Docket: 2014-3840(EI)

BETWEEN:

NAZMA HABIBA,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on May 5, 2015, at Montréal, Quebec.

Before: The Honourable Justice Dominique Lafleur

Appearances:

Counsel for the appellant:	Julien L'Abbée Lacas
Counsel for the respondent:	Marie-France Camiré

JUDGMENT

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

Signed at Ottawa, Canada, this 23rd day of June 2015.

"Dominique Lafleur"

Lafleur J.

Translation certified true
on this 31st day of July 2015

Daniela Guglietta, Translator

Citation: 2015 TCC 159
Date: 20150623
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NAZMA HABIBA,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

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[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR JUDGMENT

Lafleur J.

[1] The appellant appeals from the decision of the Minister of National Revenue (the Minister) dated August 5, 2014, that the appellant was not engaged in insurable employment with MBJC REPUBLIQUE QUÉBEC INC. (the payer) within the meaning of the *Employment Insurance Act*, S.C. 1996, c. 23, (the Act) during the period from January 11, 2010, to December 24, 2010 (the period in question). The Minister determined that the conditions for the existence of a contract of service were not met, and therefore, there was no employer-employee relationship between the payer and the appellant.

The facts

[2] First, it should be noted that an order to exclude witnesses was issued at the hearing.

[3] Five witnesses testified in this matter in the following order:

(i) The appellant's witnesses: the appellant herself and Mohammad Shajahan, the appellant's husband; and

(ii) The respondent's witnesses: Chadi El-Hajj (Mr. Chadi), cook and manager of the payer's restaurant located on St-Laurent Boulevard in Montréal (the restaurant) during 2010, Diane Dubé, an investigator with Service Canada, and Patrick Bonami, an appeals officer from the Canada Revenue Agency (the CRA).

[4] The appellant immigrated to Quebec approximately 23 years ago. She does not speak French, and her understanding of the English language, both spoken and written, appears limited; an interpreter assisted her during her examination and cross-examination.

[5] When her husband's employment was terminated on January 7, 2010, the appellant claims that she contacted Mr. Chadi to try to obain employment; she added that she knew Mr. Chadi because her husband had worked at the restaurant for a number of years. Agreeing that she had no experience or training in the restaurant business, the appellant maintained that she did not negotiate the working conditions. The appellant submitted that Mr. Chadi hired her because she was more versatile than her spouse. She therefore began to work at the restaurant on January 11, 2010. Her wages were the same as those of her husband. The appellant described her work as being multifaceted in that she performed various tasks, such as cleaning and dishwashing, and preparing food to assist the head cook.

[6] According to the appellant, her employment at the restaurant ended on December 24, 2010, owing to a shortage of work. The Record of Employment completed by the payer and her husband's testimony confirm the appellant's claims.

[7] The appellant indicated that she did not obtain severance pay, but stated, however, that she applied for and received Employment Insurance benefits.

[8] At the hearing, counsel for the appellant filed copies of the pay stubs in a bundle issued by the payer in the name of the appellant and pay stubs in a bundle issued by Ceridian (Exhibits A-1 and A-2, respectively). A review of Exhibit A-2 shows that there is reference to "Cook" or "French Cook." Said reference was not discussed at the hearing but I will come back to that.

[9] The appellant stated that her work schedule varied according to how busy the restaurant was: she worked four days per week, from seven to eight hours per day, for wages of $12 to $13 per hour, and her normal work day was from 4:00

p.m. to 11:00 p.m. or midnight. The appellant indicated that she sometimes worked, although rarely, in the morning.

[10] However, in the document entitled "Declaration to the Commission" from Mohammad Shajahan, filed as Exhibit I-4 ([TRANSLATION] "statutory declaration from the spouse") and signed by him and Ms. Dubé, Mr. Shajahan stated that his wife usually worked during the day, from 10:00 a.m. to 3:00 p.m. or 4:00 p.m. According to Mr. Shajahan, these discrepancies in the appellant's work schedule can be explained by the fact that, although he understands English, he has difficulty reading this language; he acknowledges that Ms. Dubé read the content of that document to him before he signed it.

