

Docket: 2007-1075(IT)I

BETWEEN:

COLETTE LEFEBVRE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeals of
Pierrette Fortin Raymond (2007-1181(IT)I), *Lisette Simard Côté*
(2007-1528(IT)I), *Michèle Richard Auclair* (2007-1603(IT)I),
Denise Robert Godin (2007-1621(IT)I), *Paul De Leeuw* (2007-2094(IT)I),
Micheline Bolduc (2007-2542(IT)I), *Jean-Pierre Desnoyers*
(2007-2096(IT)I) and *Linda Diamond* (2007-4806(IT)I)
on May 26 and May 27, 2008, at Montréal, Quebec

Before: The Honourable Justice Louise Lamarre Proulx

Appearances:

Agent of the Appellant:	Pierrette Fortin Raymond The Appellant herself
Counsel for the Respondent:	Benoit Mandeville

JUDGMENT

The appeal from the assessment made under the *Income Tax Act* for the 2005 taxation year is allowed and the assessment is referred back to the Minister of National Revenue for reconsideration and reassessment in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 27th day of June 2008.

"Louise Lamarre Proulx"

Lamarre Proulx J.

Translation certified true
on this 30th day of September 2008.

Brian McCordick, Translator

Docket: 2007-1181(IT)I

BETWEEN:

PIERRETTE FORTIN RAYMOND,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeals of *Colette Lefebvre* (2007-1075(IT)I), *Lisette Simard Côté* (2007-1528(IT)I), *Michèle Richard Auclair* (2007-1603(IT)I), *Denise Robert Godin* (2007-1621(IT)I), *Paul De Leeuw* (2007-2094(IT)I), *Micheline Bolduc* (2007-2542(IT)I), *Jean-Pierre Desnoyers* (2007-2096(IT)I) and *Linda Diamond* (2007-4806(IT)I) on May 26 and May 27, 2008, at Montréal, Quebec

Before: The Honourable Justice Louise Lamarre Proulx

Appearances:

For the Appellant:	The Appellant herself
Counsel for the Respondent:	Benoit Mandeville

JUDGMENT

The appeal from the assessment made under the *Income Tax Act* for the 2005 taxation year is dismissed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 27th day of June 2008.

"Louise Lamarre Proulx"

Lamarre Proulx J.

Translation certified true
on this 30th day of September 2008.

Brian McCordick, Translator

Docket: 2007-1528(IT)I

BETWEEN:

LISETTE SIMARD CÔTÉ,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeals of *Colette Lefebvre* (2007-1075(IT)I), *Pierrette Fortin Raymond* (2007-1181(IT)I), *Michèle Richard Auclair* (2007-1603(IT)I), *Denise Robert Godin* (2007-1621(IT)I), *Paul De Leeuw* (2007-2094(IT)I), *Micheline Bolduc* (2007-2542(IT)I), *Jean-Pierre Desnoyers* (2007-2096(IT)I) and *Linda Diamond* (2007-4806(IT)I) on May 26 and May 27, 2008, at Montréal, Quebec

Before: The Honourable Justice Louise Lamarre Proulx

Appearances:

Agent of the Appellant:

Pierrette Fortin Raymond
The Appellant herself

Counsel for the Respondent:

Benoit Mandeville

JUDGMENT

The appeal from the assessment made under the *Income Tax Act* for the 2005 taxation year is allowed and the assessment is referred back to the Minister of National Revenue for reconsideration and reassessment in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 27th day of June 2008.

"Louise Lamarre Proulx"

Lamarre Proulx J.

Translation certified true
on this 30th day of September 2008.

Brian McCordick, Translator

Docket: 2007-1603(IT)I

BETWEEN:

MICHÈLE RICHARD AUCLAIR,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeals of *Colette Lefebvre* (2007-1075(IT)I), *Pierrette Fortin Raymond* (2007-1181(IT)I), *Lisette Simard Côté* (2007-1528(IT)I), *Denise Robert Godin* (2007-1621(IT)I), *Paul De Leeuw* (2007-2094(IT)I), *Micheline Bolduc* (2007-2542(IT)I), *Jean-Pierre Desnoyers* (2007-2096(IT)I) and *Linda Diamond* (2007-4806(IT)I) on May 26 and May 27, 2008, at Montréal, Quebec

Before: The Honourable Justice Louise Lamarre Proulx

Appearances:

Agent of the Appellant:	Pierrette Fortin Raymond The Appellant herself
Counsel for the Respondent:	Benoit Mandeville

JUDGMENT

The appeal from the assessment made under the *Income Tax Act* for the 2005 taxation year is allowed and the assessment is referred back to the Minister of National Revenue for reconsideration and reassessment in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 27th day of June 2008.

"Louise Lamarre Proulx"

Lamarre Proulx J.

Translation certified true
on this 30th day of September 2008.

Brian McCordick, Translator

Docket: 2007-1621(IT)I

BETWEEN:

DENISE ROBERT GODIN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeals of *Colette Lefebvre* (2007-1075(IT)I), *Pierrette Fortin Raymond* (2007-1181(IT)I), *Lisette Simard Côté* (2007-1528(IT)I), *Michèle Richard Auclair* (2007-1603(IT)I), *Paul De Leeuw* (2007-2094(IT)I), *Micheline Bolduc* (2007-2542(IT)I), *Jean-Pierre Desnoyers* (2007-2096(IT)I) and *Linda Diamond* (2007-4806(IT)I) on May 26 and May 27, 2008, at Montréal, Quebec

Before: The Honourable Justice Louise Lamarre Proulx

Appearances:

Agent of the Appellant:	Pierrette Fortin Raymond The Appellant herself
Counsel for the Respondent:	Benoit Mandeville

JUDGMENT

The appeal from the assessment made under the *Income Tax Act* for the 2005 taxation year is allowed for the period within that year that expires on August 1, 2005, and the assessment is referred back to the Minister of National Revenue for reconsideration and reassessment in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 27th day of June 2008.

"Louise Lamarre Proulx"

Lamarre Proulx J.

Translation certified true
on this 30th day of September 2008.

Brian McCordick, Translator

Docket: 2007-2094(IT)I

BETWEEN:

PAUL DE LEEUW,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeals of *Colette Lefebvre* (2007-1075(IT)I), *Pierrette Fortin Raymond* (2007-1181(IT)I), *Lisette Simard Côté* (2007-1528(IT)I), *Michèle Richard Auclair* (2007-1603(IT)I), *Denise Robert Godin* (2007-1621(IT)I), *Micheline Bolduc* (2007-2542(IT)I), *Jean-Pierre Desnoyers* (2007-2096(IT)I) and *Linda Diamond* (2007-4806(IT)I) on May 26 and May 27, 2008, at Montréal, Quebec

Before: The Honourable Justice Louise Lamarre Proulx

Appearances:

Agent of the Appellant:	Pierrette Fortin Raymond
	The Appellant himself
Counsel for the Respondent:	Benoit Mandeville

JUDGMENT

The appeal from the assessment made under the *Income Tax Act* for the 2005 taxation year is dismissed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 27th day of June 2008.

