

Date: 20080124

Docket: A-48-06

Citation: 2008 FCA 32

**CORAM: LÉTOURNEAU J.A.
SEXTON J.A.
PELLETIER J.A.**

BETWEEN:

VAN DUMONT

Appellant

and

**HER MAJESTY THE QUEEN
THE DEPUTY ATTORNEY GENERAL OF CANADA**

Respondents

Heard at Vancouver, British Columbia, on January 24, 2008.

Judgment delivered at Vancouver, British Columbia, on January 24, 2008.

REASONS FOR JUDGMENT BY:

PELLETIER J.A.

CONCURRED IN BY:

**LÉTOURNEAU J.A.
SEXTON J.A.**

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REASONS FOR JUDGMENT

PELLETIER J.A.

[1] This is an appeal from the decision of Madam Justice Sheridan of the Tax Court of Canada, reported at 2005 TCC 790, [2005] T.C.J. No. 621, dismissing Mr. Dumont's appeal from the Minister's assessment of Mr. Dumont's liability for income tax for the 2001 taxation year. Mr. Dumont's income for that year derived from fishing in coastal waters.

[2] Mr. Dumont's opposition to paying tax is essentially founded on an argument that the Federal Government lacks jurisdiction to impose taxation on Indians for activities undertaken on

Indian land. In Mr. Dumont's view, all land (in the Canadian context) is Indian Land unless the person claiming ownership can show a chain of title originating with a purchase of land by the Crown from the Indian nations who owned the land. This argument is apparently founded on the provisions of the Royal Proclamation of 1763 which, among other things, prohibits the Sovereign's subjects from "making any purchases or Settlements whatsoever, or taking possession of any of the lands above reserved without our special leave and License for that purpose first obtained" and further requires that any land purchased from the Indians "shall be purchased only for Us, in our Name".

[3] These arguments, which amount to a challenge to the constitutional validity of the *Income Tax Act* as it applies to Indians were not dealt with by the Tax Court Judge, as the required Notice of Constitutional Question was not served on the Attorneys General of Canada and of the provinces. Justice Sheridan also rejected the appellant's argument that the decision of the Federal Court in *Benoit v. Canada* 2002 FCT 243, (2002) 217 F.T.R. 1 (T.D.), which held that Treaty 8 exempted Indians entitled to the benefit of the treaty from liability for tax, applied to his case. *Benoit* was overturned on appeal, in a decision reported at 2003 FCA 236, (2003) 242 F.T.R. 349 (F.C.A.), application for leave to appeal dismissed. [2003] S.C.C.A No. 387. Consequently, even if Treaty 8 applies to the appellant, it does not assist him.

[4] Finally, notwithstanding the appellant's rejection of validity and relevance of the *Indian Act*, the Tax Court judge addressed the argument that the appellant might be entitled to the benefit of section 87 of that Act. She reviewed the connecting factors as identified in *Southwind v. Canada*

[1998] 1 C.T.C. 265 (F.C.A.) and concluded that they did not establish that Mr. Dumont's income was earned on a reserve.

[5] When he appeared before us, Mr. Dumont repeated the polemic which he had previously addressed to the Tax Court of Canada, with the same results. (See pages 46-56, 71-74 of the Transcript of Proceedings) No notice of constitutional question having been given, we are not in a position to embark upon a review of the constitutional validity of the *Income Tax Act* as it applies to Indians.

[6] Even if Treaty 8 applies to the coastal areas of British Columbia, the *Benoit* case does not assist Mr. Dumont. The question of income earned on a reserve does not arise since Mr. Dumont has not pointed to a reserve where his income could have been earned.

[7] In the end result, Mr. Dumont's recourse to a blend of historical references and de-tax theory does not assist him. I would dismiss the appeal with costs.

"J.D. Denis Pelletier"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-48-06

STYLE OF CAUSE: VAN DUMONT v. HMQ ET AL.

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: January 24, 2008

REASONS FOR JUDGMENT BY: PELLETIER J.A.

CONCURRED IN BY: LÉTOURNEAU J.A.
SEXTON J.A.

DATED: January 24, 2008

APPEARANCES:

Mr. Van Dumont ON HIS OWN BEHALF

Ms. Nadine Taylor-Pickering FOR THE RESPONDENT

SOLICITORS OF RECORD:

John H. Sims, Q.C. FOR THE RESPONDENT
Deputy Attorney General of Canada