Docket: 2001-2098(EI)

BETWEEN:

GURDEV S. GILL,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent,

and

RAJINDER SINGH GILL & HAKAM SINGH GILL,
OPERATING AS R & H GILL FARMS,

Intervenors.

Appeal heard during the course of 24 days between July 4, 2005 and September 19, 2005 at Vancouver, British Columbia.

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

Appearances:

Agent for the Appellant:	Ronnie Gill
Counsel for the Respondent:	Amy Francis and Shawna Cruz
Agent for the Intervenors:	Ronnie Gill

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 16th day of June 2006.

"D.W. Rowe"

Rowe, D.J.

Docket: 2001-2100(EI)

BETWEEN:

MANJIT K. GILL,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent,

and

RAJINDER SINGH GILL & HAKAM SINGH GILL,
OPERATING AS R & H GILL FARMS,

Intervenors.

Appeal heard during the course of 24 days between July 4, 2005 and September 19, 2005 at Vancouver, British Columbia.

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

Appearances:

Agent for the Appellant:	Ronnie Gill
Counsel for the Respondent:	Amy Francis and Shawna Cruz
Agent for the Intervenors:	Ronnie Gill

JUDGMENT

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

Signed at Sidney, British Columbia, this 16th day of June 2006.

"D.W. Rowe"

Rowe, D.J.

Docket: 2001-2101(EI)

BETWEEN:

HARMIT K. GILL,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent,

and

RAJINDER SINGH GILL & HAKAM SINGH GILL,
OPERATING AS R & H GILL FARMS,

Intervenors.

Appeal heard during the course of 24 days between July 4, 2005 and September 19, 2005 at Vancouver, British Columbia.

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

Appearances:

Agent for the Appellant:	Ronnie Gill
Counsel for the Respondent:	Amy Francis and Shawna Cruz
Agent for the Intervenors:	Ronnie Gill

JUDGMENT

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

Signed at Sidney, British Columbia, this 16th day of June 2006.

"D.W. Rowe"

Rowe, D.J.

Docket: 2001-2115(EI)

BETWEEN:

SURINDER KAUR GILL,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent,

and

RAJINDER SINGH GILL & HAKAM SINGH GILL,
OPERATING AS R & H GILL FARMS,

Intervenors.

Appeal heard during the course of 24 days between July 4, 2005 and September 19, 2005 at Vancouver, British Columbia.

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

Appearances:

Agent for the Appellant:	Ronnie Gill
Counsel for the Respondent:	Amy Francis and Shawna Cruz
Agent for the Intervenors:	Ronnie Gill

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 16th day of June 2006.

"D.W. Rowe"

Rowe, D.J.

Docket: 2001-2116(EI)

BETWEEN:

SURINDER K. GILL,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent,

and

RAJINDER SINGH GILL & HAKAM SINGH GILL,
OPERATING AS R & H GILL FARMS,

Intervenors.

Appeal heard during the course of 24 days between July 4, 2005 and September 19, 2005 at Vancouver, British Columbia.

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

Appearances:

Agent for the Appellant:	Ronnie Gill
Counsel for the Respondent:	Amy Francis and Shawna Cruz
Agent for the Intervenors:	Ronnie Gill

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 16th day of June 2006.

"D.W. Rowe"

Rowe, D.J.

Docket: 2001-2117(EI)

BETWEEN:

SANTOSH K. MAKKAR,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent,

and

RAJINDER SINGH GILL & HAKAM SINGH GILL,
OPERATING AS R & H GILL FARMS,

Intervenors.

Appeal heard during the course of 24 days between July 4, 2005 and September 19, 2005 at Vancouver, British Columbia.

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

Appearances:

Agent for the Appellant:	Ronnie Gill
Counsel for the Respondent:	Amy Francis and Shawna Cruz
Agent for the Intervenors:	Ronnie Gill

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 16th day of June 2006.

"D.W. Rowe"

Rowe, D.J.

Docket: 2001-2118(EI)

BETWEEN:

JARNAIL K. SIDHU,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent,

and

RAJINDER SINGH GILL & HAKAM SINGH GILL,
OPERATING AS R & H GILL FARMS,

Intervenors.

Appeal heard during the course of 24 days between July 4, 2005 and September 19, 2005 at Vancouver, British Columbia.

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

Appearances:

Agent for the Appellant:	Ronnie Gill
Counsel for the Respondent:	Amy Francis and Shawna Cruz
Agent for the Intervenors:	Ronnie Gill

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 16th day of June 2006.

"D.W. Rowe"

Rowe, D.J.

Docket: 2001-2120(EI)

BETWEEN:

HARBANS K. KHATRA,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent,

and

RAJINDER SINGH GILL & HAKAM SINGH GILL,
OPERATING AS R & H GILL FARMS,

Intervenors.

Appeal heard during the course of 24 days between July 4, 2005 and September 19, 2005 at Vancouver, British Columbia.

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

Appearances:

Agent for the Appellant:	Ronnie Gill
Counsel for the Respondent:	Amy Francis and Shawna Cruz
Agent for the Intervenors:	Ronnie Gill

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 16th day of June 2006.

"D.W. Rowe"

Rowe, D.J.

Docket: 2001-2121(EI)

BETWEEN:

HIMMAT S. MAKKAR,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent,

and

RAJINDER SINGH GILL & HAKAM SINGH GILL,
OPERATING AS R & H GILL FARMS,

Intervenors.

Appeal heard during the course of 24 days between July 4, 2005 and September 19, 2005 at Vancouver, British Columbia.

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

Appearances:

Agent for the Appellant:	Ronnie Gill
Counsel for the Respondent:	Amy Francis and Shawna Cruz
Agent for the Intervenors:	Ronnie Gill

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 16th day of June 2006.

"D.W. Rowe"

Rowe, D.J.

Docket: 2001-2125(EI)

BETWEEN:

GYAN K. JAWANDA,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent,

and

RAJINDER SINGH GILL & HAKAM SINGH GILL,
OPERATING AS R & H GILL FARMS,

Intervenors.

Appeal heard during the course of 24 days between July 4, 2005 and September 19, 2005 at Vancouver, British Columbia.

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

Appearances:

Agent for the Appellant:	Ronnie Gill
Counsel for the Respondent:	Amy Francis and Shawna Cruz
Agent for the Intervenors:	Ronnie Gill

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 16th day of June 2006.

"D.W. Rowe"

Rowe, D.J.

Citation: 2006TCC149
Date: 20060616
Dockets: 2001-2098(EI), 2001-2100(EI),
2001-2101(EI), 2001-2115(EI),
2001-2116(EI), 2001-2117(EI),
2001-2118(EI), 2001-2120(EI),
2001-2121(EI), 2001-2125(EI)

BETWEEN:

GURDEV S. GILL, MANJIT K. GILL, HARMIT K. GILL,
SURINDER KAUR GILL, SURINDER K. GILL, SANTOSH K. MAKKAR,
JARNAIL K. SIDHU, HARBANS K. KHATRA,
HIMMAT S. MAKKAR, GYAN K. JAWANDA,

Appellants,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent,

and

RAJINDER SINGH GILL & HAKAM SINGH GILL,
OPERATING AS R & H GILL FARMS,

Intervenors.

REASONS FOR JUDGMENT

Rowe, D.J.

[1] Each appellant appealed from a decision – dated January 11, 2001 – issued by the Minister of National Revenue (the "Minister"). Each decision dealt with a specific period relevant to the particular circumstances of the individual named therein.

[2] Amy Francis and Shawna Cruz appeared as counsel for the respondent. Ronnie Gill, Certified Management Accountant, appeared as agent for all appellants and for Rajinder Singh Gill and Hakam Singh Gill, equal partners in a partnership operating as R & H Gill Farms, who are named in the style of cause as intervenors.

[3] On October 12, 2004, Justice Little of this Court issued an Order – in response to a Notice of Motion by counsel for the Respondent – that the appeals named in said Notice of Motion be heard together on common evidence pursuant to section 10 of the *Tax Court of Canada Rules of Procedure* regarding appeals filed under the *Employment Insurance Act* (the "*EIA*"). The Order also included directions concerning ongoing conduct of the litigation and by further Order dated June 10, 2005, the hearing of the within appeals was set to commence on July 4, 2005 at Vancouver, British Columbia.

[4] The within proceedings occupied 24 days during which 22 witnesses testified. Most appellants testified in the Punjabi language and the questions and answers and other aspects of the proceedings were interpreted by Russell Gill, a certified court interpreter fluent in English and Punjabi. In addition to interpreting oral testimony, Gill – on many occasions – translated written documents contemporaneously and converted the printed word into speech. Included in the binders filed as exhibits, were reports of numerous interviews that had been conducted with the appellants and other persons. I am satisfied the interpretation of the spoken word and the translation of documents or interpretation of questions and answers within the transcripts of Examinations for Discovery of various appellants was performed in an extremely efficient manner and to a standard that permitted all Punjabi-speaking witnesses to present fully their testimony and for all appellants to submit relevant facts pertaining to their specific case. Ronnie Gill, agent for the appellants and the intervenors is also capable of communicating orally in Punjabi. On occasion, Punjabi-speaking individuals testified mainly in English but Russell Gill was present in order to assist in interpreting certain words or phrases. On one occasion, Mr. Kasmir Gill, a certified court interpreter, substituted for Russell Gill.

[5] In the body of hundreds of documents forming part of the material entered as exhibits in these proceedings, the names of some individuals have been spelled in different ways. Punjabi is a syllable-based language and the conversion to the English alphabet sometimes produces a different spelling if written phonetically.

[6] In all cases, the employer was R & H Gill Farms hereinafter referred to as Gill Farms. The appeals fell within two categories. Harmit Kaur Gill is the wife of Hakam Singh Gill, a partner in Gill Farms. Manjit Kaur Gill is the wife of

Rajinder Singh Gill – the other partner in Gill Farms – and is the sister of Harmit Kaur Gill. Since these two appellants were related to the partners, the decisions were issued by the Minister pursuant to subsection 93(3) of the *EIA* and the employment of each appellant was held to be excluded employment within the meaning of subparagraph 5(2)(*i*) on the basis their relationship with Gill Farms was non-arm's length and the Minister was not satisfied within the meaning of the relevant provision that either appellant and the partnership would have entered into a substantially similar contract of employment if they had been dealing with each other at arm's length. The employment involved in these two appeals encompasses certain periods in each of 1996, 1997 and 1998 and the decision letters also referred to paragraph 3(2)(*c*) of the former *Unemployment Insurance Act (UIA)* since some periods of employment for Harmit Kaur Gill and Manjit Kaur Gill were alleged to have occurred prior to the coming into force of the *EIA* on June 30, 1996.

[7] None of the remaining appellants are related within the meaning of the relevant provision of the *Income Tax Act* (the "*ITA*") as applied to the *EIA* and all periods of employment that were the subject of decisions issued by the Minister were within 1998. With respect to the remaining appellants who were not members of the Gill family, the decision of the Minister issued to each individual was based on the finding that none of them was engaged in insurable employment with Gill Farms because his or her employment during the period under consideration was considered to be non-arm's length as a matter of fact within the meaning of the relevant provision of the *ITA*. However, within each decision, the Minister included an alternative position in which the number of hours of employment and the amount of insurable earnings during the relevant period for the named appellant were calculated in the event the primary position of the Minister was found – later – to be untenable as a matter of law. While this approach of issuing a decision with an alternative component may seem odd at this juncture, it will be dealt with later in the course of these reasons. The decisions issued to the non-related appellants were also based on paragraph 5(2)(*i*) of the *EIA*.

[8] Although the periods of employment and other circumstances differ from appellant to appellant, counsel for the respondent advised the following assumptions extracted from paragraphs 7(a) to 7(g) inclusive, of the Reply to the Notice of Appeal (Reply) of *Harmit K. Gill* (2001-2101(EI)) apply to each appellant in the within proceedings and read as follows:

> (a) during the Periods, the Partnership operated a farm, consisting of approximately 8.25 acres planted in blueberries (the "Farm");

(b) the partners in the Partnership are two brothers, Rajinder S. Gill and Hakam S. Gill;

(c) the Appellant is married to Hakam S. Gill and her sister, Manjit K. Gill, is married to Rajinder S. Gill;

(d) the Partnership employed a combination of hourly employees and contract workers to pick the blueberries;

(e) the contract workers were generally hired on a day to day basis as needed and were paid on a piecework basis;

(f) the hourly employees were employed for the entire season and were paid by the hour;

(g) the Partnership guaranteed the hourly employees that they would be employed for the entire season, regardless of whether there was enough work for them to do or not;

[9] The within appeals were heard together on common evidence, and several binders filed as exhibits – as set out in detail later – applied to most appellants, but it is important to note each appeal depends on its own particular facts and requires an independent analysis of the evidence and an assessment of credibility in instances where there were conflicting versions of events and circumstances as testified to by different witnesses. As explained at the commencement of proceedings, the onus is on each appellant to prove his or her case on a balance of probabilities. Further, the appellants were informed it was important to disclose the circumstances of their employment including details concerning the hours of work, transportation to and from the job site(s), nature of tasks performed, method of payment and identity of co-workers.

[10] Counsel for the respondent and the agent for the appellants and intervenors consented to the introduction of a large number of exhibits, the majority of which were in binders containing numerous documents. In the course of the litigation, each appellant was provided with a binder of documents pertaining to his or her appeal. The following exhibits were entered:

R-1 – Respondent’s Book of Documents (Common) – Vol. 1, tabs 1-34, inclusive;
R-2 – Respondent’s Book of Documents (Common) – Vol. 2, tabs 35-50, inclusive;

R-3 – Respondent's Book of Documents re: Gurdev S. Gill, tabs 1-14, inclusive;
R-4 – Respondent's Book of Documents re: Harbans K. Khatra, tabs 1-15, inclusive;
R-5 – Respondent's Book of Documents re: Harmit K. Gill, tabs 1-19, inclusive;
R-6 – Respondent's Book of Documents re: Surinder Kaur Gill, tabs 1-13, inclusive; (Appeal 2001-2115(EI))
R-7 – Respondent's Book of Documents re: Surinder K. Gill, tabs 1-17, inclusive; (Appeal 2001-2116(EI))
R-8 – Respondent's Book of Documents re: Manjit K. Gill, tabs 1-23, inclusive;
R-9 – Respondent's Book of Documents re: Himmat S. Makkar, tabs 1-15, inclusive;
R-10 – Respondent's Book of Documents re: Santosh K. Makkar, tabs 1-14, inclusive;
R-11 – Respondent's Book of Documents re: Jarnail K. Sidhu, tabs 1-16, inclusive;
R-12 – Respondent's Book of Documents re: Gyan K. Jawanda, tabs 1-15, inclusive;

[11] Prior to reproducing the testimony of each appellant, I will identify a particular binder – marked with an exhibit number – applicable to that appellant and, thereafter, unless noted otherwise, a tab number will refer to document(s) located within that binder. The pages of documents located within tabs in each of the binders are stamped with a number – beginning at 1 – at the upper right corner and continue in sequence until the last page of the material in the last tab. Reference to a page number corresponds with the stamped number even though other numerical markings – handwritten in pen, pencil or typed – sometimes appear at various locations on certain pages.

Harmit Kaur Gill

[12] Harmit Kaur Gill testified in Punjabi and the questions and answers and other aspects of the proceedings were interpreted and/or translated from English to Punjabi and Punjabi to English by Russell Gill, interpreter. The respondent's book of documents relevant to this appeal – 2001-2101(EI) – is Exhibit R-5.

[13] Harmit Kaur Gill appealed from the decision of the Minister wherein her employment with Gill Farms during the periods from May 25 to September 26, 1998,

May 25 to September 27, 1997 and June 2 to October 19, 1996 was found to be uninsurable because the Minister was not satisfied that, having regard to all the circumstances, she and the Gill brothers – Rajinder and Hakam – operating Gill Farms would have entered into a substantially similar contract of employment if they had been dealing at arm's length. The appellant's position is that her employment during those periods was insurable and that she had earned the money paid to her in the course of performing her work in those years.

[14] Apart from the assumptions of fact set forth in paragraphs 7(a) to 7(g), inclusive, of the Reply pertaining to the appeal of Harmit Kaur Gill – stated to be common to all appellants – the assumptions in paragraphs 7(h) to 7(r) of said Reply were also relied on by the Minister, as follows:

(h) the Partnership employed the Appellant in the Periods as a supervisor on the Farm;

(i) the Appellant's sister, Manjit, was also employed by the Partnership in the Periods as a supervisor on the Farm;

(j) the hours worked by the Appellant as set out in the Partnership's records did not reflect the hours actually worked by the Appellant;

(k) there were times when, in accordance with the payroll records, the Appellant was purported to be working as a supervisor when there was in fact no work for the other workers to do;

(l) the number of hours purportedly worked by the hourly employees, as recorded in the Appellant's payroll records, were about three times the industry standard for the size of the Farm;

(m) the Partnership's wage expense for 1998 exceeded the revenue generated in that year;

(n) there was no need for the Partnership to employ two fulltime supervisors in the Periods;

(o) the Partnership issued Records of Employment to the Appellant in respect of the Periods which she used to collect Employment Insurance benefits;

(p) the Appellant is related to the Partnership within the meaning of the Income Tax Act;

(q) at all times material hereto, the Appellant was not dealing with the Partnership at arm's length; and

(r) having regard to all the circumstances of the employment in the Periods, including the remuneration paid, the terms and conditions, the duration and the nature and importance of the work performed, it is not reasonable to conclude that the Appellant and the Partnership would have entered into a substantially similar contract of employment if they had been dealing with each other at arm's length.

[15] Harmit Kaur Gill testified she is a cannery worker, living in Abbotsford, British Columbia. She is married to Hakam Singh Gill, and her sister, Manjit Kaur Gill, is married to Rajinder Singh Gill, the brother of Hakam. The appellant, a Canadian citizen, was born in India. She and her husband have 6 children. Until her husband decided to become a blueberry farmer, she had not been familiar with that crop, although she had picked strawberries on their own farm in Canada and raspberries on another person's farm. The current farm was purchased in 1978 and Hakam Singh Gill had a full-time, off-farm job until 1998. He took two weeks holidays in the summer and worked on the farm as well as on his days off from the mill and after coming home from work. The appellant stated she had not attended school in Canada and had gained direct farming experience by working on the farm owned by her husband and brother-in-law. Although she was responsible for carrying out several tasks associated with the farm operation, she did not participate in any spraying of pesticides and/or herbicides nor was she involved with fertilizing the crops. She stated it was difficult to find farm workers to hand-pick berries because Gill Farms did not use picking machines which, apart from being expensive, could not distinguish between green and ripe berries. She was aware of 8 types of blueberries but Gill Farms only grew 4 varieties, namely, Northland, Blue Crop, Dixie and Duke. In ripening sequence, Duke is first, then Northland, followed by Blue Crop and Dixie. In the appellant's experience, picking times applicable to each type of blueberry can vary from year to year but occur within a 3-week period. Usually, Duke would be picked between the last week of June and the first week of July. The Northland variety ripens about a week later and picking of both types continues until the other types – Blue Crop and Dixie – are ready for harvesting. By the time the Dixie crop is ripe around the middle of August, the harvesting of Northland berries is nearly finished. Depending on the weather, the picking season for Dixie will extend into late September or early October. Harmit Kaur Gill stated Gill Farms had two categories of workers during the periods in 1996, 1997 and 1998 relevant to her appeal. Some were considered as full-time workers and were paid an hourly wage. The appellant stated although Gill Farms did not require these workers to use picking cards for the purpose of calculating payment for work performed, the partners still wanted to have a means

by which to monitor average daily production of each picker. Other workers, usually hired for shorter periods of time, were paid on a piecework basis and the appellant stated it was apparent the picking skills varied considerably among a group of workers. Although the picking cards were in duplicate – when used by full-time workers – it was not necessary for any of them to retain a copy for purposes of calculating remuneration. In 1998, during the high season, Gill Farms employed between 25 and 30 workers, of which 10 to 12 were paid on an hourly basis. No workers were hired through the medium of a labour–contracting business entity. The appellant stated Gill Farms produced high-quality blueberries which were sold on the fresh market at a price higher than that paid by the canneries. However, it was necessary to ensure good berries were picked and that the green ones were removed since Gill Farms' customers were re-selling the product directly to the public. Gill Farms sold berries in large containers – lugs – to Greenfield Farms. Other customers purchased berries contained in boxes or flats. The appellant stated she often worked cleaning berries and preparing orders for delivery to customers. The appellant stated she had received a letter requesting her to attend an interview at the Abbotsford office of Human Resources Development Canada (HRDC) on November 28, 1996. She recalled she was accompanied by her son – Kulwant – in order that he could assist in understanding the procedure since his ability to speak, write and read the English language was much better than her own. Harmit Kaur Gill stated she did not receive any advice to the effect she was entitled to be represented by counsel and felt compelled to answer questions put to her by Moira Emery (Emery) – an Investigation and Control Officer (ICO) employed by HRDC – and did not have the sense she was free to terminate the interview and leave any time she chose. She recalled the room was small – perhaps 8 feet by 8 feet – without a window, and it was hot. She was interviewed by Emery who was seated in front of her, although Emery stood up on occasion when posing questions. The appellant recalled informing Emery that she could speak “some” English and could read and write “some” English but at times it was necessary for her son – Kulwant – to interpret Emery’s questions into Punjabi and to interpret her response to Emery in English. She stated Kulwant came to Canada at age 5 and, like many Indo-Canadians born in Canada, did not speak pure Punjabi but used a mixture of Punjabi and English words to communicate. Ronnie Gill, agent for the appellant, referred to notes – tab 12 – of the interview as recorded by Emery. The appellant stated she had not read those notes. She recalled that at some point near the end of 1998, Emery and Claire Turgeon (Turgeon) – another HRDC employee – attended at her residence on the Gill Farms property without having provided any advance notice. There were no workers in the field at that time. The door was answered by Rajinder Singh Gill and his wife – Manjit – was present. Harmit Kaur Gill recalled Emery and Turgeon were asking questions and that Turgeon informed her she had to provide answers even if she had difficulty recalling

certain events. After a few minutes, the appellant's daughter came down the stairs to the living room and insisted Emery and Turgeon explain the purpose of their visit. The appellant stated Turgeon's response was to instruct her daughter not to interfere. The interview ended shortly thereafter and Harmit Kaur Gill recalled being told HRDC would be in further contact. Until this point, she had not realized there was a problem arising with respect to her eligibility for unemployment insurance (UI) benefits in connection with her employment at Gill Farms during the earlier farming seasons of 1996 and 1997 or in 1998, particularly since she had qualified – again – for benefits in respect of her insurable earnings as a result of working at Gill Farms during the 1998 growing season. Originally, she considered the HRDC visit to have been motivated by an inquiry into the entitlement of her sister, Manjit Kaur Gill. With respect to her own employment history at Gill Farms, Harmit Kaur Gill stated she began working for her husband and brother-in-law in 1996. At that time, all the blueberry plants were mature and her tasks included weighing berries, driving workers to and from the farm, filling orders, cleaning berries, dealing with employees during the day and recording their hours of work. For her services in 1998, she was paid $9 per hour. She took direction from her husband and/or her brother-in-law and worked in the field most of the time. However, she also worked off the farm at a strawberry cannery operated by Canada Safeway Limited (Safeway) under the brand name Lucerne Foods (Lucerne). When called upon to work at Lucerne, she accepted whatever hours were offered – even during blueberry picking season – because the pay was between $2 and $3 per hour more than she earned at Gill Farms. Currently, her work at the cannery permits her to earn $15 per hour but the work is seasonal and employees are called to work on the basis of seniority so her hours – per season – are somewhat limited. The strawberry season is finished at the end of June. Because the Lucerne cannery operated in shifts, the appellant, due to her lack of seniority, had to accept work beginning at 11:30 p.m. and continuing until the next morning. The appellant stated her descriptions of work at Gill Farms and at the cannery are applicable to 1996, 1997 and 1998 since – for the most part – the seasons were more or less the same. During those years, while working at the cannery, she continued to perform her tasks at Gill Farms so that she often worked the equivalent of two full shifts in one work day. Sometimes, she performed tasks such as record keeping after returning home from a shift at the cannery. Other individuals working at Gill Farms also worked at Lucerne or at a fish cannery, nursery or greenhouse since it was not unusual for people to have two jobs. Ronnie Gill referred the appellant to notes of an interview – Exhibit R-1, tab 24 – held at the HRDC office in Langley, B.C. on May 20, 1999. The appellant stated she recalled the circumstances of that meeting including being warned by Turgeon that she could be prosecuted for making false statements. She stated her impression at the time was that she was required to answer all the questions put to her by Turgeon. Several people were present including Paul Wadhawan, accountant for Gill Farms, as

well as Manjit Kaur Gill, Hakam Singh Gill and Rajinder Singh Gill. An ICO – Nav Chohan – spoke Punjabi and English and Emery and Turgeon were present together with an accounting expert, James Blatchford and another accountant, Mary Anne Hamilton representing HRDC. The appellant recalled the meeting took place in a large room and that it lasted 4 or 5 hours without any substantial breaks. She stated Paul Wadhawan provided answers to some questions and that she also provided information – in English – to the interviewers from time to time. The appellant recalled Harby Rai – an HRDC employee – had visited Gill Farms on August 12, 1999 and was referred to typed notes – Exhibit R-5, tab 4 – prepared by Rai in respect of said visit. Rai had been accompanied by Turgeon, Nav Chohan and a representative of the provincial Employment Standards Branch (ESB). At that time, the appellant was inside the house preparing tea for the workers as it was cold and raining. She considered the delivery of beverages to be part of her duties as workers needed water or juice on a regular basis especially during hot weather. With respect to other duties, the appellant stated sawdust had to be placed around the plants in order to inhibit weed growth. Another problem which caused concern to workers was the height of grass which they feared might conceal poisonous snakes of the sort they had encountered while living in India. As a result, spraying had to be undertaken but the tractor could not be used to access the rows so additional manual labour was required to complete that task. The appellant was referred to a Questionnaire – tab 5 – and recalled providing those answers to Ronnie Gill who completed the form on her behalf prior to inserting her name, address and phone number on the last page thereof and indicating – in the space provided – she had been the interpreter. The appellant stated she was paid by cheque and received only small payments early in the season but was paid in full shortly after the end of the season. In this sense, she stated she was not treated differently than any other non–related employee since this practice is common in the agricultural industry and workers are aware they can request and obtain advances of salary during the course of the season. The appellant stated she recorded workers' hours on a piece of paper and later entered this information onto a time sheet. She was referred to several sheets at Exhibit R-1, tab 32, described on the cover page as Daily Log of Workers & Produce (Daily Log). The appellant stated the document was in her own handwriting and that she had created it from time sheets in order to satisfy Turgeon who had requested production of that record. As a result, the appellant created the Daily Log in order to meet the demand – within the time frame set by Turgeon – to provide information concerning hours of work. She stated the time was recorded from the point when workers arrived in the field and began working. She recorded hours of work for those employees paid on an hourly basis for the purpose of permitting their insurable hours to be calculated prior to issuing them a Record of Employment (ROE). However, she did not record hours of work for those casual workers who were remunerated on a piecework basis. Some individuals

worked only a few days and when they left, an ROE was provided only if requested. The appellant stated the goal at Gill Farms was to remove every berry from each plant and that it required 5 or 6 separate pickings to harvest properly the entire acreage, particularly in view of their somewhat specialized market involving fresh berries. She was aware that other blueberry farmers in the area picked only 2 or 3 times during the season. Depending on the number of workers, the appellant stated her sister – Manjit – and/or Hakam transported them to and from work using a truck and a car but – on occasion – it was necessary for one of them to make two trips if only one vehicle was available. She pointed out the passage of time since those seasons in 1996 through 1998 has made it difficult to remember the sequence of events since the duties performed by her were more or less the same during each year.

[16] Harmit Kaur Gill was cross-examined by Amy Francis. The appellant confirmed she had been advised by Emery and Turgeon during their visit to the farm that they wanted her to attend an interview at the HRDC office. At said interview, she agreed she had not refused to answer any of the questions put to her by Emery and that her son – Kulwant – remained in the room throughout. She stated Kulwant understands Punjabi better than he speaks it but she is able to communicate with him in that language. The appellant confirmed that she answered the questions truthfully to the best of her ability. Concerning the visit of Emery and Turgeon to the farm, as described in notes taken by each – Exhibit R-8, tabs 13 and 14, respectively – the appellant agreed there had been a formal demand issued for the production of certain documents at that time. Harmit Kaur Gill expressed her opinion that Emery and Turgeon were angry during their visit because of the volume of their voices when speaking to her and other members of the Gill family. Counsel referred to the letter of Ronnie Gill to Revenue Canada – dated September 30, 1999 – with enclosed typed sheets – Exhibit R-5, tab 6 – and to the Questionnaire at tab 5, both of which had been signed by the appellant following preparation by Ronnie Gill on her behalf. Harmit Kaur Gill reiterated her answers – in both documents – were accurate to the best of her knowledge. Regarding her language skills in English, the appellant attended Grade 10 in India and is able to read and write in Punjabi. She stated that although her ability to read and write English is limited, she is the only adult member of the family at Gill Farms with that skill and her husband, and her sister and her brother-in-law, rely on the Gill children in each family to provide assistance in that regard. The appellant handles the paperwork and her husband – Hakam – conducts all business transactions that can be handled verbally. During the summer of 1998, a daughter – Satnam – then 19, was attending college but worked on the farm when needed since she was the only member of the family with a licence to use pesticides and to mix fertilizers. In order to obtain the 5-year term licence, Satnam was required to take a course and pass an examination. Although Satnam picked berries from time to time, the appellant

described those efforts as being "just for fun" rather than as part of an obligation on her part including those times when Satnam helped to weigh berries or to move tubs or other containers. Harmit Kaur Gill stated Satnam rarely transported workers and did not assist in other tasks such as the installation or removal of nets to cover the blueberry plants. Another daughter – Daljit – then 17, performed some tasks on a casual basis during the 1998 season including driving workers to and/or from work on 3 or 4 occasions. Her son – Kulwant – also helped out by loading berries onto the truck but did not drive it. The appellant stated these children had provided some services to the farm in 1996 and 1997 but cannot recall the nature and extent thereof. She stated her sister Manjit's two sons, Baljit and Gurdev, may have helped on the farm now and then during 1998. The youngest children did not perform any farming tasks in 1998 or earlier. Counsel referred the appellant to a series of Statements of Accounts – Exhibit R-2, tab 41 – pp. 504-605, inclusive issued by Fraser Valley Credit Union (Fraser Valley) in Abbotsford, with regard to the account in the names of Rajinder Gill and Hakam Gill. Located within tab 41 at pp. 606 to 716, inclusive, are Statements of Accounts issued by the Khalsa Credit Union (Khalsa) branch on Clearbrook Road, Abbotsford, said account being in the names of Rajinder S. Gill and Manjit K. Gill. Turning to a photocopy of a cheque at p. 517 within said tab, the appellant confirmed she had written out cheque # 0388 - dated May 1, 1998 – to Kulwant S. Gill in the sum of $200 and had noted "labour" on the memo line. She identified cheque # 0414 at p. 533 – dated July 3, 1998 – payable to Kulwant Singh Gill – in the sum of $300 – but stated it had not been written by her. She confirmed she had written out the body of cheque # 0455 - p. 554 – dated September 3, 1998 – in the sum of $300 – payable to Kulwant Singh Gill. The appellant stated she did not have signing authority on that account so even though she wrote out cheques in accordance with the instructions of Hakam Singh Gill and/or Rajinder Singh Gill, she did not sign any of them. Counsel referred the appellant to cheque # 0467 – p. 560 – dated September 26, 1998, payable to Baljit Singh Gill in the sum of $6,500. The appellant confirmed she had written out that cheque and understood it to have been issued in repayment of a loan made by Baljit in relation to certain construction costs incurred in building a new house. She stated that account was used for personal family purposes from time to time but was not aware whether any other account was used for the purpose of receiving farm revenue. With respect to Exhibit R-1, tab 32 – the handwritten sheets comprising the Daily Log – Harmit Kaur Gill stated she did not inform any HRDC official that a logbook existed in that form. Instead, she told HRDC that the hours of workers had been noted – initially – on a piece of paper and entered into a formal time sheet later at her convenience. Counsel referred the appellant to Turgeon's notes – Exhibit R-1, tab 24 – at p. 233 concerning the interview on May 20, 1999 at the HRDC office in Langley. Turgeon posed the question which had been produced first, the payroll record or the

Daily Log and the appellant's response – as noted – was "First, the Daily Log". As to the frequency the log was completed, the response by the appellant was "Every day. Rajinder would tell us we had to keep track". Two questions further, the appellant's answer – as noted – was that the record was usually kept every day although sometimes the workers' hours may have been entered on another day. The appellant stated there was some confusion in her answers because the Daily Log was created by her in response to what she perceived was a requirement expressed by Turgeon and it had been delivered to the HRDC office on November 30, 1998. The appellant stated that once the hours of work for each worker were transcribed onto the time sheet from the small pieces of paper or from entries in a notebook, those bits and pages were discarded. Harmit Kaur Gill recalled Gill Farms had a workforce of between 15 and 20 in 1996 and that some of them were paid on a piecework basis. She stated some people worked more than one season at Gill Farms. Counsel referred the appellant to the notes of her November 26, 1998, HRDC interview with Emery – Exhibit R-5, tab 12, p. 60 – where Emery wrote – near the middle of the page – that the appellant stated although Gill Farms – originally – found workers by word of mouth that "after the first year it has been mainly the same crew of about 17 workers for the 5 years; sometimes when there are lots of berries, the pickers find extra workers and bring them in." Counsel suggested to the appellant that records indicated none of the Gill Farms workers – in 1998 – had worked there earlier. The appellant stated she had recounted the history of the farm between 1982 and 1988 – as noted by Emery commencing at the middle of p. 58 – and during that period the acreage in production had grown from 1-2 acres to more than 8 acres at which point as many as 20 workers were required. Counsel referred the appellant to certain payroll records of workers commencing with Gurdev Singh Gill (Exhibit R-3, tab 13). The appellant confirmed 1998 was the first season Gurdev Singh Gill had worked for Gill Farms and that she made entries therein and otherwise completed said record. With respect to the payroll record of Harbans K. Khatra – Exhibit R-4, tab 15 – the appellant stated she did not think Khatra had worked earlier for Gill Farms although she had returned during the 1999 season. Surinder Kaur Gill – married to Gurdev Singh Gill – worked at Gill Farms in 1998 and her hours were recorded on the payroll record in Exhibit R–6, tab 12. Another worker with the same name – hereinafter referred to as Surinder K. Gill – worked in 1998 but not earlier at Gill Farms and the appellant also prepared her payroll record in Exhibit R-7, tab 14. Ronnie Gill – agent for the appellants – advised the Court that even though said record had been prepared in the name of Surinder Kaur Gill, she is not the same person as Surinder Kaur Gill – wife of Gurdev Singh Gill – and their respective identities had been confirmed to the satisfaction of all parties concerned by referring to their Social Insurance Numbers. Manjit Kaur Gill – the appellant's sister – worked for Gill Farms in 1996, 1997 and 1998 and her 1998 payroll record – Exhibit R-8, tab 23 – was prepared by Harmit Kaur Gill.

She identified a payroll record – Exhibit R-8, tab 21 – that she prepared for a worker – Manjit Kaur Sidhu – and agreed Sidhu had not worked for Gill Farms prior to 1998. The appellant acknowledged Himmat Singh Makkar had not worked for Gill Farms before 1998 nor had Santosh K. Makkar nor Gyan K. Jawanda nor Gurdip K. Grewal nor Sukhwinder Gill nor Pawandeep Kaur Gill, all of whom had payroll records prepared by the appellant. She thought Jarnail K. Sidhu had worked there during one season prior to 1998 and recalled Sidhu's husband had been employed at some point – earlier – by Gill Farms. In light of this information, counsel asked Harmit Kaur Gill why she told HRDC that Gill Farms had the same crew each year. Harmit responded that some of the piecework pickers showed up each year looking for a few days work but could not recall any of their names. The appellant conceded that of all the workers employed in 1998, she could confirm that only Manjit and herself had worked for Gill Farms in prior seasons. Turning to the issue of transportation of workers, counsel inquired about the logistics of transporting between 12 and 15 workers to the farm each morning and returning them to their homes at the end of the day. The appellant stated that sometimes two vehicles were used but on other occasions one vehicle had to make two trips. In that event, the first group arriving at the farm would begin work shortly thereafter. Counsel pointed out that the hours worked seem to be the same for all workers including those who must have arrived later if they were in the second load transported to the farm in the morning. The appellant stated she could not recall the precise order in which workers were collected in the morning. Counsel suggested the payroll records should reflect some variation in working hours since people did not arrive at the same time. The appellant stated she could not recall if the group of workers who arrived early were also the first to finish. She stated the quitting time was declared by her husband – Hakam – who returned, after 4:00 p.m., from his job at the mill. The appellant stated some workers remained late if a large order had to be filled while others may have left earlier if they were also working at a cannery or for another employer during the same time frame. She agreed with counsel's observation that if two vehicles were used to transport workers to the farm, the start time of workers would be the same but if one vehicle was used to make two trips, there could be a 30-45 minute delay in the start time for workers within that second group. Harmit Kaur Gill stated she prepared all payroll records and had noted the start and finish time of all workers. She shared driving duties with Hakam, Rajinder and Satnam but rebuffed counsel's suggestion she was the primary driver even though it was pointed out she had stated earlier in her direct examination that she "mostly" drove workers to the farm and that one car had been used more often than not. The appellant agreed she had made those statements but added the driving was performed by whomever had the time, including Manjit. The appellant stated she followed the same route whenever possible while picking up workers at their homes but in the event someone was not waiting outside, she used her cell phone to call them and to advise she was picking up

other people in the interim and would return later. Counsel pointed out the Gill Farms workers lived over a considerable area and that it would take up to one hour to collect them and then drive to the farm. The appellant agreed some workers lived in Abbotsford and that the Makkars lived only 15 minutes southeast of the farm as did Gurdev Singh Gill and his wife. She attempted in the same trip to pick up workers who lived in the same direction from the farm, for example, Gyan K. Jawanda, Pawandeep Gill, and one or more workers. She cannot recall whether they were picked up first if only one vehicle was used to transport workers. On occasion, workers paid by piecework were also transported to the farm. The appellant stated she recalled the Makkars generally used their own vehicle or some member of their family drove them to and from work. On reflection, the appellant stated she was certain the Gill family never used 3 vehicles to bring people to work and estimated one vehicle was used only two or three times during the season and that two vehicles was the norm. The appellant stated that Santosh K. Makkar, Jarnail K. Sidhu, Gurdev S. Gill, Surinder Kaur Gill, Harbans K. Khatra rode together when the car was used and that Gurpal S. Grewal was included when he was not taken to work by a member of his family. The workers who lived in the Aldergrove area were picked up separately. Counsel referred the appellant to the payroll record – Exhibit R-3, tab 13 – of Gurdev Singh Gill in which the entries indicate he worked exactly 9 hours a day, for 6 days each week from August 2 to September 12, 1998. His wife, Surinder Kaur Gill's payroll record – Exhibit R–6, tab 12 – showed she also worked precisely 9 hours per day, 6 days per week during the course of her employment. Counsel showed the appellant the payroll record – Exhibit R–11, tab 15, p. 2 – of Jarnail Kaur Sidhu indicating the worker was paid for 8 hours - most days – but seemed to have worked only 7 hours per day on 26 separate days during the course of her employment with Gill Farms. However, the record indicated Sidhu worked 7 days per week, commencing June 28, 1998. Counsel requested an explanation from the appellant for the discrepancy in hours worked between Jarnail Kaur Sidhu and Gurdev Singh Gill in view of the fact they rode to work together in the same vehicle. The appellant replied that men work longer hours than the women and Sidhu may have left work earlier each day and/or may not have ridden home in the same vehicle. Counsel suggested that a review of payroll records supported the Minister's observation that among workers who rode together as a group, some had more or less hours per day entered on their payroll records than others and some workers were paid 2 hours more per day over an extended period of time. The appellant explained that sometimes certain workers sat around for longer periods during breaks while others were driven home early by a relative/friend or obtained a ride with another worker. Harmit Kaur Gill was referred to notes – Exhibit R-5, tab 12, p. 60 – of an interview conducted by Emery wherein she told Emery that "the best workers are paid an hourly rate ($7.50, $8) because they will pick carefully and not mix in poor quality produce

just to increase the weight for piece work". She is also noted to have said that about 12 people were paid hourly. Counsel inquired how the managers at Gill Farms would know whether someone was a good picker if he or she had not worked there previously. The appellant agreed that would not be evident at the outset but the decisions concerning hiring and rate of pay were made by Hakam Singh Gill or Rajinder Singh Gill or – perhaps, on occasion – both of them. Counsel advised the appellant that a review of various ROEs issued by Gill Farms indicated workers were laid off at different times, some as early as September 12 and others on September 20, 1998. The appellant stated she was not involved in any decisions to lay off workers. With regard to the destination of the blueberries grown on the farm, the appellant agreed the majority of the crop was sold to three customers that operated canneries, namely, Khalon Farms (Kahlon), Universal Farms (Universal) and Greenfield Farms (Greenfield). However, Gill Farms did supply berries to the fresh market and also operated a cash-sales stand for those customers who attended at the farm to pick up berries. In the appellant's opinion, a pieceworker would pick between 200 and 300 pounds of berries per day during high season in mid-July provided the picker worked the entire day. She could not recall the average daily production of hourly workers even though picking cards were used to monitor production but based on her experience, estimated a good picker could pick at least 200 pounds per day when the berries were plentiful. The appellant stated a piecework picker would receive a picking card every day because it was the basis for remuneration whereas an hourly worker – at some point – would be requested to use a picking card but not daily since the card was not used to calculate wages. The appellant stated she recalled attending at Discovery on November 7, 2002. Counsel read in certain answers by the appellant where she said picking cards were handed out only to those workers who appeared to pick slowly. Further in said Discovery, counsel read to the appellant answers that indicated Jarnail K. Sidhu, Pawandeep K. Gill and Sukhwinder K. Gill used one card among them but no other picking cards were handed out. Later, in the Discovery, the appellant confirmed that only 5 hourly workers – in total – were handed a picking card. The appellant conceded those answers at Discovery may be correct since her recollection of events ought to have been better at that time than in 2005. She also adopted her answers given at Discovery wherein she agreed 5 workers were told to use picking cards because they appeared to be working slowly and she wanted to ascertain the amount each of them picked per day. The appellant stated she was satisfied with the production of the members of this group and cannot recall if they were required to use picking cards on more than one occasion. In any event, she noted that workers have different abilities and Gill Farms did not have a policy mandating a minimum level of production. However, she or another member of the Gill family would speak to a worker if they were consistently too slow. She stated Hakam Singh Gill, usually during his days off from his job at the mill, decided

whether an hourly–paid worker would receive a picking card. Counsel pointed out to the appellant that in answer to Q. 535 at Discovery, she stated all berries picked by the hourly workers were weighed and the amount was recorded in order to monitor the production of each worker. The appellant agreed this answer was correct and – later in Discovery – explained if a worker did not have a picking card (sometimes called a punch card) she recorded the weight of berries handed in by said worker by writing down the amount on a piece of paper which she showed to Hakam – at some point – and later discarded. The appellant stated the picking/punch cards served the purpose of causing the workers to understand their production was being monitored. The appellant identified photocopies of picking cards – Exhibit R-1, tab 33 – that were handed out to piecework pickers during the 1998 season. She confirmed the same cards – in duplicate – were used by hourly pickers but did not recall whether pickers in that category retained a copy or merely handed back the card in its original form. The appellant, upon being advised she had stated – twice – at Discovery that the picking cards were in "one piece" conceded these answers were not correct as the cards were always composed of two sheets. Counsel asked the appellant why Gill Farms retained all the copies of picking cards used by the pieceworkers but had none of the cards which had been used by the alleged hourly workers. The appellant stated there was no need to retain those cards since payment for services was based on an hourly rate. She also disagreed with the Minister's position which, counsel advised her, was based on information that all Gill Farms workers – except one – had told HRDC interviewers they used a picking card every day. The names of these workers were read to the appellant who asserted these individuals had been remunerated for their services on the basis of an hourly wage and not by the pound as suggested by counsel. Harmit Kaur Gill described the work required to be done on the farm prior to the start of picking season. She stated the workers spread sawdust around the base of the plants in order to suppress weeds and – in May – cut off dry branches and pull out grass near the plants either by hand or using a small tool shaped like a hoe. She stated the task known as trimming is not the same as heavy pruning which is performed during winter months. Other preparatory duties included cleaning buckets and the larger tubs owned by Gill Farms were also washed in order to prevent growth of mold. Some new plants have to be placed into the ground and fertilizer and sawdust spread around them. It is necessary to clean up debris composed mainly of broken branches but the most time-consuming task involves the installation of nets over the plants to protect berries from being eaten by wild birds. The installation is undertaken in June and it requires some repairs to be performed each season to tighten wires and stabilize poles. The appellant stated she could not recall which workers trimmed branches except for herself, her sister – Manjit – and another worker Manjit K. Sidhu. The worker Gyan K. Jawanda assisted in the task of installing the nets as did other workers whom she could not recall. The work is more or less the same each year and by way

of example, the appellant stated the installation of nets at the farm in 2005 required 6 or 7 people working together for more than one week. The removal of nets at the end of the season requires less time and is performed mainly by female workers. The appellant stated there are many small tasks that must be performed during May and June. Since there are no workers hired between January and the end of April, all work during this period is done by her husband – Hakam – because Rajinder does not participate in the hands-on aspect of the farming operation. The appellant stated she does not provide any services to the Gill brothers partnership except when she was employed from near the end of May to the end of September or early October in 1996, 1997 and 1998. In 1997, Rajinder Singh Gill was laid off from his job at a mill and was present at the farm more often in 1998 as a result. Hakam was still employed full time and worked on the farm during his two weeks holiday during high season. Harmit Kaur Gill stated when Hakam was on the farm, he performed many duties including picking berries and hauling loads to the cannery as well as spraying the grass. However, he did not supervise the workers. Counsel referred the appellant to the notes – Exhibit R-8, tab 14 – made by Emery in relation to the visit by her and Turgeon to Gill Farms – on November 3, 1998 – and to the portion thereof where Emery wrote "Hakam’s wife Harmit and Raginder's wife, Manjit (the client) both work on the farm from Mar to Sept in a supervisory capacity. They do no picking or weeding. They supervise the workers which range from 3 or 4 in the period, Mar, April, May to about a maximum of 30 during the picking season". The appellant did not recall having made that statement. She stated she had picked berries – on occasion – and had no reason to say otherwise. Rajinder, Manjit and Hakam were also present and she does not recall any of them making such a statement. In her notes, Emery also wrote "No actual hours are kept track of for Harmit and Manjit because they are in the fields with the workers from their arrival to their departure". The appellant states that is not correct. With respect to the policy of issuing ROEs to workers, the appellant stated that at the end of the season there was an accounting of wages due and she wrote out the final cheque and the accountant for Gill Farms prepared the relevant ROE based on information Hakam had reviewed. Upon receipt of the completed ROE, Hakam signed it and at the settling-up meeting it was handed to the worker. If the meeting was with an hourly-paid worker, there was no reference to any picking cards. The appellant stated she could not remember any worker turning in picking cards but even if any of them still had copies of picking cards, they were not used to calculate payment of wages since the only basis was the relevant hourly rate multiplied by the hours worked, to which the applicable rate of holiday pay was added. The appellant identified her application – Exhibit R-5, tab 14 – for UI benefits that she signed on October 2, 1998 and handed in at the HRDC Abbotsford office. Harmit Kaur Gill stated she did not provide an application – for UI benefits – form to workers at the settling-up meetings but some workers were accompanied by her

daughter – Satnam – to the HRDC office in order that they might apply for benefits but she does not know the extent of Satnam's assistance thereafter. The appellant stated she never instructed any workers to pay back any money to her or to anyone else at Gill Farms whether from UI benefits or otherwise. Counsel pointed out many workers did not cash their final pay cheques for as long as one month after receiving them. The appellant stated she had not instructed any worker to delay negotiation of their final pay cheque but added she is basing her recollection on current farm policy and it may have been different in 1998. Counsel advised the appellant that Manjit told an HRDC official sawdust was spread only in the spring and not in the fall. The appellant replied she had no specific recollection of the procedure followed in 1998, except that in either May or June, sawdust was placed around plants. Dry branches were cut in May and/or June and again in September. Counsel referred the appellant to the written response to the Questionnaire – Exhibit R-5, tab 6 – completed by her agent Ronnie Gill. In describing her duties from June 1 to June 30, 1998, the appellant had not mentioned cutting branches. The appellant acknowledged that omission and added that many of the dry branches had been lying on the ground or were cut off with a small tool or twisted off by hand. In providing answers to questions # 9 and # 15 concerning duties performed, the appellant had not listed berry picking or planting new plants. With respect to supervisory duties, the appellant confirmed she weighed berries, drove workers to and/or from work, wrote down amount of pounds of berries, cleaned berries, recorded hours of work, maintained the payroll sheets and other associated duties including preparing cheques for signature by Hakam and Rajinder. The appellant stated she removed berries that were not ripe or were rotten or otherwise unsuitable prior to dumping them into the large tubs. This sorting process was undertaken by using a conveyor belt. Counsel advised the appellant she had not mentioned this task at any stage of the proceedings including at interviews with HRDC officials, or when communicating with the Appeals Officer. In response to counsel's suggestion she was attempting to enlarge the scope of her duties in order to justify the hours spent, the appellant replied there was sufficient work to keep her occupied during the course of her employment. The appellant prepared the payroll record – Exhibit R-8, tab 21 – for Manjit K. Sidhu indicating Sidhu worked 8 or 8.5 hours a day between May 18 and September 26, 1998. Counsel referred the appellant to the Daily Log – Exhibit R-1, tab 32 – prepared by her and pointed out the name of Manjit Kaur Sidhu is not included among the named workers on the numerous sheets. The appellant stated she realized – at some point – Sidhu had not been included and agreed she should have remembered to do so but had been under pressure to create that document in order to satisfy what she understood to have been a requirement imposed on her by Turgeon. She recalled receiving time sheets - for Sidhu – from the accountant but did not remember any ROE being issued. Harmit Kaur Gill prepared her own payroll record – Exhibit R-5, tab 19 – which indicates she worked only 34

and 36 hours during the weeks of July 5-11, and July 12-18, respectively. Between June 8 and July 19, there were many days where she worked only 4 hours and in some weeks worked only 20 hours and 16 hours during the strawberry season when she was working at Lucerne. The appellant stated that even after the strawberry season had finished, she still worked at the cannery if her services were required to process products other than strawberries. She completed her own ROE – tab 18 – with respect to her employment with Gill Farms in 1996 in which it was stated she had 20 weeks of insurable employment. The ROE at tab 15 was issued in respect of her 1997 employment. The appellant stated she had not known the number of insurable hours of employment required to qualify for UI benefits in 1998.

[17] Harmit Kaur Gill was re-examined by her agent, Ronnie Gill. She identified a picking card – Exhibit A-1 – that had been used by Gill Farms in 1998 and stated cards were issued to every worker classified as "casual" as opposed to any worker paid by the hour. Each time berries are brought to the scale and weighed, a record is made on the card and one part labelled "Grower" is retained by Gill Farms and the picker keeps the other part labelled "Picker" since the same information is recorded on both. When work is finished for the day, total production is noted on the card. The appellant stated the hourly-paid pickers used only one part of the card and could leave them at the scale with some member of the Gill family or take them home because the purpose was solely to monitor production. All casual pickers carried their own containers of berries to the scale for weighing, whereas the hourly workers had their berries collected by Manjit Kaur Gill. The pickers who were regarded as casual workers often had other jobs and worked a few hours now and then at their choosing so it was more efficient to pay them on the basis of pounds picked. In the appellant's experience, the casual workers tended to pick more green or unsuitable berries compared to the regular workers who knew how to choose better berries. During the day, someone from Gill Farms made more than one delivery to one or more canneries. Even though Gill Farms sent high-quality berries to a cannery, personnel at a cannery examined each shipment and determined the grade of the berries and the payment per pound was based on that assessment. The appellant stated Gill Farms wanted to obtain the highest price possible and to that end attempted to remove green or unsuitable berries prior to shipping a load to a cannery. Berries destined for the fresh market were sold for $1.00 per pound. The price of cannery berries was between 60 to 65 cents per pound and those assigned the lowest grade used for processing were sold for as little as 20 cents per pound. The appellant stated it was the policy of Gill Farms to take as much time ensuring high-quality berries were shipped to Kahlon – a cannery – as if the product were being sent to a supermarket. Harmit Kaur Gill stated some people phoned the farm to ascertain if pickers were needed while others just arrived at the field. These pickers regarded as casual workers performed no other tasks on the

farm. The appellant stated the policy of Gill Farms was to continue to pay the relevant hourly rate to workers even during a heavy rain provided it was a management decision to stop picking. However, casual workers were paid only on a piecework basis which caused them to refuse to pick unproductive bushes and as a result the hourly workers were assigned that task. Regarding transportation of casual pickers, the appellant stated individuals would advise Gill Farms one day in advance if they needed a ride to work. There were 3 breaks from work each day, a 15-minute pause for coffee/tea in the morning and afternoon and a 30-minute lunch break and no workers were paid during these periods. If a worker chose to take a longer lunch break, he or she was not paid until returning to the field. In the same sense, if permission was granted to a worker to leave early, that missed time was not included in the hours worked. The appellant stated she and one other worker operated the electrically-powered conveyor belt used to sort berries and that the intention – always – to provide excellent berries culminated in Kahlon – in 2004 – using Gill Farms berries as an example of the high quality expected from other growers in the area. Harmit Kaur Gill stated all workers were paid by cheque, including any advances during the season and all information concerning such payments and details of hours worked were sent to the farm accountant. In 1998, the appellant agreed there could have been a cash-flow problem at the time of the settling-up meetings with workers because Gill Farms had to wait for payment from one or more canneries and workers could have been asked to delay cashing their final cheque until notified that sufficient funds were in the account. However, the financial position of Gill Farms had improved – during the 3 or 4 years prior to 2004 – to the point where that was no longer necessary. In the appellant's opinion, Hakam relied on the accuracy of the ROEs prepared by the accountant and merely signed the form – in her presence – in the appropriate space. The appellant identified her ROE – Exhibit A-2 – issued by Safeway with respect to her work at Lucerne. It stated she worked 221 ½ hours and had $2,466.49 in insurable earnings during the period from June 8 to the pay period ending July 25, 1998, although her last day of work was July 18. The appellant agreed it was difficult for Manjit Kaur Gill to operate the farm during her absence while working at the cannery but her daughter – Baljit – helped Manjit during those times. The appellant was referred to Exhibit R-1, tab 20, containing a list of employees of Gill Farms and to pp. 112-119, inclusive, detailing the duties performed by her for Gill Farms during each of the years 1996, 1997 and 1998. In 1996, she was paid $8 per hour and in 1997 received an increase to $9. Each time the appellant applied for UI benefits in 1996, 1997 and 1998, she disclosed on the application that her husband owned 50% of her employer's business. The appellant stated she did not seek employment with Gill Farms merely to qualify for UI benefits since she had worked at the Lucerne cannery 221.5 hours as well as 868 hours on the farm for a total of 1,084.5 insurable hours in 1998, well above the threshold for eligibility which

according to the table – Exhibit A-3 – printed from the HRDC website was 595 hours in the region where she resided. In 1997, according to the relevant ROE - Exhibit A-4 – the appellant worked 179.47 hours for Safeway in addition to her 882 hours employment with Gill Farms. The print-out – Exhibit A-5 – for the 3 Month Seasonally Adjusted Unemployment Rate by Region – as highlighted by Ronnie Gill in yellow – states 595 hours were required to receive UI benefits. The appellant confirmed she and/or Hakam relied on the ROEs as prepared by the farm's accountant and was not aware of having made any errors in recording workers' hours of work or otherwise in maintaining payroll records. Unlike the current policy, entries – in 1998 – were not always made daily although they were transcribed – from pieces of paper – within one or two days. With respect to the notes made by Turgeon and Emery – Exhibit R-8, tabs 13 and 14, respectively – the appellant stated she had no knowledge of the contents thereof since neither had been read back to her. She reiterated Hakam gave her instructions concerning duties to be performed the following day and was not pleased when she left the farm to work at the cannery in order to earn a higher hourly rate. She stated that in view of her overall responsibilities and the fact her wage throughout the relevant periods was only one or two dollars per hour above the minimum wage, her compensation was fair and reasonable under the circumstances. The appellant referred to two photographs – Exhibit A-6 – taken recently which illustrated the placement of the nets over the plants. She pointed out the higher poles and stated some of these need to be stabilized at the beginning of the season by tamping down the soil around the base or by packing stones in the hole. Sometimes, the poles are 18 feet high and replacement holes are dug with a hand tool.

[18] Having regard to the extensive re-examination, further cross-examination was permitted and was conducted by Shawna Cruz in the absence of co-counsel Amy Francis. Counsel pointed out the appellant had offered different versions of the use and form of picking cards at various times. The appellant stated the current policy at Gill Farms is to use one card to record production of two employees and cannot recall if that procedure was followed in 1998. She stated that even when the question is posed with clear reference to a specific year it is difficult to distinguish recent or current procedures from those used in earlier years. Harmit Kaur Gill agreed that within the industry when a row has been picked a worker leaves a full flat on the ground with his or her picking card inside. However, at Gill Farms, the card was placed inside a bucket and when the berries were weighed the card would either be punched or an amount written thereon, although the majority were punched. The majority of cards were retained by Manjit at the scale but some workers retained cards on their person and handed the card to Manjit along with the bucket of berries. The berries were placed into flats only after they had been weighed. The appellant stated pieceworkers often leave their cards at the scale because they trust Gill Farms to

record accurately their daily production and do not want to lose their card in the field. Gill Farms did not follow the practice of instructing workers to pin their picking card to an item of clothing during the day. The appellant stated that when she provided estimates of workers in 1998, ranging from 20-25 or from 25-30, these were to the best of her knowledge. She conceded Surinder Kaur Gill had another job during the season but was still treated as a worker paid by the hour. The appellant stated this scenario was more common among the casual pickers. Counsel suggested that at 32 cents per pound – the rate paid in 1998 – no pieceworker could earn more than the sum equivalent to the amount based on a minimum hourly wage. The appellant stated she could not recall the maximum pounds picked in a day but recalled some workers preferred to be paid by the pound during high season because they considered that method to be more profitable. Regarding the inconsistencies surrounding the use of vehicles, whether one or two, and the methods followed to transport workers, the appellant stated that as the berry season progressed, additional transportation was required to take extra workers to and/or from the farm. She accepted there were some variations in her statements with regard to this matter but added the composition of the passengers varied from time to time and she was not inventing the use of another vehicle for the purpose of accounting for the lag in time or any inconsistency in the number of employees as a consequence of the thrust of the questions posed by Ms. Francis during cross-examination. Counsel pointed out the payroll records do not reflect any variation in time due to prolonged lunch breaks and the appellant agreed that was so, probably because this would have been a rare occurrence. The appellant recalled transporting the 12 or 13-year old son of Gurdev Singh Gill and his wife inside a Gill Farms vehicle even though the child did not pick berries and remained inside the Gill residence or played during the day while his parents worked.

Surinder K. Gill

[19] Surinder K. Gill testified in Punjabi and the questions and answers and other aspects of the proceedings were interpreted and/or translated from English to Punjabi and Punjabi to English by Russell Gill, interpreter. The respondent's book of documents relevant to this appeal – 2001-2116(EI) – is Exhibit R-7.

[20] The Minister decided the appellant was not engaged in insurable employment with Gill Farms during the period from July 26 to September 12, 1998 because she was not employed at arm's length even though she was not related by blood or marriage to either Rajinder Singh Gill or Hakam Singh Gill, the partners operating Gill Farms. In the alternative, the Minister determined the number of insurable hours worked were 114 and that her insurable earnings were in the sum of $919.98. The

appellant’s position is that her ROE – tab 12 – has stated – correctly – her insurable hours – 260 – and insurable earnings in the sum of $2,098.20.

[21] The assumptions of fact specific to the appellant, stated in paragraphs 8(h) to 8(t) inclusive, are as follows:

> (h) the Partnership employed the Appellant in the Period as an hourly employee to pick blueberries;
>
> (i) the Partnership's records of hours worked did not reflect the hours actually worked by the Appellant;
>
> (j) there were times when, in accordance with the payroll records, the Appellant was purported to be working and being paid when there was in fact no work for the Appellant to do;
>
> (k) the Appellant also worked for a cannery in the Period;
>
> (l) on several occasions, the cannery's records indicate that the Appellant was working at the cannery on the same day as the Partnership's records show her working on the Farm;
>
> (m) the number of hours purportedly worked by the hourly employees, as recorded in the Appellant's payroll records, were about three times the industry standard for the size of the Farm;
>
> (n) the Partnership's wage expense for 1998 exceeded the revenue generated in that year;
>
> (o) the Partnership issued a Record of Employment to the Appellant on or about October 9, 1998 indicating that the first day worked was July 26, 1998 and the last day worked was September 12, 1998 and that the Appellant had 260 insurable hours during the Period, with insurable earnings of $2,098.20;
>
> (p) at all times material hereto, the Appellant was not dealing with the Partnership at arm's length;
>
> (q) having regard to all the circumstances of the employment, including the remuneration paid, the terms and conditions, the duration and the nature and importance of the work performed, it is not reasonable to conclude that the Appellant and the Partnership would have entered into a substantially similar contract of employment if they had been dealing with each other at arm's length;

(r) the Appellant actually worked no more than 114 hours during the Period;

(s) the Appellant was paid at a rate of $7.50 per hour plus 7.6% holiday pay; and

(t) the Appellant's earnings in the Period were $919.98.

[22] The appellant stated she was born in India in 1952 and came to Canada in 1975 with her 4 children, 3 sons and one daughter. She is not related to any of the Gill family connected with Gill Farms. Her husband died 9 years ago and she has picked various types of berries and done other farm work since 1975. She is currently employed by the Lucerne cannery where she began working on a part-time basis in 1980. She also worked the night shift at a cannery in Haney while working at another cannery job. She stated it had been necessary to earn as much income as possible in order to support the family since her husband did not make enough money. At Lucerne, she worked with blueberries, strawberries, raspberries and then vegetables near the end of the growing season. She was laid off after the sprout season was finished. Each year, she collected UI benefits based on her seasonal work. The appellant stated her recent state of health is poor and that the last 9 years have been difficult for her but she had to continue working notwithstanding her condition. She recalled attending an interview – at the Abbotsford HRDC office – even though she had a headache and felt dizzy because she believed her UI benefits would be stopped if she failed to appear. The appellant stated Turgeon interviewed her in a small room – without windows – took her photograph and instructed her to answer certain questions. Ronnie Gill referred to Turgeon's notes of said interview – at tab 9 – conducted on January 19, 1999. The appellant stated she was never informed of her right to terminate the interview if she chose and that a tape recording device was placed on the desk between herself and Turgeon. She was able to communicate through Jugender, a Punjabi-speaking interpreter. She stated she can understand some English but has had limited opportunity in her life to be exposed to it and cannot read nor write English although she can read and write Punjabi. The appellant agreed Turgeon may have read back – to her – the interview but cannot recall the event. With regard to her working career, the appellant stated she worked mainly with Indo-Canadians at the canneries and found it difficult to locate work during the off-season since employers at nurseries and greenhouses wanted to hire younger workers. The appellant identified an ROE – tab 3, p. 34 – pertaining to her employment at Townline Growers (1999) Ltd. (Townline) from May 12 to May 30, 1998 and to an ROE – tab 3, p. 34 – issued by Safeway in respect of her employment at Lucerne from June 6 to August 3, 1998. As a result of working these two jobs, she had 475.75 hours of insurable employment prior to starting work at Gill Farms. The appellant stated the

hoeing work at Townline – after the sprout season had finished – was too difficult for her so she waited at home for a week prior to starting work at the cannery. The appellant stated she worked at the cannery with Harmit Kaur Gill who had mentioned Gill Farms needed blueberry pickers and on July 26, 1998, the appellant started work there as a picker. She stated the cannery job paid $15 per hour – double her wages as a farm labourer – and she preferred to work at Lucerne as much as possible, usually during a night shift. Since the cannery needed a supply of berries in order to operate, a list was posted each day if workers were required the day following. If her name was not on the list, she would telephone the office to determine whether she was needed. Surinder K. Gill stated that if she had not worked for Gill Farms – in 1998 – she would have found work elsewhere. As disclosed by 3 separate ROEs – tab 3, pp. 26-28, inclusive – she worked at 3 jobs in 1999, two at Lucerne and one at Townline. She stated her normal practice was to work as much as possible during berry season as that period presented the only opportunity to earn income as no jobs were available during the winter. After her layoff from Gill Farms, she applied for UI benefits – tab 13 – on September 18, 1998. The appellant stated she cannot recall having performed any work at Gill Farms except picking berries. She stated she had performed the work as stated on her ROE and had been paid accordingly. With respect to disclosure of banking statements, the appellant stated she had referred to two accounts in two different branches of the Bank of Nova Scotia (Scotiabank) but was able to produce statements – tab 16 – only from the Clearbrook Station branch in Abbotsford. She stated another account – on Townline Road in Abbotsford – had been closed 2 years earlier and an East-Indian bank employee had advised the bank could not provide her with copies of transactions during 1998. The appellant recalled the account had been a savings account which allowed her to write cheques.

