Docket: 2007-4163(EI)

BETWEEN:

AGRIMÉTAL INC.,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on March 18, 2008, at Shawinigan, Quebec

Before: The Honourable Justice Réal Favreau

Appearances:

Counsel for the Appellant: Jérome Carrier

Counsel for the Respondent: Justine Malone

JUDGMENT

The appeal is dismissed and the decision made by the Minister is confirmed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 30th day of April 2008.

"Réal Favreau"

Favreau J.

Translation certified true
on this 30th day of May 2008.

Brian McCordick, Translator

Citation: 2008TCC266
Date: 20080430
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BETWEEN:

AGRIMÉTAL INC.,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR JUDGMENT

Favreau J.

[1] The Appellant is appealing from a decision of the Minister of National Revenue ("the Minister") concerning the insurability of the employments of François Houle, Mario Houle and Pascal Houle ("the Workers") with Agrimétal Inc. ("the Payor") from January 1, 2006, to February 5, 2007 ("the period in issue"). The Minister determined that all the Workers held insurable employment for the purposes of the *Employment Insurance Act* ("the Act"). The Appellant had submitted that the Workers did not hold insurable employment because their employment is excluded from the concept of insurable employment owing to the non-arm's-length dealings between the Workers and the Payor. In addition, the Appellant submits that the Minister improperly exercised his discretion under paragraph 5(3)(*b*) of the Act because it is not reasonable to conclude that the Workers and the Payor would have entered into a substantially similar contract of employment if they had been dealing with each other at arm's length.

[2] In making his decision, the Minister relied on the following assumptions of fact, set out in paragraphs 5, 6 and 7 of the Reply to the Notice of Appeal:

[TRANSLATION]

5. The Minister determined that the Workers were employed by the Appellant in insurable employment under a contract of service, based on the following assumptions of fact:

(a) The Appellant was incorporated in 1989. **(admitted)**
(b) The Appellant operates a business that manufactures municipal park and golf course maintenance equipment and machinery. **(admitted)**
(c) The Appellant operates a business throughout the year and its busiest period is from March to December each year. **(admitted)**
(d) The Appellant's place of business is in Wickham. **(admitted)**
(e) During the period in issue, the Appellant had roughly 30 employees. **(admitted)**
(f) The Workers are brothers, directors and, through their management company, shareholders of the Appellant. **(admitted)**
(g) Each shareholder is responsible for a particular sector of the operations, and together they make all decisions regarding major and day-to-day operations of the Appellant. **(denied with respect to the day-to-day operations)**
(h) François Houle primarily looks after purchasing, and, in this capacity, he makes purchase forecasts, finds parts and equipment, fills out purchase orders, negotiates prices, meets with suppliers, etc. **(admitted)**
(i) Pascal Houle is responsible for the sales department as well as interpersonal relations within the business, and, in this capacity, solicits potential customers, does product demonstrations, looks after exhibits, is responsible for the collective agreement, and mediates problems between employees. **(admitted)**
(j) In addition to being the president of the business, Mario Houle is actively in charge of the research and development component, with a view to improving existing products and creating new ones. **(admitted)**
(k) Mario works with Pascal on customer requests, criticism, and improvements to be made to products, and works with François to obtain the prices of components that finalize products. **(admitted)**
(l) All the Workers consider themselves employees of the business who render services to it in that capacity. (**denied because they all consider themselves owners)**

(m) The Workers have a great deal of flexibility in the performance of their respective tasks, and this is directly related to their responsibilities as directors and shareholders of the Appellant. **(denied because Pascal has more responsibilities)**

(n) Despite this considerable flexibility, the Appellant has a right to control them, and exercises that right in that, among other things, two signatures are required in order to issue the Appellant's cheques, and the three Workers have to consult each other with regard to every important decision involving the Appellant.**(denied because there is no right to control)**

(o) The Workers' hours are not recorded by the Appellant, but they generally work during the opening hours of the business, that is to say, roughly 40 hours a week. **(denied because on an annual basis they work much less than 40 hours a week)**

(p) By reason of his duties, Pascal Houle sometimes has to travel, and sometimes works more than 40 hours per week. **(admitted)**

(q) The Workers have disability and life insurance paid for by the Appellant, which offers group insurance to all its employees, including the Workers. **(admitted)**

