Citation: Bains and Berno and The Attorney General of Canada Date: 20001130
**2000 BCPC 0202** **File No: 46674**
**Registry: Surrey**

2000 BCPC 202 (CanLII)

# IN THE PROVINCIAL COURT OF BRITISH COLUMBIA

SMALL CLAIMS

BETWEEN:

**JESSIE BAINS**

CLAIMANT

AND:

**COLLEEN BERNO, in her capacity as Manager, Payroll and SOUTH FRASER HEALTH REGION**

DEFENDANTS

AND:

**THE ATTORNEY GENERAL OF CANADA**

THIRD PARTY

**REASONS FOR JUDGMENT**
**OF THE**
**HONOURABLE JUDGE J.R. LYTWYN**

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| Counsel for the Claimant: | Jessie Bains, on his Own Behalf |
| Counsel for the Defendant: | Paul Craven |
| Counsel for Third Party: | Donnaree Nygard |
| Place of Hearing: | Surrey, B.C. |
| Date of Hearing: | September 11, 2000 |
| Date of Judgment: | November 30, 2000 |

[1] Jessie Bains, the Claimant, has sued Colleen Berno, in her capacity as Manager of Payroll, and The South Fraser Health Region, the Defendants, for the monies that were deducted from his wages and forwarded to Canada Customs and Revenue Agency. The Defendants have added

the Attorney General for Canada as a Third Party to the action. The matter came before me for a Settlement Conference on September 21, 2000.

[2] The Claimant is dissatisfied with the federal *Income Tax Act*, and in particular, the legislation that requires the withholding of tax monies from income. Section 153(1) of the *Income Tax Act* requires "[e]very person paying at any time in a taxation year" salary or wages or other remuneration to "deduct or withhold therefrom such amount as is determined in accordance with prescribed rules".

[3] Under the Regulations prescribed by the *Income Tax Act*, the Claimant is required to complete a TD1 form. When he began to work for the South Fraser Health Region, he completed a TD1 form. Subsequently, he filed an additional TD1 form in which he filled in "n/a" for all possible tax credits. On the same form, he filled in a claim code of "E" which is to be used when no tax withholding is required. An "E" code is supposed to be used if the total of all personal tax credit amounts is more than the total employment income from all sources for the year. The Defendants, on the advice of the

Revenue Agency, did not accept the TDI as valid and continued to make deductions based on the previous TD1 the Claimant had filed.

[4] The Claimant objects to the continued withholding and remitting of tax monies from his remuneration. He frames his objections in a number of ways:

- The Federal government has no authority to pass legislation that purports to take someone's personal property without consent.

- The provisions of the *Income Tax Act* violate his inalienable rights, which pre-existed the *Canadian Charter of Rights and Freedoms.*

- The Defendants can only withhold monies when he gives express permission, notwithstanding the *Income Tax Act.*

- He has filed a valid TD1 form, which was a Constructive Notice canceling any and all contract with the Revenue Agency to withhold monies.

[5] In short, the Claimant asserts that his wishes or instructions take precedence over the *Income Tax Act* and the Defendants were in error in acting against his instructions.

[6] The Defendants and the Third Party seek to have the action dismissed at the Settlement Conference pursuant to Rule 7(14)(i) of the Small Claims Rule stating that the claim is without

2000 BCPC 202 (CanLII)

reasonable grounds and discloses no triable issue. At the Settlement conference the Claimant agreed there was no dispute as to the facts and that we could proceed on the facts as admitted.

[7] The Defendants state the claim is without reasonable grounds as Section 227(1) of the *Income Tax Act* clearly removes any liability for a person for withholding taxes at source where the person was in compliance or intended compliance with the *Act*. Section 227(1) of the *Income Tax Act* provides:

> No action lies against any person for deducting or withholding any sum of money in compliance or intended compliance with the *Act*.

[8] The Defendants state they were in compliance or intended compliance with the *Act.* They received an unusual TD1 form they believed was invalid. Bains could not claim an "E" code where he did not indicate any tax credits. An "E" should only be used if the total of all personal tax credit amounts is more than the total employment income from all sources for the year. They sought advice from the Revenue Agency and upon that advice they withheld money and remitted it to the Receiver General who held it on account of the Claimant's tax for the year it was collected. The Claimant does not suggest otherwise. There are no allegations the Defendants kept the money to themselves or otherwise misappropriated it. There is no evidence or suggestion that the Defendants intended to act other than in compliance with the *Income Tax Act*.

[9] In addition, the Defendants rely on the Regulations to show they were, in fact, compliance with the *Income Tax Act*. Section 153(1) of the *Income Tax Act* requires the Defendants to withhold taxes at sources. Regulations 100 - 108 passed by the Governor General in Council pursuant to Section 221(1) of the *Income Tax Act* assist in

calculating how much to withhold. The TD1 form is used to take into account the personal tax credits that can be filed by the employee.

[10] Sections 227(2) requires the individual to file the information in the prescribed form and 227 (3) provides that where the employee does not file the information in the prescribed form, deductions are to be made as if the person were unmarried, without dependants. The Defendant and Third Party state the TD1 form was invalid, not in the prescribed form, as the Claimant did not claim any credits and yet claimed an "E" code. There is no legal foundation to the Claimant's assertion that the TD1 form completed in this manner is Constructive Notice canceling any and all contracts with the Revenue Agency to withhold monies.

[11] The Claimant has raised a number of other concerns but cannot provide a legal foundation for these concerns. The Federal government of Canada clearly has the legislative authority to enact the provision of the *Income Tax Act*. There is no reason to believe these regulations infringe the Canadian Charter of Rights and Freedoms.

[12] In these circumstances, therefore, I agree with the Defendants that there are no reasonable grounds of success or triable issue and the matter should be dismissed pursuant to Rule 7(14)(i) of the Small Claim Rules.

[13] I further agree the matter cannot proceed against the Third Party, the Attorney General of Canada, in this forum. The Crown is the third party and once the case is dismissed against the Defendants, it fails against the Third Party. Further this court has no jurisdiction to entertain claims against the Federal Crown. The ability to sue the Federal Crown is limited to the jurisdiction given to the courts by the *Crown Liability and Proceedings Act,* R.S.C. 1985 - c. C-50.

2000 BCPC 202 (CanLII)

Section 21 of the Act provides that a claim against the Federal Crown can only be brought in the Federal Court or the B.C. Supreme Court. A Provincial Court has no jurisdiction to entertain a proceeding against the Federal Crown. ***Wong v. Kwok, Stike et al., (November 13, 1997) Richmond Registry, No. C96-11103 (B.C. Prov. Ct.).***

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J.R. Lytwyn, Judge

Provincial Court of British Columbia

2000 BCPC 202 (CanLII)