Docket: 2007-2261(IT)I

BETWEEN:

MICHELE BAPTISTE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeals heard on January 31, 2011, at Toronto, Ontario.

Before: The Honourable Justice Lucie Lamarre

Appearances:

Counsel for the Appellant:	Scott Robertson
Counsel for the Respondent:	Justin Kutyan

JUDGMENT

The appeals from the assessments or reassessments made under the *Income Tax Act* for the 1995, 1998, 1999, 2000, 2001, 2002, 2003, 2004 and 2005 taxation years are dismissed without costs.

Signed at Ottawa, Canada, this 9th day of June 2011.

"Lucie Lamarre"

Lamarre J.

Citation: 2011 TCC 295
Date: 20110609
Docket: 2007-2261(IT)I

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MICHELE BAPTISTE,

Appellant,

and

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REASONS FOR JUDGMENT

Lamarre J.

[1] These are appeals from assessments or reassessments made by the Minister of National Revenue (**Minister**) under the *Income Tax Act* (**ITA**) for the appellant's 1995, 1998, 1999, 2000, 2001, 2002, 2003, 2004 and 2005 taxation years.

Issue and preliminary remarks of the parties

[2] The issue is whether during those years the employment income received by the appellant was taxable pursuant to sections 2, 3 and 5 of the ITA, or whether it was exempt income pursuant to paragraph 81(1)(*a*) of the ITA. The appellant is of the view that her employment income should be considered as personal property of an Indian situated on a reserve within the meaning of section 87 of the *Indian Act* (**IA**) and therefore should be exempt from taxation. The appellant relies principally on the Supreme Court of Canada's decision in *Nowegijick v. the Queen*, [1983] 1 S.C.R. 29,

to argue that the *situs* of her employment income was a reserve because the employer's residence was on a reserve.

[3] The respondent on the other hand, argues that these appeals are related to over 1,000 other appeals before the Tax Court of Canada involving workers from the same placement agency, Native Leasing Services (**NLS**) or its sister company O.I. Employment Leasing Inc. (**OI**). The issue raised here has been considered by this Court, the Federal Court of Appeal and the Supreme Court of Canada and the law with respect thereto is well settled. In considering whether employment income is situated on a reserve, various connecting factors have to be taken into account, of which the location or residence of the employer is one. Among the others are 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 that work) and the residence of the employee. The respondent argues that it was held in *Horn v. The Queen*, 2008 FCA 352, and *Rachel Shilling v. M.N.R.*, 2001 FCA 178, that the interposition of NLS as the employer does not significantly connect the employment income to a reserve in a manner relevant to section 87 of the IA. The respondent submits that the appellant carried out her income-earning activities in the "commercial mainstream", and did not receive employment income that was situated on a reserve as contemplated by section 87 of the IA.

Facts admitted by consent through the production of the Statement of Agreed Facts (Exhibit A-3).

[4] The appellant was employed by NLS, a corporation owned and operated by Roger Obonsawin, who is a status Indian for the purposes of the IA. NLS's head office is on the Six Nations of the Grand River Reserve (**Six Nations**) and is part of a group of companies all owned by Mr. Obonsawin (**OI Group**). Mr. Obonsawin is a member of the Odanak First Nation on the Odanak reserve, but he has never lived on that reserve. The OI Group provides consulting services and employment placement services to employers and employees in Canada's Native communities. NLS was created in 1991 to lease employees, whether status or non-status, to Native organizations. The NLS concept of leasing employees is that they rent out an employee and provide all administration and human resources support services as the employer. The employees get their instructions and direction from the placement organization for which they work and to which they report. NLS is responsible for the payroll, and invoices the placement organization on the basis of employees' time sheets approved by the on-site supervisor. As regards banking, the operating accounts of NLS were off-reserve up until 1996. Thereafter, it had some on-reserve bank

accounts. The key functions of the employee-leasing operations were performed on the Six Nations Reserve by an administrative staff numbering from 8 to 15 people, depending on the year. All NLS files were kept at the Six Nations Reserve office. The rent paid to the Six Nations Band Council and the salary and benefits paid to on-reserve staff, which constituted the direct benefits to the reserve, were approximately $230,000 to $240,000 for the years 1995 and 1996. There were other direct benefits resulting from the training of personnel who lived on the reserve, but those benefits are difficult to quantify. The entire gross revenue of NLS is generated off-reserve. It is estimated that the OI Group had approximately 800 employees by 1997, 1,000 in 1999 and as many as 1,400 in the years between 1999 and 2006. The only functions carried out on-reserve were administrative functions. In 1995 and 1996 respectively, NLS had gross revenue of $15,692,945 and $13,344,801, all of which was derived from the work of NLS employees off-reserve. 95% of NLS's costs were the wages and benefits paid to its employees who were contracted to off-reserve organizations. These costs of employees' pay and benefits are funded by the clients in what is essentially a flow-through whereby the employees' pay and benefits are deposited by the client in NLS's bank account to be drawn down (less the service fee) to fund NLS's payroll for the employees leased to the client. Roger Obonsawin has no financial statements for NLS after 1997 although the business continues to operate.

Relevant legislative provisions

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 [including Indians**] – 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;

Indian Act

> **87. (1) Property exempt from taxation** – 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:

> (a) the interest of an Indian or a band in reserve lands or surrendered lands; and
>
> (b) the personal property of an Indian or a band situated on a reserve.
>
> [Emphasis added.]

Facts

[5] Ms. Baptiste is a status Indian who is a member of the Pikwakanagan Algonquin First Nation in Golden Lake, Ontario. She was born in Toronto, and her parents moved back to the reserve for a while when she was young. She grew up "a little bit" on the reserve, but her father, an iron worker, had to move around a lot on account of his work. They lived in Ottawa, Toronto, Cleveland and Port Perry. She herself now lives in Toronto (Transcript, p. 13). She still has family living on the reserve and goes there at least twice a year. She votes in band council elections but has very little command of her Native language. She owns with her brother a piece of land on the reserve. She completed studies in marketing management at Centennial College in 1989.

