Federal Court of Appeal | Cour d'appel fédérale

Date: 20091029

Dockets: A-460-08
A-456-08
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A-461-08
A-462-08

Citation: 2009 FCA 307

CORAM: **NOËL J.A.**
NADON J.A.
PELLETIER J.A.

A-460-08

BETWEEN:

HER MAJESTY THE QUEEN

Appellant

and

COLETTE LEFEBVRE

Respondent

A-456-08

BETWEEN:

HER MAJESTY THE QUEEN

Appellant

and

JEAN-PIERRE DESNOYERS

Respondent

A-457-08

BETWEEN:

HER MAJESTY THE QUEEN

Appellant

and

MICHELINE BOLDUC

Respondent

A-458-08

BETWEEN:

HER MAJESTY THE QUEEN

Appellant

and

DENISE ROBERT GODIN

Respondent

A-459-08

BETWEEN:

HER MAJESTY THE QUEEN

Appellant

and

LINDA DIAMOND

Respondent

A-461-08

BETWEEN:

HER MAJESTY THE QUEEN

Appellant

and

MICHÈLE RICHARD AUCLAIR

Respondent

A-462-08

BETWEEN:

HER MAJESTY THE QUEEN

Appellant

and

LISETTE SIMARD CÔTÉ

Respondent

Hearing held at Montréal, Quebec, on September 24, 2009.

Judgment delivered at Ottawa, Ontario, on October 29, 2009.

REASONS FOR JUDGMENT BY: NOËL J.A.

CONCURRED IN BY: NADON J.A.
PELLETIER J.A.

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REASONS FOR JUDGMENT

NOËL J.A.

[1] These are seven appeals from a decision by Madam Justice Louise Lamarre Proulx of the Tax Court of Canada (the TCC judge) dated June 27, 2008 (2008 TCC 395), allowing, after a consolidated hearing, each of the respondents' appeals from assessments by the Minister of National Revenue (the Revenue Minister) under the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (the Act).

[2] The seven appeals were consolidated by order of this Court on November 28, 2008, with Court file A-460-08 designated as the lead appeal. Pursuant to that order, these reasons will be filed in Court file A-460-08, and a copy entered as reasons for judgment in each of the related files.

BACKGROUND

[3] During the relevant period (taxation years 2003, 2004 and 2005 for respondent Linda Diamond and 2005 for all the others), the respondents performed various duties as pastoral agents of the Roman Catholic Church (hereinafter "the Church" or "the Catholic Church"), specifically for the dioceses of Saint-Jean-Longueuil and Saint-Jérôme.

[4] Paragraph 8(1)(*c*), if applicable, would allow the respondents to deduct their housing expenses in an amount not exceeding their remuneration from their employment by the Church. The provision reads as follows:

Deductions allowed	**Éléments déductibles**
8. (1) In computing a taxpayer's income for a taxation year from an office or employment, there may be deducted such of the following amounts as are wholly applicable to that source or such part of the following amounts as may reasonably be regarded as applicable thereto	**8.** (1) Sont déductibles dans le calcul du revenu d'un contribuable tiré, pour une année d'imposition, d'une charge ou d'un emploi ceux des éléments suivants qui se rapportent entièrement à cette source de revenus, ou la partie des éléments suivants qu'il est raisonnable de considérer comme s'y rapportant :
. . .	[…]

Clergy residence

(*c*) where, in the year, the taxpayer

(i) is a member of the clergy or of a religious order or a regular minister of a religious denomination, and

(ii) is

(A) in charge of a diocese, parish or congregation,

(B) ministering to a diocese, parish or congregation, or

(C) engaged exclusively in full-time administrative service by appointment of a religious order or religious denomination,

the amount, not exceeding the taxpayer's remuneration for the year from the office or employment, equal to

. . .

Résidence des membres du clergé

c) lorsque le contribuable, au cours de l'année :

(i) d'une part, est membre du clergé ou d'un ordre religieux ou est ministre régulier d'une confession religieuse,

(ii) d'autre part :

(A) soit dessert un diocèse, une paroisse ou une congrégation,

(B) soit a la charge d'un diocèse, d'une paroisse ou d'une congrégation,

(C) soit s'occupe exclusivement et à plein temps du service administratif, du fait de sa nomination par un ordre religieux ou une confession religieuse,

le montant, n'excédant pas sa rémunération pour l'année provenant de sa charge ou de son emploi, égal :

[…]

[5] The respondents, who are not ordained, concede that they are neither members of the clergy nor members of a religious order. However, as they act under the authority of pastoral

mandates conferred by a bishop, they submit that they are “regular ministers” within the meaning of the Act.

