Docket: 2006-3682(IT)I

BETWEEN:

MARILYN MCIVOR,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeals heard together with the appeals of
Helen Greene, 2006-3687(IT)I; *Robert Maracle*, 2006-3897(IT)I;
Denise Bolduc, 2006-3899(IT)I; *Julie Descarie*, 2007-46(IT)I;
and *Leslie Bannon*, 2007-1720(IT)I
on October 28, 29, 30 and 31, 2008, at Toronto, Ontario
and on November 6, 2008, at Ottawa, Canada

Before: The Honourable Justice G. A. Sheridan

Appearances:

Counsel for the Appellant:	Eric Lay
Counsel for the Respondent:	Gordon Bourgard and John Shipley

JUDGMENT

The appeals from the reassessments made under the *Income Tax Act* for the 1999, 2000, 2001 and 2002 taxation years are dismissed in accordance with the attached Reasons for Judgment.

The Respondent's request for costs is denied.

Signed at Ottawa, Canada, this 17th day of September, 2009.

"G. A. Sheridan"

Sheridan, J.

Docket: 2006-3687(IT)I

BETWEEN:

HELEN GREENE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeals heard together with the appeals of
Marilyn McIvor, 2006-3682(IT)I; *Robert Maracle*, 2006-3897(IT)I;
Denise Bolduc, 2006-3899(IT)I; *Julie Descarie*, 2007-46(IT)I;
and *Leslie Bannon*, 2007-1720(IT)I
on October 28, 29, 30 and 31, 2008, at Toronto, Ontario
and on November 6, 2008, at Ottawa, Canada

Before: The Honourable Justice G. A. Sheridan

Appearances:

Counsel for the Appellant:	Eric Lay
Counsel for the Respondent:	Gordon Bourgard and John Shipley

JUDGMENT

The appeals from the reassessments made under the *Income Tax Act* for the 2001, 2002, 2003, 2004 and 2005 taxation years are dismissed in accordance with the attached Reasons for Judgment.

The Respondent's request for costs is denied.

Signed at Ottawa, Canada, this 17th day of September, 2009.

"G. A. Sheridan"

Sheridan, J.

Docket: 2006-3897(IT)I

BETWEEN:

ROBERT MARACLE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard together with the appeals of
Marilyn McIvor, 2006-3682(IT)I; *Helen Greene*, 2006-3687(IT)I;
Denise Bolduc, 2006-3899(IT)I; *Julie Descarie*, 2007-46(IT)I;
and *Leslie Bannon*, 2007-1720(IT)I
on October 28, 29, 30 and 31, 2008, at Toronto, Ontario
and on November 6, 2008, at Ottawa, Canada

Before: The Honourable Justice G. A. Sheridan

Appearances:

Counsel for the Appellant:	Eric Lay
Counsel for the Respondent:	Gordon Bourgard and John Shipley

JUDGMENT

The appeal from the reassessment made under the *Income Tax Act* for the 2003 taxation year is dismissed in accordance with the attached Reasons for Judgment.

The Respondent's request for costs is denied.

Signed at Ottawa, Canada, this 17th day of September, 2009.

"G. A. Sheridan"

Sheridan, J.

Docket: 2006-3899(IT)I

BETWEEN:

DENISE BOLDUC,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeals heard together with the appeals of
Marilyn McIvor, 2006-3682(IT)I; *Helen Greene*, 2006-3687(IT)I;
Robert Maracle, 2006-3897(IT)I; *Julie Descarie*, 2007-46(IT)I;
and *Leslie Bannon*, 2007-1720(IT)I
on October 28, 29, 30 and 31, 2008, at Toronto, Ontario
and on November 6, 2008, at Ottawa, Canada

Before: The Honourable Justice G. A. Sheridan

Appearances:

Counsel for the Appellant:	Eric Lay
Counsel for the Respondent:	Gordon Bourgard and John Shipley

JUDGMENT

The appeals from the reassessments made under the *Income Tax Act* for the 1995 and 1996 taxation years are dismissed in accordance with the attached Reasons for Judgment.

The Respondent's request for costs is denied.

Signed at Ottawa, Canada, this 17th day of September, 2009.

"G. A. Sheridan"

Sheridan, J.

Docket: 2007-46(IT)I

BETWEEN:

JULIE DESCARIE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeals heard together with the appeals of
Marilyn McIvor, 2006-3682(IT)I; *Helen Greene*, 2006-3687(IT)I;
Robert Maracle, 2006-3897(IT)I; *Denise Bolduc*, 2006-3899(IT)I;
and *Leslie Bannon*, 2007-1720(IT)I
on October 28, 29, 30 and 31, 2008, at Toronto, Ontario
and on November 6, 2008, at Ottawa, Canada

Before: The Honourable Justice G. A. Sheridan

Appearances:

Counsel for the Appellant:	Eric Lay
Counsel for the Respondent:	Gordon Bourgard and John Shipley

JUDGMENT

The appeals from the reassessments made under the *Income Tax Act* for the 1999, 2000, 2001 and 2002 taxation years are dismissed in accordance with the attached Reasons for Judgment.

The Respondent's request for costs is denied.

Signed at Ottawa, Canada, this 17th day of September, 2009.

"G. A. Sheridan"

Sheridan, J.

Docket: 2007-1720(IT)I

BETWEEN:

LESLIE BANNON,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeals heard together with the appeals of
Marilyn McIvor, 2006-3682(IT)I; *Helen Greene*, 2006-3687(IT)I;
Robert Maracle, 2006-3897(IT)I; *Denise Bolduc*, 2006-3899(IT)I;
and *Julie Descarie*, 2007-46(IT)I
on October 28, 29, 30 and 31, 2008, at Toronto, Ontario
and on November 6, 2008, at Ottawa, Canada

Before: The Honourable Justice G. A. Sheridan

Appearances:

Counsel for the Appellant:	Eric Lay
Counsel for the Respondent:	Gordon Bourgard and John Shipley

JUDGMENT

The appeals from the reassessments made under the *Income Tax Act* for the 2001 and 2002 taxation years are dismissed in accordance with the attached Reasons for Judgment.

The Respondent's request for costs is denied.

Signed at Ottawa, Canada, this 17th day of September, 2009.

"G. A. Sheridan"

Sheridan, J.

Citation: 2009TCC469
Date: 20090917
Docket: 2006-3682(IT)I

BETWEEN:

MARILYN MCIVOR,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent,

AND BETWEEN:

2006-3687(IT)I

HELEN GREENE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent,

AND BETWEEN;

2006-3897(IT)I

ROBERT MARACLE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent,

AND BETWEEN;

2006-3899(IT)I

DENISE BOLDUC,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent,

AND BETWEEN;

2007-46(IT)I

JULIE DESCARIE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent,

AND BETWEEN;

2007-1720(IT)I

LESLIE BANNON,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Sheridan, J.

[1] The issue in each of these appeals is whether the Appellants' income from employment is exempt from taxation through the operation of paragraph 87(1)(*b*) of the *Indian Act* and paragraph 81(1)(*a*) of the *Income Tax Act.*

[2] The appeals were heard together with the evidence of Roger Obonsawin and Diane Wallace of Native Leasing Services applying to all of the appeals. An Agreed Statement of Facts was filed for each of the Appellants but Marilyn McIvor, Denise Bolduc and Leslie Bannon also testified at the hearing. Counsel for the Appellants sought to have the evidence of Ms. McIvor, Ms. Bannon and Ms. Bolduc treated as common to their appeals but I upheld the Respondent's objection on the basis that each Appellant's evidence was relevant only to her own appeals. All of the witnesses were credible in their testimony.

