Tax Court of Canada Cour canadienne de l'impôt

Dockets: 2021-2221(EI)
2021-2222(CPP)
2021-2459(EI)
2021-2460(CPP)

BETWEEN:

MATCH MG FIELD CANADA INC.,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

2026 TCC 194 (CanLII)

Appeals heard on common evidence on September 11 and 12, 2023, at Toronto, Ontario, and by virtual hearings on May 16, 2024 and November 14, 2024 at Ottawa, Ontario

Before: The Honourable Justice Susan Wong

Appearances:

Counsel for the Appellant:	Edward J. O'Dwyer Clare A. Wooland
Counsel for the Respondent:	Lalitha Ramachandran

JUDGMENT

The appeals are allowed, without costs, on the following basis:

(a) Victor Peterson was not engaged in insurable and pensionable employment with the appellant for the period from January 1, 2018 to December 17, 2020; and

(b) Pamela Pearse was not engaged in insurable and pensionable employment with the appellant for the period from June 23 to August 4, 2020.

Signed this 5th day of November 2026.

"Susan Wong"

Wong J.

2026 TCC 194 (CanLII)

Tax Court of Canada Cour canadienne de l'impôt

Citation: 2026 TCC 194
Date: 20261105
Dockets: 2021-2221(EI)
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2026 TCC 194 (CanLII)

BETWEEN:

MATCH MG FIELD CANADA INC.,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

REASONS FOR JUDGMENT

Wong J.

I. **Issues**

[1] The issue in these appeals is whether Pamela Pearse and Victor Peterson were engaged in insurable and pensionable employment for the periods of June 23 to August 4, 2020 and January 1, 2018 to December 17, 2020, respectively. In other words, were they employees (under a contract of service) or independent contractors (under a contract for services) during those periods?

[2] The appellant says both workers were independent contractors while the respondent says they were employees.

II. **Preliminary issue – Issue estoppel**

[3] The appellant raised issue estoppel with respect to these matters at the commencement of hearing. I did not rule on this issue during the hearing, as it seemed more useful and appropriate to hear the case in evidence first.

[4] In 2018, this Court heard the appeals of Match Action Inc. with respect to the Minister of National Revenue's decision that two workers (Rohit Kuthiala and Caitlin Cook-Yeo) were engaged in insurable and pensionable employment. The

appeals were allowed by Justice Favreau on the basis of the Court's finding that Mr. Kuthiala and Ms. Cook-Yeo were independent contractors.

Analysis

[5] The three preconditions for issue estoppel to apply are well-established by the Supreme Court of Canada, i.e.:

a) the issue must be same as the one decided in the prior decision;

b) the prior judicial decision must have been final; and

c) the parties (or their privies) to both proceedings must be the same.[1]

[6] Even where the three preconditions have ostensibly been met, the Court must still exercise its discretion to determine whether issue estoppel ought to be applied.[2]

[7] Here, the second element is clearly met while the third element is arguably less clear given that the appellants are not identical but might be considered privies. In any event, I am of the view that the first element has not been met.

[8] With respect to the first element, the Supreme Court of Canada has said that:

> [O]nce a material fact such as a valid employment contract is found to exist (or not to exist) by a court or tribunal of competent jurisdiction, whether on the basis of evidence or admissions, the same issue cannot be relitigated in subsequent proceedings between the same parties. The estoppel, in other words, extends to the issues of fact, law, and mixed fact and law that are necessarily bound up with the determination of that "issue" in the prior proceeding.[3]

[9] There are numerous distinctions between the prior decision and the current appeals, some of which are:

a) the periods under appeal are different – the prior decision dealt with the entire calendar year of 2013 for both workers, while the present appeals deal with a six-week period in 2020 for Ms. Pearse and a nearly two-year period from 2018 to 2020 for Mr. Peterson;

b) the workers are different;

2026 TCC 194 (CanLII)

c) the job titles are different – the workers in the prior decision were product demonstrators while those in the present appeals were merchandisers, i.e. they do not do the same work based on my review of the prior decision; and

d) it is not clear whether the independent contractor agreements which were the subject of the prior decision were the same as those entered into in the present appeals.

[10] These factual distinctions – the periods, the workers, the work, and perhaps the contractual agreements – go to the heart of the matter so issue estoppel cannot apply.

