

Date: 20000918

Docket: 1999-4611-EI

BETWEEN:

THE INSURANCE CORPORATION OF BRITISH COLUMBIA,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent,

and

RYAN LAKE,

Intervenor

Reasonsfor Judgment

Beaubier, J.T.C.C.

[1] This appeal was heard at Vancouver, British Columbia on August 25, 2000. Ryan Lake was the only witness. Solicitors for the other parties read in portions of Examinations for Discoveries.

[2] It is an appeal by the Appellant ("ICBC") from a decision of Revenue Canada dated August 27, 1999, which reads:

Insurance Corporation of British Columbia

c/o Corporate Law Department

L. Desrochers

151 West Esplanade Street

Appeals Division

North Vancouver, B.C.

Section 430-25

V7M 3H9

27 Aug 1999

Dear Sirs:

This letter concerns an appeal made by you under the *Employment Insurance Act* of a ruling concerning Shannie Harvey's employment with Ryan Lake during the period of September 1, 1997 to June 26, 1998.

It has been decided that Shannie Harvey was employed by Ryan Lake under a contract of service and thus was employed in insurable employment; as Shannie Harvey was paid by the Insurance Corporation of British Columbia, the Insurance Corporation of British Columbia was deemed to be the employer of the insured person in addition to the actual employer.

If you disagree with this decision, you may appeal to the Tax Court of Canada within 90 days of the mailing date of this letter. Details on how to appeal can be found in the enclosed attachment.

The decision in this letter is issued pursuant to section 93 of the *Employment Insurance Act*. The decision is based on section 5 of the *Employment Insurance Act* and section 10 of the *Insurable Earnings and Collection of Premiums Regulations*.

Yours sincerely,

Chief of Appeals

Vancouver Taxation Services Office

[3] Paragraphs 3.1, 3.2, 3.4, 3.5, 3.6, 3.7, 3.8, 3.11, 3.15, 3.20, 3.24, 3.25, 3.27, 3.28, 3.29, 3.30 and 3.31 of the Notice of Appeal were admitted by the Respondent. Insofar as Mr. Lake's testimony touched upon these paragraphs, that testimony confirmed the admissions. Those admitted paragraphs of the Notice of Appeal read:

3.1 This is an appeal pursuant to section 103 of the *Employment Insurance Act*, S.C. 1996, c. 23, as amended (the "EIA").

3.2 The Insurance Corporation of British Columbia (the "Appellant") is a body corporate continued by the *Insurance Corporation Act*, RSBC 1996, c. 228, as amended (the "ICA").

...

3.4 At all relevant times the Appellant was in the business of insuring motor vehicles and occupants of motor vehicles against damage.

3.5 At all relevant times, Mr. Ryan Lake ("Lake") lived in Richmond, B.C.

3.6 Lake was involved in a motor vehicle accident on or about May 3, 1997.

3.7 At the time of his accident, the Appellant insured Lake against damages from motor vehicle accidents.

3.8 Following the accident, Lake made a claim against the Appellant for compensation in respect of injuries suffered in the accident.

...

3.11 In or about late August, 1997, Lake retained Harvey as an attendant to assist him with general day-to-day functions while he was injured.

...

3.15 At all relevant times, Lake and not the Appellant was Harvey's actual employer.

...

3.20 The Appellant agreed to and did mail cheques to Harvey at Lake's address.

...

3.24 At a date unknown to the Appellant, Harvey applied to the Canadian Department of Human Resources Development for benefits under the EIA.

3.25 At a date unknown to the Appellant, the Canadian Department of Human Resources Development requested a ruling from the Minister of National Revenue (the "Minister") as to whether Harvey was entitled to benefits under the EIA.

...

3.27 In the Ruling the Minister ruled that Lake was Harvey's actual employer.

3.28 In the Ruling the Minister ruled that the Appellant was deemed to be Harvey's employer pursuant to paragraph 10(1)(a) of the *Insurable Earnings and Collection of Premiums Regulations* (made under the EIA), SOR/97-33, as amended (the "IECPR") on the basis that the Appellant had "paid" Harvey.

3.29 By letter dated September 8, 1998 (the "Letter"), the Minister informed the Appellant about the Ruling.

3.30 The Letter confirmed the Minister's position that the Appellant was deemed to be Harvey's employer and hence the Appellant was responsible for withholdings and employer premiums under the EIA in respect of amounts paid to Harvey in respect of her employment by Lake.

