Federal Court  Cour fédérale

Date: 20180416

Docket: T-675-17

Citation: 2018 FC 411

Ottawa, Ontario, April 16, 2018

PRESENT: The Honourable Madam Justice McDonald

BETWEEN:

PEEPEEKISIS CREE NATION NO. 81

Applicant

and

TODD DIETER

Respondent

JUDGMENT AND REASONS

[1] Mr. Dieter worked under contract with the Peepeekisis Cree Nation No. 81 [Applicant or Peepeekisis] as a water hauler until his services were terminated. In this judicial review, the Peepeekisis seeks review of the decision of a *Canada Labour Code* [CLC] Adjudicator [Adjudicator] who found that Mr. Dieter was a dependent contractor and awarded him damages for unjust dismissal pursuant to s.240 of the CLC. This was the second decision by the Adjudicator in relation to the dispute between these parties.

[2] For the reasons that follow this judicial review is dismissed. The Adjudicator properly interpreted his mandate on redetermination and his decision with respect to the issue of Mr. Dieter's rights under the CLC is reasonable.

I. Relevant Background

[3] Mr. Dieter was hired by Peepeekisis as a water hauler on April 28, 2011 and the parties entered into a written contract for the period of April 28, 2011 to April 27, 2013. The contract states that Mr. Dieter was an "independent contractor" and was not "deemed to be an employee of the Peepeekisis First Nation for any purpose." The contract also contained a clause giving Peepeekisis the right to cancel the contract with two weeks' notice. If cancelled, Mr. Dieter was entitled "to the full amount of money due for the work performed under the terms of conditions of this Agreement up to the effective date of such cancellation."

[4] This contract was extended twice by mutual agreement. First, it was extended to June 30, 2014 and then to July 14, 2015. However, on November 19, 2014, Peepeekisis informed Mr. Dieter in writing that his contract was terminated as of November 17, 2014.

[5] On February 19, 2015, Mr. Dieter filed a complaint of unjust dismissal pursuant to s.240 of the CLC. A hearing was held on December 4, 2015.

[6] In his decision of January 28, 2016 [First Decision], the Adjudicator addressed the standing of Mr. Dieter to bring a complaint under s.240 of the CLC.

[7] The Adjudicator concluded that although Mr. Dieter was described as an independent contractor, in reality he was a "dependent contractor" at common law. The Adjudicator took direction from Part I of the CLC, which defines a dependent contractor as an employee. By analogy, the Adjudicator concluded that Mr. Dieter was an employee for the purposes of Part III of the CLC and therefore had standing to bring a complaint under s.240 of the CLC. The Adjudicator concluded that Peepeekisis did not have just cause to dismiss Mr. Dieter and he awarded him $30,000.00 being the balance owing under the contract.

[8] Peepeekisis was successful in its judicial review of the First Decision, see: *Peepeekisis Cree Nation No. 81 v Dieter*, 2016 FC 1257 [*Peepeekisis No.1*]. In this decision, Mr. Justice Barnes found that the Adjudicator erred in analogizing Part I of the CLC to Part III. However, Justice Barnes deferred to the Adjudicator's finding that Mr. Dieter was a dependent contractor. Justice Barnes ordered that the matter "be re-determined by the Adjudicator on the merits and in accordance with these reasons" and that "the Adjudicator…consider whether a dependent contractor at common law was entitled to relief for unjust dismissal" (*Peepeekisis No.1,* at para 12).

II. Adjudicator Decision of April 9, 2017

[9] In the re-determination decision [Second Decision] of April 9, 2017, the Adjudicator began by noting that Justice Barnes upheld the finding that Mr. Dieter was a dependent contractor. Accordingly, the Adjudicator proceeded on the basis that the only issue for determination was Mr. Dieter's right to file a complaint under s. 240 of the CLC given the absence of a definition of the term "person" in s. 240.

[10] In considering s. 240, the Adjudicator referred to the speech of the Minister of Labour in the House of Commons at the time of the adoption of s. 240. In that speech the Minister of Labour stated that the purpose of s. 240 was to provide employees not represented by a union with the right to appeal against arbitrary dismissal.

[11] The Adjudicator noted that the scope of s. 240 was broad enough to include "persons who are in an extensive, long term and dependent contractoral [sic] relationship with an employer."

[12] The Adjudicator also noted arbitral decisions which support the inclusion of dependent contractors in the definition of "person" under s. 240 of the CLC.

