

Dockets: 2014-2632(EI)  
2014-2635(CPP)

BETWEEN:

CONNOR FINANCIAL SERVICES  
INTERNATIONAL INC.,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

---

Appeals heard on common evidence with the appeals of Connor Financial Services International Inc. (2015-83(EI), 2015-81(CPP)) on October 3 and 4, 2017, at Victoria, British Columbia.

Before: The Honourable Justice Patrick Boyle

Appearances:

Agent for the Appellant: Joel G. Connor  
Counsel for the Respondent: Geraldine Chen

---

**JUDGMENT**

The appeals made under the *Employment Insurance Act* (“EI Act”) and the *Canada Pension Plan* (“CPP”) are dismissed and the decision rendered by the Minister of National Revenue on May 7, 2014 is confirmed on the basis that Piyanard Thantasane was engaged in insurable employment and pensionable employment with the Appellant from October 4, 2012 to October 4, 2013 within the meaning of paragraphs 5(1)(a) of the EI Act and 6(1)(a) of the CPP, in accordance with the attached reasons for judgment.

Signed at Ottawa, Canada, this 4th day of December 2017.

“Patrick Boyle”

---

Boyle J.

Dockets: 2015-83(EI)  
2015-81(CPP)

BETWEEN:

CONNOR FINANCIAL SERVICES  
INTERNATIONAL INC.,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

---

Appeals heard on common evidence with the appeals of Connor Financial Services International Inc. (2014-2632(EI), 2014-2635(CPP)) on October 3 and 4, 2017, at Victoria, British Columbia.

Before: The Honourable Justice Patrick Boyle

Appearances:

Agent for the Appellant: Joel G. Connor  
Counsel for the Respondent: Geraldine Chen

---

**JUDGMENT**

The appeals made under the *Employment Insurance Act* (“EI Act”) and the *Canada Pension Plan* (“CPP”) are dismissed and the decision rendered by the Minister of National Revenue on November 18, 2014 is confirmed on the basis that Mariel Wendowsky was engaged in insurable employment and pensionable employment with the Appellant from June 20, 2012 to December 31, 2012 within the meaning of paragraphs 5(1)(a) of the EI Act and 6(1)(a) of the CPP, in accordance with the attached reasons for judgment.

Signed at Ottawa, Canada, this 4th day of December 2017.

“Patrick Boyle”

---

Boyle J.

Citation: 2017 TCC 242  
Date: 20171204  
Dockets: 2014-2632(EI)  
2014-2635(CPP)  
2015-83(EI)  
2015-81(CPP)

BETWEEN:

CONNOR FINANCIAL SERVICES INTERNATIONAL INC.,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

## **REASONS FOR JUDGMENT**

**Boyle J.**

### **Introduction**

[1] The issue in these four informal appeals heard together is whether two individuals working at Connor Financial Services International Inc. were engaged in insurable employment and pensionable employment for purposes of the *Employment Insurance Act* (“EI Act”) and the *Canada Pension Plan* (“CPP”) respectively. Neither of the two workers intervened in these appeals, although as described below one appeared as a witness.

[2] Mr. Connor is the controlling shareholder, the sole director and the President of Connor Financial Services International and Connor Financial Corporation. The workers worked for Connor Financial Services International, but the operations of Connor Financial Services International and Connor Financial Corporation, along with other related companies, were carried on more or less collectively from the evidence as what I will call “Connor Financial”. In the years in question, Connor Financial did not include a licensed mutual fund dealer as it no longer held that

registration. Mr. Connor continued to be a licensed investment advisor and Connor Financial trades were effected through an unrelated third party registered mutual fund dealer. Mr. Connor testified on behalf of Connor Financial.

[3] The worker with the greater seniority was Piyanard Thantasane. Her position at Connor Financial was her first job after immigrating from Thailand. She did not testify although efforts had been made by at least one of the parties to contact her in order to arrange for her testimony. Those efforts were not successful in locating her. The other worker, Mariel Wendowsky, testified. Her position at Connor Financial was her first job following her university graduation and it was her first full-time job.

