

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *R. v. Merrill*,  
2021 BCSC 1017

Date: 20210528  
Docket: 91448  
Registry: Kelowna

**Regina**

v.

**Steven James Merrill**

Before: The Honourable Mr. Justice Basran

On appeal from: Provincial Court of British Columbia  
(*R. v. Merrill*, Kelowna Court File 91448-1, 2020 BCPC 150)

## **Reasons for Judgment**

Counsel for the Crown/Respondent:

E. Madhur  
M. Erina

Appearing on his own behalf:

Steven Merrill

Place and Date of Hearing:

Kelowna, B.C.  
March 22, 2021

Place and Date of Judgment:

Kelowna, B.C.  
May 28, 2021

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## Overview

[1] Steven James Merrill appeals his four convictions under s. 238(1) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) [*ITA*] for failing to comply with Notices of Requirement to file personal income tax returns for four taxation years, 2014 to 2017, by April 30, 2019. Mr. Merrill does not appeal his sentence, 90 days incarceration and a \$12,000 fine payable by August 7, 2021.

[2] Mr. Merrill raises three grounds of appeal. First, he argues that the trial judge erred by rejecting his main defence: that he was not required to accept or respond to the Notices of Requirement until he received a copy of the Oath of Allegiance to her Majesty (the “Oath”) of the officer of the Canada Revenue Agency (the “CRA”) who served the Notices. Second, Mr. Merrill argues that the trial judge erred by not permitting him to call the CRA officer’s supervisor as a witness. Mr. Merrill intended to elicit evidence from the supervisor about the CRA’s refusal to respond to his demand for the Oath. Third, Mr. Merrill argues that the trial judge erred by rejecting the defence that he ultimately filed his tax returns for the relevant taxation years in January 2020.

[3] On the first ground appeal, neither service of the Notices of the Requirement nor Mr. Merrill’s obligation to comply with them was contingent on receiving a copy of the CRA officer’s Oath. This irrelevant demand is not a defence to the strict liability offence in s. 238(1) of the *ITA*. Even if Mr. Merrill genuinely believed that he was not required to accept or respond to the Notices of Requirement, this was a mistake of law, not a defence.

[4] Similarly, there is no merit to Mr. Merrill’s second ground of appeal because any evidence from the CRA supervisor about his refusal to supply Mr. Merrill with a copy of the Oath would have been irrelevant.

[5] Finally, regarding Mr. Merrill’s third ground appeal, evidence that he filed his tax returns after April 30, 2019 is irrelevant to whether he is guilty of the offence of failing to file them in accordance with the Notices of Requirement by that date.

### **The Provincial Court Trial**

[6] Judge R. Smith presided over the two-day trial in the Provincial Court of British Columbia. Mr. Merrill represented himself. He took issue with many aspects of the trial process. Most of his complaints and the defences he advanced were “organized pseudo-legal commercial arguments” (“OPCAs”) as described and explained in *Meads v. Meads*, 2012 ABQB 571. British Columbia courts have repeatedly rejected these arguments: See *R. v. Millar*, 2016 BCSC 2039 at paras. 4-13, 30-34, 54-59, aff’d 2019 BCCA 298 at paras. 3-6, 62; *Watchel v. British Columbia*, 2020 BCCA 100 at paras. 6-9, 26.

### **The Crown’s Case**

[7] The Crown’s only witness was Christopher Pagett, a collections officer for the CRA. He testified that:

- a) On January 30, 2019, he served Mr. Merrill with four Notices of Requirement that required Mr. Merrill file his tax returns for 2014, 2015, 2016, and 2017 by April 30, 2019; and
- b) Mr. Merrill did not file the requested tax returns by April 30, 2019. He filed them in January 2020.

[8] The Crown’s position was that without justification, Mr. Merrill failed to file the 2014 to 2017 tax returns by April 30, 2019 and was therefore guilty of the strict liability offence in section 238(1) of the *ITA*.

### **Mr. Merrill’s Case**

[9] Mr. Merrill read in his own affidavit material as his evidence in chief. His evidence was materially consistent with Mr. Pagett’s testimony. Although Mr. Merrill took the position that he was not required to accept service of the Notices of Requirement until Mr. Pagett supplied a copy of his Oath, he testified that Mr. Pagett attempted to leave the documents with him but he did not accept the envelope.

[10] Mr. Merrill confirmed that he filed his tax returns for the 2014-2017 taxation years in January 2020.

[11] The focus of Mr. Merrill's evidence was that the Notices of Requirement constituted an offer to contract from the CRA and his acceptance of this offer was conditional on Mr. Pagett providing a copy of his Oath. He makes a similar argument on this appeal.

