Docket: 2007-662(IT)I

BETWEEN:

ARLETTE VERREAULT,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on May 10, 2012, at Québec, Quebec.

Before: The Honourable Justice Patrick Boyle

Appearances:

For the appellant:	The appellant herself
Counsel for the respondent:	Sara Chaudhary

JUDGMENT

The appeals from reassessments made under the *Income Tax Act* for the appellant's 1998 and 1999 taxation years are dismissed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 14th day of August 2012.

"Patrick Boyle"

Boyle J.

Translation certified true
on this 1st day of October 2012
Margarita Gorbounova, Translator

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REASONS FOR JUDGMENT

Boyle J.

[1] Arlette Verreault is an Aboriginal person who, in 1998 and 1999, worked as the coordinator and director of the Centre de formation autochtone en milieu urbain (the training centre) of the Centre d'amitié autochtone de La Tuque Inc. (the friendship centre), as an employee of Native Leasing Services (NLS). The issue to be decided in this informal procedure case is whether the income earned by her for this work was exempt from tax by virtue of section 87 of the *Indian Act* and subsection 81(1) of the *Income Tax Act* (ITA). Specifically, the only issue to be decided is whether the income is "personal property situated on a reserve" for purposes of section 87 of the *Indian Act*. To decide on this issue, we must look at the factors connecting this income to a reserve.

[2] Ms. Verreault is an Innu from the Mashteuiatsh Reserve or community, at least 200 km north of La Tuque, Quebec. During the years at issue, she resided solely in La Tuque, where she worked as the director and coordinator of the training centre.

[3] The training centre was a pilot project of the Regroupement des centres d'amitié autochtones du Québec (the federation) and of the La Tuque friendship centre, in which the government participated and to which it provided assistance.

[4] In their testimony, Ms. Verreault and the Crown witness, the director general of the La Tuque friendship centre, who also sat on the board of the federation, described the relationship between the training centre, the federation and the

friendship centre. Ms. Verreault had also been a member of the board of the La Tuque friendship centre before being appointed director and coordinator of the training centre.

[5] I accept as correct and accurate the testimony of the director general of the La Tuque friendship centre, who also sat on the board of the federation and was familiar with Ms. Verreault's mandate at the training centre with regard to the relationship between the training centre, the friendship centre and the federation. The director general of the friendship centre during the years at issue worked for the organization for 20 years. The mandate is described in general terms in the first draft of the management policies manual of the Aboriginal training centres in urban communities project[1] (the manual) filed in evidence. The management policies manual was drafted following a meeting of the coordinators of the three training centre pilot projects along with the members of the board of the federation: Ms. Verreault participated in this meeting as coordinator. At the same time, I accept Ms. Verreault's testimony that, in practice, she had considerable freedom and that, in her opinion, things did not always work as the federation or the friendship centre expected.

[6] The main goal of the training centre project was to assist Aboriginal people in obtaining secondary 5 equivalency certification within a period of six months. The project of which Ms. Verreault was the director and coordinator involved setting up and operating a computer laboratory for training purposes. In the management policy manual, the federation is described as the project sponsor responsible for the overall project including the verification of the evolution of budgets. The friendship centre is described as the sponsor of the training centre responsible for the measures it took to provide services as well as for managing the training centre's facilities and staff. The training centre was not a separate legal entity and, in the documents filed by the La Tuque friendship centre with the government of Quebec, it identifies the training centre as another name used by the friendship centre during the years at issue.

[7] The head office and premises of the friendship centre were located in La Tuque, which was not a reserve. The training centre was located on the premises of the friendship centre in La Tuque.

[8] Ms. Verreault testified that, with a few exceptions, the training centre's clients were Aboriginal people. None of Mr. Verreault's clients was Innu like her or was from her band's reserve or community.

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[1] Exhibit I-2.

[9] As its name suggested, the training centre's main clients were Aboriginal people living off the reserve. However, some of the clients were not from La Tuque but from more remote locations. No specific information was provided, but some clients came from the Attikamek band's Obedjiwan, Wemotaci and Manawan reserves or communities, four or more hours' drive from La Tuque. Some may have returned to their reserves or communities once they had completed their training.

[10] According to the management policies manual, the training centre's clientele had to be, in order of priority, Aboriginal people living in urban areas, Aboriginal organizations and communities and all clients and businesses in the community.

[11] This was consistent with the objectives of the La Tuque friendship centre, set out in its letters patent and consisting, among other things, in the following: maintain a permanent policy in which or of which transitional services and programs will be offered to persons of Indian descent to assist them in establishing themselves in the urban community and promoting social, sports or cultural activities for the benefit of Aboriginal people with the participation of non-Aboriginal people in order to foster social relationships between all of these individuals and raise the general public's awareness of the special needs of Aboriginal people who immigrate into our society and facilitate their acceptance in the community.