[13] The Adjudicator compared Part I and Part III of the CLC. He noted that the CLC must be interpreted as a whole. Under Part I, he noted that the definition of "employee" includes dependent contractors. Therefore a unionized dependent contractor would have the right to challenge an unjust dismissal. If a dependent contractor is not included under the ambit of Part III, however, he would not have the right to challenge a dismissal under s. 240 of the CLC. The Adjudicator noted that this interpretation would be inconsistent with the original intent of s. 240. In support of this proposition, the Adjudicator cited the Supreme Court decision in *Wilson v Atomic Energy of Canada Ltd.*, 2016 SCC 29 [*Wilson*].

[14] With respect to Mr. Dieter's circumstances, in his First Decision the Adjudicator determined that Mr. Dieter was not given two weeks' notice or pay in lieu as required by the contract. The Adjudicator noted that Mr. Dieter "[o]n an organizational test…was integral to a

core service provided by the band," and that he was closer to the employee end of the "independent contractor – employee continuum." The Adjudicator noted that Mr. Dieter was responsible for delivering water to 44 residences 5 days a week. In doing so, Mr. Dieter agreed to comply "with the acts, protocol, codes of ethics, rules and customs pertaining to work practices and as adopted by Peepeekisis Cree Nation…."

[15] Based upon this analysis the Adjudicator determined that Mr. Dieter was an employee under s. 240 of the CLC and that he was terminated without just cause. The Adjudicator reaffirmed the award in his First Decision.

III. Issues

[16] Based upon the submissions of the parties, the following are the issues for determination:

A. What is the applicable standard of review?

B. Was the Adjudicator bound by the findings in *Peepeekisis No. 1*?

C. Did the Adjudicator err in the analysis of Parts I and III of the CLC?

D. Did the Adjudicator err in the interpretation of s. 240 of the CLC?

IV. Analysis

A. *What is the applicable standard of review?*

[17] The parties disagree on the applicable standard of review. The Peepeekisis argues that the standard of review is correctness while Mr. Dieter argues that reasonableness applies.

[18] The Peepeekisis relies upon *Dynamex Canada Inc. v Mamona*, 2003 FCA 248 at para 45 [*Dynamex*] in support of its argument that correctness is the applicable standard of review. However *Dynamex* was decided before *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*].

[19] Since *Dunsmuir*, it is well-established that the interpretation of a home statute or statutes closely related to the function of a decision-maker is presumed to be reviewed on the reasonableness standard: *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 at paras 39-41; *Edmonton (City) v Edmonton East (Capilano) Shopping Centres Ltd*., 2016 SCC 47 at para 22.

[20] Accordingly, the presumption is that a decision of a labour adjudicator interpreting statutes within their expertise would be reviewed against the reasonableness standard of review (*Wilson*, at para 15-16). While this presumptive standard of review can be rebutted, the Peepeekisis has not rebutted that presumption. Accordingly reasonableness is the standard of review.

[21] In assessing reasonableness in the context of labour adjudication, the Court can look to the decisions of arbitrators to determine whether a decision is reasonable (*Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper, Ltd.*, 2013 SCC 34 at para 6; *Canada (Minister of Transport, Infrastructure and Communities) v Jagjit Singh Farwaha*, 2014 FCA 56 at para 95; *Delios v Canada (Attorney General)*, 2015 FCA 117 at para 27 [*Delios*].

[22] Further in assessing the reasonableness of the Adjudicator's interpretation of the CLC, the text, context, and purpose of the statute are highly relevant to what constitutes a reasonable outcome (*Canada (Canadian Human Rights Commission) v Canada (Attorney General)*, 2011 SCC 53 at para 32; *Vavilov v Canada (Citizenship and Immigration)*, 2017 FCA 132 at paras 40-42).

B. *Was the Adjudicator bound by the findings in Peepeekisis No. 1?*

[23] In its submissions, the Applicant argues that the Adjudicator erred by relying upon the finding in *Peepeekisis No. 1* that Mr. Dieter was a dependent contractor. It bases this argument on the fact that the Adjudicator's First Decision was quashed by Justice Barnes in *Peepeekisis No. 1*.

[24] Mr. Dieter on the other hand argues that there are very narrow grounds for this judicial review. He argues that the Adjudicator was correct to start his reconsideration from the premise that Mr. Dieter was a dependent contractor. Consequently, he also argues that this Court on judicial review cannot reconsider the findings which were upheld in *Peepeekisis No. 1*.