3.31 The Appellant appealed the Ruling and the Letter to the Minister by letter dated December 4, 1998 but the Minister confirmed the Ruling and Letter by letter dated August 27, 1999.

[4] Paragraphs 6, 7, 8 and 9 of the Reply read:

6. In response to an appeal of a ruling by the Appellant pursuant to section 91 of the *Employment Insurance Act*, S.C. 1996, c. 23 (the "*EI Act*"), the Respondent decided that the Appellant was the deemed employer of Shannie Harvey (the "Worker") for the purpose of calculating and remitting employment insurance premiums as the Worker was employed by Ryan Lake ("Lake") in insurable employment during the period from September 1, 1997 to June 26, 1998 (the "Period").

7. In making his decision, the Respondent relied upon the following assumptions of fact:

- (a) Lake was involved in a motor vehicle accident on or about May 3, 1997;
- (b) Lake had motor vehicle insurance coverage with the Appellant;
- (c) Lake made a claim to the Appellant for approval to cover the cost of hiring an attendant to assist him during his period of recovery from the injuries he suffered during the motor vehicle accident;
- (d) the Appellant provided Lake with the approval to hire an attendant;
- (e) the Appellant set the pay rate of the attendant at \$15.00 per hour for a maximum of 4 hours per day for personal care to Lake and at \$8.25 per hour for child care of Lake's children;
- (f) Lake Hired the Worker to perform the personal care and the child care duties at his residence, from 8 a.m. to 6 p.m., Monday through Friday, for the pay rate set by the Appellant;
- (g) Lake directed and supervised the Worker in the performance of her duties;
- (h) the Appellant provided the time sheets to be completed by the Worker and signed by Lake;
- (i) the Appellant paid the salary/wage to the Worker upon receipt of the signed time sheets;
- (j) the payment of the salary/wage to the Worker by the Appellant was not a reimbursement of an expense incurred by Lake;
- (k) the Appellant monitored the need for an continued to pay for the personal care attendant for Lake during the Period;
- (l) the Appellant is the deemed employer of the Worker for purposes of employment insurance premiums as the Appellant paid the salary/wages directly to the Worker and did not reimburse Lake.

B. THE STATUTORY PROVISIONS UPON WHICH THE RESPONDENT RELIES AND THE REASONS WHICH HE INTENDS TO SUBMIT

8. He relies upon paragraph 5(1)(a) and subsection 2(1) and section 91 of the *EI Act* and on section 10 of the *Insurable Earnings and Collection of Premiums Regulations* (the "*IECPRegs*"), as amended.

9. He respectfully submits that he correctly decided that the Worker was employed by the Lake during the Period in insurable employment within the meaning of paragraph 5(1)(a) and subsection 2(1) of the *EI Act*, as the Worker was performing the duties of employment under a contract of service. He further submits that the Appellant is the deemed employer of the Worker within the meaning of section 10 of the *IECPRegs*, as the Appellant paid the Worker salary/wages during the Period.

[5] Assumptions 7(a), (b), (c), (d), (e), (f), (g), (h), (i) and (k) are correct. With respect to assumption (j), Lake incurred the expense of Harvey by hiring her, but he was not reimbursed by the Appellant; the Appellant paid Harvey directly. Assumption (l) is the subject of the dispute among the parties.

[6] Section 10 of the *Insurable Earnings and Collection of Premiums Regulations* (the "*Regulations*") was instituted pursuant to paragraphs 108(1)(d) and (f) of the *Employment Insurance Act* (the "*EI Act*"). They read:

108. (1) The Minister may, with the approval of the Governor in Council, make regulations

...

(d) respecting the manner in which any provision of this Act that applies or extends to an employer of an insured person shall apply or extend to

(i) a person by whom the remuneration of an insured person for services performed in insurable employment is paid either wholly or in part, and

(ii) the employer of that person;

...