[12] The management policies manual specifies that the friendship centre was responsible for hiring or ratifying the hiring of the coordinator of the training centre as well as for supervising the training centre's staff. I accept the disinterested testimony of the director general of the friendship centre, according to which, the centre had appointed Ms. Verreault to the position of coordinator and director after consulting with the federation without NLS's involvement. The written evidence mentioned confirms this version of events. Ms. Verreault first became aware of the opening for the position at the training centre as a member of the board of the friendship centre. Following her appointment as coordinator and director of the training centre, Ms. Verreault stopped being a board member. It is not disputed that she fulfilled her functions for the training centre of the friendship centre as an employee of NLS. However, it was not NLS that appointed her to the coordinator and director position.

[13] Ms. Verreault fulfilled her duties as coordinator and director of the training centre at its computer laboratory in La Tuque. In addition, every month, Ms. Verreault had meetings in Québec with representatives of the federation and the coordinators of the two other training centre pilot projects in Val-d'Or and Montréal. A special committee of the federation decided on the activities of the three training

centres. In addition, Ms. Verreault travelled to visit Aboriginal communities one or two days per month to promote the training centre and try to increase its clientele.

[14] It had not been decided from the outset that the training centre would be located in the friendship centre's offices in La Tuque. It was open to Ms. Verreault to choose other premises in La Tuque or in another town. Although the two witnesses' testimony diverged somewhat, it seems unlikely that the training centre would have been established not in an urban centre, but on a reserve or in a community given the urban integration aims of both the friendship centre and the training centre. In any event, the training centre is located in the friendship centre in La Tuque. As a practical matter, the training centre could not have been located on a reserve or in a community as high-speed Internet access was required and was not available outside urban centres at the time.

[15] As coordinator and director of the training centre, Ms. Verreault did not report to the director general of the friendship centre but essentially reported to the board of the federation. The coordinator and director of the training centre also reported to the board of the friendship centre in La Tuque.

[16] To enrol in the training centre's program, its clients needed to obtain approvals and funding from government employment centres.

[17] The friendship centre carried out its mission in urban and in Aboriginal communities. Similarly, both Aboriginal and non-Aboriginal people participated in its activities.

I. Applicable Law

[18] Subsections 87(1) and (2) of the *Indian Act* provide as follows:

TAXATION	*TAXATION*
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:	**87(1) Biens exempts de taxation** — Nonobstant toute autre loi fédérale ou provinciale, mais sous réserve de l'article 83 et de l'article 5 de la *Loi sur la gestion financière et statistique des premières nations*, les biens suivants sont exemptés de taxation :
(*a*) the interest of an Indian or a band	*a*) le droit d'un Indien ou d'une bande

in reserve lands or surrendered lands; and	sur une réserve ou des terres cédées;
(*b*) the personal property of an Indian or a band situated on a reserve.	*b*) les biens meubles d'un Indien ou d'une bande situés sur une réserve.
(2) No Indian or band is subject to taxation in respect of the ownership, occupation, possession or use of any property mentioned in paragraph (1)(*a*) or (*b*) or is otherwise subject to taxation in respect of any such property.	(2) Nul Indien ou bande n'est assujetti à une taxation concernant la propriété, l'occupation, la possession ou l'usage d'un bien mentionné aux alinéas (1)*a*) ou *b*) ni autrement soumis à une taxation quant à l'un de ces biens.

[19] Paragraph 81(1)(*a*) of the *Income Tax Act* provides as follows:

81(1) Amounts not included in income — There shall not be included in computing the income of a taxpayer for a taxation year,	**81(1) Sommes à exclure du revenu** — Ne sont pas inclus dans le calcul du revenu d'un contribuable pour une année d'imposition :
(*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;	*a*) **Exemptions prévues par une autre loi [incluant celles prévues dans un accord avec les Indiens]** — une somme exonérée de l'impôt sur le revenu par toute autre loi fédérale, autre qu'un montant reçu ou à recevoir par un particulier qui est exonéré en vertu d'une disposition d'une convention ou d'un accord fiscal conclu avec un autre pays et qui a force de loi au Canada;

[20] The nature and purpose of the exemption in section 87 was addressed by the Supreme Court of Canada in *Williams*[2] in which it wrote the following:

A -- *The Nature and Purpose of the Exemption from Taxation*	A -- *La nature et l'objet de l'exemption fiscale*
The question of the purpose of ss. 87, 89 and 90 has been thoroughly addressed by La Forest J. in the case of *Mitchell v. Peguis Indian Band*,	Le juge La Forest a analysé en profondeur la question de l'objet des art. 87, 89 et 90 dans l'arrêt *Mitchell c. Bande indienne Peguis*, [1990]

[2] *Supra*, footnote 2 at pages 885 and 886.