[6] The pastoral mandates define the pastoral ministries entrusted to the respondents. Most of these mandates have a one-year term and are renewable. In case of renewal, subsequent mandates generally have a three-year term.

[7] Upon obtaining such a mandate, pastoral agents sign an employment contract by which they undertake, as salaried employees, to carry out their assigned functions. The contract must specify that the employment relationship is automatically terminated by the revocation or non-renewal of the pastoral mandate.

[8] A pastoral agent may be authorized to administer certain sacraments, in which case he or she acts as an “extraordinary minister”, as opposed to an “ordinary minister”, a title reserved for ordained ministers under the rules of the Church.

TAX COURT OF CANADA DECISION

[9] The TCC judge stated at the outset that two requirements must be met under paragraph 8(1)(*c*): a status requirement and a function requirement (reasons, para. 3). She defined the issue as follows (reasons, para. 4):

> [4] The deduction was disallowed under the status test in all cases. The [Appellant's] position is that the [Respondents] are not members of the clergy or of a religious order, and are not regular ministers of a religious denomination. The [Respondents] admit that

> they were not members of the clergy and were not members of a religious order. However, they submit that they are regular, albeit non-ordained, ministers of the Roman Catholic Church.

[10] The TCC judge stressed the well-established principle that the issue of whether the respondents are regular ministers within the meaning of the Act must be analyzed in light of the rules of the Church. Accordingly, she referred to various provisions of canon law (Canons 228 and 230 of the *Code of Canon Law* in particular) that describe the role of pastoral agents (reasons, para. 31), as well as a document approved by the Pope on August 13, 1997, entitled *Instruction on Certain Questions Regarding the Collaboration of the Non-Ordained Faithful in the Sacred Ministry of Priest* (the Instruction) (reasons, para. 14).

[11] After an exhaustive review of the evidence (reasons, paras. 5 to 48), the TCC judge began her analysis by suggesting that inconsistent judgments had been issued by her Court. She found that *Noseworthy v. Canada*, [1999] T.C.J. No. 209 (QL) (*Noseworthy*) and *Kolot v. Canada*, [1992] T.C.J. No. 673 (QL) (*Kolot*), implied that the respondents could be considered regular ministers, while *Pereira v. Canada*, 2006 TCC 300, [2006] T.C.J. No. 405 (QL) (*Pereira*) and *Hardy v. Canada*, [1997] T.C.J. No. 1191 (QL) (*Hardy*), state the opposite (reasons, paras. 49 to 53).

[12] The TCC judge paid particular attention to *Pereira*, in which Mr. Justice Bédard, faced with a pastoral mandate practically identical to those of the respondents, held that Mr. Pereira did not have the status of “regular minister” within the meaning of the Act (reasons, paras. 54 to 56).

[13] According to the TCC judge, Bédard J.’s refusal to recognize the status of regular minister in the case of Mr. Pereira resulted from the latter’s failure to provide sufficient evidence (reasons, paras. 57 to 60). The TCC judge found that submissions presented to her shed more light on the structure of the Catholic Church and the place of pastoral agents within it (reasons, para. 61). In particular, the evidence reveals the following (reasons, paras. 62 and 63):

> [62] . . . At a time when there is a shortage of priests, which the Vatican hopes is temporary, the Vatican is allowing lay persons to minister, and has established a legal framework in which they may do so.
>
> [63] . . . They perform these duties in the place of ordained ministers, and do not perform all such ministers' duties. Pastoral agents derive their legitimacy from an official delegation by the bishop, and, in carrying out their duties, they are under ecclesiastical authority. . . .

[14] The TCC judge then reviewed the attributes of a regular minister, as defined by the courts. She wrote that a regular minister must have an appointment by the lawful authority of a church, authorizing the person to minister spiritually to the faithful, on an essentially ongoing basis, in accordance with the beliefs and dogmas of the church in question. In this case, pastoral mandates or mission letters fulfill the function of an investiture document (reasons, paras. 63 to 66).

[15] Paragraph 71 of the reasons reveals the essence of the rationale behind the TCC judge’s finding that that the respondents were “regular ministers” within the meaning of the Act:

> The evidence discloses that pastoral agents, called extraordinary ministers, are regular ministers of the Church. Their ministry is completely integrated, on a regular basis, into the Church's ministries, including the Ministry of the Word, catechesis, visiting the sick, sacramental preparation and mystagogia, ministry for those who are preparing for a funeral and to the bereaved, hospitality, solidarity with the poor, and charitable or humanitarian action. Without the ministry of lay persons, the Church would be unable to go on. The Bishop of the Longueuil diocese stated that their role is essential, the various authors that were cited are in agreement, and the Vatican itself has expressed the same opinion by providing a legal framework for these non-ordained lay persons.
>
> [Emphasis added.]

