Docket: 2010-478(IT)I

BETWEEN:

JUDY SACKANEY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Docket: 2007-1523(IT)I

BETWEEN:

MARY ANN SHOEFLY-DEVRIES,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent,

Application heard on October 26, 2012 at Toronto, Ontario

Before: The Honourable Justice B. Paris

Appearances:

For the Appellants:	The Appellants themselves
Counsel for the Respondent:	Laurent Bartleman

AMENDED ORDER

Upon application made by the respondent for an order striking each appellants' **Amended** Notice**s** of Appeal and Notice of Constitutional Question;

And upon hearing the appellants and counsel for the respondent, and reading the materials filed;

The application is granted and the **Amended** Notice**s** of Appeal and Notice of Constitutional Question for each appellant **are** struck.

Signed at Ottawa, Canada, this **2nd** day of **October** 2013.

"B.Paris"

Paris J.

Citation: 2013TCC303
Date: 2013**1002**
Docket: 2010-478(IT)I

BETWEEN:

JUDY SACKANEY,

Appellant,

and

HER MAJESTY THE QUEEN,

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Docket: 2007-1523(IT)I

AND BETWEEN:

MARY ANN SHOEFLY-DEVRIES,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent,

AMENDED REASONS FOR ORDER

Paris J.

[1] The respondent has applied for orders striking the appellants' Amended Notices of Appeal and Notice of Constitutional Question on the basis that they disclose no reasonable cause of action. Since the appellants filed identical Amended Notices of Appeal and a joint Notice of Constitutional Question, the respondent's motions were heard together and these reasons will apply in both cases.

[2] Both appeals have been brought by the appellants under the Informal Procedure. While the *Tax Court of Canada Rules (Informal Procedure)* SOR/90-688b do not specifically provide for the matter of striking pleadings, it falls within

the Court's inherent jurisdiction to control its own process: *Garber v The Queen*, 2005 TCC 635. Therefore, this Court has the power to dismiss any appeal which discloses no reasonable cause of action.

[3] The test for striking pleadings was set out by the Supreme Court of Canada in *Hunt v Carey Canada Inc.*, [1990] 2 SCR 959 in the following terms:

> 33 ... Thus, the test in Canada … is …: assuming that the facts as stated in the statement of claim can be proved, is it "plain and obvious" that the plaintiff's statement of claim discloses no reasonable cause of action?

[4] The Court went on in the same paragraph to caution, that :

> … if there is a chance that the plaintiff might succeed, then the plaintiff should not be "driven from the judgment seat". Neither the length and complexity of the issues, the novelty of the cause of action, nor the potential for the defendant to present a strong defence should prevent the plaintiff from proceeding with his or her case …

[5] The issue, then, in these applications is whether, even assuming the facts alleged in the appellants' pleadings are true, it is plain and obvious that their claims disclose no reasonable cause of action.

Facts relied upon by the appellant

[6] The Court has given the appellants a number of opportunities to amend both their Notices of Appeal and Notices of Constitutional Question to ensure that they have included all facts upon which they intend to rely, as well as to clarify the arguments they wish to make. In total, Ms. Shoefly-Devries has amended her Notice of Appeal four times and her Notice of Constitutional Question twice. Ms. Sackaney has amended both her Notice of Appeal and Notice of Constitutional Question twice. Still, the latest Amended Notices of Appeal and the Notice of Constitutional Question set out few facts. Those documents consist almost exclusively of the appellants' arguments. Each appellant also file an affidavit (dated January 27 in the case of Ms. Shoefly-Devries and dated January 30, 2012 in the case of Ms. Sackaney) which appear to have been intended to supplement their Amended Notices of Appeal. Both affidavits contain several exhibits, including a "Declaration of Inherent Rights" for each of them, correspondence from various parties concerning the conduct of the Native Leasing Services tax appeals and a press release for the Prime Minister's apology concerning Residential Schools.

