

Date: 20030205

Docket: A-529-01

Neutral Citation: 2003 FCA 66

**CORAM: DESJARDINS J.A.
LÉTOURNEAU J.A.
NADON J.A.**

BETWEEN:

PETER LAFAVE

Applicant

and

**ATTORNEY GENERAL
OF CANADA**

Respondent

Hearing held at Montréal, Quebec, on February 5, 2003.

Judgment delivered from the bench. at Montréal, Quebec, on February 5, 2003.

REASONS FOR JUDGMENT OF THE COURT BY:

LÉTOURNEAU J.A.

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REASONS FOR JUDGMENT OF THE COURT
**(Delivered from the bench at Montréal, Quebec,
on February 5, 2003.)**

LÉTOURNEAU J.A.

[1] Taking into account the evidence in the file and the credibility of the applicant, we have not been convinced in this case that we should disregard the principles laid down and followed by this Court in *Attorney General of Canada v. Drouin*, A-348-96, *Attorney General of Canada v. Bernier*, A-136-96, *Viel v. Canada (Employment Insurance Commission)* (2001), 278 N.R. 40

(F.C.A.), application for leave to appeal to the Supreme Court of Canada dismissed October 4, 2001.

[2] Counsel for the applicant maintained before us that the amounts of income established by the Employment Insurance Commission and attributed to the applicant were wrong, because that income represented a greater share of the company's net profit than the applicant was entitled to, namely, one-third. It appears from the financial statements of the company for the period in dispute that the net profit was \$48,466. If that had been paid in the form of dividends, the applicant's income would have been in the order of \$16,155 and not \$31,506, as the Commission claimed.

[3] In this case, the amount of the applicant's income is determined not from the company's net profit, but from the gross income of the company remaining after deducting the operating expenses incurred other than capital expenditures, as provided in section 35 of the *Employment Insurance Regulations*:

35. (10) For the purposes of
subsection (2), "income" includes

...

35. (10) Pour l'application du
paragraphe (2), « revenu » vise
notamment :

...

(c) in the case of a claimant who is self-employed in employment other than farming, the amount of the gross income from that employment remaining after deducting the operating expenses, other than capital expenditures, incurred therein; and

...

c) dans le cas d'un prestataire qui est un travailleur indépendant exerçant un emploi non relié aux travaux agricoles, le reste du revenu brut qu'il tire de cet emploi après déduction des dépenses d'exploitation qu'il y a engagées et qui ne constituent pas des dépenses en immobilisations;

...

[4] We are satisfied that the Commission used the legal basis provided by section 35(10)(c) of the Regulations as the basis for calculating the applicant's income.

[5] At the hearing, counsel for the respondent filed new figures resulting from a new calculation required after the umpire set aside the penalties imposed on the applicant. These new calculations were also done on the basis of the above-mentioned Regulations.

[6] For these reasons, the application for judicial review will be dismissed with costs.

"Gilles Létourneau"

Judge

Certified true translation

Mary Jo Egan, LLB

FEDERAL COURT OF CANADA
APPEAL DIVISION

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**REASONS FOR JUDGMENT
OF THE COURT**

FEDERAL COURT OF CANADA
APPEAL DIVISION

SOLICITORS OF RECORD

DOCKET: A-529-01

CORAM: **DESJARDINS J.A.**
LÉTOURNEAU J.A.
NADON J.A.

STYLE OF CAUSE:

PETER LAFAVE

Applicant

and

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Respondent

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: February 5, 2003

REASONS FOR JUDGMENT OF THE COURT BY: Létourneau J.A.

DATED: February 5, 2003

APPEARANCES:

Jean-Guy Ouellet

FOR THE APPLICANT

Pauline Leroux

FOR THE RESPONDENT

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FOR THE RESPONDENT