

CANADA / JUDGMENT

Lees v. M.N.R.

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Dockets: 2025-1785(CPP)

2025-1786(EI)

BETWEEN: CHELSEA LEES,
Appellant,
and
THE MINISTER OF NATIONAL REVENUE,
Respondent .
Appeal heard on August 18, 2026, at Calgary, Alberta
Before: The Honourable Justice Lara G. Friedlander

Appearances :

Agent for the Appellant: Aziz Kapasi

**Counsel for the
Respondent:** Yetunde Elizabeth Akinyinka

JUDGMENT

In accordance with the attached Reasons for Judgment;

The appeal from the decision of the Minister of National Revenue dated July 9, 2025, made under the Employment Insurance Act and the Canada Pension Plan is allowed, without costs, and the assessments are referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that the worker, Chelsea Lees, was engaged in insurable employment under the Employment Insurance Act and pensionable employment under the Canada Pension Plan during the period of January 1, 2023 to October 15, 2024 .

Signed this 8 th day of September 2026.

“Lara Friedlander”

Friedlan der J.

Citation: 2026 TCC 166

Date: 20260908

Dockets: 2025-1785(CPP)

2025-1786(EI)

BETWEEN:

CHELSEA LEES,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

REASONS FOR JUDGMENT

Friedlander J.

[1] The issue in each of these two appeals is whether the Appellant was an employee of SXNM Successionmatching Ltd. (the “Payer”) or an independent contractor providing services to the Payer from January 1, 2023 to October 15, 2024 (the “Period”). In File 2025-1785(CPP), the Appellant appeals a decision of the Minister of National Revenue that the Appellant was an independent contractor during the Period and therefore was not engaged in “pensionable employment” as defined in paragraph 6(1)(a) of the Canada Pension Plan (the “CPP Act”) during the Period. In File 2025-1786(EI), the Appellant appeals a decision of the Minister that the Appellant was an independent contractor during the Period and therefore was not engaged in “insurable employment” as defined under paragraph 5(1)(a) of the Employment Insurance Act (the “EI Act”). These two matters were heard on common evidence.

[2] The sole witness was the Appellant, whom I found to be a credible and reliable witness. The Payer did not participate in the hearing as an intervenor.

I. Factual Background

[3] In January of 2019, the Payer, a company in the business of matching buyers and sellers of small- to medium-sized businesses through a website, hired the Appellant as an employee in the role of Manager of Media Production and Design. The Appellant had a diploma in photojournalism, and had been creating videos and websites for clients prior to beginning her work with the Payer. The Appellant was hired by the Payer to design and produce online content, most notably to create videos. The Payer was described by the Appellant and in various documents of the Payer adduced into evidence as a start-up throughout the time periods discussed in these reasons.

[4] During the initial months of her work with the Payer, the Appellant was paid by the hour and was required to submit invoices to the Payer setting out the number of hours worked and providing a description of the work she did during those hours. There was no goods and services tax (“GST”) charged for this work. The letter setting out the terms of employment (the “January 4, 2019 Letter”) indicates an estimate of 30-38.5 hours per week, and contemplates the possibility

of bonuses. The January 4, 2019 Letter also contemplates 15 days of paid vacation per year, health benefits after a 3 month probationary period and a 2 week notice period (or pay in lieu of notice) upon termination (after the 3 month probationary period). It also states that the Payer would provide an office space in a mutually agreed upon space, and that all travel and additional expenses were to be agreed upon in writing.

[5] The Appellant testified that during these first few months she used her own laptop, her own telephone and her own video editing software. She testified that the Payer had offered to reimburse her for the cost of the laptop, but the Appellant refused on the basis that she was already using her laptop for projects outside of her work for the Payer. The Appellant testified that she worked from home and that she was not reimbursed for the costs of her home office.

[6] The Appellant testified that after her initial hiring it quickly became clear that her role would be much broader than creating videos for the Payer, and her responsibilities began to expand; by June of 2019 her role was more of a communications role.

[7] The Appellant also testified that after a few months on the job she realized that everyone else working for the Payer was an independent contractor. As well, she said that she was teaching yoga and taking a few other contract jobs on the side, and wanted to have the freedom to continue doing those activities. Accordingly she asked the Chief Executive Officer of the Payer, Alison Anderson, if she could become an independent contractor. The Appellant testified that she made that request to obtain more freedom to take on other job opportunities.

