

Docket: 2013-153(CPP)

BETWEEN:

1591141 ALBERTA LTD.,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

---

Appeal heard on December 11, 2013 at Edmonton, Alberta.

Before: The Honourable Justice Patrick Boyle

Appearances:

Agent for the Appellant: Owen McFarlane

Counsel for the Respondent: Valerie Meier

---

**JUDGMENT**

In accordance with the reasons delivered orally at the hearing, the appeal from the assessment made under the *Canada Pension Plan* with respect to the Appellant's 2011 taxation year is dismissed.

Signed at Ottawa, Canada this 7<sup>th</sup> day of January 2014.

"Patrick Boyle"

---

Boyle J.

Docket: 2013-153(CPP)

BETWEEN:

1591141 ALBERTA LTD.,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

**EDITED VERSION OF TRANSCRIPT**  
**OF ORAL REASONS FOR JUDGMENT**

Let the attached edited transcript of the Reasons for Judgment delivered orally from the Bench at Edmonton, Alberta on December 11, 2013 be filed. I have edited the transcript (certified by the Court Reporter) for style, clarity and to make minor corrections only. I did not make any substantive changes.

Signed at Ottawa, Canada this 7<sup>th</sup> day of January 2014.

"Patrick Boyle"

---

Boyle J.

Citation: 2014 TCC 2  
Date: 20140107  
Docket: 2013-153(CPP)

BETWEEN:

1591141 ALBERTA LTD.,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

**REASONS FOR JUDGMENT**

(Appeal heard and decision rendered orally from the Bench  
on December 11, 2013 at Edmonton Alberta.)

Boyle J.

[1] The only issue in this case arises because Mr. Hodge had previously been an employee of Teamco, incorporated his numbered company, became an employee of that numbered company, and that numbered company then contracted with Teamco to provide his services. That happened three months into 2011, with the result that there is the possibility that employer contributions get doubled up by Teamco and the numbered company.

[2] The numbered company's position this morning is that it meets the requirements of subsection 9(2) of the *Canada Pension Plan* and is an employer who immediately succeeded another as the employer of an employee as a result of the formation of a corporation.

[3] The only question I have to decide is whether or not that is correct because if the exception doesn't apply, then the Crown's position is correct. So, the question I

have to parse is whether the numbered company immediately succeeded Teamco as Mr. Hodge's employer as a result of the formation of the numbered company.

[4] The phrase in the exemption requires that the numbered company, as employer, succeed Teamco as employer -- so it's focusing on the employer, not the employee. Also, succeeding Teamco must be as a result of the incorporation or formation of the numbered company. So the terms we need to focus on are "succeeds" and "as a result of."

[5] To put it in its context, it can be the result of one of three things: (i) the formation of a company; (ii) the dissolution of a company; or (iii) the acquisition of the business of the former employer, in this case Teamco, with the agreement of the former employer or by operation of law.

[6] Neither of these other two exceptions apply, but it can be noted that the acquisition of all or part of a business is necessarily looking at Teamco's business and would apply only where the new employer carries on part of the business that Teamco used to carry on.

[7] The dissolution exception, which is also not in play in this case, can also be readily seen to meet the "as a result of" the dissolution test, because upon the winding up of the employer into its shareholder, whether corporation or individual, the employees and their employment contracts would see the shareholder/corporation succeeding the wound-up corporation as the employer as a result.

[8] With those two exemptions in mind, I would interpret the concept of formation of a corporation similarly, that is to circumstances where the formation of a corporation results itself in the employees becoming employees of the new company, such as could happen (depending upon applicable corporate law) where you had a company formed on the amalgamation or merger of two or more companies, one of which was the employer Teamco.

[9] On this view, the results test isn't met by the mere incorporation by the employee of a new company through which he hires out his services for two reasons. It doesn't meet the results test. The mere incorporation of the corporation doesn't result in the employment relationship changing. Other steps have to be taken. Also, it doesn't arise upon the business of Teamco, the original employer, being carried on by the newly-formed corporation in whole or in part the way the other exceptions clearly do.

[10] My decision is that applying this legislation as drafted, the new numbered company, the Appellant in this case, did not succeed Teamco as employer as a result of its incorporation which is the requirement. For that reason, I am dismissing the appeal.

Signed at Ottawa, Canada this 7<sup>th</sup> day of January 2014.

"Patrick Boyle"

---

Boyle J.

CITATION: 2014 TCC 2  
COURT FILE NO.: 2013-153(CPP)  
STYLE OF CAUSE: 1591141 ALBERTA LTD. AND M.N.R.  
PLACE OF HEARING: Edmonton, Alberta  
DATE OF HEARING: December 11, 2013  
REASONS FOR JUDGMENT BY: The Honourable Justice Patrick Boyle  
DATE OF JUDGMENT: January 7, 2014

APPEARANCES:

Agent for the Appellant: Owen McFarlane  
Counsel for the Respondent: Valerie Meier

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent:

William F. Pentney  
Deputy Attorney General of Canada  
Ottawa, Canada