

BETWEEN:

CENTRE DE LANGUES DE TROIS-RIVIÈRES INC.,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

Appeal heard on February 18, 2003 at Trois-Rivières, Quebec

Before: The Honourable Judge Alain Tardif

Appearances:

Agent for the Appellant: Jocelyne Beaulieu

Counsel for the Respondent: Stéphanie Côté

JUDGMENT

The appeal is dismissed and the Minister's decision is confirmed, in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 31st day of March 2003.

"Alain Tardif"

J.T.C.C.

BETWEEN:

CENTRE DE LANGUES DE TROIS-RIVIÈRES INC.,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

REASONS FOR JUDGMENT

Tardif, J.T.C.C.

[1] This appeal is from a September 21, 2001 decision by the respondent that the work performed by a number of persons as language teachers during the 1998, 1999 and 2000 taxation years constituted insurable employment within the meaning of the *Employment Insurance Act* ("the Act").

[2] Jocelyne Beaulieu represented the appellant corporation in her capacity as the majority shareholder. She admitted the truth of the following assumptions of fact:

- (a) the appellant was incorporated on October 8, 1997;
- (b) the majority shareholder in the appellant corporation is Jocelyne Beaulieu;
- (c) the appellant corporation's place of business is located at 1385, rue Notre-Dame in Trois-Rivières;
- (d) during the taxation years at issue, the appellant corporation operated a business providing language courses, particularly in English and Spanish, as well as translation services;
- (e) Jocelyne Beaulieu directed the appellant corporation's operations;

...

- (i) the appellant company controlled and recorded the hours worked;
- ...
- (k) the workers were usually paid by cheque, every two weeks;
- ...
- (m) during the taxation years at issue, the appellant corporation did not make any source deductions for employment insurance contributions from the workers' pay or remit any such contributions to the respondent.

[3] Ms Beaulieu explained that the appellant corporation started up a new business, the main commercial activities of which were teaching English and Spanish and providing translation services.

[4] From the start of the business, Ms Beaulieu took steps to obtain all the relevant information concerning the conditions required for the persons acting as teachers and translators to work as self-employed workers, not as employees. After she obtained the information, the business operated on the assumption that the teachers and translators were self-employed workers.

[5] Some teachers were recruited through advertisements, but mainly the teachers were recruited by word of mouth. Ms Beaulieu interviewed the teachers and explained to them the terms and conditions and her expectations concerning the way in which the teaching work was to be performed.

[6] It became clear that Ms Beaulieu showed very great respect for the human resources on which the appellant corporation had to rely. These feelings of great respect were also conveyed in a work setting where there was a strong desire for co-operation on both sides.

[7] The omnipresence of the concepts of respect and co-operation had the effect of creating an ideal work setting for all the activities related to the business's purposes.

[8] Ms Beaulieu explained, as was confirmed by the testimony of Jennifer Carley and Karine Brière, both of whom were directly involved since they

acted as English teachers during the periods at issue, that the relations between the teachers and the appellant corporation were excellent.

[9] The rule was that everyone benefited, in that nothing was imposed and everyone had a contribution to make. As a result, the teachers' availability, tastes and affinities were taken into account. The teachers had the possibility of indicating their constraints and reservations concerning the choice of students whom they wished to teach.

[10] This considerable latitude and freedom was also shown concerning the locations where private lessons were given and concerning the required tools of work. The teachers could use their own equipment or take the equipment made available and provided by the appellant corporation. As well, in the case of private lessons, the teachers could come to agreements with their students about where to meet.

[11] A legal relationship characterized by concepts of co-operation, freedom and considerable latitude complicates the exercise of determining whether a contract for services or a contract of service is involved, since these characteristics are usually associated with a relationship in which the parties deal with each other as equals.

[12] In this case, all the testimony was consistent. The only differences had to do with the interpretation of certain situations. The balance of the evidence is to the effect that Ms Beaulieu gave priority to harmonious relations with the persons who acted as teachers or translators.

[13] That said, in order to determine whether work has been performed under a contract of service or a contract for services, it is essential to analyse the facts in context so as to identify the parties' rights and obligations clearly. As well, the courts have repeatedly ruled that the rights and powers of the entity responsible for payment of the consideration must be taken into account.

[14] When a contract of service is involved, the employer need not have exercised its power of control. It is enough that this power exists and that the employer has not waived it. The same is true for the relationship of subordination. An employer that implements a policy of exemplary respect may give the impression that it has waived its power or abdicated its authority. Conversely, a relationship characterized by very great respect may give the impression that there

is no relationship of subordination. Assessing a situation may be further complicated if there is no concrete example of manifestation of this authority.

[15] In this case, the appellant corporation implemented a policy of respect, co-operation and teamwork. On the other hand, nothing in the evidence, of which the burden was on the appellant corporation, has established that the appellant corporation had no power of control over the persons it paid or had waived that power.

