

Docket: 2010-2185(IT)G

BETWEEN:

THE ESTATE OF THE LATE MARTIN HOLLINGER,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on December 6, 2012, at Montreal, Quebec.

Before: The Honourable Gerald J. Rip, Chief Justice

Appearances:

Counsel for the Appellant: Denis A. Lapierre
Elisabeth Robichaud

Counsel for the Respondent: Pascal Tétrault

JUDGMENT

The appeal from the reassessment made under the *Income Tax Act* for the 2007 taxation year is dismissed, with costs.

Signed at Ottawa, Canada, this 16th day of August 2013.

"Gerald J. Rip"

Rip C.J.

Citation: 2013 TCC 252
Date: 20130816
Docket: 2010-2185(IT)G

BETWEEN:

THE ESTATE OF THE LATE MARTIN HOLLINGER,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Rip C.J.

[1] This appeal bears the hallmarks of a Greek tragedy and unfortunate family drama. A father, the late Martin Hollinger, succeeded his own father in an insurance business started by his father. Martin then brought his son Michael into the business and, in time, it is alleged Martin threw his father out of the business. The father sued the son, among others, in Superior Court of Québec alleging oppression and sought various remedies. The issue in this income tax appeal is whether the legal fees incurred by Martin (who died weeks after the trial in Superior Court) and his estate are deductible in computing income for 2007 pursuant to paragraph 8(1)(b) of the *Income Tax Act* ("Act"). In its notice of appeal the appellant states legal fees were incurred by Martin "to be reinstated into his employment and to continue to be able to earn employment income", that Martin "had every right to regain employment with (GMH) ..."¹.

[2] The only witness at the hearing of the appeal was Lisa Hollinger, the daughter of Martin, the sister of Michael and liquidator of Martin's estate.

¹ The legal fees were deducted in computing income in Martin's terminal income tax return for 2007.

[3] There are several individuals and corporations that it would be convenient to identify at the outset of these reasons:

- a) Martin Hollinger, the father of four children, Lisa, Audrey, Barbara and Michael, and the husband of Sarah. Martin's father started an insurance brokerage business before World War II and at time of the litigation before the Superior Court the business specialized in property, casualty, inland and ocean marine cargo and other insurance and acted as claims managers and recovery agents on behalf of certain underwriters at Lloyds of London. Martin died in 2007 at age 88.
- b) Sarah Hollinger was the wife of Martin. Sarah worked in the business and was paid a salary.
- c) Lisa Hollinger, born in 1958, is the daughter of Martin and Sarah. A member of the Bar of Québec, she started working in the business in 1978 taking on important responsibilities.
- d) Michael Prados Hollinger, the son of Martin and Sarah, was born in 1964 and joined the family business in 1991.
- e) H.W. Hollinger Ltd., incorporated under the laws of Québec in 1957 by Martin to continue the family business originally carried on by his father's corporation, HWH Ltd. On his father's death Martin became sole shareholder of HWH Ltd.
- f) H.W. Hollinger (Canada) Inc. (the corporation referred to in these reasons as "HWH") was incorporated by Martin in 1978 under the laws of Canada. Martin was not a shareholder in HWH but briefly acted as its president and he was one of three directors (with Sarah and Lisa) until July 24, 1985. The ownership of the shares in HWH was changed on several occasions: Sarah was the only shareholder until 1980; in 1980 Sarah owned 60 per cent of the voting common shares and each child owned 10 per cent; in December 1987, there were transactions amongst various companies owned by the Hollinger family with the result that with respect to HWH Sarah owned 100 per cent of the voting shares and 60 per cent of the equity shares and each child owned 10 per cent of the equity shares. In June 1988, Lisa acquired all

the residual equity shares of HWH from her mother and siblings. In July 1989 Sarah transferred her voting shares to Lisa, apparently at the direction of Martin.

- g) Gestion Martin Hollinger Inc. ("GMH") was incorporated in 1981 by Martin. From time to time GMH paid salary to Martin.
- h) Assurances Services (Hollinger) Inc. ("ASH") was incorporated in 1982 by Martin.

