Dockets: 2002-2743(EI), 2002-2744(EI)
2002-2745(EI), 2002-2746(EI) and 2002-3730(EI)

BETWEEN:

COMMISSION DE LA
CONSTRUCTION DU QUÉBEC,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeals heard on common evidence with the appeals of ***Luigi Pace*** **(2002-1724(EI))**, ***Robert Benoit*** **(2002-2271(EI)),** ***Pierre Gagnon*** **(2002-2687(EI))** and ***Serge Lefebvre*** **(2002-3221(EI))**
on September 14 and 15, 2004, at Montréal, Quebec

Before: The Honourable Justice Louise Lamarre Proulx

Appearances:

Counsel for the Appellant: André Lareau

Counsel for the Respondent: Natalie Goulard

JUDGMENT

The appeals under subsection 103(1) of the *Employment Insurance Act* from the decisions of the Minister of National Revenue are dismissed and the Minister's decisions are confirmed, based on the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 17th day of December 2004.

"Louise Lamarre Proulx"

Lamarre Proulx J.

Translation certified true
on this 29th day of July 2005.

Daniela Possamai, Translator

Docket: 2002-1724(EI)

BETWEEN:

LUIGI PACE,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent,

and

COMMISSION DE LA CONSTRUCTION DU QUÉBEC,

Intervenor.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeals of ***Commission de la Construction du Québec*** **(2002-2743(EI), 2002-2744(EI), 2002-2745(EI), 2002-2746(EI) and 2002-3730(EI))**, ***Robert Benoit*** **(2002-2271(EI)),** ***Pierre Gagnon*** **(2002-2687(EI))** and ***Serge Lefebvre*** **(2002-3221(EI))** on September 14 and 15, 2004, at Montréal, Quebec

Before: The Honourable Justice Louise Lamarre Proulx

Appearances:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Natalie Goulard
Counsel for the Intervenor:	André Lareau

JUDGMENT

The appeal under subsection 103(1) of the *Employment Insurance Act* from the decision of the Minister of National Revenue is dismissed and the Minister's decision is confirmed, based on the attached Reasons for Judgment in *Commission de la Construction du Québec.*

Signed at Ottawa, Canada, this 17th day of December 2004.

"Louise Lamarre Proulx"

Lamarre Proulx J.

Translation certified true
on this 29th day of July 2005.

Daniela Possamai, Translator

Docket: 2002-2271(EI)

BETWEEN:

ROBERT BENOIT,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeals of ***Commission de la Construction du Québec*** **(2002-2743(EI), 2002-2744(EI), 2002-2745(EI), 2002-2746(EI) and 2002-3730(EI))**, ***Luigi Pace*** **(2002-1724(EI)),** ***Pierre Gagnon*** **(2002-2687(EI))** and ***Serge Lefebvre*** **(2002-3221(EI))** on September 14 and 15, 2004, at Montréal, Quebec

Before: The Honourable Justice Louise Lamarre Proulx

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: Natalie Goulard

JUDGMENT

The appeal under subsection 103(1) of the *Employment Insurance Act* from the decision of the Minister of National Revenue is dismissed and the Minister's decision is confirmed, based on the attached Reasons for Judgment in *Commission de la Construction du Québec.*

Signed at Ottawa, Canada, this 17th day of December 2004.

"Louise Lamarre Proulx"

Lamarre Proulx J.

Translation certified true
on this 29th day of July 2005.

Daniela Possamai, Translator

Docket: 2002-2687(EI)

BETWEEN:

PIERRE GAGNON,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeals of ***Commission de la Construction du Québec*** **(2002-2743(EI), 2002-2744(EI), 2002-2745(EI), 2002-2746(EI) and 2002-3730(EI))**, ***Luigi Pace*** **(2002-1724(EI)),** ***Robert Benoit*** **(2002-2271(EI))** and ***Serge Lefebvre*** **(2002-3221(EI))** on September 14 and 15, 2004, at Montréal, Quebec

Before: The Honourable Justice Louise Lamarre Proulx

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: Natalie Goulard

JUDGMENT

The appeal under subsection 103(1) of the *Employment Insurance Act* from the decision of the Minister of National Revenue is dismissed and the Minister's decision is confirmed, based on the attached Reasons for Judgment in *Commission de la Construction du Québec.*

Signed at Ottawa, Canada, this 17th day of December 2004.

"Louise Lamarre Proulx"

Lamarre Proulx J.