[3] Each of the Appellants is an "Indian" as defined by section 2 of the *Indian Act* and was employed by Native Leasing Services or O.I. Employee Leasing Inc. In each of the taxation years under appeal, the Appellants claimed their employment income

was exempt from taxation by operation of paragraph 87(1)(*b*) of the *Indian Act* and paragraph 81(1)(*a*) of the *Income Tax Act*, each of which is set out below:

> *Indian Act*
>
> **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.
>
> *Income Tax Act*
>
> **81. (1) Amounts not included in income.** There shall not be included in computing the income of a taxpayer for a taxation year,
>
> (a) Statutory exemptions – an amount that is declared to be exempt from income tax by any other enactment of Parliament, other than an amount received or receivable by an individual that is exempt by virtue of a provision contained in a tax convention or agreement with another country that has the force of law in Canada;

[4] In reassessing the Appellants, the Minister of National Revenue refused to exempt their employment income from taxation on the basis that it was not "personal property of an Indian … situated on a reserve" within the meaning of paragraph 87(1)(*b*) of the *Indian Act*.

[5] The Minister's position is that the appropriate test to determine whether an Indian's employment income is property situated on a reserve is the "connecting factors test" established in *Williams v. Canada*[1] and as further developed and applied in the jurisprudence; as the Appellants are unable to satisfy that criteria, their appeals ought to be dismissed. The Respondent is also seeking costs against the Appellants in any event of the cause.

[6] The Appellants' position, generally, is that on a proper interpretation of section 87 of the *Indian Act* and the applicable jurisprudence, they are entitled to a tax exemption. At the hearing, counsel for the Appellant argued that the Court ought to take a large and liberal approach to interpreting the legislation and that the "situs test"

[1] [1992] 1 S.C.R. 877. (S.C.C.).

established in *R. v. Nowegijick*[2] could be applied in lieu of the "connecting factors test" in *Williams.* They argued alternatively, that if the Court was bound to apply the *Williams* test, then it ought to do so in a way that took into account the emphasis in *Williams* on an Indian's "choice"[3] to live and/or work off-reserve in the context of reserve life in the 21st century; especially, the extent to which the lack of housing and employment opportunities on reserves deprives Indians of any real option of living and/or working on a reserve.

[7] In support of this latter point, counsel for the Appellant cited two Supreme Court of Canada decisions, *Corbiere v. Canada (Minister of Indian and Northern Affairs)*[4] and *McDiarmid Lumber Ltd. v. God's Lake First Nation* ("*God's Lake*")[5].

[8] In *Corbiere*, off-reserve band members challenged, under the *Charter of Rights and Freedoms*, certain provisions of the *Indian Act* which made their eligibility to vote in band elections contingent on their residency on a reserve. In her Reasons, Justice L'Heureux-Dubé observed:

> … From the perspective of off-reserve band members, the choice of whether to live on- or off-reserve, if it is available to them, is an important one to their identity and personhood, and is therefore fundamental. It involves choosing whether to live with other members of the band to which they belong, or apart from them. It relates to a community and land that have particular social and cultural significance to many or most band members. Also critical is the fact that as discussed below during the third stage of analysis, band members living off-reserve have generally experienced disadvantage, stereotyping and prejudice, and form a part of a "discrete and insular minority" defined by race and place of residence. In addition, because of the lack of opportunities and housing on many reserves, and the fact that the *Indian Act*'s rules formerly removed band membership from various categories of band members, residence off the reserve has often been forced upon them, or constitutes a choice made reluctantly or at high personal cost.[6] [Emphasis added.]

[9] The *God's Lake* decision involved the interpretation of the words "situated on a reserve" in section 89 of the *Indian Act* which, in certain circumstances, exempts

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[2] [1983] 1 S.C.R. 29. (S.C.C.).

[3] *Williams*, above, at paragraph 18.

[4] [1999] 2 S.C.R. 203. (S.C.C.).

[5] [2006] 2 S.C.R. 846. (S.C.C.).

[6] Above, at paragraph 62.

from seizure the property of an Indian. Writing for the majority, McLachlin, C.J. referred to the notion of "choice" in *Williams*:

> … under the *Indian Act*, an Indian has a choice with regard to his personal property. … Whether the Indian wishes to remain within the protected reserve system or integrate more fully into the larger commercial world is a choice left to the Indian.[7]

[10] Counsel for the Appellants argued that the combined effect of these cases was to permit this Court to apply the connecting factors test in a manner that recognized the limited nature of that choice.

[11] Since the hearing of these appeals, however, the Federal Court of Appeal has rendered its decision in *Margaret Horn v. Her Majesty the Queen and Sandra Williams v. Her Majesty the Queen*[8] ("*Horn & Williams*"), appeals concerning two other Native Leasing Services employees who were also challenging the Minister's denial of a section 87 exemption. In that decision, the Federal Court of Appeal explicitly reaffirmed the applicability of the "connecting factors test" in *Williams*, as further developed and applied in the jurisprudence, to the determination of a taxpayer's entitlement to an exemption under 87(1)(*b*) of the *Indian Act.* In doing so, Evans, J.A. rejected the argument that the decision of the Supreme Court of Canada in *McDiarmid Lumder Ltd. v. God's Lake First Nation* ("*God's Lake*") had implicitly overturned *Williams* and endorsed a test based solely on the location of the debtor:

> In our view, the words quoted above from *God's Lake* make it clear that the Supreme Court has not issued an invitation to this Court to revisit its well settled law. The Supreme Court has so far refused leave to appeal from the section 87 cases decided by this Court applying the connecting factors analysis to determine the location of employment income for tax purposes. Short of Parliamentary intervention, only the Supreme Court of Canada may review the soundness of the analytical framework developed and consistently applied on the issue by this Court.[9]

[12] A further weakness of the Appellants' argument regarding an Indian's lack of choice is that it is essentially a restatement of the "necessity" argument, already considered and rejected by the Federal Court of Appeal in *Desnomie v. Canada*:

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[7] Above, at paragraph 18.

[8] 2008 FCA 352, [2009] 4 C.T.C. 110. (F.C.A.).

[9] Above, at paragraph 5.

> The necessity argument in effect says that the employer, employee and place of employment would be on a reserve if that were possible and therefore the employment income should be treated as if it were located on a reserve. The difficulty with this argument is that in the circumstances of this case, it does not deal with the issue at hand, namely, whether the appellant's employment income is his property on a reserve. This is a locational, or situs determination, based upon the location of the relevant transactions.[10]

[13] The following year, in *Monias v. Canada*[11], Evans, J.A. also rejected the necessity argument, explaining that:

> … necessity cannot locate on a reserve the performance of employment duties that were clearly performed off reserve, nor situate employment income on a reserve when the connecting factors clearly point to another location. The fact that [the taxpayer] works off reserve is a factor that tends to connect his employment income elsewhere than on a reserve.[12]

However, the Court went on to say that evidence of the necessity of having to work and/or live off-reserve could be considered as part of the "surrounding circumstances" of the Indian's employment[13].

[14] Returning, then, to *Horn & Williams*, Evans, J.A. noted that the conclusion that employment income is earned in the "commercial mainstream"[14] must be drawn from an examination of the relevant factors but is "not a reason in itself for concluding that employment income is not situated on a reserve: *Recalma v. Canada* (1998), 158 D.L.R. (4th) 59 (Fed. C.A.) at para. 9."[15]

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[10] [2000] F.C.J. No. 528 at paragraph 21. (F.C.A.).

[11] 2001 FCA 239, [2001] F.C.J. No. 1168. (F.C.A.).

[12] Above, at paragraph 43.

[13] Above, at paragraph 47.

