Docket: 2002-1295(EI)

BETWEEN:

HENRI ST-ONGE,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeal of *Edmond St-Onge* (2002-1296(EI)) on May 20, 2004, at New Carlisle, Quebec

Before: The Honourable Justice Alain Tardif

Appearances:

Counsel for the Appellant: Guy Cavanagh

Counsel for the Respondent: Marie-Claude Landry

JUDGMENT

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

Signed at Ottawa, Canada, this 16th day of July 2004.

"Alain Tardif"

Tardif J.

Translation certified true
on this 16th day of March 2009.

Brian McCordick, Translator

Docket: 2002-1296(EI)

BETWEEN:

EDMOND ST-ONGE,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeal of *Henri St-Onge* (2002-1295(EI)) on May 20, 2004, at New Carlisle, Quebec

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Citation: 2004TCC399
Date: 20040716
Docket: 2002-1295(EI)

BETWEEN:

HENRI ST-ONGE,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent,

AND BETWEEN:

Docket: 2002-1296(EI)

EDMOND ST-ONGE,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR JUDGMENT

Tardif J.

[1] These are two appeals from determinations dated March 7, 2002, pertaining to the insurability of the Appellants' work for and on behalf of 9091-3005 Québec Inc. during the periods from July 10 to November 3, 2000 and July 23 to October 26, 2001 in the case of Henri St-Onge, and from July 10 to November 3, 2000 and July 30 to November 2, 2001 in the case of Edmond St-Onge.

[2] The parties agreed to proceed on common evidence. The parties also agreed that the only question the Court had to answer was whether the Appellants, during

the periods in issue, controlled more than 40% of the Payor's voting shares, pursuant to paragraph 5(2)(*b*) of the *Employment Insurance Act* ("the *Act*").

[3] Paragraph 5(2)(*b*) of the *Act* reads as follows:

> (2)(*b*) the employment of a person by a corporation if the person controls more than 40% of the voting shares of the corporation.

[4] The Minister of National Revenue based his decision on the following assumptions of fact:

[TRANSLATION]

Henri St-Onge – 2002-1295(EI):

(a) The Payor, incorporated on May 17, 2000, operates a logging business.

(b) The Payor operates its business from spring to fall and obtains its logging contracts from the company "Les Productions J.A.S. Inc."

(c) At the time of incorporation, the shareholders and directors of the Payor were:

The Appellant with 35% of the voting shares.
Edmond St-Onge with 35% of the voting shares.
Daniel St-Onge with 15% of the voting shares.
Patrick St-Onge with 15% of the voting shares.
* The Appellant and Edmond St-Onge are brothers.

(d) On June 8, 2000, the directors and shareholders Daniel and Patrick St-Onge resigned and allegedly transferred their shares to Jean-Charles Leblanc, a friend of Henri and Edmond St-Onge.

(e) On June 8, 2000, the ledger of the Payor's shareholders and directors read as follows:

The Appellant, president, with 35% of the voting shares.
Edmond St-Onge, vice-president, with 35% of the voting shares.
Jean-Charles Leblanc, director, with 30% of the voting shares.

(f) The Appellant and Edmond St-Onge invested about $20,000 each in logging machinery and lands in the Payor's business while Mr. Leblanc invested nothing.

(g) The Appellant and his brother paid $35 per share for the class A voting shares (35 shares each) while Mr. Leblanc paid nothing to obtain his alleged shares of the Payor.

(h) The Appellant and his brother were the only ones to guarantee the Payor's $10,000 line of credit.

(i) The Appellant and his brother were the only ones to have a pre-authorized cheque plan allowing them to sign on behalf of the Payor.

(j) The Appellant and his brother were the only ones employed by the Payor; Mr. Leblanc worked full time as a caretaker at the Polyvalente de Carleton.

(k) In 2000 and 2001, Mr. Leblanc did not attend any meeting of the Payor's shareholders.

(l) During the periods in issue, Mr. Leblanc served as a dummy for the Appellant and his brother, who were the only two shareholders of the Payor.

Edmond St-Onge – 2002-1296(EI):

(a) The Payor, incorporated on May 17, 2000, operates a logging business.

(b) The Payor operates its business from spring to fall and obtains its logging contracts from the company "Les Productions J.A.S. Inc."

(c) At the time of incorporation, the shareholders and directors of the Payor were:

The Appellant with 35% of the voting shares.
Henri St-Onge with 35% of the voting shares.
Daniel St-Onge with 15% of the voting shares.
Patrick St-Onge with 15% of the voting shares.
* The Appellant and Henri St-Onge are brothers.

