

Docket: 2013-1998(EI)

BETWEEN:

LAYNE O. GODIN
O/A GODIN'S SEA PRODUCTS,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent,

and

CHRISTINE CARRIER,

Intervenor.

Appeal heard on common evidence with the appeals of *Lucien Carrier* 2013-2361(EI), *Jacques Doucet* 2013-3079(EI), 2013-3080(CPP), *Steven Esliger* 2013-1271(EI), *Kelly Godin* 2013-1220(EI) and *Wayde Godin* 2013-1994(EI), 2013-1996(CPP) on May 12, 13 and 14, 2015 at Miramichi, New Brunswick.

Before: The Honourable Justice Réal Favreau

Appearances:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Catherine M.G. McIntyre
For the Intervenor:	The Intervenor herself

JUDGMENT

The appeal from the Minister of National Revenue's decision dated March 22, 2013 regarding the pensionability and insurability of 38 workers' employment with Layne O. Godin o/a Godin's Sea Products, based on paragraph 6(1)(a) of the *Canada Pension Plan* and paragraphs 5(1)(a) and 5(2)(i) of the *Employment Insurance Act*, is dismissed in accordance with the attached reasons for judgment.

Signed at Ottawa, Canada, this 15th day of April 2016.

“Réal Favreau”

Favreau J.

Docket: 2013-2361(EI)

BETWEEN:

LUCIEN CARRIER,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

Appeal heard on common evidence with the appeals of *Layne O. Godin o/a Godin's Sea Products* 2013-1998(EI), *Jacques Doucet* 2013-3079(EI), 2013-3080(CPP), *Steven Esliger* 2013-1271(EI), *Kelly Godin* 2013-1220(EI) and *Wayde Godin* 2013-1994(EI), 2013-1996(CPP) on May 12, 13 and 14, 2015 at Miramichi, New Brunswick.
Before: The Honourable Justice Réal Favreau

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: Catherine M.G. McIntyre

JUDGMENT

The appeal from the Minister of National Revenue's decision dated March 22, 2013 regarding the insurability of the appellant's employment with Layne O. Godin o/a Godin's Sea Products, based on paragraph 5(1)(a) of the *Employment Insurance Act*, section 9.1 of the *Employment Insurance Regulations* and section 2 of the *Insurable Earnings and Collection of Premiums Regulations*, is dismissed in accordance with the attached reasons for judgment.

Signed at Ottawa, Canada, this 15th day of April 2016.

“Réal Favreau”

Favreau J.

Dockets: 2013-3079(EI),
2013-3080(CPP)

BETWEEN:

JACQUES DOUCET,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent,

Appeal heard on common evidence with the appeals of *Layne O. Godin o/a Godin's Sea Products* 2013-1998(EI), *Lucien Carrier* 2013-2361(EI), *Steven Esliger* 2013-1271(EI), *Kelly Godin* 2013-1220(EI) and *Wayde Godin* 2013-1994(EI), 2013-1996(CPP) on May 12, 13 and 14, 2015 at Miramichi, New Brunswick.

Before: The Honourable Justice Réal Favreau

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: Catherine M.G. McIntyre

JUDGMENT

The appeal from the Minister of National Revenue's decision dated March 22, 2013 regarding the pensionability and insurability of the appellant's employment with Layne O. Godin o/a Godin's Sea Products, based on paragraph 6(1)(a) of the *Canada Pension Plan* and paragraphs 5(1)(a) and 5(2)(i) of the *Employment Insurance Act*, is dismissed in accordance with the attached reasons for judgment.

Signed at Ottawa, Canada, this 15th day of April 2016.

“Réal Favreau”

Favreau J.

Docket: 2013-1271(EI)

BETWEEN:

STEVEN ESLIGER,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

Appeal heard on common evidence with the appeals of *Layne O. Godin o/a Godin's Sea Products* 2013-1998(EI), *Jacques Doucet* 2013-3079(EI), 2013-3080(CPP), *Lucien Carrier* 2013-2361(EI), *Kelly Godin* 2013-1220(EI) and *Wayde Godin* 2013-1994(EI), 2013-1996(CPP) on May 12, 13 and 14, 2015 at Miramichi, New Brunswick.

Before: The Honourable Justice Réal Favreau

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: Catherine M.G. McIntyre

JUDGMENT

The appeal from the Minister of National Revenue's decision dated March 22, 2013 regarding the insurability of the appellant's employment with Layne O. Godin o/a Godin's Sea Products, based on paragraph 5(1)(a) of the *Employment Insurance Act*, section 9.1 of the *Employment Insurance Regulations* and subsection 2(1) of the *Insurable Earnings and Collection of Premiums Regulations* and section 9.1 of the *Employment Insurance Regulations*, is dismissed in accordance with the attached reasons for judgment.

Signed at Ottawa, Canada, this 15th day of April 2016.

“Réal Favreau”

Favreau J.

Docket: 2013-1220(EI)

BETWEEN:

KELLY GODIN,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

Appeal heard on common evidence with the appeals of *Layne O. Godin o/a Godin's Sea Products* 2013-1998(EI), *Jacques Doucet* 2013-3079(EI), 2013-3080(CPP), *Lucien Carrier* 2013-2361(EI), *Steven Esliger* 2013-1271(EI) and *Wayde Godin* 2013-1994(EI), 2013-1996(CPP) on May 12, 13 and 14, 2015 at Miramichi, New Brunswick.

Before: The Honourable Justice Réal Favreau

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: Catherine M.G. McIntyre

JUDGMENT

The appeal from the Minister of National Revenue's decision dated March 22, 2013 regarding the insurability of the appellant's employment with Layne O. Godin o/a Godin's Sea Products, based on paragraphs 5(1)(a) and 5(2)(i) of the *Employment Insurance Act*, is dismissed in accordance with the attached reasons for judgment.

Signed at Ottawa, Canada, this 15th day of April 2016.

“Réal Favreau”

Favreau J.

Dockets: 2013-1994(EI),
2013-1996(CPP)

BETWEEN:

WAYDE GODIN,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

Appeal heard on common evidence with the appeals of *Layne O. Godin o/a Godin's Sea Products* 2013-1998(EI), *Jacques Doucet* 2013-3079(EI), 2013-3080(CPP), *Steven Esliger* 2013-1271(EI), *Kelly Godin* 2013-1220(EI) and *Lucien Carrier* 2013-2361(EI) on May 12, 13 and 14, 2015 at Miramichi, New Brunswick.
Before: The Honourable Justice Réal Favreau

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: Catherine M.G. McIntyre

JUDGMENT

The appeal from the Minister of National Revenue's decision dated March 22, 2013 regarding the pensionability and insurability of the appellant's employment with Layne O. Godin o/a Godin's Sea Products, based on paragraph 6(1)(a) of the *Canada Pension Plan* and paragraphs 5(1)(a) and 5(2)(i) of the *Employment Insurance Act*, is dismissed in accordance with the attached reasons for judgment.

Signed at Ottawa, Canada, this 15th day of April 2016.

“Réal Favreau”

Favreau J.

Citation: 2016 TCC88

Date: 20160415

Dockets: 2013-1998(EI), 2013-2361(EI),
2013-3079(EI), 2013-3080(CPP),
2013-1271(EI), 2013-1220(EI),
2013-1994(EI), 2013-1996(CPP)

BETWEEN:

LAYNE O. GODIN O/A GODIN'S SEA PRODUCTS,
LUCIEN CARRIER, JACQUES DOUCET, STEVEN ESLIGER,
KELLY GODIN, WAYDE GODIN,

Appellants,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent,

and

CHRISTINE CARRIER,

Intervenor.

REASONS FOR JUDGMENT

Favreau J.

[1] Mr. Layne O. Godin, on his own behalf and on behalf of Godin's Sea Products, and his workers are appealing the Minister of National Revenue's 41 rulings dated March 28, 2011 in which the following was determined:

(a) 21 of the workers were not engaged in insurable employment with the Appellant within the meaning of paragraph 5(1)(a) of the *Employment Insurance Act* (the "Act") during their respective periods of employment;

(b) three of the workers were not fishers pursuant to sections 1 and 2 of the *Employment Insurance Fishing Regulations* (the "Fishing Regs"); and

(c) 17 of the workers were engaged in insurable employment with the Appellant but their insurable hours and insurable earnings for their respective periods of

employment were re-determined pursuant to section 9.1 of the *Employment Insurance Regulations* (the “*EIR*”) and subsection 2(1) of the *Insurable Earnings and Collection of Premiums Regulations* (the “*IECPR*”)

[2] As set out in paragraph 5 of the Reply to the Notice of Appeal, Mr. Layne O. Godin was advised by ministerial notification dated March 22, 2013, as follows:

(a) The 20 workers listed in the attached Schedule “A” were not engaged in insurable employment with the Appellant within the meaning of paragraph 5(1)(a) of the *Act* since the requirements of a contract of service were not met during their respective periods of employment;

(b) In the alternative, that if the 20 workers listed in Schedule “A” were engaged pursuant to a contract of service with the Appellant within the meaning of paragraph 5(1)(a) of the *Act*, their employment was excluded employment pursuant to paragraph 5(2)(i) of the *Act*;

(c) 14 workers were engaged in insurable employment with the Appellant within the meaning of paragraph 5(1)(a) of the *Act* and the Respondent determined their insurable hours and earnings pursuant to section 9.1 or subsection 10(3) of the *EIR* and subsection 2(1) of the *IECPR* as set out in the attached Schedule “B”;

(d) With respect to the workers listed in the attached Schedule “C” the respondent determined the following:

(1) Rachel Dalley was not a Fisher within the meaning of section 1 of the Fishing Regs during the period from September 14, 2009 to October 3, 2009 and she was therefore not included as an insured person pursuant to section 2 of the Fishing Regs;

(2) Nicholas Esliger was engaged in insurable employment with the Appellant within the meaning of paragraph 5(1)(a) of the *Act* during the period from Apr [sic] 22, 2007 to July 14, 2007 and the Respondent determined his insurable hours and earnings pursuant to subsection 10(3) of the *EIR* and subsection 2(1) of the *IECPR* as set out in Schedule “C”;

(3) Futhermore, Nicholas Esliger was a Fisher within the meaning of section 1 of the Fishing Regs during the periods from September 22, 2008 to October 3, 2008 and from May 11, 2009 to May 22, 2009 and he was therefore included as an insured person pursuant to section 2 of the Fishing Regs and this decision is not at issue in this appeal;

(4) Joshua Godin was not a Fisher within the meaning of section 1 of the Fishing Regs during the period from May 13, 2007 to July 7, 2007 and he

was therefore not included as an insured person pursuant to section 2 of the Fishing Regs;

(5) Rocky Hickey was employed with the Appellant pursuant to a contract of service within the meaning of paragraph 5(1)(a) of the *Act* for the periods from August 5, 2007 to September 29, 2007 and from August 4, 2008 to October 4, 2008 but his employment for these periods was excluded employment since he and the Appellant were not dealing with each other at arm's length within the meaning of paragraph 5(2)(i) of the *Act*;

(6) Furthermore, Rocky Hickey was not engaged in insurable employment with the Appellant within the meaning of paragraph 5(1)(a) of the *Act* during the period from August 2, 2009 to October 3, 2009 since the requirements of a contract of service were not met;

(7) Patrick Levesque was engaged in insurable employment with the Appellant within the meaning of paragraph 5(1)(a) of the *Act* during the period from April 26, 2009 to July 4, 2009 and the Respondent determined his insurable hours and earnings pursuant to subsection 10(3) of the EIR and subsection 2(1) of the IECPR as set out in Schedule "C";

(8) Furthermore, Patrick Levesque was not engaged in insurable employment with the Appellant within the meaning of paragraph 5(1)(a) of the *Act* during the period from August 2, 2009 to August 15, 2009 since the requirements of a contract of service were not met;

(9) Rudi Mallaley was engaged in insurable employment with the Appellant within the meaning of paragraph 5(1)(a) of the *Act* for the period from April 26, 2009 to July 4, 2009 since the requirements of a contract of service were met and the Respondent determined her insurable hours and earnings pursuant to subsection 10(3) of the EIR and subsection 2(1) of the IECPR as set out in Schedule "C";

(10) Furthermore, Rudi Mallaley was not engaged in insurable employment with the Appellant during the period from July 5, 2009 to July 18, 2009 since the requirements of a contract of service within the meaning of paragraph 5(1)(a) of the *Act* were not met; and

(e) Margaret Ann Labillois was a Fisher within the meaning of section 1 of the Fishing Regs; she was included as an insured person pursuant to section 2 of the Fishing Regs and this decision is not at issue in this appeal.

