Dockets: 2002-3189(CPP)
2002-3860(CPP)
2002-3868(CPP)
2002-3870(CPP)

BETWEEN:

OVERHEAD DOOR OF PRINCE ALBERT LTD.,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

Appeals heard on common evidence with the appeals *Overhead Door of Prince Albert Ltd*. (2002-3190(EI), 2002-3859(EI), 2002-3867(EI) and, 2002-3869(EI)) on August 7, 2003 at Prince Albert, Saskatchewan

Before: The Honourable Michael H. Porter, Deputy Judge

Appearances:

Counsel for the Appellant: James Sanderson

Counsel for the Respondent: Anne Jinnouchi

JUDGMENT

The appeals are allowed and the decisions of the Minister are vacated in accordance with the attached Reasons for Judgment.

Signed at Calgary, Alberta, this 9th day of October 2003.

"M.H. Porter"

Porter, D.J.

Citation: 2003TCC709
Date: 20031009
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BETWEEN:

OVERHEAD DOOR OF PRINCE ALBERT LTD.,

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THE MINISTER OF NATIONAL REVENUE,

Respondent.

REASONS FOR JUDGMENT

Porter, D.J.

Introduction

[1] These appeals were heard on common evidence by consent of the parties, on the 7th day of August 2003, at Prince Albert, Saskatchewan. They relate to four different workers engaged by the Appellant to provide services at varying times. The issues and evidence are the same in each case.

[2] The Appellant has appealed from the various decisions of the Minister of National Revenue (hereinafter called the "Minister") all dated the 3rd of June 2002 that the following workers were in both insurable and pensionable employment during the respective periods of time, namely:

Danny Castle - October 1, 2000 to April 30, 2001

Ronald Thorimbert - May 1, 2000 to November 30, 2001

David Anderson - April 1, 2000 to June 9, 2001

Sidney Harris - October 1, 2000 to November 30, 2001

The reasons given for the said decisions, which were the same in each case, were:

> [Worker's name] was engaged under a contract of service and therefore he was an employee of yours.

The decisions were said to be issued in accordance with subsection 27.2(3) of the *Canada Pension Plan* (the "*CPP*") and subsection 93(3) of the *Employment Insurance Act* (the "*EI Act*"), and were respectively based on paragraphs 6(1)(*a*) 5(1)(*a*) thereof.

[3] The established facts reveal that the Appellant at all relevant times, was in the business of selling and installing overhead doors as well as servicing the same. The Workers were engaged to install, repair and service the overhead doors. The Appellant maintains that they were engaged as independent contractors operating under contracts for services. The Minister, on the other hand, has decided that they were engaged as employees under contracts *of* service. That is the issue in these appeals.

The Law

Contracts Of/For Service

[4] The manner in which the Court should go about deciding whether any particular working arrangement is a contract ***of*** service and thus an employer/employee relationship or a contract ***for*** services and thus an independent contractor relationship, has long been guided by the words of MacGuigan J. of the Federal Court of Appeal in the case of *Wiebe Door Services Ltd. v. M.N.R.*, 87 DTC 5025. The reasoning in that case was amplified and explained further in cases emanating from that Court, namely in the cases of *Moose Jaw Kinsmen Flying Fins Inc. v. M.N.R.*, 88 DTC 6099, *Charbonneau v. Canada (M.N.R.)* [1996] F.C.J. No. 1337, and *Vulcain Alarme Inc. v. The Minister of National Revenue*, (1999) 249 N.R. 1, all of which provided useful guidance to a trial Court in deciding these matters.

[5] The Supreme Court of Canada has now revisited this issue in the case of *671122 Ontario Ltd. v. Sagaz Industries Canada Inc.* [2001] S.C.J. No. 61, 2001 SCC 59, 274 N.R. 366. The issue in that case arose in the context of a vicarious liability situation. However, the Court recognized that the same criteria applied in many other situations, including employment legislation. Mr. Justice Major, speaking for the Court, approved the approach taken by MacGuigan J. in the *Weibe Door* case (above), where he had analyzed Canadian, English and American authorities, and, in particular, referred to the four tests, for making such a determination enunciated by Lord Wright in *City of Montreal v. Montreal Locomotive Works Ltd.*, [1974] 1 D.L.R. 161 at 169-70. MacGuigan J. concluded at page 5028 that:

> Taken thus in context, Lord Wright's fourfold test [control, ownership of tools, chance of profit, risk of loss] is a general, indeed an overarching test, which involves "examining the whole of the various elements which constitute the relationship between the parties". In his own use of the test to determine the character of the relationship in the *Montreal Locomotive Works* case itself, Lord Wright combines and integrates the four tests in order to seek out the meaning of the whole transaction.

