

Docket: 2004-3802(IT)G

BETWEEN:

DENIS MORISSET,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeals heard on August 17, 2006, at Montréal, Quebec

Before: The Honourable Justice Lucie Lamarre

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: Susan Shaughnessy

JUDGMENT

The appeal from the assessments made under the *Income Tax Act* for the 2001 and 2002 taxation years is allowed, without costs, and the assessments are referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that the Appellant must include in his income 20% of the chiropractic income set out in paragraph 21 and Appendices 2 and 4 of the Reply to the Notice of Appeal, which income was attributed to him by the Minister in the assessments under appeal. The expenses that the Appellant was permitted, under the said assessments, to deduct from chiropractic income, shall be adjusted in the same proportion.

The amounts added to the Appellant's income as a benefit conferred on a shareholder, and the expenses disallowed by the said assessments, shall remain unchanged.

Signed at Ottawa, Canada, this 7th day of September 2006.

"Lucie Lamarre"

Lamarre J.

Translation certified true
on this 29th day of January 2008.

François Brunet, Revisor

Citation: 2006TCC483
Date: 20060907
Docket: 2004-3802(IT)G

BETWEEN:

DENIS MORISSET,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR JUDGMENT

Lamarre J.

[1] The Appellant practices chiropractic as a profession and is the sole shareholder of Centre chiropratique Morisset Inc. ("the Centre"). During the 2000 and 2001 taxation years, he did not report income from his practice of chiropractic on his personal income tax returns. Rather, he reported all his chiropractic income and other income on the Centre's income tax return. The Minister of National Revenue ("the Minister") reassessed the Appellant for both years to include the income from the practice of chiropractic in his personal income; to make the necessary adjustments to the expenses; and to include, in his personal income, the amounts derived by him in his capacity as shareholder.

[2] The Appellant states that he performs chiropractic adjustments for about one hour per week.

[3] He says that he is at the Centre on Tuesday and Friday mornings. Otherwise, he is available for consultation at any time. Most of his time is devoted to equipment repairs and electronics, and to the maintenance of the Centre. He works with his spouse, who also practices chiropractic, as well as a physical education professional and two other employees (Secondary V students) whom he has trained. Ninety percent of the Centre's clients are employees of companies that have contracts with the Appellant, under which he provides chiropractic care to their employees, but also promotes prevention in the workplace by developing a physical

exercise program. Ten percent of the clients register with the Centre for training and do not have medical problems. All of the Centre's clients receive a health card that is used to record their number of visits to the Centre. The Centre bills employers directly, or bills insurance companies or the workers' compensation board (the "CSST") directly for employees covered by a plan offered by these institutions. Generally, a flat fee is charged, and the employee can visit the Centre for training as often as desired. Certain organizations are billed a lump sum which covers chiropractic adjustments and the training offered by the Centre. Other organizations, such as the CSST, request itemized billing of the cost of adjustments and the cost of visits to the Centre. The Centre's computer system does not distinguish between income from the actual practice of chiropractic and income from visits to the Centre for physical training.

[4] The Minister refused to include chiropractic income — which includes plans that encompass a preliminary examination for chiropractic care as well as unlimited access to the Centre — in the Centre's income. Relying on the *Chiropractic Act*, R.S.Q., chapter C-16, and on the *Code of Ethics of Chiropractors*, R.Q., c. C-16, r.2, the Respondent submits that a chiropractic professional's fees cannot be shared with a person who is not a member of the *Ordre des chiropraticiens du Québec*. However, the Appellant argues that in addition to adjustments, chiropractic includes the whole preventive aspect of physical training at the Centre. On this basis, the Minister determined that all income from operating the Centre should be included in the Appellant's income. The Appellant challenges this finding.

[5] It should also be noted that upon including the income derived from the operation of the Centre, and from the actual practice of chiropractic, in the Appellant's income, the Minister allowed the Appellant the associated eligible expenses. Since the Centre owns the building that contains all the equipment needed to operate the clinic and sports centre, and the building also contains residential rental units, only the rental income was included in the Centre's income. The Centre paid the Appellant a salary for repair work on the building. This salary was considered an expense of the Centre. The taxes and permits related to the practice of chiropractic were deducted from the Appellant's income, while the total claimed for this expense item was deducted from the Centre's income. Thus, at tabs 6 and 7 of Exhibit I-1, where the Minister allocates all expenses between the Centre and the Appellant, the Minister allocates to the Centre only expenses related to the rental of the building, and to the Appellant all expenses related to the practice of chiropractic, including the operation of the Centre.