Translation certified true
on this 29th day of July 2005.

Daniela Possamai, Translator

Docket: 2002-3221(EI)

BETWEEN:

SERGE LEFEBVRE,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeals of ***Commission de la Construction du Québec*** **(2002-2743(EI), 2002-2744(EI), 2002-2745(EI), 2002-2746(EI) and 2002-3730(EI))**, ***Luigi Pace*** **(2002-1724(EI)),** ***Robert Benoit*** **(2002-2271(EI))** and ***Pierre Gagnon*** **(2002-2687(EI))** on September 14 and 15, 2004, at Montréal, Quebec

Before: The Honourable Justice Louise Lamarre Proulx

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: Natalie Goulard

JUDGMENT

The appeal under subsection 103(1) of the *Employment Insurance Act* from the decision of the Minister of National Revenue is dismissed and the Minister's decision is confirmed, based on the attached Reasons for Judgment in *Commission de la Construction du Québec.*

Signed at Ottawa, Canada, this 17th day of December 2004.

"Louise Lamarre Proulx"

Lamarre Proulx J.

Translation certified true
on this 29th day of July 2005.

Daniela Possamai, Translator

Citation: 2004TCC826
Date: 20041217
Dockets: 2002-2743(EI), 2002-2744(EI),
2002-2745(EI), 2002-2746(EI) and 2002-3730(EI)

BETWEEN:

COMMISSION DE LA CONSTRUCTION DU QUÉBEC,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS OF JUDGMENT

Lamarre Proulx J.

[1] The appeals were heard on common evidence. The Appellant is appealing the decisions of the Minister of National Revenue (the "Minister"), dated April 15, 2002, May 15, 2002, and September 13, 2002, confirming the assessments from 1997 to 2001, established under the *Employment Insurance Act* (the "Act").

[2] The Appellant is a legal person pursuant to *An Act respecting Labour relations, vocational training and manpower management in the construction industry*, R.S.Q. c. R-20 ("Act R-20").

[3] The assessments under appeal concerning the amounts paid to the workers by the Appellant for services rendered for employers following suits brought against said employers by the Appellant for the various reasons set out in section 81 of Act R-20, which reads as follows:

Powers of the Commission.

81. To ensure the carrying out of a collective agreement, the Commission may:

(a) exercise recourses arising out of this Act or out of a collective agreement in favour of employees who have not caused a suit to be served within a period of 15 days from the due date, and may do so notwithstanding any law to the contrary, any opposition or of this Act or a collective agreement in favour of the employees and that may be exercised against them;

(b) on the same conditions, continue suit in the place and stead of any employee who, having caused such a suit to be served, has neglected to proceed for 15 days;

(c) recover from the employer and the employee who violate the clauses of a collective agreement relating to remuneration in currency and to compensation or benefits of a pecuniary value, and from each of them, an amount equal to 20 % of the difference between the obligatory amount and that actually paid;

(c .1) recover, both from the employee contemplated in paragraph *c* who performs construction work without being the holder of the competency certificate or the recipient of an exemption required for that work and from his employer, an additional amount equal to 20 % of the difference between the obligatory amount and that actually paid;

(c .2) recover from the employer who fails to transmit to it the monthly report prescribed by subparagraph *b* of the first paragraph of section 82, the amounts corresponding to the indemnities, contributions, assessments and levies which should have been transmitted with the report, and an additional amount equal to 20 % of such amounts; the total amount claimed may be determined by an expert evaluation on the basis of the scope of the work performed under the contract entered into by the employer or by any other means of proof establishing the number of hours necessary for the carrying out of the work;

(d) effect any settlement, compromise or transaction considered expedient in the cases contemplated in subparagraphs *a* to *c*.2;

(e) at any reasonable time, examine the registration system, the compulsory register and the pay-list of any employer, take copies or

extracts therefrom, verify as regards any employer and employee the rate of wage, duration of work, and observance of the other clauses of a collective agreement;

(f) at any reasonable time and even at the place of work, require from any employer or employee any information considered necessary or require from any such person that he furnish the information in writing to the Commission within a period of 10 clear days following the delivery of a written request to that effect or following the day such a request is made to him by any appropriate means;

(g) by demand in writing made to any employer, require that a copy it sends to him of the scale of wages rendered obligatory, or of any decision or regulation, be posted up and kept posted up in a suitable place and in the manner prescribed in the demand;

(h) by resolution, grant to any employee of limited physical or mental fitness upon proof considered sufficient, a certificate authorizing him to work upon determined conditions different from those contemplated in a collective agreement.

