Docket: 2007-154(IT)I

BETWEEN:

JUNE ROBINSON,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on common evidence with the appeals of
Douglas Cockburn (2007-499(IT)I); *Linda Cockburn* (2007-500(IT)I);
Simone Hillier (2007-799(IT)I); *Sandra King* (2007-807(IT)I);
Jules Koostachin (2007-1026(IT)I); *Julie Debassige* (2007-1110(IT)I);
Joan Kennedy (2007-1391(IT)I); *Leanna Gerrior* (2007-1525(IT)I);
Martin John (2007-1526(IT)I); *Janet Takata* (2007-1897(IT)I);
Bonnie Guarisco (2009-1125(IT)I); *John Y Takata* (2009-3790(IT)I);
on October 18, 19, 20, 21 and 22, 2010 at Toronto, Ontario

Before: The Honourable D.W. Rowe, Deputy Judge

Appearances:

Counsel for the Appellant:	Graham Ragan Jaimie Lickers
Counsel for the Respondent:	Laurent Bartleman Anne Jinnouchi

JUDGMENT

The appeal from the assessments made under the *Income Tax Act* for the 1995, 1996, 1997, 1999, 2005, 2006, 2007 and 2008 taxation years is dismissed in accordance with the attached Reasons for Judgment.

Signed at Sidney, British Columbia this 22nd day of December 2010.

"D.W. Rowe"

Rowe D.J

Docket: 2007-499(IT)I

BETWEEN:

DOUGLAS COCKBURN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on common evidence with the appeals of
June Robinson (2007-154(IT)I); *Linda Cockburn* (2007-500(IT)I);
Simone Hillier (2007-799(IT)I); *Sandra King* (2007-807(IT)I);
Jules Koostachin (2007-1026(IT)I); *Julie Debassige* (2007-1110(IT)I);
Joan Kennedy (2007-1391(IT)I); *Leanna Gerrior* (2007-1525(IT)I);
Martin John (2007-1526(IT)I); *Janet Takata* (2007-1897(IT)I);
Bonnie Guarisco (2009-1125(IT)I); *John Y Takata* (2009-3790(IT)I);
on October 18, 19, 20, 21 and 22, 2010 at Toronto, Ontario

Before: The Honourable D.W. Rowe, Deputy Judge

Appearances:

Counsel for the Appellant:	Graham Ragan Jaimie Lickers
Counsel for the Respondent:	Laurent Bartleman Anne Jinnouchi

JUDGMENT

The appeal from the assessment made under the *Income Tax Act* for the 1995 taxation year is dismissed in accordance with the attached Reasons for Judgment.

Signed at Sidney, British Columbia this 22nd day of December 2010.

"D.W. Rowe"

Rowe D.J.

Docket: 2007-500(IT)I

BETWEEN:

LINDA COCKBURN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on common evidence with the appeals of
Douglas Cockburn (2007-499(IT)I); *June Robinson* (2007-154(IT)I);
Simone Hillier (2007-799(IT)I); *Sandra King* (2007-807(IT)I);
Jules Koostachin (2007-1026(IT)I); *Julie Debassige* (2007-1110(IT)I);
Joan Kennedy (2007-1391(IT)I); *Leanna Gerrior* (2007-1525(IT)I);
Martin John (2007-1526(IT)I); *Janet Takata* (2007-1897(IT)I);
Bonnie Guarisco (2009-1125(IT)I); *John Y Takata* (2009-3790(IT)I);
on October 18, 19, 20, 21 and 22, 2010 at Toronto, Ontario

Before: The Honourable D.W. Rowe, Deputy Judge

Appearances:

Counsel for the Appellant:	Graham Ragan Jaimie Lickers
Counsel for the Respondent:	Laurent Bartleman Anne Jinnouchi

JUDGMENT

The appeal from the assessment made under the *Income Tax Act* for the 1995 taxation year is dismissed in accordance with the attached Reasons for Judgment.

Signed at Sidney, British Columbia this 22nd day of December 2010.

"D.W. Rowe"

Rowe D.J.

