Docket: 2009-941(EI)

BETWEEN:

JULIE PERRY,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent,

and

SILVERTON RESORT LTD.,

Intervenor.

Appeal heard on April 8, 2010 at Nelson, British Columbia

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

Appearances:

For the Appellant:	The Appellant herself
Counsel for the Respondent:	Matthew W. Turnell
Agent for the Intervenor:	Greg C. Horton

JUDGMENT

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

Signed at Sidney, British Columbia this 19th day of May 2010.

"D. W. Rowe"

Rowe D.J.

Citation: 2010 TCC 266
Date: 20100519
Docket: 2009-941(EI)

BETWEEN:

JULIE PERRY,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent,

and

SILVERTON RESORT LTD.,

Intervenor.

REASONS FOR JUDGMENT

Rowe, D.J.

[1] The Appellant appealed from a decision by the Minister of National Revenue (the "Minister") – dated January 29, 2009 – wherein the Minister determined that her employment with Silverton Resort Ltd. ("Silverton") from January 1, 2008 to May 31, 2008, was not insurable employment pursuant to paragraph 5(2)(*i*) of the *Employment Insurance Act* (the "*Act*"). The Minister, after considering all of the terms and conditions of said employment, was not satisfied the contract of employment between the Appellant and Silverton would have been substantially similar if they had been dealing with each other at arm's length.

[2] Julie Perry ("Perry") testified she resides in Silverton, British Columbia – a small municipality on the shore of Slocan Lake, north of Castlegar. Greg Horton ("Horton") is her father and he is President of Silverton and appeared as its agent in the within appeal. Perry is the Manager of an 8-unit resort business comprised of a 3-bedroom waterfront chalet, 4 loft-cabins, and a 3-bedroom house. At full occupancy,

the resort can accommodate between 30 and 35 guests and the business rents canoes and kayaks and there is a playground for children. Perry started managing the resort in 2004 when the property and business were purchased by the Horton Family Trust ("Horton Trust"). For 15 years, Perry lived full-time in a house near the resort and for many years worked as a teacher in the local school. As a result, she was very familiar with the resort and after the acquisition by Silverton, renovations were undertaken to the buildings. Perry stated she wears "many hats" and performs office and administrative work including maintaining the website, responding to e-mail, and dealing with a variety of matters pertaining to reservations. As Manager, she supervises a housekeeping staff of two or three persons and is responsible for maintenance of the lawn and gardens. She hauls the recyclable material to a depot. During the relevant period, she performed these duties and also travelled to Nelson every few weeks to obtain supplies, a trip that occupied an entire day. Perry stated her main responsibility then – and now – is to take care of the guests. At the resort, she often worked long hours and was on call at all times to deal with those guests who wanted to check out early or to check in late. Perry stated the season runs from the long weekend in May to the end of October and that 87% – rather than 93% as assumed by the Minister – of annual revenue is generated during that period. However, Slocan Lake does not freeze in winter and guests – including families – use the facility as a retreat and some participate in cross-country skiing. The high season rates – $205 to $350 per night, depending on the cabin – come into effect at the first of June. Low season rates are $155. Perry stated her salary – $30,000 per year – has remained the same since 2004 and it is paid in monthly instalments of $2,500. As required, Perry obtained the services of cleaning staff and when necessary contacted trades people to provide their particular services. Perry had signing authority on the Silverton bank account and signed her own pay cheque. Perry stated that during the low season, guests do not stay as long and the cost of heating the cabins is high. She had to shovel snow by hand to clean the parking spots and walkways. The canoes and kayaks remain on the beach but the kayaks are covered and the life jackets, paddles, et cetera are stored inside a shed. Perry stated that during the typical May-to-October season, she started work from 10 a.m. and dealt with the cleaning staff and handled guest check-outs and check-ins, including some for those who had not made reservations. Typically, guests arrived during the afternoon and into evening but at 9 p.m. Perry stopped working and walked two kilometers to her residence. Perry's daughter was born on November 26, 2007 and during the winter months – until the end of February, 2008 – she performed most of her work at home but took the child to the resort when necessary. Perry's duties included preparation of the monthly returns for Goods and Services Tax ("GST") and a monthly report which was submitted to the Silverton accountant. Perry also prepared the appropriate return and submitted the amount collected for room tax to the British Columbia Provincial

