

Docket: 2002-2888(EI)

BETWEEN:

POURVOIRIE AU PAYS DE RÉAL MASSÉ INC.,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent,

and

MARIO ARÈS
FLORENCE CÔTÉ
CLAUDE FOURNIER
FERNANDE FOURNIER
RACHEL JALBERT,

Interveners.

[OFFICIAL ENGLISH TRANSLATION]

Appeals heard on common evidence with the appeal of *Claude Desaulniers*
(2002-1698(EI)) on November 19 and 20, 2003, in Montreal, Quebec.

Before: The Honourable Justice Lucie Lamarre

Appearances:

Counsel for the Appellant: Hans Marotte

Counsel for the Respondent: Marie-Aimée Cantin
Antonia Paraherakis

For the Interveners: Florence Côté, Rachel Jalbert,
Fernande Fournier

JUDGMENT

The appeal pursuant to subsection 103(1) of the *Employment Insurance Act* (“EIA”) from the decision of the Minister of National Revenue (“Minister”) with respect to Claude Desaulniers is allowed and the said decision is modified in that the taxable benefit amount for housing only is subtracted from the insurable earnings amount. The Minister’s determination with regard to Claude Desaulniers remains unchanged in all other respects.

The appeals pursuant to subsection 103(1) of the EIA and subsection 70(1) of the *Unemployment Insurance Act* from the Minister’s determinations with respect to all the other workers listed in Appendix A of the Reasons for Judgment are disallowed and the decisions rendered by the Minister are upheld.

Signed at Ottawa, Canada, the 25th day of August 2004.

“Lucie Lamarre”

Lamarre J.

Translation certified true
on this 24th day of June 2005.

Esther Shlien, Translator

Docket: 2002-1698(EI)

BETWEEN:

CLAUDE DESAULNIERS

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeals of the *Pourvoirie Au Pays de Réal Massé Inc.* (2002-2888(EI)) on November 19 and 20, 2003, at Montreal, Quebec.

Before: The Honourable Justice Lucie Lamarre

Appearances:

Counsel for the Appellant: Denis Le Reste

Counsel for the Respondent: Marie-Aimée Cantin
Antonia Paraherakis

JUDGMENT

The appeal pursuant to subsection 103(1) of the *Employment Insurance Act* is allowed and the decision rendered by the Minister with respect to the Appellant is modified in that the taxable benefit amount for housing only is subtracted from the insurable earnings amount.

The Minister's determination remains unchanged in all other respects.

Signed at Ottawa, Canada, the 25th day of August 2004.

“Lucie Lamarre”

Lamarre J.

Translation certified true
on this 24th day of June 2005.

Esther Shlien, Translator

Citation: 2004TCC582

Date: 2004-08-25

Docket: 2002-1698(EI)

BETWEEN:

POURVOIRIE AU PAYS DE RÉAL MASSÉ INC.,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent,

Docket: 2002-2888(EI)

AND BETWEEN:

CLAUDE DESAULNIERS,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent,

and

MARIO ARÈS
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CLAUDE FOURNIER
FERNANDE FOURNIER
RACHEL JALBERT,

Interveners.

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REASONS FOR JUDGMENT

Lamarre J.

[1] The Appellant was appealing the determinations the Minister of National Revenue (the “Minister”) made pursuant to the *Unemployment Insurance Act* (the “UIA”), the *Employment Insurance Act* (the “EIA”), and the regulations

thereunder, concerning 33 of its employees and the first and last day of work, the number of insurable hours and the insurable earnings of each of these 33 employees from 1993 to 2000, based on the table in Appendix A to the “Amended Reply to the Notice of Appeal (the “Reply””, which is appended to these Reasons. Five of these employees are interveners, and only one employee, Mr. Claude Desaulniers, appealed from the Minister’s determination. The latter case will be analyzed as part of these Reasons.

[2] The table drawn up by the Minister primarily shows that the periods of employment, the number of weeks or hours of insurable employment, and the insurable earnings do not match the Records of Employment prepared by the Appellant, which employed all these employees.

[3] The Minister based these conclusions on the facts in paragraph 5 of the Reply, which reads as follows:

- a) The Appellant was incorporated on September 19, 1987; (admitted)
- b) The Appellant ran an outfitting operation on a 16-kilometre site with 10 lakes for fishing and one main lake across from the inn; (admitted)
- c) There were 16 rooms in the inn on the Appellant’s site before 1998 and 24 after; (admitted)
- d) There were also 19 cottages on the Appellant’s site, which could accommodate between two and eight people, depending on the cottage; (admitted)
- e) There was also a dining room on the Appellant’s site with a 120-person capacity, that is, 30 four-person tables, and an adjacent bar; (admitted)
- f) Between 1993 and 2000, the Appellant ran his business year-round as follows:
 - during the last week of April: prepared cottages and launches, and did spring cleaning;
 - first weekend in May: opened site for an archery tournament attended by 250 to 300 people; (admitted)
 - on or about May 15: trout fishing season opened until Labour Day; (admitted)

- during the two weeks after Labour Day: cleaned up site, put launches, fishing and clearing equipment in storage and maintained trails;
- from the third week in September until mid-November: 24 hunters and their wives hunted pheasant on the weekends; (admitted)
- From the Christmas holidays until the snow melts: skidooring on trails. (admitted)

[See Table 2 in Appendix B.]

- g) During the period at issue, the Appellant hired varying numbers of people, depending on the period of activity:
- | | |
|----------------------------------|--|
| <u>Fishing season</u> : | 27 to 30 employees |
| <u>Pheasant hunting season</u> : | 3 to 4 kitchen workers (admitted)
10 to 12 in the field |
| <u>Skidoo season</u> : | 4 to 5 kitchen workers
2 in the field |
- h) Between 1993 and 1996, the Appellant paid its employees fixed weekly wages regardless of the number of hours they actually worked.
- i) Starting in 1998, the Appellant paid its employees an hourly remuneration every [sic] two weeks.
- j) The Appellant provided most employees with housing without deducting any consideration from their wages.
- k) The Appellant fed most employees without deducting any consideration from their wages.
- l) The Appellant provided most employees with uniforms for no consideration. (admitted)
- m) During the period at issue, the Appellant paid for some employees' vacation. (admitted)

- n) Between 1993 and 1998, the Appellant collected the tips during the fishing and skidoo seasons. At the end of these periods, the tips were divided among the employees in proportion to the hours each worked. (admitted)
- o) During the years at issue, the Appellant issued records of employment that did not show [sic] the actual period worked by its employees.
- p) Employees continued to work for the Appellant while they were receiving unemployment or employment insurance benefits.
- q) Some employees continued to work year-round while others continued to work [sic] for a specific period [see Table 1 in Appendix A].
- r) The Appellant then paid them the difference between the benefits they were receiving and their net wages.
- s) No source deductions were deducted from the amounts the Appellant paid the employees during their benefit period nor were they indicated in the payroll.
- t) Employees received unemployment or employment insurance benefits despite the fact that they continued working for the Appellant, which paid them wages.
- u) The Respondent used the following criteria to calculate the insurable earnings of each employee:

Housing: A \$50 weekly benefit was added to the insurable earnings of each employee who lived on the site or in a house owned by Réal Massé.

Where applicable, the amount was pro-rated to the number of days worked. The benefit amount is the same for all the years at issue.

Food: Employees have eaten for free on the site since 1995. Consequently, the benefit for meals (board) was assessed at \$35 a week, the amount the Appellant charged employees in previous years.

Benefit waiting period: During the benefit waiting period, the Appellant paid the worker the net amount of his or her earnings. This amount was consequently added to the insurable earnings amount.

Tips: Tips were pooled and distributed by the Appellant at the end of the fishing and skidooning seasons in proportion to the hours worked by staff.

These amounts were added to insurable earnings based on Table 3 in Appendix C.

[4] The Appellant sets out its own version of the facts in paragraph A (on pages 1 to 4) of its written argument, which I think, is worthwhile including in its entirety:

A) STATEMENT OF FACTS:

Over and above the facts alleged in the Respondent's amended reply to the notice of appeal which were admitted at the beginning of the hearing, the following facts were demonstrated in testimony:

1. Until 1993, the Appellant paid some of its employees a form of bonus at the beginning of the fishing season.
2. The purpose of this bonus was to encourage employees to come back year after year.
3. In 1993, the Appellant started paying some employees an amount in the off-season that represented 25% of the employment insurance benefits they could receive if they were laid off because of a shortage of work.
4. This amount was an incentive for workers to return to work at the beginning of the next fishing season.
5. The Appellant started paying this supplement after the worker's waiting period under the *Unemployment Insurance Act* (*Employment Insurance Act*) had [*sic*] passed.
6. This procedure was implemented further to meetings with Messrs. Raymond Ratelle and Maurice Sourdif, employees from the unemployment insurance office in Joliette.
7. Officials responsible for enforcing the *Unemployment Insurance Act* (the then Unemployment Insurance Commission) knew [*sic*] about this procedure since 1995.
8. Ms. Gisèle Côté, a former employee of the Appellant, informed the unemployment insurance office of this procedure in December 1995 (see Exhibit A-3).
9. As a general rule, the Appellant's employees were laid off due to a shortage of work at the end of the fishing season.

10. Between 1994 and 1998, this occurred the week after Labour Day.
11. Starting in 1999, the fishing season ended in late September.
12. After the fishing season ended, some employees could continue to work part time on weekends during pheasant hunting season.
13. About 5 or 6 people worked for the Appellant 5 to 10 hours a weekend.
14. The people who were laid off in the fall were under no obligation to the outfitter.
15. However, a number of them went on vacation or back to their family until the skidoo season started, on or about December 26.
16. Recipients of the 25% bonus continued to receive it even if they left the outfitter site for a period of time.
17. Some employees who lived on the outfitter site could help out on their own initiative, but they were under no obligation to do so.
18. Ms. Gisèle Côté testified to this effect at the hearing.
19. Some employees lived in their own homes.
20. Others lived in houses personally owned by Mr. Massé.
21. Finally, some employees lived in rentals on the outfitter site.
22. Based on the payroll records the Appellant provided the Canada Customs and Revenue Agency, the outfitter deducted the following directly from paycheques in 1993 and 1994: \$20 a week for housing and \$20 a week for meals.
23. Based on the receipts submitted by the Respondent as Exhibit I-3, employees who lived on the outfitter site paid \$200 a month in 1995 for housing.
24. In 1998 and 1999, \$20 a week for housing and \$20 a week for meals was deducted directly from the paycheques of employees who lived on the outfitter site.

25. The Appellant always obtained information from the Commission des normes du travail [labour standards board] on housing and meal deductions.
26. The Appellant always followed to the letter what it was told by the Commission des normes du travail.
27. The Appellant kept in constant contact with Unemployment Insurance Commission (now Human Resources Development Canada) officials for information on its rights and obligations.
28. During the period at issue, Ms. Ginette Massé's duty was to fill out records of employment.
29. These records did not show periods of part-time employment that some employees may have had during the pheasant hunting or skidooring periods.
30. The wages the Appellant paid during these periods were, however, indicated in the payroll and the source deductions were made in accordance with the Act.

[5] For its part, the Respondent reiterates as follows the facts in its written argument on pages 2 and 3:

STATEMENT OF FACTS

1. The documentary evidence and testimony provided at the hearing showed, among the facts admitted by the Appellant, the following basic facts:
 - a) During the entire period at issue, the Appellant's employees held year-round positions, not seasonal employment, with a view to meeting the Appellant's operational requirements¹.
 - b) The records of employment the Appellant issued did not show the actual period worked by its employees: fictitious work periods and hours were entered.
 - c) Employees continued to work for the Appellant while receiving unemployment/employment insurance benefits.