[3] Mr. Layne O. Godin appealed to this Court with respect to 38 of the workers; the two workers who are not at issue in this appeal are Margaret Ann Labillois and Cody Bernard.

[4] In making his decisions, the Minister relied on the following assumptions of fact, as set out in paragraph 7 of the Reply to the Notice of Appeal:

- (a) The Appellant is a sole proprietorship operating as Godin's Seas Products;
- (b) The Appellant's business is run from his home located in Lorne, Northern New Brunswick;
- (c) The nature of the Appellant's business operations includes fishing and forestry;
- (d) The Appellant paid his workers in cash;

The forestry operations:

- (e) The Department of Natural Resources requires that cutting permits be obtained when cutting wood on private land;
- (f) The Department of Natural Resources in New Brunswick did not issue any cutting permits to the Appellant for any of the alleged periods of employment of Travis Carrier, Kelly Godin, Clayton Hickey and Gail Lavigne (the "Forestry workers");
- (g) Eel River Band First Nation did not hire the Appellant's services to cut or haul wood or do any forestry work on their land during 2007, 2008 and 2009;
- (h) Debbie Loubert did not hire the Appellant's services to cut wood on her personal property during 2007, 2008 and 2009;
- (i) The Appellant did not sell wood to sawmills during 2007, 2008 and 2009;
- (j) The Appellant did not earn revenue from the forestry operations during 2007, 2008 and 2009;
- (k) The Appellant did not operate in the area of forestry during 2007, 2008 and 2009;

The fishing operations:

- (l) The Appellant's fishing operations consisted of lobster fishing as well as buying and reselling a variety of fish and seafood such as lobster, rock crab, herring and bait;
- (m) In Northern New Brunswick, the fishing seasons are as follows:

- (1) Herring: from mid-April to mid-May as well as in the fall;
- (2) Lobster: from May 1st to June 30th (“lobster season”);
- (3) Rock crab: from August 5th to October 15th or until fishermen reach their quota of 77,000 pounds per license (“crab season”);

Lobster season:

- (n) The Appellant fished lobster exclusively out of Jacquet River wharf;
- (o) During lobster season, there was no lobster landing at Jacquet River wharf on 12 days during 2007, 20 days during 2008; and 10 days during 2009;
- (p) The Appellant owned a boat named “#4”;
- (q) During 2007, 2008 and 2009 fishing seasons, #4 docked at Jacquet River wharf or Pointe-Verte wharf;
- (r) On May 11, 2009 #4 was towed by the Canadian Coast Guard and stayed at Pointe Verte wharf for seven days;

Crab season:

- (s) During crab season, the Appellant purchased crab from fishermen landed at Dalhousie or New Mills wharfs and sold it to L’Association Co-op des Pêcheurs de l’Île Ltée in Lamèque, New Brunswick (the “Lamèque Co-op”);
- (t) During crab season the Appellant also purchased bait from Lamèque Co-op and sold it to the fishermen at the wharfs;
- (u) The Lamèque Co-op is a fish processing facility based in Lamèque, New Brunswick, 2.5 hours away from New Mills wharf;
- (v) There was no crab landing at Jacquet River during 2007, 2008, and 2009;
- (w) During crab season, the Appellant allegedly employed between four and 15 workers;
- (x) The workers made trips to Lamèque Co-op as set out in Schedule “D” , attached, which forms part of this reply;
- (y) Not all of the Appellant’s crab workers work every day;

- (z) During crab season, August is the Appellant's busiest month, with a decrease in September and a further decrease in October as the fishermen reach their quotas;
- (aa) Off-loading crab takes 30 to 60 minutes on average;
- (bb) Crates of crab weigh roughly 100 pounds each;
- (cc) During the 2009 crab season, the latest landing of crab at the New Mills wharf occurred at approximately 4pm;
- (dd) There was no worker at the Appellant's house at 5 pm, when Lucien Carrier, the Appellant's driver, was picking up the crab to be delivered to Lamèque Co-op;

The workers in Schedule "A"

- (ee) The workers in Schedule "A" did not perform any services for the Appellant;
- (ff) The Appellant did not remunerate any of the workers listed in Schedule "A";
- (gg) The Appellant's business activities did not require the engagement of the workers listed in Schedule "A";
- (hh) The terms and conditions of employment of the workers in Schedule "A" consisted of an artificial arrangement to ensure their eligibility for employment insurance benefits;
- (ii) The assumptions of fact with respect to Kevin Bernard are as follows:
 - (1) Kevin Bernard has known the Appellant for many years;
 - (2) Kevin Bernard worked 320 hours while employed with other payers and required 420 hours to qualify for employment insurance benefits;
 - (3) The Appellant issued Kevin Bernard a Record of Employment for the period from August 10, 2009 to August 22, 2009;
 - (4) Kevin Bernard did not wash and stack crates at the Appellant's home during the period from August 10, 2009 to August 22, 2009;
 - (5) Five other workers performed labor duties at the Appellant's home during the period from August 10, 2009 to August 22, 2009;

- (6) Kevin Bernard would not have worked alone at the Appellant's house;
 - (7) The Appellant's business activities did not increase during the period from August 10, 2009 to August 22, 2009;
 - (8) Kevin Bernard did not work for the Appellant during the period from August 10, 2009 to August 22, 2009;
- (jj) The assumptions of fact with respect to Christine Carrier are as follows:
- (1) Christine Carrier has known the Appellant all her life;
 - (2) The Appellant issued a Record of Employment to Christine Carrier for the period from August 3, 2009 to September 12, 2009;
 - (3) Christine Carrier did not clean the Appellant's truck, did not wash crates or help fix lobster and crab traps; she did not clean the Appellant's house during the period from August 3, 2009 to September 12, 2009;
 - (4) Eight other workers performed labor duties at the Appellant's home during the period from August 3, 2009 to September 12, 2009;
 - (5) The Appellant's business activities did not increase during the period from August 3, 2009 to September 12, 2009;
 - (6) Christine Carrier would not have worked alone at the Appellant's home;
 - (7) Christine Carrier did not work for the Appellant during the period from August 3, 2009 to September 12, 2009;
- (kk) The assumptions of fact with respect to Debra Carrier are as follows:
- (1) Debra Carrier has known the Appellant all of her life;
 - (2) The Appellant issued a Record of Employment to Debra Carrier for the period of September 17, 2007 to October 5, 2007;
 - (3) Debra Carrier did not clean freezers, wash trucks, cut the lawn or do housework for the Appellant during the period from September 17, 2007 to October 5, 2007;
 - (4) Debra Carrier did not pick up scallops or crab at Jacquet River wharf during the period from September 17, 2007 to October 5, 2007;

- (5) Scallops were purchased and sold by the Appellant from July 2 to July 26, 2007 only;
 - (6) There was no crab landing at Jacquet River wharf during 2007, 2008 and 2009;
 - (7) Debra Carrier did not get paid by cheques issued by the Appellant;
 - (8) Seven other workers performed labor duties at the Appellant's home during the period from September 17, 2007 to October 5, 2007;
 - (9) Debra Carrier did not work for the Appellant 12 hours a day, Monday to Friday during the period from September 17, 2007 to October 5, 2007;
 - (10) The Appellant's business activities did not increase during the period from September 17, 2007 to October 5, 2007;
 - (11) Debra Carrier did not work for the Appellant during the period from September 17, 2007 to October 5, 2007;
- (II) The assumptions of fact with respect to Michael Louis Carrier are as follows:
- (1) Michael Louis Carrier has known the Appellant for 25 years;
 - (2) The Appellant issued a Record of Employment to Michael Louis Carrier for the period from July 29, 2007 to October 6, 2007;
 - (3) Michael Louis Carrier did not off-load crab from five or seven boats at the Dalhousie wharf during the period from July 29, 2007 to October 6, 2007;
 - (4) Only one fisher landed crab at the Dalhousie wharf in 2007;
 - (5) Michael Louis Carrier did not get paid by cheque issued by the Appellant;
 - (6) Michael Louis Carrier did not work for the Appellant 12 hours a day, seven days a week for the period from July 29, 2007 to October 6, 2007;
 - (7) Ten other workers performed labor duties for the Appellant during the period from July 29, 2007 to October 6, 2007;
 - (8) Michael Louis Carrier did not work for the Appellant during the period from July 29, 2007 to October 6, 2007;

- (mm) The assumptions of fact with respect to Travis Carrier, Kelly Godin, Clayton Hickey and Gail Lavigne (the “forestry workers”) are as follows:
- (1) Kelly Godin is a relative of the Appellant;
 - (2) The Appellant issued Records of Employment to each of the forestry workers for the periods as per Schedule “A”;
 - (3) The forestry workers did not cut wood or operate a skidder for the Appellant during their respective periods as per Schedule “A”;
 - (4) The Appellant’s business operation did not include forestry during 2007, 2008 and 2009;
 - (5) The forestry workers did not work for the Appellant during their respective periods as per Schedule “A”;
- (nn) The assumptions of fact with respect to Jacques Doucet are as follows:
- (1) The Appellant issued Records of Employment to Jacques Doucet for the periods from April 15, 2007 to July 7, 2007, from April 14, 2008 to July 5, 2008 and from April 19, 2009 to July 11, 2009;
 - (2) Jacques Doucet did not drive to Jacquet River, Petit Rocher or New Mills wharfs to try to buy lobster from fishermen on the Appellant’s behalf during the lobster season of 2007, 2008 and 2009;
 - (3) Jacques Doucet did not build traps or work on the Appellant’s boat before the lobster season started;
 - (4) Jacques Doucet did not work for the Appellant an average of 12 hours a day, seven days a week for 12 weeks from mid-April to early July of 2007, 2008 and 2009;
 - (5) Jacques Doucet operated his own business, which consisted of purchasing and selling lobster, clams and fiddleheads to the public and employed four to five workers during the lobster season;
 - (6) Jacques Doucet operated a lobster shop;
 - (7) Jacques Doucet’s business was a competition of the Appellant’s business;
 - (8) Jacques Doucet did not generate any additional business for the Appellant;

(9) Jacques Doucet did not work for the Appellant during the periods from April 15, 2007 to July 7, 2007, from April 14, 2008 to July 5, 2008 and from April 19, 2009 to July 11, 2009;

(oo) The assumptions of fact with respect to Kevin Doucet are as follows:

- (1) The Appellant issued a Record of Employment to Kevin Doucet for the period from April 19, 2009 to May 30, 2009;
- (2) Kevin Doucet did not clean crates, do general labor, fix traps, transport them to the beach or load crates of bait during the period from April 19, 2009 to May 30, 2009;
- (3) Kevin Doucet did not work at the Appellant's shop;
- (4) Kevin Doucet would not have worked alone;
- (5) Five other workers performed labor duties during the period from April 19, 2009 to May 30, 2009;
- (6) Kevin Doucet was laid off on May 30, 2009, one month prior to the end of the lobster season;
- (7) Kevin Doucet was not laid off due to shortage of work;
- (8) Kevin Doucet did not work an average of 12 hours a day, seven days a week for six weeks and for a total of 504 hours;
- (9) Kevin Doucet did not work for the Appellant during the period from April 19, 2009 to May 30, 2009;

(pp) The assumptions of fact with respect to Ida-Lynn Godin are as follows:

- (1) Ida-Lynn Godin is the Appellant's sister;
- (2) Ida-Lynn Godin did not work as a scaler/driver for the Appellant during the period from May 3, 2009 to July 18, 2009;
- (3) Ida-Lynn Godin did not run errands, pick up lobster or deliver bait to the Jaquet River wharf, she did not clean crates or trucks;
- (4) Ida-Lynn Godin did not work 12 hours a day, seven days a week for 11 weeks doing errands for the Appellant;
- (5) The Appellant issued a Record of Employment to Ida-Lynn Godin for the period from May 3, 2009 to July 18, 2009;