[23] The appellant – Surinder K. Gill – was cross-examined by Shawna Cruz. The appellant agreed she had undertaken – at Discovery – to provide statements from the Scotiabank Townline branch but had not done so. Regarding her interview with Turgeon, counsel referred to the notes – Exhibit R-7, tab 9, p. 53 – wherein Turgeon wrote "Claimant took a break from interview – has high blood pressure". The appellant agreed that notation may be correct but has no current recollection of that event. In providing answers to questions, the appellant stated she attempted to do her best but admitted she may have been mistaken with respect to small details such as the number of workers at the farm. She stated she was nervous and upset during the interview and may not have told Turgeon about some aspects of her employment. The appellant identified her signature on the Questionnaire – tab 6 – dated February 23, 2000 that had been completed on her behalf by Ronnie Gill and returned to Revenue Canada. She considered her answers therein to have been truthful. In India, she completed 4 grades of schooling and did not have any opportunity to further her

education after coming to Canada, except for attending English as Second Language (ESL) classes for 4 weeks. In India, she did housework as women traditionally did not work in the fields. The appellant stated because she has been regularly employed on a seasonal basis for 30 years, she had relied on UI benefits following each layoff. Concerning her hiring at Gill Farms, the appellant stated she had spoken about a picking job with Harmit Kaur Gill at the cannery since they sometimes worked the same shift but there was no date fixed for her to start. Instead, she went to Gill Farms after working a night shift at Lucerne cannery, even though – probably – it was after 10:00 a.m., because she knew the farm needed pickers and would be pleased to have another worker, even for less than a full day. On occasion, she telephoned the farm from her residence to find out if her services were needed. Although she currently works at only one job, the appellant stated she was able to get by on 2-4 hours of sleep – in 1998 – because she was younger and that situation persisted only for a brief period during the summer. Although there was no fixed work schedule for her at Gill Farms, the appellant stated she was satisfied she could stay there until the end of the season. With regard to daily production, the appellant stated she was capable of picking 200-300 pounds of berries per day, depending on the abundance of the crop. However, she had taken notice that some people picked only 100 pounds in a day. While working at Gill Farms, she drove her own car and did not have a recollection as to the manner by which other workers arrived, perhaps because her start time differed, on occasion. She stated she never picked alone nor did she recall starting work before any other picker. She could not recall any fixed quitting time but left work early only if she had to report to the cannery to commence a shift that had been assigned to her the previous day. The appellant stated the peak season usually lasts two or three weeks. Counsel referred the appellant to her time sheet – tab 14 – prepared by Harmit Kaur Gill and to the photocopies of time cards – tab 15 – issued by Lucerne and to the last card – on p. 66 – in respect of August 6, 1998. According to the entries thereon, the appellant worked a total of 7.5 hours at the cannery, starting at 11:30 p.m. and ending at 7:25 a.m. and it appears she also worked 8 hours that day for Gill Farms if the entry in the time sheet – tab 14 – is correct. The appellant stated those records were correct and that she was capable of working those hours. She went home from the cannery, ate breakfast, had a brief rest and reported to Gill Farms where she picked berries until 6:00 p.m. and then drove back home. According to the card for August 13, 1998 issued by Lucerne – tab 15, bottom of p. 67 – the appellant worked a total of 5 hours between 3:00 a.m. and 8:00 a.m. and then worked 8 hours at Gill Farms, according to the entry for that day on her payroll record. The appellant stated she assumed the information on the sheets is correct and although she cannot recall – specifically – that event, may have gone directly to Gill Farms after finishing work at the cannery since it is only a 20-minute drive. The drive from her home to the cannery took about 10 minutes and the trip from Gill Farms to her house usually occupied 15

to 20 minutes. Counsel referred the appellant to p. 68 – tab 15 – concerning her work at the cannery – on August 14, 1998 – for a total of 6 ¼ hours from 7:00 p.m. to 1:20 a.m. and to the entries for August 14 and August 15 made by Gill Farms indicating she worked 8 hours on each of those days. The appellant was shown the time card for August 15 – tab 15, middle of p. 68 – issued by Lucerne indicating she worked the dayshift from 9:30 a.m. until 5:00 p.m. as well as the entry for the same day on the Gill Farms payroll record indicating she had worked there for 8 hours. The appellant stated the record of Gill Farms is not correct with respect to that day. She was accustomed to noting her farm work hours on a calendar and accepts that an error can occur when someone is preparing a time sheet. She recalled one instance where a time sheet incorrectly indicated she had worked at Gill Farms on a certain day while she was still in England. She stated she retained her own record of hours worked until the settling-up meeting – in order to ensure she would be paid the correct amount – and provided it to one or more members of the Gill family for purposes of review. Counsel suggested she handed over her calendar to the Gill family indicating the dates she had worked at the cannery so they could assign her hours into spaces within a time sheet that would not conflict with her working time at Lucerne. The appellant denied that was the case and stated she trusted the timekeeping system used at the cannery where her time card – used to punch in and out of work – was verified by a foreman. She commented that the methods used by small farms to record hours were not always reliable – for example suspending working time during a mechanical breakdown – so had made it a practice to keep her own record. Turning again to the Lucerne time card – tab 15, p. 68, bottom – for August 20, 1998, and to the Gill Farms record – tab 14 – for the same day, counsel pointed out the appellant had worked 4 ¾ hours at Lucerne from 7:00 p.m. to 11:39 p.m. after apparently working an 8-hour shift at Gill Farms. Counsel suggested it was not reasonable for someone to work those hours since it left little time for sleep and/or rest. The appellant replied she was able to maintain that schedule – in 1998 – as she was accustomed to working long hours during the farming season. The immigration stamp on the photocopy of the appellant's passport – tab 17 – indicates she arrived in Stansted, England on September 1, 1998. The appellant stated she went there for the wedding of a close relative but stayed only one week since she needed to return to work. Counsel pointed out she was laid off about one week later on September 12. As mentioned earlier by the appellant during her testimony in direct examination, the record made by Gill Farms indicated she had worked 8 hours on September 1 and 8 hours on September 2. The appellant responded by referring to subsequent entries on said time sheet which indicated she had been away from work for 7 consecutive days. She stated she worked 8 hours each day from September 10 to 12, inclusive and was laid off. She could not recall the nature of the work done during these last 3 days and even while picking berries during the summer did not know the names of fellow workers who were referred to as "Uncle" or

"Auntie" – if they were older – or as "Sister" if they were peers. She recalled a husband and wife worked together and that a worker had his or her own row of berries to pick. She agreed – at Discovery – she provided the name of Gurdev Singh Gill as someone with whom she had worked. In her opinion, she worked with between 25 and 30 people each day and conceded she told Turgeon there were about 20 workers on site and that in answering the Questionnaire – tab 6, Q. 39 – she had estimated there were 25-30 workers employed at Gill Farms. The appellant stated she believed that answer was correct despite having provided another estimate – earlier – to Turgeon. She stated various persons fulfilled the role of supervisor at Gill Farms and tea and sweets were provided to workers by someone from the Gill family. Since some Gill family members had employment away from the farm, Surinder K. Gill stated they helped out after returning home or during their days off. She recalled seeing Harmit Kaur Gill and Manjit Kaur Gill frequently as well as Rajinder Singh Gill who – unlike his brother, Hakam – was not employed off the farm in 1998. She observed the Gill brothers and their wives occasionally picking berries. Concerning lunch breaks, the appellant stated some older workers took a bit longer – up to 45 minutes – while the younger ones adhered to the 30-minute allotted time. She picked berries by using a small bucket tied around her waist in which to place berries, if picking while standing. If squatting or bending down to harvest berries near the bottom of plants, she put the berries into buckets or flats which was an acceptable method since – in comparison with raspberries – they are not susceptible to damage by being squashed. The flats were piled in one place where she could walk over and obtain an empty one or they were placed somewhere along a row by a Gill family member. She transferred berries from her bucket to a flat and did not share that container with any other worker. When a flat was full, another full one was placed on top and a female member of the Gill family carried them to the scale. The male workers – including Hakam – carried 4 flats at once. The appellant stated she also poured berries from her small bucket into a large pail which she carried – often – to the weighing station where Harmit Kaur Gill or one of her children operated the scale and – presumably – recorded the weight. The appellant stated that although she was paid an hourly wage, she received a picking card which she took home now and then if she was in a hurry to leave work and no member of the Gill family was at the weighing area. She was handed a card each morning and identified the card – Exhibit A-1 – as the type she used and stated different farms used cards of different colours. During the day, she kept the card on her person but only one part – of the duplicate card – was punched to record her berry production. The appellant recalled a telephone interview with Rai and was referred to Rai's typed notes at tab 5. Counsel pointed out there had been no mention of a picking card until Rai had reminded her that she had already discussed – with HRDC officials – the use of said cards. The appellant replied she had wondered why such an interview was taking place and conceded she had

trouble recalling some details concerning her employment. She was paid by cheque and identified the ones at tabs 10 and 11, respectively. The first cheque – dated September 30, 1998 – was in the sum of $1,363.51 and was endorsed by her and deposited into her Scotiabank account on October 5, 1998. The other – dated September 14, 1998 – was in the sum of $570.50 and was negotiated – on September 15 – when the appellant endorsed it and received cash, as noted by the teller on the reverse. The appellant stated it was not unusual to obtain cash for pay cheques including those issued by the cannery. The ROE – tab 12 – issued to the appellant was dated September 24, 1998, 6 days prior to receiving her final pay cheque. Surinder K. Gill explained it was common within the berry farming industry for an ROE to be issued to a worker prior to handing over the final pay cheque. Counsel referred the appellant to her application – tab 13 – for UI benefits and pointed out it was dated September 18, 1998, two days before receiving her ROE. However, the tick mark – question 31 – on said application indicated the appellant was not attaching an ROE from her employer although in answering question 32, the identity of Gill Farms was disclosed together with the start and end dates of her employment. The appellant cannot recall the reason for the delay between her layoff on September 12 and September 30, when she received her final pay cheque. She was paid $7.50 per hour together with 7.6% holiday pay. The appellant stated her first day of work at Gill Farms was July 28, 1998, even though the ROE indicated that date was July 26. Counsel suggested the number of insurable hours – 260 – stated in her ROE was inflated. The appellant responded she no longer had her own record of hours to compare with the time sheet prepared by Gill Farms. During the settling-up meeting at the Gill residence, she handed over the calendar on which she had recorded her hours and Harmit Kaur Gill informed her the final cheque would be prepared. Manjit Kaur Gill was also at the meeting. The appellant stated Gill Farms was a good place to work – in 1998 – and that she had enough insurable hours from her other two jobs to qualify for UI benefits. In 1999, her employment at Lucerne and Townline permitted her to work enough insurable hours to become eligible for UI benefits following layoff, although the pay for the Townline job was barely above the minimum wage.

[24] Surinder K. Gill was re-examined by her agent, Ronnie Gill. The appellant stated she was aware holiday pay had been included in her pay, as well as the amount attributable to working on a statutory holiday. She recalled working on a mushroom farm for Safeway in 1998. The ROE issued – tab 3, p. 36 – indicated her last working day was August 3 whereas she had stated earlier in her testimony that she worked for that employer until August 28. The appellant stated she would not notice mistakes in dates or amounts within documents such as ROEs but assumed that particular one was correct since she had been paid in full for her work. Ronnie Gill referred the appellant

to her time cards – tab 15 – from Lucerne and advised her that a calculation had revealed there should have been an additional 52 hours included in the ROE issued by Safeway. The appellant responded it had always been her intention to work as many hours as possible during a growing season even if it meant working at three jobs.

Harbans Kaur Khatra

[25] Harbans Kaur Khatra testified in Punjabi and the questions and answers and other aspects of the proceedings were interpreted and/or translated from English to Punjabi and Punjabi to English by Russell Gill, interpreter. The respondent's book of documents relevant to this appeal – 2001-2120(EI) – is Exhibit R-4. The Minister decided the appellant was not employed in insurable employment with Gill Farms during the period from July 12 to September 26, 1998, because she was not dealing with that payor at arm's length. In the alternative, the Minister determined that if said employment was found to be insurable, the appellant had worked 254 insurable hours and had insurable earnings in the sum of $1,981.20. The appellant's position is that the ROE – tab 14 – is correct in stating she worked 652 insurable hours and had insurable earnings in the sum of $5,085.60.

[26] The assumptions of fact specific to the appellant, stated in paragraphs 8(h) to 8(r) inclusive, are as follows:

> (h) the Partnership employed the Appellant in the Period as an hourly employee to pick blueberries and to provide various other related services for the Farm such as gathering dried branches, putting up and taking down nets, hoeing, weeding, spraying, washing buckets etc.;
>
> (i) the Partnership's records of hours worked did not reflect the hours actually worked by the Appellant;
>
> (j) there were times when, in accordance with the payroll records, the Appellant was purported to be working and being paid when there was in fact no work for the Appellant to do;
>
> (k) the number of hours purportedly worked by the hourly employees, as recorded in the Appellant's payroll records, were about three times the industry standard for the size of the Farm;
>
> (l) the Partnership's wage expense for 1998 exceeded the revenue generated in that year;

(m) the Partnership issued a Record of Employment to the Appellant on or about October 7, 1998 indicating that the first day worked was July 12, 1998 and the last day worked was September 26, 1998 and that the Appellant had 652 insurable hours during the Period, with insurable earnings of $5,085.60;

(n) at all times material hereto, the Appellant was not dealing with the Partnership at arm's length;

(o) having regard to all the circumstances of the employment, including the remuneration paid, the terms and conditions, the duration and the nature and importance of the work performed, it is not reasonable to conclude that the Appellant and the Partnership would have entered into a substantially similar contract of employment if they had been dealing with each other at arm's length;

(p) the Appellant actually worked no more than 254 hours during the Period;

(q) the Appellant was paid at a rate of $7.50 per hour plus 4% holiday pay; and

(r) the Appellant's earnings in the Period were $1,981.20.

[27] Harbans Kaur Khatra testified she was born in Punjab, India and emigrated to Canada in 1997. She holds the status of landed immigrant. After coming to Canada, she worked for the Virk family as a farm labourer performing various tasks including pruning and also picked raspberries and blueberries. In 1997, she worked picking blueberries at Gill Farms and returned for the 1998 season. She stated she was paid an hourly rate by Gill Farms and had been paid on the same basis during her earlier employment at the Virk farm. She recalled the interview at the HRDC office – conducted by Emery on January 19, 1999 - and that Emery – with consent – had taken her picture. The appellant recalled Paula Bassi, an HRDC employee – fluent in Punjabi – was also present. The appellant stated the interview room was small and although she had attended with her brother-in-law, he did not participate in the discussion with Emery. Emery's notes of the interview are at tab 8. The appellant stated she was scared during the interview but did not request a break nor did she object to Emery's manner of questioning. With respect to her employment at Gill Farms, the appellant stated she also worked sorting berries – a task easier than picking – which she appreciated because she had suffered a back injury in a scooter accident while living in India. While working at the Virk farm – in 1997 – she worked nearly every day throughout the season and kept her own record of hours. While employed at Gill Farms, she received 3 or 4 cheques and was paid in full for any remaining wages following the end of the season. The payroll record – tab 15 – indicated the appellant had worked on August 3, 1998, a statutory holiday in

British Columbia, as well as September 7, 1998, Labour Day. Harbans Kaur Khatra stated she was not aware of the proper rate required to be paid by employers for these holidays but considered it to be about one and one-half times her regular hourly pay of $7.50. She stated she is a proficient picker – up to 400 to 450 pounds per day – and if paid at the usual piecework rate can earn as much as $150 per day – even during the slower parts of the season – so it is in the employer's interest to pay her by the hour. She preferred to harvest berries from the new varieties of plants since they were easier to pick. The time sheet indicated the appellant worked every day during her employment at Gill Farms and she was satisfied she had been paid in full for her work. Currently, she takes care of her infant granddaughter and only picks berries on weekends on a piecework basis.

[28] Harbans Kaur Khatra was cross-examined by Shawna Cruz who referred her to tab 5, the two typed pages containing answers to the Questionnaire sent to her by Bernie Keays, Appeals Officer. The appellant stated she could not recall the circumstances surrounding the provision of those answers but her responses were recorded by Luckie Gill, sister of Ronnie Gill, her agent in these proceedings. The appellant stated she attempted to answer the questions truthfully. In India, she worked inside the house, and the only farm work she performed was caring for and feeding the cows. She attended Grade 4 or 5 in India and cannot read English nor write it except for her signature. With respect to the number of hours required to qualify for UI benefits, the appellant stated she had been aware of the exact amount at one point but estimated it to have been around 700. She recalled giving evidence at Discovery on November 15, 2002, where she had stated she thought 900 insurable hours were required to qualify for UI benefits. The appellant stated the Virk family decided to use a berry picking machine in 1998. She found out from her friend – Jarnail Singh Sidhu – who worked for Gill Farms that they had good berries. Counsel referred the appellant to answer # 3 – tab 5 – that "[M]y relative found the job and took me to the farm". The appellant replied she was not related to Sidhu. She stated she spoke to Hakam Singh Gill and was hired to pick berries on the understanding she would be paid by the hour. In 1998, the appellant lived in Aldergrove, located about 10 or 15 minutes from the Gill property. She stated one of the Gills – mostly Manjit, but also Harmit or Hakam, if it was his day off – picked her up in the morning either in a green car or a "sort-of truck" that could carry 7-10 passengers, about 3 or 4 more than the car. She rode with Jarnail Singh Gill and Gurdev Singh Gill and his wife but cannot recall the names of other passengers. Usually, she was picked up at 8:00 a.m. but if it was any earlier she would still be ready because a member of the Gill family would have telephoned her to advise of the change. When she was picked up, there were other workers in the vehicle and the ride from her residence to Gill Farms took between 10 and 15 minutes. She usually went home in a Gill vehicle but her son

sometimes picked her up. She stated all the workers did not leave at the same time since there were basically two groups, one from Aldergrove, the other from Abbotsford. Because she lived nearby, sometimes either Harmit or Manjit would tell her "Sister, keep on working and we will take you home later". The appellant stated she worked every day throughout her employment with Gill Farms but did not work when it was dark and was home in time for her evening meal. Even when it rained heavily, she kept on picking because she had proper raingear and footwear although other workers usually stopped and waited for it to either quit or ease. She did not wear a watch but recalled there were short beverage breaks in the morning and afternoon and a longer break around noon. One of her duties was to sort berries on a belt-driven machine located near a house and she cleaned away debris and unsuitable berries in order to ensure the remaining ones were of high quality. The sorting and cleaning procedure did not occupy a full day of her time and was undertaken when a sufficient amount of berries had accumulated. Other than picking, she performed tasks such as taking down the nets from the poles at the end of the season and washing tubs and lugs and spreading what she considered to be sawdust (bark mulch) around plants. She also used a sickle to cut some grass and performed some light pruning. Upon being hired, her first task was to pick berries as the nets were already installed at that time. The appellant stated she usually worked with between 10 and 15 people but sometimes there were more. She remembered working with Santosh Kaur Makkar and Gurdev Singh Gill and his wife but cannot recall if they had started before her or afterwards. She stated the bushes were quite tall and it was difficult to see people unless they were nearby. Manjit was her supervisor and picked berries – on occasion – at various locations and deposited the berries into the container of the nearest worker. In her opinion, Manjit was inspecting the bushes to see if some ripe berries had been left by a picker. The appellant stated Harmit also wandered around the picking area and sometimes brought tea to the pickers. Hakam also walked around – as did Rajinder – and she was aware Hakam had a job off the farm. During several days – perhaps one week – needed to take down the nets, she recalled working with both Makkars, and two females, Jaswinder and Pawandeep, as well as with Manjit Kaur Gill. The nets had to be rolled up for purposes of storage during the off-season. The appellant could not recall the amount of time required to complete the pruning and stated she spread sawdust by using a bucket to carry that material where it was needed. She was unable to provide an estimate of the time needed to wash the containers but stated that was probably the last task performed prior to layoff. The appellant agreed she had provided some answers previously that were different than others with respect to the same subject matter but stated she found it somewhat difficult to recall small details. In relation to the picking procedures, she confirmed she used a small bucket tied around her waist to hold berries until she emptied it into a larger plastic container located nearby. When that container was full, a member of the

Gill family took it to the scale to be weighed. The appellant stated she never used a picking card and had estimated her daily production by counting the number of full buckets picked since each contained 25 pounds of berries. Her small waist bucket held 5 pounds and she also kept track of the number of times it was filled during the day by writing down numbers on the back of her hand, using a blueberry as a pen and the juice as ink. Her picking style involved the use of both hands simultaneously and during peak season the berries from only 4 or 5 branches could fill up the small bucket. The written answer to Q. 41 of the Questionnaire – tab 5 – was "Yes" indicating the appellant used "a picking card for every day of work". The appellant stated that answer is not correct and pointed out the answer – to Q. 40 – "didn't have any" was in response to the question "[W]hat did you use the picking card for?" Counsel referred the appellant to the typed notes – tab 4 – made by Harby Rai of their telephone conversation on August 16, 1999, that she "was not given a picking card or [*sic*] does not known if anyone esle [*sic*] had picking cards". Rai also noted the appellant stated "she did not see a weighing scale on site". The appellant stated there was a weighing scale and does not recall having said otherwise when speaking to Rai. She also stated she recalled saying – at some point – she had seen picking cards in the area where the cleaning/sorting conveyor belt was located. The appellant identified the photocopy of cheque # 0505 – second from top, p. 47, tab 9 – dated October 26, 1998 – in the sum of $1,828.04 – which she deposited to her account at the Aldergrove Credit Union on November 14, 1998. She also received cheque # 0501 – bottom of p. 49, tab 10 – dated October 24, 1998 – in the sum of $1,600 – which she deposited to her credit union account on November 2, 1998. She stated she did not have a vehicle and that may have caused the delay in cashing cheque # 0505 even though it was reasonable to assume cheque # 0501 had been written first. She stated she could not recall why the cheques were written nearly a month after her layoff. She identified cheque # 0492 – second from bottom, p. 51, tab 11 – dated October 22, 1998 – in the sum of $734 – which she deposited to her account on October 23, 1998. She explained a cheque was cashed quickly – sometimes – if her son needed money. She received cheque # 0426 – second from bottom, p. 53, tab 12 – dated August 9, 1998 in the sum of $200 which was not deposited until August 29. Counsel referred the appellant to the statements – tab 1 – of the activity on her account at Aldergrove Credit Union operated jointly with her son – Satwinder Singh Khatra – and - specifically – to the entry for 981112 (November 12, 1998) – on p. 8 – indicating there had been a withdrawal in the sum of $2,000. Counsel pointed out that on November 14, 1998 there was a deposit to said account in the sum of $2,024.04 which probably included the cheque from Gill Farms in the sum of $1,828.04. Counsel suggested to the appellant that she had withdrawn the sum of $2,000 in order to pay that amount to a member of the Gill family prior to receiving her final pay cheque. The appellant denied that suggestion and stated the cash was required to

purchase some furniture and for regular living expenses. Counsel referred the appellant to entry 981023 (October 23, 1998) indicating a deposit in the sum of $1,533.07 and to entry 981029 (October 29, 1998) showing a cash withdrawal in the sum of $2,000. Counsel referred to other withdrawals of cash totalling $4,500 in a two-week period from the end of October to the middle of November. The appellant stated she paid her rent in cash and had moved to a new residence on October 31 and needed to buy some furniture. During the HRDC interview – tab 8 – at p. 45 of the notes made by Emery the Question posed was whether the appellant had paid cash back to the Gills in exchange for an ROE. The record of her answer was "no she did not pay for it as far as she knows; actually, my brother-in-law looks after these things – I can't read". The appellant stated she had intended to tell Emery that while she had not paid back any money, she was assisted by her brother-in-law with regard to many business matters. Harbans Kaur Khatra identified her October 22, 1998 application – tab 14 – for UI benefits. She recalled someone assisted her to complete the form and that she used the address of Gill Farms as the place to contact her – by mail – since she was about to move to a new residence. The appellant stated the time sheet – tab 15 – was accurate and that she worked either 8 or 9 hours every day. When her son picked her up, he arrived at the farm between 4:30 and 5:00 in the afternoon. Sometimes, she started work a bit later in the morning and worked an extra hour or so in the late afternoon. Because she lived only a few minutes from the farm, it was no trouble for either Harmit or Manjit to come and get her in their car. The appellant stated she was able to get by with only 4 hours sleep per night. She recalled receiving a call from a member of the Gill family advising they were ready to settle up and to issue her final pay cheque. She confirmed her testimony – at Discovery – that her son drove her to the farm and came back later to take her home and that the settling-up was handled – personally – by Manjit Kaur Gill. She received her ROE – perhaps after receipt of the final cheque – and was informed by either Manjit or Harmit that she had sufficient insurable hours to qualify for UI benefits and her son drove her to the office so she could submit her application.

[29] The appellant – Harbans Kaur Khatra – was re-examined by her agent, Ronnie Gill. The appellant stated she was accustomed to using cash to make purchases and did not write cheques. She paid rent – $450 per month – in cash and bought furniture for their new place in Surrey. The appellant was referred to entry 980429 (April 29, 1998) on p. 6, tab 1, indicating a cash withdrawal in the sum of $700 and to entry 980529 (May 29, 1998) on p. 7, showing a withdrawal of $500 in cash. The appellant stated such a sum is "nothing and is gone within a couple of days". The appellant confirmed the balance in her account on October 7, 1998 was over $4,000 and that she had not repaid any amount to any member of the Gill family in respect of her employment at Gill Farms. She stated she had worked very hard to earn her money.

The appellant stated she had not held off negotiating any cheques received from Gill Farms during that relatively short period.

Gyan Kaur Jawanda

[30] Gyan Kaur Jawanda testified in Punjabi and the questions and answers and other aspects of the proceedings were interpreted and/or translated from English to Punjabi and Punjabi to English by Russell Gill, interpreter. The respondent's book of documents relevant to this appeal – 2001-2125(EI) – is Exhibit R-12.

[31] The Minister decided the appellant's employment with Gill Farms during the period from May 25 to September 26, 1998, was not insurable because she was not dealing with the payor partnership at arm's length. However, in the event the employment was found to be insurable, the Minister determined the appellant worked 333 insurable hours and had insurable earnings in the sum of $2,597.40. The appellant's position is that she worked 942 insurable hours and had insurable earnings in the sum of $7,347.60 as stated in her ROE at tab 12.

[32] The assumptions of fact specific to the appellant, stated in paragraphs 8(h) to 8(r) inclusive, are as follows:

> (h) the Partnership employed the Appellant in the Period as an hourly employee to pick blueberries and to provide various other related services for the Farm such as gathering dried branches, putting up and taking down nets, hoeing, weeding, spraying, washing buckets etc.;
>
> (i) the Partnership's records of hours worked did not reflect the hours actually worked by the Appellant;
>
> (j) there were times when, in accordance with the payroll records, the Appellant was purported to be working and being paid when there was in fact no work for the Appellant to do;
>
> (k) the number of hours purportedly worked by the hourly employees, as recorded in the Appellant's payroll records, were about three times the industry standard for the size of the Farm;
>
> (l) the Partnership's wage expense for 1998 exceeded the revenue generated in that year;
>
> (m) the Partnership issued a Record of Employment to the Appellant on or about October 7, 1998 indicating that the first day worked was May 25, 1998 and

the last day worked was September 26, 1998 and that the Appellant had 942 insurable hours during the Period, with insurable earnings of $7,347.60;

(n) at all times material hereto, the Appellant was not dealing with the Partnership at arm's length;

(o) having regard to all the circumstances of the employment, including the remuneration paid, the terms and conditions, the duration and the nature and importance of the work performed, it is not reasonable to conclude that the Appellant and the Partnership would have entered into a substantially similar contract of employment if they had been dealing with each other at arm's length;

(p) the Appellant actually worked no more than 333 hours during the Period;

(q) the Appellant was paid at a rate of $7.50 per hour plus 4% holiday pay; and

(r) the Appellant's earnings in the Period were $2,597.40.

[33] Gyan Kaur Jawanda testified she was born in India and came to Canada in 1998. Her first job was working at Gill Farms. After starting, she helped put up nets, did some hoeing, removed grass and trimmed away dead branches. Later, she picked berries nearly every day. She recalled the interview with Emery on January 19, 1999 at the HRDC office in Abbotsford. Paula Bassi was the Punjabi-speaking interpreter. She stated the information contained in the notes – tab 7 – was correct to the best of her knowledge. She also recalled the circumstances relevant to a discussion – on July 30, 1999 – in her own residence between herself and Harby Rai. The appellant's daughter – Baljit Kaur Jawanda – was present throughout. In the typed notes – tab 3 – Rai recorded certain answers provided by the appellant including one where she had recalled not seeing anyone else weeding or pulling grass, adding it was a small farm and if there had been other workers performing that task, she would have seen them. Rai also noted the appellant's comment that she had picked blueberries by herself for the first 20 days and that during peak season there was about 30 workers at Gill Farms. The appellant denied making those statements. She stated she does not remember the amount of berries picked each day but was paid by the hour. Rai's notes – tab 3, p. 29 – indicate the appellant stated she was paid $7.15 per hour for tasks such as weeding, cleaning, putting up and taking down nets and washing pails but was paid by piece rate for picking berries, although she did not know the amount of said rate. The appellant was referred by Ronnie Gill to Emery's notes – tab 7, p. 43 – of the January 19, 1999 interview and to her answer that she was "paid by hourly rate, $7.50/hr.". The appellant identified cheque # 0511 – tab 8, top of p. 47 – dated October 26, 1998 – in the sum of $2,000 – which she deposited – on

November 19 – to her account at Khalsa Credit Union. She also recalled receiving cheque # 0504 – top of p. 49, tab 9 – dated October 24, 1998 – in the sum of $582.21 – which she deposited to her Khalsa account on November 16, 1998. The appellant was referred to deposit slips – tab 11, p. 53 – relating to deposits to her account on November 23, 1998, of three amounts for a total of $2,863.99 and to a photocopy of a cheque issued on the Gill brothers' farm business account dated October 30, 1998 – p. 56 – in the sum of $3,657.33, that had been negotiated by the appellant at Khalsa on December 23, 1998, when she made a total deposit of $4,145.33 and withdrew $3,500 in cash. The appellant stated she used the cash for household expenses and bought a computer for one of her children. In 1998, she was living in the home of the daughter who had sponsored her immigration to Canada. Concerning the delay in cashing the pay cheque, the appellant stated she may have forgotten about it for a while or – perhaps – had waited for one of her children to do the banking transaction. She shared the Khalsa account with her daughter – Gyan Kaur Jawanda – and a statement – tab 15, p. 66 – disclosed withdrawals of $1,600 and $2,800 in cash on December 2, 1998 and December 4, 1998, respectively. The appellant stated she had been a widow for many years and arrived in Canada in January, 1998 with three children, ranging in age from 14 to 17. She has 3 other daughters and one son. In India, her husband owned a brick making business but she had worked only inside the home.

[34] The appellant – Gyan Kaur Jawanda – was cross-examined by Shawna Cruz who referred her to answers at Discovery – on February 12, 2003 – where she stated she had been hired by Harmit Kaur Gill. The appellant was also advised that in the notes – tab 7, p. 42 – taken during the interview on January 19, 1999 at the HRDC Abbotsford office, Emery recorded the appellant's answer that she was hired by Manjit K. Gill. The response to Q.3 of the Questionnaire – tab 4 – asking who had hired her for the job was "Hakam". The appellant stated she knew it was someone from the Gill family who had hired her. Counsel read out her answer – at Discovery – that she had been paid on a hourly basis for putting up the nets but did not know the method of payment for picking berries and that she accepted whatever basis was used by Gill Farms. The appellant stated she thought she was paid on an hourly basis for picking berries but agreed her wages may have been calculated by the pound. The appellant stated that although she was hired on May 25, 1998, her first week of work was spent picking strawberries on another farm and assumed the Gill family had loaned her out to said farm. She recalled being driven to work by a member of the Gill family, usually Harmit or Rajinder. When referred to various answers in the Questionnaire – tab 4 – concerning transportation to work and to some other inconsistencies, the appellant stated she was not paying much attention to which family member drove the vehicle or to the number of passengers. Counsel pointed out

to the appellant that Rai's notes – tab 3, p. 28 – indicate she told Rai she had been picked up by "Rajinder in the big pick-up truck, the one that transports berries" and that she was the only one passenger. According to her time sheet - tab 14 – the appellant did not work on any Sunday until June 28 when she began working 7 or 8 hours per day, 7 days a week until her layoff on September 26, 1998. The appellant stated it was difficult to work that hard without a break but had managed to do so even though she was 51 in 1998 and had not been employed anywhere before starting work at Gill Farms. Counsel referred the appellant to an answer – at Discovery – that she operated a joint account with her daughter because her poor health did not permit her to do banking on a regular basis. In view of that, counsel asked how she could work every day for nearly 3 months. The appellant replied that the work had to be done in order to earn a living but errands can be handed over to someone else. Counsel advised the appellant Harby Rai had recorded – tab 3, p. 28 – the appellant's answer that she "would work 4 to 5 days and then have a day to rest" whereas the time sheet indicated she worked 6 days a week until berry season started and every day thereafter. The appellant stated she did not recall details of transferring berries to be weighed but knew the farm owners wanted to know the amount of berries picked by a worker during a day. She acknowledged she had not kept her own record of hours worked and that from the end of May to some point in August, she had been paid only $200. The appellant denied having paid any money back to the Gill family in respect of her employment at Gill Farms. When asked about that matter during the HRDC interview, Emery's notes – tab 7, p. 46 – recorded the response to the question whether she knew if money was paid to the Gills in return for weeks (ROE) as "she doesn't know – her daughter would know – she doesn't really know what ROE is or is for". The appellant stated her brain was not functioning properly during the interview but was emphatic that "no one works and then gives money back".

[35] The appellant – Gyan Kaur Jawanda – was re-examined by her agent, Ronnie Gill. The appellant stated that when questioned about her health – at Discovery – she was speaking of her condition in 2003 because she had not worked since 2000 but had been much healthier in 1998 and 1999. She recalled the interview with Rai on July 30, 1999 took place just after she had returned from working since 6:30 a.m. and was tired as a result.

Himmat Singh Makkar

[36] Himmat Singh Makkar testified in Punjabi and the questions and answers and other aspects of the proceedings were interpreted and/or translated from English to Punjabi and Punjabi to English by Russell Gill, interpreter. The respondent's book of documents relevant to this appeal – 2001-2121(EI) – is Exhibit R-9.

[37] The Minister decided the appellant's employment with Gill Farms from August 2 to August 28, 1998 was not insurable because he was not dealing with the payor at arm's length. In the alternative, the Minister determined the appellant had worked 72 insurable hours and had insurable earnings in the sum of $599.04. The appellant's position is that he started on August 3, 1998 and worked 160 hours and had insurable earnings of $1,381.20, as stated in his ROE at tab 12.

[38] The assumptions of fact specific to the appellant, stated in paragraphs 8(h) to 8(r) inclusive, are as follows:

> (h) the Partnership employed the Appellant in the Period as an hourly employee to pick blueberries and to provide various other related services for the Farm such as gathering dried branches, putting up and taking down nets, hoeing, weeding, spraying, washing buckets etc.;
>
> (i) the Partnership's records of hours worked did not reflect the hours actually worked by the Appellant;
>
> (j) there were times when, in accordance with the payroll records, the Appellant was purported to be working and being paid when there was in fact no work for the Appellant to do;
>
> (k) the number of hours purportedly worked by the hourly employees, as recorded in the Appellant's payroll records, were about three times the industry standard for the size of the Farm;
>
> (l) the Partnership's wage expense for 1998 exceeded the revenue generated in that year;
>
> (m) the Partnership issued a Record of Employment to the Appellant on or about September 14, 1998 indicating that the first day worked was August 3, 1998 and the last day worked was August 28, 1998 and that the Appellant had 160 insurable hours during the Period, with insurable earnings of $1,331.20;
>
> (n) at all times material hereto, the Appellant was not dealing with the Partnership at arm's length;
>
> (o) having regard to all the circumstances of the employment, including the remuneration paid, the terms and conditions, the duration and the nature and importance of the work performed, it is not reasonable to conclude that the Appellant and the Partnership would have entered into a substantially similar

contract of employment if they had been dealing with each other at arm's length;

(p) the Appellant actually worked no more than 72 hours during the Period;

(q) the Appellant was paid at a rate of $8.00 per hour plus 4% holiday pay; and

(r) the Appellant's earnings in the Period were $599.04.

[39] Himmat Singh Makkar testified he was born in India – in 1947 – and came to Canada in 1997. He worked during the months of October and November for a labour contractor. He lived with his daughter and her family. In 1998, between March and May, he worked for Lakeland Nursery (Lakeland). He also worked for Berry Haven Farm (Berry Haven), also known as Penny's Farm, in Abbotsford and drove his own car to work. He stated that before starting work at Gill Farms on August 3, 1998, he had nearly 1,000 insurable hours of employment accrued from his previous employment which he considered to be more than the amount needed to qualify for UI benefits, although he did not know the precise number required. At Berry Haven, he was paid a piecework rate depending on the berry picked and earned amounts equivalent to an hourly rate of $9 or $10. After layoff at Berry Haven, he heard about Gill Farms from his son-in-law and applied for work there. He had not picked blueberries before and recalled receiving – sometimes – one part of a picking card similar to the one displayed in Exhibit A-1. He drove his car to Gill Farms and also drove his wife there – on occasion – but she was also picked up at home and dropped off by a member of the Gill family. He recalled attending an interview with Emery (her notes are at tab 9) at which Paula Bassi acted as a Punjabi interpreter. His photograph was taken and he answered questions subsequently put to him by Emery because he thought it was mandatory. The appellant was referred to a photocopy of cheque # 0507 – tab 10, top of p. 48 – dated October 26, 1998 in the sum of $742.09 which he deposited to his account at First Heritage Savings Credit Union (Heritage) on November 17, 1998. He could not recall any specific reason for the delay in negotiating said cheque but stated he does not always deposit cheques promptly, even now. He also received cheque # 0430 – tab 11, second from top, p. 50 – dated August 9, 1998, in the sum of $200 – which was deposited to the credit of his account on September 15, 1998. While working at Lakeland at $8.50 or $9 per hour, he was paid – by cheque – on a regular basis. He was the only member of his family with an account in a financial institution and deposits to that account were often composed of a variety of sources, including pay cheques of his wife, Santosh Kaur Makkar, who also worked at Gill Farms. An example of such a deposit – in the sum of $5,292.68 on April 25, 1998 – is indicated on the statement of account activity at tab 15, p. 58. The

appellant could not recall the reason for the cash withdrawal of $1,000 on March 21, 1998. While working at Berry Haven – beginning in June, 1998 – he was paid every month by cheque. On August 4, 1998, he made a deposit totalling $3,285.21 which he thought included pay cheques for himself and his wife. On October 31, 1998, an entry on the statement – tab 15, p. 60 – indicated a cash withdrawal of $2,200. The appellant could not recall the purpose of that transaction except to state he used cash to buy groceries or to pay for purchases – on a regular basis – since neither he nor his wife had any credit cards in 1998. He used the automatic teller machine to make withdrawals which appeared to be within the fixed daily limit of $300. Himmat Singh Makkar stated he picked blueberries at Gill Farms until laid off by Harmit Kaur Gill on August 28, 1998. He stated the work was beginning to slow down by then as the end of the season was approaching and he was not among the fastest pickers since the first time he had picked blueberries was in 1998. He stated that because he is a worker in a seasonal industry, his employment at Lakeland and Berry Haven each year provides enough insurable hours for him to qualify for UI benefits following layoff.

[40] Himmat Singh Makkar was cross-examined by Shawna Cruz. He stated he passed Grade 10 in India and took ESL classes in Vancouver for 2 or 3 weeks after coming to Canada. He agreed the answer he had given – at Discovery – on November 18, 2003, that the classes lasted 4 or 5 weeks was correct. He stated he can speak and write some English and borrows books from the library to improve his ability to read. He can read and write Punjabi and worked for a railway company in India. Prior to emigrating to Canada, he had not done any farm work. The appellant identified his signature on the last page of the Questionniare – tab 5 – completed on his behalf by Ronnie Gill – on February 23, 2000 – based on his answers which he considered to have been truthful. He recalled attending an interview with Emery on January 18, 1999, at which the Punjabi interpreter Paula Bassi was present. He also remembered speaking on the telephone to Harby Rai. He did not have the opportunity to read over the notes – tab 4 – made by Rai of that January 18, 1999, conversation nor to reflect on his answers prior to responding to Rai during the telephone interview but considered his responses to have been truthful. With respect to the manner in which he learned about the job at Gill Farms, his answer to Q. 2 of the Questionnaire - tab 5 – was that a friend told him about it. The appellant stated he appreciates some of his answers changed – due to the passage of time – but his son-in-law knew Hakam Singh Gill from the mill. When he started working for Gill Farms, he did not know how long the job would last and thought his pay would be about $8 per hour, including holiday pay. Counsel pointed out the amount paid to his wife Santosh Kaur Makkar – as shown on the time sheet in Exhibit R-10, tab 13 – was only $7.50 per hour. The appellant stated he and his wife accepted the wages paid to them as they were content to have found employment at Gill Farms. During the interview with Emery on

January 18, 1999, the notes – tab 9, p. 46 – indicate he had provided an example by stating "by piece rate – 100 lb. = $30", a sum which is the result of multiplying the number of pounds picked by the rate of 30 cents. The appellant stated he had been paid a piece rate when working at Lakeland and may have been confused when giving that answer. He conceded he knew he was required to tell the truth to Emery and, after the first few questions, realized the subject matter of the interview was his employment with Gill Farms. With respect to the matter of picking cards, he stated he used one sometimes whereas during the interview, Emery wrote – p. 46 – that he said "Yes, everyday; it was kept by one of the family members". Emery noted the appellant's answer to the subsequent question whether other workers used picking cards was "all the other workers had picking cards – no workers paid hourly rate". The appellant could not explain why he added the latter part of his answer which was not necessary in order to respond to Emery's question. He stated the berries were weighed 4 times a day because the Gill family – as owners of the farm – wanted to keep track of production by the pickers. He understood the berries could not be exposed to direct sunlight for an extended period so they were taken to the scale 4 times during the day where they were weighed. The picking cards were kept at the scale by Harmit Kaur Gill. The appellant stated he did not take berries to the scale. Counsel referred to the notes - tab 4 – of Harby Rai in respect of her telephone conversation with the appellant, where he said – apparently – that he and his wife were paid $7.50 per hour and had not been given any picking cards. The appellant was shown the photocopy of the Gill Farms picking card – Exhibit A-1 – and stated he could not say with certainty whether he used that card or one similar but recalled he was handed only one part of a picking card – in the morning – on which his wife's production was also recorded. A statement – tab 1 – was provided by his agent, Ronnie Gill in response to an undertaking at Discovery that he produce the picking cards he had used at Gill Farms. In said statement, he indicated he and his wife had been issued picking cards while employed at Gill Farms, that he handled the cards and took information from the cards concerning the number of hours worked each day which he wrote on a calendar. The stated reason for his inability to produce said cards was attributed to the fact he and his wife had moved 2 or 3 times since the end of their employment at Gill Farms as well as his supposition the calendar had been disposed of since it had no value because both he and his wife had been paid all of their wages. The appellant adopted his answer at Discovery that he could pick about 200 pounds of blueberries per day. He considered his wife's daily production was the same. In 1998, he and his wife lived in a basement suite in a house located about 10 kilometres from the Gill Farms and – depending on the route – it took only 10 or 15 minutes to travel from home to work. His wife started working at Gill Farms one day earlier than him but he drove her to work every day except when they rode to work once or twice in a Gill family vehicle. He recalled riding in a pick-up truck with other people but cannot recall who

drove it. He was laid off on August 28, 1998, but his wife continued to work and – occasionally – he drove her to and from the farm but she rode mostly with one of the Gills. The appellant stated that although his time sheet – tab 14 – showed he worked 8 hours each day during his employment, the start and end times were not as strict as those in a factory and recalled there was some variance in work hours but added it was not more than 15 minutes each way. He stated his answer – at Discovery – that all workers started at the same time was wrong. He explained that when quitting time was announced, workers at the far end of the field might finish later than others. Notwithstanding, he thought their end time was recorded the same as others who had left soon after the announcement. He conceded his answer to Rai that he and his wife had started work the same day was incorrect and that he worked 5 days a week – not 7 – as noted by Rai. If it was raining, he and his wife went to the farm and waited for a member of the Gill family to make a decision whether picking would proceed. Counsel pointed out the time sheet of his wife – Santosh Kaur Makkar – during the period of his own employment shows that she worked either 7 or 8 hours a day, 7 days a week without missing even one day. The appellant stated that was correct and confirmed his response to Q. 26 of the Questionnaire – tab 5 – and the answer provided – at Discovery – that he had not missed any work due to bad weather. Counsel pointed out he had answered "No" to Q. 29 of said Questionnaire when asked if he kept records of his own hours of work. The appellant replied he had recorded his work hours on a calendar – initially – by telling his daughter the information and – later – when she did not want to continue, by writing down – personally – the hours. Concerning his tasks at Gill Farms, the appellant stated that other than picking berries, he repaired holes in the nets by using a needle and thick thread. It took 20 to 25 minutes to close a small tear but only after a considerable amount of time had been spent attempting to find the exact location of the hole. This task was carried out on an irregular basis, as required. Usually, he handled the repair himself but Gurdev Singh Gill assisted sometimes. He stated he did not help remove the nets and that the answer – tab 9, p. 45 – provided during the interview was incorrect except that when he went to the farm to pick up his wife he volunteered to help her roll up the nets so she could finish work a bit earlier. He recalled using a tractor to spray grass and agreed he had not mentioned that task when speaking to Emery. He described the apparatus as consisting of a system whereby as many as 6 pipes/hoses could be attached to a drum, although only 4 were used on the farm during 1998. The nozzle on each hose was operated by one person in order to apply spray to the affected area. He stated he cleaned buckets and larger containers, when required, and when he went to the farm to pick up his wife – after he had been laid off – observed workers washing and disinfecting buckets and tubs. While picking berries, although he and his wife used the same container which was later taken to the scale for weighing by Manjit, he denied they were paid for their efforts on the basis they – as a couple – were

equivalent to one person. He stated if he said – at Discovery – his picking card was punched, that answer is incorrect. Counsel referred the appellant to the notes – tab 9, p. 44 – of his interview with Emery in which he stated his supervisors were either Rajinder Singh Gill or an experienced picker who had worked for Gill Farms in previous years. The appellant confirmed that answer was correct and added he did not know the names of other members of the Gill family. He could not recall having worked with the co-appellant Gurdev Singh Gill even though he mentioned him as a co-worker when interviewed by Emery. He told Emery he had worked with another man also named Gurdev Singh Gill who was Ronnie Gill's father. He recalled Manjit Kaur Gill weighed berries but had not seen her picking. However, he knew Harmit Kaur Gill usually operated the scale and saw Rajinder Singh Gill at the farm as well as Hakam Singh Gill – on occasion – especially when one or both of them transported workers. With respect to fellow workers, the appellant stated he was able to see only those individuals working in the same row. At Discovery, the appellant stated he had observed Manjit and Harmit both picking berries during a busy period as well as Hakam if he had been at the farm. The appellant explained he was not providing inconsistent answers deliberately but small details concerning work are easily lost in one's memory. By way of example, he noted that he would have been able to recall the number of the row in which he picked on a particular day – if asked within a day or so – but that ability to recall would be lost with the passage of time. The work was repetitive and he stated that when answering questions – even the same or similar questions – it was reasonable to expect some variation in the responses. He agreed the first HRDC interview had been conducted only a few months after his layoff when it should have been easier to recall details of his employment at Gill Farms. Later, during the summer of 1999, he was interviewed by Harby Rai and subsequently completed a Questionnaire which was returned to Bernie Keays, Appeals Officer. In the course of litigation, he gave evidence at Discovery and then testified in the course of the within proceedings. The appellant conceded it was appropriate to consider his answers during the HRDC interview on January 19, 1999, as the most accurate except some subsequent answers may have provided additional details. With respect to the 6-week delay in cashing the cheque dated August 9, 1998 – in the sum of $200 – the appellant stated there had been more than $13,000 in the family account – at Heritage – at that point and there was no pressing need for the money represented by that small cheque. He had not requested any money and recalled it had been handed to him by a member of the Gill family, probably Harmit. The appellant's ROE – tab 12 – was dated September 14, 1998 and his application – tab 13 – for UI benefits is dated September 4, 1998 but the checked answer to Q. 31 on said form indicates no ROE was attached at that time even though Gill Farms was named as the employer. Cheque # 0507 – tab 10 – in the sum of $742.09, was dated October 26, 1998 but was not deposited to the appellant's account until November 16. When asked by counsel to

explain the reason for the delay, the appellant stated he deposited all pay cheques at the same time because Harmit Kaur Gill had requested him to hold off cashing the cheques until the cash flow improved at Gill Farms. He had not encountered such a request from any other employer. Counsel asked the appellant if he withdrew the sum of $2,000 from his account on October 31, 1998, in order to pay money back to the Gill family as part of an arrangement whereby he and his wife could each receive an ROE which would entitle them to qualify for UI benefits. He stated there was no link between that withdrawal and the employment of him and/or his wife at Gill Farms and they had not repaid any of their wages to any member of the Gill family. With respect to the timing of receiving his ROE and the second cheque, the appellant stated he did not know if he had obtained both at the same time or on two separate occasions but there had been another meeting for the purpose of settling the amount due to his wife for her work. Counsel referred him to answers – at Discovery – to the effect he met with Harmit Kaur Gill about one month after his layoff for the purpose of settling up his own final pay and – later – had driven to the Gill Farms in order to pick up his wife's final cheque but she had not accompanied him. The appellant stated there had been no meeting in the formal sense but he had been to the Gill family residence on two separate occasions in order that his wages and – later – those attributable to his wife's employment could be received in full. The appellant was referred to an entry dated August 21, 1998 – tab 15, p. 58 – indicating there had been a debit card transaction for the purchase of groceries in the sum of $78.52. He agreed the debit card had been used now and then but numerous cash withdrawals from the account served a variety of purposes in order to satisfy the needs of his family because the account was in his name and no family member had a credit card. The appellant stated his current assertion is that he was paid on an hourly basis despite any previous statements – to HRDC officials – that he had been paid a piece rate calculated by the pound. Turning to the matter of the completion of his application – tab 13 – for UI benefits, the appellant confirmed he filled out the first part of the form but the second part had been completed by another person. He signed the form on the last page. Changes were made in the boxes applicable to Q. 17 of the form – by scribbling over the initial entry – so as to state that the appellant's earnings were $8 per hour, based on working a 40–hour week over the course of 5 days. When applying for benefits, the appellant stated he did not have the ROE from Gill Farms and assumed it was obtained by HRDC and that the information in his application with respect to his hourly rate had been changed in order to conform with the information contained in said ROE.

[41] Himmat Singh Makkar was re-examined by his agent, Ronnie Gill. He stated that in 1998, there were 5 family members over age 18 and the account at Heritage was used for the benefit of everyone. Although some groceries were purchased with

the debit card, most were paid for in cash, particularly for food and household supplies obtained at specialty stores operated by Indo-Canadians. He stated his ability to speak and understand English had improved substantially since 1998 and that it was not unusual to hear English words and phrases within a conversation otherwise in Punjabi.

Jarnail Kaur Sidhu

[42] Jarnail Kaur Sidhu testified in Punjabi and the questions and answers and other aspects of the proceedings were interpreted and/or translated from English to Punjabi and Punjabi to English by Russell Gill, interpreter. The respondent's book of documents relevant to this appeal – 2001-2118(EI) – is Exhibit R-11.

[43] The Minister decided the employment of the appellant with Gill Farms during the period from May 25 to September 26, 1998, was not insurable because she was not dealing with the payor at arm's length. In the alternative, the Minister determined she was employed for 325 insurable hours and had insurable earnings in the sum of $2,535. The appellant's position is that the ROE – tab 13 – correctly states her insurable hours – 942 – and her insurable earnings of $7,347.60.

[44] The assumptions of fact specific to the appellant, stated in paragraphs 8(h) to 8(r) inclusive, are as follows:

> (h) the Partnership employed the Appellant in the Period as an hourly employee to pick blueberries and to provide various other related services for the Farm such as gathering dried branches, putting up and taking down nets, hoeing, weeding, spraying, washing buckets etc.;
>
> (i) the Partnership's records of hours worked did not reflect the hours actually worked by the Appellant;
>
> (j) there were times when, in accordance with the payroll records, the Appellant was purported to be working and being paid when there was in fact no work for the Appellant to do;
>
> (k) the number of hours purportedly worked by the hourly employees, as recorded in the Appellant's payroll records, were about three times the industry standard for the size of the Farm;
>
> (l) the Partnership's wage expense for 1998 exceeded the revenue generated in that year;

(m) the Partnership issued a Record of Employment to the Appellant on or about October 7, 1998 indicating that the first day worked was May 25, 1998 and the last day worked was September 26, 1998 and that the Appellant had 942 insurable hours during the Period, with insurable earnings of $7,347.60;

(n) at all times material hereto, the Appellant was not dealing with the Partnership at arm's length;

(o) having regard to all the circumstances of the employment, including the remuneration paid, the terms and conditions, the duration and the nature and importance of the work performed, it is not reasonable to conclude that the Appellant and the Partnership would have entered into a substantially similar contract of employment if they had been dealing with each other at arm's length;

(p) the Appellant actually worked no more than 325 hours during the Period;

(q) the Appellant was paid at a rate of $7.50 per hour plus 4% holiday pay; and

(r) the Appellant's earnings in the Period were $2,535.00.

[45] The appellant testified she was born in India in 1941 and came to Canada in 1996. After arriving in Canada, she worked for one week until she was injured in a motor vehicle accident that totally damaged the van in which she was a passenger. As a result of injuries sustained in the collision, she did not work during the remainder of 1996 nor – at all – in 1997. She worked for Gill Farms in 1998 and in subsequent years remained at home to care for her first granddaughter who was born in October that year. This arrangement permitted her daughter-in-law to work outside the home. The appellant stated she is not able to read and/or write in either Punjabi or English. Because she had no daughters of her own, the appellant stated she gave traditional gifts – including gold – as well as a number of suits and other items of clothing to her son's wife. In total, she recalled having spent "quite a bit of money". At Gill Farms, her initial tasks included digging holes in which to insert wooden poles around which cement and gravel were added to steady them. She removed grass, spread sawdust, cut off dry branches from the blueberry plants and repaired some wires used to hold the nets. She worked with two or three other women as well as with Harmit Kaur Gill and Manjit Kaur Gill in order to erect the netting system. The nets were raised onto wires by workers standing on ladders and unrolling the netting until it could be spread over the poles. The appellant stated the hooks caught sometimes and it required time and effort to untangle the blockage. Due to her physical condition attributable to her car accident in 1996, she did not climb the ladder herself but assisted a female worker to install the netting. The appellant recalled attending – on January 19, 1999 – at an

HRDC office where she was interviewed by Turgeon, whose notes are at Exhibit R-7, tab 7. Jugender – a Punjabi-speaking HRDC employee – acted as interpreter but the appellant stated there were times when she did not understand some matters even when attempts were made – by Jugender – to interpret the questions posed by Turgeon. She stated she was interviewed in a small room and even though she was nervous and upset during the process, was under the impression she was not free to leave even after Turgeon – for some reason – banged on the table. At the interview, the appellant stated she was paid $8 or $8.50 per hour for all tasks performed, including picking berries and that she received – sometimes – one part of a picking card which was taken back at the end of the day for some reason not disclosed to her. During berry season, she assisted in a procedure whereby the grass was sprayed by using a long hose which was held away from the plants by two women while a man operated the nozzle. The appellant described working at tasks such as cutting dry branches and removing thorns from the bushes, using a sickle to remove grass, cleaning up debris, stacking containers, cleaning buckets and tubs, all of which were performed when berry season had ended. She also worked to take down the nets which she recalled took about the same amount of time as to install at the start of the season. Although she could not recall the exact number of days required for these tasks she recalled both were a time–consuming procedure. Concerning transportation to work, she recalled riding with Harmit and Manjit and – on occasion – in vehicles driven by either Hakam or Rajinder. Initially, she was the only passenger in a vehicle but later rode to work with Harbans Kaur Khatra. She lived in Aldergrove – near the residence of Khatra – but does not know the name of the street. She was aware most other workers were from the Abbotsford area. Her residence was closer to the Gill Farms than those of her co-workers. When the season ended, the appellant reviewed matters with her landlord – a lady who lived upstairs – and was satisfied she had been paid in full by Gill Farms. She did not sign her application – tab 14 – for UI benefits and does not know who completed it on her behalf. The address used therein was that of Gill Farms on Lefeuvre Road in Abbotsford even though she lived in the Langley region. Her recollection is that someone at the counter of the HRDC office advised her she should use an Abbotsford address on her application because that municipality was located within a region that would provide her with more weeks of UI benefits. The appellant stated she received cheque # 0469 – tab 11, second from bottom, p. 49 – dated September 27, 1998 – in the sum of $1,310.25 – which was deposited to her account at Aldergrove Credit Union two days later on September 29. She also received cheque # 0499, dated October 24, 1998 – tab 9, top of p. 45 – in the sum of $1,580, which she deposited on October 26. Cheque # 0493 – tab 9, also on p. 45 – dated October 23, 1998 – in the sum of $1,349 – was deposited to her account on October 23 (the photocopy of the cheques in tab 8 is the same as the one in tab 9). She also received cheque # 0498 – tab 10, bottom of p. 47 – dated October 15, 1998 – in

the sum of $2,000 – which she deposited to her account on October 26, 1998. Earlier, she received cheque # 0425 – tab 12, top of p. 51 – dated August 9, 1998 – in the sum of $200 – which she deposited on August 17. The account was in the name of the appellant and her husband and the statement of activity is at tab 16. Her son was able to withdraw money from the account. The appellant stated she was accustomed to using cash for purchases even though the usual discount offered by most vendors for that form of payment was less than $10. She did not write cheques and did not have any credit cards. Fairly large amounts of cash were kept at home for use by family members. The appellant stated it is customary to present cash in an envelope as the proper form of gift at celebrations – such as birthdays or weddings – within the Indo-Canadian community in circumstances where the recipient does not have a close relationship with the donor. The appellant stated she rode alone in the car but was with other passengers – including Harbans Kaur Khatra – when picked up in the truck. She estimated that during peak season between 25 and 30 people worked at Gill Farms but she did not know the names of co-workers except for Gurdev Singh Gill and his wife and a girl, Manjit Kaur Sidhu.

[46] The appellant – Jarnail Kaur Sidhu – was cross-examined by Amy Francis. She recounted the physical damage caused by the seat belt during the motor vehicle accident which affected her right shoulder and back and caused ongoing pain for a considerable period of time afterward. During 1998, it was not a problem for the most part but she preferred to take a lunch break of one hour, on occasion. She worked every day during a 3-month period because there was enough work on the farm to keep her busy. She identified her signature – as traced by her – on the last page of the Questionnaire – tab 4 – which was completed in her home, although she does not recall the surrounding circumstances. In India, she and her husband lived on a family farm that grew cotton which was harvested by hired pickers. Before marriage, she worked on a cotton farm owned by her parents and milked between 15 and 20 cows. Her husband did not work for Gill Farms in 1998 but had worked there during either 1996 or 1997. In 1998, because the family had only one car, her husband stayed at home and took family members to and from work and school. The appellant stated she sought employment at Gill Farms because the family needed the income. She was accompanied by her niece – Amarjit –- when she discussed the job with Manjit, Harmit and Hakam and was told she would be paid on an hourly basis. The appellant stated Amarjit was aware of the length of the typical berry season and assured her that workers would be picked up and taken home by the Gill family. She understood there would be work throughout the season but there was no promise made by any of the Gills concerning any specific number of hours of employment nor any guarantee of the duration. She stated there was no mention at the meeting with the Gills of the amount of insurable hours needed to qualify for UI benefits. After starting work at

Gill Farms, she followed the same procedure each morning and waited by the window so she could see when the Gill vehicle arrived to pick her up for work, usually at or near the same time, allowing for a 5-15 minute difference due to traffic conditions. She did not wear a watch but thought she was picked up between 7:00 a.m. and 8:00 a.m. each day and was dropped off after work was finished. Counsel referred her to a note – tab 3, p. 27 – made by Harby Rai with respect to their telephone conversation on July 27, 1999, where the appellant apparently stated she worked until 8:00 or 9:00 in the evening. The appellant did not recall that statement and added that this information was incorrect because she had not worked when it was dark. Although Rai's notes contained a recitation of the appellant's duties at Gill Farms, she did not have any recollection of the conversation but agrees it must have occurred. The appellant stated the workers from Abbotsford rode in the pickup and she and Harbans Kaur Khatra usually rode to work in the car by themselves. Sometimes, Khatra's son came to the farm at the end of the day and drove them home. She and Harbans Kaur Khatra started at Gill Farms the same day and worked together for the ensuing 77 days. Counsel referred the appellant to the time sheet – Exhibit R-4, tab 15 – of Harbans Kaur Khatra and pointed out that on 44 of 77 days, she had worked either one or two hours less than Khatra even though they rode to and from work together. The appellant stated she could not explain that difference in the time records. She stated she was supervised by Manjit and Harmit and saw Manjit working on the farm every day. Now and then, she observed Rajinder walking around the farm and Hakam also was there after returning home from his job. Hakam and some of the Gill children picked berries occasionally – for a few minutes – and Harmit sometimes picked berries for 5 minutes or so and dropped them in any bucket that was handy. Manjit carried large containers of berries to the scale. To the best of the appellant's recollection, there were only 5 to 7 people working on the farm on her first day, including Gyan Kaur Jawanda, a female named Sukhwinder, Manjit Kaur Sidhu and Harmit and Manjit Gill. Counsel advised the appellant that when interviewed at the HRDC office, Turgeon noted – tab 7, p. 40 – the appellant's estimate that between 12 and 15 people worked with her when she first started her job and that she had repeated the same answer to that question as noted by Turgeon on p. 41. The appellant reiterated she had been very upset and nervous during that interview. Counsel suggested this statement was probably true because by the time she really started working at Gill Farms, it was already berry season and she had not begun her employment at the end of May, as alleged. The appellant stated although she did not understand the purpose of the picking card because she was paid on an hourly basis, she retained the card and placed it on top of the berries when her bucket was full. In the interim, it was kept inside an empty bucket. She considered the card was used so the Gill family could figure out whether the average production of any picker justified paying an hourly wage. Manjit carried away the large container of berries to the scale

but did not recall the manner in which it was returned to her. She stated if she had realized such petty details would be important at some point, she may have paid more attention to otherwise insignificant matters. Counsel referred the appellant to a question about whether she kept track of hours and days worked and to her response as noted by Turgeon – tab 7, p. 41 – "I was given a card each day I worked". Earlier on the same page, in response to a direct question whether she was given picking cards, Turgeon noted the appellant stated "Yes, 1 card for each day, name on card". Concerning her response to the next question whether other workers received picking cards, Turgeon wrote "Yes, everyone got a picking card". The appellant stated those answers are not correct and that she was so upset during the interview she "does not know what came out of my mouth". Turgeon also wrote the appellant said "We had to return the cards when we were going to be paid". The appellant denied having made that statement although she agreed some of the information recorded as representing her answers during the interview was correct. Counsel addressed the issues arising from the notes – tab 3 – made by Harby Rai concerning the telephone conversation – in Punjabi – with the appellant on July 27, 1999 during which she apparently told Rai she had not received a picking card because she had been paid by the hour. The appellant stated she thought about that conversation during the evening following her first day of testimony in the within proceedings but could recall only that the call was made during which Rai asked some questions. The Questionnaire – tab 4 – was completed by Ronnie Gill in the presence of Amarjit Sivia, the appellant's niece and landlady. The appellant conceded she must have supplied the answers written therein, including the one – to Q. 40 – stating she had not used a picking card because she had no need for it. However, the answer to the next question whether she used a picking card for every day of work was "No. Harmit gave me one everyday". The appellant explained the confusion may have been due to the fact a picking card was handed to her only on some days so the Gill family could monitor production. She recalled giving evidence – at Discovery – in November, 2002, where she stated the picking card was used to record how much she picked even though she – personally – did not "hold the card". Later in Discovery, she stated that at the end of the working day Harmit often told her "Auntie, you picked a lot of berries; good job" but did not disclose the actual poundage picked even though the card was shown to her. Counsel asked which version was true and the appellant stated the card was with her – sometimes – while she worked in the field. She did not recall her daily production but understood the owners wanted pickers to work fast – within reason – to pick the berries and to choose only the ripe ones. Although she usually put her berries in a large plastic container, she sometimes used a flat which was carried away by Manjit. Once berry season ended, the appellant stated she performed some trimming of dry branches – by using scissors – which she considered to be a form of pruning. While she did not participate in planting new bushes early in the season, she noticed new

plants within the rows at some places. She was unable to recall during what period she worked spreading sawdust around the plants and thought Harbans Kaur Khatra had assisted her in that process even though Khatra did not start work at Gill Farms until July. The appellant stated it is very difficult to recall the sequence of what is essentially mundane, repetitive work, particularly years later. She went with Amarjit Sivia to the Gill residence in order to settle up and spoke with Harmit and Manjit but is uncertain whether she received her final cheque at that time and/or whether the ROE was also handed to her. With respect to the application – tab 14 – for UI benefits, the appellant stated no member of the Gill family had been at the HRDC office with her nor had any of them assisted her to complete the form. She talked to some people while in that office and someone mentioned that UI benefits were more generous if a worker lived in the Abbotsford region rather than in Aldergrove which had a lower rate of unemployment. Counsel advised the Court there were 3 different statements within tab 16 but the one commencing at p. 77 was in relation to another account operated by other members of the appellant's family and was not relevant to her appeal. The appellant was referred to the statement - tab 16, p. 75 – and to an entry on October 23, 1998 indicating a cash withdrawal in the sum of $2,300 and to the October 26, 1998 entry recording the deposit of her $2,000 cheque from Gill Farms which had been dated October 15, 1998. The appellant stated she could not explain why three pay cheques from Gill Farms were not deposited until October 26 if she - or someone from her family authorized to operate the account – had been at the bank three days earlier to withdraw the sum of $2,000. Counsel directed the appellant to an entry on a statement – tab 16, p. 67 – on October 23, 1998, recording a cash withdrawal of $1,450 from another account within the same credit union. The appellant stated there may be some confusion arising in relation to the sequence in which the cheques were issued and/or cashed.

[47] The appellant – Jarnail Kaur Sidhu – was re–examined by her agent, Ronnie Gill. The appellant was referred to cheque # 0499 – tab 9 – dated October 24, 1998 in the sum of $1,580 which was deposited to the appellant's account two days later and to cheque # 0493 – tab 9 – dated October 23, 1998 in the sum of $1,349 deposited the same day and to cheque # 0498 – tab 10 – dated October 15, 1998 in the sum of $2,000 which was deposited on October 26, 1998. The appellant stated it was likely that all 3 cheques were written at once and that cheque # 0498 – probably – was backdated to October 15, 1998. Two cash withdrawals totalling $3,750 were made on October 23, 1998 from two separate accounts in the same credit union, one at 12:22 p.m. and the other at 4:13 p.m., the same day. The appellant stated the accounts were accessible to herself, her husband and their son so those withdrawals may have been made by different people for different reasons. The appellant was referred to several entries in the statements within tab 16, recording the following cash withdrawals:

$4,000 on January 12, 1998 – p. 60; $800 on January 9, 1998 – p. 60; $600 on February 2, 1998 – p. 61; $4,000 on May 21, 1998 – p. 63, all of which were prior to the two withdrawals on October 23, 1998 that were the subject of questioning by counsel for the respondent. The appellant stated it was not unusual for relatively large sums of cash to be withdrawn for use by family members and that the sum of $4,000 withdrawn on May 21, 1998 could have been the subject of a loan to help someone in the family or within the Indo-Canadian community. The appellant stated her best recollection of her telephone conversation with Harby Rai is that it was brief and that she terminated the conversation after answering some of Rai's questions. She stated the response to Q. 40 of the Questionnaire – tab 4 – that she had not used a picking card was based on her understanding that picking cards were never issued for her to use but were handed out to permit the Gill family to know the extent of her daily production. In that sense, she considered she did not use any picking card for her own purpose because there was no need to do so. The appellant reiterated there had been no guarantee of any duration of work but she fully expected to be employed until the end of the season because her niece – Amarjit – had some knowledge of the berry industry and had informed her a full period of employment was normal if farmers needed pickers. The appellant stated she relied on Harmit to record – accurately – her hours of work.

Manjit Kaur Gill

[48] Manjit Kaur Gill testified in Punjabi and the questions and answers and other aspects of the proceedings were interpreted and/or translated from English to Punjabi and Punjabi to English by Russell Gill, interpreter. The respondent's book of documents relevant to this appeal – 2001-2100(EI) – is Exhibit R-8.

[49] The Minister decided the appellant's employment with Gill Farms from May 25 to September 26, 1998, from May 25 to September 27, 1997 and from June 2 to October 19, 1996 was not insurable because she was related to the individuals operating the payor partnership and the Minister was not satisfied pursuant to paragraph 5(2)(*i*) of the *EIA* that she and the payor would have entered into a substantially similar contract of employment if they had been dealing at arm's length.

[50] The appellant's position is that she was employed during those periods under reasonable terms and conditions and was paid a reasonable amount for her efforts in the course of performing supervisory work within a seasonal industry and that the details of her employment during those relevant periods were correctly stated in the relevant ROEs issued by Gill Farms.