¹ Tab 11 – Excerpt from the Pourvoirie au Pays de Réal Massé Inc. Web site.

- d) The Appellant paid its employees the difference between the unemployment/employment insurance benefits they were receiving and their net wages.
- e) As a result of the Appellant's scheme, the unemployment/employment insurance benefits in large part covered the wages of its employees.
- f) The Appellant fed, housed and clothed most of the employees free of charge without any deductions from their wages.
- g) No source deductions were made from the amounts the Appellant paid the employees during their benefit periods nor were these amounts entered in the payroll.
- h) Although some of the Appellant's employees were unaware that this practice was illegal, others feared they would lose their job if they refused the conditions imposed by Réal Massé.
- i) Mr. Réal Massé's wife, Ms. Ginette Massé, filled out the employees' unemployment cards herself or told them the number of hours they should report.
- j) Mr. Réal Massé considered a group of workers as being his "core", which consisted of the following people:
 - i) Ginette Massé, his wife;
 - ii) Nancy Massé, his daughter;
 - iii) Gilles Huet, his son-in-law;
 - iv) Richard Massé, his son;
 - v) Claude Desaulniers;
 - vi) Sylvie Provost;
 - vii) Normand Guénard;
 - viii) Mario Arès;
 - ix) Denis Courcy.
- k) All the employees who confirmed the existence of this scheme did not belong to this "core" group.

The issue

[6] The Respondent sets out the issue as follows on pages 3 and 4 of its written argument:

2. The Court must determine whether the Minister of National Revenue (hereinafter the “Minister”) was justified in re-establishing the periods of employment of the Appellant’s employees pursuant to Appendix A of the Reply to the Notice of Appeal.
3. The Court must determine whether the Minister was justified in adding the following amounts to the insurable earnings of the employees:
 - \$50 [a week] as a housing benefit;
 - \$30[sic]¹ [a week] for meals;
 - The Appellant paid the difference between the net wages and the unemployment/employment insurance benefits the employees received.
4. The Court must determine whether the Minister erred in deeming earnings less than [sic] 20% of the maximum insurable as being insurable amounts under the Act.

[7] The Respondent argued the following in connection with the issues under appeal:

5. Firstly, the Minister’s position is that the Pourvoirie had to hire year-round employees to meet its operational requirements. However, the records of employment issued by the Appellant were not a true reflection of reality: the Minister argues that the employees were falsely laid off and they continued to work at the Pourvoirie, which paid them the difference between their net wages and their unemployment/employment insurance benefits.
6. Therefore, there was an employer-employee relationship during the periods at issue in accordance with paragraph 3(1)(a) of the *Unemployment Insurance Act* and paragraph 5(1)(a) of the *Employment Insurance Act*. Further, pursuant to section 9.1 of the Employment Insurance Regulations, a 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.

¹ The amount established by the Minister is \$35 a week for meals pursuant to subparagraph 5(u) of the Reply and all the documentation submitted as evidence.

7. Secondly, the Minister argues that the benefits (housing and meals) the employees received [*sic*] during the period at issue must be included in the calculation of insurable earnings, pursuant to subsection 2(3) of the Insurable Earnings and Collection of Premiums Regulations.
8. Finally, the Minister argues that no error was made in insuring earnings amounts under the maximum. Provision is in fact made in subsection 13(1) of the Unemployment Insurance Regulations that the employment with an employer in any week of a person whose cash earnings are less than 20 per cent of the maximum weekly insurable earnings and who is employed for less than 15 hours is excepted from insurable employment. We argue that the employees worked more than 15 hours a week and are therefore insurable pursuant to the Act.

[8] For its part, the Appellant stated that the Respondent's position is based primarily on statutory declarations made by certain employees which it argued had been obtained using methods incompatible with the principles of natural justice. The employees in question were allegedly not informed that they had the right not to answer the Human Resources Development Canada ("HRDC") investigator's questions without their lawyer present. The Appellant alleged that the investigator took advantage of the fact that the employees in question had little education and obtained incriminating evidence from them about their employer which the Appellant felt was biased by the investigator's very words.

[9] The Appellant therefore argued that little weight should be given to the reports prepared by the appeals officers which partially reiterate these statutory declarations and constitute evidence.

[10] The Appellant questioned the credibility of some of the Respondent's witnesses, who are employees involved in the issues under appeal here; these witnesses substantiated the Respondent's version of events. The Appellant questioned their credibility because the testimony was confusing, erratic, invented or quite simply vengeful against their employer. In the latter case, the Appellant specifically referred to Julie Boulianne and Sylvain Therrien, two former employees, husband and wife, who reported that their employer was using dubious practices under the UIA and the EIA. The Appellant pointed out that these two witnesses contradicted each other in their declarations to HRDC and the Commission des normes du travail. The Appellant also argued that the number of hours of work reported by these two employees was clearly overstated and completely unreasonable given the number of hours reported by the other workers. The Appellant therefore asked that these witnesses be discredited.

[11] The Appellant further argued that Mr. Réal Massé, the payer's owner, and his wife, Ginette Massé, testified frankly and demonstrated a thorough knowledge of the application of the legislation concerned.

[12] Mr. Desaulniers' counsel argued that all the evidence is based on a credibility issue. Like his employer, he alleged that the Respondent's testimonial evidence is contradictory and that Mr. Desaulniers' testimony, which he felt reiterates all the information in the statutory declaration he made during the investigation, and confirmed by Mr. Massé's testimony, should be considered with a view to his appeal being allowed.

Facts

[13] I personally heard the testimony of Réal and Ginette Massé, and of nine employees (including Claude Desaulniers) involved in this case. I also heard the testimony of: Raymond Ratelle, the employment insurance investigator and monitoring officer from HRDC; Chantale Fortin, a Royal Canadian Mounted Police ("RCMP") officer, who served the Appellant with a search warrant in the fall of 1998; Gaston Lachance, a HRDC major investigation specialist who was present during the search of the Appellant and who met with the workers being investigated; and Louise Dessureault, the appeals officer from the Canada Customs and Revenue Agency ("CCRA") tax services office who prepared the table showing the periods of work and insurable earnings for each of the workers under investigation and involved in this case. The Appellant also called to testify Anne-Marie Cadieux, an administrative technician the Appellant hired in 2001 to look after its accounting. The latter started working for the Appellant after the periods at issue in this case which were from 1993 to 2000. However, between 1996 and 2001, she prepared the Appellant's financial statements while she worked for a separate accounting firm. Ms. Cadieux testified, among other things, that before she started working for the Appellant, the Appellant used to normally indicate only the periods of full-time employment on workers' records of employment.

Ginette Massé prepared these records of employment, and although in theory she was supposed to enter the hours of work of employees who continued to work part time in the payroll, she did not indicate them on the records of employment. Starting in 2001, Ms. Cadieux prepared the records of employment and indicated all the workers' hours, be they full or part time. That was about all Ms. Cadieux revealed when she testified at the hearing.

[14] Mr. Réal Massé explained how he ran his outfitting operation, which was started in 1987. In the summer, the fishing season starts in late April and ends on the first Sunday in September after Labour Day. This is peak season and he said that between 1991 and 1998, he hired between 10 and 12 employees, that is, five or six in the kitchen, four or five to serve tables and four or five as fishing guides (I would like to point out here that the numbers do not add up; the minimum staff would be 13, not 10 and maximum, 16, not 12). I would also like to point out that Mr. Massé told the appeals officer in an interview that he hired between 27 and 30 employees during the fishing seasons between 1993 and 2000 (see report on appeal, Exhibit I-2, Volume I, Tab 6 in the case of Mario Arès, [TRANSLATION] facts obtained from Mr. Réal Massé [...] in interview [...] on February 5, 2002, in his counsel's presence). In the fall of 1997, he expanded the inn (it now has 24 rooms, eight more than before) and he had six new cottages built. The outfitting operation owns 84 launches, which, according to Mr. Massé, are cleaned and put into storage on the last weekend of the fishing season. The site itself is also apparently cleaned up and trails cleared at the same time.

[15] Pheasant hunting season opens on the second weekend in September and is open for 10 consecutive weekends until mid-November. Mr. Massé said that he hires four or five kitchen staff and one or two servers during this period, and friends stay on the site who help him with outside work and are not paid (during the interview with the appeals officer, he said that he hired three or four kitchen staff and 10 to 12 field workers during this period).

[16] The skidoo season begins on Boxing Day and runs until mid-March, depending on the season and, obviously, the weather. He said he hires staff during this period: four or five to work in the kitchen and serving tables, but does not guarantee them hours. Others are hired to shovel snow and dispense gas.

[17] The outfitting operation then closes and re-opens the last week in April, when staff return to organize the archery event during the first week in May. In a statutory declaration made in his counsel's presence, Mr. Massé stated that the clean-up was done "[TRANSLATION] before the end of the fishing season" (see Exhibit I-2, Volume IX, Tab 1, Page 3). Mr. Massé admitted at the hearing that staff also return at the end of April to do another clean-up of the site (pages 46-47 of the stenographer's notes from November 19, 2003). The Appellant denied this latter fact at the beginning of the hearing (see allegation in the first subparagraph of paragraph 5 (f) of the Reply). The Appellant stated that the employees were usually laid off at the end of the fishing season (based on the records of employment entered as evidence) and Mr. Massé said that he started paying his

staff during the first week in May (page 47 of the stenographer's notes from November 19, 2003).

[18] Please note that during his testimony, Mr. Massé admitted that he had pleaded guilty to 32 charges (he had formally been charged with 385 counts) of preparing false records of employment (see pages 147-150 of the stenographer's notes from November 19, 2003; Gaston Lachance, the HRDC investigator, said that Mr. Massé had pleaded guilty to 14 charges, not 32: see page 158 of the stenographer's notes from November 20, 2003). Mr. Massé said that he had done so and agreed to pay a \$25,000 fine simply to close the case and avoid further costs.

[19] Mr. Massé said that his staff worked an average of 47 hours a week during the peak season. They were paid by the hour or week. Mr. Massé guaranteed them a net salary between \$250 and \$300 a week, and provided them with room and board regardless of the number of hours worked (see the appeals officer's interview with Mr. Massé in the presence of his counsel on February 5, 2002, reproduced in the report on an appeal, Exhibit I-2, Volume I, Tab 6, Page 4 in Mario Arès' case). Some staff was in fact provided with housing and meals. If staff lived elsewhere, they simply ate their meals at the outfitter when they were at work. In this regard, Mr. Massé said at the hearing that he deducted a total of between \$35 and \$40 a week from staff paycheques or simply added this amount to their earnings as a taxable benefit in the payroll, based on the instructions received from the Commission des normes du travail (pages 68-69 of the stenographer's notes from November 19, 2003). However, in his above-mentioned statement to the appeals officer on February 5, 2002, Mr. Massé said that no taxable benefits were deducted until 1999, which was when the Appellant allegedly started adding a taxable benefit (\$20 a week for housing and \$20 a week for meals) to the earnings of workers who received these benefits. Based on the report of the eligibility officer, an analysis of the payroll did not show any regularity or consistency in the room and board [staff] paid (see Exhibit I-2, Volume IX, Tab 1, Page 13, paragraph entitled "Logement et pension [room and board]").

