

BETWEEN:

JEMA INTERNATIONAL TRAVEL CLINIC INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard on March 1, 2011,  
at St. John's, Newfoundland and Labrador  
Before: The Honourable Justice Steven K. D'Arcy

Appearances:

Counsel for the Appellant: John Bruce  
Counsel for the Respondent: Jill Chisholm  
Gregory B. King

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**JUDGMENT**

The appeal from the assessment made under the *Excise Tax Act*, notice of which is dated July 22, 2009, for the periods from January 1, 2003 to December 31, 2007 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.

The Appellant is awarded its costs.

Signed at Ottawa, Canada, this 29th day of September 2011.

“S. D’Arcy”  
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D'Arcy J.

Citation: 2011 TCC 462  
Date: 29092011  
Docket: 2009-2465(GST)G

BETWEEN:

JEMA INTERNATIONAL TRAVEL CLINIC INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

### **REASONS FOR JUDGMENT**

D'Arcy J.

[1] Jema International Travel Clinic Inc. (“Jema”) has appealed from an assessment by the Minister in respect of Jema’s Goods and Services Tax (“HST”) reporting periods ending between January 1, 2003 and December 31, 2007 (the “Assessed Period”).

[2] This case raises the following issues: what is the nature of certain supplies made by Jema during the reporting periods and are these supplies taxable supplies, exempt supplies or zero-rated supplies under Part IX of the *Excise Tax Act* (the “HST Legislation”)?

[3] Two witnesses testified at the hearing, Dr. Austin Richard Copper, a senior Newfoundland physician and Ms. Margot Mayo. Both had been called to testify by the Appellant.

[4] Ms. Margot Mayo is the owner and nurse operator of Jema<sup>1</sup>.

[5] Ms. Mayo is a registered nurse and nurse practitioner. Subsequent to becoming a registered nurse, Ms. Mayo obtained a dual diploma in community and primary

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<sup>1</sup> Ms. Mayo and her husband hold all of the shares of Jema.

health care from Memorial University, a certificate in breast screening examination and a certificate in travel health<sup>2</sup>. I found her to be a credible witness.

[6] Dr. Cooper is one of the *responsible* physicians for Jema. He makes himself available 24 hours a day for consultations.

[7] Dr. Cooper is a practising paediatrician with training in infectious diseases and microbiology. He is also a professor of paediatrics at Memorial University's medical school and has taught a course on infectious diseases at the medical school for over 38 years. It was clear from his testimony that Dr. Cooper is dedicated to his profession. He was a very credible witness.

### **Summary of Facts**

[8] Jema is the sole certified travel and health clinic in Newfoundland and Labrador. Jema's clinic provides advice to persons traveling outside of Canada with respect to vaccinations that should be obtained before traveling to certain countries. The clinic also provides these vaccines.

[9] Ms. Mayo created Jema to fill a perceived need for a travel clinic in Newfoundland. She testified that, as a result of the phase out of travel health services at a local community health clinic, a number of individuals in St John's could not obtain the advice and vaccinations they required in order to travel to certain countries. She was aware of a number of individuals who were travelling to Nova Scotia and Ontario to obtain the advice and vaccinations.

[10] She opened Jema after receiving an authorization from the Association of Registered Nurses of Newfoundland. The authorization letter (Exhibit A-2) noted the following:

Your scope of practice is in keeping with approved nursing practice and the medications you will administer are in keeping with approved standards and travel advisories. The committee also recognized that you will be working in consultation with a physician.

As long as you practice in accordance with your proposal and follow travel advisories and standards regarding administration of vaccines & related medications then your hours of work can be recognized as nursing practice for licensure. You must hold a

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<sup>2</sup> The certificate is from the International Society of Travel Medicine.

practicing license while working within this role and renew that license in accordance with ARNNL legislation.

[11] The clinic was also required to follow guidelines from numerous health committees, including the Committee to Advise on Tropical Medicine and Travel, the National Advisory Committee on Immunizations and the Canadian Immunization Guide.

[12] Ms. Mayo testified that she employs three other nurses at Jema, a full-time nurse, a part-time nurse and a nurse who works on a casual basis. One of these nurses has a certificate in travel health from the International Society of Travel Medicine, a second is studying for the certificate and the nurse who is employed on a casual basis is a public health nurse.