[51] The assumptions of fact specific to the appellant, stated in paragraphs 7(h) to 7(r) inclusive, are as follows:

> (h) the Partnership employed the Appellant in the Periods as a supervisor on the Farm;
>
> (i) the Appellant's sister, Harmit, was also employed by the Partnership in the Periods as a supervisor on the Farm;
>
> (j) the hours worked by the Appellant as set out in the Partnership's records did not reflect the hours actually worked by the Appellant;
>
> (k) there were times when, in accordance with the payroll records, the Appellant was purported to be working as a supervisor when there was in fact no work for the other workers to do;
>
> (l) the number of hours purportedly worked by the hourly employees, as recorded in the Appellant's payroll records, were about three times the industry standard for the size of the Farm;
>
> (m) the Partnership's wage expense for 1998 exceeded the revenue generated in that year;
>
> (n) there was no need for the Partnership to employ two fulltime supervisors in the Periods;
>
> (o) the Partnership issued Records of Employment to the Appellant in respect of the Periods which she used to collect Employment Insurance benefits;
>
> (p) the Appellant is related to the Partnership within the meaning of the Income Tax Act;
>
> (q) at all times material hereto, the Appellant was not dealing with the Partnership at arm’s length; and
>
> (r) having regard to all the circumstances of the employment, including the remuneration paid, the terms and conditions, the duration and the nature and importance of the work performed, it is not reasonable to conclude that the Appellant and the Partnership would have entered into a substantially similar contract of employment if they had been dealing with each other at arm’s length;

[52] Manjit Kaur Gill testified she is married to Rajinder Singh Gill. She was born in India – in 1950 – and came to Canada in 1972. She is currently employed as a

supervisor at Gill Farms, having started work on June 15, 2005, at a salary of $9 per hour. Blueberry picking commenced on June 25, 2005 and between 15 and 20 employees are currently performing that task. The appellant stated the work performed each season is more or less the same. During 1996, 1997, 1998 – the years at issue in her appeal – and in subsequent years, she began working near the end of May or in the first part of June. She recited the tasks needed to prepare for a forthcoming season such as fertilizing, cutting off dry branches, spreading sawdust, cleaning hoses, removing grass by hoeing or using a small hand tool, repairing and installing the nets, replacing old or damaged poles and replacing drippers on the irrigation hoses and otherwise ensuring the watering system – fed from a well – is in good working condition. The appellant referred to a photograph in order to point out the pipe that runs along the ground and to the drippers – that supply water – located near the roots of the blueberry plants. She explained the process of inspecting drippers requires a worker to move aside the roots of the plant in order to determine if that mechanism had been damaged or broken, perhaps by having been stepped on by pickers during the previous season. In the event it is necessary to replace a dripper, the sawdust material has to be removed. Sometimes, the dripper holes are plugged and a cleaning is required to permit the flow of water. The water supply to the system is turned off each year prior to winter which is the start of the rainy season. The appellant stated an average row contains 65 plants and each plant is serviced by one dripper. In total, the appellant estimated this procedure is carried out over the course of 5 or 6 days. With respect to the installation of the nets, the appellant stated 5 or 6 people worked for 8 days – in 2005 – to complete the task. The nets are unrolled and two people – on ladders – hold one side of a section of netting and two other people – also on ladders – hold the other side until it has been placed properly on the poles and secured to the wires. The appellant estimated one section of net would cover an area equivalent to the large courtroom – perhaps 2,000 square feet – in which the appeals were heard. During the season, it is sometimes necessary to repair the nets due to tearing or piercing of the material. At the end of each season, the nets are removed and rolled and the wires are separated. Other tasks include cutting off dry branches, cleaning and washing 200 large containers and 100 small buckets. New plants are placed in the soil according to need in a particular year and 100 were planted in 2003. The appellant stated picking season started on June 25, 2005, which was early and the only other early start she could recall was one on June 21. In her experience, a late start would be July 17 in any given year. The appellant stated that during the periods under appeal and thereafter, she worked in the field where she performed several tasks including carrying buckets of berries – to the scale for weighing - from the point of picking. In so doing, she either returned the bucket to its original location or left another in its place. She brought water and other beverages to workers and – if time permitted – also picked berries. The small buckets held 5 to 7 pounds of berries and

pickers emptied them into the larger container/bucket which held 25 to 30 pounds so it required 5 small buckets to fill the larger one. The appellant stated a good worker can pick 35 pounds per hour so every 2 hours almost 3 large buckets will be full. In order to demonstrate the type of berry currently in full season, the appellant – on July 7, 2005 – took a photograph – Exhibit A–7 – of a Northland plant with berries. She stated Northland was prolific and pointed to the presence of several green berries amidst the ripe bunches. The next crop to mature is Blue Crop and the appellant referred to two other photographs on a sheet – Exhibit A-8 – in which the berries are a mixture of ripe and green whereas in the photograph – Exhibit A-9 – also taken on July 7, the Dixie berries are completely green. After two pickings of the Blue Crop variety, Dixie is next but it was not ready to pick on July 14, 2005, the day of the appellant's direct examination. The appellant stated the 9 rows of Dixie plants at the rear of the property, although mixed with some Blue Crop plants, are physically separated from Northland and other varieties. There is a mixture of other varieties within rows and the Blue Crop plants are marked with a blue ribbon so pickers can distinguish that berry from others. The appellant stated the varieties are picked separately and the price Gill Farms receives from the sale of Northland berries is less than that obtained for other types. As a result, a picker whose task it is to pick Blue Crop, will pass by a Northland bush which will be picked by a worker who has been designated to harvest Northland berries. The appellant stated she has 4 children and all of them lived at home in 1998. Three of them have since married and live in their own homes in the municipalities of Surrey and Abbotsford. While living at home, her son – Baljit – worked as a machinist in the airplane industry and her daughter – Harpreet – worked for the same employer while the youngest two children were still in high school and only picked berries now and then during their spare time. With respect to the development of the farm, Manjit Kaur Gill stated the property was purchased in 1979, at which point it was completely planted in grass. The first crop grown on the 8.25–acre parcel was strawberries which have a lifespan of 3 years. Once the strawberry plants were finished, the family began replacing them with blueberry plants until – in 1983 – the entire acreage was devoted to that crop. Some plants produced a harvest within two years while others did not mature fully for another 6 years. The appellant stated she has worked at a cannery since 1984 and also worked 7 years – full time – on a mushroom farm. She also worked a night shift at a cannery in Haney when called upon during the berry season and continued to work for that entity when it moved to Chiliwack until it closed out its business operations. In 1994 and 1995, she worked 3 months a year at the cannery and had another job at the same time. The mushroom farm did not have a season like other crops so some days she worked 4 hours but during other more intensive periods of activity during the year, she worked more hours on a regular basis. The appellant stated her husband – Rajinder Singh Gill – started working – in 1971 – in a mill in northern British

Columbia and continued that line of work after moving to the Lower Mainland until he was laid off in 1999. Because he suffered from a sore back, he did not do much farm work and even the spraying – using the tractor – was carried out by Hakam. Manjit Kaur Gill stated that when working – in 1996 – at the Haney cannery, she earned $13 per hour and was able to work lots of overtime. She also worked at the Lucerne cannery and earned $8.35 an hour but only after accumulating 150 days work – a level she has not attained from 1996 to 2005 – is the pay increased to $13 per hour. She currently earns $8.90 per hour. The appellant stated she had not attended any business or farming courses and has accumulated knowledge by working on strawberry and raspberry farms and from her work on the mushroom farm and in the canneries. She stated Rajinder Singh Gill and Hakam Singh Gill both worked at full-time jobs in the years prior to 1998, and invested their salaries in developing the farming operation. She also used her wages to support the farm and between 1999 and 2003, incurred considerable expenses as a result of the weddings of three of her children. During the 1998 farming season, the appellant recalled working with each of the appellants named in the within proceedings and also with Manjit Kaur Sidhu, Pawandeep Kaur Gill, Gurdial Kaur Grewal, none of whom are a party to said proceedings. The nets were installed by her, Harmit, Sukwinder Kaur Gill, Gyan Kaur Jawanda and Manjit K. Sidhu. The appellant stated Jarnail Kaur Sidhu, Harbans Kaur Khatra and Pawandeep Kaur Gill suffered from back problems so she carried their 25–pound buckets of berries to the scale. She also carried full buckets for other female workers but the men brought their own containers to the scale. During the busy part of the season, a bucket would be filled every hour and the appellant walked around the rows in order to see which buckets needed to be emptied and she carried them – two at a time – to Harmit. The same procedure is being used in the current 2005 season. The appellant stated that – in 1998 – with 15 workers picking about 35 pounds per hour, it required a lot of time merely to take the buckets to be weighed. The scale was moved from time to time in order to be closer to the pickers so the appellant would not have to walk any longer than necessary while carrying 50 pounds of berries in two buckets. The scale was mounted on a 4-wheeled cart which also held a supply of buckets. Harmit operated the scale and recorded the average production by pickers. The appellant identified the picking card - Exhibit A-1 – as the type used in the 2005 current season. If the picker is paid on a piecework basis, he or she retains the part labelled "Picker" and Gill Farms keeps the one to be used by the "Grower". The appellant stated most workers – in 2005 – prefer to be paid on a piecework basis. In 1998, picking cards were issued to workers and when the appellant picked up a bucket of berries from a worker, she used a pen to note that person’s name on the side of the container and also wrote the name down on a piece of paper. When delivering the bucket to Harmit at the scale, she informed Harmit of the identity of the picker who had filled that bucket. Harmit weighed the berries and

checked them over for quality in order to avoid the situation where the cannery could pay a lower price because it had assigned a lower grade to a shipment. The appellant explained that even though the word “cannery” is used within the industry, that type of facility also uses berries to make jam, wine, muffins, pies, juice and other products. The appellant recalled the berry crop was somewhat thinner in 1998 – even during peak season – and took longer to harvest. The Blue Crop variety is the easiest to pick because it produces high volumes of berries. During the busy part of the picking season, berries are taken to the cannery 3 or 4 times each day by a member of the Gill Family. Concerning the issue of transportation of workers – in 1998 – the appellant stated both herself and Harmit drove them to and/or from work. At Aldergrove, she or another member of her family picked up Harbans Kaur Khatra and Jarnail Kaur Sidhu both of whom lived about 7 minutes driving time from Gill Farms. Other workers lived farther away and it took 15 minutes – each way – to pick them up and return to the farm. On occasion, some workers were taken home in the evening by a family member who had stopped by the farm. The appellant stated Gurdev Singh Gill and his wife always needed a ride and were picked up first – and taken home first – by a Gill family member using the small green car. However, even if those workers were at the farm by 7:30 a.m. – before other workers – they might have had to wait for the dew to evaporate before they could start picking. The appellant drove a truck that carried 5 passengers and sometimes it was necessary to make two trips to Abbotsford to collect workers but by 9:00 a.m., all workers were on site. The appellant was referred to Exhibit A-10, a photograph of a small-diameter black irrigation hose with a protruding outlet or dripper. She produced an actual dripper which was filed as Exhibit A-11. She stated a dripper is screwed into the pipe and in the course of preparing for a forthcoming season, the crew carries drippers with them when they clear away material from the appropriate area, examine the condition of the dripper and, if required, replace it. The rows range in size from 120 to 400 plants some of which extend continuously to the limit of the Gill family property. The bushes are about 5 feet tall and it is difficult to see other workers unless they are picking nearby in the same row. The appellant stated the same procedure is followed every year – including 1998 – when sawdust is spread around plants at the beginning of the season and again in the fall. Hoeing is also done at least twice per season in order to remove grass. The appellant stated she has always worked – even in 1984 when her son was only 10 days old – because she did not want to lose her seniority at the cannery. In her opinion, if she had not worked for Gill Farms in 1996, 1997 and 1998, the Gill brothers would have needed to hire someone to carry out her duties and responsibilities. In her view, the hourly rate of $9 was reasonable bearing in mind the nature of her work. From her standpoint, she was content to accept that wage because if she worked at another job outside the farm, her remuneration would be at or near the minimum wage which ranged from about $7.15 to $7.50 during the relevant periods under appeal. In relation

to her supervisory duties, the appellant stated the piecework pickers were admonished - sometimes – if the percentage of green berries was too high because the canneries would not pay Gill Farms for those berries. She directed the hourly workers to pick the Blue Crop variety. The appellant stated that in the morning it was usual to have 10 pickers on the farm but after 3:00 p.m. when the greenhouses closed for the day – because of the intense heat – another 10 people would come to the farm to pick berries. In 1998, some berry sales were in response to specific orders from stores that demanded clean berries and so the conveyor/sorting belt was used to ensure the purchasers would receive high-quality product. Upon receiving a telephone call from someone placing an order, the appellant stated Harmit would carry out that request by obtaining assistance from Harbans Kaur Khatra – and, perhaps another worker, on occasion – to sort and clean the necessary amount of berries. However, berries grown by Gill Farms are sold – currently – only to canneries and any sorting function is performed by those facilities. In 1998, picking started – mostly – at about 8:00 a.m. whereas the current practice is to begin 30 minutes earlier and to continue until 9:00 p.m. in order to accommodate pickers who are paid by piecework. The appellant stated that throughout any season she is kept busy performing a variety of tasks, including inspection of bushes to ensure they have been picked properly because if a ripe berry has been left on a plant it becomes mouldy and can damage the quality of the remaining berries that are still green. In the event of rain heavy enough to stop picking, the hourly workers went inside a garage and were paid while they waited but the pieceworkers were not paid and often wanted to go home. The appellant stated she was not responsible for recording working hours of any employee and if she noticed a worker taking an extended break or resting – perhaps, due to not feeling well – she informed Harmit who dealt with the situation. With regard to the settling-up process at the end of the season, the appellant stated although she was present on occasion, that function was Harmit's responsibility and for that purpose she used a separate room in the Gill family residence. She recalled the meeting could occupy as long as one hour, particularly if the worker wanted an explanation of some aspect of the transaction. She stated Harmit handled the paperwork relating to employees if they quit for one reason or another. Returning to the issue of transporting workers, the appellant stated Gill Farms did not have cell phones in 1998 but she and Harmit took a cordless residential telephone into the field and workers – including those paid by piecework – called that number in order to arrange for a ride to work. The appellant stated Hakam Singh Gill decided when her services were required each season and her start date varied depending on the weather but he usually gave her about one week's advance notice. By way of example, due to warmer temperatures, the preparatory work began on May 15 in 2005 and some berries were ripe by June 25. In April, the bushes produce a white fluff and then flowers form and bees pollinate the plants and the berries start to form in May. An independent supplier is contracted to bring bees to the field for

purposes of pollination and the time required, although it varies from year to year, is between one and two weeks. Once the bees have been removed, the farm work can begin. The appellant stated her husband – Rajinder – although excited about the prospect of farming when the land was acquired in 1979 and for some years thereafter, lost interest and did not participate actively in the operation of the farm. Hakam carried out the management role and upon returning from work walked into the field to greet workers and to observe the work being done. The current policy at Gill Farms is to leave the nets up at the end of the season but in 1998 they were removed, rolled up, tied around the wires on the poles and covered in black plastic. In earlier years, the nets were rolled up and stored in the garage. The nets are now 15 years old and have been mended many times as a result of having been torn by various animals. Hakam also patrolled the picking area looking for holes in the material and gave instructions to workers to carry out repairs, if necessary. The appellant stated it was important to detect and repair breaches to the cover because birds were able to enter and consume a substantial amount of the berry crop. She recalled that during the summer of 1998, it was necessary to deal with an abundance of grass growing near the roots of the blueberry plants by moving it away from the base of the bushes and applying spray from a long hose that several workers supported in order to keep it from resting on other plants and causing damage. Hakam operated the tractor and supervised the spraying operation. The appellant described the mechanisms involved, including the hoses – of varying lengths – which were about the same diameter as a typical household garden hose and each hose was attached to one of four separate outlets on the sprayer tank. Some hoses were composed of only one length while others were made up of several sections joined together and these longer ones had to be supported by workers in order that the spray could be applied specifically to an area so damage to neighbouring plants could be avoided. A backpack sprayer was also used by Hakam to apply the liquid to a small area of unwanted grass. Larger, dry areas of grass were removed by hand. The appellant explained the ongoing problem with the grass stemmed from the fact the farm – in 1979 – was completely sown to grass and had been transformed slowly over ensuing years into a blueberry farm. Other weeds were also present and had to be dealt with by applying herbicides but the spears of grass arrived each year and had to be removed by one means or another, including hoeing and spraying, sometimes in the midst of the growing season. The rate of new growth was suppressed to some extent by spreading sawdust over the area after existing grass had been removed. The appellant recalled Harby Rai and several other members of an inspection team visited Gill Farms on August 12, 1999. The ROE – tab 15 – dated October 10, 1998 was received from the farm accountant a few days later. The appellant's application – tab 18 – for UI benefits following layoff in 1997 stated her husband owned 50% of the payor's business. Following an examination – by HRDC – of her working relationship with the payor partnership of her husband and

brother-in-law, she received her benefits according to an entitlement based on information in her ROE and/or her subsequent application. In 1998, the appellant was satisfied she had been paid in full for her work according to the record kept by Harmit. The appellant reiterated she had always worked more than enough for one or more employers in the course of any given season to qualify for UI benefits following layoff regardless of the nature of the work performed. However, although she and her sister – Manjit – both applied for UI benefits as a result of working for Gill Farms in 1998, Manjit received UI benefits but the appellant did not. From 1999 to 2004, inclusive, the appellant has applied each year for UI benefits based on her seasonal employment with Gill Farms and payments have been denied on each occasion. The appellant is currently employed as a janitor at a bank – working from 9:30 p.m. to 11:30 p.m. – 6 nights a week and earns $1,500 per month. The work location is only 15 minutes from her house and sometimes her daughter helps her perform the work. When work was available at the cannery, the appellant – after finishing work at the bank – went to Lucerne and worked for 4 hours. She also worked at Gill Farms and only worked at the cannery on a graveyard shift. If she returned home at 4:00 a.m. from a shift, she slept about two hours before starting her workday at the farm. The appellant recalled the visit by Emery and Turgeon to her house on November 3, 1998 and stated she understood the subject matter of the discussion was based on the belief – by HRDC officials – that she had attempted to build up insurable hours based on babysitting rather than as a result of working in the fields. The appellant stated she did not understand any reference to babysitting since there were no children in the house and the youngest – Hardeep – was 14 and did not require any child care. The appellant attended an interview on November 26, 1998 and answered questions put to her by Turgeon whose notes are at tab 12. Jugender Dhaliwal was present and acted as an interpreter. The appellant recalled the interview took place in a small room, lasted about two hours and she sensed that Turgeon thought she had not worked on the farm – at all – and was merely claiming enough weeks of employment to qualify for UI benefits. The appellant stated her farm work is basically the same year after year and the duties performed prior to the commencement of the growing season and after the berries are finished occupy the same amount of time, give or take a few days. Each year she was employed by Gill Farms, she received a T4 slip and filed an income tax return reporting the income stated thereon. The appellant was referred to the first of two sheets - tab 22 – with a photocopy of two cheques. The first cheque – # 0445 – dated August 18, 1998 – in the sum of $1,400 – was deposited the same day into the appellant's personal account at the Royal Bank in Aldergrove. The next cheque - # 0446 – dated August 21, 1998 – in the sum of $500 – was deposited into the appellant's account that day. The second sheet in tab 22, upon which two cheques had been photocopied, shows that – on September 8, 1998 – the appellant received cheque # 0457 – in the sum of $1,362.68 – and deposited it to her account the following day.

On September 25, 1998, she received cheque # 0468 – in the sum of $700 – which she endorsed so it could be deposited on her behalf by her nephew, Kulwant Singh Gill. The appellant recalled she had applied the entire amount of her $1,400 cheque – dated August 18, 1998 – to an outstanding balance on a Visa card issued solely in her name.

[53] The appellant – Manjit Kaur Gill – was cross-examined by Amy Francis. The appellant stated she had not discussed her testimony with her sister - Harmit Kaur Gill – nor had they spoken about matters such as the times workers were picked up nor any other details that were the subject of apparent inconsistencies as probed by counsel during Harmit's cross–examination. With respect to current farm practices at Gill Farms, Manjit Kaur Gill stated that on August 2, 2005, there were 8 hourly-paid workers and between 7 and 20 pieceworkers, depending on the day. Six of the hourly workers started the same day and the blueberry season commenced on June 25. The appellant stated she started work about May 15, 1998 although she agreed she had indicated earlier - more than once – that she had started in June but added that any previous reference to the month of June is in error and stems from her preference to describe months as the 5th or the 6th rather than using the English names for months of the year. The appellant agreed she has lived in Canada for 33 years. In 1998, she started work on May 25, about 6 weeks prior to the first picking of any berries. With respect to transporting workers, the appellant stated she and Harmit shared – more or less equally – that duty. Harbans Kaur Khatra and Jarnail Kaur Sidhu lived in Aldergrove and were picked up, taken to the farm, and then the appellant or her sister went to Abbotsford to pick up the workers who resided in that municipality. Counsel reminded the appellant that in the course of her direct examination, she testified she picked up Khatra and Sidhu only after Gurdev Singh Gill and his wife had been taken to the farm. The appellant replied it is difficult to recall the sequence in which workers were transported – in 1998 – but most of the time, Sidhu and Khatra rode home together. Some people continued to work while others were being driven home. Counsel asked the appellant to explain why people who rode to and from work together apparently worked a different number of hours according to their time sheets. The appellant replied that some workers may have taken longer lunch breaks. Counsel referred the appellant to the time sheet – Exhibit R-1, tab 28 – of Kuldip Kaur Sekhon, to the time sheet – Exhibit R-12, tab 14 – of Gyan Kaur Jawanda and to the time sheet – Exhibit R-8, tab 21 – of Manjit Kaur Sidhu. Counsel advised the appellant that previous testimony had established all three rode together from Abbotsford. Counsel referred to the week of September 6–12 on each time sheet which indicated Kuldip Kaur Sekhon apparently worked 9 or 10 hours a day but during the same period, Gyan Kaur Jawanda worked only 7 or 8 hours a day and Manjit Kaur Sidhu worked exactly 8 hours each day that week. The appellant stated she had not been in charge of keeping time records as that function was the

responsibility of Harmit and whomever performed that task during those periods when Harmit was absent while working at the cannery. Counsel advised the appellant that Harmit had testified it had been Manjit - personally – who had carried out that function when she was absent. The appellant replied that was not correct as she had played no part in any record keeping. With respect to arrival times at the farm, the appellant agreed the workers who were picked up in the Abbotsford area would not begin work until between 8:15 and 8:30 each morning. In her absence while picking up Abbotsford workers, the people already dropped off – Gurdev Singh Gill and his wife and Harbans Kaur Khatra – were given instructions where to pick and directed to place any full buckets of berries in a shady spot until she returned. Usually, she and/or Harmit were on site but workers were aware of the work that had to be performed. The appellant stated the time spent driving workers to and from the farm was counted as working time and her total hours were recorded by Harmit. Counsel referred the appellant to her time sheet – Exhibit R-8, tab 23 – indicating she worked at Gill Farms either 8, 8 ½ or 9 hours a day during 1998 whereas there were some periods – such as the week of September 6, previously discussed – where other workers including Kuldip Kaur Sekhon and Gurdev Singh Gill and his wife worked more hours on some days. The appellant reiterated she is unable to account for any supposed inconsistencies because she did not participate in the process of keeping time records. She stated she is able to read and write Punjabi and went to Grade 10 in India. She can speak some English and can read it to a limited extent. The appellant could not recall the year she began working for Gill Farms but it coincided with the hiring of outside workers and she worked as their supervisor. She stated she could not recall the first year the nets were used but it was prior to 1996, at which point all the plants were mature. She stated the irrigation system was installed in 1997. Regarding the visit to the farm by Turgeon and Emery on November 3, 1998, the appellant stated she attempted to answer – truthfully – the questions put to her. Counsel advised her there was no reference to the subject of babysitting but Emery had written – tab 14, p. 66 – that "Harmit and … Manjit both work on the farm from Mar to Sept in a supervisory capacity. They do no picking or weeding". The appellant stated the pieceworkers did not pick the Blue Crop variety and that the Northland variety is the first one to finish. By way of example, the picking of Northland was completed by July 2, 2005. The Dixie variety is the last one harvested and – in 1998 – was picked by both the hourly workers and those paid by piecework. The farm has about 15 Duke variety plants and those berries ripen at the same time as Northland. The appellant was referred to Exhibit R–1, tab 20 – a letter from Lucky Gill-Chatta of LRS Solutions – dated September 30, 1999 and directed to Revenue Canada responding to a request for information – tab 21 of same binder – by Harby Rai concerning workers employed by Gill Farms during the 1998 season. Answer # 10 – tab 20, p. 110 – in response to a question about who supervised workers stated "Manjit K. Gill at all given times

administered the direct supervision of the employees". The response went on to state that Hakam Singh Gill – following discussions with Harmit – told the appellant which of the workers to call to work. Counsel asked the appellant why that procedure would be necessary if the hourly workers worked every day. The appellant stated she could not provide any explanation. In the context of other duties, the appellant recalled carrying as many as 30 buckets of berries per hour during the busy season. Counsel referred to Turgeon's notes – Exhibit R-8, tab 12 – of the interview held at the HRDC office on November 26, 1998 and to p. 58 thereof where Turgeon recorded the appellant's response to a question about her duties as supervisor. As noted, the appellant apparently stated she phoned employees to advise the time to start work, where to go, when to take breaks, where to get their buckets and provided workers with drinks and checked on the quality of their work. Counsel informed the appellant there had been no mention whatsoever of carrying buckets of berries to the scale in order to be weighed by Harmit. In the course of providing a response – Exhibit R-1, tab 20, p. 120 – concerning the appellant's duties, counsel pointed out there had been no mention of carrying berries to the scale although numerous other tasks were listed. Counsel referred the appellant to a letter – Exhibit R-8, tab 6 – dated September 30, 1999 sent by her agent – Ronnie Gill – to Revenue Canada with respect to duties carried out and that – at # 9 – the duties listed did not include carrying berries to be weighed even though this job supposedly occupied a great deal of her time. The appellant agreed that aspect of her job had not been mentioned earlier and cannot explain why it had been omitted. She stated she can understand the concern of HRDC officials but denied having invented that task in order to add to the number of hours worked so she could qualify for UI benefits. The appellant stated she continues – in 2005 – to carry buckets of berries to the scale and has done so in previous years. Pursuant to an undertaking, the appellant provided a letter – Exhibit R-13 – from Lucerne setting her hours worked in 1996, 1997, and 1998, as 16 ¼, 81 ¼ and 74 3/4, respectively. The appellant stated the hours worked – in 1998 – were accrued only during strawberry season in June and consisted of 17 or 18 night shifts of about 4 hours each. According to the payroll sheet – Exhibit R-8, tab 23 – the appellant worked 6 days a week in June, between 8 and 9 hours each day. Including her work at Lucerne, counsel pointed out that amounted to at least 12 hours a day for 20 days in June. The appellant stated she could get by on a few hours of sleep and sometimes worked 4 hours at Lucerne, followed by 8 hours at Gill Farms and then another 4-hour shift at the cannery. She slept and/or rested for a couple of hours after finishing work on the farm and also after completing a shift at Lucerne before returning to work at Gill Farms. The appellant stated the bushes are pruned early in the season and again after the picking is finished. Some years, the berries last until early October but not in 1998. Counsel read out certain answers given by the appellant – at Discovery – in November, 2002, in which she stated no pruning had been done after the nets were up

and – in another reply – that no pruning was done after the nets were taken down. The appellant agreed she gave those answers and had neglected to mention the pruning done in the fall. The appellant stated only hourly workers were involved in taking down the nets and any previous reference to a pieceworker assisting in that task was incorrect. The appellant recalled that 500 new plants were put into the ground in 1998. She agreed that – at Discovery – she estimated there had been 200 to 250 new plants and that sawdust/bark mulch was spread at the end of May. In order to fill an order for direct sale to Greenfield Farms in Richmond, the berries were carried to the scale in 25-pound containers, weighed, and dumped into large containers known as lugs. The appellant stated only flats are used to deliver berries to the canneries and they usually hold 16.5 pounds but more can be added provided care is taken not to squish the berries. Blue tubs – containing 20 pounds – were also used to carry berries to the scale. The appellant stated she wanted to monitor production and verify the quality of berries since leaves, twigs and other debris were sometimes placed in the small picking bucket, even by an experienced picker. The transfer of berries to the flats or tubs took place near one of the houses – on the property – near the road or at another location if picking was being done there. Each place had stacks of flats and/or tubs available in order to carry berries to the scale by either the appellant or Gurdev Singh Gill. The farm property is 10 acres and the appellant pointed to a sketch – Exhibit R-1, tab 4, p. 20 – and to areas marked "new house" and "old house" which she confirmed were the two spots where berries were loaded onto flats. Another location near the old house was also used, on occasion, although the appellant could not pinpoint it on the diagram. The appellant stated she carried as many as 30 buckets of berries per hour to the scale during peak season where - after weighing – the berries were transported to another location and deposited into other containers, whether tubs or flats. If berries had to be cleaned and sorted, that task was carried out near the spot indicated as “old house” on the sketch. Although the scales were moved closer to the pickers, as required, the 3 places where berries were transferred to other containers remained the same. The farthest distance from pickers to the scale would not be more than 100 feet. Then, the berries were carried by the appellant from the scale to a transfer point which would vary in distance but each trip from the rows to the scale also involved another trip to transport the berries to the transfer point. The pieceworkers carried their own berries both to the scale and thereafter to the place where they were placed into other containers. The appellant confirmed that she carried only those berries picked by hourly workers and that at some point during their employment, each worker had been given a picking card to use for one or more days unless they were known to be fast pickers. Counsel referred the appellant to the portion of Turgeon’s notes – Exhibit R-8, tab 13, p. 65 – in respect of the visit by her and Emery to the farm on November 3, 1998 where the appellant stated "all employees that pick berries are provided with a daily picking card". The appellant denied having made that statement

and added she would not have been able to convey that information – in English – in that format because her command of the language is not good enough and no Punjabi interpreter was present. The appellant stated she did not weigh berries and that if Harmit was absent, one of her daughters worked as her replacement. Manjit Kaur Gill stated she did not know if the picking cards were punched or written on in order to record the weight of berries. Regarding the length of breaks, the appellant stated Harmit would be responsible for dealing with that matter in the event some workers took longer breaks on a regular basis. The appellant stated she had understood the hourly workers were not paid – in 1998 – if it rained but accepted Harmit's version that they were paid if required to wait inside the garage until conditions improved. The appellant was referred to a table – Exhibit R-14 – counsel had prepared in order to display information relevant to the various cheques issued to the appellant by Gill Farms. The appellant produced a Visa card in the name of Manjit K. Gill which she stated was the subject of a payment by applying the entire amount of her $1,400 pay cheque dated August 18, 1998. Counsel showed the appellant the bottom portion of a sheet – Exhibit R-2, tab 41, p. 529 – showing the photocopy of cheque # 0409 – dated June 22, 1998 – in the sum of $284.12 with a Visa number as the payee and pointed to the words written on the memo line "Manjit's Royal Bank". The appellant stated that particular Visa account number was different than the one on which she had applied the $1,400 cheque. At one point when her daughter was not married, the appellant had a joint Visa card with her but after the marriage, a new card was issued in the appellant's name only. At Discovery, the appellant stated she had endorsed the $500 cheque – dated August 21, 1998 – in favour of her nephew – Kulwant - because she had owed him that amount. However, prior to having been reminded of her testimony to that effect, the appellant stated Kulwant had gone to the bank – as a favour – to cash the cheque for her. Counsel reminded her both versions could not be correct. The appellant agreed and adopted her answer at Discovery on the basis it was correct. The appellant could not recall why she owed Kulwant that specific sum but he lived on the same farm property – in 1998 – and also worked for Gill Farms. Cheque # 0457 – Exhibit R-8, tab 22, p. 87 – dated September 8, 1998 – in the sum of $1,362.68 – was deposited to the credit of a Royal Visa account bearing the same number as the one to which the previous cheque in the sum of $1,400 had been applied. The appellant recalled she also had a Canadian Imperial Bank of Commerce (CIBC) Visa card in 1998. Counsel referred the appellant to the photocopy - Exhibit R-2, tab 41, p. 510 – of a cheque dated February 20, 1998 – in the sum of $705.39 – payable to a CIBC Visa account number and to the memo line indicating the purpose of the cheque was for "Manjit's bill". Counsel referred the appellant to her Royal account statement – Exhibit R-15 – indicating the October 24, 1998 cheque on the Gill Farms account – in the sum of $2,223.28 – was negotiated on November 9, 1998 of which only $723.28 was deposited to her account suggesting the remaining $1,500 must have

been taken by her in the form of cash. The appellant stated she could not recall that transaction but may have given cash to her son who needed money. At that time, the appellant was aware Gill Farms was waiting to be paid by a cannery but still wanted to be paid her final wages.

[54] The appellant – Manjit Kaur Gill – was re-examined by her agent, Ronnie Gill. The appellant stated her son – Baljit – was married in May, 1998. Her husband – Rajinder – had been laid off by the mill and she used her Visa card to buy gifts for the bride and to pay for a large reception. She also borrowed money from her sister and her daughter. With respect to the policy at the farm about carrying berries, the appellant stated it is currently the same as in 1998 in that she takes buckets to the scale but at coffee breaks, lunch break, and at the end of the day, the workers bring their own bucket(s) to the scale. Sometimes at quitting time, some workers will be waiting to have their berries weighed while others are already being driven home. In order to pick up workers, the appellant stated she left home at 7:15 a.m. and dropped them off at 5:30 p.m. and returned home. Ronnie Gill pointed out that – even allowing for lunch – this schedule constituted a 10-hour day but her time sheet did not have any entry of more than 9 hours on any given day. The appellant stated she relied on Harmit to keep track of her hours just as she did for all other employees. The appellant stated when Greenfield Farms ordered berries the buckets were taken to the old house area where the conveyor belt was located and either Harbans Kaur Khatra or Kuldip Kaur Sekhon helped to clean the amount required so the order could be delivered the following day.

Gurdev Singh Gill

[55] Gurdev Singh Gill testified in Punjabi and the questions and answers and other aspects of the proceedings were interpreted and/or translated from English to Punjabi and Punjabi to English by Russell Gill, interpreter. The respondent's book of documents relevant to this appeal – 2001-2098(EI) – is Exhibit R-3.

[56] The Minister decided the appellant was not engaged in insurable employment with the payor during the period from August 3 to September 12, 1998 because the employment was not at arm's length as a matter of fact. In the alternative, the Minister decided the appropriate number of insurable hours was 108 with insurable earnings in the sum of $810.56. The appellant's position is that the correct number of insurable hours is 210 with insurable earnings of $1,694.10, as decided by the Rulings Officer. The ROE – tab 11– issued by Gill Farms stated the number of insurable hours was 324 and insurable earnings were in the sum of $2,614.68.

[57] The assumptions of fact specific to the appellant, stated in paragraphs 8(h) to 8(r) inclusive, are as follows:

(h) the Partnership employed the Appellant in the Period as an hourly employee to pick blueberries and to provide various other related services for the Farm such as gathering dried branches, putting up and taking down nets, hoeing, weeding, spraying, washing buckets etc.;

(i) the Partnership's records of hours worked did not reflect the hours actually worked by the Appellant;

(j) there were times when, in accordance with the payroll records, the Appellant was purported to be working and being paid when there was in fact no work for the Appellant to do;

(k) the number of hours purportedly worked by the hourly employees, as recorded in the Appellant's payroll records, were about three times the industry standard for the size of the Farm;

(l) the Partnership's wage expense for 1998 exceeded the revenue generated in that year;

(m) the Partnership issued a Record of Employment to the Appellant on or about October 9, 1998 indicating that the first day worked was August 2, 1998 and the last day worked was September 12, 1998 and that the Appellant had 324 insurable hours during the Period, with insurable earnings of $2,614.68;

(n) at all times material hereto, the Appellant was not dealing with the Partnership at arm’s length;

(o) having regard to all the circumstances of the employment, including the remuneration paid, the terms and conditions, the duration and the nature and importance of the work performed, it is not reasonable to conclude that the Appellant and the Partnership would have entered into a substantially similar contract of employment if they had been dealing with each other at arm’s length;

(p) the Appellant actually worked no more than 108 hours during the Period;

(q) the Appellant was paid at a rate of $7.50 per hour plus 7.6% holiday pay; and

(r) the Appellant's earnings in the Period were $810.56.

[58] Gurdev Singh Gill testified he was born in India – in 1940 – and came to Canada with his wife and three children – in 1996 – and they lived with an older daughter who was their sponsor. Within a short period, he found work at Narang Farms in Abbotsford and later moved to rental accommodation on that property. The farm grew vegetables and blueberries and there was also a cannery on the property. After the 1996 season ended, he and his family continued to live there and he worked for Narang Farms again in 1997. In 1998, he worked for Sidhu Farms and lived in a furnished trailer on the property for which he paid rent. In 1998, his son – Gurpreet – was young and two daughters – Malkit Kaur Gill and Jasbir Kaur Gill – worked in Squamish, British Columbia. The appellant stated he is illiterate and innumerate so cannot read nor understand the use of numbers and does not know the exact age of his children. In 1998, he was laid off by the Sidhu family after raspberry season ended and that farm did not grow any blueberries. He knew Gill Farms grew blueberries and although he had not picked that crop before, found out they needed workers. He was hired by Gill Farms and his first task was to pick berries. Later, he performed other tasks as instructed by Manjit Kaur Gill from time to time. He recalled that when the buckets were full of berries, if it was coffee time or the lunch break, he carried those containers to the scale. Otherwise, some member of the Gill family performed that task. The appellant stated that during the course of his employment, he and his wife were driven to work by Manjit or Harmit or Rajinder or Hakam and the trip from their residence at the Sidhu Farms to Gill Farms took 10 to 12 minutes. He recalled that although he and his wife each took one day off each week it was not the same day. In the event it rained, usually the picking continued unless it was enough to cause work to stop, in which case the workers went home for the remainder of the day. The appellant recalled attending an interview – with Turgeon – at the Abbotsford HRDC office on January 18, 1999. Jugender Dhaliwal was the interpreter and Turgeon's notes are in tab 7. The appellant stated he does not understand English so cannot comment on the quality of the interpretation of Turgeon's questions into Punjabi. After working in 1996 and 1997, he qualified for UI benefits but was not aware of the number of insurable hours required in 1998. However, he had wanted to work as long as possible and when no more farm work was available, he applied for benefits. At his current job, the appellant is paid every 15 days – by cheque – but in 1998, he recalled receiving pay on an irregular basis and it seemed as though the Gills paid him only after they had received money from the cannery. He stated his practice was to keep track of his own work hours until the settling-up had been satisfactorily completed at the end of the season. In 1998, Gill Farms paid him $7.50 per hour which he thought was the same rate paid to his wife, Surinder Kaur Gill, a co-appellant (2002–2115(EI)) in the within proceedings. He and his wife were picked up in a green car or in a red and white pick-up truck and – on occasion – one of Rajinder's children used another vehicle. Except for another worker from Aldergrove,

no one else was picked up during the trip to the farm. Sometimes, their son rode with them to the farm and stayed there during the day – playing with Hakam's children – while he and his wife worked in the fields. His son did not pick berries. The appellant was directed to a sheet – tab 8 – and to a photocopy of cheque # 0513 – dated October 26, 1998 – in the sum of $1,166.85, which he deposited on November 19, 1998 to the Khalsa account he and his wife and Jasbir and Gurpreet operated jointly. He and his family also had another account at Canada Trust and Jasbir and Malkiat had an account at Royal that did not include him. The appellant stated he does not write cheques although he has cheques that could be used for that account. Because he and his wife did not drive a vehicle in order to do banking on a regular basis, he withdrew cash, usually in larger amounts, such as $1,000 or $2,000 if he needed the money to buy furniture or for another specific purpose. The appellant stated that even though Jasbir had her driver's licence – in 1998 – he also rode a bus to the credit union from time to time. After layoff that season, a car was purchased for family use and furniture had been purchased earlier due to a relocation to a residence in Abbotsford. The appellant identified his ROE – Exhibit A-13 – dated September 17, 1998 issued by Sidhu Farms stating he had worked 378 insurable hours and had insurable earnings in the sum of $3,024. Gill Farms issued an ROE - Exhibit R-3, tab 11 – indicating the appellant had worked 324 hours and had insurable earnings in the sum of $2,614.68. While working with his wife at Gill Farms, the appellant stated they were supervised by Manjit who told them where to pick. He recalled Harmit was in charge of weighing berries and that Hakam worked on the farm after returning from his outside job. The appellant recalled the nets were still in place when he was laid off. He thought the reason for his layoff was probably due to some sort of seniority policy since he and his wife had worked at Sidhu Farms earlier in the 1998 season and had started working for Gill Farms only in August. In total, he received 3 pay cheques, copies of which are in tabs 8, 9 and 10 in the amounts of $1,166.85, $956.07 and $200, respectively.

[59] The appellant – Gurdev Singh Gill – was cross-examined by Amy Francis. The appellant stated his daughter – Malkiat – had been working in Whistler – in 1998 – and was married during that year at some point before he and his wife started working at Gill Farms. After the marriage, Malkiat and her husband had a residence in Surrey but she continued to work in Whistler and resided in another town - Squamish – during the week. The appellant's daughter's married name is Malkiat Kaur Sidhu but she is not the worker who was issued picking cards for the period July 23-30, 1998, as shown on the photocopy in Exhibit R-1, tab 33, p. 371. In India, the appellant – with his brother and nephews – owned a 30-acre farm, and leased another 50 acres which he farmed with a workforce of 3 permanent employees and another 25 to 30 workers who were hired during the growing season. They grew cotton, wheat and sugar cane.

Upon emigrating to Canada, he left the management of the farm to his brother but still receives some income which he uses when he and his family visit India, mainly for special events such as his daughter's wedding. During his interview – Exhibit R-3, tab 7 – with Turgeon on January 18, 1999, Turgeon noted the appellant stated Rajinder Gill had hired him to work at Gill Farms. The appellant stated they had been driven to Gill Farms by a member of the Sidhu family – their previous employer – because the Sidhus knew the Gills needed pickers as the berries were in danger of being spoiled if not harvested soon. Counsel pointed out that in responding to a question from Revenue Canada about who had hired him, the appellant's stated answer – tab 4, # 3 – was "Hakam Singh". The appellant confirmed that answer is correct but he and his wife had already started working prior to meeting Hakam and had assumed their employment had been arranged by the Sidhu family. When they met with Hakam Singh Gill, there was no promise about any specific duration of their employment and the appellant did not work for Gill Farms after 1998. He estimated that he and his wife rode with either Harmit or Manjit at least 50% of the time and the rest of their rides were with Rajinder, Hakam or one of the Gill children. The appellant stated he had no specific recollection of the identity of the drivers and was content merely to see a Gill family member drive up in a vehicle so he and his wife could go to work. He recalled the pick-up time was rarely later than 7:30 a.m. and did not vary either way more than 5 or 10 minutes and if it was – on occasion – more, someone from the Gill family telephoned to inform them of the change in the pick-up time. When speaking to Turgeon, the notes – tab 7, p. 35 – indicate he stated "Rajinder or Manjit drove a truck (15 people picked up)". Counsel pointed out that in previous testimony he said he and his wife usually rode alone or - sometimes – with one other worker from Aldergrove. At tab 4 the answer in response to Q. 10 of the Questionnaire – also at tab 4 - about how many people rode in the van/bus was "5–7 people". The appellant stated this answer was not correct because he had never gone to work in a van and rode only in a car or in a truck where he and his wife sat in the back seat and - usually – they were the only passengers. He recalled that at quitting time, some people continued to work and he assumed they had started later in the morning than he and his wife. The end of the work day was announced by either Hakam or Manjit and although the time varied – depending on the start time in the morning – it did not vary more than 20 minutes. The appellant stated workers received a picking card – sometimes – and that his berries were weighed at the scale and Harmit marked the weight on a card. He and his wife each emptied their small buckets into their own larger bucket and did not share any container – including a flat – except at the end of the day when one or other would add berries from the small bucket in an attempt to make up one full container. He and his wife each had their own picking card. Counsel read out certain answers provided by the appellant – at Discovery – where he stated that when Harmit weighed the berries she recorded the weight under

the appellant's family name to keep track of how much his family had picked, meaning he and his wife were working together. In answering Q. 210 at Discovery, the appellant said he and his wife had a card jointly and in response to the follow-up question "So, you and your wife shared a card?" the appellant replied "Yes, yes". The appellant stated he must have misunderstood those questions because he and his wife had separate cards, although they always picked in the same row. Counsel advised the appellant his answer – as noted by Turgeon, tab 7, p. 37 – when asked if he received a picking card each day was "Yes. My name on each card, it was also like an attendance, they wrote the start & finish time". The appellant replied he meant to say that his start and finish times were recorded each day but not necessarily on a picking card. Counsel advised the appellant that according to the notes – tab 3, p. 28 – made by Harby Rai concerning their telephone conversation on August 19, 1999, he had said that no picking cards were issued to them at Gill Farms because they were paid by the hour but the owners weighed the berries for their own purposes. The appellant stated there was no need to refer to the cards since they had not been used for the purpose of settling-up after his layoff. Counsel referred the appellant to answers # 40 and # 41, respectively – tab 4 – provided on his behalf to the corresponding questions on the Questionnaire concerning the use of picking cards. Answer # 40 stated the cards were used to "keep track of my hours" and answer # 41 to the question whether he used a picking card for every day of work was "yes". The appellant stated the latter answer was wrong. Counsel informed the appellant that on 5 occasions, including his HRDC interview, the telephone conversation with Rai, the response to the Questionnaire as prepared by his agent – Ronnie Gill – and at Discovery and during his testimony in the within proceedings, he had provided different versions with respect to the use of picking cards. The appellant stated his testimony under affirmation before the Court should be accepted as the truth and any other earlier inconsistent statements should be disregarded. Counsel suggested his memory should have been better – on January 18, 1999 – when speaking to Turgeon – only 4 months after his layoff in 1998 – rather than in August, 2005. He agreed that should be so but explained he had been nervous during that HRDC interview. At Discovery, the appellant stated Manjit stayed on the farm all day but Harmit was not always there and he did not know where she went nor did he inquire. He stated he meant to distinguish between their tasks in that Harmit did not work alongside the pickers. On occasion, both Manjit and Harmit picked berries, as did Hakam when he had time after returning from work. The Gill children sometimes picked but only for a short period. The appellant confirmed he helped to take down the nets but added he had not been involved in their installation since that had been done at the start of the season while he and his wife were still working for the Sidhu family. Counsel advised him of the content of Rai's notes – tab 3, p. 27 – where she wrote her understanding of his responses that "first they put up the nets, they had to sometimes replace old poles, they

had to get up on the ladder to unroll the nets. He said they unrolled the nets first then they picked blueberries. He said they had to put up the nets to prevent the birds from eating the berries. He said he does not remember when they put up the nets but it was before they started picking the berries. He said after the nets were up they picked berries, then they weeded and then took down the nets and rolled them. I asked him three times about putting up the nets. All three times he stated yes they put up the nets before they picked the berries". The appellant stated Rai's recorded recollection of that portion of their conversation is incorrect and may be due to the usage of a Punjabi verb that is capable of meaning both "putting up" and "taking down". He added that Rai's proficiency in Punjabi was not equal to that of Russell Gill, the court interpreter. The appellant stated he only started working for Gill Farms on August 3 and definitely did not work installing the nets. During his employment, he picked Blue Crop and whatever other type was ripe but the Dixie variety was still being picked when he was laid off. In terms of their remuneration, the appellant stated he informed Sidhu to tell the Gill family that he and his wife wanted to be paid an hourly wage, the same as at Sidhu Farms. He stated he understood fast pickers working on a piecework basis probably earned more than the equivalent of minimum wage and others who worked slower still were content to be paid by the pound because they could avoid incurring the wrath of an employer since their pay was based on actual production as opposed to time. In his experience, growers at some points during the season are desperate for workers and may pay some people more – per hour – than others who have been there longer or may resort to hiring pickers through a labour contracting entity. However, in his opinion, regardless of the mechanism used to connect the owners and the pickers, the growers want to pay less and the workers want to earn more. He did not notice any Duke berries at Gill Farms but knew they were so plentiful a picker could pick up to 400 pounds per day as opposed to between 200 and 300 pounds of Blue Crop. He agreed that when he started working for Gill Farms no one there would have had any idea about his ability to pick blueberries. The appellant stated he did not know why his payroll record – tab 13 – showed his holiday pay was calculated at 7.6% while other workers received only 4%. The appellant stated that during the past two or three years, his pay for doing farm work is $8.32 an hour which includes the 4% rate for holiday pay. The appellant agreed he had not deposited his $200 cheque – dated August 15, 1998 – until September 12 and could not recall any reason for the delay except that in the meantime his daughter purchased groceries for the family. The cheque at the bottom of the sheet – tab 9 – in the sum of $956.07 – dated October 24, 1998 – appears to have "Oct" written on the date line in front of the numeral "24" but the word "Aug" appears over top and has been scratched out, and beside it are the initials "H.S.G.". The cheque was deposited into the appellant's account at Khalsa on November 3, 1998. The appellant agreed he had been laid off on September 12 but probably held off cashing the cheque until the Gills had been paid by the cannery. The

cheque – tab 8 – in the sum of $1,166.85 - dated October 26, 1998 – was deposited into the appellant's account on November 19. He did not recall whether he received two cheques the same day nor why one was deposited on November 3 and the other on November 19 and does not remember any member of the Gill family requesting that he hold off negotiating any cheque. He recalled Harmit Kaur Gill had telephoned him to advise Gill Farms was ready to do the settling-up and Harmit came to their residence – in Abbotsford – for that purpose. The appellant stated he did not know the two young females who accompanied Harmit but had seen them at the farm. His wife and daughter were present during the meeting. Counsel noted that – at Discovery – the appellant had not mentioned these two young women. The appellant replied that he only answered as much as the question required. With respect to the purchase of a car, the appellant stated it was a 1989, 4–door Dodge and cost either $2,500 or $3,000. It was purchased and insured in the name of another person but his daughter drove it. According to the statement – tab 14 – on the relevant Khalsa account, the appellant or someone authorized to do so, withdrew the sum of $2,500 in cash – p. 58 – on November 19, 1998, the same day as two deposits in the sums of $2,707.02 and $564.62, respectively. On p. 57, there is an entry indicating Khalsa certified a draft in the sum of $15,000 on September 9, 1998. Counsel suggested that apart from the withdrawal of $2,500 on November 19, 1998, the only other large withdrawal shown on the statement of account activity was one for $800. The appellant denied counsel's suggestion that he paid the sum of $2,500 – or any sum – back to the Gill family in respect of the employment of either himself or his wife. He stated the money may have been used to buy rupees at a business called A-1 Money Exchange to be used by a daughter who went to India. The appellant identified his signature on the application – tab 12 – dated September 18, 1998 for UI benefits and stated his daughter and another girl helped complete it by using the computer.

[60] The appellant – Gurdev Singh Gill – was re-examined by his agent, Ronnie Gill. She referred him to Exhibit R-3, tab 14, p. 57 and to the entry showing the withdrawal from the account – on September 16, 1998 – of the sum of $15,000 by way of certified draft. At p. 53 of the same tab, there is a statement of activity on the account the appellant had opened at Canada Trust and it shows an opening deposit in the sum of $15,000 on September 16, 1998. In the face of these references, the appellant recalled that his family decided to open an account with Canada Trust because they had talked about a bank being more secure than a credit union. A deposit to that account the same day – in the sum of $4,011.42 – was money from wages paid – by Sidhu Farms – to him and his wife. The subsequent withdrawal of $4,000 was for the purpose of buying furniture and in contemplation of moving the family to a new residence in Abbotsford. The appellant stated he worked for 4 different employers in 2004 and is currently employed as a farm worker by a labour contractor.

[61] In relation to matters arising from reference to the Canada Trust statement - tab 14, p. 53 – counsel for the respondent – Amy Francis – noted that the sum of $108.38 was taken out of the account on October 20, 1998 and the withdrawal was designated as Autoplan, suggesting this represented the amount of the monthly payment for car insurance. The appellant agreed that was correct but stated the car - initially – had been purchased by a son–in–law.

Santosh Kaur Makkar

[62] Santosh Kaur Makkar testified in Punjabi and the questions and answers and other aspects of the proceedings were interpreted and/or translated from English to Punjabi and Punjabi to English by Russell Gill, interpreter. The respondent's book of documents relevant to this appeal – 2001-2117(EI) – is Exhibit R-10.

[63] The Minister decided the appellant's employment with the payor was not insurable during the period from August 2 to September 26, 1998 because her relationship with the partners operating Gill Farms was not at arm's length. In the alternative, the Minister determined the correct number of insurable hours was 117 and the appellant had insurable earnings in the sum of $912.60. Counsel advised the Minister's alternative position also adopts the period of employment – from August 3 to September 12, 1998 – as decided by the Rulings Officer. The appellant's position is that her ROE – tab 11 – is correct wherein it states she worked 421 insurable hours and had insurable earnings of $3,283.80 during the period from August 2 to September 26, 1998.

[64] The assumptions of fact specific to the appellant, stated in paragraphs 8(h) to 8(r) inclusive, are as follows:

> (h) the Partnership employed the Appellant in the Period as an hourly employee to pick blueberries and to provide various other related services for the Farm such as gathering dried branches, putting up and taking down nets, hoeing, weeding, spraying, washing buckets etc.;
>
> (i) the Partnership's records of hours worked did not reflect the hours actually worked by the Appellant;
>
> (j) there were times when, in accordance with the payroll records, the Appellant was purported to be working and being paid when there was in fact no work for the Appellant to do;

(k) the number of hours purportedly worked by the hourly employees, as recorded in the Appellant's payroll records, were about three times the industry standard for the size of the Farm;

(l) the Partnership's wage expense for 1998 exceeded the revenue generated in that year;

(m) the Partnership issued a Record of Employment to the Appellant on or about October 7, 1998 indicating that the first day worked was August 2, 1998 and the last day worked was September 12, 1998 and that the Appellant had 421 insurable hours during the Period, with insurable earnings of $3,283.80;

(n) at all times material hereto, the Appellant was not dealing with the Partnership at arm's length;

(o) having regard to all the circumstances of the employment, including the remuneration paid, the terms and conditions, the duration and the nature and importance of the work performed, it is not reasonable to conclude that the Appellant and the Partnership would have entered into a substantially similar contract of employment if they had been dealing with each other at arm's length;

(p) the Appellant actually worked no more than 117 hours during the Period;

(q) the Appellant was paid at a rate of $7.50 per hour plus 4% holiday pay; and

(r) the Appellant's earnings in the Period were $912.60.

[65] Santosh Kaur Makkar testified she was born in India – in 1948 – and came to Canada – in September, 1997 – with her husband, one son and two daughters. They lived with their daughter who had sponsored their immigration. In 1998, she started working at Lakeland/Flora – her first job – after responding to an advertisement in a paper and is still employed there each season. The work takes place during March and April and after layoff she finds work picking berries. In 1998, she picked berries at Berry Haven/Penny's Farm. In 2005, she began picking raspberries on June 6 and then worked harvesting blackberries and then a late–maturing raspberry. She stated the overall growing season varies from year to year but 2005 was ordinary. When working at Penny's, she received a picking card and also used a card when picking and packaging flowers for Lakeland. The appellant stated that Penny's Farm re–hires people each season and returning workers tend to be hired sooner and laid off later than new workers who do not perform tasks other than picking. In 1998, she was laid off at Penny's once picking was finished but other workers were still employed. She found out Gill Farms needed pickers through her son-in-law who worked at the mill

with Hakam Singh Gill. She and her husband were hired by Gill Farms. She stated she always works with her husband at various jobs and rides to and from work with him. In 1998, she and her husband left their residence in Abbotsford between 7:15 a.m. and 7:30 a.m. and he drove their own car to the farm where either Harmit Kaur Gill or Manjit Kaur Gill gave them instructions concerning the work to be performed that day. The appellant had not worked on a farm in India except to do housework and her husband worked in a service job for a railway. However, after moving to Canada, she has done farm work every year and tries to work as many hours as possible during the season. Her husband – Himmat Singh Makkar – handles all financial matters. The appellant stated the nets were already installed when she began working at Gill Farms and – later – she noticed the material is torn from time to time. When picking berries, she and her husband follow the practice of facing each other from opposite sides of the same plant and berries are placed in a small bucket that is emptied later into a larger bucket. The appellant recalled that at the end of the 1998 season, she cleaned buckets, cut off dry branches, spread sawdust and removed dry grass. The sawdust was spread by placing the material – scooped by hand from a bucket – close to the roots of the plants. Several different tasks were often performed in the course of one day. She remembered working with Harmit, Manjit and Hakam – from the Gill family – but does not recall the names of others who also worked at these tasks, partially because she was employed there only for a short time and did not make friends with co-workers. Although she did not recall the weather conditions – generally – in the summer of 1998, the policy at Gill Farms was that workers kept picking unless the rain was very heavy. Otherwise, pickers wore appropriate raingear and work continued. When picking berries other than blueberries, the appellant stated it is usual in the industry to stop picking during the rain if berries are intended to be sold on the fresh market and to continue only if the produce will be used to make jam. The appellant stated that her only experience with blueberries was when employed at Gill Farms in 1998 and she did not seek employment there in 1999 because she did not like picking that berry. Her husband – Himmat – was laid off earlier but continued to drive her to and from work each day and on the two or three occasions he could not take her to and/or from work, she asked a member of the Gill family for a ride. During 1998, one of her daughters was employed, the other took night classes and her son was in high school. The appellant stated that her husband dealt with Hakam Singh Gill concerning all aspects of their employment including the settling–up at the end of the season. Her husband handled all financial matters and because she did not have her own bank account all of her pay cheques were turned over to him for deposit. She requested cash for spending money and to operate the household and a supply of cash was maintained within the household for that purpose and for spending by their children. During the picking season, her husband carried her bucket of berries to the scale where it was weighed by Harmit. Even though she received one or two warnings

from one of the Gills that the volume of berries picked was less than desired, she had believed her production – and that of her husband – was average when compared with the rest of the pickers. The appellant stated she was paid by the hour for working at Gill Farms and when working at picking flowers for Lakeland, she is paid by the piece – 20 cents per bunch of 10 daffodils – but is remunerated on an hourly basis when performing other types of work for the same employer. Currently, she earns $10 per hour as a farm worker and considers herself to be more aware of working conditions and related matters than in 1998. The appellant identified an ROE – Exhibit A-14 – issued to her by Lakeland Flowers Ltd. in respect of her employment from March 12 to April 22, 1998 during which period she worked 210.25 insurable hours and had insurable earnings in the sum of $1,632.10. The appellant also received an ROE - Exhibit A-15 – from Berry Haven Farm Ltd. stating she had worked 360 insurable hours from June 21 to August 1, 1998 and had insurable earnings in the sum of $2,709.11. Another ROE – Exhibit R-10, tab 11 – issued by Gill Farms for the period from August 2 to September 26, 1998, stated her insurable hours were 421 and her insurable earnings were $3,283.30. A letter – Exhibit A-16 – dated February 8, 2000, was sent to the appellant by an Insurance Agent employed by HRDC stating therein that since September 28, 1997, the appellant had been employed only 851 hours and 910 insurable hours was the amount required to qualify for UI benefits. The appellant agreed with the observation by her agent – Ronnie Gill – that if all the insurable hours in the 3 ROEs were added together, the total would be 991.25, more than enough to qualify. The appellant recalled working at Lakeland as early as February 25 one year but stated the entire season does not vary more than 3 weeks in total and – therefore – cannot be certain of the number of hours of work available within a season. She recalled attending the HRDC interview on January 18, 1999 and because she could not speak and/or understand English, Jugender Dhaliwal interpreted from English to Punjabi. Her husband – Himmat – was interviewed separately in another room. The appellant stated her husband - sometimes – was taken away from his picking duties and instructed to repair holes in the nets. She also saw Hakam Singh Gill operate the tractor in order to spray the plants in areas where no picking was being done. Although she could not recall the specific task performed on her last day of work, it was one or more of the several tasks mentioned earlier in her testimony.

[66] The appellant – Santosh Kaur Makkar – was cross-examined by Shawna Cruz who referred her to a statement – tab 1 – dated April 28, 2005 that had been produced pursuant to an undertaking arising from Discovery where the appellant had been requested to locate picking cards issued in the course of her employment with Gill Farms. The statement set forth the following information: the appellant and her husband were issued picking cards which he handled and the cards are no longer available because she and her husband have moved two or three times and the cards

probably were discarded because they were no longer of any value to them. The statement went on to confirm that the appellant did not have a bank account – either solely or jointly – in 1998 and that all her cheques were endorsed and deposited to her husband's bank account. In light of the contents of said statement, counsel asked the appellant why she would have said – in direct examination – that she did not know whether picking cards had been issued. Counsel also referred to page 2 of tab 1 – Endorsement of Interpreter – wherein Gurdev Singh Gill – father of Ronnie Gill, agent for the appellants and intervenors and not the appellant with the same name who is a party to the within proceedings – certified that he correctly interpreted the statement from the English language into the Punjabi language and that the appellant appeared to fully understand the contents. The appellant stated that picking cards had been issued by the Gill family so they could see how many berries people picked in a certain period. She did not have a specific recollection of a telephone conversation with Harby Rai on August 16, 1999, but agreed she would have attempted to provide correct information to Rai. With respect to the answers provided in the Questionnaire – tab 4 – she considered them to have been true to the best of her knowledge and appreciated that when testifying at Discovery – in November, 2002 – she had been under an obligation to speak the truth. As a result of completing Grade 10 in India, the appellant is able to read and write Punjabi. She stated she can sign her name in English and understands some English, particularly as it relates to names of plants, berries or other work-related objects or actions. At the time of hiring, the appellant stated she and her husband had not known how long the job would last. The appellant stated she had no independent recollection about how she went to work on her first day but when she and her husband worked together they usually rode home together in their own car unless he happened to leave work earlier if he was not feeling well due to the heat. Counsel referred to the appellant's time sheet – tab 13 – and to the time sheet of her husband – Exhibit R-9, tab 14 – indicating that he had two days off per week while she worked every day. The time sheets showed the appellant and her husband – if working together – each worked 8 hours, per day. She could not recall if she and her husband rode to work in a Gill Farms vehicle but in the event Himmat did not drive her to work then she rode with a member of the Gill family. Counsel advised the appellant that her husband – Himmat Singh Makkar – testified he drove her to work in the morning but one of the Gills drove her home at night. The appellant stated she did not have a strong recollection of events so could not offer an opinion whether her husband's memory of details concerning transportation to and from work was accurate as stated in the course of his testimony. She recalled riding to work in a pick-up owned by Gill Farms and that there were two or three seats in the back. She pointed out that she obviously got to work and returned home by some means and was not concerned with details such as the identity of her fellow passengers, if any, since most Gill Farms workers lived in the opposite direction from the farm. She stated she

never considered it would be important to have recorded – in some way or other – such information and there is no document or memory aid to assist her in this respect. Concerning the start time in the morning, the appellant explained that one can tell by looking at the berries whether there is too much dew to start picking and if that is the case, one has to wait until it disappears. She recalled that now and then someone from Gill Farms telephoned their house to advise there would be a late start for picking that day. The appellant agreed with counsel that she had provided different start and end times in the course of interviews with Turgeon, at Discovery, and in direct testimony but stated she had not worn a watch and was only providing estimates of times that may have varied for some reason. In the Questionnaire – tab 4 – an answer provided indicates the appellant found out about the job at Gill Farms through the Indo-Canadian Society (PICS) and she obtained the phone number and called Gill Farms. The appellant agreed that answer may be correct but she also has a recollection that she went to Gill Farms, spoke to Hakam Singh Gill and Rajinder Singh Gill and started work that same day, although it is possible that meeting was held on another day, before her start date. The appellant estimated she picked between 250 and 300 pounds of blueberries per day and confirmed the estimate provided by her husband during his testimony that he picked about 200 pounds daily. She stated she did not know the reason for the difference in the hourly rate – $7.50 – she earned and the one – $8.00 – paid to her husband nor why he was laid off earlier. She did not recall whether her husband was accustomed to taking off one day per week or whether it was two. Counsel advised the appellant that according to her time sheet – tab 13 – she worked every day but during the interview – tab 8, p. 44 – with Turgeon, she stated "… Hakam Gill called us not to come when it rained". Counsel asked why she would have given that answer if she had actually worked every day during the period of her employment. The appellant had given an answer to Q. 26 on the Questionnaire – tab 4 – that she had not missed any work due to bad weather because even if they had gotten a call about the rain, they went to work when it cleared up or, if already at work, waited inside the garage until picking could resume. While working, the appellant stated she did not take note of the names of other workers apart from one or two because she was used to saying the equivalent of "hello" and "goodbye" and did not spend time socializing and there was no link to permit a close relationship to develop. She estimated there was a work force of 25 to 30 during peak season and agreed she had earlier provided an estimate of "50 to 60" – tab 8, p. 45 – when interviewed by Turgeon. Counsel suggested it was somewhat strange to provide these two answers if she had actually worked for Gill Farms. The appellant stated she had not devoted much attention to that estimate when answering Turgeon's question about the number of people she had worked with at the farm. She confirmed that Manjit Kaur Gill gave instructions where to pick berries and that she saw her every day and that Harmit Kaur Gill and Hakam Singh Gill also gave directions to workers.

Counsel referred the appellant to Turgeon's question about the identity of her supervisor – tab 8, p. 44 – and to her response that "it was either Hakam Gill or his wife Harmit Gill" and that it was "mostly both of them were there". There had been no mention whatsoever of Manjit Kaur Gill. Turning to the issue of duties other than picking berries, the appellant described removing grass by handpicking – while wearing gloves - provided the ground was soft as otherwise it was necessary to use a small tool to dig out the grass so it would not inhibit growth of the plant. The sawdust was carried in a wheelbarrow and a bucket was used to carry that material to the plants where it was spread. The appellant stated that "work is work" and she does not recall the amount of time required to perform these menial tasks. She stated she saw Hakam spraying the grass even though she could not recall that – at Discovery – she testified she had not seen anyone spraying. She estimated that washing buckets occupied one or two days and that it took one entire day just to remove one section of net and roll it. Concerning the matter of picking cards, the appellant agreed she was issued her own picking card but her husband kept custody of it. She recalled the cards were punched and also written on so that Gill Farms would know what the average production was for each day. When shown the picking card – Exhibit A-1 – the appellant was unsure whether the cards she had used were the same nor was she able to state with reasonable certainty whether she had been given one part of a picking card or if her cards were in duplicate. Counsel advised the appellant that – at Discovery – she had stated there were two parts to the card and that one remained with the Gill family during the day but was handed to her husband later. The Appellant responded that her husband was informed of the average production and the number of hours worked on a particular day. If the picking card was handed to her, she took it home but sometimes they were merely told the amount of berries they had picked. During the interview – tab 8, p. 46 – the appellant informed Turgeon she had been paid "every 2 weeks". The appellant agreed that answer was not correct and did not know why she had said that. She recalled her husband collected her two pay cheques in the sums of $1,316.25 and $1,601.23, respectively, and that both had been deposited to his credit union account. The appellant stated neither she nor her husband had paid any money back to the Gills in respect of their employment at Gill Farms. Counsel referred to the interview – tab 8, p. 47 – with Turgeon where the appellant stated that when working at BerryHaven/Penny's Farm, "sometimes my son would work and I would get credit for the hours". Later, Turgeon pursued this line of questioning and the appellant stated she was "not sure" about whether she had been credited on her ROE for hours worked by her son but at that time he was a student and came to her workplace to help, although she was not sure of the details. The appellant stated she did not recall having made those statements concerning her son.

[67] The appellant – Santosh Kaur Makkar – was re–examined by Ronnie Gill. The appellant agreed that when interviewed by Turgeon, she had not recalled having worked at Lakeland until Turgeon specifically asked whether she had ever worked picking flowers. She stated she worked for Penny's Farm and at Lakeland in 1999 and qualified for UI benefits based on the number of insurable hours accumulated at those two jobs.

Surinder Kaur Gill

[68] Surinder Kaur Gill testified in Punjabi and the questions and answers and other aspects of the proceedings were interpreted and/or translated from English to Punjabi and Punjabi to English by Russell Gill, interpreter. The respondent's book of documents relevant to this appeal – 2001-2115(EI) – is Exhibit R-6. She is the wife of Gurdev Singh Gill – the appellant in appeal 2001-2098(EI) – who testified earlier in these proceedings. The Minister decided the appellant was not engaged in insurable employment with Gill Farms during the period from August 3 to September 12, 1998 because she was not dealing with the payor at arm's length. In the alternative, the Minister decided that if said employment was insurable, she had worked 108 insurable hours and had insurable earnings in the sum of $810.56. The appellant's position is that she worked 324 insurable hours and had insurable earnings of $2,614.68 as stated in her ROE at tab 10.