[8] The Payer agreed to her request, and accordingly the prior arrangement was terminated and replaced with a new arrangement in June of 2019. A letter dated June 1, 2019 (the “June 1, 2019 Letter”) was intended to describe the new arrangement. The role was described considerably more broadly, encompassing not only communications but also responsibility for product development, including meeting with the product development team in Bulgaria – as agreed to by both parties - and her title became “Manager of Media Design and User Experience Contractor” . She continued to be paid on an hourly basis, but her rate was increased from \$25 per hour to \$30 per hour. The June 1, 2019 Letter states that her hours were estimated to be 30 hours per week. There was no reference to vacation or health benefits. Again, bonuses were contemplated, using the same language as the January 4, 2019 Letter. Termination with written notice was contemplated, although no notice period was specified. Throughout the June 1, 2019 Letter the term “contract work” was used. The parties are in agreement that the June 1, 2019 Letter was intended to document an independent contractor position. The June 1, 2019 Letter contained no terms relating to control over the Appellant’s schedule, supervision of the Appellant or ownership of tools.

[9] The Appellant testified that although she had requested independent contractor status, she did not really understand the significance of that status at the time. She also testified that after she signed the new contract “nothing really changed” and that she was not treated any differently than before.

[10] The June 1, 2019 Letter governed the Appellant's arrangement with the Payer until November 1, 2023. However, the Appellant testified that the type of work she did during this period evolved considerably, and that over time it bore less and less resemblance to the terms set out in the June 1, 2019 Letter. She stated that the tasks she was expected to do depended on what the needs of the Payer were at that time.

[11] The Appellant testified that Ms. Anderson wished to speak with the Appellant daily, but that due primarily to Ms. Anderson's busy schedule, they had check-in meetings a few times each week, on average. The check-in meetings were used to evaluate the progress on the tasks that were already underway, and also to discuss the next tasks to be done. There were also more in-depth meetings each month that resembled job performance evaluations.

[12] The Appellant continued to use her own laptop and her own telephone without reimbursement. When she was initially hired, she also used her own video editing software, but testified that as the needs of the Payer shifted, she used that software less and less not only because her work responsibilities expanded and she did less and less video editing, but also because the Payer switched to different software – licensed by the Payer, not the Appellant – to do video editing. The Appellant stated that as her work evolved, she began to use a number of different software platforms provided by the Payer, and was provided with mentoring and training on those platforms.

[13] She stated that from the beginning she was assigned an email address, was required to use telephone numbers provided by the Payer (although to be used on the Appellant's own telephone) and was required to store all of her work product – including all of her emails - on the Payer's Google Drive. She testified that she was not permitted to delegate or subcontract to others. She continued to work from home. She continued to invoice the Payer, but, unlike the prior period, charged GST. She stated that sometimes she was paid almost immediately, but sometimes there would be significant delays in payment by the Payer.

[14] The Reply assumes that, beginning January 1, 2023, the Appellant began a new role with the Payer in an "Acting Product Director" position, but no evidence was provided on this point during trial.

[15] The Appellant stated that in October of 2023 she advocated for compensation in the form of a salary rather than an hourly wage, and indeed at some point in October 2023 the arrangement under the June 1, 2019 Letter was terminated "abruptly", and the Payer instead proposed a new arrangement, documented in a letter dated November 7, 2023 (the "November 7, 2023 Letter"). The Appellant stated that she felt that she had no choice but to sign the November 7, 2023 Letter given the abrupt termination of the previous arrangement and her financial situation at that time.

[16] The November 7, 2023 Letter stipulates a "contract term" of November 1, 2023-November 30, 2023. It describes two projects – namely the writing of an expression of interest relating to a grant and working on the establishment of a joint venture called "SkilldJobs". It also states that the Appellant is to report to Alison Anderson and that 37.5 hours per week of work is contemplated.

The Appellant testified that the job description contained in the November 7, 2023 Letter did not match the tasks she was actually required to do; she testified that rather than her work being based on the two projects described in the November 7, 2023 Letter, she was asked to do whatever was required to be done by the Payer during that period.