[13] In addition, a number of physicians provide consulting services to Jema, including Dr. Cooper, a doctor who serves as the medical officer of health for the Eastern Region of Newfoundland and a doctor who serves as the medical officer of health for the Central Region of Newfoundland. None of the consulting doctors charge for their services.

[14] Ms. Mayo described the daily operation of the travel health clinic as follows:

- The nurses begin their day by conducting research with respect to the countries their clients may visit. This includes reviewing any new travel advisories, noting any political developments in the countries, determining if any natural disasters have occurred in the last 24 hours, and determining whether there have been any recent outbreaks of diseases such as Ebola, dengue or tuberculosis in a specific country.
- When a client arrives, the nurse assigned to him or her begins by obtaining a detailed health history; the process includes a discussion of the client's allergy status, of the medications he or she is taking, and of any diseases currently suffered by the client.
- The nurse then discusses with the client the type of travel he/she intends to make, focusing on such things as the length of his/her trip, where he/she will be sleeping and eating, the parts of the country he/she intends to visit, and whether he/she will be visiting a rural area or a remote area such as a jungle.

- When obtaining the above information, the nurse ensures that she/he has complied with the Health Canada guidelines for a health and risk assessment.
- Once the nurse has obtained all of the relevant information, a decision is made with respect to which vaccines should be recommended to the client and which vaccines are required. Ms. Mayo explained that there are three types of vaccines: recommended, required (such as yellow fever) and routine (such as baby needles).
- The chosen vaccines are then provided to the client at Jema's clinic.

[15] Jema issues an invoice to its clients, which shows two charges, one for the discussion of the client's health history, his/her travel plans and other relevant information (the "consultation") and the other for any vaccines administered by the nurse. However, Ms. Mayo noted that in certain instances the vaccines are provided free of charge. This occurs when the government provides the vaccine to the Appellant for no consideration. Examples would be vaccines for tetanus, measles, mumps or rubella.

[16] Ms. Mayo noted, on cross-examinations, that clients could obtain consultations without obtaining a vaccination, however a vaccination could not be provided without a health and risk assessment based on Health Canada guidelines.

[17] Jema was not registered under the *HST Legislation* during the Assessed Period, did not collect GST/HST from its clients and did not file GST/HST tax returns.

### **Issue 1: Nature of Supplies**

[18] The Appellant's primary submission with respect to the nature of the supplies it made is that Jema's dealings with its clients constituted a single zero-rated supply of a vaccine. In the alternative, it submitted that Jema made two supplies, a zero-rated supply of a vaccine and a separate, exempt, supply of the consultation.

[19] The Respondent submits that Jema made two separate supplies; a taxable supply of the administration of a vaccination and a taxable supply of providing travel and immunization consultations.

### **The Law**

[20] The HST is levied under four separate and distinct divisions of Part IX of the *HST Legislation*: Division II, Division III, Division IV, and Division IV.1.

[21] This appeal is only concerned with the tax levied under Division II.

[22] The Division II tax is imposed on every recipient of a taxable supply that is made in Canada<sup>3</sup>. Between January 1, 2003 and June 30, 2006, the tax was levied on the value of the consideration for the supply at three rates: the 7% GST rate for supplies that were not made in a province that had harmonized its sales tax with the GST, the 15% HST rate for supplies that were made in a province that had harmonized its sales tax with the GST, and the 0% rate for taxable supplies that are included in Schedule VI of the *HST Legislation*. On July 1, 2006 the tax rates were decreased by 1% to 6% for supplies that were not made in a province with a harmonized sales tax and 14% for supplies that were made in a province with a harmonized sales tax.

[23] During the Assessed Period, Newfoundland had harmonized its sales tax with the GST.

[24] A taxable supply is defined as a supply made in the course of a commercial activity<sup>4</sup>.