(d) On June 8, 2000, the directors and shareholders Daniel and Patrick St-Onge resigned and allegedly transferred their shares to Jean-Charles Leblanc, a friend of Henri and Edmond St-Onge.

(e) On June 8, 2000, the ledger of the Payor's shareholders and directors read as follows:

Henri St-Onge, president, with 35% of the voting shares.

The Appellant, vice-president, with 35% of the voting shares.
Jean-Charles Leblanc, director, with 30% of the voting shares.

(f) The Appellant and Henri St-Onge invested about $20,000 each in logging machinery and lands in the Payor's business while Mr. Leblanc invested nothing.

(g) The Appellant and his brother paid $35 per share for the class A voting shares (35 shares each) while Mr. Leblanc paid nothing to obtain his alleged shares of the Payor.

(h) The Appellant and his brother were the only ones to guarantee the Payor's $10,000 line of credit.

(i) The Appellant and his brother were the only ones to have a pre-authorized cheque plan allowing them to sign on behalf of the Payor.

(j) The Appellant and his brother were the only ones employed by the Payor; Mr. Leblanc worked full time as a caretaker at the Polyvalente de Carleton.

(k) In 2000 and 2001, Mr. Leblanc did not attend any meeting of the Payor's shareholders.

(l) During the periods in issue, Mr. Leblanc served as a dummy for the Appellant and his brother, who were the only two shareholders of the Payor.

[5] Each of the Appellants admitted subparagraphs (a), (b), (c), (d), (e), (h), (i) and (j) of paragraph 5 of the Reply to the Notice of Appeal concerning him.

[6] To discharge their burden of proof, the Appellants did not testify or call any witnesses, but essentially confined themselves to filing a book of exhibits comprising the following documents (Exhibit A-1):

- Certificate of incorporation of 9091-3005 Québec Inc.;
- Summary information form concerning 9091-3005 Québec Inc., dated May 17, 2000;
- Notice about the address of the head office;
- Resignation of the director Patrick St-Onge

and resignation of the director Daniel St-Onge;

- Transfer of shares from Patrick St-Onge and Daniel St-Onge to Jean-Charles Leblanc, dated June 8, 2000;

- Transfer of assets and issuance of shares to the Appellants Henri St-Onge and Edmond St-Onge;

- Notarized contract concerning the transfer of assets;

- Resolutions of the board of directors of 9091-3005 Québec Inc. pertaining to the purchase of a truck, dated May 10, 2001;

- Ledger of directors;

- Ledger of shareholders;

- Record of share transfers;

- Share certificates of 9091-3005 Québec Inc.;

- Form: statement of corporate information, general information.

[7] The Appellants stated that this was irrefutable documentary evidence that the employer company's capital stock was indeed distributed as follows during the two periods in issue:

Name	Shareholder
Henri St-Onge	35 %
Edmond St-Onge	35 %
Jean-Charles Leblanc	30 %

[8] The Respondent, for his part, called Jean-Charles Leblanc as well as Alain Landry and Jean Vézina, the latter two having participated in the investigation from which the determinations under appeal resulted.

[9] Jean-Charles Leblanc, a caretaker at the Polyvalente de Carleton, explained that he met the Appellants, who became his best friends and hunting companions, about 15 years ago.

[10] Mr. Leblanc clearly had no desire to become a shareholder. He agreed to become one in order to please his friends. He said the Appellant Edmond St-Onge had approached him to find out whether he was interested in becoming a shareholder of 9091-3005 Québec Inc.

[11] Mr. Leblanc said that he spent $30 for the purchase of the shares; he also mentioned that he did not have time to devote to the affairs of the company, and that he was more interested in the future, that is, his future retirement.

[12] Mr. Leblanc, who is not very communicative, was clearly ill at ease with the questions, the objective of which was to illustrate the interest he might have had in the company, his degree of involvement, but also simply his elementary knowledge of the affairs of the company, in which, according to the records, he held 30% of the capital stock. His testimony essentially disclosed that he was not informed about the company's affairs and was not interested in them.

[13] The witnesses Mr. Landry and Mr. Vézina reported on the result of their investigation, which took the form of various meetings and telephone conversations.