Docket: 2007-799(IT)I

BETWEEN:

SIMONE HILLIER,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on common evidence with the appeals of
Douglas Cockburn (2007-499(IT)I); *June Robinson* (2007-154(IT)I);
Linda Cockburn (2007-500(IT)I); *Sandra King* (2007-807(IT)I);
Jules Koostachin (2007-1026(IT)I); *Julie Debassige* (2007-1110(IT)I);
Joan Kennedy (2007-1391(IT)I); *Leanna Gerrior* (2007-1525(IT)I);
Martin John (2007-1526(IT)I); *Janet Takata* (2007-1897(IT)I);
Bonnie Guarisco (2009-1125(IT)I); *John Y Takata* (2009-3790(IT)I);
on October 18, 19, 20, 21 and 22, 2010 at Toronto, Ontario

Before: The Honourable D.W. Rowe, Deputy Judge

Appearances:

Counsel for the Appellant:	Graham Ragan Jaimie Lickers
Counsel for the Respondent:	Laurent Bartleman Anne Jinnouchi

JUDGMENT

Upon motion made by counsel for the Respondent for an Order to quash the Appellant's purported appeal for the 1999 taxation year on the basis no federal tax was payable;

And counsel for the Appellant having not opposed this motion;

The motion is granted and the purported appeal for the 1999 taxation year is hereby quashed in accordance with the attached Reasons for Judgment.

The appeal from the assessments made under the *Income Tax Act* for the 1995, 1998, 2005 and 2006 taxation years is dismissed in accordance with the attached Reasons for Judgment.

Signed at Sidney, British Columbia this 22nd day of December 2010.

"D.W. Rowe"

Rowe D.J.

Docket: 2007-807(IT)I

BETWEEN:

SANDRA KING,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on common evidence with the appeals of
Douglas Cockburn (2007-499(IT)I); *June Robinson* (2007-154(IT)I);
Linda Cockburn (2007-500(IT)I); *Simone Hillier* (2007-799(IT)I);
Jules Koostachin (2007-1026(IT)I); *Julie Debassige* (2007-1110(IT)I);
Joan Kennedy (2007-1391(IT)I); *Leanna Gerrior* (2007-1525(IT)I);
Martin John (2007-1526(IT)I); *Janet Takata* (2007-1897(IT)I);
Bonnie Guarisco (2009-1125(IT)I); *John Y Takata* (2009-3790(IT)I);
on October 18, 19, 20, 21 and 22, 2010 at Toronto, Ontario

Before: The Honourable D.W. Rowe, Deputy Judge

Appearances:

Counsel for the Appellant:	Graham Ragan Jaimie Lickers
Counsel for the Respondent:	Laurent Bartleman Anne Jinnouchi

JUDGMENT

The appeal from the assessments made under the *Income Tax Act* for the 1999, 2005, 2006 and 2007 taxation years is dismissed in accordance with the attached Reasons for Judgment.

Signed at Sidney, British Columbia this 22nd day of December 2010.

"D.W. Rowe"

Rowe D.J.

Docket: 2007-1026(IT)I

BETWEEN:

JULES KOOSTACHIN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on common evidence with the appeals of
Douglas Cockburn (2007-499(IT)I); *June Robinson* (2007-154(IT)I);
Linda Cockburn (2007-500(IT)I); *Simone Hillier* (2007-799(IT)I);
Sandra King (2007-807(IT)I); *Julie Debassige* (2007-1110(IT)I);
Joan Kennedy (2007-1391(IT)I); *Leanna Gerrior* (2007-1525(IT)I);
Martin John (2007-1526(IT)I); *Janet Takata* (2007-1897(IT)I);
Bonnie Guarisco (2009-1125(IT)I); *John Y Takata* (2009-3790(IT)I);
on October 18, 19, 20, 21 and 22, 2010 at Toronto, Ontario

Before: The Honourable D.W. Rowe, Deputy Judge

Appearances:

Counsel for the Appellant:	Graham Ragan Jaimie Lickers
Counsel for the Respondent:	Laurent Bartleman Anne Jinnouchi

JUDGMENT

The appeal from the assessments made under the *Income Tax Act* for the 2005 and 2006 taxation years is dismissed in accordance with the attached Reasons for Judgment.

Signed at Sidney, British Columbia this 22nd day of December 2010.

"D.W. Rowe"

Rowe D.J.