"Louise Lamarre Proulx"

Lamarre Proulx J.

Translation certified true
on this 30th day of September 2008.

Brian McCordick, Translator

Docket: 2007-2542(IT)I

BETWEEN:

MICHELINE BOLDUC,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeals of *Colette Lefebvre* (2007-1075(IT)I), *Pierrette Fortin Raymond* (2007-1181(IT)I), *Lisette Simard Côté* (2007-1528(IT)I), *Michèle Richard Auclair* (2007-1603(IT)I), *Denise Robert Godin* (2007-1621(IT)I), *Paul De Leeuw* (2007-2094(IT)I), *Jean-Pierre Desnoyers* (2007-2096(IT)I) and *Linda Diamond* (2007-4806(IT)I) on May 26 and May 27, 2008, at Montréal, Quebec

Before: The Honourable Justice Louise Lamarre Proulx

Appearances:

Agent of the Appellant:	Pierrette Fortin Raymond The Appellant herself
Counsel for the Respondent:	Benoit Mandeville

JUDGMENT

The appeal from the assessment made under the *Income Tax Act* for the 2005 taxation year is allowed and the assessment is referred back to the Minister of National Revenue for reconsideration and reassessment in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 27th day of June 2008.

"Louise Lamarre Proulx"

Lamarre Proulx J.

Translation certified true
on this 30th day of September 2008.

Brian McCordick, Translator

Docket: 2007-2096(IT)I

BETWEEN:

JEAN-PIERRE DESNOYERS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeals of *Colette Lefebvre* (2007-1075(IT)I), *Pierrette Fortin Raymond* (2007-1181(IT)I), *Lisette Simard Côté* (2007-1528(IT)I), *Michèle Richard Auclair* (2007-1603(IT)I), *Denise Robert Godin* (2007-1621(IT)I), *Paul De Leeuw* (2007-2094(IT)I), *Micheline Bolduc* (2007-2542(IT)I) and *Linda Diamond* (2007-4806(IT)I) on May 26 and May 27, 2008, at Montréal, Quebec
Before: The Honourable Justice Louise Lamarre Proulx

Appearances:

Agent of the Appellant:

Nicole Rivard

The Appellant himself

Counsel for the Respondent:

Benoit Mandeville

JUDGMENT

The appeal from the assessment made under the *Income Tax Act* for the 2005 taxation year is allowed and the assessment is referred back to the Minister of National Revenue for reconsideration and reassessment in accordance with the attached Reasons for Judgment.

As for the appeals for the years 1996 through 2004, they are dismissed because they are invalid in that no notice of objection was served on the Minister of National Revenue in accordance with sections 165 and 169 of the Act.

Signed at Ottawa, Canada, this 27th day of June 2008.

"Louise Lamarre Proulx"

Lamarre Proulx J.

Translation certified true
on this 30th day of September 2008.

Brian McCordick, Translator

Docket: 2007-4806(IT)I

BETWEEN:

LINDA DIAMOND,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeals of *Colette Lefebvre* (2007-1075(IT)I), *Pierrette Fortin Raymond* (2007-1181(IT)I), *Lisette Simard Côté* (2007-1528(IT)I), *Michèle Richard Auclair* (2007-1603(IT)I), *Denise Robert Godin* (2007-1621(IT)I), *Paul De Leeuw* (2007-2094(IT)I), *Micheline Bolduc* (2007-2542(IT)I) and *Jean-Pierre Desnoyers* (2007-2096(IT)I) on May 26 and May 27, 2008, at Montréal, Quebec

Before: The Honourable Justice Louise Lamarre Proulx

Appearances:

Agent of the Appellant:

Nicole Rivard

The Appellant herself

Counsel for the Respondent:

Benoit Mandeville

JUDGMENT

The appeals from the assessments made under the *Income Tax Act* for the 2003, 2004 and 2005 taxation years are allowed and the assessments are referred back to the Minister of National Revenue for reconsideration and reassessment in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 27th day of June 2008.

"Louise Lamarre Proulx"

Lamarre Proulx J.

Translation certified true
on this 30th day of September 2008.

Brian McCordick, Translator

Citation: 2008TCC395

Date: 20080627

Dockets: 2007-1075(IT)I, 2007-1181(IT)I
2007-1528(IT)I, 2007-1603(IT)I
2007-1621(IT)I, 2007-2094(IT)I
2007-2542(IT)I, 2007-2096(IT)I,
2007-4806(IT)I

BETWEEN:

COLETTE LEFEBVRE, PIERRETTE FORTIN RAYMOND,
LISETTE SIMARD CÔTÉ, MICHÈLE RICHARD AUCLAIR,
DENISE ROBERT GODIN, PAUL DE LEEUW,
MICHELINE BOLDUC, JEAN-PIERRE DESNOYERS,
and LINDA DIAMOND,

Appellants,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR JUDGMENT

Lamarre Proulx J.

[1] These appeals, instituted primarily by pastoral agents within the Roman Catholic Church, concern the deduction, under paragraph 8(1)(c) of the *Income Tax Act*, for the residence of members of the clergy or of a religious order, or of regular ministers of a religious denomination.

[2] The relevant parts of the provision read:

8. (1) Deductions allowed – 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

...

(c) **Clergy residence** – 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

...

[3] Two tests must be met under this provision: the status test and the function test.

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

[5] Seven of the Appellants are under the authority of Bishop Berthelet of Saint-Jean-Longueuil, and two are under the authority of Bishop Cazabon of St-Jérôme. Neither bishop testified at the hearing. However, Bishop Berthelet's sworn declaration concerning the status, role and duties of pastoral agents in his diocese was tendered in evidence.

[6] Ms. Fortin Raymond represented all the Appellants from the Longueuil diocese as their agent. Nicole Rivard represented all the Appellants from the St-Jérôme diocese as their agent. Nonetheless, each of the Appellants had their own documents and arguments.

