

Federal Court of Appeal



Cour d'appel fédérale

Date: 20180614

Docket: A-285-17

Citation: 2018 FCA 119

**CORAM: STRATAS J.A.
WEBB J.A.
LASKIN J.A.**

BETWEEN:

RICK HORSEMAN

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Edmonton, Alberta, on June 14, 2018.
Judgment delivered from the Bench at Edmonton, Alberta, on June 14, 2018.

REASONS FOR JUDGMENT OF THE COURT BY:

STRATAS J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Edmonton, Alberta, on June 14, 2018).

STRATAS J.A.

[1] The appellant appeals from the judgment dated September 29, 2017 of the Tax Court of Canada (*per* Russell J.): 2017 TCC 198. The Tax Court dismissed the appellant's application for an extension of time to file a notice of appeal concerning an assessment under the *Excise Tax Act*, R.S.C. 1985, c. E-15.

[2] In support of his challenge to the assessment in the Tax Court, the appellant intended to raise arguments based on the constitutional and treaty rights of Indigenous peoples. To that end, he filed a Notice of Constitutional Question in the Tax Court.

[3] In dismissing the appellant's application, the Tax Court found (at para. 37) that the appellant had not filed a valid objection to the assessment, a statutory prerequisite for an appeal to the Court, and was now out of time. Further, the Tax Court held (at para. 24) that the provisions of the Act concerning objections and appeals apply even where a person intends to raise arguments based on the constitutional rights of Indigenous peoples. In this regard, the Tax Court emphasized (at para. 23) that the appellant was making "a private claim [...], seeking monetary relief in respect of his personal tax situation." The appellant appeals to this Court.

[4] In our view, the appeal must fail. In private, personal claims such as this, procedural and jurisdictional provisions apply and must be obeyed even where the constitutional rights and treaty rights of Indigenous peoples are asserted: *Wewaykum Indian Band v. Canada*, 2002 SCC 79, [2002] 4 S.C.R. 245; *Canada (Attorney General) v. Lameman*, 2008 SCC 14, [2008] 1 S.C.R. 372 at para. 13; *Manitoba Metis Federation Inc. v. Canada (Attorney General)*, 2013 SCC 14, [2013] 1 S.C.R. 623 at para. 134. This case law is a subset of a larger body of case law requiring that those asserting personal, private claims founded upon constitutional rights must still comply with statutory limitation periods and other procedural and jurisdictional requirements: see, e.g., *Mills v. The Queen*, [1986] 1 S.C.R. 863 at page 953; *Ravndahl v. Saskatchewan*, 2009 SCC 7, [2009] 1 S.C.R. 181; *St. Onge v. Canada*, 2001 FCA 308, 288 N.R. 3; *Newman v. Canada*, 2016 FCA 213, 406 D.L.R. (4th) 602 and the many cases cited therein.

[5] The appellant notes that the exemption from taxation contained in subsection 87(1) of the *Indian Act*, R.S.C. 1985, c. I-5 opens with the words “[n]otwithstanding any other Act of Parliament...”. He submits that this means that the procedural and jurisdictional requirements in the *Excise Tax Act* do not apply.

[6] We disagree. The opening words of section 87 prevent other Acts of Parliament imposing taxes contrary to the substantive exemption granted by section 87. They do not displace procedural and jurisdictional requirements such as where, when and how a proceeding is to be brought. Were it otherwise, what would stop a person from going directly to the Supreme Court of Canada at any time, perhaps a decade or more later, to claim the section 87 exemption at first instance?

[7] The Tax Court was correct in concluding that the application for an extension of time to file a notice of appeal must be dismissed. The Tax Court has jurisdiction over such an application only where the requirements of the *Excise Tax Act*, above, ss. 301-307 are met, including the requirement that a valid notice of objection be filed: *Tax Court of Canada Act*, R.S.C. 1985, c. T-2, s. 12. One was not filed here.

[8] We see no reviewable error in the Tax Court’s findings of fact and substantially agree with the legal analysis of the Tax Court as it pertains to those facts (at paras. 25-42).

[9] Therefore, we shall dismiss the appeal with costs fixed in the all-inclusive amount of \$1,000.00.

“David Stratas”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-285-17

**APPEAL FROM A JUDGMENT OF THE HONOURABLE MR. JUSTICE B. RUSSELL
DATED SEPTEMBER 29, 2017, DOCKET NO. 2016-4561(GST)APP**

STYLE OF CAUSE: RICK HORSEMAN v. HER
MAJESTY THE QUEEN

PLACE OF HEARING: Edmonton, Alberta

DATE OF HEARING: JUNE 14, 2018

REASONS FOR JUDGMENT OF THE COURT BY: STRATAS J.A.
WEBB J.A.
LASKIN J.A.

DELIVERED FROM THE BENCH BY: STRATAS J.A.

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