[69] The assumptions of fact specific to the appellant, stated in paragraphs 8(h) to 8(r) inclusive, are as follows:

> (h) the Partnership employed the Appellant in the Period as an hourly employee to pick blueberries and to provide various other related services for the Farm such as gathering dried branches, putting up and taking down nets, hoeing, weeding, spraying, washing buckets etc.;
>
> (i) the Partnership's records of hours worked did not reflect the hours actually worked by the Appellant;
>
> (j) there were times when, in accordance with the payroll records, the Appellant was purported to be working and being paid when there was in fact no work for the Appellant to do;
>
> (k) the number of hours purportedly worked by the hourly employees, as recorded in the Appellant's payroll records, were about three times the industry standard for the size of the Farm;

(l) the Partnership's wage expense for 1998 exceeded the revenue generated in that year;

(m) the Partnership issued a Record of Employment to the Appellant on or about September 24, 1998 indicating that the first day worked was August 2, 1998 and the last day worked was September 12, 1998 and that the Appellant had 324 insurable hours during the Period, with insurable earnings of $2,614.68;

(n) at all times material hereto, the Appellant was not dealing with the Partnership at arm's length;

(o) having regard to all the circumstances of the employment, including the remuneration paid, the terms and conditions, the duration and the nature and importance of the work performed, it is not reasonable to conclude that the Appellant and the Partnership would have entered into a substantially similar contract of employment if they had been dealing with each other at arm's length;

(p) the Appellant actually worked no more than 108 hours during the Period;

(q) the Appellant was paid at a rate of $7.50 per hour plus 7.6% holiday pay; and

(r) the Appellant's earnings in the Period were $810.56.

[70] Surinder Kaur Gill testified she was born in India in 1949 and came to Canada with her husband and 4 children in 1996. They lived with their daughter until moving to accommodation at Narang Farms where she and her husband both worked picking strawberries by sitting down in the middle of the row. She also had picked raspberries, placing them in a bucket tied around her waist. She picked blueberries every year and in 2005 picked both raspberries and blueberries on one farm where she was paid an hourly rate for picking 20 flats – 200 pounds – of raspberries each day. Currently, she is working as a farm labourer through a labour contractor and is paid hourly – $8.32 – for picking blueberries between 9 and 11 hours every day. She receives one picking card and her hours of work are recorded on it and it is also punched when berries are weighed at the scale. In 1998, the appellant and her husband began working at Gill Farms on August 3, after their layoff at Sidhu Farms where they had been picking raspberries. In her opinion, someone from the Sidhu family made the arrangement with a member of the Gill family for her and her husband to be employed at Gill Farms. She did not recall the amount of her hourly wage but worked with her husband picking blueberries as instructed by Manjit Kaur Gill. She started work at about 8:00 a.m. and finished at or near 5:30 p.m. and these times varied no more than 15 minutes

each way and if there was a late start then there was a later finish. She rode to work with her husband and – occasionally – some women from Aldergrove. On her first day, she recalled riding in a vehicle driven by Harmit Kaur Gill who drove her most of the time afterwards except on some occasions when Manjit or one of the Gill children was the driver. She and her husband lived at Sidhu Farms which was about 12 or 13 minutes away from Gill Farms. Because no other Gill Farms workers lived on the Sidhu property, she and her husband rode alone in the morning and again in the evening. On occasion, their son came to work with them and played with the younger Gill children while other times he stayed with a relative in Surrey. In late 1998, she and her family moved from the Sidhu Farms to an unfurnished residence in Abbotsford and they had to purchase furniture. She recalled having a joint account – with her husband and Jasbir – at Khalsa Credit Union but they discovered Canada Trust stayed open later so they also opened an account at a branch in Abbotsford. At her current job, she is paid every two weeks but at the end of the season – in 1998 – there was a settling-up process that was handled by her husband – and co-appellant – Gurdev Singh Gill. In India, her husband had managed the farm while she worked inside the family home and assumed responsibility for feeding the employees and providing them with water. In Canada, she rarely attends at a financial institution but was aware her pay cheques from Gill Farms were deposited and that cash was kept in their house for use by family members. She stated her family was accustomed to using cash since that had been their usual practice in India and it was more convenient to have a fairly large amount of cash on hand rather than having to obtain a ride from someone – to either the credit union or the bank – since neither she nor her husband had a driver's licence. Even when employed at Sidhu Farms, she and her husband were not paid every two weeks and their daughter from Surrey bought groceries for them. The appellant recalled an interview with Emery at an HRDC office on January 18, 1999 – where Paula Bassi was the Punjabi interpreter – and stated that even though she was not feeling well, attempted to answer the questions put to her. While working at Gill Farms, a picking card was issued to her and/or her husband and she thought it was being used by the Gill family to monitor average production during a day. The berries were poured from the small bucket into a larger container and either her husband or Manjit Kaur Gill carried it to the scale unless she and her husband were on their way to coffee and/or lunch break, in which case they took their berries with them to be weighed if one or more of their containers was full, or nearly so. The appellant stated she can pick 300 pounds of Blue Crop berries a day now but in 1998 was picking about 200 pounds a day, on average. She explained the difference is due – mainly – to the newer version of that variety which is capable of producing more berries so it is easier to pick a greater volume in a day. In her experience as a farm worker, she has received a picking card at various times during her jobs but not every day since the frequency seemed to depend on the policy of the particular employer. In

her current employment, she receives a picking card each morning and at quitting time returns it to the person in charge of the scale. She and her husband now receive a pay cheque every two weeks along with a stub showing the details of hours worked, the rate and the amounts of deductions. She stated her husband also keeps track of their hours and reviews the cheques to ensure they are accurate. The appellant recalled that – at Gill Farms – quitting time was announced by Harmit or Manjit or Hakam Singh Gill after he had returned from his job. She also remembered seeing Rajinder Singh Gill on the farm at various times but more often near the end of the work day. The appellant stated that even though she had helped to take down the nets over one or more types of blueberry plants before her layoff, one variety of berry was still being picked. The appellant stated it was her intention in 1998 and thereafter to work as much as possible each season whether employed as a farm worker directly by a farmer or through a labour contractor and when laid off by one farm, attempts to find another job as soon as possible. She estimated that she worked more than 900 hours in 2004.

[71] The appellant – Surinder Kaur Gill – was cross-examined by Amy Francis. The appellant stated she finished Grade 5 in India and can read and write Punjabi and understand numbers. With respect to travelling to and/or from work, she stated that to the best of her knowledge some female workers from the Aldergrove area rode – now and then – in the same vehicle as her and her husband. In her recollection, they started work about 10 or 15 minutes after their arrival at Gill Farms – around 8:00 a.m. each morning – after having travelled 12-15 minutes from their residence at the Sidhu Farms. She could not recall whether she and her husband were the first workers on site. Counsel informed the appellant that – at Discovery – she stated “all used to start together” and later confirmed – in response to another question – that she and her husband waited for others to arrive and "all of us would start together". The appellant stated that answer is not correct except that she and her husband started work together. She suggested she may have been confused with the practice followed at other farms where she has worked. She agreed with counsel’s suggestion that her memory should have been better in 2002 than in August, 2005 with respect to details of her employment in 1998. The appellant stated that if the driver was going to be late picking up her and/or her husband in the morning, someone from the Gill family would phone to advise them of the driver’s probable time of arrival. The appellant identified her signature on the last page of the Questionnaire at tab 3. Counsel referred her to Q. 6 concerning the time she was picked up each morning and to the written response "No set time. They told us to be ready and they will pick us up. They would tell us to be ready at 7:30-8:00 a.m., but were rarely on time". The appellant stated this answer was not correct even after counsel pointed out a similar answer using the words "rarely on time" was provided to Q. 13, inquiring whether she had been picked up at the same time each morning. In answering Q. 19 concerning quitting time, the

only person mentioned is Manjit who told workers when to stop. The appellant recalled that she and her husband were taken home soon after work ended for the day, usually arriving home by 5:45 p.m. but – sometimes – had to wait if the farm vehicles were being used for some other purpose. At Discovery, she stated the drop-off time each evening was at 6:00 or 6:15 p.m. and went on to say that time frame was inflexible because “they” – meaning the Gill family – had fixed the time. With respect to Q. 10 concerning the number of people in the van/bus with her, the answer provided was "Varied. From 2-6 people". In answering the following question, there is reference to a “white truck” and to a "blue car". The appellant stated she cannot recall – specifically – riding in a vehicle with as many as 4 other people but conceded it may have happened, although rarely because there would not have been any need to ride in the same vehicle as any of the workers who lived in Abbotsford. She reiterated her comment that she and her husband were usually alone in a vehicle whether going to or coming from work. She stated their hours of work were recorded on a calendar. Counsel informed the appellant that the answer apparently given by her to Emery, as recorded at tab 7, p. 42, whether she kept track – personally – of days/hours worked was "neither can read/write – so no records were kept". The answer to the following question about who kept track of days/hours worked was "Manjit’s sister kept track of hours, etc.”. The appellant replied that she always wrote down the number of hours worked each day and does not know why she would have said that she had not kept her own record. She was referred to the notes – tab 4 – of Harby Rai concerning the telephone conversation between Rai and herself and her husband on August 19, 1999. When referred to a paragraph of the notes – p. 35 – where Rai recorded the statement – by the appellant – "they put up the nets before berry was picked. They picked berries, then they rolled the nets", the appellant stated there must have been a misunderstanding about the word used because the berries were already being picked when she and her husband started work at Gill Farms. She denied telling Rai that she had ever put up nets prior to starting to pick berries. With respect to the practice of emptying berries from the small bucket into another container at Gill Farms, the appellant did not recall putting her berries into flats, although she had seen those containers on the farm and may have emptied her small bucket into flats for one or two days during the course of her employment. The appellant stated that she thought all berries were weighed because the Gill family wanted to know the amount picked by each worker. The appellant stated that on those days she and her husband both worked they were always together and each carried their own large buckets to the scale if heading for a coffee/lunch break. Her husband waited there until their berries were weighed and their cards were punched and then joined her at the location where workers were taking a break. Counsel referred the appellant to her answer – at Discovery – where she had been shown a copy of a picking card the same as the one in Exhibit R-1, tab 33 from Gill Farms. In responding to a question, the appellant

stated she was "picking jointly with my husband" and then continued to explain that they worked together in the same row, although each had a separate bucket. The appellant stated she had not intended to convey – at Discovery – the impression that she and her husband shared a picking card and a bucket and confirmed each had their own picking card even though she had referred – at that time – to a "card" that was retained by her husband until he gave it back to the Gill family member at the scale. The appellant stated a picking card was handed out most days and did not have any preference as to whether that recollection was more accurate than the one provided at Discovery where she stated a picking card was issued to her "occasionally". During the interview – tab 3 – with Emery, Q. 40 – p. 31 – was "What did you use picking card for?" The recorded response was "I gave it to my daughter" and in answering the following question whether she used a picking card for every day of work, stated "Yes". The appellant stated she cannot explain why she would have given those answers and is not accustomed to signing her name to a document without being aware of its contents. Even though her agent – Ronnie Gill – interpreted the questions and completed the Questionnaire on her behalf, the appellant doubted she had mentioned giving a picking card to her daughter because no cards were required in order to calculate the amount of wages earned. Counsel pointed out that Ronnie Gill had noted on the first page of the Questionnaire – tab 3, p. 26 – that the appellant had looked up some information – about dates – in a book but had been informed that Gill preferred the answers to come from the appellant's own memory for the purposes of completing the Questionnaire. The appellant did not recall the existence of any book or notebook and added that any record – such as the calendar – would have been discarded once the settling-up was completed and would not have been available as late as February 23, 2000, the date on the Questionnaire. The appellant recalled the scale was moved to different locations on the Gill farm in order to shorten the distance required for berries to be carried from the spot where pickers were working. If berries were being picked in rows close to a garage, then the scale was moved next to the garage. At Discovery, the appellant stated Harmit weighed berries in the garage – mostly – and did not remember the scale being used in the field. The appellant replied that her brain was not working very well at Discovery as she was very upset but was not as nervous when testifying in the within proceedings. She stated that no money was paid back to the Gill family in relation to the employment of herself and her husband. During her interview, the appellant was asked – tab 7, p. 43 – whether she paid cash back to the Gills in exchange for weeks (an ROE) and Emery recorded her response as "her husband took care of it – she doesn't know – the men make the arrangements". She recalled the reason for the delay in not depositing her cheque dated October 26, 1998 – tab 9 – until November 19, 1998 was due to the fact Gill Farms had not been paid by the cannery. She applied for UI benefits - tab 11 – and

identified her signature. She stated no one from Gill Farms assisted her to complete the form.

[72] The appellant – Surinder Kaur Gill – was re-examined by her agent. The appellant stated there were inconsistencies in some of her answers concerning start and end times for work but she was not wearing a watch. She demonstrated that she is capable of telling time by noting the correct time on the wall clock in the courtroom. She explained she meant to say – during the course of her answers at various times – that she had paid particular attention to the time she arrived home from work. During the interview with Emery – tab 7 – the appellant was requested to describe work done in sequential order to which she responded – p. 41 – "picked blueberry, rolled up netting" without any mention of putting up any nets.

Hakam Singh Gill

[73] Hakam Singh Gill (Hakam) testified in Punjabi and the questions and answers and other aspects of the proceedings were interpreted and/or translated from English to Punjabi and Punjabi to English by Kashmir Gill, interpreter. Hakam and his brother – Rajinder Singh Gill – are partners in the business operating Gill Farms, and are intervenors in the within proceedings. Hakam stated he came to Canada – at age 18 – from India where he had completed the 8th grade before going to work on his grandfather's 13-acre farm where trees were grown and buffalo were raised. His grandfather permitted him to participate in the management of the farm apart from his responsibility to feed and care for the animals which occupied about 3 hours each day. In Canada, he attended school for 6 months in Mackenzie, B.C. and left in the 9th grade in order to begin working for Canadian Pacific Railways (CPR) doing track maintenance under the supervision of a foreman. Later, he worked in Prince George, B.C., loading and sorting freight. In 1975, he moved to the Abbotsford area and after his marriage to Harmit Kaur Gill, they lived with his brother, Rajinder in Langley. The appellant worked in a planer mill for 3 years and then at Fraser Pulp Chips Ltd. where he is currently employed. The house in Langley was registered in Rajinder's name but was jointly owned with Hakam and they traded it in the course of acquiring – in September, 1979 – the property used thereafter by the partnership created to operate Gill Farms. Hakam stated it had been his idea to purchase the acreage and Rajinder accepted his plan to develop the land so it would support a farming business. Prior to embarking on the purchase, Hakam had discussed the farming business with some friends who had experience in that industry and came to the conclusion a reasonable amount of income could be earned from that endeavour. At the time of acquisition, the land was sowed totally to grass since the previous owner had raised cattle. The grass was removed by the middle of November – before the rains came –

through a series of 5 or 6 procedures in which plows and disk/cultivators were used. The Gill brothers planted strawberries and some crop was harvested in 1981. However, after the second year, some of these plants were plowed under and raspberries, broccoli, cauliflower and sprouts were planted. Success was somewhat mixed because the farm had a high clay content which was not conducive to growing these crops. In total, 6 acres had been devoted to strawberries but the life span of the plants was only 3 years and, whereas the land owned by his friends in Abbotsford was capable of growing strawberries, raspberries and vegetables, he discovered – through research – that he should put the partnership land into blueberries and proceeded to carry out – in stages – that plan. During this period, both he and his brother worked at full-time jobs and were investing in the farm. In 1982, Hakam and his brother planted one acre of two–year old blueberry plants and because the growth was satisfactory, decided to increase the acreage of blueberries and added another 4 acres in 1984. In 1986, more land was planted in blueberries and by then the original plants in the one-acre patch were between 6 and 7 years old. However, the plants had been obtained at a low price and produced different varieties of berry and some died and had to be replaced. Because the land was uneven, some plants in areas of high clay content did not survive, partially because there was no irrigation system in place at that point. Although all the plants were producing berries after 5 years, birds were eating the crop and financial success was impeded because Gill Farms did not have an effective marketing plan. In 1994/1995, Gill Farms began using nets to protect the crop in order to attain a profitable level of production. Prior to acting on advice from others in the industry to purchase the nets, the intervenors had attempted to scare away the birds by drumming and using a propane gun to explode at regular intervals. The flock of birds – composed of 5 or 6 different species of sparrow – lived nearby and were joined by numerous crows that also ate the berries. The nets were a significant improvement and Hakam stated he also learned better farming techniques with respect to the blueberry plants. He sought advice on a regular basis about matters such as spraying, watering, and often had to gain experience on a trial-and-error basis. In 1992, he installed an irrigation system using a well and a small motor to supply water to the crop. Someone suggested that water could be stored in a low-lying area so a large volume could be collected during the period when the rains were frequent and heavy. Following up on that recommendation, he hired an excavator to dig a hole to create a reservoir and thereafter water could be pumped directly to the crop using that source in conjunction with the supply from the well. By 1998, the irrigation system was working satisfactorily but as early as 1993, a pipe – one to one and one-half inch in diameter – carried water directly to the roots of plants and was dispersed – drop by drop – through a series of drippers. As a result of proper irrigation, the plans grew better and the amount of berries produced increased on an annual basis, aided in part through adoption of several measures, techniques and improvements by the intervenors over

the course of several years. Hakam stated he learned that spreading one or two shovelfuls of sawdust around the roots served to protect the plants by preserving moisture and shielding the roots from the effect of direct, intense sunlight during the summer and against the cold in winter months. During the hot part of the summer, temperatures at the farm can reach the high 30s in Celsius degrees for a week or more. He had been surprised to discover there could be such a difference in land quality – particularly with respect to clay content – between their land in Aldergrove and the property owned by his friends in Abbotsford even though the distance between the two areas was only 5 to 10 kilometres. He stated that in Indian culture, there is a strong attachment to the original land and house and efforts will be made to retain that property even if not inhabited or otherwise used personally. As part of an overall plan to improve growing conditions, he used spray to inhibit the growth of grass and applied - twice – the proper substance in April to kill fungus and from time to time either fungicide or pesticide was applied to resolve the relevant problem. He did spraying two or three times once the flowers appeared on the plants. Throughout, he relied on advice provided by retailers of those chemical products. During the growing season, no sprays are applied directly to the plants but these products were used in the summer to kill the grass which often grows to a height of 12 to 18 inches and uses the nutrients plants require to produce berries. Hakam stated great care is taken to ensure no spray falls onto any of the blueberry plants. Another problem is caused by slugs (a small shell-less mollusc member of the class Gastropoda) that hide in the grass and transfer from the high stalks to the bushes which they will eat along with the berries. Another technique employed was to trim the branches of the plant in a way that would reduce the potential for contact with the grass. Hakam stated he is required to undertake the spraying because the pickers complain about the high grass, which – due to their experiences in India – leads them to believe hides poisonous snakes. The spraying mechanism consists of a tractor and a tank to which is attached long hoses that must be held by workers in order to prevent contact with the blueberry bushes as the weight of the hose(s) will damage the plants. In addition to spraying, Harjit and Manjit trample the grass to flatten it so workers can see there are no snakes. After the spray had killed the grass, no further steps were taken unless the dead material was near plant roots, in which case it was removed – manually – using a small hand tool. Towards the end of October – after harvest – sprays were applied to kill certain insects which laid their eggs at this time. Hakam stated that hoeing is carried out after May 15th each season and takes between two and two and one-half weeks to complete. At the end of the picking season, a considerable amount of time is needed to take down the nets, repair any damage and roll them properly until needed next year. He recited other tasks which are performed at the end of the season including hoeing, spreading of sawdust, if required, and removal of dry and broken branches by workers to prevent insects from using these parts as a convenient place to deposit their eggs.

The sawdust is hauled – from the mill – to the farm in a truck and is dumped on a vacant space. Wheelbarrows and buckets are used to transport the sawdust from the pile to any plants needing sawdust around their base to a depth of 1.5 inches within a circumference of 1.5 feet. In Hakam's experience, most plants required some sawdust because movement by the workers – during the picking – removed some of that protective material. The heavy pruning is performed during winter months and is undertaken by Hakam – personally – in order to ensure that branches broken by snow, ice or heavy rain are removed. Later, some lighter follow-up pruning can be performed by workers. He stated new workers are hired each season and have to be instructed with respect to the various tasks that must be performed. He described the process of installing the nets which must be untied and unrolled and then carried – by three people – to the rows of poles which have been inserted into the ground. Then, two or more workers mount ladders and must take great care to ensure the nets do not touch the plants while hanging them onto the wires. Sometimes, if the hooks are not placed correctly, the net becomes stuck and it takes time to resolve that problem. The poles – 8 feet high – are approximately 30 feet apart. Nails are attached to the top of poles and a main wire is used in order to attach other wires. The net sags down between the poles to a height of about 6 feet from the ground. While working with a section of net, workers hold the material above their heads while others climb up ladders holding a piece of net with one hand and – with the other – hook the attached wires to the main line strung between the poles. The total net system is made up of two sections, each 300 feet long. Earlier, Gill Farms used a one-piece 600 foot-long net but it was more difficult to install. Hakam stated the net installation is undertaken – mainly – by female workers – aged 40-45 – and even though new workers are hired each year, they are mostly within that approximate age bracket. He stated he would prefer to have experienced people return to work the following season, particularly with respect to installation of the nets since it is so time-consuming and new workers have to be instructed and then shown how to carry out the necessary tasks. Many workers are newly-landed immigrants but the policy at Gill Farms was not to inquire further than to obtain a worker's name, address and SIN number and other forms of identification – including photo identification – was not requested. Hakam stated that there is always a problem hiring pickers so it is advantageous to offer an hourly wage to workers who will remain on the job until no longer needed. Other workers are paid on a casual basis according to a piece rate. In 2005, that rate is 45 cents per pound for workers who have been on the job since the beginning of the season when berries were not as plentiful while people starting later are paid 40 cents per pound or 42 cents if they have their own transportation to and from work and promise to stay until the end of the season. He stated that with respect to the 2005 crop, some varieties had suffered extensive damage due to an early frost and because the probable total volume of berries would be less than in earlier years, he

anticipated the hourly workers would be able to handle the harvest on their own. In 2004, the crop was heavier and the appellant estimated each worker was picking between 30 and 35 pounds per hour. While he preferred to pay workers an hourly wage, he would agree to compensate a picker by a piece rate if that person insisted. As a result of the good harvest in 2004, the price of farmland in the area increased because potential buyers saw an opportunity to earn profit. Hakam stated although Gill Farms is currently a profitable enterprise, it required many years of effort, investment and learning all of which was part of a process to increase the crop yield. He acknowledged his brother – Rajinder – was not very interested in farming but Ranjinder's wife – Manjit – was very involved in the business. Each year the brothers consulted the farm accountant and sought advice with respect to the farming operation. Over the course of many years, the farming operation lost money but Hakam stated he was advised by the farm accountant this was not unusual within the farming industry. Later, another accountant was hired and the financial picture also began to improve. Throughout, Hakam sought advice concerning rates of pay and other labour practices applicable to farm workers and discussed – with family members and knowledgeable friends – methods of increasing income. His daughter – Satnam – obtained a licence permitting her to mix the spray for application to the crop and she read the labels on the containers and ensured the instructions concerning use of the product were understood and that it was used in accordance with the manufacturer's directions. The products were purchased from a Punjabi-speaking clerk at the local retailer and Satnam supervised the mixing. Once that was done, Hakam operated the tractor which pulled the trailer carrying the tank to which booms, hoses and nozzles were attached. Currently, a new spraying system is used but the older method was still in place during 1998. Hakam stated he attempted to obtain a licence to use pesticides and herbicides but his ability to read and write English was too limited and he dropped out of the class. Gill Farms paid Satnam for her time during the one or two days a season her expertise was required. While Hakam was concerned with daily operations on the farm, Rajinder was in charge of banking and – in 1998 – the partnership had to make monthly payments on a mortgage against the farmland. During 1997-1998, a new house was constructed in which Hakam and his family, Rajinder and his family, and their mother lived. The former residence – in existence when the land was purchased – was used as a family residence until the new house was ready and then was rented out. Hakam stated it had been necessary to borrow money from friends from time to time, particularly prior to 1998, and probably during that year, too. He used employment income and revenue from berry sales to repay loans and when the older children began working at outside jobs, they were able to assist in paying household expenses. He referred to the sketch – Exhibit R-1, tab 4, p. 20 – and to the area designated "new house" at the front of the property by Lefeuvre Road. The old house is at the rear and there is also a trailer about

25 feet from the neighbour's fence. There are blueberry plants on three sides of the old house close to the area on the sketch marked "sand filter" beside the driveway. About 8 or 10 truckloads of sawdust are hauled from the mill every 3 or 4 years and placed in a large pile that does not have to be covered during the winter because sawdust is not affected by rain. Hakam and his wife have 3 sons and 3 daughters. One son worked one or two seasons on the farm and was paid wages. On occasion, one or more of the children carried out some tasks when needed and Rajinder's 3 sons and one daughter also worked from time to time, as required. In 1998, Gill Farms had several vehicles which were used for various purposes including delivering berries to canneries or other purchasers and to transport workers. There was a 4-door pickup truck capable of carrying the driver and 7 passengers and two cars. All vehicles were shared by the members of both families. Hakam stated he used the pickup to haul berries to a cannery after returning home – at 4:00 p.m. – from his job at the mill. Rajinder and his sons also hauled product to the canneries. Major problems with the vehicles were fixed at a commercial garage but ordinary maintenance was carried out by Hakam's son and Rajinder's son. During the summer, Hakam took holidays during the last week of July and the first week of August in order to work on the farm. Upon returning to the farm at 4:00 p.m., there was only another hour or so of work remaining for the day and he emptied buckets of berries into flats, sorted berries and put them into 40-pound lugs which – in 1998 – had to be loaded manually onto the truck because Gill Farms had not yet acquired the Bobcat with loader.
In 1999, Gill Farms experimented with a blueberry-picking machine – pulled by a tractor – but discovered it was unsatisfactory because when it shook the bushes so berries would fall onto the ground, it also jarred loose green berries. A further problem arose because the land was uneven and the machine required a lot of adjusting. In the process of attempting to use the mechanical picker, plants were damaged and the family held a discussion and decided to return the machine which had been operated by the prospective vendor in the course of a demonstration carried out as part of his sales pitch. During that time, Harby Rai and others visited Gill Farms – on August 12, 1999 – and Hakam recalled speaking with Rai and pointing to the picking machine in the field and commenting that he was looking for pickers. After the machine picked two rows of berries, Hakam decided that system was not working and discontinued the experiment. He recalled Rai asking why only one-half of the nets were up and stated a section of net had been taken down in order to allow the tractor and picking machine to pass over the berries. After returning to picking by humans, that portion of net had to be re-installed because the birds were eating the berries. During the previous year – 1998 – Gill Farms had difficulty finding pickers and members of the family often asked other farmers in the area to let them know if any workers would be available once work ended, usually after raspberry season. Hakam stated he shared a ride to work – at the mill – with 3 people and asked them if they knew of people who

would be willing to pick berries. A son-in-law of Himmat Singh Makkar and Santosh Kaur Makkar worked at the mill and it was through this contact that those appellants came to work for Gill Farms. Hakam stated he also made it known around Abbotsford that Gill Farms needed pickers. In his opinion, hand-picked berries are better because machine-picked berries cannot be sold on the fresh market where the price is about 15 cents per pound more than for product sold to the canneries for processing as a second-grade berry. Although the machine is faster than a crew of humans, the quality of the harvest is lower and prior to delivery to the cannery, green berries and debris are removed. Gill Farms delivered 30-pound lugs to Greenfield Farms for resale to retail food stores. Berries were cleaned by using a system using a conveyor belt powered by an electric motor that had been purchased in 1997. Because Greenfield wanted Grade A berries, Gill Farms preferred to have two days notice to prepare a special order for delivery since the ordinary practice was to clean berries only during the course of emptying buckets into the lugs or flats if they were being sold to canneries or directly to customers who visited the farm. Hakam dealt with the canneries but it was the responsibility of Rajinder to respond to telephone calls from Greenfield and others and to provide instructions to workers so those orders could be filled. Hakam was referred to Exhibit R-1 – tab 34 – and to sheets of photocopied receipts for sales of berries to vendors that also required berries that were cleaned by workers using the conveyor belt. He was aware these receipts had been provided pursuant to an undertaking arising from Discovery and added that some receipts for these sorts of sales may have been misplaced or lost in the interim. People attending at the farm to buy berries – for cash – went to the garage and a scale would be taken there for the purpose of the transaction. At one point, Gill Farms had two scales because when the original one quit working, a replacement was purchased and when the first one was repaired, it was also used in order to reduce the distance that berries had to be carried from the point of picking in order to be weighed. In 1998, because Gill Farms had not yet acquired a forklift, all berries were taken inside the garage until they could be hauled to a cannery. Berries in flats, on pallets and/or in large containers were loaded – manually – onto the pickup and transported to a cannery once each day. Hakam stated Gill Farms – in 1998 – paid $8 per hour to the hourly workers while pieceworkers received 30 cents per pound. Gill Farms paid by cheque, but not every two weeks, because the business had cash flow problems and often had to wait until payment was received from one or more canneries. Sometimes, he used money from the employment at the mill to pay workers. The cheques were prepared by Harmit but had to be signed by both Hakam and Rajinder. Deductions were taken in accordance with advice received from an employee of their accountant who would be informed of the number of hours worked by a certain employee. The accountant's office also prepared the ROEs and T4 slips, as required. Hakam identified the payroll record – Exhibit R-8, tab 23 – as a document prepared by his wife – Harmit – and routinely

provided to the accountant. Within the same exhibit – tab 17 – he identified his signature on an ROE issued to Manjit K. Gill and stated his practice was to have Harmit or one of his older children explain the contents of said ROE to him prior to signing. He assumed the information contained therein – as completed by the accountant's employee – was correct. He recalled attending a meeting at the HRDC office in Langley on May 20, 1999, at which 4 members of his family and their accountant were present together with 4 government officials, another accountant and Nav Chohan, who acted as Punjabi interpreter. He understood the purpose of that meeting was to discuss certain discrepancies and to provide explanations in respect of particular issues that caused some concern to officials at HRDC. Hakam Singh Gill stated he noticed a tape recorder on the table – at the meeting – and that it remained throughout the lengthy discussions. When requested, he gave answers and explanations that he considered were correct. In his 1995 income tax return – Exhibit R-2, tab 48 – Hakam reported employment income in excess of $40,000 and according to the statement of Farming Income & Expenses – p. 803 - all farm income came from blueberry sales in the sum of $35,701.98 but salaries were $52,806.15, and total expenses were $69,736.05. Hakam stated there is a settling-up meeting with workers when they are laid off and sometimes he is in the family home when his wife – Harmit – is discussing matters such as hours worked and previous wage payments with a worker in the course of handing over the final cheque. He stated that no worker for Gill Farms has ever paid back any part of wages to any member of the Gill Family. With respect to cash sales, Hakam was of the opinion a certain book had been lost in which other sales had been recorded. On occasion, his sons – Gurdeep and Baljit – may have sold small amounts of berries and if cash was received instead of a cheque, may have retained those proceeds for their own use. During the meeting at the HRDC office at Langley on May 20, 1999, the notes - Exhibit R-1, tab 24, p. 247 – taken by Turgeon indicate Hakam advised HRDC that Gill Farms had roadside berry sales of about $2,000 annually and that 4,000 pounds of berries were sold to Hamilton Farms in 1998 and that these sales were included in the financial statement for the farm business. With respect to roadside sales, Hakam estimated the average price was $1.30 per pound in 1998. During the meeting, someone from HRDC asked how Gill Farms could survive year to year when accumulated operating losses appeared to exceed $150,000 and Turgeon recorded a response – by Harmit – that the Gill family had borrowed a total of $30,000 – from 3 different people – in 1998. Hakam was referred to his income tax return – Exhibit R-2, tab 50 – for the 1998 taxation year in which he reported employment income of nearly $48,000 and claimed – against other income – his 50% share of a total farm loss – in the sum of $44,170.23 – which resulted when the farming operation produced only $85,712 revenue but incurred total expenses in the sum of $129,882.23, including $89,348 in salaries/wages. The Minister allowed full farm losses, as claimed, for both Hakam and Rajinder but prior

to 1998, each partner seemed to have been allowed only restricted farm losses in accordance with the relevant provision of the *Income Tax Act.* In 1997, according to Hakam's tax return – Exhibit R-2, tab 49, beginning at p. 825 – his employment income was $47,608 but gross farm revenue was only $45,656, including the sum of $43,500 from the sale of berries. In 1998, Rajinder's income was only $8,399. Turning to the matter of farming practices at Gill Farms in 1998, Hakam stated berries were kept overnight on occasion and did not sustain any damage as a result of storage for a short term. Picking continued during a slight rain and was only halted if it was heavy and the weather forecasts often predicted clear and warm weather later on in a day which allowed the berries to dry. If picking was stopped during a rainfall, the workers performed other tasks such as washing buckets. During the HRDC meeting, Turgeon noted – Exhibit R-1, tab 24, p. 243 – Hakam's responses that only one day of picking had been lost to rain in 1998 because it was very hot that year. Hakam agreed that answer was correct and added that even though it may be raining at the farm, it can be dry 3 or 4 kilometres away and sometimes that phenomenon is reversed.

[74] Hakam Singh Gill was cross–examined by Amy Francis. He confirmed that by 1998, he and his brother had owned the farm for 19 years and that as the farming business developed, it became necessary to hire outsiders. About 1995, Harmit and Manjit began working on a full-time basis during the season for the Gill brothers partnership. Harmit started somewhat later because she was employed at a cannery. Hakam stated that to the best of his recollection, 7 or 8 hourly workers were hired in 1996 and casual pickers were hired, as needed. During the 1997 season, Gill Farms hired 8 or 9 hourly workers in addition to casual pickers and the number of hourly workers was increased to 15 in 1998. Counsel pointed out the number of workers had doubled in only two years. Hakam responded by pointing out berry sales had doubled in the same period but the price paid by the canneries only increased between 5 and 10 cents per pound. The crop varies from year to year and – by way of example – 2004 was a bumper crop and the branches were so laden with berries they nearly broke. Hakam stated he preferred to have steady workers and to ensure a constant labour supply, Gill Farms paid an hourly wage. Those workers paid by piece rate were those who only worked occasionally, usually in conjunction with one or more other jobs elsewhere. Hakam stated pieceworkers only pick berries and do not perform other tasks and that was another reason Gill Farms wanted to have a core group of workers who were paid on an hourly basis. Counsel suggested the norm within the berry industry is to pay workers by piece rate and that farmers would lose money paying pickers an hourly rate except – perhaps – during two weeks in peak season. Hakam did not agree. Gill Farms grew 3 types of blueberries and, as a result, the effect of high or peak season was not as significant as at other farms. He considered the maximum rate of $8 per hour was fair and that the wage – $9 per hour – paid to Harmit and

Manjit was reasonable in view of their additional duties and responsibilities. During an interview with prospective workers, he established the appropriate hourly wage based on an assessment as to probable ability based on past work experience and from observations in the course of discussions. Himmat Singh Makkar was paid $8 per hour because he appeared healthy and had worked on a farm previously. Surinder Kaur Gill – a worker with considerable experience – was paid $7.50 per hour. Hakam stated the difference was based on the simple fact Himmat Singh Makkar was a man and Surinder Kaur Gill was a woman. Gurdev Singh Gill who had previous picking experience was paid only $7.50 per hour because he did not appear – to Hakam – as strong as Makkar. Hakam stated the amount paid to a worker could increase if additional labour was needed during a particular period. Counsel referred Hakam to a letter – Exhibit R-1, tab 20 – dated September 30, 1999, sent to Revenue Canada – by Lucky Gill of LRS Solutions – on behalf of Gill Farms. At p. 109 within said tab, in response to a question concerning the method of determining the rate of pay for a worker, Lucky Gill wrote "[R]ate of pay was determined based on minimum wage of employment standard rate and employees with a little more responsibility received pay according to the level of responsibility as well as industry standard rates. In addition, employees who produced at a faster rate were paid a higher amount to ensure they were compensated for their speed". Counsel read aloud certain questions put to Hakam – at Discovery – which called for an explanation as to why workers doing the same job were paid at different rates, according to the payroll records of Gill Farms. Hakam replied that he recalled attending said Discovery and had attempted to provide truthful answers. Counsel referred him to another response wherein he had confirmed that a person with more work experience would receive a higher rate of pay. Counsel asked him which factor was determinative, speed, experience or his subjective assessment formed during an interview. Hakam responded that – for example – when hiring Himmat Singh Makkar, that individual had made a strong impression because he was educated, had farming experience, appeared to be strong and had applied for work during a busy part of the season. Hakam agreed Gill Farms paid several workers holiday pay of 7.6% while others received 4%. He stated these payment differentials were based on advice received from the accountant. Counsel pointed out the higher rate was paid to Manjit and Harmit and to Gurdev Singh Gill, Surinder Kaur Gill and Surinder K. Gill and these last three had worked less than some others so the difference did not seem to make sense. Counsel asked Hakam if he had ever agreed to employ a worker for a specific period. Hakam stated he informed prospective employees that Gill Farms wanted workers to stay throughout the season but did not guarantee anyone a specific period of employment. Counsel asked Hakam to explain why Himmat Singh Makkar – one of the highest paid workers – was laid off before several others. He stated Makkar turned out to be a slow worker and when the work slowed down, he was laid off.

Hakam stated Gill Farms only employed people as long as there was work for them to perform and some workers had been hired as late as August. In his view, Gill Farms had two main categories of work; one involved only picking berries and the other type encompassed tasks from preparing for the forthcoming growing season to finishing up the season. Hakam agreed his intention – when hiring most of the hourly workers – was to convey the message that Gill Farms did not want workers leaving in the middle of the season and even though the length of the season varies to some extent, he wanted to assure employees they would be retained as long as there was work for them to perform, including those tasks undertaken at the end of the season. Hakam agreed that Himmat Singh Makkar had been laid off before the end of the season. Counsel referred Hakam to a letter – Exhibit R-1, tab 5 – dated November 10, 2000, sent by Ronnie Gill to Bernie Keays at Revenue Canada, consisting of a transcript of a discussion – in interview format – between Gill and Hakam concerning employment of workers by Gill Farms. Hakam identified his signature – p. 27 – under the handwritten words "Approved & Okayed". He was directed to an answer on p. 25 pertaining to hiring practices in which he said "[T]he people come and ask if we have work. They tell us that they will only work if we can employ them for the whole entire season. These are usually the older fellows. The younger ones we make sure that they will work the entire season. We fear that they will quit halfway through to work at a nursery, greenhouse or a labour contractor who can offer them a longer season of employment". In responding to the next question – p. 26 – inquiring whether workers would be laid off right away if there was less work, Hakam stated "[If] I did that and did not fulfill our agreement, I would have no workers for the next season and so on. So all my hard work over the years will be worthless". Then, in the context of the period when the berries were almost finished, he was asked – during that interview – by Ronnie Gill "[W]hy don't you send them home because there is not enough work for everyone?" Hakam proceeded to explain that during the peak season Gill Farms is "struggling to get people to come and pick berry for us. Nobody likes to pick by the pound when there is less berry. We hire casual employees during peak season. The rest of the employees work until the end. We can't tell half that they can't come to work. If we did that then we would have no workers the next season". In answer to the next question from Gill, Hakam confirmed that a worker's period of employment was based on the length of the season but added there was no guarantee of hours because if the season is shorter or longer "we don't want to be stuck paying people…". He described a custom within the farming community whereby another farmer may phone Gill Farms to inquire if workers are needed because he has workers that want to work for the season and they want to receive that assurance. Hakam explained – p. 26, last paragraph – that if he agreed to employ workers for the rest of the season, that farmer would send over some workers as otherwise, the farmer would proceed to phone another farmer until that objective could be attained. Hakam

concluded by saying "[T]his is a very tight knit community. Every farmer knows the rules when they hire a seasonal labourer". Counsel asked him what he meant by that statement. He replied that people know they will have work during the season and a fellow farmer does not want to send over his former workers if they will only be employed for a few days and then sent home. However, that promise does not extend to paying people if there is no longer any work to be done. Counsel referred Hakam to a note – Exhibit R-1, tab 6, p. 29 – made by Bernie Keays in the course of an interview with Ronnie Gill on November 2, 2000, in which she said that workers know at the start of the season they can work until the end and – therefore – do not have to look elsewhere. On the next page, Keays noted he asked Ronnie Gill "[W]hat if there is no work?", and her response "[J]ust sit there and do nothing, if nothing to do but you already made a commitment". Keays noted a further comment by Ronnie Gill as follows: "If you have them on your property you have to pay them even if nothing done. It's the farmers' way of thinking' not a business". Hakam stated he agreed that workers paid by the hour still must be paid even if work is halted by rain but they were given other tasks – such as washing buckets – to do during these periods. He agreed that there are occasions when a prospective employee informs him of the amount of employment required in order to qualify for UI benefits and before starting work for Gill Farms, wants to be assured he or she will not be laid off or fired. Hakam explained that in these instances, he agrees to employ a worker for a certain period but always with the understanding that there must be work that needs to be done. However, in return for that commitment, he wanted workers to know that Gill Farms expected them to continue to work until the end of the season even if they already had accumulated enough insurable hours to qualify for UI benefits. He pointed out his main concern was to operate Gill Farms in a businesslike manner and responding to the needs of workers to acquire sufficient insurable hours to qualify for UI benefits was secondary. Turning to the matter of transporting workers, Hakam recalled that it was Manjit who did most of the driving, although Rajinder – on occasion – also drove them. Counsel referred Hakam to an answer – Exhibit R-1, tab 20, p. 111 - provided by Lucky Gill of LRS to question # 13 of the Questionnaire in which Rajinder had been named as the person who picked up the employees "most of the time". Hakam explained that he left home at 6:00 a.m. to go to work at the mill and was aware Manjit used to pick up workers and/or take them home. As a result, he assumed she did the majority of the driving. He instructed both Harmit and Manjit to record their time and the partnership would pay them for each hour worked including the time spent transporting workers. Hakam described a routine whereby after returning home from the mill at around 4:15 p.m., he went into the house, washed, had something to eat, spent a few minutes talking to his mother and rested for a few minutes. Then, between 5:00 and 5:15 p.m., he went into the field, at which point most workers were close to finishing for the day and some had

already been taken home. On occasion, some workers stayed later to clean berries in order to fill an order for fresh berries. In the event Manjit was also involved in that task, then some other family member would substitute for her and drive workers home. Sometimes, the truck was loaded with berries to be taken to the cannery – which stayed open until midnight – but if a trip was made early in the evening, then some workers were taken home at the same time. Hakam stated that to the best of his recollection, workers started around 7:30 a.m. and finished around 5:30 p.m., although some may have worked as many as 10 hours a day during peak season. On weekends or other days off from the mill, he tended to remain in bed somewhat longer than usual and relied on Harmit and Manjit to ensure work was proceeding. He stated that – overall – most workdays would have been around 8 hours. Counsel advised him the payroll records of Gill Farms were consistent without revealing much variation throughout the season. He replied that the weather – particularly during hot days – plays a part and there may be some rest periods taken during the day as a result. He added that he relied on Harmit to record correctly the hours worked by Gill Farms employees. Counsel directed Hakam's attention to answers – Exhibit R-1, tab 20, pp. 109-110 – provided by LRS – on behalf of Gill Farms – to Revenue Canada in which several factors were listed as having an effect on the hours worked by employees, namely, the nature of the task, amount of berries on the bushes, amount of work required for their job description, climactic conditions, number of hours already worked for the week and number of hours of daylight. On p. 110, the answer explained the normal hours of work were from 6:30 a.m. to 8:30 p.m. during the seasonal employment but that the employees – usually – worked from 9:00 a.m. to 8:00 p.m. and that Manjit decided which workers were required to stay longer in order to fill an order for fresh berries. Hakam agreed that those answers had been provided by LRS on September 30, 1999, only a year after the season at issue in the within proceedings and that those answers should have been based on a better recollection of events than that those given 7 years later. However, he did not agree that workers usually started work as late as 9:00 a.m. since he had understood their start time was earlier each morning, weather permitting. He agreed that he gave instructions to Manjit to phone certain workers from time to time concerning certain matters such as pick-up time or as a courtesy to wake someone up, if they had requested such a call be made. In the event a heavy dew was anticipated during the night, Manjit called workers to advise of a late start the following day. Counsel referred Hakam to the answer – p. 110 – explaining that he oversaw the implementation of supervision of employees only to the point where he advised Manjit about certain matters including which employees to call, the variety of blueberry to be picked, whether orders had to be filled and the number of pounds required, and the condition of the field with respect to the ripeness of the berries. Counsel asked Hakam why he would be involved in determining which workers to call unless Gill Farms had a system

whereby some workers did not have to work every day. He replied that the hourly workers worked steadily but the pieceworkers would be phoned and told whether there was work for them or not, depending on the amount of berries to be picked. Because some pieceworkers only worked a few days or possibly only a portion of a day during which they earned only $20 or so, any picking cards relating to these individuals were not retained once payment had been made to that picker. With respect to the task of pruning in 1998, Hakam stated it was done during the winter but some dry or broken branches would be removed later by employees. The winter – or heavy – pruning is performed by Hakam and is regarded as an onerous task, second only to harvesting in terms of the time required. Usually, he starts pruning between Christmas and the New Year and works at it – mainly – on weekends until it is completed. The light pruning or trimming that is performed at the end of the season by workers takes about one week to finish. Counsel referred Hakam to notes – Exhibit R-1, tab 24, p. 237 – taken by Turgeon during the meeting between members of his family and several HRDC employees and consultants held at the Langley office on May 20, 1999. According to those notes, Hakam had described pruning from the beginning of September until around mid-October and had stated, "I work in the mill and off Sat & Sun so that's when I did the pruning". According to Turgeon's notes, when asked who was pruning with him, he responded by naming Mr. and Mrs. Sidhu as well as Himmat Singh Makkar, Mrs. Grewal, Manjit Sidhu and Khatra. Counsel pointed out that Makkar had been laid off on August 29, 1998. Hakam Singh Gill agreed that was correct but had recalled during a break in proceedings before the Court that Makkar had been present earlier in the season when he had demonstrated pruning techniques to a group of workers and must have confused that event with the actual pruning work carried out at the end of the season. Hakam stated he should have made it clear that he performed – personally – the heavy pruning during weekends when not working at the mill. He requested confirmation of comments made during that HRDC meeting by listening to the tapes of proceedings which he assumed had been recorded. Counsel advised the recording attempt was unsuccessful and there was no useful tape produced during the meeting. Counsel informed Hakam that when answering Q. 497 during his Discovery – about pruning in 1998 – he said workers were hired for that purpose and that it had been done twice that season, once before the net was installed and again after it had been taken down. Hakam stated the heavy pruning began in late December, 1997, and would have extended into the early part of 1998. Hakam confirmed he was the person who always did the heavy pruning during the dormant winter period and that the other lighter trimming is performed when branches become dry or broken. Counsel suggested Gill Farms wanted to make it look like there was a need for Gill Farms workers to have worked a certain number of hours and wanted to make it look like some of them had done extra work such as pruning. Hakam Singh Gill responded by pointing out that regardless of what

textbooks say about the tasks which should be performed on a berry farm, he is the person who had done the work and knows what is required during a full season. He was involved with the process of spreading sawdust and saw workers putting this material around plants using both wheelbarrows and buckets. The sawdust is light, weighing only 5-7 pounds per bucket and can be spread by hand. Counsel advised Hakam that according to Gill Farms picking records she had reviewed, there were some days when the hourly workers – as a group – appeared to have picked almost no berries. He stated the workers were expected to pick about 20 pounds per hour or 180-200 pounds per day and that their rate of production was monitored by Manjit at her discretion. Counsel referred to the report – Exhibit R-1, tab 23 – of James Blatchford – forensic accountant – in which he examined numerous documents including slips issued by canneries in respect of deliveries of berries from Gill Farms and picking cards issued by Gill Farms to pieceworkers. By subtracting the amount of berries picked by pieceworkers, counsel pointed out that the balance must have been picked by the crew of hourly workers. She referred Hakam to the entry – p. 212 of the report – for July 10, 1998, indicating 227 pounds of berries had been delivered to the cannery but 237 pounds had been picked by workers paid by the piece. On p. 209 of said report, pertaining to July 24, 1998, the entry indicated a total of 1,025 pounds of berries had been delivered and of that amount, pieceworkers had picked 410 pounds and the group of hourly employees had picked 615 pounds, at an average of 77 pounds per worker within that category. Hakam stated it was reasonable to assume some of the hourly workers may have been directed – by Manjit – to perform other duties that day and also that one should take into account some berries may have been picked one day and shipped the next. Counsel directed his attention to an entry – p. 205 – for August 18, 1998 showing that the hourly workers picked only 3 pounds of berries per hour that day for a total of 399 pounds while pieceworkers picked the balance to make up total production of 684 pounds. Counsel also referred to entries for the remainder of the week of August 18th wherein the average daily production for each hourly worker ranged from a low of 48 pounds to a high of 95 pounds. Hakam reiterated there may have been work performed by those workers during that period apart from picking. He confirmed that all berry sales – including those at the farm directly to customers – had been reported to the farm accountant and had been included in revenue for purposes of preparing a financial statement of the partnership which was included by himself and Rajinder when filing their income tax returns. He added that he was not aware of the extent of the recordkeeping to track sales from the fruit stand. Counsel advised Hakam that the statement of revenue for 1998 indicated Gill Farms had sales of $66,108.09 to canneries from the total revenue of $73,712. Hakam confirmed that he assumed the shipping slips and other records provided by Universal – Exhibit R-2, tab 35 – were correct as well as those issued by Kahlon at the following tab. In 1998, sales by Gill Farms – to Universal – were $11,552.40,

representing the purchase of 16,100 pounds of berries. Kahlon purchased 58,541.5 pounds from Gill Farms and paid a total of $42,124.48. According to the cash sales slips – Exhibit R-1, tab 34 – additional revenue in the sum of $4,205.21 was derived from that source. Counsel pointed out the total of the 3 cheques issued by Kahlon – Exhibit R-2, tab 36, p. 410 – is $42,124.48, the same amount as shown on the earlier summary of the sales slips. A summary – tab 37 – provided by Greenfield showed purchases of 9,650 pounds of berries from Gill Farms for which it paid the total sum of $8,226. The total of all sales in 1998 – as confirmed by the aforementioned records – is $77,660.49. Counsel referred Hakam to the statement – Exhibit R-2, tab 50, p. 835 – showing total farm revenue of $73,712 in 1998. He confirmed that amount was correct as was the sum of $89,438 – p. 840 – representing the amount paid by Gill Farms for wages and the total amount of expenses in the sum of $110,725. He confirmed the amounts reported for revenue and expense were correct as reported for the taxation years 1995, 1996 and 1997 in the returns located within Exhibit R-2 at tabs 48 and 49, respectively. In each of those years, the amount paid for salaries/wages had exceeded total farm revenue before taking into account the rest of operating expenses. Hakam stated that when the partnership required money in order to operate, it was advanced from the personal joint accounts he and his wife – Harmit – operated at branches of Khalsa and Fraser Valley credit unions. Pay cheques from his job at the mill were endorsed and deposited into a joint account and Harmit also deposited proceeds from her pay cheques into one or other joint account. Counsel referred him to two cheques – Exhibit R-2, tab 41, p. 714 – in the sums of $400 and $2,520 dated October 31, 1998 and November 7, 1998, respectively, written on the joint account at Khalsa that were deposited into the Gill Farms credit union account at Fraser Valley. Hakam was directed to a cheque - p. 585 – dated October 26, 1998 – in the sum of $4,407.78 – written on the Gill Farms operating account at Fraser Valley and payable to Harmit Kaur Gill. The cheque was deposited to the credit of the joint account at Khalsa on November 19, 1998. Counsel suggested to Hakam that it seemed as though it was a regular practice to use funds in that manner and if the farm needed money the partnership would borrow from Harmit and her wages would be paid later. Hakam stated Gill Farms had a $20,000 line of credit at Khalsa and if the business needed money, funds could be withdrawn from the personal joint account(s). Counsel referred Hakam to Exhibit R-1, tab 19, a letter – dated September 30, 1999 – sent by Lucky Gill of LRS Solutions to Harby Rai at Revenue Canada in which an explanation was provided therein for the nature of certain tasks undertaken and the time needed to perform them. Hakam identified his signature on said letter. He confirmed the information in paragraphs 1, 2 and 3 was correct in which certain employees had begun putting up the nets on or about June 16 and finished about June 30. Apart from Harmit Kaur Gill and Manjit Kaur Gill, the other employees named were Sukhminder

Kaur Gill, Jarnail Kaur Sidhu, Pawandeep Kaur Gill and Manjit Kaur Sidhu. Counsel advised Hakam the Minister relied on the advice of an expert that the time needed to install nets at Gill Farms was double the amount according to standards within the industry which allow 36 hours per acre to install, remove and repair nets each season on a typical berry farm. In keeping with that formula, the total time required to handle the nets should have been 306 person-hours for the 8.5 acre Gill Farms. Hakam responded by pointing out that larger farms are more efficient because they have newer equipment such as wires with handles and wheeled carts to move along the rows so workers do not have to carry stepladders from place to place, and climb them to attach the wires and install the sections of net. Counsel pointed out the averages within the industry include small farms and that Gill Farms apparently took 5 times longer than normal – in 1998 – to manage the matter of installing, removing and repairing nets. Hakam responded that whether or not the books and experts indicate that may be the case, it took that amount of time to do the necessary work and Gill Farms accepted the fact it took their workers longer to accomplish the task because most were inexperienced and he did not want to put undue pressure on people, particularly in face of the ongoing difficulty to recruit farm workers. According to answer # 6 in the letter from LRS, the spraying and fertilizing took place between May 17 and May 24 and Hakam had been assisted by Sukhminder Kaur Gill and Manjit Kaur Sidhu. Counsel informed Hakam that – at Discovery – he had stated that he was the sole driver of the tractor and Rajinder had helped to fill the water tank. Hakam stated his best recollection was that he was also assisted by another worker in some aspect of the spraying and fertilizing operation but neglected to include that information in his answer at Discovery. The fertilizer was in the form of pellets and was spread – by hand – from a 25-pound bag over an area extending 1.5 feet to 2 feet in diameter around the roots of each plant, of which there were approximately 16,000 in 1998. This work was done by Sukhminder Kaur Gill and Manjit Kaur Sidhu. As enumerated in answer # 10 of the LRS letter, a total of 9 employees worked between 6 and 8 days – after the nets were taken down – of which the task of washing buckets occupied one day. Counsel advised Hakam the Minister relied on information and advice from an expert that this amount of time was in excess of the norm within the industry. Hakam replied that the tasks occupied that amount of time, as stated in said letter. The berries were transported – usually – to canneries in lugs and while canneries supply these containers to growers, Gill Farms had purchased a supply of lugs during a sale by a bankrupt berry cooperative and as a result the lugs owned by Gill Farms were interchangeable with those supplied by the canneries. In that sense, Gill Farms would receive a clean lug after a delivery. Universal preferred to receive berries in flats while Kahlon wanted the product to be delivered in lugs. All the buckets were owned by Gill Farms and there were different sizes, shapes and capacities, some of which held up to 30 pounds of berries. Hakam stated that while

most farmers may permit the cannery to do all the cleaning of berries, Gill Farms policy was to clean debris – such as dirt or leaves – from berries and to sort out green and/or overripe berries so as to obtain a good price for a high-quality berry and to maintain a good reputation with the canneries as a supplier of excellent berries. The berries delivered to Kahlon and/or Universal were not cleaned by using the conveyor belt system as that was undertaken only for sales to Greenfield. Berries transported to Kelowna as well as those sold to stores locally and/or directly to customers from the Gill Farms fruit stand were also cleaned on the conveyor belt. With respect to the matter of issuing picking cards, Hakam stated it was a decision made in the course of business whether a worker received a card so the amount of production could be monitored. He used his own discretion to decide whether certain workers would be handed a picking card and on which days during the season and Harmit was instructed accordingly. Once the information on the cards was reviewed, the cards were no longer needed and were discarded either later in the season or at the end. He regarded the use of the picking cards as an excellent way to determine average production of the workers and to motivate them to pick more berries. He stated he did not recall the specifics of any instructions given to Harmit about issuing picking cards to workers. Since he was not on the farm during the day while working at the mill, he was not aware of the weighing practices but Harmit was requested to weigh all berries picked. He added Gill Farms were content to rely on weights of berries delivered as recorded by the canneries since they used high-quality, reliable scales and the exact amount of each shipment was known immediately after delivery. He stated Harmit also recorded weight of berries on a separate piece of paper, mainly for her own use. At Discovery, Hakam testified that berries picked by pieceworkers were weighed but those picked by hourly workers were not except if required to fill a specific order for a customer. Hakam stated he now considers his answer – at Discovery – to have been incorrect, although that was his impression at the time. As stated earlier, Hakam reiterated the use of picking cards by hourly workers was to monitor production from time to time as and if required and berries would be weighed for that purpose. In 1998, a former residence on the property was rented for $1,000 per month and this revenue was included in the financial statement of the partnership as farm income. Because he was responsible for 50% of the expenses of the farming business, funds from wages earned at the mill were injected into the enterprise, as required. The credit union account at Fraser Valley – in the joint names of Hakam Singh Gill and Rajinder Singh Gill – was used – primarily – for the partnership business except that payments by canneries to Gill Farms were deposited into an account at Khalsa and as shown on the statements – Exhibit R-2, tab 41, beginning at p. 606 – money was subsequently transferred to the Fraser Valley account. Hakam stated Rajinder and Harmit were responsible for all banking transactions and the Fraser Valley account was used to pay workers. Cheques on that account were signed by him and Rajinder as both signatures were required. He

conceded he may have requested a worker to delay cashing a final pay cheque until Gill Farms had been paid by one or more canneries because those payments often did not arrive until late October or early November. However, he was emphatic in denying the suggestion by counsel that – personally or through a family member – any worker had to pay money to him or any member of his family as a condition of receiving payment for work done during the season. He posed the rhetorical question "how do I do that; those people worked".

[75] Hakam Singh Gill was re-examined by his agent, Ronnie Gill. She directed his attention to an answer given by him – at Discovery – to Q. 399 et seq. where he explained that Harmit was instructed to do the weighing on a daily basis but if she needed help she could ask Manjit or other workers. In response to the question "so, hourly workers' berries were never weighed", he stated "it's possible the berries of hourly workers may have been weighed as well." In response to Q. 406 "so did you give instructions to weigh berries of hourly workers", he explained he left instructions that a certain worker should be issued a picking card and the berries picked by that person should be weighed. He confirmed that business details such as paying a certain rate of vacation pay and related matters concerning payroll were left to Rajinder, Harmit and the accountant. He stated Himmat Singh Makkar was laid off because he had not performed at the level expected of him as a result of an impressive hiring interview. Hakam stated he attempted to adhere to an informal policy at Gill Farms whereby layoffs were related to seniority during the 1998 season. Hakam was referred to Exhibit R-2, tab 36, p. 408, consisting of records provided by Kahlon with respect to berries purchased from Gill Farms. On said page, there are 5 different prices set forth, ranging from 30 cents per pound for juice berries to 80 cents a pound for fresh berries. Grade A berries were purchased at either 60 cents a pound or 75 cents depending on the period during the season they were delivered. Grade B berries were sold for 65 cents a pound during the season. Hakam stated the price per pound fluctuates according to the market and the price – particularly for Grade A berries – is affected by importation of berries from the United States of America. Hakam stated that currently the irrigation system at Gill Farms is efficient and only one-half day is required to get it functioning. In 1998, it took 3 days because the water from a ditch was not clean and affected the pump which had sucked up particles of dirt and plugged the pipes and drippers. He had discovered cracked pipes due to the cold winter and some joints required tightening. He was referred to a photograph – Exhibit A-10 – of a dripper and explained the old-style dripper did not have threads to screw into the hose so if one was damaged it had to be removed by hand in order to be cleaned because when the system was activated, dirty water was expelled but it also caused some drippers to become plugged. When that happened, it was necessary to "fiddle" with them so water would flow and some had to be cleaned with a wire or

replaced which was not convenient in 1998 because one had to poke a new hole in the hose and insert a new dripper. Hakam stated it is preferable to have the best equipment available but that has to be counterbalanced by the ongoing need to watch expenses, particularly in 1998 when there were some problems with cash flow. Whereas at the mill, a new machine can do the work previously performed by 50 humans, the farming business as carried out by the partnership remained labour intensive and there were no viable machines to reduce that requirement. Hakam stated Gill Farms currently is seeking ways to reduce labour costs because once made, that expenditure does not produce any enduring asset as is the case when machinery and equipment is purchased. At the mill, he is Head Sawyer and operates a machine which permits him to discover methods to improve production. However, on the farm, there is little opportunity to use that level of technology to improve yields or lower costs. If the poles holding the nets became loose, they had to be tightened by adding gravel to the holes. This task and many others occupied the time of workers in order to install the nets. There was no system to raise the nets as one would use to hoist the sails on a boat. Instead, it required 3 or 4 people to hold each section of net so to avoid damaging the plants. In 2005, at the start of the season, Gill Farms sold berries for $1.50 per pound and when production increased within the industry that price dropped to $1.15 but rebounded to $1.35. He anticipated it would increase by another 20 cents per pound before the end of the season. These prices – compared to those obtained in 1998 – represented a significant increase in revenue. In 1998, Gill Farms sold fresh berries to some customers for $1.35 per pound but the canneries were paying only 80 cents for that same quality. He explained that price difference was sufficient to make it economical for Gill Farms to use the conveyor belt for cleaning berries prior to delivery to a customer. While the cost of that task had not been calculated specifically, he estimated it was less than 5 cents per pound. Gill Farms delivered berries to 6 or 7 different stores located in North Vancouver, Vancouver, Surrey, Burnaby and neighbouring municipalities. A truck was used which carried between 1,200 and 1,500 pounds of berries per trip. Rajinder's son delivered a mid-week order to a customer. Hakam thought he had made some deliveries during the weekend during his time off from the mill. Most customers paid cash and the money was turned over to Harmit or Rajinder. He does not know what record was made or what use was made of it subsequently. With respect to the issue of production, Hakam agreed that some workers at other farms could pick up to 400 pounds per day during peak season because berries ripened in bunches. The problem at Gill Farms was that there were 3 types of berries in the process of ripening in an overlapping period and there were green berries remaining after a picking was completed. During the meeting at HRDC on May 20, 1999, Turgeon recorded a response – Exhibit R-1, tab 24, p. 251 – that Hakam – in 1998 – had been laid off from his job at the mill and his income that year was composed of severance pay in the sum of $13,000 together with $12,388 in UI

benefits. Hakam stated that information is incorrect since it was Rajinder who had been laid off, albeit in 1997 and not 1998. In 1998, Hakam worked full time at the mill. Concerning the visit to the farm – August 12, 1999 – by Rai and Turgeon, he recalls meeting Turgeon and Rai who indicated they wished to speak to Manjit. He took them to the field where they spoke to her. He explained the reason the net was not up because they were trying to use the picking machine. He stated Harmit – not Manjit – was making tea and that the notes – Exhibit R-5, tab 4 – are wrong in that aspect as well as in noting that he was informed he could not collect UI benefits because he was working on the farm full time. He stated he had not been laid off from the mill so they must have intended to refer to Rajinder's claim. He identified two cheques on a sheet - Exhibit R-2, tab 41, p. 620 – one in the sum of $1,175 and the other for $2,000, written on the joint account of Hakam and Harmit at Khalsa, and payable to the account at Fraser Valley used by Gill Farms to operate the business. On March 4, 1998, a cheque – p. 690 – in the sum of $2,000 was written on the joint Khalsa account, payable to the Fraser Valley account. It was signed by Harmit and even when she was not employed by Gill Farms, she wrote out cheques on the farm account so they could be signed by Hakam and Rajinder. He stated that to carry out the spraying, he drove the tractor and two workers walked behind carrying spray guns or nozzles which are attached – by a hose – to an outlet in the tank. If the nozzle is not depressed, the flow of spray is stopped. When spraying the grass in mid-season, one must be careful not to touch the plants with the substance. He agreed that in replying to the Questionnaire – Exhibit R-1, tab 19 – the information provided therein on September 30, 1999, did not include any mention of planting new plants nor spraying in the middle of the season.

[76] Rajinder Singh Gill (Rajinder) testified in English on the understanding Russell Gill – interpreter – could interpret, if necessary. Rajinder was born in India in 1950 and completed Grade 4 before coming to Canada in 1964. He started working in 1995 and in 1966 was employed in a lumber mill. He was referred to the cash sales receipts in Exhibit R-1, tab 34. The first one – p. 379 – pertains to the sale of berries to Paynters in Kelowna. Additional sales, as evidenced by receipts to Little Acres and Granny's Fruit Stand, were also made to customers in the Kelowna area. Rajinder estimated Gill Farms made between 6 and 8 trips to Kelowna – in 1998 – to sell berries. The berries were carried in a truck box - covered with a canopy – which held up to 55 lugs, each containing 40 pounds. Ronnie Gill directed Rajinder's attention to a chart – Exhibit A-17 – she had prepared with respect to cash sales to the Kelowna/Okanagan area, according to the receipts. Rajinder noted that sales on July 27, 1998 were 253 pounds and stated he would not have gone to Kelowna to sell only that small amount. In the event buyers did not want a receipt, none was prepared. However, the money received was placed into a bag and returned to the farm and

Kulwant – his nephew – was always with him and observed the cash transactions. He stated the money was counted with Hakam and divided equally and that those sales were reported to the farm accountant. Rajinder stated he had worked at the InterFor mill since 1986 but had been laid off in 1997. At tax preparation time, he informed the accountant of an amount to be included in revenue that was attributable to sales in the Kelowna area and also from the fruit stand on the farm. Hamilton Farms – a customer since 1994 – paid cash for berries at cannery rates for cleaned berries. Although the rate was the same, Hamilton paid immediately and the canneries issued a cheque in late July – as an advance – and paid in full only after the season was finished. Rajinder recalled one season when one cannery did not pay the balance due until February of the following year. During the berry season which lasts about 10 weeks, between 12 and 15 deliveries were made to customers in the Greater Vancouver area at an average of 1,200 pounds per trip. A customer may have ordered 300 pounds but decided to accept only 150 pounds if sales had been slow. In the event some berries were left over during the course of making rounds to various customers, they were taken to the cannery. Rajinder stated that he borrowed $10,000 from a friend - Brar – in 1998 with whom he had worked in Prince George in the 70's. He borrowed money from another friend and from his son who was 26 in 1998 and from his daughter who was 25 at that time. His son worked as a machinist in an airplane factory and his daughter was also employed there. After 31 years of working in a mill, he was laid off but later found a job which lasted for two years until that mill closed down in 2002. Rajinder stated he has suffered from asthma since 1975 and made it clear to Hakam that he could not perform physical farm work. Hakam accepted the situation and promised he and Harmit would do all the work. Rajinder stated that as a 50% partner in Gill Farms throughout, he was involved in financial matters and now and then – in 1998 – gave rides to some employees either in the morning or at night but only as a last resort if other members of the family were busy. He helped out in other ways from time to time as long as it did not involve physical activity. The attempts to grow strawberries did not produce satisfactory results which led to the decision – in 1984 – to grow only blueberries. He and Hakam were both working at the mill and invested part of their wages into the farming business. Rajinder stated he was not pleased with ongoing farm losses but wanted their families to stay together and – in any event – both of them needed a place to live. The decision to stick it out has proved worthwhile since the price of berries has increased as well as the volume of annual harvests and the farm has shown a profit in recent years. As a result, farm land in the area has increased in value. Rajinder was referred to a December, 1998 statement from Fraser Valley – Exhibit R-2, tab 41, p. 584 – indicating a deposit of $13,000 on November 19, 1998. He stated he could not recall the source of that sum. Harmit handled most financial matters, including settling up with workers and preparation of cheques for signature by him and Hakam. He recalled the visit to the farm by Turgeon

and Emery and was present during discussions with Harmit and Manjit. However, he left to answer the telephone and when he returned, Baljit was in the room and it seemed as though she was angry. He did not recall answering any of the questions posed by either Turgeon or Emery except he remembered explaining the farm had 8 acres in blueberries, as noted by Emery in Exhibit R-8, tab 14, p. 66. He had applied for UI benefits early in 1998 which he received until the farm started to sell berries. At the May 20, 1999 meeting at the HRDC office, he recalled speaking about roadside sales and the amount of berries sold to Hamilton Farms and other customers. With respect to loans to the partnership from either friends, his children or Harmit, he stated all funds went into the farm account and were repaid – at some point – from that source.