With this finding, the TCC judge gave effect to the recommendation of the Bishop of St-Jean-Longueuil that it would be fair and equitable with respect to other religions to grant the sought-after deduction to the pastoral agents of his church (reasons, para. 7).

[16] The TCC judge's decision was followed by the Court of Québec in *Côté c. Québec (Sous-ministre du Revenu*), 2008 QCCQ 12517 and *Rivard c. Québec (Sous-ministre du Revenu*), 2009 QCCQ 1399. Applying the reasoning of the TCC judge to those cases, the Court of Québec granted to pastoral agents the equivalent deduction to the one at issue, pursuant to section 76 of the *Taxation Act*, R.S.Q. c. I-3. Although not identical, the provision sets out the same requirements as paragraph 8(1)(*c*) of the Act.

ALLEGED ERRORS

[17] The appellant submits that the TCC judge confused the respondents' status with the functions they exercised by them for their respective dioceses, thereby committing an error of

law. The appellant argues that it is status, rather than function, that serves to determine whether a person is a “regular minister” within the meaning of the Act.

[18] The appellant claims that the TCC judge also erred in setting aside prior decisions of the Tax Court of Canada, citing a supposed conflict. According to the appellant, *Hardy* and *Pereira* raise the same issue, and the judge was mistaken in refusing to follow those cases.

[19] Finally, the appellant submits that the TCC judge committed a palpable and overriding error in her assessment of the facts when she held that the Catholic Church recognized the respondents as belonging to a superior class of the faithful in spiritual matters.

ANALYSIS AND DECISION

[20] The TCC judge must direct herself correctly in law and not confuse status with function. This aspect of the challenge is subject to the standard of correctness because it raises a pure question of law. Furthermore, the finding that the respondents were regular ministers within the meaning of the Act and therefore benefitted from the deduction prescribed by paragraph 8(1)(*c*) is a question of mixed law and fact and cannot be set aside in the absence of a palpable and overriding error (*Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235; *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190).

[21] Before undertaking the analysis, I must note that the canon law to which the TCC judge refers in her reasons must, as foreign law relevant to the disposition of the case, be proven by

expert evidence before it can be considered (*Fabrique de la paroisse de L'Ange-Gardien c. Procureur général de la province de Québec*, (1980) C.S. 175 at paras. 249 to 253). However, since the parties raised no objections on this point, I conclude that they accept for the purposes of these appeals that the canon law to which the TCC judge refers and on which she bases her decision faithfully reflects the applicable law and must be taken as proven.

[22] Paragraph 8(1)(*c*) of the Act sets out two requirements: a status requirement (subparagraph 8(1)(*c*)(i)) and a function requirement (subparagraph 8(1)(*c*)(ii)). Only the status of the respondents as regular ministers within the meaning of subparagraph 8(1)(*c*)(i) is being challenged here.

[23] The debate surrounding the adoption of the test set out in subparagraph 8(1)(*c*)(ii) in 1956 allows us better to understand Parliament's intention with respect to the paragraph as a whole. In its initial version introduced in 1949, paragraph 8(1)(*c*) contained no function requirements. Seven years later, following a judgment in which the deduction was granted to a minister of the United Church of Canada whose sole occupation was teaching (*James Rattray Guthrie v. Minister of National Revenue*, 55 DTC 605 (QL)), the then Finance Minister proposed that the right to the deduction be limited to persons who, in addition to having the required status, fulfilled the functions described at subparagraph 8(1)(*c*)(ii) of the Act. According to the Finance Minister (House of Commons, *Official Report of Debates*, Volume V, (1956), at p. 6775):

> The present amendment provides that any clergyman, whether he be in fact a pastor in charge of a congregation or a member of the church body in the higher level, if I may put

> it that way, who engages in church work exclusively including acting as pastor from time to time, would have the benefit of the deduction.

[24] It is therefore to status that the legislature is referring in subparagraph 8(1)(*c*)(i) and not to functions. It is only in the following subparagraph that the legislature sets out the function requirement.

[25] The term "regular minister" is not defined in the Act. The courts have nevertheless been called upon to give meaning to those words. In *Hardy*, Mr. Justice Rip performed an exhaustive analysis of the Canadian and British caselaw and retained three elements from the decision of the High Court of Justiciary of Scotland in *Saltmarsh v. Adair*, [1942] SC(JC) 58 (*Saltmarsh*), which were later adopted in *Noseworthy* (para. 28) and *Pereira* (para. 20). According to Rip J., the judges in *Saltmarsh* (*Hardy*, para. 21):

> . . . appear to infer that a "regular minister" is one who
>
> > i. performs spiritual duties, the conduct of religious services, the administration of sacraments and the like;
> >
> > ii. is appointed by a body or person with the legitimate authority to appoint or ordain ministers on behalf of the denomination; and
> >
> > iii. is in a position or appointment of some permanence.