[4] Subsection 1(2) and section 10 of the *Insurable Earnings and Collection of Premiums Regulations* (the "Regulations") read as follows:

. . .

1.(2) For the purposes of Part IV of the Act and for the purposes of these Regulations, "employer" includes a person who pays or has paid earnings of an insured person for services performed in insurable employment.

. . .

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.

10(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.

10(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 et VI of the Act shall apply to the person as if the person were the actual employer.

[5] The English text is as follows:

1.(2) For the purposes of Part IV of the Act and for the purposes of these Regulations, "employer" includes a person who pays or has paid earnings of an insured person for services performed in insurable employment.

. . .

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.

> 10(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.
>
> 10(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 et VI of the Act shall apply to the person as if the person were the actual employer.

[6] At the beginning of the hearing, counsel for the Respondent made the following changes to a few Replies to the Notice of Appeal:

[Translation]

> (1) In docket 2002-2743(EI), at subparagraph 24(f), the number "27" should be replaced with the number "29" and at subparagraph 24(g), the words "the Appellant did not withhold any amount" should be replaced with "the Appellant did not withhold sufficient amounts."
>
> (2) In docket 2002-3730(EI), subparagraph 25(g) is replaced with "Based on the T4 slips prepared by the Appellant, there was an employment insurance deduction for the year at issue, but it was insufficient."
>
> (3) In the same docket, subparagraph 25(h) is replaced with "There is a discrepancy of $47,324.90 between EI premiums that were paid and those that are owed."

[7] The parties mentioned a compensation fund created for the purposes of certain provisions of section 122 of Act R-20. The special compensation fund is mentioned in section 13 of the *Regulation respecting the Register, monthly report, notices from employers and the designation of a representative*. In the case at bar, the assessments are not supposed to be based on the amounts that were allegedly paid out of the fund. The parties agree that the amounts paid to the workers out of the fund are not necessarily subject to the assessments made under the Act. The Respondent does not believe the assessment of the Appellant's returns were based on such amounts and according to the latter, it is up to the Appellant to prove that some of these amounts come from the fund.

[8] During the hearing, the funding of the compensation fund for the purposes of section 122 of Act R-20 was explained. It is prescribed in the collective agreements that employers must pay an amount equivalent to $0.02 per hour worked per each employee. This money is paid into the fund in order to compensate workers in case of the employer's bankruptcy.

[9] According to the statements contained in the Replies to the Notice of Appeal, there were deductions and payments made by the Appellant in compliance with the Act, but the amount withheld was insufficient. Those payments were made subject to this appeal, according to Jean Ménard, director of the Appellant's legal services, a witness in this case.

[10] Mr. Ménard explained that one of the Appellant's important duties is to administer the collective agreements concluded in the construction industry. In 1994, the industry was divided into four sectors: the residential sector, the civil engineering and roads sector, the industrial sector and the institutional and commercial sector. For each of these sectors, there is a collective agreement.

[11] Under section 81 of Act R-20, the Commission exercises the recourses of employees arising out of collective agreements. It collects from employers unpaid amounts to workers either because the remuneration the workers and employers agreed upon was less than that provided for in the collective agreements, or because the registers do not indicate earnings or that wages were not paid. The Commission institutes proceedings and does not make a payment to an employee until it has recovered from the employer the amounts owed, either after a judgment or after a voluntary payment by the employer.

[12] When the Commission remits the money to the employer, it proceeds with tax deductions. The Commission issues T4 slips. There are also union deductions. The Commission has the power to claim the various assessments provided for in the collective agreements and the Commission remits to the union associations the assessments collected.

[13] A binder of documents was filed as Exhibit A-1. It contains four tabs.

[14] In Tab 2 there is letter dated December 7, 1977, sent by Revenue Canada to what the Commission was formerly, the Office de la construction du Québec. The letter informed the Office de la construction du Québec that it had to withold and remit source deduction amounts for tax purposes. The witness read paragraph 3 of the letter:

[Translation]

> Considering that it is incumbent on your organization, starting in 1977, to produce T-4 slips relating to the information mentioned above, we are requesting that you complete the additional T-4 slips as follows: Indicate in box “C” the benefits paid by your organization to each of your members. Since the earnings reported in box “C” are not insurable benefits, the term “nil” will have to appear in boxes “E” and “H” and the letter “X” will also have to appear in box “J” in Employment Insurance (EI).