Docket: 2007-1110(IT)I

BETWEEN:

JULIE DEBASSIGE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on common evidence with the appeals of
Douglas Cockburn (2007-499(IT)I); *June Robinson* (2007-154(IT)I);
Linda Cockburn (2007-500(IT)I); *Simone Hillier* (2007-799(IT)I);
Sandra King (2007-807(IT)I); *Jules Koostachin* (2007-1026(IT)I);
Joan Kennedy (2007-1391(IT)I); *Leanna Gerrior* (2007-1525(IT)I);
Martin John (2007-1526(IT)I); *Janet Takata* (2007-1897(IT)I);
Bonnie Guarisco (2009-1125(IT)I); *John Y Takata* (2009-3790(IT)I);
on October 18, 19, 20, 21 and 22, 2010 at Toronto, Ontario

Before: The Honourable D.W. Rowe, Deputy Judge

Appearances:

Counsel for the Appellant:	Graham Ragan Jaimie Lickers
Counsel for the Respondent:	Laurent Bartleman Anne Jinnouchi

JUDGMENT

The appeal from the assessments made under the *Income Tax Act* for the 1996, 1997, 2002 and 2003 taxation years is dismissed in accordance with the attached Reasons for Judgment.

Signed at Sidney, British Columbia this 22nd day of December 2010.

"D.W. Rowe"

Rowe D.J.

Docket: 2007-1391(IT)I

BETWEEN:

JOAN KENNEDY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on common evidence with the appeals of
Douglas Cockburn (2007-499(IT)I); *June Robinson* (2007-154(IT)I);
Linda Cockburn (2007-500(IT)I); *Simone Hillier* (2007-799(IT)I);
Sandra King (2007-807(IT)I); *Jules Koostachin* (2007-1026(IT)I);
Julie Debassige (2007-1110(IT)I); *Leanna Gerrior* (2007-1525(IT)I);
Martin John (2007-1526(IT)I); *Janet Takata* (2007-1897(IT)I);
Bonnie Guarisco (2009-1125(IT)I); *John Y Takata* (2009-3790(IT)I);
on October 18, 19, 20, 21 and 22, 2010 at Toronto, Ontario

Before: The Honourable D.W. Rowe, Deputy Judge

Appearances:

Counsel for the Appellant:	Graham Ragan Jaimie Lickers
Counsel for the Respondent:	Laurent Bartleman Anne Jinnouchi

JUDGMENT

The appeal from the assessments made under the *Income Tax Act* for the 1995, 1996, 1998, 1999, 2000 and 2001 taxation years is dismissed in accordance with the attached Reasons for Judgment.

Signed at Sidney, British Columbia this 22nd day of December 2010.

"D.W. Rowe"

Rowe D.J.

Docket: 2007-1525(IT)I

BETWEEN:

LEANNA GERRIOR,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on common evidence with the appeals of
Douglas Cockburn (2007-499(IT)I); *June Robinson* (2007-154(IT)I);
Linda Cockburn (2007-500(IT)I); *Simone Hillier* (2007-799(IT)I);
Sandra King (2007-807(IT)I); *Jules Koostachin* (2007-1026(IT)I);
Julie Debassige (2007-1110(IT)I); *Joan Kennedy* (2007-1391(IT)I);
Martin John (2007-1526(IT)I); *Janet Takata* (2007-1897(IT)I);
Bonnie Guarisco (2009-1125(IT)I); *John Y Takata* (2009-3790(IT)I);
on October 18, 19, 20, 21 and 22, 2010 at Toronto, Ontario

Before: The Honourable D.W. Rowe, Deputy Judge

Appearances:

Counsel for the Appellant:	Graham Ragan Jaimie Lickers
Counsel for the Respondent:	Laurent Bartleman Anne Jinnouchi

JUDGMENT

The appeal from the assessments made under the *Income Tax Act* for the 1995, 1996, 1997 and 1998 taxation years is dismissed in accordance with the attached Reasons for Judgment.

Signed at Sidney, British Columbia this 22nd day of December 2010.

"D.W. Rowe"

Rowe D.J.

