

Docket: 2015-2303(EI)

BETWEEN:

SYLVIE BELZILE,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

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Appeal heard on May 3, 2016, and decision rendered orally on  
May 6, 2016 at Montreal, Quebec.

Before: The Honourable Justice Patrick Boyle

Appearances:

Counsel for the Appellant: Angelo Caputo  
Counsel for the Respondent: Christina Ham

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**JUDGMENT**

In accordance with the reasons delivered orally at the hearing (a copy of which is attached hereto), the appeal made under the *Employment Insurance Act* is allowed, and the decision of the Minister of National Revenue is varied to reflect that Mme Belzile was in insurable employment in 2014.

Signed at Ottawa, Canada this 21st day of June 2016.

“Patrick Boyle”

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Boyle J.

Docket: 2015-2303(EI)

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SYLVIE BELZILE,

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EDITED VERSION OF TRANSCRIPT  
OF ORAL REASONS FOR JUDGMENT

Let the attached edited transcript of the Reasons for Judgment delivered orally from the Bench at Montreal, Quebec on May 6, 2016 be filed. I have edited the transcript (certified by the Court Reporter) for style, clarity and to make minor corrections only. I did not make any substantive changes.

Signed at Ottawa, Canada this 21st day of June 2016.

“Patrick Boyle”

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Boyle J.

Citation:2016 TCC 157  
Date:20160621  
Docket: 2015-2303(EI)

BETWEEN:

SYLVIE BELZILE,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

### **REASONS FOR JUDGMENT**

Boyle J.

[1] The only issue to be decided in the appeal of Mme Belzile heard earlier this week in Montréal is whether, having heard and seen the evidence at the hearing, the Minister would have ruled that it was reasonable to conclude for employment insurance purposes that Mme Belzile and her family-owned company would not have entered into a substantially similar contract of employment for 2014 had they been dealing at arm's length.

[2] 91973164 Québec Inc. operates a business under the name Pavage Casabella ("Casabella"). The business has been operating for 28 years and was incorporated about 10 years ago. It is owned as to one-third each by each of the Appellant, her common-law husband Antonio Castronovo and their daughter Alexandra Castronovo. Each of these three worked for the company. Pavage Casabella is very much a family-owned and run business. Their late son also worked for Casabella until last year.

[3] In addition, Casabella employs another five or six arm's length workers. Casabella's business is landscaping. The business lays paving stones, asphalt and lawns. It also does the preparatory excavation and foundation or bedding work. It

has expanded into other similar landscaping work. It is a seasonal business starting in May and ending in October or November, depending upon the weather.

[4] The Appellant and her husband testified on the Appellant's behalf. They are Québec Inc.'s president and vice-president respectively.

[5] The Respondent did not call any witness or put in any evidence through the Appellant's witnesses beyond cross-examinations. This means I do not know what was before the Minister of National Revenue ("Minister") that formed the basis of his decision beyond what is pleaded in the reply, which was not prepared by a lawyer.

[6] There was no dispute that Mme Belzile was an employee of the company, that she genuinely worked for the company, and that she provided service to the company that was worth what she was paid.

[7] Hers was a new position in 2014. It was created with a view to growing the business and to lighten some of the burdens on Mr. Castronovo, freeing his time to focus on dealing with clients and potential clients to generate new contracts, and on ensuring the contracted work was done.

[8] Mme Belzile was hired as an employee of the company and commenced her employment on April 28th, 2014. Mme Belzile's function and responsibilities were clearly and consistently described. About two-thirds of her time was delivering promotional pamphlets, primarily in the new subdivisions in the Montreal area north of Autoroute 40, and conducting telephone solicitations to people in those neighborhoods.

[9] Pamphlet distribution would normally be done in the afternoons and telephone solicitations in the late afternoons and early evenings. Up until then, pamphlet distribution had been done by Mr. Castronovo and Alexandra Castronovo. Since 2014 it has been done by Mme Belzile and Alexandra Castronovo. Alexandra Castronovo has other responsibilities including, accounting, bookkeeping, HR, payroll, payables and receivables-type functions. Pamphlet distribution and telephone solicitations generated contracts for the current season and, later in the season, generated work for the following season.

[10] The company had not been engaged in telephone solicitations prior to Mme Belzile's hiring. Alexandra Castronovo was also involved in the telephone solicitation activities. These efforts were successful for the company. It increased

its volumes of excavation and asphalt work and it got more contracts in the targeted areas. These efforts continue.

[11] The other third of Mme Belzile's time and responsibility was for on-site work. In jobs involving a significant amount of paving stone, she was responsible for finishing the installation by applying and distributing the polymer sand and soaking it into place. She would be notified when jobs were otherwise nearing completion. She was also responsible for the project cleanup of the considerable mortar dust which would settle on plants, yards, decks, patio furniture, et cetera, when paving stones are cut. Prior to the hiring of Mme Belzile, this finishing work had been done by the other employed workers.

[12] Her other on-site responsibilities included acting as essentially a runner to pick up and deliver missing, broken or extra material, equipment or supplies, customers' final drawings and plans, and collecting payment. These tasks had also been done previously by the company's other employees ranging from Mr. Castronovo, le gérant du chantier, or one of the labourers.

[13] It was agreed that the company would pay Mme Belzile for a 40-hour workweek at \$17 per hour. The evidence is that this reflected about what everyone else employed by the company was paid. Mme Belzile recorded her hours and her activities at least weekly. This included keeping track of where she went so she could return to deliver another flyer two or three weeks later.

