

Docket: 2007-2655(EI)

BETWEEN:

SHERRY PAI,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

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Appeal heard on common evidence with the appeal of  
*Sherry Pai (2007-2656(CPP))*  
on June 16, 17, 18, 19 and 20, 2008 at Vancouver, British Columbia

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

Appearances:

Counsel for the Appellant: Gregory P. Bruce

Counsel for the Respondent: Bruce Senkpiel and Carl Januszczak

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**JUDGMENT**

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

Signed at Sidney, British Columbia, this 12th day of August 2008.

"D.W. Rowe"

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Rowe D.J.

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Citation: 2008 TCC 456  
Date: 20080812  
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Respondent.

### **REASONS FOR JUDGMENT**

#### **Rowe D.J.**

[1] The Appellant appealed from two decisions, both dated March 12, 2007, issued by the Minister of National Revenue (the “Minister”) pursuant to the *Employment Insurance Act* (the “Act”) and the *Canada Pension Plan* (the “Plan”) wherein the Minister decided the Appellant, Sherry Pai (“Pai”), was not engaged in insurable or pensionable employment with Regions Group of Companies International Trading Ltd. (“Regions”) from May 6 to October 18, 2002.

[2] Counsel for the parties agreed both appeals could be heard together.

[3] On consent of counsel for the Respondent, counsel for the Appellant filed (Exhibit A-1) a binder with documents at Tabs 1 to 27, inclusive.

[4] On consent of counsel for the Appellant, counsel for the Respondent filed (Exhibit R-1) a binder with documents at Tabs 1 to 62, inclusive.

[5] Soraya Motameni was called to the stand by Gregory Bruce, counsel for Pai. Motameni testified she works as a store manager in Burnaby but was employed by Regions as the Managing Director (“Director”) of an English as a Second Language (ESL) school that operated at 900 West Hastings Street, Vancouver, British Columbia. She was aware Samir Fawaz (“Fawaz”) was the owner and in control of Regions which also operated the language school under the name Regions Training Institute (“RTI”). She started working at RTI early in 2001, at which point there were about 18 classrooms and more than 100 students. As Director, Motameni was in charge of hiring and firing language teachers, scheduling morning and afternoon classes and generally assuring the operation ran smoothly. There were about 20 teachers and the students were mainly from Japan, South Korea, Taiwan and China. Motameni stated the Appellant, Pai, worked as her assistant and performed administrative duties such as scheduling teachers and allocating classrooms. Counsel referred Motameni to an information sheet (Exhibit A-1, Tab 1) in which answers were provided to certain questions concerning RTI, and to several sheets (Exhibit A-1, Tab 2) one of which contained a message of welcome to incoming students and to other pages which pertained to program information, enrolment applications and contracts, and the last one which identified Motameni as Managing Director and Sherry Pai as Director’s Assistant. Motameni stated these documents were typical as part of the operation of the school but had no current specific recollection of them. Although Motameni did not participate in the establishment of a website, she was certain the documents (Exhibit A-1, Tab 3) related to it and was aware an attractive brochure had been produced for the purpose of supplying them to prospective students. Although Motameni was not involved in the production of other documents, such as the Notice to Students (Exhibit A-1, Tab 4), nor the document in Chinese characters (Exhibit A-1, Tab 5), nor the documents relating to Home Stay (Exhibit A-1, Tab 6), nor the Dismissal Policy and Procedures (Exhibit A-1, Tab 7), she was aware they were part of the set of documents provided to students. Motameni recalled that Regions had issued her several pay cheques which were returned NSF, but made good later, and on other occasions her pay was late, particularly during the period commencing about six months after the attack on the World Trade Center on September 11, 2001 because foreign student enrolment dropped sharply. Motameni recalled that Pai also worked from 8:00 a.m. to 5:00 p.m. during the week.

[6] Motameni was cross-examined by Bruce Senkpiel, co-counsel for the Respondent. Motameni stated her memory was not good with respect to dates but believed she started working for RTI in 2000. Motameni recalled a telephone interview with Susan Lazic (“Lazic”), an investigator, in May 2005 who asked her questions about her employment at RTI. Counsel pointed out that when asked to provide names of co-workers, she mentioned Maria, a receptionist, and Cyrus Zahedi

but did not mention Pai. Motameni explained she is forgetful but asserted Pai did work for RTI. Counsel informed Motameni that when speaking later to Carin Amber (“Amber”), Appeals Officer, she told Amber that Pai was already working at RTI before she was hired as Director. Counsel also advised Motameni that Amber’s notes of the interview indicated Motameni stated she did not interact with Pai in the course of her work. Motameni responded by saying that “seven or eight years have passed and my Regions Training School experience was the worst experience of my life. I try to forget everything that went on in there and I moved on. I may have said something that’s contradicting what I’m saying today but Sherry Pai was working at Regions Training Institute. Whether as my assistant or as someone else’s, she was working and she was reporting to me”. Motameni stated she assigned tasks to Pai and supervised her work but could not recall many aspects of the RTI business operation until shown certain documents in the course of her testimony. Motameni stated she had not hired Pai and did not interview her as that task was undertaken by Fawaz.

[7] During re-examination by counsel for the Appellant, Motameni stated she could not recall any government official having requested a complete list of every person who worked at the office occupied by the group of companies operating as Regions.

[8] Hassan Yazdani testified he is a certified machinist and is the husband of Sherry Pai. They were married in 2000 but had known each other since 1993. Although Yazdani has worked for the same employer for 15 years, Monday to Friday, in February 2003, he incorporated RHS Services Ltd. (“RHS”) to carry on a machining business and built a workshop in their family home. Pai did the necessary paperwork in connection with the services provided by RHS to its customers and this sideline business currently provides about one-third of Yazdani’s annual revenue. Starting about 1994, Yazdani hired Fawaz as his accountant to do bookkeeping and to file personal income tax returns and visited him three or four times a year. Yazdani was referred to a Report of Interview (Exhibit A-1, Tab 27) prepared by Susan Lazic in relation to a telephone interview on May 3, 2005 concerning a Record of Employment (“ROE”) that had been issued by RHS to Lilian Liu (“Liu”) purporting that she had worked 267 hours and had insurable earnings in the sum of \$4,980.00. Yazdani recalled the interview and that he informed Lazic that RHS had no employees and that he did not know Lilian Liu. He explained to Lazic that when contacted about the matter, he called Fawaz who assured him it was a mistake and that Liu had worked on RHS files for accounting and income tax purposes but she had worked 26.7 hours instead of 267, the number stated in the ROE by mistake. Yazdani stated he was assured by Fawaz the matter would be corrected. Yazdani

stated that after that event, he did not want Fawaz working on his tax returns in the future. Yazdani stated Pai had worked at different translation jobs from time-to-time but had been looking for steady work when she showed him a newspaper advertisement placed by a language school located at 900 West Hastings Street in Vancouver. Yazdani stated he recognized the name Regions as that of the accounting business he visited when taking his tax and accounting material to Fawaz. During those visits, he had observed several people on the premises. After Pai was hired by RTI to work at the school, he understood her role was to coordinate schedules and to work with students regarding administration. Because he also speaks Farsi, he carried on some conversations with Motameni who worked at the school. He was aware that Kathleen Owens, the wife of Fawaz, also worked there in some capacity. At some point in 2002, Pai mentioned there was a lack of students and a resulting reduced cash flow to the school because of travel restrictions imposed following September 11, 2001. Yazdani stated he was concerned because they had purchased a house in 2002 and were undertaking an expensive renovation and two incomes were required to make the payments on the credit card which had been used to pay certified trades people. In November 2002, their son was born and Yazdani's mother came to Canada to help care for the child while Pai searched for work following the expiration of maternity leave.

[9] Hassan Yazdani was cross-examined by Carl Januszczak, co-counsel for the Respondent. Yazdani agreed he is the sole director and shareholder of RHS and stated Fawaz handled all documents and required filings for the corporation. Yazdani was referred to an ROE (Exhibit R-1, Tab 53) apparently issued by RHS Services Ltd., Coquitlam, B.C., from the same address as the one registered with the British Columbia Ministry of Finance, Corporate and Personal Property Registries. The ROE purported Lilian Liu had been employed by RHS from December 15, 2003 to April 16, 2004. A payroll number for RHS was included in the ROE which Yazdani stated was filled out and signed by someone other than him. He had not requested any blank ROE forms from Human Resources Development Canada ("HRDC"), as it then was, nor did he request Fawaz to obtain a payroll number and recalled he had obtained a form which he completed and returned to Canada Revenue Agency ("CRA") for the purpose of advising that RHS did not have any employees. When interviewed by Lazic at the HRDC office in Burnaby, he produced various documents to prove the signature on the ROE was not his own. He recalled advising someone during an interview that he had been upset with Fawaz and had attempted to contact him repeatedly and left messages to that effect and had been assured later by Fawaz that this mistake concerning Lilian Liu's ROE would be corrected. Counsel advised Yazdani that Nazrin Yazdani ("Nazrin") had allegedly worked for Aberdeen Financial Services ("Aberdeen") one of the entities operating within Regions.

Yazdani confirmed that Nazrin was his sister and had lived in the same house with him and Pai. Yazdani stated that when Pai showed him the Regions newspaper advertisement, he recognized the name and when he telephoned the number therein and heard the receptionist's voice, knew it was Maria with whom he set up an appointment for an interview with his wife. He told Pai the language school was operated by the same group of companies, Regions, that did his accounting. Yazdani recalled there was much less activity at the Regions premises when he attended there at the end of February 2002 in connection with the preparation of his income tax return for the 2001 taxation year. Yazdani agreed that Fawaz also prepared the T-1 tax return for Pai (Exhibit R-1, Tab 47) for the 2004 taxation year which Pai signed and was received by the CRA on June 1, 2005. The preparer was shown as Aberdeen Financial Services Inc. which Yazdani understood to be one of the companies associated with Regions that Fawaz used to perform accounting work for clients and that Fawaz had not worked personally on those returns. Yazdani stated he was aware that HRDC was seeking repayment of about \$20,000.00 in UI maternity leave benefits because of the decision by the Minister that she was not employed by Regions during the period claimed.

