

Docket: 2013-4159(EI)

BETWEEN:

V.Y.F. EXPRESS INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeals of
V.Y.F. Express Inc. 2013-4160(EI) and Vipro Inc. 2013-4165(EI), on
February 20, 2015, at Montréal, Quebec.

Before: The Honourable Justice Johanne D' Auray

Appearances:

Counsel for the appellant:	Jean-François Brouillard Maxime Bessette, student-at-law
Counsel for the respondent:	Emmanuel Jilwan

JUDGMENT

The appeal under subsection 103(1) of the *Employment Insurance Act* (the Act) is allowed and the decision of the Minister of National Revenue dated August 30, 2013, is vacated, on the basis that Francine Vincent Allard, the worker, was not employed in insurable employment under paragraph 5(1)(a) of the Act, when she was working for the appellant, for the period from January 1, 2012, to February 13, 2013.

Signed at Ottawa, Canada, this 8th day June 2015.

“Johanne D’Auray”

D’Auray J.

Translation certified true
on this 19th day of August

Daniela Guglietta, Translator

Docket: 2013-4160(EI)

BETWEEN:

V.Y.F. EXPRESS INC.,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeals of
V.Y.F. Express Inc. 2013-4159(EI) and Vipro Inc. 2013-4165(EI), on
February 20, 2015, at Montréal, Quebec.

Before: The Honourable Justice Johanne D' Auray

Appearances:

Counsel for the appellant:	Jean-François Brouillard Maxime Bessette, student-at-law
Counsel for the respondent:	Emmanuel Jilwan

JUDGMENT

The appeal under subsection 103(1) of the *Employment Insurance Act* (the Act) is allowed and the decision of the Minister of National Revenue dated August 30, 2013, is vacated, on the basis that Yvon Vincent, the worker, was not employed in insurable employment under paragraph 5(1)(a) of the Act, when he was working for the appellant, for the period from January 1, 2012, to February 13, 2013.

Signed at Ottawa, Canada, this 8th day June 2015.

“Johanne D’Auray”

D’Auray J.

Translation certified true
on this 19th day of August

Daniela Guglietta, Translator

Docket: 2013-4165(EI)

BETWEEN:

VIPRO INC.,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeals of
V.Y.F. Express Inc. 2013-4159(EI) and V.Y.F. Express Inc.
2013-4160(EI), on February 20, 2015, at Montréal, Quebec.

Before: The Honourable Justice Johanne D' Auray

Appearances:

Counsel for the appellant:	Jean-François Brouillard Maxime Bessette, student-at-law
Counsel for the respondent:	Emmanuel Jilwan

JUDGMENT

The appeal under subsection 103(1) of the *Employment Insurance Act* (the Act) is allowed and the decision of the Minister of National Revenue dated August 30, 2013, is vacated, on the basis that Jasmin Allard, the worker, was not employed in insurable employment under paragraph 5(1)(a) of the Act, when he was working for the appellant, for the period from January 1, 2012, to March 6, 2013.

Signed at Ottawa, Canada, this 8th day June 2015.

“Johanne D’ Auray”

D’ Auray J.

Translation certified true
on this 19th day of August

Daniela Guglietta, Translator

Citation: 2015 TCC 139
Date: 20150608
Docket: 2013-4159(EI)
Docket: 2013-4160(EI)

BETWEEN:

V.Y.F. EXPRESS INC.,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

Docket: 2013-4165(EI)

BETWEEN:

VIPRO INC.,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR JUDGMENT

D' Auray J.

Background

[1] These are appeals by V.Y.F. Express Inc. (VYF) and Vipro Inc. (Vipro) from the decisions of the Minister of National Revenue (the Minister) (finding) that Francine Vincent Allard (Francine)¹ and her brother, Yvon Vincent (Yvon) held insurable employment with VYF during the period from January 1, 2012, to

¹ To make the reading of my reasons easier and less burdensome, and to avoid confusion between the workers, I will refer to them by their first names in my reasons.

February 13, 2013, and that Jasmin Allard (Jasmin) held, according to the Minister, insurable employment with Vipro during the period from January 1, 2012, to March 6, 2013.

[2] The cases of VYF and Vipro were heard on common evidence.

