

## Carver PA Corporation v MNR, 2013 TCC 125

### When is a Business a "Placement or Employment" Agency?

*Carver PA Corporation v MNR*, [2013 TCC 125](#)

At issue was whether a corporation was a "placement or employment" agency, and therefore liable for Employment Insurance premiums, and Canada Pension Plan Contributions.

#### FACTS

Carver Corporation (expertise in industrial maintenance) engaged an individual (Mahmood) to provide services to Suncor, dealing with freezing problems Suncor was having with its underground pipes.

Carver maintains a roster of subject matter experts and has systems to match experts worldwide with clients' needs. Carver engaged Mahmood as an independent contractor to do work for Suncor. Mahmood was free to decline the work with Suncor. Mahmood was paid \$55 per hour by Carver, and Carver billed Suncor at \$139 per hour for Mahmood.

The agreement between Mahmood and Carver named a Suncor employee as the person to whom Mahmood was to report, and Mahmood met with the Suncor employee on a daily basis to discuss the project, who evaluated the work and directed the work that Mahmood did.

#### ANALYSIS

Carver argued that since it provided Suncor with a package of consulting services, which included Mahmood's expertise, it is not a placement or employment agency.

The Court noted that the definition of "placement or employment agency" found in the Regulations for the *Canada Pension Plan* was equally applicable to the phrase as used in the *Employment Insurance Act*. Thus, the court had to look at whether Suncor was provided distinct services that included the worker. The problem with Carver's position was that the contract between Carver and Suncor did not provide separate consulting services, and only provided matters that could be considered quality control mechanisms. The Court held that the evidence showed only that Carver provided a highly-skilled worker - as evinced by the fact that the only payments that Suncor made to Carver were based on the hours that Mahmood worked.

Based on this, the Court held that Carver was a placement or employment agency for purpose of the two acts.

However, before being liable for the withholding responsibilities/amounts as an "placement or employment agency", Mahmood must also be under a contract for services or something analogous, and not a contract for services. The usual tests for employee versus independent contractor apply here.