[14] On the issue of "commercial mainstream", I must reiterate my unease with that term as expressed in *Giguere v. Canada*, [2005] T.C.J. No. 186, at paragraph 22. For that reason, except when quoting from other decisions, in these Reasons for Judgment I have used the terms "the larger commercial world" (*Williams*, at paragraph 18) or "the broader Canadian economy" (*Monias*, at paragraph 68).

[15] *Horn & Williams*, above, at paragraph 10. (F.C.A.).

[15] In summary, a review of the jurisprudence shows that the determination of whether the Appellants' employment income was situated on a reserve for the purposes of paragraph 87(1)(*b*) of the *Indian Act* is to be made by applying the connecting factors test as it has evolved in respect of employment income.

The Connecting Factors Test and Employment Income

[16] Where the "property" in question is employment income, the relevant connecting factors are: "… the location or residence of the employer; the nature, location and surrounding circumstances of the work performed by the employee, including the nature of any benefit that accrued to the reserve from it; and the residence of the employee"[16].

[17] In considering these factors, the trial judge must keep in mind the limited purpose of paragraph 87(1)(*b*) as enunciated by the Supreme Court of Canada in *Mitchell v. Peguis Indian Band*[17], and as more recently expressed by Noël. J.A. in *Akiwenzie v. Canada*[18]:

> … It is the purpose of the exemption i.e. the preservation of the property available to the Indian *qua* Indian on a reserve, which led this Court to hold in *Monias* that in order for an Indian's employment income to come within the exemption, there must be a link between its acquisition and a reserve as a physical location or economic base.[19]

[18] The Supreme Court also noted that section 87 is not geared "to remedy the economically disadvantaged position of Indians"[20]. Since that decision, the Federal Court of Appeal held that a finding that the employment in question was the

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[16] *Shilling v. Canada*, [2001] F.C.J. No. 951 at paragraph 31. (F.C.A.).

[17][1990] 2 S.C.R. 85 and as reiterated by the Federal Court of Appeal in *Shilling*, above, at paragraphs 27-28.

[18] 2003 FCA 469, [2003] F.C.J. No. 1826. (F.C.A.).

[19] Above, at paragraph 10.

[20] *Mitchell*, above, at page 131.

provision of not-for-profit social services to other Indians[21], or the Indian employee was dedicated to "the survival and betterment of Indians *qua* Indians on reserves"[22] does not, in itself, bring the employment income within the section 87 exemption. Again, from *Akiwenzie*:

> 11 … the fact that [Mr. Akiwenzie's] duties were beneficial and indeed "integral to the future of reserves" as the Tax Court of Canada Judge found cannot result in his income becoming situated on these reserves. As was stated by this Court in *Monias, supra*:
>
> > [66] That the work from which employment income is earned benefits Indians on reserves, and indeed may be integral to maintaining the reserves as viable social units, is not in itself sufficient to situate the employment income there. It is not the policy of paragraph 87(1)(b) to provide a tax subsidy for services provided to and for the benefit of reserves. Rather, it is to protect from erosion by taxation the property of individual Indians that they acquire, hold and use on a reserve, although in the case of an intangible, such as employment income, it is the situs of its acquisition that is particularly important.
>
> The genuineness of [Mr. Akiwenzie] *qua* Indian, or his "indianness" if I may say so, can be given no more importance for exactly the same reason.

[19] It is against these legal parameters that the Appellants' entitlement to a tax exemption in respect of their employment income must be judged. Thus, while I found the testimony of the Appellants and Mr. Obonsawin compelling, much of it concerned facts to which I am bound to give little weight or which I must disregard altogether. The changes in the interpretation of section 87 sought by the Appellants can only be achieved by Parliament.

Facts

Native Leasing Services and O.I. Employee Leasing Income

[20] The employer of all the Appellants but Robert Maracle was Native Leasing Services ("NLS"); Mr. Maracle was employed by O.I. Employee Leasing Inc. ("O.I.

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[21] *Shilling*, above, at paragraph 52 (F.C.A); *Horn el al v. The Queen*, 2007 DTC 5589 at paragraph 115. (F.C.).

[22] *Akiwenzie*, above, at paragraph 5.

Inc.). Roger Obonsawin is the sole proprietor of NLS and the sole shareholder of O.I. Inc., a corporation he established with his business and life partner, Ljuba Irwin.

[21] Ms. Irwin is a non-aboriginal person; as such, she could not and during the years under appeal, did not, live on a reserve. Her residence was in Toronto. As the executive director of NLS, she worked primarily from its head office on the Six Nations Reserve but, like many busy entrepreneurs, also from her home or summer residence, as required.

[22] Mr. Obonsawin is a status Indian and member of the Odanak Nation Band, part of the Wabenaki Nation east of Montreal, Quebec, but he never lived on that or any other reserve. He grew up near Sudbury, Ontario, where his father had relocated the family in his search for employment. After completing his high school and post-secondary education, Mr. Obonsawin was involved in various capacities with native friendship centers, ultimately becoming the executive director of the National Association of Friendship Centres in Ottawa.

[23] In 1981, Mr. Obonsawin and Ms. Irwin incorporated O.I. Inc. to do consulting work. At that time, its primary objective was to create a network of contacts and resources for native groups working with government agencies concerned with native issues. This work ultimately led to the creation of NLS and a shift in focus to "employee leasing", a contractual structure whereby NLS and O.I. Inc. would employ those who were "Indians" under the *Indian Act* and then place them with clients, usually non-profit Aboriginal organizations, but also government agencies and private sector businesses (referred to herein as "Placement Organizations"), who leased their services.

[24] Many of the individuals who would become NLS/O.I. Inc. employees had already been working for the entity that would, in its turn, become a Placement Organization. In such instances, it was simply a matter of executing the necessary contracts to convert the employee of the Placement Organization into an NLS/O.I. Inc. employee and the former employer into a Placement Organization. There is no suggestion in the present appeals that the contractual arrangements between NLS/O.I. Inc. and/or the Appellants and their Placement Organizations were in any way improper.

[25] At all times relevant to these appeals, the head offices of NLS and O.I. Inc. were in premises located on and rented from the Six Nations Reserve. Ms. Irwin, Ms. Wallace (the director of operations for O.I. Inc.) and the approximately 15 administrative employees of NLS/O.I. Inc. worked out of these premises. Some of

these employees also lived on the Six Nations Reserve. Wherever possible, NLS and O.I. Inc. purchased the supplies and services used in their operations from on-reserve businesses. Two significant exceptions to this practice were the insurers of the medical and other benefits for leased employees (Great West Life Assurance Company and Rice Financial) and the payroll companies that processed the payment of their salaries (CIBC or Comcheq).

[26] Mr. Obonsawin rarely worked at the head office on the Six Nations Reserve. As the sole proprietor of NLS and a principal of O.I. Inc. he was responsible for the general oversight of their business operations but he spent most of his time travelling the country identifying and recruiting potential employees and Placement Organizations, which he described as "public relations and sales". While he did some skills training for employees, his greater focus was on "board training" for the directors of Placement Organizations, helping them with governance, human resources and other management issues.

[27] Mr. Obonsawin was candid in his evidence that NLS/O.I. Inc. were headquartered on a reserve for the purpose of conforming to the legal criteria which would entitle the leased employees who were living and/or working off-reserve to claim a section 87 tax exemption.

[28] Mr. Obonsawin said that the leased employee model provided other advantages to the Placement Organizations and employees alike: many Placement Organizations could offer only modest salaries; many of the employees were single parent mothers who, absent the tax break, could ill afford to work for such small wages. Such employment provided them with an opportunity to obtain or enhance job skills and to be part of a larger network of employment opportunities.