HWH's business, according to Lisa, was exposed to unlimited liability as a member of Lloyd's and GMH and ASH were incorporated to mitigate liability and to take advantage of the small business deduction for income tax purposes (s. 125 of the *Act*). Each corporation carried on a separate part of the insurance brokerage business but operated together under service agreements. These corporations underwent reorganizations in 1999, effective 1998.

- i) 157198 Canada Inc. ("198") was incorporated in 1987 by Martin for tax and estate planning purposes. 198 was a holding company the shares of which were owned by Sarah and the four children. Another corporation, 157199 Canada Inc. ("199") financed clients' premiums.

(The corporations mentioned in this paragraph are sometimes referred to in these reasons as "Hollinger corporations" or "family corporations").

[4] Notwithstanding that during the 1990s Martin owned no shares in any of the family corporations, except for GMH, it was Martin, according to Lisa, who continued as the directing mind of the business and was its sole decision maker². Even when Lisa owned all the shares of HWH, she took instructions from her father as to the corporation's operations, payment of shares and dividends, etc. Martin would determine not only business decisions but would also dictate how income

² This was denied in Michael's cross-demand to Martin's action. Michael alleged that since 1992 Martin was partially retired. The respondent in her reply to the notice of appeal at bar admits that Martin was the directing mind of the business "at some point". Buffoni, J.S.C. held that Martin was the business' "driving force" until "about 1998 or 1999, when he started to slow down his activities and withdrew from the business": footnote 4, *infra*. Since I have heard the testimony only of Lisa I accept that at least prior to the corporate reorganizations in 1998 and 1999 Martin was the directing mind of the business. I can only infer what transpired later.

from the business would be allocated to members of the family and owned any number of shares in a particular company. Lisa testified that "shares kept changing hands depending on revenue".

[5] Lisa explained that in 1991 HWH entered into service agreements with GMH, ASH and other family corporations to support the companies and "their legitimacy" and to formalize the business corporate structure. The main operating company was HWH. GMH's agreement with HWH was to write insurance to HWH as its exclusive wholesale supplier of insurance underwriting facilities and, among other things, to allow HWH to arrange insurance facilities in markets GMH did not provide. In short, HWH remitted premiums to GMH and GMH paid premiums to Lloyd's. HWH also agreed to pay GMH for services provided to it, for example. Any salary Martin drew was from GMH. Martin continued to direct any salaries, bonus and dividends out of GMH (and any other family corporation) to Sarah and his children.

[6] In April 1999 there were major corporate reorganizations among the family corporations effective June 30, 1998. The primary reorganization for purposes of these reasons was that of HWH which resulted in Sarah owning all of the voting shares and Michael all the common non voting shares. Lisa testified that she transferred all of her shares in HWH to Michael and her mother. In the Motion to Institute Proceedings before the Superior Court, *infra*, the HWH reorganization is specifically described as follows:

1. Lisa transferred to Sarah her 1,000 Class A (voting shares) of HWH;
2. HWH purchased for cancellation from Lisa her residual equity shares; and
3. Michael subscribed for 100 Class B common shares (residual equity) of HWH.

In any event, as a result of the HMW reorganization, Michael owned the common non voting shares and Sarah the voting shares of HWH.

[7] There were also alterations of share ownership in GMH and ASH and, perhaps, other family corporations.

[8] And in 2003, if not earlier, the family relationship exploded.

[9] By letter dated April 17, 2003 from HWH to GMH and ASH with a copy to Lisa and 198, HWH gave notice of termination of "all business relationships between HWH, on the one hand, and GMH and ASH on the other hand", said termination to take place six months from receipt of notice. The letter was signed by Michael and referred to "certain aspects of our family relationship [that] have grown more and more difficult and ... events have demonstrated that working together has become counterproductive and is no longer in the best interests of the family"³. By this time Martin had filed for divorce from Sarah.

[10] The notice of termination and, I assume, other reasons triggered an action in Superior Court of Québec by Martin, Lisa and Barbara as Plaintiffs against Michael, Sarah, Audrey and Audrey's spouse as Defendants and included HWH, GMH, ASH, 198 and others as Mises-en-Cause⁴. (This and related litigation before Québec courts are sometimes referred to as the "civil litigation".) The originating document, Motion to Institute Proceedings, consists of 86 pages and over 400 paragraphs. It is the legal fees incurred in prosecuting this demand and defending against cross-demands and related litigation, including an appeal to the Court of Appeal, that is the amount that the appellant has deducted in computing income for 2007 and has been refused by the fisc.