[10] Sherry Shih-Wei Pai testified she is currently a homemaker looking after three young children, all under age six, and lives with her husband, Hassan Yazdani, in Coquitlam, British Columbia. She was born in Taiwan but immigrated to Canada in 1991 and became a citizen in 1997. She obtained a Bachelor of Arts from the University of British Columbia with a double major in psychology and Chinese studies. She returned to Taiwan for three years where she worked for an international consulting firm and also taught English. She took human resources classes at National Sun Yat-Sen University in Taiwan which has exchange programs with the University of Victoria. Her work history is included in her resumé (Exhibit A-1, Tab 9) and after her marriage to Yazdani in 2000 she remained in Canada and worked as an independent contractor doing translations for a property management firm. She looked for work by reading newspapers and searching the Internet. She saw the advertisement placed by Regions and recognized the name but only in connection with the accounting business that prepared her husband's tax returns. Pai stated she was interviewed by Motameni who telephoned later to inform her that she was hired. Pai stated she started working for RTI on May 6, 2002, at the 4<sup>th</sup> floor premises in the building at 900 West Hastings Street. On that floor, there were several small rooms each capable of holding six to eight people. There was a central office area with computers and other equipment. Later, the language school moved to another premises at 889 West Pender Street and she helped to move certain items and worked in the new location for a while prior to the end of her employment. Pai stated the 900 West Hastings Street location had businesses other than the language school

operating out of it. Her office was at the rear and she worked as an assistant to Motameni. The language classes changed every two weeks and this transition involved discussions with the teachers who assessed proficiency of each student prior to permitting that student to progress to another level of training. There were between 20 and 25 teachers who worked either in the morning or afternoon. Pai stated she also worked on the RTI website and did translations and prepared a brochure and other promotional material. She handled inquiries from local agencies who were searching for language schools in Vancouver and delivered brochures so they could be distributed to potential clients in Asia. She prepared the material in Exhibit A-1, Tab 1, undertook revisions to the information sheets (Exhibit A-1, Tab 2) and to the website content (Exhibit A-1, Tab 3), prepared the Notice to Students (Exhibit A-1, Tab 4) and prepared other documents at subsequent Tabs 5 to 8 (Exhibit A-1), inclusive. Pai stated there was administrative work required as it related to the students. She reported to Motameni and was assigned duties by her. Pai recalled Fawaz was in the building and knew he was the owner of Regions which included RTI, the language school. Pai stated she worked at RTI until her pregnancy was nearing completion and received an ROE (Exhibit A-1, Tab 10) on October 18, 2002. Although her pay cheques were late from time-to-time and some were returned NSF, Pai confirmed she received the amount of \$19,494.40 as stated in her ROE and that she worked 964.8 insurable hours. Her pay stubs (Exhibit A-1, Tab 11) were based on an hourly rate of \$20.20 and of the two photocopies of four pay cheques, three cheques bear the notation "advance" on the memorandum line. Pai was referred by her counsel to statements (Exhibit A-1, Tab 13) issued by her financial institution, President's Choice Financial, a member of the CIBC group of companies. On August 28, 2002, she deposited a cheque (Exhibit A-1, Tab 12) issued by Regions Group of Certified Accountants W.L.L. Samir Fawaz in the sum of \$540.00. Sometimes, she used the automated banking machine ("ABM") to make deposits into the account and other times obtained cash which was used to pay contractors working on their house renovation or for other household expenses including purchases for their infant. Pai stated that because of her Asian upbringing, it was not an extraordinary event to negotiate a pay cheque, as in Exhibit A-1, Tab 12, in the sum of \$3,402.24, dated August 7, 2002, by taking away cash. Pai explained that paying bills in cash was not unusual in Taiwanese culture and even though she tried to adjust to commercial customs after moving to Canada, in some respects she was not "completely Canadian" and often used cash to pay bills or make purchases. The account was in the name of Shih S. Pai and Pai stated transfers in and out may have been to a joint account she had with her husband, Hassan Yazdani. Another account statement (Exhibit A-1, Tab 14) pertained to a savings account at the same financial institution and covers the period from March 28, 2002 to March 31, 2003. Another statement (Exhibit A-1, Tab 15) is in relation to an account at President's Choice, apparently in



the sole name of Hassan Yazdani. Pai stated this account is actually a joint account and that her husband had his own account and also a commercial account he used for his business, RHS. Pai identified a letter (Exhibit A-1, Tab 16) she sent to Susan Lazic at HRDC on February 23, 2005 because she was not satisfied with the interview that took place on December 9, 2004 and disputed the accuracy of Lazic's notes (Exhibit R-1, Tab 6) because she was upset at the time and had two young children with her. In Pai's opinion, she had provided a more complete explanation than was noted about her relationship with Fawaz in that she indicated although she did not know him personally, she was aware Regions was owned by him and that he had an accounting business. Pai stated she also worked for Aberdeen Financial Services ("Aberdeen") from February 2 to August 31, 2004, but only dealt with Pierre Lopez and did not find out until later that Fawaz was involved with that entity. She was aware Lopez had a full-time job selling medical equipment and supplies. Pai stated she worked at home and reported to Lopez from time to time at an office located in a building at 666 Burrard Street, Vancouver. Pai stated she never saw Fawaz at that office and worked eight hours a day at home including sometimes late in the evening when she made telephone calls to countries in Asia in order to conform with business hours there due to the time difference. Pai stated she received a letter from Lazic at HRDC dated February 9, 2005 (Exhibit R-1, Tab 8) pertaining to her claim for UI benefits following the termination of her employment with Aberdeen. Pai replied by letter dated February 23, 2005 (Exhibit A-1, Tab 16) and enclosed all her pay slips and bank deposit statements for the period ending August 2004. On September 1, 2006, Pai was interviewed by Beverly Smith, Appeals Officer, whose notes are in Exhibit R-1, Tabs 21 and 22. Pai also responded to an inquiry from Carin Amber, Appeals Officer, in the form of a letter dated January 22, 2007 (Exhibit A-1, Tab 17) pertaining to her claim arising from her employment with Aberdeen. Pai stated she was paid a monthly salary of \$3,650.00 to provide her services to Aberdeen. Pai stated the Minister decided she was not engaged in insurable employment with Aberdeen and she appealed from that decision but withdrew her appeal shortly before trial on the advice of counsel because her working relationship with Aberdeen had a substantial number of *indicia* that pointed towards independent contractor status rather than that of employee.

[11] Sherry Pai was cross-examined by Bruce Senkpiel. Pai stated she thought she had informed Motameni during the interview at the RTI premises that she was pregnant as it would not have been obvious until much later. Nazrin Yazdani, Pai's sister-in-law, lived with Pai and her husband while also providing services to Aberdeen in relation to some e-commerce projects. Pai stated she did not communicate with Nazrin about work matters as their relationship was not friendly. Pai stated she was aware at the outset that the head teacher at RTI was

Kathleen Owens who was married to Fawaz at that time. The school changed locations at the end of August 2002 and Pai assisted in that process although she moved only text books and other light material in view of her advancing pregnancy. Concerning the Aberdeen office in 2004, Pai stated it was on the 34<sup>th</sup> floor of the building and some stairs led to another level where she worked on occasion in a small office. Pai stated that when interviewed by Lazic about the Aberdeen employment situation, she stated that Lopez was the person who provided her with instructions and that she did not know Fawaz was involved and had she known that, she would not have accepted the position. At some point in the working relationship, she was aware that Lopez reported to an owner. Pai was referred to her T-1 General tax return for the 2002 taxation year and to the Statement of Employment Expenses contained therein in which a total of \$1,609.50 was claimed as expenses against income. Pai stated that although she had provided her husband with some receipts, she had no specific recollection of having claimed those expenses including parking: \$360.00; postage: \$362.00 and work-place-in-the-home expense of \$887.50. Pai acknowledged she signed that tax return on June 3, 2003 and by so doing had certified that the information contained therein was correct. Although there was no T-4 slip from Regions included in the return, Pai reported employment income in the sum of \$19,494.80, based on the amount of insurable earnings stated in her ROE. Pai identified her tax return for the 2004 taxation year (Exhibit R-1, Tab 47) which she signed and was received by the CRA on June 1, 2005. In that return, a Statement of Employment Expenses detailed various expenses totalling \$10,145.25 which sum was claimed against income of \$23,459.02 and resulted in a refund in the sum of \$3,579.88 based on information in said return. Included in those expenses were the following: accounting and legal: \$1,800.00; advertising and promotion: \$2,726.59; travel: \$717.00; cell phone: \$1,928.62 and parking: \$183.13. Pai stated she used supplies at the Aberdeen office or at home for which she was reimbursed. She did not claim any amount for a home office in 2004. Pai identified her signature on the Questionnaire dated November 13, 2006 (Exhibit R-1, Tab 31) pertaining to her 2002 employment at RTI in which she stated at page 7 that everything required to perform her tasks was provided by her employer, Regions, and that she had not incurred any expenses. When completing the Questionnaire (Exhibit R-1, Tab 32) pertaining to her employment situation with Aberdeen, Pai stated she worked primarily from her home but also worked in the Aberdeen office and that everything was provided by the payor so no expenses were incurred by her for automobile use or travel and any work-related expense was reimbursed. Pai stated the office located at Suite #3509, 666 Burrard Street had one desk, one credenza and three chairs. Pai stated Lopez told her Aberdeen had other offices elsewhere and left the office when she needed to use the desk. The office had about 100 square feet but was equipped with a computer, printer, filing cabinets and telephone. Pai confirmed that her 2003 tax return (Exhibit