2026 TCC 194 (CanLII)

III. **Legal framework**

[11] There is no universal test for determining the question of employee-versus-independent-contractor and the central question continues to be that endorsed by the Supreme Court of Canada and Federal Court of Appeal in *Sagaz*[4] and *Wiebe Door*[5], respectively, i.e. whether the person engaged to perform the services is performing them as a person in business on their own account.[6]

[12] The non-exhaustive list of factors continues to be as follows:

a) the level of control the hirer has over the worker's activities;

b) whether the worker provides their own equipment;

c) whether the worker hires their own helpers;

d) the degree of financial risk taken by the worker (i.e. risk of loss);

e) the degree of responsibility for investment and management held by the worker; and

f) the worker's opportunity for profit in the performance of their tasks.[7]

[13] There is no set formula for applying these factors and their relative weight will depend on the particular situation.[8] Control will always be a factor.[9]

[14] In *Connor Homes*,[10] the Federal Court of Appeal reaffirmed the above central question while also setting out the following two-step inquiry to help address the central question:[11]

a) first ascertain the subjective intent of the parties, either by their written contractual relationship or their actual behaviour;[12] and

b) then ascertain whether an objective reality sustains the parties' subjective intent, i.e. their subjective intent does not take precedence over the reality of the relationship as ascertained through objective facts. During this step, one determines whether the test set out in *Wiebe Door* and *Sagaz* has been met.[13]

[15] The Federal Court of Appeal further described the role that intent plays in the two-step inquiry process as follows:

> [42] …The first step of the analysis should always be to determine at the outset the intent of the parties and then, using the prism of that intent, determining in a second step whether the parties' relationship, as reflected in objective reality, is one of employer-employee or of independent contractor.[14]

A. Intention of the parties

[16] The appellant is a marketing and advertising agency operating in merchandising, experiential marketing and retail sales services, all with the primary objective of matching brand partners with clients/consumers.[15]

[17] The appellant was incorporated in December 2013[16] and is a wholly owned subsidiary of Match MG Canada Inc., whose parent company is Match Marketing Group Inc.[17] Match MG Canada Inc. was formed by the amalgamation of Match Action Inc. with another business in January 2017.[18] The Match group of companies seems to generally operate in the area of marketing and advertising.

[18] During the periods under appeal, the appellant engaged Mr. Peterson and Ms. Pearse to work as merchandisers.[19]

Victor Peterson – Factual background

[19] Mr. Peterson was an experienced merchandiser hired by the appellant in December 2017.[20] The period under appeal is January 1, 2018 to December 17, 2020

2026 TCC 194 (CanLII)

and Mr. Peterson testified that he continues to work as a merchandiser for the appellant.[21]

[20] He testified that he learned of the merchandising job with the appellant by reading an online job posting.[22] He entered into an agreement with the appellant entitled "Independent Contractor Agreement" on December 13, 2017.[23] The format and substance of this agreement are largely the same as the version entered into by Ms. Pearse.

[21] He stated he understood he was being hired as an independent contractor, although he did not fully appreciate the difference between an employee versus an independent contractor at the time.[24] He stated that he understood he was being hired to do merchandising work and that he was neither full-time nor part-time but rather, hired to do a job.[25]

[22] Mr. Peterson stated that he typically read the agreements before signing and with respect to the December 2017 agreement with the appellant, he recalled checking the box that he understood he was being hired as an independent contractor.[26]

[23] He testified that he worked as a merchandiser for up to 8 different companies at one time and that he viewed all of the work as part-time.[27] He stated that he had already been merchandising for StoreSupport Canada since 2012 before being hired by the appellant in 2017.[28] Regardless of whether he was issued a T4 or T4A slip by a particular company, he described the work as part-time and variable while being paid hourly with no benefits.[29]

Victor Peterson – Analysis of intention

[24] Mr. Peterson's testimony was credible, straightforward, and clear-eyed. While he may not have appreciated the legal/technical distinctions between an employee versus an independent contractor, he understood the terms of his engagement with the appellant. He was already an experienced merchandiser by the time he began working for the appellant so he understood the nature of the work. I infer that he was/is good at his job, given the number of companies he worked with and the efficient manner in which he testified.

[25] As a result, I find on a balance there was a shared subjective intent by the appellant and Mr. Peterson that he be engaged as an independent contractor during the period in question.

2026 TCC 194 (CanLII)

Pamela Pearse – Factual background

[26] Ms. Pearse was engaged by the appellant to work as a merchandiser for the period under appeal, i.e. June 23, to August 4, 2020. Prior to that, she had been engaged by Match Marketing Group Inc. as a full-time employee for several months in 2019 in the role of MCE (multi-channel expert) representative for Imperial Tobacco.[30]

[27] The appellant's VP of Finance (Milica Bobic) explained that based on the type of work required by a particular client, the appellant determined whether to engage a worker as an employee or independent contractor.[31] For example, with respect to Ms. Pearse's role as MCE representative, she and Match Marketing Group Inc. entered into two successive letter-style agreements which described the engagement as full-time employment based on a 40-hour work week with: (a) a base salary plus bonus/commission payments, (b) a designated number of vacation days, (c) group benefits plan coverage, (d) annual performance reviews, and (e) non-competition and non-solicitation clauses.[32] On the other hand, when Ms. Pearse was engaged as a merchandiser, she and the appellant entered into an agreement entitled "Independent Contractor Agreement" which lacked all of the above terms and only retained a non-solicitation clause.[33]