(f) providing that, in any case or class of cases where insured persons work

(i) under the general control or direct supervision of or are paid by a person other than their actual employer, or

(ii) with the concurrence of a person other than their actual employer on premises or property with respect to which that person has any rights or privileges under a licence, permit or agreement,

the other person is, for the purposes of paying premiums, deemed to be the employer of the insured persons in addition to the actual employer, and providing for the payment and recovery of premiums paid for the insured persons;

[7] Section 10 of the *Regulations* reads:

10.(1) Where, in any case not coming within any other provision of these Regulations, an insured person works

(a) under the general control or direct supervision of, or is paid by, a person other than the insured person's actual employer, or

(b) with the concurrence of a person other than the insured person's actual employer, on premises or property with respect to which that other person has any rights or privileges under a licence, permit or agreement,

that other person shall, for the purposes of maintaining records, calculating the insurable earnings of the insured person and paying, deducting and remitting the premiums payable on those insurable earnings under the Act and these Regulations be deemed to be the employer of the insured person in addition to the actual employer.

(2) The amount of any employer's premium paid by the person who is deemed to be the employer under subsection (1) is recoverable by that person from the actual employer.

(3) Where a person who is deemed under these Regulations to be an employer of an insured person fails to pay, deduct or remit the premiums that an employer is required to pay, deduct or remit under the Act or these Regulations, the provisions of Parts IV and VI of the Act shall apply to the person as if the person were the actual employer.

[8] There are two legal issues in dispute in this appeal:

1. Is the Appellant immune from subsection 10(1) of the *Regulations* under the *EI Act*?

2. If the Appellant is not immune, did the Appellant pay Harvey within the meaning of subsection 10(1)?

[9] Section 13 of the *Insurance Act of British Columbia*, RSBC 1996 (the "*Act*"), Chap. 228 sets out the extent of the immunity granted to ICBC. It reads:

Corporation an agent of the government

13 (1) All property and money acquired or administered by the

corporation is deemed to be the property of the government for all purposes, including exemption from taxation.

- (2) The corporation is an agent of the government.
- (3) Money, funds, investments and property acquired or administered by the corporation may not be taken, used or appropriated by the government for any purpose whatever, except under subsection (5), section 26(1) or to repay advances by or money borrowed from the government and the interest on it.
- (4) Subsection (3) does not apply to the revenue referred to in section 7(h) that is received by the corporation.
- (5) The corporation must pay to the government any tax or impost that, but for subsection (3), would be assessed or levied against the corporation, its business or property under any other Act, except income tax under the *Income Tax Act*.

This *Act*, as amended, is the statute which incorporates the Appellant, "ICBC". The objects, power and capacity of ICBC are set forth in section 7 and section 9 of its *Act*. They read:

Objects, power and capacity

7 It is the function of the corporation and it has the power and capacity to do the following:

- (a) subject to the approval of the Lieutenant Governor in Council, engage in and carry on, inside and outside of British Columbia, the business of insurance and reinsurance in all its classes;
- (b) subject to the approval of the Lieutenant Governor in Council, operate and administer plans of insurance, including automobile insurance, authorized under any other enactment;
- (c) engage in and carry on the business of repairing insured property and of salvaging and disposing by public or private sale property insured and acquired under a contract by which the corporation may be liable as an insurer, or make agreements with other persons for those purposes;
- (d) subject to the *Medical Practitioners Act* and the *Hospital Act*, engage in and carry on the business of providing medical and hospital services to a person insured under a contract by which the corporation may be liable as an insurer, or make agreements with other persons for those purposes;
- (e) for its own use and benefit, acquire or expropriate, and hold or take options on land required for its business, conveyed, mortgaged or hypothecated to it by way of security, acquired as an investment, or conveyed to it in full or partial satisfaction for debts and judgments, and may dispose of the whole or part of the land;
- (f) acquire some or all of the shares or business and property of an insurer, agent, adjuster or motor vehicle repairer, or make an agreement to carry on jointly a class of insurance with

another insurer, inside or outside of British Columbia, and the *Insurance Act* and the *Financial Institutions Act* do not apply to the agreement;

(g) carry out any powers, duties and functions in relation to the *Motor Vehicle Act* or the *Commercial Transport Act*, or to any program of the government or of an agency of the government, that may be authorized under the *Motor Vehicle Act*, the *Commercial Transport Act* or another enactment respecting motor vehicles or vehicles, or that may be assumed by the corporation by agreement with the government or an agency of the government;

(h) receive, hold, manage and collect, for and on behalf of the government,

(i) revenue from fines in connection with violation tickets under the *Offence Act*, for contravention of enactments referred to in the regulations under that Act, including revenue from fines imposed by the Provincial Court for contraventions for which violation tickets have been issued; and

(ii) revenue from licence, permit and other fees under the *Motor Vehicle Act*, the *Commercial Transport Act* or another enactment respecting motor vehicles or vehicles;

(i) promote and improve highway safety.