[20] Mr. Massé said that up until 1991, he had told staff when he hired them that he would pay them a bonus varying from \$1,200 to \$2,300 at the end of the fishing season if they guaranteed they would return for the next season. I believe that these employees did not report this bonus on their unemployment insurance report cards. This practice was allegedly changed in 1991 after a meeting among Messrs. Massé and Raymond Ratelle, and the investigations and employment insurance monitoring officers. Mr. Massé said that Mr. Ratelle allegedly told him that instead

of paying his staff an unreported bonus, he could pay them an amount representing 25 percent of unemployment/employment insurance benefits² without there being an impact on their benefits, whether they were working or not. According to Mr. Massé, by doing this, the workers were given the incentive required to return to work at the beginning of the next fishing season. He said that he started paying this supplement after the worker's waiting period under the UIA and the EIA had passed. Mr. Massé maintained that Mr. Ratelle had in fact told him that workers could receive this 25 percent without necessarily working and without having to report it to the proper authorities. This is allegedly how Mr. Massé told certain employees that their net salaries were guaranteed year-round even if they did not work during the off-season. The following is a quote from Mr. Massé on pages 105-106 of the stenographer's notes from November 19, 2003:

[TRANSLATION] Because when I hired my people and I actually had meetings with Mr. Ratelle, and I was convinced I was on the right track, when I hired them I told them that I had an agreement, had met conditions with unemployment. If you come work for us, you work the whole season and come back the next year, in September, October, November. You are going to get full pay for six months and you don't work your hours. I don't know anyone who isn't interested in that. That was my agreement; that was how I was able to keep good employees.

[21] Paradoxically, when asked by the appeals officer who was investigating for the employment insurance office, Mr. Massé had denied the foregoing. When confronted with the fact that almost all his staff had said that they had been paid the difference between the net salary and net unemployment benefits in cash, Mr. Massé's alleged response was simply that they had all lied. He also had to deny that he guaranteed a net salary year round and that unemployment made up the difference (see the UI and CPP opinion report, Exhibit I-2, Volume IX, Tab 1, Page 12).

[22] I think I understand Mr. Massé's rationale at the hearing, that he exercised his right to pay his employees 25 percent of unemployment benefits to justify paying them the difference between their guaranteed net salary and the unemployment insurance benefits they received without them reporting anything on their unemployment insurance cards in this regard.

² Since the period at issue is between 1993 and 2000, and both the UIA and EIA are applicable (the EIA came into effect on June 30, 1996), with a view to making the text of these reasons more readable, I will consequently use "unemployment benefits" whenever I am referring to unemployment insurance benefits under the UIA or employment insurance benefits under the EIA.

The following is Mr. Massé's reasoning on pages 101-103 of the stenographer's notes from November 19, 2003:

Q. You say that the staff who received the twenty-five percent (25%) did not normally work?

A. No. When there was no work, when there is no work in the off-season, no.

Q. Then when there was work during the off-season, what happened with this twenty-five percent (25%)?

A. The five workers, when they worked and when they completed their desired hours, well, they continued receiving their unemployment because they were still entitled to earn twenty-five percent (25%). If they had worked seven hours, ten hours or fifteen (15) hours a week...

Q. Therefore, regardless, they received their twenty-five percent (25%), but they could work or not work?

A. Exactly, Madam.

HANS MAROTTE:

Q. Therefore, let us look at an example. A worker, she is in one of the dwellings; let us say she works in the kitchen. She is going to work in the kitchen let's say...

A. Yes, let's say she works ten hours.

Q. Is she paid for those ten hours on top of the twenty-five percent (25%)?

A. No, no. The employee is paid, is paid as long as, I, the employee always gets his or her pay.

Q. Okay.

A. That is the important thing.

MADAM JUSTICE:

Q. No, but you do not pay a supplement on top of the twenty-five percent (25%)?

A. Ah no, no. If you, you earn \$300 a week, when you work, you get \$300; when you go on unemployment insurance, you get \$225. Therefore, I pay my twenty-five percent (25%) to bring you up to \$300. If you work five hours, you get \$40. Therefore, you start with \$300 and you get \$340; it costs \$60. I top up their workweek.

Q. You did not therefore owe more than twenty-five percent (25%)...

A. Ah, well, no.

Q. ... you owed less.

A. Well, no, it is much less, yes, it is less because he or she had worked twelve (12) hours or seven hours or worked fifteen (15) hours. I do not give it to him or her in that case.

Q. Were these hours entered in your books?

A. Yes, Madam. Those hours were compiled for those who worked them.

HANS MAROTTE:

Q. Those hours were entered in the payroll...

A. Absolutely.

Q. ... premiums were deducted and all that.

A. Yes because when you were hired, if I had guaranteed someone \$325, there is going to be \$325. If there is one who is \$300, it is \$300 because I topped up what they earned.

[23] In this way, Mr. Massé said that if staff worked during periods of unemployment, they entered what they had been paid in the payroll. Despite the somewhat confusing explanations above provided in Mr. Massé's testimony, I think he said he paid and entered in the payroll for these employees the difference between their net salary and unemployment benefits, which according to him was 25 percent of benefits.

[24] However, some workers said their employer paid them the amounts entered in the payroll in addition to 25 percent of unemployment benefits (see the appeals officer's report for Gilles Huet, Nancy Massé, and Sylvie Provost, whose counsel was present when they made these statements. These reports are in Exhibit I-2, Volume V, Gilles Huet, Tab 6, Page 7; Volume VI, Nancy Massé, Tab 5, Page 7; Volume VII, Sylvie Provost, Tab 6, Page 7).

[25] Mr. Raymond Ratelle said that he met with Mr. Massé in the fall of 1995 or 1996 with his supervisor. He had explained to Mr. Massé what was "allowable" for an employee on unemployment. It is legal for a recipient to earn a certain amount of money without their unemployment benefits being affected. He provided the following explanations on pages 179-180 and pages 188-189 of the stenographer's notes from November 19, 2003:

A. If an individual's unemployment rate is \$200 a week, the allowable is twenty-five percent (25%), a minimum of \$50. If an individual earned \$50, his or her employment insurance would not be cut off, but he or she must nonetheless report the number of hours. We ask: "Did you work during the period of this report?" "Yes." "How many hours?" and the gross amount earned.

[...]

A. [...] Then we even explained to Mr. Massé that if someone earns \$51 for six hours of work, well, all that is deducted from employment insurance is what exceeds the allowable amount.

[...]

Q. And they absolutely must report that they worked?

A. Yes. That was made very clear to Mr. Massé; even if it is below the allowable amount, it must be put on the unemployment report in response to "Did you work during the period of this report?", yes. How many hours and how much was earned because people often report that they worked, but were not paid. That is not normal and at that point an investigation is conducted.

[26] Thus, based on Mr. Ratelle's testimony, Mr. Massé was in fact told that all claimants had to report the hours they worked and their earnings on unemployment report cards.

[27] Mr. Massé said that almost everyone who received the equivalent of their full salary and who did not work during the unemployment period probably did not report the earnings received from the employer on their report cards (see page 105 of the stenographer's notes from November 19, 2003).

[28] At the hearing, Mr. Massé admitted that he paid the 25 per cent of benefits to 10 employees only, that is to: Julie Boulianne, Sylvain Therrien, Normand Guénard, Robert Poisson, Gaston Deschenaux, Richard Massé, Gilles Huet, Nancy Massé, Sylvie Provost and Denis Courcy (see pages 214-215 of the stenographer's notes from November 20, 2003).

[29] Other workers stated that they worked for the outfitter during periods not indicated on records of employment while they were receiving unemployment benefits. The payer paid the difference between their net salary and the unemployment benefits. They confirmed that none of this was reported. These workers said that they worked long hours, more than 15 hours a week (see Bernard Geoffroy's statutory declaration in Exhibit I-2, Volume V, Tab 5, Page 1 and his testimony on pages 81-83 and pages 101-102 of the stenographer's notes from November 20, 2003). Mr. Geoffroy is one of the people who stated in his above-mentioned statutory declaration that the big clean-up was done over a three-week period after the fishing season closed, as opposed to what Mr. Massé said (he said that it was done over the last weekend of the fishing season).

[30] Other workers say they worked year-round, between 50 and 70 hours, six days a week during peak periods (see Clémence Bélanger's testimony on pages 315-316 of the stenographer's notes from November 19, 2003). It would seem that the employees claimed unemployment insurance benefits at the request of their employer, even when there was no actual work stoppage (see Clémence Bélanger's testimony on pages 309-310 of the stenographer's notes from November 19, 2003). The employer continued to pay them their regular salary during the two-week waiting period and the employer filled out the report cards (see Clémence Bélanger's testimony in Exhibit I-2, Volume I, Tab 4, Page 10 and Tab 5, pages 8 and 11, as well as her testimony on page 315 of the stenographer's notes from November 19, 2003; see also Bernard Geoffroy's testimony on pages 82-83 of the stenographer's notes from November 20, 2003). Please note that Ms. Ginette Massé denied in rebuttal that she had filled out report cards for the workers. She said she simply assisted them in filling them out (pages 182-183 of the stenographer's notes from November 20, 2003).

[31] Other workers say they were simply paid for the hours worked not included in the periods of employment while they were receiving unemployment insurance benefits (see Lisette Montmagny's testimony on page 126 of the stenographer's notes from November 20, 2003). Their employer asked them not to report the total number of hours actually worked during these periods (see Lisette Montmagny's statutory declaration in Exhibit I-2, Volume VII, Tab 5, pages 4 and 12).

[32] Sylvain Therrien, one of the two witnesses who reported the Appellant (the other was his spouse Julie Boulianne), stated in his statutory declaration (see Exhibit I-2, Volume VIII, in Tab 5) that he worked as a fishing guide and handyman the rest of the year. He and his spouse say they were hired by Mr Massé to work year-round, not simply during the periods indicated on the record of employment. They were given room and board and their employer guaranteed them \$300 net a week, regardless of the number of hours of work. They also received their full salary while on vacation. The employer asked them to fill out an unemployment insurance claim form although they had never in fact stopped working for the employer until they were dismissed by the latter in June 1998. Mr. Therrien says that he continued to work a minimum of 60 hours a week after the fishing season ended. The employer then paid him the difference between his full salary and his unemployment benefits. He says he therefore initially received \$178 net a week in unemployment benefits and the employer paid him \$122 in cash a week for a total of \$300 net a week. He later received \$195 a week in unemployment insurance benefits and his employer paid him \$105 a week. This allegedly continued until May 2, 1998, when he was allegedly put back on the payroll (see Sylvain Therrien's statement to the appeals officer, Exhibit I-2, Volume VIII; Tab 7, Page 6). During the two-week waiting period, he and his spouse received their full salary from the employer. Mr. Therrien also mentioned that for a certain period, Ms. Ginette Massé was responsible for filling out the report cards. Mr. Therrien told the investigator that the same strategy was used for most employees, among others, that they received room and board at the outfitter. In other words, the records of employment did not show what actually happened.

[33] Mr. Therrien confirmed the foregoing at the hearing. He added, however, that he worked over 60 hours a week. He said he worked 15 hours a day, six days a week. He also mentioned that in the fall of 1997, he generally worked on the construction worksite between 10 and 12 hours a day until mid-December 1997. Mr. Massé denied this and said that the construction workers did not work that many hours a day and that the construction was finished on December 1, 1997. During the winter, Mr. Therrien said that he worked between 9 and 11 hours a day. He said that the icestorm in the winter of 1998 did not affect the outfitter. He had

to clear snow off roofs that year because there were customers. Mr. Therrien said that he kept track of his hours of work as he wanted to protect himself because he found the workload was very heavy for the salary paid (see summary of his hours of work, Exhibit I-2, Volume VIII, Sylvain Therrien, Tab 4). I also understand that he filed a complaint with the Commission des normes du travail based on the latter document. Mr. Massé's response was to the effect that it was impossible that Mr. Therrien had worked the number of hours he had accounted for. In fact, based on the above-mentioned document cited as evidence in Tab 4, Mr. Therrien said that he worked up to 14 to 15 hours a day for 28 days in a row, which Mr. Massé said was unthinkable.