[1990] 2 S.C.R. 85. 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 (at pp. 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 p. 391.
>
> In summary, the historical record makes it clear that ss. 87 and 89 of the *Indian Act*, the sections to which the deeming provision of s. 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

2 R.C.S. 85. Il a conclu que ces articles visent à préserver les droits des Indiens sur leurs terres réservées et à assurer que la capacité des gouvernements d'imposer des taxes, ou celle des créanciers de saisir, ne porte pas atteinte à l'utilisation de leurs biens situés sur leurs terres réservées. La conséquence de cette conclusion était que les articles en question ne visent pas à conférer un avantage économique général aux Indiens (aux pp. 130 et 131) :

> Historiquement, les exemptions de taxe et de saisie ont protégé de deux façons la capacité des Indiens de profiter de cette propriété. Premièrement, elles empêchent qu'un palier de gouvernement, par l'imposition de taxes, puisse porter atteinte à l'intégrité des bénéfices accordés par le palier de gouvernement responsable du contrôle des affaires indiennes. Deuxièmement, la protection contre les saisies assure que l'exécution de jugements obtenus par des non-Indiens en matière civile ne pourra entraver les Indiens dans la libre jouissance des avantages qu'ils ont acquis ou pourront acquérir conformément à l'exécution par la Couronne de ses obligations prévues par traité. Dans les faits, ces articles ont protégé les Indiens contre l'imposition d'obligations de nature civile qui pouvaient conduire, quoique indirectement, à l'aliénation de leurs terres à la suite de ventes forcées et par d'autres moyens semblables; voir l'examen par le juge Brennan du but des exemptions de taxe accordées aux Indiens en contexte américain dans l'arrêt *Bryan v. Itasca County*, 426 U.S. 373 (1976), à la p. 391.
>
> En résumé, le dossier historique indique clairement que les art. 87 et 89 de la *Loi sur les Indiens*, auxquels s'applique la présomption de l'art. 90, font partie d'un ensemble législatif qui

> 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.
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> fait état d'une obligation envers les peuples autochtones, dont la Couronne a reconnu l'existence tout au moins depuis la signature de la Proclamation royale de 1763. Depuis ce temps, la Couronne a toujours reconnu qu'elle est tenue par l'honneur de protéger les Indiens de tous les efforts entrepris par des non-Indiens pour les déposséder des biens qu'ils possèdent en tant qu'Indiens, c'est-à-dire leur territoire et les chatels qui y sont situés.
>
> Il est également important de souligner la conséquence de la conclusion que je viens de tirer. Le fait que la loi contemporaine, comme sa contrepartie historique, prenne tant de soin pour souligner que les exemptions de taxe et de saisie ne s'appliquent que dans le cas des biens personnels situés sur des réserves démontre que l'objet de la Loi n'est pas de remédier à la situation économiquement défavorable des Indiens en leur assurant le pouvoir d'acquérir, de posséder et d'aliéner des biens sur le marché à des conditions différentes de celles applicables à leurs concitoyens. Un examen des décisions portant sur ces articles confirme que les Indiens qui acquièrent et aliènent des biens situés à l'extérieur des terres réservées à leur usage le font aux mêmes conditions que tous les autres Canadiens.
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> [Emphasis added.]

[21] The decision of the Supreme Court of Canada in *Williams v. Canada*[3] requires that deciding whether an Aboriginal person's employment income is personal property situated on a reserve involves considering the relevant connecting factors and weighing them:[4]

> The approach which best reflects these concerns is one which analyzes the
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> La méthode qui tient le mieux compte de ces préoccupations est celle

[3] [1992] 1 S.C.R. 877 (*Williams*).
[4] *Ibid* at para. 37, pp. 892-93.

> 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.
>
> qui analyse la situation sous le rapport des catégories de biens et des types d'imposition. Par exemple, la pertinence des facteurs de rattachement peut varier selon qu'il s'agit de prestations d'assurance-chômage, de revenu d'emploi ou de prestations de pension. Il faut d'abord identifier les divers facteurs de rattachement qui peuvent être pertinents. On doit ensuite analyser ces facteurs pour déterminer le poids à leur accorder afin d'identifier l'emplacement du bien, en tenant compte de trois choses: (1) l'objet de l'exemption prévue dans la *Loi sur les Indiens*, (2) le genre de bien en cause et (3) la nature de l'imposition de ce bien. Il s'agit donc de déterminer, relativement à chaque facteur de rattachement, le poids qui devrait lui être accordé pour décider si l'imposition en cause de ce type de bien représenterait une atteinte aux droits de l'Indien à titre d'Indien sur une réserve.