Docket: 2007-1526(IT)I

BETWEEN:

MARTIN JOHN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on common evidence with the appeals of
Douglas Cockburn (2007-499(IT)I); *June Robinson* (2007-154(IT)I);
Linda Cockburn (2007-500(IT)I); *Simone Hillier* (2007-799(IT)I);
Sandra King (2007-807(IT)I); *Jules Koostachin* (2007-1026(IT)I);
Julie Debassige (2007-1110(IT)I); *Joan Kennedy* (2007-1391(IT)I);
Leanna Gerrior (2007-1525(IT)I); *Janet Takata* (2007-1897(IT)I);
Bonnie Guarisco (2009-1125(IT)I); *John Y Takata* (2009-3790(IT)I);
on October 18, 19, 20, 21 and 22, 2010 at Toronto, Ontario

Before: The Honourable D.W. Rowe, Deputy Judge

Appearances:

Counsel for the Appellant:	Graham Ragan Jaimie Lickers
Counsel for the Respondent:	Laurent Bartleman Anne Jinnouchi

JUDGMENT

The appeal from the assessment made under the *Income Tax Act* for the 1996 taxation year is dismissed in accordance with the attached Reasons for Judgment.

Signed at Sidney, British Columbia this 22nd day of December 2010.

"D.W. Rowe"

Rowe D.J.

Docket: 2007-1897(IT)I

BETWEEN:

JANET TAKATA,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on common evidence with the appeals of
Douglas Cockburn (2007-499(IT)I); *June Robinson* (2007-154(IT)I);
Linda Cockburn (2007-500(IT)I); *Simone Hillier* (2007-799(IT)I);
Sandra King (2007-807(IT)I); *Jules Koostachin* (2007-1026(IT)I);
Julie Debassige (2007-1110(IT)I); *Joan Kennedy* (2007-1391(IT)I);
Leanna Gerrior (2007-1525(IT)I); *Martin John* (2007-1526(IT)I) ;
Bonnie Guarisco (2009-1125(IT)I); *John Y Takata* (2009-3790(IT)I);
on October 18, 19, 20, 21 and 22, 2010 at Toronto, Ontario

Before: The Honourable D.W. Rowe, Deputy Judge

Appearances:

Counsel for the Appellant:	Graham Ragan Jaimie Lickers
Counsel for the Respondent:	Laurent Bartleman Anne Jinnouchi

JUDGMENT

The appeal from the assessments made under the *Income Tax Act* for the 2005, 2006, 2007 and 2008 taxation years is dismissed in accordance with the attached Reasons for Judgment.

Signed at Sidney, British Columbia this 22nd day of December 2010.

"D.W. Rowe"

Rowe D.J.

Docket: 2009-1125(IT)I

BETWEEN:

BONNIE GUARISCO,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on common evidence with the appeals of
Douglas Cockburn (2007-499(IT)I); *June Robinson* (2007-154(IT)I);
Linda Cockburn (2007-500(IT)I); *Simone Hillier* (2007-799(IT)I);
Sandra King (2007-807(IT)I); *Jules Koostachin* (2007-1026(IT)I);
Julie Debassige (2007-1110(IT)I); *Joan Kennedy* (2007-1391(IT)I);
Leanna Gerrior (2007-1525(IT)I); *Martin John* (2007-1526(IT)I) ;
Janet Takata (2007-1897(IT)I); *John Y Takata* (2009-3790(IT)I);
on October 18, 19, 20, 21 and 22, 2010 at Toronto, Ontario

Before: The Honourable D.W. Rowe, Deputy Judge

Appearances:

Counsel for the Appellant:	Graham Ragan Jaimie Lickers
Counsel for the Respondent:	Laurent Bartleman Anne Jinnouchi

JUDGMENT

The appeal from the assessments made under the *Income Tax Act* for the 2005, 2006 and 2007 taxation years is dismissed in accordance with the attached Reasons for Judgment.

Signed at Sidney, British Columbia this 22nd day of December 2010.

"D.W. Rowe"

Rowe D.J.

Docket: 2009-3790(IT)I

BETWEEN:

JOHN Y TAKATA,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on common evidence with the appeals of
Douglas Cockburn (2007-499(IT)I); *June Robinson* (2007-154(IT)I);
Linda Cockburn (2007-500(IT)I); *Simone Hillier* (2007-799(IT)I);
Sandra King (2007-807(IT)I); *Jules Koostachin* (2007-1026(IT)I);
Julie Debassige (2007-1110(IT)I); *Joan Kennedy* (2007-1391(IT)I);
Leanna Gerrior (2007-1525(IT)I); *Martin John* (2007-1526(IT)I) ;
Bonnie Guarisco (2009-1125(IT)I); *Janet Takata* (2007-1897(IT)I);
on October 18, 19, 20, 21 and 22, 2010 at Toronto, Ontario

Before: The Honourable D.W. Rowe, Deputy Judge

Appearances:

Counsel for the Appellant:	Graham Ragan Jaimie Lickers
Counsel for the Respondent:	Laurent Bartleman Anne Jinnouchi

JUDGMENT

The appeal from the assessment made under the *Income Tax Act* for the 2007 taxation year is dismissed in accordance with the attached Reasons for Judgment.

