

March 22nd 2021

APPEAL NOTES

File 91448-1

Thank you for this opportunity, I will attempt to be as **direct and as brief as possible** in the interest of everyone's time.

Before proceeding to the heart of the Defendant's argument that Judge Smith erred in his decision, I would first like to address a number of the Judge's mistakes in his "*Reasons For Judgement*" of August 7th 2020:

First, in his **Introduction**, at point {1} Judge Smith states that (Mr Merrill) "*believes he is not a "person" within the definition of the Income Tax Act.*"

This is incorrect - Mr Merrill is absolutely, a "person" within the definition of the Act, to wit: **person**, or any word or expression descriptive of a person, **includes any corporation**, and any **entity exempt**, because of subsection 149(1), from tax under Part I on all or part of the entity's taxable income and the heirs, executors, liquidators of a succession, administrators or other **legal representatives** of such a person, according to the law of that part of Canada to which the context extends; (*personne*)

For the record, from our very first contact with the Crown's witness in 2019, Chris Pagette, and in all three notices delivered to him subsequently, and within the Defendant's Affidavit at Trial, it was clearly stated that STEVE MERRILL is a "*person*" ... the taxpayer, a corporation, and that Steven James Merrill is a **man** acting in the capacity as the "*legal representative*" for IT!

In our opinion, the fact that Judge Smith quotes something that was not said or written, instead of what **was**, and which is on the record, and which appears correct, is revealing of his bias and of his apparent desire to shelter the FACT that the taxpayer and the man are unique, and that the actual definition of person reveals this truth.

Secondly, from his own Analysis {4}, the Judge fabricates evidence with the following statement: "The social insurance number of [omitted for posting] is in the name of Steven James Merrill ..." which is clearly FALSE. The CRA's own internal Permanent Notes, which was entered into evidence at Trial (Exhibit 6), clearly displays on every page the name of the Taxpayer account as STEVE MERRILL.

Additionally, the Crown's lone witness, Chris Pagette, testified to this fact on July 13th under cross-examination, Book of Transcripts **Tab 2, Page 37**, where he verifies the exact spelling of the taxpayer's name from the CRA's Permanent Notes, to wit:

Line 11 The Court: "Okay this is a document entitles Permanent Notes"

Line 17 Q "Thats a print out from your computer files, correct Chris?"

Line 19 A "Yes"

Line 20 Q "Can you spell out the name in the top right corner for us?"

Line 22 A "S-t-e-v-e."

Line 26 A "Upper Case."

Line 27 Q "And then Merrill?"

Line 28 A "M-e-r-r-i-l-l"

Line 30 A "Upper Case."

Further, the Judge's iterance in his Reasons to a "strawman" [Analysis Pt. 4, Fairness Issues Pt. 15 19] to the definition of "individual" [Analysis Pt. 5] seems an attempt to muddy the issue further, as neither of these words is anywhere to be found within the definition section of the Income Tax Act.

In hindsight, we believe it was a mistake indulging and revealing to the Judge that the Act provides a clear distinction between the taxpayer account and the man *legally* representing it, as it allowed him to play dumb and avoid digging into the definition himself, and instead defer instead to case (Meades).

Judge Smith also iterates in his *Reasons* that he found no valid argument for the Defendant's claim of improper jurisdiction until the "*presiding judge confirmed his oath of allegiance*" (which he did), or that the Crown disclose "*the jurisdiction in which they were proceeding*" (which they never did). In our opinion, the Defendant had every right to question the jurisdiction in which the Crown was proceeding, be it admiralty, civil, or criminal, or administrative, and when Judge Smith failed to order the Crown do disclose the jurisdiction, he stated (on their behalf) that the proceeding was "*quasi criminal.*"

And then when he was challenged about the rules-of-procedure for a *quasi criminal* matter, he chose to employ physical force as a means to coerce Steven James Merrill into the Court's jurisdiction and create the *legal joinder* necessary to commence the (show) Trial.

That being said, it is not our intent to argue that the four returns were filed and accepted by the CRA almost 5 months **PRIOR** to the Trial's commencement, nor to the nearly decade long "conspiracy" by certain CRA agents in Penticton against the Defendant to which the Judge intimidated.

Nor do we seek to rehash the fact that Judge Smith initially entered the pleas himself on behalf of the Accused Person, and called an audible when it was revealed that the Crown's charging documents were incorrect (by Indictment was changed on the fly) and filled with typos.