[11] The appellant indicated that, during the period in question, her supervisor was Mr. Chadi; she had to contact him if she was going to be late or absent.

[12] The appellant stated that, during the period in question, she worked with a man by the name of Zaman Moreaules whom she refers to as Babou. Babou was the head cook at the restaurant.

[13] According to the appellant's testimony, her husband dropped her off at work in the morning and she took the bus home. During the period in question, she lived in Châteauguay, and the restaurant was located on St-Laurent Boulevard, in Montréal. However, according to the statutory declaration from the appellant's husband, his wife took the bus to work as he had to take care of the children in the morning. At the hearing, he stated that he was unsure about the veracity of that last statement and that, sometimes, he drove the appellant to the restaurant.

[14] The appellant's husband mentioned at the hearing that, during the period in question, he took care of the house and their three children (aged 4, 12 and 16, respectively, at the time) and did not work at the restaurant, except on occasion to replace his wife.

[15] During his testimony, the appellant's husband stated that has been working in the restaurant business for 23 years. He was hired in 2004 as the restaurant's head cook by Mr. Chadi as he had experience as a head cook. He worked at the restaurant from 2004 to January 7, 2010 (as confirmed by Exhibit A-6—Record of Employment) (1st period) and from December 26, 2010, to October 2011 (2nd period). He was unemployed between those two periods. He usually worked 35 to 37 hours per week; he started work at 4:00 p.m. During that time, his wife stayed at home. He lost his employment on January 7, 2010, because the restaurant

no longer needed a head cook (see document filed as Exhibit I-6—"Application for Employment Insurance for Mr. Shajahan"). He stated that he did not wish to perform the type of work required by the payer, that is, dishwashing, cleaning, and preparing food, as he was a head cook. He added that he did not work at the restaurant during the period from January 7, 2010, to December 26, 2010, the date that he resumed his work as head cook at the restaurant.

[16] According to the appellant, Mr. Chadi phoned her husband on December 24, 2010, to offer him employment as a head cook, and she pointed out that the restaurant no longer required her services but rather the services of a head cook.

[17] The respondent filed as Exhibit I-1 a copy of the "Declaration to the Commission" from the appellant ([TRANSLATION] "statutory declaration from the appellant ") signed by the appellant and by Ms. Dubé. The appellant asserts that the document is riddled with errors, that no one read this document to her before she signed it and that she did not have a clear understanding of the questions posed by Ms. Dubé. However, Ms. Dubé confirmed that she usually has the claimants reread the statutory declaration before they sign it but did not recall, in this particular case, whether the appellant read the document or whether Ms. Dubé read it for her. Ms. Dubé stated that an interpreter from Immigration Canada was present when she called the persons in this case. Ms. Dubé had no recollection of the appellant having difficulty understanding English.

[18] The appellant noted errors in the statutory declaration from the appellant. Thus: (i) it is indicated that she worked five days per week when she only worked four days per week; (ii) it is indicated that she was off on Wednesdays and Mondays—but he was also off on Sundays; (iii) it is indicated that she stated as follows: "I use to punch when I would come in; it's a machine and I punch my card in the machine")—but that is incorrect because she did not clearly understand the questions posed; (iv) it is also indicated that the appellant cooked but that is also incorrect because she thought she was answering the question about what was on the restaurant's menu; (v) it is indicated that the locker room is located in the restaurant's basement, next to the refrigerators and the storage room—but the restaurant does not have a basement.

[19] Ms. Dubé, who visited the restaurant, stated that the restaurant's employees used a computer to keep track of their hours of work. There were no cards to punch; rather, each employee recorded his or her time on the computer using an employee number.

[20] Also, in the statutory declaration from the appellant, it is indicated that Babou worked with the appellant at all times. However, on cross-examination, the appellant admitted that Babou was not present during the first months of the period in question, but he was afterwards. The respondent filed, as Exhibit I-11, Babou's Option C for 2010 (details of earnings reported by a person in the CRA's databases); no employment income is indicated in said document; Babou's sole income for 2010 is employment insurance benefits (line 119).