[25] A supply is defined as the provision of property or services in any manner including sale, transfer, barter, exchange, license, rental, lease, gift or disposition<sup>5</sup>. The words “property” and “services” are also defined in the *HST Legislation*<sup>6</sup>. “Property” is defined to mean any property, whether real or personal, movable or immovable, tangible or intangible, corporeal or incorporeal, and a right or interest of any kind whatever but not including money. A “service” is defined even more broadly to mean anything other than property, money and certain services supplied to an employer by an employee, an officer and certain other persons. The definition of “service” is extremely broad. If something is not property, money or an “employee service”, then it will be deemed to be a “service”.

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<sup>3</sup> Subsection 165(1) of the *HST Legislation*.

<sup>4</sup> Subsection 123(1) of the *HST Legislation*.

<sup>5</sup> *Ibid.*

<sup>6</sup> *Ibid.*

[26] As a result of the broad definitions of “supply”, “property” and “services”, the provision of anything in the course of a commercial transaction will potentially be subject to tax.

[27] In view of these broad definitions, the issue frequently arises as to whether a supplier such as Jema has made a single supply comprised of a number of constituent elements or multiple supplies of separate goods and/or services.

[28] The determination of this issue involves two steps. First, it must be determined whether a single supply or multiple supplies were made by the supplier; that is a question of fact. If it is determined that multiple supplies were made then the deeming provisions in section 138 and 139 of the *HST Legislation* must be considered.

[29] The factual question of whether a supplier has made a single supply or multiple supplies has been considered by the Court and the Federal Court of Appeal on numerous occasions. Most of these decisions follow the principles summarized by Justice Rip (as he then was) in *O.A. Brown Ltd. v. Canada*, [1995] G.S.T.C. 40 (*O.A. Brown*)<sup>7</sup>.

[30] Justice Rip provided the following framework for making the factual determination,<sup>8</sup>

In deciding this issue, it is first necessary to decide what has been supplied as consideration for the payment made. It is then necessary to consider whether the overall supply comprises one or more than one supply. The test to be distilled from the English authorities is whether, in substance and reality, the alleged separate supply is an integral part, integrant or component of the overall supply. One must examine the true nature of the transaction to determine the tax consequences. . . .

[31] When reaching his decision Justice Rip made the following observations:

One factor to be considered is whether or not the alleged separate supply can be realistically omitted from the overall supply. This is not conclusive but is a factor that assists in determining the substance of the transaction<sup>9</sup>. . . .

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<sup>7</sup> See for example, *Oxford Frozen Foods Limited v. The Queen*, 96 GTC 3180, *Club Med Sales Inc. v The Queen*, 97 GTC 1067, *Winnipeg Livestock Sales Limited v. The Queen*, 98 GTC 2211, *Hidden Valley Golf Resort Assn. v. R.* 2000 G.S.T.C. 42, 2000 G.T.C. 4104 (F.C.A.) 4104, *Gin Max Enterprises Inc. v. the Queen*, 2007 TCC 223 and *Manship Holdings Ltd. vs. The Queen*.

<sup>8</sup> *O.A. Brown*, at para 21.

The fact that a separate charge is made for one constituent part of a compound supply does not alter the tax consequences of that element. Whether the tax is charged or not charged is governed by the nature of the supply<sup>10</sup> . . . .

In each case it is useful to consider whether it would be possible to purchase each of the various elements separately and still end up with a useful article or service. For if it is not possible then it is a necessary conclusion that the supply is a compound supply which cannot be split up for tax purposes<sup>11</sup>.

[32] Justice Rip noted the importance of common sense when the determination is made. As my colleague Justice McArthur noted in *Gin Max Enterprises Inc. v. the Queen* at paragraph 18,<sup>12</sup>

From a review of the case law, the question of whether two elements constitute a single supply or two or multiple supplies requires an analysis of the true nature of the transactions and it is a question of fact determined with a generous application of common sense. . . .

(emphasis added)

### **Application of Law to Facts**

[33] After reviewing the evidence, I have concluded that the Appellant made two supplies, i.e. the supply of the consultation and the supply of a vaccine.

[34] The consultation between the nurses and the clients involved a determination of what vaccines the latter was required to have and what vaccines he or she could elect to have before travelling to a specific country. The consultations also resulted in the determination of whether the client, based upon his or her current health and medications, could receive the vaccines. The consultations could result in the client receiving no vaccines (if for example he/she has previously received all required or recommended vaccines), a single vaccine or numerous vaccines. Further, the actual number and type of vaccines administered by the nurses at the clinic would vary from client to client.