[7] The Declarations of Inherent Rights consist generally of argument and the views of the appellants on the effects of taxation on Aboriginal peoples. Ms. Shoefly-Devries Declaration also sets out her family background and employment history. The following facts also appear in the Declarations.

1) Ms. Shoefly-Devries is a member of the Chippewas of Nawash First Nation and is from the Bear Clan.

2) Ms. Sackaney is from Fort Albany and is a member of the Mushkwegowuk Cree Nation. She is from the Wolf Clan.

3) Both appellants are registered Status Indians.

4) Ms. Shoefly-Devries was an aboriginal support worker (part-time) in Toronto in 2007 and 2008.

5) Ms. Sackaney was employed at Aboriginal Legal Services of Toronto.

6) There has been no constitutional conference between the Government of Canada and the Aboriginal peoples of Canada concerning taxation, nor has there been any consultation with the Aboriginal peoples of Canada on the matter.

[8] By way of background, during the years under appeal each appellant worked off-reserve as an employee of Native Leasing Service. In filing their tax returns, the appellants did not report their income from that employment. The Minister of National Revenue reassessed them to include the amounts they earned from that employment in their income on the basis that it was not situated on a reserve and therefore was not exempted from tax by paragraph 87(1)(b) of the *Indian Act*. Paragraph 87(1)(b) reads as follows:

> 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:
>
> …
>
> (b) the personal property of an Indian or a band situated on a reserve.

<u>Arguments of the appellants</u>

[9] The appellants' pleadings are somewhat rambling and do not contain a concise statement of the issues they are raising. However the essence of their arguments is that:

> (i) they have an inherent aboriginal and treaty right to immunity from taxation which is protected by subsection 35(1) of the *Constitution Act, 1982*, Schedule B, *Canada Act 1982*, 1982, c. 11 (U.K.) [R.S.C., 1985, Appendix II, No. 44] and section 25 of the *Canadian Charter of Rights and Freedoms* (Part I of the *Constitution Act, 1982*).
>
> (ii) the application of paragraph 87(1)(b) of the *Indian Act* violates section 35.1 of the *Constitution Act, 1982* because no constitutional conference was held prior to the "implementation of the Income Tax Act in 1985". Furthermore, Canada has failed to carry out its fiduciary responsibility to aboriginals and its duty to consult with aboriginals and its obligation pursuant to to the *United Nations Declaration on the Rights of Indigenous Peoples* GA Res. 61/295 (Annex), UN GAOR, 61st Sess., Supp. No. 49, Vol. III, UN Doc. A/61/49 (2008) 15 by not calling a constitutional conference prior to the enactment and enforcement of paragraph 87(1)(b).
>
> (iii) paragraph 87(1)(b) of the *Indian Act*, R.S.C., 1985, c. I-5 violates the Appellants' equality rights guaranteed by section 15(1) of the *Charter*.
>
> (iv) taxation of their off-reserve income violates their mobility rights guaranteed by section 6 of the *Charter*.
>
> (v) the Court does not have jurisdiction to hear this matter and lacks judicial procedures required to recognize the inherent rights of aboriginals.

Tax immunity

[10] The appellants' first argument is predicated on the existence of an inherent aboriginal or treaty right to tax immunity. The appellants do not explicitly set out the basis of this alleged immunity, but from other statements in their Amended Notices of Appeal and Notice of Constitutional Question, I understand them to be claiming that the Crown does not have jurisdiction to impose tax on aboriginals because they have never agreed to pay tax and have not been consulted on the issue.

[11] Counsel for the respondent argued that it is clear aboriginals do not have general immunity from taxation in Canada. The appellants have not put forward any authorities to support this position, and the jurisprudence is overwhelmingly against it.

[12] The appellants' position amounts to a denial of the sovereignty of the Crown over aboriginal people in relation to taxation. The contrary view, that aboriginals are subject to the provisions of the *Income Tax Act*, flows from the fact of Canadian sovereignty over aboriginal peoples living in Canada. In *Nowegijick v The Queen*, [1983] 1 SCR 29, Dickson J. wrote at paragraph 24 that:

> Indians are citizens and, in affairs of life not governed by treaties or the *Indian Act*, they are subject to all of the responsibilities, including payment of taxes, of other Canadian citizens.