[12] Mr. Merrill's other "evidence" that more accurately seemed to be arguments, can be summarized as follows:

- a) The taxpayer "STEVE MERRILL" is a legal fiction distinct from the man named Steven James Merrill and the latter is the legal representative of the former;
- b) The *ITA* applies only to corporations;
- c) The Information and Summons served on Mr. Merrill did not include "a seal from the province or Her Majesty, a flag of any kind, a coat of arms nor any official insignia or logo that would confirm its origin."; and
- d) The trial court had jurisdiction if Mr. Merrill accepted that jurisdiction or gave it to the trial judge. However, the judge needed to confirm that he was conducting the proceedings upon his Oath of Allegiance to Her Majesty.

[13] In addition to his own testimony, Mr. Merrill called Arlen Schulz as a witness and attempted to call Mr. Ouellette, a CRA supervisor.

[14] Mr. Schulz testified that he wrote to and received a reply from the CRA Commissioner, presumably in respect of his own tax affairs. The trial judge dismissed this evidence because it was not relevant to Mr. Merrill's charges.

[15] Mr. Merrill wanted to question Mr. Ouellette about his instructions to Mr. Pagett regarding correspondence from Mr. Merrill. The trial judge refused

Mr. Merrill's request to order Mr. Ouellette to court on the basis that his evidence would have been irrelevant and unnecessary because it was uncontroverted that Mr. Pagett did not respond to Mr. Merrill's communications.

**The Trial Judgment**

[16] The trial judge found the following facts that supported convictions on all four counts:

- a) On January 30, 2019, Mr. Pagett personally served the relevant Notices of Requirement on Mr. Merrill. Mr. Merrill's refusal to accept these documents did not impede service of them; and
- b) Mr. Merrill failed to file the required tax returns by April 30, 2019 and instead filed them in January 2020.

[17] On the first day of trial, the trial judge ordered Mr. Merrill into custody, briefly, because of his "constant contemptuous conduct".

[18] Under the following headings, the trial judge rejected all of the arguments advanced by Mr. Merrill:

- a) Notice of Requirement Issues: There is no distinction between Steven James Merrill and STEVE MERRILL; the *ITA* applies to individuals; and Mr. Pagett's Oath had nothing to do with Mr. Merrill's obligation to accept and respond to the Notices of Requirement.
- b) Court Process Issues: The Information Summons were not defective for failing to be in the form Mr. Merrill considered valid; and the court had jurisdiction whether or not the trial judge confirmed his Oath of Allegiance to Her Majesty or clarified, to Mr. Merrill's satisfaction, the nature and jurisdiction of the court.
- c) Fairness Issues: Mr. Merrill's late filing of his tax returns did not make the prosecution unfair or improper; and the court did not treat Mr. Merrill

unfairly by having him taken into custody for disruptive behaviour and ruling that some of his evidence was irrelevant and inadmissible.

[19] The trial judge concluded that Mr. Merrill “simply refused” to comply with the properly served Notices of Requirement and convicted him on all four counts.

**Issues on Appeal**

[20] The issues on appeal are:

- a) Did the trial judge err by rejecting the defence advanced by Mr. Merrill that he was not required to accept or respond to the Notices of Requirement until he received a copy of the Oath of the CRA officer who served them?
- b) Did the trial judge err by not permitting Mr. Merrill to call Mr. Ouellette as a defence witness?
- c) Did the trial judge err by rejecting the defence that Mr. Merrill ultimately filed his tax returns for the relevant taxation years in January 2020?

**Standard of Review**

[21] Mr. Merrill appeals his summary convictions pursuant to section 813(a)(i) of the *Criminal Code*, R.S.C. 1985m c. C-46. Section 822(1) provides that the summary conviction appeal court has the powers granted to the Court of Appeal in respect of appeals against convictions in indictable proceedings under s. 686(1) of the *Criminal Code*. Subsection 686(1)(a)(ii) states that the court may allow the appeal where it is of the opinion that “the judgment of the trial court should be set aside on the ground of a wrong decision on a question of law.” The standard of review is correctness because Mr. Merrill appeals on questions of law.

[22] The Notices of Requirement served on Mr. Merrill were issued pursuant to s. 231.2(1) of the ITA:

Requirement to provide documents or information

**231.2 (1)** Notwithstanding any other provision of this Act, the Minister may, subject to subsection (2), for any purpose related to the administration or

enforcement of this Act (including the collection of any amount payable under this Act by any person), of a listed international agreement or, for greater certainty, of a tax treaty with another country, by notice served personally or by registered or certified mail, require that any person provide, within such reasonable time as is stipulated in the notice,

(a) any information or additional information, including a return of income or a supplementary return; or

(b) any document.

