

CANADA / JUDGMENT

Hudniuk v. Warkentin

2003 BCSC 131

COURT

Supreme Court of British Columbia

DECIDED

27 January 2003

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2003BCSC0131 Citation: Hudniuk v. Warkentin et al Date: 20030127 2003 BCSC 131 Docket: S058003 Registry: New Westminster IN THE SUPREME COURT OF BRITISH COLUMBIA BETWEEN: DONELDA HUDNIUK PLAINTIFF AND: WALDO WARKENTIN, BOBBI-JO HAWKINS, PHILIP HENRY PETERS AND HENRY FRIESEN PETERS DEFENDANTS SUPPLEMENTARY REASONS FOR JUDGMENT AND CORRIGENDUM OF THE HONOURABLE MR. JUSTICE PITFIELD Counsel for the Plaintiff: Stanley T. Cope Counsel for the Defendants: Michael W. Biggs Date and Place of Hearing: November 12, 2002 Written Submissions Received: New Westminster, B.C. December 2, 11, 17, 2002

- [1] I released Reasons for Judgment on January 16, 2003 with respect to the determination of the plaintiff's net income loss. At the hearing of the application counsel for the parties advised that no regulation had been prescribed for the purposes of the definition of "net income loss" contained in s. 52 of the Insurance (Motor Vehicle) Act, R.S.B.C. 1996, c. 231.
- [2] Subsequent to the release of my Reasons, counsel for the defendant advised that, on January 14, 2003, he identified a regulation which had been prescribed for purposes of the net income loss definition.
- [3] Regulation 328/97, s. 2, prescribed s. 2.1 of the Revised Regulation (1984) under the Insurance (Motor Vehicle) Act. Section 2.1 reads as follows: 2.1 The deductions, tax credits and premiums prescribed for the purposes of the definition of "net income loss" in section 52 of the Act are
- (a) the deductions and tax credits under the Income Tax Act and the Income Tax Act (Canada) and the premiums under the Employment Insurance Act (Canada) that apply, in the period in respect of which the net income loss is to be calculated, to the person in respect of whom the calculation of net income loss is being made, or
 - (b) for a person referred to in paragraph (b) of the definition of "net income loss", any deductions, tax credits and premiums that apply to the person in respect of whom the calculation of net income loss is being made

- (i) in the jurisdiction in which the person is liable to pay tax on income, and (ii) in the period in respect of which the net income loss is to be calculated.
- [4] The fact that a regulation has been promulgated requires that paragraph [23] of my Reasons dated January 16, 2003 be deleted and the following substituted therefore:
- [23] Because income tax payable under the Income Tax Acts of British Columbia and Canada is always calculated in accordance with regulations and the prescribed deductions and tax credits contained therein, the reference to prescribed deductions and credits in s. 52(a) must have been intended to reflect the fact that the Lieutenant Governor in Council might, by regulation, specify the manner in which one or more provisions of the provincial or federal Income Tax Acts would apply for purposes of the making the calculation required by the Insurance (Motor Vehicle) Act. Section 2.1 was added to the Insurance (Motor Vehicle) Act Regulation by B.C. Regulation 328/97. The addition specifies that the deductions and credits to be taken into account in the computation of net income loss are the deductions and tax credits permitted by the federal and provincial Income Tax Acts and the premiums under the Employment Insurance Act (Canada) that apply in the period in respect of which, and to the person in respect of whom, the calculation of net income loss is being made. "I.H. Pitfield, J." The Honourable Mr. Justice I.H. Pitfield

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