[15] According to the witness, this meant that no remissions were to be made with respect to Employment Insurance.

[16] On November 24, 2000 (Exhibit A-2), the Appellant wrote to Canada Customs and Revenue Canada (“CCRC”) to accept to deduct and remit CCRC premiums, but indicated that that was subject to their proceedings to the contrary. The letter mentioned that, although it contested the validity of the amounts claimed, the Commission would, until the complete disposition of the litigation, make employment insurance source deductions from the amounts the Commission remits to employees to whom amounts are owed by employers. The Commission would also claim from defaulting employers employer contributions to Employment Insurance on the amounts owed by these employers to their employees.

[17] There are premiums for 2001. The explanation is that the Commission changed its way of doing things and began to collect from employers and deduct at source amounts relating to EI premiums, but this process occurred gradually and the amounts paid in 2001 to workers were not always subject to these deductions.

[18] The Commission was recognized as a provincial labour authority within the meaning of subsection 2(2) of the *Insurable Earnings and Collection of Premiums Regulations*. The letter confirming this was sent on December 28, 2001 (Tab 3 of Exhibit A-1). The witness read the first and last paragraphs of the letter.

[Translation]

> This is further to the request of the Commission de la construction du Québec and your letter of September 20, 2001. You were seeking to obtain confirmation that the Commission de la construction du Québec (CCQ) constitutes a provincial labour authority within the meaning of subsection 2(2) of the *Insurable Earnings and Collection of Premiums Regulations*.
>
> . . .
>
> We also would like to note that a memorandum was issued to all our Tax Services Offices and Tax Centres informing them that the CCQ constitutes a provincial labour authority within the meaning of subsection 2(2) of the *Insurable Earnings and Collection of Premiums Regulations*.

[19] Subsection 2(2) of the Regulations reads as follows:

> 2(2) For the purposes of this Part, the total amount of earnings that an insured person has from insurable employment includes the portion of any amount of such earnings that remains unpaid because of the employer's bankruptcy, receivership, impending receivership or non-payment of remuneration for which the person has filed a complaint with the federal or provincial labour authorities, except for any unpaid amount that is in respect of overtime or that would have been paid by reason of termination of the employment.

[20] I reported the incident described above because it was part of the evidence but it has no bearing on the outcome of these appeals involving the meaning to be given to the term “employer” as defined by the Regulations.

[21] The Respondent filed a book of exhibits containing 17 tabs as Exhibit I-1.

[22] During the cross-examination, the witness admitted that he was aware of the letter dated June 19, 1998, Exhibit I-1, Tab 9. The letter reads as follows:

[Translation]

> June 19, 1998

Commission de la construction du Québec
3530 Jean-Talon Street West
Montréal, Quebec H3R 2G3

Attention: Gérard Lawless, CA

Dear Mr. Lawless:

This is further to our meeting of December 13, 1994, regarding whether or not the CCQ should deduct EI premiums from the amounts it recovers from employers and which it pays to their employees.

Following our meeting, we sought legal advice from our counsel. They are of the opinion that the CCQ is the deemed employer for the purposes of the *Insurable Earnings and Collection of Premiums Regulations*. This decision is also supported by the decision of the Tax Court of Canada number 92-108(UI), *Commission de la construction du Québec* v. *Minister of National Revenue*, dated June 1, 1993.

As a result, we are of the opinion that the CCQ is a deemed employer and that it should deduct the required EI premiums from the amounts it recovers from employers and pays to workers. However, the CCQ is not a new employer and should only deduct and remit the premiums the employer would have had to deduct and remit had the employer paid these amounts directly to the employee.

The amounts from the compensation fund, paid by the CCQ to workers, are not subject to EI premiums.

Considering that it is incumbent on your organization to produce T-4 slips relating to the information mentioned above, we are requesting that you complete the additional T-4 slips as follows:

Box “14” indicate the amount paid by your organization to the worker.

Box “18” indicate the amount of EI premiums (per employee) deducted from the payment made to the worker. In the case of an amount coming from the compensation fund and considering that these amounts are not subject to EI premiums, insert “NIL”.