[21] The appellant also acknowledged having met with two women at the CRA's Tax Services Office in Montréal (the TSO), but she does not recall the exact date of the meeting. An interpreter was present at that meeting. The questions posed to the appellant and the answers she provided at the meeting can be read and are documented in Exhibit I-9 filed at the hearing. The information obtained during the meeting is in many respects inconsistent with that described in the statutory declaration from the appellant. For instance, it is stated in Exhibit I-9 that the appellant recorded her time on the computer but that she could not recall her employee number, whereas, in the statutory declaration from the appellant, she mentioned that "I use to punch when I would come in; it's a machine and I punch my card in the machine;" it is stated in Exhibit I-9 that she claimed to have worked in the morning, whereas, in the statutory declaration from the appellant, she said she worked in the afternoon; after stating, in the statutory declaration from the appellant, that she used the locker room located in the restaurant's basement, the appellant acknowledged, in Exhibit I-9, that the restaurant did not have a basement and that the term she was thinking of was [TRANSLATION] "ground floor."

[22] It is important to note the presence of an interpreter during the appellant's meeting with the TSO, which should be noted because the appellant stated on several occasions during her examination and cross-examination at the hearing that some answers were incorrect because she did not understand English well.

[23] The appellant was questioned about the "Questionnaire for a worker," attached to the CRA letter dated February 24, 2014, addressed to the appellant and filed as Exhibit I-2 at the hearing. The appellant claims that her daughter helped her answer the questions. On the questionnaire, she wrote that her wages were $12.75 per hour and that said amount was based on her work experience. However, the appellant admitted that she had no work experience and added that the answer is not very accurate because anyone can do the type of work she was doing. In addition, it was stated that the appellant's duties included cleaning, dishwashing and preparing food.

[24] The appellant's husband was also questioned about the "Questionnaire for a worker," attached to the CRA letter dated February 24, 2014, addressed to him and filed as Exhibit I-5 at the hearing. Mr. Shajahan acknowledged that his wages were $12.75 per hour and that his wages were based on his experience. He stated to the Court that one of his friends wrote the answers to the various questions. After counsel for the respondent showed him Exhibit I-2, which, according to the appellant, was filled out by her daughter, he admitted that the handwritings were similar.

[25] The respondent filed the appellant's Option C (details of earnings reported by a person in the CRA's databases) for 1993 to 2014 as Exhibit I-10; that document indicates that the appellant's only employment earnings during those years are those obtained from the payer during the period in question.

[26] The respondent filed as Exhibit I-8 a document that is a copy of the report on the interviews conducted by Ms. Dubé with Mr. Chadi. Mr. Chadi recognized having had those intereviews with Ms. Dubé.

[27] The first interview, which was held at Mr. Chadi's place of business, was very brief given the lack of confidentiality.

[28] The second interview was carried out by telephone. According to the interview report, Mr. Chadi answered the question as to whether the appellant had worked for him as follows: [TRANSLATION] "She received her husband's paycheques but it was her husband who worked. He never stopped working." He stated in examination at the hearing that he did not recall saying that to Ms. Dubé.

[29] Moreover, according to that interview report, Mr. Chadi denied having prepared fake Records of Employment and stated that all the employees had nicknames and that he took the Social Insurance Numbers that the employees gave him to prepare the Records of Employment. Also, in this report, Mr. Chadi mentioned that his wife, Sandra Saad, who prepared the Records of Employment, used the information provided by the employees and that [TRANSLATION] "if the head cook gave him his wife's Social Insurance Number, the paycheques were in the wife's name."

[30] On cross-examination, Mr. Chadi confirmed that the appellant had worked at the restaurant in 2010 and that she performed a number of tasks, such as cleaning, washing the dishes, and preparing food for the head cook. He confirmed that he was the appellant's supervisor and that she obtained her position through him. He

stated that it is difficult to find workers in the restaurant business and that she filled another person's position. He also recognized that the appellant's husband had worked at the restaurant for a number of years; he only stopped working once, for approximately one year. He explained to the Court that Mr. Shajahan had lost his employment in January 2010 owing to the business fluctuations in the restaurant industry. He also added that is also why the appellant had to quit her employment in December 2010.