[14] The Respondent produced, in support of his allegations, the investigation reports commonly referred to as CPT110s (Exhibit I-2), and I think it is useful to reproduce an excerpt from one of these two reports, more specifically section (v) regarding the facts – file of *Henri St-Onge* (2002-1295(EI)):

> [TRANSLATION]
> **The following facts are taken from the statutory declaration of the Appellant, Henri St-Onge, in the presence of the investigator of the HRCC of New-Richmond, Lucien Gignac, dated November 30, 2001. (Tab A)**
>
> Henri St-Onge admitted all the facts indicated below during our telephone conversation of February 19, 2002, other than the corrections (in boldface) to facts #1 and 4.
>
> 1. In the spring of 2001 (**2000**) we formed a company, "9001-3005 Québec Inc." We are three (3) shareholders of this company: myself, my brother Edmond St-Onge, Charles Leblanc of Maria.

2. I and my brother each have 35% of the shares and Charles Leblanc 30%.

3. The company's office is at the private residence of my brother Edmond in St-Alphonse.

4. We invested about $20,000 each (**Edmond and I**) in logging machinery and lands, and that is part of the company.

5. We work for "Les Productions J.A.S. Inc."; we cut wood and bring it out with machines.

6. Les Productions J.A.S. Inc. pays the company and the company pays us a gross salary of $750 per week.

7. Les Productions J.A.S. Inc. gets the logging lands from Lands and Forests in Caplan and we got ourselves hired by this company.

8. I and my brother Edmond are the only ones collecting employment insurance, Charles Leblanc works at the Polyvalente de Carleton as a caretaker. He only invested in the company.

9. The surplus money remains in the company (dividends). We have no long-term contract, only short-term.

The following additional facts were obtained via the Appellant, Henri St-Onge, during our telephone conversation of February 19, 2002.

10. The Appellant worked for several years as an employee for Les Productions J.A.S. Inc. The shareholder Adelbert Bernard told him that the CSST [occupational health and safety] contributions and other expenses were too high. The Appellant had to incorporate in order to continue working for him, and incorporate is what he did.

11. Jean-Charles Leblanc had become the third shareholder because, the notary says, the law said that [with] less than 40% of the shares the Appellant was entitled to his unemployment.

12. The role of Jean-Charles Leblanc was only to be the third shareholder. That was all it took in order to have unemployment. He had invested only $30 for his 30 shares.

13. The Appellant worked as a lumberjack or operator of forestry machinery (Timberjack) and he alternated with his brother Edmond, also a shareholder, in order to change the routine.

14. The Appellant's work schedule was decided by common agreement with the other shareholder, Edmond St-Onge. It was normally from Monday to Thursday, from 6 a.m. to 4 p.m. and on Friday until noon or longer depending on repairs to the machine or a decision to cut a bit more to total 45 to 50 hours of work per week.

15. The Appellant's gross salary was $750 per week, i.e. what is paid for that kind of work in the forest.

16. The Appellant was always alone in the forest with his brother Edmond and they worked together. There was also Adelbert Bernard of Les Productions J.A.S., who often came into the forest to visually observe the work and he might say, for example, where to go and cut and observe what had been done.

17. There were only the two shareholders Edmond and Henri St-Onge who had a pre-authorized cheque plan and were receiving a salary from the Payor. He was paid by cheque. Edmond St-Onge had the Payor's cheque-book.

18. In addition to their shares for which they had paid $35 each, Henri and Edmond St-Onge invested in the company their logging land "about $9,500", an old Timberjack "$16,000", and a new one "$40,000".

19. It was the two shareholders Henri and Edmond St-Onge who endorsed the Payor's line of credit in the amount of $10,000.

20. All the materials and forestry equipment such as, for example, the skidder, the chain saws and the truck, belong to the Payor. All are stored at the home of Edmond St-Onge when there is no work.

21. When the Payor gets no further contract from Les Productions J.A.S. Inc., the lay-off occurs.

22. The Payor normally operates from spring to fall and depends on contracts obtained via Les Productions J.A.S. Inc.

23. The Appellant looked at the Payor's financial statements on a regular basis. The shareholders call each other once a year to hold the annual meeting. The third shareholder, Jean-Charles Leblanc, was often not consulted since it was not necessary. The Appellant and Edmond St-Onge always worked together and made decisions together when there were problems.

The following facts were obtained from the shareholder Edmond St-Onge, brother of the Appellant Henri St-Onge, during our telephone conversation of February 19, 2002.

Edmond St-Onge repeated all the facts of the above-cited Appellant.

The following facts were obtained from the shareholder Jean-Charles Leblanc during our telephone conversation of February 7, 2002.