R-1, Tab 46) was prepared by Aberdeen Financial, an entity located at Suite #3400, 666 Burrard Street. Pai agreed she signed this tax return on March 8, 2004 and started working for Aberdeen on February 2. The tax return did not contain any reference to Fawaz but the ROE (Exhibit A-1, Tab 10) received by mail from Regions was signed by Fawaz. Pai was referred to the account statement (Exhibit A-1, Tab 15) and to an entry dated May 8, 2002 that recorded an ABM deposit in the sum of \$2,000.00 and another ABM deposit of \$3,000.00 on May 14, 2002, followed by a transfer on May 15 in the sum of \$2,000.00 out of the account to Regions and a transfer in from an unidentified source on May 17, 2002. Pai stated she started working at RTI on May 6, 2002, so is not aware why she would receive any cheque from Regions five days later. Pai stated she did not know why the notation "advance" had been written on the memorandum line of some of her cheques. Pai also stated that the Regions Group of Certified Accountants W.L.L. Samir Fawaz cheque in the sum of \$540.00 (Exhibit A-1, Tab 12) with the notation "In Acc" had no connection with any services provided by her to any accounting business operated by Fawaz. Pai was referred to her pay stubs (Exhibit A-1, Tab 11) which showed Pai's address on French Street in Vancouver until after the May 24, 2002 pay period when it was changed to the Linton Street address in Coquitlam. Pai stated Motameni provided her with a pay stub for a particular pay period even when it was not accompanied by a pay cheque. Counsel pointed out that the pay stubs produced by Pai and contained in Exhibit A-1, Tab 11 for the period following May 2002, show RTI was located at 800-889 West Pender Street even though that location had not been used until August. Pai stated she may have requested Motameni print out all her pay stubs after the relocation had taken place and the new RTI address was used as a result. Pai stated she did not receive any pay stubs after June 28, 2002. According to the notes taken by Lazic (Exhibit R-1, Tab 6), Pai did not mention working at the new West Pender location of RTI and claimed to have worked out of the 900 West Hastings office until her final day on October 18, 2002. Lazic recorded Pai's responses that she could name only two employees other than Motameni and that she deposited her pay cheques regularly. Pai stated she was not asked by Lazic to name any of the teachers at RTI and did not review the notes taken by Lazic following termination of the interview. Pai stated she knew the names of the teachers at RTI, their countries of origin and their family situations. Pai stated that when questioned about the Aberdeen employment in 2004, she doubts she told Lazic she was hired by "a friend of a friend" and does not know a person named Queena and to the best of her recollection did not tell Lazic that Queena was her friend. Pai stated she had not intended to convey the impression she did not know Fawaz and has no recollection of that portion of the interview. Pai stated it may have been that Fawaz told Lopez what instructions to pass along to her but she did not have any contact with Fawaz when working for the Aberdeen entity. Pai stated she relieved Maria Malabanan on

occasion by taking over receptionist duties so Maria could have lunch or at other times as required. The receptionist answered the telephones of various tenants in the small offices located in the Regions premises, including those numbers assigned to RTI, the language school, and other companies within the group called Regions. Pai stated Lopez informed her that Aberdeen wanted to import products from China including electronics and that there were people in Canada who were interested in investing in such a venture. Pai stated she researched the markets relating to cellular telephones, small home appliances, medical supplies and visited various websites and made telephone calls to certain contact numbers in China to inquire about prices and availability of models, colours, function and quality of cellular telephones. Pai stated she understood it was the intent of Aberdeen to import quantities of between 1000 and 4000 units and to make a profit by purchasing them at a reduced price directly from the Chinese manufacturing source. Pai stated that as a Mandarin-speaking person familiar with international business, she could obtain a better price. Pai agreed she may have told Beverly Smith, Appeals Officer, that she was pregnant when hired by Lopez to work for Aberdeen and that he was aware of her condition. Pai agreed she told Smith she did not have any contact with Fawaz in respect of the Aberdeen China project. Pai stated she produced banking records to the best of her ability but the statements did not provide sufficient detail in many instances as to the source of a deposit or transfer in or out of the account. Pai denied the suggestion of counsel that her ROE pertaining to her work at RTI for Regions was incorrect in that it inflated her insurable hours and insurable earnings. She denied that she worked part-time only and asserted she worked on a full-time basis for the period stated in the ROE. With respect to the ROE issued for her work for Aberdeen in 2004, Pai stated it was accurate and that she had received payment for the money shown on the pay stubs produced in Exhibit A-1, Tab 21.

[12] Pai was re-examined by her counsel, Gregory Bruce. Pai stated her sister-in-law, Nazrin Yazdani, lived with her and her husband until 2004 and that Nazrin was unmarried and had a Master degree from a foreign university. At the Regions premises, Pai distributed mail to the various tenants by placing it in the appropriate box. Pai stated her life was stressful due to the financial strains associated with the house renovation and caring for two infants but she provided Lazic with the appropriate material and attempted to persuade her that HRDC was “going after the wrong person”, referring to herself. Pai stated she met Lopez to submit reports and described him as tall, about 40-45 years old with a strong build and dark complexion and that she also met his father at the office. Pai stated her salary at Aberdeen was based on a 40-hour week and when she prepared reports for Lopez she used software such as Microsoft Word or Excel and provided commentary, observations and

conclusions based on her analysis but only made recommendations and was not involved in any negotiations with foreign suppliers.

[13] Samir Fawaz testified he has lived in Vancouver since 1988 and is a businessman. He stated he obtained a Bachelor and Master of Business Administration from the University of Hamburg where he studied after leaving his native Syria. He started an accounting business in Vancouver in 1993 and utilized Regions as a shipping agent for cargo lines. In 1996, Regions began operating a business centre at 900 West Hastings and occupied the entire fourth floor. In 1998, Regions also operated a tour business dealing mainly with business people from Germany and Japan. On February 1, 2001, Regions opened the language school, RTI, at 789 West Pender Street. In 2004, Regions used Aberdeen as an operating name to search for trade opportunities, including importation of dental supplies, in China, Dubai and Ireland. When RTI began operations, his wife at that time, Kathleen Owens, handled day-to-day operations until Motameni was hired to assume that role and Owens then worked as a language teacher. Fawaz stated Motameni contacted him from time-to-time about matters pertaining to the school and he attended every business day at the same premises whether at the initial location or later at 900 West Hastings and finally at 889 West Hastings after the end of August 2002. Fawaz was referred to the school brochure (Exhibit A-2) and the Registration Certificate (Exhibit A-3) issued by the Private Post-Secondary Education Commission of British Columbia and to other material within the Exhibit including a 2001 business licence issued by the City of Vancouver. Fawaz stated Regions invested approximately \$400,000.00 to start the language school. Fawaz identified Pai as one of the RTI staff present during a student field trip to Harrison Hot Springs as reproduced by printing pages from the school website (Exhibit A-1, Tab 3). Fawaz stated that a spreadsheet (Exhibit A-4) was prepared by someone versed in that skill and was used by Motameni and others under her direction. According to the Regions Income Statement (Exhibit A-5) for the period 01/01/2001 to 31/12/2001, RTI had total revenue of \$661,096.45 after deducting promotional discounts in the sum of \$244,836.54 and incurred expenses in the sum of \$961,804.37 resulting in an operating loss of \$300,707.92. The total payroll was \$379,764.81 which was paid mainly to the 20 or 25 language teachers and to Motameni, \$3,500.00 per month, and to her assistant, Pai. Fawaz stated he did not recall hiring Pai and that this task fell within the area of responsibility assigned to Motameni. He was aware Pai spoke Mandarin and worked to liaise between students, teachers and agents who were interested in recruiting foreign students, mostly Asian, to come to Vancouver to study English. Fawaz identified Pai in a bundle of photocopied pictures (Exhibit A-6) taken of either teachers or teachers and students during activity trips in 2002. Fawaz was referred to an Agency Phone List (Exhibit A-1, Tab 8), which he identified as a

spreadsheet Pai had prepared in connection with a project designed to find agents willing to enter a contract, Independent Agent Agreement, with RTI to recruit students who would enrol in the school. Fawaz stated Pai worked at RTI Monday to Friday, 9:00 a.m. to 5:00 p.m., and had worked the number of hours stated in her ROE (Exhibit A-1, Tab 10). The ROE was prepared by Cyrus Zahedi, an employee of Regions, and the corporate address provided in the ROE was 14 floor, 400 Burrard Street, Vancouver. Fawaz stated that two computers were used by Regions and the information in one of them may have been different but when the ROE was issued, the language school was operating from 889 West Hastings. Some students were being taught at that address in May 2002 but by the end of August the entire school had been relocated there from the 900 West Hastings premises. Fawaz stated RTI suffered cash flow problems due to declining enrolment and that it was not possible to meet payroll demands on a timely basis. Some pay cheques bounced and the lines of credit were utilized to the maximum in an effort to permit the school to continue. Enrolment declined by more than 50% in a short period due to several factors including the impact of travel restrictions following September 11, 2001, and RTI closed down the school at the end of 2002. Fawaz stated he prepared the income tax returns of Hassan Yazdani since the 1990s and saw him two or three times a year in connection with accounting matters but had no social contact. With respect to the business operation known as Aberdeen, it rented a small office and work station in a building located at 666 Burrard. Aberdeen was involved in e-commerce and research was undertaken to source medical supplies. Fawaz asked Pierre Lopez to look after this business operation and believes Lopez obtained the services of Pai who was suited to the task since she was a hard worker and spoke Mandarin and English. Fawaz stated he and Lopez were looking at importing several products, including cement and medical supplies such as gloves, known commonly as rubber gloves, used in medical and dental offices, hospitals and by others concerned with hygiene and protection. Fawaz stated Lopez had a full-time job as a medical supply salesman and asked him to pass on instructions to Pai. Fawaz stated he received information gathered by Pai in the form of an e-mail and read reports that contained contact names, prices and related details which he forwarded to certain overseas clients. Fawaz explained that neither Aberdeen Financial Services nor Aberdeen Financial Group was incorporated as a company because the name Aberdeen was not available. As a result, Aberdeen was used as a name to signify a division within Regions. However, a limited company called Abardeen, with an *a*, Financial Group Inc. was formed and its head office was at Suite 3400, 666 Burrard, the same address used by the accounting business known as Aberdeen Financial. Fawaz stated Pai was paid by Regions and a copy of the payroll journal was sent by Regions' solicitor by letter dated September 14, 2005 (Exhibit A-1, Tab 26) to Susan Lazic at Human Resources and Skills Development Canada ("HRSDC") previously known as HRDC. Fawaz

stated the Aberdeen division conducted some business in 2003 and 2004 including the export of some motor vehicles to Syria but a potentially profitable crude oil deal fell apart at the last moment and the Aberdeen venture ended up losing several hundred thousand dollars.