Rip J. added (*ibidem*):

> In the absence of a legitimate appointment, the mere performance of the duties of a minister will not suffice, in their view, to constitute a "regular minister".

[26] The last comment demonstrates that it is not so much the position or the duties that have to have some permanence (see point iii.), but rather the status of the person who holds the position or performs the duties. The fact that a person holds a position or performs duties in a relatively permanent manner will not suffice if the person does not also have a legitimate appointment. This is the proposition for which *Saltmarsh* stands.

[27] The requirement that a regular minister possess a superior status in spiritual matters has also been adopted by the courts. This test, which originated in *Walsh v. Lord Advocate*, [1956] 3 All ER 129 (C.L.) (*Walsh*), has been applied by the Tax Court of Canada on several occasions, notably in *Kolot* (p. 6) and *Pereira* (para. 17):

> . . . he must have by virtue of his appointment as a minister what might be called 'a clergyman status' which sets him apart from and places him over the laity of his denomination in spiritual matters.

[28] It should be noted that the issue in *Walsh* and *Saltmarsh* was related to status. It had to be determined in both cases whether the appellants, who were active members of the Jehovah's Witnesses, were ". . . [men] in holy orders or [regular ministers] of any religious denomination", in which case they would be exempt from military service (*Walsh*, p. 3; *Saltmarsh*, p. 4). The appellants sought the status of "regular minister" on the grounds that they performed the functions associated with that position, even though the status seemed to elude them.

[29] In refusing to grant the exemption, the judges in *Walsh* emphasized the dichotomy between status and function:

> . . . It is the spiritual or pastoral status and not the performance of functions that gives the right to exemption from military service. A clerk in holy orders is exempted whether or not he holds a benefice or preferment, so also is the minister or pastor of any other religious body . . . (*Lord Goddard*, p. 135).
>
> . . .
>
> . . . What distinguished the appellant as a regular minister, it was said, was his functions or vocation. The appellant was discharging full time spiritual functions as a congregation servant and pioneer publisher. This distinguished him from other members of this sect and made him a regular minister. The definition was satisfied by a person officially charged by his denomination with whole time spiritual functions which constituted his vocation for the time being. But that is not, in my opinion, the test. It would exclude many ordained ministers who were not discharging any, or at least full time, spiritual functions and who would according to ordinary conceptions be regarded in this country as regular ministers. . . . (Lord Keith of Avonholm, p. 137).
>
> . . .
>
> . . . The thing goes deeper than function. At bottom there is a sacerdotal status which once it is properly acquired remains with its holder independently of the particular functions which he is called on to perform. Something of that sort is at the root of the conception of being in holy orders or being a regular minister. . . . (Lord Thomson, p. 140).
>
> . . .
>
> At the hearing before us . . . [i]t was claimed that the evidence established that the pursuer as congregation servant was the spiritual "overseer" of the congregation and performed many of the functions such as funeral services, marriage ceremonies (where permitted by the law of the land), conduct of the service meeting of the congregation, visiting of the sick and so forth which are performed by the pastors of the more ordinary religious bodies in this country. In my opinion it is status rather than function which is the determining factor in qualifying a man for being the holder of the position of "A man in holy orders or a regular minister of any religious denomination", but even in the matter of function I do not thing that the congregation servant (or company servant as until recently he was called) in the Jehovah Witness body truly matches up to the position of a clergyman in a more ordinary type of religious denomination. . . .

and further:

> . . . All this goes to show in my opinion that it is the status yielded by the position rather than the functions which may have to be performed in it which should be regarded as determinative of whether a man is a regular minister of a religious denomination in the sense of the statute. . . . (Lord MacKintosh, pp. 143, 144)
>
> [Emphasis added.]

[30] In *Saltmarsh*, decided a few years earlier, the judges focussed on the fact that the functions the appellant was authorized to perform did not distinguish him from ordinary members of his religion:

> . . . Their ideal was that their religious services should be conducted by laymen who occupied the position of elders. Accordingly, when the appellant conducted the religious services set forth in article 19 of the stated case, he was acting, not as a person set apart and holding the sacred office of minister, but as a person received and allowed to conduct services on the same footing as an elder of a congregation.
>
> The appointment by the unlimited company, therefore, was not that of a regular minister within this denomination, and there was no such thing as a regular ministry of the denomination. It was not a permanent appointment; it was merely an appointment terminable at the will of the body which appointed him, and that was an unlimited company. . . . (Lord Normand, p. 6).
>
> . . .
>
> . . . It therefore appears to me that the services performed by the appellant, even if he had been authorized by a religious body to perform them, could not be regarded as clerical services, seeing that, although more regularly performed than by the occasional servants of the company, these services are regarded by the company as services suitable to be entrusted, not only to clerics, but to laymen. . . . (Lord Moncrieff, p. 7).
>
> [Emphasis added.]