Treasurer and – to comply with the requirements of the legislation – was required to file a report even though no tax had been collected during a particular period. She paid all the bills pertaining to the operation of the resort and responded to e-mails and other inquiries related to the business of Silverton and worked on the website. At least twice a week, she inspected the cabins to ensure the electric heat was functioning and that there was no problem with the running water in the cabins. She inspected the electrical breakers, checked the building to see if there had been any damage caused by vandals and set mouse traps. She did not record her hours of work and was free to set her own schedule. Perry stated that she issued a pay cheque to herself each month, although not always on the same date but any slight delay was not related to any cash flow problem on the part of Silverton. Perry acknowledged she had received a $5,000 bonus in 2007 and believed it was based on Silverton's increased business income that year. From 2004 to 2007, Silverton recorded Perry's remuneration as Management Fees and Perry reported that revenue as business income when filing her income tax returns. During that period, she also earned income by working as a substitute teacher in the local kindergarten-to-Grade 12 school. Perry stated the corporate accountant advised that she should be an employee of Silverton and that the usual source deductions for Employment Insurance (EI), Canada Pension Plan (CPP) and income tax should be taken from her pay cheques. In accord with that advice, and as assumed by the Minister at paragraph 5(w) of the Reply to the Notice of Appeal ("Reply"), source deductions were taken from her May, 2008, pay cheque and were applied – retroactively – to January 1. Perry stated she left her employment with Silverton on May 31, 2008 because it became too onerous to work and to care for her infant daughter who was 7 months old. Perry realized that even though she could work for Silverton and care for the child while providing most of her services from home, it was difficult to accomplish that when required to attend at the resort facility on a regular basis in preparation for – and during – the forthcoming busy season. In anticipation of her departure, Angelina Simpson ("Simpson") – was hired in April and started working for Silverton on May 1. Simpson was a local resident and was familiar with the resort and its operation. Perry stated she worked with Simpson in May and showed her how to operate the resort business and during that period continued to take care of the lawns and gardens and to obtain supplies. Simpson lived in one of the cabins at the resort and her base salary was $1,500 per month in addition to the supplied accommodation. However, prior to the cabin being ready for her occupancy, Simpson lived for a few weeks in a private home across the street and Silverton paid the rent. Simpson was also paid $12 per hour for housekeeping and payment was based on time sheets which she submitted. Perry stated that when she performed those housekeeping duties, she had not recorded her time since she had considered that work as part of her overall responsibility for which she received a monthly salary. Simpson did not operate the

ride-on mower and did not have a vehicle for travel to Nelson to purchase supplies. After May 31, Perry continued to make trips to Nelson to obtain supplies for Silverton, although Simpson – sometimes – was able to get a ride to Nelson and make the necessary purchases herself. Perry stated that when attending at wholesale suppliers and other stores in Nelson, she also purchased items for her own household. Perry continued to sign and issue pay cheques – every two weeks – for Simpson and any others who provided their services to the resort. On occasion, Perry and her daughter visited the resort since there is a nice beach and it was a pleasant spot to spend time with a child. Perry stated she is not a Director or Officer of the Appellant. Perry estimated that after May 31, 2008, she spent about 15 to 20 minutes a day helping out at the resort facility and made 4 buying trips to Nelson. Simpson dealt with all the e-mails and voicemails pertaining to reservations and the resort website did not require any revisions. Perry stated she returned to work at the resort on January 1, 2009, on the same terms and conditions as had been in effect since 2004, including the relevant period.