[6] In 1993, the Canadian Council for Aboriginal Business gave her a referral for a position at Miziwe Biik, which is an organization providing training and employment services for the Greater Toronto Area's Aboriginal community, helping urban Native people to secure employment and to benefit from federal and provincial training programs (see Fresh as Amended Notice of Appeal, par. 10). Ms. Baptiste applied for the position at Miziwe Biik, was interviewed and was offered a job directly by that organization (formerly known as the Greater Toronto Aboriginal Management Board). She was hired as a marketing officer and signed a contract of employment agreement with NLS on June 21, 1993. She was an employee of NLS but received direction from Miziwe Biik. Her salary was paid by NLS from its office located on the Six Nations of the Grand River Reserve (see the contract of employment agreement, Exhibit R-1, Tab 2). Ms. Baptiste explained that NLS (referred to as OI) was administering the payroll and employee benefits for Miziwe Biik, and that all the employees (all Aboriginal) were "leased employees through the organization [NLS/OI]" (Transcript, pp. 17-20). As a marketing officer, she helped First Nation clients to find jobs within the Greater Toronto Area. She was working with potential employers to develop training programs and collaborated with Native organizations from the surrounding area with respect to the placement of job candidates. The location of her work was in Toronto but she had a fair number of joint meetings away from the office with other organizations. Miziwe Biik's clients

were Aboriginal people, which include status and non-status Indians (see Transcript, p. 23).

[7] In March 1996, she was offered a position as Assistant Manager – Employment Equity in a pilot project at the Bank of Nova Scotia. Her mandate was to recruit primarily Aboriginal people, but also persons with disabilities, to work at branches of the Bank of Nova Scotia located in Toronto. The bank hired her on a one-year contract. On her own initiative, she approached the bank and asked to be employed through OI. This proposal was accepted and there was signed between OI and the bank on July 8, 1996, a placement agreement whereby OI was to be responsible for paying Ms. Baptiste's salary, using the fees remitted to it by the bank (Exhibit R-1, Tab 5, par. 1 to 4)). The same day, Ms. Baptiste signed a contract of employment agreement with OI (Exhibit R-1, Tab 6). Ms. Baptiste explained that she filled out time sheets, which were then approved by her superior at the bank (examples of such time sheets were filed as Exhibit R-1, Tab 57) and that she regularly faxed to OI, which then invoiced the bank (Transcript, p. 33). OI deposited her salary directly in her bank account located on the reserve. During her first year, she travelled around to various organizations (including some First Nations communities), universities and colleges to advertise the recruitment of Aboriginals by the bank in Toronto and to search for candidates (Transcript, pp. 29-30).

[8] Her contract was extended year after year. In 1997, the bank had created a National Diversity Program to develop relationships with First Nation communities across the country. She started working in the Diversity division as National Manager - Aboriginal Employment. Her duties were to create an Aboriginal employee retention strategy for the bank and then to travel across Canada, with regional Diversity Managers, to First Nations communities to present that strategy. She would hold information sessions on careers at the bank. She also participated in various career fairs, especially those aimed specifically at Aboriginal students. She said in examination in chef that she travelled on an as-needed basis, probably a week and a half per month, mainly in northern Ontario, but also in the western provinces. Her work was done on-and off-reserve (Transcript, pp. 34-39). In 1998, although still working on internal programs aimed at hiring Aboriginal employees, she started working closer with the bank's Aboriginal Banking Unit on business opportunities for the bank with First Nations communities, opportunities such as providing banking services or commercial loans to Aboriginals. She was asked to participate, from a human resources perspective, in the discussion of the bank's strategy for doing business with those communities (Transcript, pp. 39-41 and p. 47). In her performance appraisal report for 1999, she said in her own comments that the feedback received from Aboriginal community members was that the bank was seen

as investing in the overall well-being of Aboriginal people and looking at the long-term benefits. In that same report, the assessor's comments were that Ms. Baptiste made a strong contribution by raising the profile of the bank in the Aboriginal community, that she created beneficial partnerships between that community and the bank, although she did not always have the full agreement of internal partners at the bank (see Exhibit R-1, Tab 20, page 2, Key Accountability # 2). In her examination in chief, she said that the community referred to above included the on-and off-reserve First Nations community as well as the urban Aboriginal community (Transcript, p. 46).

[9] In 2000, she was transferred to a new service line – Shared Services-HR – created by the bank, and became the National Manager - Aboriginal Employment (Transcript, pp. 50-54, and Exhibit R-1, Tab 21). She worked on different Aboriginal initiatives programs sponsored by the bank for students (such as career options symposia, mentoring, junior achievement, and a scholarship program) and also on supporting Aboriginal cultural activities such as elders' gatherings. This entailed more travelling in the field. In addition the bank was approached with respect to financing on-reserve casinos in Alberta, one of the reasons for this being the fact that its largest First Nation customer was the casino located on the Rama First Nation, where the bank had a branch (Transcript, p. 57, and Performance Appraisal Report for 2001, Exhibit R-1, Tab 22, Key Accountability # 2). Ms. Baptiste also mentioned that she played the lead role in 2003 in securing over $82 million of business for the bank with the Siksika First Nation in Alberta. She stated that because of her relationship with key people on the Siksika reserve, the bank was asked to make a presentation with respect to obtaining the land claim settlement trust account (see the Measurements of Success Report for Ms. Baptiste for 2003, Exhibit R-1, Tab 23, Objective/Accountability # 3). In cross-examination, she explained that her role was to assist the bank in preparing for the bid and that she would travel out to the communities to give the First Nations an overall view of how the bank operated within First Nations communities (Transcript, pp. 109-110). As a general finding in her appraisal reports, Ms. Baptiste was considered by her superior as playing an important role in bridging some of the cultural gaps and in lending credibility to the bank's message that it was committed to the objective of building strong relationships with Aboriginal communities (see Measurements of Success Report for Ms. Baptiste for 2004 and 2005, Exhibit R-1, Tabs 24 and 25).

[10] In 2005, the bank created a designated budget for Ms. Baptiste's travel, so that she could travel without submitting a prior request to the bank. Before 2005, she had needed approval from Human Resources (Transcript, pp. 64-66). Over the years that she was with the bank, she stated, she visited approximately 40-45 reserves, as per

Exhibit A-2, a document created for the purposes of the trial from her own recollection. She was let go by the bank in 2009 (Exhibit R-1, Tabs 54-55).

