

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20110503

Docket: A-207-10

Citation: 2011 FCA 152

**CORAM: BLAIS C.J.
LÉTOURNEAU J.A.
SEXTON J.A.**

BETWEEN:

ROGER OBONSAWIN

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Ottawa, Ontario, on May 3, 2011.

Judgment delivered from the Bench at Ottawa, Ontario, on May 3, 2011.

REASONS FOR JUDGMENT OF THE COURT BY:

LÉTOURNEAU J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Ottawa, Ontario, on May 3, 2011)

LÉTOURNEAU J.A.

[1] The appellant appeals against a decision of Webb J. of the Tax Court of Canada (judge) whereby he dismissed with costs the appellant's appeal against the assessments made by the Minister of National Revenue under Part IX of the *Excise Tax Act*, R.S.C. 1985, c. E-15 (ETA).

[2] The appellant was assessed on the ETA for his failure to collect and remit the GST owed by his clients on the supplies he provided to them. He claimed that, pursuant to section 87 of the *Indian*

Act, R.S.C. 1985, c. I-5, he was exempt from taxation and the GST assessments against him amounted to a tax on his property situated on a reserve or a tax on him in respect of that property.

[3] Section 87 reads:

Property exempt from taxation	Biens exempts de taxation
<p>87. (1) Notwithstanding any other Act of Parliament or any Act of the legislature of a province, but subject to section 83 and section 5 of the First Nations Fiscal and Statistical Management Act, the following property is exempt from taxation:</p> <p>(a) the interest of an Indian or a band in reserve lands or surrendered lands; and</p> <p>(b) the personal property of an Indian or a band situated on a reserve.</p>	<p>87. (1) Nonobstant toute autre loi fédérale ou provinciale, mais sous réserve de l'article 83 et de l'article 5 de la Loi sur la gestion financière et statistique des premières nations, les biens suivants sont exemptés de taxation :</p> <p>a) le droit d'un Indien ou d'une bande sur une réserve ou des terres cédées;</p> <p>b) les biens meubles d'un Indien ou d'une bande situés sur une réserve.</p>
Idem	Idem
<p>(2) No Indian or band is subject to taxation in respect of the ownership, occupation, possession or use of any property mentioned in paragraph (1)(a) or (b) or is otherwise subject to taxation in respect of any such property.</p>	<p>(2) Nul Indien ou bande n'est assujetti à une taxation concernant la propriété, l'occupation, la possession ou l'usage d'un bien mentionné aux alinéas (1)a) ou b) ni autrement soumis à une taxation quant à l'un de ces biens.</p>

[4] After a careful analysis of the evidence, the contracts with placement organizations and the relevant jurisprudence, the judge drew the following conclusions:

- a) the appellant provided taxable supplies in the nature of services for which an administrative fee was charged;

- b) no personal property of the appellant was being taxed or taken;
- c) the appellant was not taxed in respect of the ownership, occupation, possession or use of any of his personal property;
- d) the appellant was the supplier of the services and it was the purchaser, not the vendor, of these services which was taxed;
- e) none of the purchasers of the services were Indians and would qualify for an exemption from taxation under the *Indian Act*: the appellant cannot pass to a person who is not an Indian or a Band an exemption that he may or could have under section 87 of the *Indian Act*;
- f) since the GST was not imposed on the appellant but on his clients, it did not erode the appellant's property;
- g) subsection 87(2) of the *Indian Act* does not apply since the appellant is not taxed because the tax is due by the purchaser, not the appellant; and
- h) the appellant was assessed for the GST that he failed to collect from his client: he is not taxed, he is assessed for his failure to collect and remit the GST.

[5] We are in agreement with the factual and legal findings and conclusions of the judge. There was ample evidence and legal authorities to support them. This appeal is without merit and will be dismissed with costs.

“Gilles Létourneau”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-207-10

STYLE OF CAUSE: ROGER OBONSAWIN v.
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PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: May 3, 2011

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DELIVERED FROM THE BENCH BY: LÉTOURNEAU J.A.

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