> Box “24” indicate the amount of insurable earnings on which you calculated EI premiums. As in box “18” for the amounts coming from the compensation fund, insert “NIL”.
>
> Box “28” indicate the letter “X” in EI Exemption, when the amounts come from the compensation fund.
>
> Employers subject to an assessment by the Commission de la construction du Québec will have to be informed not to produce additional T4 slips, for the amounts paid to your organization, during visits by your auditors.
>
> ...

[23] On March 27, 2000, another letter confirmed the above letter.

Arguments

[24] Counsel for the Appellant argued that the person other than the actual employer, mentioned in section 10 of the Regulations, should be in the context of the Regulations an employer carrying out activities substantially similar to those of the employer. This argument is based on the use of the actual term in a spoken or written text. Thus, a person who asks for a product made of authentic leather in a store is not asking for a product made of imitation leather.

[25] With respect to the legal concept of payment, counsel for the Appellant argued that the payment was made to terminate an obligation. However, there is no remuneration obligation for services rendered to the Commission.

[26] Counsel for the Respondent argued that the actual term in the context of the Regulations is contrary to “deemed under the Act.” The purpose of the Regulations is to appoint as an employer a person who is not the employer, but the payor. The payor is not the actual employer but the deemed employer.

[27] Counsel for the Respondent referred to *Insurance Corp. of British Columbia* v. *Canada*, [2002] F.C.J. No. 380 (Q.L.), and argued that the term “pay” should not be interpreted in too narrow a contractual legal sense. It should be attributed the meaning of paying earnings to terminate obligations that existed between the employer and the worker or that should have existed had the employer complied with the collective agreements in force.

[28] She referred to paragraphs 4 to 9 of that decision:

> [4] ICBC appealed this decision to the Tax Court of Canada. The learned Tax Court Judge allowed the appeal. He rejected ICBC's argument that as an agent of the provincial Crown it was immune from this federal regulation. However, he concluded that ICBC did not come within section 10 because it could not be said to have "paid" Harvey. He reached this conclusion in the belief that the term "paid" as it appears in section 10 can only apply where the money which is transferred is legally owed by the transferor to the transferee.
>
> [5] I am of the view that the learned Trial Judge gave an unnecessarily narrow construction to the word "paid" in section 10 of the Regulations. As a result he wrongly concluded that when ICBC transferred to Harvey the amount of salary as agreed upon by Lake and Harvey, it was not "paying" an insured person as defined in the Employment Insurance Act. In reaching this conclusion he relied on textbook and dictionary definitions of the verb "to pay", as well as a decision of this Court in A.G.C. v. Théorêt ((1988), 61 D.L.R. (4th) 289). He interpreted the word to mean that one only "pays" when one has a legal obligation owed specifically to the payee.
>
> [6] I would first observe that the Théorêt decision, while it did specifically involve a predecessor to present section 10 of the Regulations, focussed on different issues. The Court there was divided on whether the person assessed as payor was a "mandatary" of the person providing the funds and whether that fact would be determinative of whether such assessed person could be said to have "paid" within the meaning of the then regulation. This involved issues of interpretation of article 1715 of the Civil Code of Lower Canada. I do not find this case helpful because: first, there was no majority decision on the crucial issue; secondly, it did not focus on the meaning of the regulation itself; and thirdly, it involved an alleged agent paying, not on behalf of the real employer, but on behalf of a lender to that employer, all facts which are not found in the present case.
>
> [7] Nor are general textbook or dictionary definitions of "pay" or "paid" helpful in the interpretation of "paid" as it appears in the context of section 10 of the Regulations.
>
> [8] The purpose of the Regulations and the statute which authorizes them is in part to facilitate collection of employment

> insurance premiums, an activity which is essential to the scheme as it now exists. The Act clearly authorizes the kind of provision which has been adopted by the Governor in Council in section 10 of the Regulations. In examining section 10 one sees that it is to apply inter alia where an employed insured person is being "paid by a person other than [his or her] actual employer". In such case that "other person" must maintain records of employment and calculate, deduct, and remit the appropriate premiums. The proposition is simple enough and its purpose clear: premiums are to be deducted at the source where salary or wages are calculated and administered, and where checks or pay-packets are issued. The term "paid" ought to be interpreted in context, and it is not necessary to examine technical sources in order to attribute to it a meaning that would defeat the clear purpose of the section. It would be equally possible, if one were to dwell on abstract legal concepts, to hold that a person can be an "actual employer" only if that person is paying the "employee" from his or her own resources and not at the expense of another. But that would also defeat the purpose of the section by precluding its application to any situation where a third party was actually providing and administering the wages or salary.
>
> 9 I am reinforced in this opinion by several decisions of the Tax Court of Canada which are consistent with the conclusion that the "other person" can be considered to have "paid" someone else's employee without having a legal obligation to that employee to do so (See Kern Hill Co-op Ltd. v. Canada [1989] T.C.J. No. 702; Gateway Building and Supply Ltd. v. Canada [1991] T.C.J. No. 521; Commission de la Construction du Québec v. Canada [1993] T.C.J. No 650; Danks v.Canada [1995] T.C.J. No. 948; and Ferme Riomil Inc. v. Canada [1998] T.C.J. No. 203).