[77] Rajinder Singh Gill was cross-examined by Amy Francis. Russell Gill interpreted her questions into Punjabi and Rajinder's answers into English. Counsel suggested to Rajinder the amount of income reported in income tax returns – based on the financial statement of the partnership operating Gill Farms for 1998 – did not appear to include all sales. He stated that all cash sales had been reported to the accountant who had not appeared too interested in that information and agreed there may be some unreported revenue even though he had advised the accountant about the missing receipt book. He confirmed that all sales were reported even if a buyer had not requested a receipt for the purchase of berries. When signing his income tax return for 1998, he did not verify its accuracy with respect to the amount of revenue reported. He identified his signature on his 1998 tax return – Exhibit R-2, tab 47, p. 775 – which declared farm income in the sum of $73,712. Counsel recited the sources of revenue – Exhibit R-1, tabs 35-36-37 – as follows: Kahlon – $42,124.48; Universal – $11,552.40; Greenfield – $8,226; cash sales according to the receipt book – $4,150 for a total of $66,052.88. Counsel advised Rajinder that an examination of records revealed where Gill Farms had produced 88,450 pounds of berries in 1998, amounting to 11,056 pounds per acre, above the average industry yield of 9,000-10,000 pounds. Rajinder pointed out those records did not include the cleaned berries sold to Hamilton and stated the production of berries at Gill Farms in 2004 was approximately 20,000 pounds per acre. Counsel reminded him that – at Discovery – he had given an undertaking to provide information concerning the income of family members residing in the same house and that it had not been fulfilled. Rajinder agreed his position – at Discovery – had been that he would adopt the answers provided by Hakam and also confirmed that several times during the examination of Hakam, the proceedings went off the record in order that he could provide information to Hakam concerning certain aspects of the farming operation. At Discovery, there had been a series of questions put to Hakam concerning the sum of $110,000 which counsel thought represented the difference between identifiable deposits to the Gill Farms

account and traceable sources of revenue. Ms. Francis advised that figure is incorrect as the amount at issue in relation to this alleged discrepancy is $87,000. Rajinder stated that proceeds from a house loan had been deposited into that account. Counsel referred him to a document – Exhibit R-1, tab 1 – dated April 29, 2005 – provided pursuant to an undertaking – wherein he stated the house had been completed in June, 1997. Counsel also referred to a statement – Exhibit R-2, tab 40 – supplied by Ronnie Gill – pursuant to an undertaking – in which details of disposition of the proceeds of a $350,000 mortgage were provided. According to the statement – Exhibit R-2, tab 41, p. 652 – the account of Rajinder S. Gill and his wife Manjit K. Gill at Khalsa was overdrawn by more than $13,000 on October 31, 1998. Counsel referred Rajinder to the notes - Exhibit R-1, tab 24, p. 239 – taken during the meeting at the Langley HRDC office on May 20, 1999, indicating he had explained that he transported workers and performed other tasks such as repairing water pipes, spreading sawdust, repairing a broken pole, putting up netting and hooks, repairing damage to nets, cutting grass and – on occasion – supervising workers and shipping berries. He confirmed he had made those statements but it has always been his position that because he had asthma he was not going to do physical farm work and even when carrying out those duties as described at the meeting, they did not occupy much of his time. He recalled that he drove workers between one and three times per week since Hakam took over that responsibility on Saturday and Sunday. In providing answers – Exhibit R-1, tab 20 – to the Questionnaire, it was stated – p. 111 – that "the employees were picked up by Rajinder S. Gill most of the time". Rajinder stated he did not agree with the adjective "most" but agreed he had driven workers 3 days during some weeks. He was referred to notes – Exhibit R-8, tab 14 – made by Emery in respect of the visit by her and Turgeon to the farm. In those notes – p. 68 – there is a description of work – attributable to Rajinder – concerning tasks performed on the farm between March and June. That work included ground preparation, removing branches, hand fertilization of each plant and other tasks that were performed by 3 or 4 workers who were "on call" because they also worked for other farms at the same time. Rajinder recalled providing that description and agrees his recollection of events at that time – November 3, 1998 – should have been fresh since the season had just ended. He reiterated he was not fully aware of day-to-day operations of the farm. He confirmed that proceeds from berry sales to the canneries were deposited to the Khalsa account and that transfers were made to the Fraser Valley account, as required. The Fraser Valley account was used to make all payments connected with the operation of the farming business. Counsel advised that a review of records revealed Gill Farms had been paid in full – by every cannery – on October 21, 1998. She asked why some workers had been requested to delay cashing their final pay cheque if there were no outstanding accounts receivable after that date. Rajinder replied that canneries often did not pay until at least the end of October and

to be sure there were funds in the account, some people were requested to hold off presenting their cheques until after October 24, 1998. He agreed – however – that in 1998, funds had been received already and there would have been no need for workers to delay cashing their final cheque. Counsel referred him to a sheet – Exhibit R-2, tab 39 – on which monthly deposits to the Fraser Valley account – in 1998 – were listed. The total amount was $172,282.64. In November, deposits amounted to $25,822.16 and in December, the total sum was $32,620.78. Counsel informed Rajinder these deposits did not include money from any cannery nor were there any transfers of funds to that account from Khalsa. The relevant Fraser Valley statement – Exhibit R-2, tab 41, p. 584 – showed a deposit of $11,220.78 on November 16, 1998, followed by a deposit of $13,000 on November 19 and another in the sum of $6,000 on November 28. Counsel pointed out some workers at Gill Farms had large withdrawals from their account at about the same time as those large deposits were made to the Fraser Valley account. Counsel suggested that workers were instructed not to cash their final pay cheque until they had paid certain sums to the Gill family as a condition of their employment. Rajinder denied that was the case and stated no money was received from any worker by any member of the Gill family as alleged by the Minister or at all.

[78] Rajinder Singh Gill was re–examined by his agent, Ronnie Gill. He was referred to a statement – Exhibit R-2, tab 41, p. 570 – dated November 10, 1998, with respect to the Fraser Valley account. He agreed that on October 21, 1998, the account was overdrawn in the sum of $5,051.01. According to the statement – p. 657, same tab – $12,000 was withdrawn from the Khalsa account on October 21, 1998 and a deposit of the same amount was recorded – p. 570 – in the Fraser Valley account that same day. On October 23, 1998, the sum of $5,700 – p. 657 – was withdrawn – by cheque – from Khalsa and a deposit of that amount was credited - p. 570 – to the Fraser Valley account. Rajinder agreed the Fraser Valley farm account had been in an overdraft position until those transfers – from Khalsa – had been made. On November 7, 1998, Hakam and Harmit Gill wrote a cheque – in the sum of $2,520 – to the Gill Farms account at Fraser Valley, as reflected on the statement on p. 571. Even after these amounts were credited to that account, it was still overdrawn by $2,530.05 on November 4, 1998. Earlier, a cheque dated October 15, 1998 – in the sum of $9,868.46 – payable to Revenue Canada had cleared through the account. Rajinder stated that in his opinion if every worker had cashed his or her cheque within one or two days of receiving it, the cheque would have been dishonoured because the line of credit on that account was not sufficient. He and his wife – Manjit – had a $15,000 line of credit on their Khalsa account but according to the statement – tab 41, p. 613 – they were within $1,650 of that limit on October 31, 1968 and could not transfer sufficient funds to the account of Gill Farms to help reduce any deficit in the cash

flow. By December 31, that $15,000 limit on the line of credit had been exceeded by $111. According to the statement – tab 41, p. 709 – Hakam S. Gill and Manjit K. Gill had $2,220.70 remaining on a line of credit and another line of credit – p. 712 – set at $10,000 had been totally used so that no more funds were available from that source. Rajinder stated the Gill family had difficulty meeting expenses at that time and used various sources of credit as well as having borrowed from friends during the 1998 season. He confirmed that he had been wrong at Discovery in attributing some receipt of funds to a mortgage on the new house since that had been completed in 1997.

[79] Ronnie Gill advised the foregoing constituted the case for all appellants and both intervenors subject to any rebuttal evidence permitted by the Court.

[80] James Paul Blatchford (Blatchford) was called to the stand by Shawna Cruz, counsel for the respondent. Ronnie Gill – agent for the appellants and the intervenors – advised the Court she acknowledged Blatchford's qualifications and expertise as a forensic accountant as set forth in Exhibit R-16. He is the holder of a Master in Business Administration from the University of British Columbia (1986) and is a Certified Management Accountant (1992) and has been recognized as a Certified Fraud Examiner (1994) by the Association of Certified Fraud Examiners in Austin, Texas. From 1974 to 1988, he served with the Royal Canadian Mounted Police, and in 1982, was assigned to the Vancouver Commercial Crime Section where he conducted numerous investigations of white-collar crime, including theft, fraud and related offences. As a consequence, Blatchford was qualified as an expert in the field of forensic and investigative accounting and examination of business records. Blatchford identified a report – Exhibit R-17 – prepared by him – in his capacity of Senior Associate – and his staff at the accounting firm of Lindquist Avey Macdonald Baskerville (Lindquist). Currently, he is President of James P. Blatchford Consulting Limited and said report was transmitted to counsel with a covering letter – Exhibit R-18 – on the letterhead of that firm. Blatchford stated he was contacted by Turgeon from HRDC in the spring of 1999. He and an associate – Maryann Hamilton, Chartered Accountant – met with Turgeon and Emery who provided details of their investigation into the business affairs of Gill Farms and explained they required assistance in order to interpret certain business transactions as disclosed by numerous business and banking records. Blatchford stated the HRDC office provided him with copies of schedules, documents, tax records of the principals of Gill Farms, picking cards, payroll records and bank records. He reviewed those documents and began his analysis. In order to obtain a sense of the financial state of the farming operation, he examined the tax returns of Hakam Singh Gill and Rajinder Singh Gill for the taxation years 1994 to 1998, inclusive. He contacted Turgeon and Emery to advise that additional information was required and he and

Hamilton attended a meeting at the Langley HRDC office on May 20, 1999, where Turgeon and Emery met with the Gill brothers and their wives and Paul Wadhawan, accountant. A Punjabi-speaking interpreter – Nav Chohan – was present throughout. The meeting was held in a boardroom and participants were seated around a long table. Turgeon acted as Chair of the meeting as questions were directed to various members of the Gill family. The report – Exhibit R-17 – had not been prepared at that point although certain components such as schedules or tables had been completed. Blatchford recalled the meeting lasted about two hours. His associate – Hamilton – took notes of matters discussed including answers provided by members of the Gill family. He considered the meeting to have been conducted in a professional and cordial manner by Turgeon. Blatchford stated the format of the report was in accordance with the practice at Lindquist. As stated on page 2 thereof, he concluded that Gill Farms (referred to in said report as "RH" or "the farm") suffered a loss of net cash flow of $218,553 during the period from January 1, 1994 to December 31, 1998, inclusive. He prepared – as Schedule 1A to the report – a comparative statement of annual farming results. He determined that Gill Farms was earning a "negative gross profit" taking into consideration its wage expense as the only variable expense. The effect of that finding was to conclude that the farm was not earning a gross profit but – instead – was sustaining operating losses attributable to wages even before taking into account any of the other operating expenses. The amount paid for wages, salaries and benefits rose from $33,275.55 in 1994 to $89,438.00 in 1998. In those years, revenue from sale of berries was $23,072.60 and $73,712.00, respectively. Blatchford prepared Schedule 1B which set out comparative revenues net of wage expense including spousal wages. In Schedule 1C, he excluded or "backed out" wages paid to the partners' wives – Harmit and Manjit – and ascertained the farm still suffered a loss of total gross profit of $8,739 during the period under review before consideration of all other operating costs. However, by utilizing this method, the remainder of wages paid to non-related employees did not exceed sales revenue in 1994, 1996 and 1998. However, other operating expenses still had to be paid. In his view, the farming operation did not make any economic sense because there was no apparent opportunity for it to earn net cash flow from blueberry sales. Overall, based on economic reality, it would have been cheaper for Gill Farms to have allowed the berries to wither on the bushes since the cost of harvesting exceeded total sales from 1994 through 1998. In his opinion, other operating expenses were reasonable. From information supplied by the Gill family, he had been aware the farm had lost money every year since 1981 and that various crops including strawberries, raspberries and vegetables had been grown prior to the land having been planted entirely to blueberries. He stated it was obvious that a significant amount of capital was required in order that the farming operation could become economically viable. It was apparent that money had to come from some external source(s) in order for the

farming operation to continue year after year. He prepared Schedule 2 – tab 2 of report – in which he listed all sources of income for Rajinder Singh Gill and his wife – Manjit Kaur Gill – and Hakam Singh Gill and his wife, Harmit Kaur Gill. During the period from 1994 through 1998, the total income for these four members of the Gill family was $461,437, excluding farm income. In the same period, the farm had a shortfall in the sum of $207,564.93 as shown on Schedule 1A. Blatchford pointed out this loss represented actual money and was not composed of soft costs such as capital cost allowance. He also examined the Daily Log – Exhibit R-1, tab 32 – prepared by Harmit Kaur Gill pertaining to the period from May 18 to September 26, 1998, inclusive. He recalled Harmit had stated – at the May 20, 1999 meeting at the HRDC office – that the entries had been made – from memory – in the evening and that those recorded hours were entered – periodically – into the payroll record since she was responsible for carrying out that function. In that sense, Blatchford stated he expected the data in the log and in the individual payroll records to be the same and Harmit had agreed that should be the case when discussing the subject at the May 20, 1999 meeting. Blatchford referred to the payroll record - Exhibit R-8, tab 21 – of Manjit Kaur Sidhu, a worker who is not an appellant in the within proceedings. According to that document, Sidhu worked 8 or 8 ½ hours every day from May 18 to September 26, 1998. However, her name does not appear in the Daily Log in Exhibit R-1, tab 32. Blatchford stated that struck him as odd because Harmit had described the process whereby she transferred information periodically from the log to those payroll sheets. As a consequence, he began to harbour doubts about the overall reliability of those records. Within the information provided to him, there had been a reference to some pruning supposedly performed by Himmat Singh Makkar at the end of the season but the ROE disclosed Makkar had been laid off on August 29, 1998. At the HRDC meeting, Hakam Singh Gill confirmed that date was correct and agreed Makkar could not have helped with the pruning. In examining the payroll records, Blatchford ascertained 9 out of 15 hourly employees worked 8 or 8 ½ or 9 hours per day while the remaining group of 6 worked 8 hours per day. He considered that to be somewhat of an anomaly and noted that in some instances the abbreviation “Hrs” was written in a box beside a number while other entries were composed only of the number. He considered the payroll records may have been created later and not on a regular basis by transferring information from the log where hours worked by each employee were allegedly recorded. In his opinion, the entries on the payroll records for the workers were not done on a regular basis because they are too consistent in form and the same writing instrument seems to have been used throughout that extended period. In Schedules 3A and 3B – tab 3 – Blatchford summarized the hours worked each month from May through September by the hourly workers, excluding any work performed by those individuals described at various times as casual/contract pickers or pieceworkers. He concluded the hourly-paid group worked a total of

9,868 hours during the overall farming season, of which 5,623 were attributable to the berry-picking season and 4,245 were performed outside of that period. According to those numbers, 43% of the total was spent in performing tasks other than those related to picking berries. In Schedule B, the hours worked – 1,245 – by contract pickers were included in order to arrive at the total hours – 6,868 – worked by all employees during berry-picking season which augmented the total employee hours to 11,113 for the overall farming season. Blatchford undertook an analysis of hours worked by employees and prepared Schedules 4 to 8, inclusive in which he set forth the total hours worked each month – from May to September, inclusive – by each of the hourly employees. He prepared a 3-page sheet – Schedule 9, tab 9 – in which he used the number of pounds of berries delivered to suppliers in order to allocate amounts picked per day by workers paid on an hourly basis and those paid by piecework during the period from May 17 to May 31, 1998. The 4 pages of Schedule 10 – tab 10 – dealt with the period from June 1 to June 30. Schedule 11 – 4 pages, tab 11 – covered the period from July 1 to July 31 and the 4 pages of Schedule 12 – tab 12 – concerned the entire month of August, 1998. As noted on page 4 of said schedule, Gill Farms delivered 46,082 pounds of berries to canneries and to those buyers who paid cash. In the process of preparing Schedules 9-13, inclusive, Blatchford and his staff referred to picking cards that had been issued to various pieceworkers. It was ascertained that the workers in this category picked a total of 11,228 pounds during August, 1998, which led to the conclusion that the hourly-paid workers must have picked the balance of 34,854 pounds. Blatchford stated he reviewed the payroll records of those workers alleged to have been paid on an hourly basis and ascertained that – as a group – they worked a total of 3,501 hours in August. In order to calculate the amount of berries picked per hour by hourly workers, he eliminated those days on which no berries were shipped. From information provided by the Gills, he understood they preferred to ship berries daily in order to ensure high quality. Since the pieceworkers were remunerated solely on their production, he did not know how many pounds they picked per hour but had been informed by the Gills during the HRDC meeting that these workers usually picked 17.5 pounds per hour on average. At page 20 of his report, Blatchford stated the Gill family had informed him they expected each worker to pick between 15 and 20 pounds per hour. As set out in Schedule 11, the average pounds picked per hour by an hourly-paid worker – in July – was 14 pounds. In August, that production fell to less than 10 pounds per hour as set out in Schedule 12. Blatchford stated that it appeared that there were days on which the total pounds picked would have been represented by a negative number, as noted in Schedules 11 and 12. He cited the example of July 17, 1998, in which 248 pounds of berries were sold. According to records made by Gill Farms, the pieceworkers picked 530 pounds that day. However, the payroll records indicated 8 hourly employees also worked on July 17. He noted similar results on other dates in July and August including August 24 where the

average pounds picked was negative 24 per hourly employee. According to the payroll records, 15 hourly employees worked that day and information taken from picking cards established that pieceworkers had picked 414 pounds of berries. On August 26, no berries were delivered and pieceworkers picked 190 pounds. Again, the payroll records indicated 15 hourly-paid workers were on the job. Blatchford stated it made no economic sense for Gill Farms to hire 15 workers on an hourly basis each of whom picked only 27 pounds of berries on August 18, 1998. On August 5, 1998, according to Schedule 12 – page 1 – the hourly-paid workers each picked an average of 5 pounds per hour. Blatchford calculated that just to pay wages for picking, the price of berries would have to range from $1.50 to $1.80 per pound, setting aside any consideration of all other operating expenses. However, a review of records indicated Gill Farms was receiving between 75 cents and 95 cents a pound from the canneries and from $1.25 to $1.35 per pound from those buyers in the cash sales category. This information led Blatchford to conclude that either there was a significant amount of unrecorded berry sales or the payroll records were unreliable. He had been advised by the Gills that there was approximately $4,000 in previously unrecorded sales. When asked by counsel what effect it would have on his calculations if it were shown that another 5,000 pounds of berries had been picked – 2,500 pounds in July and again in August – Blatchford stated that was less than 100 pounds per day and would have a minimal effect. He had also been told that the hours of work performed by each hourly employee had been recorded in the log. Blatchford stated it made no economic sense – in his opinion – to pay 15 people an hourly wage to pick 5 or 6 pounds an hour for several days during the peak period when on other days, fewer employees – perhaps 10 – each picked between 23 and 38 pounds per hour. He considered the production of berries at Gill Farms was within the industry average according to the Ministry of Agriculture guide. Blatchford noted that the payroll records indicated 3 hourly employees had worked at least 7 hours every day from June 1 to September 26, 1998, a total of 118 consecutive days. Based on blueberry sales receipts and delivery records, the blueberry picking season was from July 2 to September 4, 1998, a period of 65 days. In preparing his analysis, Blatchford assumed that both Manjit Kaur Gill and Harmit Kaur Gill had picked berries on a regular basis. He agreed if that assumption was not accurate, then removing them from the calculations, would increase the average amount picked per day or per hour by the hourly workers. By way of example, the average amount picked per hour on August 18 – Schedule 12, p. 3 – was 3 pounds per worker. By eliminating Harmit and Manjit from that group, the average is increased to 3.5 pounds per hour. Blatchford agreed that because he had assumed Harmit and Manjit were steady pickers, the effect of excluding them from this category would boost average production of remaining members by approximately 15%. Blatchford explained that when preparing his report, he had not been provided with any information that would lead him to conclude

Harmit and Manjit had performed any other duties except picking berries because there had been a reference in the material that each of them had performed this task. He was referred to notes – Exhibit R-19 – made by his associate – Hamilton – during the May 20, 1999 meeting at the HRDC office. Hamilton had written under the heading "Manjit" the words "also pick" in the course of noting duties performed by her. The notation "pick berries" was included in the listing of tasks done by Harmit. During that meeting, Blatchford recalled Rajinder Singh Gill had discussed the duties he had performed on the farm as well as providing an estimate that a reasonable expectation of production by a picker was between 120 and 160 pounds per day. At said meeting, Rajinder also related the history of the farming operation and the difficulties encountered over the years which had resulted in losses which were claimed when he and Hakam filed their income tax returns. Blatchford stated he made his own notes during the meeting and also read Hamilton's notes which, apart from being much neater, confirmed his own recorded observations. On page 24 of the report – Exhibit R-17 – there is a list of cheques payable to Hardeep S. Gill and Kulwant S. Gill that were issued on the Fraser Valley account used by Gill Farms for business purposes. None of these payments were recorded on the payroll records or on any ROEs. Blatchford stated the effect of paying wages to Harmit and Manjit was to increase the loss within the farming operation which was then claimed by Rajinder and Hakam against other income. He agreed that in one taxation year, a claim for a farming loss would not have assisted Rajinder because his other income was too low. As employees, Harmit and Manjit would become eligible to receive UI benefits and in Blatchford's view, that was an advantage accruing to the Gill family.

[81] James Blatchford was cross-examined by Ronnie Gill. Blatchford stated he had access to original documents, copies of which are in Exhibit R-2, tab 36, pp. 412-448. He assumed information – including number of pounds – on the delivery receipts was accurate. Blatchford conceded that the extra sales of about $7,000 as reported in the 1998 tax returns of Rajinder and Hakam – through incorporation of the Gill Farms financial statement for that year – could indicate another 6,000 pounds of berries had been picked and sold directly to small stores or fruit stands. He stated that – based on the information at hand – he assumed all hourly employees were devoting full time to picking berries during the picking season. He agreed that if some workers had performed other tasks such as mending nets or cleaning berries on the conveyor belt, it would affect his calculations. In preparing Schedule 1C – tab 1 – of his report, Blatchford had excluded the wages of Harmit and Manjit when comparing Gill family total revenues net of farm expense. He agreed that by adding in those amounts, the family would have had another $17,300 to use for living expenses. Blatchford agreed the Gill family would have had about $50,000 income after deducting full farm losses in 1998. He had not been provided with any information to indicate whether Hakam's

son and daughter were working or contributing to household expenses. Blatchford agreed that in 1995 and 1996, Hakam and Rajinder had been permitted to claim only restricted farm losses under the relevant provision of the *Income Tax Act* and that this limitation would have precluded any significant advantage accruing even taking into account salaries to Harmit and Manjit totalling approximately $15,000. Blatchford pointed out that in 1997 and 1998, full farming losses were allowed by the Minister and paying salaries to spouses would increase the loss and allow a greater deduction by Hakam and Rajinder against other income. Ronnie Gill advised Blatchford that the Daily Log – Exhibit R-1, tab 32 – had been produced by Harmit Kaur Gill in order to satisfy what she perceived to have been a request from HRDC. Blatchford replied that he understood that entries had been made therein on a regular basis even though there might have been some delay during the busy part of a season.

[82] James Blatchford was re-examined by Shawna Cruz, counsel for the respondent. Turning to Exhibit R-19, p 2 – the notes of the May 20, 1999 HRDC meeting – Hamilton recorded that Harmit said she completed entries in the log "daily" and that details were transferred to the payroll record "whenever she had time" Blatchford recalled the Daily Log – Exhibit R-1, tab 32 – was present at the meeting and reference to it led him to believe that when Harmit was explaining her system of timekeeping, she was referring to that document.

[83] Mark Sweeney was examined by Amy Francis, counsel for the respondent. He stated he is employed by the British Columbia Ministry of Agriculture and Lands (Ministry) as the Industry Specialist for berries. He has a Bachelor of Science degree from the University of British Columbia and is a Professional Agrologist (PAg). In order to obtain that designation, an individual must have a degree within an agricultural specialty and at least 3 years experience working in that field. It is also necessary to comply with annual continuing education requirements. Sweeney stated he has been employed by the Ministry for 27 years, beginning in 1978 when he was the Manager of Community or Allotment Gardens and a greenhouse technician. From that position, he became a vegetable specialist and worked in that capacity for 17 years before assuming his current position in 1998. While working as a vegetable specialist, he encountered many situations where the farmers were also growing berries. Although there are over 1,000 berry farms in British Columbia, Sweeney is the only berry specialist employed by the Ministry and is responsible for advising growers throughout the province. He is concerned with the entire gamut of production from choices of varieties and assessments of varieties to issues relating to soil management, nutrition, fertilization, weed and pest control, harvest management and other matters within the agricultural or horticultural industry.

[84] In view of Sweeney's education, experience and professional designation, counsel requested that the Court qualify him as an expert. Ronnie Gill – agent for the appellants and intervenors – did not object. Accordingly, Sweeney was qualified as an expert in the discipline of growth and harvesting of berries and matters related thereto and therefore able to offer opinion evidence in this respect. Sweeney identified a report – Exhibit R-20 – that he prepared at the request of counsel for the respondent. In the report, he stated the main blueberry harvest began on July 5, 1998 and was completed by September 9. However, limited volumes of early varieties were harvested in late June and limited volumes of a late variety – Elliott – were harvested into early October. In order to establish those dates, Sweeney contacted packers and processors to determine – from their records – the dates berries were first received and the date of the latest deliveries in a season. In his experience, when the season starts, berries sold to large packers and canneries are picked and shipped the same day while berries destined for smaller markets may be harvested – in limited volumes – up to one week earlier. Sweeney stated the most common variety in the Fraser Valley is Blue Crop, followed by Duke but in 1998 the Duke blueberry was not that common. Although there are many varieties grown in the Fraser Valley, in 1998, about 60% of blueberries were Blue Crop and all other types made up the balance. Sweeney stated Northland was a minor variety and probably accounted for less than 3% of total volume in 1998. Dixie was an even older variety and was not widely planted by local farmers. In terms of ripening, Duke is first, followed by Northland, Blue Crop and Dixie. However, there is considerable overlap because they do not all mature at once so at some point in the season all 4 varieties referred to earlier could be picked on the same day. Sweeney stated there is also more than one picking of each type because the berries ripen over an extended period of time. He stated the price is determined by the market and goes up and down based on volume and what is happening in the rest of the industry within North America. Often, the earliest varieties command a good price but as the volume of harvest increases, the price will drop in response. At the end of the season when volumes are light, the price will increase again. In his opinion, the price per pound of blueberries is more dependent on timing during the season than it is due to differential in varieties. With respect to the matter of yields in 1998, Sweeney stated they were above normal. In his experience, there is always a large yield range from field to field depending on age of planting, variety, method of harvest, localized weather conditions, soil type and grower management. As a result, yields can range from 2 to 12 tons per acre. A well-managed, mature field of Blue Crop should produce – on a regular basis – 5 to 8 tons per acre if harvested by hand. The younger plants do not produce as many berries as older plants but after 7 to 10 years, plants attain a maximum yield and production thereafter is at a certain plateau. However, a farmer can have yields vary tremendously due to weather and other factors. Sweeney stated the blueberry plants can last almost indefinitely with

good management and he is aware of a field in Richmond, B.C. that has been in production since the 1930s. Some varieties – such as Blue Crop – are considered to be high-yielding plants. Older varieties – including Dixie – are not as productive and as a result have fallen into disfavour among farmers. The yield can vary greatly from year to year and from farm to farm. Hand-harvested crops produce more berries – generally – than those picked by machine. Blueberries are a resilient crop and can be grown in different types of soil but heavy, compacted clay or extremely sandy or rocky soil is not conducive to good growth. Sweeney stated he considered grower management to be the most important single factor in determining yield because producing blueberries or any other crop is a demanding task. Many factors are involved, including proper pruning, fertilization and controlling over 15 different types of pests in addition to dealing with weeds. The ideal manager will undertake a wide range of activities in the correct way at the right time and will adapt and modify procedures according to the requirements of the crop. Pruning at the wrong time would have a negative impact on yield as would inefficient weed management. Counsel referred Sweeney to one of the information sheets – page 5 – appended to his report and to the paragraph headed Step # 6 dealing with the subject of added annual return by increasing yields due to installation of nets. In said paragraph, it states a well-managed, mature Blue Crop planting can produce 18,000 to 20,000 pounds per acre if hand-harvested, although the industry average yield across all varieties is about 9,000 pounds per acre. Sweeney acknowledged there is a wide range for the yields as found in information provided to growers. He explained the Ministry does not want to mislead farmers – particularly prospective growers – into believing they can achieve numbers that are basically unrealistic and are rarely attained except by good growers in good years. In response to a question from the Bench, Sweeney stated that 5% of growers would fit into the category of top producers who achieved high yields. He stated it is necessary not only to have experience but to have ability to manage a farm efficiently and to take all steps required to enable growth of a good crop. With respect to the number of pounds workers can pick per day, Sweeney stated in his experience as a berry specialist and based on information received from growers, an experienced picker working with a good crop could pick 400 pounds per day. However, the range was huge in terms of picking ability among workers and – most important – the crop because in order to pick large volumes the fruit has to be large, uniformly mature and the field has to be suitable. The amount picked per day also depends on the time within the overall season. Most pickers prefer the Duke variety because the bushes are small, there is not much foliage, the fruit is large and ripens more or less at the same time and the pickers can strip away large clusters of berries in order to achieve a high number of pounds per day. Sweeney reiterated the Duke variety, although common now, was not widely planted in 1998. Sweeney stated that when considering all factors most workers would pick between 200 and 400 pounds in an 8 or 9-hour

workday. The Blue Crop variety was also easy to pick and could permit large daily volumes while Northland – although a good yielding variety – had more foliage which tended to slow down pickers. Dixie – a late-maturing berry – was not particularly high yielding and pickers would not do as well with that variety. Counsel referred Sweeney to appended material – p. 15 of his report – entitled Assumptions: Blueberry Full Production – Hand-Harvested – Fraser Valley, wherein the target yield at full production is 12,800 pounds per acre. Under the following category headed Sensitivity Analysis, a yield at 8,000 pounds per acre was low, 10,000 pounds was average and 15,000 pounds was high. Sweeney stated those assumptions were based on production of mature plants between 7 and 10 years old. Dealing with the subject of profitability, the information sheet – p. 16 – entitled Sample Enterprise Budget and Worksheet used 3 different prices per pound based on whether the produce was sold as fresh, for processing or at the farm gate which multiplied by the target yield of 12,800 pounds per acre produced revenue in the sum of $9,752. On said sheet, there is a detailed listing of projected expenses which totals $8,427 per acre. The bottom line – referred to a Contribution Margin – is $1,335 per acre which does not take into account interest charges, depreciation or other indirect expenses which would reduce pre-tax profit to $1,000 per acre. If someone farmed 8 acres, they would have a net profit – before tax – of $8,000 without taking into account the labour contribution of the farm operator(s). Sweeney stated an increase in price to $1.20 or more per pound for fresh berries in the last few years was responsible for increasing revenue per acre and would produce a better profit. However, the labour costs remained high and more farmers were mechanizing picking in order to reduce operating expenses. At page 2, paragraph 3 of his report, Sweeney dealt with the matter of labour requirements which vary greatly from field to field depending on several factors. Hand-harvesting is the most time-consuming operation and in his opinion it is done on a piecework basis. In his opinion, the most significant hourly-paid farming operation would be winter pruning which the Ministry estimated would required 65 hours per acre for blueberries. In Sweeney's experience, virtually all farmers pay pickers on a piecework basis, although he accepted there may be some harvesting done for specialized markets that would not reward a pieceworker sufficiently so an hourly rate would be more appropriate. In his opinion, that situation would be extremely rare and he had not encountered this scenario in the course of his duties with the Ministry. Apart from pruning, certain other tasks were remunerated on an hourly basis including spraying, mowing, fertilizing, installing and removing nets and other minimal operations. Pruning is done – generally – once per year in the dormant period between November and February because if performed later in the spring after buds begin to break, considerable damage is done to those developing flower buds. In the event some pruning was undertaken at different times of the year, Sweeney considered it would be limited to removal of dead or diseased branches after harvest because the damage

would be visible and those branches would be cut off and taken away for disposal elsewhere in order to prevent any spread of the disease. Following harvest in late August or in September, because the supply of sap has been cut off, the leaves on diseased branches turn a bright, red-brown colour. He estimated this task could be performed by one person walking through the field and that the total operation would occupy a few hours per acre at the most. The major pruning in the dormant period is either performed by hourly workers or some growers do that work by themselves with a small crew of helpers. Sweeney stated that fertilizing is done in the spring and most growers apply it twice, once when growth begins in April and a second application a month or more later. Some growers spray again in June. New plantings are generally fertilized by hand and would require only a few hours per acre. Larger growers use a tractor to pull a fertilizer spreader but small growers have workers walking down the rows carrying a bucket of fertilizer and spreading by hand. As stated in paragraph 7 – p. 2 – of his report, hand weeding of blueberry plants is not required generally except in young plantings or for specific problems in mature plantings because the use of sawdust mulch and herbicides is an effective method of controlling weed growth. Unlike some other crops such as strawberries, there is a wide range of herbicides available for use on blueberry crops. While weeding by hand is a significant labour-intensive operation on a strawberry farm requiring up to 50 hours per acre, Sweeney estimated a typical blueberry farm would need only 3 or 4 hours per acre to walk through and perform whatever hand weeding was necessary. In his experience, most growers put down sawdust every third year and not twice a year because there is no need for that frequency with proper use of chemicals. Most herbicides are applied between late February and late April and growers can develop their own weed control program based on their needs but nearly all herbicides must be applied before the bloom is on the plant. July and August are not months in which sprays are typically used because of a requirement printed on the labels of products such as Gramoxone warning it is not to be used once the blossom is on the plant. Since Gramoxone is a generic weed contact killer, it will kill most weeds when they are green and although it could be used on grass, the more common method to get rid of unwanted grass would be to apply the product Roundup. Even with Roundup, it is not supposed to be applied within 30 days of harvest. In Sweeney’s opinion, it would be difficult to spray in late June because the plants are heavy with berries and would be drooping down to the ground and it would be tricky to spray weeds without contacting the plant. Another method of weed control is to use sawdust mulch which is spread two or three inches thick in an area two or three feet in diameter around the base of the plant. After three years, the sawdust decomposes and creates humus in the soil which is beneficial to the rooting environment. At this point, it has to be replaced but Sweeney did not consider it would be necessary to replace sawdust during a season – other than in a few spots – because it would be difficult to pickers to disturb sufficiently a two or

three-inch layer of material to the point where new mulch was needed. With respect to the matter of irrigation, Sweeney stated it would be normal for a grower to ensure – perhaps in May – that the system was working properly. At that time, leaks would be repaired and maintenance and inspections would be performed. The drip system is relatively free of maintenance although breaks in the line can be caused by animals such as mice or coyotes chewing through the material or by workers stepping on the drippers. In his opinion, even an older irrigation system would not require much time to get it operating at the beginning of the season. He was not familiar with the system used by Gill Farms where the emitter or dripper could not be screwed into the outlet in the hose but had to be re-installed elsewhere by piercing another hole. He agreed that if the water supply had not been filtered properly – preferably with a sand-filtration system – it could plug up the entire mechanism and added that clean water was vital to the efficacy of a drip-irrigation system as dirt or other material could clog up the lines and block the drippers. On page 3 – paragraph 9 – of his report, Sweeney dealt with the topic of netting. The nets are installed prior to the first fruit ripening, normally during the month of June. Removal would be done after harvest, normally in September or as late as October depending on the variety of berry grown. Minor repairs to nets are done – normally – during the installation and if there is major damage, that section of net is replaced. The estimate by the Ministry – based on information received from several growers – is that 36 hours per acre is required annually to install and remove nets in the period including 1998. A revised estimate in 2001 reduced that requirement to 15 hours per acre. The initial estimate was based on information gathered when there were not many growers using netting and the Ministry learned it was a time-consuming and often frustrating process to install nets but as growers became more experienced, they needed less time to complete this operation. Sweeney stated that he considered 36 hours per acre to perform all tasks associated with the practice of netting would be a generous allotment even allowing for some time attributable to re-setting poles that had become loose at the base. Since there was no mechanized system to install and/or remove netting for blueberry plants, human labour was required. Returning to the subject of the different markets for berries, Sweeney stated that for the most part machine-harvested berries are sold for processing and freezing and the price per pound is less than for berries sold on the fresh market or directly to buyers at the farm. The labour requirement for berries destined for the fresh market will be higher than for those intended for sale at the canneries or processors. Sweeney stated the price differential between processor/cannery berries and fresh market can vary depending on the market. The standard for Individually Quick Frozen (IQF) berries is very high and those berries must be picked carefully and cannot be bruised or otherwise damaged or contain debris. At or near the end of the season, berries of lower quality will be sold as juice grade and will bring a lower price. Handpicking is expensive because care must be

taken to avoid picking green fruit or damaging the berries. Sweeney was familiar with Universal and knew that entity was a processor and that it and many other processors – including Kahlon – also sold fresh berries to their customers. In Sweeney's experience, farmers do not want to be sending berries to the canneries which are full of debris such as twigs and leaves and/or green berries but they would not bother running the berries down a belt because that operation is done by the cannery. The conveyor belt is used by farmers to clean and sort berries that are sold directly to the consumer or to a local produce store. Generally, berries are delivered in lugs or other larger containers to the canneries while smaller buckets are used by pickers to hold the fruit until it is emptied into a larger container. Some containers used to transport berries to a processor may hold up to 1,000 pounds and even though the bottom layer is squashed, it does not matter if the product is being used to make jam or juice. However, if berries are intended for the fresh market, they will be shipped in containers that are flatter and hold only 20 or 25 pounds. Sweeney stated the general rule observed by blueberry growers is to take the berries to the cannery as soon as possible, particularly during hot weather, even though a blueberry is much more durable than other fruits and is regarded as a "shippers' dream" berry.

[85] Mark Sweeney was cross-examined by Ronnie Gill, agent for the appellants and intervenors. He confirmed that in the course of his duties he has observed pickers placing berries into 5-pound buckets which are taken to the scale - sometimes several at the same time – for weighing. Sweeney was referred to the Weight Check slip – Exhibit R-2, tab 35, top of p. 394 – issued by Universal in which the word "flats" was crossed out and the word "lugs" was written to the left thereof. The gross weight of that shipment – comprised of 9 lugs – was 317 pounds and the rate for those fresh berries was 90 cents per pound. Sweeney agreed that appeared to be so but most berries are shipped in flats in order to obtain the fresh market price. Sweeney was shown a bundle of printed berry shipment receipts – Exhibit R-2, tab 36, pp. 412 – which indicated Kahlon received berries from Gill Farms that had been shipped in containers described as "light lugs". According to the receipt at the top of p. 412, 754 pounds of berries were shipped in 21 lugs indicating each lug – on average – held 35.9 pounds of berries. The Grower Payment Receipt – p. 408 – shows Kahlon purchased 24,453 pounds of berries from Gill Farms for which it paid the fresh rate of 80 cents. This category represented 41% of total sales by Gill Farms to Kahlon in 1998. Sweeney agreed that the total production of Gill Farms in 1998 was comprised of 88,450 pounds sold to canneries/packers as represented by receipts. Assuming that there had been extra sales of 10,900 pounds not substantiated by receipts or other documentation and adding that volume to those sales to Hamilton and to Lower Mainland groceries as well as fruit stand sales on the farm, Sweeney agreed total production could have reached 125,200 pounds,

amounting to 15,650 pounds per acre which would be a yield at the upper end of the scale. Ronnie Gill advised Sweeney that Gill Farms produced ten tons – 20,000 pounds – of berries per acre in 2004. Sweeney replied that this number would indeed represent the peak of yields and it would be difficult to achieve – consistently – that volume. With respect to pruning, Sweeney stated there is a bacterial blight that caused blackening of the tips of branches and shoots and causes a die-back of the branches but it does not occur on an annual basis. It does appear more often in areas more prone to frost. The appropriate response is to apply fungicide in the fall and to remove only the blackened branches by pruning as it is not economical to prune the small blackened tips. Sweeney stated the standard spacing of blueberry plants is 1,452 per acre and that they are planted in rows 10 feet wide with 3-foot spacing between plants. If a grower planted with 2-foot spacing, the land would accommodate up to 2,000 plants per acre. With respect to replanting, Sweeney stated a grower should determine why the existing plant died as it may have been due to a disease. He estimated it would take about 10 minutes to remove the old plant and another 2 minutes to plant the new one. He agreed the efficiency of the workforce varies within the industry and that most farmers access the same labour pool. In recognition of this fact, the Ministry uses a cross-section based on a wide range of information. Because of the cost of acquiring nets and the time-consuming installation and removal operations, it is not always economically feasible for growers to utilize that technique to prevent crop loss. The cost of netting is approximately $3,000 per acre which means a grower has to save a lot of berries from birds in order to justify the cost, not only for the initial acquisition but subsequent annual expenses related thereto. Sweeney stated some losses due to birds eating the crops are field-specific as well as particular to a season. If the birds are plentiful and the crop is heavy, losses can range as high as 20% of total which could be substantial if yields were 16,000 pounds per acre and the price was 80 cents per pound. Using those numbers and applying them to an 8-acre farm, Sweeney agreed the total loss could be more than $20,000 and the volume of production by Gill Farms justified the use of nets. He added that the nets must be installed and removed as efficiently as possible. He agreed that grass should be sprayed because it will remove essential nutrients from the soil that is needed by the plants. In his opinion, hoeing to control weeds is not usually necessary on a blueberry farm. He stated most high-yielding farms cannot attain superior levels of production without utilizing a proper weed control program. Those farms that are certified as organic farms often suffer a 50% loss of crop due to uncontrolled weeds. Sweeney stated he did not consider it necessary to devote much time to resetting poles or tightening wires and conceded the 36-hour per acre estimate by the Ministry to perform all tasks related to netting probably did not include these incidental matters.

[86] Charanpal Singh Gill (Charan Gill) was examined by Amy Francis, counsel for the respondent. He is the Executive Director of the Progressive Intercultural Community Services Society known as PICS. His résumé was filed as Exhibit R-21. Charan Gill obtained a Master of Arts in India – in 1959 – before coming to Canada. In 1970, he was registered as a Social Worker in British Columbia. He attended University of British Columbia and received his Bachelor of Social Work in 1982 and his Master of Social Work in 1983. After a 32-year career in the public service with the Ministry of Human Resources, he took an early retirement and was instrumental in creating the PICS organization. Charan Gill described PICS as a diverse society that provides services to the multicultural population and there is one specific unit which provides support to farm workers. PICS holds orientation workshops where workers are advised of their rights and responsibilities and they are assisted with respect to matters arising from employment situations. There is also an English Language, Second Language for Adults (ELSA) program staffed by 6 or 7 teachers. PICS has offices in Surrey and Vancouver and employs over 40 people working under Charan Gill's supervision. Those offices offer employment counselling and also have settlement workers who help people to deal with problems they encounter in terms of immigration or to assist farm workers in collecting unpaid wages. PICS has a legal advocate who works strictly for farm workers. Recently, PICS built 54 units of seniors' housing as well as a 72-bed assisted living facility. Workshops are held to deal with subjects such as crime prevention, drug addiction and youth programs. PICS is a registered charitable organization and a member of the United Way Agency. The society operates Colony Farm Project on a 167-acre parcel of land devoted to growing produce while providing training to farm workers and farmers. PICS assists members with translation from English to Punjabi, Hindi and many other languages. PICS currently operates with a $5 million annual budget and will add 32 employees due to the needs of the assisted living housing development. Charan Gill stated PICS was founded in 1987 and at that time he was President of the society as well as Executive Director, for which he received a salary of one dollar per year. He was advised he could not hold both positions and resigned the post of President. In 1978, he began working with the Canadian Farmworkers Union (CFU) and other groups dealing with anti-racism and other educational programs pursuant to an informal association until PICS was formally registered as a society in 1987 and began serving as an umbrella organization. Charan Gill stated he and three other people formed the Union as a result of him and his family having gathered firsthand knowledge of working conditions for farm workers as a result of picking berries to earn extra money for family vacations. A labour activist – the late Cesar Chavez – renowned for his work in California as founder of the United Farm Workers and the leader of the grapes boycott was invited to British Columbia to assist in forming CFU. Charan Gill has served as Secretary-Treasurer from 1978 and still occupies that position. In the early stages,

CFU was involved in collective bargaining with farmers and growers but provincial labour legislation was amended to make it easy for unions to be decertified. Throughout, CFU has sought better working conditions since there was often no drinking water provided, no washrooms and living quarters were unhealthy. Although by 1984 all units were decertified, CFU still had 200 members and was itself a member of the British Columbia Federation of Labour. It decided to devote its efforts towards lobbying governments to pass legislation to improve WCB coverage, amend health and safety regulations and to require employers to provide some employment benefits for farm workers. In those years, farm workers were not included in the labour code. At one point, Charan Gill – through PICS – was involved with an experiment called the Farm Labour Project (Project). PICS obtained a labour contractor's licence and hired workers with the intent to provide them with better wages and working conditions. The goal was to demonstrate this approach could work so other employers in the agricultural industry would follow. However, the result of the experiment was the project lost $10,000 the first year and $12,000 the next, due in part to a misunderstanding of provincial labour legislation which required broccoli and Brussels sprouts workers to be paid hourly rather than by piecework. This misapplication of the regulations led to PICS paying a fine as well as wage arrears based on an hourly wage to those workers who performed tasks relating to those two particular crops. Charan Gill stated the PICS-operated project paid its workers by piecework to pick berries according to the standard within the industry. In his experience gathered during the past 25 years, he has never encountered an employment situation where an hourly wage was paid to berry pickers by any grower. Charan Gill stated the Project had only 35 or 40 workers in the midst of an industry that employed up to 15,000 and could not make a dent in changing employers' attitudes because the workers were scared and so were the labour contractors. He discovered that if Project workers were at a farm, they would be sent to an area where the crop was poor. Charan Gill stated this experience operating a labour contracting entity provided an opportunity to learn the "inside story" and caused him to conclude "unless you do lots of hanky-panky, you cannot make money". Charan Gill stated he was involved with many issues while serving as Secretary-Treasurer for CFU which instituted a program where informational leaflets were distributed to workers. However, some farmers would not allow CFU representatives to enter the property. Charan Gill stated he was pleased to see that educational task assumed as part of the duties of Agricultural Compliance Team (ACT) composed of members of the provincial Employment Standards Branch (ESB) and employees of HRDC and one or more other governmental agencies from either the provincial or federal government. In his view, this squad performed an excellent service over the course of 4 or 5 years in obtaining compliance with existing employment standards and regulations pertaining to employment of farm workers. To his chagrin, the activities of that group

– ACT – were reduced – in 2001 – to the point where he thought it had been completely dismantled. Charan Gill stated he is currently active in farm labour issues and – two or three times a week during the winter – instructs classes of 35-40 people in a workshop setting in which participants are helped with language skills and informed about their rights under various pieces of provincial and federal legislation affecting their employment. Resource people from various government departments or agencies attend the workshops and explain the methods whereby workers can lodge a complaint if they feel they have been treated unfairly. Over the years, Charan Gill has written articles on various aspects of farm labour practices, including dangers associated with child care on farms and improper use of pesticides and participated in research leading to the publication of a book dealing with those issues. From 1978 to 1980, he assisted in the production of a documentary by the National Film Board entitled "A Time to Rise" which he considered presented an accurate portrayal of the struggle of farm workers to improve their working conditions. Charan Gill is the recipient of the Order of British Columbia (1999) as well as a Human Rights Award in 1983. Counsel for the respondent proposed Charan Gill be recognized by the Court as an expert in farm labour practices in British Columbia. Ronnie Gill, agent for the appellants and intervenors did not object. In view of the qualifications and experience of Charan Gill as disclosed in his testimony, he was so qualified and permitted to offer opinion evidence with respect to that subject matter. With the agreement of Ms. Francis and Ms. Gill, the testimony of Charan Gill received to this point with respect to the issue of qualification as a expert witness was incorporated as part of his testimony as a whole. Counsel filed – as Exhibit R-22 – a report – dated June 21, 2005 – prepared by Charan Gill. Charan Gill estimated about 65% of the individuals assisted by PICS would be South Asians and that out of a total work force of 32,000 agricultural workers in B.C., at least 23,000 would be South Asians, mainly from farming regions in Punjab, India. Charan Gill stated it has always been his aim to eliminate piecework because farm workers were not earning more than the equivalent of $5 per hour for a 10-hour day. He ascertained during research on this subject that farm workers were remunerated by piecework as early as 1901 and in his opinion payment according to piecework on berry farms is almost universal. In his experience within the industry, he has never encountered any blueberry farmers who pay an hourly wage to pickers. However, he is aware of a practice where blueberry pickers will work 10 or 12 hours and earn $60 based on piecework but that amount will be converted by the farmer to an hourly minimum wage of $8 per hour for 7 or 7.5 hours. The result is that workers are paid according to one method but the records reflect another. In Charan Gill's opinion, growers believe they cannot afford to pay the hourly minimum wage because they have to compete with product from California. He estimated it may be possible for a few very fast pickers to make more money on piecework than they would if paid an hourly wage but this would be possible only for

one or two weeks during the peak of the season. In his experience, most labour contractors pay pickers 40 or 45 cents per pound and during the height of the season if the crop is good, a worker can pick 150 to 200 pounds of blueberries per day for a maximum total wage of $90. However, the daily volume during a first picking may be only 100 pounds and the same production can be expected during the third picking. As a result, only during mid-season can high daily volumes be attained and over the entire 6-week berry picking season, a competent picker could earn an amount close to the equivalent of the hourly minimum wage for only two weeks. Charan Gill stated he has not seen or heard of any worker who could pick more than 200 pounds of blueberries per day. In his opinion, berry pickers in the Fraser Valley who are remunerated according to the common industry standard of piecework, will not earn more than $5 per hour by working 10 hours per day. Gill stated there are several varieties of blueberries and some farmers may grow only one or two and even if more varieties are grown which mature at different times, in his opinion based on the total growing season, no picker will earn more than the sum of $5 per hour. Charan Gill stated pieceworkers work long hours – 10-12 per day – and farmers may – on occasion – pay some of them an hourly wage to perform tasks such as hoeing, pruning or other duties but not for picking berries. He stated his personal experience in operating a labour contracting business – via PICS – as well as based on observations and industry research for 25 years have led him to conclude there is a considerable amount of EI fraud within the industry. In his view, the farm workers are caught in the middle and lose UI benefits because proper records have not been kept by farmers or there is some fraudulent activity perpetrated by labour contractors who either change the name of their existing operation or file for bankruptcy and start afresh with another entity for another season. Charan Gill stated ACT was responsible for charging over 100 farmers for breaches of ESB regulations and either preventing or discovering breaches of EI regulations. In his opinion, during the six years ACT was active, it reduced fraud and malpractices on the farms and performed inspections on the engines and brakes of vehicles with a view to improving safety of workers. By 2001, ACT was no longer visiting farms with the sort of frequency required to carry out its mandate. In his view, the labour contractors and farmers are in a better position to buy whole tables at fundraising dinners for politicians and the unorganized farm workers did not have that kind of political clout. Legislation and/or regulations were modified since 2001 to permit farm workers to work up to 100 hours per week and there is no provision for overtime pay. The age at which a child could work on a farm was reduced from 14 to 12 and a special training wage of $6 per hour – at $2 below the otherwise applicable minimum wage – has been abused by farmers. Holiday pay was preserved and is supposed to be paid every two weeks. The rates for piecework established by regulations were designed to include payment for statutory holidays during the season. Overall, he estimated EI fraud cost millions of dollars per year in

the Fraser Valley. Because EI regulations have undergone revisions in recent years, it is more difficult to work sufficient hours to become entitled to benefits. He is aware of incidents where people who had never been near a berry farm purchased ROEs in order to qualify for UI benefits. Charan Gill stated it is possible for apple pickers in the Okanagan area to earn more than minimum wage for their efforts but he is not aware of any picker who has earned the equivalent of the hourly minimum wage for an 8 or 10-hour day while picking raspberries, strawberries or blueberries.

[87] Charan Gill was cross-examined by Ronnie Gill. He agreed that a farmer - in 1998 – could pay holiday pay of 7.6% to an hourly-paid worker instead of merely the mandatory 4% on the basis the higher rate took into account work done on one or more statutory holidays during the season. Charan Gill stated he had never visited Gill Farms and was not otherwise familiar with their methods of operation. He stated he was aware of the general practice within the industry which was to pay workers for 7 or 8 hours at the minimum wage even if they had worked as many as 10 or 12 hours per day. At the end of the season, the worker does not have enough insurable hours to qualify for UI benefits following layoff and that situation creates the opportunity for fraud because the worker wants credit for more hours and pays the farmer for an ROE that meets or exceeds the minimum requirements for said benefits. Charan Gill stated it is the older workers - particularly those recently arrived from India – who are susceptible to this sort of arrangement. Although the situation has improved somewhat due to a general shortage of labour, it is still the older workers who pick berries because younger people are employed in greenhouses where they are paid an hourly minimum wage. Charan Gill stated there were about 500 Mexican workers employed on farms in the Fraser Valley in 2005 and they were paid between $11 and $13 per hour even though local workers were paid by piecework which was not equivalent to minimum wage. Charan Gill stated he had heard of a farmer who paid pickers on an hourly rate in 2005 to harvest both raspberries and blueberries but the usual practice when there is a labour shortage and berries are ripe is to increase the price per pound to 50 or 55 cents in order to attract workers. In response to a question from the Bench whether he had encountered a two-tiered farm work situation where pickers in one group are paid an hourly wage and those in another group are paid by piecework because they want to come and go as they please, particularly if they have other jobs, Charan Gill stated he had not. In his opinion, only workers performing tasks such as driving tractor or hoeing or heavy-duty work would be paid an hourly wage whereas all pickers - most of whom are elderly and predominantly female – are remunerated on a piecework basis. Even though people working on vegetable crops such as broccoli and sprouts are supposed to be paid an hourly wage, Charan Gill stated it is often a normal practice for growers to pay workers at a piece rate because no one from the government checks on it. Despite repeated efforts from CFU to end

payment to farm workers on piecework, the policy continues and berry pickers are paid according to an established minimum rate per pound unless they can obtain more. Charan Gill stated that in 2005, a pound of blueberries sold for $1.75, the highest price he could recall. He is aware that 108 labour contracting entities are operating in the Lower Mainland but is not aware of any who are paying workers a minimum hourly wage to pick berries. He agreed there has been an increase in the past two or three years in the number of farmers who have decided to bypass the labour contractors and not only hired workers directly but acquired vehicles for purposes of transport to and from the farm. Charan Gill stated the number of farm workers in the Fraser Valley has fallen from nearly 20,000 per season to 10,000 or 12,000 due to a variety of factors including the trend to use machines to pick the crops. However, world demand for blueberries has been increasing rapidly and more land in the Fraser Valley is being put into production to supply that need. There are a few small blueberry farms on Vancouver Island and pickers there are also paid per pound because if berries are being sold for $1 a pound and it costs 40 cents or more just to pick them, there is not enough money left over to cover the remainder of expenses. Charan Gill stated that in his experience based on observations and research within the berry industry, if a farmer were to pay pickers an hourly minimum wage, he would go broke. He stated he is a blueberry grower himself and has 4.5 acres. In the event he had to pay minimum wage to pickers, he would not be able to make a profit. In his opinion, it is not economically feasible for a farm of less than 20 acres to acquire a picking machine at a cost of around $90,000. Because of his personal experience as a grower, he stated he would be very surprised if a larger grower like Gill Farms could pay pickers an hourly minimum wage and still earn a profit. He stated the per-acre yield on his farm was 10,000 pounds and did not know of any grower who produced more than 18,000 pounds per acre except – perhaps – on a small two or three-acre parcel and that 15,000 pounds was a high yield. Ronnie Gill advised Charan Gill that Gill Farms – in 2004 – achieved a yield of 20,000 pounds per acre according to the testimony of Rajinder Singh Gill. Charan Gill replied that he had never heard of such a high volume, although with proper use of netting and the right growing conditions he conceded that number might be attained by a few growers. Ronnie Gill referred Charan Gill to the second sentence of the second paragraph on page 2 of his report – Exhibit R-22 – where he stated "[S]ome growers provide an hourly wage initially to lure workers to stay work [*sic*] for them, but no one continues to pay them an hourly wage throughout the whole season". She asked whether some farmers might not continue to pay an hourly wage in order to keep employees. Charan Gill responded that some workers would be paid an hourly wage for performing certain tasks but not for picking as that method of payment – in his experience – had never been used to compensate blueberry pickers. In his view, the younger people in the Indo-Canadian community were not going to become berry pickers in the future because they were

accepting other jobs within the agricultural industry that paid on an hourly basis even if only at the minimum wage. As a result, the supply of pickers was drawn from a pool of elderly immigrants who did not want to become a financial burden to their children. Charan Gill predicted that increased mechanization would result in fewer workers and small farmers would rent machines in order to harvest their crops.

[88] Claire Turgeon was examined by Amy Francis. Turgeon testified she is employed by Human Resources and Skills Development Canada (HRSDC) as Team Leader of the Investigation and Control Unit HRDC in the Abbotsford office. She started working for HRDC – the predecessor of HRSDC – in 1995 as an Investigation and Control Officer (ICO). She also fulfilled the additional responsibility of Team Leader of ACT, also referred to as the Joint Compliance Team. In that capacity, she was lead investigator for the team which was composed of representatives from the provincial Ministry of Labour, ESB, and investigators from Canada Customs and Revenue Agency (CCRA), a federal agency. The mandate of ACT was to detect and deter fraud and abuse arising from breach of relevant government legislation pertaining to farm workers and employment entitlements arising from their employment. Depending on the results of an investigation, ACT recommended either the imposition of administrative penalties or prosecution by the Crown of certain offences. Turgeon stated ACT was moved from the HRDC Abbotsford office to the branch at Surrey and that it continues to operate. Turgeon stated she is no longer involved with that team but understood it was still making visits to farms. Turgeon stated that in the course of her employment, she worked on files dealing with farm work and some investigations involved more than 100 workers and their employers. Before working for HRDC, she was an Immigration Officer assigned to the Enforcement Unit and earlier she was a constable with the Royal Canadian Mounted Police (RCMP) for 9 years. In both of those roles, she was accustomed to interviewing individuals, many of whom did not have English as their first language. As a result, she was familiar with the practice of using interpreters when conducting interviews. Turgeon stated files arrive on her desk as a result of an investigation by ACT, a referral from an EI Insurance Agent or in order to follow up on tips received from various individuals who provide information concerning a farm employment situation. Turgeon stated she received the file pertaining to Manjit Kaur Gill because the Insurance Agent was concerned about the effect of the non-arm's length relationship between this worker and the partners who owned Gill Farms. Turgeon stated she had been requested by Emery to accompany her on a visit to Gill Farms on November 3, 1998 and notes of that visit by her and Emery are in Exhibit R-8, tabs 13 and 14, respectively. At that time, Turgeon considered it was a preliminary, fact-finding visit to obtain information concerning the business operation. The visit was unannounced which was in accord with the policy applicable to investigations of this

type. During the discussion with members of the Gill family, Turgeon noted Harmit Kaur Gill and Manjit Kaur Gill were having more difficulty communicating in English than Rajinder Singh Gill who had a better command of the language. Turgeon stated she and/or Emery asked a question more than once or in a different way until they were satisfied their inquiries were understood. The door to the Gill residence was opened by Rajinder and when Turgeon identified herself and Emery and handed him her business card, they were invited inside and offered beverages. She described the subsequent discussion – while seated at the kitchen table – as cordial. However, at one point, a teenage female member of the Gill family appeared and was upset at something Emery had said and as a result the tone of the meeting changed. Turgeon stated she raised her voice to the young female when advising her it was not her business to interfere with the discussion. Turgeon stated there was never any discussion of the matter of babysitting – allegedly done by Manjit – as later stated by Manjit in her testimony. During the discussion, either Turgeon or Emery asked questions and one or more members of the Gill family would respond. Turgeon stated she made her notes later the same day from other handwritten notes that were in point form. She wrote – p. 64 – that "Manjit Gill does not do any fertilizing or spraying and she does not pick berries. Her only duties are supervising the workers during berry time and for a short time before and after berry picking". Turgeon stated she could not remember – specifically – that statement but wrote it down at that time in her short-form notes and is satisfied that notation is accurate. Because the point of the investigation was the employment of Manjit Kaur Gill, it was important to obtain information about her duties. As noted on p. 65 of her notes, Turgeon demanded Gill Farms produce – for examination by HRDC – all daily attendance logs, picking cards and cancelled cheques. Turgeon stated that in her experience all berry farms issue picking cards to workers. She requested production of a daily record because she had been told by a member of the Gill family that a log was the method used to keep track of hours worked by employees. Turgeon identified the document entitled Daily Log – Exhibit R-1, tab 32 – as a photocopy of the original she received – on November 30, 1998 - which had been written on pages in an ordinary notebook containing un-numbered blank pages that is commonly used by students. Turgeon did not have any recollection of Harmit Kaur Gill referring to keeping track of workers' hours on scraps of paper at any point during the discussions at the Gill residence. Turgeon interviewed Manjit Kaur Gill on November 26, 1998 and her notes are in Exhibit R-8, tab 12. She does not have any specific recollection of that interview but made notes contemporaneously. A Punjabi-speaking interpreter - Jugender Dhillon – was present throughout the interview. Turgeon explained her method is to write the question first, then ask it and record the answer verbatim to the best of her ability. It is not her practice to record sidebar conversations that are not relevant. The purpose of the interview was to obtain additional information regarding the alleged supervisory

duties performed by Manjit Kaur Gill, who had claimed UI benefits as a result of her employment with Gill Farms. At the bottom of p. 58 of Turgeon's notes, she asked Manjit to describe all her duties as supervisor. Turgeon wrote down her answer in which Manjit explained she phoned employees to advise the time to start work and where to work as well as telling them when to take coffee and lunch breaks and checking on their work; she also told workers where to get their buckets and where to work next and provided drinks to them during the day. Turgeon stated she wanted to ensure that all duties or tasks performed by Manjit were recorded because that was the critical issue of the HRDC investigation. At p. 61, Turgeon asked Manjit about duties performed by Harmit Kaur Gill at Gill Farms. She recorded the explanation that Harmit punched picking cards, kept track of the number of pounds picked and sold, kept track of the hours each employee worked and made out cheques for the workers. Turgeon described the interview as "low-key" and stated she had not been angry at any point during the interview because that is something she would have recalled. Turgeon was referred to the report by Blatchford – Exhibit R-17 – and stated she had requested Blatchford and his firm to undertake that forensic examination of various business records and other documentation pertaining to the operation of Gill Farms. Turgeon arranged for a meeting to be held in the Langley HRDC office on May 20, 1999. She requested the meeting in the form of a letter – Exhibit R-23 – sent to Gill Farms wherein she stated she wanted all 4 members of the Gill family to attend together with their accountant in order to have the opportunity to explain certain discrepancies between the information they had provided and the ROEs issued by Gill Farms for the same time period. In paragraph 3 of said letter, Turgeon set out – in bold typeface – a warning that information provided is subject to verification and that there were penalties for making false statements which could lead to sanctions pursuant to the provisions of the *EIA.* She made notes – Exhibit R-1, tab 24 – of said meeting which was attended by 10 people. The attempt at recording the content of the discussions was unsuccessful as the reproduction was inaudible to the point it was completely useless and it was destroyed. The small tape recorder had been placed in the centre of a long table around which participants were seated but it was not sufficiently sophisticated to perform the required task. The only microphone was the one built into the machine. Turgeon expressed disappointment at the useless recording because she had intended it to be available for various purposes in the future including the within proceedings. This was the only attempt at recording any interview involving any of the appellants and/or intervenors in the within proceedings. Turgeon acted as Chair and at the start of the meeting requested each person to respond only to the question directed to them and to be patient while she was writing down that response. On May 20, 1999, Blatchford had not completed his audit. Turgeon recalled that on some occasions, an answer to one of her questions would be provided by one or other of the Gill family – in English – but most of the questions and answers were

interpreted by Nav Chohan, an HRDC employee who was fluent in both English and Punjabi. As she noted – bottom p. 30 – she advised the parties that she would direct questions to a specific individual and wanted a response from that person rather than from the spouse of said person. Turgeon stated she is not proficient in shorthand but attempted to write down all relevant matters discussed during the lengthy meeting. She did not record any conversation or repetitions that were for the purpose of seeking clarification of a date, number or other information. As noted on p. 231, Turgeon asked Manjit Kaur Gill to describe what role she undertook with respect to the farm operation. Manjit explained that the night before she would discuss with Hakam where workers would be going and what they would be doing. She told people where to work, checked their work, told them where to start in which row, brought buckets of water, told them about breaks for coffee and/or lunch and – if she had time – picked berries. Turgeon asked Manjit if she performed any other duties and Manjit stated she put nets up before berry season, put on hooks, weeding, more weeding after berry season was finished and concluded by saying "[B]asically, we would take orders from Hakam". Turgeon stated it is unlikely she would have missed recording any duties as explained by Manjit since she was writing them down as the interpreter was stating them to her in English after having interpreted from Punjabi. At p. 233 of her notes, Turgeon wrote about the discussion concerning the Daily Log. Prior to that meeting, that document had been provided to Turgeon at the end of November, 1998 and she wanted to inquire as to the manner in which it was kept. She asked which had been produced first, the payroll records or the Daily Log. The noted response was that the Daily Log was first and that it was updated every day because Rajinder told Harmit to keep track of hours. Turgeon noted the response – by Harmit – that the log was the actual record of the hours people worked and that it was usually written every day although the hours worked on some days may have been recorded in the log on another day because she transferred the hours to the log whenever she had time. Harmit stated she did not take the log into the field with her and when asked the purpose of that document if she was also keeping a timesheet, stated "I kept the daily log because it was separate. I did the log quickly, it takes more time to do the employee sheets". In response to a follow-up question, Harmit confirmed the detail in the log is the same as in the employee records and that there should not be any difference between the two. During further questioning by Turgeon at said meeting, Harmit agreed she had not made any entry in the log pertaining to Manjit Kaur Sidhu even though she had been employed every day for a certain period and had been issued an ROE. Harmit explained that she must have missed recording Sidhu's hours for some reason but believed the rest of the record was accurate. Counsel advised Turgeon that Harmit Kaur Gill testified she had created the Daily Log specifically to satisfy Turgeon's demand for that sort of information. Turgeon stated that was not correct and had requested that record because the Gill family had told her they used

the log as their source document to record hours worked by their employees. Turgeon stated that in her mind there was no doubt whatsoever during the meeting that the questions and answers were with regard to the specific subject of that record entitled Daily Log that was subsequently provided to HRDC. She stated there had been a reference – during the visit to Gill Farms by Turgeon and Emery on November 3, 1998 – to Harmit completing all daily logs and that is why she issued a formal demand – that same day – to the intervenors – in their capacity as partners operating Gill Farms – to produce that document. Counsel referred Turgeon to pp. 241 and 242 of her notes concerning the discussion during the meeting about the use of picking cards. Turgeon stated she and Emery had interviewed several workers by that point and were aware they had been issued picking cards. In Turgeon's experience, including all the farm-site visits carried out as a member of ACT, the normal practice is for pickers to receive picking cards because that document constitutes the basis for payment on a piecework basis. Usually, pickers have the cards pinned to a shirt or otherwise carry them on their person. She considered the use of picking cards to record piecework was a standard industry practice because berries are sold by the pound and the growers cannot earn a profit if they paid workers an hourly rate when their production during the season did not justify that amount. Turgeon – as noted on p. 241 – asked Hakam Singh Gill why Gill Farms had piece rate and hourly workers at the same time. She wrote down his reply that all hourly workers used picking cards so Gill Farms could see the amount of work they should be doing. Turgeon stated there was a difference of opinion among members of the Gill family with respect to the use of picking cards and Harmit Kaur Gill said everyone did not get a picking card and she had not retained said cards. Turgeon sought clarification on this point and recorded Harmit's response that picking cards were used "sometimes when I wanted to see what people were picking". Harmit then went on to explain that it was Manjit's duty – in the morning – to hand out picking cards and that pieceworkers would not work all day because they worked at other farms. Turgeon asked "[D]o you have pick cards for any hourly workers?" and at the bottom of p. 242 of her notes recorded Harmit's response as "No". Turgeon noted - top of p. 246 – that Rajinder alluded to paying piecework rather than hourly but the accountant – Wadhawan – reminded Rajinder that Gill Farms was paying hourly. Although she did not insert it in her notes, Turgeon recalled Rajinder when explaining the piece rate payment stated "if you pick more you make more" at which point Wadhawan "elbowed" Rajinder and interjected to remind him workers were paid hourly. At the meeting, Rajinder produced cash receipts for sales including those made to buyers in the Kelowna area. He also indicated that there were about $2,000 in roadside sales – in 1998 – and that Hamilton had purchased about 4,000 pounds of berries that year. He confirmed that the financial statement of Gill Farms included all cash sales. Turgeon stated she had shown the Gills the graph prepared by Blatchford showing the

average amount picked per day by hourly workers as well as the pieceworkers and that some days a negative amount resulted from the calculations applicable to the alleged hourly workers. Turgeon stated the cash receipts and the information concerning additional sales were provided by Rajinder immediately thereafter. With respect to the issue of interviews, Turgeon stated she and/or Emery conducted all interviews in person and they used a standard set of questions printed on a form. When interviewing a Gill Farms worker, at the beginning he or she was asked if HRDC could take a photograph and if consent was given, the photograph was taken for purposes of the file. Counsel referred Turgeon to the document – Exhibit R-3, tab 7 – produced during her interview with the appellant, Gurdev Singh Gill. Turgeon stated she had no independent recollection of that interview but had read over the notes prior to testifying. She reiterated her usual practice was to ask the questions as printed and to record the answer in her own handwriting. Jugender Dhillon acted as interpreter. Turgeon identified the document – Exhibit R-7, tab 9 – pertaining to her interview – on January 19, 1999 – with Surinder K. Gill, the appellant in appeal 2001-2116(EI). Again, Turgeon did not have any independent recollection of this interview. Jugender Dhillon acted as interpreter. The interview was not recorded and Turgeon did not recall Surinder K. Gill asking to reschedule the interview because she was not feeling well but stated that was an event that would have been recorded in her notes. Counsel referred Turgeon to a note – in parentheses about two-thirds down page 53 – that the "claimant took a break from interview. Has high blood pressure". Turgeon stated she had no recollection of that event but this type of notation was the sort ordinarily made to record such an occurrence. Turgeon did not have any recollection of her interview with Santosh Kaur Makkar on January 18, 1999 but identified the interview form and her notes in Exhibit R-10, tab 8, which indicated Jugender Dhillon was the English/Punjabi interpreter. Turgeon stated she reviewed those notes and is satisfied they reflect accurately the contents of that interview. As noted at the top of p. 47, Turgeon asked Makkar whether she had paid cash back to the Gills in exchange for weeks, i.e. an ROE. She recorded Makkar's reply, as follows "No, but when I worked at Penny's, sometimes my son would work and I would get credit for the hours". Turgeon could not recall the sequence of questioning thereafter but wrote down her questions and Makkar's response in the space directly under the heading "Additional questions and answers" on p. 47 of her notes. Turgeon interviewed the appellant Jarnail Kaur Sidhu on January 19, 1999, and identified the documentation - Exhibit R-11, tab 7 – relevant thereto. While Turgeon did not have any specific recollection of that interview, she stated that if there had been an incident in which she is alleged to have been angry and banging her hand or fist on the table she would have recalled it. In hundred of interviews conducted each year, Turgeon stated she does not conduct herself in that manner. She stated she can recall the content of those discussions only by referring to her notes made at the time in accordance with her

usual practice. Turgeon prepared a sheet titled Entitlement to EI Benefits – Exhibit R-24 – in which she set out regional rates of unemployment and the corresponding number of insurable hours of employment required to qualify for UI benefits in 1998. Turgeon explained the qualifying period for benefits starts – generally – one year prior to the start of an individual's claim or from the week following their last claim for benefits, whichever is shorter. The number of insurable hours within the qualifying period is used to determine if a claimant has sufficient insurable hours to establish a claim and also to determine the number of weeks during which the benefits will be paid. In 1998 – barring exceptions permitted by the regulations – first-time claimants required 910 insurable hours of employment in order to qualify for UI benefits. Turgeon explained that subsequent applicants are subject to variable entrance requirements which can vary from about 420 hours to 909 hours during the relevant qualifying period which is based on the number of "labour force attachment" hours in the year prior to the qualifying period and that there is a language within the regulations to define that attachment. In 1998, Vancouver, Surrey and Langley were included in region code 76 and Abbotsford and Chiliwack were in the region identified as South Coastal B.C. and assigned code 78. On page 2 of Exhibit R-24, in the left-hand column Turgeon listed the appellants in the within proceedings and in the middle she set out the number of hours needed by each named appellant in order to qualify for UI benefits in 1998. In the third column, Turgeon set out in detail – inside parentheses – the number of insurable hours each named appellant had worked at employment other than at Gill Farms, if applicable. By way of example, Himmat Singh Makkar needed 910 insurable hours to become entitled to UI benefits but had worked 934.75 hours at other employment apart from the hours he accumulated by working for Gill Farms. However, Jarnail Kaur Sidhu required the same amount of insurable hours – 910 – but did not have any other employment and had to depend on her employment at Gill Farms to produce sufficient hours in order to qualify for benefits after layoff. Turgeon prepared a sheet – Exhibit R-25 – entitled Number of Insurable Hours Required for Non-Related Appellants to Obtain EI Benefits – in which she set out the name of each appellant other than Harmit Kaur Gill and Manjit Kaur Gill and in four separate columns set out the number of insurable hours each appellant needed to qualify for UI benefits, the number of insurable hours from other employment, the number of hours worked according to the relevant ROE issued by Gill Farms and the total insurable hours of employment. The table is as follows:

Number of Insurable Hours Requiered for Non-Related Appellants to Obtain EI Benefits

Name of	Number of	Number of	Number of Insurable	TOTAL

Appellant	Insurable Hours Required to Qualify for EI	Insurable hours from other employment	Hours per R&H Gill Farms ROE	
Gurdev Gill	560	378	324	702
Harbans Khatra	560	0	652	652
Surinder Kaur Gill (Appeal 2115)	560	378	324	702
Surinder K. Gill (Appeal 2116)	560	475.5	260	735.5
Himmat Makkar	910	934.75	160	1094.75
Santosh Makkar	910	571	421	992
Jarnail Sidhu	910	0	942	942
Gyan Jawanda	910	0	942	942

[89] Turgeon stated that except for Himmat Singh Makkar, all appellants listed thereon required employment from Gill Farms in order to acquire enough hours to qualify for EI benefits. Turgeon prepared a document entitled R&H Gill Farm Summary – Exhibit R-26 – which she sent to CCRA together with her request for a ruling on insurability of certain named workers, including the appellants. The second to last page thereof contained 9 questions she posed and the last page listed several matters Turgeon considered to represent anomalies. Turgeon stated she wanted to provide CCRA with the relevant evidence as well as her view of the employment situations applicable to the related workers – Manjit Kaur Gill and Harmit Kaur Gill – as well as the group of non-related workers. She set forth her doubts about the accuracy of records produced by Gill Farms and the various discrepancies relating to the amount of money earned by the partnership from selling berries and the substantial difference between that sum and the total amount deposited to the business accounts operated by the intervenors in 1998. She pointed out her concerns that the two wives – Harmit and Manjit – were working as supervisors on a full-time basis during those parts of the season when there were as few as 6 employees. The labour expended appeared to be 3 times as much as required by industry standards and it did not make sense that any farmer would pay out $86,948 in wages to pick berries that sold for only $61,902. Turgeon stated she listed in detail those matters she felt required consideration by a Rulings Officer in the course of arriving at a decision on insurability.

