

Docket: 2007-2412(EI)

BETWEEN:

JEAN-ROCK GAGNON,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

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Appeal heard on common evidence with the appeal of *Charles Gagnon*  
(2007-2414(EI)) on February 12, 2008, at Chicoutimi, Quebec

Before: The Honourable Justice Alain Tardif

Appearances:

Agent for the Appellant: Sylvain Bergeron

Counsel for the Respondent: Anne Poirier

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JUDGMENT

The appeal under subsection 103(1) of the *Employment Insurance Act* is dismissed and the decision made by the Minister of National Revenue is confirmed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 5th day of March 2008.

"Alain Tardif"

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Tardif J.

Translation certified true  
on this 18th day of April 2008.

Brian McCordick, Translator

Docket: 2007-2414(EI)

BETWEEN:

CHARLES GAGNON,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

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Brian McCordick, Translator

Citation: 2008TCC123  
Date: 20080305  
Dockets: 2007-2412(EI)  
2007-2414(EI)

BETWEEN:

JEAN-ROCK GAGNON,  
CHARLES GAGNON,

Appellants,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

### **REASONS FOR JUDGMENT**

#### **Tardif J.**

[1] These are appeals from a decision about the insurability of Charles Gagnon's employment with his father Jean-Rock Gagnon, the sole shareholder of Gîte de la Montagne Enchantée.

[2] The employment period commenced on September 22, 2006, and ended on October 25, 2006.

[3] It was determined that the employment in question was not insurable, by reason of paragraph 5(2)(i) of the *Employment Insurance Act* ("the Act") which states that any employment between parties that are not dealing with each other at arm's length is excluded from insurable employment.

[4] Paragraph 5(2)(i) reads:

5(2) Insurable employment does not include

(i) employment if the employer and employee are not dealing with each other at arm's length.

[5] Thus, the principle is outright exclusion. However, Parliament has provided for an exception, which is worded as follows:

5(3) For the purposes of paragraph (2)(i),

- (a) the question of whether persons are not dealing with each other at arm's length shall be determined in accordance with the *Income Tax Act*; and
- (b) if the employer is, within the meaning of that Act, related to the employee, they are 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.

[6] Upon reading this section, one can see that an employment that is not insurable under the Act can become insurable if, following an investigation and analysis of the facts related to the terms and conditions of the employment and the duration and remuneration, it appears that the employment in question was similar to one in which the parties are dealing with each other at arm's length.

[7] What must first be verified is whether the file was analysed correctly. If so, I must simply confirm that the determination is well-founded.

[8] Otherwise, I will have to re-analyse the relevant facts and determine whether the Appellant is eligible for the exception contemplated in the Act on the basis that the employment was under an insurable contract of service.

[9] The parties agreed to proceed on common evidence.

[10] Jean-Rock Gagnon testified. He began by trying to explain why he gave two different and sometimes contradictory accounts at interviews concerning the terms and conditions of the work done by his son.

[11] First of all, he said that, during his first telephone interview, he was tired, sick and very concerned about a possible labour dispute at the business where he worked. This, he said, caused him to make a mistake about the way in which he remunerated his son for the work that he entrusted to him, but also about the number of hours, and when those hours were worked.

[12] He said that he changed his account after checking things with his accountant, and that the second interview was conducted under more propitious and serene circumstances.

[13] After providing these explanations, he said that he invested in a business in order to create a retirement fund for himself, because the employer pension fund to which he was contributing was unsatisfactory due to the little seniority that he had accrued.

[14] His business was a special kind of lodge because it was located in the middle of a natural setting and was intended for prospective guests who were interested in the outdoors. The site offered remoteness, nature, isolation, and the opportunity for hikes in the forest.

[15] His son's work consisted primarily in laying and clearing various trails on the site in question. He also had various duties at the lodge itself.