[34] Julie Boulianne stated in her statutory declaration (see Exhibit I-2, Volume II, Tab 7) that she worked about 40 hours a week while she received unemployment insurance benefits, that is, between September 1997 and the end of April 1998. Several restaurant bills on which her initials appear were submitted as evidence to illustrate this point (see Exhibit I-2, Volume II, Julie Boulianne, Tab 4). There are, however, no dates on these bills, and it is virtually impossible to determine to which periods they refer. As with her spouse, the employer paid her the difference between her full salary and her benefit amount. She therefore received \$162 net a week in benefits and the employer paid her \$88 cash a week for a total of \$250 net a week. Then, in February 1998, the employer allegedly started paying her \$138 a week to increase her pay to \$300 net a week, with the balance being covered by the unemployment benefits. She said she worked full time until mid-December 1997. She told the investigator that she had allegedly worked only three days between mid-December 1997 and the end of January 1998, that is, 12 hours on December 25, 1997, and a total of 20 hours on December 31, 1997 and January 1, 1998. She allegedly started working full weeks in February and March 1998 (between 40 and 45 hours a week). She confirmed this at the hearing. However, based on the record of her hours of work she compiled for the complaint to the Commission des normes du travail (Exhibit A-6), it would seem that she had worked virtually every day between Thursday, December 25, 1997, and Sunday, January 11, 1998, and not just three days as indicated above. She says on page 6 of this document that between January 11, 1998 and February 15, 1998, she allegedly did not work because Mr. Massé did not want her to work anymore because she had been "asked to be reported".

[35] When asked about this document at the hearing, she simply said that she had confused the period of work stoppage. She remembered that she had been off work at some point, but thought it had started in mid-December 1997, when it had in fact been from mid-January to mid-February 1998. However, she pointed out

that she was not mistaken when she said she had worked on December 25 and 31, 1997 and January 1, 1998 (see pages 60, 68 and 69 of the stenographer's notes from November 20, 2003).

[36] She also testified that she had been unlawfully dismissed because she was pregnant. She had apparently asked her employer to report all her hours of work because she realized that she was penalizing herself by agreeing to go along with the employer's strategy. She said that Mr. Massé dismissed her husband two weeks after she gave her notice.

[37] Mr. Massé responded by saying that Julie Boulianne had told the Commission de la santé et de la sécurité au travail (CSST) that she worked 55 hours a week when she actually only worked between 25 and 30 hours a week. She asked for a raise and he decided to pay her by the hour instead of giving her \$300 net a week. This resulted in a salary decrease for Ms. Boulianne. He also said that he added an \$80 weekly taxable benefit to her salary for the room and board. She then allegedly quit because she was very angry. He allegedly subsequently dismissed Mr. Therrien when he asked for more vacation leave. Mr. Massé said that he had agreed to settle the proceedings instituted by the couple with the Commission des normes du travail by paying them each \$4,000 so they could refund the employment insurance overcontribution.

[38] For his part, Richard Massé, the son of Réal Massé, testified in court that he had not worked during periods he received unemployment insurance benefits. This contradicts the first statutory declaration he made in the presence of Mr. Gaston Lachance. Several other workers allegedly mentioned during the investigation that Richard Massé worked year-round (see Exhibit I-2, Volume VI, Richard Massé, Tab 4, page 3 of 9 and Tab 6, page 3). Richard allegedly had a falling out with his father and left the outfitter in August 1998.

[39] Richard Massé testified that he worked at the outfitter from 1994 to 1998 and that he had received room and board from the outfitter during that period. He said he never paid for his room or board (see page 106 of the stenographer's notes from November 20, 2003). This completely contradicts Exhibit I-3, which shows \$200 monthly receipts signed by Réal Massé for rent between January 1 and July 1, 1995. This simple statement casts serious doubt on the authenticity of the receipts submitted as Exhibit I-3, which show that Richard Aubé, Normand Guénard, Nancy Massé, Gilles Huet and Sylvie Provost also allegedly paid the employer \$200 a month in 1995 for the lodgings provided by the employer. Most of the workers told the investigator that they had not paid any rent

(see UI and CPP opinion report, Exhibit I-2, Volume IX, Tab 1, pages 7-8). Further, none of this type of deduction is shown on any of these workers' cheque stubs in 1995. Based on the appeals officer's report, none of these workers allegedly paid the board indicated (see Exhibit I-2, Volume I, Richard Aubé Jr., Tab 1 and Tab 7 page 6; Volume V, Normand Guénard, Tab 1 and Tab 6, page 6; Volume VI, Nancy Massé, Tab 1 and Tab 5, page 13; Volume V, Gilles Huet, Tab 1 and Tab 5, pages 6 and 13; Volume VII, Sylvie Provost, Tab 1 and Tab 6, pages 6 and 14). Based also on the appeals officer's report, if there is an indication in the payroll for the other years at issue that an amount was actually deducted from the pay of these employees or any other employee for room, the Minister took it into account and decreased the taxable benefit amount to be added into the calculation of insurable earnings. In other words, based on what is indicated in the payroll, the source deduction amount deducted from the employees' pay was subtracted from the benefit amount.

[40] Claude Desaulniers said he started working full time as a cook at the outfitter in May 1998. He said that he had not been living in the area before that. He worked from 5:00 a.m. to 2:30 p.m., five days a week. He said that in 1998 and 1999, he stopped working in early September and started working again at the end of April or early May of the following year for the fishing season. In the fall of 1999, after the head cook (Denis Courcy) quit, Mr. Massé allegedly asked him to work during the skidoo season. He became head cook in May 2000 and is still working at the outfitter. In 2000, he worked until the end of October as part of "Volet 2" (a program funded in part by the federal government) in which his employer participated. At the hearing, he said that he did not work during the pheasant hunting season in 1998 and 1999. He said he never lived on the outfitter site nor in any housing provided by Mr. Massé. He purchased a house near the outfitter in October 1999. Before that, he said he lived in a trailer 10 km from the outfitter when he was working for the outfitter and when he was not, he stayed in a small cottage in St-Paul de Joliette (45 minutes from the outfitter site). He ate at the outfitter when he was working.

[41] Mr. Desaulniers said that he was paid by and worked for the employer only during the periods of employment on his record of employment. Based on the appeals officer's report (see Exhibit I-2, Volume III, Claude Desaulniers, Tab 6, page 7), other workers said they worked with Claude Desaulniers other than during the periods reported. For example, Lisette Montmagny, who admitted she worked in housekeeping for the Appellant from January 1998 to March 7, 1999, stated during the investigation that she always worked at the same time as Claude Desaulniers. Although at the hearing she had trouble remembering what she had

said in her statement, she did not deny what was in it. Further, she remembered at the hearing that she and “Claude” worked at the same time. No doubt was cast on this in the cross-examination.

[42] Sylvain Therrien allegedly stated that Claude Desaulniers had replaced the cook, Normand Guénard, who had resigned his position in October 1997. He prepared food with Denis Courcy for the people working on the outfitter expansion worksite in the fall of 1997. Both Mr. Therrien and his spouse Julie Boulianne said that Claude Desaulniers also worked during the skidoo season (which means the winter of 1998 because Mr. Therrien and Ms. Boulianne worked only one winter at the outfitter, the winter of 1998, because they were hired in April 1997 and dismissed in June 1998). No doubt was cast on this statement when Mr. Therrien and Ms. Boulianne were cross-examined.

[43] However, other workers not called as witnesses (Léo and Lisette Perreault) stated that Claude Desaulniers had started working at the outfitter a few weeks after Normand Guénard left in October 1997 (see the appeals officer’s report, Exhibit I-2, Volume III, Claude Desaulniers, Tab 6, page 7).

[44] Two workers, Lisette Montmagny and Ginette St-Jules mentioned in their statutory declarations that Mr. Desaulniers lived on the outfitter site, but not during the summer (see the appeals officer’s report, Exhibit I-2, Volume III, Claude Desaulniers, Tab 6, page 9). However, these two workers also seemed to insinuate that Mr. Desaulniers had not worked during the 1998 skidoo season (see Exhibit I-2, Volume III, Claude Desaulniers, Tab 6, page 7 and Exhibit I-2, Volume VII, Lisette Montmagny, Tab 5, page 12), which contradicts the statements of Sylvain Therrien and Julie Boulianne. Mr. Desaulniers refused to meet with the appeals officer to clarify the situation (see report on appeal, Exhibit I-2, Volume III, Claude Desaulniers, Tab 6, page 8). Based on the latter, therefore, Mr. Desaulniers worked other than during the periods at issue indicated in the appended table and added an amount for room and board to the calculation of insurable earnings until he purchased his new residence on October 1, 1999.

[45] Ms. Louise Dessureault, one of the appeals officers who worked on these cases, explained in court that the periods of work and the insurable earnings of each of the workers was calculated based on the employer’s periods of activities and on what each worker had told them. In fact, HRDC conducted an investigation further to a tip. The case was referred to the RCMP, which obtained a search warrant in the fall of 1998. Mr. Gaston Lachance, a major investigation specialist at HRDC, stated in court that he met with about thirty of the workers, and about

twenty of them allegedly stated that they had received the difference between their net salary and unemployment insurance benefits while they worked at the outfitter. Mr. Lachance told each of the workers met with that he was taking note of information from their unemployment insurance claims and the records of employment provided by their employer and they, the workers, could be required to eventually refund any overpayments made. Mr. Lachance explained in court that when statutory declarations are taken as was the case here, no cautionary statements are made. An individual is cautioned that he or she is entitled to consult a lawyer before answering questions. Mr. Lachance explained that this is done when the investigator plans to take the individual to court. In the case at hand, it seems that the decision had not yet been made as to whether each worker would be charged individually. This is why Mr. Lachance took statutory declarations and explained to the workers that if they had received an overpayment and had penalties to pay they had the right to appeal.

[46] Based on all the documentation gathered, including the statutory declarations of workers that were, generally speaking, confirmed by them during a telephone interview with the appeals officer, it was found that the workers continued to work after they were laid off and that their layoffs were fictitious. The case of each worker was analyzed individually and each worker's insurable earnings were redistributed based on his or her specific case.

[47] Consequently, it was found that the difference between the net salary and the unemployment insurance benefits was included in insurable earnings. During the two-week waiting period when unemployed workers do not normally receive any salary or unemployment insurance benefits, it was shown that the worker received his or her full salary and that this was added to insurable earnings. The tips pooled and redistributed by the payer at the end of each season were also added to the insurable earnings of workers who received these tips. A weekly benefit worth \$50 a week per employee was also added for housing and \$35 a week per employee for board (\$5 a day). These amounts were added to the workers' insurable earnings based on the number of days they earned these benefits.

[48] Based on Louise Dessureault's testimony and the insurability officer's report (see Exhibit I-2, Volume IX, Tab 1, page 15) the then section 13 of the Unemployment Insurance Regulations was used from 1993 to 1996 to determine the workers' weeks of insurable employment.

[49] Provision is made in subsection 13(1) of the Unemployment Insurance Regulations as follows:

13 (1) Subject to subsection (2), the employment with an employer in any week of a person whose cash earnings are less than 20 per cent of the maximum weekly insurable earnings and who is employed for less than 15 hours is excepted from insurable employment.

[50] Therefore, pursuant to subsection 13(1), only employment of less than 15 hours a week and for which weekly earnings are less than 20 per cent of the maximum weekly insurable earnings will be considered non-insurable employment. *A contrario*, when the investigation showed that a worker worked more than 15 hours week, his or her employment was considered insurable during those weeks although he or she received less than 20 per cent of the maximum weekly insurable earnings from his or her employer.