(r) During the period in issue, the Workers received fixed weekly pay of $1,746 by direct deposit each week. **(admitted)**

(s) The Worker's remuneration takes into account the fact that each of them has a management position and each is a worker-shareholder with the Appellant. **(denied)**

6. The Workers and the Appellant are related persons within the meaning of the *Income Tax Act* because

(a) during the period in issue, the Appellant's equal voting shareholders were
- Gestion Mario Houle Inc.,
- Gestion François Houle Inc. and
- Gestion Pascal Houle Inc.; **(admitted)**

(b) Mario, François and Pascal are each the sole shareholder of their respective management company; and **(admitted)**

(c) each of the Workers is part of a group that controls the Appellant. **(admitted)**

7. The Minister also deemed that the Workers and the Appellant were dealing with each other at arm's length in the context of the employments in question because he was satisfied that it was reasonable to believe that they would have entered into a substantially similar contract of employment if they had been dealing with each other at arm's length, having regard to the following circumstances:
   (a) Despite having a great deal of flexibility in the performance of their work, the Workers remain under the Appellant's control in the performance of their respective duties and their decision-making regarding the operation of the Appellant's business. **(denied)**
   (b) The duties and tasks carried out by the Workers are essential to the operation of the Appellant's business. **(admitted)**
   (c) the Appellant operates its business throughout the year, and the duration of the Workers' employment is consistent with the Appellant's true needs in this regard. **(denied)**
   (d) The Workers' remuneration is reasonable having regard to the fact that each of them has a management position and is a worker-shareholder with the Appellant. **(denied)**

[3] In his assessment of the file, the Minister also took into account the other relevant facts set out in paragraphs 8, 9 and 10 of the Reply to the Notice of Appeal:

[TRANSLATION]

8. On July 12, 2002, the insurability department, at the Appellant's request, determined that the three Workers' jobs were insurable despite the non-arm's-length dealings, for the period from January 1, 1999, to July 11, 2002.

9. On March 20, 2003, the appeals branch of the Canada Revenue Agency (CRA) confirmed the insurability decisions and the Appellant did not appeal these decisions to the Tax Court of Canada.

10. In the instant case, Mario Houle, a shareholder with the Appellant who also represented his brothers Pascal and François, specified a few times that the terms and conditions of his job and that of his brothers did not significantly change during the period in issue.

[4] Only Pascal Houle testified at the hearing. He began by providing information about the origins of the business, its development, and the selloff of the agricultural division in 2000 when the business was making roughly $13 million in sales. Following the selloff, that figure declined to $5 million, and is now roughly $3.5 million.[1] For the fiscal year ended March 31, 2007, the Appellant incurred a net loss of $64,195, and for the fiscal year ended March 31, 2006, the Appellant incurred a loss of $70,590.

[5] Mr. Houle also explained that the Appellant's employees' workload decreased significantly after the agricultural division was sold off, but that the employees continued to be paid at the same rate. They simply worked fewer hours and were paid based on the number of hours worked. That was not the Workers' case: they kept the same salary, namely $90,800 per year, despite the reduction of their workload.

[6] In addition, Mr. Houle explained the restructuring of the Appellant's operations in October 2003. In order to protect the Appellant's assets from the risk of litigation, each brother incorporated a management company to hold his shares in the Appellant, and another corporation, Les Immeubles MFP Inc., was created to hold the buildings and machinery. After transferring the ownership of the buildings and machinery to Les Immeubles MFP Inc., the Appellant entered into a lease agreement with that company for the occupancy of the buildings and the use of the machinery.

[7] Lastly, Mr. Houle clearly stated that if he were replaced by a new employee, the employee would earn no more than $40,000 a year, and would not be entitled to the 13 weeks of vacation that each of the Workers can take.

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[1] See Exhibit A-1.

