



In The Federal Court of Canada  
Trial Division

In re the *Income Tax Act*

T-219-78

BETWEEN:

GENE A. NOWEGIJICK

Plaintiff

- and -

HER MAJESTY THE QUEEN

Defendant

REASONS FOR JUDGMENT

MAHONEY, J.

The Plaintiff, an Indian, disputes his liability to include in the computation of his taxable income for 1975 wages paid to him on his reserve, by a corporation on the reserve, for work performed off the reserve. The material facts are agreed. The full text of the agreement filed follows. The words in brackets reflect corrections, none of them material to the issue, made by the parties at the trial.

1. The Plaintiff is a registered Indian within the meaning of that term as defined by the Indian Act, R.S.C. ch. I-6, and amendments thereto, and is a member of the Gull Bay Indian Band, Gull Bay, Ontario.

2. During the 1975 taxation year the Plaintiff was an employee of the Gull Bay Development Corporation hereinafter referred to as the Corporation. The Corporation is a corporation without share capital with its head office and administrative offices situated on the Gull Bay Reserve. All directors, members and employees of the Corporation live on the Reserve and are registered Indians.

3. During 1975, the Corporation, in the course of its business, conducted logging operations, and was involved in cutting trees for sale to third parties outside the Reserve. The actual site of the logging operations was [ten] miles from the Gull Bay Reserve.

4. During 1975, the Plaintiff maintained his permanent dwelling on the Gull Bay Reserve. Each morning, as a logger for the Corporation, he would

leave the Reserve to work on the site of the logging operations, and then return to the Reserve at the end of the working day.

5. The Plaintiff was paid [on a piece work basis] for his work and was paid [bi-weekly] by cheque at the head office of the Corporation on the Gull Bay Reserve.

6. The Plaintiff earned in such employment, \$11,057.08, and his assessed taxable income for the 1975 taxation year was \$8,698.00.

The Letters Patent incorporating Gull Bay Development Corporation, Revenue Canada Interpretation Bulletin IT-62, dated August 18, 1972 and documents transmitted by the Minister of National Revenue pursuant to subsection 176(2) of the *Income Tax Act*<sup>1</sup> are also of record. The only other evidence is that of Stanley King, a councillor of the Gull Bay Band, a registered Indian, member of the Gull Bay Band, resident on the Gull Bay Reserve, and a director of Gull Bay Development Corporation (hereafter the "Corporation"). He corroborated, by his circumstantial evidence, some of the agreed facts as they pertain to the Corporation and its *modus operandi*.

The Plaintiff is a person entitled to invoke section 87 of the *Indian Act*.<sup>2</sup>

87. Notwithstanding any other Act of the Parliament of Canada or any Act of the legislature of a province, but subject to subsection (2) and to section 83, the following property is exempt from taxation, namely:

- (a) the interest of an Indian or a band in reserve or surrendered lands; and
  - (b) the personal property of an Indian or band situated on a reserve;
- and no Indian or band is subject to taxation in respect of the ownership, occupation, possession or use of any property mentioned in paragraph (a) or (b) or is otherwise subject to taxation in respect of any such property; and no succession duty, inheritance tax or estate duty is payable on the death of any Indian in respect of any such property or the succession thereto if the property passes to an Indian, nor shall any such property be taken into account in determining the duty payable under the *Dominion Succession Duty Act*,

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<sup>1</sup> R.S.C. 1970, c. I-6.

<sup>2</sup> S.C. 1970-71-72, c.63.

being chapter 89 of the Revised Statutes of Canada, 1952, or the tax payable under the *Estate Tax Act* on or in respect of other property passing to an Indian.

Section 83 of the *Indian Act* has no application. Subsection 87(2) was repealed in 1960,<sup>3</sup> although the reference to it in what was formerly subsection (1) remains. Paragraph 81(1)(a) of the *Income Tax Act* was not pleaded and, in my view, has no application.

Wages, once received, lose the character of wages and become simply a negotiable instrument or money in their recipient's hands. Only up to the point of receipt are they wages. Wages are a contract debt, a chose in action, personal property which, strictly speaking, has no *situs*; however, where the law has found it necessary to attribute a *situs* to a debt, that *situs* has been the debtor's residence. The authorities pertinent to the foregoing were recently considered by Thurlow, A.C.J., and need not be recited here.<sup>4</sup>

It was not argued that the fact the services by which the wages were earned were performed off the Gull Bay Reserve is determinative of anything. No reason has occurred to me why it should. The Corporation had but one residence: the Gull Bay Reserve. Wages payable by it to the Plaintiff were situated there.

The *Income Tax Act* does not, however, impose a tax on property; it imposes a tax on persons.<sup>5</sup> The question is whether taxation of the Plaintiff in an amount determined by reference to his taxable income is taxation "in respect of" those wages when they are included in the computation of his taxable income. I think that it is.

The tax payable by an individual under the *Income Tax Act* is determined by application of prescribed rates to his taxable income calculated in the prescribed

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<sup>3</sup> S.C. 1960, c.8.

<sup>4</sup> *The Queen v The National Indian Brotherhood* 78 D.T.C. 6488.

<sup>5</sup> *Sura v M.N.R.* [1962] S.C.R. 65.

manner. If his taxable income is increased by the inclusion of his wages in it, he will pay more tax. The amount of the increase will be determined by direct reference to the amount of those wages. I do not see that such a process and result admits of any other conclusion than that the individual is thereby taxed in respect of his wages.

The appeal against the Minister's assessment will be allowed. This is a test case. It was agreed that the Plaintiff be entitled to his costs, to be taxed as between solicitor and client, in any event.

J.E.C.C.

Ottawa, Canada

March 6, 1979.