[14] Samir Fawaz was cross-examined by Carl Januszczak. Fawaz stated his marriage to Kathleen Owens broke down in 2002. He was acquainted with an individual named Qin Han, also known as Queena, but was not living with her at an address on Russet Way in West Vancouver in 2004 when Han issued a personal cheque to Lilian Liu in the sum of \$800.00, a copy of which is located in Exhibit R-1, Tab 61. Fawaz stated some of Regions records and documents were left behind at the 900 West Hastings office when the entire operation moved at the end of August 2002. There had been an arrangement made with a moving company to move additional items during September. Fawaz stated the lack of a complete set of documents and records was attributable to the following sequence of events: Regions had a 10-year lease on its premises but became involved in a dispute with the new owner of the building when the classification of the building was raised from “C” to “B”, a higher level, due to certain renovations. As a result, new space in the building was rented out at \$22.00 per square foot instead of the much lower rate payable pursuant to the lease held by Regions. A dispute arose with the new landlord and the landlord decided the school was not permitted to continue its operation in that space although the other businesses operated by Regions could remain. Fawaz stated he surrendered the lease on the expectation a buyer would take over the operation of the school but that did not take place and the landlord gave notice the premises used by RTI for the language school would be locked at the end of August 2002. Some of the individual businesses that rented space from Regions on the 4<sup>th</sup> floor or 5<sup>th</sup> floor at 900 West Hastings moved out rather than be caught in the middle of a dispute between Regions and the new landlord. Fawaz stated the complete telephone system installed by Regions was left behind but some computers were moved to the new address at 889 West Hastings. At that point, Regions also carried on business from offices in Kelowna and elsewhere in British Columbia and these were supervised by Fawaz from his office at 900 West Hastings. During the fullest part of the RTI school operation, there were 10 to 12 classes operating daily with five or six students in each class. Fawaz stated he saw Pai around the office several times during 2002 and although he had his own separate office, he thought most employees should have known him. At one point, Regions employed about 50 people in addition to the 20 to 25 language teachers who worked for the RTI division but many of the employees working on projects for Regions were in the premises for only a few minutes as their work was carried out elsewhere. Fawaz identified a Notice of Bankruptcy (Exhibit R-2) filed on his behalf by a bankruptcy trustee on February 27, 2008. The total of

liabilities was \$3,032,359.13, including nearly 1.5 million dollars owed to CRA, and the total of his assets was \$2,611.00. Monthly income from business was shown as \$3,000, minus a theoretical instalment of \$600.00 for income tax. Fawaz acknowledged that among the creditors listed on page 5 of the Notice were Soraya Motameni and Frank Motameni who claimed they were owed the sum of \$45,200.00. Fawaz stated that amount was not connected with Motameni's duties as Director of the language schools but arose from an investment by her and her husband in a taxi venture while she was employed at RTI. Fawaz acknowledged that when signing his application for the bankruptcy he was certifying under oath or affirmation that the information provided therein was correct. Fawaz stated he had lived in Canada since 1991 and filed personal income tax returns thereafter until 1996 but did not file any subsequent returns of income until 2008. The Regions group of companies did not file any corporate tax returns. Fawaz identified his signature on a Lease Agreement (Exhibit R-3) between Aberdeen Financial Group Inc. and Insignia Corporate Establishments (Eight) Inc. for the premises described as Suite 3509, 35<sup>th</sup> floor Park Place, 666 Burrard Street, Vancouver, British Columbia. The lease was dated January 26, 2004 and Fawaz also signed other documents including those within said exhibit pertaining to Internet connection, telecommunications set up and a security pass and key request. Fawaz conceded the lessee, Aberdeen, did not exist as a corporation since the name had been refused by the company branch. Fawaz stated that although the form indicated he was the only holder of a security pass and key, he obtained an extra one for himself and also gave one to Lopez. Fawaz stated Lopez came to that office now and then to do some business for their import venture and sometimes used a work station for which the landlord charged an hourly or daily rate. A request for usage was directed to the receptionist on the 34<sup>th</sup> floor. Fawaz acknowledged he pleaded guilty to four counts of GST fraud contrary to the *Excise Tax Act* on September 12, 2005 and then had attempted to change his plea before the presiding Provincial Judge and thereafter by way of appeal to the Supreme Court of British Columbia. The appeal was dismissed in accordance with the Reasons for Judgment (Exhibit R-4) of The Honourable Mr. Justice Goepel. The amount of the fraud was \$82,537.23 and arose between December 31, 1996 and February 29, 2000. Fawaz was sentenced to pay a fine in the sum of \$82,000.00 and to serve a conditional sentence in his residence in accord with certain restrictions on his movements. Fawaz stated he prepared and signed the ROE (Exhibit A-1, Tab 10) issued to Pai and inserted the number of insurable hours and amount of insurable earnings based on information provided to him by Cyrus Zahedi. Some documents and information had been transferred to the new location before Regions and RTI had to move out of 900 West Hastings. Fawaz stated he did not know Pai was pregnant when she starting working for RTI and that he may have met her earlier in the course of doing accounting work for her husband, Yazdani. He



agreed he probably knew they had purchased a new house. He denied the suggestion by counsel that the hours and insurable earnings stated in Pai's ROE were inflated or otherwise not correct and asserted Pai performed the work at RTI and had not entered into any sham arrangement that would enable her to collect UI benefits based on maternity leave. Fawaz conceded he had prepared and issued the ROE to Lilian Liu (Exhibit R-1, Tab 53) which purported she had worked 267 hours and had insurable earnings in the sum of \$4,980.00 in the course of her employment with RHS Services Ltd. The ROE was signed by Jumah (Jack) Sultan, a director of Regions but Fawaz listed his own name as the contact person. Fawaz stated he knew RHS was a limited company owned by Pai's husband, Yazdani, and decided to issue the ROE in that corporate name because Liu had worked on the RHS corporate, accounting and tax files and Aberdeen, the accounting division of Regions, had hired her on behalf of RHS. Fawaz stated the amount of Liu's hours (267 hours) stated in her ROE was not correct nor was the stated amount of her insurable earnings, and he prepared an amended ROE (Exhibit R-5) also in the name of RHS, in which the insurable hours were stated as 26.92 and the insurable earnings as \$498.00. He denied knowing Liu was pregnant when he hired her to do some accounting work. He denied having participated in any discussion with Liu about his ability to issue her with an ROE that would serve to maximize the amount of her UI maternity benefits and denied she paid him the sum of \$1,369.50, alleged to represent the Regions contribution, as employer, of her EI premiums, CPP contributions and income tax. Fawaz stated he did not receive any cheque from Liu and did not return the sum of \$520.00 in cash to her on or about May 2005. He agreed there was a cheque in the sum of \$800.00 dated December 31, 2002 issued by Qin Han to Lilian Liu on which there is a notation on the memorandum line "80 hours" and that said cheque may have been written by Han because he did not have a bank account at that time. According to the amended ROE purported to have been issued by RHS, Liu's last day of work was April 18, 2004 yet the unsigned ROE was dated December 23, 2004.

[15] Samir Fawaz was re-examined by counsel for the Appellant. Fawaz agreed that Yazdani was not pleased about what he had done in issuing an ROE to Lilian Liu based on purported employment with RHS.

[16] In response to questions posed from the Bench, Fawaz stated he did not find it unusual or improper to issue an ROE using the name of one of his accounting clients as the purported employer to an employee and accounting business entities within Regions who had worked many hours on files pertaining to that particular person or corporation. As a result, he issued an ROE to Liu using the name of RHS, Yazdani's limited company, because she had worked on RHS accounting and tax matters. However, he made a mistake as to the number of hours and amount of insurable

earnings and corrected it later by issuing an amended ROE using, again, the name of RHS as the employer.

[17] Pierre Lopez was examined in direct by counsel for the Respondent, Bruce Senkpiel. Lopez stated he was a salesman for a medical supply company and had worked there full-time for about 14 years. Fawaz had been his accountant and tax preparer for about eight years and they discussed a venture that could generate revenue by importing medical supplies. He met with Fawaz at the Regions premises at 900 West Hastings and dealt with Maria Malabanan, the receptionist. He stated that a company, Abardeen, was incorporated to use as a vehicle to conduct business operations from a small office in a building situated at 666 Burrard which offered package offices with appropriate equipment and telecommunication service. There was a common reception area with many offices. Lopez stated the space, Suite 3509, was leased by Fawaz and he did not use a desk nor rent any work station. He did not remember Pai and when he saw her outside the 701 West Georgia Street building the day before testifying, he asked her if she was Sherry Pai because she was standing beside her counsel and Fawaz. Lopez stated he did not hire Pai nor supervise her and that she did not do any work for him. He stated he has no memory of having met her. He agreed China was discussed as a potential supplier of medical supplies and had obtained some information in that regard from Fawaz but did not have any contact with Pai nor did he provide her with any instructions.

[18] In cross-examination by counsel for the Appellant, Lopez described his job as a salesman of a vast array of disposable products used in the medical field. In the past, he had attempted to start his own business and was interested in doing so with Fawaz but it never “amounted to anything more than just talk.” No results had been achieved and he had reviewed some sales brochures and agreed he ascribed to the theory that if there was no end product capable of producing profit, or at least some revenue, then nothing worthwhile had taken place. Lopez acknowledged he had been angry at Pai and swore at her outside the 701 West Georgia building the day previously because he considered she had involved him in her litigation and he had been inconvenienced. He also acknowledged he had hired Fawaz to file an appeal to Tax Court of Canada concerning a reassessment of income tax but had discontinued the appeal and is dealing with CRA to pay the income tax arrears. He denied having any ill feeling towards Fawaz even though he admitted having sworn at him at the same time as he was directing invective towards Pai.