[17] Compensation is stated in the November 7, 2023 Letter to be a fixed amount for the month. The November 7, 2023 Letter also contemplates an “opportunity to write yourself into the SkilldJobs business plan P/T or F/T at market rate” , including a potential 2% of revenue from a grant and certain business trips “provided a position within SkilldJobs either P/T or F/T” . The Appellant explained that the opportunity to write anything into a business plan never materialized. She testified that the reference to the 2% of revenue was a reference to 2% of the amount that would be paid by a non-profit organization called Talent Beyond Boundaries (the other party participating in the SkilldJobs joint venture) out of a grant for which an application was anticipated to be made, but that she never got the opportunity to write that grant application. The November 7, 2023 Letter also contemplates stock options after the next round of equity financing was completed. The Appellant stated that, again, this opportunity never materialized. She also stated that no bonuses ever materialized.

[18] Similar letters for the December 1, 2023-February 1, 2024 period (the “December 1, 2023 Letter”) and the February 1, 2024-April 1, 2024 period (the “February 1, 2024 Letter”) were adduced into evidence, although these letters contained different descriptions of the particular tasks for which the Appellant was responsible. Again, the Appellant indicated that the opportunities for a percentage of revenue and for business trips never materialized. The Appellant testified that these letters were given to her without any opportunity for negotiation. The Appellant also testified that, again, her actual job responsibilities were different than those contemplated by these letters; in particular, during the last year of her time with the Payer, the Appellant did not do much work on the SkilldJobs joint venture notwithstanding the allocation of time contemplated by the aforementioned letters.

[19] There was no evidence as to why the November 7, 2023 Letter, the December 1, 2023 Letter and the February 1, 2024 Letter had termination dates, but the June 1, 2019 Letter did not.

[20] The parties agree that the November 1, 2023 Letter, the December 1, 2023 Letter and the February 1, 2024 Letter (together with the June 1, 2019 Letter, the “Contractor Letters”) were intended by both the Appellant and the Payer to document an independent contractor arrangement.

[21] At one point the yoga studio for which the Appellant worked – for which she normally taught classes at lunchtime or before business hours – asked her to do a 9:30 am class on a weekday. The Appellant testified that she had to ask Ms. Anderson for permission to teach the class, and that the conversation was difficult.

[22] The Appellant testified that over the course of her time with the Payer, she began to realize that she was being treated as an employee rather than an independent contractor. She gave the example of the Payer putting meetings in the Appellant’s calendar without previous discussion

with the Appellant and at times that were not necessarily convenient for the Appellant. She testified that she sometimes worked hours such as 6:30 am to 3 pm in order to accommodate the product development team in Bulgaria. The Appellant stated that she grew frustrated, and ultimately decided to leave the Payer. In an email to the Payer notifying the Payer of the Appellant's departure, the Appellant stated "I kindly ask that we don't start any new projects together, and I would like to exercise my contractor's rights to not schedule any meetings that I haven't agreed to beforehand." A letter governing the October 1, 2024-October 15, 2024 period (the "October 1, 2024 Letter") was signed by the Appellant on October 15, 2024. The October 1, 2024 Letter outlined a number of tasks, and specified compensation on an hourly basis. The Appellant stated that she lost all access to the work stored on the Payer's Google Drive after her departure from the Payer.

[23] In describing the reasons for her departure, the Appellant testified, in part, as follows:

...at this point in October of 24 I had started contemplating leaving the company. Well, I'd been contemplating it for well over a year at that point. I was trying to set myself up. It was a challenge to take on clients outside of the amount of hours that I was working for her, of course, but I was doing it. And really, like, the feeling was just that I was being treated as an employee but not really receiving any of the benefits of being an employee. I was still saving for taxes, but I didn't feel like my time was my own.

[24] The Appellant stated that, throughout her time with the Payer, the Appellant had been teaching yoga, and that the Payer always gave her the time to do that, but that the Appellant always had to ask for permission to take on an additional class. Similarly she always had to get the Payer's approval in order to take vacation. The Appellant stated that she often had to work while she was on vacation.

[25] The Appellant also testified that, during the Period, her work for clients (apart from the Payer, work for which was done under the Appellant's name) was done under the name of Dava Studio, and that she incorporated that business under the name Dava Studio Inc. in August of 2024. The activities carried on by Dava Studio (both before and after incorporation) consisted of bookkeeping and certain other services. The Appellant stated that the Payer prohibited her from doing any work directly for any clients of the Payer, and that in one case one of the Payer's clients wished the Appellant to build a website, and the Appellant did so – but through the Payer at a rate that was lower, on a net basis, than what the Appellant would have received had she worked for the client directly.