[22] With respect to employment income, the relevant connecting factors are accepted to be (i) location of the employer; (ii) residence of the employee; (iii) location of the work; and (iv) nature of the work. See *Her Majesty the Queen v. Shilling*, 2001 FCA 178:[5]

> [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.
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> [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
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> [29] Comme il en a déjà été fait mention, la Cour suprême n'a pas encore eu l'occasion d'appliquer au revenu d'emploi le critère des facteurs de rattachement qui a été énoncé dans l'arrêt *Williams*, précité. L'arrêt *Williams* lui-même se rapportait à l'emplacement de prestations d'assurance-chômage.
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> [30] Toutefois, dans plusieurs cas, la présente Cour a eu à appliquer la jurisprudence de la Cour suprême afin de déterminer si le revenu d'emploi

[5] 2001 FCA 178 (*Shilling*).

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 (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 paragraph 27:

> In my view, having regard for the

d'un Indien était situé dans une réserve et si, par conséquent, il était exempt d'impôt en vertu de l'alinéa 87(1)*b*) de la *Loi sur les Indiens*.

[31] Ainsi, dans les arrêts *Canada c. Folster*, [1997] 3 C.F. 269 (C.A.); et *Bell c. Canada*, [2000] 3 C.N.L.R. 32 (C.A.F.), on a dit que les facteurs suivants étaient peut-être pertinents lorsqu'il s'agissait de déterminer si le revenu d'emploi d'un Indien est situé dans une réserve: l'emplacement de l'employeur ou son lieu de résidence; la nature du travail, le lieu de travail et les circonstances dans lesquelles le travail est accompli par l'employé, et notamment la nature de tout avantage qu'en tire la réserve; le lieu de résidence de l'employé.

[32] Le lieu où l'employé était payé a également été considéré comme un facteur de rattachement qui pouvait être pertinent, même si l'on n'a pas accordé beaucoup d'importance à ce facteur : *Bell c. Canada* (1998), 98 DTC 1857 (C.C.I.), aux paragraphes 45 à 47. La décision du juge de la Cour de l'impôt a été confirmée en appel et son identification des facteurs de rattachement a été approuvée : [2000] 3 C.N.R.L. 32 (C.A.F.), au paragraphe 35.

[33] L'importance à accorder à l'un quelconque de ces facteurs peut varier selon les faits d'une affaire donnée, et ce, même si le bien en question (un revenu d'emploi) et l'impôt (un impôt sur le revenu) appartiennent à une même catégorie. Néanmoins, la jurisprudence donne à entendre qu'il faut prêter une attention particulière à la nature du travail accompli par l'employé et aux circonstances y

> 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.
>
> afférentes. Comme le juge Linden l'a expliqué dans l'arrêt *Folster*, précité, au paragraphe 27 :
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> À mon avis, étant donné le but poursuivi par le législateur en créant l'exemption d'impôt et le genre de bien meuble en cause, l'analyse doit porter sur la nature de l'emploi de l'appelante et les circonstances qui s'y rapportent. Le genre de bien meuble en cause, c'est-à-dire le revenu d'emploi, est tel qu'on ne peut juger de sa nature sans se référer aux circonstances dans lesquelles il a été gagné. De même que le *situs* des prestations d'assurance-chômage doit être déterminé par rapport à l'emploi ouvrant droit aux prestations, de même l'analyse de l'emplacement du revenu d'emploi est subordonnée à un examen de toutes les circonstances qui ont donné lieu à l'emploi.

II. Analysis of connecting factors

A. *Location of the employer*

[23] Ms. Verreault's employer, Native Leasing Services, is operated by an Aboriginal person on the Six Nations Reserve in Ontario. The significance of this connecting factor is somewhat limited given that NLS had no role in the appointment of Ms. Verreault to her position at the training centre and no other involvement with the affairs of the training centre or the friendship centre, and appeared to have served solely as the vehicle through which payment for her services to the training centre was made. In *Shillin*, NLS played a similar role. In that case, the Federal Court of Appeal wrote the following:

> 45 One other issue respecting the location of the employer requires comment. That tax planning was the motivation for the respondent to enter into an employment relationship with
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> 45 Il importe de faire une autre remarque au sujet de l'emplacement de l'employeur. Le fait que l'intimée a été amenée à avoir une relation d'emploi avec NLS pour des raisons de