[19] Maria Malabanan was examined in direct by Bruce Senkpiel. She testified she is currently employed as a customer sales representative but worked as a receptionist for Regions from the fall of 1998 to about September 2002. She answered calls for

several companies that were logged into the phone system and handled the mail. She did typing for different tenants who rented the small offices on the premises and scheduled meetings and did some administrative work for Dean Powers, one of the tenants. She was interviewed by both Powers and Fawaz but Fawaz made the decision to hire her to work at the Regions office space at 900 West Hastings and later at 889 West Pender for a brief period following the move at the end of August 2002. Malabanan stated she knew Fawaz was in charge of the Regions Executive Offices function and saw him almost daily. The language school, RTI, was operated from the 900 West Hastings location until it moved to the West Pender premises. With respect to Regions, that group had only Fawaz, Zahedi and Malabanan as employees but the school hired several teachers. She was paid by cheque every two weeks and worked full-time but there were occasions when her cheques were returned NSF and towards the end of her employment she was not paid for some work periods. Zahedi was responsible for accounting and payroll. Malabanan stated that during lunch hour or other breaks that took her away from the reception desk, she was replaced by Kathleen Owens or by Pai. She was aware that Owens, married to Fawaz at that time, also did some teaching. Malabanan recalled that Pierre Lopez attended at the Regions office and had meetings with Fawaz. Malabanan stated Soraya Motameni and her husband, Frank, came to the office and met with Fawaz in one of the rooms. Malabanan stated her recollection is that Motameni came to the office only occasionally by herself and that Pai was dealing with “lots of paperwork” and was sorting out bills and filing them and handing them to Fawaz. She recalled Pai came to work several times a week and “eventually she was regular I think until she gave birth”. Malabanan was referred to the notes of Lazic (Exhibit R-1, Tab 13) pertaining to her interview on June 17, 2005. When asked by Lazic to name her co-workers, Malabanan mentioned Owens, Zahedi and a female named Rose and told Lazic that Motameni did not work there but only saw Fawaz about taxes. Malabanan stated she saw Pai working at the office in the context of helping Fawaz at tax time and at other times saw her come and go but did not know her hours of work as that was the responsibility of either Zahedi or Fawaz.

[20] Malabanan was cross-examined by counsel for the Appellant. Malabanan stated that early in 2002, there were 60 to 80 students and several teachers all of whom had to pass by her reception desk. At that time, Fawaz appeared to have a partner, Pierre Nadeau (“Nadeau”), in the language school and Nadeau was at the office regularly during a certain period. Pai collected mail from the reception desk that pertained to RTI and she recalled speaking with Pai sometimes.

[21] In response to questions from the Bench, Malabanan stated she understood the administrative work pertaining to RTI was performed in or near the office occupied

by Fawaz or the one utilized by Nadeau when he was part of that business operation. Although there were only six business tenants in the space, Regions also operated a telephone answering service and during tax season, lots of people were coming to see Fawaz. Malabanan stated that when RTI started operations, the premises on the 4<sup>th</sup> floor of 900 West Hastings became a very busy place. Malabanan recalled Pai was expecting her first baby and was excited about it and understood she worked until shortly before she gave birth. When informed that the ROE stated Pai worked until October 18, 2002, Malabanan stated she had left her employment with Regions in September and had not been aware of how long thereafter Pai continued to work.

[22] Susan Lazic testified she is employed by Service Canada, the current name of the agency previously known by many names including HRSDC and HRDC. She has worked for Service Canada and its predecessors for 20 years starting in a clerical role and then assuming a supervisory role. She currently works as an Investigator, a function formerly known as an Investigation and Control Officer or ICO. Lazic stated she investigated a claim by Fawaz for UI benefits based on his alleged employment with Regions. The problem was that the SIN used by Fawaz had been assigned to a female with the surname, Jones. A print-out (Exhibit R-1, Tab 1) was identified by Lazic as a Record of Employment Distribution Request indicating Fawaz personally picked up and signed for 15 ROEs together with one Guide and 10 envelopes on September 23, 2002. According to the information on the form, Regions had 45 insured employees at that time. The information recorded by HRDC indicated 20 ROEs had been ordered by Fawaz on May 25, 2001. The ROEs were assigned serial numbers and the one issued to Pai on September 9, 2004 (Exhibit A-1, Tab 20) was within the range of numbers of the forms provided to Fawaz on September 23, 2002. The purported employee was Aberdeen Financial Group and the Canada Customs and Revenue Agency (“CCRA”), as it then was, reference number used in Box 5 of the ROE was not the number previously assigned to Regions. The ROE issued purportedly by RHS to Lilian Liu (Exhibit R-1, Tab 53) bore a serial number within the range of numbers on the ROE forms issued to Fawaz on May 25, 2001. Lazic stated she reviewed the numbers on the ROEs issued and the identity of applicants for UI benefits and discovered they were Lilian Liu, Sherry Pai, Kathleen Owens, Christine Appelt and Samir Fawaz. Lazic stated it became apparent an investigation was required and questions were prepared in advance and varied to suit the occasion when these individuals were interviewed. Her practise was to type the answers directly into her computer during an interview. Lazic identified the notes of her interview with Pai on December 9, 2004 (Exhibit R-1, Tab 6). Pai brought her two children whom Lazic considered were well-behaved and had not caused any disturbance. Lazic stated she was concerned when Pai stated she did not know Fawaz. Lazic stated that after conducting interviews with Pierre Lopez,

Soraya Motameni and Maria Malabanan, she formed the opinion these individuals were not truthful about the identity of their supervisor or employer. Lazic, in the presence of ICO Michael Kingsley, interviewed Lilian Liu on May 6, 2005 and Lazic's notes (Exhibit R-1, Tab 57) recorded Liu's admission that she did not work for the purported employer, RHS, as stated in her ROE. Instead, Liu worked for Fawaz only a few times in January 2004 doing data entry and had earned about \$500.00. On May 16, 2005, Lazic stated Liu sent her an e-mail (Exhibit R-1, Tab 50) explaining how she had met Fawaz around 2002 when he was introduced to her as the boyfriend of her best friend and that she understood Fawaz was a professional accountant and had overseas businesses. Liu explained in the e-mail that she did data entry on three boxes of files and was paid \$450.00 in cash and that Fawaz had known she was pregnant, had a student loan and a mortgage on a newly purchased house and suggested she could maximize her UI maternity leave benefits to \$499.00 per week instead of \$413.00, which was the entitlement based on her previous employment in Ontario. In return for an ROE that would accomplish this purpose, Liu stated Fawaz required her to pay the sum of \$1,369.50 which would cover the employer's portions of EI premium, CPP contribution and income tax to be withheld. Liu stated in the e-mail that she requested a breakdown of that total by separating those amounts but the breakdown was not forthcoming from Fawaz. In the e-mail, Liu stated she wrote a cheque for the amount requested by Fawaz and issued it in his name. Lazic submitted seven Requests for Insurability (Exhibit R-1, Tab 14), including one for Liu and one for Pai.

[23] Lazic was cross-examined by counsel for the Appellant. Lazic stated the application for UI benefits dated June 26, 2003 submitted by Fawaz using the identity of a female named Jones was based on 10 years alleged employment with Regions. Lazic stated a review of data indicated Fawaz was not a landed immigrant in Canada and that he did not have a work permit. Lazic stated that some of the ROE forms provided to Fawaz have not been used. Lazic stated she did not know where Regions did its banking and that precise information in that regard is a prerequisite to issuing a Requirement to Produce Documents to a financial institution. Lazic acknowledged receipt of Pai's letter dated February 23, 2005 (Exhibit A-1, Tab 16) that enclosed pay slips and bank deposit statements pertaining to her 2004 employment with Aberdeen and that Pai mentioned in said letter she was not able to locate all the pay slips and cheques paid to her by Regions almost three years earlier. Lazic agreed she had reviewed the three cheques (Exhibit A-1, Tab 11) drawn on the Bank of Montreal, First Bank Tower Branch and issued by Regions Training Institute. There was also a cheque issued by RTI on the Vancouver City Savings Credit Union, Pender and Hornby Community Branch. Lazic stated there was no problem with Malabanan's claim for UI benefits but considered Pai was evasive about several

matters and was not forthright when responding to straightforward questions. Lazic estimated the interview with Pai lasted 30 to 40 minutes and was certain Pai did not mention the name of Fawaz as someone involved in the language school. Lazic agreed that in Pai's letter (Exhibit A-1, Tab 16) she stated Fawaz was the owner of Regions but had not been aware of any connection between him and Aberdeen, her employer in 2004. On February 9, 2005, Lazic sent a letter to Pai (Exhibit R-1, Tab 8) informing her that her claim for UI benefits was suspended due to an investigation and that her previous claim based on employment with Regions was also being investigated. Lazic stated that by the time she received Pai's letter dated February 23, 2005 she had sent the Request for Insurability to CCRA.