- (6) Ida-Lynn Godin did not work for the Appellant during the period from May 3, 2009 to July 18, 2009;
 - (7) Ida-Lynn Godin lived in the Moncton area since 2005;
 - (8) Ida-Lynn Godin lived with her 14 year old son at 57 Horsman Street in Salisbury, New Brunswick until December 2009;
 - (9) Rudi Mallaley who worked for the Appellant during the lobster season of 2009 did not identify Ida-Lynn Godin as a co-worker;
 - (10) Rudi Mallaley is Ida-Lynn Godin's daughter;
- (qq) The assumptions of fact with respect to Wayde Godin are as follows:
- (1) Wayde Godin is the Appellant's brother;
 - (2) The Appellant issued Records of Employment to Wayde Godin for the periods from August 6, 2007 to October 20, 2007, from July 27, 2008 to October 4, 2008 and from July 26, 2009 to October 10, 2009;
 - (3) Wayde Godin did not work as a truck driver for the Appellant or wash the Appellant's crates or trucks during the periods from August 6, 2007 to October 20, 2007, from July 27, 2008 to October 4, 2008 and from July 26, 2009 to October 10, 2009;
 - (4) The Appellant engaged Lucien Carrier, Ricky Esliger and Jeffrey Hickey as truck drivers during 2007, 2008 and 2009;
 - (5) No more than one delivery of crab was made to Lamèque Co-op each day during crab season;
 - (6) Fifteen workers washed crates and trucks at the Appellant's house during the crab season of 2007, 2008 and 2009;
 - (7) Wayde Godin did not work for the Appellant during the periods from August 6, 2007 to October 20, 2007, from July 27, 2008 to October 4, 2008 and from July 26, 2009 to October 10, 2009;
- (rr) The assumptions of fact with respect to Léo Guitard are as follows:
- (1) The Appellant issued Records of Employment to Léo Guitard for the periods from September 2, 2007 to September 29, 2007 and from September 28, 2008 to October 18, 2008;

- (2) Léo Guitard did not unload from or load the bait onto the Appellant's trucks; he did not weigh the bait in crates or clean the crates at the Appellant's house; he did not take the crates full of bait to the Jaquet River, Dalhousie or New Mills wharfs during 2007 or 2008;
 - (3) Léo Guitard did not work alone at the Appellant's house;
 - (4) Nine other workers performed labor work at the Appellant's house during the periods from September 2, 2007 to September 29, 2007 and from September 28, 2008 to October 18, 2008;
 - (5) Léo Guitard did not work with Jason Godin in 2007;
 - (6) Jason Godin did not work for the Appellant in 2007;
 - (7) Léo Guitard did not work with the Appellant's nephew, Carlton, in 2008;
 - (8) The Appellant did not hire Carlton in 2008;
 - (9) During 2007 and 2008, there were several days when there was no crab landing and no sale of crab;
 - (10) Léo Guitard started working one month into the 2007 crab season and two months into the 2008 crab season;
 - (11) There was no increase in the Appellant's business activity at the time of Léo Guitard's engagement;
 - (12) Léo Guitard did not work for the Appellant during the periods from September 2, 2007 to September 29, 2007 and from September 28, 2008 to October 18, 2008;
- (ss) The assumptions of fact with respect to Brad Hickey are as follows:
- (1) The Appellant issued a Record of Employment to Brad Hickey for the period from September 2, 2007 to December 1, 2007;
 - (2) Brad Hickey did not work as a laborer or a deckhand on the Appellant's fishing vessel during the period from September 2, 2007 to December 1, 2007;
 - (3) The Appellant fished lobster only and lobster season ended on June 30th of each year;
 - (4) Brad Hickey was not hired to clean up in the fall and pick up traps;

- (5) Brad Hickey did not run the catch to Arseneau's fish market;
 - (6) In 2007, the last delivery of crab to Lamèque Coop was made on October 21, 2007;
 - (7) All the other workers engaged in the fishing operations of the Appellant's business in 2007 were laid off by October 21st;
 - (8) Ten workers performed labor work for the Appellant during the period from September 2, 2007 to October 21, 2007;
 - (9) Of 12 co-workers identified by Brad Hickey, nine were either not working for the Appellant during the same period of employment or were not working in the fishing operations of the Appellant;
 - (10) Brad Hickey did not work for the Appellant an average of 12 hours a day, seven days a week for 13 weeks during the period from September 2, 2007 to December 1, 2007;
 - (11) Brad Hickey did not work for the Appellant during the period from September 2, 2007 to December 1, 2007;
- (tt) The assumptions of fact with respect to Brenda Hickey are as follows:
- (1) The Appellant issued Records of Employment to Brenda Hickey for the periods from April 29, 2007 to July 14, 2007 and from April 21, 2008 to July 5, 2008;
 - (2) Brenda Hickey did not work as a laborer, fish processing laborer or construction laborer for the Appellant during the periods from April 29, 2007 to July 14, 2007 and from April 21, 2008 to July 5, 2008;
 - (3) Brenda Hickey did not work 12 hours a day, six or seven days a week during the periods from April 29, 2007 to July 14, 2007 and from April 21, 2008 to July 5, 2008;
 - (4) Six other workers performed labor work at the Appellant's house during the periods from April 29, 2007 to July 14, 2007 and from April 21, 2008 to July 5, 2008;
 - (5) Brenda Hickey did not work for the Appellant during the periods from April 29, 2007 to July 14, 2007 and from April 21, 2008 to July 5, 2008;

- (uu) The assumptions of fact with respect to Rodney Hickey are as follows:
- (1) The Appellant issued a Record of Employment to Rodney Hickey for the period from August 17, 2008 to October 18, 2008;
 - (2) Rodney Hickey did not put bait in crates, load crab onto the truck or work in the forestry for the Appellant;
 - (3) Rodney Hickey did not cut or haul wood on the Eel River Bar First Nations property;
 - (4) Rodney Hickey did not operate the Appellant's skidder, Rocky Hickey did;
 - (5) Rocky Hickey is Rodney Hickey's brother;
 - (6) Rodney Hickey did not work with Steven Eslinger, Jeff Hickey or Thomas Carrier;
 - (7) Thomas Carrier was a deckhand during lobster season and his employment ended on August 15, 2008;
 - (8) Rodney Hickey did not work for the Appellant during the period from August 17, 2008 to October 18, 2008;
- (vv) The assumptions of fact with respect to the Late Arthur Lapointe are as follows:
- (1) Arthur Lapointe died on November 25, 2010;
 - (2) Arthur Lapointe worked 295 hours for another payer and required 420 hours to qualify for employment insurance benefits;
 - (3) The Appellant issued a Record of Employment to Arthur Lapointe for the period from June 1, 2008 to June 14, 2008;
 - (4) Arthur Lapointe did not load the crates from the boat, take them to the weight master and load them onto the Appellant's truck;
 - (5) Arthur Lapointe did not work at Dalhousie or Jacquet River wharfs;
 - (6) Off-loading crates from the boat and onto the trucks did not take more than 30 to 45 minutes;
 - (7) Arthur Lapointe did not work 12 hours a day, seven days a week, for two weeks;

- (8) Arthur Lapointe was not paid by the Appellant;
- (9) Arthur Lapointe did not work for the Appellant during the period from June 1, 2008 to June 14, 2008;

(ww) The assumptions of fact with respect to Tracy Lapointe are as follows:

- (1) The Appellant issued a Record of Employment to Tracy Lapointe for the period from August 5, 2007 to October 13, 2007;
- (2) Tracy Lapointe did not drive a truck and did not go to Dalhousie, Jacquet River or Belledune wharfs to weigh the fish and bait for the Appellant during the period from August 5, 2007 to October 13, 2007;
- (3) There was no crab landing at the Jacquet River or Belledune wharfs in 2007;
- (4) Tracy Lapointe did not work for the Appellant an average of 12 hours, seven days a week for ten weeks for the Appellant;
- (5) Five other workers worked for the Appellant during the period from August 5, 2007 to October 13, 2007;
- (6) Tracey Lapointe did not work for the Appellant during the period from August 5, 2007 to October 13, 2007;

(xx) The assumptions of fact with respect to the Late Michael Tardiff are as follows:

- (1) Michael Tardiff died in February 2011;
- (2) Michael Tardiff worked 98 hours and 299 hours for other payers prior to August 13, 2007;
- (3) Michael Tardiff required 420 hours to qualify for employment insurance benefits;
- (4) The Appellant issued a Record of Employment to Michael Tardiff for the period from August 13, 2007 to September 1, 2007;
- (5) Michael Tardiff did not work an average of 11 hours per day, six or seven days a week for three weeks during the period from August 13, 2007 to September 1, 2007 for the Appellant;
- (6) Seven other workers perform labor work for the Appellant during the period from August 13, 2007 to September 1, 2007;

- (7) Michael Tardiff did not work for the Appellant during the period from August 13, 2007 to September 1, 2007;

Workers listed in Schedule “B”:

(yy) The assumptions of fact with respect to Lucien Carrier are as follows:

- (1) The Appellant issued Records of Employment to Lucien Carrier for the periods from August 5, 2007 to October 20, 2007, from July 27, 2008 to October 2, 2008 and from August 2, 2009 to October 17, 2009;
- (2) Lucien Carrier worked as a truck driver to deliver rock crab from New Mills Wharf (the “Wharf”) to Lamèque Co-op and to return with bait purchased from Lamèque Co-op;
- (3) The Records of Employment issued by the Appellant inflated the hours and wages of Lucien Carrier;
- (4) Lucien Carrier did not work 869, 856 and 864 hours during the periods from August 5, 2007 to October 20, 2007, from July 27, 2008 to October 2, 2008 and from August 2, 2009 to October 17, 2009, respectively;
- (5) Lucien Carrier did not earn \$10,428, \$11,128 and \$11,232 during the periods from August 5, 2007 to October 20, 2007, from July 27, 2008 to October 2, 2008 and from August 2, 2009 to October 17, 2009, respectively;
- (6) When delivering to Lamèque Co-op, Lucien Carrier worked 12 hours per day;
- (7) Lucien Carrier occasionally drove to Arseneau Fish Market to pick up or deliver products;
- (8) Arseneau Fish Market was approximately 40 kilometers away from the Appellant’s location and an additional 33 kilometers from Jacquet River where the Appellant sold fish out of a truck;
- (9) Lucien Carrier did not work more than eight hours a day when delivering and picking up products from Arseneau Fish Market;
- (10) Lucien Carrier did not wash crates and trucks for the Appellant;
- (11) The Appellant employed several other workers to wash crates and trucks during Lucien Carrier’s periods of employment;

- (12) During the 2007 period, Lucien Carrier made 42 trips to Lamèque Co-op and five trips to Arseneau Fish Market;
 - (13) During the 2007 period, Lucien Carrier did not work more than 544 hours for the Appellant;
 - (14) During the 2008 period, Lucien Carrier made 44 trips to Lamèque Co-op and no trips to Arseneau Fish Market;
 - (15) During the 2008 period, Lucien Carrier did not work more than 528 hours for the Appellant;
 - (16) During the 2009 period, Lucien Carrier made 39 trips to Lamèque Co-op and seven trips to Arseneau Fish Market;
 - (17) During the 2009 period, Lucien Carrier did not work more than 524 hours for the Appellant;
 - (18) Lucien Carrier was paid an hourly wage of \$12 in 2007 and \$13 in 2008 and 2009;
 - (19) Lucien Carrier's wages received from the Appellant did not exceed \$6,528, \$6,864 and \$6,812 during the periods from August 5, 2007 to October 20, 2007, from July 27, 2008 to October 2, 2008 and from August 2, 2009 to October 17, 2009, respectively;
- (zz) The assumptions of fact with respect to Tom Carrier are as follows:
- (1) The Appellant issued Records of Employment to Tom Carrier for the periods from April 22, 2007 to July 14, 2007, from April 21, 2008 to August 15, 2008 and from April 19, 2009 to July 11, 2009;
 - (2) The Records of Employment issued by the Appellant inflated the hours worked by Tom Carrier;
 - (3) Tom Carrier did not work 994, 1020 and 1008 hours during the periods from April 22, 2007 to July 14, 2007, from April 21, 2008 to August 15, 2008 and from April 19, 2009 to July 11, 2009, respectively;
 - (4) Tom Carrier did not work and was not paid during the period from July 6, 2008 to August 2, 2008, as he was sick;
 - (5) During the lobster season, May 1st to June 30th of 2007, 2008 and 2009, Tom Carrier was deckhand on the Appellant's fishing boat and his duties included preparing lobster traps and fishing lobster;