Signed at Sidney, British Columbia this 22nd day of December 2010.

"D.W. Rowe"

Rowe D.J.

Citation: 2010 TCC 649
Date: 20101222
Docket: 2007-154(IT)I

BETWEEN:

JUNE ROBINSON,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent;

Docket: 2007-499(IT)I

AND BETWEEN:

DOUGLAS COCKBURN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent;

Docket: 2007-500(IT)I

AND BETWEEN:

LINDA COCKBURN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent;

Docket: 2007-799(IT)I

AND BETWEEN:

SIMONE HILLIER,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent;

Docket: 2007-807(IT)I

AND BETWEEN:

SANDRA KING,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent;

Docket: 2007-1026(IT)I

AND BETWEEN:

JULES KOOSTACHIN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent;

Docket: 2007-1110(IT)I

AND BETWEEN:

JULIE DEBASSIGE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent;

Docket: 2007-1391(IT)I

AND BETWEEN:

JOAN KENNEDY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent;

Docket: 2007-1525(IT)I

AND BETWEEN:

LEANNA GERRIOR,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent;

Docket: 2007-1526(IT)I

AND BETWEEN:

MARTIN JOHN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent;

Docket: 2007-1897(IT)I

AND BETWEEN:

JANET TAKATA,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent;

Docket: 2009-1125(IT)I

AND BETWEEN:

BONNIE GUARISCO,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent;

Docket: 2009-3790(IT)I

AND BETWEEN:

JOHN Y TAKATA,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Rowe D.J.

[1] These appeals proceeded on the basis of common evidence. The issue in each of the appeals of Douglas Cockburn – 2007-499(IT)I, Martin John – 2007-1526(IT)I and John Y Takata – 2009-3790(IT)I, is whether any of them is entitled to deduct the personal credit for married status in the relevant taxation year, pursuant to paragraph 118(1)(*a*) of the *Income Tax Act* (the "*Act*"). The reassessment of the Minister of National Revenue (the "Minister") issued to each Appellant is based on the net income of the spouse having exceeded the maximum allowable in each of the taxation year(s) at issue and as such, none of these Appellants – as spouses – were entitled to deduct the personal credit for married status. Counsel for the Appellants and counsel for the Respondent agreed the result in each of these appeals would depend on the decision rendered in respect of that Appellant's spouse.

[2] The issue in the remaining group of appeals is whether the employment income earned by the Appellants was exempt from income tax by virtue of paragraph 87(1)(*b*) of the *Indian Act*, R.S.C. 1985, c. I-5, which provides that the personal property of an Indian or a band is exempt from taxation if situated on a reserve. The position of each Appellant employed by Native Leasing Services ("NLS") is that the

employment income is exempt from taxation pursuant to paragraph 81(1)(*a*) of the *Act*. The relevant period for these appeals is between the years 1995 and 2008. Each of the Appellants is an Indian as defined in the *Indian Act.* The appeals proceeded on the basis of common evidence, agreed facts and other evidence specific to certain Appellants.

[3] The position of the Respondent is that an application of the "connecting factors test" established by the Supreme Court of Canada in *Williams v. Canada*, [1992] 1 S.C.R. 877 did not connect the property of any Appellant to a reserve for the purpose of establishing whether the property is situated on a reserve. The Minister reassessed each Appellant on the basis no income was situated on a reserve.

[4] On consent of counsel for the parties, the following exhibits were filed:

- Exhibit R-1 – Joint Book of Documents;
- Exhibit R-2 – Ontario Federation of Indian Friendship Centres Book of Documents;
- Exhibit R-3 – O.I. Employee Leasing/Native Leasing Services New Leased Employee Information;
- Exhibit R-4 – Statement of Agreed Facts.