[24] Carin Amber testified she has been employed by CRA and its predecessor agencies for 22 years and has worked as an EI/ CPP Appeals Officer for the past 17 years. She stated the bulk of her workload is generated by appeals from a decision by a Rulings Officer and that she received several appeals involving Regions, including the one filed by Pai. Amber stated she reviewed several files and examined material and gathered information in an effort to obtain a fresh perspective. Although Questionnaires were sent to Regions, there was no response. Pai completed and returned two Questionnaires, one pertaining to her employment with Regions (Exhibit R-1, Tab 31) concerning the language school, RTI, and another one relating to services provided to Aberdeen in 2004 (Exhibit R-1, Tab 32). Amber sent Pai a letter dated January 2, 2007 (Exhibit R-1, Tab 33) in which she requested additional information. Amber stated she spoke on the telephone with Fawaz, Lopez and Motameni in the course of her review and made notes (Exhibit R-1, Tab 36) to summarize those conversations. Amber determined that Lopez was the sole director of a corporation called Abardeen Financial Group Inc. Amber noted that Lopez told her he was trying to do some business and would call Pai sometimes to translate for him and that he dealt with her mostly by telephone but did not know the extent of her duties since she did not report to him. Amber referred to a photocopy of a T-4 slip (Exhibit R-1, Tab 37) issued by Regions to Pai for the 2002 taxation year. It indicated her gross earnings were \$19,494.00 and that income tax in the sum of \$3,442.35 had been withheld together with CPP contributions in the sum of \$751.76 and EI premiums in the sum of \$428.89 which had been remitted, allegedly, on her behalf. Amber stated that to the best of her knowledge, Regions did not remit any amounts to CRA on behalf of any employees during the periods at issue. Amber prepared a CPT 110 report (Exhibit R-1, Tab 39) with respect to Pai's 2002 employment and another report (Exhibit R-1, Tab 40) pertaining to the 2004 work performed for Aberdeen under the Regions umbrella. Amber commented (Exhibit R-1, Tab 39, page 4) that the alleged remittance of tax did not match the purported salary paid to Pai according to her T-4. Amber concluded there was too much conflicting information provided to

her and others in respect of the matters and that many of the persons interviewed were not credible. In her opinion, there was no tangible proof that wages had been paid as alleged or at all. As a result, she recommended to the Minister that a decision be issued finding Pai was not in insurable employment with Regions in 2002 or in 2004.

[25] In cross-examination by counsel for the Appellant, Amber stated she was aware of Pai's 2005 letter to Lazic (Exhibit A-1, Tab 16) but did not consider it for purposes of preparing her report. She could not recall if Pai's tax return for 2002 included a copy of the T-4 and thought it may not have been inserted because Regions closed down the language school as of December 31, 2002 and T-4s are sent out by employers in February of the following year. Amber sent a letter to Pai (Exhibit A-1, Tab 18) requesting certain information concerning her 2004 employment and received a reply (Exhibit A-1, Tab 19) and acknowledged Pai was cooperative. Amber stated that according to the payroll journal provided to her by Regions solicitors, Pai earned \$21,900.00 but the T-4 issued to her had stated her gross earnings were \$18,250.00 and that income tax in the sum of \$4,306.75 was deducted. She agreed the amount of insurable earnings stated in Pai's ROE (Exhibit A-1, Tab 10) was \$19,494.40 and that the ROE (Exhibit A-1, Tab 20) in respect of the 2004 employment with Aberdeen indicated insurable earnings were in the sum of \$25,550.00 and that said amount was reported by Pai in her 2004 tax return. Amber acknowledged she stated in her CPT 110 report (Exhibit R-1, Tab 40) that the copies of banking records submitted by Pai permitted her to identify seven deposits from Regions, operating as Aberdeen, between February 2 and August 31, 2004. Amber also noted in the report that another bank draft dated July 28, 2004 in the sum of \$2,318.12 did not appear to have been deposited to Pai's bank account. In the letter to Amber dated January 22, 2007, Pai provided the names of several language teachers at RTI and stated that Soraya Motameni was the School Director and that she reported to her and received directions. Amber acknowledged that information was consistent with statements made to that effect during Pai's interview with Lazic. Amber noted (Exhibit R-1, Tab 36, page 12) details of her telephone conversation with Motameni wherein Motameni stated Pai was already working at the language school when she started and agreed this statement was not correct. Motameni also told her Pai worked in a different office and that she did not interact with her, nor supervise her, nor assign tasks to her. Amber stated her sense of the Regions situations was that it was far-reaching and operated through a series of interwoven entities. She considered the language school, RTI, to have been a legitimate business operation or at least a functioning entity. At one point, Fawaz told her Regions had a source of income from China but there were no documents to prove that assertion. Fawaz blamed CRA for having seized certain documents in

connection with the agency investigation concerning the GST fraud of which he was later convicted.

[26] Carin Amber was re-examined by Bruce Senkpiel. She was referred to Exhibit A-1, Tab 22 which contained copies of Royal Bank of Canada drafts payable to Pai at various times in 2004. Amber stated she did not have any concerns about the legitimacy of the bank drafts but considered those payments may have been returned by Pai to Regions or to Fawaz or one of his entities as part of a scheme to defraud the EI system.

[27] Beverly Smith testified she has been employed by CRA for 23 years in various capacities including Compliance Officer and is currently working as a CPP/EI Rulings Officer. Her job requires her to determine whether a working relationship constitutes insurable employment and in the course of carrying out that function examines material and gathers information. She received a Request (Exhibit R-1, Tab 18) from Michael Kingsley at HRDC in respect of Pai's purported employment with Regions in 2002 and another Request (Exhibit R-1, Tab 19) concerning her work with Aberdeen in 2004. There were other Requests pertaining to other employees who claimed they had worked for Regions. Smith stated she interviewed Pai on September 1, 2006 and typed notes (Exhibit R-1, Tab 20) contemporaneously in response to the questions which had been inserted earlier in the computer file. Smith also interviewed Fawaz and Liu. Smith had access to Pai's application for UI benefits (Exhibit R-1, Tab 2) pertaining to employment with RTI in which Pai stated her monthly salary was \$3,500.00. Smith stated that in her opinion there was too much conflicting information and insufficient supporting documentation to permit her to issue a ruling that Pai had been employed by Regions in either of those instances.

[28] Smith was cross-examined by counsel for the Appellant. Smith agreed that as a Rulings Officer she had the statutory authority to compel production of Regions' banking records. She acknowledged Pai was cooperative throughout their dealings. As part of the Case Management System Text Summary concerning Pai's file (Exhibit R-1, Tab 30) Smith stated information had been gathered, entries 040 to 043, which indicated Fawaz had been convicted of GST fraud, had filed for UI benefits using another person's name and SIN, had never filed T-2 Corporation tax returns for any of the companies in Regions and had an expired SIN, did not hold a valid work permit and had held himself out to be a Certified Management Accountant which was not true. Further information revealed Fawaz had applied several times for refugee status in Canada all of which had been refused.



[29] Lilian Liu testified she resides in Burnaby and works as a financial advisor. She does not know Pai nor her husband, Yazdani. She met Fawaz in 2003 when a close female friend introduced him as a boyfriend and a couple of months later her friend telephoned to ask if Liu was interested in doing some data entry for Fawaz. Liu stated she met Fawaz who stated he was a Certified General Accountant (“CGA”) and had many clients. Liu started working for Fawaz at the office located on the 35<sup>th</sup> floor of the Park Place building at 666 Burrard. She attended at the Fawaz residence to collect a box of documents and used her computer to make entries and saved the file to diskette which she returned to Fawaz together with the box of documents. In total she worked to enter data from documents contained in three boxes. The work was performed between November 3, 2003 and February 2004. She was pregnant at the time and the baby was due in April. Fawaz paid her, in cash, the sum of \$150.00 per box of documents for a total of \$450.00. Liu stated she and her husband had full-time jobs but their household expenses were high and she spoke with Fawaz about some matters concerning their income tax. During these discussions, the subject of Liu’s maternity leave arose and Fawaz did some calculations and determined the amount of her potential maximum UI weekly benefit but did not explain how that could be achieved. After her son was born in mid-April, Fawaz visited her in the hospital and raised the subject again and spoke with Liu’s husband. Fawaz explained he could issue an ROE to Liu that would entitle her to the maximum maternity leave UI benefit but it would require her to pay him the employer’s portion of income tax, CPP and EI which amounted to the sum of \$1,369.50. A couple of weeks after these discussions, she received an ROE by mail (Exhibit R-1, Tab 53) which stated she had worked 267 insurable hours for RHS Services Ltd. and had insurable earnings in the sum of \$4,980.00. Liu stated she did not know anything about RHS and had never seen that name when making data entries from three boxes of documents. She attempted to telephone the number provided on the ROE but no one answered. She telephoned Fawaz to request a breakdown of the \$1,369.50 payment but none was provided and in the course of the conversation he told her RHS was his client. Later, when HRDC began investigating her UI claim, she attempted to contact Fawaz and left messages but he did not respond. Liu was interviewed by Lazic and Kingsley at HRDC on May 6, 2005 and confirmed the notes taken by Lazic accurately record the substance of their conversation. At the bottom of page 3 of the said notes (Exhibit R-1, Tab 57), Liu identified her handwriting where she wrote: “[He] knew I would have maternity leave soon, and made this suggestion”, referring to Fawaz. Liu stated she reviewed the notes (Exhibit R-1, Tab 49) made by Beverly Smith of the interview on September 1, 2006 and is satisfied the notes are accurate and confirmed that her answers were truthful. Liu stated the poor quality of the photocopy of her cheque number 276 (Exhibit R-1, Tab 60) does not indicate clearly the amount of \$1,369.50

paid to Fawaz but the bank statement in the previous Tab (Exhibit R-1, Tab 59) has an entry indicating cheque 00000276 in that exact sum cleared her account and that this pertains to the cheque issued to Fawaz. Liu stated she was entitled to maternity leave UI benefits based on her employment as reflected in the ROE (Exhibit R-1, Tab 52) issued by her employer in Ontario but she had earned only about \$9.00 per hour at that job. According to the T-4 issued to Liu (Exhibit R-1, Tab 58) she earned the sum of \$4,980.00 from which \$240.00 in income tax had been withheld. Liu stated the T-4 is not correct and that following the interview with Lazic she spoke on the telephone with Fawaz and was angry with him and demanded an explanation for his conduct in issuing her that ROE in the name of RHS and also requested the return of the money she had paid to him. Liu stated she went to the office at 666 Burrard and the receptionist handed her an envelope with \$500.00 in cash and gave her a cheque in the sum of \$800.00 and that she deposited these items on May 9, 2005. Those transactions are recorded in her bank statement at Exhibit R-1, Tab 62. The cheque she received was dated December 31, 2004 and was issued by Qin Han.

[30] In cross-examination by counsel for the Appellant, Liu stated she has a Bachelor of Science degree from Wuxi University in China and has been in Canada for 10 years and that her husband is employed as a laboratory technician.