> NLS is not a concern in the absence of an allegation that either the transaction is a sham, or that the general anti-avoidance rule in section 245 of the *Income Tax Act* is applicable. The Crown has made no such allegation in this case. As the Trial Judge found, there should be no discounting of the weight to be accorded the on-reserve location of the employer because the employment by that employer was motivated by tax planning and a desire to avoid the payment of income tax. See *Neuman v. Minister of National Revenue*, [1998] 1 S.C.R. 770, at paragraph 39. On the other hand, in the absence of evidence which would support giving additional weight to this connecting factor, contracting with an on-reserve employer, whether motivated by tax planning or not, will be given only limited weight.
>
> planification fiscale importe peu s'il n'est pas allégué que l'opération est factice, ou que la règle générale anti-évitement énoncée à l'article 245 de la *Loi de l'impôt sur le revenu* s'applique. Or, Sa Majesté n'a fait aucune allégation de ce genre dans ce cas-ci. Comme le juge de première instance l'a conclu, on ne devrait pas accorder une importance réduite au fait que l'employeur est situé dans une réserve du simple fait que des raisons de planification fiscale et le désir d'éviter d'avoir à payer l'impôt sur le revenu avaient amené l'intimée à exercer l'emploi en question. Voir *Neuman c. Ministre du Revenu national*, [1998] 1 R.C.S. 770, au paragraphe 39. D'autre part, en l'absence d'éléments de preuve étayant l'importance accrue à accorder à ce facteur de rattachement, le fait d'avoir passé un contrat avec un employeur situé dans une réserve ne se verra accorder qu'une importance restreinte, et ce, indépendamment de la question de savoir si des raisons de planification fiscale étaient à l'origine du contrat.
>
> [Emphasis added.]

[24] NLS fulfilled a similar role in the matter before the Federal Court in *Horn v. Canada*.[6] In that case, Justice M.L. Phelan wrote the following:

> 97 Therefore, while NLS's location is on the Six Nations Reserve, these other circumstances indicate that this factor is not particularly weighty. It is of almost little weight to Horn as she is not a member of the Six Nations nor does her band at Kahnawake receive any direct benefits from NLS's location on the Six Nations Reserve.
>
> 97 Par conséquent, si NLS est située dans la réserve des Six Nations, ces autres circonstances indiquent que ce facteur n'est pas particulièrement important. Il est presque sans importance pour Horn, puisqu'elle n'est pas membre des Six Nations et que sa bande de Kahnawake ne tire aucun avantage direct du fait que NLS est

[6] 2007 FC 1052, 2007 D.T.C. 5589 (*Horn*).

située dans la réserve des Six Nations.

[25] Similarly, in *Canada v. Folsteri*, the Federal Court of Appeal did not think that it should attach much weight to the location where the cheques were issued to pay the employee (see paragraph 26).

[26] The role of NLS and the relevance of its situs on the Six Nations Reserve were also addressed by Justice Sheridan of this Court in *McIvor v. The Queen*[7] in which she wrote the following:

> 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
>
> 84 Il est certain que les bureaux principaux de NLS et d'O.I. Inc. étaient situés dans la réserve des Six Nations. L'exploitation de NLS et d'O.I. Inc. offrait certains avantages à la réserve des Six Nations : les fournitures et les services étaient achetés de sources situées dans la réserve, les locaux à bureaux étaient loués de la bande et des emplois et de la formation étaient fournis au personnel administratif dans la réserve.
>
> 85 Toutefois, il faut soupeser cette conclusion en fonction des faits suivants, qui atténuent le poids à accorder à ce facteur de rattachement : premièrement, l'avantage financier accordé à la réserve des Six Nations représentait une fraction bien faible de l'ensemble des revenus de NLS et d'O.I. Inc. En outre, ces revenus provenaient des frais de service qui étaient déduits de la rémunération de chacun des employés dont les services étaient loués auprès de leurs organismes de placement respectifs, dont aucun n'était situé dans la réserve des Six Nations ou dans une autre réserve. Enfin, le personnel administratif de NLS et d'O.I. Inc. dans la réserve des Six Nations se contentait

[7] *McIvor v. The Queen*, 2009 TCC 469, 2009 D.T.C. 1330 (*McIvor*).

> of the leased employees' hours of work, and the off-reserve payroll services that processed their pay cheques.
>
> d'agir comme intermédiaire entre les organismes de placement hors réserve, qui enregistraient et déclaraient les heures de travail des employés dont les services étaient loués, et les services de paye hors réserve qui traitaient les chèques de paye.