[11] In cross-examination, Ms. Baptiste acknowledged that the postings for internship opportunities at the bank were distributed in universities and different organizations located in urban areas (Exhibit R-1, Tab 30). With respect to travel to reserves, she did not keep any record (Transcript, p. 77). She said that in number of cases, she travelled with other people to visit communities and did not claim mileage expenses. She acknowledged that her business-related travel expenses were debited to her bank's commercial credit card (Transcript, p. 79). In her Fresh as Amended Notice of Appeal, at paragraph 16, she stated that she visited reserves 70 per cent of the time. However, from the commercial card monthly statements filed as Exhibit R-1, Tabs 26 to 29, it can be seen that she was staying in hotels in urban areas and that she did not travel away from Toronto more than one week per month (Transcript, p. 96). In her report on "frequent activities/meetings" in the Aboriginal community found in Exhibit R-1, Tab 21, most of the activities listed were held in Toronto and very few on reserves (Transcript, pp. 99-102). In re-examination, she mentioned that the records filed before this Court were not a complete record of expense reports (Transcript, p. 104). She also said that mileage claims did not appear on the commercial card statements because she did not use the card for that purpose (Transcript, pp. 105-106).

[12] Ms. Gertrude Saulnier, Director of Human Resources at the Bank of Nova Scotia, testified. She said that up to 2001, Ms. Baptiste reported to Diversity Managers who in turn reported to her. They worked together on initiatives specific to the Aboriginal community or on diversity in general. The bank worked on employment equity with a view to diversifying its workforce and thereby ultimately benefiting its business. In Ms. Saulnier's own terms, "it wasn't just about people; it was about the business as well" (Transcript, p. 117). In 2001, Ms. Baptiste's role was split into different components. She worked on retention of Aboriginal employees and on programs sponsored by the bank for Aboriginal people. She was also involved as a consultant for the business partners at the bank, helping them understand the Aboriginal community in general (Transcript, pp. 118-119). Starting in 2001, Ms. Baptiste reported directly to Ms. Saulnier. Ms. Saulnier recommended any salary increase or any incentive pay, which was determined on the basis of her performance rating. Once the pay amount was determined, Ms. Saulnier would advise OI to invoice the bank (see as an example Exhibit R-1, Tabs 43 and 44 and Transcript, p. 120). OI did not have any input into determining Ms. Baptiste's salary. Ms. Saulnier estimated from looking at all the parking charges incurred by Ms. Baptiste in Toronto, that Ms. Baptiste spent 40 per cent of her time in her office

in Toronto (Transcript, pp. 122 and 127). According to Ms. Saulnier, there were no business records for travel other than the commercial credit card statements (Transcript, p. 129). The bank paid all travel expenses. OI did not pay such expenses. Ms. Baptiste's mandate was to develop Aboriginal relationships and to recognize business opportunities for the bank (Transcript, pp. 122-123). She would accompany bankers onto reserves to introduce them, but it was not her mandate to go onto reserves to get business (Transcript, p. 123). For example, she was not the one who negotiated the $82 million worth of business with the Siksita First Nation in Alberta. Ms. Baptiste was the expert on the bank's commitment to the Aboriginal community, but not on the trust business deal. The bankers themselves did the negotiating. The work done by Ms. Baptiste on that project was mostly over the phone. She went out to the reserve for that project maybe two or three times in the course of the year (Transcript, pp. 132-133).

Appellant's arguments

[13] The appellant argued that the intention of Parliament in implementing section 87 of the IA was to protect Indians from the erosion of their property on a reserve and that a liberal interpretive approach applies to any statute relating to Indians (reference was made to *Mitchell v. Peguis Indian Band*, [1990] 2 S.C.R. 85 (QL) at paragraphs 15 and 87). Acknowledging that a connecting factors approach has been adopted by the courts to determine the location of employment income for tax purposes, the appellant, submitted, however, that this approach is a very fact-specific exercise (reference was made to *Horn v. The Queen.*, 2008 FCA 352, at paragraph 8). In her view, the facts of her case are unique and distinguishable from those in the cases relied on by the respondent. She argued that she has demonstrated that she was working on reserves for status Indians.

[14] With respect to the connecting factors, the appellant stated that the residence of the debtor is an important factor, and could even be the exclusive one. Relying on *Williams v. Canada*, [1992] 1 S.C.R. 877 (QL), at paragraph 18, the appellant argued that the guiding principle is that a status Indian should be able to exercise a choice to situate his or her property within or outside the protection of the IA. In her case, she deliberately made the choice to situate her employment income on a reserve as she chose to work for OI or NLS, those employers being located on a reserve. The respondent has admitted that Ms. Baptiste's employer was OI or NLS and that can no longer be challenged in any way (Transcript, pp. 149-150, 153-154).

[15] With respect to the other connecting factors, the appellant submitted that her employer conferred significant benefits on the First Nations community generally. It is not disputed by the respondent that the NLS and OI group of companies employ approximately 8 to 15 Six Nations band members at any given time to administrate the employee leasing operations from the reserve (Transcript, p. 161, and Statement of Agreed Facts, Exhibit A-3, paragraph 6). According to the most recent statistics, the salaries and benefits for the office staff located on the Six Nations Reserve totalled almost $250,000. The OI and NLS group of companies also leased their premises from the Six Nations Band Council, and contributed significant indirect benefits to First Nations communities generally. One of the NLS and OI group of companies' goals was to assist in the development of a self-supporting network of client organizations and potential Aboriginal employees in Canada. This approach allowed the improvement of skills in Aboriginal organizations through the provision of training, governance and skills development services, and Ms. Baptiste was working in precisely that field (Transcript, pp. 161-163).

[16] With respect to the location and surrounding circumstances of the work performed, Ms. Baptiste's duties were directly tied to the recruitment of Aboriginal people and helping them acquire management skills and access to equity and loan financing, which is one concern expressed in the *Report of the Royal Commission on Aboriginal Peoples* (Transcript, pp. 163-167, and Exhibit A-1). In her view, there is little doubt that her work contributed to the Aboriginal community in Canada, both on-and off-reserve (reference was made by counsel to *Canada v. Folster*, [1997] 3 F.C. 269, where the Federal Court of Appeal suggested that it is the benefit to the community from the duties performed which should be considered and not the strict location of their performance, see Transcript, p. 169). Even if Ms. Baptiste was not working directly on a reserve, she was working on the development of a relationship to benefit First Nations (Transcript, p. 169). In her view, the fact that the work was done off-reserve did not in itself disqualify her income from attracting the protection of section 87 of the IA.