[31] The TCC judge did not question the relevance of these decisions or of the legal tests the Tax Court of Canada has drawn from them. She held, however, that the application of these tests

by her colleagues had given rise to conflicting decisions. I shall now take a closer look at the inconsistency supposedly identified by the TCC judge.

[32] According to the TCC judge, *Kolot* and *Noseworthy* stand for a broader interpretation of the concept of regular minister and support her finding in this case, while *Hardy* and *Pereira* go the other way.

[33] I note at the outset that *Kolot* has limited application; the issue there was whether the appellant was a regular minister of the United Church of Canada. As the TCC judge is aware, the analysis must be performed in light of the rules of the relevant church.

[34] Nor does *Noseworthy* support the TCC judge's holding. It is true that in that case, the Court held that the appellant, who was clearly not ordained, nevertheless possessed the status of regular minister within the meaning of the Act. However, as pointed out by Bédard J. in *Pereira*, this is explained by the unusual facts of that case, in particular the following (*Pereira*, para. 25):

> 1) the Catholic archbishop of Halifax had granted [to Ms. Noseworthy] the position of chaplain;
>
> 2) she held that position permanently;
>
> 3) to my great surprise, she could administer sacraments and did so;
>
> 4) the Catholic Church considered her to be a Catholic chaplain working regularly as minister.

[35] On the other hand, the two other decisions to which the TCC judge refers deal with precisely the issue we have before us. *Pereira* merits close attention.

[36] The issue in that case was whether Mr. Pereira, who held a pastoral mandate conferred by the archbishop of the Archdiocese of Québec, and whose duties were those related to a hospital chaplaincy, was a "regular minister" within the meaning of paragraph 8(1)(*c*) (*Pereira*, para. 2). As in the case before us, it was admitted that he satisfied the function requirement; the only doubt was as to his status (*idem*, para. 15).

[37] Having performed an exhaustive review of the evidence and submissions (*idem*, paras 2 to 11), Bédard J. was not convinced that that the Catholic Church recognized the appellant as having a superior and distinct rank in spiritual matters (*idem*, para. 19). Next, after considering the factors developed in *Hardy*, Bédard J. found that although the Appellant occupied this position on a full-time basis, he performed his duties according to the goodwill of the archbishop of Québec and his appointment therefore does not appear to be permanent (*idem*, paras.20 to 23). Bédard J. concluded his analysis as follows (*idem*, para. 24):

> In short, simply by performing most of the duties of a "regular minister" under a precise and temporary liturgical mandate is, in my opinion, insufficient to make the Appellant a "regular minister" of the Catholic Church.

[38] The TCC judge set aside Bédard J.'s finding on the grounds that the more extensive evidence presented to her justified the opposite finding.

[39] The issue of status must be analyzed from the perspective of the Catholic Church, which alone determines the status it confers to its members. In canon law, the distinction between ordained ministers and lay faithful (among whom pastoral agents are recruited) remains as fundamental today as it has always been.

[40] Moreover, only ordained ministers are conferred a status that can be said to be permanent (i.e. *ad vitam aut culpam*). Even though under canon law, the lay faithful are authorized to perform certain specific functions that are normally entrusted to ordained ministers, they are called upon to do this on a temporary basis when there is a scarcity of ordained ministers:

> Canon 228 - . . .
>
> § 1. Lay persons who are found suitable are qualified to be admitted by the sacred pastors to those ecclesiastical offices and functions which they are able to exercise according to the precepts of the law.
>
> Canon 230 - . . .
>
> § 2. Lay persons can fulfill the function of lector in liturgical actions by temporary designation. All lay persons can also perform the functions of commentator or cantor, or other functions, according to the norm of law.
>
> § 3. When the need of the Church warrants it and ministers are lacking, lay persons, even if they are not lectors or acolytes, can also supply certain of their duties, namely, to exercise the ministry of the word, to preside offer liturgical prayers, to confer baptism, and to distribute Holy Communion, according to the prescripts of the law.
>
> [Emphasis added.]