[3] The Minister submits that there was a contract of service between VYF and Francine and between VYF and Yvon under paragraph 5(1)(a) of the *Employment Insurance Act* (the Act).

[4] The Minister also submits that there was a contract of service between Vipro and Jasmin under paragraph 5(1)(a) of the Act.

[5] Section 5(1)(a) of the Act reads 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;

[6] Although the employment of Francine, Yvon and Jasmin is excluded under subparagraph 5(2)(i) of the Act in light of the non-arm's length relationship with VYF and Vipro, the Minister argues that in these cases subparagraph 5(3)(b) of the Act applies. According to the Minister, it was reasonable to conclude, having regard to all the circumstances, that Francine, Yvon and Jasmin would have entered into substantially similar contracts of employment if they had been dealing with the employer at arm's length. Subparagraphs 5(2)(i) and 5(3)(b) read as follows:

5(2) Insurable employment does not include

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

5(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.

[Emphasis added.]

[7] VYF and Vipro submit that the employment of Francine, Yvon and Jasmin are excluded from insurable employment under paragraph 5(2)(i) of the Act and that paragraph 5(3)(b) of the Act does not apply. They argue as follows:

- (a) that the Minister failed to consider relevant facts;
- (b) that the Minister misapprehended certain facts by relying on irrelevant, inaccurate or ambiguous factors.

[8] Justice Bowie noted in *Birkland v. Canada (Minister of National Revenue – MRN)*, 2005 TCC 291, [2005] TCJ No. 195, that the wording of paragraph 5(3)(b) has led to some difficulty in interpretation. He described the principles that the Court must apply by referring to *Légaré* and *Denis* of the Federal Court of Appeal. Justice Bowie wrote as follows:

[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 J.J.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 Minister'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).

[9] Upon reviewing all the evidence on file including the testimonies of Francine, Yvon and Jasmin, I am of the view that the Minister's decision is unreasonable in the case at bar. I find that in deciding as he did, the Minister misapprehended the facts and also failed to take into account relevant facts. I am

also of the opinion that if the Minister had not misapprehended the facts and omitted relevant facts, he would not have rendered the decision he did, as that decision is unreasonable, having regard to the circumstances.

Facts

[10] I will first explain the non-arm's-length relationships between the parties involved in the dispute.

- (a) Francine Vincent Allard is Yvon Vincent's sister, Ange-Albert Allard's spouse and Jasmin Allard's mother.
- (b) Yvon Vincent is Francine's brother, Ange-Albert Allard's brother-in-law and Jasmin's uncle.
- (c) Jasmin Allard is Francine and Ange-Albert Allard's son and Yvon's nephew.

[11] Ange-Albert Allard operates Animat, a company that manufactures and sells interlocking rubber mats made from recycled tires.

[12] Animat operates primarily in the agricultural sector. The rubber mats are used to provide comfort to animals, particularly dairy cows.

[13] Ange-Albert Allard approached Yvon about starting up a business as a subcontractor for Animat.

[14] Not wanting to go into business alone, Yvon asked his sister, Francine, to join him. Thus, in 1998, Francine and Yvon founded VYF. They each invested \$5,000. They are the sole directors and each hold 50% of the capital stock of VYF.

[15] Francine used part of her principal residence for the operations of VYF.

[16] In 2000, more space was required and VYF rented the half basement of a residence for its operations.

[17] In the first years of operations of VYF, although Francine worked many hours, she did not receive a salary from VYF. As she explained during her testimony, she could afford not to receive income because the salary of her spouse, Ange-Albert Allard, sufficed to meet their needs. However, Yvon received \$600

per week from VYF. Yvon's salary was based on his financial needs and not on the profits of VYF.

[18] VYF was doing quite well. Thus, in 2002 or 2003, VYF purchased land and built a building for its operations. Francine and Yvon also guaranteed the loans that VYF took out with the Caisse populaire Desjardins for the land purchase and construction of the building.

[19] It was also at the time of the purchase of the land and building that VYF ceased to be a subcontractor for Animat and began selling directly products manufactured by Animat.