[31] Mr. Bonami, appeals officer for the CRA, explained that he reviewed the appellant's file since there were seven files pertaining to the same employer subject to a tip-off and that he had to review the CRA's decisions regarding the insurability of employment under the Act. He concluded that there was no contract of service between the appellant and the payer during the period in question.

[32] The appellant's Record of Employment dated December 21, 2010, filed as Exhibit I-3 and signed by Mr. Chadi, indicates that she worked 1,190 hours; Mr. Bonami confirmed that 910 hours are required to qualify for Employment Insurance benefits. Another of the appellant's Records of Employment, dated January 19, 2011, filed as Exhibit I-13 and signed by Sandra Saad (Mr. Chadi's wife) indicates that the appellant worked 481 hours between September 20, 2010, and December 24, 2010. Mr. Bonami could not understand why there were two records for the same period.

[33] Mr. Bonami added in his examination that he contacted the appellant's husband by telephone on April 25, 2014, although the appellant's husband has no recollection of having had a telephone interview with him. In that interview, Mr. Bonami reported that the appellant's husband told him that he did not experience a work interruption between 2004 and 2011, except for a short period in 2006.

[34] Mr. Bonami also had a telephone interview with the appellant, along with the Appeals Division Chief, who acted as her interpreter as she is originally from Bangladesh like the appellant; the purpose of the interview was to confirm the facts reported by the decisions officers (Exhibit I-9) so as to allow Mr. Bonami to decide whether the appellant held insurable employment under the Act.

The parties' positions

[35] The appellant states that she was an employee at the payer's restaurant during the period in question.

[36] The respondent submits that the appellant never worked at the payer's restaurant and that she received her husband's wages, as he worked at the restaurant during the period in question as a head cook.

Analysis

[37] Because the facts in this case took place in Quebec, the situation must be analyzed in light of the private law applicable in Quebec.

[38] "Insurable employment" is expressly defined in section 5 of the Act:

> 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;
>
> (*b*) employment in Canada as described in paragraph (*a*) by Her Majesty in right of Canada;
>
> (*c*) service in the Canadian Forces or in a police force;
>
> (*d*) employment included by regulations made under subsection (4) or (5); and
>
> (*e*) employment in Canada of an individual as the sponsor or co-ordinator of an employment benefits project.
>
> Excluded employment
>
> (2) Insurable employment does not include
>
> (*a*) employment of a casual nature other than for the purpose of the employer's trade or business;
>
> (*b*) the employment of a person by a corporation if the person controls more than 40% of the voting shares of the corporation;
>
> (*c*) employment in Canada by Her Majesty in right of a province;
>
> (*d*) employment in Canada by the government of a country other than Canada or of any political subdivision of the other country;

> (*e*) employment in Canada by an international organization;
>
> (*f*) employment in Canada under an exchange program if the employment is not remunerated by an employer that is resident in Canada;
>
> (*g*) employment that constitutes an exchange of work or services;
>
> (*h*) employment excluded by regulations made under subsection (6); and
>
> (*i*) employment if the employer and employee are not dealing with each other at arm's length.

[39] Nothing in the Act defines what constitutes a "contract of service or apprenticeship."

[40] In *NCJ Educational Services Limited v. Canada (National Revenue)*, 2009 FCA 131, Justice Desjardins of the Federal Court of Appeal stated:

> [49] Since paragraph 5(1)(*a*) the *Employment Insurance Act* does not provide the definition of a contract of services, one must refer to the principle of complementarity reflected in section 8.1 of the *Interpretation Act*, R.S.C. 1985, c. I-21, which teaches us that the criteria set out in the *Civil Code of Québec* must be applied to determine whether a specific set of facts gives rise to a contract of employment.