[7] According to the sworn declaration of Bishop Berthelet, the starting point for his thinking is Interpretation Bulletin IT-141R. I quote from the declaration:

[TRANSLATION]

The starting point of my thinking was the definition in Interpretation Bulletin IT-141R of the Canada Customs and Revenue Agency. The definition applies to all churches and religious denominations. It seems to correspond to what is experienced in practice in terms of the duties and mandates that I assign to pastoral agents in our diocese. Thus, my thinking started from this definition, and, assuming that one does not want there to be discrimination between religions or denominations, one can say that, given their role, duties and status, such assistants should be treated like clergy.

[8] In Bishop Berthelet's opinion, pastoral agents should be considered equivalent to the definition of clergy in the Interpretation Bulletin. The point that I believe Bishop Berthelet is making pertains to the essential role of pastoral agents in his diocese. But the phrase "member of the clergy" must be interpreted in accordance with the rules of the church to which the member belongs, and we shall see that, under rules of the Roman Catholic Church, only members who have received the Sacrament of Orders are considered members of the clergy of that Church. Consequently, a lay person must take the "regular minister" route in order to have some chance of success in the instant appeals.

[9] Bishop Berthelet goes on to provide the following description of the role of pastoral agents, their training and their degree of permanence:

[TRANSLATION]

Their actions, and the functions entrusted to them, constitute participation in the spiritual leadership of the Catholic Church here. It is necessary to know that in parishes throughout the diocese, ministry is carried out by teams that work in a collegial manner. In a parish, some functions are assigned to the priest and others are assigned to pastoral agents. Together they provide service and spiritual leadership to the Christian community.

To reduce the entire ecclesial function in a parish to the administration of the sacraments is to fail to recognize the importance of the Word of God for us, the many aspects of the ministry of teaching wherein we prepare people for and contribute to their understanding of faith and practice of the sacraments and accompany them. We can take and examine the important role of pastoral agents in each of the sacraments, whether in preparing people or accompanying them before, during and after the celebration of these sacraments. Thus, these pastoral agents play an essential role that allows the faithful to understand, celebrate and live these sacraments fully. It is in this sense that I say that they participate in spiritual leadership.

In order for this spiritual leadership to be exercised, I entrust to them a pastoral mandate of some permanence. These are not people who offer their services occasionally, but people on whom we count permanently. These agents require a long period of formation; several of them have held these positions, either in the diocese or in the parish, for more than ten years. I would say that we could not function without them. They are part of our pastoral staff, and in this sense, they are equivalent to the definition of a member of the clergy in point 4 of document IT-141R of the Canada Customs and Revenue Agency.

[10] According to the Bishop, to reduce the ecclesial function to the administration of sacraments is to misunderstand the situation. Pastoral agents do not administer the sacraments, but they prepare the faithful for them and accompany them. They play an essential and ongoing role in the Church's teaching and charity. They serve under a mandate issued by the bishop, who certifies their competency and determines the duration of the mandate and the services to be performed.

[11] Counsel for the Respondent produced a 1997 Vatican document entitled *Instruction on Certain Questions Regarding the Collaboration of the Non-Ordained Faithful in the Sacred Ministry of Priest* ("the Instruction"). The document was approved by the Pope on August 13, 1997.

[12] Counsel for the Respondent produced this document with the aim of showing that the Vatican draws a marked distinction between priests, who are ordained sacred ministers, and the lay faithful who perform certain duties in sacred ministers' place and are called extraordinary ministers in such cases.

[13] I would note parenthetically that the mere fact that the Vatican thought it necessary to prepare this document constitutes proof of a relatively recent development in which laypersons have taken on importance within the Church.

[14] I quote certain excerpts from the Instruction:

The necessity and importance of apostolic action on the part of the lay faithful in present and future evangelization must be borne in mind. The Church cannot put aside this task because it is part of her very nature, as the 'People of God', and also because she has need of it in order to realize her own mission of evangelization.

. . . Only in some of these functions, and to a limited degree, may the non-ordained faithful cooperate with their pastors should they be called to do so by lawful Authority and in accordance with the prescribed manner. (Emphasis added.)

. . . "*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". (Emphasis added.)

. . . The non-ordained faithful may be generically designated "extraordinary ministers" when deputed by competent authority to discharge, solely by way of supply, those offices mentioned in Canon 230, § 3(56) and in Canons 943 and 1112. Naturally, the concrete term may be applied to those to whom functions are canonically entrusted e.g. catechists, acolytes, lectors etc. (Emphasis added.)

It is unlawful for the non-ordained faithful to assume titles such as "pastor", "chaplain", "coordinator", "moderator" or other such similar titles which can confuse their role and that of the Pastor, who is always a Bishop or Priest.

...

Necessary Selection and Adequate Formation

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, (in environments other than that of the Seminary, as this is reserved solely for those preparing for the priesthood). 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.]

[15] In my view, the Instruction shows that, despite a fervent wish that religious vocations become numerous again and constitute the norm, the Vatican, out of concern for reality and for the maintenance of order in the Church, has chosen to create a legal structure governing the laity in pastoral service. In the Instruction, the Vatican recognizes the necessity and importance of apostolic action on the part of the lay faithful. However, the Vatican wants a clear distinction to be maintained between ordained ministers and the laity. Lay persons may be called extraordinary ministers when called upon by competent authority to carry out duties that would normally be performed by clergy if there were enough clergy to perform them. The lawful authority must choose faithful of sound doctrine and exemplary conduct. In addition, such lay persons must have adequate formation (training). Suppletive duties derive their legitimacy formally and directly from an official delegation effected by Pastors, and, when performing such duties, a lay person is subject to ecclesiastical authority.

[16] For an analysis of the Instruction, the Appellants' agent referred to an article written this year by Anne Asselin, JCD, of the Faculty of Canon Law of St. Paul University: "Les Laïcs au service de leur Église, Le point actuel du droit." [Lay persons serving their Church: The current law]. Here are some excerpts from the chapter entitled "L'instruction interdicastérielle de 1997", at pages 170, 172, 173 and 184:

[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.)

[17] The author understands that the Vatican wants vocations to be more numerous. She says that she cannot argue with this. However, she wonders whether all hope for the future should be placed there. In her view, lay ministry may turn out to be good for the Church. The author notes that the situations that the Instruction purports to consider exceptional are actually commonplace.

[18] Chapter 3.3 of the article is entitled "Les agents de pastorale". Here are some excerpts from pages 210-11:

[TRANSLATION]

. . . 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.

[19] What I take from this analysis of the Instruction is that the distinction between ordained ministers and lay persons who act in their place must be respected. However, what was supposed to be the exception has become the norm in Canada, Europe and the United States. Lay persons carry out their pastoral ministries on a full-time basis for a limited term, though that term can encompass a great deal of a pastoral agent's active life. The exercise of such ministries is founded in baptism and in a mandate from lawful authority, which is a juridical act. These pastoral ministries include preaching, catechesis, presiding over prayer, spiritual direction, and accompanying and comforting the sick and grieving.

