and she was unable to estimate the time required for that work.

[52] I do not believe that this element is capable of affecting or modifying the nature of the legal relationship between the Appellants. The work that Ms. Lévesque did for her husband's business was part of a commonplace and normal situation that had no effect on the work done for Agneau de l'Est Inc.

[53] On the preponderance of the evidence, it appears that during the period in issue, the Appellant performed work for which she was paid a percentage of sales. This form of remuneration is expressly referred to in paragraph 5(1)(*a*) of the *Act*. The work was done on the company's premises. In the beginning, the boss and her daughter trained her in the various operations of the company.

[54] Talented and competent, she implemented various systems and methods that made it possible to monitor sales very closely. The crucial element of her work was to ensure that the owner of the business had quick access, at any time, to sales figures, accounts receivable and so forth.

[55] At the same time, she performed of office duties and looked after correspondence and preparing deposits. In short, the Appellant provided administrative support.

[56] Marielle C. Deschênes could have intervened at any time to impose her authority with regard to the method of work, and to modify the workload, reprimand the Appellant with regard to the quantity and quality of the work, and impose new requirements. These elements point decisively to a true relationship of subordination — an essential condition of an employment contract, and quite the opposite of a contract for services.

[57] Even if the parties to a written and oral agreement have stated their intent, or such intent can be inferred from their conduct, this does not necessarily mean that the courts must consider this fact decisive. As Décary J.A. stated in *Wolf v. Canada*, 2002 FCA 96, 2002 DTC 6853, [2002] 3 C.T.C. 3, 288 N.R. 67, [2002] 4 F.C. 396, the contract must be performed in accordance with that intent.

[58] Thus, the fact that the parties called their contract a "contract for services" and stipulated that the work would be performed by an "independent contractor" does not necessarily mean that the contract in question is a contract for services.

[59] It is essential to seek the true mutual intention of the parties, as opposed to limiting ourselves to the literal meaning of the terms used in the contract. In *Le droit du travail au Québec*, 5th ed. (2003), Robert P. Gagnon writes as follows:

> [TRANSLATION]
>
> **91** — *Assessment of the facts* — Subordination must be verified on the facts. In this regard, the jurisprudence has always refused to simply defer to the parties' characterization:
>
> > In the contract, the distributor himself recognizes that he is a self-employed independent contractor. There is no need to come back to this point because it does nothing to alter the truth of the matter; in fact, people often claim to be something that they are not.
>
> (Emphasis added.)

[60] In *D & J Driveway*, F.C.A., No. A-512-02, November 27, 2003, Létourneau J.A. of the Federal Court of Appeal writes:

> 2 It should be noted at the outset that the parties' stipulation as to the nature of their contractual relations is not necessarily conclusive and the Court which has to consider this matter may arrive at a contrary conclusion based on the evidence presented to it: *Dynamex Canada Inc. v. Canada,* [2003] 305 N.R. 295 (F.C.A.). However, that stipulation or an examination of the parties on the point may prove to be a helpful tool in interpreting the nature of the contract concluded between the participants.
>
> (Emphasis added.)

[61] It should be recalled that the hallmark of an employment contract is not the employer's actual exercise of the power of direction or control, but the fact that the employer had the ability to exercise it. In circumstances where the employer did not regularly exercise his power of direction or control, it is not easy to prove that such a "power" existed.

[62] The question that must be asked is the following: do the indicia point to the probability that a power of direction or control existed, or, rather, to the probability that the worker was performing the contract on a self-employed basis?

Robert P. Gagnon suggests the following at paragraph 92 of his treatise, *supra*:

> [TRANSLATION]

> . . . In practice, one looks for a certain number of indicia of the ability to control (and these indicia can vary depending on the context): mandatory presence at a workplace; a somewhat regular assignment of work; the imposition of rules of conduct or behaviour; an obligation to provide activity reports; control over the quantity or quality of the services, etc. The fact that a person works at home does not mean that he or she cannot be integrated into a business in this way.

(Emphasis added.)

There are also indicia supplied by French authors. Pélissier, Supiot and Jeammaud write as follows in *Le droit du travail*, 22d ed. (2004):

> **[TRANSLATION]**
>
> **2. The indicia**
>
> In order to identify the combination of elements that determine the characterization, judges will turn to various indicia. Some of these indicia are drawn from the stipulations in the contract. More often, however, they are drawn from the "factual circumstances in which the workers' activities are carried out"; essentially, this means the terms that have been adopted or accepted as governing the performance of the contract. The factors examined include the conduct of the parties, their dealings with each other, the place and time in which the activity is carried out, whether the person works alone or is assisted by others, the ownership of the equipment and raw materials, and, of course, whether or not the beneficiary of the work is exercising direction or has control, and whether, and on what terms, the worker is remunerated. A contract of employment exists when a *coalescence of indicia* points to such a characterization, and the fact that one or more of these indicia are not present is not sufficient to change such a characterization. . . .
>
> **128 *Place of work*** ◊ An employee normally carries out the work at the post set aside for him at the employer's plant or offices. Thus, the existence of a geographical requirement is one indicia of subordination.
>
> However, the determination of a place of work is clearly not decisive in itself. The nature of an independent contractor's activity may cause that contractor to work at the premises of his client (e.g. an accountant or engineering consultant) or where the client is holding an event (e.g. a conference interpreter.)
>
> The development of *telecommuting*, the practice of requiring workers to be "*on call*" (remaining at home and available to the employer) or work *on demand* are weakening the traditional importance of the place of work.
>
> **129 *Work schedule*** ◊ Employment is a successive contract, which means that it can only be performed over a period of time. It does not matter whether the contract is

determinate or not, or whether it is long-term or very short, though regular collaboration over a relatively lengthy period may, in itself, be an indicia of subordination.