[20] For his part, in the early 2000s, Jasmin founded Vipro with his father, Ange-Albert Allard, and another partner. Although Ange-Albert is a shareholder of Vipro, he is not involved in the operations of Vipro.

[21] Vipro recovers chicken residue to turn it into fertilizer intended for sale in the agricultural products sector.

[22] In late 2003, Jasmin's partner passed away. Jasmin was now operating Vipro alone. VYF therefore decided to integrate Vipro into its operations. That said, the two companies continued their operations. The integration was done through the redistribution of the shares of VYF and Vipro, namely:

	VYF	Vipro
Francine Vincent	16.67 %	16.67%
Ange-Albert Allard	16.67 %	16.67%
Yvon Vincent	33.33 %	33.33%
Jasmin Allard	33.33%	33.33 %

[23] According to the testimonies of Francine, Yvon and Jasmin, the shares of VYF and Vipro are divided so that the two young shareholders, Yvon and Jasmin, will each hold 50% of the shares when Francine and Ange-Albert retire.

[24] Francine, Yvon and Jasmin are the directors of VYF and Vipro.

[25] Yvon, Francine and Jasmin were paid based on their financial needs and not on the companies' profits. In that regard, they all testified that they preferred to reinvest in the companies rather than increase their salaries. For them, it is

important that the companies prosper. To that end, they did not pay themselves bonuses or dividends.

[26] During the period in issue, from January 1, 2102, to February 13, 2013, the annual pay was as follows:

Francine	\$72,800
Yvon	\$82,700
Jasmin	\$80,600

[27] During the hearing, Francine, Yvon and Jasmin testified that their pay was the same for a number of years and that as of the date of the hearing, their pay had not changed.

[28] Although Francine and Yvon work for VYF and Vipro, they do not receive pay from Vipro. As for Jasmin, although he works for VYF and Vipro, he does not receive pay from VYF.

[29] Francine is responsible for Human Resources for VYF and Vipro. VYF has approximately 75 employees and Vipro has approximately 16 employees. Francine is also in charge of following up with clients and, where necessary, with the installers.

[30] Yvon is in charge of sales, marketing and distribution for VYF and Vipro. He also performs other tasks where necessary.

[31] Jasmin is responsible for operations and anything related to rubber mats for animals. He also installs mats for animals for VYF. He also continues to manufacture fertilizer as part of the Vipro's operations.

[32] Francine and Yvon both testified that that they work long hours. For example, Francine works from 7 a.m. to 6 p.m. She also works weekends. As she considers herself the owner of VYF and Vipro, she states that she is available at all times.

[33] As for Yvon, he stated that his schedule is variable. He often starts work at 5 a.m. and if there is a loading issue, whether it be in the morning, the evening or at night, he is the one who is called to handle it. He works 50 to 70 hours per week.

[34] Jasmin also stated that his work schedule is variable. He stated that he works until the work has been completed. For instance, the day prior to the hearing he worked from 5 a.m. to midnight.

[35] Francine, Yvon and Jasmin have never received overtime pay from VYF and Vipro, whereas their other employees are paid for overtime worked.

[36] As for vacation leave, Francine, Yvon and Jasmin each have six weeks' vacation. VYF and Vipro close down for two weeks over the Christmas period and during the two weeks of construction holidays in Quebec. They never ask each other for permission to take vacation. They all stated that they have always been available during their vacation. Furthermore, they take advantage of that time to participate in agricultural fairs, as they provide an opportunity for them to meet with their clients and to acquire new clients.

[37] Francine and Jasmin have group insurance coverage provided by the companies. Yvon does not have coverage.

[38] Francine, Yvon and Jasmin can individually sign the cheques of VYF and Vipro without a co-signer.

[39] They also all testified that they make the decisions necessary in their respective areas of work, without having to consult with each other beforehand.

[40] The directors' meetings are more like family councils. They discuss the direction of the companies during meals. They never vote and their discussions and decisions are not confirmed in writing.

[41] Francine, Yvon and Jasmin stated that they never wanted to have a non-member of the immediate family join them. For them, it is important that their businesses remain family businesses.