[26] She also testified that one of the reasons for her departure from the Payer was that she was simply burnt out.

[27] The Reply assumes that, in 2023, the Appellant reported earnings received from the Payer as business income, with expenses claimed for meals and entertainment, motor vehicle expenses, office expenses and telephone and utilities. No evidence contradicting this assumption was adduced during trial.

[28] After her departure from the Payer, the Appellant started a business with her best friend under which they offered bookkeeping services, web services and copywriting services. She describes this business as being dramatically different from the work she did for the Payer, subject to a small amount of “product” work she does for one client which itself is quite different from the type of work she did for the Payer.

[29] I also note that the original ruling issued by the CRA in respect of the Appellant’s status as an employee or an independent contractor was issued in response to a request that appears to have been initiated some time at the end of 2024 or possibly in very early 2025 by the Trust Account Examination Section of the CRA.

II. Legal Framework

[30] Section 5 of the EI Act defines and provides supporting rules relating to “insurable employment” . Of relevance here is paragraph 5(1)(a) of the EI Act, which contemplates that insurable employment is employment in Canada by one or more employers, under any express or implied contract of service. Sections 6 and 7 of the CPP Act define and provide supporting rules relating to “pensionable employment” . Of relevance here is paragraph 6(1)(a) of the CPP Act, which contemplates that pensionable employment is employment in Canada that is not excepted employment. Subsection 2(1) of the CPP Act defines “employment” as meaning, in relevant part, the state of being employed under an express or implied contract of service or apprenticeship. A “contract of service” denotes an employment relationship, whereas a “contract for services” denotes an independent contractor relationship. (See paragraph 41 of 671122 Ontario Ltd. v Sagaz Industries Canada Inc. , 2001 SCC 59.).

[31] The leading Canadian case on the distinction between employees and independent contractors is the aforementioned Sagaz decision. In Sagaz the Court considered whether Sagaz Industries was an employer, and therefore vicariously liable for the acts of an employee under tort law, or had contracted with an independent contractor, and therefore was not vicariously liable for those acts. Although the context is vicarious liability rather than a tax question, the tests for determining the existence of an employment relationship versus an independent contractor relationship in the different contexts are the same.

[32] The Court in Sagaz relied heavily on Wiebe Door Services Ltd. v M.N.R. , [1986] F.C. 553 (F.C.A.), ultimately stating the following at paragraph 47:

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.

[33] The Court in *Wiebe Door* approved of the test described by Lord Wright in *Montreal v Montreal Locomotive Works Ltd.* , [1947] 1 D.L.R. 161 (P.C.) – focussing on control, ownership of the tools, chance of profit and risk of loss – and then went on to describe at page 564 the following paragraph from *Market Investigations, Ltd. Minister of Social Security* , [1968] 3 All E.R. 732 (Q.B.D.) as the best synthesis of the employee/independent contractor test:

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.

[34] Since *Sagaz* , the employee/independent contractor test has evolved somewhat. This evolution was discussed by the Federal Court of Appeal in *1392644 Ontario Inc. v. Minister of National Revenue* , 2013 FCA 85 (also known and referred to here as “ Connor Homes ”). In that case the Court stated, in part, the following:

30 Alongside the test as set out in *Wiebe Door Services Ltd.* and *Sagaz Industries Canada Inc.* , in the past few years another jurisprudential trend has emerged which affords substantial weight to the stated intention of the parties: *Wolf v. R.* , 2002 D.T.C. 6853 (Fed. C.A.) (“ Wolf ”); *Royal Winnipeg Ballet v. Minister of National Revenue* , 2006 FCA 87, [2007] 1 F.C.R. 35 (F.C.A.) (“ Royal Winnipeg Ballet ”). This trend has not gone without criticism: see *Lang v. Minister of National Revenue* , 2007 TCC 547, 2007 D.T.C. 1754 (Eng.) (T.C.C. [Employment Insurance]) where Bowman C.J. appears to express his frustration with the lack of clarity and consistency in this Court's jurisprudence on the matter...