...

Additional power

9 (1) The corporation has the power and capacity to do all acts and things necessary or required for the purpose of carrying out its functions and powers.

(2) Without limiting subsection (1), the corporation may do any of the following:

(a) conduct surveys and research programs and obtain statistics for its purposes and to establish and administer any insurance plan;

(b) enter into an agreement with, or retain agents or adjusters to solicit and receive applications for insurance, to collect premiums, adjust claims, and do other things on its behalf it considers necessary;

(c) prescribe forms for application, contracts, policies and other matters it considers necessary;

(d) prescribe the detail required to be set out on a form;

(e) evaluate damages and losses and pay claims under a contract by which the corporation may be liable as an insurer;

(f) reinsure the whole or part of a contract of another insurer, and reinsure its risks under the whole or part of a contract with another insurer, whether or not the other insurer is inside or outside of British Columbia, or is authorized under the *Financial Institutions Act*;

(g) do anything necessary to settle, adjust, investigate, defend and otherwise deal with, under this Act, the *Insurance Act* or the *Financial Institutions Act* so far as is applicable and the regulations made under those Acts, claims made on contracts by which the corporation may be liable as insurer or on a plan established under sections 7 and 8(1);

(h) make bylaws and pass resolutions, not contrary to law or this Act, it considers necessary or advisable for the conduct of its affairs including the time and place of its meetings, procedure at meetings and generally the conduct of its affairs in all ways.

Of all the objects, power and capacity set forth in these two sections, only subsections 7(e), (f) and (h) deal with property and money which are particularized in subsection 13(1) as "deemed to be the property of the government for all purposes".

[10] In *Regina v. Eldorado Nuclear Limited et al.* (S.C.C., 1983) 4 D.L.R. 4th 193, Dickson, J., for the majority, said at pages 205 and 206:

Uranium Canada and Eldorado are each, by statute, expressly made "an agent of Her Majesty". Uranium Canada owes its status as a Crown agent to s. 10(4) of the *Atomic Energy Control Act*, which reads:

10(4) A company is for all its purposes an agent of Her Majesty and its powers may be exercised only as an agent of Her Majesty.

Eldorado's agency status derives from *the Government Companies Operation Act*, R.S.C. 1970, c. G-7; s. 3, reads:

3(1) Every Company is for all its purposes an agent of Her Majesty and its powers may be exercised only as an agent of Her Majesty.

The fact that these statutory provisions make each of the respondent corporations "for all its purposes" an agent of the Crown does not mean, however, that these companies act as Crown agents in everything they do.

Statutory bodies such as Uranium Canada and Eldorado are created for limited purposes. When a Crown agent acts within the scope of the public purposes it is statutorily empowered to pursue, it is entitled to Crown immunity from the operation of statutes, because it is acting on behalf of the Crown. When the agent steps outside the ambit of Crown purposes, however, it acts personally, and not on behalf of the State, and cannot claim to be immune as an agent of the Crown. This follows from the fact that s. 16 of the *Interpretation Act* works for the benefit of the State, not for the benefit of the agent personally. Only the Crown, through its agents, and for its purposes, is immune from *the Combines Investigation Act*.

and then said at pages 212 and 213:

The position at common law is not that those under *de jure* control are entitled to Crown immunity, but rather that immunity extends to those acting on behalf of the Crown. In *Metropolitan Meat Industry Board v. Sheedy et al.*, [1927] A.C. 899, the Privy Council found the board not to be a Crown agent because "there is nothing in the statute which makes the acts of administration his [the Minister's] as distinguished from theirs" (p. 905). *Sheedy* is not an immunity case, rather, the question was whether Crown priority could be asserted in a liquidation. Nevertheless, it does indicate that the *de jure* test applies only in the absence of specific language indicating the body acts on behalf of or as an agent of the Crown: see also *Tamlin v. Hannaford*, [1950] 1 K.B. 18 (C.A.). A case such as *British Columbia Power Corp. Ltd. v. A.-G. B.C. et al.* (1962), 34 D.L.R. (2d) 25, 38 W.W.R. 657, is easily distinguishable. In that case the statutory designation of Crown agent was held not to be conclusive, because the statute did not say "for all its purposes". The majority concluded the statute made the Power Corporation an agent only for some purposes, not including the matter at issue in that appeal.

