Docket: 2002-1067(EI)

BETWEEN:

P&D INVESTMENTS LTD.,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

Appeal heard on common evidence with the appeal of *P&D Investments Ltd.* (2002-1069(CPP)) on August 6, 2003 at Prince Albert, Saskatchewan

Before: The Honourable Michael H. Porter, Deputy Judge

Appearances:

Counsel for the Appellant: Ajay Krishan

Counsel for the Respondent: Anne Jinnouchi

JUDGMENT

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

Signed at Calgary, Alberta, this 4th day of October 2003.

"Michael H. Porter"

Porter, D.J.

Citation: 2003TCC697
Date: 20031004
Dockets: 2002-1067(EI)
2002-1069(CPP)

BETWEEN:

P&D INVESTMENTS LTD.,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

REASONS FOR JUDGMENT

Porter, D.J.

[1] These appeals were heard on common evidence by consent of the parties, at Prince Albert, Saskatchewan, on the 6th day of August 2003.

[2] The Appellant has appealed from the decisions of the Minister of National Revenue (hereinafter called "the Minister") dated the 18th of December 2001, that the employment of Ernest Lister (the "Worker") with it from January 1, 2000 to December 29, 2000 was both insurable and pensionable under the *Employment Insurance Act* (the "*EI Act*") and the *Canada Pension Plan* (the "*CPP*") respectively, for the following reason:

> Ernest Lister was engaged under a contract of service; therefore he was your employee.

The decision was said to be issued in accordance with section 93 of the *EI Act* and subsection 27.2(3) of the *CPP* and was based on subsection 5(1) of the *EI Act* and paragraph 6(1)(*a*) of the *CPP* respectively.

[3] The established facts reveal that the Appellant, at the material times, was in the delivery business, delivering cargo and merchandise in and around the City of Prince

Albert. It had a contract with an organization called Dynamex Canada Inc. to deliver their goods. The Worker was engaged by the Appellant to drive a delivery vehicle and deliver the goods. The Minister has decided that he was engaged as an employee under a contract ***of*** service. The Appellant to the contrary, maintains that the Worker was an independent contractor working under a contract ***for*** services. That is the issue before the Court.

The Law

Contracts Of Service/For Services

[4] The manner in which the Court should go about deciding whether any particular working arrangement is a contract ***of*** service and thus an employer/employee relationship or a contract ***for*** services and thus an independent contractor relationship, has long been guided by the words of MacGuigan, J. of the Federal Court of Appeal in the case of *Wiebe Door Services Ltd. v. M.N.R.*, 87 DTC 5025. The reasoning in that case was amplified and explained further in cases emanating from that Court, namely in the cases of *Moose Jaw Kinsmen Flying Fins Inc. v. M.N.R.*, 88 DTC 6099, *Charbonneau v. Canada (M.N.R.)*, [1996] F.C.J. No. 1337, and *Vulcain Alarme Inc. v. The Minister of National Revenue*, (1999) 249 N.R. 1, all of which provided useful guidance to a trial Court in deciding these matters.

[5] The Supreme Court of Canada has now revisited this issue in the case of *671122 Ontario Ltd. v. Sagaz Industries Canada Inc.*, [2001] S.C.J. No. 61, 2001 SCC 59, 274 N.R. 366. The issue in that case arose in the context of a vicarious liability situation. However, the Court recognized that the same criteria applied in many other situations, including employment legislation. Mr. Justice Major, speaking for the Court, approved the approach taken by MacGuigan J. in the *Weibe Door* case (above), where he had analyzed Canadian, English and American authorities, and, in particular, referred to the four tests, for making such a determination enunciated by Lord Wright in *City of Montreal v. Montreal Locomotive Works Ltd.*, [1974] 1 D.L.R. 161 at 169-70. MacGuigan, J. concluded at page 5028 that:

> Taken thus in context, Lord Wright's fourfold test [control, ownership of tools, chance of profit, risk of loss] is a general, indeed an overarching test, which involves "examining the whole of the various elements which constitute the relationship between the parties". In his own use of the test to determine the character of the relationship in the *Montreal Locomotive Works* case itself, Lord Wright combines and integrates the four tests in order to seek out the meaning of the whole transaction.