[20] The agent for the Appellants of the Longueuil diocese also referred to an article by Alphonse Borras, of Université catholique de Louvain, entitled "À propos des ministères, L'articulation des ministères : de la théologie à la lettre de mission" [Articulating the ministries: from the theology to the mission letter] (2007) 179 *Esprit et Vie* 1. I shall quote excerpts from pages 2, 3, 6 and 7:

[TRANSLATION]

If I had to characterize the major change in these last decades in terms of theology, and, above all, in the practice of ministries, I would readily say that, by laboriously but progressively overcoming the split between clerics and the laity, we have moved from a ministerial monopoly of priests to the implementation of a diversity of ministries. As I see it, this change seems to have been accepted, albeit to different degrees, in the local Churches of Western Europe and in North America. . . .

...

Indeed, one notes the development of a whole range of tasks assumed by lay people who have the requisite qualities and mandate from the Church. One has also seen that their initial formation continues to deepen in response to the needs of the mission. We should also be happy about this change from a role of helping priests to a genuine partnership with them. What is fortunate is that in general, there is a tendency toward *teamwork*. . . .

...

The ministries entrusted to lay people are "non-ordained" ministries.

...

For the lay faithful whom the Church calls upon to exercise a ministry — in France, they are generically called "lay people involved in an ecclesial mission" — the sacramental investiture of ordination does not exist. Baptism, and the charisms that each of the lay faithful possesses, constitute the theological foundation that justifies the Church in calling them according to the needs of its mission. Their authorization does not come from the Sacrament of Orders, but from their suitability and from the Church's call (see Canon 228, §1). . . .

...

Theologically speaking, it is by virtue of their baptism and their own particular charisms, and with the Church's discernment and call in whatever form, that these lay faithful assume ministries that play an indispensable role in building up the Church and contributing to its mission *in this place*. They participate "more closely" in pastoral responsibility. Their responsibility or function is either general or sectoral, depending on whether they participate in the exercise of pastoral responsibility in close association with the leadership of a community, or carry out their work in a specific sector determined by the Church's pastoral action such as catechesis, visiting the sick, preparation for sacraments, hospitality, solidarity with the poor, charitable or humanitarian endeavours, etc. This participation will take different forms, according to the nature and needs of the ecclesial community in question.

[21] The author discusses a major change over the past few decades in terms of the practice of ministries. He notes that lay persons have taken on ecclesial duties and have deepened their formation. The lay faithful whom the Church calls upon to minister do not derive their capacity from sacramental investiture (i.e. ordination) but from their suitability, and from the Church's call. The pastoral mandate plays the role of an investiture.

[22] The appellants tendered *Un document de référence, adopté par les évêques du Québec lors de l'Assemblée plénière tenue à Trois-Rivières, le 12 mars 2004 concernant le mandat pastoral décerné aux agentes et agents de pastorale laïques*. [Reference document concerning the pastoral mandates of lay pastoral agents, and adopted by the bishops of Quebec at their plenary assembly in Trois-Rivières on March 12, 2004.] I shall quote at length from the document:

[TRANSLATION]

The function of lay pastoral agents has been developing in Quebec dioceses for several years now.

It would seem helpful at this point to clarify this topic so we can develop some consistent language about this subject, and, where useful, establish some similarity in the ways that we function.

...

Lay pastoral agents

The lay faithful are called, each according to his or her situation, to participate in the mission that God gave to the Church to enable it to accomplish that mission in the world (Canon 204). The term *pastoral agent* designates those among them who have received a specific mission from the bishop and who collaborate in the exercise of the pastoral responsibility for the parish by carrying out tasks of leadership, animation and coordination.

It is advisable to reserve the expression "pastoral agent" for those lay faithful, and to designate ordained ministers specifically as deacons, priests and bishops, reserving the term "pastor" for the latter two categories.

The pastoral mandate

The pastoral mandate is the act by which the bishop, recognizing the suitability, ability and competence of a member of the lay faithful, chooses that person to collaborate in the exercise of pastoral responsibility, and gives him, or her, a mission.

A person is 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.

The diocesan bishop determines the necessary formation and requisite capacities to exercise this mission.

The bishop grants this mandate in writing for a determinate period. The text refers explicitly to the criteria of suitability and the required abilities, and to how the mandate will be terminated or revoked. The procedure for non-renewal or revocation of the pastoral mandate is defined by diocesan decree. A pastoral mandate does not necessarily require the bishop to guarantee employment. The signature of the mandated person indicates the person's acceptance.

The employment contract

The pastoral agent signs an employment contract with his or her employer. The contract sets out the terms of employment. It must state that the possession of a pastoral mandate is required in order for the contract to be valid, and that the revocation or non-renewal of the mandate automatically results in the termination of the employment contract.

The pastoral agent's employer in a parish is the *fabrique* [administrative committee]. The employer of a diocesan pastoral agent is the Corporation of the Roman Catholic Bishop. The pastoral agent's employer in a civil setting is the civil institution itself.

[23] The document specifies that pastoral agents are men or women who, under a special mission from the bishop, collaborate in the exercise of pastoral responsibility by carrying out tasks of direction, animation or coordination. The pastoral mandate is the document in which the bishop, acknowledging the suitability, abilities and skills of a member of the lay faithful, chooses that lay person to exercise a pastoral ministry.

[24] At page 18 of the *Lettre pastorale aux prêtres et aux diacres aux agentes et agents de pastorale et aux personnes collaboratrices en paroisse* [Pastoral letter to the priests, deacons, pastoral agents and parish workers] (Official Communication No. 7 of the Saint-Jean de Longueuil Church, April 15, 2001), a paragraph entitled [TRANSLATION] "Ordinary and extraordinary ministers" reads:

[TRANSLATION]

Ordinary ministers are those who carry out their duties pursuant to their ordination and to the jurisdiction that the bishop has conferred on them. Extraordinary ministers are those who receive a specific personal mandate authorizing them to act in particular circumstances because there are no ordinary ministers or because impediments prevent the ordinary ministers from acting. In our diocese, a certain number of people can act as extraordinary ministers of baptism and preaching. The two documents to which we are referring specify their ministry and how it is to be exercised.