[16] The appellant corporation operated a business, the success of which was closely related to the performance and talent of the persons teaching the various language courses. In achieving the business's objective and ensuring its development, the appellant corporation relied on the satisfaction of the teachers and clients and on the quality of the services provided.

[17] In practice, however, the evidence has established that the business exercised tight control and ongoing follow-up over the activities of the teachers it paid. Granted, these teachers had a great deal of latitude concerning the locations where the courses were provided, but they were required to prepare reports and to submit them to the appellant corporation. It was clear from the testimony of Jennifer Carley and Karine Brière that Ms Beaulieu was indeed the boss, even though they demonstrated a great deal of esteem, appreciation and respect for the virtues that certainly made her an ideal employer.

[18] In fact, this organization was very flexible in meeting the clients' needs and responding to their expectations. However, that flexibility did not release the teachers from the obligation to provide the services or, otherwise, to notify the appellant corporation so that it could authorize a replacement.

[19] In theory, the teachers could have reached an agreement among themselves, but any arrangement was subject to the agreement or consent of the appellant corporation, which was responsible for co-ordinating the activities.

[20] Jennifer Carley and Karine Brière also acknowledged that the business was not their own, but that they introduced and represented themselves as working for the appellant corporation. Even though both these witnesses had excellent relations with the clients entrusted to them, they both acknowledged that these clients were not their own, but the clients of Centre de langues de Trois-Rivières inc. As well, all the clients were required to pay the cost of the courses to Centre de langues de

Trois-Rivières inc. The teachers were paid a fixed, definite amount, on the basis of a periodic activity report they were required to complete.

[21] The appellant corporation also required a report in order to issue the pay cheques, which was usually done every two weeks. Even though the situation apparently never arose, there is no doubt that a teacher who failed to meet the appellant corporation's standards regarding quality, assiduousness and evaluation would have been reprimanded and even dismissed.

[22] Overall, there is no doubt that the appellant corporation exercised control over the planning and development of the business. Although the teachers were closely associated with the smooth operation of the business, they were not a vital link in it.

[23] The teachers were fully integrated into the business and were required to follow the practices established by the appellant corporation, including completing the reports set out in specific clauses of certain contracts requiring the teachers to check the students' attendance at the courses they taught.

[24] The teachers were paid at an hourly rate: \$10 per hour for private lessons, and \$15 per hour for group classes. Although certain factors might vary, the appellant corporation always had the last word. Generally speaking, the teachers all had essentially the same conditions of employment.

[25] Travel costs were also reimbursed, depending on the locations where the courses were provided.

[26] Concerning the ownership of the tools of work, another test required to identify a contract of service, these tools were provided by the appellant corporation. Granted, the appellant corporation agreed that the teachers could use their own equipment, but it made the required tools available.

[27] That said, at this point it is important to note that the work required special skills; thus it was essential that the teachers be given latitude, since they were in the best position to assess the students' various levels of learning and development.

[28] In this regard, it appears from the evidence that the appellant corporation did not require the teachers whose services it retained to provide any equipment whatsoever. Elsewhere, this Court has repeatedly ruled that, in the case of work

requiring special skills, the power of control is usually exercised more over the results of the work performed than over the means to that end.

[29] Lastly, concerning the test of the chance of profit and the risk of loss, the evidence is decisive; the persons affected by the decision being appealed from had no chance of profit or risk of loss in performing their work. They taught and were paid at an hourly rate established when they were hired, with known variables depending on whether they gave private lessons or taught group classes. Their travel costs were also reimbursed.

[30] In conclusion, Ms Beaulieu started up a business in which the working relationships were clearly very good.

[31] The Court also noted that Ms Beaulieu cared very much about the teachers' status. She obtained information and wished to ensure that the work to be performed was done by persons working as self-employed workers.

[32] Although the employer wished and desired that to be the case, that desire clearly had no effect on the nature of the legal relationship between the parties. As well, this concept appeared to be much more present and of much greater concern to Ms Beaulieu than to the teachers, at least according to the teachers who testified. Only the facts adduced from the performance of the work were significant in determining the nature of the contract.

[33] In this case, certain factors might suggest that the teachers had a degree of latitude and freedom enjoyed by self-employed persons, but the balance of the evidence is to the effect that the work performed was done under a contract of service, since all the tests required to identify a contract of service are present and have been met.

[34] For these reasons, the appeal is dismissed.

Signed at Ottawa, Canada, this 31st day of March 2003.

"Alain Tardif"

J.T.C.C.

CITATION: 2003TCC81

COURT FILE NO.: 2001-4494(EI)

STYLE OF CAUSE: Centre de langues de Trois-Rivières
and Her Majesty the Queen

PLACE OF HEARING: Trois-Rivières, Quebec

DATE OF HEARING: February 18, 2003

REASONS FOR JUDGMENT BY: The Honourable Judge Alain Tardif

DATE OF JUDGMENT: March 31, 2003

APPEARANCES:

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COUNSEL OF RECORD:

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