At page 5029 he said:

> ... I interpret Lord Wright's test not as the fourfold one it is often described as being but rather as a four-in-one test, with emphasis always retained on what Lord Wright, *supra*, calls *"the combined force of the whole scheme of operations,"* even while the usefulness of the *four subordinate criteria is* acknowledged. (emphasis mine)

At page 5030 he had this to say:

> What must always remain of the essence is the search for the total relationship of the parties…

He also observed:

> There is no escape for the Trial Judge, when confronted with such a problem, from carefully weighing all of the relevant factors…

[6] Mr. Justice MacGuigan also said this:

> Perhaps the best synthesis found in the authorities is that of Cooke J. in *Market Investigations, Ltd. v. Minister of Social Security*, [1968] 3 All E.R. 732, 738-9:

> The observations of Lord Wright, of Denning L.J., and of the judges of the Supreme Court in the U.S.A. suggest that the fundamental test to be applied is this: "Is the person who has engaged himself to perform these services performing them as a person in business on his own account?" If the answer to that question is "yes", then the contract is a contract for services. If the answer is "no" then the contract is a contract of service. No exhaustive list has been compiled and perhaps no exhaustive list can be compiled of considerations which are relevant in determining that question, nor can strict rules be laid down as to the relative weight which the various considerations should carry in particular cases. The most that can be said is that control will no doubt always have to be considered, although it can no longer be regarded as the sole determining factor; and that factors, which may be of importance, are such matters as whether the man performing the services provides his own equipment, whether he hires his own helpers, what degree of financial risk be taken, what degree of responsibility for investment and management he has, and whether and how far he has an opportunity of profiting from sound management in the performance of his task. The application of the general test may be easier in a case where the person who engages himself to perform the services does so in the course of an already established business of his own; but this factor is not decisive, and a person who engages himself to perform services for another may well be an independent contractor even though he has not entered into the contract in the course of an existing business carried on by him.

[7] In the case of *Kinsmen Flying Fins Inc.* case, above, the Federal Court of Appeal said this:

> ... like MacGuigan J. we view the tests as being useful subordinates in weighing all of the facts relating to the operations of the Applicant. That is now the preferable and proper approach for the very good reason that in a given case, and this may well be one of them, one or more of the tests can have little or no applicability. To formulate a decision then, the overall evidence must be considered taking into

> account those of the tests which may be applicable and giving to all the evidence the weight which the circumstances may dictate.

[8] The nature of the tests referred to by the Federal Court of Appeal can be summarized as:

a) The degree or absence of control exercised by the alleged employer;
b) Ownership of tools;
c) Chance of profit;
d) Risk of loss;

In addition, the Court must consider the question of the integration, if any, of the alleged employee's work into the alleged employer's business.

[9] In the *Sagaz* decision (above) Major J. said this:

> …control is not the only factor to consider in determining if a worker is an employee or an independent contractor…

[10] He dealt with the inadequacy of the "control test" by again approving the words of MacGuigan J. in the *Wiebe* Door case (above) as follows:

> A principal inadequacy [with the control test] is its apparent dependence on the exact terms in which the task in question is contracted for: where the contract contains detailed specifications and conditions, which would be the normal expectation in a contract with an independent contractor, the control may even be greater than where it is to be exercised by direction on the job, as would be the normal expectation in a contract with a servant, but a literal application of the test might find the actual control to be less. In addition, the test has broken down completely in relation to highly skilled and professional workers, who possess skills far beyond the ability of their employers to direct.