[25] In *Peepeekisis No. 1* Mr. Justice Barnes made the following findings:

- He upheld the Adjudicator's conclusion that the Respondent was a dependent contractor (*Peepeekisis*, at para 10).
- He concluded that the Adjudicator erred by importing the definition of "dependent contractor" in Part I of the CLC into Part III. Instead, he concluded that the Adjudicator had to determine, at common law, whether a dependent contractor is entitled to relief under Part III of the CLC

> because there is no definition of "person" in s.240 of the CLC.

[26] In the Second Decision, the Adjudicator starts his analysis from the position that his finding that Mr. Dieter was a "dependent contractor" is not being reconsidered as that finding was upheld in *Peepeekisis No. 1*.

[27] In *Canada (Citizenship and Immigration) v Yansané*, 2017 FCA 48 [*Yansané*], the Federal Court of Appeal addressed the effect of a judge, on judicial review, concluding that a matter should be redetermined "in accordance with these reasons." The Court concluded the following at paras 25 and 27:

> [25] Strictly speaking, the first judge's judgment did not, in my opinion, contain any directions or instructions. By referring the case to another immigration officer for reconsideration "in accordance with these reasons," the first judge was not giving instructions within the meaning of paragraph 18.1(3)(b), but merely reiterating the well-known principle that an administrative decision-maker must comply with the decision of a superior court in applying the principle of stare decisis. In fact, it matters little whether the judgment allowing an application for judicial review contains such a statement; **it goes without saying that an administrative tribunal to which a case is referred back must always take into account the decision and findings of the reviewing court, unless new facts call for a different analysis**… **(emphasis added).**
>
> […]
>
> [27] I would reword the question certified by the judge to remove the reference to findings of fact, and I would answer as follows:
>
> Question: In the absence of a specific verdict, what impact do the Federal Court's directions have on an administrative decision-maker assigned to re-determine the case?

> Answer: The administrative decision-maker to whom the case is returned **must always comply with the reasons and findings of the judgment allowing the judicial review**, as well as with the directions and instructions explicitly stated by the Federal Court in its judgment **(emphasis added).**

[28] The comments in *Yansané* are directly relevant to this case. Based upon the principle of *stare decisis*, the Adjudicator was required to take Justice Barnes' decision into account.

[29] As Justice Barnes in *Peepeekisis No. 1* upheld the dependent contractor finding, the Adjudicator reasonably concluded that he was bound by this finding.

C. *Did the Adjudicator err in the analysis of Parts I and III of the CLC?*

[30] The Applicant argues that the Adjudicator erred by conflating Part I and Part III of the CLC. It argues that this is the same error found in *Peepeekisis No. 1* where the Court held that the Adjudicator erred in importing the definition of "employee" from Part I of the CLC into Part III of the CLC.

[31] The definition of employee in Part I is as follows:

Employee means any person employed by an employer and includes a dependent contractor and a private constable, but does not include a person who performs management functions or is employed in a confidential capacity in matters relating to industrial relations; (*employé*)	***Employé*** Personne travaillant pour un employeur; y sont assimilés les entrepreneurs dépendants et les agents de police privés. Sont exclues du champ d'application de la présente définition les personnes occupant un poste de direction ou un poste de confiance comportant l'accès à des renseignements confidentiels en matière de

relations du travail. (*employee*)

[32] In considering this issue in the Second Decision, the Adjudicator noted an "anomaly" in the CLC between Part I and Part III, that a unionized dependent contractor could challenge an unjust dismissal under Part I, but a non-unionized dependent contractor could not do so under Part III. The Adjudicator concluded that such an interpretation is not consistent with the expanded coverage intended when s. 240 was introduced.