Subordination is concrete where the worker is required to remain available to the employer in accordance with a schedule established by the employer. Where services are not delivered on an ongoing basis and in accordance with a regular schedule, subordination may result from a duty to report to the creditor of the delivery whenever this is requested.

When a worker is required to report to the assigned location in accordance with an imposed schedule, it will be easy for a judge to find that "legal subordination", and thus an employment contract, exists. This act of submission is significant in itself and the assignment of a location and time of work appears to constitute an actual exercise of the employer's power of direction and control. The new trends in terms of duration of work (personalized schedules, part-time and intermittent work, variations in schedule depending on the time of year) do not seem to make these indicia less significant.

130 ***Personal and exclusive delivery of services*** ◊ Under an employment contract, the employee must perform the work personally and is not entitled to be replaced by anyone, including an employee that he hires.

The direct or indirect imposition of such personal performance strongly points to the existence of an employment contract. By contrast, a contractor who hires workers who work under his exclusive direction and responsibility does not have an employment contract with the party benefiting from his work.

The problem has arisen in cases involving sales representatives, and the legislator has solved the problem by deeming the existence of an employment contract in certain cases.

In addition, by giving up his freedom and agreeing to work for a single employer, an employee is submitting to the employer's authority.

While exclusivity normally triggers a presumption of subordination, the opposite is not true: non-exclusive activity for the benefit of several employers or customers is not necessarily inconsistent with employee status. One can be an employed independent professional, just as one can hold several employment contracts with different employers (in principle, in order to comply with regulations regarding hours of work, the contracts must be part-time). It is becoming increasingly common for one person to have *several different occupations.* This practice of multiple jobholding carries no stigma and is only rarely prohibited.

131 ***Supply of equipment, raw materials or products*** An employer normally provides his employees with the tools and materials necessary for the performance of his work. This is a reflection of workers' dependence on employers, who own the means of production in capitalist economies.

In terms of subordination, the authority of the party benefiting from the work fades when the worker owns the equipment and can dispose of it as he sees fit because the worker thereby ceases to be a mere lessor of services.

132 ***Direction and control over the work*** This is a decisive factor. Judges have held that the following persons were employees:

. . .

Thus, an analysis of the jurisprudence shows that, among the various indicia of subordination, the *worker's integration into an organized department* is significant, though it remains only an indicia, not a possible and sufficient condition of subordination.

If the worker is integrated into an organized department within the enterprise, it does not matter that he carries out his occupation elsewhere, or is only involved in the business as a term employee and has the freedom inherent in the activity of a researcher.

The decisive point appears to be control over the activity. One possible manifestation of this control is an obligation of accountability. This obligation is a particularly helpful and significant indicator when one is faced with management methods which employ objective-driven agreements that give workers a great deal of autonomy in exchange for an obligation to account for the way in which that autonomy is used. These agreements, far from sounding the death-knell of subordination, are actually its new face.

(Emphasis added.)

[63] Quebec authors Bich and Gagnon both write that an employee's work is integrated into the employer's business. Bich writes, in "Contracts of Employment", in *Reform of the Civil Code*, vol. 2B, translated by Susan Altschul (1993) that "his activity is defined by the framework set by the employer for whose benefit it is carried out . . ." Gagnon writes that [TRANSLATION] "an employee is someone who agrees to be integrated into the operations of a business so that it will benefit from his work." (Gagnon, *supra*, at paragraph 92.)

[64] However, the ability to work for other payors is not necessarily inconsistent with the existence of relationship of subordination: *Comité paritaire de l'entretien d'édifices publics, région de Montréal c. 9026-8863 Québec inc.*, [2004] Q.J. No. 13911 (QL) (C.Q.). In particular, it is possible to have more than one employment (*Commission des normes du travail du Québec c. Immeubles Terrabelle*, [1989] R.J.Q. 1307 (C.Q)).

[65] Another indicia of a worker's integration into the payor's business, and, consequently, of the existence of a power of direction or control, is the fact that the customers served by the worker are the payor's customers.

[66] In the case at bar, the Appellant was very competent; the quality of her work was beyond reproach. In fact, the employer was so satisfied with the work that she did not need to intervene at all, except to express her appreciation.

[67] However, it is absolutely clear that the Appellant would have been disciplined if she had refused to perform any of the functions that were part of her job description. She had no risk of loss or chance of profit from the performance of the work. All the materials necessary for the performance of the work were supplied by the payor company. At all times during the performance of the work, the Appellant, acting through its manager, could intervene and demand any change. The fact that she never manifested this authority does not mean that she did not have this control and this right to intervene.

[68] For these reasons, the appeals are dismissed on the basis that the work done by the Appellant Lucienne Lévesque during the period commencing January 1, 2002, and ending October 7, 2003, was under a true contract of service.

Signed at Ottawa, Canada, this 28th day of July 2005.

"Alain Tardif"

Tardif J.

Certified true translation
On this 31st day of January, 2006.
Garth M^{c}Leod, Translator

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APPEARANCES:

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