[41] The Instruction, on which the TCC judge relies heavily throughout her reasons, is, as required by canon law (Canon 34, para. § 2), consistent with the law in that it clearly indicates

that pastoral agents are called upon to supply certain of the duties of ordinary ministers on a temporary basis. However, it is ordinary ministers and the revival of priestly vocations that will enable the Church to fulfill its mission on earth. This is the message of the Instruction as a whole, but the following passage, found at the end of the document under the heading "Conclusion" leaves no doubt on this point (Instruction, pp. 16 and 17):

> . . .
>
> While on the one hand the numerical shortage of priests may be particularly felt in certain areas, on the other, it must be remembered that in other areas there is currently a flowering of vocations which augurs well for the future. Solutions addressing the shortage of ordained ministers cannot be other than transitory and must be linked to a series of pastoral programs which give priority to the promotion of vocations to the Sacrament of Holy Orders. (115)
>
> In this respect the Holy Father notes that in "some local situations, generous, intelligent solutions have been sought. The legislation of the Code of Canon Law has itself provided new possibilities, which however, must be correctly applied, so as not to fall into the ambiguity of considering as ordinary and normal, solutions that were meant for extraordinary situations in which priests were lacking or in short supply". (116)
>
> The object of this document is to outline specific directives to ensure the effective collaboration of the non-ordained faithful in such circumstances while safeguarding the integrity of the pastoral ministry of priests. "It should also be understood that these clarifications and distinctions do not stem from a concern to defend clerical privileges but from the need to be obedient to the will of Christ, and to respect the constitutive form which he indelibly impressed on his Church". (117) (footnotes omitted)
>
> . . .
>
> [Emphasis added.]

[42] The TCC judge cites several excerpts of an article published by Anne Asselin, JCD, of the Faculty of Canon Law of St. Paul University in Ottawa (*Les laïcs au service de leur Église, Le point actuel du droit* [Lay persons serving their Church: The current law]), which questions

the hope placed by the Church in its campaign for new vocations, as suggested by the Instruction (reasons, paras. 16 and 18):

> [TRANSLATION]
>
> The Instruction suggests that the solution to the shortage of priests lies in the encouragement of a "zealous and well-organised pastoral promotion of vocations". . . . "Any other solution to problems deriving from a shortage of sacred ministers can only lead to precarious consequences." No one can argue with a campaign for vocations; only a priest can replace a priest. But we can ask whether all our hope for the future of the Church should be placed there. A well-managed lay ministry may turn out to be a good thing for the Church.
>
> This doctrinal section of the document concludes with a reminder that this collaboration of lay people in the ministry of priests is of extraordinary character and that its application must "avoid . . . the abuse of multiplying 'exceptional' cases over and above those so designated and regulated."
>
> . . .
>
> . . . The Assembly of Quebec Catholic Bishops also studied the question of traditional vocabulary and current experience of ministry. The bishops suggested adopting a "certain number of agreements to avoid sterile struggles about semantics and even more tensions between ministers that can only harm the community." It seems clear that, in practice, the restrictions on terminology imposed by the Instruction did not have the desired impact, at least not yet, ten years after its promulgation.
>
> . . .
>
> The Instruction does not seem to take into account the fact that the situations which it calls exceptional are in reality frequent, if not habitual, in many dioceses:
>
> > My real difficulty with this restrictive decree is that it deals with extraordinary ministers of Communion, and lay ministers in general, at best as helpers who are reluctantly authorized for some exceptional situations for which, unfortunately, no other solution can be found. My real concern is the refusal to recognize the actual pastoral situations in many countries around the world. (R. Stecher, Bishop of Innsbruck, Austria.)
>
> . . .

> . . . What ought to be an exception has, in many cases, become standard practice or habit. This situation can be found everywhere in Canada, Europe and the United States.
>
> Whereas lay people were once said to be involved in "an apostolate in the world," they now exercise "pastoral ministries." The exercise of such ministries is founded in baptism and in a juridical act: a mandate from the competent authority. The activities undertaken by a pastoral agent in the context of Canon 517, §2 include, among other things, preaching, catechesis, presiding over prayer, spiritual direction, administration, assistance to those who are non-practising and to non-believers, and the responsibility to assure that sacramental celebrations are made available to the faithful. . . .
>
> In his discussion of such lay ministers, Roch Pagé describes them as "full-time pastoral agents," preferring this term to "permanent pastoral agents" because a mandate is never for life. It is for a full-time office and for a certain length of time. Permanent ministries—ministries for life—are reserved for ordained, instituted ministries. Even if these ministers cannot exercise their ministry full time, they are still permanent. See Pagé, "Full-Time Pastoral Ministers", pp. 167-168.
>
> > Let us say then that in participating in the exercise of a pastoral office, clerics and laity are linked together by the stability that their mandate gives them rather than by the permanence that constitutes the basis of their mandate, since this can differ from one person to another (Pagé, p. 168).
>
> . . . The inclusion of lay people in the ministry of the church and in offices of ecclesiastical responsibility has perhaps happened because of the lack of priests, but it is here to stay. This is not a temporary or provisional measure that will disappear as soon as there are enough ordained ministers.
>
> [Emphasis added.]