24. Jean-Charles Leblanc has no idea of the Appellant's employment periods during the years 2000 and 2001. Moreover, he is not related to the Appellant.

25. The Appellant was an operator of heavy logging machinery, namely a Timberjack.

26. Jean-Charles Leblanc has no idea of the Appellant's work schedule, saying it was from the dark of morning to the dark of night. It was the shareholders Henri and Edmond St-Onge who determined their work schedule, since they were the ones who were doing the work.

27. The Appellant worked 10 hours a day and 50 to 60 hours per week, from Monday to Saturday as the case might be.

28. The Appellant's gross salary was between about $700 and $800 per week depending on what price was paid for logs.

29. It was Henri and Edmond who signed the Appellant's paycheques and not Jean-Charles Leblanc. He never signed any cheque.

30. The equipment used by the Appellant was the Timberjack and the truck which belonged to the company. The company also had some chain-saws and a stripper worth about $50,000. Jean-Charles Leblanc did not know whether the truck's fuel was reimbursed.

31. The Appellant had invested money in the company. Jean-Charles Leblanc did not know whether the Appellant had personally guaranteed some loans or a $10,000 line of credit.

32. Jean-Charles Leblanc did not know whether the period of employment corresponded to the company's highest monthly revenues.

33. Jean-Charles Leblanc was a caretaker at the Polyvalente de Carleton and he worked at night. That was all he did for a living.

34. Henri and Edmond St-Onge always worked together in the forest and it was the client Adelbert Bernard who personally supervised their work in the forest.

35. Jean-Charles Leblanc thinks the Appellant had a pre-authorized chequing account; he could sign the company cheques.

36. The Payor was operating a logging business which was seasonal in nature, normally from June to November depending on the contracts obtained.

37. There were three employees in the company, only two of whom were workers, namely Edmond and Henri St-Onge. Jean-Charles Leblanc did not physically work for the Payor, he was just a shareholder.

38. Jean-Charles Leblanc had no idea of the Payor's gross sales; he did not follow the Payor's affairs closely. He just thought it was not losing money. He did not know the Payor's date of incorporation.

39. Jean-Charles Leblanc did not know the fiscal year-end date of the Payor. He had never seen the Payor's financial statements. He did not know the name of the Payor's accountant and had no knowledge of his mandate.

40. Jean-Charles Leblanc did not know who was president, vice-president and secretary of the Payor. He thought that Edmond and Henri St-Onge had 45% of the shares and he himself 10%. He did not know the class of shares he held or the number or class of the shares that had been issued.

41. Jean-Charles Leblanc has no idea of the capital outlay of the three shareholders. He had not invested any sum of money to acquire his shares. They had been given to him by Edmond and Henri and that's how it appeared in the company books.

42. Jean-Charles Leblanc had advanced $1,100 to Edmond St-Onge for his personal needs but nothing to the company. He did not know whether the other two shareholders had made advances to the company.

43. There had not been any meeting of the shareholders. Furthermore, if there was an important decision to make in the course of work or otherwise, it was Edmond and Henri St-Onge alone who made it. They were the only ones working.

44. It was Edmond and Henri St-Onge alone who dealt with the Caisse Populaire de St-Edmond. Jean-Charles Leblanc thought it was Henri St-Onge who had the Payor's cheque book, or the accountant. He was not 100% sure. He did not know how many signatures it took for a cheque from the Payor. He himself did not have signing rights.

45. Jean-Charles Leblanc did not know if the Payor had debts. He did not know if there had been any dividends paid by the company or if there had been any major purchases in 2000 and 2001.

46. It was Edmond and Henri St-Onge who maintained the company's equipment. The Payor's client was Adelbert Bernard, who owned a sawmill and some logging rights and who contracted out the logging to the company. It was Edmond and Henri St-Onge who negotiated the logging contracts.

47. The reason why Jean-Charles Leblanc had become a shareholder with Edmond and Henri St-Onge was that they were his best friends. They had proposed that he become a partner without too much risk in the event of bankruptcy. He had not put any money into the company and those two were the only ones who had.

48. In reality, he could say that he had served as a dummy so they could set up a company to get logging contracts. So it was only to help them that he had done that, without any financial risk. Moreover, it took three partners for the company to operate.

[15] Although Mr. Leblanc's testimony was quite succinct and did not bear on all the aspects and items reported by the investigators in the case, the Court found an evident consistency among the various accounts.