[14] She was paid a regular salary for a 40-hour week. The Appellant generally worked 40 hours per week. She always worked more than 35 hours and occasionally worked a few additional hours beyond 40 hours in a week. She was paid weekly by cheque and was always paid on time.

[15] I do not know the specifics of how the other employees were paid. Since Mme Belzile's pay was set to reflect what others were paid, it would be a reasonable inference that they were also paid for a fixed number of hours of work per week with a reasonable degree of flexibility reflecting such things as workload and weather.

[16] Mme Belzile began to work for the company on April 28th, 2014. She was laid off on October 17th, 2014 and expected to return to work in April or May of 2015, which she did. She continues to work for the company in this position.

[17] Mme Belzile had not worked for the company before this. She had owned and operated a tanning salon for the eight or nine prior years. She had decided to get out of the tanning salon business and work at their other family business. This was done to lighten the load on her husband, who by then had to work too much and was never home. The tanning salon was closed on May 30th at the end of its lease. The Minister's assumption is that the tanning salon business was sold by the Appellant and that she ceased operating it on May 30th. That is not necessarily inconsistent with the Appellant's testimony.

[18] For her first month working for the company, Mme Belzile had scaled back the tanning salon's hours and was not open Saturdays, Sundays or Mondays. May is traditionally a slow month for tanning salons. She would also close for the afternoons at times that month. In order to wind down her involvement with the tanning salon and fulfill her employment commitments to the company, Mme Belzile had to juggle a lot of things and be both flexible and very busy. The Minister's assumptions are consistent with her evidence that she made this transition month work. The Minister assumed that she did her work for the company in the afternoons and evenings in May.

[19] The Minister also assumed the company allowed her to alter her schedule for the first four weeks because she was his spouse. The evidence is that her work was largely to be done in the afternoons and evenings. Obviously, she was not the company's spouse. Her spouse was the vice-president of the company of which she was president. There was no evidence this determined how she was treated by her employer in her first month of working for the company. It would be entirely reasonable in an arm's-length setting to expect a reasonable degree of flexibility and transitioning at the outset of a new hire's onboarding process.

[20] During 2014, Mme Belzile took one week's vacation for which she was not paid. A week's summer vacation even in a seasonable job appears reasonable in an arm's-length situation and there is no evidence this was not an available option to the other employees of the company.

[21] Mme Belzile did not receive vacation pay in 2014. She agreed to defer it to 2015. The other employees did receive their vacation pay regularly in 2014 which means that if they also took a week off, it would have been unpaid as well. While deferring her vacation pay would not generally be expected in an arm's-length situation, certainly that alone would not be sufficient to conclude that Mme Belzile and the company, had they been dealing at arm's length, would not have agreed to an employment contract that, overall, was substantially similar to the one they had.

[22] Mme Belzile was laid off by the company on October 17th. The other employees were laid off on October 10th. There was no suggestion this was done for Employment Insurance or other non-business purposes. This additional week is consistent with the fact that she was responsible throughout for doing the finishing, setting and cleaning up after the other employees had finished laying the paving stone. She was also involved in closing up the company's rented storage lot of machinery, equipment and material at the end of the season. It is reasonable that an arm's-length employee with her same responsibilities would stay on for a number of days beyond other workers whose work was finished for the season.

[23] Mme Belzile mostly used her personal vehicle for her work for the company. There was a company pickup truck stored at the company's rental lot which she would use only if it was needed to deliver machinery, equipment or supplies. She was reimbursed by the company for her actual use of her own vehicle. That appears to be a reasonable arm's-length approach. There was no suggestion other employees were not similarly reimbursed. There was no suggestion of any personal benefit or abuse of her access to the pickup truck.

[24] The standard of review in an appeal such as this involving paragraph 5(3)(b) of the *Employment Insurance Act* is whether the Minister's decision to uphold its ruling was properly arrived at and is reasonable in light of the evidence before the Minister and as supplemented before the Court. See for example the Federal Court of Appeal decisions in *Légaré* in 1999<sup>1</sup> and *Pérusse* in 2000<sup>2</sup> as well as this Court's 2005 decision in *Birkland*.<sup>3</sup>

[25] In light of all of the above, it is my assessment that if the Minister had the benefit of all of the evidence before the Court, the Minister could not reasonably have failed to conclude that the company and an arm's-length employee would have entered into a substantially similar contract of employment to that between the company and Mme Belzile.

[26] As the Minister's decision was not reasonable in light of the fullness of the evidence, I will be ordering that the Minister's decision be varied to reflect that Mme Belzile was in insurable employment in 2014.

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<sup>1</sup> [1999] F.C.J. No. 878

<sup>2</sup> [2000] F.C.J. No. 310

<sup>3</sup> 2005 TCC 291

Signed at Ottawa, Canada this 21st day of June 2016.

“Patrick Boyle”

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Boyle J.



CITATION: 2016 TCC 157  
COURT FILE NO.: 2015-2303(EI)  
STYLE OF CAUSE: SYLVIE BELZILE AND THE MINISTER  
OF NATIONAL REVENUE  
PLACE OF HEARING: Montreal, QC  
DATE OF HEARING: May 6, 2016  
REASONS FOR JUDGMENT BY: The Honourable Justice Patrick Boyle  
DATE OF JUDGMENT: June 21, 2016

APPEARANCES:

Counsel for the Appellant: Angelo Caputo  
Counsel for the Respondent: Christina Ham

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

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