[17] The appellant also referred to the decision of this Court in *Robertson v. The Queen*, 2010 TCC 552 (under appeal to the Federal Court of Appeal), in which Hershfield J. expressed his thoughts on the concept of the "commercial mainstream" in determining whether property is situated on a reserve. He wrote as follows at paragraphs 117 et seq.:

> *iii) the commercial mainstream*

> 117 As a preliminary comment, I share the discomfort expressed by counsel for the Appellants and for the Crown that all businesses run by aboriginal people should be found to be outside Canada's "commercial mainstream" simply because of some attachments to a reserve. On the other hand, in seeking clarification of the proper interpretation of this term, I am guided by the words of Linden, J.A. in *Recalma v. R.* where he confirmed that the section 87 analysis should not overemphasize the "commercial mainstream" test. At paragraph 9 he noted:
>
> > ... We should indicate that the concept of "commercial mainstream" is not a test for determining whether property is situated on a reserve; it is merely an aid to be used in evaluating the various factors being considered. It is by no means determinative. The primary reasoning exercise is to decide, looking at all the connecting factors and keeping in mind the purpose of the section, where the property is situated, that is, whether the income earned was "integral to the life of the Reserve", whether it was "intimately connected" to that life, and whether it should be protected to prevent the erosion of the property held by Natives *qua* Natives.
>
> 118 In another part of the judgment he expressed the same view slightly differently:
>
> > **9** ... It is also important in assessing the different factors to consider whether the activity generating the income was "intimately connected to" the Reserve, that is, an "integral part" of Reserve life, or whether it was more appropriate to consider it a part of "commercial mainstream" activity.
> >
> > [Emphasis added.]
>
> 119 The first passage looks at the connection of the activity to the life on the reserve as if that could prevail as a governing factor even if the activity is in the commercial mainstream. The second passage introduces an "or" which suggests that an activity cannot be both an integral part of life on the reserve and be in the commercial mainstream. I cannot accept that these two aspects were meant to be mutually exclusive in all cases. The test is to find whether the activity being part of the commercial mainstream is the dominant aspect of its being undertaken with its contribution to community life being incidental or contrived. Viewing the test in this way permits the historical significance of the activity to life on the reserve to weigh-in as a relevant factor in helping to assess the dominant aspect of the activity.

[18] The appellant is of the view that there is evidence that her work was integral to the Indian community. She gave as an example the $82 million land grant trust on

which she worked for the bank. In her view, it helped the First Nation concerned develop and grow its economy, as recommended in the *Report of the Royal Commission on Aboriginal Peoples* (Transcript, pp. 176-177).

[19] Finally, the appellant submitted that her work greatly benefited Aboriginal communities, specifically in providing financing and business acumen and by charitable contributions that were provided to First Nations through different organizations.

[20] In summary, Ms. Baptiste is of the view that steps taken by her through her work to maintain and foster the connection with reserve communities, coupled with the fact that her employer was located on a reserve and the fact that she travelled to reserves for her work, are important factors that should weigh in favour of exempting her employment income from taxation.

Respondent's arguments

[21] The respondent is of the view that taxing Ms. Baptiste's employment income does not erode the property of those living on a reserve. In *Monias v. The Queen*, 2001 FCA 239, Evans J.A. stated:

> 22 However, before I turn to the application of the connecting factors test, I would make three preliminary observations. First, as La Forest J. said in *Mitchell v. Sandy Bay Indian Band*, [1990] 2 S.C.R. 85 (S.C.C.), at 131, the policy underlying section 87 is not to redress generally the economic disadvantages suffered by Indians "by ensuring that Indians may acquire, hold and deal with property in the commercial mainstream on different terms than their fellow citizens."
>
> 23 Rather, like the companion provision in section 89, the more limited and specific purpose of section 87 is to protect reserve lands, and Indians' personal property on a reserve, from erosion, so that the Bands are able to sustain themselves on the reserves as economic and social units. Hence, it is fully consistent with legislative policy to apply section 87 to income that is earned by Indians who reside on a reserve from work that is performed on a reserve.
>
> . . .
>
> 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.
>
> 67 By enacting paragraph 87(1)(*b*) Parliament made an important exception to the principle that those similarly situated should be treated in the same way for tax purposes. However, the paragraph cannot be read as exempting from income tax Indians' employment income that was not clearly earned in circumstances that link its acquisition to a reserve as an economic base.

[22] The respondent submitted that Ms. Baptiste's case does not depart significantly from that of the appellant in *Rachel Shilling, supra*. In that case, Rachel Shilling was placed in a non-profit organization in Toronto to help other Aboriginal people in the Greater Toronto Area. In 1995 and 1996, Ms. Baptiste worked at Miziwe Biik, an organization that assisted Aboriginal people in the Greater Toronto Area in finding work and improving their skills, and that assisted them in general. The respondent referred to the Miziwe Biik 2003/2004 annual report (Exhibit R-2). With respect to that organization's vision, it is stated that Aboriginal people in Toronto face many barriers when attempting to join the workforce and that the organization is committed to breaking down those barriers by providing Native people with access to training programs and employment services, and by entering into partnerships within the Aboriginal community and non-Aboriginal community. Its mission is to assist all persons of Aboriginal ancestry in the Greater Toronto Area to attain a better quality of life (Exhibit R-2, Tab 1, page 1). Miziwe Biik has its office in downtown Toronto and the people working for that organization work in Toronto.

[23] Subsequently, and for the majority of the years at issue, Ms. Baptiste worked for a commercial, for-profit bank. Her superior testified that when Ms. Baptiste worked for the bank she spent approximately 40 per cent of her time at the office in Toronto. The fact that Ms. Baptiste was travelling outside the office and visiting reserves is not in itself determinative of the *situs* of the income (reference was made to *Monias, supra*, at par. 37, and *Akiwenzie v. The Queen*, 2003 FCA 469, at par. 3). Finally, with respect to the necessity argument made by the appellant regarding the $82 million land claim settlement trust account, namely, that Ms. Baptiste could not work from the reserve the entire time, the respondent referred to the decision of the Federal Court of Appeal in *Desnomie v. Canada*, [2000] F.C.J. No. 528 (QL). In that case Rothstein J.A., as he then was, said the following:

(2) The location of the employer, the employee and the employment is dictated by factors beyond the control of the employer or employee.

15 The appellant says that the off-reserve location of the employer should be given little weight in the connecting factors analysis. All directors of the MIEA reside on reserves. All are members of Indian bands. Meetings of the board are held in Winnipeg out of necessity. A related argument is that the place where the appellant works and where the services are performed -- off-reserve -- also should not be given significant weight. Education opportunities beyond grades 9 or 10 are not available on reserves. Students must leave the reserve and move to Winnipeg to pursue their education. The services provided by the appellant in these circumstances are provided in Winnipeg because there is no realistic way for them to be provided on a reserve. Therefore, the employer, the employee and the employment are intensively connected to various Indian reserves in Manitoba.