[35] This, in my view, evidences that the supply of the consultations was separate from the supply of the vaccines. For example, a person may attend at the clinic and

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<sup>9</sup> *Ibid*, at para. 22.

<sup>10</sup> *Ibid*, at para 23.

<sup>11</sup> *Ibid*.

<sup>12</sup> 2007 TCC 223, [2007] G.S.T.C. 56.



the nurse may determine that he or she does not require any vaccines. The supply of the consultation has been made, but there is no supply of a vaccine. In other words, a supply of the vaccine is not required to make a supply of the consultation. This supports a finding that the supply of the consultation was separate from the supply of any vaccines.

[36] In addition, the supply of the consultation is a useful service even if a supply of a vaccine is not made. If the client elects not to receive a required vaccination then he/she knows that he/she cannot travel to the country that requires the vaccine. Alternatively, if the consultation results in a determination that the client can travel safely to a specific country without having received any vaccinations, then he/she has still received useful information.

[37] Having made the factual determination that Jema's consultation and vaccination services constitute separate supplies, I must next consider whether the deeming provisions in section 138 and 139 of the *HST Legislation* apply to deem the separate supplies to be a single supply. Section 138, which is generally referred to as the incidental supply rule, does not apply since the two supplies were made for separate considerations: that provision requires that the separate supplies be made for a single consideration. Section 139, which is generally referred to as the mixed supply rule, does not apply to the supplies at issue since neither of the supplies constituted the supply of a financial service: that provision only applies if one of the supplies at issue constitutes the supply of a financial service.

[38] It is my view, on the basis of the evidence before me, that the supply of the vaccine and the administration of the vaccine constituted a single supply. As Ms. Mayo noted, the clinic could not sell the vaccine to the client without physically administering the vaccine at the clinic. Under Canadian law, the vaccine must be administered by a qualified health care professional (such as a physician or a nurse).

[39] The Respondent argued that this single supply constituted a single supply of the *administration* of a vaccine. I do not agree with this submission. Rather, I agree with the Appellant that the single supply constituted a supply of a *vaccine*.

[40] It is clear from the evidence before me that it was the vaccine that was supplied for the consideration (if any) provided by the clients. Ms. Mayo testified that clients came to the clinic to receive a vaccine. This was the primary purpose of their attending the clinic. The consultation that took place had a single purpose, to determine the specific vaccines, if any, that the client required before he/she could

travel to a specific country. The administration of the vaccine was merely a component of the overall supply of the vaccine.

[41] The evidence before me was that once it was determined which, if any, vaccines were to be provided to the clients, then the consideration to be charged would be determined. This consideration was dependent on the vaccines supplied to the clients. For example, as Ms. Mayo noted in her testimony, if she was not charged consideration when purchasing the vaccine, then the vaccine was administered to the client free of charge. It was only when the Appellant purchased the vaccine for consideration that it charged a consideration to the client for the vaccine.

## **Issue 2: Taxation of Supplies**

### **Taxation of supply of consultation services**

[42] I will first address the taxation of the supply of the consultation services.

[43] It is the Appellant's position that the supply of the consultations constituted an exempt supply under paragraph 6(a) of Part II of Schedule V of the *HST Legislation*, as that section read prior to February 27, 2008. It is the Respondent's position that the supply is a taxable supply and does not satisfy the conditions of section 6 of Part II of Schedule V.

### **The Law**

[44] Part II of Schedule V, entitled Health Care Services, deems a number of supplies made by health care professionals and others to constitute exempt supplies. Certain sections of Schedule V have general application, while other sections relate to supplies made by specific health care professionals. Supplies made by a specific health care professional may be exempted under more than one of the sections of Schedule V. For example, physicians' services may be exempted under sections 2, 5, 9 or 10. Services rendered by nurses may be exempted under sections 2, 6, 9 or 10.