[16] For a few years, Jean-Rock Gagnon's business made a total of roughly \$5,000 annually, an amount exceeded substantially by the expenses. In other words, he had to run major operating deficits, which he said were necessary to develop the infrastructure that would eventually enable him to get a larger and more constant flow of customers and thereby achieve profitability in time for him to operate the lodge to supplement his pension benefits.

[17] When called upon to explain why his income tax return did not include the wage expenses paid to his son, the Appellant said that the accountant had stated that he could not deduct them because they were debatable and perhaps even unreasonable.

[18] In order to justify the work entrusted to his son and the remuneration paid, he said that he hired someone other than his son to do essentially the same work; however, he paid this third party \$18 an hour over a period of roughly 15 weeks.

[19] When he was asked why he paid the third party \$18 per hour when he had just explained that he paid his son only \$10 per hour, he spontaneously said that nobody else would have agreed to do the same work for \$10 per hour.

[20] He also said that he had a very good and well-paid job that enabled him to retain the services of people to help him set up the infrastructure for his lodge. In this regard, he said that he would have lost in the balance by doing the work himself because his own hourly wage was \$30.

[21] Charles Gagnon also testified. He explained that he worked for a reforestation cooperative at the time, but did not work long enough to collect employment insurance benefits. Since he had not accrued enough hours of work, it was very attractive to obtain another job that would get him the number of hours needed to become eligible for benefits.

### Analysis

[22] Jean-Rock Gagnon admitted unequivocally that a third party would never have agreed to perform similar work for a salary of \$10 per hour. Such an admission is sufficient in and of itself to conclude that the decision under appeal is well-founded.

[23] Indeed, Jean-Rock Gagnon's admission that a third party would not have done the work for the same remuneration that his son received is the very reason for the existence of paragraph 5(2)(i) of the Act.

[24] For this reason alone, it would be inappropriate to intervene, and I must confirm that the decision of the Minister of National Revenue was well-founded.

[25] However, I would add that my finding would have been the same even if this decisive admission had not been made.

[26] Indeed, all of Jean-Rock Gagnon's explanations struck me as implausible for the following reasons:

- Jean-Rock Gagnon is not someone who is so nervous that he would completely distort the facts during two interviews concerning the same subject; mistakes concerning nuances or oversights concerning secondary details would be understandable, but differences concerning elements such as the number of hours, the method of payment and the time that the work was performed are another matter altogether, especially if the statement is about the work itself, or the worker.
- Moreover, although Jean-Rock Gagnon's job paid very well, and gave him an annual salary of approximately \$80,000, it is completely implausible for someone reasonably well-counselled by an accountant to fail to take into account an expense that is entirely warranted as part of the operation of a business, especially since the deduction of such an expense would have a major impact on his tax burden.
- The contradictions between the statements made during the interviews, notably with respect to the way that his son was remunerated and the number of hours that his son worked, show that this was clearly a job of convenience, the sole purpose of which was to enable his son to receive employment insurance benefits.

[27] This is my assessment of the evidence in this matter, where the Appellants bore the burden of proof. I therefore repeat that the appeals are dismissed on the ground that the Appellant Jean-Rock Gagnon admitted that a third party would never have agreed to do similar work for a wage of \$10 per hour, the wage that his son was allegedly paid.

[28] For these reasons, the appeals are dismissed.

Signed at Ottawa, Canada, this 5th day of March 2008.

"Alain Tardif"

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Tardif J.

Translation certified true  
on this 18th day of April 2008.

Brian McCordick, Translator



CITATION: 2008TCC123

COURT FILE NOS.: 2007-2412(EI); 2007-2414(EI)

STYLES OF CAUSE: Jean-Rock Gagnon and  
Charles Gagnon  
and the Minister of National Revenue

PLACE OF HEARING: Chicoutimi, Quebec

DATE OF HEARING: April 12, 2008

REASONS FOR JUDGMENT BY: The Honourable Justice Alain Tardif

DATE OF JUDGMENT: March 5, 2008

APPEARANCES:

Agent for the Appellant: Sylvain Bergeron

Counsel for the Respondent: Anne Poirier

COUNSEL OF RECORD:

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