

Docket: 2004-3785(EI)

BETWEEN:

IVANN ALEXANDRE BERGERON,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on May 3, 2005, at Montréal, Quebec

Before: The Honourable Justice Louise Lamarre Proulx

Appearances:

For the Appellant:

The Appellant himself

Counsel for the Respondent:

Johanne M. Boudreau

JUDGMENT

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

Signed at Montréal, Quebec, this 6th day of June 2005.

"Louise Lamarre Proulx"

Lamarre Proulx J.

Translation certified true
on this 3rd day of October 2006.
Monica F. Chamberlain, Reviser

Citation: 2005TCC372
Date: 20050606
Docket: 2004-3785(EI)

BETWEEN:

IVANN ALEXANDRE BERGERON,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR JUDGMENT

Lamarre Proulx J.

[1] This is an appeal from a decision of the Minister of National Revenue ("the Minister") dated June 3, 2004.

[2] According to the decision, the Appellant was not employed in insurable employment while serving on the municipal council of the Municipalité de St-Faustin-Lac-Carré from September 23, 2001, to September 21, 2002, and from September 29, 2002, to March 29, 2003.

[3] The relevant explanatory paragraphs read as follows:

[TRANSLATION]

It has been determined that your employment was not insurable for the following reason: You were not employed under a contract of service, and consequently, you were not an employee of the Municipalité de Saint-Faustin-Lac-Carré.

While the position of municipal councillor is an office under subsection 2(1) of the *Canada Pension Plan*, that office is not included in insurable employment under paragraph 6(f) of the *Employment Insurance Regulations*.

This decision was made under subsection 93(3) of the *Employment Insurance Act* and is based on paragraph 5(1)(a) of the *Employment Insurance Act* and paragraph 6(f) of the *Employment Insurance Regulations*.

...

[4] The Reply to the Notice of Appeal describes the facts of this case as follows:

[TRANSLATION]

7. In making his decision, the Minister, relying on the following assumptions of fact, determined that the Appellant held an office within the meaning of subsection 2(1) of the *Canada Pension Plan* that was not included in insurable employment:

- (a) the Appellant was elected by popular vote as a municipal councillor of the Municipalité de Saint-Faustin-Lac-Carré for the period of November 1999 to November 2003;
- (b) the Appellant's duties as municipal councillor were to participate in public meetings of the municipality and be available to meet with residents;
- (c) during the periods in issue, the Appellant received a \$500 monthly allowance for his office as municipal councillor;
- (d) during the periods in issue, the Appellant had no duties for the municipality other than those of a municipal councillor;

[5] The Appellant has admitted to all these facts.

[6] Article 2085 of the *Civil Code of Québec* defines a contract of employment as follows:

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.

[7] Section 2 of the *Act respecting elections and referendums in municipalities*, R.S.Q., c. E-2.2, provides that an election shall be held every four years for all the offices on the council of a municipality. Section 2 of the *Act respecting the remuneration of elected municipal officers*, R.S.Q., c. T-11.001, provides that the council of a municipality may, by by-law, fix the remuneration of its mayor or

warden and of its other members. A section of the same statute provides for the minimum annual remuneration that a councillor must be paid.

[8] The Appellant explained that his remuneration was indeed based on a municipal by-law, that the mayor could not dismiss him, that he did not receive instructions from anyone except perhaps the opinions of his voters, that he had no office in the municipality's premises, etc. In fact, during the hearing, it was not possible to determine which employer could have had control over his work and what control that would have been.

[9] The duties of a municipal councillor are not the duties of a contract of employment. That is not a difficult finding to make. However, such duties are undoubtedly the duties of an office. We must therefore refer to section 6 of the *Employment Insurance Regulations*, which broadens the category of insurable employment. Only subparagraph (f)(iii) of that section could possibly apply here. It reads as follows:

(f) employment of a person who holds an office, as defined in subsection 2(1) of the *Canada Pension Plan*,

...

(iii) where the person holds the office in or under a corporation, commission or other body that is an agent of Her Majesty in right of a province referred to in subparagraph (ii) . . .

[10] The definition of "office" in section 2 of the *Canada Pension Plan* reads as follows:

"office" means the position of an individual entitling him to a fixed or ascertainable stipend or remuneration and includes a judicial office, the office of a minister of the Crown, the office of a lieutenant governor, the office of a member of the Senate or House of Commons, a member of a legislative assembly or a member of a legislative or executive council and any other office the incumbent of which is elected by popular vote or is elected or appointed in a representative capacity, and also includes the position of a corporation director, and "officer" means a person holding such an office;

[11] The Respondent admits that a municipal councillor is an office holder.

[12] The municipality was created under the *Act respecting municipal territorial organization*, R.S.Q., c. O-9. Section 13 of that Act states that "a local municipality is a legal person of public right consisting of the inhabitants and ratepayers of the

territory under its jurisdiction." I would also refer to articles 298 to 300 of the *Civil Code of Québec*, which deal with the creation and types of legal persons. The fact that the municipality is a legal person is not in issue either.

[13] The issue is whether the *Municipalité de St-Faustin-Lac-Carré*, a legal person, is an agent of Her Majesty in right of Quebec for the purpose of section 6 of the *Regulations*.

[14] The proper meaning of "agent of the Crown" was recently explained in *Nova Scotia Power Inc. v. Canada*, [2004] 3 S.C.R. 53. I quote from the relevant portions of paragraphs 12 and 13:

12 There are two ways in which an entity can become an agent of the Crown. The first is when the Crown exercises sufficient control over it so that it can be said to be in *de jure* control, which requires a careful examination of the relationship between the parties: see *R. v. Eldorado Nuclear Ltd.*, [1983] 2 S.C.R. 551, at pp. 573-74. . . .

13 The second way is for the legislature to expressly legislate it to be an agent: *Eldorado Nuclear, supra*, at pp. 575-76. . . .

[15] The Order in Council creating the municipality was produced at tab 1 of the Respondent's book of authorities. The instrument, Order in Council 1612-95 of December 13, 1995, contains no specific designation of a Crown agent. Section 3 of the Order in Council stipulates that the new municipality is governed by the *Municipal Code of Québec*, R.S.Q., c. C-27.1. I have seen nothing in that statute that provides that municipalities are agents of the Crown, nor has anyone pointed me to such a provision.

[16] With respect to *de jure* control of a municipality by the Crown, referred to in the first point of the Supreme Court of Canada decision quoted above, I know of no decision in which it was held that *de jure* control over the management of municipal affairs existed.

[17] It should also be noted that in *Madeline Faiazza v. M.N.R.*, docket 83-671(UI), dated September 5, 1985, this Court held that the mayor of a municipality was not employed in insurable employment.

[18] Consequently, the appeal is dismissed.

Signed at Montréal, Quebec, this 6th day of June 2005.

"Louise Lamarre Proulx"

Lamarre Proulx J.

Translation certified true
on this 3rd day of October 2006.
Monica F. Chamberlain, Reviser

CITATION: 2005TCC372

COURT FILE NO.: 2004-3785(EI)

STYLE OF CAUSE: Ivann Alexandre Bergeron and M.N.R.

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: May 3, 2005

REASONS FOR JUDGMENT BY: The Honourable Justice Louise
Lamarre Proulx

DATE OF JUDGMENT: May 6, 2005

APPEARANCES:

For the Appellant: The Appellant himself

Counsel for the Respondent: Johanne M. Boudreau

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: John H. Sims, Q.C.
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