- (6) In 2007, 2008 and 2009, the Appellant fished lobster exclusively out of Jacquet River wharf;
- (7) There was no lobster landing at Jacquet River wharf on 12 days during 2007, 20 days during 2008; and ten days during 2009;
- (8) Tom Carrier worked 12 hours a day when fishing;
- (9) Prior to the start of the lobster season each year, Tom Carrier worked for the Appellant, making preparations for the fishing season;
- (10) Following the end of the lobster season each year, Tom Carrier worked for the Appellant, cleaning up the fishing gear;
- (11) Tom Carrier did not work more than eight hours a day for the Appellant when working prior to and after the close of the lobster season;
- (12) In 2007, Tom Carrier worked nine days for the Appellant, preparing for the lobster season; he fished lobster for 49 days and cleaned up for 14 days;
- (13) In 2007, Tom Carrier did not work for the Appellant more than 772 hours during a period of 12 weeks;
- (14) In 2007, Tom Carrier was paid \$875 per week and earned a total of \$10,500;
- (15) During the period from April 21, 2008 to July 5, 2008, Tom Carrier worked for the Appellant ten days preparing for the lobster season; he fished lobster for 41 days and cleaned up for five days;
- (16) During the period from April 21, 2008 to July 5, 2008, Tom Carrier did not work for the Appellant more than 612 hour during a period of 11 weeks;
- (17) During the period from April 21, 2008 to July 5, 2008, Tom Carrier was paid \$925 per week and earned a total of \$10,175;
- (18) During the period from August 5, 2008 to August 15, 2008, Tom Carrier also worked as a laborer for the Appellant;
- (19) During the period from August 5, 2008 to August 15, 2008, Tom Carrier worked 60 hours a week for a total of 120 hours for the Appellant;

- (20) During the period from August 5, 2008 to August 15, 2008, Tom Carrier was paid \$10 per hour and his total earnings were \$1,200;
 - (21) During the period from April 19, 2009 to July 11, 2009, Tom Carrier worked for the Appellant 12 days preparing for the lobster season, he fished lobster for 51 days and cleaned up for 11 days;
 - (22) During the period from April 19, 2009 to July 11, 2009, Tom Carrier did not work for the Appellant more than 780 hours during a period of 12 weeks;
 - (23) During the period from April 19, 2009 to July 11, 2009, Tom Carrier was paid \$950 per week and earned a total of \$11,400;
- (aaa) The assumptions of fact with respect to Kyle Dempsey are as follows:
- (1) Kyle Dempsey worked as laborer for the Appellant during the period from August 24, 2008 to September 20, 2008, which is crab season;
 - (2) The Appellant issued a Record of Employment to Kyle Dempsey for the period from August 24, 2008 to September 20, 2008;
 - (3) The Records of Employment issued by the Appellant inflated the hours and wages of Kyle Dempsey;
 - (4) Kyle Dempsey did not work for the Appellant for 336 hours during the period from August 24, 2008 to September 20, 2008;
 - (5) Kyle Dempsey did not earn \$3,360 during the period from August 24, 2008 to September 20, 2008;
 - (6) Kyle Dempsey's duties consisted of washing the Appellant's trucks and crates at the Appellant's house in Lorne and picking up crab and bait from New Mills and Dalhousie wharfs;
 - (7) During the period from August 24, 2008 to September 20, 2008, the Appellant's driver made 19 trips to Lamèque Co-op where the crab was sold and bait purchased;
 - (8) Laborers who performed similar tasks to Kyle Dempsey's and who worked for another employer in the same region, worked an average of 55 hours per week during crab season;
 - (9) Kyle Dempsey did not work more than 220 hours for the Appellant during the period from August 24, 2008 to September 20, 2008;

(10) Kyle Dempsey was paid an hourly wage of \$10;

(11) Kyle Dempsey did not earn more than \$2,200 during the period from August 24, 2008 to September 20, 2008;

(bbb) The assumptions of fact with respect to Rickey Eslinger are as follows:

(1) Rickey Eslinger was engaged by the Payer as a truck driver/laborer during the period from April 29, 2007 to July 7, 2007 which is during lobster season;

(2) The Appellant issued a Record of Employment to Rickey Eslinger for the period from April 29, 2007 to July 7, 2007;

(3) The Record of Employment issued by the Appellant inflated the hours worked by Rickey Eslinger;

(4) Rickey Eslinger did not work 840 hours during the period from April 29, 2007 to July 7, 2007;

(5) Rickey Eslinger's duties consisted of the following:

i) Cleaning the truck and crates at the Appellant's house;

ii) Driving to Jacquet River and/or the New Mills wharf and waiting for the Appellant's fishing boat to come in between 1 pm and 5 pm;

iii) Helping load the catch onto the truck and driving to Eel River Bar and/or Nigadoo where lobster was sold and bait was purchased and delivered to fishermen;

(6) Jacquet River and New Mills were 13 and 15 kilometers or an 11 to 14 minute drive from Lorne;

(7) Nigadoo and Eel River Bar were 33 and 38 kilometers or a 23 or 27 minute drive from Lorne;

(8) Other workers/laborers employed by the Appellant worked an average of ten hours a day, six days a week during the lobster season;

(9) On average, Rickey Eslinger's work hours did not exceed ten hours a day during the period from May 1st to June 30th;

(10) Rickey Eslinger worked two days prior to the start of lobster season in order to get the truck and gear ready and worked seven days after the lobster season in order to help clean up and put away the gear;

- (11) On average, Rickey Esliger's work hours outside of the lobster season did not exceed eight hours a day;
- (12) Rickey Esliger's total number of hours worked during the period from April 29, 2007 to July 7, 2007 did not exceed 682;
- (13) Rickey Esliger was paid a weekly salary of \$875 during the period of ten weeks;
- (14) Rickey Esliger's total earnings for the period from April 29, 2007 to July 7, 2007 was \$8,750;

(ccc) The assumptions of fact with respect to Tracy Esliger are as follows:

- (1) Tracy Esliger was engaged by the Appellant as a laborer during the periods from June 3, 2007 to September 1, 2007 and from July 6, 2008 to September 27, 2008;
- (2) The Appellant issued Records of Employment to Tracy Esliger for the periods from June 3, 2007 to September 1, 2007 and from July 6, 2008 to September 27, 2008;
- (3) The Records of Employment issued by the Appellant inflated the hours and earnings of Tracy Esliger;
- (4) During lobster season, Tracy Esliger's tasks consisted of washing crates and fixing traps at the Appellant's house in Lorne and dropping bait off at the wharfs;
- (5) During crab season, Tracy Esliger's tasks consisted of picking up crab at the wharfs and loading the crates on the truck going to Lamèque Co-op;
- (6) Tracy Esliger did not work 1092 and 1008 hours during the period from June 3, 2007 to September 1, 2007 and from July 6, 2008 to September 27, 2008, respectively;
- (7) Tracy Esliger did not earn \$10,920 and \$10,080 during the periods from June 3, 2007 to September 1, 2007 and from July 6, 2008 to September 27, 2008, respectively;
- (8) Tracy Esliger did not work an average of 12 hours a day, seven days a week for 13 weeks in 2007 and 12 weeks in 2008;
- (9) Four or five workers performed labor tasks for the Appellant during lobster season;

- (10) Tracy Esliger worked 28 days during the 2007 lobster season;
 - (11) In 2007, Tracy Esliger did not work more than seven days after lobster season;
 - (12) Tracy Esliger did not work more than ten hours a day during lobster season and eight hours a day after lobster season;
 - (13) The Appellant's business activity was minimal between lobster and crab season, which is during July;
 - (14) Tracy Esliger did not work between July 8, 2007 and July 29, 2007;
 - (15) Tracy Esliger worked as a crab laborer for the Appellant during the period from July 29, 2007 to September 1, 2007, which is 5 weeks;
 - (16) Laborers who performed similar tasks to Tracy Esliger's and who worked for another employer in the same region, worked an average of 55 hours per week during crab season;
 - (17) In 2007, Tracy Esliger did not work more than 611 hours for the Appellant;
 - (18) In 2008, Tracy Esliger did not start working for the Appellant prior to the start of crab season, which is July 27, 2008;
 - (19) In 2008, Tracy Esliger did not work more than 495 hours for the Appellant;
 - (20) Tracy Esliger was paid an hourly wage of \$10;
 - (21) Tracy Esliger did not earn more than \$6,110 and \$4,950 during the periods from June 3, 2007 to September 1, 2007 and from July 6, 2008 to September 27, 2008, respectively;
- (ddd) The assumptions of fact with respect to Jeffrey Hickey are as follows:
- (1) Jeffrey Hickey worked as crab laborer for the Appellant during the periods from July 27, 2008 to October 11, 2008 and from August 9, 2009 to October 17, 2009;
 - (2) The Appellant issued Records of Employment to Jeffrey Hickey for the periods from July 27, 2008 to October 11, 2008 and from August 9, 2009 to October 17, 2009;

- (3) The Records of Employment issued by the Appellant inflated the hours and wages of Jeffrey Hickey;
 - (4) Jeffrey Hickey did not work 924 and 840 [hours] during the periods from July 27, 2008 to October 11, 2008 and from August 9, 2009 to October 17, 2009, respectively;
 - (5) Jeffrey Hickey did not earn \$11,088 and \$10,960 during the periods from July 27, 2008 to October 11, 2008 and from August 9, 2009 to October 17, 2009, respectively;
 - (6) Jeffrey Hickey's duties consisted of washing the Appellant's trucks and crates at the Appellant's house in Lorne, picking up crab and bait from New Mills and Dalhousie wharfs and doing some maintenance work on the Appellant's truck;
 - (7) Laborers who performed similar tasks to Jeffrey Hickey's and who worked for another employer in the same region, worked an average of 55 hours per week during crab season;
 - (8) Jeffrey Hickey did not work more than 55 hours a week for 11 weeks in 2008 and ten weeks in 2009;
 - (9) Jeffrey Hickey did not work more than 605 hours in 2008 and 550 hours in 2009;
 - (10) Jeffrey Hickey was paid an hourly wage of \$12 in 2008 and \$13 in 2009;
 - (11) Jeffrey Hickey did not earn more than \$7,260 and \$7,150 during the periods from July 27, 2008 to October 11, 2008 and from August 9, 2009 to October 17, 2009, respectively;
- (eee) The assumptions of fact with respect to Noreen Hickey are as follows:
- (1) Noreen Hickey worked as crab laborer for the Appellant during the periods from July 29, 2007 to October 13, 2007 and from August 3, 2008 to October 18, 2008;
 - (2) The Appellant issued Records of Employment to Noreen Hickey for the periods from July 29, 2007 to October 13, 2007 and from August 3, 2008 to October 18, 2008;
 - (3) The Records of Employment issued by the Appellant inflated the hours and wages of Noreen Hickey;

- (4) Noreen Hickey's duties consisted of washing the Appellant's trucks and crates at the Appellant's house in Lorne, picking up crab and bait from New Mills and Dalhousie wharfs;
 - (5) Noreen Hickey did not work 904 and 924 hours during the periods from July 29, 2007 to October 13, 2007 and from August 3, 2008 to October 18, 2008, respectively;
 - (6) Noreen Hickey did not earn \$9,040 and \$11,088 during the periods from July 29, 2007 to October 13, 2007 and from August 3, 2008 to October 18, 2008, respectively;
 - (7) Noreen Hickey was paid an hourly rate of \$10;
 - (8) Laborers who performed similar tasks to Noreen Hickey's and who worked for another employer in the same region, worked an average of 55 hours per week during crab season;
 - (9) Noreen Hickey did not work more than 605 hours and did not earn more than \$6,050 during each of the periods from July 29, 2007 to October 13, 2007 and August 3, 2008 to October 18, 2008;
- (fff) The assumptions of fact with respect to Schenley Hickey are as follows:
- (1) Schenley Hickey worked as laborer for the Appellant during crab season, from July 29, 2007 to October 20, 2007;
 - (2) The Appellant issued a Record of Employment to Schenley Hickey for the period from July 29, 2007 to October 20, 2007;
 - (3) The Record of Employment issued by the Appellant inflated the hours and wages of Schenley Hickey;
 - (4) Schenley Hickey did not work 988 hours during the period from July 29, 2007 to October 20, 2007;
 - (5) Schenley Hickey did not earn \$9,880 during the period from July 29, 2007 to October 20, 2007;
 - (6) Schenley Hickey's duties consisted of washing the Appellant's trucks and crates at the Appellant's house in Lorne, picking up crab and bait from New Mills and Dalhousie wharfs;
 - (7) The Appellant also occasionally called-in Schenley Hickey in the evening if he needed help to load a truck with crates of crab headed to Lamèque Co-op;