[5] With respect to Exhibit R-1, the title page displays a different Style of Cause than the one used in the within appeals. Now, the lead Appellant is June Robinson, a member of the group claiming exemption from taxation and other Appellants were named in ascending numerical order according to the docket number assigned to their appeal. The first page of Exhibit R-1 states the documents therein are to be deemed filed as an exhibit in each of the appeals noted below. There is a table containing further information and an explanatory heading that only documents relevant to the individual appeal of an Appellant will be deemed to be in the Joint Book of Documents for purposes of that appeal. Included in Exhibit R-1, is a 5-page Index indicating the location within the binder of certain documents which are arranged in categories according to the particular Placement Organizations involved and those relevant to a particular Appellant.

[6] Various documents and title pages within exhibits filed in the within appeals refer to an Appellant – Julie Pigeon – who advised the Court at the outset of the hearing that she did not wish to be part of the group of Appellants named herein and

wanted to represent herself. Her appeal was heard prior to the commencement of the within appeals.

[7] With respect to Exhibit R-2, that binder was originally prepared for the specific appeal of Bonnie Guarisco – 2009-1125(IT)I but the documents therein – by agreement of counsel – are applicable to all Appellants, where relevant.

[8] Exhibit R-4 is a Statement of Agreed Facts, ("Agreed Facts"), the relevant portion of which is reproduced below:

STATEMENT OF AGREED FACTS

The parties to these appeals, for the purposes only of these appeals, and as common evidence, agree to the following facts. The parties agree that each party is free to adduce in evidence additional facts not inconsistent with this Statement of Agreed Facts.

1. The parties adopt the Statement of Agreed Facts filed in the Tax Court of Canada proceeding *Roger Obonsawin v. Her Majesty the Queen*, Tax Court File 2000-4164 (GST)G. In substance and effect those facts are applicable to years subsequent to the period they describe. Attached as **Schedule "A"** to this document is the Statement of Agreed Facts as filed in that proceeding and as **Schedule "B"** the financial statements referred to in Schedule "A".

I. THE RELEVANT PERIOD

2. The relevant period for these appeals is between the years 1995 and 2008.

II. NATIVE LEASING SERVICES AND OI EMPLOYEE LEASING INC.

3. Roger Obonsawin is a status Indian and a member of the Odanak Indian Band, which has its reserve in Odanak, near Pierreville, east of Montreal. He is not a member of the Six Nations Band.
4. The Appellants were all employed by either Native Leasing Services (NLS) or OI Employee Leasing (OIEL) (together NLS/OIEL).

5. NLS, as an operating unit, was located on a reserve. NLS leased its office premises at the Woodland Cultural Centre on the Six Nations Reserve. NLS and other members of the O.I. Group of companies had offices in Toronto and Winnipeg but it operated primarily out of the Six Nations Reserve.

6. The majority of NLS/OIEL administrative staff in the Six Nations office, numbering from 8 to 15 people depending on the year, were Six Nations members, some of whom lived on the reserve. The key functions of the

employee leasing operation – human resources administration, payroll and benefits administration, invoicing and accounting as well as general administrative support – were conducted on the Six Nations Reserve.

7. To the extent that there were any deviations from the procedures to concentrate administrative and business function on the Six Nations Reserve, these instances were minor and insignificant. All NLS/OIEL files including financial and staff records were kept at the Six Nations Reserve office. NLS/OIEL also had a Toronto office where some of NLS/OIEL's administrative work was carried out. Obonsawin did not work regularly on the Six Nations Reserve, worked principally out of Toronto, and did not reside on the Six Nations Reserve until 2005, after which he still maintained his Toronto residence.

8. Up to 1999, the offices of NLS/OEIL were located in the Woodland Indian Cultural Centre on the Six Nation Reserve. In 2000, the offices were moved to a building known as "Eagle's Nest", which was also on Six Nations Reserve. The offices in both locations were rented from the Six Nations Band Council.

9. NLS/OIEL provided certain benefits to the Six Nations Reserve. These include training of personnel who live or may come to live on the reserve; however, this benefit was difficult to quantify. More direct benefit is evident in the rent to the reserve and salary and benefits paid to on-reserve staff during the years 1995 and 1996 was approximately $230,000 to $240,000.

