

Docket: 2003-128(EI)

BETWEEN:

3087-6452 QUÉBEC INC.  
(AGENCE LE MONDE),

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

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Appeal heard on May 2, 2003, at Montréal, Quebec

Before: The Honourable Judge Louise Lamarre Proulx

Appearances:

Counsel for the Appellant: Christian Leblanc

Respondent's Agent: Antonia Paraherakis (Student-at-law)

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JUDGMENT

The appeal under subsection 103(1) of the *Employment Insurance Act* respecting a decision of the Minister of National Revenue dated November 1, 2002, is allowed, and the decision rendered by the Minister is vacated in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 3rd day of June 2003.

"Louise Lamarre Proulx"

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J.T.C.C.

[OFFICIAL ENGLISH TRANSLATION]

Citation: 2003TCC385

Date: 20030603

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**REASONS FOR JUDGMENT**

**Lamarre Proulx, J.T.C.C.**

[1] This is an appeal from a decision of the Minister of National Revenue (the "Minister") dated November 1, 2002, according to which Joan Bureau held insurable employment with the appellant during the period from March 25, 2001, to March 30, 2002.

[2] The facts on which the Minister relied in making his decision are described in paragraph 5 of the Reply to the Notice of Appeal (the "Reply") as follows:

[TRANSLATION]

- (a) The appellant is a placement agency which provides a legal interpretation and translation service;
- (b) The payer uses a list of approximately 600 to 1,000 interpreters in order to meet the needs of its clients;
- (c) Its main clients are the Municipal Court of Montréal and the various police stations in the metropolitan Montréal area;
- (d) During the period in issue, Joan Bureau was called by the appellant to work as an interpreter;
- (e) She worked on call;
- (f) She served as an interpreter for deaf persons;
- (g) She worked on the premises of the payer's clients;

- (h) The payer's client controlled and directed the worker;
- (i) The payer paid the interpreters in accordance with a rate that it had established;
- (j) The worker was paid at an hourly rate of \$20 with a three-hour minimum guarantee;
- (k) The payer reimbursed the worker for taxi expenses when she rendered services at night;
- (l) The payer billed its client;
- (m) The worker billed the payer on a monthly basis.

[3] Giovanni Sciascia, the president of the appellant, Yvan Hart and Alexandre Kubacki testified for the appellant party. Alain Lacoste testified for the respondent party.

[4] Mr. Sciascia is the sole shareholder of the appellant. He is also an official interpreter. He admitted subparagraphs 5(a) to (g), (i) and (k) to (m) of the Reply. As to subparagraph 5(h) of the Reply, he stated that the payer's client did not

control or direct the worker. She had to do the work of properly interpreting what the judge and witness said. As regards the remuneration referred to in subparagraph 5(j) of the Reply, he explained that the worker was paid in three-hour blocks, no matter whether she worked five minutes or not at all.

[5] The witness explained that the agency offers legal interpretation and translation services. Interpretation requests are made to the agency by a lawyer, the court or police. The agency then calls an interpreter to ensure that his or her services will be provided to the client.

[6] In the instant case, the worker is a sign interpreter. The agency's secretary told the interpreter where to go during the day, and Mr. Sciascia at night. Upon arrival, she handed the court registrar an attendance sheet (Exhibit A-2), on which the registrar indicated whether the interpreter's services were required in the morning or in the afternoon.

[7] Exhibit A-3 contains the fee claims which the worker made to the agency. It shows that, in 2001, she worked three afternoons in November, two afternoons in December, two afternoons in February, once in March, two afternoons in May and

four full or partial days in June, and that she also worked once in March 2002 and twice in June of that year.

[8] The worker, Ms. Bureau, did not come and testify to describe her conditions of employment. Her absence was not explained.

[9] The second witness, Yvan Hart, explained that he worked as a sign interpreter for the Ministère de l'Éducation on a continuing basis. His name is also in the appellant's inventory, and he had rendered services for the latter on a number of occasions. Alexandre Kubacki's name is also in the appellant's inventory. Mr. Kubacki is an interpreter and works in English, French, Spanish and, on occasion, Hindi. Both mentioned that, when they worked for the appellant, they did so as freelancers or self-employed workers.

[10] Alain Lacoste, an appeals officer, explained that he had spoken with Mr. Sciascia, who had confirmed that his business was a placement agency. Without asking any further questions as to the worker's conditions of employment, he had therefore concluded that paragraph 6(g) of the *Employment Insurance Regulations* (the "*Regulations*") applied.

