Dockets: 2006-3714(EI)
2007-457(EI)
2006-3715(CPP)
2007-459(CPP)

BETWEEN:

ROBERT DEMPSEY,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

Appeals heard on common evidence
on June 13 and 14, 2007, at Vancouver, British Columbia

Before: The Honourable Justice J.E. Hershfield

Appearances:

Counsel for the Appellant:	Brenda McLuhan
Counsel for the Respondent:	Selena Sit

JUDGMENT

The appeals are allowed, without costs, in accordance with and for the reasons set out in the attached Reasons for Judgment.

Signed at Winnipeg, Manitoba, this 10th day of September, 2007.

"J.E. Hershfield"

Hershfield J.

Citation: 2007TCC362
Date: 20070910
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2006-3715(CPP)
2007-459(CPP)

BETWEEN:

ROBERT DEMPSEY,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

REASONS FOR JUDGMENT

Hershfield J.

[1] The Appellant appeals the Minister's determination that he was not engaged in a contract of service with either Western Economic Diversification ("WD") or Consulting and Audit Canada (now Audit Services Canada) ("CAC") for the period from October 5, 2003 to September 30, 2004.

[2] CAC was engaged by WD under a Memorandum of Agreement (the "MOA") to perform audit services for WD. To assist in the performance of its audit responsibilities under the MOA, CAC engaged the Appellant under a written agreement to perform services for WD on behalf of CAC. The first contract between the Appellant and CAC was entered into in January 1992. That agreement was for three months and under it the Appellant was to perform duties as assigned by the portfolio manager of WD, B.C. region.

[3] As a result of a series of new agreements, renewals and extensions, the Appellant was continuously engaged by CAC to perform services for WD from January 1992 until September 30, 2004.

[4] The Appellant is and was throughout the engagement period a chartered accountant performing what in general terms might be referred to as auditing services for WD.

[5] CAC was an agency of Public Works Canada operating on a cost plus formula so as to be self-funded. CAC had full-time employees that could be used to perform CAC contracts and as well entered into contracts with independent contractors who would be contracted to perform services that CAC had contracted to provide. The Appellant was in the latter group and was paid at all times by CAC for his work for WD under the MOA.

[6] It is clear, and it is not in dispute, that the contractual status imposed on the Appellant under the written agreements with CAC was that of an independent contractor.

[7] Notwithstanding such contractual labelling, the Appellant asserts that in reality he was engaged in a contract of service with WD and that CAC was a deemed employer pursuant to paragraph 10(1)(a) of the *Insurable Earnings and Collection of Premiums Regulations* (the "*EI Regulations*") and subsection 8.1(1) of the *Canada Pension Plan Regulations* (the "*CPP Regulations*"). As such, the Appellant asserts that his earnings during the subject period were pensionable earnings under the *Canada Pension Plan* ("*CPP*") and that his employment was insurable employment under the *Employment Insurance Act* ("*EIA*").

[8] The Appellant's testimony at the hearing, although not disinterested, was candid and credible and I accept his evidence where it differed from that of the Respondent's witnesses. The Director General of Operations of WD and the Regional Director of CAC testified for the Respondent. Both were credible witnesses although somewhat defensive and less informed by personal experience with the Appellant's situation than others might have been, such as his portfolio manager at WD. His designated Project Authority at CAC would have been better informed as well although the Appellant's contact with CAC was minimal being limited to contract renewal discussions and submitting monthly invoices. Neither of the Respondent's witnesses worked directly with the Appellant and neither had been with their respective organizations as long as the Appellant. The CAC Director had only been there since July 2000 and the WD Director General had only been there since April 2003.

CONTRACTUAL BACKGROUND

CAC – WD

[9] CAC was retained under the MOA to perform auditing and professional services in relation to loans and grants made by WD to small businesses in Western Canada (called contribution arrangements). The objectives of the MOA and the responsibilities of the CAC under it, were broadly stated so as to encompass almost anything and everything that a worker might do in relation to WD's contribution arrangement activities. More specific duties in respect of the Appellant's duties were set out separately in other documents or letters or terms of reference, copies of which were not put in evidence.

[10] Generally, however, it is not in dispute that it was under the MOA that CAC personnel came to work on various aspects of WD's contribution arrangements including and in particular in the case of the Appellant, monitoring accounts receivable in respect of repayable loans made by WD.