[3] Perry was cross-examined by counsel for the Respondent. When the resort was purchased by Trust in 2004 as an investment and Perry was asked to manage the property, she reduced her substitute teaching to once a week during the summer season but taught on more days during the winter. She did not teach during the relevant period. In previous years she worked 10 hours a day, 7 days a week during the high season and from 20 to 25 hours a week during the off-season but the "shoulder season" of April, May and June required more hours. Perry estimated that if her salary had been paid according to an hourly rate, it would have varied from $10 to $30 per hour depending on the season. She stated she was satisfied with the salary and working conditions as they were suitable to her needs and the annual remuneration paid on a monthly basis enabled her to have only one job which permitted her to earn additional income from substitute teaching. Perry acknowledged she was "pretty much her own boss" but talked to her parents about certain matters such as the decor of the cabins. Perry stated she worked at home – mostly – in January and February, 2008, but spent more time at the resort in March, April and May while preparing for the forthcoming tourist season. Perry's husband was capable of attending to emergent situations at the resort and had done maintenance work previously for which he was remunerated on a per-job basis. During a meeting with the Silverton accountant in early February, Perry was advised she should be on the payroll as an employee. Perry stated she had not intended to apply for EI benefits based on parental leave but – by early April – realized it was becoming too difficult to care for her child and to manage the resort and to continue would require the services of someone to assist with child care. Perry stated the Minister's assumptions that she was "free to set her own schedule and come and go

as she pleased" and to "take as much time off as she wanted" – as stated at paragraphs 5(p) and 5(q), respectively of the Reply – were applicable only to the months of January and February when the bulk of the work could be performed at home. Silverton paid for the utilities in her residence. With respect to the assumption – at paragraph 5(ee) that she and Simpson "received remuneration under different terms", Perry stated the remuneration was comparable when one included the value of the accommodation and utilities and the disparity in duties since Simpson did not have to handle the recycling nor did she do the lawn maintenance or gardening. Perry stated that even though Simpson was asked to stay at the resort during the winter, she decided to leave at the end of October. As a result, the resort was closed until Perry resumed her duties in January, 2009.

[4] Perry closed her case.

[5] Gregory Horton testified he has been a Chartered Accountant since 1965 but instead of carrying on a professional practice has worked in a real estate development business in Calgary. In November, 2004, Horton Trust purchased 100% of the shares in Silverton. Horton, his wife and his brother-in-law are the trustees and Perry is one of 4 contingent beneficiaries but none of them is able to control the trust and any benefits flowing therefrom are at the discretion of the trustees. Horton stated that when Perry undertook management of the resort business, she was remunerated in the form of a management fee which eliminated the need for a payroll account. The trustees decided – and Perry agreed – that the annual fee of $30,000 was reasonable. Horton stated an examination of the financial records of the resort when it was operated by a couple who were partial owners, indicated they were able to draw out amounts ranging from $28,000 to $38,000 annually as remuneration for their efforts. Horton received a letter – Exhibit I-1 – dated February 13, 2008 – from the Silverton accountant advising that as a consequence of an audit of Perry's income tax return, the Minister had assessed Silverton for CPP contributions and that Canada Revenue Agency's ("CRA") position was that a T4 should have been issued and CPP contributions deducted. The accountant advised Horton that Silverton should discontinue paying Perry a management fee and – instead – treat Perry as an employee by establishing a regular payroll account. Horton stated he disagreed with the Minister's position that there was a significant disparity in the remuneration paid to Perry and to Simpson and set forth his reasons in a letter – Exhibit I-2 – dated October 16, 2008 which he directed to Chief of Appeals in Surrey. In said letter, Horton stated the value of the accommodation provided to Simpson was $800 per month or $9,600 per year and the resort business paid the cost of utilities which was approximately $100 per month or $1,200 per year. Simpson's base salary was $1,500 per month and Horton estimated she could earn approximately $700 per month by

providing housekeeping and cleaning services for which she was compensated at the rate of $12 per hour. Horton stated he based that estimate on information received from Perry who was aware of the amount of work required, taking into account that during the low season the cleaning work would generate only $250 per month for Simpson. Horton stated he thought Perry was an officer of Silverton because she had signed certain documents required to be submitted or filed by that corporation. With respect to reservations at the resort, Perry collected a 50% deposit of the anticipated bill, 3 months prior to the arrival date. Horton stated the bonus of $5,000 paid to Perry in 2007 was justified because the resort's annual revenue had increased by $29,000 when compared with previous years.