[90] Claire Turgeon was cross-examined by Ronnie Gill. Turgeon issued her request for rulings on insurability on July 9, 1998 at which point she had not received the final

report from Blatchford which stated revenue from blueberry sales was in the sum of $73,712 and not $61,902 as she had assumed in her summary. Turgeon agreed HRDC had not conducted any investigation concerning the employment of Santosh Kaur Makkar at Penny's farm even though Makkar had volunteered the information that – sometimes – her son worked there and his hours were added to her own for purposes of the ROE. Ronnie Gill referred Turgeon to the notes – Exhibit R-8, tab 14 – made by Emery regarding the visit to Gill Farms on November 3, 1998. Gill pointed out that Turgeon had written in her notes – tab 13 – that "Harmit completes all the Daily Logs" but Emery noted that a formal demand was made for "cancelled cheques, payroll records, time sheets" without mentioning any logs. Turgeon stated she could not comment on those notes. Ronnie Gill pointed to another discrepancy in the notes of Turgeon compared with those of Emery concerning the number of workers required for certain tasks from March to June. Turgeon noted that "the fertilizing and clean-up was done by 2 or 3 people" and Emery wrote that Rajinder Singh Gill said it took "three to four workers for this job but not full-time, they are on call". Turgeon stated the interview was conducted in an informal setting and there were times when there was more than one conversation occurring. Turgeon's notes indicate she considered Rajinder had done most of the talking. Ronnie Gill suggested Harmit Kaur Gill would have been more knowledgeable about farm operations. Turgeon replied that it was somewhat of a disorganized conversation in the sense she spoke with Rajinder while Emery was talking with Harmit and Manjit. Turgeon recalled Rajinder left the kitchen area to answer a telephone call and then returned to participate further in the discussions until the meeting was terminated following the intervention of Daljit Kaur Gill who objected to the line of questioning. Turgeon estimated she and Emery were inside the Gill residence approximately 20 minutes to 30 minutes. Turgeon stated she understood Manjit Kaur Gill to say that she did not pick berries. However, when interviewing other workers, they mentioned Manjit had picked berries. Turgeon stated she had not clarified – each time – whether that worker had observed Manjit picking berries only occasionally for a brief period of time or whether it seemed to be on a regular basis. Ronnie Gill referred Turgeon to the interview – Exhibit R-11, tab 7, p. 40 – of Jarnail Kaur Sidhu where she was asked to describe - sequentially – the different jobs performed during her employment at Gill Farms. Sidhu stated her work progressed from hoeing, cutting off prickly parts of the blueberry plants, to tightening the wires holding the net, putting hooks on the wires, putting up the net - all of which was done using ladders – and then she picked berries, cut and/or broke off dry branches, took down the nets and weeded until her layoff on September 26, 1998. Turgeon confirmed that none of her interviews with any Gill Farms workers had been recorded on tape or otherwise and the only record was contained in the printed forms and her handwritten notes regarding answers provided to questions therein. Turgeon confirmed that her sole attempt to record interviews was

during the meeting on May 20, 1999 at HRDC that was attended by a total of 10 people. Turgeon agreed that in her summary – Exhibit R-26 – she considered it odd that both Manjit and Harmit would have been required to work as supervisors when there were only 6 employees. Ronnie Gill referred Turgeon to Blatchford's notes – Exhibit R-19 – of the May 20th meeting when he listed several duties performed by Manjit apart from supervising workers and had noted similar tasks which were performed by Harmit. Ronnie Gill suggested it should have been clear to HRDC that both workers had worked together with other employees both before and after the berry picking portion of the season. Turgeon stated she had been a member of ACT for 6 years and visited many farms in various areas of British Columbia including orchards in the Okanagan and ginseng farms in the Kamloops region. She stated it was not usual for people to work between 10 and 14 hours a day during peak season.

[91] Moira Emery was examined by Shawna Cruz. She testified she had been employed as an ICO by HRDC for the past 8 years. Earlier, she worked in other divisions including employment counselling and as an assessor. As an ICO, she deals with various aspects of EI and SIN files that land on her desk, including fraud. Often, she receives tips from outsiders and works on files referred to her by frontline assessors or insurance agents within HRDC who have been dealing with a particular claim. She had worked on about a dozen farm files prior to being assigned the files pertaining to Gill Farms and Manjit Kaur Gill. She does not speak Punjabi and her practice is to contact an individual and to determine whether the assistance of an interpreter is required. Upon receiving a file, she reviews the contents in order to determine the issue and then decides on an appropriate course of action which she pursues. Although Turgeon is now her supervisor, they were both ICOs in 1998. Emery recalled the visit to Gill Farms on November 3, 1998 and that she and Turgeon had not given the Gill family any advance notice. Their intention was to learn about the farming operation generally and to obtain information concerning the nature of the duties performed by Manjit Kaur Gill. Emery prepared her notes – Exhibit R-8, tab 14 – after her return to the office which were based on notes made on a piece of paper during the interview in the Gill residence. Emery stated her practice is to rewrite notes the same day and when writing them – tab 14 – she does not include "every single comment" but attempts to deal with details relevant to the issue of non-arm's length employment. To the best of her recollection, the meeting lasted between 40 and 45 minutes and Rajinder spoke more often than either Manjit or Harmit. Emery stated she was explaining the rules surrounding insurability of employment of a family member and questions to members of the Gill family were directed to that issue. Emery stated a young female intervened in the discussion and was very upset. As a result of that event, the meeting was terminated in about 10 minutes. Emery stated she

did not recall any problem communicating - in English – with any of the Gills and the main concern was the nature of the work performed by Manjit for the Gill brothers partnership. There was no reference to babysitting in any context whatsoever. A formal demand on a special form – Requirement to Provide Information – was issued for cancelled cheques, payroll records and time sheets. There was no mention by any member of the Gill family of a Daily Log, a document required by law to be kept by labour contractors and at that point HRDC was not aware whether the Gills had hired some labour through contractors, so the request for a Daily Log was made as a matter of routine. Emery stated she was satisfied both Harmit and Manjit understood the questions posed by her and Turgeon although they often deferred to Rajinder who provided the answers. Emery stated she discovered later that Harmit had also been employed by Gill Farms in 1998 and that led to examination of the reasons why it would have been necessary to employ two supervisors. Emery identified her notes – Exhibit R-5, tab 12 – prepared in respect of an interview with Harmit Kaur Gill on November 26, 1998. Harmit's son – Kulwant – acted as interpreter. The interview took place in a small room at the HRDC Abbotsford office. The notes in their current form were created later, based on notes made contemporaneously with answers provided by Harmit and were made using short forms, abbreviations and symbols according to her own style. The expanded version – tab 12 – is in a form capable of being easily read and understood by individuals who peruse the files subsequently for their own purposes. During the interview, Emery attempted to speak directly with Harmit and to receive answers from her. She stated she relied on interpretation – by Kulwant – only when difficulties in communication arose in the course of their discussion. Emery had telephoned Harmit to arrange for the interview. During the discussion, Emery noted – p. 57 – Harmit stated "if she had free time she would pick berries". Emery stated HRDC decided to examine the employment of all claimants who had been employed by Gill Farms in 1998. A chart was prepared to illustrate the first and last day worked by each person who had been issued an ROE. HRDC obtained shipping receipts from canneries/packers which included the dates berries were delivered by Gill Farms. Emery stated she and Turgeon interviewed every worker alleged to have been paid on an hourly basis and utilized Punjabi-speaking HRDC employees as interpreters. The questions were prepared in advance and warnings were given at the outset to the interviewee that he or she should not provide false information as that could subject them to penalties. Emery stated there is no legal authority vested in HRDC to compel an individual to attend an interview or if they do attend, to require them to stay. She confirmed that no interviews were taped and that the only attempt was a failure when a recorder was used at the meeting in the HRDC boardroom in Langley on May 20, 1999. Emery identified her notes – Exhibit R-4, tab 8 – with respect to her interview with Harbans Kaur Khatra on January 18, 1999. She recalled it lasted about

45 minutes but agreed it could have been longer if the interpreter – Paula Bassi – would have been required for each question and answer. In her experience, some interviewees are nervous, confused and/or uncomfortable and she attempts to ascertain the reason. Emery interviewed Himmat Singh Makkar the same day and her notes are in Exhibit R-9, tab 9. Paula Bassi was the interpreter. As noted on p. 46, Emery asked about the rate of pay and recorded Makkar's answer that it was "by piece rate – 100 lb. = $30". Emery stated the example of the number of pounds multiplied by the applicable rate to result in the sum of $30 was provided by Makkar. Emery stated her policy is to paraphrase answers back to the interviewee in order to obtain confirmation of the information the person intended to convey in the response. At the end of the printed form, she used the space therein to record additional questions and answers. She recorded Makkar's answers as to start and end times of his work as 7:00 a.m. and 6:00 p.m., respectively. In Emery's experience, start and end times for farm workers vary and she notes the answer as provided specific to each case. Emery made notes – Exhibit R-12, tab 7 – of her interview with Gyan Kaur Jawanda on January 19, 1999. Paula Bassi was the interpreter and explained to Jawanda – in Punjabi – the purpose of the interview which was to discuss Jawanda's entitlement to EI benefits. The requirement to give truthful answers was explained to Jawanda and she was asked – p. 46 – whether she paid cash back to the Gills in exchange for an ROE. Emery noted Jawanda's response that she did not know what an ROE is or for what purpose it is used but her daughter would. Emery also interviewed Surinder Kaur Gill – appeal 2001-2115(EI) – on January 18, 1999 and her notes are in Exhibit R-6, tab 7. Emery noted – p. 43 – that Surinder Kaur Gill was "not feeling well" but had not requested the interview be terminated. After all the interviews had been conducted by Emery and/or Turgeon, the information gathered to that point was reviewed and HRDC decided to retain the services of a forensic accounting firm. Emery recalled the meeting in the Langley HRDC office on May 20, 1999 and estimated it lasted about 4 hours. Turgeon was in charge of the meeting and Emery considered the process to have been formal in nature but cordial.

[92] Moira Emery was cross-examined by Ronnie Gill who referred her to a letter – Exhibit R-23 – dated May 4, 1999 sent on HRDC letterhead to Gill Farms. The last sentence on page 1 of said letter stated that failure to attend the interview "may result in penalties being imposed or a prosecution approved with the information already on file". Emery conceded that the letter was not typical and that the recipients could have considered their attendance at said interview was mandatory. With respect to the visit to the Gill residence on November 3, 1998, Emery agreed she assumed both Manjit and Harmit understood English sufficiently to comprehend the nature of the questions asked by herself and/or Turgeon. She stated there was no mention in her notes of the intervention by the young female member of the Gill family because she did not

consider it as a significant event. Emery could not explain the discrepancy between her notes and those made by Turgeon of the same discussion during that visit as they pertained to matters such as the correct number of workers at a particular point or the amount of time required to install nets. When issuing a formal demand for documents, Emery agreed there is a time limit imposed for production but that deadline is often arrived at through negotiation with the recipients of said notice.

[93] Moira Emery was re-examined by Shawna Cruz. She agreed that she had noted – Exhibit R-8, tab 14, p. 66 – that Manjit's English was "a little limited".

[94] In response to a question from the Bench, Emery stated it is not uncommon for people – when served with a formal demand to produce certain documents – to advise they do not have a Daily Log or its equivalent and she would have expected the Gills to have done the same if said Log did not already exist. She stated she included the specific reference to a Daily Log in the demand at the request of Turgeon.

[95] Harby Rai was examined by Shawna Cruz. Rai testified she is a CPP/EI Rulings Officer and has been employed by Canada Revenue Agency and its predecessors since March, 1997. Beginning as a clerk, she became a Rulings Officer in 1992. She was born in India and came to Canada – at age 9 – and went to school thereafter until graduating from high school. Prior to working on the Gill files, Rai had worked on about 15 different farm files where she was required to issue a ruling concerning the employment of certain individuals and to establish the amount of hours worked, the insurable earnings and duration of the employment. Rai stated she was fluent in Punjabi because that was the language of the family at home and she married a man from India who spoke Punjabi. She stated that she spoke Punjabi to her family and her in-laws on a regular basis and when travelling in Punjab in 1993, 1995 and 2003 – for periods of 3 or 4 weeks on each occasion – did not encounter any significant barriers in communicating in Punjabi to friends, relatives or when touring around Punjab. Rai stated that her employment required her to speak Punjabi on a regular basis since 1999 and she was familiar with the polite manner of speaking in which one uses certain words of respect. However, she cannot read nor write Punjabi as she has lost that skill over the years and has not taken any classes to retain that ability since arriving in Canada. From mid-1999 to 2001, Rai was a member of ACT and handled several farm files in the context of her position as Rulings Officer. The requests for rulings arrive on her desk from employers, employees, HRDC and through an internal mechanism at CRA where she receives referrals of certain files from trust examiners or auditors. In the usual course, Rai contacts both the worker and the employer and reviews documents received from HRDC. In the within cases, she reviewed payroll records, ROEs, Rulings Request Forms, applications for UI benefits,

cancelled cheques, bank statements, a forensic audit report and copies of HRDC interview notes, all of which she received in July, 1999. At that point, the issue with which she was concerned was the circumstances of the employment with respect to the wives of the brothers operating Gill Farms and whether the insurable hours of the non-related workers had been inflated on the various ROEs. In August, 1999, as a member of ACT, she visited Gill Farms and spoke with Hakam Singh Gill. In carrying out her duties as Rulings Officer, she conducted interviews by telephone except for the one with Gyan Kaur Jawanda which was carried out at the appellant's residence. Rai stated that when interviewing workers, she inquires about payroll periods, duties, identities of co-workers, start and finish times of employment, working hours, method of transportation to and from work. Counsel referred Rai to typewritten notes - Exhibit R-7, tab 5 – pertaining to Surinder K. Gill (appeal 2001-2116(EI)). Rai stated her practice is to speak to workers – in Punjabi – and to translate the answers from Punjabi to English when making notes of the conversation. Later, she types her notes into a computer and prints them out. With respect to the interview with Surinder K. Gill on July 27, 1999, Rai estimated it took between 30 to 45 minutes to complete. Initially, the worker denied having used picking cards while employed by Gill Farms but Rai reminded her that she had told HRDC a card was used every day and the worker then agreed she had been given picking cards and her start and finish times had been marked on said card together with the weight of berries picked. Rai stated Surinder K. Gill had received vacation pay of 7.6% even though she had worked only from July 26 to September 12, 1998, a relatively short period in comparison with other workers who had received only 4% holiday pay. Rai was referred to her typed notes – Exhibit R-4, tab 4 – pertaining to her telephone interview with Harbans Kaur Khatra. The interview was conducted in Punjabi and Rai noted Khatra explained she had been taken to work by Manjit Kaur Gill and had been paid $8 per hour rather than by piece rate for her work. Rai stated Khatra stated she had not used a picking card and did not know if other workers used them. Rai stated the questions were not complicated and were concerned with basic details of Khatra's employment. Rai stated that in order to issue her ruling, she had to rely on the relevant legislation and regulations which limited insurable hours to 35 per week under the circumstances applicable to Khatra and other non-related employees of Gill Farms and she multiplied the resulting total by the hourly rate of $7.50 in order to establish the amount of insurable earnings. Rai visited Gyan Kaur Jawanda at her home on July 30, 1999, after Jawanda had returned home from work. Rai's typed notes pertaining to this interview are in Exhibit R-12, tab 3. The interview had been scheduled earlier for the 28th but had been cancelled by Jawanda's daughter. Rai stated Jawanda's daughter was present throughout the entire interview – on July 30 – which lasted about one hour. Rai stated she had been offered juice and the interview was carried out in the living room of the basement suite and was calm in tone.

Jawanda's daughter – Baljit – told her mother "Mom, just be honest". Rai stated she considered the answers provided by this appellant to have been credible but neglected to have her sign the interview notes and phoned Baljit to advise her of this omission. On August 12, 1999, Rai called Baljit and was advised Gyan Kaur Jawanda was at work but wanted to pass on the information that she had been dispatched by Gill Farms to a farm in Langley where she had picked strawberries for one week. On August 16, the interview notes were signed at the bottom by Jawanda and Baljit Kaur Jawanda acted as interpreter. Rai conducted a telephone interview with Himmat Singh Makkar on August 16, 1999. Her typed notes are in Exhibit R-9, tab 4. She spoke to him in Punjabi and noted he stated he and his wife – Santosh Kaur Makkar – had been paid $8 per hour and worked 7 days per week unless the weather was bad. Rai could not recall whether she had pointed out to Himmat Singh Makkar the discrepancy between that statement and the payroll record which indicated he had worked only 5 days per week. Rai referred to her typed notes – Exhibit R-10, tab 5 – regarding her telephone interview with the appellant Santosh Kaur Makkar which she conducted after concluding her conversation with Himmat Singh Makkar. Rai stated she spoke – in Punjabi – to Santosh Kaur Makkar for about 20 minutes and was informed she and her husband had both worked as pickers on a raspberry farm and went to work for Gill Farms after they had been laid off. Rai noted Santosh Kaur Makkar said she was paid $7.50 per hour and had not used picking cards. On July 27, 1999, Rai spoke – in Punjabi – to Jarnail Kaur Sidhu on the telephone and typed notes – Exhibit R-11, tab 3 – of that conversation. Rai noted the worker stated she could not remember when she performed different activities at Gill Farms and did not remember in which months the work was done. Sidhu also stated she had not used a picking card because she was paid an hourly rate, the amount of which she could not recall. Rai estimated the conversation occupied approximately 45 minutes and – initially – Sidhu had been willing merely to confirm information she had previously provided to HRDC. However, when Rai asked her to confirm she had used picking cards, Sidhu denied having made such a statement to HRDC because she had not used those cards. Rai interviewed – in Punjabi, by telephone – Gurdev Singh Gill on August 19, 1999. He explained to Rai that he worked with his wife – Surinder Kaur Gill (appeal 2002–2115(EI)) – at Gill Farms and that they were usually picked up by Manjit Kaur Gill. Rai noted Gurdev Singh Gill said "first, they put up the nets …" and that he went on to explain some old poles had to be replaced and workers had to get up on the ladder to unroll the nets. Rai noted that on another occasion during their conversation, Gill said he picked berries after the nets were up and advised her the nets were installed to prevent birds from eating the berries. Overall, Rai stated she asked Gill 3 times about putting up the nets and each time he responded by telling her they put up the nets before picking berries. Rai stated the reason she repeated the question about the timing of the net installation

was that Gill only started working for Gill Farms on August 2, 1998, and by that date, the nets had been in place for at least one month. He also said he was paid by the hour and did not use picking cards. He confirmed that he had received the same amount of holiday pay – 7.6% – as his wife. Rai prepared a summary – Exhibit R-1, tab 22 – for each worker and p. 159 deals with Manjit Kaur Gill and Harmit Kaur Gill and their respective roles in the overall operation of Gill Farms. Rai stated she concluded the payroll records of Gill Farms were unreliable, particularly in view of the reports of Sweeney and Blatchford and information she had reviewed with respect to normal wage expenses according to industry standards. She concluded the hours of employment for the non-related workers had been inflated except for those attributable to Gyan Kaur Jawanda. In Rai's opinion, the allocation of 38% of total person-hours to tasks other than picking during that 1998 season was not reasonable. Rai issued a ruling to Manjit Kaur Gill – Exhibit R-8, tab 4 – and to Harmit Kaur Gill - Exhibit R-5, tab 4 – in which she found their employment with Gill Farms not to have been insurable employment for the relevant periods applicable to each. In preparing the Rulings Report in respect of Manjit Kaur Gill, Rai assumed that Rajinder Singh Gill had worked full time on the farm in 1998. Rai stated there were several discrepancies in terms of work allegedly performed such as the weighing of berries by Harmit. On the whole of the information before her, Rai concluded there was not enough work to employ either Manjit or Harmit for the relevant periods and they would not have been so employed had they not been related to the partners who operated Gill Farms. Rai stated she sent out a questionnaire – Exhibit R-1, tab 21 – to the Gill brothers and requested it be completed with respect to each worker. The information was supplied by Lucky Gill – LRS Solutions – in the form of a letter – Exhibit R-1, tab 20 – dated September 30, 1999.

[96] Harby Rai was cross-examined by Ronnie Gill. Gill referred Rai to the LRS letter at tab 20, and to the duties performed by Harmit Kaur Gill, commencing at p. 112. At p. 117, for the period of July, 1998, there is a statement that one of the responsibilities was the "weighing all the Blueberries picked to track production". Gill pointed out to Rai that this same description was included in the list of duties performed by Harmit in the subsequent months of August and September and that this letter had been directed to her attention by Lucky Gill, the author. Gill referred Rai to the notes – Exhibit R-8, tab 12 – made by Turgeon of her interview with Manjit Kaur Gill – on November 26, 1998 – where – at p. 59 – Manjit in response to a direct question from Turgeon about who weighed the berries – had stated "… my sister does that, Harmit". Rai accepted that information was correct and stated it had not played any significant part in the formation of her decision to issue the ruling denying insurability. Gill suggested that since Hakam Singh Gill had a full-time job in 1998, it would not seem reasonable to accept that he had been supervising the daily work of

Gyan Kaur Jawanda. Rai stated she knew Hakam had regular off-farm employment but – overall – had accepted Jawanda's description of her employment. Gill referred Rai to notes – Exhibit R-12, tab 3, p. 28 – of her face-to-face conversation with Jawanda – on July 30, 1999 – and to Jawanda's comment that she had "picked blueberries by herself for the first 20 days". Gill referred Rai to Blatchford's report – Exhibit R-1, tab 23, p. 211 – and to the table showing the total pounds of blueberries picked on July 7, 1998 was 1,686. Rai stated she merely noted what Jawanda was saying during the interview and did not challenge her with respect to that statement which she considered to be bizarre. Rai stated that until completing Grade 11, she had picked berries in the Fraser Valley during the summer seasons and recalled being picked up at 5:00 a.m. and not returning home until nearly 10:00 p.m. Even while in elementary school, she worked picking berries which was remunerated – always – on a piece rate basis while other work – such as weeding – was paid at an hourly rate. During her visit to Gill Farms – in August, 1999 – Rai had not checked to see if workers were using picking cards. During that visit, Turgeon spoke with Hakam Singh Gill about his UI claim since he had been laid off – recently – from the mill. Ronnie Gill suggested to Rai that visit would have presented an opportunity to gather valuable information concerning the operation of Gill Farms during peak berry season. Rai replied that although she had been a member of ACT since June, 1999, she had not yet been assigned to any site inspections and had only attended at Gill Farms on one previous occasion in order to determine the validity of employment of an elderly – age 84 – worker. Rai stated the main purpose behind the formation of ACT was to deal with labour contractors and because Gill Farms hired its own workers, it did not occur to her to observe the farming operation or to speak with workers. As a Rulings Officer since 1992, even after being assigned to ACT, Rai stated she continued to work on rulings involving appellants in the within proceedings. Ronnie Gill referred Rai to the notes - Exhibit R-3, tab 7 – made by Turgeon during her interview with Gurdev Singh Gill – January 18, 1999 – and to p. 36 where Turgeon noted Gill said he "picked blueberries, rolled up the tarps to take them down, weeding". Gill suggested that description was in response to a question about the "sequential order" of the different jobs he did for Gill Farms in 1998 and it was opposite to the conclusion Rai had drawn from his comments during the telephone interview on August 19, 1999. Rai reiterated she had repeated her inquiry about the subject of the nets because the timing suggested by the answers of Gurdev Singh Gill seemed to be wrong but he repeated it at least 3 times. Rai stated her preference is to visit elderly Indo-Canadian workers in their own homes rather than by telephone. In her experience, people are happy to see her and to speak Punjabi during the conversation. Rai agreed there are various dialects spoken by people from Punjab but has not encountered difficulties that could not be surmounted by continuing the conversation and noted the context of the conversation is quite simple

because it pertains to repetitive farm work. With respect to the two rates – 4% and 7.6% – of vacation pay, Rai stated she was unsure of the application of ESB labour rules in this regard but considered it odd that only a few workers had received the higher rate. Gill referred Rai to her conclusion – Exhibit R-1, tab 22, p. 163 – that "the total labour hours claimed by the Gills are triple" compared to normal industry standards of 500-700 hours per acre for a cost of up to $6,400 per acre. Gill pointed out Gill Farms farmed 8 acres and even applying those so-called standard rates, total labour costs would have been $51,000 and labour costs of Gill Farms – exclusive of wages paid to the wives – were $72,000 in 1998.

[97] Amandeep Brar was examined by Shawna Cruz. Brar testified she is the Customer Service Representative (CSR) at the Townline branch of Scotiabank in Abbotsford. Pursuant to the subpoena, Brar brought statements regarding the account of Surinder K. Gill (appeal 2002-2115(EI)). As a CSR, Brar deals daily with the deposits and withdrawals of customers and other matters concerning account activity. In 1998, Surinder K. Gill had two accounts with Scotiabank, one at Clearbrook and Central branch and the other at Townline Road. Brar was referred to the Affidavit – Exhibit R-27 – of Fern Snow, Accounting Officer, Bank of Nova Scotia, and to the attached bank statement. Brar was shown the middle photocopy of a cheque – Exhibit R-7, tab 10, p. 56 – and the data centre stamp indicating the account number. The date stamped was October 5, 1998. Brar stated the actual deposit could have been made two days earlier. According to the statement – 3 pages from back of attachment to said affidavit – there was a deposit of $1,200.51 to the account on October 3, 1998. The cheque payable to Surinder Kaur Gill – Exhibit R-7, tab 10, p. 55 – was dated September 30, 1998 and was in the sum of $1,363.51. Brar stated the difference may have been due to the customer receiving that amount – in cash – from the teller and that some tellers did not adhere to the practice of noting the denominations of the bills on the reverse of the cheque. Brar stated if the payee takes cash for the whole amount of the cheque, there will be no record of that transaction reflected in the account statement. On the statement – Exhibit R-27, 4th page from the back – the entry indicates a withdrawal of $800 on September 30, 1998.

[98] Amandeep Brar was cross-examined by Ronnie Gill. Brar stated she knew Surinder K. Gill personally. Brar confirmed the entries on page 1 of Exhibit R-27 showing a withdrawal of $1,000 on January 17, 1998 followed by other withdrawals of $120 and $200 on January 21 and January 24, respectively. The March statement containing transactions during the previous month showed a withdrawal of $700 on February 5 and Brar stated the withdrawal in the sum of $281.31 could have been in cash or – more likely – to pay a bill since there was no method – in 1998 – to record the purpose of that transaction. The April statement on the account showed a

withdrawal of $200 on March 7 and another on March 13 in the sum of $250. On May 30, there was an entry – NBW – indicating a withdrawal in the sum of $470. Earlier, on May 27, a similar notation – NBW – had been made beside the withdrawal amount of $200. Brar confirmed there had been other withdrawals in June – as well as a deposit of $422.11 on the 26th – and the December statement showed a withdrawal of $1,000 on November 27 and another in the sum of $300 on November 30.

[99] Amandeep Brar was re-examined by Shawna Cruz. Brar stated the entry - NBW – means No Book Withdrawal and signifies the transaction was conducted - in person – within the branch at a teller's wicket. The code # 201 was assigned to the automatic teller machine inside the branch but it did not permit a passbook to be updated by inserting it into a slot. Brar stated the notation "W/D" could indicate a withdrawal of cash or that the sum represented a payment of a bill. A transfer to a Visa account would show up on the statement as a transfer rather than a withdrawal. An Interac transaction is recorded with PSP to signify a Point of Sale Purchase using a debit machine. Brar stated the NBW notation always indicates a withdrawal transaction was conducted either by a teller or a bank machine inside the branch. The codes for tellers used a digit ending in 00 while the machine code was 201. Brar confirmed the account statement indicated several withdrawals of small amounts - between $20 and $150 – in April, 1998 as well as similar amounts withdrawn in June and July. However, on August 6, there was a withdrawal in the sum of $4,500 followed by a withdrawal (NBW) of $800 on September 30. Brar stated the bank machine would only accept the sum of $200 as a maximum withdrawal and the daily withdrawal limit would require 4 separate withdrawals in order to attain the maximum amount of $800.

[100] In relation to matters arising from re-examination, Ronnie Gill referred Brar to the page marked "1998-08-03" in Exhibit R-27 and to the entry dated 0729NBD showing a deposit in the sum of $6,796.13. Brar stated if a NBW entry has a code – in the third column of the statement extract – other than 201, it means a customer dealt with a teller. She confirmed that if any withdrawal is labelled NBW, it signifies the transaction involved cash whether received from a teller or a machine.

[101] Jugender Dhillon was examined by Amy Francis. She testified she is a Service Delivery Representative for HRSDC – formerly HRDC – and has been so employed for 12 years. In the course of her duties, she acts as an interpreter from Punjabi to English and English to Punjabi. She is requested to act in that capacity a few times each year. Dhillon stated her first language was Punjabi even though she was born in England. The household language was Punjabi and she left home at age 21. She married a man who speaks both Punjabi and English. Dhillon stated she spoke Punjabi

when conversing with her in-laws who lived with them for more than 9 years. While living in England, Dhillon attended classes to learn how to read and write in Punjabi and she continued to read but has lost much of her ability to write well. However, she speaks Punjabi daily and considers herself fluent. She has not encountered any serious difficulties understanding any Punjabi speaker and if there was a problem arising during an interpretation, she would rephrase the question until confident the person understood the subject matter of the query. Dhillon was the interpreter during the interviews of Surinder K. Gill – appeal 2002-2116(EI) – Manjit K. Gill, Jarnail K. Sidhu, Gurdev Singh Gill and Santosh K. Makkar.

[102] Jugender Dhillon was cross-examined by Ronnie Gill. Dhillon stated she worked about 27 hours a week and spoke English to her two children, aged 16 and 12 and to her friends while living in England. Dhillon did not have a specific recollection of her interview with Gurdev Singh Gill but stated her policy is to interpret as closely as possible on a verbatim basis. She stated her parents were born in Punjab and has not encountered any problems dealing with dialects in the course of her interpretation duties which involved discussions concerning details and conditions of employment using simple language.

[103] Paula Bassi was examined by Amy Francis. She is employed by HRSDC as a Service Delivery Representative. She started working as a data entry clerk and moved into investigations until assuming her current position in 1998. She interpreted during several interviews conducted by Turgeon and/or Emery and estimated she is called upon to handle Punjabi/English interpretation two or three times per month. She recalled interpreting during interviews with farm workers and that the questions were usually the same and the answers provided were similar in terms of vocabulary. Her parents spoke Punjabi at home and she married a man whose first language was Punjabi and his Punjabi-speaking parents lived with them. She stated she can read Punjabi with some difficulty and can write to some extent but it is not easy to do so. She always speaks Punjabi to friends and extended family on a regular basis and still continues to use that language in the course of her employment although not as frequently as in 1998. She interpreted during the interviews of Surinder Kaur Gill – appeal 2002-2115(EI) – Gyan K. Jawanda, Harbans K. Khatra and Himmat S. Makkar.

[104] Paula Bassi was cross-examined by Ronnie Gill. Bassi stated she could not recall any occasion when any HRDC interviewer had advised the interviewee that he or she was free to leave at any time. Bassi stated that when she arrived to assume the interpretation duties, the interviewer and the claimant were already in the room and

sometimes a friend or relative is present but she cannot recall whether the person fulfilling this role supplies any information during the interview process.

[105] Bernie Keays was examined by Amy Francis. He testified he is employed as a Litigation Officer by CRA. He has been employed by CRA and its predecessors since 1981, beginning as a Collections Officer, a position he held for 10 years. In 1991, he took the position of Appeals Officer for CPP/EI and continued until assuming his current position in 2002. As an Appeals Officer, he determined insurability and pensionability of workers. Keays estimated 50% of his workload over the past few years involved farm workers and the matters in question concerned the validity of ROEs as they purported to state certain weeks – later, hours – of employment and the amount of pay earned. Keays stated most determinations – later, decisions – involve only one or two workers but he has handled files concerning 110 workers and several other cases where 20 or more workers were employed. In 2002, 12 files involving the Gill Farms partnership and its workers landed on his desk. Due to processing a request for information under the relevant statute, there was a delay in issuing the decisions. In the within proceedings, Keays followed the usual course of reviewing all documents transmitted by HRDC as part of the request for a ruling on insurability. Even before the files had been assigned to Keays, letters – enclosing a Questionnaire – had been sent out by CCRA staff to Gill Farms – as the employer – and to all the employees. Keays was referred to the Index of Exhibit R-1 wherein 50 items were listed and described. He stated he reviewed all of that material in the course of formulating his report and issuing his recommendation for determination on each appeal. Keays stated he reviewed the documents in Exhibit R-3, tabs 1-13, inclusive, pertaining to Gurdev Singh Gill and reviewed all documents in Exhibit R-4 pertaining to Harbans Kaur Khatra, except for the document at tab 14. He reviewed all documents in the binder – Exhibit R-5 – relating to the appeal of Harmit Kaur Gill. He reviewed all documents – except the one at tab 13 – in the binder – Exhibit R-6 – relevant to the appeal of Surinder Kaur Gill (2001-2115(EI)). In Exhibit R-7 – pertaining to the appeal of Surinder K. Gill (2001-2116(EI)) – he read all documents except the ones at tabs 16 and 17. He perused all documents in Exhibit R-8, involving the appeal of Manjit Kaur Gill. With respect to the binder - Exhibit R-9 – concerning the appeal of Himmat Singh Makkar, Keays read all the material therein except for the documents at tabs 1 and 15. He examined the material within Exhibit R-10 – pertaining to Santosh Kaur Makkar – except for the documents at tabs 1 and 14. He read all documents in Exhibit R-11 – regarding Jarnail Kaur Sidhu – except for the one at tab 16. With the exception of the document at tab 15 in Exhibit R-12, Keays reviewed all documents relating to Gyan Kaur Jawanda. Keays identified his Report On a Determination or Appeal (Report) in Exhibit R-1, tab 3 (Master report). The Master Report was dated

January 10, 2001 and was delivered to John Morgan – Team Leader – who signed the decision letters the next day and sent one to each person affected by his decision. Keays stated Morgan had been authorized by Loretta Bemister, Assistant Director of Appeals to issue decision letters pertaining to insurability. Keays stated the recommendation contained in a Report is usually accepted by a Team Leader unless there is some compelling reason to disagree. Usually, letters will be issued the same day to all parties affected by the decision. Keays explained some portions of his 17-page Master Report had been blacked out to protect certain persons who had provided information about working conditions and practices within the agricultural industry on the basis their names would not be disclosed. In preparing the within Report, Keays stated he conducted a thorough review of all information on file and in order to clarify certain issues arising therefrom, read all the Questionnaires and considered other information gathered from other sources including telephone interviews. In his view, it is difficult to conduct telephone interviews because he does not speak Punjabi and personal interviews are not practical because the location of West Pender Street Vancouver CCRA office is a considerable distance from the Abbotsford area. Keays stated that in many instances he speaks with a lawyer, agent or other representative of appellants, which include – on occasion – the employer as well as workers. In arriving at his recommendation, he relies on experts within the farming industry to provide certain information. Keays was referred to the Questionnaire – Exhibit R-3, tab 4 – pertaining to Gurdev Singh Gill which was based on a template used in a previous case involving more than 100 workers employed by a labour contractor. The two-page response was sent to Keays by Ronnie Gill. Keays explained the purpose of the Questionnaire may seem somewhat redundant since many of the same questions previously asked by HRDC interviewers and/or the Rulings Officer are repeated. In his view, the 30-day period during which individuals are requested to complete and return a Questionnaire provides an opportunity to reflect on the details to be provided without any sense of urgency or pressure and should produce reliable information concerning the employment situation. Keays recalled he spoke with Ronnie Gill on several occasions concerning the files of workers represented by her and also obtained information from her – on behalf of the intervenors – regarding the operation of Gill Farms. Keays stated he was aware of the 16-page letter – Exhibit R-1, tab 16 – sent to J. Williams, Appeals Division, West Pender Street, Vancouver. Keays stated he assumed the letter – dated February 29, 2000 – had been authored by Ronnie Gill of LRS Solutions. LRS also sent a letter – dated March 14, 2000 – to J. Williams, in which Lucky Gill-Chatta responded to certain aspects of Rai's ruling report – generally – and as it pertained to Gyan Kaur Jawanda. Keays identified his handwritten notes – Exhibit R-1, tab 13 – in which he recorded the substance of his conversation with Ronnie Gill on June 23, 2000. He noted it was "a very long conversation" and he ascertained she was

not related to the family operating Gill Farms although she had known them for 20 years. He sought to clarify her status as he did not know whether she was a lawyer, accountant or other agent. Keays was referred to a set of notes – Exhibit R-1, tab 6 – regarding a telephone conversation with Ronnie Gill on November 2, 2000. Keays stated that at this point he was nearing the end of his review of the material relative to the appeals from the rulings. Keays stated he spoke to Ronnie Gill about the gross revenue of Gill Farms – in 1998 and earlier years – because it did not seem to make economic sense to continue operating the blueberry farm in the face of annual losses. Keays noted Ronnie Gill spoke of the "farmers' plight" including the difficulty in finding workers and efforts required to retain a workforce until the end of the season. Keays noted Ronnie Gill's explanation that berry farmers were not necessarily good business people in the sense they often felt an obligation to pay workers in order to retain their services even if there were some brief periods when there was no work to be done. Gill informed Keays that in her opinion the workers want to know they will have employment – with the same employer – for the entire season instead of having to look elsewhere every few weeks. Keays stated that as a result of the conversation with Ronnie Gill, he formed the impression that the policy of Gill Farms was that people were employed – in 1998 – on the basis they would be kept on long enough to qualify for UI benefits following layoff and that this arrangement would be pursued even though it did not make economic sense because of ensuing disproportionate labour costs. Keays stated he reviewed the letter - Exhibit R-1, tab 5 – dated November 10, 2000, sent to him by Ronnie Gill on LRS letterhead. The letter was in the form of an interview of Hakam Singh Gill as conducted by Ronnie Gill and dealt with farming losses over the course of many years as well as business practices followed by Gill Farms with respect to hiring and retaining a workforce. Keays stated he concluded the nature of the employment relationship between those workers not related by blood, marriage, adoption, etc. – to Hakam Singh Gill and Rajinder Singh Gill, the partners operating Gill Farms – was such that it constituted – as a matter of fact – a non-arm's length relationship within the meaning of the *Income Tax Act* which is applicable for purposes of determining insurability pursuant to relevant provisions of the *EIA*. In his Master Report, Keays listed those persons contacted in an effort to obtain as much relevant information as possible concerning the operation of a blueberry farm. LRS had provided details of time estimates for a variety of tasks as part of the submission – Exhibit R-1, tab 19 – dated September 30, 1999. Keays stated the information contained in the letter from LRS was the basis for a considerable portion of the conversation between him and Ronnie Gill on November 2. Keays made notes – tab 8 of same exhibit – of his conversation with Jim Walton – an official at ESB – who was a member of ACT. Keays inquired about the method of payment for berry pickers within the industry and was advised the usual method is to pay according to a piece rate. Walton added that it

was customary for labour contractors to assert the position that the pay was based on an hourly rate but in Walton's opinion, that was not true. Keays stated he was advised by Walton that the normal working day for pickers during berry season was 10-12 hours and a 7 or 8-hour day would be uncommon. In Walton's experience, a prudent farmer could not guarantee work for the entire season. Keays was informed that an employer – in 1998 – could elect to pay 7.6% holiday pay instead of 4% of the total wage because the higher percentage encompassed work performed on statutory holidays. Overtime pay on supplemental hours applied only if someone worked more than 120 hours in a two-week period. Keays stated he spoke with James Blatchford – forensic accountant – and made notes – Exhibit R-1, tab 9 – of that conversation. He ascertained that Blatchford considered the payroll records of Gill Farms to be unreliable. Keays made notes – Exhibit R-1, tab 10 – of his conversation with Karen Gill, a Director of the British Columbia Blueberry Council (Council). He inquired about the installation of nets which he learned was usually undertaken in May or June. He was advised that nets are not usually mended while they are in place and that no grower does any pruning in September because the plants are not dormant. He was advised that some small farms did hoeing by hand and that it would take 8 to 10 workers about 10 days to complete that task. Karen Gill advised Keays 1998 was an early season and it was not reasonable for 10 workers to have worked on water pipes nor did it seem usual for 2 people to be involved with spraying for 7 days. Keays was informed that Karen Gill was closely involved with the operation of a 25-acre blueberry farm and was well acquainted with that industry. With regard to washing buckets at the end of the season, Karen Gill advised Keays it should take one person one day. Keays stated he also spoke to Mark Sweeney – agricultural expert – and made notes – Exhibit R-1, tab 11 – of that conversation. Keays prepared typed questions in advance and wrote Sweeney's answers by hand in the space provided. Keays noted Sweeney's opinion that if bark mulch is used, the amount of time spent on hoeing by hand would be minimal and it would never take 560 hours to do that sort of work as had been suggested by Ronnie Gill in the February 29, 2000 letter at tab 16, p. 94. Sweeney also told Keays that 128 hours devoted to replanting was excessive and that it was not reasonable for a grower to keep workers employed where there were only a few berries to pick nor did growers guarantee workers steady work from the beginning of the season to the end. With respect to yields, Sweeney advised Keays that 16,000 pounds per acre would represent a "best-case scenario" in 1998 although yield projections are updated from time to time. Sweeney advised Keays that nets are erected in mid-June and subsequently provided Keays with information – Exhibit R-1, tab 12 – on that subject including estimates of labour. In Sweeney's opinion, it would not require 1,520 hours of labour in June to install nets on an 8-acre farm. Keays was advised further that it was not reasonable for 3 or 4 workers to continue to be employed after the berry season had finished and that the buckets could

be washed in a few hours. As for procedures undertaken for pest and disease control, Sweeney estimated it would take one person one day. In terms of the methods apparently used by Gill Farms in this respect, Sweeney considered them to have been completely uneconomic. Since there is no spraying done during picking season, Sweeney considered 20-30 hours per season to be the maximum time required and definitely not 178 hours as suggested by Ronnie Gill in her letter at tab 16. Sweeney informed Keays it would take 2 minutes to plant each new plant and would not require 128 hours as stated by Ronnie Gill, particularly since the financial statement of Gill Farms indicted only $610 was expended on 200 new plants which would require only 3.5 hours to plant. Keays made notes – Exhibit R-28, Exhibit R-29 and Exhibit R-30 – of other conversations including those with a representative of Kahlon and other growers. Keays stated he was advised that most growers did not wash their own lugs and that one grower – operating a large farm – spent only two or three days weeding. Another grower advised Keays that an 8-acre farm would require as many as 50 casual pickers and one full-time employee to perform other tasks during the entire season. Keays spoke to a confidential informant who operated a 20-acre farm. This individual advised Keays the amount of money spent by Gill Farms on labour in the month of June was excessive as was the sum expended in September. This grower informed Keays pickers are paid by the pound and fall pruning is negligible. The grower offered the opinion that 70-80 pickers would be needed over a period of 20 days to harvest the crop. Keays stated he spoke with Turgeon about the alleged tape recording of the meeting at the HRDC office and was advised the tape was garbled and of no use so it had been discarded. He also spoke with Rai about the issue raised by Ronnie Gill that Rai's command of Punjabi was insufficient to interpret correctly the information provided by workers during interviews whether by telephone or in person. Keays stated his practice is to contact a Rulings Officer only for the purpose of clarifying some matter such as illegible handwriting or something similar but does not otherwise discuss the files. At the bottom of page 7 of the Report, Keays set out the issues in dispute. At the bottom of p. 10, he considered the non-related workers to have been complicit in the arrangement whereby they would be given enough work to qualify for UI benefits. In his opinion, the submissions by Ronnie Gill on behalf of Gill Farms had left him with the impression that the workers had been guaranteed a certain period of work whether or not they were needed. As a result, Keays decided to recommend to the Minister that the employment of each one of the otherwise non-related workers should not be considered as insurable employment because they were related as a fact due to their consent to act in concert with Rajinder Singh Gill and Hakam Singh Gill in order to participate in a bargain whereby a certain period of work was guaranteed regardless of whether the work was necessary or had been performed. However, after obtaining approval from his superiors in CCRA, Keays decided to embark on an exercise to explore an alternative position in

the event the Minister's position in relation to the otherwise non-related workers was not sustained on appeal to the Tax Court of Canada. Keays stated he began to calculate the hours of work and insurable earnings applicable to each appellant based on the normal number of hours attributable to the various tasks performed by each appellant during the term of their employment. Although he accepted the payment to the appellants had been based on piecework while picking berries and on an hourly rate for other tasks, he converted the gross income of each appellant to an hourly rate in order to determine an appropriate amount of insurable earnings. Keays stated he relied on the schedule in Blatchford's forensic report – Exhibit R-17 – and if a particular worker was present on a specific day, attempted to acknowledge – on an hourly basis – the work performed by that individual based on the methodology employed at p. 14 of his Report (Exhibit R-1, tab 3). For example, Keays considered it reasonable to allow a total of 4 days – at 8 hours per day – for the tasks of spraying and fertilizing and he based his finding on the recommendation of Sweeney. Keays prepared a table – Exhibit R-31 – in order to illustrate the various tasks, the period during which they were performed, the number of hours allocated to each task according to the submission from LRS and the amount determined by him to represent a reasonable time in which to accomplish said tasks. The position of the appellants and intervenors was that a total of 417 hours had been expended in gathering dried bushes in the period from May 25 to June 1, 1998. On the basis of information received from Sweeney and from a Director of the Council, Keays considered that amount to have been seriously inflated and determined that a total of 48 person-hours would have been sufficient to perform that work. LRS had suggested that 560 hours attributable to hoeing was reasonable. Keays rejected that number and based on the research he had conducted, assigned a total of 96 hours to that task on the basis it could have been done by 6 workers during two 8-hour days. LRS estimated it took 135.5 hours to work on the water pipes (irrigation system) and allowed one day for 6 workers for a total of 56 hours. The position taken by the intervenors was that installation of the nets occupied a total of 770.5 hours. Keays accepted the advice of Sweeney that the time required should not exceed 18 hours per acre and that it would not have taken more than 148.5 hours to finish that task. LRS stated it took between 500 and 645 hours to take down the nets at the end of the season. Again, Keays used the same formula of 18 hours per acre and allotted 145.5 total hours to that task. The position taken by Gill Farms was that workers had spent between 432 and 576 hours pruning in the late fall. Keays found that estimate to be unreasonable and decided it could have been done in one day by 8 workers for a total of 64 person-hours. Instead of allocating 72 hours to washing buckets, Keays considered that only a few hours would have been required – in total – because the lugs were washed by the canneries/packers and made no allocation of labour as a result. Because the schedule in Blatchford's report showed 5 people had been involved in putting up the nets, he

allocated 4 days work – at 8 hours per day – to each of the 5 appellants who performed that task. Based on said schedule, he determined 7 appellants had worked taking down the nets and assigned each one 3 days work and accepted the hours as recorded on their payroll sheets. As a result, some appellants were accorded 7 hours for working at that task while others were granted 8 or 9 hours as marked on the sheet. The forensic audit prepared by Blatchford examined the volume of berries picked daily between July 2 and September 9, 1998. The amount picked was divided into two categories, namely the weight picked by the casual workers paid by piece rate and those workers – including the appellants in the within proceedings – who were paid – allegedly – on an hourly basis. Keays stated he chose the figure of 10 pounds per hour as representing the minimum production per worker. In 1998, the average price per pound of blueberries was 71 cents so it would cost $7.10 per hour to pick 10 pounds of blueberries. Keays stated he did not take into account additional sales of berries even though – in the letter from LRS – there had been a reference to sales at a stand and other places. Keays stated there had been no specific details provided therein nor any reference to sales in the Kelowna area. Keays stated he used 75 cents per pound as an average price with the result he considered it would cost Gill Farms $7.50 per hour – including holiday pay – for each worker to pick 10 pounds. Keays was aware that according to the information provided by Gill Farms to HRDC, each worker was expected to pick 20 pounds per hour. In order to calculate insurable earnings for each worker, Keays plotted hours on a chart on a day by day basis whenever possible and used the rate of pay – plus holiday pay – as shown on the payroll records of Gill Farms. Some workers earned $7.50 per hour while others apparently earned $8 and others $10. Keays accepted those rates as shown on the payroll sheet of each worker on the basis it is the prerogative of an employer to pay varying amounts of wages to employees. Keays prepared a calendar on which he set forth the days and hours of work that he was willing to accept as representing the work actually performed by each of the appellants in the within appeals. Keays stated he had a problem accepting the reliability of records and was bothered by various instances of inconsistent statements by workers throughout the entire process until the files had reached his desk and thereafter as disclosed by answers within some of the Questionnaires. Keays stated he was satisfied that some work had been done but it did not support the claim that each worker had been engaged in employment over the extended period as purported in his or her ROE. In his opinion, the workers should have been able to provide detailed information pertaining to duties performed month by month. He relied on information contained in Questionnaires that had been prepared and submitted by Ronnie Gill on behalf of some of the workers. In Keay's view, the forensic audit by Blatchford represented an accurate snapshot of the financial situation of Gill Farms and the farming operation during the relevant period in 1998. After canvassing the issue with Rai, he was satisfied with assurances

concerning her ability to speak Punjabi and to translate her interviews – in Punjabi – with workers, accurately into English. He was also convinced the Punjabi/English, English/Punjabi interpreters utilized during HRDC interviews were sufficiently fluent in both languages.

[106] Counsel requested Keays deal with the process concerning his recommendations for decisions as they applied to the individual appellants in the within proceedings, commencing with Gurdev Singh Gill. Keays referred to Exhibit R-3, tab 1, a copy of his Master Report, of which the first 16 pages were generic – applicable to all appellants – and to p. 17 where he commenced his specific analysis of Gurdev Singh Gill's employment situation. Keays stated he structured the reports for each appellant by including the Master Report at the beginning before proceeding to deal with facts specific to that individual. Keays prepared a calendar – p. 21 – in which certain days of alleged employment together with a description of duties were listed, in table form. He explained the shaded areas represented those days of purported duties that he considered were not supported by an analysis of the information he had reviewed and the research he had undertaken with respect to normal practices within the berry industry. For purposes of his calculations, Keays assumed the berry farming season extended from May 17 to September 26, inclusive and that this period covered all aspects of the Gill Farms' operations in 1998. For the period from May 17 to May 24, Keays allocated 4 days work to each worker who was employed at that time when spraying and fertilizing was done and used the number of hours recorded in the relevant payroll record for those days. However, Gurdev Singh Gill did not start work until August 3 so was not given credit for any time spent on the spraying and fertilizing task. With respect to the periods when picking was underway, Keays used 10 pounds per hour as the minimum amount of production per worker and if the schedule included in Blatchford's report indicated production less than that – as an average – he disallowed that entire day. Again, with respect to Gurdev Singh Gill, Keays was concerned with the discrepancy between his holiday pay – 7.6% – as compared to most workers who had received only 4% of their wage as holiday pay. He stated he was concerned that people who apparently rode to work and back in the same car or bus had different hours marked on their payroll sheets so there was a discrepancy of one hour per day either 6 or 7 days per week. Based on the information received from Sweeney and from blueberry growers in the area, Keays did not believe workers were paid an hourly wage if there was no work to be done. In order to prepare for the possibility the Minister's view of the non-arm's relationship – by otherwise non-related workers – was not accepted by the Tax Court of Canada on appeal from the decisions issued to the appellants and intervenors, Keays determined the amount of insurable hours – 108 – and insurable earnings – $871.56 – were applicable to the employment of Gurdev Singh Gill. In this case – as

he did for all otherwise non-related appellants – Keays calculated the amount of insurable earnings by multiplying the number of insurable hours by the hourly rate on the relevant payroll record and added the appropriate amount of holiday pay shown on said record, whether 4% or 7.6%.

[107] Keays referred to Exhibit R-4, tab 2 applicable to the appeal of Harbans Kaur Khatra (appeal 2001-2120(EI)). His specific analysis with respect to Khatra commenced at p. 26. In his view this worker had not been employed in insurable employment with Gill Farms due to the absence of a non-arm's length relationship. However, as an alternative, he decided it was reasonable to find she had 254 hours of insurable employment and insurable earnings in the sum of $1,981.20. Keays accepted Khatra started work on July 12, 1998 when the blueberry season was well underway. According to her payroll record, she worked every day until she was laid off on September 26. However, the Blatchford report indicated there were some days in which no berries were picked at Gill Farms but Khatra had been credited with 8 hours work. Keays stated he is well aware workers often pick berries every day during the peak season. As shown on his calendar – beginning at p. 29 – he accepted Khatra had worked on those days which were not within the shaded area and which he disallowed as not being reasonable due to the lack of berry production on those dates.

[108] Keays referred to Exhibit R-6, tab 1, applicable to the appeal of Surinder Kaur Gill (2001-2115(EI)). His analysis specific to her case commenced at p. 17. The relevant period of employment as reported in her ROE was August 3 to September 12, 1998. Keays maintained the primary position of no insurability but embarked on the process of determining the appropriate number of insurable hours and earnings as an alternative. He reviewed the facts and set forth – p. 18 – those matters he regarded as discrepancies, particularly the appellant's comments about putting up nets when they had been installed long before she started work. Keays was unsatisfied with her responses about identity of co-workers and was puzzled by her holiday pay rate of 7.6% since she was employed for a relatively short period compared to other workers. Keays accepted the information in the Blatchford report that September 6, 1998 was the last day on which berries were picked at Gill Farms. However, Keays stated August 25th was the last day for which he allocated hours for picking because once the amounts picked by the casual workers were subtracted, the balance of pounds, when divided by the number of so-called hourly workers, amounted only to a fraction of pounds per hour for subsequent entire days and he chose to ignore that minimal production for the purpose of his calculations. Keays excluded all the days contained within the shaded areas of pp. 23 and 24 of the calendar as it pertained to Surinder Kaur Gill. Keays determined she had worked 108 insurable hours and had insurable earnings of $871.56. When it was pointed out

the decision letter – tab 2 – stated her insurable earnings were $810.56, Keays acknowledged that was in error because her holiday pay of 7.6% had not been added and the proper amount was $871.56 and that this sum was also the correct amount of insurable earnings of her husband – Gurdev Singh Gill – and not the sum of $810.56 as stated erroneously in his decision letter.

[109] Keays referred to Exhibit R-6, tab 1, applicable to the appeal of Surinder K. Gill (appeal 2001-2116(EI)). His specific analysis began at p. 17 as it concerned the period from July 26 to September 12, 1998. After stating the primary position of no insurability, Keays considered the alternative and decided that if her employment was insurable she had worked 114 hours and had insurable earnings in the sum of $919.98. At p. 18, Keays took into account this appellant had worked at Lucerne during this period and had given priority to that job due to the fact she received better pay than from picking berries. Because the payroll record prepared by Gill Farms indicated Surinder K. Gill had worked 8 hours on August 15, 1998 – a date when she also worked at Lucerne during the day – he did not credit her with 8 hours for that day. As shown on the calendar, he did not credit her with any hours during those days in the shaded areas on pp. 23 and 24 because his examination of the relevant information led him to conclude there was no significant amount of work performed on those days and he ignored any entries to the contrary in her payroll records.

[110] Keays referred to Exhibit R-9, tab 2, applicable to the appeal of Himmat Singh Makkar (appeal 2001-2121(EI)). The analysis specific to this appellant commenced at p. 19 and pertained to the brief period from August 2 to August 28, 1998. Rai – in her capacity as Rulings Officer – had recognized his employment during said period and found he had worked 140 insurable hours and had earnings of $1,164.40. Keays stated that he considered Makkar's employment not to have been insurable but proceeded to determine – as an alternative – that Makkar had worked no more than 72 insurable hours during which he had insurable earnings of $599.04. At p. 21, Keays set out what he considered were serious discrepancies including the conflicting statements Makkar and his wife – Santosh K. Makkar – had made at various stages concerning the use of picking cards. Keays noted Himmat Singh Makkar told HRDC he had been paid 30 cents per pound for picking blueberries at Gill Farms but later changed his story to say he had been confused and had stated – in error – the piece rate paid to him for working at a nursery. As disclosed by the shaded and un-shaded areas on pp. 26 and 27 of his report, Keays recognized only 72 hours of work during the relevant period for which he accepted Makkar had been paid $8 per hour plus 4% holiday pay.

[111] Keays referred to Exhibit R-10, tab 2, applicable to the appeal of Santosh Kaur Makkar (appeal 2001-2117(EI)). Commencing at p. 19, Keays examined the circumstances of her employment between August 2 and September 26, 1998. Keays noted that a reference to Jarnail K. Sidhu – mid-way on that page – is a formatting error because the subsequent discussion concerns Santosh K. Makkar. At p. 21, Keays noted certain discrepancies regarding various aspects of her employment including matters such as frequency of payment, use of picking cards, hours of work and duration of employment. Keays stated he found it somewhat strange that this worker and her husband – Himmat Singh Makkar – started work the same day but he was laid off on August 28 while she continued until September 26. Although they rode to work together, Himmat Singh Makkar only worked 5 days per week while she worked – apparently – 7 days per week during the course of her employment at Gill Farms. Keays stated he was convinced no useful work had needed to be done after September 12, 1998 and that it was not reasonable for Santosh K. Makkar to have been employed after that date. Keays concluded – as an alternative to the primary recommendation – that she had worked 117 insurable hours and had insurable earnings in the sum of $912.60. He did not accept she had worked those days within the shaded areas on pp. 27 and 28 and credited her for those days in the un-shaded areas, allotting the number of hours per day shown on the payroll records of Gill Farms.

[112] Keays referred to Exhibit R-11, tab 1, applicable to the appeal of Jarnail Kaur Sidhu (appeal 2001-2118(EI)). In his report – commencing at p. 17 – Keays was not convinced she had performed any useful work after September 12, 1998. He accepted her start date of May 25 but – as shown on his calendar at pp. 21 and 22 – did not acknowledge she had worked – thereafter – on those days in the shaded areas for reasons stated earlier with respect to other appellants. He set forth details of perceived discrepancies on pp. 17 and 18 including those arising from descriptions of work performed, frequency of payment of wages and conditions of employment such as use of picking cards and number of hours and days worked each week. Based on the information he had gathered from experts within the agricultural industry, Keays decided to reduce the number of hours allegedly worked by Sidhu in May and June with respect to working at tasks categorized – in his calendar – as Spraying and Fertilizing, Gathering Dried Bushes, Hand Hoeing, Working on Water Pipes and Putting Up Nets. Keays concluded Sidhu had worked 325 insurable hours and had insurable earnings of $2,535.

[113] Keays referred to Exhibit R-12, tab 1, applicable to the appeal of Gyan Kaur Jawanda (appeal 2001-2125(EI)). His specific analysis begins at

p. 17 with respect to the period from May 25 to September 26, 1998. Keays noted – pp. 18 and 19 – Jawanda apparently had a poor memory and claimed she was unaware of the contents of her interview with Rai which occurred in her own residence in the presence of her daughter. Keays stated he was satisfied the interview had been conducted properly and that Jawanda understood it, particularly when the notes of said interview as prepared by Rai were signed a few days later by Jawanda after review and explanation by her daughter, Baljit. Keays allowed those days in the un-shaded area in the calendar as shown on pp. 21-24, inclusive, and decided she had worked 333 insurable hours and had insurable earnings in the sum of $2,597.40 rather than 942 hours and $7,347.60 earnings as stated in Jawanda's ROE issued by Gill Farms.