[8] The Canada Revenue Agency appeals officer did not testify, but her appeal report was tendered in evidence.[2] Part VI of the report, entitled [TRANSLATION] "Summary", aptly summarizes the appeals officer's analysis, and it is worth reproducing it:

> [TRANSLATION]
>
> This summary applies, without restriction, to the cases involving the Workers François Houle (1008085), Mario Houle (1008093) and Pascal Houle (1008101).
>
> The Payor, Agrimétal Inc., was incorporated in 1989 and the shareholders were Mario Houle, François Houle and Pascal Houle. The three shareholders are brothers, and each held 33⅓% of the voting shares.
>
> The Payor's activity consists in manufacturing machines used for lawn maintenance (golf courses, municipal parks). The Payor's place of business is in Wickham, and it has roughly 30 employees.
>
> Effective October 1, 2003, the shareholders of Agrimétal Inc. are Gestion Mario Houle Inc., Gestion Franjo Houle Inc. and Gestion Pascal Houle Inc., each of which holds 33⅓% of the voting shares. Mario, François and Pascal Houle each own 100% of the shares of their management company.
>
> The three shareholders work for the Payor, and each is responsible for a department. Mario Houle is in charge of research and development. François is responsible for purchasing and computer systems. Pascal Houle is responsible for sales, customers and production.
>
> The Payor argues that the Workers' jobs were excluded from insurable employment because of non-arm's-length dealings during the period in issue, which is from January 1, 2006 to February 5, 2007.
>
> Since all the shareholders belong to the same family, each worker is part of a related group that controls more than 50% of the voting shares of the company. The Workers were also related persons as defined by paragraph 251(2)(*a*) and subparagraph 251(2)(*b*)(ii) of the *Income Tax Act*. Under paragraph 251(1)(a) of the Act, related persons are deemed not to be dealing with each other at arm's length.
>
> The issue in these files was whether there was a true contract of service between the Workers and the Payor, and whether it was reasonable to believe that an outsider could have been employed under substantially similar terms and conditions.

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[2] See Exhibit A-2.

In determining whether employment in Quebec is insurable for the purposes of the Employment Insurance Act, one must refer to the provisions of the *Civil Code of Québec*, which dictates the rules governing a contract of employment and the rules governing a contract of enterprise or for services.

Contract of employment

The facts analysed above show that the contract of employment between the parties was not in dispute. There was indeed a contract of employment based on the criteria set out in the *Civil Code of Québec*, namely, a prestation of work, remuneration of the Workers, and subordination that existed and was exercised by the Payor.

Non-arm's-length dealings

The terms and conditions of the employment and its nature and importance

Mario, François and Pascal Houle each hold management positions within the company.

Mario Houle's duties, in his capacity as the person in charge of research and development, are to develop prototypes, test them and adjust them, and find solutions when machines are broken.

Pascal Houle's duties, in his capacity as the person in charge of sales, customers and production, are to visit the distributors, do demonstrations, and set up exhibits.

The Payor's official hours of business are Monday to Thursday from 7:30 a.m. to 5 p.m. Closing time on Fridays is noon. The three shareholders do not really have a work schedule to comply with, but they work roughly 40 hours a week on average. However, Pascal Houle sometimes works up to 80 hours a week when he has to travel for presentations or trade shows.

Unlike the unrelated employees, the three shareholders do not fill out time sheets. In our opinion, given the fact that the Workers hold management positions, this is not unusual. It is normal for their work schedules to coincide mainly with the Payor's hours of business and for them to work more on some weeks and less on others.

It is true that Mario, François and Pascal Houle have a great deal of flexibility in the performance of their duties. However, the Payor has a right to control them, and that control is exercised in that, among other things, two signatures are required in order to issue the Payor's cheques. Moreover, although each shareholder manages his own department and ensures that the department is running soundly, they jointly discuss and weigh important decisions involving the Payor, such as investments.

The financial statements as at March 31, 2006, refer to a $473,000 advance payable to related persons. This amount is the balance of a dividend payable to the three shareholders' management companies and stems from their creation. It is common for amounts to be owed to a company's shareholders, but this has no bearing on the terms and conditions of their work as employees.

As a shareholder, Mario Houle made a $12,690 personal loan to the Payor on January 1, 2006; the loan was repaid to him in April 2006.

The three shareholders have 13 weeks of vacation, whereas the unrelated employees get six weeks off. Mario, François and Pascal Houle have disability insurance and life insurance and the premiums for these are paid by the Payor. The Payor offers group insurance for everyone, that is to say, shareholders and unrelated employees.

The Workers' duties are essential to the business. In our opinion, it is possible for outsiders in similar positions with the Payor to be essential to the business as well.