[6] Horton was cross-examined by counsel. Horton agreed that Perry made the day-to-day decisions relating to the business of the resort but the trustees of Horton Trust made the major decisions pertaining to matters such as renovation, construction, and otherwise retained control over the operation. Horton stated the trustees had based Perry's annual remuneration on a calculation which took into account the attribution of salary – by way of draw – received by the previous managers who were part owners and the fact they lived in the house. Horton stated the nature of the asset required someone to manage the resort on an annual basis with the understanding that this person would work more hours during the busy season. Horton did not know the resort had been closed during November and December, 2008 but Perry would have known the state of affairs since she lived nearby. Horton believed Perry was an officer of Silverton since she had signed certain annual returns but is not aware of her precise title or whether she held any specific office.

[7] Horton – as agent for the Intervenor – closed its case.

[8] Perry submitted the work performed by her during the relevant period was similar to what would have been done by a non-related person. In her view of the evidence, the compensation paid to Simpson was comparable when considering the various components thereof and taking into account that Simpson had less duties to perform. Otherwise, both she and Simpson had flexible hours and the same ability to take time off provided that the daily demands of the resort business had been satisfied. Perry acknowledged that she had been providing her services from November, 2004 to December 31, 2007 in exchange for an annual management fee but that status had been revised on the advice of the Silverton accountant based on requirements imposed by an auditor from CRA.

[9] Horton submitted that the evidence supported the view that Perry was an employee who provided her services in an ordinary manner considering the nature of

the business which, although seasonal in nature, required continuous attention to many details including inspection and care of the physical assets.

[10] Counsel for the Respondent submitted that the parties were related in accordance with the relevant provision – subparagraph 251 (*b*) (iii) – of the *Income Tax Act* since her father – Horton – was a member of the related group that controlled Silverton. Counsel submitted the Minister properly acted as the gatekeeper and reviewed all relevant factors including the composition and amount of the remuneration paid to Simpson who took over management duties from Perry. In counsel's view of the evidence, the Appellant had not demonstrated that the Minister had ignored any relevant matters or had considered any extraneous information and that the Minister would not be surprised by any of the evidence adduced pertaining to the overall circumstances of the working relationship. Counsel submitted that – taken as a whole – the assumptions of the Minister were valid and there had been no misapprehension of the circumstances prior to issuing the decision. The Minister had considered that a non-related person would not have had as much flexibility in many respects but on the other hand probably would not have been willing to be on call 24 hours a day, 7 days a week. The Minister accepted the work performed by Perry was important, especially during the high season. However, the services provided during the slow periods were less significant and the circumstances in respect of the total work done were consistent with those in effect from November, 2004 to December 31, 2007 when Silverton remunerated Perry on the basis of a fixed amount per year. Counsel pointed out it was not until May, 2008 that Silverton acknowledged Perry was an employee and made certain source deductions retroactive to January 1. Counsel submitted the evidence adduced by the Appellant and by the Intervenor did not permit the Court to intervene and that the decision of the Minister ought to be confirmed. Even if that intervention occurred, Counsel submitted there were no material new facts disclosed and an independent examination of the relevant indicia ought to result in a confirmation of the Minister's decision.