[13] Similarly, in *R v Sparrow*, [1990] 1 SCR 1075 the Supreme Court stated at page 1103 that:

> It is worth recalling that while British policy towards the native population was based on respect for their right to occupy their traditional lands, a proposition to which the Royal Proclamation of 1763 bears witness, there was from the outset never any doubt that sovereignty and legislative power, and indeed the underlying title, to such lands vests in the Crown . . .
>
> (underlining added)

[14] In light of these pronouncements of the Supreme Court, it is clear that the appellants' claim of an inherent aboriginal right to tax immunity, based on a claim that aboriginals did not agree to pay tax and have not been consulted on the matter, is incompatible with the Crown's sovereignty over Canadian territory.

[15] Since the claim of an inherent aboriginal right to tax immunity is unfounded, it is clear that the appellants' arguments relating to section 25 of the *Charter* and subsection 35(1) of the *Constitution Act, 1982* cannot succeed.

[16] Section 25 of the *Charter* reads:

> 25. The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada including
>
> (*a*) any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763; and
>
> (*b*) any rights or freedoms that now exist by way of land claims agreements or may be so acquired.

[17] Subsection 35(1) reads:

> 35(1). The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada including
>
> > (*a*) any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763; and
> >
> > (*b*) any rights or freedoms that now exist by way of land claims agreements or may be so acquired.

[18] In *Mitchell v M.N.R.*, 2001 SCC 33 McLachlin C.J. explained that the effect of the enactment of subsection 35(1) of the *Constitution Act, 1982* was to elevate *existing* common law aboriginal and treaty rights to constitutional status.

[19] It is also clear that the aboriginal rights protected by section 25 of the *Charter* are those rights recognized by the Royal Proclamation or those existing by way of land claims at the time the *Constitution Act, 1982* came into force or rights acquired by way of land claims after that point. In *R. v Kapp*, 2008 SCC 41 McLachlin C.J., writing for the majority, stated that "not every aboriginal interest or program falls within the provision's scope" and that "only rights of a constitutional character are likely to benefit from s. 25."

[20] Since the appellants have not set out any facts that would support a finding that tax immunity existed for aboriginal people in Canada prior to the coming into force of section 25 of the *Charter* and subsection 35(1) of the *Constitution Act, 1982* and since the appellants do not refer to any land claim agreement in their pleadings there can be no basis for finding that those provisions were breached by imposing tax on the income of an aboriginal person.

[21] Even if the appellant had pled facts to show that tax immunity for aboriginals existed at some point prior to 1982, it is apparent that the those rights would have been extinguished when income tax was imposed in 1917 on "every person residing or ordinarily resident in Canada": *Income War Tax Act, 1917*, S.C. 1917, c.28 subsection 4(1). In *Mitchell*, McLachlin C.J. explained that prior to 1982, aboriginal rights could be unilaterally abrogated by the Crown:

> 10… aboriginal interests and customary laws were presumed to survive the assertion of sovereignty, and were absorbed into the common law as rights, unless (1) they were incompatible with the Crown's assertion of sovereignty, (2) they were surrendered voluntarily via the treaty process, or (3) the government extinguished them

[22] Finally, the appellant has not alleged any facts that would support a treaty right, as distinct from an inherent aboriginal right, to immunity from taxation.

Failure to convene a constitutional conference

[23] The appellants' second argument is that the application of paragraph 87(1)(b) of the *Indian Act* violates section 35.1 of the *Constitution Act, 1982* and that the Crown breached its fiduciary duty to aboriginal peoples and its duty to consult by failing to hold a constitutional conference with aboriginal leaders "prior to enactment of the *Income Tax Act*" and prior to the imposition of income tax on aboriginal peoples employed off-reserve.