Duration

The Payor operates year-round, but its peak period is March to December. Mario, François and Pascal Houle work for the Payor all year.

In our opinion, the duration of the jobs is consistent with the Payor's needs and it is possible for outsiders to be in the same situation.

Remuneration

François, Mario and Pascal Houle are each paid a fixed salary of $1,746 per week. Unlike the unrelated workers, the shareholders are not paid based on an hourly rate. The remuneration of all the Payor's workers, including the shareholders, is paid by direct deposit each week.

The shareholders' remuneration might initially seem high, but one must bear in mind that each of them holds a management position and is a worker-shareholder.

The following excerpt from the Honourable Justice Tardif's decision in *9022-0377 Québec Inc.* aptly summarizes the situation:

> When shareholders in an arm's length or non-arm's length relationship decide to have a salary policy for the shareholders-workers, be it stingy or generous, very permissive or very restrictive, it has nothing to do with the other employees' conditions of employment.

In our opinion, a person unrelated to the Payor, who is also a shareholder and performs the same duties as the Workers, could have been paid the same salary.

Other consideration

On July 12, 2002, the insurability department determined that the jobs held by François Houle, Mario Houle and Pascal Houle when they were working for Agrimétal Inc. were insurable under paragraph 5(1)(*a*) of the *Employment Insurance Act*. The period in issue was January 1, 1999, to July 11, 2002, and a right of appeal was available for the period from January 1, 2001, to July 11, 2002, and was exercised by Agrimétal Inc. On March 20, 2003, the CPP/EI Appeals Division confirmed the decisions of July 12, 2002. This determination was not brought before the Tax Court of Canada.

Based on the facts obtained in these files, the terms and conditions of the three shareholders' jobs have not significantly changed since they were first considered. The only change that we noted was the creation of the management companies solely held by each of the three brothers. In our opinion, this change in the share ownership does not interfere with the terms and conditions of the three shareholders' jobs, and therefore does not interfere with the insurability of those jobs either.

Conclusion

The analysis of the non-arm's-length dealings has also shown us that the parties would have entered into a substantially similar contract. Thus, the Minister is satisfied that it is reasonable to conclude that the elements analysed and referred to in paragraph 5(3)(*b*) of the *Employment Insurance* Act cause the jobs to be re-included in insurable employment.

Since Mario Houle, François Houle and Pascal Houle's jobs during the period in issue were in Canada, remunerated, and under a contract of service, the requirements of paragraph 5(1)(*a*) of the *Employment Insurance Act* have been met, and the jobs are therefore insurable within the meaning of the Act.

[The author made minor corrections to the text.]

The Appellant's position

[9] In his oral argument, counsel for the Appellant submitted that there was no contract of employment within the meaning of the *Civil Code of Québec* between the Workers and the Appellant. He argued that, owing to the degree of autonomy that they each enjoyed, their contract with the Appellant was a contract of enterprise.

[10] In addition, counsel for the Appellant submitted that the Minister improperly exercised his discretion because, in the opinion of counsel, it was unreasonable to conclude that the terms and conditions of employment would have been substantially similar if the Workers and the Appellant had been dealing with each other at arm's length. In particular, counsel for the Appellant submitted that the employees who were at arm's length could not have continued to be paid the same compensation after the selloff of the agricultural division because their workload had decreased by roughly 30%. Employees at arm's length would not have been paid annual remuneration of $90,800 because the Appellant incurred net operating losses for the 2006 and 2007 fiscal years. They would not have been able to take 13 weeks of vacation per year and to take their vacations when they wished, outside usual vacation periods, without advance notice. They would not have gotten phone calls at home during the evening, nor would they have been able to use the truck supplied by the Appellant for personal reasons on weekends.

[11] Counsel for the Appellant also submitted that the appeals officer incorrectly applied the provisions of the Act because her decision did not take into account the decline in the Appellant's sales following the selloff of the agricultural division.

Analysis

[12] The provisions relevant to the instant dispute are paragraphs 5(1)(*a*), 5(2)(*i*) and 5(3)(*b*) of the Act, which read as follows:

> Types of insurable employment
>
> 5. (1) Subject to subsection (2), insurable employment is
>
> (*a*) employment in Canada by one or more employers, under any express or implied contract of service or apprenticeship, written or oral, whether the earnings of the employed person are received from the employer or some other person and whether the earnings are calculated by time or by the piece, or partly by time and partly by the piece, or otherwise;
>
> . . .