[25] The agent also referred to *Post-Synodal Exhortation Christifideles Laici of His Holiness Pope John Paul II on the Vocation and the Mission of the Lay Faithful in the Church and in the World* (December 30, 1988). The following is an excerpt from it:

When necessity and expediency in the Church require it, the Pastors, according to established norms from universal law, can entrust to the lay faithful certain offices and roles that are connected to their pastoral ministry but do not require the character of Orders. The Code of Canon Law states: "When the necessity of the Church warrants it and when ministers are lacking, lay persons, even if they are not lectors or acolytes, can also supply for certain of their offices, namely, to exercise the ministry of the word, to preside over liturgical prayers, to confer Baptism, and to distribute Holy Communion in accord with the prescriptions of the law." However, *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, and in his Eternal Priesthood. The task exercised in virtue of supply takes its legitimacy formally and immediately from the official deputation given by the Pastors, as well as from its concrete exercise under the guidance of ecclesiastical authority. [Footnotes omitted.]

[Emphasis added.]

[26] This excerpt reconfirms that lay persons may carry out certain duties of ordained ministers when expediency in the Church requires it.

[27] In his book of authorities, Counsel for the Respondent included the House of Commons debates from when the provision in question was enacted. I am referring to the debates on November 10, 1949, during which Mr. Sinclair, the Minister of Finance, made the following statement about the reason for the deduction in question:

The present exemption can be justified in that a minister's home is, if I may use the expression, more or less his place of doing business, the place where during week days he ministers to his congregation and performs other functions in connection with his office.

[28] In this regard, most of the Appellants spontaneously mentioned, without specific prompting, that their residences are frequently used for pastoral meetings.

[29] The agent of the Appellants from the St-Jérôme diocese outlined the dwindling numbers of ordained ministers in the diocese: in 1985, there were 124 priests, and in 2008, there are 46. Twenty-five of those priests are permanently on duty, and 83 pastoral agents have been mandated.

[30] I will not repeat all the points made by the agent in question, because she agreed with the person who represented the Appellants from the Longueuil diocese. Bishops are responsible for making arrangements for the pastoral service to the Christian communities of their diocese. A pastoral mandate is an act in which a bishop, recognizing the suitability, qualifications and skills of a lay person, chooses that person to collaborate in the exercise of this pastoral responsibility and gives him, or her, a mission.

[31] The agent referred to paragraphs 228(1) and 230(3) of the Code of Canon Law, which read:

Can. 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.

Can. 230 - § 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.

[32] It would also be helpful, in my view, to reproduce paragraphs 3 to 6 of Interpretation Bulletin IT-141R:

¶ 3. Whether a person is a "member of the clergy" or a "regular minister" depends upon the structure and practices of the particular church or religious denomination.

¶ 4. A "member of the clergy" is a person set apart from the other members of the church or religious denomination as a spiritual leader. It is not necessary that the process of appointment be referred to as ordination or that the appointment be by someone higher up in the ecclesiastical hierarchy; it may be done by the congregation itself. It is sufficient that there be a formal or legitimate act of recognition, and it requires a serious and long-term commitment to the ministry. Priests, pastors, ministers, rabbis, imams, commended workers and other persons who have been commended, licensed, commissioned or otherwise formally or legitimately recognized for religious leadership within their religious organization may be members of the clergy.

- ¶ 5. A "regular minister" is a person who
- is authorized or empowered to perform spiritual duties, conduct religious services, administer sacraments and carry out similar religious functions. Religious functions may include participation in the conduct of religious services, the administration of some of the rituals, ordinances or sacraments, and pastoral responsibilities to specific segments of the religious organization;
 - is appointed or recognized by a body or person with the legitimate authority to appoint or ordain ministers on behalf of or within the religious denomination; and
 - is in a position or appointment of some permanence.

¶ 6. In the absence of a legitimate appointment or recognition, the mere performance of the duties of a minister will not suffice to constitute a "regular minister".

[33] Let us now consider each Appellant's particular case, beginning with the Appellants from the Longueuil diocese.

[34] The Appellant Lisette Simard-Côté, a pastoral agent, is responsible for the ministry of catechesis in three parishes. Here are the three paragraphs of the pastoral mandate of June 30, 2004, signed by Bishop Berthelet and by Jean-Pierre Camerlain, the priest chancellor:

[TRANSLATION]

In order to meet the pastoral needs of the Parishes of Saint-Isaac-Jogues, Saint-Jean-de-la-Lande and Saint-Thomas-de-Villeneuve, I hereby renew your mandate as pastoral agent for those parishes and as member of the pastoral team assigned to this parish grouping. Although you must be aware of the pastoral needs of the parish as a whole, your primary tasks will be the catechetical needs for which you are responsible in these parishes. You will also assist in the process of Christian initiation. This mandate is subject to your adherence to Episcopal Regulation No. 7 and to the signing of your employment contract.

This term of this mandate commences August 1, 2004 and ends on July 31, 2007. You will fulfil this mandate in close collaboration with the personnel of the parish, drawing inspiration primarily from the letter, *Service de la paroisse* [Parish service] (Official Communication No. 7).

May the Lord sustain your enthusiasm for His service and may He bless you.

[35] The Appellant Michèle Richard Auclair adduced a pastoral mandate dated July 14, 2003, in which the subject heading refers to the position of pastoral animator, parish activity coordinator and pastoral team member assigned to the Immaculée Conception and Saint-Hubert parishes for a term commencing on August 1, 2003, and ending on July 31, 2006.

[36] The Appellant Colette Lefebvre adduced her pastoral mandate, signed on June 29, 2004, for the period from August 1, 2004, to July 31, 2007. The first paragraph of the mandate reads:

[TRANSLATION]

In order to meet the pastoral needs of Résurrection Parish, and of its six Christian communities, I hereby renew your mandate as pastoral agent and a member of the pastoral team for this parish. Although you must be aware of the pastoral needs of the parish as a whole, your primary tasks will be in communications, as well as funeral ministry and ministry to the grieving. Your particular responsibility will be as liaison for the Support Committee of the Notre-Dame-de-l'Espérance Christian community. This mandate is subject to your adherence to Episcopal Regulation No. 7 and to the signature of your employment contract.

[37] One of the documents adduced by Ms. Lefebvre is a 2000 pastoral mandate authorizing her to administer the sacrament of baptism to children.

[38] The Appellant Denise Robert Godin tendered two mandates received for the year 2005. The first mandates her as a pastoral agent. The second is different. I shall quote from both:

I appreciate your willingness to renew your service to the diocese for another year. The year just ended was as busy as the previous ones: all the parishes of your region decided to embark on an evangelization plan and have put in place the structures that will enable them to carry it out. We must now implement these projects and ensure that our Church is more alive in each of the parishes. For this reason, I am thankful that you have agreed to make a contribution as regional animator.