[27] Similarly in a decision of Associate Chief Justice Rossiter of this Court in *Googoo v. The Queen*,[8] in addressing the weight to be given to the residence of NLS on the Six Nations Reserve, he wrote the following at paragraph 98:

> 98 In *Canada v. Monias, supra*, it was noted that although the location of the employer has been regarded as a connecting factor under the analysis mandated by *Williams*, there must nonetheless be some evidence of the scope of the employer's activities on the reserve or of some benefit flowing to the reserve from the presence of the employer. Otherwise it cannot be a factor upon which much weight will be assigned.
>
> 98 Dans l'arrêt *Canada v. Monias*, précité, la Cour d'appel fédérale a fait observer que, même si l'emplacement de l'employeur est considéré comme un facteur de rattachement dans l'analyse prévue par l'arrêt *Williams*, il faut néanmoins qu'il y ait des éléments de preuve au sujet de l'importance des activités de l'employeur dans la réserve ou d'un bénéfice pour la réserve du fait de la présence de l'employeur, à défaut de quoi il n'y a pas lieu d'accorder beaucoup de poids à ce facteur.

[28] It is clear from the facts of this case that the location of NLS on the Six Nations Reserve in Ontario did not in any way factor into the operations of the training centre or the friendship centre in La Tuque. There was no evidence in this case of the role that NLS might have fulfilled on the Six Nations Reserve for the benefit of its residents. In the circumstances, I am of the opinion that little weight should be given to this limited connecting factor in Ms. Verreault's case. The only role NLS played in her case was to somewhat increase her prospects for being successful in her claim for a section 87 exemption by virtue of an additional connecting factor. As it is clear from the decisions cited above, that alone is of little relevance or assistance and should be given little weight.

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[8] 2008 TCC 589, 2009 D.T.C. 1061.

B. *The appellant's residence*

[29] During the years in question, Ms. Verreault lived in the town of La Tuque. She did not live on a reserve. It was not clear from the evidence when, if ever, she had lived on a reserve prior to or since the years in question.

[30] The absence of such a connecting factor is by no means fatal to her claim. It is not a requirement of section 87 of the *Indian Act* that the owner of the personal property reside on a reserve. Section 87 requires that the situs of the property be on a reserve. In *Williams* the Supreme Court of Canada wrote the following:[9]

> Having regard to the importance of the location of the qualifying employment income as a factor in identifying the location of the unemployment insurance benefits, the remaining factor of the residence of the recipient of the benefits at the time of their receipt is only potentially significant if it points to a location different from that of the qualifying employment.
>
> Compte tenu de l'importance de l'emplacement du revenu d'emploi donnant droit aux prestations en tant que facteur dont il faut tenir compte pour identifier l'emplacement des prestations d'assurance-chômage, le facteur restant, c'est-à-dire la résidence de la personne qui reçoit les prestations au moment de leur réception, ne peut avoir d'importance que s'il indique un emplacement différent de celui de l'emploi qui a rendu admissible aux prestations.
>
> [Emphasis added.]

[31] In *Horn*,[10] Justice M.L. Phelan noted that one of the appellants resided on a reserve and wrote the following:

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[9] *Supra*, footnote 2 at p. 897
[10] *Supra*, footnote 5.

104 As regards Williams, she is a resident of the Six Nations Reserve. She has strong ties to the community, both physical, social and emotional. However, the benefits to the Reserve of her employment, aside from those clients of the Shelter who come from the Reserve, is largely that of her spending income on living expenses. This is not a significant connecting factor, *per se*, as held in *Bell*.	104 Quant à Williams, elle réside dans la réserve des Six Nations. Elle entretient des liens solides avec la collectivité, tant physiques que sociaux et émotionnels. Toutefois, les avantages que tire la réserve de son emploi, mis à part les clients du Refuge qui viennent de la réserve, tiennent principalement au fait qu'elle consacre son revenu à ses frais de subsistance. Il ne s'agit pas d'un facteur de rattachement important en soi, ainsi qu'il a été conclu dans l'arrêt *Bell*.

[32] Given these comments from *Williams* and *Horn*, even had Ms. Verreault lived on a reserve, the significance and weight of that connecting factor would only be strong if her residence on a reserve played some significant role in her work that gave rise to the income in question.

[33] In the circumstances, therefore, this is at best a neutral consideration in my analysis of the connecting factors; it does not assist in any way in establishing that Ms. Verreault's income is property situated on a reserve.

[34] If Ms. Verreault's income is to be situated on a reserve, there is no factual basis for it to be considered to be situated on her Innu reserve, where she did not reside and with which neither the training centre nor the friendship centre was in any way connected.

[35] The three Attikamek reserves of Obedjiwan, Wemotaci and Manawan, which many of the training centre and the friendship centre's clients were members of and came from – and may have remained members of while they were living in La Tuque and attending the training centre or otherwise – are not sufficiently connected to Ms. Verreault's work at the training centre to conclude that the situs of her income from that work was on any of those three reserves. She estimated that her promotional activities took her out of La Tuque to one of the reserves for a day or two each month on average. It is noted that the evidence showed that the drive to and from any of these reserves would have taken a long day in itself.