[11] The MOA was a contract for a fixed term of two years having a maximum authorized expenditure or contract fee cap for the two year term. By virtue of renewals it was in place throughout the time that the Appellant was engaged by CAC. The MOA recognized and accommodated the uncertainty of WD's funding. Given such uncertainty, WD was unable to commit to hiring audit personnel in employment positions. Services of monitoring loan repayments for example would only be required as long as government provided funding for loans. Since funding was uncertain, employment commitments were not possible. Indeed, the MOA was in place for two year periods to permit periodic reconsideration of WD's need to engage workers through CAC depending on its funding commitments.

[12] Under the MOA, WD paid CAC fees based on the actual hours spent by CAC auditors in the performance of services for WD. As well, actual travel expenses incurred by CAC workers in the performance of services for WD were

charged to WD.[1] There was a maximum total fee stipulated in the MOA in respect of each term.

CAC – Appellant

[13] While the agreements varied somewhat over the years, the principal terms were substantially unchanged.

[14] Each contract provided a rate of pay for each full working day of 7.5 hours at a stipulated daily rate with a contract maximum based on a maximum number of days. The daily rate was pro-rated on an hourly basis for less than a full day's work. The maximum number of days (with a minor exception) was the number of actual working days in the stipulated contract period. For example, the first contract starting January 20, 1992 and ending March 31, 1992 (i.e. 70 days or ten full weeks) was for a maximum of 50 days (i.e. 5 working days a week). In each year the maximum allowed was worked and paid for.

[15] The Appellant was required to submit invoices each month for the number of hours worked each day of the month and same had to be approved by WD.

[16] Each contract stipulated that GST was payable on services invoiced and the Appellant was required to be a GST registrant providing his number on each invoice.[2]

[17] Each contract had a schedule of work to be performed. The first contract simply said that duties were as assigned by the WD portfolio manager in the office to which the Appellant was assigned ("WD, B.C. Region"). Later, work to be performed was described in considerable detail in an appendix to the contract.

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[1] The contract provides for actual travel and living costs "incurred relative to work undertaken". This would cover expenses from a home office to the WD offices since under the Appellant's contract with CAC he was required to have a home office (at least in later agreements) from which he was to work. The Appellant was never reimbursed for travel from a home office to WD offices. He never had a home office. He worked at WD's office. He was reimbursed for travel to see WD clients and to attend training courses.

[2] Small suppliers had to provide written confirmation of their status.

The Appellant's Retention and Work Responsibilities

[18] Prior to his engagement with CAC, the Appellant worked in industry in Canada and in the United States and as well owned his own business in Canada.

[19] In 1992 he was looking for work and was eventually referred to CAC. His business venture had failed and he was under considerable pressure to find work.

[20] After one meeting with CAC, he was referred to WD, B.C. Region where he had two interviews and was found suitable to be engaged in the position to review and monitor the repayment of WD loans. In this way, the Appellant's services would be included under the then existing two year MOA and under its fee cap.

[21] As noted, the first contractual engagement by CAC was for ten weeks and the work to be performed was as assigned by WD's portfolio manager in the B.C. Region. The portfolio manager assigned files to the Appellant to review and monitor repayments. This was the primary role the Appellant served for twelve and one-half years.

[22] He was given initial training in Edmonton at a two day session which was paid for by WD. As well, WD paid for two additional training courses. He was paid for time spent on training. He was supplied with and worked with operating manuals setting out WD's prescribed procedures.

Working Conditions and Responsibilities

[23] The Appellant worked regular hours at WD's office in Vancouver on files housed there. He could not do his work away from his office at WD as files and the data bases he worked with were locked away and inaccessible except at WD's offices during normal office hours. During the almost thirteen years of his working relationship with WD he performed virtually no services away from that office except when visiting WD clients in the course of his duties.

[24] His major tool was his computer which was supplied by WD along with an office and office supplies. He occasionally had secretarial help although for the most part he did not require such help. He had use of the office fax and copier as any employee would.

[25] He dealt directly with WD clients in this role and was held out as a senior business officer of WD. He visited clients and made reports to his manager on files

which were his responsibility to monitor. He made recommendations as to collection arrangements, write-offs and possible legal actions. His reports were received by his manager, the WD regional Director General and then by the Edmonton head office and were subject to edits and revisions at each of these levels and at times were sent back for him to revise as directed by one or more of these persons at higher levels. He was paid for time spent revising his own work.