Analysis and conclusion

[29] I am of the opinion that if one reads the Regulations, which are very short, in full, the proposal of counsel for the Respondent’s seems to be the most consistent with the purpose of the Regulations. The definition of the word “employer” at the very beginning does not refer to the person who gives instructions and for whom services are performed but explicitly stipulates that for the purposes of Part IV of the Act and for the purposes of these Regulations, “employer” includes a person who pays or has paid earnings of a worker for services performed in insurable employment. This is a deeming provision of the nature of a legal fiction.

[30] Section 10 of the Regulations is entitled “Other Deemed Employers.” Section 7 of the Regulations involves placement or employment agencies. Their activities are not similar to those of their clients.

[31] Legal fiction is a legislative scheme that is well-known in civil law. It is also frequently used in federal statutory law. The Court must therefore attribute to the deeming provision the meaning it decrees to a term or expression. I am referring to the decision of the Supreme Court of Canada in *The Queen* v. *Verrette*, [1978] 2 S.C.R. 838, particularly page 845, and the decision of the Federal Court of Appeal in *Canada* v. *Scarola*, [2003] F.C.J. No. 482 (Q.L.), at paragraphs 19 and 20.

[32] According to the decision of the Federal Court of Appeal in *Insurance Corp. of British Columbia* (*supra*), when a person, other than the actual employer, pays earnings owed to an insured person, that person is an employer under the Regulations. This decision ultimately exempted ICBC because it was an agent of Her Majesty and the Regulations were not binding on Her Majesty. The Appellant did not claim that status, with reason it seems to me, upon reading the recent decision of the Supreme Court of Canada in *Nova Scotia Power Inc.* v. *Canada*, [2004] S.C.J. No. 36 (Q.L.) which analyzed the notion of agent of the Crown. Nevertheless, considering that there was no legal debate as to the Appellant’s capacity as agent of the Crown, I will not deal with the issue.

[33] It should be noted that in *Insurance Corp. of British Columbia, supra*, at paragraph 9, the Federal Court of Appeal relied, among other things, on the decision of Allard J. of this Court in *Commission de la Construction du Québec* v. *Canada (Minister of National Revenue — M.N.R)*, [1993] T.C.J. No. 650 (Q.L.). The decision of Allard J. confirmed that the Appellant was a deemed employer. It should also be noted that the Federal Court of Appeal distanced itself from *Théoret* (*supra*), on which the Appellant relied in part.

[34] I must conclude that the Appellant is not exempt from the deeming provisions of the Regulations. Subsection 1(2) of the Regulations clearly stipulates that “employer” includes a person who pays or has paid earnings of an insured person for services performed in insurable employment. Subsection 10(1) of the Regulations also clearly stipulates that where an insured person is paid by a person other than the insured person’s actual employer, 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.

[35] Consequently, the appeals are dismissed.

Signed at Ottawa, Canada, this 17th day of December 2004.

"Louise Lamarre Proulx"

Lamarre Proulx J.

Translation certified true
on this 29th day of July 2005.

Daniela Possamai, Translator

CITATION:	2004TCC826
COURT FILE NUMBERS:	2002-2743(EI), 2002-2744(EI), 2002-2745(EI), 2002-2746(EI), 2002-3730(EI)
STYLE OF CAUSES:	Commission de la Construction du Québec and M.N.R.
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	September 14 and 15, 2004
REASONS FOR JUDGMENT BY:	The Honourable Justice Louise Lamarre Proulx
DATE OF JUDGMENT:	December 17, 2004

APPEARANCES:

For the Appellant:	André Lareau
For the Respondent:	Natalie Goulard

COUNSEL OF RECORD:

For the Appellant:

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