16 In *Union of New Brunswick Indians v. New Brunswick (Minister of Finance)*, a similar argument was made in respect of sales tax paid by New Brunswick Indians on purchases of goods made off-reserve to be used on the reserve. It was said that the Indians were obligated to make such purchases off the reserve and therefore the protection afforded by section 87 was eroded. McLachlin J. (as she then was), for the majority, rejected this argument. After noting that in the event of ambiguity, an interpretation that most favours the Indians is to be preferred (paragraph 6), she stated at paragraphs 37 and 38:

> 37. The respondents argue that s. 87 is intended to protect Indians from taxation in respect of their use of property on-reserve. Where Indians are obliged to purchase most of their goods off reserve, as most are in New Brunswick, this protection is eroded. Therefore, they submit that s. 87 should be read as applying to sales tax levied off reserve on goods purchased by Indians for use on the reserve. This was the view of the majority of the New Brunswick Court of Appeal.
>
> 38. The first difficulty with this argument is that it takes the purpose of s. 87 far beyond that articulated by this Court in *Williams* -- to prevent Indian property on Indian reserves from being eroded by taxation or claimed by creditors. No support has been offered for the proposed extension, except this would economically benefit Indians. But that, this Court has stated, is not the purpose of s. 87: see *Mitchell and Williams*. La Forest J. in *Mitchell* (at p. 133), specifically cautioned against attributing an expansive scope to the s. 87 exemption:
>
> > ...one must guard against describing an overly broad purpose to ss. 87 and 89. These provisions are not intended to confer privileges on Indians in respect of any property that they may acquire and possess, wherever situated. Rather, their purpose is simply to insulate the property interest of Indians in their reserve lands from

> the intrusion and interference of the larger society so as to ensure that Indians are not dispossessed of their entitlements.

17 The necessity argument in *New Brunswick Indians* is, if anything, more compelling than in the appeal at bar. There, the goods being purchased, of necessity off the reserve, were for use on the reserve. Nonetheless, the argument failed as taking the purpose of section 87 far beyond what was articulated in *Williams* -- to protect Indian property on Indian reserves from being eroded by taxation.

18 In this case what is at issue is the appellant's employment income. The appellant is a member of the Peepeekisis Band, located twenty miles east of Fort Qu'Appelle in Saskatchewan. In 1989, he had lived off his reserve, in Winnipeg, for nine or ten years. As the learned Tax Court Judge stressed, it is the appellant's personal property that has to be "situated on a reserve ...". There is no connection here between the appellant's employment income and the Peepeekisis Reserve in Saskatchewan.

19 The necessity argument is based on the connection between the MIEA and the services performed by the appellant on the one hand, and students from various reserves in Manitoba on the other. It explains why it makes sense for the MIEA and the appellant to be located in Winnipeg, even as they are providing services to Indian students from reserves.

20 However, the object of the connecting factors test is to determine the *situs* of intangible property for purposes of section 87, having regard to whether the Indian holds the property as part of an entitlement of an Indian *qua* Indian on the reserve. In *Union of New Brunswick Indians* McLachlin J. reaffirmed this purpose at paragraph 8:

> The purpose of the s. 87 exemption was to "preserve the entitlements of Indians to the reserve lands and to ensure that the use of their property on the reserve lands was not eroded by the ability of governments to tax, or creditors to seize". It "was not to confer a general economic benefit upon the Indians": see ***Williams***, ***supra***, at p. 885.

Having regard to intangible property she continued at paragraph 12:

> Again, in ***Williams***, ***supra***, the Court, ***per*** Gonthier J. confirmed the approach in ***Mitchell*** in determining whether the ***situs*** of unemployment insurance benefits was on or off the reserve for the purposes of taxation. As the benefits, intangible personal property, were effectively on the reserve at the time of taxation, they were exempt from taxation pursuant to s. 87.

> 21 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. The implication of the appellant's argument is that as long as an Indian is performing work for an Indian employer and for Indians from reserves, his employment income should be tax exempt, irrespective of where he, his employer, or the place of the employment is located, or where he is paid. There is no doubt the nature of the appellant's work is related to assisting reserve Indians when they move off the reserve. There is also no doubt that his employer is an Indian organization. The problem is that these considerations do not connect the appellant's employment income to any particular reserve. Even if it could be argued that the section 87 exemption applies when the property of an Indian is located on a reserve other than his own, in this case the nature of the employer and the employment alone do not identify a specific reserve to which the appellant's property can be connected. Therefore, these considerations do not help to locate his employment income.
>
> 22 To accept the necessity argument as justifying a section 87 exemption from tax on the appellant's employment income would, as found by McLachlin J. in *Union of New Brunswick Indians*, extend the purpose of section 87 far beyond that articulated in *Williams*. While not having to pay income tax would undoubtedly benefit the appellant, that is not the purpose of section 87. In the circumstances of this case, the necessity argument does not assist the appellant.

[24] The respondent is of the view that Ms. Baptiste’s work was more beneficial to the bank than to the Aboriginal community. An example of this is the $82 million worth of deposits in 2003. The present case invloves a commercial bank doing commercial business on a reserve. There is no immediate and discernable nexus between Ms. Baptiste’s work and the occupancy of reserve land. In summary, the location of the work, the nature of the work and the circumstances surrounding it point towards an off-reserve source of the income.

[25] With respect to the benefits to reserves and the location of the employer, the case law with respect to the same employer has already determined the issue in a way which is not favourable to the appellant. Finally, Ms. Baptiste did not reside on a reserve.

[26] In conclusion, the respondent submitted that the connecting factors in fact, support the assessments.

Analysis

[27] The matter of the exemption from taxation of personal property of an Indian situated on a reserve has been addressed frequently by our courts in Canada.