- (8) Schenley Hickey was paid at hourly rate of \$10;
 - (9) Laborers who performed similar tasks to Schenley Hickey's and who worked for another employer in the same region, worked an average of 55 hours per week during crab season;
 - (10) Schenley Hickey did not work more than 660 hours and did not earn more than \$6,600 during the period from July 29, 2007 to October 20, 2007;
- (ggg) The assumptions of fact with respect to Serina Hickey are as follows:
- (1) The Appellant issued Records of Employment to Serina Hickey for the periods from April 29, 2007 to September 1, 2007, from April 28, 2008 to July 5, 2008 and from August 9, 2009 to September 5, 2009;
 - (2) The Records of Employment issued by the Appellant inflated the hours worked by Serina Hickey;
 - (3) The Record of Employment issued by the Appellant for the period from August 9, 2009 to September 5, 2009 inflated the wages of Serina Hickey;
 - (4) Serina Hickey did not work 1008, 828 and 336 hours during the periods from April 29, 2007 to September 1, 2007, from April 28, 2008 to July 5, 2008 and from August 9, 2009 to September 5, 2009, respectively;
 - (5) During lobster season, Serina Hickey's duties consisted of weighing and selling lobster at the Jacquet River wharf;
 - (6) Prior to and after lobster season, Serina Hickey's duties consisted of preparing and cleaning for the season;
 - (7) During crab season, Serina Hickey's duties consisted of icing the crab, loading the truck at New Mills and Dalhousie wharfs and washing crates;
 - (8) Serina Hickey started to work between 8 and 10 am and usually finished work at approximately 5pm;
 - (9) Four or five other workers performed the same tasks for the Appellant during the same periods;
 - (10) Serina Hickey did not work 12 hours a day, seven days a week for 12 weeks in 2007, 2008 and 2009;

- (11) During lobster season, Serina Hickey did not work more than ten hours a day;
 - (12) Prior to and after lobster season, Serina Hickey did not work more than eight hours a day;
 - (13) During crab season, laborers who performed similar tasks to Serina Hickey's and who worked for another employer in the same region, worked an average of 55 hours per week;
 - (14) During crab season, Serina Hickey did not work more than 55 hours a week;
 - (15) During the period from April 29, 2007 to September 1, 2007, Serina Hickey worked two days prior to lobster season, worked 61 days during lobster season and worked three weeks of the crab season;
 - (16) During the period from April 28, 2008 to July 5, 2008, Serina Hickey worked three days prior to lobster season, 61 days during lobster season and five days after lobster season;
 - (17) During the period from August 9, 2009 to September 5, 2009, Serina Hickey worked four weeks of the crab season;
 - (18) Serina Hickey did not work more than 791, 674 and 220 hours during the periods from April 4, 2007 to September 1, 2007, from April 28, 2008 to July 5, 2008 and from August 9, 2009 to September 5, 2009, respectively;
 - (19) Serina Hickey was paid a weekly salary of \$875 in 2007, \$925 in 2008 and was paid at an hourly rate of \$12 during the period from August 9, 2009 to September 5, 2009;
 - (20) Serina Hickey's earnings during the periods from April 4, 2007 to September 1, 2007 and from April 28, 2008 to July 5, 2008 were in the amount of \$10,500 and \$9,250, respectively;
 - (21) Serina Hickey did not earn \$4,032 during the period from August 9, 2009 to September 5, 2009;
 - (22) Serina Hickey's earnings during the period from August 9, 2009 to September 5, 2009 did not exceed \$2,640;
- (hhh) The assumptions of fact with respect to Vanessa Hickey are as follows:

- (1) Vanessa Hickey worked as laborer for the Appellant during crab season, from July 29, 2007 to October 20, 2007, and from July 21, 2008 to August 28, 2008;
- (2) The Appellant issued Records of Employment to Vanessa Hickey for the periods from July 29, 2007 to October 20, 2007 and from July 21, 2008 to August 28, 2008;
- (3) The Records of Employment issued by the Appellant inflated the hours and wages of Vanessa Hickey;
- (4) Vanessa Hickey did not work 988 and 444 hours during the periods from July 29, 2007 to October 20, 2007 and from July 21, 2008 to August 28, 2008, respectively;
- (5) Vanessa Hickey did not earn \$9,880 and \$4,440 during the periods from July 29, 2007 to October 20, 2007 and from July 21, 2008 to August 28, 2008, respectively;
- (6) Vanessa Hickey's duties consisted of washing the Appellant's trucks and crates at the Appellants' house in Lorne, picking up crab, weighing and selling bait at New Mills and Dalhousie wharfs;
- (7) Four or five other workers performed the same tasks as Vanessa Hickey's during the same periods;
- (8) Vanessa Hickey's schedule varied everyday depending on the amount of crab to unload;
- (9) Some days, Vanessa Hickey and other workers had only two or three crates and only one or two boats to off-load;
- (10) When there was little work to be done, Vanessa Hickey was paid for hours worked only;
- (11) Laborers who performed similar tasks to Vanessa Hickey's and who worked for another employer in the same region, worked an average of 55 hours per week during crab season;
- (12) Vanessa Hickey did not work 10 to 12 hours a day, seven days a week during the periods from July 29, 2007 to October 20, 2007 and from July 21, 2008 to August 28, 2008;
- (13) Vanessa Hickey did not work more than 55 hours per week for 12 weeks during the period from July 29, 2007 to October 20, 2007;

- (14) Vanessa Hickey did not work more than 55 hours per week for five weeks during the period from July 21, 2008 to August 23, 2008;
 - (15) Vanessa Hickey worked 48 hours in the week from August 24, 2008 to August 28, 2008;
 - (16) Vanessa Hickey was paid at hourly rate of \$10;
 - (17) Vanessa Hickey did not work more than 660 and 323 hours and did not earn more than \$6,600 and \$3,230, during the periods from July 29, 2007 to October 20, 2007 and from July 21, 2008 to August 28, 2008, respectively;
- (iii) The assumptions of fact with respect to Bruce Lapointe are as follows:
- (1) Bruce Lapointe worked as laborer for the Appellant during crab season, from August 10, 2008 to September 13, 2008, and from August 9, 2009 to October 17, 2009;
 - (2) The Appellant issued Records of Employment to Bruce Lapointe for the periods from August 10, 2008 to September 13, 2008 and from August 9, 2009 to October 17, 2009;
 - (3) The Records of Employment issued by the Appellant inflated the hours and wages of Bruce Lapointe;
 - (4) Bruce Lapointe did not work 420 and 828 hours during the periods from August 10, 2008 to September 13, 2008 and from August 9, 2009 to October 17, 2009, respectively;
 - (5) Bruce Lapointe did not earn \$4,200 and \$9,936 during the periods from August 10, 2008 to September 13, 2008 and from August 9, 2009 to October 17, 2009, respectively;
 - (6) Bruce Lapointe's duties consisted of washing the Appellant's trucks and crates at the Appellants's house in Lorne, picking up crab and bait at New Mills and Dalhousie wharfs;
 - (7) Four or five other workers performed the same tasks as Bruce Lapointe's during the same periods;
 - (8) Bruce Lapointe did not work an average of 12 hours a day, seven days a week in 2008 and 2009;

- (9) Laborers who performed similar tasks to Bruce Lapointe's and who worked for another employer in the same region, worked an average of 55 hours per week during crab season.
 - (10) Bruce Lapointe did not work more than 55 hours per week for five weeks in 2008 and for 10 weeks during 2009;
 - (11) Bruce Lapointe did not work more than 275 hours and 550 hours during the periods from August 10, 2008 to September 13, 2008 and from August 9, 2009 to October 17, 2009, respectively;
 - (12) Bruce Lapointe was paid at hourly rate of \$10 in 2008 and \$12 in 2009;
 - (13) Bruce Lapointe did not work (*sic*) earn more than \$2,750 and \$6,600, during the periods from August 10, 2008 to September 13, 2008 and from August 9, 2009 to October 17, 2009, respectively;
- (jii) The assumptions of fact with respect to Marylyn Lapointe are as follows:
- (1) Marylyn Lapointe worked as laborer for the Appellant during crab season, from August 5, 2007 to October 20, 2007, from August 3, 2008 to October 18, 2008 and from August 2, 2009 to October 17, 2009;
 - (2) The Appellant issued Records of Employment to Marylyn Lapointe for the periods from August 5, 2007 to October 20, 2007, from August 3, 2008 to October 18, 2008 and from August 2, 2009 to October 17, 2009;
 - (3) The Records of Employment issued by the Appellant inflated the hours and wages of Marylyn Lapointe;
 - (4) Marylyn Lapointe did not work 914, 924 and 900 hours during the periods from August 5, 2007 to October 20, 2007 from August 3, 2008 to October 18, 2008 and from August 3, 2009 to October 17, 2009, respectively;
 - (5) Marylyn Lapointe did not earn \$9,140, \$11,088 and \$10,800 during the periods from August 5, 2007 to October 20, 2007, from August 3, 2008 to October 18, 2008 and from August 2, 2009 to October 17, 2009, respectively;
 - (6) Marylyn Lapointe's duties consisted of washing the Appellant's trucks and crates at the Appellant's house in Lorne, picking up crab and bait at New Mills and Dalhousie wharfs;

- (7) Four or five other workers performed the same tasks as Marylyn Lapointe's during the same periods;
- (8) Marylyn Lapointe did not work an average of 12 hours a day, seven days a week in 2007, 2008 and 2009;
- (9) Laborers who performed similar tasks to Marylyn Lapointe's and who worked for another employer in the same region, worked an average of 55 hours per week during crab season;
- (10) Marylyn Lapointe did not work more than 55 hours per week for 11 weeks in 2007, 2008 and 2009;
- (11) Marylyn Lapointe was paid at hourly rate of \$10 in 2007 and \$12 in 2008 and 2009;
- (12) Marylyn Lapointe did not work more than 605 hours and did not earn more than \$6,050 during the period from August 5, 2007 to October 20, 2007;
- (13) Marylyn Lapointe did not work more than 605 hours and did not earn more than \$7,260 during each of the periods from August 3, 2008 to October 18, 2008 and from August 2, 2009 to October 17, 2009;

(kkk) The assumptions of fact with respect to Carol-Ann Mallaley are as follows:

- (1) Carol-Ann Mallaley worked as laborer for the Appellant during crab season, from August 13, 2007 to September 29, 2007 and from August 31, 2008 to October 4, 2008;
- (2) In 2009, Carol-Ann Mallaley worked for the Appellant during both lobster and crab season: from May 17, 2009 to June 27, 2009 and from August 23, 2009 to September 12, 2009;
- (3) The Appellant issued Records of Employment to Carol-Ann Mallaley for the periods from August 13, 2007 to September 29, 2007, from August 31, 2008 to October 4, 2008 and from May 17, 2009 to September 12, 2009;
- (4) The Records of Employment issued by the Appellant inflated the hours and wages of Carol-Ann Mallaley;
- (5) Carol-Ann Mallaley did not work 544, 420 and 756 hours during the periods from August 13, 2007 to September 29, 2007, from August 31, 2008 to October 4, 2008 and from May 17, 2009 to September 12, 2009, respectively;

- (6) Carol-Ann Mallaley did not earn \$5,440, \$4,200 and \$7,560 during the periods from August 13, 2007 to September 29, 2007, from August 31, 2008 to October 4, 2008 and from May 17, 2009 to September 12, 2009, respectively;
- (7) Carol-Ann Mallaley's duties consisted of washing the Appellant's trucks and crates at the Appellant's house in Lorne, picking up crab and bait from New Mills and Dalhousie wharfs;
- (8) Four or five other workers performed the same tasks as Carol-Ann Mallaley's during the same periods;
- (9) Laborers who performed similar tasks to Carol-Ann Mallaley's and who worked for another employer in the same region, worked an average of 55 hours per week during crab season;
- (10) Carol-Ann Mallaley did not work an average of 12 hours a day, seven days a week in 2007, 2008 and 2009
- (11) Carol-Ann Mallaley did not work more than 55 hours per week for seven and five weeks in 2007, 2008, respectively;
- (12) In 2009, Carol-Ann Mallaley did not work more than ten hours per day for 45 days during the period from May 17, 2009 to June 27, 2009 and she did not work more than 55 hours per week for three weeks during the period from August 23, 2009 to September 12, 2009;
- (13) Carol-Ann Mallaley did not work more than 385, 275 and 615 hours during the periods from August 13, 2007 to September 29, 2007, from August 31, 2008 to October 4, 2008 and from May 17, 2009 to September 12, 2009, respectively;
- (14) Carol-Ann Mallaley was paid at hourly rate of \$10 in 2007, 2008 and 2009;
- (15) Carol-Ann Mallaley did not earn more than \$3,850, \$2,750 and \$6,150 during the period from August 13, 2007 to September 29, 2007, from August 31, 2008 to October 4, 2008 and from May 17, 2009 to September 12, 2009, respectively;

Workers listed in Schedule "C":

