

Docket: 2010-3554(CPP)

BETWEEN:

B2C INTELLIGENCE GROUP INC.,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

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Appeal heard on April 24, 2012, at Toronto, Ontario.

Before: The Honourable Justice Patrick Boyle

Appearances:

Agent for the Appellant: Gil Gagea

Counsel for the Respondent: Christopher M. Bartlett

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**JUDGMENT**

The appeal made pursuant to subsection 28(1) of the *Canada Pension Plan* is dismissed and the decision rendered by the Minister of National Revenue on August 19, 2010 is confirmed in accordance with the attached reasons for judgment.

Signed at Toronto, Ontario, this 8th day of June 2012.

"Patrick Boyle"

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Boyle J.

Citation: 2012 TCC 203  
Date: 20120608  
Docket: 2010-3554(CPP)

BETWEEN:

B2C INTELLIGENCE GROUP INC.,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

### **REASONS FOR JUDGMENT**

#### **Boyle J.**

[1] B2C Intelligence Group Inc. (“B2C”) has appealed from *Canada Pension Plan* (“CPP”) assessments in respect of two of its employees for the period January 1, 2007 to December 31, 2009.

[2] B2C is a Canadian corporation wholly owned by the two employees in question, Mr. Khalid Toma and his spouse Ms. Hedeel Salman. B2C operated from the Mississauga home of Mr. Toma and his spouse. Mr. Toma and his spouse are Canadian residents.

[3] B2C is an acronym for Business to Commerce. B2C runs a worldwide technology consulting firm. Many of its customers are in the United Kingdom (“UK”) and in Europe. In providing those services, in addition to Mr. Toma’s expertise, B2C has access to a highly talented pool of information technology and computer professionals located in India, Ukraine and Russia, who are available to work on its contracts as subcontractors. Non-Canadians are regularly used by B2C to fulfill its foreign contracts. Ms. Salman’s work for B2C consists of marketing and ensuring that requests for proposals are received, and that proposals are properly submitted and presented. Her work for B2C also takes her regularly outside Canada.

[4] Two contracts between B2C and a UK corporation were put in evidence. The UK counterparty was subcontracting to B2C its commitments to arm's-length UK companies, Vodafone UK and Cooperative Financial Services Bank. The evidence is that these were representative contracts of how B2C conducts at least its non-Canadian business activities. It is clear from these contracts that B2C is in the business of committing to provide professional services to its customers and their underlying customers. While the contracts do specify which staff member of B2C will be providing the services unless otherwise agreed (which in both cases was Mr. Toma), it is entirely clear from the contracts that B2C was committing to provide the specific contracted services using its professionals and was not committing to provide the placement of its staff, employees or subcontractors to fill a role for its customers, or its customers' customers, in the manner that a placement or employment agency would.

[5] Pensionable employment is defined in paragraph 6(1)(a) of the *CPP* as employment in Canada that is not excepted employment.

[6] Paragraph 6(2)(k) of the *CPP* provides that excepted employment includes employment excepted from pensionable employment by a regulation made under section 7. Paragraph 7(1)(a) of the *CPP* provides for regulations to be made to include as pensionable employment "any employment outside Canada or partly outside Canada, being employment that would be pensionable employment if it were in Canada".

[7] Part III of the *CPP Regulations* is headed "Employment Included in or Excepted from Pensionable Employment by Regulation." Regulation 16 deals with employment outside Canada. Regulation 16(1)(b) provides specifically that "[p]ensionable employment includes employment outside Canada. . . that would be pensionable employment if it were in Canada, if the employee employed therein is resident in Canada and is paid at or from an establishment in Canada of his employer."

[8] It is the Appellant's position that B2C's employment of Mr. Toma and Ms. Salman was employment outside Canada. It is not entirely clear to me that the two employees were employed outside Canada merely because part of their services rendered to their Canadian employer included travel to attend at foreign clients and prospective clients. However, even if their employment was employment outside Canada, it is clear and it is not disputed by the Appellant that:

- 1) Mr. Toma's employment and Ms. Salman's would be pensionable employment if all of B2C's clients and prospective clients were in Canada;
- 2) Each of Mr. Toma and Ms. Salman is resident in Canada; and
- 3) Each of these two employees was paid at or from an establishment in Canada of B2C.