[42] In 2012, VYF and Vipro purchased a new building. To that end, Francine, Yvon, Ange-Albert and Jasmin guaranteed the loans taken out by VYF and Vipro for approximately two million dollars. They are also responsible for the outstanding balances on the corporate credit cards used by some of the employees of VYF and Vipro.

[43] The Minister relied on the following facts to determine that there was a contract of service between the companies, Francine, Yvon and Jasmin:

- (a) the worker was paid every two weeks, like all the other employees of the appellant;
- (b) the worker's salary was determined by the appellant's shareholders;
- (c) the salary paid by the appellant to the worker is comparable to that offered on the job market for this type of work, according to the information published by Emploi Québec;
- (d) the worker's pay was reasonable and would have been substantially similar if the appellant and the worker had an arm's length relationship;
- (e) the worker worked for the appellant, not only as an employee, but also as a director and shareholder;
- (f) the tasks performed by the worker were required and essential to the appellant's operations;
- (g) as a manager, the worker assumed the responsibilities commonly associated with this type of position;
- (h) the hours worked by the worker were not unreasonable, given the nature of his duties with the appellant;
- (i) the worker had coverage under the appellant's group insurance plan, like all the other employees;
- (j) the worker was employed by the appellant year-round, as required by his activities;
- (k) the expertise and skills acquired by the worker over the years were relevant and similar to those that an arm's length employee would have been required to have to perform the same duties;
- (l) the terms and conditions of employment, the hours of work, and the nature and importance of the worker's work are similar to those that would have prevailed in an arm's length relationship.

[44] Ms. Laroche is the Rulings Officer for the Canada Revenue Agency (the CRA). She reviewed the files of VYF and Vipro. During her testimony, she stated that she spoke with Francine and Jasmin by telephone. She said she asked Francine and Jasmin questions using a pre-determined questionnaire. She noted the answers they provided. As for Yvon, she relied on what Francine and Jasmin had to say to make her decision. Ms. Laroche did not explain why she did not contact Yvon. The questionnaires with the answers written by Ms. Laroche were not filed in evidence.

[45] During her testimony, Ms. Laroche stated that the hours worked by Francine, Yvon and Jasmin appeared reasonable to her given that they worked for their companies.

[46] Ms. Laroche also filed in evidence documents from Emploi Québec that indicated that the average annual income for a full-time Human Resources director was \$58,000 in 2005 in central Quebec and \$74,000 in Quebec as a whole. In that same document it was also reported that a Human Resources director's hourly salary in Quebec in 2010 and 2012 was as follows:

Hourly salary in Quebec (2010-2012)	
First quartile (or the lower half)	between \$24.00 and \$25.99
Median	between \$32.00 and \$33.99
Third quartile (or the upper half)	between \$44.00 and \$45.99

[47] Again according to documents from Emploi Québec filed in evidence by Ms. Laroche, the average annual income for a full-time director of sales, marketing and advertising was \$65,000 in 2005 in central Quebec and \$76,000 in Quebec as a whole. According to the document by Emploi Québec, the hourly salary for a director of sales and marketing in Quebec in 2010 and 2012 was as follows:

Hourly salary in Quebec (2010-2012)	
First quartile (or the lower half)	between \$22.00 and \$23.99
Median	between \$30.00 and \$31.99
Third quartile (or the upper half)	between \$42.00 and \$43.99

[48] Ms. Laroche stated that she did not analyze any factors other than pay, working conditions, duration of employment and whether the employment was integrated into the business, i.e., the importance of the work performed.

[49] According to Ms. Laroche, in light of the criteria examined, it was reasonable for the Minister to conclude, having regard to all the circumstances, that VYF and Francine, VYF and Yvon, and Vipro and Jasmin would have entered into substantially similar contracts of employment if they had been dealing with the employer at arm's length.

Analysis

[50] In my opinion, the Minister's decision is not reasonable, as he misapprehended and omitted material facts in these cases.

[51] First, the respondent failed to take into account that Francine, Yvon and Jasmin and VYF and Vipro are one in the same. The evidence reveals that Francine, Yvon and Jasmin are the directing minds of the companies. The companies' decisions are made based on their family's economic interests. In addition, their economic interests are inextricably linked to those of the companies. To that end, Francine, Yvon and Jasmin personally guaranteed the loans taken out by VYF and Vipro for approximately two million dollars. They also guaranteed the outstanding balances on the corporate credit cards used by the employees of VYF and Vipro.