[4] The parties agree that the question to be decided in these appeals is whether these two workers were employees or independent contractors of Connor Financial in the years in question. The parties do not dispute that the question to be decided in law is whether these two workers were in business for their own account as set out in the *Connor Homes*<sup>1</sup> and other decisions, and that this is to be decided having regard to the parties' intentions and the several *Wiebe Door*<sup>2</sup> considerations or factors.

[5] In addition to the testimony from Mr. Connor and Ms. Wendowsky, the Crown also called Ms. Lee, a Canada Revenue Agency ("CRA") representative who was the rulings officer in the case of one of the two workers. Ms. Lee's testimony included a description of how the rulings process proceeded, as well as the CRA review and objection stages. She informed the Court that Connor Financial through Mr. Connor had declined to provide any information, answer any questions or complete the questionnaire as part of the rulings process, but that he did provide written answers to a written questionnaire at the objection stage. The rulings determined that the workers were employees, and this was upheld or confirmed on objection.

[6] Ms. Lee was an entirely credible witness with respect to the review, rulings and appeals processing of the characterization of the work relationship between Connor Financial and these two workers.

[7] Ms. Wendowsky testified in a very candid and forthright manner and I found her to be consistent and credible in all of the relevant parts of her testimony

---

<sup>1</sup> *1392644 Ontario Inc. (Connor Homes) v. Canada (National Revenue)*, 2013 FCA 85.

<sup>2</sup> *Wiebe Door Services Ltd. v. M.N.R.*, 87 DTC 5025.

germane to my decision in these appeals, including her testimony as to the role, responsibilities and activities of her colleague at Connor Financial, Ms. Thantasanee.

[8] I have some real credibility concerns with Mr. Connor's testimony given particularly, but not exclusively, his testimony regarding the workers preparing invoices for contract work to Connor Financial as well as submitting their time sheets in accordance with Connor Financial's written requirements to get paid. His lack of candour about his past regulatory problems was also significant. He said he and the regulator had some past discussions about regulatory concerns. It turned out there was a B.C. Supreme Court decision in which Connor Financial was found to have engaged in unconscionable financial transactions with its clients. My concerns about the invoices in particular are very significant, and therefore there is a carry-over concern to some degree about all of his testimony on material points and I prefer the testimony of the other two witnesses wherever his departs from theirs.

[9] It is my finding that on a balance of probabilities neither of the two workers submitted the invoices provided to the Court by Connor Financial. I find they were probably prepared by someone else at Connor Financial, and likely Mr. Connor, and if not Mr. Connor, likely his bookkeeper with his knowledge. Invoices are not mentioned in the written rules for getting paid set out by Mr. Connor in Connor Financial's time sheets below. Also, only a time sheet is asked for by Mr. Connor in his written response to Ms. Wendowsky's resignation from work; he does not request an invoice. I found his explanation that the copies of the invoices provided to the Court which have an accounting stamp indicating the worker was paid and often where they were posted in the financial records of Connor Financial would not reasonably have been given back to the worker who he says prepared the invoice when the invoice is paid by cheque. Ms. Wendowsky was categorical that she absolutely did not prepare invoices at any time nor ever think she was expected to.

### **Intention of the Parties**

[10] Ms. Wendowsky testified that Mr. Connor did not ever tell her that she was a contract worker or self-employed worker. He says he did. She acknowledged she had been told by an earlier interviewer that she would be paid as a contractor. She said she did not really know what that meant apart from being told she should put aside money for her taxes.

[11] As I said in the *Loving Home Care* decision,<sup>3</sup> it would be hard in circumstances such as these to place much weight on the intention of the parties even where it may have been dictated at the outset if the worker does not in fact understand the difference:

3 The applicable law in appeals such as these is fully and clearly set out by the Federal Court of Appeal in *1392644 Ontario Inc. (Connor Homes) v. Canada (National Revenue)*, 2013 FCA 85. I will not reproduce all of paragraphs 23 and 33 through 41 of Justice Mainville's reasons.

4 The legal issue to be decided is simply whether an individual worker is performing her personal care worker services as her own business on her own account.

5 This requires me to first decide whether subjectively, based upon the facts, circumstances and evidence in the particular case, there was a mutual understanding or common intention between the parties regarding their relationship as either employment or independent contractor.