[114] Keays referred to Exhibit R-5, tab 1, applicable to the appeal of Harmit Kaur Gill (appeal 2001-2101(EI)). His analysis specific to this appellant begins at p. 17. Unlike the unrelated workers whose involvement in the within appeals was limited to their employment with Gill Farms only in 1998, the relevant periods of employment of Harmit Kaur Gill at issue were in 1996, 1997 and 1998. Keays was aware this appellant was the wife of Hakam Singh Gill and the sister-in-law of Rajinder Singh Gill who was married to her sister, Manjit Kaur Gill. Because this appellant was related to the partners of the payor as deemed by section 251 of the *Income Tax Act*, he undertook an examination of the criteria set out in paragraph 3(2)(*c*) of the *Unemployment Insurance Act.* The decision letter – tab 2 – referred to that *Act* because the 1996 period of employment of Harmit Kaur Gill is alleged to have begun on June 2, 1996 prior to the coming into force of the new *Employment Insurance Act* which governed employment situations commencing July 1, 1996. At p. 19, Keays dealt with the indicia as required by the provisions of the paragraph. He considered the remuneration of $9 per hour was reasonable for supervisory work on a farm provided there was a reasonable amount of work to be done which would require supervision. In relation to the terms and conditions of employment, Keays concluded Harmit Kaur Gill had been given a guarantee by the partners operating Gill Farms that she would be employed for the entire growing season and – therefore – was based on the needs of the worker to accumulate sufficient weeks – later, hours – to qualify for UI benefits rather than the requirements of the payor partnership based on sound economic reasons. Concerning the length and duration of employment, Keays decided the periods of employment in each of the relevant years was not consistent with the blueberry farming season. In his opinion, the payor partnership had extended the normal time frames – both at the beginning and the end – of a berry season in order to make it appear as though the employment was necessary for the length shown on the ROEs for 1996, 1997 and 1998. Keays considered that duration of employment to have been at odds with the normal

standards within the local agricultural industry. In examining the nature and importance of the work performed, Keays thought it unusual that Gill Farms would have hired both Harmit Kaur Gill and her sister - Manjit Kaur Gill – to supervise a staff composed – at times – of only 5 people. In his view, an arm's length employer operating with limited financial resources and suffering annual operating losses would not hire two full-time supervisors particularly when there were large blocks of time in each season when not much – if any – work was being done. Keays concluded the timing and extent of the duties performed by Harmit Kaur Gill during the relevant periods of each of the years had been grossly exaggerated and he recommended the Minister issue a decision that her employment was excluded (excepted) employment because she and Gill Farms would not have entered into a substantially similar contract of employment in the event they had been dealing at arm's length. In arriving at that conclusion, Keays stated he had not been aware whether any labour or other duties had been performed by Harmit Kaur Gill nor did he enter into any consideration of an alternate position as he had done with the employment of the unrelated workers in 1998. Keays stated the information before him disclosed that Harmit Kaur Gill and her sister – Manjit – had worked only as supervisors and that there had been ample opportunity to present evidence to the contrary to HRDC or to Rai instead of only at the appeal from the rulings. Keays stated he accepted the information provided on behalf of Harmit Kaur Gill with respect to the 1998 season and accepted the representation it could also apply to her periods of employment in 1996 and 1997 since her position was that the duties performed were similar in each of those years.

[115] Keays referred to Exhibit R-8, tab 1, applicable to the appeal of Manjit Kaur Gill (appeal 2001-2100(EI)). His analysis, specific to this appellant, commences at p. 17. The relevant periods of employment included the years 1996, 1997 and 1998. Keays was aware that Manjit Kaur Gill was married to Rajinder Singh Gill and that she was the sister of Harmit Kaur Gill who was married to Hakam Singh Gill, the partner – with Rajinder – in Gill Farms. When reviewing the facts, he did so on the basis that this appellant had confirmed – through her representative(s) – that her duties were the same during all 3 years under review. In considering the indicia required by the relevant provision of the legislation, Keays stated he examined the same facts which had been applicable to the employment situation of Harmit Kaur Gill and found no significant difference. He stated he found it strange that the extra duties allegedly performed would only surface in representations made to him rather than earlier when there had been ample opportunity to have done so either during the HRDC interview or at the large meeting at the HRDC Langley office in May, 1999 or during the rulings stage. He stated there had been no mention – earlier – of additional cash sales of blueberries and even

though the book recording certain cash sales had been included in the material on the appeal file he did not consider it would have had a major impact on his analysis. Overall, he considered the extent of the duties allegedly performed by Manjit Kaur Gill were exaggerated and the timing and extent of the duties reportedly performed were inflated as was the length and duration of employment for reasons stated earlier with respect to the appeal – from the ruling – by Harmit Kaur Gill. He was satisfied the remuneration throughout the 3 years under review was reasonable. Keays concluded the employment of Manjit Kaur Gill constituted excluded employment because he was not satisfied she and the partners operating Gill Farms would have entered into a substantially similar contract of employment if they had been dealing with each other at arm's length.

[116] Bernie Keays was cross-examined by Ronnie Gill. With respect to the discussions with the confidential informants in the blueberry industry, Keays stated he had not considered the impact of a grower having different varieties of blueberries and agreed that if a labour contracting entity is retained it will provide a supervisor and arrange for transportation of workers to the fields. Keays stated when he made notes – Exhibit R-30 – of his conversation with a grower he understood this individual had a 20-acre blueberry farm which was operated by that person, his two children and contract pickers. Keays stated he was informed that if an employer made some sort of guarantee with respect to the duration of employment on a piecework basis it would be understood that this would continue only as long as there were berries to be picked. Keays stated he was aware Lucky Gill-Chatta - writing on behalf of LRS – had some concerns about Rai's interview with Gyan Kaur Jawanda. However, the first page of her letter – Exhibit R-1, tab 15, p. 84 – did not question the extent of Rai's ability to speak Punjabi nor did it raise any issue about the accuracy of the translation of that interview into written English. Keays agreed there had been an earlier reference by LRS to sales of blueberries at a stand and to other places and accepted that some workers must have picked those berries. Keays was referred to Turgeon's notes – tab 24, pp. 246 and 247 – taken during the large meeting – on May 20, 1999 – at the HRDC Langley office in which she wrote about the discussion with Rajinder Singh Gill concerning delivering berries to Kelowna and other sales at the roadside stand and to Hamilton Farms, involving approximately 5,000 pounds in total. Keays stated he based his decision solely on the information contained in the audit report authored by Blatchford. Keays acknowledged Blatchford – when calculating production of pickers – had included both Harmit and Manjit in this group as though they had spent all of their time picking berries. He agreed if that information was not correct, then their inclusion within that group of pickers would have an impact on the calculations but was not certain of the extent thereof, barring a recalculation during which this new information was taken into account. Ronnie Gill referred Keays to his

notes of a conversation – Exhibit R-29 – with an informant within the blueberry industry where he noted that between 70 and 80 pickers would be required two days a week. Gill suggested that would amount to more than 1,000 person hours per week which would approximate the equivalent total time spent by 18 full-time hourly-paid pickers working 8 hours per day, 7 days per week. Keays stated he had not related that general information to the specific situation applicable to Gill Farms but had relied on the audit report prepared by Blatchford without going behind those figures stated therein to examine other alternative methods of calculating the volume picked by workers. Keays recalled various conversations between himself and Ronnie Gill concerning the appeals – from the rulings – by the workers and the owners of Gill Farms and stated his policy is to make notes of all conversations as they related to relevant matters and would choose not to do so only if it had been a quick call for a very specific purpose. Keays was shown a Telus statement – Exhibit A-18 – showing an 11-minute call from Ronnie Gill's number to Keays on December 12, 2000 and another call which according to the statement – Exhibit A-19 – lasted 25 minutes on January 16, 2001. Keays agreed he had not made notes of either conversation as he had done with others which were within tab 6 of Exhibit R-1. He pointed out the January 16, 2001 telephone call was made after the decision letters had been issued on January 11 and would not have been considered significant at that point. When questioned about the subject of tape recordings allegedly made by Turgeon of interviews, Keays replied he did not recall any conversation about that subject matter nor did he ever mention – even in jest – that any such tapes had been "burned". Keays agreed there had been information supplied by Jarnail Kaur Sidhu concerning her work putting up nets and that other details were included in the Questionnaire completed and submitted by Ronnie Gill on her behalf. Keays stated he had to consider the totality of all the information before him including that provided by experts within the agricultural industry as it related to the time required to perform certain tasks. He conceded this information was general and was not provided specifically in relation to the actual situation at Gill Farms.

[117] Counsel for the respondent advised the Court the respondent's case was closed.

[118] Ronnie Gill advised the Court she was calling rebuttal evidence. Hakam Singh Gill testified in Punjabi and the questions and answers and other aspects of the proceedings were interpreted and/or translated from English to Punjabi and Punjabi to English by Russell Gill, interpreter. He stated he was employed as a mill worker in Abbotsford and was a 50-50 partner – with his brother, Rajinder Singh Gill – in Gill Farms. He was referred to a statement - Exhibit A-20 – which, although taken from the income tax return of Rajinder Singh Gill for the 1999 taxation year, also applied to him since they have always been 50-50 partners. The

statement showed gross farming income of $91,780 and Rajinder and Hakam each claimed a loss of $5,136 against other income. Hakam stated the berries suffered from a root disease during 1999 and that this same problem had been encountered in 1997, 1998 and later in 2002. The disease affects the root of the plant and causes the branches to dry up to the point where it reduces berry production by as much as 40% or – at some point – kills the plant. Hakam was referred to the statement – Exhibit A-21 – which had been included in Rajinder's income tax return for the 2000 taxation year. It showed gross farming income in the sum of $147,470 and that Rajinder had declared his 50% share of total farming net income was $3,787. The statement – Exhibit A-22 – for the 2001 taxation year showed gross farming income in the sum of $129,325 which produced net income of $530 for each partner. With respect to the 2002 taxation year, the statement – Exhibit A-23 – showed gross farming income was $169,873 which yielded a net profit of $5,170 for each partner. The statement – Exhibit A-24 – for the 2003 taxation year showed gross farming income of $151,141 which did not lead to profit but rather resulted in a net loss of $7,659 for each partner. Hakam Singh Gill stated the disease problem had caused a reduction in normal yield during the 2003 season. The 2004 taxation year produced gross income of $237,059 according to the statement – Exhibit A-25 – and each partner claimed net farming income in the sum of $21,415. Hakam stated Gill Farms had increased gross farming revenue from $91,780 in 1999 to $237,059 in 2004 even though the acreage was the same. He stated the mature plants were healthier in 2004 and the price per pound of blueberries had increased in recent years. As an example, the price was $1.50 per pound at the beginning of the 2005 season, dropped later to $1.15 in full season and near the end, climbed back to $1.80 per pound due to market laws of supply and demand. Hakam stated that in 2005 Gill Farms sold berries at $1.80 per pound for a 10-day period. A further factor in increasing revenue – and net profit – was the extent of the yield which had increased to at least 16,000 pounds per acre. Hakam Singh Gill was referred to a bundle of deposit slips – Exhibit A-26 – relating to the account at the credit union – Prospera – formerly known as Fraser Valley. Hakam stated there were various deposit slips indicating members of his family had been the source of the funds deposited to the account. Hakam stated he thought the first deposit as shown on the slip – dated October 31, 1998 – probably was a pay cheque from the mill. He stated the cheque – shown on the last page of Exhibit A-26 – dated November 2, 1998, in the sum of $2,400 and payable to Rajinder Gill had been issued by Harpreet Gill as a loan to the farming operation. He stated Gill Farms had borrowed money from friends and referred to the photocopy of the cheque – 3 pages from the back of said exhibit – dated 11-11, 1998 – in the sum of $10,000 – issued on the account of Gurbax Brar and Kuljit Brar and payable to Rajinder S. Gill and Hakam S. Gill. On the 4th page in said exhibit, Hakam referred to a photocopy of a cheque dated November 18, 1998 – in the

sum of $10,000 – payable to Rajinder & Hakam Gill that had been issued by Mr. and Mrs. Sidhu as a loan to Gill Farms. Hakam stated he and his brother also borrowed the sum of $3,000 from Harmel S. Bhugra and his wife – Parminder K. Bugra – as evidenced by the photocopy of the cheque dated November 18, 1998. On November 15, 1998, he deposited a pay cheque – in the sum of $1,220.76 – issued by his employer, Fraser Pulp. Hakam stated he received some money from his father's estate which was transferred to the Fraser Valley account – from another account – at some point after the harvest had finished in 1998 but could not recall the amount. He was referred to a November 10, 1998 account statement issued by Fraser Valley – Exhibit R-2, tab 41, pp. 570, 571 – showing a deposit in the sum of $4,000 on November 4, 1998 from another account. Hakam stated that entry probably was the one applicable to the money received from his father's estate. Hakam Singh Gill stated he wanted to clear up a misconception about the type of hoeing performed on their farm. He agreed with the statement by Sweeney – agricultural expert – that roots of the blueberry plant are shallow but explained the type of hoe used is only 7 or 8 inches long and has a short handle. The end of the hoe is shaped like a spade and is inserted gently into the ground – without penetrating too deep – in order to remove grass that cannot be controlled by spraying during that period of the season when the berries are being formed.

[119] Hakam Singh Gill was cross-examined by Amy Francis. She pointed out that during the years 1996, 1997 and 1998, the wage expense exceeded the revenue of Gill Farms. Although the figures were not in evidence, she suggested that situation was probably the same in 1999. Hakam agreed that may have been the case in that year as well. Counsel questioned why the gross income fell from $169,873 in 2002 to $151,141 in 2003. Hakam stated some branches had dried out due to the disease and had to be trimmed and some bushes had died so new plants had to be purchased. Counsel pointed out there had been no previous mention – at any stage – of the disease affecting the blueberry plants in 1998 and suggested it had been raised at this point in order to account for excess labour in 1998 for the purpose of trimming. Hakam stated he had mentioned cutting dry branches earlier but had not referred to the disease as the need for that work to be done. Counsel advised Hakam Singh Gill that the cheques shown on Exhibit A-26, totalled $26,600 and that berry sales – in 1998 – amounted to $73,712 and rental income in the sum of $12,000 had also been included as farm income. She pointed out there had been a total sum of $172,282.64 deposited to the Fraser Valley farm account in 1998 and that there was a discrepancy of over $60,000 which had not been accounted for in the course of the evidence presented to date. Hakam replied that there were further and other contributions to the farming operation made by other family members who were employed at jobs off the farm.

[120] Ronnie Gill stated the case on behalf of the appellants and both intervenors was concluded.

[121] Counsel for the respondent and Ronnie Gill agreed it would be more efficient to make written submissions and to exchange responses to said submission and a deadline of November 15, 2005 was established to accomplish that purpose.

[122] In response to a query from the Bench, Ms. Francis stated she would seek instructions whether the Minister wished to maintain the position – as set forth in paragraph 10 of each Reply filed in response to each appeal by workers who were not members of the Gill family – that each had been employed in a non-arm's relationship – as a matter of fact – with the payor partnership operating Gill Farms.

[123] Within one week, Ms. Francis advised the Court the Minister had abandoned that primary position with respect to those workers who were not members of the Gill family and that forthcoming written submissions would be based on the alternative findings – as stated in paragraph 11 of each appellant's Reply – with respect to periods of employment, insurable hours and insurable earnings applicable to each of them, as calculated by Bernie Keays pursuant to the methodology disclosed in his Master Report and as explained during the course of his testimony.

[124] Counsel advised the respondent's position with respect to Harmit Kaur Gill and Manjit Kaur Gill was unchanged and that each of their periods of employment during 1996, 1997 and 1998 was considered to constitute excluded employment within the meaning of paragraph 5(2)(*i*) of the *EIA*.

[125] I will now decide these cases, beginning with the appeal of Harmit Kaur Gill.

Harmit Kaur Gill:

Relevant Book of Documents: Exhibit R-5

Minister's Decision:

[126] The Minister decided the employment of the appellant with Gill Farms was not insurable employment during each of the relevant periods at issue in 1996, 1997 and 1998.

Appellant's Position:

[127] The appellant maintains she was employed during each period and had insurable earnings as stated in each ROE issued by Gill Farms in respect of each period of employment.

Relevant Jurisprudence:

[128] The relevant provision of the *Act* is paragraph 5(3)(*b*) which reads as follows:

> (3) For the purposes of paragraph (2)(*i*),
>
> ...
>
> (*b*) if the employer is, within the meaning of that Act, related to the employee, they are deemed to deal with each other at arm's length if the Minister of National Revenue is satisfied that, having regard to all the circumstances of the employment, including the remuneration paid, the terms and conditions, the duration and the nature and importance of the work performed, it is reasonable to conclude that they would have entered into a substantially similar contract of employment if they had been dealing with each other at arm's length.
> …

[129] In the case of *Birkland v. Canada (Minister of National Revenue – M.N.R.)*, [2005] T.C.J. No. 195, 2005 TCC 291, Justice Bowie, Tax Court of Canada, considered the effect of a decision by the Minister based on paragraphs 5(2)(*i*) and 5(3)(*b*) of the *EIA*. In the course of his reasons, Justice Bowie reviewed the relevant jurisprudence as it evolved over the course of several years and proceeded to comment on the current state of the law relevant to the determination of this issue. It is useful to quote a substantial part of this judgment, commencing at paragraph 2, as follows:

> 2 During the hearing before me there was some discussion as to the role of this Court in cases arising under paragraph 5(3)(*b*) of the Act. This question has been the subject of a number of decisions of the Federal Court of Appeal during the past decade or so. The earlier cases, [Tignish Auto Parts Inc. v. M.N.R., (1994) 25 Admin L.R. (2d) 1 (F.C.A.); Ferme Émile Richard et Fils Inc. v. Canada, (1994) 178 N.R. 361 (F.C.A.); M.N.R. v. Jencan Ltd., [1998] 1 F.C. 187; Bayside Drive-In Ltd. v. Canada (Minister of National Revenue), [1997] FCJ No. 1019.] decided under paragraphs 3(1)(*a*) and 3(2)(*c*) of the *Unemployment Insurance Act*, [R.S.C. 1985 c. U-1, as amended. These provisions do not differ materially from paragraphs 5(2)(i) and 5(3)(*b*) of the present Act.] held that the Minister's opnion was insulated from appeal in this Court, unless it could be shown that in the course of forming that opinion he had committed what might be termed an administrative law error. As the

words of subparagraph 3(2)(*c*)(ii) conferred a discretion on the Minister, this Court had no mandate to simply substitute its opinion for that of the Minister. However, if in the course of the hearing of an appeal the Appellant were able to show that the Minister had erred in law in forming his opinion, then this Court's function was to proceed to a de novo determination of the paragraph 3(2)(*c*)(ii) (now 5(3)(*b*)) question whether the terms of the employment contract could reasonably be considered to be those that arm's length parties would have arrived at. In other words, after finding that the Minister's decision was vitiated by an administrative law error, and only then, could this Court substitute its opinion for that of the Minister as to the paragraph 3(2)(*c*) question.

3 In 1999 the Federal Court of Appeal revisited the matter in Légaré v. Canada [[1999] F.C.J. No. 878.] Marceau J.A., speaking for himself and Desjardins and Noël JJ.A., said there at paragraph 4:

> 4 The Act requires the Minister to make a determination based on his own conviction drawn from a review of the file. The wording used introduces a form of subjective element, and while this has been called a discretionary power of the Minister, this characterization should not obscure the fact that the exercise of this power must clearly be completely and exclusively based on an objective appreciation of known or inferred facts. And the Minister's determination is subject to review. In fact, the Act confers the power of review on the Tax Court of Canada on the basis of what is discovered in an inquiry carried out in the presence of all interested parties. The Court is not mandated to make the same kind of determination as the Minister and thus cannot purely and simply substitute its assessment for that of the Minister: that falls under the Minister's so-called discretionary power. However, the Court must verify whether the facts inferred or relied on by the Minister are real and were correctly assessed having regard to the context in which they occurred, and after doing so, it must decide whether the conclusion with the Minister was "satisfied" still seems reasonable.

That judgment has spawned some debate as to whether it represents a new point of departure in the jurisprudence, or simply a gloss on the law as established in the earlier cases. Support for the former view may be found in some decisions of the Federal Court of Appeal, [Pérusse v. Canada, [2000] F.C.J. No. 310; Valente v. Canada, 2003 FCA 132; Massignani v. Canada (Minister of National Revenue), 2003 FCA 172; and Denis v. Canada (Minister of National Revenue), 2004 FCA 26.] and for the latter view in some others. [Candor Entreprises Ltd. v. Canada (Minister of National Revenue), 2000 CanLII 16690 (F.C.A.); Quigley Electric Ltd. v. Canada (Minister of National Revenue), 2003 FCA 461; Théberge v. Canada (Minister of National revenue), 2002 FCA 123.] Still others are consistent with either view. [Gagnon v. Canada (Attorney General), 2001 FCA 292; Staltari v. Canada (Attorney General), 2003 FCA 448.] My colleague Archambault J. has

recently discussed the subject quite fully in Bélanger v. M.N.R. [2003 FCA 455.] I do not propose to add to that debate, except to point out that Marceau J.A. himself seems to have been of the view that Légaré had overruled the earlier cases when ten months later, in Pérusse, he wrote the following two paragraphs, concurred in by Décary J.A., who had delivered the judgment in Ferme Émile Richard:

> 13 It is clear from reading the reasons for the decision that, for the presiding judge, the purpose of his hearing was to determine whether the Minister, in the well-known expression, had exercised "properly" the discretion conferred on him by the Act to "recognize the non-exception" of a contract between related persons. He therefore had to consider whether the decision was made in good faith, based on the relevant facts disclosed by a proper hearing, not under the influence of extraneous considerations. Accordingly, at the outset, at p. 2 of his reasons, the judge wrote:
>
> > The determination at issue in the instant appeal results from the discretionary authority provided for by the provisions of s. 3(2)(*c*) of the Act, which reads as follows:
> > …
> > The appellant was required to discharge the burden of proof, on the balance of probabilities, that the respondent in assessing the matter had not observed the rules applicable to ministerial discretion, and if this could not be done this Court would not have no basis for intervening.
>
> And finally, his conclusion at p. 14:
>
> > So far as the appeal is concerned, I cannot allow it as the appellant has not proven that the respondent exercised his discretion improperly.
>
> 14 In fact, the judge was acting in the manner apparently prescribed by several previous decisions. However, in a recent judgment this Court undertook to reject that approach, and I take the liberty of citing what I then wrote in this connection in the reasons submitted for the Court.

Marceau J.A. then quoted paragraph 4 of his reasons for judgment in Légaré.

> 4 At this point it is sufficient simply to state my understanding of the present state of the law, which I derive principally from paragraph 4 of Légaré (reproduced

above) and from the following passage from the judgment of Richard C.J., concurred in by Létourneau and Noël JJ.A., in Denis v. Canada.

> 5 The function of the Tax Court of Canada judge in an appeal from a determination by the Minister on the exclusion provisions contained in subsections 5(2) and (3) of the Act is to inquire into all the facts with the parties and the witnesses called for the first time to testify under oath, and to consider whether the Minster's conclusion still seems reasonable. However, the judge should not substitute his or her own opinion for that of the Minister when there are no new facts and there is no basis for thinking that the facts were misunderstood (see Pérusse v. Canada (Minister of National Revenue – M.N.R.), [2000] F.C.J. No. 310, March 10, 2000).

This Court's role, as I understand it now, following these decisions, is to conduct a trial at which both parties may adduce evidence as to the terms upon which the Appellant was employed, evidence as to the terms upon which persons at arm's length doing similar work were employed by the same employer, and evidence relevant to the conditions of employment prevailing in the industry for the same kind of work at the same time and place. Of course, there may also be evidence as to the relationship between the Appellant and the employer. [See paragraph 5(3)(*a*) of the Act and sections 251 and 252 of the *Income Tax Act*.] In the light of all that evidence, and the judge's view of the credibility of the witnesses, this Court must then assess whether the Minister, if he had had the benefit of all that evidence, could reasonably have failed to conclude that the employer and a person acting at arm's length would have entered into a substantially similar contract of employment. [Some appeals are brought from the Minister's determination that the employee was engaged on arm's length terms, with a view to having the employment determined not to be insurable because the employer or the employee or both of them do not wish to participate in the employment insurance scheme. I will say nothing about such cases, as different considerations may apply to them: see C & B Woodcraft Ltd. v. Canada (Minister of National Revenue) 2004 TCC 477 at paragraphs 9 to 13; and Actech Electrical Limited v. M.N.R. 2004 TCC 572 at paragraph 17 where two different views of the statutory scheme have been expressed, both of them obiter dicta.] That, as I understand it, is the degree of judicial deference that Parliament's use of the expression "…if the Minister of National Revenue is satisfied…" in paragraph 5(3)(*b*) accords to the Minister's opinion. [This formulation of the test does not deal with the possibility of a finding of bad faith or improper motive on the part of the Minister. This subject has not been addressed in the cases subsequent to Jencan and Bayside and is no doubt best left until such a case arises.]

Submissions:

[130] Ronnie Gill - agent for Harmit Kaur Gill - submitted the evidence established the appellant worked on the farm and performed valuable, necessary work during the

relevant periods of each year at issue in the within appeals. She pointed out that Bernie Keays – Appeals Officer – considered the wage paid to her was reasonable under the circumstances and in accordance with industry standards. Ronnie Gill submitted the method and timing of payment of wages was substantially the same as those applicable to non-family workers and that Harmit – like other workers – was subject to the direction and supervision of Hakam Singh Gill. Ronnie Gill referred to the testimony of Harmit Kaur Gill wherein she provided extensive details of numerous and onerous duties performed during the course of her employment in each year and to the evidence generally which substantiated the nature and extent of those duties. Ronnie Gill submitted the appeal of Harmit Kaur Gill should be allowed because the Minister had erred in deciding Harmit Kaur Gill's employment was uninsurable by virtue of the provisions of subsection 5(3) of the *EIA*.

[131] Counsel for the respondent submitted there was no basis upon which the Court would be justified in intervening in the decision of the Minister because Harmit Kaur Gill had failed to adduce credible evidence to discharge the burden upon her to demonstrate the Minister had erred in exercising his discretion under paragraph 5(3)(*b*) of the *EIA* and paragraph 3(2)(*c*) of the *UIA* as it applied to that portion of her employment in 1996 prior to the coming into force of the *EIA*. The position of the respondent is that the evidence adduced on behalf of – or otherwise applicable to – this appellant is not credible in many instances and is rife with contradictions and inconsistencies, particularly with respect to the method of transporting workers, the basis upon which picking cards were issued to workers and numerous other matters. Counsel referred to instances where the testimony of the appellant – at Discovery – was different from that given in the within proceedings. Counsel pointed to the fact Harmit Kaur Gill continued to work at Lucerne during the period she was employed at Gill Farms and that in June and later in July – during the busy blueberry season – she was absent for whole days or half-days and during the week of June 14, 1998, had worked only two of seven days. Counsel submitted this example demonstrated the appellant's alleged supervisory duties were not required because that function was performed by Hakam Singh Gill even though he was working full-time at the mill or – occasionally – was undertaken by Manjit Kaur Gill who allegedly had her own full-time duties to perform. With respect to the evidence relating to pay cheques issued by Gill Farms to Harmit Kaur Gill, counsel referred to evidence that cast doubt on the nature of the so-called wage payments to her as the cheques issued to her were deposited into the joint account – with Hakam Singh Gill – and shortly thereafter, funds were transferred from that account to the one used by Gill Farms as its business account. Counsel submitted the banking records of the Gill family demonstrated there was a reasonably free flow of funds between business and personal accounts. Counsel submitted the overarching problem with the appellant's

case was that the overall evidence – including her own testimony – suffered a lack of credibility and documents – such as payroll records – were unreliable since they did not reflect the hours actually worked by the appellant. Further, counsel referred to instances where the appellant apparently worked as a supervisor during times when there was no work for other workers to perform. Counsel submitted the evidence adduced by the respondent established the number of hours purportedly worked by the hourly employees – as recorded in the payroll records of Gill Farms – was approximately three times the number of hours required in accordance with industry standards. Counsel also referred to evidence showing the wage expense of Gill Farms – for 1998 – exceeded the total revenue generated in that year and submitted there was no need for the payor partnership to have employed two full-time supervisors. Counsel submitted the decision of the Minister was correct and, when viewed in the context of new facts disclosed during the course of the within proceedings, was reasonable, proper and worthy of confirmation by this Court.

Analysis:

[132] Unlike the majority of these cases, in the within proceedings, the respondent did not rely solely on assumptions of fact pleaded in the relevant Reply, as set out earlier in these Reasons. Instead, Bernie Keays – Appeals Officer – testified at length with respect to the facts and circumstances taken into account when arriving at a recommendation to the Minister's designate with regard to the insurability of the employment of Harmit Kaur Gill during the relevant periods in 1996, 1997 and 1998. Keays testified he conducted his review on the basis of the representations made to him by the appellant and her agent, Ronnie Gill, that the conditions applicable to the appellant's 1998 employment were substantially the same as those during 1996 and 1997. In conducting an examination of the criteria set forth in paragraph 5(3)(*b*) of the *EIA*, Keays stated he took into account the facts as recited in his Master Report – Exhibit R-1, tab 3 – pertaining to the overall operation of Gill Farms. Since the first 16 pages of said report were relevant to all appeals in the within proceedings, he included them in each report pertaining to a specific appellant. His report – Exhibit R-5, tab 1, pp. 17-19 – dealt specifically with the insurability of the employment of Harmit Kaur Gill during the relevant periods at issue. Keays stated he took into account the information gathered by HRDC and the content of the ruling issued by Harby Rai. In addition, he considered the expert advice provided by Mark Sweeney, Agriculturist, and reviewed the extensive forensic audit prepared under the direction of James Blatchford. Keays stated he formed the opinion that – for several reasons – wage records were unreliable and that the financial information gathered by Blatchford established the farming operation was uneconomical and did not justify the amount of wage expense incurred. The amount of revenue was insufficient to cover

the labour component of operating costs before taking into account other usual business expenses. As a consequence of reviewing the material and taking into account information he obtained through discussions with certain individuals and from reading the Questionnaires and the material submitted by Ronnie Gill and Lucky Gill-Chatta of LRS Solutions, Keays concluded the hours purportedly devoted to the farming operation were grossly inflated. In his assessment, there was insufficient work subsequent to the end of blueberry season on September 10, 1998 to justify the continuing employment of Harmit Kaur Gill until September 26. At various points during the course of the appellant's employment, Keays considered the tasks allegedly performed by the appellant and other workers or those involving supervision – by her – were exaggerated and represented a serious departure from normal time frames assigned to said tasks in accordance with industry standards. In the beginning of the 1998 season, Keays concluded the tasks allegedly performed by the appellant and the extent of her supervision of other workers was out of sync with industry norms applicable to preparatory work such as spraying and fertilizing, gathering dried bushes, working on water pipes and installing the netting.

[133] Keays testified he considered the remuneration – $9 per hour – paid to Harmit Kaur Gill was reasonable under the circumstances. However, that view was based on the premise there was work to be done and he stated it was not reasonable – in his opinion – to pay this amount – or any other – during periods when there was insufficient work to justify continued employment of a supervisor or during those early portions of the farming season when no supervisor would have been required. In Keay's opinion, an employer dealing at arm's length with an employee would not have negotiated a substantially similar contract of employment pursuant to which there was – in a practical sense – a commitment – tantamount to a guarantee – that the individual would be employed long enough to qualify for UI benefits at the end of the season.

[134] With respect to the matters of the terms and conditions and duration of employment, Keays considered the period of employment in each year was not consistent with the blueberry season. In his view – based on all the information available to him – the payor extended the period of employment of Harmit Kaur Gill well past normal time frames within the industry in order to create employment that would last throughout the full farming season. Keays testified he considered a non-arm's length employer would hire and retain employees in accordance with a demonstrable need for their services and would not provide a virtual guarantee of employment without regard to normal labour requirements within the industry. To Keays, the employment relationship between Harmit Kaur Gill and the intervenors appeared to be completely inconsistent with the usual prevailing standards within the

agriculture industry, particularly when compared to other blueberry growers in the Lower Mainland. He considered the employment – as alleged – was based on the appellant's needs rather than those of the payor partnership. Keays did not consider it reasonable that the appellant would be required to supervise workers during days on which – according to Blatchford's forensic audit – there was little or no work performed.

[135] Concerning the nature and importance of the work, Keays took into account that Harmit Kaur Gill and her sister – Manjit Kaur Gill – were allegedly hired to supervise a staff of only 5 people during certain times of the year. The alleged start dates of the appellant's employment in the years at issue were June 2, 1996, May 25, 1997 and May 25, 1998. At those times of the year, the material before Keays led him to conclude there would not have been any need for two persons to be hired – as supervisors – particularly when there were large blocks of time during which little or no work was being performed and any tasks actually carried out could have been directed by Hakam Singh Gill or Rajinder Singh Gill. In the same sense, the supposed layoff dates for Harmit Kaur Gill were October 19, 1996, September 27, 1997 and September 26, 1998. Since Gill Farms grew only blueberries, Keays relied on various documents, including purchase slips issued by canneries and on information received from growers within the blueberry industry as well as taking into account the opinion of the expert – Mark Sweeney – in order to conclude the blueberry season was finished by September 9, 1998 and in earlier years within a week of that date. As a result, there was no need for Harmit Kaur Gill to have been employed for more than a day or two after the end of the picking season. In Keay's opinion, both the timing and extent of the duties performed by the appellant were grossly exaggerated and in view of the financial problems associated with the operation of Gill Farms since its inception, it did not make economic sense to employ people under circumstances where they were not needed. In his view, when total revenue from sale of berries did not cover the wage expense associated with their harvest, a prudent operator would not have hired the appellant to work throughout the entire periods as reported in the ROEs issued by Gill Farms with respect to her employment in 1996, 1997 and 1998. After reviewing all of the material before him, Keays recommended the Minister decide the employment of Harmit Kaur Gill was uninsurable because it fell within the category of excluded/excepted employment within the provisions of the former *UIA* and the current *EIA*.

[136] It became apparent in the course of the proceedings the appellant had represented – at various stages – that her only job was supervising workers. At one point – when her agent responded to the Questionnaire – she maintained she did not supervise workers. The appellant testified she spent a great deal of time weighing

berries at the weighing station and in view of the number of pickers employed and the amount of berries harvested during a busy part of the season, that task would occupy a reasonable amount of time. However, said task – which according to her evidence at trial occupied several hours per day – was not mentioned as one of her duties when she was interviewed by HRDC nor was it included in a description of her duties in the Questionnaire sent to Keays. Harmit Kaur Gill testified she worked at Lucerne whenever possible because the rate of pay was $15 per hour and that it was not unusual for non-family workers employed by Gill Farms to work at other employment in order to earn more money while retaining their jobs at Gill Farms. She stated that even though she worked a shift at Lucerne, she was able to perform her duties at Gill Farms the same day. She described – in considerable detail – the work required to be done in late May and during the month of June in order to prepare for the forthcoming blueberry season which is extremely busy, particularly during the peak period which lasts approximately two months. She testified she did not perform any tasks on the farm between January and her start date each year, because they were undertaken by Hakam Singh Gill during days off from his full-time job. However, once she was hired each year, she testified there was sufficient work to keep her gainfully employed until her layoff at the end of the season. Harmit Kaur Gill prepared her own payroll records and ROEs. She explained that she had created the Daily Log specifically in response to her perception of a demand issued by Turgeon of HRDC. She conceded that in preparing this document, she neglected to include any reference to a worker – Manjit Kaur Sidhu – who had worked 8 or 8.5 hours a day from May 18 to September 26, 1998 and stated she was unable to offer any explanation for that omission.

[137] Harmit Kaur Gill testified that, in her opinion, she had performed a wide range of duties for which she was paid a fair wage in accordance with industry standards and in keeping with the normal practice where growers paid wages on an irregular basis until the end of the season when there was a settling of accounts. She stated Hakam Singh Gill was not pleased when she left the farm in order to earn a higher hourly wage at Lucerne but she was able to carry out her duties by working on the farm either before or after a shift. The appellant pointed out she had always worked at outside employment – while working at Gill Farms over the course of several years – and continued to do so in order to earn sufficient money to contribute to the needs of her family. She stated she did not have to work for Gill Farms in order to obtain sufficient employment within the agricultural industry in order to qualify for UI benefits following layoff at the end of each season.

[138] The information before the Minister was not as extensive as the evidence adduced before me in the course of this lengthy trial. I heard details of numerous

duties allegedly performed by Harmit Kaur Gill that were never put before the Minister for consideration, including tasks such as transporting employees, weighing berries and elaborate descriptions concerning the extent of time required to perform seeming small tasks – such as cutting off dry branches – during the early part of the farming season prior to the berries becoming ripe. Also, the appellant had not informed HRDC nor Rai – Rulings Officer – nor Keays – Appeals Officer – that she had devoted time to cleaning berries by using a conveyor belt in order to fill specific orders for high-quality berries to customers selling directly to fresh-market consumers. In my view, the problem encountered by the appellant is not the extent of her duties during the blueberry season. I have no doubt she was very busy indeed during certain periods within that overall time frame. However, the appellant did not discharge the requisite burden of proof to justify the duration of her employment – in each year – based on an analysis of all the evidence. Gill Farms operated a blueberry farm and there was no need for the appellant to have been employed as early as the last week of May – in 1998 and 1997 – or on June 2 – in 1996 – nor as late as October 19, September 27 or September 26 in 1996, 1997 and 1998, respectively. The evidence, including the testimony of the expert – Mark Sweeney – makes it clear that even allowing for some inefficiencies attributable to an inexperienced, older work force, the time allegedly allotted to the performance of various tasks was 3 to 5 times the amount accepted as normal within the industry based on information gathered over several years from a wide range of growers operating small, medium and large farms. One must look at the information before the Minister and to all of the evidence adduced at trial. Certainly, there was an overriding issue of credibility because of various versions provided earlier with respect to events. I appreciate it is extremely difficult for the appellant to recall minute, insignificant, details of repetitive tasks undertaken 7, 8 or 9 years ago and that farming seasons tend to blur together. However, there seemed to be a cavalier attitude throughout, as exemplified by the tendency to provide information to HRDC and CCRA on a need-to-know basis in bits and pieces. Even during the within proceedings, details of additional duties or tasks emerged from time to time in order to respond to questions posed by the appellant's agent or by counsel during cross-examination or in relation to questions from the Bench. In several instances, the expansive nature of the tasks allegedly performed either directly by the appellant or under her supervision, seemed to comply with Parkinson's law in that the time needed to complete said tasks appeared to equal the period allotted – retroactively – for their completion.

[139] The Minister decided the appellant – Harmit Kaur Gill – was not employed in insurable employment during the periods at issue in 1996, 1997 and 1998, because she and the intervenors, as members of the partnership operating Gill Farms, were related according to provisions of relevant legislation and the Minister was not

satisfied, after having regard to the criteria set forth in the applicable paragraphs of the *EIA*, they would have entered into a substantially similar contract of employment if they had been dealing at arm's length.

[140]In the case of *Barbara Docherty v. M.N.R.*, [2000] T.C.J. No 690 - 2000-1466(EI) – dated October 6, 2000, I commented as follows:

> The template to be utilized in making a comparison with arm's length working relationships does not require a perfect match. That is recognized within the language of the legislation because it refers to a "substantially similar contract of employment". Any time the parties are related to each other within the meaning of the relevant legislation, there will be idiosyncrasies arising from the working relationship, especially if the spouse is the sole employee or perhaps a member of a small staff. However, the object is not to disqualify these people from participating in the national employment insurance scheme provided certain conditions have been met. To do so without valid reasons is inequitable and contrary to the intent of the legislation.

[141] In the within proceedings, the overall effect of the evidence was to present a picture of an employment situation that was seriously at odds with what would be expected of parties within an employment relationship who were not related. In so stating, I appreciate the amount of work performed by the appellant and the valuable services rendered by her to Gill Farms at various times within the relevant periods during the years at issue. However, I am not at liberty to decide the matter as though I were deciding it *de novo* and the structure of the employment relationship at issue in her appeals was such that I cannot create new periods of employment in each year that would be reasonable if modified to conform with the evidence. The issue before me is whether the period of employment, as constituted and reflected in each ROE issued to the appellant in each year, is insurable. This appeal – by way of trial – was not a mediation process wherein the goal was to achieve some middle ground in order to resolve the conflict between the appellant and the Minister as to an acceptable period of employment in each year. Instead, it was an appeal of the decision issued by the Minister during which the testimony of the appellants, intervenors, and several other witnesses was heard and extensive documentary evidence was received in accordance with appropriate procedures and rules of evidence applicable to EI appeals. The subsequent analysis based on that accumulated evidence must be undertaken in compliance with existing jurisprudence.

[142] There is no suggestion the Minister's decision was based on bad faith or improper motive and I mention these factors only because in earlier jurisprudence

they formed part of the analysis concerning the nature of the Minister's so-called discretion.

Conclusion:

[143] Taking into account all the relevant evidence and – in particular – those additional facts presented during the trial, I find the decision of the Minister would not have been different had those facts been known at the time. Even with the benefit of all the evidence before me and in considering the credibility of the appellant with respect to certain inconsistencies affecting important aspects of her testimony and in applying relevant portions of common evidence to her case, the Minister – acting reasonably – would not have arrived at any other conclusion. It is apparent the employment of the appellant during the relevant periods stated within the ROEs was uninsurable because there is not sufficient evidence to conclude the intervenors – as members of the partnership operating Gill Farms – and the appellant would have entered into a substantially similar contract of employment if they had been dealing with each other at arm's length.

[144] The decision of the Minister is hereby confirmed and the appeal is dismissed.

Manjit Kaur Gill:

Relevant Book of Documents: Exhibit R- 8.

Minister's Decision:

[145] The Minister decided the employment of the appellant with Gill Farms was not insurable employment during each of the relevant periods at issue in 1996, 1997 and 1998.

Appellant's Position:

[146] The appellant maintains she was employed during each period and had insurable earnings as stated in each ROE issued by Gill Farms in respect of each period of employment.

Relevant Jurisprudence:

[147] The same principles as discussed earlier with respect to the appeal of Harmit Kaur Gill are applicable to the appeal of Manjit Kaur Gill since she is also related to the members of the payor partnership.

Submissions:

[148] Ronnie Gill submitted Manjit Kaur Gill had been employed under circumstances that were comparable to those within the berry industry and that she had worked hard and performed tasks in the same manner as any unrelated third party charged with the responsibility of carrying out similar functions in the course of a busy farming season. Ronnie Gill referred to the fact Keays considered the remuneration of $9 per hour to have been reasonable in view of the circumstances and that it should have been clear to the Minister the work performed by the appellant was necessary for the efficient operation of the farm. In her view, the evidence disclosed payment had been made to the appellant for her work and that the method followed by the payor was substantially similar to that followed with respect to workers who were not family members.

[149] Counsel for the respondent submitted the appeal should be dismissed as the appellant had not adduced credible evidence at trial to demonstrate the Minister had erred in exercising his discretion under paragraph 5(3)(*b*) of the *EIA* and paragraph *3(2)(c)* of the *UIA*. Counsel referred to the testimony of the appellant wherein she testified – on three separate occasions – that her start date – in 1998 – was June 15 and that berry picking had begun on June 25. Although later in her direct examination, the appellant corrected her start date to May 15, she stated – during cross-examination – that she and the hourly workers started working at the end of June. Counsel submitted the confusion in dates was relevant because it established the appellant had no reason to begin working until at least the middle of June, 1998, since the tasks required to be performed prior to the commencement of the picking season can be accomplished within a two-week period. Counsel submitted the whole of the evidence made it apparent the appellant had not begun working on May 24, 1998 – as stated in her ROE – or on May 25, 1998, the date referred to in the decision issued by the Minister. Counsel submitted the evidence disclosed the earlier seasons of 1996 and 1997 were basically the same and there was no reason for Manjit Kaur Gill to have started work on June 2, 1996 nor on May 25, 1997 because there was no need for her to have been employed at that time, particularly not in a supervisory capacity at the same time as her sister – Harmit Kaur

Gill – was allegedly performing substantially the same function. Counsel submitted the appellant's claim she had been busy carrying buckets of berries to the weighing station and thereafter to other locations was not credible because she had not mentioned that task during the initial interview at the farm on November 3, 1998 nor when completing the Questionnaire at the rulings stage and that it was only when providing information to Keays – Appeals Officer – that the appellant's agent referred to the appellant having carried berries. Counsel submitted the appellant's evidence was not credible and that she attempted during her testimony to add tasks and duties so as to make it appear as though 15 workers and two supervisors were needed to operate the farm. With respect to the task of transporting workers, counsel submitted there were numerous examples of inconsistencies and that it was strange to note the appellant worked either 8 or 9 hours per day but many of the hourly workers allegedly driven by her on a regular basis worked either 9 or 10 hours per day. Counsel referred to evidence concerning certain cheques issued by Gill Farms to the appellant, including one which indicated the purpose of the cheque was to pay a CIBC Visa statement of account. In counsel's view of the matter, there were other instances disclosed in the evidence which indicated there was a blurring of the lines between personal and business accounts and personal Gill family expenses and business expenses of Gill Farms. Further, with respect to pay cheques, the appellant received them regularly throughout August, September and October and they were either cashed or deposited shortly thereafter, unlike the method used to pay non-family workers who – apart from a small advance – did not receive any cheques until the end of October and even then, some of them were told to hold off cashing the cheques for another two or three weeks. Counsel submitted the Minister had considered all of the relevant information and the evidence at trial further supported the conclusion that the employment of the appellant was not insurable during the relevant periods at issue.

Analysis:

[150] Bernie Keays testified he prepared a report – Exhibit R-8, tab 1 – pertaining to the issue of insurability of the employment of Manjit Kaur Gill. He took into account relevant aspects of the material applicable to all appellants – as contained in the first 16 pages of the Master Report – before dealing with the specific employment relationship between the appellant and the intervenors. He relied on representations from the appellant's agent that her duties were substantially the same during all 3 years under review. In reviewing the relevant facts, Keays stated he found no significant difference between those applicable to the appellant and to her sister – Harmit Kaur Gill – whose file he had also assessed in the course of making a recommendation to the Minister in respect of the insurability of that employment.

Again, he found it odd that details of extra duties emerged only during representations to him in his capacity as an Appeals Officer rather than during initial interviews with HRDC officials or during the meeting at the HRDC office in Langley in May, 1999 where various issues were thoroughly discussed – ove the course of several hours – with the intervenors and their wives and the farm accountant. Keays conceded during cross-examination that he had not considered the impact of a grower having different varieties of blueberries and agreed that since Gill Farms had not hired workers through a labour-contracting entity, members of the Gill family had to supervise workers and transport them to and from work, duties that would have been carried out by the contractor.

[151] Keays testified he considered the rate of remuneration – $9 per hour – was reasonable – in 1998 – as were other hourly rates paid in 1997 and 1996. Again, he stated his acceptance of this factor was based on the need for work to be done as he did not consider an arm's length employer would pay someone a supervisor's wage when there was little or no work to be done by a handful of other workers.

[152] Keays stated he was satisfied the intervenors had guaranteed the appellant employment throughout a period that would enable her to qualify for UI benefits without having regard to the current financial demands and historic economic reality of their farming business. When advised by the agent for the appellant that it was normal that hourly workers " wanted the hours their employer promised them" and that they refused to go home if there was no work to be done, Keays stated he did not accept the proposition that an employer – acting at arm's length with employees – would permit this practice nor would said employer hire two supervisors to oversee workers who had little or no work to perform, particularly when the assertion throughout on behalf of all parties to the within proceedings was that they were paid by the hour for picking berries rather than by piecework which was standard throughout the industry.

[153] With respect to the duration of the employment and the nature and importance of the work, Keays stated his review of the material led him to conclude the period of the appellant's employment during the years at issue was inconsistent with the normal blueberry season. None of the information available permitted him to accept that it was reasonable for a prudent employer to extend the time frame applicable to an ordinary season within the berry industry, particularly when that employer was not generating enough revenue from the sale of berries to pay for the labour to harvest them. He considered it was not necessary for Manjit Kaur Gill to have been employed as a supervisor during the periods set forth in the ROEs issued by Gill Farms and that – overall – her purported duties had been inflated.

[154] As a result of reviewing the material, Keays concluded the timing and extent of the duties performed by the appellant were greatly exaggerated as was the length and duration of her employment. He recommended the Minister advise Manjit Kaur Gill that her employment with Gill Farms during the relevant periods in 1996, 1997 and 1998 was uninsurable.

[155] Manjit Kaur Gill testified she was accustomed to starting work for Gill Farms each season either at the end of May or in June. She stated she began working for Gill Farms on June 15, 2005 and the blueberry picking season began 10 days later, which was an early start compared with other years. She recalled that in 1996, 1997 and 1998, she started working at the end of May or in the early part of June. She described the preparatory work that must be done in the early part of the season including the onerous and time-consuming task of installing nets. She stated it took 5 or 6 people a total of 8 days to install the nets in 2005. With respect to the 1998 season, the appellant described the process of carrying buckets of berries to the scale and stated that during those peak periods when 15 hourly-paid workers picked 35 pounds of berries per hour, it occupied a great deal of her time to transport berries – in 25-pound buckets – to the scale which was on a 4-wheel cart so it could be moved to different locations. Manjit Kaur Gill testified she worked very hard at many tasks throughout each period of her employment and that if she had not performed those duties during the years at issue, Gill Farms would have been forced to hire someone else. She pointed out her pay was only $1 or so above the minimum wage paid to other workers who had no supervisory duties to perform. She stated that from her perspective, if she had worked at another farm performing more or less the same duties, her pay would not have been any higher. In her opinion, she was treated like any other employee and was paid in full for her work in accordance with the timing of payment normal in the berry industry. Further, when applying for UI benefits she always disclosed that her husband owned 50% of Gill Farms. During cross-examination, the appellant conceded that on other occasions she had stated she started work in June, 1998, but had been confused because despite having lived in Canada for 33 years, she still referred to months by their number within the year rather than by their names in English. She testified she was certain she had started on May 25, 1998, about 6 weeks prior to the commencement of the picking season. The appellant conceded – during cross-examination – she had never mentioned to any HRDC or CCRA official – at any stage of the proceedings – that one of her duties was to carry berries to the scale. She also agreed she had not mentioned – at Discovery – that any pruning had been done at the end of the season after the nets had been taken down. As for inconsistencies or discrepancies in the payroll records –

whether her own or pertaining to other workers – Manjit Kaur Gill stated she could not offer any explanation since Harmit – or her designate, if she was away working at Lucerne – was in charge of keeping those records. However, she was satisfied that all her work – including time spent transporting workers – had been properly recorded by Harmit. The appellant stated she had the impression when interviewed by Turgeon on November 26, 1998, that HRDC officials believed she had not worked on the farm – at all – and was merely claiming UI benefits without having a basis of real employment. She stated she received a T4 slip and paid income tax on her earnings from Gill Farms and acted throughout the employment relationship as though she were an ordinary non-related employee.

[156] There were numerous contradictions and inconsistencies throughout the testimony of Manjit Kaur Gill; some were to be expected bearing in mind the passage of time while others were not. It strikes me as highly unusual that one would forget to disclose – on several occasions over the course of time and at different stages of the review process – the task of carrying berries, a duty that – apparently – was one of the most onerous and time-consuming. However, it is not the busy part of the picking season that casts doubt on the validity of the employment of the appellant for purposes of the *EIA*. Instead, it is the duration of the purported employment in each year and the nature and importance of the work performed throughout said periods. The evidence permits one to draw the reasonable inference that the appellant started work about June 15 and was finished by September 12, 1998. That period would accord with the relevant evidence pertaining to the length of the working season normally applicable to a blueberry farm. With respect to 1996 and 1997, the evidence does not support the contention that the appellant's employment was required as early as the end of May – or on June 2nd – and should not have endured until September 27, 1997 and certainly not until October 19, 1996 as there was no evidence Gill Farms grew any late-bearing varieties that year, and Manjit Kaur Gill confirmed no late-ripening blueberry crops had been grown in 1998. During the busy season in each year, I accept she worked hard while performing various tasks but there were other periods within that larger time frame in which it was superfluous for her and her sister to have been performing supervisory duties during times when little or no picking was done. In that sense, the hours entered in the payroll records were inflated in the sense they are unreasonable within the context of the evidence relating to the operation of a blueberry farm. I accept that the appellant had the responsibility of preparing payroll records, ROEs and numerous cheques for signature by Hakam Singh Gill and Rajinder Singh Gill and that she dealt with the requisite paperwork as it pertained to employees, including herself and that she was the liaison between the intervenors and the farm accountant.

Conclusion:

[157] I cannot find any error in the methodology employed by Keays in undertaking a review of her employment in the course of discharging his function as an Appeals Officer with respect to the issue of the insurability of her employment. Taking into account the extensive evidence before me – documentary and otherwise – including the lengthy testimony of Manjit Kaur Gill, I cannot conclude the decision of the Minister would – or should – have been any different if all the evidence before me had been available to him prior to issuing the decision. An examination of all of the relevant information bearing on the central issue does not permit a rational conclusion that the employment of the appellant with Gill Farms would have been substantially similar if she and the intervenors had been dealing with each other at arm's length.

[158] The decision of the Minister is hereby confirmed and the appeal is dismissed.

Non-Related Appellants

[159] The first issue to be decided with respect to this group of appellants is whether they were paid on the basis of piecework for picking berries rather than on an hourly basis.

[160] The Minister assumed in the various Replies to the Notices of Appeal that they were remunerated on an hourly basis. Each appellant testified they were paid on that basis to pick berries instead of by piece rate which was the method used to pay those pickers who were described as casual workers. However, there was a substantial body of evidence supporting the view that the appellants – like all other workers in the berry industry in the Lower Mainland – were paid on the basis of piecework. With respect to this point, Ronnie Gill – agent for the appellants and intervenors – asserted there was a clear distinction between the two types of workers and while Gill Farms did employ pickers on a piecework basis it also employed a core group of steady workers throughout the season who were compensated on an hourly basis for all duties performed, including picking. The position of the agent was that there were two categories of pickers based on the need for Gill Farms to produce and market a high-quality product in order to attract top price and to offer workers an opportunity to be employed throughout an entire season at a reasonable wage rather than having them work intermittently which would force them to seek supplemental, temporary work at other farms or with a labour contractor. In view of the steady growth over the years in the gross revenue and net profit of Gill Farms due to a variety of factors including an increase in the price of berries, Ronnie Gill submitted it made good

economic sense for Gill Farms to have followed that practice in order to build a reputation as a top producer within the industry. She also referred to the evidence of Manjit Kaur Gill that hourly pickers harvested the Blue Crop variety because there were less ripened berries on the plants and there was a higher potential for spoilage. The pieceworkers were not interested in picking those berries because of the lower amount of production per day.

[161] The position of counsel for the respondent is that all pickers were – and are – paid on a piecework basis within the industry and it defied logic that Gill Farms paid their pickers on an hourly basis when the evidence of experts in the industry and the facts revealed by the forensic audit made it clear no grower could afford to pay pickers on any other basis other than a certain amount per pound.

[162] The evidence of the appellants and intervenors on the issue of piecework vs. hourly rate is not credible. The blueberries are sold at a price ranging from 65 to 90 cents per pound to canneries, and at $1.25 per pound to the fresh market or at a roadside stand. The theory that these alleged hourly workers had to be remunerated on that basis is completely out of step with reality. I do not accept the evidence offered by various appellants that they were provided with picking cards only now and then for the purpose of monitoring their so-called average production in order that the operators of Gill Farms could assess their productivity. The explanation offered by Hakam Singh Gill regarding the rationale for issuing picking cards to selected workers from time to time does not make sense. It was also difficult for Harmit Kaur Gill to maintain a consistent explanation concerning the practice of distributing picking cards and it was painfully apparent that the attempt to bolster the proposition that employees within one group were paid on an hourly basis to pick berries was predicated on a faulty premise completely unsupported by the overall weight of relevant evidence. The entire industry operates on the basis that the free market will determine the price per pound. Sweeney, the expert witness who is a berry specialist, testified that hand-harvesting is a time-consuming farming operation and that in the course of his long service with the Ministry, he had not encountered any situation where growers paid pickers on a piecework basis except when harvesting berries for a highly specialized market in which case it would not be worthwhile for a picker to be paid on a basis other than an hourly rate. Sweeney testified the only farming duties paid on an hourly basis within the industry are related to weeding, spraying, mowing, fertilizing and installing and removing nets. Overall, labour costs are high in proportion to revenue and many growers have turned to mechanized picking in order to reduce costs. Since 1997, the price of blueberries has risen significantly and growers' profits have increased provided other costs are kept in check. Charan Gill is the Executive Director of PICS and testified as an

expert in the area of farm labour practices in British Columbia. He stated that in 25 years he has never encountered a situation where a grower paid berry pickers other than on a piecework basis. He described a project operated by PICS whereby that organization attempted to change attitudes within the industry as well as previous efforts by the CFU to place unionized workers in fields. In his opinion, most berry pickers in the Fraser Valley earned about $5 per hour when averaged out over the entire berry season. In the course of undertaking research on the subject of farm workers, he ascertained that berry pickers in British Columbia were paid by piecework as far back as 1901. In his experience, a picker who works 10 or 12 hours in a day will earn $60 based on the prevailing piecework rate. The common practice followed by growers is to take that amount and convert it to hours worked, by dividing the sum by the current minimum wage plus holiday pay. As a result, even though a worker has picked berries for 12 hours, the $60 earned in accordance with the applicable piece rate will translate into a 7.5 or 8-hour day depending on the amount of the hourly minimum wage mandated by current provincial legislation. The result of this conversion process is that it does not reflect the actual hours of work performed in a day. With respect to 1998, Charan Gill considered it would have been difficult for any picker to harvest more than 200 pounds of blueberries per day during the peak period and during the early part of the season and at the end, the number of pounds picked per day is often 100 pounds or less. In his opinion, a competent picker is able to earn the equivalent of the minimum hourly wage for about two weeks during a season that lasts from 6 to 8 weeks depending on the varieties of berries grown. Charan Gill related the experience gained by him and others at PICS when it decided to operate a labour contracting business as a method by which to test the long-held theory that it was economically feasible to pay pickers an hourly wage instead of by piecework. That noble experiment was a failure and the PICS-operated contracting entity lost money for both years it was in business. Charan Gill testified that EI rules were changed so as to require a worker to accumulate more insurable hours in order to qualify for UI benefits and that led to certain persons within the berry industry selling ROEs to workers so they could receive said benefits. Also, certain employers issued ROEs stating exaggerated hours of work allegedly performed during a certain period of employment in order that workers – who paid money for these false records – could receive UI benefits over the winter. Charan Gill stated that in his experience only apple pickers in the Okanagan Valley could earn more than a minimum hourly wage for their efforts during an 8-10 hour day. He was not aware of any picker who had earned the equivalent hourly minimum wage while picking strawberries, raspberries or blueberries. Charan Gill testified there were 108 labour contracting entities operating in the Lower Mainland in 2005. He stated he was not aware of any contractor that paid workers an hourly wage for picking and that all picking was on the basis of piecework. Charan Gill is a blueberry grower and

operates a 4.5-acre farm. He stated his opinion that it was not possible to pay pickers an hourly wage and still earn a profit and that it was not economically feasible to buy a picking machine unless the farm had at least 20 acres of blueberries. When berries were selling for $1 per pound and the piece rate for picking was 40 cents, often there was not sufficient money remaining to cover other operating expenses. Charan Gill acknowledged that some farming tasks are remunerated on an hourly basis and that workers are hired to perform various duties early in the season in order to attract them so they will remain for the entire season. However, once the preparatory tasks have been completed, the hourly wage disappears and – thereafter – the payment for picking berries will be made according to the prevailing piecework rate established by the provincial government or somewhat higher depending on the circumstances. Bernie Keays testified he consulted with various persons in the blueberry industry and concluded payment to pickers based on a set piece rate was the norm. Claire Turgeon testified that in her experience at HRDC, blueberry pickers are always paid on piece rate and not by the hour. In 1998, the legislated minimum piece rate for blueberries was $.312 per pound and the minimum wage was $7.15 per hour.

[163] I find that all the appellants in the within proceedings were remunerated on the basis of piecework for picking blueberries for Gill Farms in 1998. In the case of *Kang v. Canada (Minister of National Revenue – M.N.R.)*, [2005] T.C.J. No 19, 2005 TCC 24, I arrived at the same conclusion with respect to the basis for paying berry pickers. In that case, the expert evidence together with the testimony of growers and some workers satisfied me that the only rational means of payment to pickers was by piecework in accordance with standards within the industry. The *Kang* case involved a contractor corporation that supplied workers and acted as an intermediary between the farmer and the workers. In that case, the growers paid the contractor by the unit and subsequent sale of berries to customers was based on either flats for strawberries and raspberries or pounds for blueberries. In the within proceedings, there is some evidence Gill Farms paid 30 cents per pound but whatever the actual rate, it was utilized to calculate gross earnings so that a payroll record could be created for each worker by converting those sums into equivalent hours per day at the minimum wage plus applicable holiday pay rate at 4% or for some appellants 7.6%. This finding that all appellants were paid on a piecework basis will form part of the analysis undertaken hereafter with respect to each appellant in the course of arriving at a decision applicable to his or her appeal.

Effect of the Forensic Audit

[164] Ronnie Gill – agent for the appellants and intervenors – submitted the forensic audit report by Blatchford did not take into account the additional berries that had

been sold but not accounted for due to the absence of corresponding receipts. Based on the testimony of Hakam Singh Gill and others, she submitted the evidence demonstrated Gill Farms had sold additional berries that were not taken into account by Blatchford when preparing his schedules. According to the totals calculated by Blatchford, the so-called hourly workers – characterized as employees in Exhibit R-17, schedule 11 – picked 30,611 pounds in July while the pieceworkers – referred to by Blatchford as contract pickers – harvested 9,718 pounds for a total of 40,329 pounds. According to Schedule 12, the total amount picked by all pickers – in August – was 46,082 of which 34,854 was picked by the alleged hourly workers and – in September – these workers picked 632 pounds. Ronnie Gill stated the appellants and intervenors accepted Blatchford's calculations were accurate with respect to sales to Greenfield, Universal, Kahlon and those recorded in the cash receipt book provided to him but had not taken into account those to stores in the Vancouver area, nor at the roadside stand on Gill Farms property, nor to Hamilton nor those in the Kelowna area many of which had not been recorded since they were for cash and buyers had not requested a receipt. She referred to the testimony of Rajinder Singh Gill who estimated Gill Farms made between 12 and 15 trips to take berries to various retail outlets in the Greater Vancouver area during the season and that the average delivery was 1,200 pounds. Ranjinder Singh Gill also described a cash sale of berries to Hamilton. From her perspective after analyzing Blatchford's report, Ronnie Gill submitted it was reasonable to conclude that an additional 36,750 pounds of berries had been produced – and sold – for a 1998 season total of 102,846 pounds. However, it appears she did not take into account the 20,946 pounds allocated to the contract pickers during July and August. In any event, Ronnie Gill's position is that the amount picked by the hourly workers was within the ranges recognized within the blueberry industry with respect to pounds picked per hour. She also referred to evidence of time spent by Harbans Kaur Khatra cleaning berries on the conveyor belt – with Harmit Kaur Gill – in order to ensure shipments of top-quality berries to the fresh market did not contain green berries, twigs or other debris. Ronnie Gill referred to the acknowledgment by Blatchford during his testimony that he had assumed both Harmit and Manjit picked berries every day along with the other hourly-paid workers. That assumption was adopted by Keays when arriving at his recommendations to the Minister on which the decisions affecting the appellants and intervenors were based. As a result of that erroneous conclusion, Ronnie Gill submitted there was a significant difference and that the remaining 13 pickers should each be credited with having picked – in total – 15% more berries once Harmit and Manjit were excluded from the methodology used by Blatchford.

[165] Counsel for the respondent submitted the analysis of Blatchford was reasonably accurate even though it was predicated on the theory that both

Harmit Kaur Gill and Manjit Kaur Gill were full-time pickers throughout the season. Counsel referred to figures introduced in evidence from the sales slips to the canneries and to the fact Blatchford had taken into account cash sales – in the sum of $5,190.95 – as recorded in the receipt book provided to him by the Gill family. Dividing that sum by $1.25 – the average price of berries sold by Gill Farms at fruit stands – results in an additional 4,131 pounds for total production of 88,432.5 pounds in 1998. Based on the testimony of Sweeney, that amount is consistent with an above average yield for an 8-acre blueberry farm. Counsel submitted there was no reliable evidence upon which to base a finding that further berry sales had occurred particularly in light of the information included within the 1998 income tax returns of the intervenors that total berry sales were $73,712. Since the total of the sales to the canneries and the other cash sales was $67,093.83, the difference between those two numbers was $6,618.17 and any extra sales not accounted for by Blatchford would not be in excess of that amount because the evidence of intervenors was that all sales – regardless of source – were reported to the farm accountant and accurately reported in the partnership financial statement. Assuming the extra cash sales were to grocers or fruit stands and the average price was $1.25 per pound, that would account for only 5,295 pounds of berries not otherwise factored into Blatchford's calculations. Counsel referred to Blatchford's testimony in which he indicated the addition of approximately 5,000 pounds to the total would add less than 100 pounds per day to the total pounds picked by those workers categorized as employees and would amount to a few pounds per person. Counsel referred to the example provided by Blatchford in the course of his testimony where he chose August 18, 1998 as an example. That day, if Manjit and Harmit were removed from the equation, the amount picked by each remaining worker would increase from 27 pounds to 30.6 pounds or approximately 15%. However, on those days where production of berries had to be expressed in a negative number, the increase per worker – excluding Manjit and Harmit – would still result in a negative amount. Counsel referred to the testimony of various appellants which established that Manjit Kaur Gill picked some berries during the season as did Hakam and some of the Gill children from time to time. Those berries were not factored into Blatchford's audit since there were no payroll records kept for them and even though there is no measurement available, the position of counsel is that any contribution made to the overall harvest by members of the Gill family would decrease the average pounds picked by each hourly worker during the season. Counsel submitted the forensic audit established the amount of berries picked by hourly workers was extremely low and it was unreasonable for people to have allegedly spent full days doing little or no work on certain days during picking season. Counsel submitted the evidence that several workers were devoting time to tasks other than picking berries during the busy season was simply not credible in the face of the expert testimony of Sweeney who stated it was highly

unlikely that any spraying of herbicides was undertaken during the growing season or that nets were mended at that time. In addition, any time spent by a worker taken from the field to work on the berry-cleaning conveyor belt would be insignificant and would have only a negligible effect within the context of Blatchford's calculations for the entire season.

Analysis:

[166] It is apparent Blatchford prepared his report on the basis that 15 full-time pickers – including Harmit and Manjit – plus the casual workers picked 87,880 pounds of berries. That amount is based on the total pounds delivered to Kahlon, Universal and Greenfield in July, August and September and includes those sales recorded in the receipt book provided to him by the Gill family. Those amounts were 40,329, 46,082 and 1,469 pounds, respectively. The total pounds picked as referred to by counsel for the respondent in written submissions was 88,432.5 based on the same data but with the notation that some of the pounds attributable to cash sales in the receipt book had to be estimated by assuming the price per pound was $1.25. The difference is not significant and I will use the total of 87,880 based on Blatchford's schedules. By subtracting the amount picked by the hourly employees, one obtains the amount picked by the casual or contract pickers – paid by piecework – which is 20,946 pounds based on Blatchford's numbers as expressed in the Schedules, Exhibit R-17, tabs 11, 12 and 13. Therefore, the hourly employees picked 66,934 pounds of berries. Leaving aside for the moment any unknown amount picked by members of the Gill family, only 13 full-time workers harvested that total. As a result, instead of each hourly worker having picked 4,463 pounds during the season, he or she picked 5,140 pounds, a difference of 687 pounds. If between 15 and 20 pounds per hour was the average picked, that would amount to an additional 45.8 to 34.3 hours per worker during the season based on the records available to Blatchford. I am satisfied on the evidence that any berry picking by Manjit Kaur Gill was infrequent and mainly for the purpose of quality control and to ensure berries were not left on the bush to rot and to interfere with the ripening of green berries. The amount picked by Hakam Singh Gill was not substantial and the Gill children – like most children and young adults – probably ate about as much as they picked, which was not often and only for brief periods as an interesting diversion with which to amuse themselves. I do not see any point in paying too much attention to those few days in which there appeared to be a negative number of berries produced since one has to look at the big picture which is comprised of those figures with respect to the total production for the season. However, those days of negative production may play some role when arriving at a decision for each appellant in the event that individual was not working during one or more of those days.