> Excluded employment
>
> (2) Insurable employment does not include
>
> . . .
>
> (*i*) employment if the employer and employee are not dealing with each other at arm's length.
>
> Arm's length dealing
>
> (3) For the purposes of paragraph (2)(*i*),
>
> …
>
> (*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.

[13] The definition of "contract of employment" is set out in article 2085 of the *Civil Code of Québec* and the definition of "contract of enterprise" is set out in articles 2098 and 2099 of the same Code. The provisions read:

> 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.
>
> 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.
>
> 2099. The contractor and the provider of services is free to choose the means of performing the contract and no relationship of subordination exists between the contractor or the provider of services and the client in respect of such performance.

[14] The evidence discloses that the Workers provided services to the Appellant and were remunerated. As for the relationship of subordination, in assessing it, one should not look at whether the employer actually exercised control over its employees, but, rather, whether the employer had the power to control the manner in which they carried out their duties.[3] Some of the indicia of direction or control worth noting are mandatory presence at a workplace, a requirement to comply with a work schedule, a requirement to do the work personally and on an exclusive basis, the nature of the work to be performed, and the degree of integration into the Appellant's activities.[4]

[15] Upon applying these criteria to the facts of the instant appeal, it is clear that the contract in issue was a contract of employment, not a contract of enterprise. Although the Workers enjoyed a great deal of autonomy in the performance of their work, this autonomy was entirely justified having regard to the nature of their respective duties; each of them was responsible for an important activity sector in the Appellant's business. The fact that the Workers held senior positions in the company's hierarchy and that most of their duties were carried out at the Appellant's place of business (except in the case of Pascal Houle) constitute indicia of a high degree of integration into the Appellant's business, and, thus, of the existence of a relationship of subordination between the Workers and the Appellant.

[16] As the person responsible for sales, customers and production, Pascal Houle was frequently called away from the Appellant's office in order to visit distributors, demonstrate equipment and participate in trade shows that were often outside Canada. His hours of work were less regular than his brothers' and he sometimes worked many more hours than them as part of his marketing activities. Despite this disparity between the Workers' outputs, all of their salaries were quite similar, ranging from $90,000 to $109,000.

[17] Although the Workers noted that they did not have to report to anyone and that they acted as owners, not employees, the fact is that the Appellant exercised its power of direction and control in order to ensure that the work entrusted to the Workers was done adequately. I am convinced that this is what happened when Mario Houle went through his divorce in 2006 and had to stay away from work for three months due to depression.

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[3] See *Gallant v. M.N.R.* , [1986] F.C.J. No. 330 (QL), *D&J Driveway Inc.v. Canada (M.N.R.)*, 2003 FCA 453, and *Rock Lacroix v. M.N.R.* 2007TCC181.

[4] Based on the remarks of Archambault J. in *Rock Lacroix v. M.N.R.*, 2007TCC181, at page 16, paragraph 33.

[18] In light of the foregoing, I find that there is indeed a relationship of subordination between the Appellant and the Workers, and that, consequently, the relations between the Appellant and each of the Workers are governed by an employment contract.

Exclusion by reason of non-arm's-length dealings

[19] Under the provisions of the *Income Tax Act*, the three Workers constitute a group of related persons who together control the Appellant through their respective management companies. Consequently, it is clear that the Workers are related to the Appellant and are not at arm's length from it.

[20] In accordance with paragraph 5(3)(*b*) of the Act, the Minister must determine if he is satisfied that it is reasonable to believe, having regard to all the circumstances, including the remuneration paid, the terms and conditions of employment, and the duration, nature and importance of the work, that they would have entered into a substantially similar contract of employment if they had been dealing with each other at arm's length.