[24] Section 35.1 of the *Constitution Act, 1982* sets out the commitment of the government of Canada to convene a constitutional conference with aboriginal representatives prior to amending Class 24 of section 91 of the *Constitution Act, 1867*, section 25 of the *Charter* or to Part II of the *Constitution Act, 1982*.

[25] Section 35.1 reads as follows:

> 35.1. The government of Canada and the provincial governments are committed to the principle that, before any amendment is made to Class 24 of section 91 of the "*Constitution Act, 1867*", to section 25 of this Act or to this Part,
>
> (*a*) a constitutional conference that includes in its agenda an item relating to the proposed amendment, composed of the Prime Minister of Canada and the first ministers of the provinces, will be convened by the Prime Minister of Canada; and
>
> (*b*) the Prime Minister of Canada will invite representatives of the aboriginal peoples of Canada to participate in the discussions on that item.

[26] Part 24 of section 91 of the *Constitution Act, 1867* reads as follows:

> It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make Laws for the Peace, Order, and good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater Certainty, but not so as to restrict the Generality of the foregoing Terms of this Section, it is hereby declared that (notwithstanding anything in this Act) the

> exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say,
> …
> 24. Indians, and Lands reserved for the Indians.

[27] Part II of the *Constitution Act, 1982* contains sections 35 and 35.1 which deal with the rights of the aboriginal peoples of Canada. The text of those sections has been set out earlier in these reasons.

[28] The respondent's counsel maintains that there have never been any "active constitutional amendment proposals relating to Class 24 of section 91 of the *Constitution Act, 1867*, or to section 25 of the *Charter* or Part II of the *Constitution Act, 1982*," and therefore no need to call a constitutional conference pursuant to section 35.1.

[29] The appellants did not allege that any such amendments have ever been proposed, and therefore the respondent is correct in asserting that section 35.1 has no application in this case. On a plain reading, the enactment and enforcement of tax legislation affecting aboriginals are not government actions that would engage section 35.1.

[30] The respondent's counsel also submitted that the case law demonstrates that the Crown has no fiduciary duty to aboriginal people in respect of paragraph 87(1)(b) of the *Indian Act* and had no duty to consult prior to enacting or applying that provision.

[31] These same issues were considered by Lax J. of the Ontario Superior Court of Justice in *Hester v The Queen et al*, [2007] O.J. No. 4719, aff'd: *Hester v. Canada* 2008 ONCA 634 (Ontario Court of Appeal). In that case, the plaintiff alleged that the Crown owed aboriginal taxpayers a fiduciary duty and had a duty to consult in respect of the application of paragraph 87(1)(b). Lax J. held that neither duty was owed to aboriginals by the Crown and allowed the Crown's application to strike those claims. She dealt firstly with the fiduciary duty claim, at paragraphs 29 to 35 of her reasons. The relevant portions of her analysis follow:

> [29] …In *Wewaykum Indian Band v. Canada*, 2002 SCC 79 (CanLII), [2002] 4 S.C.R. 245 at paras. 72-85, Binnie J. traces the development of the 'sui generis fiduciary duty' pointing out that since *R. v. Guerin*, 1984 CanLII 25 (SCC), [1984] 2 S.C.R. 335, Canadian courts have experienced a flood of fiduciary duty claims by Indian bands. In reaffirming the principle from *Lac Minerals Ltd. v. International Corona Resources Limited*, 1989 CanLII 34 (SCC), [1989] 2 S.C.R.