[51] In 1997 and subsequent years, the number of insurable hours was based on the new legislation introduced by the EIA and its regulations in June 1996. The insurability officer decided that section 9.1 and subsections 10(1) to 10(3) of the Employment Insurance Regulations could apply because the workers received a fixed salary, regardless of the number of hours of work. Subsections 10(4) and 10(5) of the Employment Insurance Regulations were therefore applied and the weekly maximum hours of insurable employment was 35. In several cases, it was decided that there had not been a work stoppage and that the employer-employee relationship had not been severed.

[52] The following provisions are made in section 9.1 and subsections 10(1) to 10(5) of the Employment Insurance Regulations:

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. (1) Where a person's earnings are not paid on an hourly basis but the employer provides evidence of the number of hours that the person actually worked in the period of employment and for which the person was remunerated, the person is deemed to have worked that number of hours in insurable employment.

(2) Except where subsection (1) and section 9.1 apply, if the employer cannot establish with certainty the actual number of hours of work performed by a worker or by a group of workers and for which they were remunerated, the

employer and the worker or group of workers may, subject to subsection (3) and as is reasonable in the circumstances, agree on the number of hours of work that would normally be required to gain the earnings referred to in subsection (1), and, where they do so, each worker is deemed to have worked that number of hours in insurable employment.

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

(4) Except where subsection (1) and section 9.1 apply, where a person's actual hours of insurable employment in the period of employment are not known or ascertainable by the employer, the person, subject to subsection (5), is deemed to have worked, during the period of employment, the number of hours in insurable employment obtained by dividing the total earnings for the period of employment by the minimum wage applicable, on January 1 of the year in which the earnings were payable, in the province where the work was performed.

(5) In the absence of evidence indicating that overtime or excess hours were worked, the maximum number of hours of insurable employment which a person is deemed to have worked where the number of hours is calculated in accordance with subsection (4) is seven hours per day up to an overall maximum of 35 hours per week.

Analysis

[53] All the parties agreed that the dispute centred on the credibility of the individuals involved. I also agree, but given that there are contradictions on both sides, the more credible version on the balance of probabilities will be used to resolve the dispute.

[54] To this end, I tried to reiterate the evidence submitted to me as objectively as possible and to point out in passing the most striking contradictions. I also tried insofar as possible to provide my view of the facts based on the testimony I heard and the statutory declarations provided by these witnesses. Although they were all not called to testify, I also analysed the appeals officer's report on each worker. I understood the explanations provided by the Respondent's counsel to the effect that she did not call each and every worker to testify in court to save the court time and, more importantly, because she did not feel that they would contribute anything further than the evidence already provided and the appeals officer's report

on each worker. I also understand that these workers were available to testify if the Appellants had decided they should be heard.

[55] With regard to the validity of the method Mr. Gaston Lachance used to gather information during his investigation, I disagree with the Appellant's counsel that the method was not in keeping with the principles of natural justice and that the appeals officers' reports, which reiterate the statutory declarations, should not be included as evidence. The Appellant's counsel does not base his position on any specific legal authority. However, I will simply say that an investigation conducted by HRDC to determine whether an overpayment had been made or whether employment insurance contributions must be deducted from compensation an employer pays his or her employees is a civil or administrative issue. The investigative procedures that must be followed in civil matters differ from those involving criminal matters.

[56] In *Houle v. Mascouche (Ville)*, [1999] R.J.Q. no 2652, the Quebec Court of Appeal ruled the following in paragraphs 172 and 173:

172 [TRANSLATION] In short, although the goal of criminal and civil proceedings is to uncover the truth, the fundamental differences in the conduct of both makes rendering evidence admissible much easier in civil matters. This specifically stems from adjudicative fairness, a standard according to which the accused person is entitled to silence, can decide not to testify and cannot act against him or herself in during the trial through to the investigation conducted by Crown representatives; this does not apply to civil proceedings, where the standard is the opposite: parties testify and can be forced to during interrogations before the trial as well as in court, cannot refuse to answer any relevant question and must provide a copy to the opposite party, and, later, provide the court with any useful exhibits.

173 The judge in civil proceedings must weigh two values: respect of fundamental rights and search for the truth. The following question must be answered: given the nature, objective, motivation and the legal interest of the perpetrator of the offence, as well as the method used, would the seriousness of the violation of fundamental rights be such that it would be unacceptable for a court of law to authorize the party that infringed them to use them to advance his or her private interests? A very difficult exercise and one that must be based on the facts in the matter. Each case must therefore be considered individually. In the final analysis, however, if the judge is convinced that the evidence obtained by infringing basic rights is an abuse of the legal system because there is no real and sufficient legal justification, he or she must reject the evidence.

[57] The right to legal representation is not an absolute right. Within the context of the case at hand, I feel that the words of P. Garant, author of *Droit administratif* 4^e ed., Cowansville (Qc.), Yvon Blais, 1996, on page 295 are appropriate:

[TRANSLATION]

Generally speaking, provision is made in section 7 of the Charter (Canadian Charter of Rights and Freedoms) for the right to retain legal counsel as part of a quasi-legal process. This right is not, however, absolute and still depends here on the circumstances:

“I am of the opinion that the enactment of section 7 has not created any absolute right to counsel in all such proceedings. It is undoubtedly of the greatest importance to a person whose life, liberty or security of the person are at stake to have the opportunity to present his case as fully and adequately as possible. The advantages of having the assistance of counsel for that purpose are not in doubt. But what is required is an opportunity to present the case adequately and I do not think it can be affirmed that in no case can such an opportunity be afforded without also as part of it affording the right to representation by counsel at the hearing.”³⁹⁰

No provision is made in section 7 concerning the right to representation by counsel in administrative matters³⁹¹.

390. *Howard v. Stoney Mountain Institution*, [1984] 2 F.C. 642, p. 662-663. See also what MacGuigan, J. wrote on p 684; *McInnis v. Canada (A.G.)*, [1995] 2 F.C. 215.

391. *Delghani v. Canada (E.I.)*, [1993] 1 S.C.R. 1053.

[58] I have not been convinced that fundamental rights were infringed here to obtain evidence or that there was an abuse of justice. Most of the workers concerned reiterated the content of their statutory declarations in a telephone conversation with the appeals officer. As I mentioned earlier, this is a civil matter and, as the Quebec court of appeal indicated, the parties cannot refuse to answer questions and can even be forced to in an examination before proceedings begin. I therefore disagree with the Appellant’s counsel’s claim that the evidence should not include the appeals officers’ reports which reiterate the statutory declarations of workers who were not represented by counsel.

[59] With regard to the analysis of the evidence as such, each party attacks the credibility of the other party’s witnesses by emphasizing the credibility, honesty and objectivity of its own witnesses.

[60] For my part, I accept that almost everyone in general, the employer and the employees alike, seem to recognize that the Appellant paid its employees the difference between their net salary guaranteed by the employer and unemployment insurance benefits during periods when the employees were receiving unemployment insurance benefits. I also accept that, either out of ignorance, misunderstanding or for other reasons, the employees did not report the amounts paid by the employer to HRDC on their unemployment insurance report cards. I feel that the evidence clearly shows that the employer paid its employees more than 25 percent of unemployment insurance benefits (the “allowable”). If we look at the example provided by Sylvain Therrien, he said that if he received \$178 in unemployment insurance benefits a week, the employer paid him \$122 a week so that his net salary would be \$300 a week. Here already, we can see that the amount the employer paid is more than 25 per cent of unemployment insurance benefits ($25\% \times \$178 = \44.50). Mr. Massé himself seems to recognize this de facto situation because many times he said he guaranteed the net salary of his employees even if they were not working. That is what the employees also seem to say. They received the difference between the guaranteed net salary and unemployment insurance benefits.

[61] Consequently, the employer paid his employees more than 25 per cent of unemployment insurance benefits and this amount was supposed to be reported so that the benefits of each employee with this type of agreement with the employer could be adjusted which was not done.

[62] Further, the appeals officer felt that the records of employment were not a true reflection of reality. In my opinion, there is ample evidence to conclude that the employees continued to work during periods of employment not indicated on the records of employment. Although there were some contradictions in this regard in the evidence, the main thread in the events described to me, and the documentary evidence submitted, clearly show that Mr. Massé asked his employees to work for the Appellant during periods when they were unemployed and guaranteed to pay them the difference between their net salary and their unemployment insurance benefits. I am not at all convinced that any of the other workers involved in this case were treated differently. At any rate, I do not feel that the Appellant demonstrated otherwise.

[63] I disagree with the Appellant’s counsel who said that the employees worked during periods of unemployment out of goodwill and that the employer did not have any control over them. He provided the testimony of Gisèle Côté and Clémence Bélanger as examples. Instead, I accept Gisèle Côté’s testimony to the

effect that she was already on unemployment when Mr. Massé hired her on a trial basis during the winter of 1995. She said she worked long hours during these periods and that she had to be there to show the employer that she was able to do the work (see page 229 of the stenographer's notes from November 19, 2003). Similarly, Ms. Clémence Bélanger said in fact that she continued to work for Mr. Massé while she was unemployed because she did not have a choice since she was given room and board (see page 313 of the stenographer's notes from November 19, 2003).

[64] Mr. Desaulniers said that the evidence showed that he did not work during periods not indicated on the record of employment and that he never received any compensation from his employer during these periods. Mr. Massé testified to the same thing. However, given the evidence provided for the other employees, I feel that Mr. Massé's testimony alone is clearly insufficient in and of itself to support Mr. Desaulniers' position. Further, other workers testified and stated that the latter was present at the outfitter during unreported periods. Sylvain Therrien and Julie Boulianne said they saw him during the skidoo season (which cannot be anything other than the winter of 1998 because it was the only winter they worked). Sylvain Therrien said that Mr. Desaulniers worked during the construction season in 1997. Lisette Montmagny and Ginette St-Jules said that Claude Desaulniers worked one winter, but not the winter of 1998.

[65] I agree that the evidence is rather contradictory here as well, but it is the Appellant's responsibility to demonstrate on a balance of probabilities that the Minister's determination is erroneous. However, I have one doubt as to the truthfulness of Mr. Desaulniers's statement. I disagree with his counsel when he says that Mr. Therrien's versions were contradictory. He said that Mr. Desaulniers had replaced Mr. Normand Guénard in the fall of 1997, which is in keeping with what the other workers said. Further, he said that Mr. Desaulniers worked with Denis Courcy. Mr. Desaulniers was the morning cook. It is extremely plausible that Mr. Courcy worked in the afternoon and evening. Further, the appeals officer noted that Mr. Desaulniers received the same amount of tips as Mr. Courcy (see Exhibit I-2, Volume III, Claude Desaulniers, Tab 6, page 9). This is why she concluded that both of them had worked the same number of weeks. Given all the evidence in the docket, I find it difficult to believe that Mr. Desaulniers was the only employee involved who did not benefit from the employer's compensation system.

[66] The Respondent's evidence is not as strong concerning the fact that Mr. Desaulniers lived on the outfitter site before he bought his new home in 1999.

The Respondent's position is based solely on the statements of Ginette St-Jules and Lisette Montmagny. Ms. St-Jules did not testify and Ms. Montmagny was not asked any questions in this regard at the hearing. The evidence shows that not all employees lived on the outfitter site. I feel that Mr. Desaulniers' version of the facts in this regard is satisfactory. I therefore conclude that Mr. Desaulniers' insurable earnings should not include a taxable benefit for housing.