[43] Conscious of the supplemental role of pastoral agents under canon law and the temporary mandate resulting therefrom, the TCC judge infers from this article that even though recourse to pastoral agents is described as temporary, in reality they are called upon to perform their functions on a regular and ongoing basis (reasons, para. 19). It is this reality described by the author of the article that led the TCC judge to hold that the status conferred on pastoral agents

did in fact have the requisite permanence (see also the article published by Alphonse Borras of the Université Catholique de Louvain entitled, “À propos des ministères, L’articulation des ministères : de la théologie à la lettre de mission”, excerpts of which are cited by the TCC judge (reasons, para. 20)).

[44] The difficulties with this approach are its focus on function rather than status and its disregard for the perspective of the Catholic Church. Even if we accept the argument by the author of the article that the functions of pastoral agents are permanent, the status conferred on them by the Church nevertheless remains temporary, and, no matter what the critics might say, this is the perspective from which the issue must be analyzed. In this respect, the Church continues to stress that the functions it confers on pastoral agents are not attributive of status (Instruction, Premiss, p. 5):

> . . . “The exercise of such tasks does not make Pastors of the lay faithful, in fact, a person is not a minister simply in performing a task, but through sacramental ordination. Only the Sacrament of Orders gives the ordained minister a particular participation in the office of Christ, the Shepherd and Head in his Eternal Priesthood. The task exercised in virtue of supply takes its legitimacy formally and immediately from the official deputation given by Pastors, as well as from its concrete exercise under the guidance of ecclesiastical authority”. (39) (footnotes omitted)
>
> [Emphasis added.]

[45] With respect, the designation of “extraordinary minister” given by the Catholic Church to pastoral agents, mentioned several times by the TCC judge (reasons, paras. 62, 66, 69 and 71), does not indicate any change with respect to the temporary and supplemental role played by these agents. The word “extraordinary” is not used in these texts as a superlative (admirable,

remarkable, sublime), but in its ordinary sense (abnormal, unusual) (translated from *Le Petit Robert*, French language dictionary). Despite the commitment of time made by pastoral agents, the fact remains that, according to the Catholic Church, only the pastoral ministry of priests respects “the constitutive form which [Christ] indelibly impressed on his Church” (see the last paragraph of the excerpt from the Instruction cited at paragraph 41, above).

[46] Moreover, the qualities required by the faithful to have conferred on them a pastoral mandate do not point to a finding that the persons elected must have, from the point of view of the Church, a superior rank in spiritual matters. The formal requirement is set out at article 13 of the Instruction (p. 16):

> Should it become necessary to provide for “supplementary” assistance in any of the cases mentioned above, the competent Authority is bound to select lay faithful of sound doctrine and exemplary moral life. Catholics who do not live worthy lives or who do not enjoy good reputations or whose family situations do not conform to the teaching of the Church may not be admitted to the exercise of such functions. In addition, those chosen should possess that level of formation necessary for the discharge of the responsibilities entrusted to them.
>
> In accordance with the norms of particular law, they should perfect their knowledge particularly by attending, in so far as possible, those formation courses organized for them by the competent ecclesiastical Authority in the particular Churches, (112) (in environments other than that of the Seminary, as this is reserved solely for those preparing for the priest hood). (113) Great care must be exercised so that these courses conform absolutely to the teaching of the ecclesiastical magisterium and they must be imbued with a true spirituality. (footnotes omitted)

[47] The reference document adopted by the Bishops of Quebec in 2004 says the following on this point (reasons, para. 22):

> [TRANSLATION]
>
> Persons are recognized as suitable when they accept their baptismal faith and testify to it by the coherence of their life. They have significant experience of our common ecclesial life, know how to make the connection between faith and life, and are in complete solidarity with the thought and the mission of the Roman Catholic Church through the diocesan bishop, notably in matters of doctrine. Moreover, their state of life must conform to Church teaching, particularly in matters of marriage.

[48] There is no indication that the Catholic Church expects any less from its faithful. In principle, all of the faithful must live in accordance with their faith and conform to the rules of the Church. According to the Instruction, it is from this very pool of believers that the Church recruits its pastoral agents. From the Church's perspective, the fact that the chosen faithful must live in accordance with their faith and adhere to its doctrine does not elevate them to a superior rank in spiritual matters.

[49] Moreover, it is clear that, according to the rules of the Church, only ordained ministers commit "*ad vitam aut culpam*" and are awarded a special status. That pastoral agents do not possess this status is evident from their temporary mandates, which the Church may terminate at any time. In my humble opinion, the TCC judge confused status with function in finding that the respondents possessed the status of "regular ministers" within the meaning of the Act.