Consequently, I appoint you as animator of the South-West Pastoral Region. This appointment came into effect on August 1, 2004, and will end on July 31, 2005. As usual, it is subject to your adherence to Episcopal Regulation No. 7 and to the signing of your employment contract.

You have the assurance of my prayers and support, and I wish you courage and joy in your service of the Church.

I know that you were contemplating retirement after several years in school-based pastoral service and as a regional animator, but new needs have led me to ask for your service in managing the Diocesan Centre. I thank you for hearing my call and agreeing to answer it.

Consequently, I appoint you as executive assistant in the Diocesan Centre. In this capacity, you will share certain administrative responsibilities with Abbot Claude Hamelin, who will manage the centre as moderator of the diocesan curia.

This appointment came into effect on August 1, 2005, and shall end on July 31, 2007.

May the Lord bless you and assist you in your work with all the Diocesan Centre and regional staff.

[39] The Appellant Micheline Bolduc has been accepting pastoral mandates since September 1991. Her mandate for 2005 was to be a pastoral agent and parish activity coordinator for the Saint-Isaac-Jogues, Saint-Jean-de-la-Lande and Saint-Thomas-de-Villeneuve parishes. The term of the mandate dated June 30, 2004, was from August 1, 2004, to July 31, 2007.

[40] The Appellant Pierrette Fortin Raymond worked as a pastoral agent for several years. According to a letter from Bishop Berthelet, dated March 28, 2006, Ms. Fortin Raymond is currently an executive assistant with the human resources department. She is responsible for an administrative task and for the coordination of activities related to diocesan organization. Ms. Fortin Raymond did not adduce a pastoral mandate.

[41] The Appellant Paul De Leeuw did not adduce a pastoral mandate either. His duties for the Longueuil diocese are described as essentially administrative, economic or accounting-related. He gives *fabriques* [parish administrative committees] administrative and legal guidance. He is also responsible for religious heritage, church restoration and religious art. In his letter dated March 28, 2006, to the Canada Revenue Agency, Bishop Berthelet describes Mr. De Leeuw's duties as follows:

[TRANSLATION]

Mr. Paul De Leeuw is hired as a member of the administrative department of the diocese of Saint-Jean-Longueuil as director of the department that assists parish administrative committees (*fabriques*). He will work in administration and will coordinate activities related to diocesan structures.

[42] We shall now discuss the Appellants from the Saint-Jérôme diocese.

[43] The Appellant Linda Diamond adduced her pastoral mandate, which is signed by Bishop Gilles Cazabon and chancellor Claude Massicotte, and is dated June 18, 2004:

[TRANSLATION]

In order to meet the pastoral needs of Saint-François-Xavier Parish, I hereby renew your appointment as parish pastoral animator and parish pastoral team member, for the period from August 1, 2004, to July 31, 2007.

Your work in pastoral animation and Christian values education among the members of the Saint-François-Xavier Christian community is of great importance. By your witness and your pastoral activity, you are contributing to the people's growth in faith in the God of Jesus Christ, and to their becoming "living stones" in the Church of Saint-Jérôme.

I invite you to faithfully attend the meetings of the pastoral team, pastoral zone, and AALP, as well as the diocesan pastoral days. These different meetings are the best occasions to show that you belong to the diocesan Church, and to create bonds of solidarity with pastoral agents, priests and laity.

Working in faith education is a demanding pastoral activity. It is essential that you make sure that you have time for renewal, and that you continue your theological and pastoral formation. Obtaining your Bachelor of Theology is a goal to pursue so that you will be able to fulfill the mission entrusted to you. Ongoing formation should also be included in your schedule.

The comprehensive 2001-2006 plan, "For a Missionary Church", commits the Church of Saint-Jérôme to important parish reorganizations. As part of this change that we are making in order to respond to the call for a new evangelization, the "zones" and, increasingly, the "sectors", will play a major role in the life of our diocese. I ask that you draw inspiration from these policy directions, and that you actively pursue these opportunities for exchange, mutual support, and common action in your milieu.

May the Spirit guide you in your mission of evangelization. Once again, let me express my confidence in your pastoral ministry.

[44] The Appellant Jean-Pierre Desnoyers tendered his pastoral mandate dated November 27, 2003, and signed by the same people as the preceding Appellant's mandate. Mr. Desnoyers was mandated as parish pastoral animator for the Bienheureuse-Marie-Anne-Blondin Parish from January 1, 2004, to July 31, 2006.

[45] The Appellant Desnoyers also adduced pastoral mandates that he received at least as early as 1994.

[46] All the Appellants except Paul De Leeuw have degrees from a theology faculty. The Appellants who are pastoral agents have had such duties for most of their active lives.

[47] Counsel for the Respondent adduced the appellant's pastoral mandate in *Pereira* with a view to showing that the mandate was similar to the ones adduced in the instant appeal. Mr. Pereira's appeal was dismissed. We will discuss the ground for the dismissal further on. The mandate, signed by Marc Cardinal Ouellette, Archbishop of Québec, and dated May 28, 2004, reads:

[TRANSLATION]

Dear Co-Worker,

With the agreement of the director of the institution that hired you, I am pleased to renew your mandate as pastoral animator for the Centre hospitalier de la région de l'Amiante [Amiante Region Hospital], for four days a week, until July 31, 2007.

Your status as pastoral animator, rooted in your baptism and confirmation, authorizes you to participate in my pastoral responsibility for the Church of Québec according to your charisms and the responsibilities given to you. I count you as a member of the pastoral team in this mission.

As a witness of the risen Christ and inspired by gospel values, you will care in particular for people who are suffering, sick and dying, and for their families, those who are close to them, and for the staff. You will show the Father's love, and the tenderness and compassion of Christ Jesus in the communion of the Holy Spirit. You will accompany people in their search for meaning and in their faith journey.

May you undertake your ministry in union of spirit and heart with the Pastor of this diocese and in solidarity with the diocesan mission. You will strive to involve the faithful in your pastoral activity, inviting them to participate because of their baptism and the particular gifts they have received from the Holy Spirit.

I thank you, and I am pleased to be able to count on your commitment. I ask the Lord to keep you rooted in faith, firm in your hope and radiant in love.

Given at Quebec, May 28, 2004.

Marc Cardinal Ouellet
Archbishop of Quebec

Analysis and conclusion

[48] A review of the case law discloses that certain decisions conflict with each other. It also reveals a certain amount of hesitation in arriving at a decision, because the structures of the church to which the appellants claim to belong are not adequately described in the evidence adduced at the hearing.

