

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20140212**

**Dockets: A-416-12  
A-423-12**

**Citation: 2014 FCA 40**

**CORAM: NOËL J.A.  
MAINVILLE J.A.  
WEBB J.A.**

**BETWEEN:**

**HER MAJESTY THE QUEEN**

**Appellant**

**and**

**REYNOLD DICKIE**

**Respondent**

Heard at Vancouver, British Columbia, on February 12, 2014.

Judgment delivered from the Bench at Vancouver, British Columbia, on February 12, 2014.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**WEBB J.A.**

Federal Court of Appeal



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**REASONS FOR JUDGMENT OF THE COURT**

(Delivered from the Bench at Vancouver, British Columbia, on February 12, 2014).

**WEBB J.A.**

[1] These are consolidated appeals from the decision of Pizzitelli, J. of the Tax Court of Canada (2012 TCC 242) who found that the income of Mr. Dickie from his sole proprietorship business was not to be included in his income as determined for the purposes of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (the Act) as a result of the provisions of paragraph 81(1)(a) of the Act and

section 87 of the *Indian Act*, R.S.C. 1985, c.I-5 and from the order of Pizzitelli, J. (2012 TCC 327) awarding costs of \$90,000 (\$80,000 plus \$10,000 in disbursements).

[2] In conformity with the order of this Court dated November 15, 2012, these reasons will be filed in Court File A-416-12 and a copy thereof will be filed in Court File A-423-12.

[3] The Crown acknowledged that the Tax Court Judge identified the correct legal test to determine whether the income of Mr. Dickie was personal property of an Indian situated on a reserve for the purposes of paragraph 87(1)(b) of the *Indian Act* as set out by the Supreme Court of Canada in *Bastien Estate v. The Queen*, [2011] 2 S.C.R. 710. The Crown also did not identify any palpable and overriding error that the Tax Court Judge made in any of his findings of fact. The Crown's argument, however, was that the Tax Court Judge did not give the appropriate weight to certain factors.

[4] As noted by this Court in *Horn v. The Queen*, 2008 FCA 352, it is the role of the trial judge to assess the weight to be given to the various connecting factors in determining whether the exemption from taxation as provided in section 87 of the *Indian Act* will be applicable to any particular income. It is not the role of this Court, unless the trial Judge has committed a palpable and overriding error in assessing the factors or has committed an error of law, to substitute its view of the relative weight to be given to the various factors.

[5] We have not been convinced that the Tax Court Judge committed any palpable and overriding error in assessing the factors. As a result the appeal from the decision of the Tax Court

Judge that the income of Mr. Dickie from his sole proprietorship is not to be included in determining his income under the Act, will be dismissed.

[6] With respect to the amount awarded for costs, section 147 of the *Tax Court of Canada Rules (General Procedure)* provides the Tax Court Judge with discretion to award an amount for costs and subsection 147(3) of these Rules sets out certain considerations that may be taken into account by the Court in exercising the discretion to award costs under section 147 of the Rules. The Tax Court Judge provided reasons to explain why the considerations would justify the costs that he awarded and we have not been convinced that the Tax Court Judge committed any error that would warrant our intervention in awarding costs of \$90,000.

[7] As a result these appeals will be dismissed, with one set of costs.

"Wyman W. Webb"

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKETS:** A-416-12  
A-423-12

**(APPEAL FROM A JUDGMENT DATED JULY 10, 2012 AND AN ORDER DATED  
SEPTEMBER 19, 2012 OF THE HONOURABLE MR. JUSTICE PIZZITELLI OF THE  
TAX COURT OF CANADA, DOCKET NO. 2008-2808(IT)G.)**

**STYLE OF CAUSE:** HER MAJESTY THE QUEEN v.  
REYNOLD DICKIE

**PLACE OF HEARING:** VANCOUVER, BRITISH  
COLUMBIA

**DATE OF HEARING:** FEBRUARY 12, 2014

**REASONS FOR JUDGMENT OF THE COURT BY:** NOËL J.A.  
MAINVILLE J.A.  
WEBB J.A.

**DELIVERED FROM THE BENCH BY:** WEBB J.A.

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