[11] The allegations of facts in the Motion to Institute Proceedings are divided into several sections. The summary of these proceedings accuse the Defendants of breach of the understanding and agreement that Martin, notwithstanding share ownership, retained his role and power as owner of the family corporations, that members of his family were his agents, nominees and prête-noms. It alleges that Michael and Sarah appropriated control of HWH and other family corporations, they took control of the corporations, they denied access to Martin and Lisa of books and records, and they conspired to drive Martin out of the family home, among other personal allegations.

[12] The titles of several subsections under the "Facts" title in the Motion offer the reader a further taste of the family conflict: the corporate history of Martin's companies; the corporate reorganizations which were initiated and directed by

³ The letters addressed to GMH and to ASH were to the attention of Martin and Audrey Hollinger, respectively. The copy of the letter to 198 was to the attention of Sarah. A copy of the letter was also sent to Lisa personally.

⁴ *Hollinger c. Hollinger*, 2007 QCCS 2571, Court No. 500-11-021834-037. Notwithstanding that Lisa and Barbara, as well as Martin, were Plaintiffs in this action it appears that all the legal fees paid on account of the litigation are being claimed as deduction by Martin. There were also other related matters that proceeded to court, including a motion by Martin to extend safeguard order regarding inter-company service agreements and for corollary relief.

Martin — distribution of wealth to the family members; the Hollinger Defendants' illegal assertion of control over HWH, GMH, ASH, 198, 199 and 161212 Canada Inc.; the Hollinger Defendant's illegal and oppressive tactics to force Plaintiffs to capitulate to their unreasonable demands and their campaign of intimidation and abuse against Martin, Lisa and Barbara; the Hollinger Defendants' unjust enrichment and Plaintiffs' corresponding impoverishment; and the ingratitude of Michael, Sarah and Audrey, etc.

[13] The relief sought by the Plaintiffs in the civil litigation was based on the allegation that "notwithstanding the fact that Martin has bestowed millions of dollars upon the Defendants over the years, his generous administration of the Hollinger companies for their benefit" he finds himself in a situation where his rights as owner and directing mind of HWH and other companies are denied, that the Defendants have treated the Plaintiffs in an oppressive and prejudicial manner, that Martin is humiliated at work by Michael, that Michael and Sarah have conspired to misappropriate contents of Martin's safety deposit box, among other allegations of a personal nature.

[14] The various relief requested by the Plaintiffs are against the Defendants in the civil litigation and are relevant to the appeal at bar since they determine the purpose of the litigation for which the legal fees in issue were paid. There is no specific relief requested against any family corporation. I do not intend to list the 31 paragraphs, including subparagraphs of relief sought. The following are examples of relief requested by the Plaintiffs against the Defendants:

- a) a judicial declaration confirming that Martin is the sole and true owner of all of the issued and outstanding shares of the various companies;
- b) a judicial declaration that the corporate reorganization of 1998 do not affect or diminish in any way Martin's effective ownership and control of all of the voting and equity shares of HWH and other companies;
- c) that the Defendants be ordered to endorse, in favour of Martin, all of the shares of the Hollinger corporations of which they are the registered owners.
- d) that the 1998 transactions be declared null and void;

- e) that if the Court cannot grant relief as requested in a) and b) and related matters, that the Defendants pay Martin \$8,000,000 representing the fair market value of HWH, ASH and GMH; and
- f) that gifts made by Martin to Defendants over the years be revoked for reasons of ingratitude.
- g) Martin and Barbara be entitled to obtain judgment against the Defendants ordering them to remit to Martin and Barbara all of Martin's personal, medical and business files; and
- h) judgment in favour of Barbara ordering Michael and Audrey to transfer to the benefit of Barbara all sums in Barbara's bank account at the Toronto-Dominion Bank, plus any compensation if funds were improperly disbursed by either Michael or Audrey.

[15] There was no relief requested by Martin against any family corporation for an amount owed to him or that established a right to an amount owed to him that, if received by him as a result of the civil litigation, would be required to be included in his income from an office or employment or any relief sought that may reasonably be considered analogous to such request. All relief demanded was against the Defendants personally.