[36] Considering these facts, the only other reserve where Ms. Verreault could argue the income from her training centre work was situated was the Six Nations Reserve in Ontario. As stated above, in the first part of my analysis, the Six Nations Reserve and NLS situated on that reserve had no inherent or significant relationship

with the work of the friendship centre in La Tuque or its training centre, and its only role was limited to that of being a kind of placement agency for their employee Arlette Verreault.

[37] Thus, the conclusion to be made on the connecting factor analysis of the appellant's residence in this case is that Ms. Verreault's income was not situated on any of those reserves.

C. *Location of work*

[38] The training centre of which Ms. Verreault was the director and coordinator and its computer laboratory were located on the premises of the friendship centre in La Tuque, not on a reserve. With few very limited exceptions, all of Ms. Verreault's work was completed in La Tuque. She did go to Québec one day per month for meetings of the three coordinators with members of the federation's board. In addition, she spent on average one or two days a month at one of the three Attikamek reserves promoting the La Tuque training centre project. Her evidence was that each of these reserves was two to five hours driving distance from La Tuque each way. There is no reason to believe that any of the training centre clients resided on the reserves while attending classes. It is clear that the primary focus of both the friendship centre and the training centre was providing assistance to Aboriginal people living in urban centers. The promotion of her project on the reserves was not established to be a principal or significant part of her duties as director and coordinator of the training centre.

[39] Cases such as *Folster*[11] and *Amos*[12] provide examples of circumstances where an Aboriginal person's off-reserve work may qualify for the section 87 exemption. In each of those cases, the Aboriginal person's workplace had a historical connection to a reserve and had at times been at least in part situated on the reserve, even if the employee did not work on the reserve during the year in question. In each of these two cases, the appellants lived on the reserve in question. In Ms. Verreault's case, unlike in *Folster* and *Amos*, there were no significant historical or practical connections of a similar nature between the off-reserve location of the training centre at which she worked and any of the reserves in question.

[40] In Ms. Verreault's case, the fact that her place of work was located in La Tuque, not on a reserve; that little of her time was spent on any reserve; and that there

[11] *Folster v. Canada*, [1997] 3 F.C. 269, 97 D.T.C. 5315 (*Folster*).
[12] *Amos v. The Queen*, 99 D.T.C. 5333, [2000] 3 C.N.L.R. 1 (*Amos*).

was no historical connection between her La Tuque computer laboratory and any reserve results in a very weak connection to a reserve.

D. *Nature of the work*

[41] The only connection between the nature of Ms. Verreault's work and the training and services offered by the computer laboratory project and any reserve is that the majority of her clients were Aboriginal people who were believed to have come from the three Attikamek reserves mentioned and some of whom may have returned there. Given the driving distances, it is assumed that none of the clients resided on the reserves during their six months of training in La Tuque.

[42] This factor was considered in *Shilling* at paragraphs 49 et seq.:[13]

> 49 In this case, the respondent's place of employment was in Toronto. This is a factor that would tend to locate her employment income off-reserve. However, under the connecting factors analysis, location of employment alone will not be conclusive. Normally, regard must be had to the nature of the employment as a whole and the surrounding circumstances to determine what connection, if any, the off-reserve employment has to a reserve.
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> . . .
>
> 51 AHT appears to be a social services organization involved in preventative health care and other social assistance for off-reserve Native people in Toronto. The respondent's work benefits AHT and its off-reserve clientele. This is in stark contrast to *Folster* where the hospital's patients mostly lived on-reserve. As the Trial Judge found, merely because the nature of employment is to provide services to Indians does not connect that employment to an Indian reserve as a
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> 49 En l'espèce, l'intimée travaille à Toronto. Ce facteur tendrait à montrer que le revenu d'emploi est situé en dehors d'une réserve. Toutefois, selon l'analyse se rapportant aux facteurs de rattachement, le lieu du travail à lui seul n'est pas concluant. Normalement, il faut tenir compte de la nature de l'emploi dans son ensemble et des circonstances y afférentes en vue de déterminer quel lien existe, le cas échéant, entre l'emploi exercé en dehors d'une réserve et une réserve.
>
> [...]
>
> 51 AHT semble être une organisation de services sociaux qui s'occupe de soins de santé préventifs et fournit de l'aide, à Toronto, aux autochtones qui ne sont pas dans une réserve. AHT et sa clientèle hors réserve tirent bénéfice du travail de l'intimée, contrairement à ce qui se produisait dans l'affaire *Folster*, où les patients de l'hôpital habitaient presque tous dans la réserve. Comme le juge de première instance l'a conclu, l'emploi n'est pas rattaché à une réserve

[13] *Supra* at footnote 4.

physical place.

indienne au sens physique du terme du simple fait que la nature de l'emploi consiste à fournir des services à des Indiens.