[6] Adjustments were made during the audit and can be found at tabs 11 and 12 of Exhibit A-1. Thus, unexplained or unsubstantiated salaries were disallowed, along with personal and unsubstantiated expenses. A 50% share of meals and lodging expenses was accepted under the *Income Tax Act* ("the Act").

[7] In addition, the Minister included in the Appellant's income, as a benefit conferred on a shareholder, amounts paid by the Centre for the Appellant's personal benefit. These amounts can be found at tab 5 of Exhibit A-1 and consist of premiums paid for life insurance for the Appellant (tabs 15 to 17), unreported bonuses (tab 13) and personal expenses (tab 24). The personal expenses included expenses paid by the Centre for a motor vehicle owned exclusively by the Appellant. However, the Appellant was allowed to deduct travel expenses, including wear and tear. The shareholder benefit also includes all expenses charged to the Appellant's credit card and paid by the Centre using an unexplained residual balance (for example, see tab 22). However, the Appellant was permitted to deduct substantiated travel and management expenses (tabs 25 and 26, Exhibit A-1).

[8] The Appellant did not really challenge the treatment of these expenses, and he did not adduce any evidence to contradict the Minister on this point.¹

[9] The crux of the matter is the computation of the income from the practice of chiropractic and the operation of the Centre.

[10] The Respondent submits that only a member of the *Ordre des chiropraticiens* may practice chiropractic. In this regard, the Respondent relies on the following legislation:

¹ The Minister had calculated a shareholder benefit based on the amount of rent that the Appellant should have paid the Centre for the lodging that he and his family enjoyed free of charge. This benefit does not appear in the Appellant's reassessed income because the Minister reduced the "payable to shareholder" item in the Centre's books. The Appellant challenged this, claiming that the lodging belonged to him. However, he did not challenge the fact that the Centre owned the entire building. He is clearly confusing the Centre's assets with his own. Since the tax treatment of this benefit has no impact on the Appellant's income for the taxation years in question, and the Centre did not appeal its own assessment, no more will be said on the issue of the benefit conferred by virtue of the Appellant's occupancy of residential premises.

R.S.Q., chapter C-16

CHIROPRACTIC ACT

DIVISION 1

DEFINITIONS

1. In this Act and the regulations made thereunder, unless the context indicates a different meaning, the following terms mean:

...

(c) "chiropractor" or "member of the Order": any person entered on the roll;

...

(e) "roll": the list of the members in good standing of the Order prepared in accordance with the Professional Code ...

...

PRACTICE OF CHIROPRACTIC

6. Every act the object of which is to make corrections of the spinal column, pelvic bones or other joints of the human body, by use of the hands, constitutes the practice of chiropractic.

Chiropractic treatment.

7. A chiropractor may determine by clinical and radiological examination of the spinal column, pelvic bones and other joints of the human body, the chiropractic treatment indicated.

...

10. No person may practise chiropractic under a name other than his own.

...

CODE OF ETHICS OF CHIROPRACTORS, c. C-16, r. 2

...

3.05.05. The chiropractor must refrain from sharing his fees with a person who is not a member of the Order or from remitting such fees to him.

...

R.S.Q., chapter C-26

PROFESSIONAL CODE

...

32. No person shall claim in any manner to be ... [a] chiropractor, ... or use one of the above titles or any other title or abbreviation which may lead to the belief that he is one, or initials which may lead to the belief that he is one, or engage in a professional activity reserved to the members of a professional order, claim to have the right to do so or act in such a way as to lead to the belief that he is authorized to do so, unless he holds a valid, appropriate permit and is entered on the roll of the order empowered to issue the permit, unless it is allowed by law.

...

Code of ethics.

87. The Bureau must make, by regulation, a code of ethics governing the general and special duties of the professional towards the public, his clients and his profession, particularly the duty to discharge his professional obligations with integrity. Such code must contain, *inter alia*:

1) provisions determining which acts are derogatory to the dignity of the profession;

2) provisions defining, if applicable, the professions, trades, industries, businesses, offices or duties incompatible with the dignity or practice of the profession;

...