[11] Counsel for the appellant relied on the decision of Deputy Judge Porter of this Court in *Saskatchewan Deaf and Hard of Hearing Services Inc. v. M.N.R.*, [2001] T.C.J. No. 38 (Q.L.). In that case, the appellant was a non-profit organization that made interpreters available to deaf, hard of hearing and late deafened persons. The worker had been hired to provide this type of service. The appellant contended that it had hired the worker as an independent contractor to join the team of interpreters that it employed, in accordance with a contract for services. The Minister had ruled that the contract was a contract of service.

[12] Counsel for the appellant stated that Judge Porter had analyzed the meaning that should be attached to paragraph 6(g) of the *Regulations*, which reads as follows:

6. Employment in any of the following employments, unless it is excluded from insurable employment by any provision of these Regulations, is included in insurable employment:

...

- (g) employment of a person who is placed in that employment by a placement or employment agency to perform services



for and under the direction and control of a client of the agency, where that person is remunerated by the agency for the performance of those services.

[13] Counsel argued that, relying on the decision of the Federal Court of Appeal in *Vulcain Alarme Inc. v. M.N.R.*, [1999] F.C.J. No. 749 (Q.L.), Judge Porter had concluded that it must be determined whether a relationship of subordination exists between the interpreter and the agency's client. Judge Porter had concluded on an analysis of the worker's conditions of employment that the contract was a contract for services, not a contract of service.

[14] The respondent's agent relied on the decisions of the Federal Court of Appeal in *Canada v. Agence de Mannequins Folio Inc.*, [1993] F.C.J. No. 910 (Q.L.), and *Sheridan v. Canada*, [1985] F.C.J. No. 230 (Q.L.). Both cases concern placement agencies, for models in the first case and nurses in the second. The respondent's agent argued that the appellant was a placement agency and that the worker had been under the direction and control of the judge or the police, as the case might be, and that her employment was therefore insurable within the meaning of paragraph 6(g) of the *Regulations*.

Analysis

[15] I cite paragraph 6(g) of the *Regulations* once more:

6. Employment in any of the following employments, unless it is excluded from insurable employment by any provision of these Regulations, is included in insurable employment:

...

(g) employment of a person who is placed in that employment by a placement or employment agency to perform services for and under the direction and control of a client of the agency, where that person is remunerated by the agency for the performance of those services.

[16] The key words in the text of this regulatory provision are "under the direction and control". To determine whether an employment is insurable, it must be ensured that the person is under the direction and control of the agency's client or, in other words, it must be determined whether there was a relationship of subordination between the worker and the agency's client.

[17] To that end, the conditions of employment between the worker and the agency's client must be considered. Were those conditions similar to those of a contract of employment or to those of a contract of enterprise?

[18] A contract of employment is defined as follows in Article 2085 of the *Civil Code of Quebec* (the "*Code*"):

**2085.** A contract of employment is a contract by which a person, the employee, undertakes for a limited period to do work for remuneration, according to the instructions and under the direction or control of another person, the employer.

[19] A contract of enterprise or for services is defined as follows in Article 2098 of the *Code*:

**2098.** A contract of enterprise or for services is a contract by which a person, the contractor or the provider of services, as the case may be, undertakes to carry out physical or intellectual work for another person, the client or to provide a service, for a price which the client binds himself to pay.

[20] It should be recalled here that the worker, Ms. Bureau, did not come and describe her conditions of employment. Reference must therefore be made to the documents filed and the testimony provided by the persons and the worker. The description of Ms. Bureau's conditions of employment is at first glance consistent with a contract for services and not at all a contract of employment.

[21] The worker acted as an interpreter for the agency's various clients: the courts, the police and others. She had to render the professional service for which she reported at the appointed time and place. She did not work exclusively for the appellant or for any client of the appellant. Her work was sporadic, discontinuous work done in accordance with the needs of the agency's clients and the worker's availability. She worked a few days each month during the period in question and changed places of work in accordance with the needs of clients and her own availability. In this case, there was no element of a relationship of subordination between the worker and the agency's client.

[22] As to the other tests used to distinguish a contract of employment from a contract of enterprise, the worker, as an interpreter, supplied her own tools. She was not integrated into the appellant's business or that of the client. This was the worker's business. Ms. Bureau had a chance of profit.

[23] In conclusion, the contract was a contract of enterprise, not a contract of employment. The appeal is accordingly allowed.

Signed at Ottawa, Canada, this 3rd day of June 2003.

"Louise Lamarre Proulx"

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J.T.C.C.