[11] He went on to say this:

> In my opinion, there is no one conclusive test which can be universally applied to determine whether a person is an employee or an independent contractor. Lord Denning stated in Stevenson Jordan, …([1952] 1 The Times L.R. 101) that it may be impossible to give a precise definition of the distinction (p.111) and, similarly, Fleming observed that "no single test seems to yield an invariably clear and acceptable answer to the many variables of ever changing

employment relations …" (p. 416). Further, I agree with MacGuigan J.A. in Wiebe Door, at p. 563, citing Atiyah, … (Vicarious Liability in the Law of Torts. London: Butterworths, 1967), at p. 38, that what must always occur is a search for the total relationship of the parties:

> [I]t is exceedingly doubtful whether the search for a formula in the nature of a single test for identifying a contract of service any longer serves a useful purpose…. The most that can profitably be done is to examine all the possible factors which have been referred to in these cases as bearing on the nature of the relationship between the parties concerned. Clearly not all of these factors will be relevant in all cases, or have the same weight in all cases. Equally clearly no magic formula can be propounded for determining which factors should, in any given case, be treated as the determining ones.

Although there is no universal test to determine whether a person is an employee or an independent contractor, I agree with MacGuigan J.A. that a persuasive approach to the issue is that taken by Cooke J. in Market Investigations, supra. The central question is whether the person who has been engaged to perform the services is performing them as a person in business on his own account. In making this determination, the level of control the employer has over the worker's activities will always be a factor. However, other factors to consider include whether the worker provides his or her own equipment, whether the worker hires his or her own helpers, the degree of financial risk taken by the worker, the degree of responsibility for investment and management held by the worker, and the worker's opportunity for profit in the performance of his or her tasks.

It bears repeating that the above factors constitute a non-exhaustive list, and there is no set formula as to their application. The relative weight of each will depend on the particular facts and circumstances of the case.

[12] I also find guidance in the words of Décary J.A. in the *Charbonneau* case (above) when speaking for the Federal Court of Appeal he said this:

> The tests laid down by this Court ... are not the ingredients of a magic formula. They are guidelines which it will generally be useful to consider, but not to the point of jeopardizing the ultimate objective of the exercise, which is to determine the overall

> relationship between the parties. The issue is always, once it has been determined that there is a genuine contract, whether there is a relationship of subordination between the parties such that there is a contract of employment ... or, whether there is ... such a degree of autonomy that there is a contract of enterprise or for services. ... In other words, we must not pay so much attention to the trees that we lose sight of the forest. ... The parts must give way to the whole. (emphasis mine)

[13] I also refer to the words of Létourneau J.A. in the *Vulcain Alarme* case (above), where he said this:

> … These tests derived from case law are important, but it should be remembered that they cannot be allowed to compromise the ultimate purpose of the exercise, to establish in general the relationship between the parties. This exercise involves determining whether a relationship of subordination exists between the parties such that the Court must conclude that there was a contract of employment within the meaning of art. 2085 of the *Civil Code of Quebec*, or whether instead there was between them the degree of independence which characterises a contract of enterprise or for services….

[14] I am further mindful that as a result of the recent decisions of the Federal Court of Appeal in *Wolf v. Canada,* [2002] F.C.J. No. 375, and *Precision Gutters Ltd. v. Canada (Minister of National Revenue-M.N.R.)*, [2002] F.C.J. No. 771, a considerable degree of latitude seems now to have been allowed to creep into the jurisprudence enabling consultants to be engaged in a manner in which they are not deemed to be employees as they might formerly been. I am particularly mindful of the words of Mr. Justice Décary in the *Wolf* decision (above) where he said:

> In our day and age, when a worker decides to keep his freedom to come in and out of a contract almost at will, when the hiring person wants to have no liability towards a worker other than the price of work and when the terms of the contract and its performance reflect those intentions, the contract should generally be characterised as a contract for services. If specific factors have to be identified, I would name lack of job security, disregard for employee-type benefits, freedom of choice and mobility concerns. (my emphasis)

[15] Thus, it seems to this Court that the pendulum has started to swing, so as to enable parties to govern their affairs more easily in relation to consulting work and so that they may more readily be able to categorize themselves, without interference by

the Courts or the Minister, as independent contractors rather than employees working under contracts of service.

[16] In conclusion, there is no set formula. All these factors bear consideration and as Major J. said in the *Sagaz* case (above), the weight of each will depend upon the particular facts and circumstances of the case. Many of the tests can be quite neutral and can apply equally to both types of situation. In such case, serious consideration has to be given to the intent of the parties. Thus is the task of the trial Judge.

The Facts

[17] The Minister was said in the Replies to the Notices of Appeal signed on his behalf, to have relied upon the following assumptions of fact, along side of which I have indicated the agreement or disagreement of the Appellant.