[29] Those who chose to become leased employees paid a fee of approximately 5% of their gross salary to NLS or O.I. Inc. for which they received access to extended medical and insurance benefits, training opportunities and (it had been anticipated) a section 87 tax exemption.

[30] Employee service fees represented the revenue of NLS/O.I. Inc. The Placement Organization kept track of the leased employees' hours of work and rate of pay and provided this information to the NLS/O.I. Inc. administrative staff who then forwarded it to the off-reserve payroll service to process the employees' pay cheques.

[31] NLS/O.I. Inc. invoiced the Placement Organizations for the services provided by the leased employees. The payments received from the Placement Organizations were usually direct deposited into on-reserve accounts maintained by NLS and O.I. Inc. for that purpose. There being no banking facilities on the Six Nations Reserve, NLS and O.I. Inc. maintained bank accounts at a nearby reserve, Mississauga of the New Credit.

Marilyn McIvor

[32] Marilyn McIvor is appealing the Minister's reassessment of her 1999 to 2002 taxation years.

[33] Ms. McIvor was born on the Golden Lake Reserve west of Ottawa and lived there until her mother's death when Ms. McIvor was five years old. In the years that followed, Ms. McIvor spent only weekends and holidays on the reserve. When she was 16, she moved to Ottawa where she ultimately became a federal public servant, employment she held until 1991. She married and, with her husband, raised two children. Because her spouse was a non-Indian, she lost her status as an Indian under the *Indian Act*; in 1985, she took advantage of amendments to that legislation to regain her status as a member of the Pikwakanagan Indian Band. In 1991, Ms. McIvor took an extended break from the public service to spend the summer at the Golden Lake Reserve reconnecting with family and friends; this was an emotional and significant time in her life.

[34] In 1998, Ms. McIvor was employed as a receptionist by the Aboriginal Healing Foundation ("AHF") in Ottawa, a not-for-profit private corporation funded by the Government of Canada. The membership of its board of directors was exclusively Aboriginal[23]; indeed, its funding was contingent upon that condition being fulfilled.

[35] Ms. McIvor summarized the objectives[24] of the AHF as being "… to support residential school survivors to heal from the impact of the [physical and sexual] abuse of residential schools and also for intergenerational impact on their

[23] Exhibit R-2, Tab 6.

[24] Exhibit R-2, Tab 5.

survivors"[25]. Working with the AHF had a special significance for Ms. McIvor who, as the daughter and, later, adopted daughter of Indian women who had been placed in residential schools, was herself a "survivor" of the experience.

[36] In October 1999, Ms. McIvor became an NLS employee and was placed with the AHF as the executive assistant to the director of communications. As such, she provided general administrative support to the director as well as distributing AHF informational materials and granting applications; doing data entry and records-keeping; and coordinating residential school workshops for native communities across Canada[26].

[37] As a leased employee, Ms. McIvor paid a service fee of 5% of her gross salary to NLS. She was entitled to certain medical benefits, similar to the extended coverage she had been receiving as a direct employee of the AHF. She stated that part of her reason for becoming an NLS employee was to permit her to obtain tax-exempt income. Ms. McIvor received some training from NLS but also continued to have access to and to take advantage of AHF training programs. She ceased to be employed by NLS in 2002 due to a shortage of work at AHF.

Leslie Bannon

[38] Leslie Bannon is appealing the Minister's reassessment of her 2001 and 2002 taxation years.

[39] Ms. Bannon is a member of the Fort William First Nation associated with Reserve No. 52 where she was raised. She attended high school in Thunder Bay and pursued post-secondary education in Toronto and later, for one year, in Arizona. After marrying, she and her husband and family lived for a time in British Columbia; while there, Ms. Bannon worked with native organizations and participated in Aboriginal cultural and social activities. She and her family ultimately returned to the Thunder Bay area.

[25] Transcript, page 725, lines 12-15, inclusive.

[26] Exhibit R-2, Tab 21.

[40] Because of the lack of housing and employment on the reserve, in 2000, Ms. Bannon found herself living off-reserve and working at the offices of the Ontario Native Women's Association in Thunder Bay, Ontario.

[41] The Ontario Native Women's Association is a not-for-profit organization. One of its objects was “to carry out programmes consistent with those of a charitable organization for the advancement of the level of education, training, and opportunity, and for the relief of poverty among the Native people in Ontario”[27]. It is affiliated with the Native Women’s Association of Canada and represents “aboriginal” women, a term which, for its purposes, includes Indians with status, Indians without status, Inuit, Métis or anyone who self-declares as Aboriginal. Its mandate extends to both on- and off-reserve Aboriginal women.

[42] As of the hearing of these appeals, the Ontario Native Women's Association had approximately 83 local volunteer organizations, most located off-reserve. Subject to the objects of the Ontario Native Women's Association, each local volunteer organization determined its own priorities.

[43] One of the priorities of the Ontario Native Women's Association in Thunder Bay was the Problem Gambling Awareness Program, funded by the Ministry of Health of the Government of Ontario and generally available to Ontario residents. The Ontario Native Women's Association adapted that provincial initiative to suit the needs of its local community; according to the Agreed Statement of Facts, its program provided “information and support, education and prevention, referral services and community presentations. These services are available to Aboriginal women and their families who are experiencing problems related to gambling or who are concerned about someone’s gambling”[28].

[44] It was under the auspices of that program that during the taxation years under appeal, Ms. Bannon was working as an NLS employee at the Ontario Native Women's Association. Its offices were located in Thunder Bay on non-reserve land.

[45] In January 2001, Ms. Bannon accepted a position with the Ontario Native Women's Association as a Problem Gambling Coordinator. As such, she was responsible for researching culturally appropriate programming; this five-month

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[27] Agreed Statement of Facts at paragraph 1.

[28] Above, a paragraph 11.

phase of her work saw her working mainly at the Association's offices in Thunder Bay but also travelling, on occasion, to reserves within a 300-kilometer radius of the city. Because the Thunder Bay office of the Ontario Native Women's Association had no counseling mandate, the next phase of Ms. Bannon's work was aimed at establishing a relationship with local agencies that could provide such services, and at developing training and teaching materials for use by Aboriginal women and their families. The final phase of her work was conducting problem gambling workshops at various locations in Ontario: four on reserves and one in the city of Hamilton.

[46] In June 2002, funding difficulties with the Problem Gambling Program caused her to accept alternate short-term work as a Data Base Systems Technician. She received data base training from the Ontario Native Women's Association and funded by the Ontario government or her band. Her task was to build a data base for Ontario Native Women's Association programs. She ceased to be a Native Leasing Services employee in September 2002.

[47] Some of the Ontario Native Women's Association staff members were employed directly by that organization; others, like Ms. Bannon, were Native Leasing Services employees, according to their choice. Whether employed by the Ontario Native Women's Association or NLS, all of the employees' medical and other benefits were provided by the Great West Life Assurance Company. Ms. Bannon attended one workshop for NLS employees conducted by Mr. Obonsawin in Thunder Bay.

Denise Bolduc

[48] Denise Bolduc is appealing the Minister's reassessment of her 1995 and 1996 taxation years.

[49] Ms. Bolduc was born and raised near Sault-Ste-Marie, Ontario, the daughter of a status Indian mother and French-Canadian father. Having married a non-Indian, Ms. Bolduc's mother lost her status under the *Indian Act*, regaining it only after the amendments to that legislation in 1985. Ms. Bolduc herself is now a member of the Batchewana Indian Band associated with the Rankin Reserve near Sault-Ste-Marie. She never lived on a reserve but over the years, spent some weekends and holidays with family on the Rankin Reserve.