[49] As to the issue of conflicting decisions, I would say that *Noseworthy v. Canada*, [1999] T.C.J. No. 209 (QL) and *Kolot v. Canada*, [1992] T.C.J. No. 673 (QL) are on one side, and that *Hardy v. Canada*, [1997] T.C.J. No. 1191 (QL) and *Pereira v. The Queen*, 2006 TCC 300, [2006] T.C.J. No. 405 (QL) are on the other.

[50] In *Noseworthy*, a pastoral care practitioner was appointed by the Roman Catholic Church to the position of chaplain in a women's prison.

[51] Hamlyn J. was of the opinion that, in view of the appellant's duties (discussed at paragraphs 18-20 of the decision), she was the spiritual leader within the institution where she worked on an ongoing basis. The judge held that although the appellant was not a member of the clergy, she was a regular minister of the religious denomination in question.

[52] *Kolot* also involved a pastoral agent – specifically, a Christian education associate whose duties included Sunday school. She did not ask to be authorized to give the sacraments of the United Church of Canada, but, based on the evidence, she could have made such a request, in which case it would have been granted. Judge Beaubier allowed the appeal.

[53] In *Pereira*, Bédard J. did not come to the same conclusions as the Court arrived at in *Noseworthy*, where the facts were relatively similar except that the pastoral action in *Pereira* was hospital-based. I quoted from that appellant's pastoral mandate at paragraph 46 of these Reasons for Judgment. Counsel for the Respondent referred to it with a view to showing that it was similar to the Appellants' pastoral mandates.

[54] The functions of the appellant *Pereira* are also described in *Pereira, supra*, specifically at paragraph 2:

. . . These duties include religious and spiritual support of the ill and their families, organization of chaplaincy activities, celebration of regular weekly liturgies and special liturgies, celebration of benediction rituals, last rites, leadership, training and supervision of chaplaincy volunteers, moral assistance and support, as contact person, on questions of ethics and bioethics. . . .

[55] I will also quote from paragraphs 17, 18, 19, 21 and 22 of the decision:

17 This Court has reviewed the meaning of the term "regular minister" several times. Lamarre Proulx J., in *Côté [Côté v. Canada, [1998] T.C.J. No. 762 (QL)]*, appears to adopt the meaning of "regular minister" given by Lord MacDermott in *Walsh v. Lord Advocate, [1956] 3 All E.R. 129 (H.L.)*, in paragraph 20 of her decision:

In my opinion the words "a regular minister" connote a class which forms but a part of the denomination in question and is acknowledged by that denomination as having a superior and distinct standing of its own in spiritual matters. . . . Lord MacKintosh puts this requirement very clearly when, speaking of the "regular minister", he says

. . . 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.

18 In *Osmond v. Canada*, No. 97-1446(IT)I, December 10, 1998, [1998] T.C.J. No. 1086, and *Kolot v. Canada*, No. 91-718(IT), November 9, 1992, [1992] T.C.J. No. 673, Bonner and Beaubier JJ. also appear to adopt the definition of "regular minister" given by Lord MacDermott in *Walsh*.

19 In light of this definition, the Appellant did not convince me that the Catholic Church recognized him as having a superior and distinct rank in spiritual matters. Indeed, the Appellant did demonstrate that, as an employee of the CSSSRT, he performed pastoral animation in his employer's establishment, thanks to an appointment by the archbishop of Québec. Did the archbishop's appointment make the Appellant someone of superior and distinct rank in spiritual matters? In my opinion, the Appellant simply did not supply satisfactory evidence in that respect.

...

21 In light of the conclusions arrived at by Rip J. in *Hardy*, on the meaning of the term "regular minister," the following questions, in my opinion, must be asked:

(i) Did the Catholic Church consider the Appellant to be a regular minister? Did the mandate given the Appellant by the archbishop of Québec, in itself, confer on the Appellant the status of "regular minister" of the Catholic Church? Was it not rather a temporary appointment for certain liturgical actions? Did this temporary (if that is the case) appointment still confer on the Appellant the status of "regular minister" of the Catholic Church? Is the status of "regular minister" not conferred by the Catholic Church only on ordained members? Due to the fact that the Catholic Church is short of priests in Quebec, does it need to give, as in this case, certain interim duties to lay members with adequate training?

(ii) Did the Appellant occupy a position with permanency?

22 Each religion has its own practices, traditions and rules. To determine if a person is a "regular minister," the structure and practices of the Church in question must be considered. Counsel for the Respondent was the only one who attempted to enlighten me on the rules, practices and traditions of the Catholic Church relating to the status of "regular minister". Indeed, in his submissions, counsel for the Respondent argued, relying moreover on the Pope's instructions with respect to this, that the rules of the Catholic Church clearly lay down that it is illegal to confer on a non-ordained member the status of "regular minister" or "chaplain". Unfortunately, I cannot accept the arguments of counsel for the Respondent in this respect. He should have known that foreign law, in this case canon law, is equated with a fact. Whoever relies on it must allege it in their written submissions and prove it adequately, which was not done.

[56] Bédard J. held that there was not enough evidence that the appointment made by the archbishop caused the appellant to have a superior and distinct rank in spiritual matters (paragraph 19). The fact that the appellant was not appointed for life meant that his appointment, though full-time, was temporary, not permanent, in nature (paragraph 23).

[57] The judge in *Pereira* (paragraph 22) would have liked to hear the Church's position on the place of pastoral agents within it.

[58] In *Hardy*, which was also about a Roman Catholic pastoral agent, Judge Rip held that the appellant was not a regular minister of that Church. I shall quote paragraphs 21, 23 and 24 of the decision:

21 Thus, Lord Justice-General Normand and Lord Moncrieff 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.

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".

...

23 Each religion has its own practices, traditions and rules, and any branch of a religion may have different practices, traditions and rules from other branches of the same religion. Whether one qualifies as a regular minister or as a member of the clergy, it seems to me, depends on one's religion and, in some cases, one's church, synagogue, mosque or other congregation. In other words, eligibility for the deduction is religion and practice dependent.

24 I am not satisfied that Ms. Hardy has proven that she was a regular minister of the Roman Catholic Church. The fact that she is a Roman Catholic means she has a greater burden to prove her claim than a person whose religion accepts women in its clergy. Ms. Hardy trained for her position and was appointed by the Bishop of London to perform spiritual duties. This was her full-time occupation. Her authority to perform such duties appears to be at the pleasure of the Bishop of London and, therefore, her appointment does not appear to be permanent.

[59] Actually, the four decisions discussed above equate "member of the clergy" with "regular minister" in the sense that both must have the power to administer the sacraments. I would also say that *Hardy* and *Pereira* equate "regular minister" with "permanent minister". Further on, we shall see the distinctions that must, in my opinion, be drawn.

