

Docket: 2010-1799(EI)

BETWEEN:

JEREMY ZAFRAN,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

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Appeal heard on June 3, 2011, at Montreal, Quebec

Before: The Honourable Justice G. A. Sheridan

Appearances:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Ilinca Ghibu Valérie Messore, Student-at-Law

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**JUDGMENT**

The appeal from the decision of the Minister of National Revenue dated February 24, 2010 is dismissed.

Signed at Ottawa, Canada, this 23<sup>rd</sup> day of June 2011.

“G. A. Sheridan”

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Sheridan J.

Citation: 2011TCC313  
Date: 20110623  
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BETWEEN:

JEREMY ZAFRAN,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

### **REASONS FOR JUDGMENT**

Sheridan J.

[1] The Appellant, Jeremy Zafran, is appealing the determination of the Minister of National Revenue under subsection 93(3) of the *Employment Insurance Act* and section 9.1 of the *Employment Insurance Regulations* that he did not have sufficient insurable hours during the relevant period to qualify for unemployment insurance benefits.

[2] Mr. Zafran represented himself and was the only witness to testify. He did not dispute that during the relevant periods he was employed as a radio announcer or that the number of hours worked during each period was 1,417, 443 and 210, respectively. The purpose of Mr. Zafran's appeal was to show the inequity of being required to contribute to the Employment Insurance scheme when the terms of his employment virtually guaranteed he would never be entitled to receive benefits when he needed them. As I cannot improve on Mr. Zafran's eloquent description of the impact of the law as it is currently drafted on many employed in the radio industry, portions of it are set out below:

... The problem that I face is the industry that I'm in ... which is also the same position that all of my co-workers who are on air find themselves in, is that we will never achieve thirty-five (35) hours on air; it's impossible. My role as an announcer - even full-time - maxes out thirty (30) hours, maybe twenty (20), twenty-five (25), depending on the shift that we do [at a] full-time level [but] on part-time [hours]. A few years ago, the industry converged and what happened is the main companies

bought each other out and their process was to eliminate full-time positions and to rehire people part-time thus [eliminating] ... the necessity to pay health benefits.<sup>1</sup>

... the reality of the industry is with convergence, there is a... there has been a move to eliminate more full-time positions to include part-time positions therefore the companies, without mentioning it outright eliminate the need for them to pay extra health benefits to employees but at the same time are able to max out the use of part-time employees which, at the end, cost them less. Why I'm presenting that is there [are] a lot of people in my position [who] end up with fewer hours down the road but they still manage to keep us in the business and afloat and we... and the full-time employees, you know, they number... much fewer, therefore, [the radio companies] have an easier time of eliminating our positions...

What happened with full-time and part-time announcers, they still have regulations, ... [in] my case ... there was a union and if you hit a certain number of hours, you end up paying time and a half over that and the company [made]... a concerted effort to ensure that people didn't go past a certain number of hours that require them to be... into overtime... . The problem with our industry (and I think that's where I'm most frustrated) is I feel like I'm being penalized for... employment that I have and the earnings that I earn. As a part-time employee at this company in the year that I was let go, my earnings were \$46,000... plus... \$3,000 part-time.

I supplement my income with freelance which keeps me afloat and which was... kept me afloat until today. The reality, my hours don't come close to where the thirty-five (35) hour minimum work... but I do pay in full-time to EI. So, my problem is, as a part-time employee, I'm paying in full-time and I'm not entitled to receive the benefits as though I'm being punished because of the manner of the hours I work - but not for the amount of income and the amount of money that the government is willing to take from me. They don't have a problem taking the money; they have a problem giving it back when I'm in trouble. The point of view... the spirit of the law for employment insurance is to ensure my employment, not to punish me for having a job that actually pays more than some other jobs... in comparison, if I worked, hypothetically, as a McDonald's employee, as a manager and worked enough hours and earned \$46,000, I would have been entitled to full benefits but because I worked twenty (20) hours, odd hours a week and reported \$6,000, that did not entitle me to the same benefits ... as would be an [employed manager] of McDonald's ... .<sup>2</sup>

[Edited for punctuation, spelling and grammatical errors in the transcript.]

[3] Mr. Zafran said that he had made essentially the same argument before the Board of Referees: while they were sympathetic to his circumstances, their decision had to be made in accordance with the law as currently drafted. As I suggested to Mr.

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<sup>1</sup> Transcript, page 8, lines 20-25 to page 9, lines 1-7, inclusive.

<sup>2</sup> Transcript, page 10, lines 10-25 to page 12, lines 1-9, inclusive.

Zafran at the conclusion of the hearing, this Court is in the same position. The remedy he sought was a change to the law, a power which lies exclusively with Parliament. While aware of that division of powers, Mr. Zafran expressed doubt that he could prevail upon government to amend the *Employment Insurance Act* saying, “I can’t walk up to Parliament and say ‘change the law’; it just doesn’t work that way”<sup>3</sup>.

[4] Certainly, effecting legislative change can be a long and frustrating process. But that should not prevent concerned Canadians like Mr. Zafran from making the sort of cogent and impassioned argument he presented in court to elected officials; for example, before the appropriate parliamentary committee or to his local member of parliament or the minister(s) responsible. If nothing else, such an initiative would have the advantage of being in the proper forum. The Court’s role is to interpret and apply the law, not to create it.

[5] Although I permitted Mr. Zafran to set out his concerns under the *Charter of Rights and Freedoms* and heard student-at-law Ms. Messoré’s able response on behalf of the Respondent, as Mr. Zafran had not given the requisite notice of constitutional question, his submissions in that regard could not advance his position.

[6] In these circumstances, I regret to say I have no other recourse than to dismiss the appeal.

Signed at Ottawa, Canada, this 23<sup>rd</sup> day of June 2011.

“G. A. Sheridan”

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Sheridan J.

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<sup>3</sup> Transcript, page 37 at lines 15-16.

CITATION: 2011TCC313

COURT FILE NO.: 2010-1799(EI)

STYLE OF CAUSE: JEREMY ZAFRAN AND THE MINISTER  
OF NATIONAL REVENUE

PLACE OF HEARING: Montreal, Quebec

DATE OF HEARING: June 3, 2011

REASONS FOR JUDGMENT BY: The Honourable Justice G. A. Sheridan

DATE OF JUDGMENT: June 23, 2011

APPEARANCES:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Illinca Ghibu Valérie Messore, Student-at-Law

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