[28] Ms. Pearse's testimony and recollection were somewhat imprecise with respect to the terms of engagement. For example, when shown a letter agreement dated March 27, 2019 during examination-in-chief, she identified it as pertaining to her employment by the appellant as a merchandiser.[34] On the other hand, the March 27, 2019 letter agreement actually referred to her employment as an MCE representative rather than a merchandiser and the employer was Match Marketing Group Inc. rather than the appellant.[35]

[29] As explained by the VP of Client Services for Match Retail (Kim Lewis), an MCE representative would visit the various stores that carry a particular product and train potential consumers as well as store staff on how to use the particular product.[36] Those tasks are different than those for a merchandiser, the latter of which will be examined more closely during the second step of the Court's two-step inquiry process.

Pamela Pearse – Analysis of intention

[30] While Ms. Pearse initially stated in direct examination that an MCE representative did merchandising,[37] she corrected herself during cross-examination

2026 TCC 194 (CanLII)

by clarifying that her work as an MCE representative for Imperial Tobacco was sales rather than merchandising, affirming that the two activities are different.[38] She stated that she did not appreciate there was a connection between her work with Imperial Tobacco versus the Match group of companies, and that her recollection was affected by personal difficulties she was experiencing in 2019.[39]

[31] Ms. Pearse's imprecise recollection with respect to the terms of engagement as an MCE representative in 2019 versus a merchandiser in 2020 made her testimony unreliable in this regard. Therefore, I cannot find that the parties shared a common intention as to whether she would be an employee or independent contractor during the period in question.

2026 TCC 194 (CanLII)

B. Objective reality of the relationship

Victor Peterson – Factual background

[32] As a merchandiser, Mr. Peterson was responsible for stocking, displaying, and positioning the products of specific manufacturers in retail settings. During the period under appeal, he worked in New Brunswick and Prince Edward Island, setting up and maintaining product displays at a variety of retail locations such as Superstore, Sobeys, Shoppers Drug Mart, and Wal-Mart.[40] A summary of projects shows that the manufacturers whose products he commonly merchandised during that period included Lise Watier/Annabelle/Marcelle (all cosmetics), Danone (yogurt), and Formedica (orthopedic home care equipment).[41]

[33] He explained that he sometimes received training for displays with which he was not already familiar and other times, he did not. For example, he was already familiar with setting up makeup walls for cosmetic lines so did not need training. He stated that there were so many different projects, he would not be able to say which ones included training and which did not. He elaborated that training consisted of giving a worker a planogram, putting the worker in front of a wall to try to follow it, and the worker asking questions if necessary.[42] He explained that he was required to follow a planogram to set up displays, describing the planogram as a blueprint showing him where/how to display specific products by matching their UPC (universal product code) to a designated location. He stated that planograms allow a store to track their inventory of a particular manufacturer's products and maintain its stock in that regard.[43]

[34] He testified that he received his project assignments from the appellant via a merchandising app called Natural Insight. He stated that when he logged into the

app, he would see “calls” for him which he equated to different projects. Natural Insight would contain notes for each project, telling him what was needed. When he worked alone, either he or someone from the appellant would make an appointment for him to attend the particular store. A kit of the necessary materials for that project – such as new UPCs, graphics, and trays – would then be waiting for him at the store. On arriving at a store, he would sign in as a visitor and then proceed to see the cosmetics manager if it was a cosmetics display or the store manager on duty if it was a different type of product.[44] With respect to how to conduct himself in a store, he stated that 90 percent was common sense.[45]

[35] Mr. Peterson said that he worked alone on some projects and with other people on certain other projects called cosmetic blitzes.[46] He explained that cosmetic companies paid for a certain percentage of a store’s makeup wall each year so the walls would have to be upsized or downsized to reflect the new percentages. For the blitzes, he would be part of a group of 8 to 12 people to move cosmetic walls and adjust shelving. A team leader or district manager from the appellant’s office would be present.

[36] Mr. Peterson stated that during blitzes, he would wear a lanyard from the appellant on which he handwrote his name, as well as a store lanyard with a visitor badge. He stated that the cosmetic companies would sometimes provide t-shirts to wear but it was not mandatory to wear them; there were no other uniforms and he described the dress code as more or less business casual.[47] If a product or shelf was damaged in the process, he was not expected to pay for either. He explained that it is normal for people to drop things so it was only necessary to inform the cosmetics manager with respect to products. With respect to shelves, he would order a replacement by way of missing materials, presumably on Natural Insight.[48]

[37] He testified that when he worked alone, he could set his own schedule; on the other hand, he had to inform the responsible team leader or district manager if he was unable to come in on a particular day during a blitz project.[49] For blitzes, he and the others would typically start at 8:00 a.m. and work until they were finished, with the schedule being set by the team leader or district manager. On regular calls (i.e. not blitzes), he would typically receive a time frame such as one week, two weeks, or a month within which to do the project and he would set his own schedule.[50]

