

MONTRÉAL, QUEBEC, THE 16th DAY OF JANUARY 1997

**CORAM: THE HONOURABLE MR. JUSTICE HUGESSEN
THE HONOURABLE MR. JUSTICE DÉCARY
THE HONOURABLE DEPUTY JUSTICE CHEVALIER**

BETWEEN: RAYMONDE BÉRARD,

Applicant,

AND:

MINISTER OF NATIONAL REVENUE,

Respondent.

J U D G M E N T

The application for judicial review is dismissed.

James K. Hugessen

J.A.

Certified true translation

Stephen Balogh

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

BETWEEN:

RAYMONDE BÉRARD,

Applicant,

AND:

MINISTER OF NATIONAL REVENUE,

Respondent.

Hearing held at Montréal
on Thursday, January 16, 1997

Judgment delivered at Montréal
on Thursday, January 16, 1997

REASONS FOR JUDGMENT OF THE COURT BY:

HUGESSEN J.A.

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

BETWEEN:

RAYMONDE BÉRARD,

Applicant,

AND:

MINISTER OF NATIONAL REVENUE,

Respondent.

REASONS FOR JUDGMENT OF THE COURT
(Delivered from the bench at Montréal
on Thursday, January 16, 1997)

HUGESSEN J.A.

This is an application for judicial review of a decision of the Tax Court of Canada that affirmed the Minister's determination that the applicant did not hold insurable employment.

The only question of law raised by counsel for the applicant relates to the interpretation of paragraph 3(2)(c) of the *Unemployment Insurance Act*:

3. (2) Excepted employment is
...
(c) subject to paragraph (d), employment where the employer and employee are not dealing with each other at arm's length and, for the purposes of this paragraph,

(i) the question of whether persons are not dealing with each other at arm's length shall be determined in accordance with the provisions of the *Income Tax Act*, and
(ii) where the employer is, within the meaning of that Act, related to the employee, they shall be deemed to deal

with each other at arm's length if the Minister of National Revenue is satisfied that, having regard to all the circumstances of the employment, including the remuneration paid, the terms and conditions, the duration and the nature and importance of the work performed, it is reasonable to conclude that they would have entered into a substantially similar contract of employment if they had been dealing with each other at arm's length;
.....

3. (2) Les emplois exclus sont les suivants:

...
c) sous réserve de l'alinéa d), tout emploi lorsque l'employeur et l'employé ont entre eux un lien de dépendance, pour l'application du présent alinéa:

(i) la question de savoir si des personnes ont entre elles un lien de dépendance étant déterminée en conformité avec la *Loi de l'impôt sur le revenu*,

(ii) l'employeur et l'employé, lorsqu'ils sont des personnes liées entre elles, au sens de cette loi, étant réputés ne pas avoir de lien de dépendance si le ministre du Revenu national est convaincu qu'il est raisonnable de conclure, compte tenu de toutes les circonstances, notamment la rétribution versée, les modalités d'emploi ainsi que la durée, la nature et l'importance du travail accompli, qu'ils auraient conclu entre eux un contrat de travail à peu près semblable s'ils n'avaient pas eu lien de dépendance;
.....

According to counsel, a teleological interpretation of this provision requires that only those employments of which the conditions are inordinately favourable to the employee be excepted. We disagree. Nothing in either the provision or the context suggests such an interpretation. The clear purpose of the legislation is to except contracts of employment between related persons that are not similar in nature to a normal contract between persons dealing with each other at arm's length. It is in our view clear that this abnormality can just as well take the form of conditions unfavourable to the employee as of favourable conditions. In either case, the employer-employee relationship is abnormal and can be suspected of having been influenced by factors other than economic forces in the labour market.

The application for judicial review will be dismissed.

James K. Hugessen

J.A.

Certified true translation

Stephen Balogh

FEDERAL COURT OF APPEAL

A-487-96

BETWEEN:

RAYMONDE BÉRARD,

Applicant,

AND:

MINISTER OF NATIONAL REVENUE,

Respondent.

REASONS FOR JUDGMENT OF THE COURT

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

COURT FILE NO.: A-487-96

STYLE OF CAUSE: RAYMONDE BÉRARD,
Applicant,

AND:
MINISTER OF NATIONAL REVENUE,
Respondent.

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: January 16, 1997

REASONS FOR JUDGMENT OF THE COURT (THE HONOURABLE MR. JUSTICE HUGESSEN, THE HONOURABLE MR. JUSTICE DÉCARY AND THE HONOURABLE DEPUTY JUSTICE CHEVALIER)

DELIVERED FROM THE BENCH BY: The Honourable Mr. Justice Hugessen

Dated: January 16, 1997

APPEARANCES:

Gilbert Nadon for the applicant

Marie-Andrée Legault for the respondent

SOLICITORS OF RECORD:

Campeau, Ouellet & Associés
Montréal, Quebec for the applicant

George Thomson
Deputy Attorney General
of Canada
Ottawa, Ontario for the respondent