(a) the Appellant is in the business of sales, installation and service of overhead doors; (Agreed)

(b) the Worker was hired as an installer and his duties included installing, repairing and servicing overhead doors; (Basically agreed, but hired not meaning "employed as employee")

(c) normally the Worker spent 20% of his time installing doors and the remaining time was spent on repairs and service; (Agreed)

(d) the Appellant obtained the clients and the work; (Agreed)

(e) the Worker earned a set wage per service perform; (Agreed)

(f) the Worker was also paid an hourly wage for some services; (Agreed)

(g) the Appellant set the Worker's rates of pay; (Agreed)

(h) the Appellant set the prices charged to its clients; (Agreed)

(i) the Appellant paid the Worker on a weekly basis; (Agreed)

(j) the Worker normally worked regular business hours; (Disagreed)

(k) the Worker's hours were controlled by the Appellant's client; (Disagreed)

(l) the time frames, deadlines and priorities were set by the Appellant's clients; (Disagreed)

(m) the Appellant assigned the work and instructed the Worker; (Disagreed)

(n) the Appellant provided the Worker with work orders; (Agreed)

(o) the Appellant provided training for the Worker; (Disagreed)

(p) the Worker worked along side a qualified installer; (Disagreed)

(q) the Worker reported to the Appellant's premises on a daily basis; (Disagreed)

(r) the Worker submitted work reports to the Appellant; (Agreed)

(s) the Appellant inspected the Worker's work; (Disagreed)

(t) the Worker did not replace himself or hire his own helpers; (Disagreed)

(u) the Worker did not perform services for others while working for the Appellant; (Disagreed)

(v) the Worker provided his own hand tools and vehicle; (Agreed)

(w) the Appellant provided the specialty tools including scaffolding, ladders and scissor lifts; (Agreed)

(x) the Worker performed his services in the field and at the Appellant's premises; (Disagreed)

(y) the Appellant provided the doors and all of the accessories and materials required; (Agreed)

(z) the Worker did not have a chance of profit; (Disagreed)

(aa) the Appellant provided the Worker with a mileage allowance and a per diem amount to cover out-of-town travel costs; (Agreed for out of town work only)

(bb) the Worker was not liable for any losses or damage; (Disagreed)

(cc) the Appellant provided the Worker with liability insurance; (Disagreed)

(dd) the Worker was not in business for himself; (Disagreed)

(ee) the Worker did not charge the Appellant G.S.T., and (Agreed)

(ff) the Worker was employed under a contract of service with the Appellant. (Disagreed – the issue in this appeal)

[18] Evidence was given by Michael Fisher ("Fisher"), the sole shareholder and director of the Appellant. I found him to be an extremely honest and reliable witness and I have no difficulty in accepting his evidence in its entirety.

[19] Fisher said there were simply two employees of the company, namely himself and a secretary. The remaining workers, he said, were engaged as independent contractors. He provided a standard form of contract (Exhibit A-1) entered into with the Workers. This was, I understand, a form provided by the franchise company and he simply filled in the blanks. The signed originals were not produced.

[20] The contract contains the following relevant terms:

> The sub-contractor is totally responsible for the supply of necessary tools and equipment and the tools and equipment leased, rented or borrowed from others whether they are lost, damaged, stolen or subject to mysterious disappearance wherever the event may happen.
>
> ...
>
> We understand that by the terms of this agreement, every attempt has been made to make this an agreement between a contractor and a sub-contractor. For example, it is understood that the company does not have exclusive command over or control of the sub-contractors services. However, the workmanship must meet or exceed the standards of the industry and the sub-contractor realizes that they do not have the benefits that may be associated between an employer/employee relationship. For example, the fee schedule as amended periodically, is all inclusive and the sub-contractor becomes obligated to self fund for annual vacation, public holidays, leaves for maternity/paternity, bereavements etc., liability for Canada Pension Plan, Income tax and employment insurance, if applicable and any other tax or deduction associated with an employee, except for assessments under the Worker's Compensation Board, which the company will pay and not deduct from payments under the fee schedule.

> As a sub-contractor, services can be provided to others without the risk of losing assignments from the company except for the possibility of not being available within the time frame of the customers' requirements.
>
> As a sub-contractor, you assume and accept full responsibilities for your actions and agree to carry sufficient liability and general insurance to protect yourself and the company from liability claims, arising from your actions, and losses or damages to tools and equipment.