[11] Counsel for the Respondent submits that the Centre cannot bill for the professional acts of the Appellant. She cites *Lebel c. Pharmacentres Cumberland (Merivale) Ltée*, [2002] Q.J. No. 4595 (C.A.Q.), where two pharmacists complained to the Syndic of the *Ordre des pharmaciens* about charges levied by "Cumberland", a non-pharmacist, on fees or profit resulting from the sale of medicines, in contravention of the *Code of Ethics of Pharmacists*, which reads in relevant part:

DUTIES AND OBLIGATIONS TOWARDS THE PROFESSION

§1 Derogatory acts

4.01.01. In addition to those referred to in sections 57 and 58 of the Professional Code (R.S.Q., c. C-26), the following acts are derogatory to the dignity of the profession of pharmacist:

...

- (t) sharing his fees or the profit resulting from the sale of medicines with a person who is not a pharmacist;

[12] The Quebec Court of Appeal made the following comments at paragraphs 16 to 20:

[TRANSLATION]

¶ 16 That being said, the trial judge properly found that under the contractual structure created trial by Cumberland, the pharmacists are sharing their fees (or profit) with the franchisor in contravention of their Code of Ethics. The trial judge wrote:

[TRANSLATION]

The Court is of the view that Cumberland implemented a structure or system that made it possible to circumvent the law because, as we shall see, the evidence does not show that the charges collected pursuant to the franchise contract reflect the fair market value of the services actually provided by the franchisor.

¶ 17 Section 4.01.01(t) of the Code of Ethics of Pharmacists, which prohibits pharmacists from sharing their fees or profit with non-pharmacists, is undeniably of public order [see Note 3 below]. It was adopted in accordance with section 87 of the Professional Code [see Note 4 below]:

Note 3: *Robert Laforce Inc. v Bellemare*, [1989] Q.J. No. 874 (C.A.) (QL); Marie-France Bich, "Le professionnel salarié : considérations civiles et déontologiques", in *Journées Maximilien-Caron* (1994) (Montréal: Themis, 1994), at page 45; *Paupé v. Gauvin*, [1954] S.C.R. 15.

Note 4: R.S.Q., c. C-26.

87. The Bureau must make, by regulation, a code of ethics governing the general and special duties of the professional towards the public, his clients and his profession, particularly the duty to discharge his professional obligations with integrity. Such code must contain, inter alia:

...

¶ 18 Section 4.01.01 t) is a public order provision because, among other things, its object is to protect the public interest in general, not pharmacists in particular. The aim, indirectly, is to prevent non-pharmacists from becoming owners of a pharmacy. The practice of pharmacy is directly tied to the protection of human life and health. As a general principle, legislation regarding professional bodies is of public order [see Note 5 below]:

Note 5: J.-L. Baudouin, *Les obligations*, 4th ed. (Cowansville: Yvon Blais, 1993), at pages 79-81.

Thus, legislation regarding the administration of justice or the organization of the state, as well as administrative and fiscal laws and laws regarding the organization of professional bodies, is of public order.... The parties cannot circumvent or contract out of it, and a contract purporting to do so is absolutely null.

¶ 19 Therefore, the trial judge correctly stated:

[TRANSLATION]

The Court is of the view that the provision in issue goes beyond the strictly private interest of the pharmacist or the mere contractual relationship between a pharmacist and his or her client. It is a protective measure that is far broader in scope and concerns the integrity of the profession and the protection of the public.

¶ 20 Therefore, we find that the trial judge made no error of law and no error of mixed law and fact in determining that the part of clauses 3.1.17 and 10.2 of

the franchise contract which pertains to the revenues collected by the owners of the pharmacy as fees or profits is null.

[13] In the instant case, the *Chiropractic Act* provides that "every act the object of which is to make corrections of the spinal column, pelvic bones or other joints of the human body, by use of the hands, constitutes the practice of chiropractic."

[14] The *Ordre des chiropraticiens du Québec's* web site provides a general description of a chiropractor's area of practice. I shall set out a few excerpts from this description:

[TRANSLATION]

**GENERAL DESCRIPTION OF
A CHIROPRACTOR'S AREA OF PRACTICE**

...

4. A chiropractor performs and prescribes tests, examinations and analyses of the patient's state of health to assess the appropriateness and efficacy of the chiropractor's treatment or in connection with the chiropractor's illness prevention program. In addition, a chiropractor is required to carry out any periodic monitoring and reassessment exams that are needed to determine the progress being made by the patient under his care and to keep the chiropractor's knowledge of each patient up to date.