[67] With regard to the insurable earnings of the other employees, the Appellant said that the employer paid the workers less than 20 per cent of the maximum weekly insurable earnings from 1993 to 1996, and that the employment should be excepted from insurable employment during these periods pursuant to subsection 13(1) of the Unemployment Insurance Regulations. I agree with the Respondent on this point. Two conditions must be met in order for employment to be excepted from insurable employment: the worker must not only have been paid less than 20 per cent of the maximum weekly insurable earnings, but also have worked less than 15 hours a week. The evidence shows on a balance of probabilities that the workers involved worked more than 15 hours a week aside from the periods of employment reported. I would like to point out in passing that in the appeals officer's report, the periods during which the employees did not work were not deemed insurable under this provision of the Regulations.

[68] I feel that the benefit amount deducted from insurable earnings for room and board was completely reasonable. The employer itself failed to prove that certain workers paid \$200 a month for rent in 1995 (Exhibit I-3). Although the evidence showed on a balance of probabilities that these employees did not pay any such rent in 1995, the insurability and appeals officers used this to establish the value of the housing at \$50 a week per worker. Further, based on their reports, they calculated this benefit only for employees who were housed at the employer's expense during periods they worked at the outfitter. The fact that some lived in homes Mr. Massé personally owned has no bearing on the value of the taxable benefit. In fact, it was an employment-related benefit the worker received during a period the employer paid him or her in cash. This benefit is therefore a taxable benefit for employees who received it and must be added to their insurable earnings pursuant to paragraph 2(3)(a) of the Insurable Earnings and Collection of Premiums Regulations, which read as follows:

INSURABLE EARNINGS

Earnings from Insurable Employment

2(3) For the purposes of subsections (1) and (2), "earnings" does not include

(a) any non-cash benefit, other than the value of either or both of any board or lodging enjoyed by a person in a pay period in respect of their employment if cash remuneration is paid to the person by their employer in respect of the pay period;

[69] I feel that the amount deducted for board (\$5 a day) is more than reasonable.

[70] Given the evidence in the docket, I conclude that the Appellants did not demonstrate on a balance of probabilities that the Minister's determinations being appealed are erroneous and should be modified in terms of the periods of employment or number of insurable weeks or hours, as indicated in Appendix A to the Reply, which is appended to these reasons.

[71] With the exception of Mr. Desaulniers, I uphold the Minister's determinations for all the workers regarding the calculation of insurable earnings. The taxable benefit amount that was added for housing should be subtracted from Mr. Desaulniers' insurable earnings. In all other respects, the Minister's determinations, as indicated in Appendix A to the Reply, remain unchanged.

[72] For these reasons, the appeals are allowed solely with regard to the determination made concerning the insurable earnings of Claude Desaulniers, which should be reduced by the amount of the taxable benefit for housing. In all other respects, the Minister's determinations remain unchanged.

Signed at Ottawa, Canada, this 25th day of August 2004.

“Lucie Lamarre”

Lamarre J.

Translation certified true
on this 24th day of June 2005.

Esther Shlien, Translator

CITATION:	2004TCC582
COURT DOCKET NO:	2002-2888(EI)
STYLE OF CAUSE:	Pourvoirie au pays de Réal Massé Inc. vs. The Minister of National Revenue and Mario Arès, Florence Côté, Claude Fournier, Fernande Fournier, Rachel Jalbert (interveners)
PLACE OF HEARING:	Montreal, Quebec
DATE OF HEARING:	November 19 and 20, 2003
APPELLANT'S WRITTEN ARGUMENT:	December 19, 2003
RESPONDENT'S WRITTEN ARGUMENT:	January 23, 2004
APPELLANT'S RESPONSE TO THE RESPONDENT'S WRITTEN ARGUMENT:	February 6, 2004
RESPONDENT'S RESPONSE TO THE APPELLANT'S WRITTEN ARGUMENT:	February 16, 2004
REASONS FOR JUDGMENT BY:	The Honourable Justice Lucie Lamarre
DATE OF JUDGMENT:	August 25, 2004
APPEARANCES:	
Counsel for the Appellant:	Hans Marotte
Counsel for the Respondent:	Marie-Aimée Cantin Antonia Paraherakis
For the Interveners:	Florence Côté, Rachel Jalbert, Fernande Fournier

SOLICITOR OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent:

Morris Rosenberg
Deputy Attorney General of Canada
Ottawa, Canada

CITATION: 2004TCC582

COURT DOCKET NO: 2002-1698(EI)

STYLE OF CAUSE: Claude Desaulniers vs. The Minister of National Revenue

PLACE OF HEARING: Montreal, Quebec

DATE OF HEARING: November 19 and 20, 2003

APPELLANT'S WRITTEN ARGUMENT: January 23, 2004

RESPONDENT'S WRITTEN ARGUMENT: January 23, 2004

APPELLANT'S RESPONSE TO THE RESPONDENT'S WRITTEN ARGUMENT: February 5, 2004

REASONS FOR JUDGMENT BY: The Honourable Justice Lucie Lamarre

DATE OF JUDGMENT: August 25, 2004

APPEARANCES:

Counsel for the Appellant: Denis Le Reste

Counsel for the Respondent: Marie-Aimée Cantin
Antonia Paraherakis

SOLICITOR OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: Morris Rosenberg
Deputy Attorney General of Canada
Ottawa, Canada

APPENDIX A - TABLE 1

MARIO ARÈS

POSITION	PERIODS WORKED BASED ON RECORD OF EMPLOYMENT		PERIODS AT ISSUE		COMPENSATION BASED ON RECORD OF EMPLOYMENT	INSURABLE EARNINGS AT ISSUE
	PERIODS	Number of weeks/hours	PERIODS	Number of weeks/hours		
Cook (1990), then housekeeper, handyman	May 2 to September 11, 1993	19 weeks	May 2, 1993 to February 26, 1994	43 weeks	\$9,694	\$14,857.24, of which \$2,960.00 was for the last 20 weeks

RICHARD AUBÉ JR.

POSITION	PERIODS WORKED BASED ON RECORD OF EMPLOYMENT		PERIODS AT ISSUE		COMPENSATION BASED ON RECORD OF EMPLOYMENT	INSURABLE EARNINGS AT ISSUE
	PERIODS	Number of weeks/hours	PERIODS	Number of weeks/hours		
Day labourer	April 25 to September 11, 1993	20 weeks	April 25, 1993 to January 1, 1994	36 weeks	\$8,945	\$12,235.27
	May 1 to September 10, 1994	19 weeks	January 2 to December 31, 1994	52 weeks	\$9,730	\$15,039.45
	January 2 to August 27, 1995	23 weeks	January 1 to August 28, 1995	35 weeks	\$8,325 for the last 20 weeks	\$13,093.45

JACQUELINE AYOTTE

POSITION	PERIODS WORKED BASED ON RECORD OF EMPLOYMENT		PERIODS AT ISSUE		COMPENSATION BASED ON RECORD OF EMPLOYMENT	INSURABLE EARNINGS AT ISSUE
	PERIODS	Number of weeks/hours	PERIODS	Number of weeks/hours		
Cook	July 3 to July 16, 1995	11 weeks	July 3 to November 18, 1995	20 weeks	\$4,031	\$7,303.16
			December 17 to December 23, 1995	1 week		\$201.37

CLÉMENCE BÉLANGER

POSITION	PERIODS WORKED BASED ON RECORD OF EMPLOYMENT		PERIODS AT ISSUE		COMPENSATION BASED ON RECORD OF EMPLOYMENT	INSURABLE EARNINGS AT ISSUE
	PERIODS	Number of weeks/hours	PERIODS	Number of weeks/hours		
Cook's assistant and handywoman	April 25 to September 11, 1993	20 weeks	May 17 to January 1, 1994	33 weeks	\$7,963	\$12,014.96
	May 1 to July 23, 1994	11 weeks	January 2 to July 22, 1994	29 weeks	\$5,690	\$6,664.51
	January 1 to June 3, 1995	7 weeks	September 4, 1994 to February 18, 1995	25 weeks	\$2,494	\$2,825
			March 14 to June 3, 1995	12 weeks		\$3,617.80

JULIE BOULIANNE

POSITION	PERIODS WORKED BASED ON RECORD OF EMPLOYMENT		PERIODS AT ISSUE		COMPENSATION BASED ON RECORD OF EMPLOYMENT	INSURABLE EARNINGS AT ISSUE
	PERIODS	Number of weeks/hours	PERIODS	Number of weeks/hours		
Server	April 26 to September 6, 1997	834 hours	April 28 to May 10, 1997	121 hours	\$6,163	\$985.68
	January 25 to June 13, 1998	292.75 hours	May 18, 1997 to January 10, 1998	1,343 hours	\$2,312.73	\$10,491.05
			February 15 to June 13, 1998	539 hours		\$4,549.73

FLORENCE CÔTÉ

POSITION	PERIODS WORKED BASED ON RECORD OF EMPLOYMENT		PERIODS AT ISSUE		COMPENSATION BASED ON RECORD OF EMPLOYMENT	INSURABLE EARNINGS AT ISSUE
	PERIODS	Number of weeks/hours	PERIODS	Number of weeks/hours		
Server	May 2 to September 11, 1993	19 weeks	May 2, 1993 to March 5, 1994	44 weeks	\$9,694	\$15,005.24 (of which \$2,960 for the last 20 weeks)

GISÈLE CÔTÉ

POSITION	PERIODS WORKED BASED ON RECORD OF EMPLOYMENT		PERIODS AT ISSUE		COMPENSATION BASED ON RECORD OF EMPLOYMENT	INSURABLE EARNINGS AT ISSUE
	PERIODS	Number of weeks/hours	PERIODS	Number of weeks/hours		
Cook	April 23 to June 3, 1995	6 weeks	April 23 to June 3, 1995	6 weeks	\$3,262	\$3,816.14

DENIS COURCY

POSITION	PERIODS WORKED BASED ON RECORD OF EMPLOYMENT		PERIODS AT ISSUE		COMPENSATION BASED ON RECORD OF EMPLOYMENT	INSURABLE EARNINGS AT ISSUE
	PERIODS	Number of weeks/hours	PERIODS	Number of weeks/hours		
Cook and dayworker	April 24 to September 10, 1995	20 weeks	April 24 to December 30, 1995	36 weeks	\$9,057	\$14,216.55
	January 1 to September 7, 1996	19 weeks	December 31, 1995 to January 4, 1997	53 weeks	\$8,783	\$16,539.39
	September 29, 1996 to November 1, 1997	1,667 hours	January 5 to December 27, 1997	2,512 hours	\$11,535	\$20,619.26
	January 4 to September 12, 1998	140 hours	December 28, 1997 to November 14, 1998	1,536 hours	\$1,400	\$23,621.73
	January 3 to October 23, 1999		December 27, 1998 to March 20, 1999	360 hours		\$3,720
			April 18 to October 23, 1999	1,257 hours		\$15,137.55

FRANÇOIS DAIGLE

POSITION	PERIODS WORKED BASED ON RECORD OF EMPLOYMENT		PERIODS AT ISSUE		COMPENSATION BASED ON RECORD OF EMPLOYMENT	INSURABLE EARNINGS AT ISSUE
	PERIODS	Number of weeks/hours	PERIODS	Number of weeks/hours		
Handyman	April 23 to June 3, 1995	6 weeks	April 23 to June 3, 1995	6 weeks	\$3,262	\$3,816.14

CLAUDE DESAULNIERS

POSITION	PERIODS WORKED BASED ON RECORD OF EMPLOYMENT		PERIODS AT ISSUE		COMPENSATION BASED ON RECORD OF EMPLOYMENT	INSURABLE EARNINGS AT ISSUE
	PERIODS	Number of weeks/hours	PERIODS	Number of weeks/hours		
Cook	May 4 to September 12, 1998	855 hours	December 14, 1997 to October 28, 2000		\$9,102.70	\$15,389 (27 last weeks)
	February 27 to September 18, 1999	1,1129.10 hours		53 last weeks / 1,855 hours	\$11,122.13	
	January 18 to October 29, 2000	1,470 hours			\$15,283	