[41] Section 8.1 of the *Interpretation Act*, R.S.C. 1985, c. I-2, provides as follows:

> 8.1 Both the common law and the civil law are equally authoritative and recognized sources of the law of property and civil rights in Canada and, unless otherwise provided by law, if in interpreting an enactment it is necessary to refer to a province's rules, principles or concepts forming part of the law of property and civil rights, reference must be made to the rules, principles and concepts in force in the province at the time the enactment is being applied.

[42] Thus, we must consider the provisions of the *Civil Code of Québec* (CCQ) to determine the meaning of the expression "contract of service or apprenticeship." The relevant provisions read as follows:

> 1378. A contract is an assignment of wills by which one or several persons obligate themselves to one or several other persons to perform a prestation.

> Contracts may be divided into contracts of adhesion and contracts by mutual agreement, synallagmatic and unilateral contracts, onerous and gratuitous contracts, commutative and aleatory contracts, and contracts of instantaneous performance or of successive performance; they may also be consumer contracts.
>
> . . .
>
> 1425. The common intention of the parties rather than adherence to the literal meaning of the words shall be sought in interpreting a contract.
>
> 1426. In interpreting a contract, the nature of the contract, the circumstances in which it was formed, the interpretation which has already been given to it by the parties or which it may have received, and usage, are all taken into account.
>
> . . .
>
> 2085. A contract of employment is a contract by which a person, the employee, undertakes for a limited period to do work for remuneration, according to the instructions and under the direction or control of another person, the employer.
>
> 2086. A contract of employment is for a fixed term or an indeterminate term.

[43] Thus, in order for there to be a contract of service within the meaning of the Act (or contract of employment within the meaning of CCQ), the following three elements must be present (see *9041-6868 Québec Inc. v. M.R.N.*, 2005 FCA 334, para. 11), namely:

i. The performance of work;

ii. Remuneration; and

iii. A relationship of subordination.

[44] As taught by the Federal Court of Appeal in *9041-6868 Québec Inc. v. MRN*, *supra*, control is the determining factor in such a relationship:

> [12] It is worth noting that in Quebec civil law, the definition of a contract of employment itself stresses "direction or control" (art. 2085 C.C.Q.), which makes control the actual purpose of the exercise and therefore much more than a mere indicator of organization. . . .

[45] In *Grimard v. Canada*, 2009 FCA 47, the Federal Court of Appeal affirmed this principle and invited the Courts to be guided by the criteria set out in the

common law in analyzing the legal nature of the work relationship, regardless of whether they must make determinations under the Quebec civil law system:

> [37] This excerpt mentions the notion of control over the performance of work, which is also part of the common law criteria. The difference is that, in Quebec civil law, the notion of control is more than a mere criterion as it is in common law. It is an essential characteristic of a contract of employment: see *D&J Driveway*, *supra*, at paragraph 16; and *9041-6868 Québec Inc. v. Canada (Minister of National Revenue)*, 2005 FCA 334.
>
> . . .
>
> [43] In short, in my opinion there is no antinomy between the principles of Quebec civil law and the so-called common law criteria used to characterize the legal nature of a work relationship between two parties. In determining legal subordination, that is to say, the control over work that is required under Quebec civil law for a contract of employment to exist, a court does not err in taking into consideration as indicators of supervision the other criteria used under the common law, that is to say, the ownership of the tools, the chance of profit, the risk of loss, and integration into the business.

[46] Finally, as described by Justice Mainville in *1392644 Ontario Inc. (Connor Homes) v. Canada (National Revenue)*, 2013 FCA 85, a two-step test must be used to make this determination:

> 1 — The subjective intent of each party to the relationship must be ascertained. This can be determined either by the written contractual relationship the parties have entered into or by the actual behaviour of each party;
>
> 2 — Ascertain whether an objective reality sustains the subjective intent of the parties—the question being whether the facts are consistent with the parties' expressed intention. It is therefore necessary to refer to the tests developed by the case law, namely, control, ownership of tools, chance of profit and risk of loss, and integration in the payer's business.