[11] The relevant provisions of the *Act* are paragraphs 5(1)(*a*) and 5(2)(*i*) and subsection 5(3) which read as follows:

> 5. (1) Subject to subsection (2), insurable employment is
>
> > (*a*) employment in Canada by one or more employers, under any express or implied contract of service or apprenticeship, written or oral, whether the earnings of the employed person are received from the employer or some other person and whether the earnings are calculated by time or by the piece, or partly by time and partly by the piece, or otherwise;
> >
> > …
>
> (2) Insurable employment does not include

…

(*i*) employment if the employer and employee are not dealing with each other at arm's length.

(3) For the purposes of paragraph (2)(*i*),

(*a*) the question of whether persons are not dealing with each other at arm's length shall be determined in accordance with the *Income Tax Act*; and

(*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.

[12] In *Quigley Electric Ltd. v. Canada (Minister of National Revenue – M.N.R.)*, [2003] F.C.J. No. 1789; 2003 FCA 461 (F.C.A.), the Federal Court of Appeal heard an application for judicial review of a decision issued by a judge of the Tax Court of Canada confirming the decision of the Minister that the Appellant's employment with a related employer was not insurable. Malone J.A., writing for the Court - at paragraph 7 and following – stated:

7 A legal error of law is also said to have been committed when the Judge failed to apply the legal test outlined by this Court in *Légaré v. Canada (Minister of National Revenue)* (1999) 246 N.R. 176 (F.C.A.) and *Perusse v. Canada* (2000) 261 N.R. 150 (F.C.A.). That test is whether, considering all of the evidence, the Minister's decision was reasonable.

8 Specifically, it is argued that the Judge circumscribed the scope of his review function when, after finding that the Minister clearly did not have all the facts before him he stated:

> ... That is not to say that on reviewing new information, I am then precluded from finding that the Minister did not have, after all, sufficient information to exercise his mandate as he did without my interference. This would simply mean that I have found that the new factors not considered were not relevant.

9 According to the applicant, the proper question was not whether the Minister had sufficient information to make a decision, notwithstanding the evidence of Mrs. Quigley; rather the question was whether, considering all the evidence, the Minister's decision still seemed reasonable. Instead, the applicant asserts that the

Judge carried out an irrelevant examination of whether Mrs. Quigley was a "principal" or a "subordinate" of Quigley Electric Ltd.

10 In my analysis, the Judge correctly followed the approach advanced by this Court in *Canada (A.G.) v. Jencan Ltd.* [1998] 1 F.C. 187 (C.A.), namely, that the Minister's exercise of discretion under paragraph 5(3)(b) can only be interfered with if she acted in bad faith, failed to take into account all relevant circumstances or took into account an irrelevant factor.

11 Bad faith on the part of the Minister is not an issue in this case.

12 While the reasons for decision are lengthy, it is clear that the Judge was analysing the oral evidence of Jean Quigley in conjunction with paragraph 5(3)(b); namely, whether having regard to all of 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. After reviewing other authorities in the Tax Court, the Judge rejected any suggestion that Mrs. Quigley could be termed a principal of Quigley Electric Ltd. and in turn dismissed her examples of special treatment within the company as arising from her personal relationship with the controlling shareholder and not to her employment contract.

13 He concluded by indicating that the factors considered by the Minister, as set out earlier in his reasons, were the relevant factors for his consideration. That, in the context of this case, can only mean that the Minister's decision was reasonable considering all of the evidence. I can discern no legal error in this analysis or conclusion.

14 I would dismiss the application for judicial review with costs.

[13] The assumptions in the Reply that were challenged in whole or in part by the Appellant and the Intervenor were:

…

h) the Resort does about 93% of its business between May to October each year;

i) prior to 2008 the Resort did not have any employees as all workers, including the cleaning and maintenance workers were hired as contractors;

…

q) the Appellant took as much time off as she wanted;

r) the Appellant worked from her own home on most occasions;

…

z) Angelina was required to provide her services at the Resorts (*sic*) location only and could not work from her home;

…

ee) the Appellant and Angelina received remuneration under different terms.