[26] He had a staff title (Senior Business Officer) and was listed in the WD directories and on the WD website. He had WD business cards and a name plate on his door. He had a WD office email address which he used in communications with WD clients and personnel. He was to a large extent integrated as part of the office personnel for almost thirteen years. He was part of the social network in the office, participated in at least one event to showcase and promote WD services[3] and on occasion was assigned and did work that fell outside his specified duties. For example, on a few occasions, he worked on loan proposals.

[27] As part of his collection monitoring role, he had to prepare collection forecasts that were subject to deadlines and, as well, there were deadlines for meetings with his manager.

[28] While he was allowed to take time off and work his hours as he pleased, practically speaking his work could only be performed at WD offices and he could only take time away for holidays and the like if, based on discussions with his manager, his absence would not create operational problems. As well, the existence of deadlines from time to time would limit his ability to simply select his own working times. He was in daily contact with his manager who was just two offices down the hall and attended staff meetings and annual planning workshops.

[29] He was not included in staff review meetings and was not subject to the same performance reviews or evaluation procedures as employees. He was not part of a buddy system where WD employees teamed up on files.

[30] The Appellant was not included in an employee benefit plan or pension plan, was not entitled to vacation or sick pay or leave and was not a member of the employees' union as were employees of WD and CAC. He saved for his retirement by making contributions to an RRSP and subscribed for a private health plan.

Contract Extensions and Termination

[3] He was paid for his time attending at an APEX conference to promote WD at a WD booth.

[31] At the end of each contract with the Appellant, CAC would tender the contract utilizing a competitive process. Having heard all three witnesses describe their view of this "competitive" process, I am of the view that it was pretty much a foregone conclusion that the Appellant's contract would be renewed as long as the job existed. I appreciate the evidence given by the Regional Director of CAC that every attempt should have been made to follow Agency guidelines to ensure that the process was competitive so that there would be a level playing field for outside contractors to make competitive bids for the contract. If the contract was for over $89,000 it would have been posted on GETS (the Government Electronic Tendering System). Otherwise, CAC might use Contract Canada's data base or its own data to solicit bids. Practically speaking, however, it appears that contract renewal options could keep the Appellant engaged for extended periods without new bids being sought[4] and in any event, again practically speaking, I am satisfied based on the evidence before me that in all probability no other bidder would have a fair chance to replace the Appellant. He was located in Vancouver.[5] WD was happy with his work. They had trained him and he was experienced in the very work that was being contracted out. He knew the staff, the clients and the active contribution arrangements needing attention. Renewing the Appellant's contract afforded WD an uninterrupted service without any of the growing pains associated with introducing new personnel.[6]

[32] As well, the Appellant knew when his position was being posted and there was communication to him by CAC as to acceptable bid rates. Indeed, at one point the Appellant lowered his daily (hourly) rate after being made aware of some budget restraints.[7] This may or may not have been possible to impose had the Appellant been employed by WD but it was certainly possible given the contractual format under which the Appellant was engaged. Indeed, not only was it

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[4] After the first couple of contract renewals with the Appellant, CAC added a provision that permitted CAC the option to extend the contract for a further period on the same terms. This was done to enable WD to bridge any gaps in the MOA's and to ensure continuity of the workers' services. One contract was extended for 15 months. One 18 month contract had an option to extend for 6 months. As well, shorter contract periods were used to permit sole source contracts.

[5] Typically, CAC independent contractor bids from persons who needed to charge travel costs to perform a contract were less attractive.

[6] This was of particular importance in the last few years as he was then the only monitoring officer at WD.

[7] As well, the Appellant could agree to lower the number of contract hours on a particular contract to fit the budget. He was being informed of what it would take to get the contract.

possible, it serves perhaps to illustrate the very reason for the existence of the MOA. Budget uncertainties were better controlled under the MOA than under direct employment engagements in terms of personnel contracts. The Regional Director of CAC acknowledged however that typically CAC contracts were not for long terms. They might more typically be seasonal work or work that had a completion date. The situation with the Appellant was not the norm and at least some of the contract provisions did not suit the Appellant's situation such as being required to have his own office to perform the contracted services. The growing list of specified duties to reflect the Appellant's subordinate role would also be the result of this atypical situation. The Regional Director of CAC all but acknowledged that CAC's services may have been abused in this case.