52 In finding that the nature of the respondent's duties are not a connecting factor to a reserve, we do not overlook the fact that the services provided are social services to Native people as opposed to employment in a for-profit enterprise. However, many not-for-profit social service organizations exist in Canadian cities. Employees of such organizations are not exempt from income tax. Given the limited purpose of paragraph 87(1)(*b*) of the *Indian Act*, the fact that the employment at issue involves providing social services to off-reserve Native people, is no reason for conferring preferred tax treatment under that provision.

52 En concluant que la nature des tâches de l'intimée ne constitue pas un facteur de rattachement avec une réserve, nous n'omettons pas de tenir compte du fait que les services fournis sont des services sociaux à l'intention des autochtones, par opposition à un emploi exercé dans le cadre de l'exploitation d'une entreprise à but lucratif. Toutefois, il existe dans les villes canadiennes un grand nombre d'organisations à but non lucratif offrant des services sociaux. Les employés de pareilles organisations ne sont pas exemptés de l'impôt sur le revenu. Compte tenu du but restreint de l'alinéa 87(1)*b*) de la *Loi sur les Indiens*, le fait que l'emploi en question se rapporte à la prestation de services sociaux à des autochtones en dehors d'une réserve ne confère pas pour autant un traitement fiscal privilégié en vertu de cette disposition.

[Emphasis added.]

[43] On the same subject, Justice Evans of the Federal Court of Appeal wrote the following in *Monias*:[14]

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

66 Le fait que le travail qui donne lieu au revenu d'emploi soit au bénéfice des Indiens dans les réserves et qu'il puisse être essentiel au maintien des réserves comme groupes sociaux viables, n'est pas en soi suffisant pour situer le revenu d'emploi dans les réserves. La politique qui sous-tend l'alinéa 87(1)*b*) n'a pas pour but d'offrir une subvention fiscale aux services fournis aux réserves. Il

[14] *Canada v. Monias*, 2001 FCA 239, 2001 D.T.C. 5450 (*Monias*).

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.	s'agit plutôt de protéger la propriété que les Indiens peuvent acquérir, conserver et utiliser dans une réserve, de toute atteinte par le biais de l'impôt, bien que dans le cas d'un bien incorporel, comme le revenu d'emploi, c'est le *situs* de son *acquisition* qui est particulièrement important.

[44] It is clear from these comments of the Federal Court of Appeal that the status Indian make-up of the clientele of Ms. Verreault's workplace is not a strong connecting factor.

[45] Nothing else in the nature of her work that would connect it to any reserve.

III. Conclusion

[46] The Court is sympathetic to the financial consequences for Ms. Verreault of her income not qualifying for the exemption since NLS did not withhold income tax from her salary payments. However, this Court is bound to apply the law as set out in subsection 81(1)(*a*) of the ITA and in section 87 of the *Indian Act* and to follow the analysis mandated by the Supreme Court of Canada and the Federal Court of Appeal in applying the section 87 exemption. Unfortunately for Ms. Verreault, that requires me to dismiss her appeal. In her testimony, she did complain that she was very annoyed with NLS for not having withheld tax and having put her in this position. This Court is without jurisdiction to deal with that complaint. If Ms. Verreault wishes to pursue a claim against NLS, such a claim must be brought in a court other than the Tax Court of Canada.

[47] In her testimony, Ms. Verreault complained as well that she did not understand why her section 87 exemption had been allowed in respect of her previous work in prior years at several Aboriginal-related organizations in La Tuque by the Canada Revenue Agency (CRA) without challenge, yet her similar work in the years at issue at the training centre, while an employee of NLS, has been challenged. She noted that the only significant difference apparent to her was the involvement of NLS. The Tax Court of Canada has no other knowledge of the thoughts or workings of the CRA with respect to Ms. Verreault in other years, but it may well be the case that the involvement of NLS in her work at the training centre in the years in question did trigger an audit review and verification by the CRA of that work whereas her prior years' work at other organizations was never audited or verified by the CRA. In any event, these considerations do not allow me to depart from a proper application of the

law to the appeal in question before me which relates solely to her claim for a section 87 exemption for 1998 and 1999 in respect of her income from working at the training centre.

[48] For the above reasons, the appeal is dismissed.

Signed at Ottawa, Canada, this 14th day of August 2012.

"Patrick Boyle"

Boyle J.

Translation certified true
on this 1st day of October 2012
Margarita Gorbounova, Translator

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