[38] When asked if he could refuse work without consequences, he responded that the answer was tricky in the sense that on the one hand, he could refuse work while on the other hand, he might risk that they would not call on him in the future.[51] He agreed that he could always say no to a project, but added that he had actually never

2026 TCC 194 (CanLII)

refused work unless it was not in his geographical area.[52] At one point, he accepted a project to act as Formedica rep which included a sales-related component where he would refer to the Formedica planogram to ensure their products were stocked. He would either order the missing products himself or notify the store that it needed to restock. He stated that this project required additional paperwork and he was paid an additional $2 per hour.[53]

[39] He submitted his time worked and mileage on the Natural Insight app for payment/reimbursement.[54] He was typically reimbursed for mileage locally but if he worked in a different province and had to travel by taxi to the retail location, the appellant would reimburse his fare.[55] He stated that he never tried to negotiate his pay and simply did not apply for jobs where the rate of pay was not sufficient.[56] He did not consider himself to be in business and stated it seemed that the appellant wanted certain things from him as an employee and certain other things from him as an independent contractor.[57]

[40] As mentioned earlier, Mr. Peterson worked as a merchandiser for up to 8 different companies at one time and stated that he viewed all of the work as part-time.[58] He had been doing merchandising work for StoreSupport Canada since 2012 before joining the appellant in 2017,[59] and estimated that he had been merchandising for 20 to 25 years.[60] He stated that the work with various merchandising companies came and went. He would be rehired by a company if they had a project for him while other times, he remained in a company's payroll system (though unpaid) and if a project came up, they would contact him.[61]

[41] In cross-examination, Mr. Peterson agreed that the appellant did not ever tell him he was prohibited from working for another merchandising company.[62] He stated that he preferred working alone and there were projects or retail locations he enjoyed less than others, but he did them because it was work.[63] He stated that he typically used his own vehicle, cell phone, iPad, laptop, and desktop computer to travel and stay in touch with the appellant.[64]

[42] He testified that he did not believe he could subcontract his work to others because he was the only signatory to the agreement with the appellant. He stated that in any event, he never sought to do so because it did not make financial sense for him.[65] He did not ask for help on his jobs because if another person was needed, the appellant would typically make those arrangements of its own initiative.[66]

[43] Mr. Peterson explained that if a job was going to take a few minutes longer than expected, he would proceed with finishing it. If it was going to take significantly

2026 TCC 194 (CanLII)

longer, he would be expected to contact the team lead or district manager first; however, he stated that did not happen with him unless something went wrong and he could not fix the situation within the expected time.[67]

[44] He testified that when he worked alone, he was responsible for completing and submitting the Natural Insight reports, including taking photos to confirm the job was done as required. When there was a team lead from the appellant present, all of the administrative and decision-making responsibilities would shift to that individual. In addition to blitzes, he recalled there being a team lead for setting up televisions as well as reset jobs at Rona hardware stores.[68]

Pamela Pearse – Factual background

[45] During the six-week period under appeal, Ms. Pearse recorded hours on 25 days.[69] Most of her time worked was spent either on Quo fixture installs for Shoppers Drug Mart or cosmetic blitzes.[70]

[46] She described her training as a matter of following the instructions of the Match supervisor running the site. She stated that materials would be shipped directly to the store in question and could only be unpacked by the supervisor, who would then direct who was to do what.[71]

[47] She stated that during the Quo fixture installs, the supervisor would install cosmetic walls with lighting while she and others would take acrylic trays containing products and put the products in place according to the planogram. She testified that she could not take a break or do anything else without her supervisor's approval, and only submitted time records for payment. She recalled that her supervisor took the necessary photos to prove the installation was completed as well as communicated with the store while on site.[72] She also stated that a Match supervisor was at the store every time she was there.[73]

[48] Ms. Pearse recalled that the majority of the Quo projects were one-day jobs and the appellant would typically divide an 8-hour job between two people, resulting in four hours per person. She also recalled that a Match supervisor was present.[74] She stated that she could not refuse work and if she made a mistake, the Match supervisor would contact her to schedule a return trip to the store to correct the error.[75] She stated that correcting the error was not optional and the appellant determined her work schedule.[76]

2026 TCC 194 (CanLII)

[49] She described the dress code as business casual and stated that on arrival at a store, she would be expected to sign in at the front of the store and identify herself as representing the appellant. She stated that each store had its own way of identifying working visitors such as ID badges or stickers on which she would write her name and it was understood she was there on behalf of the appellant.[77]

[50] Ms. Pearse stated that she was paid as long as she was there and if a job was not completed, the supervisor experienced the consequences. She also recalled that she was not required to pay for damaged products or shelves and did not have discretion to adjust her work hours.[78] She stated that if she needed time off, she would have to ask someone with the appellant at a higher level than the supervisor; on the other hand, the supervisor could authorize additional hours if needed to complete a particular project.[79]