[16] The Plaintiffs also sought interim relief to give them access to the office and financial and corporate records of the Hollinger companies, for an order that the defendants, HWH, GMH and ASH continue to respect all agreements in place as of January 1, 2003 as between themselves to retain of personal files belonging to Martin and Barbara, to protect Martin's liquid assets, to conserve evidence, to provide monthly bank statements, among other relief.

[17] The Plaintiffs were not successful in the Superior Court and their appeal to the Court of Appeal was also dismissed⁵.

[18] There is no issue that prior to 1999 Martin "called the shots" and determined who in the family would get paid (by way of salary or dividend) from any of the

⁵ 2009 QCCA 1004 per Brossard, Forget et Dalphond J.J.C.A. This was not the end of litigation. A month after the judgment in the Superior Court Michael sued Lisa personally and in her capacity as liquidator of the succession of Martin, and Barbara on grounds of oppression in Superior Court. Following the decision of the Court of Appeal HWH sued GMH and ASH.

Hollinger corporations and how much or how shares in the corporations would be allocated. Lisa's evidence is that Martin and she, at least, were of the view that his authority would continue even after the corporate reorganization. Apparently when Michael and Sarah thought otherwise Martin sought to bring things back to where they were before the reorganization, that he would continue in his prior role.

[19] There are several submissions appellant's counsel makes in support of its position that the legal fees were expenses incurred to earn employment income. He asserts that the recourse in oppression by Martin against Michael and Sarah was "more in the nature of a procedure to collect income than of a procedure to establish a new right to receive such income ..."⁶ and to enable Martin to benefit from income from the family corporations and distribute income to members of his family through a complex corporate structure.

[20] Counsel for the appellant referred to decisions of this and other courts that held that legal fees laid out for the purpose of earning income from a business or property were deductible in computing income. For example, in *Lela Kornberg v. The Queen*⁷, the taxpayer's husband's, from whom she was separated, owned management corporations that had been managing corporations in which the taxpayer had substantial holdings. Her concern how the corporations were being managed led her to take certain steps and commence legal action which included demands for access to records and documents and alleging her husband's injurious actions in his management capacity. Bell J. held that the litigation was not to preserve property from which the taxpayer hoped to receive income but to obtain information and, hopefully, dividend income from the corporations in issue. She already owned the property in issue. The legal fees were therefore deductible pursuant to paragraph 18(1)(a) of the *Act*. (Paragraph 8(1)(b) was not in issue.) Similarly in *Kruco Inc. v. Canada*⁸, the legal and professional legal fees arising from litigation were allowed since Kruco's objective in the litigation was not to preserve a capital asset — there was no dispute that it owned shares in the company — but was an attempt to be treated fairly as a corporate shareholder by seeking limited dividends to which it was entitled. Here, too, the taxpayer claimed the deduction under paragraph 18(1)(a) of the *Act*, not paragraph 8(1)(b).

⁶ *Kruco Inc. v. Canada*, [1998] T.C.J. No. 286 (QL) para. 32 per Archambault J.

⁷ [1997] T.C.J. No. 660 (QL); 97 DTC 1459.

⁸ [1998] T.C.J. No. 286 (QL); 98 DTC 1568.

[21] Similarly, in the appeals of *B.J. Services Co. v. Canada*,⁹ *International Colin Energy Corporation v. The Queen*,¹⁰ *ZR v. Canada*,¹¹ *Johns-Manville Canada v. The Queen*,¹² *Pantorama Industries Inc. c. Canada*,¹³ the issue was whether an expense was made or incurred by the taxpayer for the purpose of gaining or producing income from a business or property. Paragraph 8(1)(b) of *Act* was not invoked by any party in these appeals.

[22] There is no allegation in the appellant's notice of appeal that Martin carried on business at any relevant time for which the legal expenses were incurred. There also is no allegation that the legal fees were incurred in gaining or producing income from property within the meaning of paragraph 18(1)(a).