GASTON DESCHENAUX

POSITION	PERIODS WORKED BASED ON RECORD OF EMPLOYMENT		PERIODS AT ISSUE		COMPENSATION BASED ON RECORD OF EMPLOYMENT	INSURABLE EARNINGS AT ISSUE
	PERIODS	Number of weeks/hours	PERIODS	Number of weeks/hours		
Cook	July 7 to September 12, 1998	470 hours	July 7 to December 26, 1998	935 hours	\$4,888	\$9,308
	December 27, 1998 to September 25, 1999	1,502 hours	December 27, 1998 to March 20, 1999	310 hours	\$13,136	\$3,260
			May 2 to September 25, 1999	1,152 hours		\$12,417
			October 3 to October 23, 1999	18.5 hours		\$400
			October 31 to November 13, 1999	20 hours		\$320
			December 19, 1999 to March 4, 2000	286 hours		\$3,556

CLAUDE FOURNIER

POSITION	PERIODS WORKED BASED ON RECORD OF EMPLOYMENT		PERIODS AT ISSUE		COMPENSATION BASED ON RECORD OF EMPLOYMENT	INSURABLE EARNINGS AT ISSUE
	PERIODS	Number of weeks/hours	PERIODS	Number of weeks/hours		
Dayworker	June 1 to October 21, 1995	20 weeks	July 1 to September 23, 1995	17 weeks	\$4,082	\$3,981.04
	April 29 to June 15, 1996	7 weeks	October 1 to October 21, 1995	3 weeks	\$1,903	\$1,441.64
			December 31, 1995 to March 2, 1996	9 weeks		\$1,908
			April 29 to June 15, 1996	7 weeks		\$2,269.44

FERNANDE FOURNIER

POSITION	PERIODS WORKED BASED ON RECORD OF EMPLOYMENT		PERIODS AT ISSUE		COMPENSATION BASED ON RECORD OF EMPLOYMENT	INSURABLE EARNINGS AT ISSUE
	PERIODS	Number of weeks/hours	PERIODS	Number of weeks/hours		
Cook's assistant and housekeeper	May 12 to September 23, 1995	20 weeks	May 1 to September 23, 1995	19 weeks	\$3,677	\$4,971.24
	May 19 to September 8, 1996	16 weeks	December 31, 1995 to March 2, 1996	9 weeks	\$3,164	\$954
			May 19 to September 14, 1996	17 weeks		\$4,006.60

MANON GARIÉPY

POSITION	PERIODS WORKED BASED ON RECORD OF EMPLOYMENT		PERIODS AT ISSUE		COMPENSATION BASED ON RECORD OF EMPLOYMENT	INSURABLE EARNINGS AT ISSUE
	PERIODS	Number of weeks/hours	PERIODS	Number of weeks/hours		
Server	May 19 to September 6, 1997	723 hours	December 28, 1997 to March 7, 1998	240 hours	\$5,426	\$1,950
	May 4 to September 5, 1998	703.75 hours			\$7,149.68	

MARC GAUDREAU

POSITION	PERIODS WORKED BASED ON RECORD OF EMPLOYMENT		PERIODS AT ISSUE		COMPENSATION BASED ON RECORD OF EMPLOYMENT	INSURABLE EARNINGS AT ISSUE
	PERIODS	Number of weeks/hours	PERIODS	Number of weeks/hours		
Dayworker	May 2 to September 11, 1993	19 weeks	May 2 to November 20, 1993	29 weeks	\$10,483	\$13,712.90

BERNAND GEOFFROY

POSITION	PERIODS WORKED BASED ON RECORD OF EMPLOYMENT		PERIODS AT ISSUE		COMPENSATION BASED ON RECORD OF EMPLOYMENT	INSURABLE EARNINGS AT ISSUE
	PERIODS	Number of weeks/hours	PERIODS	Number of weeks/hours		
Dayworker	May 1 to September 10, 1994	19 weeks	May 1 to November 19, 1994	29 weeks	\$6,964	\$8,871.48
			December 18, 1994 to February 18, 1995	9 weeks		\$958

MARC GAUDREAU

POSITION	PERIODS WORKED BASED ON RECORD OF EMPLOYMENT		PERIODS AT ISSUE		COMPENSATION BASED ON RECORD OF EMPLOYMENT	INSURABLE EARNINGS AT ISSUE
	PERIODS	Number of weeks/hours	PERIODS	Number of weeks/hours		
Cook	April 24 to September 9, 1995	20 weeks	April 24 to December 30, 1995	36 weeks	\$9,057	\$14,128.58
	January 1 to September 7, 1996	19 weeks	December 31, 1995 to December 28, 1996	53 weeks	\$8,783	\$17,188.39
	September 21, 1996 to October 18, 1997	1,948 hours	December 29, 1996 to October 18, 1997	2,358 hours	\$10,296 (During the Last 27 weeks)	\$18,578.73

GILLES HUET

POSITION	PERIODS WORKED BASED ON RECORD OF EMPLOYMENT		PERIODS AT ISSUE		COMPENSATION BASED ON RECORD OF EMPLOYMENT	INSURABLE EARNINGS AT ISSUE
	PERIODS	Number of weeks/hours	PERIODS	Number of weeks/hours		
Fishing guide and dayworker	May 9 to September 11, 1993	18 weeks	May 9 to December 25, 1993	33 weeks	\$9,948	\$13,422.99
	May 1 to September 10, 1994	18 weeks	December 26, 1993 to December 31, 1994	53 weeks	\$10,510	\$17,233.23
	January 2 to September 9, 1995	24 weeks	January 1 to December 30, 1995	52 weeks	\$9,576	\$17,396.21
	January 1 to September 7, 1996	19 weeks	December 31, 1995 to January 4, 1997	53 weeks	\$9,718	\$17,347.97
	September 21, 1996 to November 1, 1997	2,089 hours	January 5 to December 27, 1997	2,783.68 hours	\$11,517	\$20,951.07
	January 1 to September 12, 1998	1,321 hours	December 28, 1997 to December 26, 1998	2,236.25 hours	\$13,188.55	\$18,894.72
	January 3 to October 23, 1999	1,474.55 hours	December 27, 1998 to March 6, 1999	192 hours	\$15,444.70	\$2,665
	November 4, 1999 to December 1, 2000	1,931 hours	May 2 to October 23, 1999	1,232.55 hours	\$15,791.34	\$14,754.70
			October 31 to November 13, 1999	16 hours		\$290
			December 26, 1999 to March 4, 2000	194 hours		\$2,786
			March 21, 2000	No insurable hours		\$407
			April 30 to December 2, 2000	1,673 hours		\$20,068.34
			December 24 to December 30, 2000	55 hours		\$554.50

RACHEL JALBERT

POSITION	PERIODS WORKED BASED ON RECORD OF EMPLOYMENT		PERIODS AT ISSUE		COMPENSATION BASED ON RECORD OF EMPLOYMENT	INSURABLE EARNINGS AT ISSUE
	PERIODS	Number of weeks/hours	PERIODS	Number of weeks/hours		
Housekeeper	May 4 to September 6, 1998	846 hours	May 4 to September 5, 1998	846 hours	\$7,153.69	\$8,080.95
	February 6 to September 3, 1999	780.20 hours	September 19 to November 16, 1998	90 hours	\$7,491.25	\$720
			January 31 to March 7, 1999	120 hours		\$995
			May 9 to May 15, 1999	40 hours		\$325
			May 23 to September 3, 1999	740.80 hours		\$7,359.75
			November 6 to November 13, 1999	10 hours		\$85

FRANCE JOLY

POSITION	PERIODS WORKED BASED ON RECORD OF EMPLOYMENT		PERIODS AT ISSUE		COMPENSATION BASED ON RECORD OF EMPLOYMENT	INSURABLE EARNINGS AT ISSUE
	PERIODS	Number of weeks/hours	PERIODS	Number of weeks/hours		
Housekeeper	May 1 to September 10, 1994	19 weeks	May 1 to November 19, 1994	29 weeks	\$6,964	\$8,753.48
			December 18, 1994 to February 18, 1995	9 weeks		\$820

YVONNE LACROIX

POSITION	PERIODS WORKED BASED ON RECORD OF EMPLOYMENT		PERIODS AT ISSUE		COMPENSATION BASED ON RECORD OF EMPLOYMENT	INSURABLE EARNINGS AT ISSUE
	PERIODS	Number of weeks/hours	PERIODS	Number of weeks/hours		
Housekeeper	February 17 to May 9, 1997	126 hours	January 13 to March 29, 1997	130 hours	\$949	\$2,135
			April 29 to May 3, 1997	86.50 hours		\$856.75

FRANCINE LEFRANÇOIS

POSITION	PERIODS WORKED BASED ON RECORD OF EMPLOYMENT		PERIODS AT ISSUE		COMPENSATION BASED ON RECORD OF EMPLOYMENT	INSURABLE EARNINGS AT ISSUE
	PERIODS	Number of weeks/hours	PERIODS	Number of weeks/hours		
Cook's assistant	January 4 to March 1, 1997		January 4 to March 1997	240 hours	\$1,872	\$2,552

NANCY MASSÉ

POSITION	PERIODS WORKED BASED ON RECORD OF EMPLOYMENT		PERIODS AT ISSUE		COMPENSATION BASED ON RECORD OF EMPLOYMENT	INSURABLE EARNINGS AT ISSUE
	PERIODS	Number of weeks/hours	PERIODS	Number of weeks/hours		
Server and manager	May 9 to September 11, 1993	18 weeks	May 9 to December 25, 1993	33 weeks	\$9,438	\$13,160.49
	May 1 to September 10, 1994	18 weeks	December 26, 1993 to December 31, 1994	53 weeks	\$10,510	\$17,134.57
	January 2 to September 10, 1995	24 weeks	January 1 to December 30, 1995	52 weeks	\$9,576 (during last 20 weeks of the period)	\$17,466.24
	January 1 to September 7, 1996	19 weeks	December 31, 1995 to January 4, 1997	53 weeks	\$9,718	\$17,347.97
	September 21, 1996 to September 6, 1997	1,526 hours	January 5 to December 27, 1997	2,501.20 hours	\$10,760	\$17,401.42
	January 1 to September 12, 1998	1,373 hours	December 28, 1997 to December 26, 1998	2,267 hours	\$13,198.55	\$20,160.03
	January 3 to October 23, 1999	1,475.55 hours	December 27, 1998 to March 6, 1999	192 hours	\$15,444.70	\$2,665.00
	November 5, 1999 to December 1, 2000	1,996 hours	May 2 to October 3, 1999	1,232.55 hours	\$15,791.34	\$14,754.70
			October 31 to November 20, 1999	22 hours		\$420
			December 26 1999 to March 4, 2000	247 hours		\$3,258
			March 21, 2000	No insurable hours		\$443
			April 30 to December 16, 2000	1,694.50 hours		\$20,879.69
			December 24 to December 30, 2000	32 hours		\$559