[51] She testified that she could not subcontract her work or hire assistants.[80] In terms of tools, she recalled the appellant providing her with elastics for bundling cosmetics such as lipsticks together, as well as a simple flat plastic tool for popping sections out of display walls.[81] She stated that the appellant also delivered an iPad to her home for work use and required her to sign an agreement that the iPad would be returned on leaving the appellant or when it was no longer needed.[82] She recalled receiving the iPad before starting the Quo projects in June 2020 but her recollection was imprecise as to what she used the iPad for.[83] She stated that the majority of her work during the period under appeal involved the Quo fixture installs and not much time was spent on cosmetic blitzes.[84]

[52] Ms. Pearse testified that her rate of pay was $18 per hour, which was higher than usual perhaps due to the global pandemic.[85] She stated that other than reimbursement for mileage, she did not incur nor claim any other expenses.[86]

Analysis and discussion

[53] I will now turn to the question of whether Mr. Peterson and Ms. Pearse performed their merchandising services as people in business on their own account, by examining the non-exhaustive list of objective factors[87] set out in *Sagaz* and *Wiebe Door*. Degree of responsibility for investment and management is not a relevant factor in this situation, so it will not be examined.

[54] As mentioned earlier, Ms. Pearse's testimony conflated aspects of her work as an MCE representative for Imperial Tobacco with her work as a merchandiser, and she clarified during cross-examination that the former was sales rather than

2026 TCC 194 (CanLII)

merchandising.[88] She stated that she had 20 years of sales experience and had worked for many different companies, but her memory was affected by personal difficulties.[89]

[55] Although she stated that her memory with respect to merchandising was clear, her testimony conflated aspects of that work as well. For example, when asked in direct examination whether she received training for the Quo fixture installs (which is Shoppers Drug Mart), she answered in the affirmative and referred to the F20 blitz training she received for L'Oreal Canada, i.e. a different client and a different project.[90]

[56] Ms. Pearse did not hear Mr. Peterson's testimony and her description of the merchandising work aligned with his in certain important respects. At the same time, it is difficult to rely on her evidence exclusively or significantly because she sometimes conflated such things as who she worked for, what she did, and when she did them.

(a) Control

[57] As merchandisers, Ms. Pearse and Mr. Peterson had to set up displays according to planograms and there was a team leader/site supervisor present on behalf of the appellant for larger jobs. The fact that Ms. Pearse and Mr. Peterson had to dress in business casual attire, sign in at stores, and wear ID showing they represented the appellant while in the stores is more common-sense professionalism than control.

[58] For larger projects where there was more than one merchandiser working at the same time, the appellant's team leader/site supervisor kept the projects organized and coordinated. Telling the merchandisers what time to report for work and handling administrative aspects while everyone (including the team leader/site supervisor) followed a planogram, does not rise to the level of control to be an employee. Ms. Pearse and Mr. Peterson retained the option of not working on a particular project and with respect to any project on which they worked alone, they could set their own schedule within the parameters of the expected deadline for completion. Ms. Pearse was significantly less experienced as a merchandiser than Mr. Peterson so she likely recalled greater control because she initially required more direction. The fact that they had to complete work by a deadline is not control so much as the reality of performing work for someone else, whether employee or independent contractor.

2026 TCC 194 (CanLII)

[59] Planograms are used to display retail products in an appealing way to attract consumer interest and maximize sales. I expect that if a particular brand partner did not like their display, their preferences/instructions would prevail over those of the appellant. If the appellant then directed Mr. Peterson or Ms. Pearse to adjust the display according to a revised planogram based on the brand partner's preferences, it would be equally plausible to infer they are employed by the brand partner if the threshold for control is that proposed by the respondent. In my respectful view, the respondent's proposed threshold is low and leads to an absurdity.

[60] Control is a question of degree and the fact that Ms. Pearse and Mr. Peterson had to follow an established protocol speaks to the nature of merchandising and the brand-partner relationship. While Mr. Peterson may not have been able to explain the distinction between employee-versus-independent contractor in technical terms, he was insightful when he said that he viewed merchandising as being hired to do a job.

[61] I find that this factor favors a finding of independent contractor.

(b) Who provided the equipment

[62] The necessary materials for a project were contained in a specific kit provided to Mr. Peterson and Ms. Pearse when they arrived at the retail location. A flat plastic blade-like tool was also provided for popping shelves out of display walls. Mr. Peterson stated that he used his own vehicle, cell phone, iPad, laptop, and desktop computer to travel and stay in touch with the appellant. Both Mr. Peterson and Ms. Pearse stated that they had to use their own means to travel to work locations and were reimbursed by the appellant for mileage.