[52] In my view, had they been dealing with the companies at arm's length, Francine, Yvon and Jasmin would not take such financial risks. For instance, Francine's financial risk is very high knowing that she only holds 16.67% of the shares in the companies. Furthermore, Francine, Yvon and Jasmin would not be as invested in the companies by working countless hours. They would not have therefore entered into substantially similar contracts of employment if they had been dealing with the companies at arm's length.

[53] The companies are managed by Francine, Yvon and Jasmin as if they are the owners of the company's assets. They have a common vision, the prosperity of the companies so as to ensure that when Francine retires, her shares and the shares of her spouse Ange-Albert Allard will be distributed between Yvon and Jasmin. The companies' decisions are made orally during family meals. The long hours worked, the ongoing investment in the companies and the financial risks would not be borne by Francine, Yvon and Jasmin if they had been dealing with the companies at arm's length.

[54] Since the incorporation of VYF in 1998, the pay has been based on Francine and Yvon's financial needs. This approach continued so that the company could prosper. It is clear that had Francine, Yvon and Jasmin been dealing with the companies at arm's length, they would not have agreed to salaries that were not market-based.

[55] I am also of the view that it was not reasonable for the Minister to conclude that Francine, Yvon and Jasmin should agree to be available 24/7, to work 60 to 70 hours per week and to respond to any emergency at all times without compensation for overtime.

[56] Although the documents from Emploi Québec filed by the respondent have limited probative value, as the bases for those documents are unknown, it is

interesting to note that the average annual income disclosed by those documents for a Human Resources director in 2005 was between \$58,000 and \$74,000 per year. According to that same document, however, a Human Resources director's hourly salary is from \$44 to \$45.99 in 2012, the year at issue. If we were to assume that Francine worked 50 hours per week in 2012, based on said document her salary should have been between \$114,400 and \$119,548. If the same calculation is made for a 60-hour work week, Francine's salary should have been between \$137,280 and \$143,468, which is significantly higher than the salary of \$72,800 received by Francine in 2012.²

[57] Again according to the documents from Emploi Québec, a director of sales, marketing and advertising in 2005 earned an average annual salary of \$65,000 in central Quebec and \$76,000 in Quebec as a whole. However, the document indicates that the hourly salary in the third quartile was between \$42.00 and \$43.99 in 2012. Based on that document, Yvon's salary in 2012 should have been between \$109,200 and \$114,348 for 50 hours and between \$131,040 and \$137,228 for 60 hours, which is also higher than what Yvon received, \$82,700.³

[58] Moreover, in that regard, Francine, Yvon and Jasmin testified that they would not accept to work for similar pay and working conditions for another employer. They also stated that they would not agree to having someone who is not part of the family join the companies.

[59] The Minister also concluded that there was a relationship of subordination between VYF and Francine, VYF and Yvon, and Vipro and Jasmin. I am of the view that the evidence showed the opposite. Francine, Yvon and Jasmin make decisions in their respective areas without consulting the other directors. The authorization of the other directors is not required with respect to their leave, work schedules and vacation. Obviously, they notified each other in advance of their leave, which is, in my opinion, a matter of courtesy and work organization, but this does not create, however, a relationship of subordination.

[60] In light of my conclusions, I do not need to decide the specific objective of paragraph 3(2)(i) of the Act, but I would like to adopt the comments made in a number of decisions regarding paragraph 3(2)(i) of the Act.

² Even if I were to use the median hourly rate of \$32.00 and the hourly rate of \$33.99, the amount Francine received for her salary is below that of the industry standard.

³ Even if I were to use the median hourly rate, the amount Yvon received for his salary is below that of the industry standard.

[61] To this effect, I would refer to the comments of Justice Woods in *C&B Woodcraft Ltd v. The Minister of National Revenue*, 2004 TCC 477. She wrote the following at paragraphs 7 to 13 of her Reasons for Judgment:

[7] The statutory scheme for determining whether a person related to the employer is engaged in insurable employment is not easy to decipher. One question that has arisen is whether the Minister's decision making power under these sections is final and what role the Tax Court has in reviewing these decisions. Another question that has received less attention is how the legislation applies to a person who does not wish to be within the employment insurance scheme. I would make a few comments about this question before considering the facts of this particular case.