[23] The issue in the pleadings of both parties at bar was whether the legal fees were incurred in computing Martin's income from an office or employment: paragraph 8(1)(b)¹⁴. Pleadings have a function: they define the issues in dispute between the parties¹⁵. If a party fails to define an issue in its pleading, that issue is not one that may be debated at trial. Parties are expected to adhere to the rules of pleadings so that each side will know the case the other party has to meet at trial¹⁶. It is the facts as pleaded and the issues defined in the pleadings that determine the relevancy of evidence¹⁷. It is not open to me as trial judge to make a finding on a point not raised in the pleadings and where no evidence had been particularly directed to it¹⁸. The pleadings at bar direct the parties and the judge to one issue, whether or not the legal expenses are deductible in accordance with one sole provision of the *Act*, paragraph 8(1)(b). The authorities cited by appellant's counsel on which the courts based their decisions on section 18, although interesting, do not assist me to any great degree.

[24] Counsel for the appellant submitted that Martin gained income from Hollinger corporations from employment as a *de facto* director, including salary, wages or other

⁹ 2003 TCC 900; [2003] T.C.J. No. 706 (QL);

¹⁰ 2002 D.T.C. 2185.

¹¹ [2007] T.C.J. No. 407 (QL); 2007 D.T.C. 1577 (Eng.).

¹² [1985] 2 S.C.R. 46.

¹³ [2005] T.C.J. No. 635 (QL); 2005 D.T.C. 5230 (Eng.).

¹⁴ See footnote 23, *infra*.

¹⁵ *Globtek Inc. v. The Queen*, 2005 D.T.C. 1696 (Eng.) (Tax Court of Canada (General Procedure)); [2005] T.C.J. No. 562 (QL).

¹⁶ This is no different than Articles 76 and 77 of the *Quebec Code of Civil Procedure*.

¹⁷ *Lubrizol Corp. v. Imperial Oil Ltd.*, [1996] 3 F.C. 40, 197 N.R. 241 (C.A.).

¹⁸ *J.M. Voith GmbH v. Beloit Corp.* (1991), [1991] F.C.J. No. 503 (QL); 128 N.R. 54 (F.C.A.).

remuneration he received from GMH. As director he was entitled to fixed and ascertainable remuneration¹⁹.

[25] Counsel stated that since Martin was the driving force of the family business, he was *de facto* director and officer of HWH²⁰ as well. He was paid for his employment services to HWH by GMH "as a consequence of the corporate structure of the Hollinger group, this remuneration was paid to him through the income distributed to GMH in virtue of the service agreement between GMH and HWH". Counsel referred to *Scott v. Canada*²¹ for the proposition that salary paid to an employee by one corporation may be considered as being paid on behalf of another corporation. This is not an uncommon situation, depending on the particular facts, and I accept his proposition. However, on the facts before me I am not satisfied GMH was paying any wages to Martin on behalf of HWH.

[26] In his plea and cross demand in the civil litigation, Michael alleged that on January 31, 2003 Martin increased his salary in GMH from \$2,600 to \$150,000 a year and on June 6, 2003 Lisa's salary also was increased to \$150,000. Michael described the salaries as "excessive and unwarranted and illegally draining GMH of its funds in a manner which is oppressive and unfairly prejudicial to Michael's interests" and asked that GMH be reimbursed for these salaries. Counsel argues that in the civil litigation Martin was not only seeking employment income but also defending himself against a claim of possibly having to return employment income. In both cases, according to counsel, the legal fees are deductible pursuant to paragraph 8(1)(b) of the *Act*. Counsel relied on *Chagnon v. R.*²² in which the taxpayer's appeal to deduct legal fees to defend an action by his former employer and its parent corporation to recover salary was allowed. In the appeal at bar it is Michael who is making the allegation and demand for reimbursement of employment income, not GMH or any other family corporation or purported former employer.

[27] Paragraph 8(1)(b)²³ of the *Act*, applicable to amounts paid in 2001 and subsequent taxation years, provides that:

¹⁹ Subsections 5(1) and 248(1) of the *Act*.

²⁰ Subsection 248(1) of the *Act* defines "employee" to include an "officer" and an "officer" means a person holding the position of corporate director.

²¹ [1991] F.C.J. No. 256 (QL); 91 D.T.C. 5268 (F.C.T.D.) per Walsh J.; [1994] F.C.J. No. 3 (QL); 94 D.T.C. 6193 (F.C.A.) allowed in part to permit a carry back of a loss.

²² 2011 CCI 268, 2011 D.T.C. 1205 (Eng.).

