

"Insurable Employment" for Employment Insurance Purposes

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Sherman v MNR, [2014 TCC 292](#)

At issue was whether a person would be considered to be employed in "insurable employment" as for purposes of the *Employment Insurance Act*, where the employment was continued under the terms of a settlement agreement but no duties of employment were required.

Justice Boyle held that this question has already been answered definitively by the FCA - *Canada v. Verreault*, 86 NR 389 (1986); *Canada v. Sirois*, 243 NR 212 (1999); *Serafini v. M.N.R.*, 89 DTC 653 - and the TCC - *Canadian Pacific Ltd. v. M.N.R.*, [1995] T.C.J. No. 1755; *Community Living Huntsville v. M.N.R.*, [2003 TCC 932](#); *Wronski v. M.N.R.*, [1999] T.C.J. No. 666 (QL).

The court reminded us that for tax law, form matters (*HMQ v. Friedberg*, 92 DTC 6031 at 6032), and in this case the settlement agreement stated that the employment continued. Although the *Employment Insurance Act* includes the phrase "contract of service" this does not change the analysis where the contract is continued through another agreement.

The court concluded with this comment at paragraph 22:

[22] The law on the point in issue in this appeal is very clear and has been consistently applied by the courts. I am therefore reminded somewhat of the comments of Cory J. of the Supreme Court of Canada in *Alberta Treasury Branches v. M.N.R.*, [\[1996\] 1 S.C.R. 963](#), that "agile legal minds can probably find an ambiguity in as simple a request as "close the door please" and most certainly in even the shortest and clearest of the ten commandments". If I may also paraphrase the comments of Stephen J. in *In Re Castioni*, [1891] 1 QB 149: On many occasions people try to misunderstand legislation that is easy to understand. In drafting legislation it is not enough to attain a degree of precision which a person reading in good faith can understand, but it is necessary to attain if possible a degree of precision which a person reading it otherwise cannot misunderstand. It is all the better if he cannot pretend to misunderstand.

It may be that the latter comments are not quite appropriate as it is part of the canons of statutory interpretation to both consider related statutes when interpreting words and phrases (so as to interpret them consistently) and to proceed on the basis that the legislator does not

speak in vain (and therefore all words must be given meaning, and differences in wording and additional words be given meaning). The addition of the phrase "contract of service" may well indicate the recognition by the legislators that a person can be employed under other contracts (for example a settlement agreement) but that this is not employment for purposes of employment insurance.

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