[45] Paragraph 6(a) of Part II of Schedule V of the *HST Legislation* read as follows during the Assessed Period:

A supply of a nursing service rendered by a registered nurse, a registered nursing assistant, a licensed or registered practical nurse or a registered psychiatric nurse, where

(a) the service is rendered to an individual in a health care facility or in the individual's place of residence;

[46] The only issue raised by the Respondent with respect to the application of paragraph 6(a) of Part II of Schedule V of the *HST Legislation* to the supply of the consultations by the Appellant related to the definition of “health care facility”. It is the position of the Respondent that the services rendered by the Appellant’s nurses to the individual clients in the course of the consultations were not rendered to the clients in a *health care facility*.

[47] *Health care facility* is defined in section 1 of Part II of Schedule V of the *HST Legislation* as follows:

“health care facility” means

(a) a facility, or a part thereof, operated for the purpose of providing medical or hospital care, including acute, rehabilitative or chronic care,

(b) a hospital or institution primarily for individuals with a mental health disability,  
or

(c) a facility, or a part thereof, operated for the purpose of providing residents of the facility who have limited physical or mental capacity for self-supervision and self-care with

(i) nursing and personal care under the direction or supervision of qualified medical and nursing care staff or other personal and supervisory care (other than domestic services of an ordinary household nature) according to the individual requirements of the residents,

(ii) assistance with the activities of daily living and social, recreational and other related services to meet the psycho-social needs of the residents, and

(iii) meals and accommodation;

### **Application of Law to the Facts**

[48] Counsel for the Respondent argued that the services provided by the Appellant’s nurses were not provided in a “health care facility” since the Appellant’s clinic did not constitute a facility operated for the purpose of providing medical care. Counsel for the Respondent argued that medical care can only be found to exist in the context of a doctor/client relationship and hence, the services provided by the Appellant’s nurses did not constitute medical care.

[49] For the following reasons, I do not agree with the Respondent's position.

[50] The words "medical care" are not defined by the *HST Legislation*. As the Supreme Court of Canada has stated, statutory interpretation of fiscal legislation should be done ". . . according to a textual, contextual and purposive analysis to find a meaning that is harmonious with the Act as a whole. . . ." <sup>13</sup>

[51] The word "medical", in the ordinary sense, is defined by the Canadian Oxford Dictionary <sup>14</sup> as follows:

**medical** *adjective* **1** of or relating to the science or practice of medicine in general. **2** of or relating to conditions requiring medical and not surgical treatment (*medical ward*). **3** of or relating to the condition of one's health (*medical leave*).

[52] Dorland's Illustrated Medical Dictionary <sup>15</sup> ("Dorland's) defines "**medical**" as:

pertaining to medicine or the treatment of diseases; pertaining to medicine as opposed to surgery.

[53] Dorland's defines "medicine" as:

1. any drug or remedy. 2. the art and science of the diagnosis and treatment of disease and the maintenance of health. 3. the treatment of disease by nonsurgical means.

[54] The Canadian Oxford English Dictionary defines "care" as follows:

**care** noun **1a** the process of looking after or providing for someone or something; the provision of what is needed for health or protection (*child care; health care; skin care*). . . .

[55] In my view, the words "medical care", as used in the definition of health care facility in section 1 of Part II of Schedule V of the *HST Legislation*, mean that a person is provided with what is required to diagnose, treat and/or prevent disease, injuries or other illnesses. This would include services relating to the treatment of

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<sup>13</sup> *Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54, [2005] 2 S.C.R. 601, at para. 10.

<sup>14</sup> The Canadian Oxford Dictionary, 2d ed., (Oxford University Press Canada, 2004).

<sup>15</sup> 9th ed (Philadelphia: WB Saunders, 2000).

existing medical conditions and services relating to maintaining the person's current health (such as an annual physical).

[56] The Respondent argued that medical care can only be provided by physicians and cannot be provided by nurses.

[57] The Quebec *Nurses Act*<sup>16</sup> defines the "nursing practice" as:

The practice of nursing consists in assessing a person's state of health, determining and carrying out of the nursing care and treatment plan, providing nursing and medical care and treatment in order to maintain or restore health and prevent illness, and providing palliative care.

[58] This definition, in my view, shows that a nurse does provide medical care to her/his patients.

[59] The Newfoundland *Registered Nurses Act* does not contain a definition of "nursing practice". However, examples of the type of services nurses are authorized to provide under the Act are contained in the *Nurse Practitioners Regulations* to the Act.