[21] The allocation of work, according to Fisher, was on a first-come-first-serve basis. The Appellant would take in the orders. They would be written up on forms which were then placed in a central point in the office. The Workers could then come into the office, if and when they chose, and select a work order. If a work order was beyond the competence or experience of a worker, he could just select the next one. If he did not come in at any time, that was up to him. Work was just there when he chose to come in and pick it up.

[22] At the end of the project, the Worker would complete the form and return it to the office. He would, subject to a holdback, be paid one week later.

[23] There were no restrictions on a Worker undertaking other work either in his own right or as an employee, at any time.

[24] Similarly, although it did not tend to happen, a Worker could hire a sub-worker out of his own resources.

[25] It was clear that generally speaking, the Workers used their own tools. If they lost or forgot their own, they could borrow those of the Appellant. Specialty tools belonged to the Appellant or were rented and the cost passed on to the customer.

[26] The Workers used their own vehicles and paid for their own fuel. The contractual stipulation for white vehicles was never enforced. If the Workers went out of town, they were reimbursed for mileage, meals and hotel accommodation, which I understand was passed onto the customer.

[27] When the Minister made his rulings, the Workers quit working for the Appellant, as they did not wish to be treated as employees.

[28] The Workers received on-the-job training in that at the outset, those who did not have any experience went with an experienced Worker to learn the work.

[29] The Workers were requested to do the work within normal business hours unless a customer wanted the work done at a special time, and the Worker was requested to accommodate that request. Thus, the Workers' hours were not controlled by the Appellant (items (j), (k) and (l)). Further, the work was not assigned by the Appellant (item (m)); it was posted and the Workers could select work as they saw fit.

[30] Items (o) and (p) are, to some extent, correct. Some Workers obviously had sufficient experience whilst others had none.

[31] Item (s) is incorrect, as Fisher did not inspect the work unless there was a complaint. In that case, the Worker had to fix it at his own expense (item (bb)).

[32] The Workers did not in fact replace themselves, but Fisher maintained they could have done so if they wished (item (t)). Generally speaking, the economics would probably not have allowed for it.

[33] With respect to item (x), the Workers performed all the work in the field.

[34] With respect to item (z), the Worker did have a chance of profit in the sense referred to in the *Precision Gutters* case (above).

[35] Item (cc) is correct in that, although by the contract the Workers were required to take out their own insurance, they in practice did not do so. Also, the Appellant covered them for Workers' Compensation.

[36] Those then, are the salient facts.

Application of the Factors to the Evidence

[37] **Title:** It must be clearly understood that even where the parties choose to put a title on their relationship, if the true nature and substance of the arrangement does not accord with that title, it is the substance to which the Court must have regard. That legal principle has not changed (see *Shell Canada Ltd. v. Canada* (1999) S.C.J. No. 30). Having said that, it is also fair to say that where the parties genuinely choose a particular method of setting up their working arrangement, it is not for the Minister or this Court to disregard that choice. Due deference must be given to the method

chosen by the parties and if on the evidence as a whole there is no substantial reason to derogate from the title chosen by the parties, then it should be left untouched. The *Wolf* and *Precision Gutters* cases very much substantiate that proposition.

[38] **Control:** As this aspect of the test has been traditionally applied, it has been consistently pointed out that it is not the actual control so much as the right to control that it is important for the Court to consider. The more professional and competent a person is or the more experience they have in their field, the less likely there is to be any actual control, which creates difficulty in applying this test. Indeed as Major J. pointed out in the *Sagaz* case (above), there may be less control exercised in the case of a competent professional employee than in the case of an independent contractor. Nonetheless, it is another factor to be weighed in the balance.

[39] In this case, it is clear that both the Appellant and the Workers had a clear understanding that they were working as independent contractors not employees. They sought neither the benefits of being employees nor wished to assume the obligations thereof. It is significant in my mind, that rather than be treated as such, they ceased working for the Appellant.

[40] In this case, I see very little, if any, control exercised by the Appellant over the Workers. They basically could come and go as they pleased and were free to work or not work as they chose, which is hardly a hallmark of an employee. They chose their own assignments. They worked when they wanted to. They had to rectify their own work if there were complaints. This factor clearly points to independent contractors working under contracts ***for*** services.