²³ Paragraph 8(1)(b) was amended by S.C. 2013, c. 34, June 26, 2013 and is applicable to amounts paid in 2001 and subsequent taxation years. The Subdivision referred to is

(1) 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

[...]

(b) amounts paid by the taxpayer in the year as or on account of legal expenses incurred by the taxpayer to collect, or to establish a right to, an amount owed to the taxpayer that, if received by the taxpayer, would be required by this subdivision to be included in computing

(1) Sont déductibles dans le calcul du revenu d'un contribuable tiré, pour une année d'imposition, d'une charge ou d'un emploi ceux des éléments suivants qui se rapportent entièrement à cette source de revenus, ou la partie des éléments suivants qu'il est raisonnable de considérer comme s'y rapportant :

[...]

b) les sommes payées par le contribuable au cours de l'année au titre des frais judiciaires ou extrajudiciaires qu'il a engagés pour recouvrer un montant qui lui est dû et qui, s'il le recevait, serait à inclure en vertu de la présente sous-section dans

Subdivision a, Income or Loss from an office or employment and includes sections 5, 6, 7 and 8 of the *Act*. Paragraph 8(1)(b) formerly read:

(1) 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

[...]

(b) amounts paid by the taxpayer in the year as or on account of legal expenses incurred by the taxpayer to collect, or to establish a right to salary or wages owed to the taxpayer by the employer or former employer of the taxpayer;

I do not find that on the facts in this appeal there is any difference between the provisions of paragraph 8(1)(b) as they now apply or as they applied to amounts paid before 2001. The reported cases are still good authority. Therefore, for this reason and because the provisions of paragraph 8(1)(b) had been included in draft legislation amending the provision since July 16, 2010 there was no need to request further submissions from counsel. The amended provision provides that legal expenses may be deducted not only to collect or establish a right to salary or wages owed to the taxpayer by an employer as stated in paragraph 8(1)(b) as it applied to amounts before 2001 but also amounts owed to the employee that, if received, would be included in income from office or employment, for example, legal fees to collect insurance benefits under a sickness or accident insurance policy provided through an employer.

the taxpayer's income;

le calcul de son revenu pour établir un droit à un tel montant;

[28] The Federal Court of Appeal in *Loo v. R*²⁴, explained the application of paragraph 8(1)(b) (as it read before June 26, 2013):

[7] Paragraph 8(1)(b) has two branches. The first branch permits a deduction for legal expenses incurred in an action to collect salary or wages owed. It contemplates litigation resulting from the failure of an employer to pay the salary or wages due to an employee. In such a case, there may be no dispute as to the amount of salary or wages that the employee is entitled to be paid for the services the employee has performed, but there may be a factual dispute as to how much of the salary or wages remains unpaid.

(Emphasis added).

[8] The second branch of paragraph 8(1)(b) contemplates a situation in which the matter in controversy is the legal entitlement to the salary claimed. The second branch applies if, for example, an individual incurs legal expenses in litigating a factual dispute as to whether he or she has actually performed the services required by the contract of employment, or a dispute as to the rate of salary payable for services performed. That would include, for example, a dispute as to the term and conditions of employment.

(Emphasis added.)

[29] Thus, what is deductible in computing a taxpayer's income from an office or employment are legal fees to collect an amount owed to the taxpayer, which include amounts owed for salary or wages, or to establish a right, a legal entitlement, to an amount owed which, if received, would be required to be included in computing the taxpayer's income from an office or employment.

[30] An analysis of the Motion to Institute Proceedings by Martin and Lisa does not support the appellant's position that the legal fees in issue were to collect or establish any right to collect an amount that if received by him, would be included in his income from office or employment. First of all, nowhere in his pleadings in the civil litigation does Martin ask for oppression relief against a family corporation that can reasonably be considered a demand to collect, or to establish a right to, an amount owed to Martin that, if received, would be included in his employment from an office or employment. The relief demanded is against individuals, that is family members, and not against corporations. No family corporation was targeted to pay any employment income to Martin nor against which Martin claimed an amount owed to

²⁴ *Loo v. R*, [2004] F.C.J. No 1132 (QL); 2004 FCA 249.