[28] In *Williams, supra*, Gonthier J. summarized the view expressed by La Forest J. in *Mitchell, supra*, and made his own analysis, as follows:

> **A -- The Nature and Purpose of the Exemption from Taxation**
>
> 16 The question of the purpose of sections 87, 89 and 90 has been thoroughly addressed by La Forest, J. in the case of *Mitchell v. Peguis Indian Band (sub nom. Mitchell* v. *Sandy Bay Indian Band*), [1990] 2 S.C.R. 85, 71 D.L.R. (4th) 193. La Forest, J. expressed the view that the purpose of these sections was to preserve the entitlements of Indians to their reserve lands and to ensure that the use of their property on their reserve lands was not eroded by the ability of governments to tax, or creditors to seize. The corollary of this conclusion was that the purpose of the sections was not to confer a general economic benefit upon the Indians (S.C.R. at pages 130-31):
>
> > The exemptions from taxation and distraint have historically protected the ability of Indians to benefit from this property in two ways. First, they guard against the possibility that one branch of government, through the imposition of taxes, could erode the full measure of the benefits given by that branch of government entrusted with the supervision of Indian affairs. Secondly, the protection against attachment ensures that the enforcement of civil judgments by non-natives will not be allowed to hinder Indians in the untrammelled enjoyment of such advantages as they had retained or might acquire pursuant to the fulfillment by the Crown of its treaty obligations. In effect, these sections shield Indians from the imposition of the civil liabilities that could lead, albeit through an indirect route, to the alienation of the Indian land base through the medium of foreclosure sales and the like; see Brennan J.'s discussion of the purpose served by Indian tax immunities in the American context in *Bryan v. Itasca County*, 426 U.S. 373 (1976), at page 391.
> >
> > In summary, the historical record makes it clear that sections 87 and 89 of the *Indian Act*, the sections to which the deeming provision of section 90 applies, constitute part of a legislative "package" which bears the impress of an obligation to native peoples which the Crown has recognized at least since the signing of the Royal Proclamation of 1763. From that time on, the Crown has always acknowledged that it is honour-bound to shield Indians from any efforts by non-natives to dispossess Indians of the

> property which they hold *qua* Indians, i.e., their land base and the chattels on that land base.
>
> It is also important to underscore the corollary to the conclusion I have just drawn. The fact that the modern-day legislation, like its historical counterparts, is so careful to underline that exemptions from taxation and distraint apply only in respect of personal property situated on reserves demonstrates that the purpose of the legislation is not to remedy the economically disadvantaged position of Indians by ensuring that Indians may acquire, hold, and deal with property in the commercial mainstream on different terms than their fellow citizens. An examination of the decisions bearing on these sections confirms that Indians who acquire and deal in property outside lands reserved for their use, deal with it on the same basis as all other Canadians.

17 La Forest, J. also noted that the protection from seizure is a mixed blessing, in that it removes the assets of an Indian on a reserve from the ordinary stream of commercial dealings (S.C.R. at pages 146-47).

18 Therefore, under the *Indian Act*, an Indian has a choice with regard to his personal property. The Indian may situate this property on the reserve, in which case it is within the protected area and free from seizure and taxation, or the Indian may situate this property off the reserve, in which case it is outside the protected area, and more fully available for ordinary commercial purposes in society. 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.

19 The purpose of the *situs* test in section 87 is to determine whether the Indian holds the property in question as part of the entitlement of an Indian *qua* Indian on the reserve. Where it is necessary to decide amongst various methods of fixing the location of the relevant property, such a method must be selected having regard to this purpose.

B -- Nature of Benefit and the Incidence of Taxation

. . .

21 This Court’s decision in *Nowegijick v. The Queen*, [1983] 1 S.C.R. 29, [1983] C.T.C. 20, 83 D.T.C. 5041, stands for the proposition that the receipt of salary income is personal property for the purpose of the exemption from taxation provided by the *Indian Act*. . . .

22 *Nowegijick* also stands for the proposition that the inclusion of personal property in the calculation of a taxpayer's income gives rise to a tax in respect of that

personal property within the meaning of the *Indian Act*, despite the fact that the tax is on the person rather than on the property directly.

23 Therefore, most of the requirements of section 87 of the *Indian Act* have clearly been met in this case. . . . The remaining question is whether the property in question is situated on a reserve.

. . .

C -- Comments on the "Residence of the Debtor" Test

25 The factor identified in previous cases as being of primary importance to determine the *situs* of this kind of property is the residence of the debtor, that is, the person paying the income. This was clearly stated by Thurlow, A.C.J. in *The Queen v. National Indian Brotherhood*, [1978] C.T.C. 680, 78 D.T.C. 6488 (T.D.), at page 684 (D.T.C. 6491):

> A chose in action such as the right to a salary in fact has no *situs*. But where for some purpose the law has found it necessary to attribute a *situs*, in the absence of anything in the contract or elsewhere to indicate the contrary, the *situs* of a simple contract debt has been held to be the residence or place where the debtor is found. See Cheshire, *Private International Law*, seventh edition, pp. 420 *et seq.*

26 This conclusion was cited with approval by this Court in *Nowegijick v. The Queen, supra*, at page 22 (D.T.C. 5043, S.C.R. 34):

> The Crown conceded in argument, correctly in my view, that the *situs* of the salary which Mr. Nowegijick received was sited on the reserve because it was there that the residence or place of the debtor, the Gull Bay Development Corporation, was to be found and it was there that the wages were payable. See Cheshire and North, *Private International Law* (10th ed., 1979) at 536 *et seq.* and also the judgment of Thurlow A.C.J. in *R. v. National Indian Brotherhood*, [1979] 1 F.C. 103 particularly at 109 *et seq.*

27 The only justification given in these cases for locating the *situs* of a debt at the residence of the debtor is that this is the rule applied in the conflict of laws. The rationale for this rule in the conflict of laws is that it is at the residence of the debtor that the debt may normally be enforced. Cheshire and North, *Private International Law* (11th ed. 1987), quote Atkin, L.J. to this effect in *New York Life Insurance Co. v. Public Trustee*, [1924] 2 Ch. 101 (C.A.), at page 119:

> ... the reason why the residence of the debtor was adopted as that which determined where the debt was situate was because it was in that place where the debtor was that the creditor could, in fact, enforce payment of the debt.

28 Dicey and Morris adopt the same explanation in *The Conflict of Laws* (11th ed. 1987), vol. 2, at page 908, as does Castel in *Canadian Conflict of Laws* (2nd ed. 1986), at page 401. This may be reasonable for the general purposes of conflicts of laws. However, one must inquire as to its utility for the purposes underlying the exemption from taxation in the *Indian Act*. . . .

. . .