[16] The issue is whether it suffices to set up a company and allocate the shares in such a way that individual shareholder-workers hold no more than 40% and it can then be concluded that their work on behalf of the company was carried out under a contract of service and is consequently insurable. Is this essentially a mathematical question, the sole requirement being consistency of the minutes book with the various records?

[17] Can a shareholder with 30% of a company's shares be completely uninterested in the affairs of the company or act as if he was not a shareholder, thereby implicitly giving control of his shares to another shareholder or other shareholders, without any effect on the question of insurability of the work performed by the other shareholders?

[18] Does incorporation by itself make work insurable that would otherwise not be?

[19] For work to be insurable, there is one essential and fundamental condition: it must be a relationship of subordination resulting from the presence of a power to exercise control over the work. It is not necessary that this power of control be used or applied, but it must actually exist.

[20] The requirement that a person who is a shareholder may not hold more than 40% of the shares of a company if that person wishes to claim he or she has performed insurable work within the company of which the person is a shareholder flows quite definitely from the essential concept of control.

[21] Parliament enacted a formula of distribution of shares so that no one person could control, as a worker and not a shareholder, that person's own actions in the context of his or her work. In other words, Parliament provided for a distribution of the shares that would ensure the presence and existence of a power of control.

[22] It is therefore not sufficient to set up a company and allocate less than 40% of the voting shares to each of the worker-shareholders in order to get an automatic determination that their work is insurable.

[23] To comply with the letter and the spirit of paragraph 5(2)(*b*) of the *Act*, it must be determined who controls the company's voting shares.

[24] This is a question of mixed fact and law. The courts have held that administrative or operational control of the company is not relevant in this regard.

[25] First, it must be determined who holds the shares. Then, it is necessary to see whether there are obstacles to the free and independent exercise by the holder of his right to vote. If there are no obstacles, the analysis ends there.

[26] In the case at bar, there is no doubt as to the holders of the shares. Were there any obstacles to prevent Mr. Jean-Charles Leblanc from freely and independently exercising his right to vote? Did Mr. Leblanc waive the rights conferred on him by the shares he held according to the company's documents, or did he assign those rights? In the first place, he was simply not aware of his rights. They were of no concern to him. He had agreed that his name be used, but was unable to understand or know what rights and obligations resulted from that.

[27] He trusted his friends and did not want to disappoint them since it seemed important to them and was inconsequential to him. His friends, the Appellants Henri and Edmond St-Onge, clearly had such influence over Mr. Leblanc that it is no exaggeration to conclude that he waived the exercise of his right to vote in advance.

[28] Jean-Charles Leblanc was essentially a shareholder of convenience, enabling the St-Onge brothers to present a legal structure such that they could hope their work would be considered insurable when it could not be otherwise.

[29] It was a set-up the ultimate purpose of which was to make insurable a type of work that a number of decisions of the Federal Court have determined is not. I refer in particular to *Charbonneau v. Canada (M.N.R.)*, [1996] F.C.J. No. 1337 (Q.L.), where Décary J.A. of the Federal Court of Appeal stated:

> 4 Moreover, while the determination of the legal nature of the contractual relationship will turn on the facts of each case, nonetheless in cases that are substantially the same on the facts the corresponding judgments should be substantially the same in law. As well, when this Court has already ruled as to the nature of a certain type of contract, there is no need thereafter to repeat the exercise in its entirety: unless there are genuinely significant differences in the facts, the Minister and the Tax Court of Canada should not disregard the solution adopted by this Court.
>
> ...
>
> 10 Supervision of the work every second day and measuring the volume every two weeks do not, in this case, create a relationship of subordination, and are entirely consistent with the requirements of a contract of enterprise. It is indeed rare for a person to give out work and not to ensure that the work is performed in accordance with his or her requirements and at the locations agreed upon. Monitoring the result must not be confused with controlling the worker.
>
> 11 The same is true of the standards imposed in respect of hours and days of work, holidays, operating method and safety. The standards are common to all workers in public forests whose activities are "governed" by the ministère des Ressources naturelles. They apply regardless of whether the worker is a mere employee or a contractor.
>
> ...

[30] As has been admitted, Mr. Leblanc invested absolutely nothing in the company, while the two Appellants invested a substantial amount, $52,000.

[31] Not only did Mr. Leblanc invest nothing, but he contributed absolutely nothing to the company that would compensate for or justify the lack of investment. To hold voting rights implies the ability to exercise them. And to do that, it is essential that ownership of the shares confer some minimal authority.