[63] While Ms. Pearse recalled that she received an iPad from the appellant for her merchandising work, I believe on a balance of probabilities that the iPad was likely loaned to her when she was doing the Imperial Tobacco sales work for the appellant, rather than the merchandising work under appeal. It seems unlikely that she would receive an iPad from the appellant to use for a six-week work period while Mr. Peterson continued to use his own iPad and other equipment for a significantly longer period of work.

[64] This factor slightly favors a finding of employee because the appellant provided what was needed for each project, albeit the kits' contents may have been as much the brand partner's as the appellant's.

2026 TCC 194 (CanLII)

(c) Opportunity for profit/Degree of financial risk

[65] Mr. Peterson and Ms. Pearse could work for other entities while also providing services to the appellant, although it appears that Ms. Pearse did not do so. On the other hand, Mr. Peterson routinely worked for multiple companies at the same time. Their time entries ranged from 0.25 hours to 9.75 hours; the latter time entry was for F20 (i.e. fall 2020) blitz training for L'Oreal cosmetics for Ms. Pearse.[91] The hours reported varied and the days on which they worked were not continuous.

[66] If Ms. Pearse and Mr. Peterson worked more, they would make more money and if they did not, the loss was also theirs including the possibility they would not be called on going forward. Mr. Peterson's testimony was clear-eyed when he stated that while he could refuse work, he might risk not being called about jobs in the future.

[67] I find that this factor favors a finding of independent contractor.

(d) Whether the workers hired their own helpers

[68] Neither Mr. Peterson nor Ms. Pearse hired helpers to assist them in doing their merchandising work. Mr. Peterson also noted that paying someone to help him did not make financial sense.

[69] The appellant asserted that Mr. Peterson and Ms. Pearse could hire helpers but neither Ms. Pearse nor Mr. Peterson seemed to be aware of this prerogative. The independent contractor agreements provide that the services can be performed "in the manner, time and place determined by the Contractor that is appropriate in the circumstances."[92] I expect that the appellant relies on the reference to manner for this assertion but it is not self-evident that "manner" includes the ability to hire helpers.

[70] As a result, I find this factor to be neutral.

IV. **Conclusion**

[71] After weighing the relevant factors, I conclude that Mr. Peterson and Ms. Pearse were not engaged in insurable and pensionable employment with the appellant for the periods under appeal, i.e. they were independent contractors.

2026 TCC 194 (CanLII)

[72] The rules for EI and CPP appeals are silent with respect to costs. Considering that there is provision for costs in the rules for income tax and GST appeals heard by this Court, I infer Parliamentary intent behind the silence with respect to EI and CPP matters, such that costs awards are not available.

[73] The appeals are allowed, without costs.

Signed this 5th day of November 2026.

"Susan Wong"

Wong J.

2026 TCC 194 (CanLII)

CITATION:	2026 TCC 194
COURT FILE NOS.:	2021-2221(EI), 2021-2222(CPP), 2021-2459(EI), 2021-2460(CPP)
STYLE OF CAUSE:	MATCH MG FIELD CANADA INC. AND M.N.R.
PLACES OF HEARING:	Toronto, Ontario and Ottawa, Ontario (virtual)
DATES OF HEARING:	September 11 and 12, 2023, May 14, 2024 (virtually) and November 14, 2024 (virtually)
REASONS FOR JUDGMENT BY:	The Honourable Justice Susan Wong
DATE OF JUDGMENT:	November 5, 2026

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Counsel for the Respondent:	Lalitha Ramachandran

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2026 TCC 194 (CanLII)

[1] *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63 (CanLII) at paragraph 23; *Danyluk v. Ainsworth Technologies Inc.*, 2001 SCC 44 (CanLII) at paragraph 25; Angle v. MNR, 1974 CanLII 168 (SCC) at page 254; *Canadian Energy Services LP v. Secure Energy (Drilling Services) Inc.*, 2025 FCA 76 (CanLII) at paragraph 90; *Cameco Corporation v. The King*, 2025 TCC 23 at paragraph 42

[2] *Danyluk v. Ainsworth Technologies Inc.*, 2001 SCC 44 (CanLII) at paragraph 33

[3] *Danyluk v. Ainsworth Technologies Inc.*, 2001 SCC 44 (CanLII) at paragraph 54

[4] *671122 Ontario Ltd. v. Sagaz Industries Canada Inc.*, 2001 SCC59 (CanLII)

[5] *Wiebe Door Services Ltd. v. Minister of National Revenue*, 1986 CarswellNat366 (FCA)

[6] *671122 Ontario Ltd. v. Sagaz Industries Canada Inc.*, 2001 SCC59 (CanLII) at paragraph 47; *Wiebe Door Services Ltd. v. Minister of National Revenue*, 1986 CarswellNat366 at paragraph 17 (FCA)