At page 5029 he said:

> ... I interpret Lord Wright's test not as the fourfold one it is often described as being but rather as a four-in-one test, with emphasis always retained on what Lord Wright, *supra,* calls *"the combined force of the whole scheme of operations,"* even while the usefulness of the *four subordinate criteria is* acknowledged. (emphasis mine)

At page 5030 he had this to say:

> What must always remain of the essence is the search for the total relationship of the parties…

He also observed:

> There is no escape for the Trial Judge, when confronted with such a problem, from carefully weighing all of the relevant factors…

[6] Mr. Justice MacGuigan also said this:

> Perhaps the best synthesis found in the authorities is that of Cooke J. in *Market Investigations, Ltd. v. Minister of Social Security,* [1968] 3 All E.R. 732, 738-9:
>
> > The observations of Lord Wright, of Denning L.J., and of the judges of the Supreme Court in the U.S.A. suggest that the fundamental test to be applied is this: "Is the person who has engaged himself to perform these services performing them as a person in business on his own account?" If the answer to that question is "yes", then the contract is a contract for services. If the answer is "no" then the contract is a contract of service. No exhaustive list has been compiled and perhaps no exhaustive list can be compiled of considerations which are relevant in determining that question, nor can strict rules be laid down as to the relative weight which the various considerations should carry in particular cases. The most that can be said is that control will no doubt always have to be considered, although it can no longer be regarded as the sole determining factor; and that factors, which may be of importance, are such matters as whether the man performing the services provides his own equipment, whether he hires his

> own helpers, what degree of financial risk be taken, what degree of responsibility for investment and management he has, and whether and how far he has an opportunity of profiting from sound management in the performance of his task. The application of the general test may be easier in a case where the person who engages himself to perform the services does so in the course of an already established business of his own; but this factor is not decisive, and a person who engages himself to perform services for another may well be an independent contractor even though he has not entered into the contract in the course of an existing business carried on by him.

[7] In the case of *Kinsmen Flying Fins Inc.* case, above, the Federal Court of Appeal said this:

> ... like MacGuigan J. we view the tests as being useful subordinates in weighing all of the facts relating to the operations of the Applicant. That is now the preferable and proper approach for the very good reason that in a given case, and this may well be one of them, one or more of the tests can have little or no applicability. To formulate a decision then, the overall evidence must be considered taking into account those of the tests which may be applicable and giving to all the evidence the weight which the circumstances may dictate.

[8] The nature of the tests referred to by the Federal Court of Appeal can be summarized as:

a) The degree or absence of control exercised by the alleged employer;
b) Ownership of tools;
c) Chance of profit;
d) Risk of loss;

In addition, the Court must consider the question of the integration, if any, of the alleged employee's work into the alleged employer's business.

[9] In the *Sagaz* decision (above) Major J. said this:

> …control is not the only factor to consider in determining if a worker is an employee or an independent contractor…

[10] He dealt with the inadequacy of the 'control test' by again approving the words of MacGuigan J. in the *Wiebe* Door case (above) as follows:

> A principal inadequacy [with the control test] is its apparent dependence on the exact terms in which the task in question is contracted for: where the contract contains detailed specifications and conditions, which would be the normal expectation in a contract with an independent contractor, the control may even be greater than where it is to be exercised by direction on the job, as would be the normal expectation in a contract with a servant, but a literal application of the test might find the actual control to be less. In addition, the test has broken down completely in relation to highly skilled and professional workers, who possess skills far beyond the ability of their employers to direct.

[11] He went on to say this:

> In my opinion, there is no one conclusive test which can be universally applied to determine whether a person is an employee or an independent contractor. Lord Denning stated in Stevenson Jordan, …([1952] 1 The Times L.R. 101) that it may be impossible to give a precise definition of the distinction (p.111) and, similarly, Fleming observed that "no single test seems to yield an invariably clear and acceptable answer to the many variables of ever changing employment relations …" (p. 416). Further, I agree with MacGuigan J.A. in Wiebe Door, at p. 563, citing Atiyah, … (Vicarious Liability in the Law of Torts. London: Butterworths, 1967), at p. 38, that what must always occur is a search for the total relationship of the parties:
>
> > [I]t is exceedingly doubtful whether the search for a formula in the nature of a single test for identifying a contract of service any longer serves a useful purpose…. The most that can profitably be done is to examine all the possible factors which have been referred to in these cases as bearing on the nature of the relationship between the parties concerned. Clearly not all of these factors will be relevant in all cases, or have the same weight in all cases. Equally clearly no magic formula can be propounded for determining which factors should, in any given case, be treated as the determining ones.
>
> Although there is no universal test to determine whether a person is an employee or an independent contractor, I agree with MacGuigan J.A. that a persuasive approach to the issue is that taken by Cooke J.