RICHARD MASSÉ

POSITION	PERIODS WORKED BASED ON RECORD OF EMPLOYMENT		PERIODS AT ISSUE		COMPENSATION BASED ON RECORD OF EMPLOYMENT	INSURABLE EARNINGS AT ISSUE
	PERIODS	Number of weeks/hours	PERIODS	Number of weeks/hours		
Dayworker	April 24 to September 9, 1995	20 weeks	April 23 to December 30, 1995	36 weeks	\$9,057	\$14,128.55
	January 1 to September 7, 1996	19 weeks	December 31, 1995 to January 4, 1997	53week	\$8,695	\$16,980.97
	September 21, 1996 to November 1, 1997	2,069 hours	January 5 to December 27, 1997	2,754 hours	\$12,503	\$21,923.55
	January 4 to August 20, 1998	1,313.75 hours	December 28, 1997 to August 22, 1998	1,645.75 hours	\$10,780.85	\$14,312.25

LISETTE MONTMAGNY

POSITION	PERIODS WORKED BASED ON RECORD OF EMPLOYMENT		PERIODS AT ISSUE		COMPENSATION BASED ON RECORD OF EMPLOYMENT	INSURABLE EARNINGS AT ISSUE
	PERIODS	Number of weeks/hours	PERIODS	Number of weeks/hours		
Housekeeper	April 26 to September 6, 1998	807 hours	January 25 to September 5, 1998	1,356 hours	\$7,515.44	\$12,320.2
	January 31 to March 7, 1999	75 hours	September 19, 1998 to November 16, 1998	90 hours	\$562.50	\$720
			January 31, 1999 to March 7, 1999	120 hours		\$995

ROBERT POISSON

POSITION	PERIODS WORKED BASED ON RECORD OF EMPLOYMENT		PERIODS AT ISSUE		COMPENSATION BASED ON RECORD OF EMPLOYMENT	INSURABLE EARNINGS AT ISSUE
	PERIODS	Number of weeks/hours	PERIODS	Number of weeks/hours		
Cook and dayworker	May 17 to September 11, 1993	17 weeks	May 16, 1993 to January 1, 1994	33 weeks	\$7,342	\$10,644.86
	May 8 to September 10, 1994	18 weeks	January 2 to December 31, 1994	52 weeks	\$8,473	\$14,306.13
	January 1 to June 3, 1995	11 weeks	January 1 to June 3, 1995	22 weeks	\$3,565	\$5,286.80

SYLVIE PROVOST

POSITION	PERIODS WORKED BASED ON RECORD OF EMPLOYMENT		PERIODS AT ISSUE		COMPENSATION BASED ON RECORD OF EMPLOYMENT	INSURABLE EARNINGS AT ISSUE
	PERIODS	Number of weeks/hours	PERIODS	Number of weeks/hours		
Server and housekeeper	May 9 to September 11, 1993	18 weeks	May 9 to December 25, 1993	33 weeks	\$9,948	\$13,204.71
	May 8 to September 10, 1994	18 weeks	December 26, 1993 to December 31, 1994	53 weeks	\$9,964	\$16,624.46
	January 2 to September 9, 1995	25 weeks	January 1 to December 30, 1995	52 weeks	\$9,576	\$17,613.74
	January 1 to September 7, 1996	19 weeks	December 31, 1995 to January 4, 1997	53 weeks	\$9,718	\$17,296.97
	October 21, 1996 to September 6, 1997	1,526 hours	January 5 to December 27, 1997	2,491.20 hours	\$10,760	\$17,240.42
	January 4 to September 7, 1998	1,293.25 hours	December 28, 1997 to December 26, 1998	2,236.25 hours	\$12,427.50	\$18,894.72
	January 3 to October 23, 1999	1,780.60 hours	December 27, 1998 to March 23, 1999	300 hours	\$15,490.65	\$3,645
	November 5, 1999 to November 24, 2000	1,952.50 hours	May 2 to October 23, 1999	1,376.55 hours	\$14,939.35	\$13,900.52
			October 31 to November 20, 1999	20 hours		\$405
			December 26, 1999 to March 4, 2000	243.50 hours		\$3,366
			March 21, 2000	No insurable hours		\$425
			April 30 to November 25, 2000	1,618 hours		\$18,056.85
			December 3 to December 30, 2000	77.50 hours		\$2,118.50

LISE ROBERGE

POSITION	PERIODS WORKED BASED ON RECORD OF EMPLOYMENT		PERIODS AT ISSUE		COMPENSATION BASED ON RECORD OF EMPLOYMENT	INSURABLE EARNINGS AT ISSUE
	PERIODS	Number of weeks/hours	PERIODS	Number of weeks/hours		
Server	January 6 to September 6, 1997	797 hours	September 20 to November 22, 1997	50 hours	\$5,979	\$450
	February 7 to March 30, 1998	105.75 hours			\$828.76	

FRANCIS RONDEAU

POSITION	PERIODS WORKED BASED ON RECORD OF EMPLOYMENT		PERIODS AT ISSUE		COMPENSATION BASED ON RECORD OF EMPLOYMENT	INSURABLE EARNINGS AT ISSUE
	PERIODS	Number of weeks/hours	PERIODS	Number of weeks/hours		
Dayworker	April 25 to September 11, 1993	20 weeks	April 25 to September 25, 1993	22 weeks	\$5,725	\$9,208.57
	May 8 to September 10, 1994	11 weeks	October 10 to November 20, 1993	6 weeks	\$6,592	\$282
			May 8 to September 24, 1994	20 weeks		\$7,091.72
			October 9 to November 19, 1994	6 weeks		\$384

MARCELLE RONDEAU

POSITION	PERIODS WORKED BASED ON RECORD OF EMPLOYMENT		PERIODS AT ISSUE		COMPENSATION BASED ON RECORD OF EMPLOYMENT	INSURABLE EARNINGS AT ISSUE
	PERIODS	Number of weeks/hours	PERIODS	Number of weeks/hours		
Housekeeper and server	May 2 to September 11, 1993	19 weeks	September 20 to November 22, 1997	29 weeks	\$7,872	\$9,208.57
	May 8 to September 10, 1994	18 weeks	December 26 1993 to February 26, 1994	9 weeks	\$8,149	\$657
			May 8 to November 19, 1994	28 weeks		\$9,629.50
			December 18 to December 24, 1994	1 week		\$83
			January 1 to March 11, 1995	10 weeks		\$1,595.75

GINETTE ST-JULES

POSITION	PERIODS WORKED BASED ON RECORD OF EMPLOYMENT		PERIODS AT ISSUE		COMPENSATION BASED ON RECORD OF EMPLOYMENT	INSURABLE EARNINGS AT ISSUE
	PERIODS	Number of weeks/hours	PERIODS	Number of weeks/hours		
Housekeeper	May 4 to September 6, 1998	846 hours	January 25 to April 24, 1998	448 hours	\$7,153.69	\$3,840
	January 31 to March 7, 1999	75 hours	May 3 to September 5, 1998	846 hours	\$562.50	\$8,035.95
			September 19 to October 12, 1998	40 hours		\$320
			October 19 to November 21, 1998	46 hours		\$365
			January 31 to March 7, 1999	120 hours		\$995

SYLVAIN THERRIEN

POSITION	PERIODS WORKED BASED ON RECORD OF EMPLOYMENT		PERIODS AT ISSUE		COMPENSATION BASED ON RECORD OF EMPLOYMENT	INSURABLE EARNINGS AT ISSUE
	PERIODS	Number of weeks/hours	PERIODS	Number of weeks/hours		
Fishing guide and dayworker	April 28 to November 1, 1997	1,576 hours	April 28, 1997 to June 27, 1998	4,799 hours	\$11,028	\$24,152.18
	February 16 to June 27, 1998	517 hours			\$4,795.65	

ANN VAILLANCOURT

POSITION	PERIODS WORKED BASED ON RECORD OF EMPLOYMENT		PERIODS AT ISSUE		COMPENSATION BASED ON RECORD OF EMPLOYMENT	INSURABLE EARNINGS AT ISSUE
	PERIODS	Number of weeks/hours	PERIODS	Number of weeks/hours		
Server and housekeeper	February 2 to March 22, 1997	7 weeks	February 3 to March 22, 1997	297.50 hours	\$2,320	\$2,915.50
	February 3 to September 6, 1997	1,000 hours	May 19 to September 6, 1997	702.50 hours	\$7,589	\$6,932.36
	May 31 to September 12, 1998	705 hours	May 31 to September 12, 1998	705 hours	\$7,211	\$8,011.60

APPENDIX B - TABLE 2

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POURVOIRIE AU PAYS DE RÉAL MASSÉ INC. Annual periods of activity											
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Jan.	Feb.	Mar.	April	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
Skidooing on trails				Trout fishing				Pheasant hunting		Skidooing on trails	
			*1	*2				*3			

*1 Last week of April: - major clean-up of site
 - preparing cottages and launches

*2 First weekend in May: - opening for archery tournament

*3 First two weekends in September: - major clean-up of site
 - storing launches and fishing equipment
 - clearing and maintaining trails

APPENDIX C - TABLE 3

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POURVOIRIE AU PAYS DE RÉAL MASSÉ INC.

WORKERS	HOUSING BENEFIT	BOARD BENEFIT	BENEFIT WAITING PERIOD	TIPS
1. Albert, Rachel	yes 1998, 1999	yes 1998, 1999	yes	yes
2. Arès, Mario	yes 1993, 1994	yes 1993, 1994	yes	no
3. Aubé Jr., Richard	yes 1993 to 1995	yes 1993 to 1995	yes	no
4. Ayotte, Jacqueline	yes 1995	yes 1995	yes	yes
5. Bélanger, Clémence	yes 1993 to 1995	yes 1993 to 19959	yes	yes
6. Bouliane, Julie	yes 1997, 1998	yes 1997, 1998	yes	yes
7. Côté, Florence	yes 1993, 1994	yes 1993, 1994	yes	yes
8. Côté, Gisèle	yes 1995	yes 1995	no	yes
9. Courcy, Denis	yes 1995 to 1999	yes 1995 to 1998	yes	yes
10. Daigle, François	yes 1995	yes 1995	no	yes
11 Desaulniers, Claude	yes 1997, 1998	yes 1997 to 1999	yes	yes
12. Deschenaux, Gaston	yes 1998 to 2000	yes 1998 to 2000	yes	yes
13. Fournier, Claude	yes 1995, 1996	yes 1995, 1996	yes	yes
14. Fournier, Fernande	yes 1995, 1996	yes 1995, 1996	yes	yes
15. Gariépy, Manon	no	yes 1998	no	yes
16. Gaudreau, Marc	yes 1993	yes 1993	yes	no
17. Geoffroy, Bernard	no	yes 1994, 1995	yes	no
18. Guénard, Normand	yes 1995 to 1997	yes 1995 to 1997	yes	no
19. Huot, Gilles J.	yes 1993 to 2000	yes 1993 to 2000	yes	no
20. Joly, France	no	yes 1994, 1995	yes	no
21. Lacroix, Yvonne	yes 1997	yes 1997	yes	yes
22. Lefrançois, Francine	yes 1997	yes 1997	no	no
23. Massé, Nancy	yes	yes	yes	yes

	1993 to 2000	1993 to 2000		
24. Massé, Richard	yes 1995 to 1998	yes 1995 to 1998	yes	yes
25. Montmagny, Lisette	no	yes 1998, 1999	yes	yes
26. Poisson, Robert	yes 1993 to 1995	yes 1993 to 1995	no	yes
27. Provost, Sylvie	yes 1993 to 2000	yes 1993 to 2000	yes	no
28. Roberge, Lise	no	yes 1997	no	no
29. Rondeau, Francis	no	no	yes	no
30. Rondeau, Marcelle	no	yes 1993 to 1995	yes	yes
31. St-Jules, Ginette	no	yes 1998, 1999	yes	yes
32. Therrien, Sylvain	yes 1997, 1998	yes 1997, 1998	yes	yes
33. Vaillancourt, Ann	yes 1997, 1998	yes 1997, 1998	no	yes