[7] *671122 Ontario Ltd. v. Sagaz Industries Canada Inc.*, 2001 SCC59 (CanLII) at paragraphs 47 and 48; *Wiebe Door Services Ltd. v. Minister of National Revenue*, 1986 CarswellNat366 at paragraph 17 (FCA); *0808498 BC Ltd. v. M.N.R.*, 2023 TCC 53 (CanLII) at paragraph 33

[8] *671122 Ontario Ltd. v. Sagaz Industries Canada Inc.*, 2001 SCC59 (CanLII) at paragraph 48

[9] *671122 Ontario Ltd. v. Sagaz Industries Canada Inc.*, 2001 SCC59 (CanLII) at paragraph 47

[10] *1392644 Ontario Inc. (Connor Homes) v. Canada (National Revenue)*, 2013 FCA 85 (CanLII)

[11] *1392644 Ontario Inc. (Connor Homes) v. Canada (National Revenue)*, 2013 FCA 85 (CanLII) at paragraph 38

[12] *1392644 Ontario Inc. (Connor Homes) v. Canada (National Revenue)*, 2013 FCA 85 (CanLII) at paragraph 39

[13] *1392644 Ontario Inc. (Connor Homes) v. Canada (National Revenue)*, 2013 FCA 85 (CanLII) at paragraph 40

[14] *1392644 Ontario Inc. (Connor Homes) v. Canada (National Revenue)*, 2013 FCA 85 (CanLII) at paragraph 42

[15] Notice of appeal 2021-2459(EI) at paragraph 1; Reply 2021-2459(EI) at paragraph 27(a)

[16] Reply 2021-2459(EI) at paragraph 27(b)

[17] Testimony of Milica Bobic, Transcript of proceedings (September 11, 2023) at page 24, lines 14 to 21

[18] Respondent's affidavit of Darlene Slingerland filed September 12, 2023 at paragraph 9

[19] Testimony of Pamela Pearse, Transcript of proceedings (September 12, 2023) at page 92, lines 5 to 6; Testimony of Victor Peterson, Transcript of proceedings (September 12, 2023) at page 12, lines 20 to 22

[20] Transcript of proceedings (September 12, 2023) at page 11, lines 11 to 12

[21] Transcript of proceedings (September 12, 2023) at page 66, line 28; page 67 lines 1 to 2

[22] Transcript of proceedings (September 12, 2023) at page 11, lines 13 to 15

[23] Appellant's book of documents (Exhibit A-1), tab 16, page 55

2026 TCC 194 (CanLII)

[24] Transcript of proceedings (September 12, 2023) at page 12, lines 10 to 17; page 64, lines 24 to 27

[25] Transcript of proceedings (September 12, 2023) at page 12, lines 18 to 22; page 65, lines 1 to 10

[26] Transcript of proceedings (September 12, 2023) at page 63, lines 22 to 28; page 64, lines 1 and lines 20 to 28; page 65, lines 1 to 10

[27] Transcript of proceedings (September 12, 2023) at page 68, lines 2 to 6; page 69, lines 11 to 12; page 70, lines 10 to 12

[28] Transcript of proceedings (September 12, 2023) at page 69, lines 21 to 25

[29] Transcript of proceedings (September 12, 2023) at page 66, lines 7 to 15; page 68, lines 8 to 28; page 69, lines 1 to 12; page 70, lines 1 to 16

[30] Appellant's book of documents (Ex. A-1) at tabs 1, 2, and 3

[31] Transcript of proceedings (September 11, 2023) at page 21, lines 21 to 28

[32] Appellant's book of documents (Exhibit A-1), tabs 1 and 2

[33] Appellant's book of documents (Exhibit A-1), tab 5, page 32

[34] Transcript of proceedings (September 12, 2023) at page 89, lines 13 to 28; page 90, lines 1 to 4

[35] Appellant's book of documents (Exhibit A-1), tab 1

[36] Transcript of proceedings (September 11, 2023) at page 104, lines 6 to 26

[37] Transcript of proceedings (September 12, 2023) at page 91, lines 1 to 3

[38] Transcript of proceedings (September 12, 2023) at page 117, lines 2 to 11

[39] Transcript of proceedings (September 12, 2023) at page 117, lines 17 to 28

[40] Appellant's book of documents (Exhibit A-1), tab 25

[41] Appellant's book of documents (Exhibit A-1), tab 25

[42] Transcript of proceedings (September 12, 2023) at page 56, lines 6 to 9

[43] Transcript of proceedings (September 12, 2023) from page 16, line 17 to page 17, line 4

[44] Transcript of proceedings (September 12, 2023) from page 17, line 8 to page 23, line 2

[45] Transcript of proceedings (September 12, 2023) at page 79, lines 17 to 22

[46] Transcript of proceedings (September 12, 2023) at page 16, lines 5 to 7

[47] Transcript of proceedings (September 12, 2023) from page 17, line 8 to page 23, line 2