33 Royal Winnipeg Ballet stands for the proposition that what must first be considered is whether there is a mutual understanding or common intention between the parties regarding their relationship. Where such a common intention is found, be it as an independent contractor or employee, the test set out in Wiebe Door is then to be applied by considering the relevant factors in light of that mutual intent for the purpose of determining if, on balance, the relevant facts support and are consistent with the common intent.

36 ...properly understood, the approach set out in Royal Winnipeg Ballet simply emphasises the well-know [sic] principle that persons are entitled to organize their affairs and relationships as they best deem fit. However, the legal effect that results from that relationship, i.e. , the legal effect of the contract, as creating an employer-employee or an independent contractor relationship, is not a matter which the parties can simply stipulate in the contract. In other words, it is insufficient to simply state in a contract that the services are provided as an independent contractor to make it so...

38 Consequently, Wolf and Royal Winnipeg Ballet set out a two step process of inquiry that is used to assist in addressing the central question, as established in Sagaz Industries Canada Inc. and Wiebe Door Services Ltd. , which is to determine whether the individual is performing or not the services as his own business on his own account.

39 Under the first step, the subjective intent of each party to the relationship must be ascertained. This can be determined either by the written contractual relationship the parties have entered into or by the actual behaviour of each party, such as invoices for services rendered, registration for GST purposes and income tax filings as an independent contractor.

40 The second step is to ascertain whether an objective reality sustains the subjective intent of the parties. As noted by Sharlow J.A. in TBT Personnel Services Inc. v. Minister of National Revenue , 2011 FCA 256, 422 N.R. 366 (F.C.A.) at para. 9, "it is also necessary to consider the Wiebe Door Services Ltd. factors to determine whether the facts are consistent with the parties' expressed intention." In other words, the subjective intent of the parties cannot trump the reality of the relationship as ascertained through objective facts. In this second step, the parties intent as well as the terms of the contract may also be taken into account since they colors [sic] the relationship. As noted in Royal Winnipeg Ballet at para. 64, the relevant factors must be considered "in the light of" the parties' intent. However, that being stated, the second step is an analysis of the pertinent facts for the purpose of determining whether the test set out in Wiebe Door Services Ltd. and Sagaz Industries Canada Inc. has been in fact met, i.e whether the legal effect of the relationship the parties have established is one of independent contractor or of employer-employee.

41 The central question at issue remains whether the person who has been engaged to perform the services is, in actual fact, performing them as a person in business on his own account. As stated in both Wiebe Door Services Ltd. and Sagaz Industries Canada Inc. , in making this determination no particular factor is dominant and there is no set formula. The factors to consider will thus vary with the circumstances. Nevertheless, the specific factors discussed in

Wiebe Door Services Ltd. and Sagaz Industries Canada Inc. will usually be relevant, such as the level of control over the worker's activities, whether the worker provides his own equipment, hires his helpers, manages and assumes financial risks, and has an opportunity of profit in the performance of his tasks.

[35] Regarding the role of the parties' expressed intention in interpreting contracts more generally, the majority of the Supreme Court of Canada stated in *Earthco Soil Mixtures Inc. v Pine Valley Enterprises Inc.*, 2024 SCC 20 at paragraphs 64 and 65 as follows:

[64] While the language used is central, courts recognize that words are not ends in themselves: they are a means to demonstrate, discern and determine the true intention of the parties. The jurisprudence seeks certainty but acknowledges the limits of language. This Court recognized how “words alone do not have an immutable or absolute meaning” and cannot, by themselves, convey the commercial purpose of a contract (*Sattva* , at para. 47). When seeking the meaning of a document, the focus of the court is properly on what the parties objectively intended and what they reasonably understood their words to mean. This is because the “meaning of words is a matter of dictionaries and grammars; the meaning of the document is what the parties using those words against the relevant background would reasonably have been understood to mean” (*Sattva* , at para. 48, citing *Investors Compensation Scheme Ltd. v. West Bromwich Building Society* , [1998] 1 All E.R. 98 (H.L.), at p. 115).

[65] Courts are therefore directed “to have regard for the surrounding circumstances of the contract — often referred to as the factual matrix — when interpreting a written contract” (*Sattva* , at para. 46). The meaning of the words of a contract can be derived from reference to various contextual factors, which include the purpose of the agreement and the nature of the relationship created by the agreement (para. 48). *Sattva* allows courts to interpret contractual terms in light of the contract as a whole and with reference to objective evidence that illustrates what was within the parties' knowledge at or before the time of their contract's formation (para. 58). Ultimately, ascertaining the objective intent of the parties involves not only a consideration of the actual words used in a contract but also a consideration of the factual matrix surrounding the contract.