[50] Since 1985, Ms. Bolduc has lived and worked in Toronto. After working at various jobs, she found employment at the Native Earth Theatre. It was there that she found a vehicle for combining her passion for the arts with a desire to promote native heritage and culture.

[51] In 1993, she became involved with the Association for Native Development in the Performing and Visual Arts ("ANDPVA"). In May 1994, ANDPVA hired her on a contract basis to coordinate Aboriginal music events in Toronto; in October 1994, she was employed by NLS to work as the music coordinator at ANDPVA.

[52] For reasons not relevant to these appeals, by February 1996, a separate agency known as the Aboriginal Music Project ("AMP") emerged from the ashes of ANDPVA. Around the same time, Ms. Bolduc, still an NLS employee, was placed at AMP as the artistic director.

[53] Funding for ANDPVA and AMP's activities came primarily from various organs and agencies of the federal and provincial governments but also from corporate and other private sector sponsors.

[54] Ms. Bolduc testified that the following was a fair description of AMP's goals:

> The Aboriginal Music Project, (AMP), is dedicated to the establishment of a comprehensive Aboriginal developed and controlled music network and to provide a base for professional development in the music industry. AMP is mandated to advocate and provide educational opportunities for Aboriginal musicians in all aspects of the music industry and to ensure that the protection of the unique Aboriginal cultures, languages and music of Aboriginal people are maintained.[29]

[55] Ms. Bolduc went on to summarize one of AMP's objectives as promoting the development of Aboriginal music and musicians throughout the world, referred to metaphorically in the Aboriginal community as "Turtle Island"[30].

[56] In pursuing this goal, Ms. Bolduc worked in her Toronto office handling the administrative tasks normally associated with a management position. She was also required to travel throughout Canada, meeting with artists both on- and off-reserve and making appearances at native and non-native musical performances, industry workshops and media events. Many such events were in large urban centers,

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[29] Exhibit A-3, Tab 42.

[30] Transcript, page 595 at lines 9-11.

although from time to time Ms. Bolduc did promotional interviews on reserve-run radio stations. She also spent some time at the Six Nations Reserve because of its relatively robust cultural community.

[57] Most of Ms. Bolduc's promotional work was done in Toronto because of its potential for wide audiences, professional networking and industry resources. Ms. Bolduc was candid in her evidence that no such opportunities existed on the Rankin Reserve or indeed, on the reserves with which the Aboriginal artists were associated. Hence, the need for agencies such as AMP.

[58] As an employee of NLS, Ms. Bolduc was charged a service fee of 5%. Her main reason for choosing to be an employee of NLS was to take advantage of the tax exemption.

Helen Greene

[59] Helen Greene is appealing the Minister's reassessment of her 2001, 2002, 2003, 2004 and 2005 taxation years. She appeared through her counsel. She adduced no evidence other than that of Mr. Obonsawin, Ms. Wallace and her Agreed Statement of Facts.

[60] Ms. Greene was a member of the Iskatewizaagegan #39 Independent First Nation Indian Band until her transfer to registry #1310044301 of the Ojibways of Onigaming First Nation which is located on five settlements, approximately 280 kilometers southeast of Kenora, Ontario.

[61] During the taxation years under appeal, Ms. Greene lived off-reserve in Kenora, Ontario where she was employed by NLS and placed at the Ne-Chee Friendship Centre.

[62] According to the Agreed Statement of Facts and the evidence of Mr. Obonsawin, the concept of the "friendship centre" originated in the 1950's in response to the increased migration of Aboriginal people from reserves to urban areas. Friendship centers provided assistance to native people regarding employment, housing, health and liaison with other community organizations. The range of programs, sources of funding and organizational structure of friendship centers evolved commensurate with the growing need for them all across the country. In 1983, the Canadian government formally recognized Friendship Centres as legitimate urban Native institutions responding to the needs of Native

people and established permanent funding from the Department of the Secretary of State.

[63] During the years under appeal, the Ne-Chee Friendship Centre was located in Kenora, Ontario on non-reserve land. It was incorporated in 1976 as a non-profit corporation. Its objects are set out in its Letters Patent and Supplementary Letters Patent:

> **Ne-Chee Friendship Centre**
>
> 1. The Ne-Chee Friendship Centre (Ne-Chee) is a non-profit corporation established in 1976. The objects of Ne-Chee, described in its Letters Patent and Supplementary Letters Patent … include:
>
> a) To promote the well being of Native people;
>
> b) To provide security, safety and assistance to Native people in the urban environment;
>
> c) To promote the provision of services designed to meet the basic needs of Native people in the urban environment including programs which will address the housing, employment, cultural and recreational needs of Native people.[31]

[64] When Ms. Greene first became an employee of NLS in 1998, she was working at the Ne-Chee Friendship Centre as a Healing and Wellness Coordinator. Her contract ran for less than a month and there were no extended benefits attached to it.

[65] In May 2001, Ms. Greene, still an NLS employee, was again placed at the Ne-Chee Friendship Centre working as a Healthy Babies Worker in the "Aboriginal Healthy Babies, Healthy Children Program".

[66] The Aboriginal Healthy Babies, Healthy Children Program was part of an initiative of the Government of Ontario known as "Healthy Babies, Healthy Children". That provincially funded program was designed to ensure that all Ontario families with children (prenatal to 6 years) who were at risk of physical, cognitive, communicative and/or psych-social problems had access to effective, consistent early intervention services. The implementation of these goals and the delivery of services occurred with the appropriate agency at the local community

[31] Exhibit A-8, Statement of Agreed Facts, paragraph 1.

level. The Ne-Chee Friendship Centre, as part of the Ontario Federation of Indian Friendship Centres, adopted these goals and adapted them to the needs of the local Aboriginal community.

[67] Ms. Greene sometimes performed her duties off the premises of the Ne-Chee Friendship Centre but her mandate as an Aboriginal Healthy Babies Worker did not permit her to work on-reserve.

[68] Some of Ms. Greene' fellow workers were NLS employees; others were not, according to their choice. The Ne-Chee Friendship Centre did its own job posting, interviewing and candidate selection; NLS became involved only when the candidate wished to be hired by NLS and placed at the Ne-Chee Friendship Centre. After executing the required contracts, NLS then implemented its usual practice of invoicing the Placement Organization for the services of the newly hired employee. The Ne-Chee Friendship Centre paid such invoices by issuing a cheque and depositing it in an NLS account in Kenora, Ontario.

Julie Descarie

[69] Ms. Descarie is appealing the Minister's reassessment of her 1999 to 2002 taxation years. She appeared through her counsel. She adduced no evidence other than that of Mr. Obonsawin, Ms. Wallace and her Agreed Statement of Facts.

[70] At all times relevant to these appeals, Ms. Descarie was a member of the Kitigan Zibi Anishinabeg Indian Band located outside the municipality of Maniwaki, Quebec. She resided off-reserve in Ottawa.

