

Federal Court of Appeal



Cour d'appel fédérale

A-177-96

CORAM: HUGESSEN J.A.
DÉCARY J.A.
CHEVALIER D.J.

BETWEEN: EDDY SORENSEN

Applicant

- AND -

THE ATTORNEY GENERAL OF CANADA

Respondent

Heard at Québec, Quebec, on Tuesday, April 29, 1997.

Judgment delivered from the bench on April 29, 1997.

REASONS FOR JUDGMENT OF THE COURT BY: CHEVALIER D.J.

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the bench at Québec
on April 29, 1997)

CHEVALIER D.J.

This is an application for judicial review of a decision by the Tax Court of Canada dismissing the applicant's appeal of a decision of the Minister of National

Revenue declaring that he did not hold insurable employment within the meaning of the *Unemployment Insurance Act*, R.S.C. 1988, c. U-I.

The Minister concluded that no employer-employee relationship existed between the applicant and the payer, that the wage report and record of employment from the payer were merely a pretence in order to make the applicant eligible for unemployment insurance benefits, and that it was not reasonable to conclude that an employment contract similar to theirs would have existed if they had been dealing with each other at arm's length.

The Minister's decision covers three periods: from July 30 to November 2, 1990, from May 20 to July 19, 1991, and from October 14 to November 8, 1991.

As regards the first period, it is admitted and established that paragraph 3(2)(c) of the Act was not yet in force at the time. The conclusions in the judgment with respect to that period should therefore be rejected.

As for the other two periods, the Deputy Judge of the Tax Court of Canada held, first of all, that the payer was operating a business and that there existed a genuine relationship of subordination and a real contract of employment between the payer and the applicant.

Turning next to the interpretation of subparagraph 3(2)(c)(ii) of the Act and to its application, the Deputy Judge simply stated that “having regard to all the circumstances, including the endorsement of the payer’s \$50,000 debt by the appellant, the payer and the appellant would never have entered into a similar contract of employment if they had been dealing with each other at arm’s length” and that, accordingly, “the decision by the Minister . . . resulted from a proper exercise of his discretionary authority”.

With respect, we are of the view that this judgment is incorrect for the following two reasons:

First, the record contains uncontradicted, corroborated and at first blush conclusive evidence that the remuneration paid to the applicant, the terms and conditions of employment and the importance of the work performed by him are circumstances from which it may reasonably be inferred that parties dealing with each other at arm’s length would have entered into a substantially similar contract of employment within the meaning of subparagraph 3(2)(c)(ii).

As regards the reference in the judgment to the endorsement of the payer’s \$50,000 debt by the applicant, not only did the Minister fail to mention this in stating the facts on which he had based his decision, but the only evidence in the record on this point demonstrates precisely the opposite. It was in fact established that, when a loan was taken out to pay for, among other things, certain renovations to a building

belonging to the payer, no personal undertaking was given to guarantee its repayment, and that the only security given in the circumstances was an airplane belonging to the payer.

It is true that one of the facts raised by the Minister in support of his determination was that on another occasion, and with two other people, the applicant had guaranteed a \$15,000 line of credit. The Deputy Judge of the Tax Court made no reference to this, and it is impossible for us to say what effect such an act might have had on his decision.

For these reasons, the application will be allowed, the decision of the Tax Court of Canada will be set aside, and the matter will be referred back to that Court for redetermination on the basis that the applicant held insurable employment in 1990.

François Chevalier
D.J.

Certified true translation
Erich Klein

Court No. A-177-96

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REASONS FOR JUDGMENT OF THE COURT

FEDERAL COURT OF APPEAL

**NAMES OF COUNSEL AND SOLICITORS OF
RECORD**

COURT FILE NO.: A-177-96

STYLE OF CAUSE: EDDY SORENSEN

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- AND -

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Respondent

PLACE OF HEARING:

Québec

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

Hugessen J.A.

Décary J.A.

Chevalier D.J.

DATED:

April 29, 1997

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