...

7. A chiropractor provides, or arranges for others to provide, various forms of physical therapy intended to complete and optimize the effects of chiropractic treatments. For example, these include the use of traction, diathermy, galvanic currents, infrared or ultraviolet rays, ultrasound, massage, paraffin baths, hot and cold wraps, meridian therapy, braces and casts.

...

8. A chiropractor advises patients on their lifestyle, mental attitude, emotional life, safety, working conditions and leisure. The chiropractor advises on any other day-to-day activities that could positively or negatively affect the efficacy of chiropractic treatment. It is important to note that chiropractic care is based on a holistic, comprehensive approach of the patient and influences the patient's health (physical, mental and social), well-being and vitality.

9. A chiropractor advises professionals concerned with the workplace, or with the prevention of accidents on duty or work-related illnesses, or the prevention of traffic accidents, and performs assessments in connection with these matters.

...

12. A chiropractor may have a general practice or specialize in the treatment of certain types of problems or patients. For example, a chiropractor may focus on the care of children or the elderly, or on work-related illnesses, sports injuries or employment-related health problems. Some chiropractors devote their practice to the treatment of specific types of health problems, while others focus on the treatment of musculoskeletal disorders.

...

... A chiropractor, also known as a doctor of chiropractic, may practice alone or in a partnership or may be employed by one or more chiropractors.

[15] The evidence shows that the Appellant offers his services through the Centre to various organizations. In particular, the Appellant filed Exhibit A-2, which consists of various sample contracts in which the Appellant agrees to offer Centre memberships to employees of various businesses for a set fee that the employees themselves must pay. In the same contracts, the employer agrees to pay the costs of assessing the employees' physical condition, including a posture assessment and a training program for a specific fee stated therein. (For example, see the contract between the Mitis health and community services centre and the Morisset Centre.)

[16] These contracts show that the Appellant clearly distinguishes between the fees charged by the Centre for a quarterly or annual membership and the fees related to the practice of chiropractic. The problem here is that the Appellant did not break down the income according to each of these sources.

[17] In my opinion, the Respondent's desire to include the income derived from the practice of chiropractic (including everything related to the training program) in the Appellant's income is well founded, because the Appellant is not allowed to bill through the Centre. However, the income from Centre memberships does not form part of the income from the actual practice of chiropractic.

[18] The Appellant said that 10% of the Centre's clients have no medical problem. He said that, on average, he devotes two mornings per week to chiropractic counselling or back adjustments. However, he is available at any time.

According to the information on the health card (photocopied in Exhibit A-2), the Centre is open Monday to Friday from 6 a.m. to 9 p.m. and Saturday from 9 a.m. to noon, for a total of 78 hours per week. The office is open three days per week for six hours each day, for a total of 18 hours per week. Thus, I find that the Appellant offers chiropractic services 23% of the time for 90% of his clients.

[19] Since these are the only figures available to me, I estimate that 20% of the Centre's income is from the practice of chiropractic and must be included in the Appellant's income.

[20] The appeal is therefore allowed on the basis that the Appellant must include in his income only 20% of the chiropractic income that the Minister attributed to him in the assessments under appeal, which income is set out in paragraph 21 and Appendices 2 and 4 to the Reply to the Notice of Appeal. The expenses that the Appellant was allowed, under the said assessments, to deduct from chiropractic income, shall be adjusted in the same proportion.

[21] The amounts added to the Appellant's income as a benefit conferred on a shareholder, and the expenses disallowed by the said assessments, shall remain unchanged.

Signed at Ottawa, Canada, this 7th day of September 2006.

"Lucie Lamarre"

Lamarre J.

Translation certified true
on this 29th day of January 2008.

François Brunet, Revisor

CITATION: 2006TCC483

COURT FILE NO.: 2004-3802(IT)G

STYLE OF CAUSE: DENIS MORISSET v. HER MAJESTY THE QUEEN

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: August 17, 2006

REASONS FOR JUDGMENT BY: The Honourable Justice Lucie Lamarre

DATE OF JUDGMENT: September 7, 2006

APPEARANCES:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Susan Shaughnessy

COUNSEL OF RECORD:

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Name:

Firm:

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