32 In resolving this question, it is readily apparent that to simply adopt general conflicts principles in the present context would be entirely out of keeping with the scheme and purposes of the *Indian Act* and *Income Tax Act*. The purposes of the conflict of laws have little or nothing in common with the purposes underlying the *Indian Act*. It is simply not apparent how the place where a debt may normally be enforced has any relevance to the question whether to tax the receipt of the payment of that debt would amount to the erosion of the entitlements of an Indian *qua* Indian on a reserve. The test for *situs* under the *Indian Act* must be constructed according to its purposes, not the purposes of the conflict of laws. Therefore, the position that the residence of the debtor exclusively determines the *situs* of benefits such as those paid in this case must be closely re-examined in light of the purposes of the *Indian Act*. It may be that the residence of the debtor remains an important factor, or even the exclusive one. However, this conclusion cannot be directly drawn from an analysis of how the conflict of laws deals with such an issue.

IV -- The Proper Test

. . .

37 The approach which best reflects these concerns is one which analyzes the matter in terms of categories of property and types of taxation. For instance, connecting factors may have different relevance with regard to unemployment insurance benefits than in respect of employment income, or pension benefits. The first step is to identify the various connecting factors which are potentially relevant. These factors should then be analyzed to determine what weight they should be given in identifying the location of the property, in light of three considerations: (1) the purpose of the exemption under the *Indian Act*; (2) the type of property in question; and (3) the nature of the taxation of that property. The question with regard to each connecting factor is therefore what weight should be given that factor in answering the question whether to tax that form of property in that manner would amount to the erosion of the entitlement of the Indian *qua* Indian on a reserve.

38 This approach preserves the flexibility of the case-by-case approach, but within a framework which properly identifies the weight which is to be placed on various connecting factors. Of course, the weight to be given various connecting

> factors cannot be determined precisely. However, this approach has the advantage that it preserves the ability to deal appropriately with future cases which present considerations not previously apparent.
>
> . . .
>
> 61 Determining the *situs* of intangible personal property requires a court to evaluate various connecting factors which tie the property to one location or another. In the context of the exemption from taxation in the *Indian Act*, there are three important considerations: the purpose of the exemption; the character of the property in question; and the incidence of taxation upon that property. Given the purpose of the exemption, the ultimate question is to what extent each factor is relevant in determining whether to tax the particular kind of property in a particular manner would erode the entitlement of an Indian *qua* Indian to personal property on the reserve.
>
> [Emphasis added.]

[29] The respondent is therefore right in the way she addressed the issue in the present case. The question to be asked is whether taxing Ms. Baptiste's employment income would amount to the erosion of the entitlement to property as an Indian qua Indian on a reserve. The *situs* of the employer is but one factor to consider among all the other connecting factors.

[30] In *Folster, supra*, Linden J.A. of the Federal Court of Appeal stated the following at paragraphs 14 et seq.:

> 14 . . . La Forest J. characterized the purpose of the tax exemption provision as, in essence, an effort to preserve the traditional way of life in Indian communities by protecting property held by Indians *qua* Indians on a reserve. Section 87, however, was not intended as a means of remedying the economic disadvantage of Indians. Although a laudable goal, it is not for the courts to attempt to achieve it by stretching the boundaries of the tax exemption further than they can be supported on a purposive reading of the legislation. Where, therefore, an Aboriginal person chooses to enter Canada's so-called "commercial mainstream", there is no legislative basis for exempting that person from income tax on his or her employment income. Hence, the requirement that the personal property be "situated on a reserve". The *situs* principle provides an internal limit to the scope of the tax exemption provision by tying eligibility for the exemption to Indian property connected with reserve land. Thus, as will be seen, where an Indian person's employment duties are an integral part of a reserve, there is a legitimate basis for application of the tax exemption provision to the income derived from performance of those duties.

. . .

16 . . . Gonthier J. crafted a new test based on the foundation of La Forest J.'s purposive analysis in *Mitchell*. He recognized that, although there are necessarily many factors which may be of assistance in determining the *situs* of intangible property such as unemployment insurance or employment income, the relevance of these "connecting factors" must be assessed on the basis of their ability to further the purpose of section 87. Further, the weight to be given to each factor may change from case to case.

> A connecting factor is only relevant in so much as it identifies the location of the property in question for the purposes of the *Indian Act*. In particular categories of cases, therefore, one connecting factor may have much more weight than another. It would be easy in balancing connecting factors on a case by case basis to lose sight of this.
>
> . . .

This new test was not designed to extend the tax exemption benefit to all Indians. Nor was it aimed at exempting all Indians living on reserves. Rather, in suggesting reliance on a range of factors which may be relevant to determining the *situs* of the property, Gonthier J. sought to ensure that any tax exemption would serve the purpose it was meant to achieve, namely, the preservation of property held by Indians *qua* Indians on reserves so that their traditional way of life would not be jeopardized.

. . .

28 . . . <u>In my view, when the personal property at issue is employment income, it makes sense to consider the main purpose, duties and functions of the underlying employment; specifically, with a view to determining whether that employment was aimed at providing benefits to Indians on reserves</u>.

[Emphasis added.]

[31] In *Rachel Shilling, supra*, the Federal Court of Appeal applied the connecting factors test formulated in *Williams, supra*, to employment income and recapitulated the state of the law in that regard as follows:

(c) Locating employment income

29 As we have already noted, the Supreme Court has not yet had occasion to apply to employment income the connecting factors test formulated in *Williams, supra. Williams* itself concerned the location of unemployment insurance benefits.

30 However, in several cases this Court has been called upon to apply the Supreme Court's jurisprudence in order to determine whether an Indian's employment income was situated on a reserve and thus exempt from income tax by virtue of paragraph 87(1)(*b*) of the *Indian Act*.

31 Thus, in *Canada v. Folster*, [1997] 3 F.C. 269 (F.C.A.); and *Bell v. Canada*, [2000] 3 C.N.L.R. 32 (F.C.A.), the following factors were said to be potentially relevant in determining whether an Indian's employment income is situated on a reserve: 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.

32 The place where the employee was paid has also been considered a potentially relevant connecting factor, although not one that has been given much weight: *Bell v. Canada* (1998), 98 DTC. 1857 (T.C.C.), at paragraphs 45-47. The Tax Court Judge's decision was upheld on appeal and his identification of the connecting factors approved: [2000] 3 C.N.L.R. 32 (F.C.A.), at paragraph 35.