> in Market Investigations, supra. The central question is whether the person who has been engaged to perform the services is performing them as a person in business on his own account. In making this determination, the level of control the employer has over the worker's activities will always be a factor. However, other factors to consider include whether the worker provides his or her own equipment, whether the worker hires his or her own helpers, the degree of financial risk taken by the worker, the degree of responsibility for investment and management held by the worker, and the worker's opportunity for profit in the performance of his or her tasks.
>
> It bears repeating that the above factors constitute a non-exhaustive list, and there is no set formula as to their application. The relative weight of each will depend on the particular facts and circumstances of the case.

[12] I also find guidance in the words of Décary J.A. in the *Charbonneau* case (above) when speaking for the Federal Court of Appeal he said this:

> The tests laid down by this Court ... are not the ingredients of a magic formula. They are guidelines which it will generally be useful to consider, but not to the point of jeopardizing the ultimate objective of the exercise, which is to determine the overall relationship between the parties. The issue is always, once it has been determined that there is a genuine contract, whether there is a relationship of subordination between the parties such that there is a contract of employment ... or, whether there is ... such a degree of autonomy that there is a contract of enterprise or for services. ... <u>In other words, we must not pay so much attention to the trees that we lose sight of the forest. ... The parts must give way to the whole.</u> (emphasis mine)

[13] I also refer to the words of Létourneau J.A. in the *Vulcain Alarme* case (above), where he said this:

> … These tests derived from case law are important, but it should be remembered that they cannot be allowed to compromise the ultimate purpose of the exercise, to establish in general the relationship between the parties. This exercise involves determining whether a relationship of subordination exists between the parties such that the Court must conclude that there was a contract of employment within the meaning of art. 2085 of the *Civil Code of Quebec*, or whether instead there was between them the degree of independence which characterises a contract of enterprise or for services….

[14] I am further mindful that as a result of the recent decisions of the Federal Court of Appeal in *Wolf v. Canada,* [2002] F.C.J. No. 375, and *Precision Gutters Ltd. v. Canada (Minister of National Revenue-M.N.R.)*, [2002] F.C.J. No. 771, a considerable degree of latitude seems now to have been allowed to creep into the jurisprudence enabling consultants to be engaged in a manner in which they are not deemed to be employees as they might formerly been. I am particularly mindful of the words of Mr. Justice Décary in the *Wolf* decision (above) where he said:

> In our day and age, when a worker decides to keep his freedom to come in and out of a contract almost at will, when the hiring person wants to have no liability towards a worker other than the price of work and when the terms of the contract and its performance reflect those intentions, the contract should generally be characterised as a contract for services. If specific factors have to be identified, I would name lack of job security, disregard for employee-type benefits, freedom of choice and mobility concerns. (my emphasis)

[15] Thus, it seems to this Court that the pendulum has started to swing, so as to enable parties to govern their affairs more easily in relation to consulting work and so that they may more readily be able to categorize themselves, without interference by the Courts or the Minister, as independent contractors rather than employees working under contracts of service.

[16] In conclusion, there is no set formula. All these factors bear consideration and as Major J. said in the *Sagaz* case (above), the weight of each will depend upon the particular facts and circumstances of the case. Many of the tests can be quite neutral and can apply equally to both types of situation. In such case, serious consideration has to be given to the intent of the parties. Thus is the task of the trial Judge.

The Facts

[17] In the Reply to the Notices of Appeal, signed on his behalf, the Minister admitted the following facts contained in the Appellant's Notice of Appeal:

(a) That the Appellant had a contract with Dynamex Canada Inc. ("Dynamex").

(b) That the Worker picked up freight from the Appellant's premises.

(c) That the deliveries were done for those who used the services of Dynamex.

(d) That the Appellant had contracts with the customers.

(e) That the Worker had to complete delivery sheets.

(f) That the Worker's wages were not dependent on the number of deliveries made or hours worked.