[33] Further in considering the "anomaly" between Parts I and III of the CLC, the Adjudicator relied upon *Wilson* (issued after *Peepeekisis No. 1*) where the Supreme Court at paras 44 and 46 states:

> [44] The references in the statement to the right of employees to "fundamental" protection from arbitrary dismissal and to the fact that such protection was "already a part of all collective agreements" make it difficult, with respect, to draw any inference other than that **Parliament intended to expand the dismissal rights of non-unionized federal employees in a way that, if not identically, then certainly analogously matched those held by unionized employees (emphasis added).**
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> […]
>
> [46] And this, in fact, is how the new provisions have been interpreted by labour law scholars and almost all the adjudicators appointed to apply them, namely, that the purpose of the 1978 provisions in ss.240 to 246 was to offer a statutory alternative to the common law of dismissals and to conceptually align the protections from unjust dismissals for non-unionized federal employees with those available to unionized employees…

[34] While stopping short of holding that s. 240 should be interpreted in the same manner as the Part I provisions, *Wilson* does support a conclusion that s. 240 and Part III can be interpreted

"analogously" to Part I. Here the Adjudicator, relying upon *Wilson*, concluded that Mr. Dieter, as a dependent contractor, is entitled to relief under s. 240.

[35] A reasonable decision is one which shows a consistent consideration of the text, context, and purpose of the statute. Here, the Adjudicator concludes that the CLC should be interpreted as a whole and that the term "employee" should not be interpreted in isolation from the rest of the statute particularly when considering its overall purpose. This is a proper approach, and in keeping with the accepted approach to statutory interpretation. The overall purpose and context of the CLC informs the interpretative task under Part III: *Burchill v Canada*, 2010 FCA 145 at para 11. The CLC should be interpreted as a whole, as the Adjudicator reasonably concluded.

[36] Further, as noted above, *Peepeekisis No. 1* was binding on the Adjudicator, as was the decision in *Wilson.* This was part of the overall context which the Adjudicator had to take into consideration. On a reasonableness review this narrows the range of options available to the Adjudicator (*Delios*, at para 27).

[37] The decision in *Wilson* deals with the same provisions of the CLC albeit within a different factual context. The Adjudicator relied upon *Wilson* to conclude that Part III of the CLC should be interpreted analogously to Part I. In so doing, the Adjudicator did not directly import Part I of the CLC into Part III, rather, he undertook the analysis which Justice Barnes found was lacking in the First Decision. He concluded that a dependent contractor *could* be covered by s.240, based on *Wilson,* and based on the fact that Mr. Dieter was closer to the employee end of

the “independent contractor- employee” continuum. This analysis is the proper approach for the Adjudicator to take, and is consistent with a contextual interpretation of the CLC.

[38] The Adjudicator followed the accepted approach to statutory interpretation, and the applicable case law. His decision has the necessary hallmarks of reasonableness. The decision is reasonable and the Adjudicator did not err in analogizing Parts I and III of the CLC based upon the facts before him.

D. *Did the Adjudicator err in the interpretation of s.240 of the CLC?*

(1) Legal Principles

[39] The Applicant argues that the Adjudicator erred in the interpretation of s.240 of the CLC and it argues that *Wilson* required that the Adjudicator to complete a “control test” analysis to properly assess Mr. Dieter’s status.

[40] Section 240 states as follows:

Complaint to inspector for unjust dismissal	**Plainte**
240 (1) Subject to subsections (2) and 242(3.1), any person	**240 (1)** Sous réserve des paragraphes (2) et 242(3.1), toute personne qui se croit injustement congédiée peut déposer une plainte écrite auprès d’un inspecteur si :
(a) who has completed twelve consecutive months of continuous employment by an employer, and	**a)** d’une part, elle travaille sans interruption depuis au moins douze mois pour le même employeur;

(b) who is not a member of a group of employees subject to a collective agreement, may make a complaint in writing to an inspector if the employee has been dismissed and considers the dismissal to be unjust.	**b)** d'autre part, elle ne fait pas partie d'un groupe d'employés régis par une convention collective.
Time for making complaint	**Délai**
(2) Subject to subsection (3), a complaint under subsection (1) shall be made within ninety days from the date on which the person making the complaint was dismissed.	**(2)** Sous réserve du paragraphe (3), la plainte doit être déposée dans les quatre-vingt-dix jours qui suivent la date du congédiement.
Extension of time	**Prorogation du délai**
(3) The Minister may extend the period of time referred to in subsection (2) where the Minister is satisfied that a complaint was made in that period to a government official who had no authority to deal with the complaint but that the person making the complaint believed the official had that authority.	**(3)** Le ministre peut proroger le délai fixé au paragraphe (2) dans les cas où il est convaincu que l'intéressé a déposé sa plainte à temps mais auprès d'un fonctionnaire qu'il croyait, à tort, habilité à la recevoir.

