

Federal Court of  
Appeal



Cour d'appel  
fédérale

**Date: 20111212**

**Docket: A-29-11**

**Citation: 2011 FCA 349**

**CORAM: EVANS J.A.  
LAYDEN-STEVENSON J.A.  
MAINVILLE J.A**

**BETWEEN:**

**ANIGER CONSULTING INC.**

**Appellant**

**and**

**HER MAJESTY THE QUEEN**

**Respondent**

Heard at Calgary, Alberta, on December 12, 2011.

Judgment delivered from the Bench at Calgary, Alberta, on December 12, 2011.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**LAYDEN-STEVENSON J.A.**

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**REASONS FOR JUDGMENT OF THE COURT**

**(Delivered from the Bench at Calgary, Alberta on December 12, 2011)**

**LAYDEN-STEVENSON J.A.**

[1] This is an appeal of the decision of Justice Little of the Tax Court of Canada (the judge). The only issue is whether the judge erred in concluding that the appellant, Aniger Consulting Inc. (Aniger) is a “personal services business” within the meaning of subsection 125(7) of the *Income Tax Act*, R.S.C. 1985 (5th) Supp), as amended (the Act).

[2] The factual context is provided at paragraphs 1 through 30 of the judge's reasons, which are reported as 2010 TCC 637, and need not repeated here.

[3] We are of the view that the appeal must be allowed on the basis that the judge failed to appreciate or apply the legal test contained in this Court's decision in *Dynamic Industries Inc. v. Canada*, 2005 FCA 211. Counsel for the respondent acknowledges that nearly all of the factors relied upon by the judge to support his decision relate to the issue of the reasonableness of the fees charged by Aniger rather than to the factors associated with the test to determine whether the legal relationship is that of employee or independent contractor.

[4] We are satisfied that, had the judge applied and analysed the appropriate factors, he would have been bound to conclude that the appellant is not a "personal services business".

[5] The appeal will be allowed and the matter will be remitted to the Minister for reassessment in accordance with these reasons. The appellant will have its costs on appeal and in the court below.

"Carolyn Layden-Stevenson"

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-29-11

**STYLE OF CAUSE:** ANIGER CONSULTING INC. v. HER  
MAJESTY THE QUEEN

**PLACE OF HEARING:** CALGARY, ALBERTA

**DATE OF HEARING:** DECEMBER 12, 2011

**REASONS FOR JUDGMENT  
OF THE COURT BY:** EVANS J.A.  
LAYDEN-STEVENSON J.A.  
MAINVILLE J.A.

**DELIVERED FROM THE BENCH BY:** LAYDEN-STEVENSON J.A.

**APPEARANCES:**

Mr. Patrick Lindsay FOR THE APPLICANT

Ms. Cynthia Isenor FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

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Deputy Attorney General of Canada