[48] Transcript of proceedings (September 12, 2023) at page 23, lines 3 to 10

[49] Transcript of proceedings (September 12, 2023) from page 23, line 15 to page 25, line 2

2026 TCC 194 (CanLII)

[50] Transcript of proceedings (September 12, 2023) at page 21, lines 10 to 18

[51] Transcript of proceedings (September 12, 2023) at page 20, lines 16 to 21

[52] Transcript of proceedings (September 12, 2023) at page 71, lines 16 to 28

[53] Transcript of proceedings (September 12, 2023) from page 52, line 27 to page 53, line 10

[54] Transcript of proceedings (September 12, 2023) at page 54, lines 7 to 20; page 77, lines 3 to 11

[55] Transcript of proceedings (September 12, 2023) from page 75, line 24 to page 76, line 7

[56] Transcript of proceedings (September 12, 2023) at page 54, lines 21 to 24

[57] Transcript of proceedings (September 12, 2023) from page 57, line 20 to 58, line 16

[58] Transcript of proceedings (September 12, 2023) at page 68, lines 2 to 6; page 69, lines 11 to 12; page 70, lines 10 to 12

[59] Transcript of proceedings (September 12, 2023) at page 69, lines 21 to 25

[60] Transcript of proceedings (September 12, 2023) at page 78, lines 9 to 22

[61] Transcript of proceedings (September 12, 2023) at page 70, lines 10 to 16

[62] Transcript of proceedings (September 12, 2023) at page 70, lines 21 to 25

[63] Transcript of proceedings (September 12, 2023) from page 73, line 18 to page 74, line 4

[64] Transcript of proceedings (September 12, 2023) from page 74, line 21 to page 75, line 11

[65] Transcript of proceedings (September 12, 2023) from page 80, line 21 to page 81, line 21

[66] Transcript of proceedings (September 12, 2023) from page 81, line 22 to page 82, line 1

[67] Transcript of proceedings (September 12, 2023) from page 82, line 6 to page 82, line 28

[68] Transcript of proceedings (September 12, 2023) at page 84, lines 1 to 10

[69] Appellant’s book of documents (Exhibit A-1), tab 13

[70] Appellant’s book of documents (Exhibit A-1), tab 13; Transcript of proceedings (September 12, 2023) at page 95, lines 22 to 25

[71] Transcript of proceedings (September 12, 2023) from page 95, line 22 to page 96, line 12

[72] Transcript of proceedings (September 12, 2023) from page 97, line 8 to page 98, line 10

[73] Transcript of proceedings (September 12, 2023) at page 97, lines 8 to 18

[74] Transcript of proceedings (September 12, 2023) at page 98, lines 21 to 26

[75] Transcript of proceedings (September 12, 2023) at page 99, lines 3 to 17

[76] Transcript of proceedings (September 12, 2023) at page 99, lines 18 to 21

2026 TCC 194 (CanLII)

[77] Transcript of proceedings (September 12, 2023) at page 102, lines 1 to 27

[78] Transcript of proceedings (September 12, 2023) at page 103, line 2 to 23

[79] Transcript of proceedings (September 12, 2023) from page 103, line 24 to page 104, line 24

[80] Transcript of proceedings (September 12, 2023) at page 104, lines 25 to 28

[81] Transcript of proceedings (September 12, 2023) at page 105, lines 1 to 6, lines 23 to 28; page 106, lines 1 to 13

[82] Transcript of proceedings (September 12, 2023) at page 105, lines 7 to 13

[83] Transcript of proceedings (September 12, 2023) at page 107, lines 2 to 22

[84] Transcript of proceedings (September 12, 2023) from page 109, line 20 to page 110, line 6

[85] Transcript of proceedings (September 12, 2023) from page 110, line 26 to page 111, line 3

[86] Transcript of proceedings (September 12, 2023) at page 107, lines 23 to 26; page 111, lines 18 to 23

[87] *671122 Ontario Ltd. v. Sagaz Industries Canada Inc.*, 2001 SCC59 (CanLII) at paragraphs 47 and 48; *Wiebe Door Services Ltd. v. Minister of National Revenue*, 1986 CarswellNat366 at paragraph 17 (FCA); *0808498 BC Ltd. v. M.N.R.*, 2023 TCC 53 (CanLII) at paragraph 33

[88] Transcript of proceedings (September 12, 2023) at page 91, lines 1 to 3; page 117, lines 2 to 11 and lines 17 to 28

[89] Transcript of proceedings (September 12, 2023) at page 119, lines 21 to 22; page 129, line 23 to page 130, line 3

[90] Transcript of proceedings (September 12, 2023) from page 95, line 22 to page 96, line 1; Appellant's book of documents (Exhibit A-1), tab 13

[91] Appellant's book of documents (Exhibit A-1), tabs 13 and 25

[92] Appellant's book of documents (Exhibit A-1), tab 5 at page 30; tab 16 at page 53

2026 TCC 194 (CanLII)