[21] In her appeal report, the appeals officer exercised the discretion conferred on the Minister by stating as follows:

> [TRANSLATION]
>
> The analysis of the non-arm's-length dealings has also shown us that the parties would have entered into a substantially similar contract. Thus, the Minister is satisfied that it is reasonable to conclude that the elements analysed and referred to in paragraph 5(3)(*b*) of the *Employment Insurance Act* cause the jobs to be re-included in insurable employment.[5]

[22] The role conferred on this Court where the Minister has exercised his discretion has been the subject of considerable case law, including the decision of the Federal Court of Appeal in *Canada (Attorney General) v. Jencan Ltd. (C.A.)*, [1997] F.C.J. No. 876 (QL), [1998] 1 F.C. 187. The following excerpts from *Jencan* aptly summarize the role conferred on this Court:

> . . . Because it is a decision made pursuant to a discretionary power, as opposed to a quasi-judicial decision, it follows that the Tax Court must show judicial deference to the Minister's determination when he exercises that power.[6] . . .

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5 Conclusion, appeal report, Part VI.

6 Paragraph 33.

> . . .
>
> . . . On the basis of the foregoing, the Deputy Tax Court Judge was justified in interfering with the Minister's determination under subparagraph 3(2)(*c*)(ii) only if it was established that the Minister exercised his discretion in a manner that was contrary to law. . . . The Tax Court is justified in interfering with the Minister's determination under subparagraph 3(2)(*c*)(ii)"by proceeding to review the merits of the Minister's determination "where it is established that the Minister: (i) acted in bad faith or for an improper purpose or motive; (ii) failed to take into account all of the relevant circumstances, as expressly required by paragraph 3(2)(*c*)(ii); or (iii) took into account an irrelevant factor.[7]

[23] The important question to be asked in the case at bar is whether the Minister considered all the relevant circumstances required by paragraph 5(3)(*b*) of the Act. In his oral argument, counsel for the Appellant cited the fact that the appeals officer did not take the selloff of the agricultural division, or the resulting drop in sales, into account in her decision. It is true that the appeals officer did not specifically refer to these things in her report, but it has not been proven that she did not know about them and did not take them into account. In my opinion, when she examined the Appellant's financial statements for the years 2005, 2006 and 2007 and the monthly GST remittances for the same periods, she undoubtedly noticed that the business's sales dropped following the selloff of the agricultural division and the rise of the Canadian dollar against the U.S. dollar (80% of the Appellant's sales are to the United States).

[24] Counsel for the Appellant also cited the fact that the Appellant incurred net operating losses in 2006 and 2007, with a view to showing that the compensation paid to the Workers was not reasonable having regard to the circumstances. Counsel for the Respondent rebutted this argument, alleging that the compensation paid to the Workers was reasonable having regard to the management positions held by the Workers and their seniority (25-27 years). She also noted that the Workers received no bonuses and were not paid for their overtime.

[25] In assessing whether the Workers' contracts of employment would have been substantially similar if the parties have been dealing with each other at arm's length, one must have regard to the special circumstances of the Workers, each of whom held one third of the Appellant's shares though their respective management companies. Workers who are both salaried employees and owners of their employer often behave differently from those who are mere employees.

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[7] Paragraph 37.

This case is an illustration. The Workers receive fixed compensation that does not depend on the number of hours worked or the employer's sales or operating revenues. Rather, it appears to me that the Workers' remuneration is based on their personal needs. The argument that the Workers' remuneration is too high having regard to the net operating losses incurred by the Appellant is entirely unacceptable in my view, because the Appellant is not a "profit centre". The profits made by the Appellant are extracted to pay the rent payable to the affiliate Immeubles MFP Inc. and the $473,056 advance owed to the management companies as at March 31, 2006, which advance represents the balance of the $2,400,000 dividend declared on October 1, 2003, upon the creation of the three management companies. Such conduct is not unusual for people who are Workers but who indirectly own their employer as well. Pascal Houle himself stated that the management companies and the real estate company were put in place to shelter the assets of the business (buildings, machinery and liquid assets) from potential legal claims.

[26] I find that the Workers and the Appellant have not succeeded in reversing the burden of proof by showing that the Minister's decision was unreasonable having regard to the circumstances. In my opinion, the instant case is one in which the Court must not intervene to substitute its opinion for that of the Minister.

[27] For these reasons, the Appellant's appeal is dismissed.

Signed at Ottawa, Canada, this 30th day of April 2008.

"Réal Favreau"

Favreau J.

Translation certified true
on this 30th day of May 2008.

Brian McCordick, Translator

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APPEARANCES:

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Counsel for the Respondent:	Justine Malone

COUNSEL OF RECORD

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