[60] The judge in *Pereira* would have preferred to know more about the structure of the Roman Catholic Church. The evidence that he heard did not convince him. In my opinion, I have heard relatively thorough evidence regarding the place of pastoral agents within the Roman Catholic Church.

[61] With respect to the place of pastoral agents in the Roman Catholic Church, counsel for the Respondent adduced the *Instruction*, and the Appellants' representatives adduced scholarly and Church writing that analyzes and defines the role of pastoral agents.

[62] In the *Instruction*, the Vatican reiterates that pastoral agents are extraordinary ministers, and are different from members of the clergy, who have received the Sacrament of Orders and are ordinary ministers. 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] Under this legal framework, pastoral agents can carry out certain ecclesial responsibilities or duties that are indispensable in carrying out the Church's mission. 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. It is the responsibility of the competent Church authority, that is to say, the diocesan bishop, to assign and regulate pastoral ministries. Diocesan bishops assign pastoral ministries to people who have the requisite qualifications: suitability, charisms and theological formation.

[64] According to the rules of the Roman Catholic Church, pastoral agents are not clergy. In fact, the Appellants do not claim to be clergy. However, they claim to be regular ministers of the Church.

[65] The courts have consistently held that in order for a person to be a regular minister of a religious denomination, there must be an appointment by the lawful authority of that church, authorizing the person to minister spiritually to the faithful of that church or to others, under the terms of the assigned mission or mandate, on an essentially ongoing basis, in accordance with the beliefs and dogmas of the church in question.

[66] Does such an appointment require a specific investiture? In my opinion, one must refer to the rules of the church, as one would do with respect to the investiture of clergy. In the Roman Catholic Church, pastoral mandates or mission letters fulfil the function of an investiture document for the extraordinary ministers in issue.

[67] Must a person be appointed as a minister for life in order to be a regular minister of a church? Must a person have the right to administer all the sacraments of his or her church in order to be a regular minister?

[68] Is there something in paragraph 8(2)(b) that prevents a church from having members of the clergy and regular ministers? I see no such bar in that provision. It is true that some of the cases equate the two terms. However, I prefer to remain true to the main principle established by the case law, namely, that the terms are defined by the structure of the denomination in issue.

[69] In order to determine whether a denomination permits clergy and regular ministers to co-exist for the purposes of its ministries, one must examine its structure. In the Roman Catholic Church, we have seen that there is such co-existence, and we have also seen that priests are appointed for life, and that extraordinary ministers are appointed for the duration of their mandate, and carry out the pastoral ministries assigned to them.

[70] The evidence discloses that the bishops of the two dioceses in issue work within the legal framework that the Vatican has established for this class of persons. The bishops, taking into consideration the needs of the Church's mission and the person's qualifications (suitability, charisms and formation), issue a mandate describing the pastoral ministry that the person is assigned, and setting out the duration of the person's mandate, which is normally a few years. These mandates are usually renewed, and are therefore frequently exercised for the person's entire active life. Pastoral agents must work with ordained ministers as a team in carrying out pastoral action.

[71] 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.

[72] To paraphrase Lord MacDermott in *Walsh v. Lord Advocate*, [1956] 3 All E.R. 129 (H.L.), it is clear that, in carrying out their ministries, pastoral agents have a status that sets them apart from and places them over the laity of their denomination. They constitute a class which forms part of the denomination in question, and which is acknowledged by that denomination as having a distinct and superior standing in spiritual matters.

[73] I therefore conclude that, according to the current regulatory structure of the Roman Catholic Church, pastoral agents act as regular ministers within the Church. That status is conferred on them by a pastoral mandate in which they are assigned a pastoral ministry for a determinate term. Thus, they have the status of regular ministers within the meaning of paragraph 8(2)(c) of the Act for the duration of that mandate.

[74] Consequently, the appeals of Colette Lefebvre, Lisette Simard Côté, Michèle Richard Auclair, Micheline Bolduc, Jean-Pierre Desnoyers and Linda Diamond are allowed.

[75] However, I must determine the outcome for those Appellants who were not pastoral agents, namely the Appellant Paul De Leeuw; the Appellant Pierrette Fortin Raymond; and the Appellant Denise Robert Godin, who ceased to be a pastoral agent during the year 2005.

[76] With regard to Mr. De Leeuw, he submitted that a priest who had the same functions would be entitled to the deduction. This is probably the case, because the priest would have clergy status. Mr. De Leeuw is not a member of the clergy, and, based on the evidence, I am of the opinion that he does not have regular minister status. He did not adduce a pastoral mandate and his work is not part of the Church's pastoral action. His appeal must therefore be dismissed.

[77] The decision concerning the Appellant Pierrette Fortin Raymond is more difficult to make, because she has a great deal of education in theology and was a pastoral agent for several years. However, the absence of a pastoral mandate inclines me to dismiss her appeal. Regular ministers are invested by a pastoral mandate in connection with a pastoral ministry.

[78] As for the Appellant Denise Robert Godin, her duties changed on August 1, 2005. Based on the evidence adduced, she was no longer a pastoral agent as of that date. Her pastoral mandate has ended. Thus, her appeal is allowed for the part of the 2005 taxation year that expires on August 1, 2005.

Signed at Ottawa, Canada, this 27th day of June 2008.

"Louise Lamarre Proulx"

Lamarre Proulx J.

Translation certified true
on this 30th day of September 2008.

Brian McCordick, Translator

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2007-1603(IT)I, 2007-1621(IT)I, 2007-2094(IT)I,
2007-2542(IT)I, 2007-2096(IT)I, 2007-4806(IT)I

STYLE OF CAUSE: COLETTE LEFEBVRE,
PIERRETTE FORTIN RAYMOND,
LISETTE SIMARD CÔTÉ,
MICHÈLE RICHARD AUCLAIR,
DENISE ROBERT GODIN, PAUL DE LEEUW,
MICHELINE BOLDUC JEAN-PIERRE DESNOYERS
AND LINDA DIAMOND
v. HER MAJESTY THE QUEEN

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: May 26 and May 27, 2008

REASONS FOR JUDGMENT BY: The Honourable Justice Louise Lamarre
Proulx

DATE OF JUDGMENT: June 27, 2008

APPEARANCES:

Agent of the Appellants Colette Lefebvre, Micheline Bolduc and Lisette Simard Côté:	Pierrette Fortin Raymond and the Appellants themselves
Agent of the Appellant Linda Diamond: Counsel for the Respondent:	Nicole Rivard and the Appellants themselves Benoit Mandeville

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