- (III) The assumptions of fact with respect to Rachel Dally are as follows:

- (1) The Appellant issued a Record of Employment for self-employed fisher to Rachel Dally for the period from September 14, 2009 to October 3, 2009;
 - (2) Rachel Dally did not fish or participate in making a catch on her brother's boat during the period from September 14, 2009 to October 3, 2009;
 - (3) Rachel Dally's brother worked 50 hours a week for another payer from September 28, 2009 to October 16, 2009;
 - (4) When fishing, Rachel Dally's brother fished alone;
 - (5) Rachel Dally did not own a fishing license and did not lease a fishing license from the Madawaska Maliseet First Nation;
 - (6) The Appellant did not pay Rachael Dally for the purchase of a catch during the period from September 14, 2009 to October 3, 2009;
- (mmm) The assumptions of fact with respect to Nicholas Esliger for the period from April 22, 2007 to July 14, 2007 are as follows:
- (1) Nicholas Esliger was engaged by the Appellant as deckhand or laborer during the period from April 22, 2007 to July 14, 2007;
 - (2) Nicholas Esliger worked on the Appellant's boat and fished lobster during the period from April 22, 2007 to July 14, 2007;
 - (3) The Appellant was the captain of his boat;
 - (4) The Appellant decided when the boat left the wharf and when it returned;
 - (5) The Appellant instructed Nicholas Esliger on what tasks needed to be done;
 - (6) The Appellant supervised Nicholas Esliger;
 - (7) Nicholas Esliger performed his duties at the Appellant's house before and after the lobster season and on the boat during the lobster season;
 - (8) The Appellant owned the boat as well as the equipment needed for Nicholas Esliger to perform his duties;
 - (9) Nicholas Esliger was not allowed to subcontract his work or hire a helper;

- (10) Nicholas Esliger was responsible for the tasks assigned to him;
- (11) Nicholas Esliger was paid a weekly salary of \$875 per week regardless of the hours worked;
- (12) Nicholas Esliger did not incur any expenses while performing his duties;
- (13) Nicholas Esliger did not bear any financial risk of the Appellant's business;
- (14) Nicholas Esliger did not have an opportunity for profit over and above his weekly pay;
- (15) Nicholas Esliger did not make any investment in a business of his own;
- (16) Nicholas Esliger performed his duties for the Appellant and not in his own name;
- (17) The Appellant issued a Record of Employment for Nicholas Esliger for the period from April 22, 2007 to July 14, 2007;
- (18) The Record of Employment issued by the Appellant for the period from April 22, 2007 to July 14, 2007 inflated the hours worked by Nicholas Esliger;
- (19) Nicholas Esliger did not work 994 hours and did not earn \$10,500 during the period from April 22, 2007 to July 14, 2007;
- (20) There was no lobster landing at Jacquet River wharf on 12 days during the 2007 lobster season;
- (21) Nicholas Esliger did not work more than 49 days on the Appellant's boat from May 1, 2007 to June 30, 2007;
- (22) Nicholas Esliger worked 12 hours per day when fishing;
- (23) Nicholas Esliger worked nine days prior to the opening of the lobster season to prepare the boat and gear and 14 days after the close of the season to gather the traps and gear to be stored until the following year;
- (24) The Appellant engaged several other laborers to perform similar duties prior to and after the lobster season;
- (25) There was no increase in business activities when no fishing occurred;

- (26) Nicholas Esliger did not work more than eight hours per day prior to and after the lobster season;
- (27) Nicholas Esliger did not work more than 772 hours during the period from April 22, 2007 to July 14, 2007;
- (28) Nicholas Esliger earned \$10,500 from the Appellant during the period from April 22, 2007 to July 14, 2007;
- (nnn) The assumptions of fact with respect to Joshua Godin are as follows:
- (1) Joshua Godin is the Appellant's nephew;
 - (2) Joshua Godin was not employed by the Appellant;
 - (3) The Appellant issued a Record of Employment for self-employed fisher to Joshua Godin for the period from May 13, 2007 to July 7, 2007;
 - (4) Joshua Godin did not fish or participate in making a catch on his great uncle's boat during the period from May 13, 2007 to July 7, 2007;
 - (5) Joshua Godin did not have a fishing license;
 - (6) The Appellant did not buy any lobster or clams from Joshua Godin during the period from May 13, 2007 to July 7, 2007;
 - (7) The Appellant did not pay Joshua Godin for the purchase of lobster or clams during the period from May 13, 2007 to July 7, 2007;
- (ooo) The assumptions of fact with respect to Rocky Hickey are as follows:
- (1) The Appellant issued Records of Employment to Rocky Hickey for the periods from August 5, 2007 to September 29, 2007, from August 4, 2008 to October 4, 2008 and from August 2, 2009 to October 3, 2009;
 - (2) Rocky Hickey was engaged by the Appellant as a skidder operator;
 - (3) During 2007 and 2008, Rocky Hickey was seen doing some work in the woods, using the Appellant's skidder;
 - (4) The Appellant did not earn revenue from the forestry operations during 2007, 2008 and 2009;
 - (5) During 2007 and 2008, Rocky Hickey ran errands, picked up parts and made repairs to the Appellant's skidder outside of his employment periods of 2007 and 2008;

- (6) During 2007 and 2008, Rocky Hickey may have received some remuneration for the work he performed for the Appellant;
 - (7) Rocky Hickey was not paid for the repairs performed on the Appellant's skidder outside of his employment periods of 2007 and 2008;
 - (8) Rocky Hickey was not reimbursed for expenses incurred while running errands for the Appellant within and outside his employment periods of 2007 and 2008;
 - (9) Rocky Hickey did not perform any work for the Appellant in 2009;
 - (10) Rocky Hickey's terms and conditions of employment during 2007, 2008 and 2009 consist of an artificial arrangement to make him eligible for unemployment insurance benefits;
- (ppp) The assumptions of fact with respect to Patrick Levesque are as follows:
- (1) The Appellant issued a Record of Employment to Patrick Levesque for the period from April 26, 2009 to August 15, 2009;
 - (2) The Record of Employment issued by the Appellant inflated the hours and wages of Patrick Levesque;
 - (3) Patrick Levesque did not work or receive remuneration for 4 weeks, between July 5, 2009 and August 2, 2009;

Period from April 26, 2009 to July 4, 2009
 - (4) Patrick Levesque was engaged by the Appellant as a deckhand/laborer during the period from April 26, 2009 to July 4, 2009, which includes lobster season;
 - (5) From May 1 to June 30, 2009, Patrick Levesque's tasks included setting up nets to catch herring and bait, fishing for lobster, bringing it back to the wharf and unloading it;
 - (6) When fishing lobster, Patrick Levesque worked on the Appellant's boat, #4;
 - (7) When fishing lobster, Patrick Levesque worked with the Appellant as well as Tommy Carrier and Kevin McGregor;
 - (8) There were about 300 lobster traps;

- (9) While the Appellant's boat was out of commission for seven days in May 2009, Patrick Levesque fished herring and lobster with the Appellant's small boat and did some repairs on traps and ropes;
- (10) During the 2009 lobster season, there were ten days without any landing at Jacquet River wharf;
- (11) Patrick Levesque did not work on the Appellant's boat more than 51 days during the 2009 lobster season;
- (12) Patrick Levesque worked 12 hours a day when fishing lobster;
- (13) Patrick Levesque worked five days prior to lobster season to prepare the boat and fishing gear and worked four days after the close of the season to clean up and store the gear away;
- (14) The Appellant engaged several other laborers whose duties were similar to Patrick Levesque's, prior to and after lobster season;
- (15) Patrick Levesque did not work more than eight hours a day prior to and after the lobster season;
- (16) The total hours worked by Patrick Levesque during the period from April 26, 2009 to July 4, 2009 did not exceed 684 hours;
- (17) Patrick Levesque was paid a weekly salary of \$950 and his total remuneration for the period from April 26, 2009 to July 4, 2009 did not exceed \$9,500;

Period from August 2, 2009 to August 15, 2009

- (18) During the period from August 2, 2009 to August 15, 2009, Patrick Levesque did not work for the Appellant, did not get ice ready for the crab, did not go to the wharf and did not transfer crates to the truck to be weighed;
- (19) Patrick Levesque did not work with Tommy Carrier to deliver crab to Lamèque Co-op and unload the truck in Lamèque;
- (20) Tommy Carrier worked for the Appellant from April 19, 2009 to July 11, 2009;
- (21) Tommy Carrier did not work during crab season in 2009;

- (22) Patrick Levesque did not drive to Lamèque Co-op eight to ten times with Jeffrey Hickey during the period from August 2, 2009 to August 15, 2009;
 - (23) Jeffrey Hickey did not drive to Lamèque Co-op during crab season; he only drove the Appellant's truck locally;
 - (24) The Appellant's workers were not allowed to unload the delivery trucks at the Lamèque Co-op; only the Co-op workers were authorized to receive a delivery;
 - (25) All of the Appellant's crab workers were paid an hourly rate; none were paid a weekly salary;
 - (26) The terms and conditions of Patrick Levesque's employment for the period from August 2, 2009 to August 15, 2009 consisted of an artificial arrangement to extend the length and increase the rate of his employment insurance benefits;
- (qqq) The assumptions of fact with respect to Rudi Mallaley are as follows:
- (1) Rudi Mallaley is the Appellant's niece;
 - (2) The Appellant issued a Record of Employment to Rudi for the period from April 26, 2009 to July 18, 2009;
 - (3) The Record of Employment issued by the Appellant inflated the hours and wages of Rudi Mallaley;

Period from April 26, 2009 to July 4, 2009:
 - (4) Rudi Mallaley worked for the Appellant during the period from April 26, 2009 to July 4, 2009 only;
 - (5) During the period from May 1, 2009 to June 30, 2009, Rudi Mallaley's tasks included weighing and selling lobster mostly at the Jacquet River wharf and helping Steven Esliger, Marylyn Lapointe and Carol Ann Mallaley with the uploading of the truck to be delivered at the Arseneau's Fish Market;
 - (6) Prior to and after the close of the lobster season, Rudi Mallaley helped with the preparations and clean-up of the fishing gear;
 - (7) Rudi Mallaley did not work 12 hours a day, seven days a week during the period from April 26, 2009 to July 4, 2009;

- (8) During lobster season, Rudi Mallaley's work day normally started at approximately 11am but sometimes started at approximately 8 or 9 am and finished between 6 and 7 pm or earlier;
- (9) Prior to and after the close of the lobster season, Rudi Mallaley did not work more than eight hours per day;
- (10) During the 61 days of lobster season, Rudi Mallaley did not work more than ten hours per day;
- (11) Rudi Mallaley did not work more than 682 hours during the period from April 26, 2009 to July 4, 2009;
- (12) Rudi Mallaley was paid a salary of \$950 per week during the period from April 26, 2009 to July 4, 2009 and her total earnings for that period was \$9,500;

Period from July 5, 2009 to July 18, 2009:

- (13) Rudi Mallaley did not work for the Appellant during the period from July 5, 2009 to July 18, 2009;
- (14) The Appellant did not buy scallop from any fisherman or sell fish or scallop to either Lamèque Co-op or Arseneau's Fish Market in July 2009;
- (15) Rudi Mallaley did not perform any services during the period from July 5, 2009 to July 18, 2009; and
- (16) The terms and conditions of Rudi Mallaley's employment for the period from July 5, 2009 to July 18, 2009 consisted of an artificial arrangement to extend the length and increase the rate of her employment insurance benefits.

[5] The Respondent treated these files as a fraud case. An investigation of the affairs of Mr. Layne O. Godin and his workers was initiated as a result of information obtained from the public that Mr. Layne O. Godin was selling stamps, paying high wages and adding work weeks to qualify the workers for full employment insurance benefits or for partial benefits provided for by the *Employment Insurance Act* ("the Act").

[6] Mr. Jacques Blanchard, a former inspector with Human Resources and Skills Development Canada ("HRSDC"), testified at the hearing and he explained how the investigation was conducted. The investigation started at the end of 2009 and lasted for seven to eight months. The years under review were 2007 and 2008.

During the course of the investigation, 60 of Mr. Layne O. Godin's workers were interviewed and questionnaires were filled out and signed by the workers in front of Mr. Blanchard or his assistant, Ms. H  l  ne L  vesque. When a worker made a comment during his interview, it was written down and the worker was asked to initial besides it. Mr. Layne O. Godin refused to be interviewed and did not provide any information at that stage.

