

Federal Court of Appeal



Cour d'appel fédérale

Date: 20250529

**Dockets: A-314-23 (Lead file)
A-315-23**

Citation: 2025 FCA 107

**CORAM: BOIVIN J.A.
ROUSSEL J.A.
PAMEL J.A.**

BETWEEN:

JANICE WHELAN

Appellant

and

HIS MAJESTY THE KING

Respondent

Heard at Ottawa, Ontario, on May 29, 2025.
Judgment delivered from the Bench at Ottawa, Ontario, on May 29, 2025.

REASONS FOR JUDGMENT OF THE COURT BY:

ROUSSEL J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Ottawa, Ontario, on May 29, 2025).

ROUSSEL J.A.

[1] This is a consolidated appeal of two judgments of the Tax Court of Canada in files 2020-2288 (CPP) and 2020-2289 (EI). In reasons for judgment delivered orally on October 19, 2023, the Tax Court dismissed Ms. Whelan's appeals and confirmed the determinations made by the Minister of National Revenue that Ms. Whelan operated a placement agency and that the

individual workers were in pensionable and insurable employment within the meaning of the *Canada Pension Plan*, R.S.C. 1985, c. C-8 and the *Employment Insurance Act*, S.C. 1996, c. 23 and their corresponding regulations (subsections 34(1) and (2) of the *Canada Pension Plan Regulations*, C.R.C., c. 385 and paragraph 6(g) of the *Employment Insurance Regulations*, S.O.R./96-332).

[2] The standard of review in this appeal is that set out in *Housen v. Nikolaisen*, 2002 SCC 33: correctness for questions of law (the identification of the proper test) and palpable and overriding error for questions of fact and questions of mixed fact and law (the application of the facts to the proper test). When the Court reviews issues of procedural fairness, its role is to determine whether the proceedings were fair in all of the circumstances (*Canadian Pacific Railway Company v. Canada (Attorney General)*, 2018 FCA 69 at para. 54).

[3] Ms. Whelan raises several grounds of appeal. However, after reviewing the record and considering the submissions of counsel, we are all of the view that the Tax Court made no reviewable error that warrants intervention. While the reasons for judgment could have been undoubtedly more clearly expressed, we are satisfied that the Tax Court applied the correct legal principles for determining whether the workers were engaged in pensionable and insurable employment (*European Staffing Inc. v. Canada (National Revenue)*, 2020 FCA 219; 1392644 *Ontario Inc. (Connor Homes) v. Canada (National Revenue)*, 2013 FCA 85; *Wiebe Door Services Ltd. v. M.N.R. (F.C.A.)*, [1986] 3 F.C. 553, 1986 CanLII 6775, approved in 671122 *Ontario Ltd. v. Sagaz Industries Canada Inc.*, 2001 SCC 59).

[4] Moreover, we have not been persuaded that the Tax Court made a palpable and overriding error in its analysis of the evidence and its application to the relevant principles. Although Ms. Whelan points to conflicting evidence, she is essentially inviting us to reweigh the evidence, which is not the role of this Court on appeal. Likewise, it is not our role to substitute our view of the importance to be given to the relevant factors. The factors that are relevant to determining the true nature of the relationship between the parties are not exhaustive, and the weight assigned to each factor will be dependent on the particular facts and the circumstances of each case (*Connor Homes* at para. 41; *Sagaz* at para. 48).

[5] Finally, Ms. Whelan has not demonstrated that the Tax Court breached procedural fairness by failing to allow her the opportunity to address the concept of innovation in the analysis of control under the *Wiebe Door* framework. In examining the issue of control, the Tax Court considered the workers' ability to innovate, but only in the sense that they knew what was expected of them and did their work without trying to change things. Ms. Whelan knew that the issue of control was central to the litigation and is attributing too much weight to the choice of words used by the Tax Court. In the circumstances of this case, we are satisfied that she knew the case to meet.

[6] For these reasons, the appeals will be dismissed with costs.

"Sylvie E. Roussel"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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A-315-23

STYLE OF CAUSE: JANICE WHELAN v. HIS
MAJESTY THE KING

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: MAY 29, 2025

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BY:** BOIVIN J.A.
ROUSSEL J.A.
PAMEL J.A.

DELIVERED FROM THE BENCH BY: ROUSSEL J.A.

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