[71] In 1995, Ms. Descarie began working as an employee of the Odawa Native Friendship Centre in Ottawa. The Odawa Native Friendship Centre was established as a non-profit corporation in 1975. The concept of the "friendship centre" was discussed above in the appeals of Helen Greene; those findings are equally applicable to these appeals. The objects of the Odawa Native Friendship Centre were as follows:

> 1. The Odawa Native Friendship Centre (Odawa) is a non-profit corporation established in August 1975. The objects of Odawa, described in its Letters Patent … include:

a) To promote a counseling and referral service for status and non-status Indians, Métis, Eskimos, and Inuits, hereinafter referred to as "Natives" in the said City of Ottawa and the surrounding area;

b) To facilitate understanding and educational opportunities for people of Native background in order to effectively include them into the social and economic structure of the community;

c) To act as a liaison between the people of Native background and government agencies, industry and other groups;

d) To provide facilities for university and vocational school students for the purpose of giving them an opportunity to organize social, cultural and recreational activities;

e) To establish a centre where non-Native people will have an opportunity to visit the centre and socialize with the Native people;

f) To provide Native transients and permanent residents an opportunity to utilize the centre for social activities and as a meeting place in which Native people can socialize and seek friendships among people with similar interests and backgrounds;

g) To establish and maintain a library with emphasis on subject relating to Native people, but including books, periodicals, and literature as a whole;

h) To ensure that all centre activities, programs and directives be non-sectarian and politically non-partisan.[32]

[72] During the taxation years in issue, Ms. Descarie was placed at the Odawa Native Friendship Centre as the administrative assistant to the manager of the Sweetgrass Home Child Care Agency ("Sweetgrass"). Sweetgrass was a home childcare agency duly licenced by the Province of Ontario. Its operation was a joint effort involving Sweetgrass, the Odawa Native Friendship Centre and the City of Ottawa: located on the premises of the Odawa Native Friendship Centre, Sweetgrass had a purchase of service agreement with the City of Ottawa under which it accepted applications from and determined the suitability of prospective childcare caregivers. The Odawa Native Friendship Centre looked after advising parents of the availability of subsidized childcare spaces; any interested parents applied to the City of Ottawa for placement. If approved by the City, they completed the necessary forms through the Odawa Native Friendship Centre.

[32] Exhibit A-10, Statement of Agreed Facts, paragraph 1.

[73] As a publicly funded agency, Sweetgrass was obliged to make its services available to all eligible children, although it could and did attempt to give priority to Aboriginal children. The actual childcare services were provided by the approved childcare caregivers who looked after the children in their homes. While Sweetgrass made an effort to place children in Aboriginal homes, non-aboriginal caregivers were also accepted in the program.

[74] In 1999, Ms. Descarie elected to become an NLS employee; as such, she was placed at the Odawa Native Friendship Centre in her former position as administrative assistant to the director of Sweetgrass. Her duties included the following:

> a) Receiving invoices from home caregivers for monthly payment processing and verifying payment amounts using a formula based on hours of care per child;
>
> b) Sending the verified home caregivers invoice to Odawa's payroll department for payment;
>
> c) Taking telephone calls;
>
> d) Doing paperwork and keeping files up to date;
>
> e) Keeping the various forms that had to be completed by either the home-care providers or by parents up-to-date;
>
> f) Assisting in the preparation of workshops and other events at Odawa.[33]

[75] Although NLS charged Ms. Descarie a service fee, she was not entitled to any benefits beyond those provided by statute. Both before and after becoming an NLS employee, Ms. Descarie was required to submit time sheets to the Sweetgrass director for approval; after she became an NLS employee, Sweetgrass sent her time sheets to NLS for payment. The Sweetgrass director conducted performance reviews of her work but these did not affect her salary; that was dependent upon increases in the City of Ottawa's purchase of service budget.

Robert Maracle

[33] Exhibit A-10, Statement of Agreed Facts, paragraph 39.

[76] Robert Maracle is appealing the Minister's reassessment of his 2003 taxation year. He appeared through his counsel. He adduced no evidence other than that of Mr. Obonsawin, Ms. Wallace and his Agreed Statement of Facts.

[77] Mr. Maracle is a member of the Mohawks of the Bay of Quinte Indian Band located near Belleville, Ontario.

[78] In 2002, Mr. Maracle was employed by G.D. Jewell Engineering Incorporated ("Jewell Engineering") as a Construction Inspector/Survey Technician.

[79] Jewell Engineering has offices in Belleville, Kingston and Mississauga; none of these is located on a reserve. Jewell Engineering provides engineering services to the public and private sector: 80% to municipalities; 10% to the Government of Ontario; and 10% to the federal government and/or private sector. The company is engaged in all manner of engineering services ranging from rural and urban transportation planning and design, structural building and design, municipal infrastructure renewal, land use and environmental impact and related issues.

[80] In June 2003, Mr. Maracle asked Jewell Engineering to contract for his services as a leased employee of O.I. Inc. so that he could obtain a tax exemption. Jewell Engineering agreed and the necessary paperwork was completed to give effect to this change. Mr. Maracle paid a service fee to O.I. Inc.; O.I. Inc. invoiced Jewell Engineering for Mr. Maracle's services. Apart from these arrangements, becoming an NLS employee did not alter in any way Mr. Maracle's duties with Jewell Engineering.

[81] In 2003, Jewell Engineering had approximately 40 employees. Mr. Maracle was the only Indian employee. Twenty of the employees were construction inspectors/survey technicians like Mr. Maracle. He and his colleagues performed the same duties and were paid the same wage.

[82] In 2003, Mr. Maracle worked on 50 projects, only seven of which were on reserve land. According to the Agreed Statement of Facts, Mr. Maracle was not asked to work on the reserve projects because of his Indian status. Of the 1,855 hours Mr. Maracle worked in 2003, 426.5 hours were spent on reserve projects. Whether on- or off-reserve, the nature of the work performed remained the same.

[83] Mr. Maracle received training from Jewell Engineering, the cost of some of which was later reimbursed by his band, the Mohawks of the Bay of Quinte. He received no training from O.I. Inc.

Analysis

1. Location or Residence of the Employer

[84] There is no question that NLS and O.I. Inc. headquarters were located on the Six Nations Reserve. By purchasing supplies and services from on-reserve sources, renting office space from the band and providing jobs and training to the on-reserve administrative staff, the business operation of NLS/O.I. Inc. provided some benefit to the Six Nations Reserve.

[85] Against this finding, however, must be balanced the following facts which reduce the weight to be given this connecting factor: first, the financial benefit to the Six Nations Reserve represented but a modest portion of the total revenues of NLS and O.I. Inc. Further, the source of such revenues were the service fees deducted from the employment earnings of each of the leased employees at their respective Placement Organizations, none of which was located on the Six Nations Reserve or any other reserve. Finally, the NLS/O.I. Inc. administrative staff on the Six Nations Reserve did little more than act as a conduit between the off-reserve Placement Organizations who maintained and reported records of the leased employees' hours of work, and the off-reserve payroll services that processed their pay cheques.

[86] Neither Mr. Obonsawin, the principal of NLS/O.I. Inc., nor Ms. Irwin and Ms. Wallace, the two individuals responsible for the on-reserve management of NLS/O.I. Inc., was resident on the Six Nations Reserve or any other reserve.

[87] Although NLS/O.I. Inc. maintained on-reserve bank accounts, that fact is typically accorded little weight[34]; as Evans, J.A. stated in *Monias*, "… [w]here employees receive their employment income has little, if any, logical connection with the policy underlying section 87"[35].

[34] *Shilling*, above at paragraph 66.

[35] *Monias*, above at paragraph 57.

[88] Thus, while I am persuaded that the location of the NLS and O.I. Inc. headquarters on the Six Nations Reserve connects, to some extent, the Appellants' employment to that reserve, for the reasons set out above, I am unable to accord much weight to that factor. This conclusion applies to the analysis of each of the Appellants' appeals considered below.

2. Nature, Location and Surrounding Circumstances of the Work/Residence of the Employee/Benefit to a Reserve

Marilyn McIvor

[89] For the reasons set out below, I am not persuaded that there is sufficient connection between Ms. McIvor's employment income and a reserve to render her employment income tax exempt.

[90] Ms. McIvor had not lived on her reserve since she was a young child; during the taxation years under appeal, she lived and worked off-reserve in Ottawa. As executive assistant to the director of communications at the AHF, her administrative duties were no different in kind from those of any executive assistant in the broader Canadian economy. The materials Ms. McIvor prepared or distributed and the workshops she helped organize were not restricted to a particular reserve or to a clientele resident on a reserve.