[23] Section 238(1) of the *ITA* creates a summary conviction offence for failing to comply with various provisions of the *ITA* including s. 231.2(1). It is a strict liability offence. In addition to identity and jurisdiction, the only elements the Crown must prove beyond a reasonable doubt are service of the notices and the accused's failure to comply with them. The accused may seek to establish due diligence, that the time provided to comply with the notices was unreasonable, or that the demand was not made for purposes related to the administration or enforcement of the *ITA*.

**Did the trial judge err by rejecting the defence advanced by Mr. Merrill that he was not required to accept or respond to the Notices of Requirement until he received a copy of the Oath of the CRA officer who serve them?**

[24] Mr. Merrill's insistence on seeing a copy of the CRA officers Oath was based on his assertion that the Notices of Requirement constituted an offer to contract that he was entitled to accept conditionally and his concern that the Notices might have been sent by a fraudster.

[25] The trial judge correctly rejected both of these arguments:

[7] Mr. Merrill wrongly believed that he had no legal obligation to respond to the Notices of Requirement until Mr. Pagett first provided him with a certified copy of Mr. Pagett's Oath of Allegiance to Her Majesty. The court can appreciate that in modern society, from time to time, one receives requests for money from unknown fraudulent senders claiming to be entitled to that money. However, this is not a case of Mr. Pagett requesting any money from Mr. Merrill. It was simply a Notice of Requirement to file tax returns with the Canada Revenue Agency. The returns were to be delivered to the Canada Revenue Agency office and not to some fly-by-night fraudulent address. The simplest of searches by Mr. Merrill would have confirmed the address was the business address for Canada Revenue Agency and that Mr. Pagett had an office there.



[8] 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—it is a demand from an authorized government agency tasked with and having authority to make such demands. The potential consequences were correctly set out to Mr. Merrill in the Notices of Requirement served on him...

[26] The trial judge’s reasoning is unassailable. He found that Mr. Merrill was personally served with the Notices of Requirement and once served, was obliged to respond to them, regardless of his beliefs.

[27] No section of the *ITA* makes valid service contingent on production by the serving party of their Oath. These provisions are unequivocal and do not allow a taxpayer to negotiate compliance with them.

[28] The arguments that one must agree to be bound by legislation and obligations arising from legislation, and that proof of a person’s oath is necessary to evidence their authority, have been routinely dismissed as OPCAs: *Meads* paras. 379-388, 243, and 287-290. This Court recently held that it is “completely appropriate” to dismiss such pseudo-legal arguments “summarily”: *R. v. August-Sjodin*, 2020 BCSC 826 at para. 22.

[29] If Mr. Merrill genuinely believed that receipt of Mr. Pagett’s Oath was a condition precedent to the effective service and enforceability of the Notices of Requirement, this was a mistake of law incapable of serving as a defence: s. 19, *Criminal Code*.

[30] Interestingly, Mr. Merrill filed the requested tax returns without receiving a copy of Mr. Pagett’s Oath. This suggests that he accepted the genuineness of the Notices of Requirement without reviewing the Oath.

**Did the trial judge err by not permitting Mr. Merrill to call Mr. Ouellette as a defence witness?**

[31] The trial judge did not err in refusing Mr. Merrill’s attempt to call Mr. Ouellette as a witness. This is because the CRA’s lack of response to Mr. Merrill’s request for the Oath is irrelevant to the issue of his culpability for failure to file his tax returns as

required. Accordingly, Mr. Ouellette could not have provided the court with any evidence relevant to the underlying criminal charges.

**Did the trial judge err by rejecting the defence that Mr. Merrill ultimately filed his tax returns for the relevant taxation years in January 2020?**

[32] The Notices of Requirement, served on January 30, 2019, required that Mr. Merrill file his 2014 to 2017 tax returns within 90 days, by April 30, 2019. Accordingly, as of May 1, 2019, he had committed the offence of failing to comply with these notices. His subsequent filing of the subject tax returns in January 2020 is irrelevant to the determination of his culpability for failing to file these returns by the April 30, 2019 deadline.

[33] As the trial judge observed, late compliance may be a mitigating factor on sentencing but it does not “undo” the completed offence.

**Conclusion**

[34] Mr. Merrill’s appeal is dismissed.

“Basran, J”