[33] While the budgetary need to contract with CAC to provide some of its staffing needs continued through this twelve and one-half year period, by the summer of 2004, WD had a more solid funding commitment from the government of the day. There were then three individuals that worked at WD that were provided through WD's contract with CAC. One was an employee of CAC and the other two were independent contractors of CAC. Both independent contractors including the Appellant were offered full-time employment positions with WD during the summer of 2004. The other independent contractor accepted the employment position. The Appellant did not.

[34] The Appellant's contract with CAC ended at the end of September 2004 and was not renewed. The Appellant applied for unemployment insurance.

Incidental Facts

[35] The Appellant filed income tax returns reporting his income from CAC as an independent contractor, and claimed expenses not available to employees for each year except 2004. For 2004 he reported his income as an employment income.

[36] The Appellant had no home office and had no work other than that with WD during the twelve and one-half years he was contracted to work there. He subscribed to GETS and was on Contract Canada's data base and WD's data base. He made bids as required to secure the original and subsequent contracts with WD. There is no evidence that he sought to compete for contracts other than making bids to CAC to provide services to WD.

[37] The Appellant had asked prior to the employment offer in 2004 why he was not recognized as an employee as his readings on the subject had alerted him to the

likelihood that at law he would be considered one in any event. He did nothing more to change or clarify his position.

[38] The Appellant did not accept the employment offer made near the end of the term of his last contract (ending September 30, 2004) believing his independent contractor contract would be renewed. He felt the employment contract offer was inadequate. The offer was for one year only, was at a reduced rate of pay and came to him at the age of sixty-five when he would no longer be eligible to participate in the employee pension plan. The independent contractor contract was preferable to him. In a sense, and he admitted this, he gambled that his independent contractor contract would be renewed and he lost.

Analysis

[39] If intentions were determinative of the status of the Appellant's engagement, there would be no doubt that his engagement would be that of an independent contractor. The Appellant not only accepted the status imposed by circumstance and organizational structure but played out the role of an independent contractor until it was no longer to his benefit to do so. He honoured the contract which defined his status by becoming a GST registrant, invoicing his time with GST set out and bidding on new contracts as existing contracts expired. He claimed business expenses on his income tax return and paid no union dues as a public servant. He had no benefits and was not part of the public service pension plan. These were all contractually established, understood and accepted by the Appellant. At the end of the day, he preferred the independent status that this contractual arrangement gave rise to, although when he lost it he seized on the opportunity to deny that which he had accepted for almost 13 years.

[40] However, it has long been accepted that the terms of a contract dictating whether an engagement is one of employment or independent contractor are not determinative of the relationship for the purposes of the *EIA* and the *CPP* even if outside of the four corners of the actual working relationship both parties treat such dictated term as definitive of their relationship. Mutuality of intention as to the status of an engagement, even coupled with conduct outside the working relationship that recognizes that intended contractual status, is not determinative of that status. While recent authorities have recognized the potential importance of intentions in so called close cases,[8] this is not a close case. The test to be applied in

[8] *Lawrence Wolf v. Her Majesty the Queen*, 2002 FCA 96; *Royal Winnipeg Ballet v. M.N.R.*, 2006 FCA 87; *and City Water International Inc. v. Her Majesty the Queen*, 2006 FCA 350.

this case is clearly that set down by the Supreme Court of Canada in 2001 in *Sagaz Industries Canada Inc. v. 671122 Ontario Limited*[9] which in large measure accepted the tests applied in *Wiebe Door Services Ltd. v. Canada (Minister of National Revenue).*[10]

[41] Applying the *Wiebe Door* tests the Appellant is clearly an employee. He was engaged in a wholly subordinate position as subject as any professional employee would be to do what his manager required of him. He had no freedom as to how, when or where he performed his services. In virtually every sense he was subject to the control of his manager at WD. He was treated in almost every respect as an employee and held out as one. He did what was asked of him in the context of his position. He had to correct reports as dictated by persons above him and was subject to deadlines. The specific list of duties that the Appellant was contracted to do for WD was an expanding list that covered everything that WD might require of an employee in the position occupied by the Appellant and even then at the direction of his manager, the Appellant did more than the specified duties that he was contracted to perform and he was paid in the normal course for such services. The reason for that is that he was under the complete control of his manager in WD as any employee would be. If control over the worker is the relevant test, the Appellant's engagement status is employment.