[31] Counsel for the Appellant submitted the overarching issue was credibility and that the Appellant and her husband provided credible testimony that was supported by other witnesses, including some called by the Respondent. Counsel pointed out that both Amber and Smith, Appeals Officers, found Pai to have been cooperative and consistent in providing information to them during interviews and through letters in which information was provided and documents were submitted. Counsel acknowledged there was a divergence in testimony between his client and the evidence provided by Lazic both on the stand and according to her notes of the interview with Pai. Counsel pointed out that although Pai had withdrawn her appeal concerning the 2004 working relationship with Regions, operating as Aberdeen, on the basis she was probably an independent contractor rather than an employee, a great deal of time was spent during trial examining the details of that work situation. It was the theory of the Respondent that the 2004 scenario was a repeat of Pai's 2002 employment because in each case Pai was pregnant and it was merely a re-run of a scam to defraud the EI system that had been concocted by Fawaz and Pai and others had participated. Counsel referred to the evidence of the bank drafts and the bank deposits shown on Pai's account statements that demonstrated she had been paid for her efforts in 2004 when she undertook market research for the entity she knew only as Aberdeen without any connection to Regions. With respect to the testimony of Lopez, counsel characterized it as hostile and referred to the admission by Lopez that

he expressed his hostility towards both Pai and Fawaz by swearing at them outside the 701 West Georgia building prior to attending Court to testify. Counsel submitted that the testimony of Lopez was not credible when he purported he had not known Pai earlier and had not dealt with her in respect to any business matters involving research of various products with the intent Aberdeen import them from China.

[32] With respect to the 2002 employment at the language school, RTI, operated by Regions, counsel submitted there was ample evidence to support the contention Pai was employed there for the period stated in her ROE and that she earned the amount of insurable earnings reported therein. The Director of the school, Motameni, testified Pai worked there and even the receptionist, Malabanan, agreed Pai was present and sometimes provided relief at the desk during lunch or other breaks, although Malabanan was under the impression Pai's duties involved helping Fawaz mainly during tax season. Counsel pointed out that the failure of HRDC to obtain banking records on the accounts operated by Regions had prejudiced the Appellant and that the fact Pai took out relatively large sums in cash when negotiating pay cheques on occasion was consistent with her Taiwanese heritage and that Pai and her husband were renovating their home and required additional money to pay for supplies and labour. Counsel submitted there was no evidence whatsoever to link Pai with Liu's participation in the scheme concocted by Fawaz to maximize her maternity leave UI benefits, nor was there any proof that Yazdani had anything to do with the use, by Fawaz, of the limited company, RHS, as a purported employer of Liu for purposes of the scheme. Counsel referred to Pai's background, education and previous employment, all of which were consistent with her employment in 2002 and the services she provided to Aberdeen in 2004. Counsel submitted the evidence had established Pai was employed in 2002 by Regions which operated a language school, RTI, that ultimately failed. He submitted the fraudulent activities of Fawaz and his business failures should not be used to implicate Pai when she was merely a worker caught up in the overall network of fraud and deception masterminded by Fawaz over the course of several years.

[33] Counsel for the Respondent, Carl Januszczak, stated the position of the Respondent was that the hours and insurable earnings were inflated in the ROE issued to Pai in respect of her 2002 employment. Further, the 2004 working relationship with Aberdeen was a repeat of the earlier scam only this time Lopez was named as the alleged supervisor instead of Motameni. Counsel pointed out that Owens, the ex-wife of Fawaz, was not called as a witness by the Appellant nor was Zahedi, the Regions internal bookkeeper. Counsel acknowledged Motameni's memory was somewhat fallible in that she had difficulty recalling when she worked there and thought Pai had started earlier but submitted Motameni's testimony at trial

has to be weighed in the context of her interview with Lazic during which she did not mention Pai even as an employee of the language school let alone her assistant. The situation was complicated further by the testimony of the receptionist, Malabanan, who stated Pai only assisted Fawaz from time to time and that she could not rely on her to provide relief during lunch breaks and that Motameni did not attend at RTI that often considering her alleged role as Director. Counsel conceded there were numerous inconsistencies throughout the testimony of most, if not all, of the witnesses who testified at trial. Malabanan told Lazic that Motameni did not work at the 900 West Hastings premises. Counsel conceded that HRDC/Services Canada did not obtain banking records of Regions but pointed out Pai had not provided full bank statements and pay information concerning her 2002 employment. Counsel submitted there were problems associated with the testimony of Pai in several areas and that Motameni's evidence failed to corroborate many aspects of Pai's descriptions of her work at RTI. He referred to Pai's reluctance to disclose any knowledge of Fawaz as having any connection with Aberdeen in 2004 and her statement to Lazic that she worked at the 900 West Hastings location until the termination of her employment on October 18, 2002 when the school had moved to the West Pender premises at the end of August and thereafter in September the former landlord had padlocked the West Hastings office, according to Fawaz. Counsel suggested it was reasonable to infer that Pai never worked at the new location and that it was not reasonable for her not to have named Malabanan as a co-employee during her interview with Lazic.

[34] Co-counsel for the Respondent, Bruce Senkpiel, stated the President's Choice statements (Exhibit A-1, Tab 12) were not provided by Pai's counsel until the first day of trial and it disclosed that none of the six cheques received by Pai in 2002 were deposited to that account. Further, there was no explanation for the entry in the statement in the same exhibit (Exhibit A-1, Tab 15) indicating there was a transfer in the sum of \$2,000.00 on May 15, 2002 from the account in the name of Pai's husband, Yazdani, to Regions followed by a \$3,000.00 transfer into the account on May 17, 2002 from an unidentified source. With respect to the 6 cheques (Exhibit A-1, Tab 11) allegedly paid by Regions to Pai, three of them bore the notation "advance" on the memorandum line and there was no evidence presented that was capable of proving how and where those cheques were negotiated. There were no corresponding entries in the bank statements at (Exhibit A-1, Tab 14) to indicate two cheques issued on August 7 in the respective sums of \$2,501.12 and \$3,402.24, for a total of \$5,903.36, were deposited to any of Pai's accounts, although the statement did have deposit entries matching the May 24, 2002, cheque in the sum of \$600.00, the \$1,000.00 cheque dated June 17, and the July 12 cheque in the sum of \$600.00 which was returned NSF. Counsel admitted this sum was replaced by Regions and received by Pai and that she also deposited to her account the cheque dated August

28 in the sum of \$540.00. Counsel stated the total of those cheques that can be traced to deposits by Pai was only \$2,740.00 which would cause one to wonder why she would regularly deposit small cheques yet take out nearly \$6,000.00 in cash by negotiating two cheques on the same day. Counsel submitted the facts established that Motameni did not work for Regions as a supervisor or a Director and that Lopez did not play any role with respect to Pai's alleged employment with Aberdeen in 2004. The position of the Respondent is that Fawaz had a prior relationship with Pai's husband, Yazdani, from preparing his income tax returns for several years and upon learning Pai was pregnant in 2002 and that they had recently purchased a home that was being renovated, offered Yazdani and Pai the opportunity to participate in a scheme whereby she would work some hours at RTI and be issued an ROE that would entitle her to claim maternity leave UI benefits. In 2004, a similar plan was carried out using Lopez as the alleged supervisor and this ruse was strikingly similar to the one which Fawaz perpetrated to increase Liu's UI payments by issuing her an ROE using the name of RHS, a limited company owned by Yazdani. Counsel referred to the evidence concerning the income tax returns prepared by Fawaz and certified to be accurate by Pai whereby Pai received a refund that she did not deserve because she had claimed expenses that were not paid by her in the course of earning income as purported on the statement enclosed in her returns for 2002 and 2004.

[35] Counsel for the Appellant advised he had issued a subpoena to Kathleen Owens who had contacted him and expressed her anger and an unwillingness to appear in a forum involving her ex-husband, Fawaz, and as a result had elected not to pursue the matter.

[36] The relevant assumptions of fact set forth in the Reply to Notice of Appeal in appeal 2007-2655(EI) as they pertain to Pai are as follows:

- (d) the Appellant is married to Hassan Yazdani ("Hassan");
- (g) Hassan and Fawaz were involved in business together;
- (h) the Appellant alleged that she did not know who Fawaz was;
- (i) the Appellant received a record of employment ("ROE") from the Payor for the 2002 taxation year alleging income of \$19,494.40;
- (j) the Appellant's 2002 ROE from the Payor alleged 964.8 insurable hours of employment;
- (m) the Appellant alleged that in 2002 she was supervised by Soraya Motameni ("Motameni"), however Motameni alleged that she did not supervise the Appellant;

- (o) in 2002 the Appellant applied for maternity benefits based on her employment with the Payor;
- (p) the Appellant's ROE from the Payor was for the approximate number of hours required to establish a maternity claim;
- (w) The Payor failed to provide documentation to support the alleged payment of wages to the Appellant;
- (x) the Payor and the Appellant have given inconsistent and contradictory information at each stage of review;
- (y) the Appellant did not work the number of hours alleged in the ROE issued by the Payor for the Period; and
- (z) the ROE issued to the Appellant by the Payor for the Period is false.

#### 2004 Employment – Aberdeen

[37] The matter of Pai's 2004 working relationship with the Aberdeen entity was relevant to the issue of credibility in the context of the Respondent's theory that it was a repeat of the 2002 employment scam involving the language school, RTI, operated by Regions. The Respondent's theory received a boost when it was ascertained that Fawaz had maximized Liu's UI maternity leave benefits by issuing her with a phoney ROE using Yazdani's corporation, RHS, as the employer. In the course of further investigation, CRA Appeals Officers discovered Fawaz had been convicted of GST fraud and had attempted to collect UI benefits for himself by using the name and SIN of a female.

