

Docket: 2021-324(IT)I

BETWEEN:

ALLAN B. LABOUCAN,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Appeal heard on March 18, 2024, at Vancouver, British Columbia

Before: The Honourable Justice Susan Wong

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: Mark Shearer

JUDGMENT

The appeal from the assessments made under the *Income Tax Act* for the appellant's 2015, 2016, and 2017 taxation years is dismissed without costs.

Signed this 20th day of August 2025.

“Susan Wong”

Wong J.

Citation: 2025 TCC 115

Date: 20250820

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REASONS FOR JUDGMENT

Wong J.

I. Issues

[1] The questions before the Court are whether:

- a. the Minister of National Revenue properly assessed Mr. Laboucan for unreported capital gains as income from the disposition of shares in 2015, 2016, and 2017;
- b. Mr. Laboucan is liable for a penalty for failure to file his 2015 return;
- c. Mr. Laboucan is liable for penalties for repeated failure to file with respect to his 2016 and 2017 returns; and
- d. Mr. Laboucan is exempt from income tax on the basis that he is a descendant of the Treaty 8 people of northern Alberta.

II. Factual background

[2] The Minister used subsection 152(7) of the *Income Tax Act* to assess Mr. Laboucan for proceeds from his disposition of shares in 2015, 2016, and 2017, finding them to be unreported capital gains and including them in his income. Mr. Laboucan also did not file returns for those years so the Minister levied penalties for failure to file (2015) and repeated failure to file (2016 and 2017).

[3] At the hearing, Mr. Laboucan stated that he did not dispute the amounts assessed nor that the amounts arose from his sale of stocks and consulting work for various companies. In 2015, 2016, and 2017, he lived in Langley, British Columbia and stated that he worked from his home office which was not on reserve land. He also acknowledged that he did not file returns for the years in question.

[4] He explained he disputes the requirement that he be subject to taxation and asserts that Treaty No. 8¹ gives him tax-exempt status. He testified that he had no documentation showing he is a descendant of the indigenous Treaty 8 signatories nor was he registered for status under the *Indian Act*. He explained that his father was denied status under the *Indian Act* because some of his father's ancestors signed for scrip, which resulted in their and his father's enfranchisement. Mr. Laboucan stated that he did not wish to go through the same disheartening process as his father in applying to be recognized by the Canadian government for what he is.

[5] Mr. Laboucan confirmed that he was not asserting tax-exempt status pursuant to section 87 of the *Indian Act*. Rather, he says that the crux of his position lies in the negotiation and signing of Treaty 8.

Treaty No. 8 and the Report of Commissioners for Treaty No. 8

[6] Treaty 8 sets out the terms under which its indigenous signatories surrendered certain tracts of land in western and northern Canada to the federal Crown.² The treaty was made in June 1899 and ratified by order-in-council in February 1900. The responsible treaty commissioners prepared an accompanying "Report of Commissioners for Treaty No. 8" dated September 22, 1899.

[7] In the commissioners' report, taxation is referenced twice as follows:

There was expressed at every point the fear that the making of the treaty would be followed by the curtailment of the hunting and fishing privileges, and many were impressed with the notion that the treaty would lead to taxation and enforced military service.³

...

We assured them that the treaty would not lead to any forced interference with their mode of life, that it did not open the way to the imposition of any tax, and that there was no fear of enforced military service...⁴

[8] The treaty itself does not mention exemption from taxation and aside from the commissioners' report, Mr. Laboucan led no evidence in this regard.