[47] In the case at bar, it must be determined whether the appellant performed work on behalf of the payer. Therefore, my role involves verifying whether the evidence showed, on a balance of probabilities, that the appellant performed work at the restaurant during the period in question. If I find that the appellant did not perform work at the restaurant, the two other criteria for determining whether a contract of employment exists, remuneration and control, will be irrelevant as a

contract of employment cannot exist in the absence of one of its determining criteria.

[48] The testimonies of the appellant and her husband, Mr. Shajahan, have not persuaded me that the appellant performed work at the restaurant on behalf of the payer during the period in question. There are too many contradictions or errors, according to the appellant, in the various documents signed by the appellant and her husband during the years involved in this case to satisfy me that there was a contract of employment between the appellant and the payer. Furthermore, I am persuaded that all of these contradictions and errors are not the result of language issues, as the evidence showed that interpreters assisted the appellant at all stages of this lengthy process. The appellant's husband, for his part, maintained that he understood English but had difficulty reading it. Thus, the appellant and her husband cannot attribute all these contradictions or errors to their difficulty with English.

[49] I will now review these contradictions or errors and the testimonies supporting my conclusion that the appellant did not perform work at the restaurant during the period in question.

[50] First, the appellant claimed that she worked with Babou every day (see the statutory declaration from the appellant). However, the evidence showed that Babou's sole income for 2010 was Employment Insurance benefits (Babou's Option C filed as Exhibit I-11). In addition, after having learned that Babou did not work in 2010, the appellant changed her version of the facts and added that, while Babou was not present during the first few months of the period in question, he was present for the remainder of that period. Also, Babou did not testify at the hearing. If what the appellant says is true, Babou's testimony would have certainly supported the appellant's position. In my view, the assumption must be made that Babou's testimony would have been unfavourable to the appellant (*Lévesque v. Comeau*, [1970] S.C.R. 1010).

[51] Second, the evidence concerning the appellant's work schedule is contradictory. First, in the statutory declaration from the appellant, it is stated that she worked from 5:00 p.m. to 11:00 p.m. or midnight; during the meeting at the TSO, the appellant claimed that she worked sometimes in the morning and sometimes in the evening; however, in the statutory declaration from the spouse, Mr. Shajahan stated that the appellant worked during the day, from 10:00 a.m. to 3:00-4:00 p.m. At the hearing, the appellant stated that she normally worked from

4:00 p.m. to 11:00 p.m. or midnight and that she sometimes worked in the morning, but rarely.

[52] Third, the manner in which the appellant's hours of work were recorded was the subject of differing statements. Initially, in the statutory declaration from the appellant, the appellant stated as follows: "I use to punch when I would come in; it's a machine and I punch my card in the machine;" however, Ms. Dubé looked at the restaurant's premises and stated before the Court that rather, it was a computer that was used to record the employees work time; there were no cards to punch, and an employee number was used instead. During the meeting at the TSO, the appellant confirmed that a computer was used, and not a punch clock machine. Again, the appellant changed her version of the facts.

[53] Fourth, the appellant indicated in the statutory declaration from the appellant that she used the locker room in the restaurant's basement. However, during the meeting at the TSO, she admitted that there was no basement at the restaurant.

[54] Fifth, with respect to her commute to work, the appellant initially claimed that she took the bus and the subway to get to work (see the statutory declaration from the appellant). At the hearing, the appellant mentioned that her husband drove her to work and that she took the bus home. Also, the appellant's husband stated, in the statutory declaration from the spouse, that the appellant took the bus to work as he had to take care of the children in the morning; it must be borne in mind that Mr. Shajahan indicated that his wife worked in the morning.

[55] Sixth, there are contradictions in the evidence regarding the tasks performed by the appellant. In the statutory declaration from the appellant, it is mentioned that the appellant cooked. However, at the hearing, the appellant testified that it was a mistake and that she did not cook but rather performed tasks such as cleaning, dishwashing and preparing food. The appellant also mentioned this in the "Questionnaire for a worker" (Exhibit I-2).