[42] The Appellant provided no tools in respect of the performance of his duties. All of the tools were provided by WD. If the provision of tools is the relevant test, the Appellant's engagement status is employment.

[43] The Appellant worked at a fixed rate for fixed hours and had no expenses in respect of the performance of his duties. There is no more entrepreneurial risk of loss or opportunity for profit than any employee working on a fixed term employment contract basis has. That he had no job security at the end of the term of each contract and that he had to bid on each contract are compatible with a series of negotiated term employment contracts. During the term of each contract, work was done for a wage. If this is the relevant test, the Appellant's engagement status is employment.

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[9] [2001] S.C.J. No. 61 (S.C.C.).

[10] [1986] 3 F.C. 553 (F.C.A.).

[44] All the *Wiebe Door* factors point to the Appellant being an employee. This is not a close case where the intentions of the parties can impact the status of the engagement.

[45] Before concluding these Reasons, however, it is important to return to the analysis engaged in by the Supreme Court in *Sagaz*. While the tests considered above were effectively endorsed in that case, they were applied to what was referred to as the central question in making the required determination which was whether the worker was working as a person in business on his own account. In addressing this question of the degree of control by the engaging party over the worker, the provision of tools and the entrepreneurship of the worker become factors. Assessing the last factor requires more than an examination of risk of loss and chance of profit. It also requires examining whether the worker can be said to have a business that he is engaged in. Here, there are some indices of the Appellant having a business. He was a GST registrant, he invoiced his time, he listed himself on data bases used for engaging contractor services and engaged in a contract proposal or bidding system.[11] These indicia however are insufficient in this case to support a finding that the Appellant had a business that he was engaged in for his own account in performing services for WD.

[46] The Appellant was not engaged in any real sense in a government contract seeking business. He had a job that was only secure for a fixed term and he had to re-apply for that job periodically. The way in which the re-application was submitted and handled however was hardly entrepreneurial. It was essentially admitted that the contracting system in this case was abused. Even if that were not the case, it is hard to imagine that someone without a substantive business of his own (no office, no tools) who has worked for one “client” for almost 13 years in a subordinate position, can be said to be in business for his own account because he could “negotiate” his contract rate. Indeed, in general terms, the enduring long term nature of the relationship between the Appellant and WD as a full-time worker is not consistent with viewing the Appellant as an independent contractor carrying on business for his own account.

[47] As well, on the facts of this case, I am not impressed with the model employed here under the MOA. Many businesses have budget uncertainties. Many

[11] Other indicia such as having his own health benefit package and retirement income plan and not being part of a union or being evaluated as part of an employee assessment process flow from the contractual model accepted by the Appellant. As such they do not assist in making a determination of his engagement status irrespective of the contract.

can accommodate such uncertainties by engaging staff in short term employment contracts. That some cannot, say because of union issues, does not enable them to use their budget uncertainties to dictate the status of a worker for the purposes of the *EIA* and the *CPP* by employing a particular contractual model designed to do just that. These are not in the normal course elective regimes. The needs of WD were not for a specific audit project where an independent contractor might be parachuted in on the basis generally contemplated by the CAC. WD had an ongoing need for a full-time employment position to be filled and used the MOA and CAC as a means to fill that position. That CAC used an independent contractor contract did not, in this case at least, cause a change in the nature of the engagement for the purposes of the *EIA* and the *CPP*. The nature of the engagement was a contract of service.

[48] I have not reached this conclusion easily in spite of it being the obvious one as dictated applying the traditional tests. There is a strong attraction to the argument that I should accept, looking at each contract separately and the adherence of the parties to the contractual model employed, even to the point where the Appellant anticipating another contract chose that model, that the Appellant was engaged in a business of his own. He used that status to get tax deductions and invoiced his fee and collected and remitted GST. He had his own health benefit insurance. He bid for contracts in a business like manner even though the absence of competitive neutrality gave him a form of engagement security. His conduct almost begs me to say he should be estopped from denying his contractual independent contractor status. However, such view of this appeal comes down to my accepting (or not) that the intentions of the parties must govern the nature of the relationship in this case. Clearly, it is a result of the common understanding of the nature of the relationship that dictated the “business-like” conduct that reflects that understanding. Such “business-like” conduct arises solely from that understanding and to put emphasis on it in this context would just put determinative weight on the importance of the intentions of the parties. The question then is whether, considering recent authorities, placing such weight on the intentions of the parties is warranted in this case.