This Court's decision in *Formea Chemicals Ltd. v. Polymer Chemicals Ltd. v. Polymer Corp. Ltd.* (1968), 69 D.L.R. (2d) 114, 55 C.P.R. 38, [1968] S.C.R. 754, is also instructive. The case concerned s. 19 of the *Patent Act*, R.S.C. 1952, c. 203.

19. The Government of Canada may, at any time, use any patented invention, paying to the patentee such sum as the Commissioner reports to be a reasonable compensation for the use thereof, and any decision of the Commissioner under this section is subject to appeal to the Exchequer Court.

Martland J., speaking for the Court, equated "Government of Canada" with the Crown. Polymer, like Eldorado, was made, for all its purposes, an agent of the Crown, though not under *de jure* control. None the less, Polymer was held entitled to take advantage of s. 19 (at p. 123 D.L.R., p. 49 C.P.R., p. 764 S.C.R.):

In my opinion the Crown, under s. 19, has an unrestricted right to use a patent. It caused the respondent [Polymer] to be incorporated to manufacture, sell and deal in synthetic rubber and made the respondent, for all its purposes, its agent. The use by the respondent of the patent was, in the circumstances, a use by the Crown within s. 19. This being so, there was no infringement by the respondent of such patent.

The "agent for all its purposes" designation was held to be determinative; there was no inquiry into the actual independence of Polymer. I think this case makes it clear that when an enactment refers to the Crown, and a particular body is expressly made a Crown agent for all purposes, the enactment embraces the statutory agent. This applies to the construction of s. 16 of the *Interpretation Act*.

[11] In *British Columbia Power Corp. Ltd. v. A.G.B.C. et al.* (1962) 34 DLR (2d) 25, at 29 *et seq.*, Sheppard, J.A., as part of the majority, cited a number of tests to be applied where a corporation is alleged to be an agent of the government. These include (with answers and statutory citations from the *Act* incorporating ICBC):

1. Did the Crown delegate control and management to ICBC's Board? (p. 32) (Yes, s.3)
2. Is ICBC in its essential nature "a government department" and do its powers fall within the province of government? (p. 32) (No, ss. 7 and 9)
3. Is ICBC an instrument of government or is it a corporation incorporated to carry on the business? (p. 32) (It is incorporated to carry on the business of insurance and reinsurance, s.7)
4. Has ICBC contractual capacity apart from the Crown? (p. 33) (Yes, ss. 7 and 9)
5. Is ICBC's power to contract limited by its incorporation documents? (p. 33) (Yes, s. 7 and 9)
6. Does ICBC own its assets and is the Crown merely its shareholder? (p. 33) (It owns its assets and is controlled by the BC government.)
7. Do ICBC's directors have their own discretionary powers? (p. 33) (Yes, s. 3)
8. Are ICBC's employees civil servants? (p. 34) (No)
9. Has ICBC the power to sue and to be sued? (p. 34) (Yes, ss. 9(1) and para. 9(2)(g)).

[12] In light of these comments, section 13 of the *Act* bears a closer examination:

1. Subsection (1) deems only the property and money acquired or administered by the corporation to be property of the government for all purposes.
2. Subsection (2) then states that the corporation is an agent of the government. Thus its scope is broader than the scope of subsection (1) which is limited to "property and money". But the power of agency is not granted "for all purposes".
3. Moreover subsection (5) states that the corporation must pay to the (British Columbia) government any impost levied against the corporation, except income tax under the *Income Tax Act*.

Therefore, it appears that the usage "for all purposes" is limited to protecting the property and money of the corporation from the exercise of powers such as an execution or garnishee. But ICBC's grant of immunity contained in section 13 of the *Act* does not extend so far as to protect it in a case such as this. It is not immune from liability under Section 10 of the *Regulations*.

