

Docket: 2007-1482(EI)
2007-1483(CPP)

BETWEEN:

JOSEPH K. ZINCK,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

Appeals heard in part on September 28, 2007, at Halifax, Nova Scotia
By: The Honourable Justice C.H. McArthur

Appearances:

For the Appellant: The Appellant himself
Counsel for the Respondent: Deanna Frappier

JUDGMENT

After the commencement of the hearing, counsel for the Respondent informed the Court that she would consent to Judgment.

The appeals pursuant to subsection 103(1) of the *Employment Insurance Act* and section 28 of the *Canada Pension Plan* are allowed and the determination of the Minister of National Revenue on the appeal made to him under section 92 of the *Act* and the determination of the Minister on the application made to him under section 27.1 of the *Plan* are varied on the basis that the Appellant was not employed in insurable or pensionable employment during the period January 1, 2005 to August 21, 2006.

Costs to the Appellant in the amount of \$750.

Signed at Ottawa, Canada, this 4th day of October 2007.

“C.H. McArthur”

McArthur J.

Citation: 2007TCC592
Date: 20071004
Docket: 2007-1482(EI)
2007-1483(CPP)

BETWEEN:

JOSEPH K. ZINCK,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

REASONS FOR JUDGMENT

McArthur J.

[1] These were disturbing appeals heard in Halifax on Friday, September 28, 2007. The Minister of National Revenue's (the "Minister"), position was that the Appellant was an employee within the meaning of paragraph 5(1)(a) of the *Employment Insurance Act* (the "Act"). The Appellant stated that he worked but two days, three hours per day for a man known only as Shenk (phonetic), painting walls in a residential building and was paid \$100 in cash. Ms. Kennedy confirmed this and I believed them.

[2] I found it upsetting for these reasons:

- (a) In the Courtroom prior to my entering, the Minister's main witness made remarks to an Appellant witness, Angie M. Kennedy, seriously upsetting her. As a result, the hearing was delayed for the attendance of two police officers.
- (b) At the outset of the trial, Respondent's counsel consented to judgment for the period from January 1, 2006 to August 31, 2006. The Appellant "may" have been incarcerated during this period.

- (c) The Appellant had absolutely no knowledge of assumptions of facts 5(a), (b), (c), (d) and (e) in the Reply to the Notice of Appeal. He disagreed with all of the remaining assumptions, (f) to (n) inclusive. I accept the Appellant's evidence that not one of these final assumptions, relied on by the Minister, were accurate and they were the only assumptions of substance.
- (d) Both the Appellant and Ms. Kennedy were very uncomfortable in the Court setting and were difficult to follow, but I believe that all of the Minister's meaningful assumptions were wrong.
- (e) The Appellant's purported signatures on invoices presented to the Appellant were obviously forgeries. One did not have to be an expert in determining this by comparing his actual signature with that on the invoices.
- (f) He knew nothing about the invoices. All he knew was that he painted six hours over two days for Shenk and received \$100 in cash.
- (g) Mr. Jourdrej testified for the Respondent. He had no personal knowledge of the material assumptions upon which the Minister arrived at his decision. I believe he relied on the phoney invoices and what Shenk told him.
- (h) Respondent's counsel advised she was not calling Shenk to testify.
- (i) At this point, we took a 15-minute recess and I requested counsel to give serious thought to what was before us.
- (j) I do not believe the Appellant was well, leaving him vulnerable and it would appear that Ms. Kennedy was assisting him.
- (k) Upon returning to the bench, Counsel for the Respondent advised she was consenting to judgment in favour of the Appellant for the entire appeal.

[3] I stated that, while I may not have jurisdiction, I was awarding costs to the Appellant adding that I did not believe the Minister would object. I was wrong. In a letter dated September 28, 2007 counsel states that there is no statutory provision

allowing for an award of costs in employment insurance matters and refers to *Regroupement Mamit Innuat Inc. v. The Minister of National Revenue*.¹

[4] I find jurisdiction in *Fournier v. Canada*.² Justice Archambault, in his decision as trial judge, noted that he wished that the Informal Procedure provided a mechanism for awarding costs, in his instance, against the taxpayer, because of his irrelevant claims and failure to cooperate.

[5] Upon appeal Letourneau, J.A. found that the Tax Court has the inherent jurisdiction to prevent and control an abuse of process. He stated at paragraph 11:

The judge stated that he had no jurisdiction to impose costs on an appellant who unnecessarily delayed an appeal process initiated within an informal proceeding. I should point out that the Tax Court of Canada has the inherent jurisdiction to prevent and control an abuse of its process: see *Yacyshyn v. Canada*, [1999] F.C.A. No. 196 (F.C.A.).

I cannot imagine a more appropriate instance to apply this inherent jurisdiction to prevent and control an abuse of the Tax Court's process.

[6] Upon consent, the appeal is allowed in its entirety. Costs in the amount of \$750 are awarded to the Appellant to be payable forthwith.

Signed at Ottawa, Canada, this 4th day of October 2007.

“C.H. McArthur”

McArthur J.

¹ 2006, TCC 125 (T.C.C.), para. 114.

² [2005] F.C.J. No. 606 (F.C.A.).

CITATION: 2007TCC592

COURT FILE NO.: 2007-1482(EI)
2007-1483(CPP)

STYLE OF CAUSE: Joseph K. Zinkc v. MNR

PLACE OF HEARING: Halifax, Nova Scotia

DATE OF HEARING: September 28, 2007

REASONS FOR JUDGMENT BY: The Honourable Justice C.H. McArthur

DATE OF JUDGMENT: October 4, 2007

APPEARANCES:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Deanna Frappier

COUNSEL OF RECORD:

For the Appellant:

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