[38] In my view of the matter, the Respondent considered relevant material but was working backwards from facts by making subsequent assumptions designed to operate retroactively based on information that, without more, was capable of supporting the overall conspiracy theory involving Pai, her husband and Fawaz. The fact that Pai's sister-in-law also worked for Aberdeen in 2004 while living with Pai and her husband was a significant factor taken into account by the Minister. Insofar as the 2004 scenario has a bearing on the within appeal with respect to the issue of credibility, I am satisfied Pai had a legitimate working relationship with Aberdeen for the following reasons. First, the testimony of Fawaz in this regard is believable because he knew her to be a hard worker and as someone who spoke Mandarin and could deal with businesses overseas. Second, there is proof that she was paid for her work as established by the duplicate bank drafts and Amber, Appeals Officer, was

satisfied the drafts were legitimate even though she suspected that, by some means or other, some or all of that money was returned by Pai to Fawaz or to Regions. There is no evidence to support that allegation and I accept the testimony of Pai with respect to the work done by her for Aberdeen and find she was paid for her work at the stated salary. In so doing, I reject the testimony of Lopez whose entire attitude and bearing was one of outright hostility towards Pai and the within litigation which, to him, was a waste of his valuable time. I find that Fawaz instructed Lopez to hire Pai and to provide her with instructions to research markets in China and elsewhere in Asia with the expectation that Aberdeen or, perhaps the real corporation, Abardeen, could generate substantial revenue by importing various goods from China and selling them in Canada or in Europe. The fact that no significant revenue resulted from the Aberdeen/Abardeen adventure should come as no surprise to anyone who ever dealt with Fawaz. However, the reaction of Lopez was to deny any activities had taken place involving Liu and to write off his limited participation with Fawaz as an exercise constituting “nothing but talk”. In the course of her testimony, Pai described Lopez accurately before he had confronted her on the sidewalk or testified in the within appeal. Lopez denied he had ever met Pai.

[39] The testimony of Pai’s husband, Yazdani, was that he never met Liu and she testified she never met Yazdani and had not done any work at all on any files involving his company, RHS. It is obvious Fawaz used RHS as a purported employer to carry out the scheme to maximize Liu’s UI maternity leave benefits by using an ROE form he had obtained in person from an HRDC office on the basis Regions employed 45 people at that time. I accept the evidence of Yazdani that there was never any permission either express or implied for Fawaz to issue an ROE in the name of RHS and that he was angry and frustrated with his attempts to obtain an explanation from Fawaz who ultimately promised Yazdani he would correct the matter. Yazdani was forthright during his interview with Lazic and Kinglsey at the HRDC office and produced documentation with his signature thereon to demonstrate he had not signed the ROE issued to Liu. The testimony of Liu and others and the documentary evidence leads me to conclude the scheme was hatched by Fawaz alone without any participation by Yazdani and that Liu and her husband were persuaded to participate by paying the amount requested by Fawaz allegedly to compensate Regions for the employer’s portions of CPP, EI and income tax. The explanation provided by Fawaz in the course of his testimony that it was not abnormal in his accounting practice to issue an ROE in the name of one of his clients to some clerk or data entry person who worked on the file, is ridiculous even for someone who merely pretends to be a certified accountant.

2002 Employment with RTI

[40] The Respondent conceded there was evidence which established Pai worked at the language school but argued she had not worked the number of hours nor had she earned the amount of insurable earnings stated in her ROE. Although Pai had deposited some pay cheques to her account, the Minister was not satisfied she earned the amount stated in her T-4 and believed Pai had negotiated two large cheques in August 2002 by taking cash for the purpose of paying Fawaz or Regions as part of the scheme to inflate her hours and earnings so she could collect maternity leave UI benefits.

[41] As counsel for the Respondent conceded, there are some “nuggets of truth” in the testimony of Fawaz. I characterize most of it as a mixture of fog, smoke and dust, a patchwork of arrogant self-justification, ego-driven pap and pure lies. It is obvious Pai was present at the school in a capacity relating to administration and had participated in a student outing as featured in the photographs entered as an exhibit. When Motameni spoke with Lazic or later with the Appeals Officer, she was not under oath. It was apparent she did not want to deal squarely with the matter of her involvement with Fawaz as an employee of RTI nor did she mention participating as a co-venturer with her husband in a failed taxi cab venture leaving them with the dubious honour of being listed as one of the creditors on the Fawaz bankruptcy application. Motameni admitted her memory was not reliable with respect to dates and the fact she told Amber that Pai was already working there when she started as Director seriously undercut Pai’s assertion that she had been hired by Motameni and had worked as her Assistant. The fact is Motameni was working for RTI since 2000 or early 2001, more than a year before Pai started. When speaking with Lazic at HRDC, Motameni did not mention Pai as her assistant and explained in her testimony that she merely forgot to do so. She testified Pai worked for RTI and reported to her concerning schedules and that her recollections were imperfect when speaking with investigators she wanted to put the entire RTI experience behind her.

[42] The testimony of Malabanan, receptionist, was a bit odd. According to her, Motameni was not actively working at RTI on a regular basis but visited the premises with her husband, Frank, and met with Fawaz in an office. Malabanan confirmed that Pai worked at the 900 West Hastings office and relieved her at the reception desk from time to time but did not consider her to have been available on a regular basis to assume that role. Malabanan thought Pai’s work involved the accounting business operated by Fawaz but was not certain as to her exact function with Regions. Malabanan testified Pai was working at that location until the move at the end of August. Her own employment ended shortly thereafter so she was not able to say how long Pai worked at the new location. It is obvious Malabanan was an extremely



busy person in 2002 at the height of the school's operation with more than a hundred people a day coming and going to the school in addition to those attending to see Fawaz about accounting or business matters. She had to answer telephones for RTI and for tenants in the executive offices operated by Regions. I would not expect her to have kept track of Pai or others during the day and if she was not involved in the actual operation of the school there was no need for her to have been aware of the nature of the tasks carried out by Pai.

[43] Although I have some reservations about Pai's conduct when interviewed by Lazic, I am satisfied she told the truth during her testimony. Her subsequent actions in providing information and documentation to the best of her ability to Lazic or to Amber and Smith, Appeals Officers, was beyond reproach. Pai is an intelligent, well-educated woman with a degree from UBC and has work experience compatible with her employment at RTI in 2002. Where there is a conflict between her evidence and that of Fawaz, I accept her version. I accept Pai's description of her duties at RTI including various aspects of administration, scheduling of classes and teachers, preparation of working documents for the business, working on the website and dealing with agents to recruit foreign students for the school. I accept Pai's evidence in preference to that of Malabanan who suggested she only did some accounting work for Fawaz. Any anomalies inherent in her income tax returns for the 2002 and 2004 taxation years are grist for another mill and it is not unreasonable to infer from the overall conduct of Fawaz that the statement of so-called expenses was not included in the forms when Pai signed them. It is reasonable for her to have relied on their accuracy since they were prepared by Fawaz, supposedly a properly accredited accountant with membership in a professional organization who had prepared tax returns for her husband for several years previously.

[44] It is not a mystery why the Appeals Officers recommended the Minister should decide the employment of Pai with Regions in 2002 and Aberdeen in 2004 was not insurable employment. The activities carried out by Fawaz through various interwoven entities and his conviction for GST fraud in the context of his fraudulent attempt to collect EI for himself and his scheme involving Liu would cause any reasonable person to examine closely the file of anyone purportedly employed by Fawaz or one of his businesses. The Minister had no doubts about the legitimacy of Malabanan's employment nor do I. It was the unfortunate circumstance of the ROE to Liu having been issued in the name of RHS, Pai's husband's corporation, that even if not icing on the cake, was the blazing sparkler on top which could not be ignored. In my view, the analysis undertaken by Amber and Smith was reasonable based on the information before them. However, when matters are dealt with in Court by way of trial, the process can produce a different perspective and enable an in-depth

evaluation of the totality of evidence, whether documentary or adduced through testimony. Often, there is a vast gulf between what people say in a cavalier fashion during a telephone interview a year or more after the event or even in a face-to-face interview with an HRDC investigator or Appeals Officer because there is a desire to gloss over matters that may put them in a bad light or bring back memories of an unpleasant work experience consigned to the past.

[45] I find the Appellant has proven her case on a balance of probabilities and that her employment with Regions, operating as RTI, was genuine and that the ROE issued to her accurately stated the number of insurable hours and the amount of insurable earnings. I have taken into account the evidence that the working hours were approximately 40 hours per week and that Pai may have worked some extra hours in the course of accompanying students and teachers on field trips. The period of employment stated in her ROE consists of 23 weeks and four days which is 40.5 hours per week on average during the period of her employment as stated in her ROE. Her salary of \$20.20 per hour is reasonable bearing in mind her qualifications and her language skills, Mandarin, including her ability to read Japanese characters. According to Fawaz, the hours worked by employees were recorded by Zahedi who was responsible for the payroll. There is nothing in the evidence to suggest Zahedi was not keeping accurate records and the number of hours and the amount of insurable earnings are consistent with the particular duties carried out by Pai. The language school had a gross income of \$856,578.54 in 2002 according to the Income Statement, excluding the sum paid to agents for promotional discounts. Obviously, that enterprise required teachers and administrators to keep it functioning on a daily basis.

[46] Both appeals, EI and CPP, are allowed and both decisions of the Minister are varied to find that Sherry Pai was engaged in both insurable and pensionable employment with Regions Group of Companies International Trading Ltd. from May 6, 2002 to October 18, 2002 pursuant to paragraph 5(1)(a) of the *Employment Insurance Act* and paragraph 6(1)(a) of the *Canada Pension Plan*.

Signed at Sidney, British Columbia, this 12th day of August 2008.

"D.W. Rowe"

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Rowe D.J.

CITATION: 2008 TCC 456

COURT FILE NOS.: 2007-2655(EI) and  
2007-2656(CPP)

STYLE OF CAUSE: Sherry Pai and  
The Minister of National Revenue

PLACE OF HEARING: Vancouver, British Columbia

DATES OF HEARING: June 16, 17, 18, 19 and 20, 2008

REASONS FOR JUDGMENT BY: The Honourable D.W. Rowe,  
Deputy Judge

DATE OF JUDGMENT: August 12, 2008

APPEARANCES:

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