

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20151118**

**Dockets: A-474-14**

**A-475-14**

**A-542-14**

**Citation: 2015 FCA 258**

**CORAM: DAWSON J.A.  
RYER J.A.  
WEBB J.A.**

**BETWEEN:**

**ART ZOCCOLE, VIRGINIA FORSYTHE  
AND CARRIE MARTIN**

**Appellants**

**and**

**HER MAJESTY THE QUEEN**

**Respondent**

Heard at Toronto, Ontario, on November 18, 2015.  
Judgment delivered from the Bench at Toronto, Ontario, on November 18, 2015.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**DAWSON J.A.**

Federal Court of Appeal



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**REASONS FOR JUDGMENT OF THE COURT**

(Delivered from the Bench at Toronto, Ontario, on November 18, 2015)

**DAWSON J.A.**

[1] Each appellant is a Status Indian who at all material times was employed by Native Leasing Services. Generally, employment income is taxable pursuant to subsection 5(1) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5<sup>th</sup> Supp.). However, each appellant argues that their employment income is property “situated on a reserve” so that it is exempt from taxation by

operation of paragraph 87(1)(b) of the *Indian Act*, R.S.C. 1985, c. I-5. Each provision is set out in the appendix to these reasons.

[2] The Minister of National Revenue reassessed each appellant so as to include in their income the salary earned from their employment with Native Leasing Services. The appellants appealed their reassessments to the Tax Court of Canada, where the appeals were heard together on common evidence. For careful and thorough reasons cited as 2014 TCC 284, a judge of the Tax Court dismissed each appeal. These are appeals from three judgments of the Tax Court. A copy of these reasons will be placed on each Court file.

[3] The appellants raise a number of issues in these appeals. The essence of their submissions is that the salaries owed to them are a simple debt; the situs of the debt must be determined in accordance with the common law principle that such a debt is situated at the location of the employer. Here, Native Leasing Services is located on the Six Nations of the Grand River Nation Reserve, and in the present case, following the decision of the Supreme Court of Canada in *Nowegijick v. The Queen*, [1983] 1 S.C.R. 29, this is determinative with respect to the location of the appellants' employment income.

[4] In the alternative, in the event of ambiguity about the application of this common law principle, other connecting factors may be considered to locate the situs of the appellants' employment income, but the Judge erred in the application of those factors.

[5] In *Horn v. Canada (Minister of National Revenue)*, 2008 FCA 352, 302 D.L.R. (4<sup>th</sup>) 472, a case concerning other employees of Native Leasing Services, this Court held that the “connecting factors” test should be applied to determine where employment income is situated. See also: *Kelly v. Canada*, 2013 FCA 171, 446 N.R. 339, and *Pilfold Estate v. Canada*, 2014 FCA 97, 459 N.R. 159. The appellants have not shown these decisions to be manifestly wrong.

[6] Additionally, by analogy, in *Bastien Estate v. Canada*, 2011 SCC 38, [2011] 2 S.C.R. 710, the Supreme Court applied the “connecting factors” test to determine the location of interest income.

[7] It follows that the Judge did not err in law by applying the “connecting factors” test to determine whether the appellants’ salaries were property “situated on a reserve”. Nor have the appellants established that the Judge made any palpable and overriding error in the application of the “connecting factors” test to the evidence before her. While the appellants may wish that the Judge had weighed the factors differently, they have not demonstrated any palpable and overriding error in her appreciation of the evidence or the weight she gave to each connecting factor.

[8] It follows that the appeals will be dismissed with one set of costs.

“Eleanor R. Dawson”

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J.A.

APPENDIX

Subsection 5(1) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5<sup>th</sup> Supp.) reads as follows:

5. (1) Subject to this Part, a taxpayer's income for a taxation year from an office or employment is the salary, wages and other remuneration, including gratuities, received by the taxpayer in the year.

5. (1) Sous réserve des autres dispositions de la présente partie, le revenu d'un contribuable, pour une année d'imposition, tiré d'une charge ou d'un emploi est le traitement, le salaire et toute autre rémunération, y compris les gratifications, que le contribuable a reçus au cours de l'année.

Paragraph 87(1)(b) of the *Indian Act*, R.S.C. 1985, c. I-5 reads as follows:

87. (1) Notwithstanding any other Act of Parliament or any Act of the legislature of a province, but subject to section 83 and section 5 of the *First Nations Fiscal Management Act*, the following property is exempt from taxation:

87. (1) 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 des premières nations*, les biens suivants sont exemptés de taxation :

[...]

[. . .]

(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.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKETS:** A-474-14, A-475-14, A-542-14

**STYLE OF CAUSE:** ART ZOCCOLE, VIRGINIA  
FORSYTHE AND CARRIE  
MARTIN v. HER MAJESTY THE  
QUEEN

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** NOVEMBER 18, 2015

**REASONS FOR JUDGMENT OF THE COURT BY:** DAWSON J.A.  
RYER J.A.  
WEBB J.A.

**DELIVERED FROM THE BENCH BY:** DAWSON J.A.

**APPEARANCES:**

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Laurent Bartleman  
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