[91] While her contribution to the residential school survivor program was for the benefit of Indians whose lives had been affected by that regime, her work in that regard did not have a benefit to a particular reserve, in the sense contemplated by the jurisprudence. As in *Akiwenzie*, the generally beneficial nature of her work is not sufficient to convert her off-reserve employment into work that was integral to the life of a reserve. The same is true of her efforts to rekindle and to maintain social, cultural and family links with her former life on the Golden Lake Reserve; although certainly important to Ms. McIvor personally, they do not serve to connect her NLS employment income to that reserve or the Six Nations Reserve. In these circumstances, her appeals must be dismissed.

Leslie Bannon

[92] For the reasons set out below, I am not persuaded that there is sufficient connection between Ms. Bannon's employment income and a reserve to render her employment income tax exempt.

[93] Although Ms. Bannon grew up on a reserve, for most of her adult life and certainly, during the taxation years under appeal, she did not live or work on a reserve. Although her work as a Problem Gambling Coordinator was focused on Indians and other Aboriginal people with gambling problems, the Problem Gambling Program itself was part of a larger provincial initiative targeted generally at all Ontarians afflicted by gambling problems. Similarly, the mandate of the Ontario Native Women's Association made the Program broadly available to the greater Aboriginal population: it was not limited to on-reserve status Indians. Notwithstanding its benefit to the individuals concerned, Ms. Bannon's employment as a Problem Gambling Coordinator did not directly or indirectly provide a benefit to her reserve, the Six Nations Reserve or any other reserve.

[94] As for her particular duties, although she occasionally did some work on reserves during the research and workshop phases of her project, most of her time was spent off-reserve at the office of the Ontario Native Women's Association in Thunder Bay. The nature of her responsibilities as a Problem Gambling Coordinator were not fundamentally different from those attached to a similar position in any not-for-profit organization with a mandate to help people with problems, i.e. researching the most effective way of addressing the needs of the target group, preparing effective informational tools, and communicating that information to the relevant constituency. In these circumstances, Ms. Bannon's employment was not integral to the life of a reserve.

[95] I accept her evidence that because housing and employment opportunities were in short supply on her reserve, she had no real alternative but to live and work off-reserve. The necessity of having to accept employment off-reserve is a relevant surrounding circumstance that shows how she came to work at the Ontario Native Women's Association in Thunder Bay. It is not enough in itself, however, to transform her work in Thunder Bay into on-reserve employment. For all of these reasons, her appeals must be dismissed.

Denise Bolduc

[96] For the reasons set out below, I am not persuaded that there is sufficient connection between Ms. Bolduc's employment income and a reserve to render her employment income tax exempt.

[97] Ms. Bolduc never lived on a reserve and during the taxation years under appeal, only occasionally performed her duties on a reserve; certainly never, on the Rankin Reserve. That she sometimes worked with artists on the Six Nations Reserve where NLS was headquartered was merely coincidental. When she was not in Toronto or at Six Nations, her employment required her to be in other regions of the country where almost always, she was working off-reserve.

[98] Her duties at ANDPVA and AMP required her to promote Aboriginal artists and music in the larger commercial world: in her words, "… that's the kind of, I don't want to say role model [referring here to internationally recognized Aboriginal artists like Buffy Sainte-Marie and Robbie Robertson], but maybe great outcome for the native artists that you were trying to encourage along is great careers like that"[36]. By their very nature, her promotional efforts were focused on the broader Canadian economy and beyond, to the international stage. The clientele she sought to assist were not themselves located on reserves. That certain Indians artists or their reserves may have benefited from Ms. Bolduc's employment does not suffice to connect her employment income to "a reserve" for the purposes of section 87. The nature of her duties at ANDPVA and AMP was not substantially different from what would be expected of anyone engaged in the administration, organization or promotion of artistic endeavours in the broader Canadian economy.

[99] Taken as a whole, the evidence shows that there was no link of the kind contemplated by the jurisprudence between her employment at ANDPVA and AMP and a reserve. Accordingly, Ms. Bolduc's appeals of the 1995 and 1996 taxation years must be dismissed.

Helen Greene

[100] For the reasons set out below, I am not persuaded that there is sufficient connection between Ms. Greene's employment income and a reserve to render her employment income tax exempt.

[36] Transcript, page 635, lines 10-14, inclusive.

[101] The clientele of her Placement Organization, the Ne-Chee Friendship Centre, was Aboriginal people who, for various reasons, had left their reserves to live in urban areas. Although the objective of the Aboriginal Healthy Babies, Healthy Children Program was to improve the lot of at-risk Aboriginal children, it was part of a general health initiative launched by the Government of Ontario and aimed at all at-risk children in the province. Her duties as a Healthy Babies Worker were performed off-reserve in Kenora for clients who were themselves living off-reserve. In these circumstances, her appeals of the 2001 to 2005 taxation years must be dismissed.

Julie Descarie

[102] For the reasons set out below, I am not persuaded that there is sufficient connection between Ms. Descarie's employment income and a reserve to render her employment income tax exempt.

[103] During the years under appeal, she did not work or reside on a reserve. Notwithstanding the Aboriginal focus of the Odawa Native Friendship Centre and Sweetgrass, the services provided were required by law to be equally available to native and non-native families. As a friendship center located in an urban center, by definition, the Odawa Native Friendship Centre had as its primary constituency off-reserve native people.

[104] Similarly, Ms. Descarie's duties as an administrative assistant to the manager of the Sweetgrass program were not different in kind from those typically associated with an equivalent position in the broader Canadian economy. The one aspect of the program most directly focussed on Aboriginal people, the linking of Aboriginal children with Aboriginal caregivers, did not form part of Ms. Descarie's duties: she was not responsible for either approving the suitability of applicant caregivers or making visits to their homes once children had been placed in them.

[105] In these circumstances, Ms. Descarie's work was not connected to the life of a reserve. Accordingly, her appeals of the 1999 to 2002 taxation years are dismissed.

Robert Maracle

[106] Although Mr. Maracle lived on a reserve, the preponderance of the evidence points strongly to the conclusion that Mr. Maracle's employment income was earned in the broader Canadian economy.

[107] The business of his Placement Organization, Jewell Engineering, was unquestionably part of the broader Canadian economy. Mr. Maracle's duties, whether performed on- or off-reserve, were the same as those of his non-native colleagues. That he worked on projects located on reserves had nothing to do with his status as an Indian; even if that were not the case, less than a quarter of his hours worked in 2003 were spent on reserve land.

[108] In these circumstances, I am not persuaded that there is a nexus between his employment income at Jewell Engineering and a reserve so as to make that income tax exempt. Mr. Maracle's appeal of the 2003 taxation year is dismissed.

Costs

[109] In addition to the dismissal of the Appellants' Informal Procedure appeals, the Respondent also sought an order for costs in any event of the cause.

[110] The basis for the Minister's request appears at paragraph 573 of the Respondent's Memorandum of Fact and Law:

> … that the conduct of these Appellants, in turning the handling of their appeals over to Roger Obonsawin and Native Leasing Services, and following his direction to refuse to provide information relevant to their individual reassessments in pursuit of some collective agenda abuses the process of the Court. When the Appellants effectively say to the Minister "we will not tell you the facts until we get to Court", Parliament's system for the effective administration of tax disputes is stood on its head and the Court is drawn into an unnecessary and wasteful process of the discovery of facts which ought to have been disclosed.