Nor do we wish to question the reasoning of the Judge when he denied the Defendant a chance to call to Trial the witness's supervisor, despite the subpoena, for Mike, Michael, or Michael James Ouellette.

No... we are here today to state and provide evidence that the Defendant had a legitimate and **lawful cause** to delay the four filings from the Canada Revenue Agency, and that Judge Smith Erred in his decision by failing to recognize the **default** committed by the CRA agents in the expressed and lawful **agreement** that existed between the two parties.

Therefore, our intention today is to illustrate how the agreement was commenced, the nature and terms of the agreement, and how the agent (Pagette) and his supervisor (Ouellette), committed a default upon their own administrative process, and provided the Defendant with cause to delay the filings.

So lets begin ...

It is part of the Trial record and not disputed that Bob Hamilton, in his capacity as the Commissioner of the Canada Revenue Agency, did present an offer upon STEVE MERRILL, by mail, on December 3rd 2018, to file income tax returns *in exchange* for benefits.

The letter, at Tab 10 of the Appeal Book, clearly states at the *"Subject: Request to file and income tax and benefit return."*

The letter also clearly states, at **Paragraph 2**, that *"Filing a tax return is key to getting your benefits and credits."*

The above is a clear example of a certain party, in this case Bob Hamilton on behalf of CANADA (a corporation) reaching out or *offering* something of **benefit** to another party, in this case STEVE MERRILL, a taxpayer, in an attempt to conduct commerce.

It is part of the Trial record and not disputed that Chris Pagette, in his capacity as an employee of the Canada Revenue Agency (for six years), Non-filer Division, and an apparent sworn servant of Her Majesty, aka Regina, made a **Request** upon Steven James Merrill, a sovereign man, to provide information and answer questions, by telephone, on or about November 15th 2019.

Pagette's testimony at Trial confirms this fact, at **Tab 2** of the Book of Transcripts, **Page 20 & 21**, to wit:

Line 47 A *"I remember calling you"*

Line 4 A *"I had questions for you"*

Chris Pagette was clearly following up on Bob Hamilton's *"Request"* to file income tax returns in exchange for *"benefits and credits."*

Pagette's testimony at the Trial confirms his role is the same as Bob Hamiltons, to seek out people looking or Government benefit. When asked by the Crown Attorney about his duties as a CRA agent in the Non-Filer Division, at **Tab 2** of the Book of Transcripts, **Page 11**, he stated:

Line 31 Q *"And what does a non-filer officer do?"*

Line 32 A *"(I) try to contact taxpayers of the Canadian public to **request** that they file their tax returns."*

It is part of the Trial record and **not** disputed that Steven James Merrill did conditionally accept the offer (request) of Chris Pagette (and Bob Hamilton) by delivering to Pagette a facsimile the very next day, and subsequently a second facsimile on December 17th 2019, which can be found at **Tab 5 and Tab 6** of the Appeal Book.

It is part of the Trial record and **not** disputed that Chris Pagette received both documents, and did read both documents, and did understand both documents, and did nothing with them, except file them.

Pagette's testimony at Trial confirms this fact, at **Tab 2** of Book of Transcripts, **Page 23 & 24**, to wit:

Line 16 Q *"Did you respond to that"*

Line 17 A *"No"*

Line 4 Q *"So for the record, what did you do with my conditional acceptance to your offer to provide information to your file?"*

Line 6 A *"I put it in the – in the file."*

Line 7 Q *"And you did not respond?"*

Line 8 A *"No"*

Pagette goes on to intimate that it "wasn't in his capacity" to provide Merrill with a "certified oath of office" (**Page 23, Line 19**) as a basis for his failure.

However, it absolutely was Pagette's duty, if he indeed was working for the CRA and Her Majesty, to respond within 30 days, and identify to Merrill that he was either not a sworn servant of Her Majesty, or that he did not have access to his Oath, or that it was not able retrieve it and share it, or that he required more time, and by doing neither (and instead sitting on his hands) Pagette committed a **Default** upon his own commercial process.

We submit further that the CRA's own code of conduct required that Pagette respond, according to the **Taxpayer Bill of Rights Guide**, to wit:

5. You have the right to be treated professionally, courteously, and fairly.
6. You have the right to complete, accurate, clear, and timely information.

It is part of the Trial record and **not** disputed that on or about January 30th 2020 Chris Pagette did attempt to deliver to Merrill, at his place of business on Bernard Avenue in Kelowna, an envelope containing a new **offer**, a so-called "Requirement" to file income tax returns.