[32] In this case, Mr. Leblanc had spent nothing; he clearly knew nothing of the requirements as to the economic activities, nor was he interested in availing himself of the rights inherent in the shares bearing his name; there was nothing that encouraged him to do so and he had no will to do so. Basically, what interested him was not to displease his friends, the St-Onge brothers.

[33] The facts set out in subparagraphs (h), (i) and (j) of each Reply to the Notice of Appeal, reproduced earlier, definitely raise some serious questions as to the true status of Mr. Leblanc. There is no doubt, on the facts, that the company was totally and entirely managed, administered and directed by the Appellants alone. This was not essentially administrative or operational control; Mr. Leblanc in fact exercised no rights of any nature whatsoever.

[34] Counsel for the Appellants, who was in fact the counsel of record in *Sexton v. M.N.R.*, [1991] F.C.J. No. 417 (Q.L.), stressed the relevance of that decision. He relied in particular on the following excerpt:

> A person who has administrative or operational control of a company does not necessarily control its shares; in fact, it often happens in the modern business world that those responsible for managing a company have few of its shares or none at all.

[35] That is a very important aspect, to be sure, but it is just as important to take into account the preceding paragraph in which the Honourable Mr. Justice Hugessen states:

> Determining the control of voting shares in a company is a mixed question of law and fact. To begin with, it must be determined who is the holder of the shares; then, the question is whether there are circumstances interfering with the holder's free and independent exercise of his voting right, and if applicable, who may legally exercise that right in the holder's place.

And Hugessen J.A. continues, further on:

> In the case at bar the Tax Court of Canada judge concluded that the applicants, who each held 17 per cent of the company's voting shares, actually controlled it. While this conclusion may be correct it in no way determines the control of voting rights to the 33 per cent of the shares held by each of the applicants' children. As the judge himself said, Michel and Charlène Sexton "were owners and held the de jure power to control the new company", and there is no basis in the evidence for concluding that they ever gave up their voting rights to the shares owned by them or in any way interfered with the free exercise of that right.
>
> [Emphasis added.]

[36] If Parliament had intended to achieve the contemplated purpose through an essentially mathematical provision, it would not have referred to the concept of control.

[37] Paragraph 5(2)(*b*) of the *Act* means that workers working for and on behalf of a small business in which they hold an interest through their status as shareholders will not be penalized.

[38] That is an obvious objective of the provision. However, I do not think that it provides a means of obviating or avoiding the other requirements posed by the *Employment Insurance Act* in relation to the concept of control.

[39] In the current state of the law on insurability, Parliament subjects the insurability of any work to the presence of a power of control, including in those cases where the work is performed by the shareholders of the company that hires them.

[40] In this case, the theoretical legal structure complies with the provisions of the *Act* so as to create a presumption that the work done by the Appellants was insurable. However, on the facts, it is equally obvious that Mr. Leblanc's participation as a shareholder was one of convenience.

[41] Not only did he not assume any responsibility as a shareholder, it is clear that his decision to become a shareholder essentially stemmed from his desire to please his friends, the Appellants. They had such influence over Mr. Leblanc that it is by no means an exaggeration to conclude that in fact the Appellants were operating a business that they directed and controlled as if they were the only two shareholders.

[42] On the facts, the Appellants were operating a joint undertaking; they were the only masters on board. The kind of work they were doing had been the subject of a number of decisions to the effect that this was non-insurable work.

[43] So they set up a corporation and rolled into it the major assets they owned. In order to claim they were doing insurable work, they had to dilute or distribute the issued capital stock so as not to hold 40% of the shares. They decided to bring in their friend Jean-Charles Leblanc, knowing that he would not dare to refuse to accommodate them, and with no questions asked.

[44] Accordingly, the structure established was a smokescreen to disguise what was essentially, on the facts, the Appellants' company.

[45] The appeal is therefore dismissed.

Signed at Ottawa, Canada, this 16th day of July 2004.

"Alain Tardif"

Tardif J.

Translation certified true
on this 16th day of March 2009.

Brian McCordick, Translator

CITATION:	2004TCC399
COURT FILE NOS.:	2002-1295(EI); 2002-1296(EI)
STYLES OF CAUSE:	Henri St-Onge and Edmond St-Onge and the Minister of National Revenue
PLACE OF HEARING:	New Carlisle, Quebec
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REASONS FOR JUDGMENT BY:	The Honourable Justice Alain Tardif
DATE OF JUDGMENT:	July 16, 2004

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