

Docket: 2015-2160(IT)I

BETWEEN:

NASEER AHMAD CHAUDHRY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on November 30, 2015, at Winnipeg, Canada

Before: The Honourable Mr. Justice Randall S. Boccock

Appearances:

Agent for the Appellant:

Chris Shannon

Counsel for the Respondent:

Larissa Benham

JUDGMENT

IN ACCORDANCE with the Reasons for Judgment attached, the appeal from the reassessment made under the *Income Tax Act*, R.S.C., 1985, c. 1 (5th supp.) for the taxation year 2012 is hereby dismissed.

Signed at Ottawa, Canada, this 29th day of January 2016.

“R. S. Boccock”

Boccock J.

Citation: 2016 TCC 28
Date: 20160129
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REASONS FOR JUDGMENT

Bocock J.

[1] The nature of this appeal may be summarized briefly. There are no facts in dispute. No arguments were advanced before the Court regarding the specifics of the reassessment made under the *Income Tax Act*, RSC, 1985, c. 1 (5th Supp.) (the “*Act*”). Instead the purely legal argument of the Appellant, advanced through his agent, Mr. Chris Shannon, was that the legislation comprising the *Act per se* was not properly before the Court.

[2] Some expansion and summary of this unique argument is needed. The appellant contends there is no basis before the Court that the Minister has reassessed (or for that matter, assessed) Mr. Chaudhry according to the official version of the *Act* as passed by Parliament and certified by the Clerk of Parliament.

[3] Mr. Chaudhry’s agent argues that, sections 3, 4, 5, 6 and 7 of the *Publication of Statutes Act*, RSC, 1985 c S-21 decrees how laws are certified, recorded and published once Parliament has enacted them. He concludes that such requirements have not been met on the basis which follows.

[4] Firstly, section 3 of the *Publication of Statutes Act* provides that all original Acts passed by Parliament and assented to by the Governor General shall remain in the custody of the Clerk of the Senate of Canada.

[5] The Clerk of the Senate shall furnish to the Queen’s Printer a certified copy of every Act of Parliament as soon as it has received royal assent. The Queen’s

Printer shall then print and distribute the statutes under various provisions of sections 9 to 14 of the *Publication of Statutes Act*.

[6] The Clerk of the Senate shall affix his seal to copies of all Acts required to be produced before the courts of justice, either within or outside Canada. These certified copies are deemed to be duplicate originals and to be evidence of the context of those Acts. Specifically, the relevant sections provide as follows:

4. The Clerk of the Parliaments shall have a seal of office and shall affix the seal to certified copies of all Acts required to be produced before courts of justice, either within or outside Canada, and in any other case in which the Clerk of the Parliaments considers it expedient.

5. All copies of the Acts certified by the Clerk of the Parliaments pursuant to section 4 shall be held to be duplicate originals and to be evidence of those Acts and of their contents as if printed under the authority of Parliament by the Queen's Printer. [underlining added]

[7] Additionally, the Clerk of the Senate shall also furnish, to every person applying for a copy, a certified copy of any Act in his custody pursuant Section 7 of the *Publication of Statutes Act*. These copies are deemed to be true copies of the Act passed by the Parliament. An excerpt from that provision is as follows:

7. The Clerk of the Parliaments shall furnish certified copies of any of the Acts mentioned in section 3 ... to any person applying for a copy ... [...]

[8] With an eye turned to the conjunctive effect of Sections 4 and 5, Mr. Chaudhry's agent submits that:

- a) A sealed version of the *Act* is "required to be produced before courts of justice ..., within ... Canada", and;
- b) Only "copies of the *Acts* certified by the Clerk...pursuant to section 4 shall be held ... to be evidence of those *Acts* and of their contents as if printed under the authority of Parliament by the Queen's Printer."

[9] In short, the appellant's agent states that the Minister has not produced a certified copy of the *Act* nor has respondent's counsel made a request of the Clerk of the Senate for a copy.

[10] On that basis, the Court has no evidence that the reassessment against the appellant has been raised by the Minister pursuant to validly subsisting and

promulgated legislation. Reference to third party-published copies or website reproductions are simply not sufficient to legally comply with the requirements imposed under the *Publication of Statutes Act*.

[11] The appellant's agent, in response to the Court's queries, confirmed that there was no legal authority to support the argument other than a plain reading of the statutes. He also confirmed there were no further grounds of appeal, including those otherwise referenced in the Notice of Appeal, but ignored by the agent before the Court.