574, *per* Sopinka J. at 597 that not all obligations existing between parties to a fiduciary relationship are themselves fiduciary in nature, Binnie J. states that this principle applies to the relationship between the Crown and aboriginal people and that, "It is necessary, then, to focus on the particular obligation or interest that is the subject matter of the particular dispute and whether or not the Crown has assumed discretionary control in relation thereto to ground a fiduciary obligation." (para. 83). He continues:

> I do not suggest that the existence of a public law duty necessarily excludes the creation of a fiduciary relationship. The latter, however, depends on identification of a cognizable Indian interest, and the Crown's undertaking of discretionary control in relation thereto in a way that invokes responsibility "in the nature of a private law duty" …

[34] In *Ludmer*, which was an appeal by a taxpayer allowing a motion to strike certain paragraphs of the statements of claim, the court considered the role of tax officials and whether equitable principles applied under the Canadian system of tax collection and said:

> … Neither the Minister of National Revenue nor his employees have any discretion whatever in the way in which they must apply the *Income Tax Act*. They are required to follow it absolutely, just as taxpayers are also required to obey it as it stands … In determining whether their decisions are valid, the question is not whether they exercised their powers properly or wrongfully, but whether they acted as the law governing them required them to act. (para. 44)

[35] … In issuing notices of assessment under the *Income Tax Act* and administering tax exemption rights under the *Indian Act*, CRA is carrying out the statutory duty discussed in *Ludmer*. There is no discretionary control exercised by the Crown that invokes responsibility in the nature of a private law duty. In my view, it is plain and obvious that the alleged failure of the Crown and its servants to administer s.87 of the *Indian Act* in a manner that protects the tax exemption rights of native peoples cannot give rise to a claim for breach of fiduciary duty. I conclude that this is not a tenable claim and should be struck.

(underlining added)

[32] At paragraphs 36 to 38, she dealt with the plaintiff's argument regarding the existence of a duty to consult:

> [36] In *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73 (CanLII), [2004] 3 S.C.R. 511, McLachlin C.J.C. described the duty to consult

> with aboriginal peoples and accommodate their interests as being grounded in the principle of the honour of the Crown, which must be understood generously. The duty arises when the Crown has knowledge, real or constructive of the potential existence of the aboriginal right or title and contemplates conduct that might adversely affect it.
>
> …
>
> [38] … It is clear from *Haida* and the academic commentary (see, for example, Professor Chrisitie's article, paras. 3, 17, 24, 30, 120, 121) that the duty to consult and accommodate arises when there is contemplated Crown conduct to exploit resources that are the subject of potential, but as yet proved land or treaty claims. It is doubtful that any such duty arises in the context of personal property, but assuming it does, there can be no contemplated Crown conduct on the facts pleaded as the Crown exercises no discretion in its administration of tax exemption rights.
>
> (underlining added)

[33] I agree with the conclusions of Lax J. and find that they are applicable as well in this case. Neither the enactment nor the application of paragraph 87(1)(b) relate to land or treaty claims that are under negotiation, or to any discretionary control exercised by the Crown. I have already held, as well, that the appellant has not pled sufficient facts to support the existence of an inherent aboriginal or treaty right to tax immunity and the case law is clear that there is no general tax immunity for aboriginals in Canada. Therefore, in my view, the appellants' claims concerning fiduciary duty and a duty to consult cannot succeed.

[34] The appellants also argue that the failure of the Crown to hold a constitutional conference on the issue of aboriginal taxation is contrary to article 40 of the *UNDRIP*. Article 40 reads:

> Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

[35] The *UNDRIP* is an international instrument regarding the rights and treatment of indigenous peoples, adopted in 2007 by the United Nations. As pointed out by counsel for the respondent, it is not legally binding under international law and, although endorsed by Canada in 2010, it has not been ratified by Parliament. It does

not give rise to any substantive rights in Canada. International instruments such as the *UNDRIP* may help inform the contextual approach to statutory interpretation, but no issue of statute interpretation has been raised in this case. The appellants argument relating to the *UNDRIP* also has no chance of success.

Mobility Rights:

[36] The appellants' third argument is that their mobility rights under section 6 of the *Charter* have been infringed by paragraph 87(1)(b) of the *Indian Act*. They say that paragraph 87(1)(b) infringes their right to earn their livelihood off-reserve.