[7] Interviews were also conducted with fishermen in general to obtain information on the workings of the industry and from fish buyers who signed receipts for fish deliveries. They confirmed that deliveries were not made every day. Government officials were also consulted to obtain information on the licences required by a fisherman and permits required to cut wood on public and private lands.

[8] Mr. Blanchard formally denied the allegation made by some workers that he made an offer to let their employment insurance claims go through in exchange for a confirmation that Mr. Layne O. Godin was selling stamps.

[9] As a result of the investigation, only two workers had a favourable outcome. The rest were referred to the Canada Revenue Agency ("CRA") for a ruling on their insurable hours, insurable earnings and pensionability of their employment with Mr. Layne O. Godin

[10] Mrs. Lucie St-Amour, a complex case review officer with the CRA, testified at the hearing and she described the work undertaken in reviewing the files of the workers. Essentially, she was looking for corroboration between information provided by HRSDC and information gathered from interviews with the workers. She conducted interviews with Mr. Layne O. Godin and most of the workers except for Wayde Godin. A summary of each interview was typed and each page was initialized by the worker and by another CRA's officer, Mrs. Laura Papineau, who was also present during the interviews.

[11] Ms. St-Amour consulted with officials from Fisheries and Oceans Canada's and the Forestry Department of New Brunswick. She also spoke to third parties such as the representatives of Lam  que Co-op, Arseneau Fish Market and Mr. Earl Le Bellois of the First Nations.

[12] In terms of documents, Mr. Layne O. Godin submitted the workers' payslips which were already in the CRA's files. No Record of Employment ("ROE"), bank

statements nor timesheets were provided by Mr. Layne O. Godin at the time of the interview with him.

[13] As a result of her reviews, Ms. St-Amour issued 41 rulings dated March 28, 2011, confirming that:

- (a) 21 of the workers were not in insurable employment with Mr. Layne O. Godin;
- (b) three of the workers were not Fishers; and
- (c) 17 of the workers were in insurable employment with Mr. Layne O. Godin but their insurable hours and earnings for their respective periods of employment had to be re-determined.

[14] All 41 workers appealed their respective ruling to the CPP/EI Appeals division of the CRA. Mrs. Brigitte Gagnon was the appeals officer who dealt with the workers' appeals. It took her a year and a half to review the files. She prepared a Fact Finding Questionnaire that was filled out by each worker. She spoke to third parties concerning the forestry and fishing industry and she did comparisons.

[15] For the workers working during the crab fishing season, Mrs. Gagnon concluded that the wages paid were reasonable but that the working hours were inflated. Individuals working in that industry, work on average 55 hours per week, more at the beginning of the season and less at the end. No worker works 12 hours per day, seven days a week during the entire season from mid-August to mid-October.

[16] For the workers cutting wood, Ms. Gagnon found out that a licence was required to cut wood on Crown and private lands but no permits were obtained by those workers. Furthermore, no record of wood sales during the 2007, 2008 and 2009 years were filed as evidence and the owner of the private farm where the wood was alleged to have been cut told Mrs. Gagnon that there was no commercial wood cutting on his farm except for his own personal consumption.

The Position of Mr. Layne O. Godin

[17] Mr. Layne O. Godin's appeal applies to all 41 workers even if only five of them formally filed an appeal with this Court.

[18] Mr. Layne O. Godin testified at the hearing. He essentially provided general information on his fishing and forestry operations and the work performed by his

workers. Mr. Godin explained that he hires two or three workers for three weeks in April in preparation for the lobster season which is from April 30 to June 30. The work to be done during the pre-lobster season consists of checking, repairing and painting the traps, delivering the traps to the wharves, checking and repairing the nets for herring fishing and ensuring that the boats will be in good condition for the fishing season. One boat is used for fishing herring and the biggest boat is used for fishing lobster. The crews on the boats consisted of the same three persons in 2007 and 2008, that is, Mr. Layne O. Godin himself, Tommy Carrier and Nicholas Slugger. In 2009, Nicholas Slugger was replaced by Patrick Lévesque.

[19] In terms of documentary evidence, Mr. Godin submitted the following documents:

- the registration of his three boats used for fishing lobster and herring;
- invoices for the delivery of baits to the Arseneau Fish Market which show that he was in operation during the month of April of each year;
- the truck inspection reports showing that he had six or seven trucks in 2007;
- a map showing from where he purchased crabs;
- receipts from Arseneau Fish Market showing trips made by Lucien Carrier;
- purchase and sale of lobsters by Jacques Doucet;
- the timesheets prepared by Tracy Esliger;
- payments for the purchases of lobster for three years;
- T-4 slips prepared by Tracy Esliger issued to crab fishermen;
- receipts for wood delivered to Bathurst in 2010 but cut in 2009;
- receipts from the Arseneau Fish Market showing that he was still in operation during the month of July of each year.

[20] Every April, Mr. Layne O. Godin purchases baits for herring fishing from Lamèque Co-op and delivers them to fishermen and to the Arseneau Fish Market. Mr. Godin prepares the invoices for the sale of the baits before their deliveries. Sale of the baits are cash operations. For the suppliers of crabs, the costs of the baits delivered to them are deducted from the sale of crabs to Mr. Layne O. Godin.

[21] Mr. Layne O. Godin explained that the timesheets were prepared by Tracy Esliger but that he also kept track himself of the working hours of all workers. The workers had to report to his place at the beginning and at the end of each working day, except for the wood cutters who went directly to the farmlands

as they were paid by production. Mr. Godin said that he then provided the information to Tracy Esliger for preparation of the timesheets.

[22] All workers were paid in cash for work done the preceding week at the end of their shifts on Fridays at Mr. Layne O. Godin's place.

[23] During the lobster season, Mr. Layne O. Godin also purchases lobsters from the fishermen on the wharves and sell them to the public on the wharves and to fish markets in the region. All lobster transactions are in cash. Mr. Layne O. Godin said that he makes a profit of \$1.50 to \$2.00 on a pound of lobster. Mr. Jacques Doucet, one of the Appellants, was principally involved in the purchase and sale of lobster on behalf of Mr. Layne O. Godin who advanced him money so that he could pay for the lobsters. During the lobster season, Mr. Layne O. Godin usually employs three workers on the boat and three on land.

[24] Mr. Layne O. Godin explained that the crab fishing season begins on the first Monday of August and ends at the end of October and that it is busier at the beginning of the season. At the end of July, the truck drivers would go to Lamèque Co-op to pick up baits which are then delivered to fishermen. The amount charged for the baits to the suppliers of crabs are then deducted from the sale of the crabs to Mr. Layne O. Godin. Sales of the baits are paid in cash. During the crab fishing season, Mr. Layne O. Godin buys crabs from different fishermen and delivers them to the Lamèque Co-op and to fish markets like the Arseneau Fish Market. Because there are quotas for crabs, one appointed monitor has to be present when the crabs are unloaded from the fishing boats. There is only one monitor for fishing zone #23 and this explains why the truck drivers often have to wait on the wharves. The normal working hours for the workers during the crab season are from 7 or 8 a.m. to 8 p.m. Their work essentially consists of loading the crabs in the trucks, washing the crabs and the trucks, unloading the crabs from the trucks if they cannot be delivered immediately. Deliveries usually take place from 6 p.m. to midnight. During the crab season, Mr. Layne O. Godin employed between 8 to 10 full-time workers and 7 or 8 part-time workers.

[25] Mr. Layne O. Godin explained that the wood cutting activities took place on a private farm from August 2 to October 10, 2009 only. In 2007 and 2008, the wood was cut by the native people. The workers then simply skinned the wood and transported it to Bathurst where it was sold. In 2007, Mr. Layne O. Godin had only two workers involved in that activity but, in 2008, he hired two more workers. According to Mr. Layne O. Godin, the gross revenue generated by the wood

cutting operations was approximately \$50 000 in 2009, \$48 000 to \$49 000 in 2008 and \$45 000 in 2007.

Testimony of the Intervenor and the Other Appellants

[26] Ms. Christine Carrier, the intervenor in Mr. Layne O. Godin's appeal, testified at the hearing. She stated that her own claim for employment insurance benefits was cut off. She worked for Mr. Layne O. Godin for five weeks starting the first week of August 2009. She provided cleaning services, mostly at Mr. Layne O. Godin's house, for a few hours mainly in the evenings. While working for Mr. Godin, Ms. Carrier was also working at Denny's restaurant from 6 a.m. to 2 p.m. She lived in Belle Dune which is about a 40-minute drive from Mr. Godin's house. At the hearing, she said that she kept a record of her working hours on a calendar, that she received her payslips prepared by Mr. Godin at the end of the week and that she was always paid in cash on Saturdays by Mr. Godin. She stated that she did not see anybody at Mr. Godin's house while working there. She could not give the name of any person she may have seen on Mr. Godin's property inside or outside the house.

[27] Ms. Carrier was interviewed on two occasions: the first time by H el ene L evesque and the second time by Lucie St. Amour. She was also asked to answer two questionnaires. There are many contradictions between her testimony in Court and her answers to the questionnaires concerning the way she kept records of her working hours, the work performed for Mr. Godin and the exact place where she performed the work. In summary, the witness was not credible.

Steven Esliger

[28] Mr. Esliger worked for Mr. Layne O. Godin during the crab seasons of August 10 to October 13, 2007 and August 15 to October 18, 2008 and during the lobster season of May 15 to June 27, 2009. His appeal is only for the 2007 and 2008 years because the CRA reduced his insurable hours and wages for those two years. For 2009, the CRA increased his insurable hours and wages.

[29] His work during the crab season consisted of unloading crabs from the fishermen's boats, weighing the crabs and loading the crabs in the trucks. He said that these activities required five to six workers on the wharves. Mr. Godin had his own scale but did not have any crane. During the 2007 and 2008 crab seasons, he

claimed that he worked seven days a week, 12 hours a day. He was paid \$10 an hour in 2007 and \$12 an hour in 2008.

[30] He testified that he kept track of his working hours in a book but he did not file any document proving that fact. No fishermen were subpoenaed to confirm the seven days a week of crab loading during the crab season.

Lucien Carrier

[31] Mr. Lucien Carrier was a truck driver who worked for Mr. Layne O. Godin during the 2007, 2008 and 2009 crab seasons. His day of work usually started at noon at Mr. Layne O. Godin's house where he takes a truck (usually the eight-ton truck). His first task was to go to Arseneau's Fish Market to pick-up crabs and to drive back to Mr. Godin's house where part of the crabs was unloaded. Mr. Carrier would go home between 3 p.m. and 4 p.m. for rest and supper and would return to Mr. Godin's house to deliver the rest of the crabs at Lamèque Co-op where the crabs were unloaded by employees of the cooperative using their own equipment. The truck was then loaded with baits and ice. Mr. Carrier drove back to Mr. Godin's house late in the evening. In his testimony, Mr. Carrier stated that during his trips to Lamèque he was often accompanied by his girlfriend and a brother-in-law.

[32] During cross-examination, Mr. Carrier stated that he did not go to Lamèque Co-op everyday. Sometimes there was no need to go to Lamèque Co-op because there were no crab transactions or because bad weather prevented the fishermen from going to sea. On those days, he would work reduced hours at Mr. Godin's house. He also pointed out that near the end of the season, there is usually less crab being caught which results in a reduced number of trips to Lamèque.

Jacques Doucet

[33] Mr. Jacques Doucet worked for Mr. Layne O. Godin during the 2007, 2008 and 2009 lobster seasons from mid-April to the beginning of July. His job was to go to the wharves to buy lobsters directly from the fishermen. Since the lobsters had to be paid in cash, Mr. Godin advanced him approximately \$5,000 for this purpose.

[34] Mr. Doucet testified that he was working alone and that his working day started between 6 to 8 a.m. at Mr. Godin's house. He took a truck and Mr. Godin

assigned him places to go. He had to be on the wharves between 11:30 a.m. and 4:35 p.m. The wharves were located at Jack River, Petit Rocher and Pointe Verte. He said he worked seven days a week and that during a lobster season, only five to six days were lost due to bad weather.

[35] Mr. Doucet testified that he was the sole owner of a fish market located close to his house and that during the lobster season, he hired two or three full-time employees. He confirmed that he never sold the lobster he bought for Mr. Godin at his own fish market.

Wayde Godin

[36] Mr. Wayde Godin is Mr. Layne O. Godin's brother and was hired for the 2007, 2008 and 2009 crab seasons. His main task was to take care of the maintenance of the vehicles and to wash the crab traps. His working hours at Mr. Layne O. Godin's house were from 8 a.m. to 8 p.m. He was always present on site except when he had to purchase parts for the trucks.