[167] Excluding Manjit Kaur Gill and Harmit Kaur Gill, the numbers in Blatchford's report demonstrate that 8 so-called hourly-paid pickers (employees) picked a total of 30,611 pounds of blueberries in July for an average of 3,826 pounds per person. Even using the modest amount of 175 pounds picked per day, per person, that amounts to less than 22 days work per person and if one uses the 200-pound per day average production per picker, that results in 19 days work per month out of a total of 31 days. In August, 13 workers in the employees group picked 34,854 pounds or 2,681 pounds per person. Using a production rate of 175 pounds per person, per day, each picker would have been required to work only 15.3 days. At 200 pounds per person, per day, there was less than 13.5 days work for each picker in August. In September, 12 persons in this same group picked 632 pounds of berries for an average of 52.6 pounds per person, about 1 to 1 1/2 days work at this point in the season when the picking is poor as very few berries remain on the plants. It is obvious the amount of hours allegedly spent by workers in this category was grossly inflated and that the entries in the payroll record of each worker who picked berries are notoriously unreliable.

[168] I am prepared to accept the evidence adduced on behalf of the intervenors that Gill Farms produced an additional 5,295 pounds of berries that Blatchford could not have taken into account because he had no information in that regard. The intervenors were adamant they had reported all revenue from the sale of berries to their accountant and that said amounts were included within the financial statement which formed part of the individual income tax returns of both Hakam Singh Gill and Ranjinder Singh Gill for the 1998 taxation year. There were casual pickers throughout the season and they picked – as a category of workers – 24% of all berries harvested according to the numbers used in Blatchford's report. Therefore, 76% or 4,024 pounds of those additional 5,295 pounds of berries was attributable to the efforts of between 8 and 13 workers described therein as hourly employees. In addition to the sales reflected in Blatchford's audit, that means each hourly worker picked an additional 310 to 500 pounds (numbers rounded off) of berries in the course of the season assuming – for the moment – he or she worked throughout July, August and in September until the season was over.

Conclusion:

[169] In my opinion, it is reasonable to recognize that the amount of berries picked by each hourly worker should be increased by 687 pounds – as discussed in the preceding paragraph – and by the extra 309.5 pounds which – after rounding up – amounts to a potential extra 1,000 pounds per worker for the entire season. That

could result in additional insurable hours of employment within the range of 50 to 67 additional hours – based on a picking rate of 15 to 20 pounds per hour – for an appellant who picked berries throughout the season. However, rather than dealing with relatively small adjustments on an individual basis day by day. If I increase the amount of insurable hours worked and insurable earnings of each non-related appellant by 15%, I am satisfied it will conform to the overall context of the evidence, including an assessment of various factors discussed earlier, provided there are no other factors relevant to a specific appellant that requires a departure from the application of that formula. There is no reliable mechanism by which to arrive at a precise number in each case. However, I am satisfied an across-the-board increase of 15% to picking time already recognized by Keays in the course of formulating an alternative position on behalf of the Minister, adequately reflects the extent of the variation demanded by taking into account the whole of the evidence.

Amount Allocated by the Minister for Specific Farm Tasks

[170] Ronnie Gill submitted the evidence established Gill Farms had to deal with several problems that were unusual in the sense they would not conform to the so-called average time frames based on information gathered by the Ministry of Agriculture and as relied on by Sweeney in his report. She referred to the testimony of various witnesses including Hakam Singh Gill concerning the origin of the blueberry farm which had once been totally seeded to grass. As a result, there was an ongoing problem with grass requiring additional weeding by workers using hoes and by spraying chemicals, an operation undertaken by Hakam during a period before any of the appellants were employed. In addition, there was a problem with blight which required dry branches to be trimmed. The irrigation system – in 1998 – was not sophisticated and required extra maintenance. Ronnie Gill referred to evidence concerning the amount of time required to install and remove the netting and, because the system was not new, sections of the net needed repair, wires had to be tightened, hooks replaced, and poles had to be either straightened, secured or replaced. She pointed out the appellants were mainly inexperienced in this task and most were at an age where it was not easy to climb up and down ladders and install or remove netting material within the framework of an older, inefficient system. Ronnie Gill submitted it was not appropriate to apply industry averages to the performance of certain tasks when there was sufficient direct evidence on the point to satisfy the Court that the operation of Gill Farms required additional hours of labour in order to carry out its farming business in 1998, including spreading of sawdust mulch to control weeds.

[171] Counsel for the respondent submitted the number of hours reported on the ROE of each appellant was inflated. As a result, even while conceding the existence of insurable employment by the non-related appellants with Gill Farms, the Minister found the number of insurable hours worked – and insurable earnings – were considerably less than those stated in the ROEs. Counsel referred to the evidence of Keays – Appeals Officer – during which he explained how he perused the representations made on behalf of the appellants and intervenors with respect to the time needed to perform certain tasks on the farm in 1998. Subsequently, Keays consulted with industry experts and third parties in the berry industry and analyzed relevant information with regard to determining whether the time estimates provided on behalf of the appellants were reasonable. Based on that analysis, Keays concluded those estimates were unreliable and created a calendar for each worker. For each day a worker was alleged to have worked, he credited that worker with the number of hours on his or her time sheet as recorded by Harmit Kaur Gill, provided there was reason to conclude there was work to be performed that day. Counsel referred to Keays' testimony – explaining his methodology – wherein if he was able to come to the conclusion it was reasonable for a certain number of workers to have been weeding or performing some other task on a certain day, then he credited each of those workers with the number of hours entered on the time sheet whether it was 7, 8 or 9 hours. Counsel submitted this method was fair and reasonable to the workers under the circumstances. With respect to specific tasks, the position of the respondent is that the hours allegedly devoted to gathering dried branches or bushes were exaggerated and did not conform in the slightest to the average time required in accordance with industry standards. In the submission letter sent by LRS on behalf of the appellants, the assertion was that 8 workers spent 8 days gathering dried bushes between May 25 and June 1, 1998. In Keays opinion, that was unreasonable and did not conform to industry norms so he allotted one day of work to each worker and made a corresponding entry to the calendar of each appellant. The submission on behalf of the appellants was that it took 7 workers 11 days to complete the hoeing. Keays reduced that time to 2 days for each worker based on information received from Sweeney, a Director of the BC Blueberry Council and two blueberry growers in the area. According to LRS, 7 workers spent 3 days dealing with the irrigation system during which they performed several tasks. Counsel pointed out there was not a lot of evidence offered to Keays at the appeals stage concerning the nature of those duties and that – like much of the evidence offered by the appellants and intervenors – other details emerged at trial for the first time. Overall, counsel was skeptical of the number of problems allegedly encountered by Gill Farms in 1998 particularly in light of the position that the yields were substantially above average. The position of the respondent is that the timing of these complications is suspect and that none of the

various exceptional challenges encountered by the farm was offered as an explanation for the huge amount of hours expended by employees, except in bits and pieces during the course of the trial, including explanations of the poor state of the watering system as related by Hakam Singh Gill in the course of his re-direct examination at trial. Counsel submitted it had never been explained satisfactorily why Gill Farms considered it was reasonable to spend more money on wages than it was able to gross from berry sales. Counsel referred to the submission by LRS that 7 workers took 2 weeks to put up the nets and 9 workers spent 7 to 9 days taking them down. The amount of time allotted to this task – by LRS – was between 1,270 and 1,415.5 hours. For his calculation, Keays used the average time of 36 hours per acre as set forth in the Ministry guidelines – effective in 1998 – although that number was subsequently revised to 15 hours per acre in 2001. He did not credit the two supervisors – Harmit Kaur Gill and Manjit Kaur Gill – with any time spent installing and removing nets. Instead, he multiplied 36 (hours) by 8 (acres) for a total of 288 hours which he considered was reasonable to attribute to the tasks of both putting up and taking down the nets. Counsel pointed out that – at trial – Sweeney stated his opinion that the allowance of 36 hours per acre for this task was generous and that this estimate was derived from consultations with many growers – small and large – all of whom installed the netting system by hand since there was no mechanized means of doing so. Counsel submitted LRS had not submitted any estimates of time devoted to picking blueberries. As a result, Keays developed a method whereby he could allocate hours of work to appellants on certain days. Based on Blatchford's report, Keays used a threshold of 10 pounds of berries per hour because any lesser amount would cost Gill Farms more to pick than the farm would gross in sales based on the assertion by the payor partnership that the workers were being paid between $7.50 and $8.00 per hour plus holiday pay. Keays' approach was to allocate to an appellant the hours entered on the payroll record only if production that day averaged out to at least 10 pounds per hour for all members within the employee group comprised of the so-called hourly-paid workers. Counsel submitted there were no picking cards nor any other basis for allocating hours to the appellants and that the approach undertaken by Keays was fair and reasonable under the circumstances. Counsel referred to the LRS submission that 9 workers spent 8 days pruning bushes in September and to Keays' rejection of that assertion on the basis it was patently unreasonable. Keays concluded it was appropriate to credit each appellant who performed that task with one day's labour according to the hours noted on his or her time sheet. The position advanced on behalf of Gill Farms and the appellants was that it took 9 workers one day to wash buckets and lugs. Keays rejected this as being highly improbable and credited no time at all to this task because of Sweeney's opinion that this task could have been performed by one worker in about one-half day. Keays had been provided with information on behalf of Gill Farms that new

plants were planted in September, 1998 which required 128 hours of labour. Keays relied on information from Sweeney that it would take only 2 minutes to plant each replacement and that 200 plants would occupy – in total – only 5.6 hours.

Analysis:

[172] Keays testified he considered it necessary to follow a course of action mandated by certain provisions of the *EI Regulations* as follows:

> Hours of Insurable Employment – Methods of Determination
>
> 9.1 Where a person's earnings are paid on an hourly basis, the person is considered to have worked in insurable employment for the number of hours that the person actually worked and for which the person was remunerated.
>
> 9.2 Subject to section 10, where a person's earnings or a portion of a person's earnings for a period of insurable employment remains unpaid for the reasons described in subsection 2(2) of the *Insurable Earnings and Collection of Premiums Regulations*, the person is deemed to have worked in insurable employment for the number of hours that the person actually worked in the period, whether or not the person was remunerated.
>
> 10.(1) Where a person's earnings are not paid on an hourly basis but the employer provides evidence of the number of hours that the person actually worked in the period of employment and for which the person was remunerated, the person is deemed to have worked that number of hours in insurable employment.
>
> (2) Except where subsection (1) and section 9.1 apply, where there is doubt or lack of specific knowledge on the part of the employer as to the actual hours of work performed by a worker or by a group of workers, the employer and the worker or group of workers may, subject to subsection (3) and as is reasonable in the circumstances, agree on the number of hours of work that would normally be required to gain the earnings referred to in subsection (1), and, where they do so, each worker is deemed to have worked that number of hours in insurable employment.
>
> (3) Where the number of hours agreed to by the employer and the worker or group of workers under subsection (2) is not reasonable or no agreement can be reached, each worker is deemed to have worked the number of hours in insurable employment established by the Minister of national Revenue, based on an examination of the terms and conditions of the employment and a comparison with the number of hours normally worked by workers performing similar tasks or functions in similar occupations and industries.

> (4) Except where subsection (1) and section 9.1 apply, where a person's actual hours of insurable employment in the period of employment are not known or ascertainable by the employer, the person, subject to subsection (5), is deemed to have worked, during the period of employment, the number of hours in insurable employment obtained by dividing the total earnings for the period of employment by the minimum wage applicable, on January 1 of the year in which the earnings were payable, in the province where the work was performed.
>
> (5) In the absence of evidence indicating that overtime or excess hours were worked, the maximum number of hours of insurable employment which a person is deemed to have worked where the number of hours is calculated in accordance with subsection (4) is seven hours per day up to an overall maximum of 35 hours per week.
>
> …

[173] Paragraph 2(1)(*a*) of the *Insurable Earnings and Collection of Premiums Regulations* reads:

> 2.(1) For the purposes of the definition " insurable earnings" in subsection 2(1) of the Act and for purposes of these Regulations, the total amount of earnings that an insured person has from insurable employment is
>
> > *(a)* the total of all amounts, whether wholly or partly pecuniary, received or enjoyed by the insured person that are paid to the person by the person's employer in respect of that employment. (emphasis added)

[174] In those instances where there was work performed that ordinarily would be remunerated on an hourly basis and where there was an entry of hours worked in the payroll record of a particular appellant, Keays accepted that work had been done which was attributable to a particular task. However, when it came to calculating the hours of work performed by appellants who picked berries, he had no access to picking cards that had been issued in their names. The circumstances of the employment of the appellants were such that Keays considered the time records prepared by Harmit Kaur Gill were unreliable and not reasonable under the circumstances. As a result, he followed the intent of the *Regulations*, including subsections 10(3) and 10(4) and calculated a number of hours of insurable employment that was reasonable based on an examination of the terms and conditions of the employment and a comparison with the number of hours normally worked by persons performing similar tasks within the berry industry. Keays then divided the amount of hours assigned to each appellant by the amount of the wage shown on the payroll record including the appropriate rate of holiday pay to which

that worker was entitled. If there was any doubt, Keays used the 1998 minimum hourly wage and 4% holiday pay in order to calculate the total earnings for each appellant's period of employment. One problem with this method is that subsection 10(5) limits the number of hours worked – calculated in accordance with the preceding provisions – to 35 hours per week unless the evidence establishes overtime or excess hours were worked. In 1998, that limit for farm workers was 120 hours in a two-week period and there is no evidence adduced before me to find that any overtime hours were worked by any appellant.

[175] Subsection 10(4) of the *Regulations* relied on – in part – by Keays prescribes the calculation to obtain the number of hours of insurable employment which results in a number the worker is deemed to have worked "during the period of employment". It is ascertained by dividing the total earnings for the period of employment by the applicable minimum wage. The effect of subsection 10(5) is to limit that attribution of deemed insurable hours to 7 hours per day up to an overall maximum of 35 hours per week unless there is evidence that overtime or excess hours were worked. The evidence before me was that labour legislation in British Columbia – in 1998 – did not consider overtime hours to have been worked unless the limit of 120 was breached within a two-week period. I think it is safe to assume those subsections of the *EI Regulations* were drafted with the intent they would apply to the type of work performed within the berry industry. It is reasonable to conclude the words and phrases used therein such as "during the period of employment", "total", and "overall maximum", as well as the reference to overtime or excess hours – in the context of establishing a limit of 35 hours per week – were intended to apply to the total period of employment. The limit of 7 hours per day may not permit a carryover to another day but the language of these provisions – taken in combination and in accord with their purpose – permits recognition of up to a maximum of 35 hours per week during the period of employment. However, on any day within a 7-day week, a worker cannot acquire more than 7 hours insurable employment. As a result, in those cases where an appellant was picking berries in September, although not many pounds, and in view of the fact Keays allowed credit for some pruning work, the actual date of the end of work within that first week or so is not critical unless the 35-hour per week limit, when multiplied by the number of weeks of employment, has been exceeded. Therefore, if a person worked a total of 10 weeks, the maximum number of insurable hours that can be recognized in accordance with subsections 10(4) and 10(5) of the *Regulations* is 350. In my opinion, those provisions do not prohibit an accumulation within the overall period of employment that may result from working 48 hours in one week – less than 7 hours per day for 7 days – and 22 hours the next, for a total of 70 hours in two weeks and to continue –

more or less – in that manner throughout the relevant employment period. It does not make sense to regard these provisions in any other way because even though drafted by someone working in an office in Ottawa, they were intended to apply to a workplace like the berry industry where hours are long, unpredictable and subject to variations caused by weather and the state of the crop to be harvested. As a result, if increasing the insurable hours attributable to picking berries or other tasks exceeds the 35-hour limit in a particular week within the framework of the calendar designed by Keays, I do not consider that to be a problem because the assignment of hours to an appellant – based on having worked certain days within a week – was arbitrary. In accordance with his methodology, Keays intended to recognize that an appellant had performed a certain number of hours of work within a certain time frame. He utilized – as a matter of convenience – the payroll record created by Gill Farms in order to credit appellants with work done on certain days within that period in accordance with subsection 10(3) of the *Regulations*, which requires an examination of the terms and conditions of the employment and a comparison with the number of hours normally worked by people in the berry industry. By so doing, Keays credited each appellant with a specific number of insurable hours attributable to the performance of a specific task or within a category – such as picking – during the course of the entire berry-harvesting season. However, Keays did not attribute any insurable hours to any appellant on any day in which the total amount of berries harvested by the group of so-called hourly-paid employees was less than 10 pounds per person, per hour, based on an 8-hour day. The evidence established that during the latter part of the season, berries are sparse and although the volume is much less, the remaining berries are still picked even though daily production is often under the amount set by Keays as the threshold for awarding insurable hours. When Keays was performing his duty as Appeals Officer, he was proceeding on the basis the appellants had been remunerated on an hourly basis for picking since that was the consistent thread of the information presented to HRDC officials and to Rai – Rulings Officer – and to him. The fact is that all workers were paid on a piecework basis for picking berries and even if – as an example – some picked only 50 pounds in a day in order to earn approximately $15, they were still working. According to Charan Gill, the practice within the industry is for employers to convert that amount earned – calculated from the picking cards – into hours by dividing it by the applicable hourly minimum wage. Using the example, a worker would be credited with 2 hours work – at $7.50 per hour – for that day's production of 50 pounds. Keays did not have any picking cards at his disposal so had to develop a system based on an amalgam of subsections 10(3) and 10(4) in order to recognize the appellants had provided services to Gill Farms at various times within the overall period of their employment.

[176] I have undertaken an analysis of these provisions because when I decide these appeals on a case-by-case basis, one or more appellants may be affected when I increase – by 15% – the number of insurable hours attributable to picking and/or when allocating extra hours for tasks associated with the nets and the irrigation system. Although at this point I doubt it will arise, it is possible a resulting number could exceed the total allowable number of insurable hours per week within the period of employment, particularly if it was for only a few weeks. As discussed earlier, the allowable number of insurable hours – in total – cannot exceed 35 hours per week. Therefore, the allocation of hours for picking berries – based on subsection 10(4) – when combined with hours credited for other tasks in accordance with subsection 10(3), could exceed that limit.

[177] It is apparent from the whole of the evidence that the time sheets, payroll records and the Daily Log are not reliable. There are many instances where one or more of these records purport to show a person working 8 or 9 hours in a day – or during a week – when they were working elsewhere or out of the country. The records show that appellants who rode to work and back home in the same car for several weeks worked a different number of hours on many days. Husbands and wives who allegedly worked together every day, had individual records that did not support this contention. Farm work is not the same as office work where there is not a lot of rainfall inside most buildings. Nor do files ripen at various times except in a figurative sense and for many workplaces both within and outside the public sector, there is no peak season. Therefore, it is unreasonable to expect that any farm worker on a berry farm would work exactly 8 hours a day over a long period of time. It is reasonable to expect that the hours spent in the field would increase as the days grew longer and more berries were ripe. The variation in hours allegedly worked by most appellants is rarely – if ever – more than one hour between the very early part of the season and the absolute peak when the canneries are operating around the clock. There were entries on behalf of appellants indicating they had worked a full day during times when the only reasonable conclusion to be drawn from the overall weight of the evidence is there was little or nothing to be done. The Daily Log did not include the hours worked by a worker who – allegedly – was there nearly every day for several months. According to the Gill family, the log was prepared to satisfy a demand by Turgeon, which she denied. In my view, said log – for the most part – was fabricated in order to create an illusion that time records had been maintained on a regular basis and in an orderly, businesslike manner. One would be forgiven in asking why Keays placed any reliance on the time sheets and Daily Log in order to allocate a certain amount of insurable hours of work to the appellants in the course of carrying out his duty as an Appeals Officer. The answer lies in an appreciation of the adage: Even a broken clock is right twice a day. Of course, one must assume this

timepiece is in the analog category. Keays admitted that his methodology, as applied to each appellant consisted of a “rough and ready” formula he invented to carry out his function to the best of his ability under the circumstances.

[178] In my view, the course of action followed by Keays was completely reasonable. The unreliability of time sheets and other similar records does not render them completely valueless. When viewed in the context of the body of evidence – expert and otherwise – relating to farming practices within the berry industry, said records proved – on occasion – to have some useful purpose but clearly the hours stated therein – overall – were not reasonable in the circumstances and Keays was compelled to observe the method of determining insurable hours of employment and insurable earnings pursuant to the *Regulations.*

[179] In assessing Keays’ methods within the context of all the evidence, the only areas of endeavour by the appellants that strike me as worthy of re-examination are those pertaining to the installation and removal of netting and the irrigation system. With respect to other tasks referred to in the course of the submissions of Ronnie Gill and counsel for the respondent, I cannot find any reason to deviate from the methodology employed by Keays. Although Keays did not have the benefit of testimony from witnesses, the evidence before me does not lead me to conclude that the estimates of time for the performance of certain tasks as asserted on behalf of the appellants and intervenors are credible. The time allegedly spent by them for the completion of tasks including gathering dried bushes, hoeing and weeding, pruning or trimming, washing buckets, repairing nets and planting new bushes is totally unreasonable and does not conform with reliable evidence in respect of reasonable farming practices within the berry farming industry.

[180] Returning to the matter of the nets, Keays did not have the benefit of observing the appellants and hearing them describe this task. I appreciate the industry average of 36 hours per acre included information from a wide range of farming operations but in order to establish that average there must have been some farms above that number and some below. Some may have been way above average and some way below. That is the reason why when presenting statistics, it is a more reliable – and meaningful – source of information to establish a median in that one could see how many growers were above that 36-hour dividing line and compare it with those who accomplished that task in less than the mean time and to what extent. The workers were not young, mainly over 45 years of age and the task of installing and removing the netting was painstaking and slow, particularly when many workers were inexperienced not only in that task but in farm work generally, and especially as it pertained to a berry farm. The net system was old and there was a certain amount of

repair required at the outset to parts of it including poles and wires. Manjit Kaur Gill testified that in 2005, it took 5 or 6 workers 8 days just to install the nets. Assuming 5 people each worked an 8-hour day for 8 days, that amounts to a total of 320 hours. According to current Ministry standards, it should have taken a total of 15 hours for each of the 8 acres of crop, for a total of 120 hours – per season – to erect the nets and take them down. Assuming the time allocated to installation and removal is to be apportioned equally, the time spent by Gill Farms – in 2005 – to put up the nets was more than 5 times the current industry average and there is no reason to believe their methods were any more efficient in 1998.

[181] Hakam Singh Gill testified about the irrigation system. It was a system that had been created by the Gill family and it utilized old drippers which had to be replaced by cutting a hole in the hose and re-inserting a new one rather than just threading a replacement into an outlet. According to Hakam, it had taken 3 days to get the irrigation system functioning – in 1998 – because water from a ditch was not clean and dirt and other particles had been sucked up into the pipes and plugged the drippers. The system had been created several years earlier and was working fairly well in 1998, except for that particular problem early in the season. It may be his recollection is correct but in view of the ever-present tendency by those individuals operating, managing or working for Gill Farms to inflate the amount of time required to perform various tasks, I am reluctant to accept this assertion that 3 days were devoted to this task. Based on the limited information in front of him on this point, I have no quarrel with Keays' opinion that an allocation of one day per worker was adequate. However, in view of the evidence before me and having acquired an extensive knowledge of the operation of Gill Farms in the course of this trial, I am satisfied that more than one day's work by each of 7 workers was required in view of these special circumstances and the quasi-obsolescent state of the system.

Conclusion:

[182] The impact of the evidence leads me to find it is reasonable to double the amount of time allocated to the performance of all tasks pertaining to the netting system. However, based on the inherent unreliability of much of the evidence including testimony by the appellants with regard to this and other tasks, that is the limit of the variation. Therefore, this calculation (doubling) will be factored into the specific decision – where relevant – applicable to each appellant and – without more – the time allotted by Keays to an appellant for putting up nets or taking them down or performing both tasks will be doubled. Keays included pruning at the end of the season within the allocations of time pertaining to taking down the nets without assigning any specific amount of time to said task. I do not find any reason to deviate

from this categorization but the result of doubling the hours with respect to tasks performed with respect to the netting will include all pruning work because the evidence does not support any need to add hours specifically attributable to that task. In my opinion, Keays was generous in allocating one day's work to each appellant – where relevant – for pruning. In order to demonstrate once again that no good deed goes unpunished, by doubling the amount of insurable hours allocated to tasks associated with the nets, that charitable allocation by Keays is subsumed therein.

[183] With respect to the work undertaken with respect to the irrigation system, I find it reasonable to allocate 2 days work to each of the 7 workers who performed this task.

[184] In both instances, when an additional day of work is credited to an appellant, it will constitute 8 insurable hours regardless of the number entered in the individual worker's time sheet for a day – or days – within that time frame during which the relevant task was performed.

Surinder K. Gill: Appeal 2002- 2116(EI)

Relevant Book of Documents: Exhibit R-7

Respondent's Position:

[185] The Minister has conceded that the appellant was employed in insurable employment with Gill Farms in 1998 and that she worked 114 insurable hours and had insurable earnings in the sum of $919.98.

Appellant's Position:

[186] The appellant asserts she was employed from July 26 to September 12, 1998 during which period she worked 260 insurable hours and had insurable earnings of $2,098.20.

Analysis:

[187] The appellant testified she was still working at the Lucerne cannery after starting her employment with Gill Farms. She testified she was able to work a shift at the cannery and at the farm on the same day as she did not require much sleep during the relatively short period within a busy farming season as that was her only opportunity to earn money. Keays discovered an entry in the appellant's payroll record for August 15, 1998 stating she had worked from 9:00 a.m. to approximately 5:00 p.m., the same hours as those entered on her time sheet in respect of her shift that day at Lucerne cannery. The appellant agreed this entry by Gill Farms was in error as well as those indicating she had worked at Gill Farms during days when she was in England. Keays did not accept that the appellant could work one shift – or equivalent – at Gill Farms and another shift at Lucerne on the same day. As a result, on the calendar at Exhibit R-7, tab 1, pp. 21-24, he did not allocate her any insurable hours for work done at Gill Farms on August 13 and August 15, 1998 even though the payroll entry showed 8 hours for each of those days.

[188] The appellant testified she had been remunerated by the hour for picking berries. I have already rejected that notion as advanced on behalf of all appellants and the intervenors. The appellant testified the only work she performed for Gill Farms was picking berries. Throughout, there were many other occasions where it was apparent the appellant was not telling the truth including with regard to matters such as the use of picking cards or details concerning her work schedule at Gill Farms. The appellant's interview with Turgeon was not taped, as she alleged. Certain banking transactions were not satisfactorily explained and the appellant did not comply with an undertaking to produce records with respect to a particular account. Her excuse for this non-compliance was not plausible. The payroll record for the appellant is not credible and is of little comfort to anyone attempting to rely on entries thereon for the purpose of calculating insurable hours worked. Keays testified he was well aware that using the payroll records of Gill Farms was a "rough and ready" method but felt he had no option since there were no picking cards available nor any other record of hours worked. In light of all the difficulties inherent in the evidence, an educated guess produces the best result. I accept the appellant's evidence that she was capable – in the short term – of working at two jobs on the same day. Therefore, I am prepared to restore credit for 8 hours worked each day on August 13th and August 15th for a total of 16 hours. Added to the number of insurable hours – 114 – already accepted by Keays, the result is 130. Since the appellant did not do any work other than picking blueberries, there is no other adjustment required in respect of certain tasks. Therefore, I need only to apply the 15% increase to her insurable hours and insurable earnings – including holiday pay of 7.6% – in accordance with the methodology explained previously in order to arrive at the appropriate numbers. The appellant was in England for the first week of

September, 1998. During that time, 12 of her co-workers picked only 632 pounds of berries or 52 pounds each. That amount is so insignificant, there is no point in factoring it into the equation so as to deny the appellant the benefit of the full 15% increase to picking time that applies to all appellants who performed the same task at some point during the season.

Conclusion:

[189] I find the appellant was engaged in insurable employment with Gill farms from July 26 to September 12, 1998 and that she worked 149.5 insurable hours and had insurable earnings in the sum of $1206.46.

Harbans Kaur Khatra:

Relevant Book of Documents: Exhibit R-4.

Respondent's Position:

[187] The Minister has conceded that the appellant was engaged in insurable employment with Gill Farms in 1998 and that she worked 254 insurable hours and had insurable earnings in the sum of $1,981.20.

Appellant's Position:

[188] The appellant asserts that she was employed from July 12 to September 12, 1998 and during said period worked 652 insurable hours and had insurable earnings in the sum of $5,085.60, as stated in her ROE.

Analysis:

[189] The appellant testified she arrived in Canada – from India – in 1997 and found work as a farm labourer with the Virk family prior to obtaining employment as a berry picker for Gill Farms later that season. In 1998, she returned to work for Gill Farms and testified that although she picked berries, she also worked on the conveyor belt sorting and cleaning berries. She testified she was paid an hourly wage for all her work and explained that as a competent picker she could pick as much as 400 to 450 pounds per day which would permit her to earn approximately $150 based on the applicable piece rate at that time. She stated it was probably the reason Gill Farms paid her the hourly rate of $7.50 for an 8-hour or 9-hour day. The appellant testified she helped to take down the nets at the end of the season and also spent some time

pruning and spreading sawdust around the base of plants and that the last task performed prior to layoff was washing buckets. There is no other evidence to support the appellant's contention that – in 1998 – she could pick 400 to 450 pounds per day even during the peak season while harvesting berries from those varieties that were easy to pick and known for their high yield. The weight of the evidence suggests a picker could pick about 200 pounds per day during the height of the season which in the case of blueberries lasts at least 6 weeks. On occasion, an exceptionally competent picker might attain 300 pounds in a day for a few days. Harbans Kaur Khatra denied using a picking card in order to support her contention that she had not been remunerated on the basis of piecework. She also insisted that her interview with Emery at the HRDC office had been taped and that her rights were violated as a result. I reject that evidence and note it is not possible for her to have been confused about that issue. Instead, she chose to make that allegation believing that any taping would – somehow – be an infringement of some right to the extent that a remedy might be unearthed which could end her troubles with HRDC and CCRA. On November 12, 1998, two days before the appellant deposited her final pay cheque from Gill Farms, she withdrew $2,000 in cash from her bank account. She also waited a considerable length of time before cashing her last pay cheque prior to making said withdrawal. There is insufficient evidence for me to find that the appellant paid money back to any member of the Gill family in return for her ROE. However, as in this instance, there was a pattern of deposits and withdrawals by several appellants in the within proceedings for which unsatisfactory explanations were provided that caused officials in HRDC and CCRA to suspect there had been transactions designed to facilitate the issuance of an ROE to a worker that would permit that individual to qualify for UI benefits even though the threshold of minimum insurable hours for that particular worker had not been obtained legitimately in the course of his or her employment.

[190] Keays found it difficult to believe the appellant worked 8 or 9 hours a day - 7 days per week – during the course of her employment, particularly when there was not enough work to go around according to the information he had obtained from various sources. As a result, he accepted the hours entered in the appellant's payroll record for those days when she picked berries and the overall production of the group had been sufficient for him to accept that work had been done. He also allowed her 3 days work – totaling 26 hours – for taking down nets and pruning on the basis those tasks had been performed on September 10, 11 and 12. Keays concluded the appellant had worked a total of 254 insurable hours of which 228 must have been attributable to picking berries according to the entries on the calendar in Exhibit R-4, tab 2, pp. 29-32. In keeping with my earlier finding with respect to work done to install and remove the nets, I note the appellant was involved only in taking

down the nets since they were already up when she started work. However, she is entitled to have her time doubled for that task in accordance with the formula devised earlier. As a result, she will receive credit for 52 hours work in respect of the task of taking down nets and pruning. In accordance with the formula, the appellant's picking hours – 228 – are increased by 15% – to 262 – and her insurable earnings – including holiday pay of 4% – will be increased accordingly.

Conclusion:

[191] The appellant – Harbans Kaur Khatra – was engaged in insurable employment with Gill Farms from July 12 to September 12, 1998, and during said period worked 314 insurable hours and had insurable earnings in the sum of $2,449.20.

Gyan Kaur Jawanda:

Relevant Book of Documents: Exhibit R-12

Respondent's Position:

[192] The Minister has conceded the appellant was engaged in insurable employment with Gill Farms in 1998 and that she worked 333 insurable hours and had insurable earnings in the sum of $2,597.40.

Appellant's Position:

[193] The appellant maintains the information stated in her ROE is accurate and that she was employed from May 25 to September 26, 1998 during which period she worked 942 hours and had insurable earnings in the sum of $7,347.60.

Analysis:

[194] The appellant came to Canada from India in 1998. Her first job was working at Gill Farms. In India she had never been employed away from the family farm. The appellant could not recall much about the work she did for Gill Farms and when interviewed by Harby Rai – Rulings Officer – stated she had worked alone – picking blueberries – the first 20 days of her employment. She also told Rai that during peak season there were about 30 workers picking berries of which only 5 to 7 were full-time. She also told Rai she was picked up by Rajinder Singh Gill and rode to work with him alone. The appellant later denied making those statements but I am satisfied there was no confusion on the part of Rai who recorded those comments by the

appellant. Rai is fluent in spoken Punjabi and the entire interview was conducted in that language in the appellant's residence. Rai typed up her notes of the interview and dropped them off at the appellant's home so Baljit – her daughter – could translate the contents into Punjabi before the appellant signed the last page in order to acknowledge the contents were accurate. Later, Baljit telephoned Rai to state the appellant had recalled that she worked one week picking strawberries in Langley because Gill Farms sent her there to perform that work for another farmer. The appellant told Rai she was paid a piece rate for picking berries and an hourly rate for performing other tasks. During the appellant's cross-examination, certain statements made by her – at Discovery – indicating she was unsure whether she was paid on an hourly basis were put to her and she acknowledged her wages may have been calculated on the basis of pounds but was not concerned since she assumed Gill Farms had calculated correctly her remuneration. The appellant gave several versions about being transported to and from work at various stages in the review process commencing with the HRDC interview, followed by the interview with Rai, the Questionnaire provided to Keays, and subsequently at this trial. She was not able to explain the various versions except to say that on occasion her brain was not functioning properly. The evidence of both Harmit Kaur Gill and Manjit Kaur Gill was that the appellant was one of the workers who lived in Abbotsford and rode together with other workers from that area. According to the appellant, she worked almost every day for nearly 3 months. On December 23, 1998, the appellant deposited the sum of $4,153.33 to her account and withdrew $3,500 in cash which she testified was used for household expenses and to buy a computer for one of her children. The appellant denied paying any money back to any member of the Gill family in relation to her employment with Gill Farms.

[195] Keays testified that in preparing his report in respect of the employment of Gyan Kaur Jawanda – Tab 1 – he allocated certain hours to certain tasks as entered in the calendar – pp. 21-24. Although the appellant had referred to several different tasks allegedly performed during her first week of work, Keays was willing only to credit her with 8 hours work for one day spent gathering dried bushes. He acknowledged her efforts – in June – hoeing and weeding – 8 hours – working on the water pipes for the irrigation system – 8 hours – and putting up nets – 32 hours – for a total of 56 hours. Following the rationale based on the Blatchford report and other relevant information – as previously explained by Keays in his testimony – he accepted that the appellant had worked 146 hours in July – and another 100 hours in August – picking berries. In September, Keays allocated 3 days work – totalling 24 hours – to the task of taking down nets and pruning. Keays concluded there was evidence upon which to find the appellant had worked 333 insurable hours during the

course of her employment and had insurable earnings in the sum of $2,597.40 based on an hourly rate of $7.50 plus holiday pay of 4%.

[196] I cannot accept the appellant's evidence that she worked the first week picking strawberries on another farm after having been loaned out by Gill Farms. There is no other cogent evidence to support that contention and the appellant's evidence overall is not trustworthy for several reasons. She appears to have a terrible memory and changes her story at will depending on the circumstances. Her only interest was in receiving an ROE upon which she could base her claim for UI benefits following layoff and thereafter gave whatever answers she thought would help her to retain those benefits. With respect to the remainder of tasks performed in the course of her employment with Gill Farms, I am utilizing the formula applicable to eligible appellants within the non-related worker category. The appellant is credited with an additional 8 hours work on the irrigation system. Since she participated in putting up and taking down the nets, the total amount of time – 55 hours – allocated by Keays for work done in June and September will be doubled to 110. Keays decided the appellant had worked picking berries for a total of 246 hours in June and July. In accordance with the methodology established earlier, that amount will be increased by 15% to 283 hours. To summarize, I have allowed her an extra 8 hours for working on the irrigation system, 55 extra hours for working on the nets and an additional 37 hours for picking berries for a total of 100 hours in excess of that acknowledged by Keays in his report to the Minister. Her insurable earnings based on an hourly rate of $7.50 per hour and holiday pay of 4% will be increased accordingly.

Conclusion:

[197] The appellant – Gyan Kaur Jawanda – was engaged in insurable employment with Gill Farms from May 25 to September 12, 1998 and during this period worked 433 insurable hours and had insurable earnings in the sum of $3,377.40.

Himmat Singh Makkar:

Relevant Book of Documents: Exhibit R-9

Respondent's Position:

[198] The Minister has conceded the appellant was engaged in insurable employment with Gill Farms in 1998 and that he worked 72 insurable hours and had insurable earnings in the sum of $599.04.

Appellant's Position:

[199] The appellant asserts he was employed from August 3 to August 28, 1998 and during said period worked 160 insurable hours and had insurable earnings in the sum of $1,331.20.

Analysis:

[200] During his HRDC interview with Emery, Himmat Singh Makkar explained his rate of pay for picking berries at Gill Farms was by piece rate and provided the example "100 lb. = $30". Obviously, he was being remunerated at 30 cents per pound which was below the minimum of 31.2 cents set by provincial regulations. At trial, the appellant testified he was paid by the hour for picking and that he misunderstood the question when giving this answer at his interview. He testified that sometimes picking cards were issued but during the HRDC interview he stated cards were issued every day to each worker and that no workers were paid an hourly rate. The time sheets prepared by Gill Farms state the appellant worked exactly 8 hours per day during his employment. During his interview with Harby Rai, the appellant stated both he and his wife worked 7 days per week but at trial he testified he worked 5 days a week and his wife worked 7. The payroll records indicate he worked 5 days a week. At various stages of the process, the appellant gave a different version of his work hours and none of these matched the entries in his payroll record as prepared by Harmit Kaur Gill as part of her job at Gill Farms. During his HRDC interview, the appellant described his duties including removing the rolled-up netting from the fields. Since the nets were not removed until near the end of September and picking was still being carried out when he was laid off on August 28, this explanation did not – and does not – make sense. At trial, Himmat Singh Makkar stated he had helped out his wife – and other workers – to roll up the nets because she was still in the field when he arrived early to pick her up and drive her home. Like much of what the appellant had to say in the course of his testimony, this is not credible. He testified that he had driven a tractor to spray grass even though he had not mentioned that task to Emery. He also said he washed buckets and larger containers, as required, and used a needle and thread to repair – now and then – holes in the net. The appellant received two pay cheques from Gill Farms. One – dated August 9, 1998 – was in the sum of $200 and the other – dated October 26, 1998 – in the sum of $742.09 was not deposited until November 17. He stated he had been told by Harmit Kaur Gill not to negotiate the cheque until instructed. On October 31, 1998, he withdrew $2,200 from his bank account. His wife – Santosh Kaur Mikkar – was not laid off by Gill Farms until September 26 and her final cheque was dated October 26.

It was deposited to the appellant's account on November 14, 1998, two weeks after the $2,200 cash withdrawal.

[201] Keays prepared a calendar – Exhibit R-9, tab 2, p. 26 – for the month of August and allocated a total of 72 hours work to the appellant for picking berries. Because the payroll record for the appellant indicated he was paid $8.00 per hour, Keays used that figure – plus holiday pay of 4% – to calculate insurable earnings in the sum of $599.04. The only adjustment called for on the evidence relevant to this appeal is to increase the allowable hours – attributable to picking berries – by 15%. His insurable earnings – including holiday pay of 4% – are varied accordingly.

Conclusion:

[202] The appellant – Himmat Singh Makkar – was engaged in insurable employment with Gill Farms from August 3 to August 28, 1998 and during this period worked 83 insurable hours and had insurable earnings in the sum of $690.56.

Jarnail Kaur Sidhu:

Relevant Book of Documents: Exhibit R-11.

Respondent's Position:

[203] The Minister has conceded the appellant was engaged in insurable employment with Gill Farms in 1998 and that she worked 325 insurable hours and had insurable earnings of $2,535.00.

Appellant's Position:

[204] The appellant asserted the information set forth in her ROE accurately stated she was employed from May 25 to September 26 and during this period worked 942 insurable hours and had insurable earnings of $7,347.60.

Analysis:

[205] After arriving in Canada in 1996, the appellant worked for only one week before she was injured in an automobile accident which prevented her from working in 1997. She began working for Gill Farms on May 25, 1998 and testified her first tasks involved digging holes for the replacement of poles for the nets and spreading gravel around the base to steady them. She described other tasks such as removing grass, spreading sawdust, cutting off dry branches and repairing some wires used to hold up the nets. She stated she worked with two or three other women to install the nets and that all workers were supervised by Harmit Kaur Gill and Manjit Kaur Gill who also worked with them. She worked taking down the nets at the end of the season and while she could not recall the precise amount of time required to put up and remove the nets, stated it was a time-consuming and sometimes frustrating procedure. The appellant testified she and Harbans Kaur Khatra usually rode together both to and from work. The time sheets prepared by Gill Farms indicate they worked together 77 days but for 49 of those days, the appellant worked either one or two hours less than Khatra. The appellant was unable to explain this discrepancy except to say her son "sometimes" picked her up and drove her home and that the payroll records of Gill Farms were probably not correct. The appellant testified that although she was given a picking card, it was not every day. During her HRDC interview – with Turgeon, on January 19, 1999 – less than 4 months after her layoff on September 26, 1998, she stated she had received a picking card every day she worked and that the cards were in duplicate, one for her and one for the employer. The appellant told Turgeon, "We had to return the cards when we were going to be paid." During the interview with Rai – Rulings Officer – the appellant said she was paid on an hourly basis and when providing information to Keays in the Questionnaire, stated she received a picking card from Harmit every day but did not use it. At trial, the appellant testified her answers to Turgeon were not correct and "did not know what came out of my mouth," apparently because she was upset. There was a cash withdrawal of $2,300 shortly before her final pay cheque was deposited to her account. It is apparent the appellant is not credible with respect to many issues. Obviously, she was paid on a piecework basis for picking blueberries and used a picking card so her daily production could be recorded. She is extremely vague about what other duties she allegedly performed in the latter part of May and in June except working to install the netting.

[206] Keays testified he allocated certain hours to the appellant as entered in the calendar – Exhibit R-11, tab 1, pp. 21-24 – in the course of pursuing the alternative position in the event a subsequent decision found her employment to have been insurable. He accepted she had worked one 8-hour day gathering dried bushes on

May 25 and that she had worked 16 hours hoeing and weeding during the first two days in June. Later that month, he credited her with working 8 hours on the water pipes and allocated 4 days – 32 hours – for putting up the nets. He allotted a total of 246 hours for berry picking in July and August. With respect to the time involved in taking down the nets and pruning, he credited the appellant with 23 hours work ending on September 12 since he had formed the opinion there was no work for her to perform after that date.

[207] In accordance with the formula previously developed, the following variations will be made to Keays' findings. The time allocated (55 hours) for putting up and taking down the nets is doubled – to 110 – and 8 hours is added to her insurable hours in respect of work performed on the irrigation system. The amount of hours allotted to picking will be increased by 15% from 246 to 283. The insurable earnings will be increased accordingly, based on an hourly rate of $7.50 plus holiday pay of 4%.

Conclusion:

[208] The appellant was employed in insurable employment with Gill Farms from May 25 to September 12, 1998 and during said period worked 425 hours and had insurable earnings in the sum of $3,315.00.

Gurdev Singh Gill:

Relevant Book of Documents: Exhibit R-3.

Respondent’s Position:

[209] The Minister has conceded the appellant was engaged in insurable employment with Gill Farms in 1998 and that he worked 108 insurable hours and had insurable earnings in the sum of $871.56.

Appellant’s Position:

[210] The appellant relies on the information contained in his ROE that he was employed from August 2 to September 12, 1998 and during said period worked 324 insurable hours and had insurable earnings in the sum of $2,614.68.

Analysis:

[211] The appellant's testimony with respect to several aspects of his employment with Gill Farms was rife with contradictions when compared with statements he made earlier with respect to the same subject matter. His description of being driven to and from work and the number of passengers in the vehicle changed between the time of his HRDC interview, then within the Questionnaire sent to Keays and subsequently at trial. Gurdev Singh Gill testified he was paid an hourly rate to pick berries and that he had chosen this method of remuneration rather than piecework even though it had been offered – as an option – by Hakam Singh Gill. He stated picking cards were issued but not every day, nor were berries weighed every day. At Discovery, the appellant stated he and his wife – Surinder Kaur Gill – shared a picking card and when the full container was handed over to Manjit Kaur Gill, she weighed it and marked down the amount under their family name. At trial, the appellant asserted he and his wife had separate picking cards – when issued – and that he must have misunderstood the line of questioning with respect to this issue during Discovery. During the HRDC interview, he told Turgeon he was given a picking card for each day and that his name was written on the card. He described it as “being like an attendance, they wrote the start & finish time”. At trial, the appellant attempted to explain he meant his start and finish times were recorded each day but not necessarily on a picking card. Throughout, like all other appellants, he stuck to his story that he was paid an hourly rate for picking berries rather than a piece rate. During his testimony, the appellant stated he had helped take down the nets but had not been involved with their installation since he started working for Gill Farms on August 2. However, when he was interviewed – in Punjabi – by Harby Rai on August 19, 1999, he described how he assisted to put up the nets and proceeded to tell Rai that he and other workers replaced old poles and had to climb a ladder in order to unroll the nets. He told Rai the nets were put up “first” to prevent birds from eating the crop and then he picked blueberries. Rai testified that when the appellant was telling her this story it did not make sense since the nets had been installed in June. As a result, she went over that subject matter with him three times and each time the appellant maintained he had worked installing the nets. At trial, Gurdev Singh Gill offered the lame – albeit inventive – excuse that Rai was not very proficient in Punjabi and was unable to appreciate the appropriate sense of the verb which is capable of meaning both “putting up” and “taking down”. It is obvious from the context of the entire discussion between the appellant and Rai that he was not

confused and intended to convey the impression that part of his duties at Gill Farms was to assist in installing the nets. During his HRDC interview, the appellant stated he worked 7 days a week.

[212] Keays – in developing the rationale for the Minister's alternate position – examined the relevant data applicable to Gurdev Singh Gill and prepared a calendar – Exhibit R-3, tab 1, pp. 23 and 24 – on which he credited the appellant with certain hours of work in accordance with the methodology he developed as a template for the non-related workers. He allocated 81 hours to picking berries in August and allowed a total of 27 hours during three 9-hour days in September attributable to taking down nets and pruning. In the event the appellant was found to have been engaged in insurable employment, Keays decided he had worked 108 hours and had insurable earnings in the sum of $871.56 based on an hourly rate of $7.50 and holiday pay of 7.6%.

[213] Based on the evidence relevant to the appellant and in accordance with the formula, the amount of insurable hours accumulated while picking berries is increased – by 15% – to a new total of 93. As decided earlier with respect to tasks associated with the netting system, the allocation for work done in this regard is doubled from 27 hours to 54. The appellant's insurable earnings will be increased accordingly.

Conclusion:

[214] The appellant was engaged in insurable employment with Gill Farms from August 3 to September 12, 1998 during which period he worked 147 insurable hours and had insurable earnings in the sum of $1,186.29.

Santosh Kaur Makkar:

Relevant Book of Documents: Exhibit R-10.

Respondent's Position:

[215] The Minister has conceded the appellant was engaged in insurable employment with Gill Farms in 1998 and that she worked 117 insurable hours and had insurable earnings in the sum of $912.60.

Appellant's Position:

[216] The appellant asserts she was employed from August 2 to September 26, 1998 and during said period worked 421 insurable hours and had insurable earnings in the sum of $3,283.80.

Analysis:

[217] Earlier in 1998, the appellant had been employed at Berry Haven/Penny's Farm. She testified that when laid off from that job, she learned Gill Farms was looking for pickers. She and her husband – Himmat Singh Makkar – were both hired the same day and worked together until he was laid off on September 12. In compliance with an undertaking at Discovery, the appellant signed a statement – Exhibit R-10, tab 1 – in which she admitted she and her husband had been issued picking cards during the course of their employment at Gill Farms and that they were handled by her husband but were no longer available and had probably been lost in the course of several moves to new residences. During her testimony, the appellant maintained she was paid by the hour for picking berries even though picking cards were issued – every day – to her and her husband. The appellant testified that sometimes her husband finished work earlier than her – by 30 to 45 minutes – but he sat and waited for her so they could ride home together. The timesheets prepared by Gill Farms indicate both the appellant and her husband were credited with exactly 8 hours for each day of their respective employment periods. After blueberry season ended, the appellant described various tasks she had performed such as cutting off dry branches, spreading sawdust, washing buckets, removing dry grass and spreading sawdust – by hand – around the roots of the blueberry plants. She stated several of these tasks were performed in the course of the same day and was unable to recall the names of any individuals who participated in these tasks except Harmit Kaur Gill, Manjit Kaur Gill and Hakem Singh Gill. She explained that because she was employed for only a short period, she had not made friends with other workers. The appellant estimated she picked between 200 and 250 pounds of berries per day and that her husband picked about 200 pounds. She did not know why her husband was paid $8.00 per hour rather than the $7.50 rate paid to her nor did she know why Gill Farms laid off her husband while she continued to work an additional two weeks. The position of counsel for the respondent was that the evidence of certain transactions in respect of the appellant and her husband permitted the inference to be drawn that a cash withdrawal of $2,200 from their account had been for the purpose of paying money back to the Gill family in order that the appellant could obtain her ROE. At the HRDC interview, the appellant denied having paid any money back to the Gill family in respect of her employment but then added

– gratuitously – that when she worked at Penny's Farm, her son would work there but she was given credit – on her ROE – for his hours.

[218] The appellant's testimony lacks in credibility in many respects. Obviously, she was remunerated by piecework and used picking cards to record her production. On the other hand, when she described several tasks having been performed the same day during a period following the end of berry season, she was probably accurate and certainly more in sync with the overall opinion of Keays – as expressed in his report – as to the nature of the work actually done at this point in the season.

[219] Keays – in preparing his report with respect to the appellant and her husband – wrote "[T] he worker and her husband's statements and answers lack any credibility. It's impossible to know what the truth is in this case". In allowing for the possibility the appellant's employment might turn out to have been insurable, Keays created a calendar – Exhibit R-10, tab 2, pp. 27 and 28 – in which he allocated 96 hours for picking berries in August and 21 hours in September attributable to taking down nets and pruning. He calculated her insurable earnings – including holiday pay at 4% – were $912.60.

[220] Applying the formula with respect to picking time, the appellant's hours spent at that task will be increased – by 15% – from 96 to 110 and the time credited for taking down the nets will be doubled from 21 hours to 42. As a result, the total insurable hours are increased to 152 and the appellant's insurable earnings are increased accordingly.

Conclusion:

[221] The appellant was employed in insurable employment with Gill Farms from August 3 to September 12, 1998 and during this period worked 152 insurable hours and had insurable earnings of $1,185.60.

Surinder Kaur Gill: (Appeal 2002-2115(EI))

Relevant Book of Documents: Exhibit R-6

Respondent's Position:

[222] The Minister has conceded the appellant was engaged in insurable employment with Gill Farms in 1998 and that she worked 108 insurable hours and had insurable earnings in the sum of $871.56.

Appellant's Position:

[223] The appellant relies on the information contained in her ROE that she was employed from August 2 to September 12, 1998 and during said period worked 324 hours and had insurable earnings in the sum of $2,614.68.

Analysis:

[224] The appellant's evidence with respect to being driven to and from the farm, or concerning start and finish times and other related matters would be significant if there had been a finding that she – like other workers – had been remunerated for picking berries on a hourly rate rather than by a piece rate. During her interview with Rai – Rulings Officer – the appellant stated – more than once – that she and her husband put up nets before starting to pick blueberries. Rai was aware the nets had been installed in June and that the appellant's employment with Gill Farms only started on August 2 so this statement did not make sense. In the course of preparing her ruling and as related during her testimony at trial, Rai noted several discrepancies with respect to the hours and days allegedly worked. The evidence established there was a large withdrawal from the account of the appellant and her husband – Gurdev Singh Gill – on the same day as the last of their pay cheques were deposited. When asked whether she had paid cash back to the Gill family in exchange for receiving her "weeks" (ROE), the appellant stated she did not know as "her husband took care of it" and added, "the men make all the arrangements". The appellant estimated she had picked 200 pounds of blueberries per day – on average – in 1998 but, in 2005, due to increased yields and new varieties of plants, could pick 300 pounds per day during high season. At trial, the appellant stated she had not put up the nets but helped take them down. At Discovery, several of her answers made it apparent she and her husband shared a bucket when picking berries and their joint production was measured on one picking card. At trial, she refused to acknowledge those answers were correct and stated she had not intended to convey that impression but meant to say that although she and her husband each had a picking card, he retained her card on his person throughout the day.

[225] Keays prepared a calendar – Exhibit R-6, tab 1, pp. 23 and 24 – in which he allocated 81 hours to the task of picking berries in August to which he added 27 insurable hours – over 3 days – for taking down nets and pruning in September. Keays decided that if the appellant's employment was insurable, she worked 108 hours and had insurable earnings of $871.56, including holiday pay of 7.6%.

[226] Again, by applying the formula with respect to picking time, the appellant is entitled to have her insurable hours increased – by 15% – from 81 to 93. Her time allotted by Keays for taking down nets – 27 hours – is doubled to 54. As a result, her total insurable hours are 147 and her insurable earnings are increased accordingly.

Conclusion:

[227] The appellant was employed in insurable employment with Gill Farms from August 3 to September 12, 1998 during which period she worked 147 insurable hours and had insurable earnings in the sum of $1,186.29.

[228] The decision of the Minister with respect to each non-related appellants was that their employment with Gill Farms was not insurable because it was excluded employment within the meaning of the *EIA.* Keays, in carrying out his responsibility as an Appeals Officer, sought advice and direction from senior officials in CCRA and obtained permission to embark on a course of action wherein he developed a methodology based on the information before him that permitted him to arrive at an alternative position and to state a number attributable to insurable hours and insurable earnings. In Keays' career, he had not encountered a similar situation. Each decision issued by the Minister to a non-related appellant went on to state that – in the alternative – if the employment were found to be at arm's length, the Minister had determined a relevant number of insurable hours and a corresponding total of insurable earnings. While not strictly on point, the decision of the Federal Court of Appeal in *Minister of National Revenue v. Schnurer Estate* 208 N.R. 339, dealt with the situation where the determination (as it was then called) by the Minister found first that Schnurer and the employer had not been dealing with each other at arm's length and therefore his employment constituted "excepted employment" within the meaning of the *Unemployment Insurance Act.* Second, the determination went on to find Schnurer was not employed pursuant to a contract of service as defined by paragraph 3(1)(*a*) of said *Act.* By way of application for judicial review, the Minister appealed the trial decision (mine) that he could not proceed on the basis that the determination relied on both provisions because it would require mutually exclusive findings of fact and the Minister should choose one or other of the positions upon which the decision rested before the case be allowed to proceed further. In allowing the application for judicial review, Chief Justice Isaac – writing for the Court – at paragraphs 17 and 18 of his judgment stated:

> [17] On appeal, the Deputy Tax Court judge is obliged to review the validity of the Minister's determination based upon all of the submissions of the parties. The Minister's determination rests upon the assumed facts as outlined in the applicant's

> reply to the Notice of Appeal. These facts, if not disproved, might lead the Tax Court, on appeal, to conclude that Mr. Schnurer's employment was not insurable either because Mr. Schnurer was not an employee under a contract of service (s.3(1)(a)) or because the nature of Mr. Schnurer's relationship with the payor corporation, although a contract of service, was such that it was not substantially similar to a contract between parties dealing at arm's length and therefore should remain "excepted employment" (s. 3(2)(c)). The determination by the Deputy Tax Court judge on the preliminary question of law, however, would preclude the Tax Court from deciding all of the points of fact and law necessary to assess the validity of the Minister's determination when the s. 70 appeal is heard. For these reasons, I am respectfully of the view that the Deputy Tax Court judge erred in law in finding that the applicant could not defend the Minister's determination on the basis of these two alternative grounds.
>
> [18] In reaching this conclusion, I am not unmindful of the fact that, because of this court's decision in **Tignish,** supra, the two grounds advanced by the Minister in this case must be assessed according to different standards of review. In **Tignish**, supra, this court held that, where an employer and employee are not at arm's length, the Minister's determination under s. 3(2)(c)(ii) that they would not have entered into a similar contract of service had they been at arm's length, is a discretionary determination subject to a high standard of review on appeal to the Tax Court. In essence, if the Minister has given sufficient weight to all of the relevant factors related to the employment relationship, the Tax Court is not at liberty to overrule the Minister's decision under s. 3(2)(c)(ii) merely because it would have come to a different conclusion. The Minister's decision under s. 3(1)(a), on the other hand, is quasi-judicial and therefore subject to de novo review by the Tax Court. The different standards of review which apply to these sections, however, do not in any way preclude the applicant from advancing both as grounds, in the alternative, in support of the Minister's determination. Faced with this class of case, the task of the Tax Court is to review all of the evidence and consider all of the submissions of the parties in order to assess the validity of the Minister's determination, taking into account the different standards of review which apply to the alternative grounds.

[229] In *Schnurer*, the Minister expressed two reasons why the employment was not insurable. In the within proceedings, each decision issued to a non-related worker included an alternative finding but that was premised on the possibility there could be a subsequent finding by the Court (or a concession by the Minister, perhaps) that the subject employment was insurable. The alternative position in each decision was expressed in a manner consistent with the normal practice followed in pleadings and said position was included in each Reply filed in response to each Notice of Appeal filed by non-related appellants.

[230] The within appeals from decisions of the Minister are pursuant to subsection 103(1) of the *EIA*. The jurisdiction of this Court in respect of an appeal is set forth in subsection 103(3) as follows:

> (3) Decision – On an appeal, the Tax Court of Canada
>
> > (*a*) may vacate, confirm or vary a decision on an appeal under section 91 or an assessment that is the subject of an appeal under section 92;
> >
> > (*b*) in the case of an appeal under section 92, may refer the matter back to the Minister for reconsideration and assessment;
> >
> > …

[231] Because the within appeals are from decisions of the Minister issued pursuant to section 91, there is no ability to send them back to the Minister as there would be in the case where assessments were issued under section 92. Therefore, without Keays having embarked on a course of action to develop the basis for a statement of the alternative position within the decisions issued to each non-related appellant, I would have had to start almost at square one, using the evidence before me, including Blatchford's report and testimony, Sweeney's report and testimony, in order to create a system for calculating the number of insurable hours of employment and insurable earnings in those cases where the employment of an appellant was found to be insurable. As it transpired, the primary position of the Minister with respect to the non-arm's length issue was abandoned within a week after this trial had concluded. The methodology developed by Keays took on added significance and was used – by me – as a foundation upon which to examine all the relevant evidence with respect to the issues of insurable hours of employment and insurable earnings applicable to each non-related appellant.

[232] I am satisfied the procedure followed by the Minister in the case of the non-related appellants was practical and extremely helpful in this sort of case. The expression of an alternative (in the sense of being opposite) position within the body of the decision – rather than merely allowing for that possibility when drafting subsequent pleadings – does not vitiate the validity of the primary position of the Minister that the employment of each non-related appellant was not insurable. The surplus language expressing an alternative position did not detract from the viability of the decision and only came into play when the primary finding was abandoned following completion of a lengthy trial during which evidence along the entire spectrum relevant to the overall issue of arm's length vs. non-arm's length by all appellants – family and non-family – was examined thoroughly.

[233] The testimony of the expert – Charan Gill – disclosed the working life of the farm labourer is not a happy one. The hours are long and including travel to and from a farm, the working day can consist of 12 hours. In Charan Gill's opinion, only during a couple of weeks within the peak part of season can a berry picker earn more than the minimum hourly wage. In his experience, a farm worker might earn an average of $5 per hour throughout the season and that is factoring in some hours of work at the beginning and end of the season when certain tasks are remunerated on an hourly basis according to the current minimum wage set by provincial legislation. The effect of subsection 10(5) of the *Regulations* concerning the method of determining hours of insurable employment is that in the absence of evidence indicating that overtime or excess hours were worked, the maximum number of hours of insurable employment which a person is deemed to have worked is limited to 7 hours per day up to an overall maximum of 35 hours per week. As a result, a piecework picker might only earn $60 per day or $420 during a 7-day work week but in order to do so has to spend 70 or more hours in the fields. As explained by Charan Gill, the practice followed by growers in the berry industry is to convert the gross earnings into hours of work by dividing that amount by the minimum hourly wage so the payroll records contain entries of a 7 or 8-hour day instead of recording the actual hours worked by the picker. By following that method, growers will never be compelled to pay rates in accordance with provincial overtime rates which – in 1998 – only came into play if a farm worker's hours exceeded 120 within any two-week period. As a consequence of new provincial regulations that came into effect in 2001, any consideration of overtime pay for a farm worker is forestalled until the 200-hour limit – within a two-week period – has been breached. Charan Gill testified that when the farm inspection team – ACT – was active as a joint federal/provincial task force, it had a big impact on the industry and several growers were charged with a variety of offences for having breached applicable federal and/or provincial legislation or regulations. In addition, ACT educated and instructed both farmers and workers as to the proper procedures to follow and safety issues were also addressed by the provincial representative assigned to the team by the Employment Standards Branch. The evidence of Turgeon was that ACT continues to exist but that declaration would have surprised Charan Gill who testified he thought it had been disbanded. I suspect ACT exists on paper and some individuals employed in some departments or agencies may continue to be assigned to that team – in a notional sense – and ACT may be headquartered in a small, shared office – with telephone – somewhere but I have not heard any EI cases arising within the past 3 or 4 years in which unannounced inspections were made by ACT to a farm in British Columbia.

[234] Within the system, it is difficult for a farm worker to accumulate sufficient insurable hours during the course of a relatively short season that will permit him or

her to qualify for UI benefits following layoff. The amounts earned during the season are usually within the range of $3,000 – $8,000 even by people working at more than one job and the receipt of UI benefits after layoff is the main reason people perform this kind of work. The young people within the Indo-Canadian community are no longer willing to do piecework and if they do choose to perform farm work, it is at a cannery, nursery or for a farming business that not only pays an hourly wage – usually minimum – but issues a pay cheque every two weeks rather than waiting until after the end of the season to pay the bulk of wages due to workers. The growers maintain that the free market and fierce competition with producers in the United States of America has shrunk their profit margins. Overall, the farm labour market is a fertile field and ripe for exploitation. Within the industry in the Lower Mainland, ROEs are either sold outright or a certain amount of cash is returned to the employer in exchange for an ROE that has been inflated, exaggerated, stretched and massaged with respect to hours worked, the period of employment, rate of hourly pay, percentage of holiday pay and the total amount of insurable earnings. The workers are kept in the dark and are content to remain in that unenlightened state since it means they can adhere to the position that it was the fault of their employer, HRDC, CCRA or someone else. They are content to repeat – as though it were a mantra – "I don't know about that, I just worked, very hard". It was extremely difficult to make the appellants understand the onus was on them to establish – on a balance of probabilities – that their employment with Gill Farms was insurable according to the provisions of the *EIA*. There was no burden on the respondent to prove that money had been returned by any appellant to any member of the Gill family with respect to his or her employment in 1998. The weight of the evidence certainly supported the position of the Minister that something fishy was going on when certain cash withdrawals by several appellants at the end of the season coincided – or nearly so – with the issuance of an ROE to either the worker or to his or her spouse. In 1998, the amount of money deposited into the account used by Gill Farms as the business account was approximately $60,000 more than the total of amounts shown to have been attributable to farm revenue, loans from family and friends or injections of capital by Hakam Singh Gill and Rajinder Singh Gill from their pay cheques or other off-farm revenue.

[235] The amount of any pay cheque issued by Gill Farms to an appellant – even though deposited to that appellant's account in a financial institution – does not mean that sum automatically qualifies as forming part of overall insurable earnings. As I commented in the *Kang*, *supra*, at paragraph 429:

> There is no doubt that two cheques totaling $6,500 cleared the SRC bank account. However, insurable earnings are not based merely on the receipt of money

> from someone who happens to be an employer for a certain period of time, they must be in respect of that employment…

[236] In the within appeals, as in *Kang*, the quality of the interpretation undertaken by Punjabi-speaking HRDC personnel or by Rai – Rulings Officer – was appropriate under the circumstances and I am satisfied there was no significant miscommunication between any appellant and those persons investigating their UI claims. There seemed to be a sense on the part of the appellants that they were being picked on and singled out for harassment by HRDC and CCRA. In my assessment of the situation, the officials within HRDC and CCRA were patient, thorough and willing to receive whatever cogent information could be provided to support any appellant's claim that the ROE issued by Gill Farms in respect of their employment was correct.

[237] Each year in Canada, there must be more than a million ROEs issued by employers to employees. At any given point, about 800,000 people are receiving UI benefits and because of the nature of the country and the harsh climate in many regions, a substantial portion of workers are employed in jobs that are seasonal. As a matter of routine, an employer issues ROEs to laid off workers who can rely on the information contained therein if they need to apply for UI benefits. If everything is in order, the appropriate amount of ensuing benefits is calculated pursuant to the legislation and in accordance with the policy by which the UI/EI scheme is administered and cheques are issued for a specific period of entitlement. One shudders to contemplate the devastating impact on the federal treasury if it were necessary on each occasion to undertake the same laborious process that was necessary with respect to these appellants in order to arrive at a decision regarding the validity of every worker's employment, and, if found to be legitimate, then to calculate the correct number of insurable hours worked and the total insurable earnings based on employer records that were not reliable and on information from employees concerning their employment that was inconsistent, incomplete, vague, or – worse – simply untrue.

[238] I am indebted to both counsel for the respondent for their methodical and competent presentation of evidence and organization of material – including binders of documents which were filed as exhibits – that enabled the trial to proceed in an orderly manner. I am satisfied each appellant had the benefit of full disclosure of all information capable of affecting his or her appeal. The written submissions prepared by counsel contained references to specific testimony and exhibits and summaries of evidence applicable to each appellant. The material also included information concerning relevant dates as well as calculations of important amounts and numbers.

Overall, it was a well-organized submission of relevant material that proved to be extremely helpful in the course of preparing these reasons.

[239] The quality of the English to Punjabi and Punjabi to English interpretation and translation by Russell Gill throughout – and Kasmir Gill on one occasion – was excellent and their professional service was essential.

[240] Ronnie Gill – agent for the appellants and intervenors – is a Certified Management Accountant (CMA). She represented the parties from the appeals stage of the process until the end of this trial. On many occasions leading up to the commencement of this trial, she appeared before Justice Little in respect of various motions, status hearings, case management, or with regard to scheduling of this trial and related matters. However, she had no previous experience in conducting a trial. Fortunately, she was a fast learner. I am satisfied the intervenors and appellants received proper representation throughout this trial as a result of her efforts on their behalf.

Signed at Sidney, British Columbia, this 16th day of June 2006.

"D.W. Rowe"

Rowe, D.J.

CITATION:	2006TCC149
COURT FILE NO.:	2001-2098(EI), 2001-2100(EI), 2001-2101(EI), 2001-2115(EI), 2001-2116(EI), 2001-2117(EI), 2001-2118(EI), 2001-2120(EI), 2001-2121(EI), 2001-2125(EI)
STYLE OF CAUSE:	Gurdev S. Gill, Manjit K. Gill, Harmit K. Gill, Surinder Kaur Gill, Surinder K. Gill, Santosh K. Makkar, Jarnail K. Sidhu, Harbans K. Khatra, Himmat S. Makkar Gyan K. Jawanda and M.N.R. and Rajinder Singh Gill & Hakam Singh Gill, operating as R & H Gill Frams
PLACE OF HEARING:	Vancouver, British Columbia
DATE OF HEARING:	During 24 days between July 4 and September 19, 2005
REASONS FOR JUDGEMENT BY:	The Honourable D.W. Rowe, Deputy Judge
DATE OF JUDGMENT:	June 16, 2006.

APPEARANCES:

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COUNSEL OF RECORD:

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