[37] Section 6 of the *Charter* reads:

> 6.(1) Every citizen of Canada has the right to enter, remain in and leave Canada.
>
> (2) Every citizen of Canada and every person who has the status of a permanent resident of Canada has the right
> (*a*) to move to and take up residence in any province; and
> (*b*) to pursue the gaining of a livelihood in any province.
>
> (3) The rights specified in subsection (2) are subject to
>
> (*a*) any laws or practices of general application in force in a province other than those that discriminate among persons primarily on the basis of province of present or previous residence; and
> (*b*) any laws providing for reasonable residency requirements as a qualification for the receipt of publicly provided social services.
>
> (4) Subsections (2) and (3) do not preclude any law, program or activity that has as its object the amelioration in a province of conditions of individuals in that province who are socially or economically disadvantaged if the rate of employment in that province is below the rate of employment in Canada.

[38] The thrust of the appellants' argument is that, by virtue of oral and written treaties entered into between their tribes and the Crown, they enjoy the same rights both on and off their reserves and, in particular, they have a right to earn their livelihood both on and off reserve. I understand their position to be that the imposition of tax on their income earned off-reserve restricts their right to earn a livelihood and therefore violates their section 6 *Charter* mobility rights.

[39] I agree again with respondent's counsel that, even assuming that the facts set out by the appellants in their Notices of Appeal and Notice of Constitutional

Question are true, their argument relating to section 6 does not have any chance of success.

[40] Subsection 6(2) sets out the right of an individual to move freely and work anywhere within Canada and is subject to the limits contained in subsections 6(3) and (4). In particular, the rights guaranteed by subsection 6(2) are subject to any laws of general application in a province other than those that discriminate among persons primarily on the basis of province of present or previous residence.

[41] As the respondent's counsel points out, the *Income Tax Act* is a law of general application in all provinces and territories. Therefore, even if the *Income Tax Act* could be said to interfere with an individual's right to pursue the gaining of a livelihood, (which I do not believe it does), section 6 mobility rights are subject to its operation.

[42] Nor can I see any basis for holding that paragraph 87(1)(b) of the *Indian Act* restricts or interferes with a right to work in any province. That provision exempts property (including income) of an Indian from tax if that property is situated on a reserve. It is one of a number of provisions in the *Indian Act* designed to protect Indians in various ways from the erosion of their economic base, namely reserve lands and personal property there belonging to an Indian: *Mitchell v Peguis Indian Band*, [1990] 2 SCR 85. It does not deal with an Indian's right to work or to earn income.

Section 15

[43] The appellants' fourth argument is that the limitation of the tax exemption provided by paragraph 87(1)(b) of the *Indian Act* to income situated on a reserve results in discrimination against Indians who work off-reserve and therefore violates subsection 15(1) of the *Charter*.

[44] The focus of section 15(1) of the *Charter* is on preventing governments from making distinctions based on enumerated or analogous grounds that have the effect of perpetuating disadvantage or prejudice or imposing disadvantage on the basis of stereotyping: *Law v Canada (Minister of Employment and Immigration)*, [1999] 1 SCR 497.

[45] Subsection 15(1) reads as follows:

> 15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

[46] The respondent's counsel points out that a similar argument was made and rejected in *Horn v Canada*, [2007] FCJ No. 1356. The appeal of that decision was dismissed and leave to appeal to the Supreme Court of Canada was denied.

[47] In *Horn*, the appellant claimed that the application of paragraph 87(1)(b) of the *Indian Act* in accordance with guidelines prepared by the CRA amounted to discrimination and breached her rights under section 15(1) of the *Charter*. Phelan J. of the Federal Court found, however, that distinction drawn by paragraph 87(1)(b) of the *Indian Act* and the CRA guidelines is between property located on a reserve and property located elsewhere and that this was not an enumerated or analogous ground for the purpose of section 15(1). He said:

> 136 There is nothing immutable like race, religion or a characteristic which can only be changed at an unacceptable cost to personal liberty, involved in the distinctions as to situs of property. The distinction as to the situs of personal property on a reserve is not therefore an analogous ground.
>
> 139 None of the distinctions in the 1994 Guidelines are based on personal traits or circumstances or impact on the Plaintiffs' human dignity. The location of one's personal property is not *per se* the type of matter which could reasonably be said to impact human dignity. There is no evidence that either Horn or Williams have lessened, or been viewed as having lessened, their status as Indian *qua* Indian, nor viewed as less integral to the life of their reserve by virtue of not qualifying for the tax exemption.