[12] The issue remains: must the Senate Clerk's certified copy of the *Act* be before the Court? If such a certified copy need not be tendered before the Court, then the supplementary question remains: what legal authority does the Court have to reference other sources and receive such sources as the current and effective version of the *Act*? The Court has elected to address these arguments by written judgement for two reasons: the current absence of such a decision in the jurisprudence and the frequency and number of amendments to this, Parliament's largest *Act*.

[13] For the reasons which follow, the appeal is dismissed. There exists legal certainty to afford the Court authority to rely upon a publically accessible and legally authenticated version of the *Act* and, for that matter, other legislation and regulations of Parliament.

[14] Firstly, sections 2 and 26 of the *Legislation Revision and Consolidation Act*, RSC, 1985, c S-20 ("*LRCA*") allow the Minister of Justice and Attorney General of Canada (the "Minister") to maintain a consolidation of the public statutes of Canada.

2. In this Act,

"Minister" means the Minister of Justice and Attorney General of Canada;

26. The Minister may maintain a consolidation of the public statutes of Canada and a consolidation of the regulations of Canada.

[15] In this respect, the Minister may cause consolidated statutes to be published in printed or electronic form. This power is embedded in Subsection 28(1) of the *LRCA*.

28. (1) The Minister may cause the consolidated statutes or consolidated regulations to be published in printed or electronic form, and in any manner and frequency that the Minister considers appropriate.

[16] This consolidation of statutes allows the Minister to publish a Parliamentary Act with all subsequent amendments in a cumulative fashion. As a slightly ironic example, the former *Statute Revision Act*, 1974-75-76, ch 20, s 1 (the “*Statute Revision Act*”), was revised and enacted in 1985. On December 31, 2002, the *Statute Revision Act* was amended to alter, add and repeal numerous sections. This occurred again on June 1, 2009. These amendments are combined with the original version of the *Statute Revision Act*, resulting in a cumulative consolidated statute that appears on the Department of Justice’s website. Examples of major amendments undertaken include the addition of Sections 26 to 32, as well as the change of name of the *Statute Revision Act* to the *LRCA*. The power to consolidate all federal legislation (statutes and regulations) is expressly given to the Minister under Section 26 of the *LRCA*.

[17] As importantly, pursuant to Subsection 31(1) of the *LRCA*, either the print or the electronic consolidated statutes published by the Minister constitute evidence of that statute:

31. (1) Every copy of a consolidated statute or consolidated regulation published by the Minister under this Act in either print or electronic form is evidence of that statute or regulation and of its contents and every copy purporting to be published by the Minister is deemed to be so published, unless the contrary is shown.

[18] In the case of inconsistency between consolidated statutes published by the Minister and the original statute or amendments retained by the Clerk of the Senate, the original statute or amendments shall prevail. Subsection 31(2) of the *LRCA* says so:

31(2) In the event of an inconsistency between a consolidated statute published by the Minister under this Act and the original statute or a subsequent amendment as certified by the Clerk of the Parliaments under the Publication of Statutes Act, the original statute or amendment prevails to the extent of the inconsistency.

[19] Section 18 of the *Canada Evidence Act*, RSC, 1985, c C-5, states that no proof before a Court of any Parliamentary Acts, public or private, is necessary in order to establish evidence of a Parliamentary Act.

18. Judicial notice shall be taken of all Acts of Parliament, public or private, without being specially pleaded.

[20] In summary, the Court finds that:

- (i) Senate Clerk certified copies of public Acts need not be before the Court;
- (ii) Copies of the *Act* printed from the Department of Justice's website in electronic form and containing the *imprimatur* of Sections 31(1) and 31(2) of the *LRCA* are official copies of federal statutes and regulations; and
- (iii) Once produced before the Court, as above, the version constitutes an Act of Parliament and judicial notice may be taken of it.

[21] In conclusion, the Court may rely upon the extracted version of the *Act* produced by the Respondent containing subsections 31(1) and (2) which are automatically printed with any excerpt or extract. No further proof is needed. Further, the appellant's agent did not assert that two differing versions of the *Act* required reconciliation under subsection 31(2) of the *LRCA*.

[22] For these reasons, as stated, the appeal is dismissed.

Signed at Ottawa, Canada, this 29th day of January 2016.

"R.S. Boccock"

Boccock J.

CITATION: 2016 TCC 28

COURT FILE NO.: 2015-2160(IT)I

STYLE OF CAUSE: NASEER AHMAD CHAUDHRY AND
THE QUEEN

PLACE OF HEARING: Winnipeg, Manitoba

DATE OF HEARING: November 30, 2015

REASONS FOR JUDGMENT BY: The Honourable Mr. Justice Randall S.
Bocock

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APPEARANCES:

Agent for the Appellant: Chris Shannon
Counsel for the Respondent: Larissa Benham

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