III. Analysis and discussion

[9] The question of whether Treaty 8 provides for exemption from taxation was discussed by the Federal Court of Appeal in *Benoit*⁵ and eleven years later again in *Tuccaro*.⁶

[10] In *Benoit*, the Federal Court of Appeal found there was insufficient evidence to support the lower court's conclusion that the indigenous signatories to Treaty 8 understood the treaty would exempt them from taxation at any time and for any reason.⁷ Among other things, the Federal Court of Appeal noted that the treaty was silent with respect to exemption from taxation and that the commissioners' report was the only documentary evidence which referenced taxation.⁸

[11] The Court then clarified in *Tuccaro* that its finding in *Benoit* was factual and based only on the lack of supporting evidence before the lower court, i.e. no legal conclusions were drawn to bind a lower court going forward.⁹ The clarification seems to make possible the prospect that an evidentiary case could be made to support a finding that tax-exempt status was intended/understood with respect to Treaty 8.

[12] Mr. Laboucan referred the Court to the commissioners' report and introduced no other evidence in support of the interpretation that Treaty 8 provides for exemption from taxation. Besides the treaty itself and the commissioners' report, the Federal Court of Appeal and lower court in *Benoit* considered the affidavit of a witness to the signing of Treaty 8, transcripts of interviews with indigenous elders, and expert testimony, among other things.¹⁰

[13] While the principle of *stare decisis* does not apply to oblige me to follow *Benoit* as a legal precedent, there is no basis for me to make a different factual finding than the Federal Court of Appeal made in *Benoit* with more evidence on the record before it. Therefore, I must also conclude that Mr. Laboucan has not established that the indigenous signatories to Treaty No. 8 understood the commissioners to have promised they would be exempt from taxation at any time for any reason.¹¹ Since I have found that exemption from taxation has not been established with respect to Treaty 8, it is not necessary to consider whether Mr. Laboucan is a descendant of the Treaty 8 people of northern Alberta.

[14] As Mr. Laboucan was not challenging the assessments on any other basis, the Minister's assumptions of fact in the reply were not rebutted and the assessments are upheld.

IV. Conclusion

[15] The appeal is dismissed, without costs.

Signed this 20th day of August 2025.

"Susan Wong"

Wong J.

CITATION: 2025 TCC 115

COURT FILE NO.: 2021-324(IT)I

STYLE OF CAUSE: ALLAN B. LABOUCAN AND HIS
MAJESTY THE KING

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: March 18, 2024

REASONS FOR JUDGMENT BY: The Honourable Justice Susan Wong

DATE OF JUDGMENT: August 20, 2025

APPEARANCES:

For the Appellant: The Appellant himself

Counsel for the Respondent: Mark Shearer

COUNSEL OF RECORD:

For the Respondent: Shalene Curtis-Micallef
Deputy Attorney General of Canada
Ottawa, Canada

¹ Treaty No. 8 (made June 21, 1899; ratified by Order in Council February 20, 1900)

² *Canada v. Benoit*, 2003 FCA 236 at paragraph 2; Treaty No. 8 (made June 21, 1899; ratified by Order in Council February 20, 1900)

³ Report of Commissioners for Treaty No. 8 (Commissioners Laird, Ross, and McKenna), September 22, 1899, at 4th unnumbered paragraph; *Canada v. Benoit*, 2003 FCA 236 at paragraph 8

⁴ Report of Commissioners for Treaty No. 8 (Commissioners Laird, Ross, and McKenna), September 22, 1899, at 7th unnumbered paragraph; *Canada v. Benoit*, 2003 FCA 236 at paragraph 8

⁵ *Canada v. Benoit*, 2003 FCA 236;

⁶ *Tuccaro v. Canada*, 2014 FCA 184 and 2016 FCA 259

⁷ *Canada v. Benoit*, 2003 FCA 236 at paragraphs 116 to 118

⁸ *Canada v. Benoit*, 2003 FCA 236 at paragraph 116

⁹ *Tuccaro v. Canada*, 2014 FCA 184 at paragraphs 21 and 22; *Tuccaro v. Canada*, 2016 FCA 259 at paragraph 19

¹⁰ *Canada v. Benoit*, 2003 FCA 236 at paragraph 116

¹¹ *Canada v. Benoit*, 2003 FCA 236 at paragraph 118