[48] In my view, the appellants' section 15(1) *Charter* argument cannot be distinguished from the position taken by the appellant in *Horn*. Since that position was rejected at all levels, I see no chance that the argument in this case could succeed.

Tax Court Jurisdiction

[49] The appellants' fifth argument is that this Court lacks jurisdiction to address the application of the *Income Tax Act* to aboriginal people and lacks judicial procedures for the recognition of inherent aboriginal rights. This is simply not the case. Section 12 of the *Tax Court of Canada Act*, R.S.C., 1985, c.T-2 gives this Court exclusive original jurisdiction to hear and determine references and appeals provided

for in the *Income Tax Act*. In determining whether an assessment is correct or not, the Court will take into account any relevant aboriginal right the existence of which is established on the evidence.

[50] To the extent that the appellants are challenging the Court's jurisdiction over aboriginals, this raises the same sovereignty issue that I have dealt with earlier in these reasons, and as I have already concluded, this argument cannot succeed.

[51] I would also point out that it is the appellants who have brought their appeals in this Court, which is seemingly inconsistent with a claim that the Court lacks jurisdiction to deal with them.

Other submissions

[52] The appellants submit that allowing the motion to strike would be an abuse of authority because it would deny them the right to present their arguments in relation to their aboriginal rights. They also argue that if the motion is granted they would suffer great hardship.

[53] It is true that striking the appellants' Notice of Appeal and Notice of Constitutional Question will prevent them from making their arguments relating to alleged violations of their rights and may result in hardship to them. However, if their arguments have no chance of success, the Court is bound to strike them in order to maintain the integrity of the Court's process.

[54] The appellants also argued that the motion to strike amounts to prosecutorial discrimination. It is not entirely clear to me what the appellants meant by this. The appellants are not being prosecuted in these proceedings. They have filed an appeal from reassessments of income tax and the respondent is defending those reassessments. Furthermore, I find nothing in any of the material before me to suggest that in bringing this motion, the respondent's counsel is discriminating against the appellants.

[55] The appellants also submit that the presentation of their case has been hampered by their inability to obtain proper legal advice. This is, of course, regrettable but it can have no bearing on the outcome of this application. The Supreme Court of Canada has held that in Canada there is no general constitutional right to counsel: *British Columbia (Attorney General) v Christie*, [2007] SCC 21.

Conclusion

[56] I note that the appellants have already been given a number of opportunities to amend their Notice of Appeal and Notice of Constitutional Question in order to clarify their arguments and to set out all relevant facts. Even after those amendments, I find that it is plain and obvious that the arguments they are raising have no chance of success.

[57] For all of these reasons, the respondent's application is granted and the **Amended** Notices of Appeal and Notice of Constitutional Question are struck.

Signed at Ottawa, Canada, this **2nd** day of **October** 2013.

"B.Paris"

Paris J.

CITATION:	2013TCC303
COURT FILE NOs.:	2010-478(IT) and 2007-1523(IT)I
STYLE OF CAUSE:	JUDY SACKANEY AND THE QUEEN and MARY ANN SHOEFLY-DEVRIES AND THE QUEEN
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	October 26, 2012
REASONS FOR ORDER BY:	The Honourable Justice B. Paris
DATE OF AMENDED ORDER:	October 2, 2013

APPEARANCES:

For the Appellants :	The Appellants themselves
Counsel for the Respondent:	Laurent Bartleman

COUNSEL OF RECORD:

For the Appellant:	
Name:	
Firm:	
For the Respondent:	William F. Pentney Deputy Attorney General of Canada Ottawa, Canada