[18] In the said Replies to the Notices of Appeal, the Minister was also said to have relied upon the following assumptions of fact (I have set out the agreement or disagreement of the Appellant in parenthesis), namely:

a) the Appellant is in the delivery business; (Agreed)

b) the Appellant entered into a contract with Dynamex to deliver merchandise for Dynamex; (Agreed)

c) the Worker was hired as a driver and his duties included delivering goods, packages, documents, and other cargo; (Agreed, subject to word "hired" meaning no more than "engaged" and "duties" being no more than "contractual obligations". His work was agreed.)

d) the Worker performed his services at the Appellant's premises and in the field; (Agreed)

e) the Worker earned a set wage of $60.00 per day (originally $50.00 per day); (Disagreed)

f) the Worker was paid semi-monthly; (Agreed)

g) the Appellant set the Worker's rate of pay; (Disagreed)

h) the Worker did not invoice the Appellant; (Agreed)

i) the Worker normally worked from 8:00 a.m. to 5:00 p.m., Monday to Friday; (Disagreed)

j) the Appellant controlled the Worker's hours and days; (Disagreed)

k) the Appellant obtained and assigned the work; (Disagreed)

l) the Appellant set all deadlines in accordance with the contract the Appellant entered into with Dynamex; (Agreed - with some explanation)

m) the Appellant was responsible for fulfilling the contract it entered into with Dynamex; (Agreed)

n) the Appellant instructed and monitored the Worker; (Disagreed)

o) the Appellant instructed the Worker, on his route and cargo, on a daily basis; (Disagreed)

p) the Worker did not have the power to accept or refuse work; (Disagreed)

q) the Worker was required to complete reports; (Agreed - with explanation)

r) the Appellant told the Worker where to fuel up the vehicle; (Disagreed)

s) the Worker could not replace himself or hire his own helpers; (Disagreed)

t) the Appellant controlled all pricing, billing, and money collection; (Agreed - with explanation)

u) the Worker wore clothing with Dynamex's logo on it; (Agreed)

v) the vehicle driven by the Worker had Dynamex's logo on it; (Agreed)

w) the Appellant provided all of the tools and equipment required including the vehicle, a mobile phone, wheelers, and the business premises; (Disagreed)

x) the Worker used different vehicles during the period under review and a mobile phone was included in each vehicle; (Agreed - with explanation)

y) the Worker did not enter into a vehicle lease agreement with the Appellant; (Disagreed)

z) the vehicle was required to be parked at the Appellant's premises; (Disagreed)

aa) the Appellant paid for all vehicle operating costs including fuel, maintenance, licence, registration and insurance; (Disagreed)

bb) the Appellant supplied the Worker with a gas card; (Agreed - with explanation)

cc) the Appellant provided all the forms and supplies required; (Agreed - with explanation)

dd) the Worker did not incur any expenses in the performance of his duties; (Disagreed)

ee) the Worker had no control over the vehicle operating expenses and never saw expense receipts; (Disagreed)

ff) the Worker did not charge the Appellant G.S.T.; (Agreed)

gg) the Worker was employed under a contract of service with the Appellant. (This is the issue in the appeal)

[19] Evidence was given on behalf of the Appellant by Diane Lavoie ("Lavoie") who along with her husband, owned all the issued shares in the Appellant corporation. In addition, she worked as the secretary in the business. Evidence was also given by Ernest Lister ("Lister"), the Worker in question.

[20] Lavoie explained that Dynamex is a large freight carrier which brings freight into Prince Albert and leaves it at the office building that it shared with the Appellant. In fact, Lavoie worked for Dynamex at the same time, as a dispatcher. The Appellant would then distribute that freight out to the various points to which it was consigned. Similarly, I understood it would collect in freight to go elsewhere which in turn, would be taken out by Dynamex.

[21] To carry the freight to the outlying places, the Appellant engaged workers, including Lister, to drive a number of different vehicles which it owned.

[22] Each worker was required to sign a contractor application and a form of agreement whereby they agreed to work as independent contractors to deliver the freight on behalf of the Appellant and to provide their own vehicles to perform that service. The agreement (Exhibit A-1) is a standard independent contractor agreement, making it perfectly clear that the Worker is not an employee of the

Appellant.

[23] Lavoie said in her evidence, that she gave Lister a copy of this agreement and went over it with him. She was, however, unable to find any copy signed by him. Lister said in evidence that he had been given a copy of the agreement, that he took it home with him and never did sign it as there were too many things about it with which he did not agree. Nevertheless, he started to work for the Appellant.