[111] Additional details of the Minister's allegations, which apply equally to all of the Appellants, are set out in paragraphs 12 and 13 of the Amended Reply to the Notice of Appeal of Leslie Bannon:

> 12. In considering the Notices of Objection, the Minister requested that the Appellant identify whether her case was factually comparable to any of the four cases originally promoted as test cases, viz.: Rachel Shilling, Vicki Clarke, Margaret Horn and Sandra Williams. The Minister further

> requested documentary evidence to corroborate the relevant connecting factors including the location of her duties of employment, the location of her principle residence, the nature of her employment duties and other surrounding circumstances, the benefit the employer's business provides to the reserve and any other relevant connecting factors. The Appellant declined to identify with any of the four cases originally promoted as test cases. The Appellant also declined to provide any corroborating evidence respecting the connecting factors.
>
> 13. Given the Appellant's refusal to identify with any of the four cases or to provide any documentary evidence to support her claim, the Minister proceeded on the basis that, for the purpose of the connecting factors analysis, the Appellant *(sic)* was not factually distinguishable from the *Shilling* test case.

[112] The Canada Revenue Agency sent the same letter to each of the Appellants; the relevant portion of the letter sent to Ms. Bolduc[37] reads as follows:

> …
>
> If you believe your factual situation is the same as any of the above four cases, we request you indicate which case applies to you and provide us documentary evidence corroborating the following connecting factors, as they apply to you for each year under objection.

[113] Ms. Bolduc, Ms. Bannon and each of the other Appellants responded to this request by sending a letter drafted on their behalf by NLS/O.I. Inc.:

> This is to advise the Canada Revenue Agency that I am a status Indian within the meaning of the Indian Act and that income for the base years referenced in your letter was derived from my employment with Native Leasing Services, which has a head office located … on the Six Nations of the Grand River Reserve. I am paid from my employer's head office.
>
> The assessment(s) issued against me wrongfully include income that is exempt from taxation pursuant to Section 87 of the Indian Act and Section 81(1)(a) of the Income Tax Act. In addition, any consideration of residency on or off reserve as a relevant connecting factor is contrary to the Charter of Rights, s. 15.
>
> I am awaiting the outcome of the four test cases of *Shilling*, *Clarke*, *Horn* and *Williams*, as per the test case agreement. No single one of the four test cases at this point in time is determinative of my situation. The Court's determination of

[37] Exhibit A-3, Tab 61.

> these cases and in particular the Constitutional challenge to section 87 of the *Indian Act* brought pursuant to section 15 of the *Charter* is fundamental to the question of my taxation exemption. I understand that these cases are scheduled to proceed to trial on March 27, 2006.
>
> As this matter is currently before the Courts, your request for information and evidence directly related to the issues that the Court has been asked to determine is highly inappropriate and prejudicial to a fair and impartial hearing of these cases. As per the test case agreement, my Notices of Objection are to stay in abeyance pending the outcome of ongoing litigation.[38]

[114] The Appellants oppose the awarding of costs to the Respondent on several grounds: first, these appeals were brought under the Informal Procedure which, counsel argued, does not contemplate the awarding of costs. Indeed, the informational material[39] accompanying the Minister's Notices of Confirmation[40] expressly stated that if the Appellants were to appeal under the Informal Procedure, no order for costs could be made. Counsel also underscored the fact that the Appellants' alleged "refusal" occurred at the objection stage, long before the judicial process had been invoked. In any event, counsel submitted, even if the Appellants had identified their factual situations with those of the other taxpayers listed (whose own appeals had not yet been the subject of judicial disposition), that would not have prevented the bringing of these appeals.

[115] I am not at all persuaded by the Respondent's argument that the Appellants' behaviour, either before this Court or indirectly, at the objection stage, constitutes an abuse of process.

[116] Counsel for the Respondent cited *Fournier v. Canada*[41] and my application of that decision in *Tuck v. Canada*[42] in support of its request for costs. While counsel for the Appellants expressed some doubt that this Court has any jurisdiction to award costs in Informal Procedure appeals, in *Fournier*, the Federal Court of Appeal held that:

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[38] Exhibit A-3, Tab 62.

[39] Exhibit A-13.

[40] Exhibit A-3, Tab 70.

[41] 2005 FCA 131, [2005] F.C.J. No. 606. (F.C.A.).

[42] 2007 TCC 418, [2007] T.C.J. No. 272. (T.C.C.).

…

> The judge stated that he had no jurisdiction to impose costs on an appellant who unnecessarily delayed an appeal process initiated within an informal proceeding. I should point out that the Tax Court of Canada has the inherent jurisdiction to prevent and control an abuse of its process: see *Yacyshyn v. R.*, [1999] F.C.J. No. 196 (F.C.A.).[43]

[117] In *Fournier*, the Appellant had refused to cooperate in any way with Canada Revenue Agency officials at the audit stage and behaved badly before the Tax Court of Canada and the Federal Court of Appeal. As a result of what the appellate Court later described as his "extreme and abusive stubbornness", a hearing that had been scheduled for one day in the Tax Court ended up spanning two full 11-hour days: one of the Appellant's goals had been to have the trial judge review some 4,900 invoices he had refused to disclose to the auditor.

[118] In *Tuck*, also an Informal Procedure matter, I followed *Fournier* to order costs against the taxpayer whose abusive conduct I described as follows:

> … The more the Appellant expanded on his views, however, the less convinced I was of his *bona fides.* Having patiently listened to what effectively became a rant against the Government of Canada, the Prime Minister, the Minister of National Revenue, Canada Revenue Agency officials, politicians, judges and the general unpleasantness of having to pay taxes, I concluded that the appeals have more to do with providing a forum for the Appellant's anti-tax theories than seeking a determination of the correctness of the assessments.[44]

[119] Nothing in the Appellants' behaviour comes close to that of the taxpayers in *Fournier* or *Tuck*. While it may be that a taxpayer's actions at the objection stage could contribute to what is ultimately found to be an abuse of process at the hearing of the appeal, this is not such a case. First of all, I am not persuaded by the Respondent's characterization of the Appellants' response to the Minister's request letter. Far from a bare "refusal", the Appellants' letter of reply sets out, in language respectful but firm, the essential facts, the statutory provisions relied upon, their interpretation of the jurisprudence, and their concerns with taking a potentially prejudicial position prior to a judicial determination in the cases listed by the Minister. Further, the Minister's request was qualified by the opening statement,

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[43] Above, at paragraph 11.

[44] Above, at paragraph 16.

"*If* you believe your factual situation is the same as any of the above four cases"[45] [emphasis added.]; their responses clearly state that they did not believe that to be the case: "No single one of the four test cases at this point in time is determinative of my situation."[46]

[120] Each Appellant legitimately[47] sought to lessen his or her tax liability by working at a Placement Organization as an employee of Native Leasing Services or O.I. Inc. Each of them, as they were perfectly entitled to do, elected to have Mr. Obonsawin represent them at the objection stage. Each signed his or her individual response letter. They had a statutory right to object to and later, to appeal the Minister's reassessment(s). At the hearing of the appeals, the Appellants were represented by counsel who conducted himself in a courteous, congenial and cooperative manner. Similarly, Mr. Obonsawin, Ms. Wallace and the three Appellants who testified were straight-forward and respectful in the presentation of their evidence. Much of the hearing proceeded on agreed statements of facts and joint books of documents and authorities.

[121] In these circumstances, there is no justification for the awarding of costs against the Appellants. The Respondent's request for costs is, therefore, denied.

Signed at Ottawa, Canada, this 17th day of September, 2009.

"G. A. Sheridan"

Sheridan J.

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[45] Exhibit A-3, Tab 61.

[46] Exhibit A-3, Tab 62.

[47] *Horn et al*, above, at paragraph 51. (F.C.).

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