him. No family corporation was "mise en cause" for the oppression remedy. As stated by Brossard J.C.A. at paragraph 116 of the reasons of the Court of Appeal:

Qui plus est, la compagnie, qui doit nécessairement être la partie défenderesse, en vertu de l'article 241(1) de la Loi, n'est nullement visée par le remède recherché en l'espèce. Le recours ne vise que les autres actionnaires individuels tant de la mise en cause (HWH) que des trois autres sociétés. En d'autres mots, le recours en redressement ou en oppression n'est dirigé que contre ASH, GMH et 157198 Canada Inc., et ce, de façon subsidiaire seulement. Le juge de première instance était donc justifié de rejeter, même d'une façon aussi lapidaire qu'il l'a fait, la qualification de recours en oppression ou en redressement donné à la requête, puisque la mise en cause (HWH) n'était pas visée et que les gestes reprochés n'affectaient que les intérêts des actionnaires des trois sociétés affiliées.

[Translation]

Furthermore, the company, which must necessarily be the respondent, pursuant to subsection 241(1) of the Act, is in no way affected by the relief sought in this case. The relief affects only the other individual shareholders, including both the third party (HWH) and the three other corporations. In other words, the remedy or oppression relief is directed only at ASH, GMH and 157198 Canada Inc., and only in the alternative. The trial judge was therefore justified in dismissing, even as tersely as he did, the label of remedy or oppression relief given to this motion because the third party (HWH) was not affected and the alleged acts concerned only the interests of the shareholders of the three affiliated corporations.²⁵

[Emphasis added]

[31] It was also suggested that Martin's action was to place him back into a position where he could again receive salary or wages from GMH or determine who would receive income from family corporations, not necessarily to receive or be entitled to receive amounts of income owed to him. It may well be true that at one time GMH was Martin's primary source of income. However, paragraph 8(1)(b) contemplates the collection or the entitlement to amounts owed. Parliament uses the word "owed" to describe "amount" in paragraph 8(1)(b). The "amount owed" is, in the case at bar, for services that were provided in the past. Paragraph 8(1)(b) does not contemplate legal fees incurred for future employment or to gain a future right²⁶. It also does not apply to a claimant seeking financial compensation in connection with allegations of unlawful or wrongful acts by an employer²⁷ nor to protect the right to employment or

²⁵ *Supra*. Reference to subsection 241(1) of the *Canada Business Corporation Act*.

²⁶ *L'Écuyer v. The Queen*, 95 DTC 241 (T.C.C.).

²⁷ *Guenette v. Canada*, 2004 TCC 111; 2004 DTC 2276.

a right to earn income²⁸. The appellant does not have the comfort of applying paragraph 8(1)(b) if he is arguing that the legal fees were paid for the right to obtain income in the future from an office or employment or to acquire a right to a position he had at one time but lost.

[32] The Motion to Institute Proceedings and related civil litigation do not support the appellant's submission that the expenses incurred during the civil litigation process were legal fees to collect or to establish a right to an amount owed to him that, if received by him, would be included in computing his income for 2007 from an office or employment. The civil litigation process addressed a variety of issues, all of a personal nature. It was a family battle for control of a family business with an avalanche of personal recriminations. The family corporations were not involved in this activity. Michael and Sarah had gained control of the business and Martin wanted control returned to him, among other relief of a personal nature. The legal fees paid by Martin and/or his succession had nothing to do with whether he was owed an amount or trying to establish a right to an amount owed to him by any of the family corporations which, if received, would be included in his income from an office or employment.

[33] The appeal is dismissed with costs.

Signed at Ottawa, Canada, this 16th day of August 2013.

"Gerald J. Rip"

Rip C.J.

²⁸ *Blagdon v. Canada*, [2003] 4 C.T.C. 107 (F.C.A.).

CITATION: 2013 TCC 252

COURT FILE NO.: 2010-2185(IT)G

STYLE OF CAUSE: THE ESTATE OF THE LATE MARTIN
HOLLINGER
v. HER MAJESTY THE QUEEN

PLACE OF HEARING: Montreal, Quebec

DATE OF HEARING: December 6, 2012

REASONS FOR JUDGMENT BY: The Honourable Gerald J. Rip, Chief Justice

DATE OF JUDGMENT: August 16, 2013

APPEARANCES:

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