[41] Section 240 is in Part III of the CLC which applies to non-unionized employees. Under s.240, the term "person" is not defined. However, courts have held that in order to be a "person" under s.240, one must have the status of an employee at common law (*Dynamex*, at para 49).

[42] In this case then, the Adjudicator had to assess if Mr. Dieter, being a dependent contractor, was also an "employee", and therefore a "person" within the meaning of s.240. In

undertaking this analysis, the Adjudicator stated from the finding in *Peepeekisis No. 1,* that Mr. Dieter was a dependent contractor.

[43] At common law, a distinction is drawn between a contractor and employee. The Supreme Court of Canada in *671122 Ontario Ltd. v Sagaz Industries Canada Inc.*, 2001 SCC 59 [*Sagaz*] set out the relevant factors to be assessed. The Court noted the "control" test which considers the level of employer control; the "organizational test" which looks at the centrality of the employee's work to the organization; and the multi-factor test which considers all relevant factors as outlined in *Wiebe Door Services v MNR*, [1986] 3 FC 553 (FCA).

[44] The Court in *Sagaz* concluded at para 47:

> Although there is no universal test to determine whether a person is an employee or an independent contractor…[t]he 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.

[45] Further, the Ontario Court of Appeal in *McKee v Reid's Heritage Homes Ltd*., 2009 ONCA 916 [*McKee*] identified a "dependent contractor" category between the contractor and employee categories. The dependent contractor category includes "those non-employment work relationships that exhibit a certain minimum economic dependency, which may be demonstrated by complete or near-complete exclusivity" (*McKee*, at para 32).

[46] *McKee* outlines the criteria to determine if one is an independent contractor, dependent contractor, or employee. The first is to determine if a worker is a contractor or employee, under the *Sagaz* principles. The court outlines the next part of the analysis at paras 34 and 36:

> [34] The next step, required only if the first step results in a contractor conclusion, determines whether the contractor is independent or dependent, for which a worker's exclusivity is determinative, as it demonstrates economic dependence.
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> […]
>
> [36] These decisions have frequently recognized the policy justification for using the "intermediate" status doctrine in order to extend the safeguards of the employment contract to self-employed workers who are subject to relatively high levels of subordination and/or economic dependency, but who, technically, do not qualify as "employees" *strict sensu*…

[47] If the conclusion is that one is a dependent contractor then a right to reasonable notice on termination is established (*McKee*, at para 30).

(2) Section 240 and Dependent Contractors

[48] The Adjudicator appropriately began his statutory analysis by considering s.240's overall purpose, in order to determine whether s.240 bars the inclusion of dependent contractors. That purpose was described by the Minister of Labour at the time of its adoption as follows:

> The intent of this provision is to provide employees not represented by a union, including managers and professionals, with the right to appeal against arbitrary dismissal—protection the government believes to be a fundamental right of workers and already a part of all collective agreements.

[49] The Adjudicator then took note of the adjudicative jurisprudence which has interpreted s.240 broadly in relation to the term "employee". For example, in *Stanley and Road Link Transportation Ltd* [1987] 17 CCEL 176 [*Stanley*] the adjudicator concluded that the word "person" included the term "dependent contractor." The adjudicator in *Stanley* further found that Parliament intentionally did not define "employee" for the unjust dismissal provisions of the CLC in order to avoid a narrow interpretation of the word (see also Stacey Reginald Ball, *Canadian Employment Law*, at 21-6.1).

[50] In *Masters v Bekins Moving & Storage (Canada) Ltd*., [2000] CLAD No. 702 [*Masters*], the adjudicator applied this broad interpretation of s.240, concluding "that those persons in a position of economic dependency are not exploited by those with economic power".

[51] Additionally, this Court has affirmed the comments in both *Masters* and *Stanley*. In *C.P. Ships Trucking Ltd. v Kuntze*, 2007 FC 1225 at para 29 [*Kuntze*], the Court held that the term "person" in s.240 imports a wider meaning than the general term of "employee."

[52] All of these cases are supported by *Wilson*, which drew a direct link between Parts I and III of the CLC.

[53] Therefore, by rendering a decision consistent with these cases, the Adjudicator's decision was reasonable. The Adjudicator's range of outcomes was constrained, most notably by *Wilson*, but also by the other adjudicative decisions. These decisions provided that s.240 must be

interpreted with regard to the "ameliorative" purpose of the CLC generally and Part III in particular.