Pagette's testimony at Trial confirms this fact, at **Tab 2** of the Book of Transcripts, **Page 29**, to wit:

Line 11 The Court "-- what were you doing at his place of business for on the 30th of January again?"

Line 14 A "To serve him with requirements to file notices."

It is part of the Trial record and **not** disputed that Steven James Merrill did initially question Pagette's service, as Merrill did not admit to the name on the envelope, nor open the envelope, and in fact returned the envelope to Pagett a few seconds later after he left the premises, and where he abandoned it outside on the sidewalk near a 7-11 at Gordon and Bernard.

The Trial transcript confirms this fact, Book of Transcripts **Tab 2, Page 13. and 14.**, wherein Pagette was asked by the Crown Attorney about his *personal service*, to wit:

Line 47. Q "Did you do that?"

Line 1. A "I -- he wouldn't take the -- physically take the notice, but I did place it down in front of him."

On February 5th 2020, Merrill did write to Pagett to "clarify the record." Merrill wrote that despite its "sloppiness" he would **acknowledge his service** and accept his recent offer (of Jan 30th) **on the condition** that he "agree" that Merrill was "a man and not a fiction" and also that he produce a true copy of his oath of office within 30 days. It is important to note that the notice to Pagett concludes by stating that, if it was not he that extended (signed) the offer (Requirement), but rather a supervisor or other employee (at CRA), that he should also include a copy of that individual's oath of office. *Remember, Merrill never saw the document out of the envelope.*

Merrill's **conditional acceptance** of Pagett's offer (Requirement) can be found within the Appeal Book at **Tab 7**.

The Trial transcript confirms, at **Tab 2** of the Appeal Book, **Page 31**, that Pagett did not respond to this notice in writing, to wit:

Line 29 Q "Did -- did you respond to that notice?"

Line 30 A "No"

Line 35 A *“That it’s not Canada Revenue Agency’s policy to respond to letters requesting a signed oath – oath of office.”*

However, what Pagett **DID** do, on February 6th 2020, the day immediately following his receipt of Merrill’s conditional acceptance on the 5th, was swear an Affidavit of Service.

To summarize, Pagett didn’t swear an Affidavit of Service upon returning to his office of the 30th of January, nor did he swear the next day, nor the next. Obviously, he was not certain that he had properly served Merrill, nor was his supervisor, Ouellette. Instead, Pagett waited until he received Merrill’s notice of the 5th, whereby Merrill stated he would acknowledge his service, conditionally.

And at that moment, Pagett and his supervisor, Michael James Ouelette (who affirmed his service), confirmed that he (they) were in AGREEMENT, and accepted that Merrill was a man and not a fiction, and also, to produce a true copy of his oath of Office within 30 days, and satisfy for Merrill that he (Pagett) was in fact an employee of Her Majesty, and that he would act in good faith.

The timing of Pagett’s swearing is evidence that he (and Ouellette) knew and understood the terms and nature of the Agreement.

Unfortunately, Pagett (and Ouellette) failed to produce for Merrill a copy of his oath of office within 30 days, and thereby **defaulted** upon the agreement (at or about March 5th), and this default did provide Merrill with a lawful cause to delay the filings.

Despite the fact that there exists all the evidence of an agreement, or a contract, between the two parties as detailed herein, Judge Smith, in his *Reasons [Analysis, Pt. 8]* stated “Mr. Merrill made yet another error in law when he maintained that the Notices of Requirement were a contract offer. **It is no contract at all.**”

Judge Smith appears not to understand the nature of an agreement, or a contract, or was otherwise *pretending* not to understand for the purpose of concealing his desire to produce a certain result, aka a conviction, and thereafter, a headline (jail) for public consumption.

In our opinion, Judge Smith completely disregarded the **fact** that *a contract and agreement overcomes the law -- **Consventio et modus vincunt legem***

Additionally, Judge Smith stated in his *Reasons [Summary Pt 22]* that *“in simplest terms, Mr. Merrill **refused** to timely file his personal tax returns ...”* when in fact Steven James Merrill did not such thing!

Steven James Merrill, acting in his capacity for the taxpayer STEVE MERRILL, made every attempt to determine who was Chris Pagett, confirm his capacity, and verify his intent, and then after securing this agreement, watched Pagett they commit a DEFAULT upon it...

In our opinion Judge Smith erred in his decision by failing to recognize the agreement, and the subsequent default, and failed the justice system, the public, and Steven James Merrill, who was injured personally, psychologically, and physically by his actions.

We implore this honorable court to recognize his fault and overturn his decision.