[50] For these reasons, I would allow the appeals, set aside the TCC judge's decision, and, rendering the judgment that she should have rendered, I would dismiss the appeal of each of the appellants and because the Crown has not asked for costs, none shall be awarded.

"Marc Noël"

J.A.

"I agree.
M. Nadon J.A."

"I agree.
J.D. Denis Pelletier J.A."

Certified true translation
Francie Gow, BCL, LLB

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET:	A-460-08
(APPEAL FROM A JUDGMENT OF THE HONORABLE MADAM JUSTICE LOUISE LAMARRE PROULX OF THE TAX COURT OF CANADA DATED JUNE 27, 2008, DOCKET NO. 2007-1075(IT)I.)	
STYLE OF CAUSE:	Her Majesty the Queen v. Colette Lefebvre
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	September 24, 2009
REASONS FOR JUDGMENT BY:	Noël J.A.
CONCURRED IN BY:	Nadon J.A. Pelletier J.A.
DATED:	October 29, 2009

APPEARANCES:

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Monique Rhéaume	FOR THE RESPONDENT

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FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET:	A-456-08
(APPEAL FROM A JUDGMENT OF THE HONORABLE MADAM JUSTICE LOUISE LAMARRE PROULX OF THE TAX COURT OF CANADA DATED JUNE 27, 2008, DOCKET NO. 2007-2096(IT)I.)	
STYLE OF CAUSE:	Her Majesty the Queen v. Jean-Pierre Desnoyers
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	September 24, 2009
REASONS FOR JUDGMENT BY:	Noël J.A.
CONCURRED IN BY:	Nadon J.A. Pelletier J.A.
DATED:	October 29, 2009

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FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET:	A-457-08
(APPEAL FROM A JUDGMENT OF THE HONORABLE MADAM JUSTICE LOUISE LAMARRE PROULX OF THE TAX COURT OF CANADA DATED JUNE 27, 2008, DOCKET NO. 2007-2542(IT)I.)	
STYLE OF CAUSE:	Her Majesty the Queen v. Micheline Bolduc
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	September 24, 2009
REASONS FOR JUDGMENT BY:	Noël J.A.
CONCURRED IN BY:	Nadon J.A. Pelletier J.A.
DATED:	October 29, 2009

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FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET:	A-458-08
(APPEAL FROM A JUDGMENT OF THE HONORABLE MADAM JUSTICE LOUISE LAMARRE PROULX OF THE TAX COURT OF CANADA DATED JUNE 27, 2008, DOCKET NO. 2007-1621(IT)I.)	
STYLE OF CAUSE:	Her Majesty the Queen v. Denise Robert Godin
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	September 24, 2009
REASONS FOR JUDGMENT BY:	Noël J.A.
CONCURRED IN BY:	Nadon J.A. Pelletier J.A.
DATED:	October 29, 2009

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FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET:	A-459-08
(APPEAL FROM A JUDGMENT OF THE HONORABLE MADAM JUSTICE LOUISE LAMARRE PROULX OF THE TAX COURT OF CANADA DATED JUNE 27, 2008, DOCKET NO. 2007-4806(IT)I.)	
STYLE OF CAUSE:	Her Majesty the Queen v. Linda Diamond
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	September 24, 2009
REASONS FOR JUDGMENT BY:	Noël J.A.
CONCURRED IN BY:	Nadon J.A. Pelletier J.A.
DATED:	October 29, 2009

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FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET:	A-461-08
(APPEAL FROM A JUDGMENT OF THE HONORABLE MADAM JUSTICE LOUISE LAMARRE PROULX OF THE TAX COURT OF CANADA DATED JUNE 27, 2008, DOCKET NO. 2007-1603(IT)I.)	
STYLE OF CAUSE:	Her Majesty the Queen v. Michèle Richard Auclair
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	September 24, 2009
REASONS FOR JUDGMENT BY:	Noël J.A.
CONCURRED IN BY:	Nadon J.A. Pelletier J.A.
DATED:	October 29, 2009

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FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET:	A-462-08
(APPEAL FROM A JUDGMENT OF THE HONORABLE MADAM JUSTICE LOUISE LAMARRE PROULX OF THE TAX COURT OF CANADA DATED JUNE 27, 2008, DOCKET NO. 2007-1528(IT)I.)	
STYLE OF CAUSE:	Her Majesty the Queen v. Lisette Simard Côté
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	September 24, 2009
REASONS FOR JUDGMENT BY:	Noël J.A.
CONCURRED IN BY:	Nadon J.A. Pelletier J.A.
DATED:	October 29, 2009

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