[54] In assessing the reasonableness of the Adjudicator's decision, it is appropriate for the Court to consider alternative interpretations (*Williams v Canada (Public Safety and Emergency Preparedness)*, 2017 FCA 252 at para 52). Here the rival interpretation, that dependent contractors cannot be included in s.240, would belie the overall statutory scheme and call into question *Wilson* and the adjudicative jurisprudence which interprets s.240 broadly.

[55] Therefore, the Adjudicator's interpretation is consistent with the overall purpose of the CLC and the decision in *Wilson*. The Adjudicator's decision that s.240 encompasses dependent contractors was, therefore, reasonable.

(3) Mr. Dieter's Status

[56] The evidence before the Adjudicator demonstrated that Mr. Dieter's employment circumstances were of the nature contemplated in *Sagaz* and *McKee*. Mr. Dieter worked exclusively for the Peepeekisis; his contract stated that he was bound by "with the acts, protocol, codes of ethics, rules and customs pertaining to work practices and as adopted by Peepeekisis Cree Nation…."; and he conducted extensive deliveries for the Peepeekisis, delivering water to 44 residences 5 days a week. Mr. Dieter was exclusive to the Peepeekisis.

[57] As such, the Adjudicator's assessment of Mr. Dieter's exclusivity "represents an appropriate assessment of the evidence" (*Peepeekisis No. 1*, at para 8). As noted in *Peepeekisis*

No. 1, at para 10, "[i]f the scope of work contemplated by the parties was something other than full time and exclusive, it would be reasonable to expect better evidence on the point from Peepeekisis." The evidence before the Adjudicator supported his conclusion.

[58] The Applicant relies on *Wilson* to argue that the Adjudicator's decision is unreasonable. In relying on *Wilson*, the Applicant is in effect attacking the finding that Mr. Dieter was a dependent contractor, and it argues that the dependent contractor analysis needed to be reconsidered. However for the reasons outlined above, that argument has no merit as the Adjudicator was bound by *Peepeekisis No.1*.

[59] Furthermore, the decision in *Wilson* does not address the issue of standing to make a claim of unjust dismissal under s.240 of the CLC. In *Wilson*, there was no question raised as to the jurisdiction of the adjudicator over the applicant as an "employee." The issue was if the statute ousted the ability of an employer to dismiss without cause and on reasonable notice at common law.

[60] Here, the issue for the Adjudicator was his jurisdiction after finding that Mr. Dieter was a dependent contractor. That jurisdiction is dependent on the common law principles defined in *Sagaz* and *McKee*, and involves an appreciation of the factual circumstances of Mr. Dieter's case. The dependent contractor finding is not used to grant a remedy to Mr. Dieter, but rather is used to determine if Mr. Dieter is entitled to assert a claim under s.240 of the CLC, in absence of a definition of "person" in that section.

[61] The Adjudicator's interpretation of s.240 is reasonable and in keeping with the text and purpose of the CLC, and the relevant case law. The Adjudicator concluded that Mr. Dieter's facts made him an exclusive worker entitled to the protection of s.240. This was a reasonable conclusion in light of the application of the common law principles which must be used to determine whether Mr. Dieter was an "employee" for the purposes of s.240 (*Dynamex*, at para 49).

[62] On a reasonableness review, regardless if the Court agrees with the outcome, the Adjudicator's decision must engage with the facts of the case, the applicable law, and be within a range of acceptable outcomes (*Dunsmuir*, at para 47). Here, the Adjudicator properly interpreted s.240 consistent with the Supreme Court of Canada's direction in *Wilson* and took account of Mr. Dieter's exclusivity with and dependence on the Peepeekisis. Overall, the Applicant has not identified any error by the Adjudicator. Therefore there is no basis for this Court to interfere with the decision.

V. Costs

[63] Mr. Dieter has been successful on this judicial review and is entitled to costs. He seeks costs on an indemnity basis in the amount of $20,000.00. The Applicant suggests costs pursuant to the tariff. The Applicant also notes that costs were not awarded in *Peepeekisis No. 1* despite the Applicant being successful. Further the Applicant argues that the record before the Adjudicator and the Court is the same as in the earlier adjudication and judicial review.

[64] Considering the circumstances, I am awarding costs in favour of the Respondent in the amount of $7,500.00.

JUDGMENT in T-675-17

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed; and

2. The Respondent shall have costs in the amount of $7,500.00.

"Ann Marie McDonald"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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