[14] In the within appeal, the evidence of the Appellant was that only 87% – not 93% – of the annual revenue of the resort was produced between May to October each year. With respect to the regularity of pay, the Appellant testified that she wrote herself a pay cheque each month but not always on the same day within a month. However, any delay was not due to any Silverton cash flow problem. Perry stated that she could take time off but only when the necessary work was done and that – often – free time was dictated by the arrival and departure of guests. As for working at home on most occasions during the relevant period, Perry stated that situation prevailed from January to the middle of March but subsequently preparation for the upcoming season required more attendance at the facility itself. Perry was at the resort on April 1 to train the replacement manager – Simpson – and continued to work there until the end of May. The evidence adduced by the Appellant and the Intervenor was that Simpson lived in a cabin on the resort property so there was no need for her to perform her work from any other location. With regard to the Minister's position that Perry and Simpson received remuneration under different terms, the Appellant's response was that when the value of the accommodation was factored into the analysis together with the $12 per hour payment for housekeeping – based on time sheets – the difference was not significant.

[15] It is apparent the Minister was aware that the employment of the Appellant was based on an annual salary of $30,000, paid in 12 equal payments of $2,500. Simpson was paid a base salary of $1,500 per month and was required to record her time and to submit time sheets for housekeeping work. Although there was an estimate of the revenue that could be produced from that activity – as referred to in Horton's letter – Exhibit I-2 – to the Chief of Appeals, there was no evidence to corroborate the amount paid to Simpson under that category. The Appellant testified that when she performed the housekeeping duties, remuneration for that service was incorporated in her annual salary and there was no need to quantify the time spent. The Minister took into account that the Appellant performed services – without remuneration – for the resort which included signing pay cheques for Simpson and for casual workers. That is not disputed by the Appellant. The evidence disclosed that Perry travelled to Nelson on at least 4 occasions to purchase supplies for the resort

and made purchases for her own home at the same time. Each trip occupied one full day. After taking parental leave on May 31, Perry estimated she assisted Simpson between 15 and 20 minutes a day by performing some required task at the resort. Over the course of the next 5 months until Simpson left at the end of October and the resort was closed, that amounted to between 40 and 50 hours of volunteer work. In addition to issuing pay cheques to Simpson and other workers and paying the accounts of trades people and suppliers – as required – Perry prepared and submitted the GST returns and the provincial turns on a monthly basis. There is no concrete evidence that her signing authority for Silverton was based on holding any specific title or office as opposed to being among her many duties as Manager. The Minister took into account that the Appellant's hours were not recorded and that she was able to arrange her hours around her pregnancy and – after giving birth – could work at home or at the resort according to the needs of her newborn daughter. She was free to come and go as she pleased and the majority of the work performed during the relevant period was from her nearby home.

[16] In the case of *Forget v. Canada (Minister of National Revenue – M.N.R.)*, [2003] T.C.J. No. 575; 2003 TCC 733, Campbell, J. found that the Appellant waited to receive her pay until the company could afford to pay and had done so only because she was the spouse of her employer.

[17] In *Samson v. Canada (Minister of National Revenue – M.N.R.)*, [2005] T.C.J. No. 290; 2005 TCC 383, Little, J. dealt with an appeal wherein the Appellant had made 135 bank deposits and prepared and signed a total of 623 cheques during a period she was not on the payor's payroll and had signed a number of invoices. In Justice Little's view, that work was clear evidence that person who was at arm's length with the payor would not have performed activities of that "magnitude and nature" and concluded the Minister was correct in deciding the employment of that Appellant was not insurable.

[18] The work performed by the Appellant in the within appeal following the termination of her employment was not to the same extent as in *Samson* and – unlike the situation in *Forget* – any slight, occasional delay in writing herself a pay cheque was not based on any lack of ability to pay on the part of Silverton.

[19] In the case of *Birkland v. Canada (Minister of National Revenue – M.N.R.)*, [2005] T.C.J. No. 195; 2005 TCC 291, Bowie, J. provided a summary of the state of the jurisprudence and commented as follows at the end of paragraph 4 of his Judgment:

> 4. … 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. 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. 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.