[60] Schedule A to the *Nurse Practitioners* regulations contains a 5 page list of illnesses and injuries where the nurse practitioner may provide diagnosis advice<sup>17</sup>. The illnesses and injuries are grouped under the following headings; eye, ear, nose, upper respiratory tract, other, lower respiratory tract, cardiovascular, peripheral vascular, endocrine, gastrointestinal, genitourinary, reproductive, integument, infections and parasitic diseases, musculoskeletal, haematopoietic, nervous system, psychological and other. The regulations specify, for each listed illness or injury, whether the nurse is required to consult with her/his consulting physician or whether the consultation is discretionary. The consultation is discretionary for a significant number of the identified illnesses and injuries.

[61] Schedule B to the *Nurse Practitioner Regulations* contains a list of 33 diagnostic tests that can be ordered by the nurse practitioner independently "in providing care to clients".

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<sup>16</sup> *Nurses Act*, R.S.Q., I-8, section 36.

<sup>17</sup> The nurse practitioner is required to have a consultation relationship with a physician. The regulations set out the situations where the nurse is expected to consult with the physician.

[62] Schedule C to the *Nurse Practitioner Regulations* contains a three and a half page list of drugs that a nurse practitioner may be prescribed “independently or administered in the course of practice by a nurse practitioner.”

[63] Clearly, a nurse practitioner, such as Ms. Mayo, is providing medical care when she is providing the services authorized under the regulations. The nurse is diagnosing illness, ordering diagnostic tests and prescribing drugs.

[64] As Dr. Cooper noted when answering a question on cross-examination:

. . . Someone comes in with a pain in the ear and the nurse practitioner sees it, gets a history, finds out that the child has an ear infection and gives them an antibiotic and I do the same thing. Now what’s the difference? I’m governed under the *Medical Act* and she’s governed under Nurse Practitioner agreement, usually with a hospital such as Eastern Health or somewhere else, Western or whatever<sup>18</sup>. . . .

[65] The Respondent argued that her position that only physicians can provide medical care is recognized under Part II of Schedule V of the *HST Legislation*. She argued that “by virtue that there are separate exempting provisions for medical care and nursing care, the *Act* implicitly distinguishes between these services.”<sup>19</sup> I do not agree with this argument. While section 5 of Part II of Schedule V only applies to supplies made by physicians (and dentists) and section 6 of Part II of Schedule V only applies to supplies made by nurses, supplies made by physician and nurses services are also exempted under other provisions of Part II Schedule V. In fact, sections 2, 9 and 10 of Part II of Schedule V may apply to services rendered by either physicians or nurses.

[66] The Respondent also argued that its position was supported by the decision of the Court in *Riverfront Medical Evaluations Ltd. v. R.* 2001 G.S.T.C. 80 (*Riverfront*). I am not of the view that *Riverfront* is authority for the proposition that only physicians can provide medical care. *Riverfront* involved a corporation that contracted with doctors to provide independent medical evaluations to insurance companies and lawyers. The analysis conducted by Justice Bell centered on whether this was an exempt supply made by a physician. Justice Bell did not directly consider the question of whether a nurse can provide medical care.

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<sup>18</sup> Transcript, page 30-31.

<sup>19</sup> Respondent’s Written Submissions, paragraph 14.

[67] In summary, while I accept that medical care can only be provided by a qualified health care professional, I do not accept counsel for the Respondent's argument that medical care can only be provided by physicians. It is clear from the evidence before me, particularly the testimony of Dr. Cooper and Ms. Mayo and the relevant provincial legislation, that nurses have the training and skills to provide medical care to their clients, and, I find that they do.

[68] The question that must be answered is whether Jema's clinic was operated for the purpose of providing medical care. In other words, did the nurses who worked at Jema provide medical care to their clients?

[69] The authorization letter Jema received from Association of Registered Nurses of Newfoundland states that the activities carried out by the nurses are recognized as nursing practice.

[70] Dr. Cooper stated that most of the work performed by the nurses was preventive medicine for people who were intending to travel abroad. He noted that the nurses also administered numerous vaccines to seniors.