[13] Appellant's counsel thereupon argues respecting the meaning of "pay", that legally there is only payment by ICBC to Harvey if that payment to Harvey discharges an obligation which ICBC owes to Harvey. Lake agreed to hire Harvey and entered into the contract of employment with her. Harvey then phoned ICBC to confirm Lake's representation that ICBC was paying Lake in respect to part of her employment by Lake. Thereafter ICBC and Lake

agreed that ICBC would make its cheque out to Harvey based upon Lake submitting to ICBC a record of hours of employment signed by both Lake and Harvey. Harvey knew this and that is what happened. Lake owed the obligation to pay Harvey to satisfy his indebtedness. ICBC did not.

[14] In *Re Attorney General of Canada and Théoret* 61 D.L.R. (4th) 289 the Federal Court of Appeal dealt with subsection 18(1) of the *Unemployment Insurance (Collection of Premiums) Regulations*, the predecessor of section 10 of the *Regulations*. At pp. 310 to 312, Desjardins, J. A. said:

Jean-Louis Baudouin, in *Les Obligations* (Cowansville, Quebec: Les Éditions Yvon Blais Inc., 1982), a pp. 351-52, explains the various meanings of the word "to pay" (translation):

To pay, in popular language, primarily means giving a sum of money. In legal language, to pay is to perform an obligation no matter what its nature, whether it consists of doing or refraining from doing something or giving an object or a sum. The payment, which is an act of performance of the obligation assumed by the debtor, has the effect of extinguishing the obligation and putting an end to the juridical relationship between the debtor and his creditor. The juridical nature of the payment has given rise to a theoretical and jurisprudential controversy: some authorities view it as a mere juridical fact, and therefore capable of being proved by any means, while others see it as a juridical act subject to the strict proof thereof under articles 1233 et sq. of the Civil Code. And some even view it as a convention, since it presupposes an agreement between the creditor and the debtor. Whatever it is, a payment comprises both a material element (the surrender of the object that is owed) and an intentional element (the desire to extinguish the obligation).

In this case, what was the intentional element performed by the respondent notary? If he paid in the juridical sense, his act binds him as the deemed employer, under the provisions of s. 18(1) of the regulations.

[15] The Federal Court of Appeal's decision in *Théoret* respecting Quebec's Civil Code also applies to the application of Section 10 of the *Regulations* under the common law. The meaning of "pay" in *Théoret* is also one of the meanings of "pay" in common law as can be seen in the Black's Law Dictionary, 6th Ed. where "pay" is defined as:

Pay, n. Compensation; wages; salary; commissions; fees. The act or fact of paying or being paid. *See* Discharge; Payment.

Pay, v. To discharge a debt by tender of payment due; to deliver to a creditor the value of a debt, either in money or in goods, for his acceptance. U.C.C. § § 2-511, 3-604. To compensate for goods, services or labor. *See also* Discharge; Payment.

[16] Since ICBC did not owe an obligation to pay Harvey and Harvey knew this, ICBC did not pay Harvey within the meaning of subsection 10(1) of the *Regulations* under the *EI Act*.

[17] For this reason the appeal is allowed.

Signed at Ottawa, Canada, this 18th day of September, 2000.

"D. W. Beaubier"

J.T.C.C.

COURT FILE NO.: 1999-4611(EI)

STYLE OF CAUSE: The Insurance Corporation of British

Columbia v. The Queen and Ryan

Lake

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: August 25, 2000

REASONS FOR JUDGMENT BY: The Honourable Judge D. W. Beaubier

DATE OF JUDGMENT: September 18, 2000

APPEARANCES:

Counsel for the Appellant: Joel Nitikman and Lori Mathison

Counsel for the Respondent: Ron Wilhelm and Victor Caux

For the Intervenor: The Intervenor himself

COUNSEL OF RECORD:

For the Appellant:

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Firm: Fraser Milner

Vancouver, British Columbia

For the Respondent: Morris Rosenberg

Deputy Attorney General of Canada

Ottawa, Canada

BETWEEN:

THE INSURANCE CORPORATION OF BRITISH COLUMBIA,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent,

and

RYAN LAKE,

Intervenor.

Appeal heard on August 25, 2000 at Vancouver, British Columbia by

the Honourable Judge D. W. Beaubier

Appearances

Counsel for the Appellant: Joel Nitikman and Lori Mathison

Counsel for the Respondent: Ron Wilhelm and Victor Caux

For the Intervenor: The Intervenor himself

JUDGMENT

The appeal is allowed and the decision of the Minister is vacated.

Signed at Ottawa, Canada, this 18th day of September, 2000.

"D. W. Beaubier"

J.T.C.C.