[24] I accept Lister's evidence that he never signed or committed to the terms of this agreement and thus the written document is, in essence, a non-issue.

[25] Lavoie said there was also a second contract which formed part of Exhibit A-1, whereby the Appellant leased to the Workers a mobile phone. Again, there is no signed copy available and I find that this also was not in fact signed by Lister.

[26] Some workers who had their own vehicles may have worked as independent contractors, under the terms of the written contract. The actual arrangements with workers such as Lister, although ostensibly the same to an outsider, were in fact somewhat different. They did not own their own vehicles. They entered into a concocted scheme whereby they purported to lease vehicles from the Appellant. In fact, they did not lease them and the whole arrangement was a sham. How it worked was revealed in the balance of Lavoie's evidence.

[27] She said some people wanted to be independent contractors but did not have the necessary funds to purchase their own vehicles.

[28] She said the workers bid on the routes they wished to run. The route was assigned a dollar figure based on their experience as to what was involved. It appears that Lister started at $50.00 per day for his route and worked up to $60.00 per day. It was a flat rate. There were no extras. The driver delivered whatever was required along that route and received the same amount for the day whether there was one, ten or one hundred packages to deliver.

[29] Ostensibly, Lister was required to lease his vehicle from the Appellant for $150.00 per month. He also ostensibly leased his radio equipment, and paid his fuel and vehicle licenses. In fact, he did none of those things. Exhibit R-I shows a typical pay stub. The pay stub would be calculated by adding up the number of days the driver worked at the rate for his route, and then adding to it a cost of the lease of $150.00, cost of renting radio equipment $29.43, cost of fuel whatever it

was, license and insurance costs of $31.24, to show a gross figure of pay. From that gross figure would then be deducted those same items to show a net figure which was the original figure. In other words, these costs were artificially added on, in a hidden way, and then shown as a deduction off that figure. In fact, they were never paid. To an outside eye, however, they would appear as expenses. In reality, they were a fiction.

[30] The only item which was genuinely deducted was the amount of the insurance deductible that Lister agreed to pay as he had had three accidents. That was a genuine figure and came off at $50.00 per month up to $500.00 in total.

[31] Apart from the fact that there was in fact no lease payment, the other flaw in the claim that Lister leased a vehicle was that there were three vehicles in total and he had a choice of those three to make each day, depending upon what he was delivering. Thus, there was no set vehicle of which he had the use.

[32] In the result, to claim that he leased a vehicle in lieu of supplying his own was nothing more than a fiction. He did not provide or lease any vehicle. He used different vehicles belonging to the Appellant. I do not go so far as to say that this was a deliberate deception on the part of the Appellant. However, it clearly was a complete sham, for whatever the purpose for which it was set up.

[33] There was a considerable divergence on the evidence between Lavoie and Lister. I noted also that Lavoie's husband sat through the case without giving evidence. On the whole, where there was a difference, I accept Lister's evidence as being the more credible.

[34] Lavoie seemed to indicate that the workers could come and go as they pleased. Lister said he was expected to be at the office Monday to Friday before 8:00 a.m. I accept his evidence.

[35] Lavoie said Lister could use the truck he leased as he saw fit. Lister said it had to be returned each day and that although he did in fact use it once to move his personal belongings, he was not allowed to use it for personal reasons. Again, I accept his evidence.

[36] Lavoie said the drivers could have others fill in for them. Lister said he was not allowed to get somebody else. It would not have been economically practical in any event. Again, I accept Lister's evidence.

[37] Lavoie said he could fill in his report whenever he chose. Lister said he had to do it at the office each day at the end of his run. Again, I accept Lister's evidence.

[38] Lavoie said he could leave at the end of his run. He said he had to come back and do any other deliveries they needed. He only went home early on one occasion. Again, I accept Lister's evidence.

[39] Lavoie said they left the drivers to organize their own routes as long as deliveries were made during business hours. Lister said he was told sometimes to wait for special deliveries, leading to 11 hour days, despite his concerns about being overtired due to the long hours. Again, I accept Lister's evidence.

[40] In all these instances, I accept the evidence of Lister. He struck me as being a reliable witness. Lavoie, on the other hand, presented this fiction about the leasing arrangements, purported to have me believe there was a written contract with Lister, when in fact it had not been signed and generally lacked the same forthrightness in her evidence that I saw in that of Lister.