[56] Seventh, with respect to her wages, the appellant testified that her wages were the same as those of her spouse. I think it doubtful that a restaurant employee, who does the cleaning and dishwashing, and who assists the head cook, would be paid the same salary as the head cook himself; also, the appellant mentioned in the "Questionnaire for a worker" (Exhibit I-2) that the wages were based on her experience. However, the appellant admitted at the hearing that she did not have experience in this area.

[57] Eighth, I note the similarity between the handwritings in the documents "Questionnaire for a worker" of the appellant (Exhibit I-2) and her husband (Exhibit I-5). The appellant claimed at the hearing that her daughter helped her write the answers, whereas the appellant's husband claimed that a friend helped him complete the document. These contradictory answers give me reason to doubt the veracity of the testimonies of the appellant and her husband.

[58] Ninth, I have difficulty believing Mr. Chadi when he claims that he does not recall having told Ms. Dubé (interview report filed as Exhibit I-8) [TRANSLATION]: "She received her husband's paycheques but it was her husband who worked. He never stopped working." In that same report, Mr. Chadi mentioned that all the employees had nicknames and that he used the Social Insurance Numbers that the employees gave him to prepare the Records of Employment. He also added that, if the head cook gave him his wife's Social Insurance Number, the paycheques were in the wife's name. This way of managing the payroll and ensuing obligations shows that the payer had little regard in fulfilling his legal duties as an employer. Thus, it is not enough that the Records of Employment or paycheques are in the appellant's name to justify the employment relationship between the appellant and the payer. This leads me to discuss Exhibit A-2, which contains copies, in a bundle, of pay stubs in the appellant's name that read "Cook" or "French Cook." As I stated earlier, this reference was not discussed at the hearing. However, can it not be inferred from that document that the appellant was in fact receiving her husband's salary for tasks that her husband continued to perform at the restaurant as head cook? I believe the answer to this question could be "yes."

[59] Tenth, I wish to draw attention to the interview in which Mr. Shajahan, the appellant's husband, told Mr. Bonami that he worked without interruption between 2004 and 2011, except for a short period in 2006, although Mr. Shajahan claimed, however, that he stayed at home to take care of the children while his wife was supposedly working at the restaurant during the period in question. Although Mr. Bonami's statements were not corroborated by the appellant's husband, I have no reason not to believe Mr. Bonami, having considered all of the testimony and documents submitted at the hearing.

[60] Eleventh, one of the factors to be considered in addressing the question in issue is the appellant's employment history, before and after the period in question. The evidence showed that the appellant's sole earnings from employment for 1993 to 2014 were paid by the payer during the period in question (reflected in the appellant's Option C for 1993 to 2014 filed as Exhibit I-10). The appellant did not receive employment earnings before or after the period in question.

[61] Before concluding, I would like to address the argument made by counsel for the appellant, who conceded that there was a conflict of interest when Mr. Bonami's supervisor acted as an interpreter during the telephone interview with the appellant intended to confirm the facts that the CRA officers relied upon to conclude that there was no employer-employee relationship between the appellant and the payer. In my view, this argument has little weight in light of all the contradictions raised in the various documents submitted at the hearing and the testimonies of the appellant and her husband.

[62] In view of all this, it is my opinion that the appellant did not perform work at the restaurant during the period in question. Since I have concluded that the appellant did not perform work at the restaurant, the two other criteria for determining whether a contract of employment exists, remuneration and control, will not be considered. Since there was no contract of employment (or contract of service) between the appellant and the payer during the period in question, the appellant was not engaged in insurable employment with the payer during the period in question.

[63] For all these reasons, the decision of the Minister is confirmed and the appeal is dismissed.

Signed at Ottawa, Canada, this 23rd day of June 2015.

"Dominique Lafleur"

Lafleur J.

Translation certified true
on this 31st day of July 2015

Daniela Guglietta, Translator

CITATION:	2015 TCC 159
COURT FILE NO.:	2014-3840(EI)
STYLE OF CAUSE :	NAZMA HABIBA v. M.N.R.
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	May 5, 2015
REASONS FOR JUDGMENT BY:	The Honourable Justice Dominique Lafleur
DATE OF JUDGMENT:	June 23, 2015

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