[8] If paragraphs 5(2)(i) and (3)(b) are read literally, a person who is related to the employer is deemed not to be insurable, the employee and employer are not required to pay premiums and the employee is not entitled to benefits - unless the Minister is satisfied that the employment terms are arm's length. Typically the Minister makes this determination when a person makes an application for employment insurance benefits. However, in this case, the Minister made the determination in the context of the requirement to pay premiums. Does paragraph 5(3)(b) contemplate that the Minister would make this kind of determination?

[9] To date this court has accepted, albeit reluctantly, that the Minister has the power to make a determination under paragraph 5(3)(b) to require premiums. The statute been considered to be broad enough as a matter of strict construction to give the Minister this power: see *Hoobanoff Logging Ltd. v. M.N.R.*, [1999] T.C.J. 856 (T.C.C.). The following is from Deputy Judge Porter's decision:

I am of the view that the law enables him to do that in the appropriate circumstances, but that such is hardly consistent with the intent of the amendments made to the *Unemployment Insurance Act* in 1990 when this discretion was first introduced. ...

Nonetheless, as a matter of strict interpretation of the law, I am satisfied that the legal capacity for the Minister to do this exists.

(Paragraphs 11 and 12)

[10] The legislative history suggests that paragraph 5(3)(b) was enacted as a relieving measure so that persons would not be denied employment insurance benefits unless the denial could be justified on a basis other than the relationship between the parties. Prior to the enactment of paragraph 5(3)(b) in 1990, a person who was employed by a spouse was simply excluded from the employment insurance scheme. In the case of *Canada v. Druken*, [1989] 2 F.C. 24 (F.C.A.), this exclusion was held to be discriminatory and contrary to the *Human Rights Act*. As a result, the provision was struck down and held to be unenforceable. The *Druken* decision led to an amendment to the legislation shortly thereafter. The new provision, now in paragraph 5(3)(b), ensures that a person will not be denied

employment insurance benefits if the employment terms are essentially arm's length terms.

[11] When one looks at the legislative history and the statutory provisions together, I would have thought that the scheme was that persons related to their employer would not be eligible for employment insurance unless they could satisfy the Minister that they should qualify based on the arm's length test that is provided in paragraph 5(3)(b). If this is the statutory scheme, then under the so-called modern approach to statutory construction, paragraphs 5(2)(i) and 5(3)(b) should not be interpreted in a manner that Parliament did not intend. As a result I have some doubt that paragraph 5(3)(b) gives the Minister the power to mandate that someone who is related to the employer should pay employment insurance premiums.

[12] Not only is this Ministerial power not clear on the words of the statute, but the fact that the power is partly discretionary makes it quite unfair in a self-assessing system. Persons must decide whether to pay premiums and risk that the Minister will refuse benefits. On the other hand, if they do not pay premiums, the Minister can require premiums on a retroactive basis.

[13] For these reasons, it is not clear to me that Parliament intended the Minister to have the type of power that was exercised in this case. It is not necessary that I make a finding on this, however, because of the conclusion that I have reached on the particular facts of this case.

Disposition

[62] Consequently, the decisions of the Minister that the employment of Francine Vincent Allard, Yvon Vincent and Jasmin llard insurable employment are vacated. I declare that their employment is not insurable employment.

[63] The appeals are allowed.

Signed at Ottawa, Canada, this 8th day June 2015.

“Johanne D’Auray”

D’Auray J.

Translation certified true
on this 19th day of August 2015

Daniela Guglietta, Translator

CITATION: 2015 TCC 139

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2013-4165(EI)

STYLE OF CAUSE: V.Y.F. EXPRESS INC. v. THE MINISTER
OF NATIONAL REVENUE

VIPRO INC. v. THE MINISTER OF
NATIONAL REVENUE

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: February 20, 2015

REASONS FOR JUDGMENT BY: The Honourable Justice Johanne D’Auray

DATE OF JUDGMENT: June 8, 2015

APPEARANCES:

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