[71] He described the task performed by the nurses as a process, focused on obtaining the client's health history. He stated the following:

When I started medical school, the first thing or relatively soon, I learned how to talk to people and get a proper history and physical and it was pounded into me as a student and I'm pounding it into our students that the most important thing is to get a proper history on people, so you know the story and is it safe to give medications and make a diagnosis, make an assessment of that person, and that's done today equally by nurses, by nurse practitioners and physicians...<sup>20</sup>

[72] On cross-examination he noted the following knowledge that a nurse would be required to have in order to select and administer a vaccine (this was in addition to the ability to obtain the client's history).

- General knowledge of anatomy
- Training of a registered nurse.

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<sup>20</sup> Transcript, page 10.

- Knowledge of the various types of vaccines and how they are manufactured.
- Knowledge of the various contraindications (a condition or factor that serves as a reason to withhold a certain vaccine).
- The specific country the person will travel to.

[73] Dr. Cooper noted that many nurses (including two at Jema's clinic) were qualified as travel medical experts, which required specific training and having passed a number of exams. Dr. Cooper stated that these nurses would have knowledge that was "far superior to the knowledge of an average physician" with respect to the selection and administration of a vaccine<sup>21</sup>.

[74] I have already summarized the daily activities of the clinic. They include obtaining a history from the client (including whether he/she has any allergies and is taking any medications), determining what vaccines (if any) are required or recommended to protect him/her from becoming ill while travelling, and administering the selected vaccines. I agree with Dr. Cooper's description of these activities as preventive medicine, diagnosing potential illnesses, determining the current health of the client and providing drugs. In my view, these services constitute "medical" care as they are provided by a trained medical professional and are intended to maintain the client's current health.

[75] For the foregoing reasons, the Jema facility did constitute a "health care facility", since it was a facility that was operated for the purpose of providing medical care. Further, the consultations provided by Jema constituted exempt supplies under paragraph 6(a) of Schedule V of the *HST Legislation*. The consultations constituted the supply of nursing services rendered by a registered nurse to an individual in a health care facility.<sup>22</sup>

### **Taxation of supply of vaccine**

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<sup>21</sup> Transcript, page 32.

<sup>22</sup> It should be noted that if, for some reason, Jema did not supply the vaccine but merely administered a vaccine supplied to the client by a third party, the administration of the vaccine at the clinic would have been exempt under paragraph 6(a) of Schedule V of the *HST Legislation*.



[76] Part I of Schedule VI of the *HST Legislation* zero-rates the supply of certain prescription drugs and biologicals. Section (2)(a) of Schedule VI zero-rates a drug included in Schedule C or D to the *Food and Drug Act*.

[77] During the assessment period, Schedule D to the *Food and Drug Act* included a number of drugs of biological origin including immunizing agents and allergenic substances used for the treatment or diagnosis of allergic or immunological diseases<sup>23</sup>.

[78] The Appellant argued that the vaccines administered by the Appellant were included in Schedule D to the *Food and Drug Act*. The Respondent did not challenge the Appellant's position on this point. I agree with the Appellant.

[79] In summary, the supply of the vaccines by the Appellant constituted a zero-rated supply.

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<sup>23</sup> Paragraph 12 of CRA's Memorandum 4.1 entitled *Drugs and Biologicals* states that Schedule D includes vaccines.

[80] For the foregoing reasons the appeal is allowed and the assessment dated July 22, 2008 is referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that the Appellant made an exempt supply of the consultation services and a zero-rated supply of the vaccine. The Appellant is awarded its costs.

Signed at Ottawa, Canada, this 29th day of September 2011.

“S. D’Arcy”

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D’Arcy J.

CITATION: 2011 TCC 462

COURT FILE NO.: 2009-2465(GST)G

STYLE OF CAUSE: JEMA INTERNATIONAL TRAVEL  
CLINIC INC. AND HER MAJESTY THE  
QUEEN

PLACE OF HEARING: St. John's Newfoundland and Labrador

DATE OF HEARING: March 1, 2011

REASONS FOR JUDGMENT BY: The Honourable Justice Steven K. D'Arcy

DATE OF JUDGMENT: September 29, 2011

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