[20] In the case of *Glacier Raft Co. Ltd. v. Canada (Minister of National Revenue – M.N.R.)*, 2003 TCC 559; [2003] T.C.J. No. 450, Bowie, J. heard the appeal by Glacier Raft and three workers from a decision by the Minister that the workers – who were children of the payor's owner – were not at arm's length and therefore not engaged in insurable employment. At paragraphs 8 and 9 of his Judgment, Bowie, J. stated:

> **8** All three individual Appellants agreed with their father that they would be paid a salary of $7,000 for the season, with some amount to be paid during the summer, and the balance at the end. In fact they were all paid $5,000 by a cheque dated August 9, 2000, and the balance of $2,000 by a second cheque at the end of the season. There is no evidence to suggest that this method of payment, rather than regular paycheques on a weekly or monthly basis, is usual in the industry. I accept that there were advantages to Glacier, and also to the three individual Appellants, in the arrangement they made. Glacier, by not having to pay the workers until late in the season, was able to conserve what was probably scarce working capital. Anne and Elizabeth were able to avoid the risk of a poor summer in which their total earnings might have been much less than $7,000. Conceivably, Bridget, too, might have been laid off, or had her hours curtailed, if the volume of business was less than expected. I have not overlooked the fact that the individual Appellants all said that they would have been willing to work for another company on exactly the same terms as they had with Glacier. The question for the Minister, however, was whether Glacier and an arm's length person would likely have entered into a contract in essentially the same terms. The Minister was not satisfied that they would have, and on the evidence before me, I cannot say that she was wrong in that. The appeals must be dismissed.

> **9** I should make it clear that although I am bound to dismiss the appeals, I was impressed with all the witnesses, and in particular with Anne Duquette, as she now is, Elizabeth Murphy, and James Murphy. I have no doubt that Anne and Elizabeth worked as hard as, and probably harder than, the other guides. Nor do I doubt that Mr. Murphy relied heavily on their experience, not only when he bought the company in 1995, but thereafter as well. This is certainly not a case of employment of convenience being created for the benefit of members of the family so that they could take unfair advantage of the employment insurance system. Nevertheless, the terms of the *Act* are reasonably clear, and when related parties enter into employment contracts they must be scrupulous to see that the terms do not differ from those on which the employer employs other workers, or on which the workers could find work with other employers, if they wish the employment to be insurable under the *Act*.

[21] If I had the jurisdiction to decide the within appeal *de novo*, the result could have been different but to vary the decision of the Minister in this instance would be to substitute my own judgment. After having considered all the evidence, the decision of the Minister is still reasonable. Certain facts were considered by the Minister and a subsequent analysis was undertaken of the relevant indicia as required by the legislation. During this process, no unreasonable inferences were drawn in the course of arriving at the assumptions upon which the decision was based. Those assumptions were not invalidated by the evidence adduced on behalf of the Appellant and they remain substantially intact in every material sense.

[22] The decision of the Minister is confirmed.

[23] The appeal is hereby dismissed.

Signed at Sidney, British Columbia this 19th day of May 2010.

"D. W. Rowe"

Rowe D.J.

CITATION:	2010 TCC 266
COURT FILE NO.:	2009-941(EI)
STYLE OF CAUSE:	JULIE PERRY AND M.N.R. AND SILVERTON RESORT LTD.
PLACE OF HEARING:	Nelson, British Columbia
DATE OF HEARING:	April 8, 2010
REASONS FOR JUDGMENT BY:	The Honourable D.W. Rowe, Deputy Judge
DATE OF JUDGMENT:	May 19, 2010

APPEARANCES:

For the Appellant:	The Appellant herself
Counsel for the Respondent:	Matthew W. Turnell
Agent for the Intervenor:	Greg C. Horton

COUNSEL OF RECORD:

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Name:	
Firm:	
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