Kelly Godin

[37] Mr. Kelly Godin is not related to Mr. Layne O. Godin. From August 2, 2009 to October 10, 2009, he worked for Mr. Layne O. Godin cutting wood on a private farm located about a 10-minute drive away from his house. He has a lot of experience and know how to handle a chain saw. His working hours were from 5 a.m. to 8 or 9 p.m. seven days a week. He worked with two other workers of Mr. Layne O. Godin, Rocky and Clayton Hickey.

Analysis

[38] The legislative provisions on which the Minister relied in making the determinations are found in subsection 6(1) of the *Canada Pension Plan*, paragraphs 5(1)(a), 5(2)(i) and subsection 5(3) of the *Act*, section 9.1 or subsection 10(3) of the *EIR*, subsection 2(1) of the *IECPR*, sections 1 and 2 of the *Fishing Regulations* and paragraphs 251(1)(a) and (c), paragraph 251(2)(a) of the *Income Tax Act*. They read as follows:

6 (1) Pensionable employment is

(a) employment in Canada that is not excepted employment;

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;

Excluded employment

(2) Insurable employment does not include

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

Arm's length dealing

(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.

Hours of Insurable Employment — Methods of Determination

9.1 Where a person's earnings are paid on an hourly basis, the person is considered to have worked in insurable employment for the number of hours that the person actually worked and for which the person was remunerated.

10(3) Where the number of hours agreed to by the employer and the worker or group of workers under subsection (2) is not reasonable or no agreement can be reached, each worker is deemed to have worked the number of hours in insurable employment established by the Minister of National Revenue, based on an examination of the terms and conditions of the employment and a comparison with the number of hours normally worked by workers performing similar tasks or functions in similar occupations and industries.

Earnings from Insurable Employment

2(1) For the purposes of the definition *insurable earnings* in subsection 2(1) of the Act and for the purposes of these Regulations, the total amount of earnings that an insured person has from insurable employment is

(a) the total of all amounts, whether wholly or partly pecuniary, received or enjoyed by the insured person that are paid to the person by the person's employer in respect of that employment, and

(b) the amount of any gratuities that the insured person is required to declare to the person's employer under provincial legislation.

Interpretation

1(1) The definitions in this subsection apply in these Regulations.

Act

Act means the *Employment Insurance Act (Loi)*

buyer

buyer means a person who buys a catch for the purpose of reselling it, either in the form in which it was caught or after processing, and not for the purpose of using it as food, feed or bait. (*acheteur*)

catch

catch means any natural product or by-product of the sea, or of any other body of water, caught or taken by a crew and includes fresh fish, cured fish, Irish moss, kelp and whales, but does not include fish scales or seals, and

(a) where only a portion of a catch is delivered to a buyer, means the portion delivered; and

(b) where more than one catch or portion of a catch is delivered to a buyer at one time, means the catches or portions that are delivered. (*prise*)

crew

crew means a group of fishers who generally engage in making a catch together or who have actually engaged in making a catch together and, in the case of a single fisher, *crew* or *member of a crew*, as the case may be, means that single fisher. (*équipage*)

cured fish

cured fish means the following fish and fish products:

(a) salted groundfish, smoked herring, pickled mackerel, pickled turbot, pickled herring, pickled and salted alewives, pickled trout and other pickled fish products; and

(b) cod oil and cod livers. (*poisson traité*)

employer

employer means a person included by section 3 as the employer of a fisher. (*employeur*)

fisher

fisher means a self-employed person engaged in fishing and includes a person engaged, other than under a contract of service or for their own or another person's sport,

(a) in making a catch;

(b) in any work incidental to making or handling a catch, whether the work consists of loading, unloading, transporting or curing the catch made by the crew of which the person is a member, or of preparing, repairing, dismantling or laying-up the fishing vessel or fishing gear used by that crew in making or handling the catch, where the person engaged in any such incidental work is also engaged in making the catch; or

(c) in the construction of a fishing vessel for their own use or for the use of a crew of which the person is a member in making a catch. (*pêcheur*)

fishing gear

fishing gear means any specialized equipment, other than hand tools or clothing, used by a crew exclusively in making a catch. (*engins de pêche*)

fresh fish

fresh fish means fish that is not cured fish. (*poisson frais*)

major attachment claimant

major attachment claimant means a claimant who qualifies to receive benefits and has \$3,760 or more of insurable earnings from employment as a fisher in their qualifying period. (*prestataire de la première catégorie*)

minimum wage

minimum wage, in respect of the earnings of a fisher from the catch of a crew, means the minimum wage in effect in the province where the fisher resides on January 1 of the year in which the catch is sold. (*salaire minimum*)

minor attachment claimant

minor attachment claimant means a claimant who qualifies to receive benefits and has less than \$3,760 of insurable earnings from employment as a fisher in their qualifying period. (*prestataire de la deuxième catégorie*)

(2) An employer who is engaged in work incidental to a catch that is generally performed on shore shall not, at any time, be regarded as a member of the crew that made the catch.

General

2 A person who is a fisher shall be included as an insured person and, subject to these Regulations, the Act and any regulations made under the Act apply to that person with such modifications as the circumstances require.

Arm's length

251.(1) For the purposes of this Act,

(a) related persons shall be deemed not to deal with each other at arm's length;

...

(c) in any other case, it is a question of fact whether persons not related to each other are, at a particular time, dealing with each other at arm's length.

Definition of "related persons"

(2) For the purpose of this Act, "related persons", or persons related to each other, are

(a) individuals connected by blood relationship, marriage or common-law partnership or adoption;

[39] My first observation is that the workers and Mr. Layne O. Godin were given a lot of opportunities to provide HRSDC and the CRA documents to corroborate the work they performed and explanations corroborating the fact that seven to ten workers worked 12-hour days, seven days a week during the lobster and crab seasons despite fluctuations in weather conditions and diminishing stocks of resources at the end of the fishing seasons.

[40] In terms of evidence put forward by the various Appellants, there were many inconsistencies in what the workers and Mr. Layne O. Godin said to the various inspectors and officers of HRSDC and the CRA. There were also inconsistencies amongst themselves.

[41] Mr. Layne O. Godin's evidence consisted primarily of documents prepared by persons who did not come to testify in Court and therefore could not be cross-examined to authenticate the documents. For instance, according to Mr. Godin, the payslips and timesheets for the workers were prepared by Tracy Esliger. She did not testify in Court to confirm that she did prepare the payslips, the timesheets and the T-4s and to describe the procedure followed to collect the information for that purpose. We also do not know who prepared the invoices from Arseneau Fish Market and these persons could not be cross-examined to confirm the accuracy of the invoices or the actual circumstances that led to the purchases of fish, crabs and lobsters in 2007, 2008 and 2009.

[42] Mr. Layne O. Godin's testimony was not accurate in many aspects. For example, he said that, during the crab season, he employed seven to eight workers on land but when asked to provide the names of these workers for 2007, he could not do so.

[43] Another example of contradictory evidence by Mr. Layne O. Godin was regarding the drivers of the eight-ton truck. He testified that Jacques Doucet, Lucien Carrier and Wayde Godin drove the eight-ton truck for deliveries to the Lamèque Co-op. During Mr. Lucien Carrier's cross-examination, he explained that a Class 2 license was required in order to drive the eight-ton truck. When asked to produce his license, he admitted that he did not hold a Class 2 license. Finally, Mr. Wayde Godin testified that his duties were primarily to clean the crates and do the maintenance of the trucks. He never testified that he drove the eight-ton truck.

[44] Mr. Layne O. Godin also testified that Christine Carrier was hired on a part-time basis to clean crates and trucks. However, Ms. Carrier indicated on the questionnaires that her primary responsibility was to do housework. She was also

unable to name any of the workers who would have cleaned the crates and trucks with her, as the evidence shows that seven or eight workers were cleaning crates and trucks at one time. Strangely enough, she also said that she never saw any other workers on Mr. Godin's property while she was there.

[45] Mr. Layne O. Godin testified that his workers worked Sundays to Saturdays and were paid on the following Friday. They all had to sign a payslip and were paid in cash. They were paid in person every Friday at the end of their shifts, between 6 p.m. and 10 p.m. The evidence given by Christine Carrier contradicted Mr. Godin's evidence in many aspects. For example, she testified that Mr. Godin prepared the workers' payslips and that she was paid on Saturdays. In the questionnaires that she provided to both HRSDC and the CRA between February 2010 and February 2012, she testified that she would cash her paycheques at the bank or at times, Mr. Layne O. Godin would cash them for her.

[46] Mr. Stephen Eslinger's testimony at the hearing also contradicted the answers he gave during the HRSDC and CRA interviews in February and November 2010. He testified that he worked seven days a week, 12 hours a day while his payslips do not reflect this nor do the timesheets submitted on his behalf. During the trial, he testified that Mr. Layne O. Godin wrote down the payslips in front of him which is in direct contradiction with Mr. Godin's testimony who said that the payslips were prepared by Tracy Eslinger. Moreover, at the hearing, Mr. Stephen Eslinger testified that he was paid in cash whereas he said to the integrity branch investigators that he was paid by cheques and that he gave his cheques to his mother who took care of his banking.

[47] Mr. Lucien Carrier testified that he did not keep track of his working hours and did not know that the hours on his payslips did not correspond to the hours on the records of employment issued to him for 2007, 2008 and 2009. Each of these Records of Employment had inflated hours when compared to the payslips. Mr. Carrier could not name any other workers present at Mr. Layne O. Godin's house when he would go there at noon to get the truck and around 5 p.m. to go to Lamèque Co-op despite the fact that most workers testified that they worked 12 hours a day starting at 8 a.m., 7 days a week. He also testified that even when there was no need to go to Lamèque because it was too windy to fish crab, he would work reduced hours at Mr. Layne O. Godin's house.

[48] Mr. Jacques Doucet testified that he was buying lobster for Mr. Layne O. Godin seven days a week, 12 hours a day. Mr. Doucet confirmed in his testimony that he had his own business of selling lobster from his own fish market. As

documentary evidence, Mr. Layne O. Godin tendered various documents, in particular sale slips from Labillois Lobster and Arseneau Fish Market. Ms. Labillois was not called as a witness to authenticate those sale slips, nor did we have anyone from Arseneau Fish Market. Furthermore, the sale slips do not assist Mr. Doucet's appeal since they were all addressed either to Mr. Doucet personally or to Doucet Fish Market and not to Mr. Layne O. Godin.

[49] Mr. Wayne Godin testified that he was washing the crab traps and the trucks and did maintenance on the trucks on Mr. Layne O. Godin's property. He said that he worked 12 hours a day, seven days a week but no other worker working 12 hours a day, seven days a week mentioned having seen him at Mr. Godin's house or to be one of the workers.

[50] Mr. Kelly Godin testified that he worked 13 to 15 hours a day, seven days a week, cutting wood on a property which was four acres wide and 50 to 100 acres deep. He never mentioned that this land was intended to be clear cut and never explained how the trees were marked so as to identify them for cutting. There is no cogent or credible evidence that Mr. Kelly Godin was cutting wood during the 2007, 2008 and 2009 years nor if any wood was sold during those years. Some invoices from mills dated from 2010 were submitted but those invoices fall in the category of self-serving documents as no one was called to testify on behalf of these mills to confirm they had been purchasing wood from Mr. Godin during the appeal period.

[51] All the workers are not credible witnesses. They all testified that they did not have a bank account but, when cross-examined, they admitted that they received employment insurance benefits and that they needed a bank account to cash their cheques. No one gave consistent answers to HRSDC and the CRA during the various stages of the process and finally nor to this Court either. No additional evidence was submitted during this trial than what was already available at each stage of the review process with respect to the determination of insurable hours or earnings or whether the workers actually worked for Mr. Layne O. Godin.

[52] For all these reasons, the appeals are dismissed.

Signed at Ottawa, Canada, this 15th day of April 2016.

“Réal Favreau”

Favreau J.

CITATION: 2016 TCC 88

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2013-1994(EI), 2013-1996(CPP)

STYLE OF CAUSE: LAYNE O. GODIN O/A GODIN'S SEA
PRODUCTS,
LUCIEN CARRIER, JACQUES DOUCET,
STEVEN ESLIGER,
KELLY GODIN, WAYDE GODIN,
and HER MAJESTY THE QUEEN

PLACE OF HEARING: Miramichi, New Brunswick

DATES OF HEARING: May 12, 13 and 14, 2015

REASONS FOR JUDGMENT BY: The Honourable Justice Réal Favreau

DATE OF JUDGMENT: April 15, 2016

APPEARANCES:

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Ottawa, Canada