

Docket: 2006-444(IT)I

BETWEEN:

MICHAEL PICARD,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

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Appeal heard on September 21, 2006, at Montréal, Quebec.

Before: The Honourable Justice Louise Lamarre Proulx

Appearances:

For the Appellant:

The Appellant himself

Counsel for the Respondent:

Jean Lavigne

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**JUDGMENT**

The appeal from the assessment under the *Income Tax Act* for the 2003 taxation year is allowed and the assessment is referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that an amount of \$1,166.96 must be deducted from the Appellant's unreported income along with an amount of \$1,500 for business expenses. The amount of the penalty must be computed accordingly. The whole in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 29th day of September 2006.

"Louise Lamarre Proulx"

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Lamarre Proulx J.

Translation certified true  
on this 24th day of July 2007  
Monica F. Chamberlain, Translator

Citation: 2006TCC531  
Date: 20060929  
Docket: 2006-444(IT)I

BETWEEN:

MICHAEL PICARD,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

**REASONS FOR JUDGMENT**

Lamarre Proulx J.

[1] This is an appeal, under the informal procedure, pertaining to the 2003 taxation year.

[2] The facts set out in paragraphs 6 and 7 of the Amended Reply to the Notice of Appeal (the "Reply") are as follows:

[TRANSLATION]

6. In making and confirming the assessment in respect of the 2003 taxation year, the Minister relied on the same assumptions of fact, namely:

(a) during the taxation year in issue, the Appellant and his son distributed "Public-Sacs" [plastic bags containing advertising flyers] in the "Aux quatre vents" district for Marcel Hamel, Jr.;

(b) until June 26, 2003, the Appellant was remunerated by cheque payable to his son Jesse Parent Picard;

(c) these cheques were endorsed both by the Appellant and his son;

(d) from June 26 to July 31, 2003, the cheques that Mr. Hamel remitted to the Appellant were payable to "cash";

(e) those cheques were endorsed only by the Appellant;

(f) From July 31, 2003 to the first week of December 2003, the Appellant was paid in cash; and

(g) The remuneration from this source received by the Appellant in the course of the taxation year in issue totalled \$10,510;

7. The facts relied upon in imposing the penalty under subsection 163(2) of the Act for the 2003 taxation year, are as follows:

(a) the Appellant reported no business income during the taxation year in issue; and

(b) the Appellant's unreported income for the taxation year in issue represents 29% of his employment income and 22% of his total income.

[3] Marcel Hamel, Jr. is the Appellant's next-door neighbour. In 2002, Jesse Parent Picard, the Appellant's son, got a contract from that neighbour to distribute advertising flyers to roughly 245 households in the vicinity twice a week. His father, Michael Picard, supported him in these efforts. Jesse is now 18 years old, which means that he was 15 in 2003.

[4] Later on — in June 2003, he says — the Appellant told Mr. Hamel that his son wanted to increase his income. Mr. Hamel told the Appellant about a neighbourhood where a car would have to be used, and in which 2,400 households were to be covered twice a week. Mr. Hamel said that the contract could only be entered into with an adult who had a car, and that the Appellant was the person who agreed to carry out the work. The Appellant says that it was his son Jesse who did so.

[5] Throughout his testimony, the Appellant claimed that he had very little to do with this agreement, and that it was Jesse who looked after everything with his mother and little brother. Nathalie Parent, Jesse's mother, also said that she was the person who drove the car for the purposes of Jesse's work.

[6] However, this is not what Mr. Hamel testified. He said that Nathalie Parent helped put the advertising flyers in the bags, but that he never saw her with her son Jesse and the Appellant while advertising bags were being distributed.

[7] The remuneration was at least \$400 per week. Jesse said that he gave all this money to his father. He did not deposit this money into a personal bank account. He did not keep any specific books; he relied on his father.

[8] Mr. Hamel declared bankruptcy. Ginette Borduas, a Canada Revenue Agency officer, audited the bankrupt's books to determine the claims of the Minister of National Revenue (the "Minister") in the bankruptcy. Several people worked for Mr. Hamel's business. The auditor issued T4 slips in respect of those people. Exhibit I-1 is the auditor's compilation of the amounts that Mr. Hamel paid the Appellant.

[9] As stated in the Reply, the auditor saw that the cheques issued until June 26, 2003, were payable to Jesse Parent Picard. They were endorsed by both the father and the son. Both the father and the son explained that the son's bank account did not permit immediate access to funds. The son preferred that his father cash the cheques, which explains why handed them over to him.

[10] The larger amounts of money paid subsequently were either in the form of cash, or cheques payable to "cash." According to Mr. Hamel, the payments of these amounts began when the route became much longer and needed to be done by car.

#### Analysis and conclusion

[11] I am of the opinion that the evidence has disclosed that the initial service agreement was genuinely between Mr. Hamel and Jesse Parent Picard. This version is common to all the parties and is plausible considering the factual circumstances of this case. The route could be done by a teenager, and that was who the cheques were payable to. The amounts paid totalled \$1,166.96.

[12] I am also of the opinion that, starting in June, the service agreement was between Mr. Hamel and the Appellant. In order to perform that agreement, a car was needed. The Appellant's son did not have a driver's licence or a car at the time. According to the payor's books, the cash and the cheques payable to "cash" were given to the Appellant. The son did not deposit these amounts into his bank account and did not account for the amounts received. In this regard, he trusts his father. In fact, he did not act like the owner of this income in any way.

[13] The Minister determined that this income was income from a business in the Appellant's hands. The Appellant could have sought to deduct business expenses such as the use of his car and fuel. He also appears to have made certain payments to

Jesse and his friends. In early 2004, the Appellant appears to have purchased a \$4,000 car for his son to compensate him for his efforts, and Jesse appears to have purchased a \$1,800 sound system.

[14] The Appellant did not itemize any expenses incurred to earn the business income. Business income is rarely earned without incurring expenses. Normally, it is up to taxpayers to keep a record of their expenses. However, this is a case in which the Appellant is not represented by counsel. I believe that in view of the work that was performed, namely, running a delivery route twice a week, I can allow motor vehicle expenses of \$1,500. It would be difficult for me to grant any remuneration at all to the people who were involved in the business because none of them reported any income.

[15] As for the penalty imposed under subsection 163(2) of the *Income Tax Act*, I must take account of the fact that the Appellant clearly intended to omit certain income from his tax return. Thus, I am of the opinion that the penalty must be maintained.

[16] The appeal is allowed to the extent that the unreported income must be reduced by \$1,166.96, which was genuinely earned by Jesse, and by \$1,500 for business expenses. The amount of the penalty must be determined accordingly.

Signed at Ottawa, Canada, this 29th day of September 2006.

"Louise Lamarre Proulx"

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Lamarre Proulx J.

Translation certified true  
on this 24th day of July 2007  
Monica F. Chamberlain, Translator

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PLACE OF HEARING: Montréal, Quebec  
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REASONS FOR JUDGMENT BY: The Honourable Justice  
Louise Lamarre Proulx  
DATE OF JUDGMENT: September 29, 2006

APPEARANCES:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Jean Lavigne

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent:	John H. Sims, Q.C. Deputy Attorney General of Canada Ottawa, Canada
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