[41] **Tools and Equipment:** These were not numerous and such as they were, the Workers owned their own. As was pointed out by the Federal Court of Appeal in the *Precision Gutters* case (above):

> It has been held that if the worker owns the tools of the trade which it is reasonable for him to own, this test will point to the conclusion that the individual is an independent contractor even though the alleged employer provides special tools for the particular business. See Bradford v. M.N.R. 88 D.T.C. 1661; Campbell v. M.N.R. 87 D.T.C. 47; Big Pond Publishing v. M.N.R. (1998) T.C.J. No. 935.
>
> I feel that the Tax Court Judge erred in refusing to place any meaningful emphasis on the importance of the tools owned by the installers, which were essential to the installation of the gutters.

[42] This factor clearly points to the Workers working as independent contractors despite the fact that occasionally specialty tools were provided by the Appellant.

[43] **Chance of Profit – Risk of Loss:** Quite frankly I am of the view that the circumstances in the cases at hand are substantially similar to those in the *Precision Gutters* case (above) where the Federal Court of Appeal said this:

> "The Tax Court Judge concluded, because at the time the rates were agreed upon between Precision and the installer, that there was no further opportunity for profit. As a result he concluded that this criteria favoured characterization of the installers as employees. In my view, this ignores certain important aspects of the relationship between the installer and Precision. In particular each installer used his own judgment to decide when to work and whether to accept or decline any particular job. He was of course free to take jobs with other gutter manufacturers. The contract price, although it was not negotiated on all occasions, was nevertheless negotiated 20%-30% of the time. In my view, the ability to negotiate the terms of a contract entails a chance of profit and risk of loss in the same way that allowing an individual the right to accept or decline to take a job entails a chance of profit and risk of loss. The installers were not given any set time for performance of the contract and hence efficient performance might well lead to more profits. An installer could choose to work alone or employ others to help him. Obviously, the more work he could do on his own the more profits he could make. The installer was responsible for defects in work done and had to return to repair the defects at his own expense. There was no guarantee of work from day to day, no guaranteed minimum pay and no fringe benefits. All of these things have led other courts to conclude that an independent contractor relationship exists. See Société de Projets ETPA Inc. v. Minister of National Revenue, 93 D.T.C. 510. I am therefore of the view that the Tax Court Judge erred in holding that chance of profit and risk of loss criteria favours characterization of the installers as employees.

[44] I am of the view that there was a significant entrepreneurial element to the work of the Workers. How they arranged their affairs and the assignments they chose could unilaterally affect the amount of profit they made. They also had expenses in the form of their vehicles and tools. If there were damaged or lost tools they faced substantial losses.

[45] This factor, in my view, clearly points to the Workers being independent contractors.

[46] **Integration:** Lastly, I come to the question of whether the work the Workers were doing was done as an integral part of the business of the Appellant, in which case it is said to be integrated into it and done as an employee working under a contract of service; or whether the work, although done for the business of the Appellant, was not integrated into it but was only accessory to it, in which case it is done by an independent contractor working under a contract for services. In other words, was there one or two (several) businesses working here.

[47] In my view, there were two (several) businesses in operation; that of the Appellant and that of each individual Worker. Each of the Workers had an entrepreneurial element to their working arrangement. They had freedom from control, they provided their own equipment which subjected them to financial risk, and they had the opportunity of making a profit. I do not see this as being an integration into the business of the Appellant. These factors also, in my view, favour a finding of independent contractors working under contracts ***for*** services.

Conclusion

[48] When I look at the forest as a whole, as well as the individual trees, I see no reason to derogate from the title put upon the working arrangement by the parties themselves. Nothing is inconsistent with that title. In fact, the evidence reveals that the arrangement was entirely consistent with that title.

[49] In the result, all the appeals are allowed and the decisions of the Minister vacated.

Signed at Calgary, Alberta, this 9th day of October 2003.

"M.H. Porter"

Porter, D.J.

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COURT FILE NO.:	2002-3189(CPP), 2002-3190(EI), 2002-3859(EI), 2002-3860(CPP), 2002-3867(EI), 2002-3868(CPP), 2002-3869(EI) and 2002-3870(CPP)
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DATE OF JUDGMENT:	October 9, 2003

APPEARANCES:

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