[49] In considering this question I have considered the similarity of the facts in this case with those in *Wolf*. While an income tax case as opposed to an EI and CPP case, I find that case worth noting as the analysis there is the one that most invites me to say that the Appellant in this case should be left with the contractual deal he signed on to - and lived up to until he saw a window to obtain an advantage, namely unemployment insurance.

[50] The facts in that case also involved a professional contracted by a third party to perform independent contractor services for a company that did not want to engage a worker under a contract of employment. The contract was initially for one year with an option to extend a further year. Extensions and renewals resulted in the engagement lasting some 5 years. Some of the renewals arose from finding work in other departments. There was an element of control over the work performed in that the worker was told what projects to work on and he could be asked to work on many projects at a time each with specific goals to be addressed. Specialized tools such as a specialized computer were made available. He was paid essentially by the hour.

[51] While the three judges of the Federal Court of Appeal wrote different reasons, they concurred that the worker in that case was an independent contractor. All three judges placed emphasis on the principle enunciated in Article 1425 of the *Quebec Civil Code* that the common intentions of the parties prevail in the interpretation of contracts. While each judge found the application of each of the traditional tests inconclusive, their emphasis on letting the taxpayer's intentions prevail in light of the employment trends and the business needs of the parties leads me to emphasize my reasons for not following this approach.

[52] Firstly, of course, the factual distinctions between the case at bar and those in *Wolf* warrant a different conclusion on the application of the traditional tests. The application of each of the traditional tests in the case at bar *are* conclusive. The Appellant was in a subordinate relationship with WD and was not, over the period of years that he was engaged by WD, engaged in a business being carried on for his own account. There were no entrepreneurial risks, rewards or investments - just conduct consistent with the contractual requirements of his employer. Applying the principles in *Royal Winnipeg Ballet* and *City Water International* in such circumstances, the intentions of the parties cannot alter the outcome of the conclusion so determined. Indeed *Wolf*, like these cases, gives effect to intentions only where the traditional tests are not conclusive.

[53] Secondly, the inclination to accept that the interpretation of contracts should rest on common law or civil law principles of intentions defeats the exercise that the Supreme Court in *Sagaz* set down as being required.

[54] Thirdly, and of importance to me in the context of my struggle not to ignore the Appellant's self interested reversal of his contractual standing, I am, unlike the judges in of the Court of Appeal in *Wolf*, satisfied on the evidence in this case that the continuous engagements were not of the general "type" contemplated as

independent contractor engagements in *Wolf*. The needs of WD were not for the type of specific audit projects that an independent contractor might be parachuted in to perform. As stated above, WD had an ongoing need for a full-time employment position to be filled and used the MOA and CAC as a means to fill that position. That was not the setting envisioned either by CAC or by the Court of Appeal in *Wolf*.

[55] The setting envisioned in and responded to in *Wolf* was the type of work that contractors could be parachuted in to perform to permit the engaging company flexibility and cost saving in addressing fluctuations in activity. In *Wolf*, the worker was doing just that even though he found new jobs in different departments that allowed for contract extensions. He was identified as a contractor in each assignment and was never integrated as part of the staff. He had no office. He did not even have a computer assigned to him – he had to find an available work station as and when required. He was identified and treated as an outsider parachuted in to do project consulting work. That was not the setting in the case at bar. In the case at bar, we have a worker who formed part of the daily work force of WD performing subordinate services. In such a case, it is no surprise that applying the traditional tests results in a finding that the engagement is one of employment. That a worker may be able to gain a social welfare advantage as a result, only confirms that that is what was intended by that regime regardless of the terms agreed to by, and performed by, the contracting parties.

[56] Accordingly, I find that the appeals must be allowed. The Appellant's earnings during the subject period were pensionable earnings under the *CPP* and that his employment was insurable employment under the *EIA*. CAC having paid the Appellant for his services was the deemed employer pursuant to paragraph 10(1)(a) of the *EI Regulations* and subsection 8.1(1) of the *CPP Regulations*.

Signed at Winnipeg, Manitoba, this 10th day of September, 2007.

"J.E. Hershfield"

Hershfield J.

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