III. Analysis

A. Intention of the Parties

[36] Following the methodology outlined by Connor Homes , I begin with the intention of the Appellant and the Payer.

[37] The documentary evidence on this point is, on its face, clear: the Contractor Letters explicitly label the relationship between the Appellant and the Payer as an independent contractor relationship, and indeed the Appellant testified that the June 1, 2019 Letter was drafted specifically to respond affirmatively to the Appellant's request for an independent contractor relationship.

[38] In addition, other evidence supports the view that the parties intended an independent contractor relationship, including the facts that (a) the Appellant charged GST for her services and that the Payer agreed to those charges and (b) the Payer did not deduct and remit Employment Insurance and Canada Pension Plan premia and did not withhold and remit income tax. The Reply assumes that the Appellant reported her earnings from her work with the Payer as business income and also that various expenses were deducted in relation to that work, and no evidence to the contrary was adduced at trial.

[39] However, other aspects of the evidence suggest that the parties did not have a common intention that the relationship between the Appellant and the Payer would be one of independent contractor in substance; adopting the language of Earthco , one might say that the “true intention” or “objective intention” of each of the Appellant and the Payer was not held in common.

[40] First, the Contractor Letters contain very little detail regarding key elements of the relationship, such as ownership of tools, control over schedule and vacation time, control of selection of work to be done and the manner in which it would be done, delegation and the possibility of the Appellant working for others. Accordingly, the parties appear to have agreed on a label for the relationship, but the Contracting Letters themselves do not address much of the substance of the relationship.

[41] Second, the Appellant testified that “not much changed” when the arrangement was changed from an employment relationship to an independent contractor relationship. And indeed, the January 4, 2019 and June 1, 2019 Letters are very similar, subject (generally) to the slight increase in hourly rate, the much broadened scope of the tasks contemplated and the termination provisions, such as they were. (The November 7, 2023 Letter and subsequent agreements also look very similar to the January 4, 2019 and June 1 2019 Letters, although those later agreements describe work that is very project specific and have termination dates.) I do not take this fact as meaning that the Appellant was always an employee; it is possible that the initial arrangement was an independent contractor arrangement notwithstanding the language of the January 4, 2019 Letter. However the absence of change from one arrangement to the other suggests that the Payer did not perceive a substantive difference between the arrangements. Again, I note that no one testified on the Payer’s behalf at trial.

[42] Third, as per the Appellant’s testimony, the reality of the Appellant’s work was frequently and increasingly inconsistent with much of the content (such as it was) of the Contractor Letters. Accordingly, the Payer’s intention that the Contractor Letters should govern the work of the Appellant may be questioned.

[43] Fourth, although the Appellant testified that she wanted an independent contractor relationship so that she could pursue other opportunities while working for the Payer, she also testified that she did not fully understand the concept of an “independent contractor” when she asked the Payer for that status, and in any case did not have the opportunity to negotiate any of the Contractor Letters.

[44] Therefore taking all of the above into account, I find that the Appellant and the Payer – through the language of the relevant agreements and their positions regarding aspects of taxation such as GST and withholdings – both identified their relationship as that of independent contracting, but I also find that notwithstanding the expressed intention of the parties and their conduct regarding taxation issues, there is little evidence that the parties had a common intention that the relationship was to be an independent contractor relationship in substance. Indeed, I find that the lack of change before and after the June 1, 2019 Letter, the similarity between the January 4, 2019 Letter and the Contractor Letters, the degree of control over the Appellant’s work and schedule exercised by the Payer, the divergence between the content of the Appellant’s work and the Contractor Letters, the needs-based nature of the Appellant’s work and the frequent performance evaluations demonstrate that the Payer intended the substance of its relationship to the Appellant to be one of employment. Again, no one testified at trial on behalf of the Payer. I will return to the significance of this finding below.

B. Substantive Legal Aspects of the Relationship

[45] As noted in *Connor Homes*, employee/independent contractor status is not an elective regime; the status chosen by the parties will not govern if that status is inconsistent with the legal substance of the relationship.