6 At this stage, a Court can consider, among other things, the extent to which a worker understood the differences between an employment or independent contractor relationship, the relative bargaining position strengths and weaknesses, and the extent to which such evidence, which can typically be expected to be self-serving, is corroborated by and consistent with the other evidence placed before the Court.

7 The answer to this question is not determinative. The parties cannot agree to the correct legal characterization of their work relationship as if it were just another term or condition of their work relationship rights, obligations, duties and responsibilities. A declared and agreed intent to a particular characterization of the work relationship as employment or independent contractor must, in fact, be grounded in a verifiable objective reality.

8 If the parties have a common agreed intended characterization of their relationship, this Court must determine if the overall objective reality of their working relationship sustains, and is consistent with, their subjective intent.

9 This second step requires the Court to consider and weigh the traditional *Sagaz/Wiebe Door* factors of control over the work and the worker (including the extent of subordination of the worker), the provision of tools, material, credentialing and equipment needed for the worker to do the work, and the extent of the worker's financial upside and downside risks regarding the services provided by her.

---

<sup>3</sup> *Loving Home Care Services Ltd. v. M.N.R.*, 2014 TCC 71.

10 In this second step, the Court may again consider the parties' intent, along with the actual behaviour of the parties and any written agreement between them. In *Royal Winnipeg Ballet v. M.N.R.* (F.C.A.) the Federal Court of Appeal had similarly said the traditional *Sagaz/Wiebe Door* factors must be considered "in the light of the parties' intent."

11 This second step is otherwise the same as how the Court would proceed in cases where there is no common shared intention regarding the characterization of the work relationship by the parties.

...

27 . . . As a general principle, workers who are not informed and do not actually know or understand the differing possible characterizations of their work relationship cannot make a very helpful self-characterization of the nature of the legal relationship they have taken on, and certainly not one that can much enlighten or inform the Court's objective consideration of the traditional *Sagaz/Wiebe Door* factors.

28 In the circumstances of this case, the Court places little weight on the subjective intentions of the workers to characterize their work relationship as independent contractors.

[12] Mr. Connor consistently in his testimony, and on his version of the interviews with the workers, used the term contract worker. This would be an ambiguous term. For example, Ms. Wendowsky in her B.C. Employment Standards complaint actually uses the term "contract employee" when it is clear she is using it as the term for independent contractor since she is arguing against it. Another example would be employees who are often referred to as being on contract in the case of fixed term employees.

[13] I am not satisfied that there was a shared intention to be an employee or an independent contractor. I conclude that the evidence of intention in these appeals is unhelpful and should be given little weight in characterizing the work relationships. I turn now to the traditional *Wiebe Door* considerations.

## Control

[14] Mr. Connor was the sole shareholder and director and the President of Connor Financial. The other few workers in his office were his staff. Only Mr. Connor was licensed as an investment advisor capable of contracting mutual fund transactions.

[15] At the bottom of the Connor Financial Biweekly Staff Time Sheet<sup>4</sup> which the workers were required to complete and comply with, the following terms of work are highlighted:

1. **All overtime hours must be approved by [Mr. Connor] in advance.**
2. Sick time must be approved by [Mr. Connor] and may require a Doctor's note.
3. Vacation time must be approved by [Mr. Connor] in advance. All unapproved or unexplained absences will be deducted from regular or vacation time.
4. Give details of any non-lunch time absence. Lunch is 30 minutes and must be staggered so that two staff are not absent at the same time.
5. Provide details of any absences. Use back of page if needed and date.

This form must be properly completed in full and turned in to be paid. Due to the bookkeeper's schedule, adjustments may be reflected in the following pay period. Put on [Mr. Connor's] desk at 5pm each day.

**Start time 8:30AM. Depart time 5:00PM.** \*You may use 24 clock, otherwise indicate am or pm.

[Emphasis in original.]