Thus, it is clear that, even if the employment constitutes employment outside Canada because some of the employees' services to their employer B2C were rendered outside Canada, the employment is nonetheless deemed to be pensionable employment by virtue of Regulation 16(1)(b).

[9] This result is consistent with the judgment of Hershfield J. of this Court in *DatEx Semiconductor Incorporated v. M.N.R.*<sup>1</sup> which considered Regulation 16(1)(b) and specifically the definition of "establishment in Canada" and the meaning of the words "paid at or from" the employer's Canadian establishment.

[10] The Appellant's position is that, notwithstanding Regulation 16(1)(b) deems this employment to be pensionable employment, this employment is excluded from being pensionable employment under Regulation 34 which deals with workers placed by a placement or employment agency. There are two reasons why this position is wrong in law.

[11] First, Regulation 34 is a rule which deems placement or employment agencies to be employers of individuals placed by them. It does not exclude anyone otherwise in pensionable employment.

[12] Second, it is clear that B2C is not a "placement or employment agency" as defined in Regulation 34(2) for these purposes. The evidence does not support it being characterized as an entity "engaged in the business of placing individuals in employment or for performance of services or of securing employment for individuals for a fee, reward or other remuneration." It is clear from the representative contracts in evidence that B2C commits itself to its customers to provide its professional consulting services through named individuals working for it.

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<sup>1</sup> 2007 TCC 189, [2007] T.C.J. No. 128 (QL).

[13] The Appellant placed considerable emphasis upon the section on Placement/Employment Agencies in the publication by the CPP/EI Rulings division of the Canada Revenue Agency (“CRA”) entitled “CPP/EI Explained”. It is clear from the definition section of this publication that the document is only concerned with entities that are placement or employment agencies as defined in Regulation 34(2) described above. Since B2C is not such an entity, this CRA publication is not a relevant consideration either.

[14] In the Federal Court of Appeal’s decision in *OLTCPI Inc. v. Canada (The Minister of National Revenue)*,<sup>2</sup> the Court considered the meaning of the term of placement agency in the *CPP Regulations*. The Court wanted to ensure that the placement agency provisions not apply to persons, such as a subcontractor, providing services which require that workers attend at the premises of the client and perform functions, sometimes at the direction of the client. They emphasized that the question in this regard is whether the person concerned is merely supplying workers or is doing so in the course of providing a distinct service. The Court quoted with approval the Tax Court of Canada’s decision in *Supreme Tractor Services Ltd. v. M.N.R.*<sup>3</sup> In that case, the Tax Court Judge wrote:

13 The question as I see it is not so much about who is the ultimate recipient of the work or services provided as this will cover every single possible subcontract situation, but rather who is under obligation to provide the service. If the entity alleged to be the placement agency is under an obligation to provide a service over and above the provision of personnel, it is not placing people, but rather performing that service and is not covered by the Regulations.

[15] It is clear from the wording of Regulation 34 and from how Regulation 34 has been applied in *OLTCPI* and *Supreme Tractor* that, on the evidence before me of B2C’s business and contracts, B2C is committed to perform a service to its clients that is not placing people and that the placement of its workers at its ultimate customers premises is not a mere supply of workers but is being done in the course of B2C providing a distinct service.

[16] It does not matter that B2C’s business could have been operated as a placement agency if it was reorganized and if its customers were agreeable to such a different relationship.

[17] The appeal is dismissed.

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<sup>2</sup> 2010 FCA 74, [2010] F.C.J. No. 379 (QL) [*OLTCPI*].

<sup>3</sup> 2001 CanLII 748, 2000-4909-CPP [*Supreme Tractor*].

Signed at Toronto, Ontario, this 8th day of June 2012.

"Patrick Boyle"

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Boyle J.

CITATION: 2012 TCC 203  
COURT FILE NO.: 2010-3554(CPP)  
STYLE OF CAUSE: B2C INTELLIGENCE GROUP INC. AND  
THE MINISTER OF NATIONAL REVENUE

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: April 24, 2012

REASONS FOR JUDGMENT BY: The Honourable Justice Patrick Boyle

DATE OF JUDGMENT: June 8, 2012

APPEARANCES:

Agent for the Appellant: Gil Gagea

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