[46] The legal substance of the relationship is to be evaluated “in light of” the intention of the parties, as with any other contract, but applying that test to particular facts can be challenging. (See, for example, paragraphs 13 and 14 of *AE Hospitality Ltd. v Minister of National Revenue*, 2020 FCA 207 and *Insurance Institute of Ontario v Minister of National Revenue*, 2020 TCC 69).

[47] In this case, for the reasons set out below, I find that the bulk of the relevant indicators demonstrate that the relationship between the Appellant and the Payer was an employment relationship, thus overriding the intention of the Appellant and the Payer as expressed in their various agreements and in their taxation positions. But I also note that the requirement to examine the Wiebe Door factors “in light of” any common intention of the parties does not have a material impact in this case given my finding above that the parties did not share a common intention that the substance of the relationship was to be one of independent contracting.

[48] I now turn to the Wiebe Door factors, considering in turn control, the ownership of tools, the opportunity for profit and risk of loss and the opportunity to delegate or subcontract, as well as the nature of the Appellant’s responsibilities and her other activities, the latter of which I will comment on below in response to the general question “whose business is it?”.

[49] Beginning with control, the Appellant testified that the tasks for which she was responsible were selected by Ms. Anderson in response to the needs of the Payer in the moment, and were often very different than the tasks set out in the relevant Contractor Letter. Ms. Anderson met with the Appellant a few times each week on average to review the progress of the tasks assigned and discuss new tasks. The times when the Appellant worked were decided by Ms. Anderson, which sometimes necessitated the Appellant working outside ordinary business hours or while

on holiday. The Appellant was required to ask permission to take vacation. I find that the Payer exercised a great deal of control over the tasks to be accomplished by the Appellant and when those tasks would be accomplished, suggesting an employment relationship.

[50] Moving on to ownership of tools, the Appellant did use her own laptop and video editing software. However, during the Period, the various pieces of software used by the Appellant were a key aspect of her role, and the vast majority of that software was owned by the Payer. I find that this factor is neutral in this case.

[51] Regarding the Appellant's opportunity for profit and risk of loss, the Appellant was expected to work a fixed number of hours for a fixed wage (whether paid by the hour or paid monthly). Although there were some delays in payment, the terms of the Appellant's arrangement with the Payer did not contemplate any possibility of loss. Some of the Contractor Letters did contemplate that the Appellant could "write in" some possibility of receiving 2% of revenue into the business plan governing the SkilldJobs joint venture, but the Appellant was not given the opportunity to write such a business plan. On this point, then, the contingent nature of this possibility leads me to assign relatively low weight to it. Furthermore, I infer that the concept behind this part of the November 7, 2023 Letter was that the Appellant might obtain a part-time or full-time job with the SkilldJobs joint venture, and that the opportunity to receive 2% of revenue would attach to that role, and not to the Appellant's role with the Payer. The possibility of a bonus also did not materialize. In addition I note the prohibition on the Appellant working directly for clients of the Payer. Accordingly, I find that the arrangement between the Payer and the Appellant did not provide the Appellant with material opportunity for profit or risk of loss, again suggesting an employment relationship.

[52] The lack of ability of the Appellant to delegate or subcontract her duties also suggests an employment relationship.

[53] I also note that the Appellant had a key, broad and often managerial role with the Payer. She was responsible not only for communications but also for the design of the product – namely the website – itself. Although it is possible to imagine the inhabitants of key roles as being independent contractors – for example, a person might be in the business of being a temporary chief financial officer for start-up companies, negotiating short work terms with the intention of moving to a new company after the termination of each contract – but in this case the Appellant worked in her communications and product design role for over five years and there seemed to be an expectation that the Appellant would continue working for the Payer (until, of course, the Appellant decided to leave her position). I also note that there was no history prior to her work with the Payer of the Appellant taking on this type of communications and/or product role with other companies, nor did she do so after she left the Payer. The Appellant's work during the Period was also determined entirely by the needs of the Payer in the particular moment, which changed regularly. Accordingly, I conclude that the work done by the Appellant was the business of the Payer, and not the business of the Appellant.

[54] Therefore for the reasons set out above, I conclude that the legal substance of the relationship between the Appellant and the Payer indicates an employment relationship rather than an independent contractor relationship notwithstanding the expressed intention of the Appellant and the Payer.

[55] The Appeal is allowed, without costs.

Signed this 8 th day of September 2026.

“Lara Friedlander”

Friedlander J.

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