Application of the Factors to the Evidence

[41] **Title:** It must be clearly understood that even where the parties choose to put a title on their relationship, if the true nature and substance of the arrangement does not accord with that title, it is the substance to which the Court must have regard. That legal principle has not changed (see *Shell Canada Ltd. v. Canada* (1999) S.C.J. No. 30). Having said that, it is also fair to say that where the parties genuinely choose a particular method of setting up their working arrangement, it is not for the Minister or this Court to disregard that choice. Due deference must be given to the method chosen by the parties and if on the evidence as a whole there is no substantial reason to derogate from the title chosen by the parties, then it should be left untouched. The *Wolf* and *Precision Gutters* cases very much substantiate that proposition.

[42] In this case there was no clear agreement about the title to be put upon the working arrangement. Whilst the Appellant sought to establish, via a written contract an independent contractor arrangement, in fact Lister declined to sign it or agree to its terms. I find there was no meeting of the minds on this point. The

Appellant wanted contractual arrangement. Lister was content to be an employee working under a contract ***of*** service and that is what he considered he was doing.

[43] **Control:** As this aspect of the test has been traditionally applied, it has been consistently pointed out that it is not the actual control so much as the right to control that is important for the Court to consider. The more professional and competent a person is or the more experience they have in their field, the less likely there is to be any actual control, which creates difficulty in applying this test. Indeed as Major J. pointed out in the *Sagaz* case (above), there may be less control exercised in the case of a competent professional employee than in the case of an independent contractor. Nonetheless, it is another factor to be weighed in the balance.

[44] In this case, I find there was a great deal of control exercised over Lister by the Lavoies, from the hours he worked, both at the start and end of the day, through how he was paid, (although he could bid for better routes when they became available), to how he used the truck, staying off gravel roads and out of rural areas, and completed his reports. This factor points distinctly to an employee working under a contract ***of*** service.

[45] **Chance of Profit/Risk of Loss:** However hard he worked, it was impossible for Lister to earn extra money. His daily rate for the route remained the same. Similarly, there was no exposure to loss, save for his payment of the deductible, which I gleaned came to an end when he quit, so there was no ongoing loss.

[46] There was quite simply, no entrepreneurial element to this work whatsoever. He was simply paid for his route, almost as if paid by the piece. This factor points clearly to an employer/employee relationship, not to that of an independent contractor.

[47] **Tools and equipment:** It is apparent from the evidence, as it finally came out, that Lister provided nothing by way of tools and equipment. The Appellant provided the truck, radio and bore the expenses. This is entirely consistent with an employer/employee relationship.

[48] **Integration:** Lastly, I come to the question of whether the work the Workers were doing was done as an integral part of the business of the Appellant, in which case it is said to be integrated into it and done as an employee working under a contract of service; or whether the work, although done for the business of the Appellant, was not integrated into it but was only accessory to it, in which case it is

done by an independent contractor working under a contract of service. In other words, was there one or two (several) businesses working here.

[49] Lister was not of the view he was running any business of his own. Everything he did was in connection with the business of the Appellant. In my view, his work was totally integrated into the business of the Appellant. As I say, there was no entrepreneurial element to his work. These factors clearly point also to an employee situation.

Conclusion

[50] When I look not just at the individual trees but at the forest as a whole, I am left overwhelmingly with the view that this work was carried out by the worker as part and parcel of the business of the Appellant as an employee working under a contract ***of*** service.

[51] I have some sympathy for the Appellant in that it has received different rulings from the Minister in the past with respect to other workers. However, I make no comment on the reliability of the evidence presented to the Minister in those cases. In this case, I can only say that it took some probing to uncover the true situation. I have no idea whether the evidence presented to the Minister was the same or different and thus, these prior cases, although perhaps confusing to the Appellant, are of no assistance to it in the present appeal. In any event, the Minister is not estopped from deciding as he did as a result of those prior decisions. Each case turns on its own facts.

[52] In the result, the appeals are dismissed and the decisions of the Minister are confirmed.

Signed at Calgary, Alberta, this 4th day of October 2003.

"Michael H. Porter"

Porter, D.J.

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COURT FILE NO.:	2002-1067(EI) and 2002-1069(CPP)
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DATE OF JUDGMENT:	October 4, 2003

APPEARANCES:

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