[16] It can be noted that the Biweekly Staff Time Sheet of Connor Financial required the workers to track regular hours, overtime hours, sick hours, vacation hours and there was a box for Mr. Connor's initials each day. It does appear that in practice in the period in question they were only submitted to Mr. Connor at the end of the pay period and not daily. However, it is the right and ability of Connor Financial to control and direct the performance of duties that is most significant, not how often the right was exercised or the extent to which it was exercised. See *Loving Home Care*, above, and *Dean (Ana's Care & Home Support) v. M.N.R.*<sup>5</sup>

---

<sup>4</sup> Exhibit R-2.

<sup>5</sup> 2012 TCC 370.



[17] Mr. Connor expected the workers to be at the office during office hours and he had ultimate authority over everything. He indicated that Ms. Thantasanee did more of the supervision of Ms. Wendowsky than he did. The characterization of Ms. Wendowsky's work as employee or independent contractor would not depend upon which Connor Financial officer or other staff person or designate supervised her. What is relevant is that her work was supervised by Connor Financial.

[18] I find on the evidence that both workers were trained by Mr. Connor, and in the case of Ms. Wendowsky, by Ms. Thantasanee and other staff. I do not accept as reasonable or credible Mr. Connor's assertion that he simply provided them with a copy of the third party licensed dealer's procedures manual and the Mutual Fund Dealers Association rule book and expected them to function without any further training, practical or otherwise, on the job or otherwise.

[19] These two workers were administrative assistants. In addition, Ms. Wendowsky served as receptionist. She brought Mr. Connor his daily morning coffee. Their duties and activities as administrative assistants and receptionist were assigned and supervised by Mr. Connor or his other staff based on their responsibilities and seniority.

[20] The workers were told by Mr. Connor to work overtime during the RRSP season and they did.

[21] Overall, I find the evidence of control over the workers and their work to weigh very strongly in favour of an employment characterization in these cases. Their hours were dictated by, they were supervised by, they were trained by, and their work was assigned by, Mr. Connor and his other staff. They were clearly subordinate to Mr. Connor and from other staff based upon conventional concepts of seniority.

### **Ownership of Tools**

[22] All of the equipment and supplies needed by the two workers to perform their tasks were provided by Connor Financial. On the evidence I am unable to conclude that any Connor Financial work was done by either worker on a personal computer or outside the office.

[23] A consideration of this factor leans in favour of an employment characterization of the relationship.

### **Financial Upside and Downside Risks**

[24] The workers were paid at hourly rates. They bore no expenses, so they could not lose money. They could only make more money for themselves by working more hours or negotiating a raise.

[25] The workers did not have the ability to subcontract any or all of their work to another person. Mr. Connor said he would instead hire another worker if they needed help.

[26] A consideration of this factor does not clearly lean in favour of a worker in business for herself.

### **Conclusion**

[27] The Appellant has not been able to establish with sufficient credible evidence that the Connor Financial workers covered by the decisions were, on a balance of probabilities, in a working relationship that would be characterized in law as an independent contractor and not as an employee.

[28] Given especially the extent of Connor Financial's rights to direct the performance of the work duties and its actual monitoring and reporting requirement practices, and given the very limited financial risks to the workers, the absence of any financial investment by the workers, and the relatively fixed financial rewards by which they can only generate more income by working additional hours or days, these particular facts and circumstances considered as a whole quite strongly give rise to insurable employment under the EI Act and pensionable employment under the CPP.

[29] The appeals are dismissed.

Signed at Ottawa, Canada, this 4th day of December 2017.

“Patrick Boyle”

---

Boyle J.

CITATION: 2017 TCC 242

COURT FILE NOS.: 2014-2632(EI)  
2014-2635(CPP)  
2015-83(EI)  
2015-81(CPP)

STYLE OF CAUSE: CONNOR FINANCIAL SERVICES  
INTERNATIONAL INC. v. M.N.R.

PLACE OF HEARING: Victoria, British Columbia

DATES OF HEARING: October 3 and 4, 2017

REASONS FOR JUDGMENT BY: The Honourable Justice Patrick Boyle

DATE OF JUDGMENT: December 4, 2017

APPEARANCES:

Agent for the Appellant: Joel G. Connor

Counsel for the Respondent: Geraldine Chen

COUNSEL OF RECORD:

For the Appellant:

Firm:

For the Respondent: Nathalie G. Drouin  
Deputy Attorney General of Canada  
Ottawa, Canada