33 The weight to be assigned to any of these factors may vary according to the facts of any given case, even when the category of property in question (employment income) and the nature of the tax (income tax) are the same. Nonetheless, the case law suggests that particular attention should be given to the nature of the work performed by the employee, and the circumstances surrounding it. As Linden J.A. explained in *Folster, supra* , at paragraphe 27:

> In my view, having regard for the legislative purpose of the tax exemption and the type of personal property in question, the analysis must focus on the nature of the appellant's employment and the circumstances surrounding it. The type of personal property at issue, employment income, is such that its character cannot be appreciated without reference to the circumstances in which it was earned. Just as the *situs* of unemployment insurance benefits must be determined with reference to its qualifying employment, an inquiry into the location of employment income is equally dependent upon an examination of all the circumstances giving rise to that employment.

[Emphasis added.]

[32] In *Recalma v.Canada*, [1998] F.C.J. No. 433 (QL), Linden J. stated at paragraph 9:

> 9 In evaluating the various factors the Court must decide where it "makes the most sense" to locate the personal property in issue in order to avoid the "erosion of property held by Indians *qua* Indians" so as to protect the traditional Native way of

> life. It is also important in assessing the different factors to consider whether the activity generating the income was "intimately connected to" the Reserve, that is, an "integral part" of Reserve life, or whether it was more appropriate to consider it a part of "commercial mainstream" activity. (See *Folster v. The Queen* (1997), 97 D.T.C. 5315 (F.C.A.)) . . .

[33] Therefore, to determine whether Ms. Baptiste's employment income is exempt from taxation, an analysis of the connecting factors has to be done and the Court cannot reach a conclusion based upon the sole fact that the appellant has chosen to work for an employer that is located on a reserve (this was confirmed by the Federal Court of Appeal in *Horn, supra*, at paragraph 5, where Evans J.A. stated that the connecting factors analysis to determine the location of employment income for tax purposes is not to be revisited and still stands).

Analysis of the connecting factors

[34] As was said by Linden J.A. in *Folster, supra*, at paragraphs 20 and 22, in determining the *situs* of employment income, the test is no more magic than asking where does it make the most sense to locate the *situs* of that income, what factors ought to be relevant to the assessment of employment income in the circumstances of each particular case and also what relative weight should be accorded to those factors?

[35] In the present case, the location of the employment was in downtown Toronto in the case of both Miziwe Biik and the Bank of Nova Scotia. When working for Miziwe Biik, Ms. Baptiste did not travel. She did travel to Indian communities for the Bank, but according to the evidence, this was one week per month at the very most. Ms. Baptiste lived in downtown Toronto. With respect to the nature of her employment and the circumstances surrounding it, the evidence disclosed that when she worked for Miziwe Biik, she was employed to help Aboriginal people (status or non-status Indians) to obtain work in urban areas. Her role was to help these people raise their skills and integrate with society. While she was working for the bank, her job was at first to attract Aboriginal people to work for that institution in urban areas and to retain them. Then her role evolved to become one of taking the bank's business into the Indian communities. Ms. Baptiste is of the view that that role was in keeping with the recommendations of *the Report of the Royal Commission on Aboriginal Peoples*.

[36] The question remains whether the purpose, duties and functions of her employment were aimed mainly at providing benefits to Indians on reserves. In my view, they were not. The report on Aboriginal peoples was intended, from what I have seen of it, to protect the property of Indians on their reserves and to redress economic disadvantages. As can be seen in the case law, the policy underlying section 87 of the IA is not to redress generally the economic disadvantages suffered by Indians. Rather, the purpose of that provision is simply to insulate the property interest of Indians in their reserve lands so as to ensure that they are not dispossessed of their entitlements. As stated in *Monias, supra*, at paragraph 66, "[t]hat 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*) of the IA 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". Here, Ms. Baptiste's employment income was, in my view, not earned in circumstances that linked its acquisition to a reserve as an economic base.

[37] Ms. Baptiste's employment was aimed at helping Aboriginal people to integrate with urban society, specifically a society not located on reserves, and to encourage reserves to do business with the bank. The bank employed her with a view to making a profit, and although this was good for Indian communities, it cannot be said that her work was an integral part of community life on reserves. She was employed to work for the bank in the commercial mainstream, doing business with Indian' communities, but her employment was more intimately connected to the bank than to a reserve. This is not a case where the employee and the place of employment (either with Miziwe Biik or with the bank) would be on a reserve if that were possible. On the contrary, Ms. Baptiste's employment was aimed at helping Aboriginal people obtain work outside reserves in urban areas, and in the case of her employment with the bank, consisted in promoting the bank's business with different communities.

[38] The sole factor, in my view, connecting Ms. Baptiste's employment income to a reserve is that the employer is located on a reserve. However, an employer's location of convenience on a reserve does little to connect the employment income to a reserve (*Monias, supra*, paragraph 50). Further, as held in *Horn v. The Queen*, 2007 FC 1052, at paragraphs 96-97, confirmed by 2008 FCA 352, the fact that the majority of the administrative staff of NLS were members of the Six Nations Reserve, and that NLS paid rent to the reserve as well is not a factor that is particularly weighty. Indeed, the amounts paid by NLS for rent and staff salaries and benefits represented

only a small percentage of NLS's gross income. The same conclusion was reached in *Robinson v. The Queen*, 2010 TCC 649, at paragraphs 102-103, concerning individuals having been employed by NLS to work for Aboriginal organizations. The Court concluded that the factors connecting the employment of those individuals employed by NLS to a reserve were extremely limited. Those individuals were part of the same group as that referred to by the respondent in her preliminary remarks. The fact that 95% of NLS's costs were the wages and benefits paid to its employees who were contracted to off-reserve organizations which funded NLS's payroll was a factor relied upon by the Court to conclude that there was no evidence that connected the employment income of the individuals in question to any reserve as either a physical location or an economic base.

[39] As stated earlier, the purpose of the exemption from taxation pursuant to section 87 of the IA is to preserve the entitlements of Indians to their reserve lands and to ensure that the use of their property on their reserve lands is not eroded by the ability of governments to tax. It is not to confer a general economic benefit upon Indians (*Williams, supra*, par. 16). In the present case, I find that the taxation of Ms. Baptiste's employment income does not amount to the erosion of the entitlement of an Indian qua Indian to property on a reserve. Therefore, there is no justification or legitimate basis for exempting her employment income from taxation.

[40] I conclude that Ms. Baptiste's employment income during the taxation years at issue was taxable under the ITA. The appeals are dismissed

Signed at Ottawa, Canada, this 9th day of June 2011.

"Lucie Lamarre"

Lamarre J.

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