10. The gross revenue of NLS/OIEL is generated off-reserve. It is estimated that OI had approximately 800 employees by 1997, 1000 leased employees by 1999, and as many as 1400 employees in the years between 1999 and 2006. The only functions carried out on the reserve are administrative functions.

11. From a business perspective, the employee leasing business is the *sine qua non* of NLS's operations. NLS financial statements show:

    a. In 1995 and 1996 respectively, NLS had gross revenue of $15,692,945 and $13,344,801, all of which were derived from the work of NLS employees off-reserve;

    b. 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 where the employee's 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 those employees leased to the client;

> 12. Roger Obonsawin does not have financial statements for NLS after 1997 although the business continues to operate.
>
> 13. The descriptions of the facts concerning Roger Obonsawin and the operations of NLS/OIEL by Justice Phelan of the Federal Court in the 2007 decision in *Horn et al. v. The Queen* at paras. 42 - 69 attached as **Schedule "C"** and Justice Paris of the Tax Court in the 2008 decision in *Roe v. The Queen* at paras. 6 - 20, attached as **Schedule "D"**, Associate Chief Justice Rossiter in the 2009 decision in *Googoo v. The Queen* at paras. 5 - 16, attached as **Schedule "E"** and Justice Sheridan in the 2009 decision in *McIvor v. The Queen* at paras. 20 - 31, attached as **Schedule "F"** fairly reflect the evidence that Roger Obonsawin has given and would give again.
>
> DATED in the city of Toronto, Ontario, this 20th day of October, 2010.

…

[9] Pursuant to paragraph 13 of the Agreed Facts, there are references to specific paragraphs in four decisions – one by the Federal Court and three by the Tax Court of Canada – as cited therein and counsel agreed those findings of fact fairly reflect the evidence that Roger Obonsawin has given in other proceedings and would give again.

[10] In order to minimize repetition in the recital of facts, I have examined the Agreed Facts and the specific paragraphs in the decisions referred to, which are attached as Schedules C, D, E, and F to Exhibit R-4. For the purposes of the within appeals, I have chosen the following:

- from the decision of Phelan J. in *Horn et al. v. The Queen et al.*, 2007 FC 1052, 2007 DTC 5589:

> **45** Obonsawin had extensive experience and training in the delivery of social services. His evidence was clear, direct and credible. The purpose of his business, aside from profit, was to improve his client organizations by providing training, governance expertise and administrative services including employee leasing.
>
> **46** The concept of employee leasing is another aspect of outsourcing. For a fee, an organization hires a leasing company to provide personnel and the administrative support for that personnel who, although employees of the leasing company, work for the hiring organization.
>
> **47** The genesis of the aboriginal employee leasing concept arose after Obonsawin and his partner, Ljuba Irwin, formed Obonsawin-Irwin Consulting

Inc., a management consulting company focused on aboriginal organizations. Obonsawin saw the need for skills improvement in aboriginal organizations.

48 The original employee leasing operation was conducted by O.I. Employee Leasing Inc. However, in 1991 NLS was formed, as a proprietorship, and the operations of O.I. Employee Leasing Inc. were split. O.I. Employee Leasing Inc. clients were departments and agencies of various levels of government while NLS's clients were aboriginal not-for-profit organizations.

49 Obonsawin testified that NLS was set up originally to deal with GST problems and only later was he made aware of the decision of the Supreme Court in *R. v. Nowegijick*, [1983] 1 S.C.R. 29. Obonsawin testified that he saw the immediate tax benefits under s. 87 in that it would allow aboriginal organizations the opportunity to offer more competitive salaries and would attract a better skilled work force.

50 This testimony is instructive in that it focuses attention on competitive salaries and raises the question of "with whom is the competition for salaries". It suggests that attention is being paid to the "market place" or "the mainstream of commerce". The implication is that by employees being income tax exempt, NLS's clients could offer employment to Natives through NLS which would be the same net amount to the employee but at a lesser gross cost amount to NLS's client. The NLS fee was less than the applicable tax rate imposed on the native employee's income.

53 A central feature of NLS's business is its employee leasing function. It is not, however, the only feature -- NLS provided benefits to its client native organizations particularly that of training to assist new and existing directors, and training for the development of strategic and financial plans. The evidence is replete with instances of NLS assisting its clients in dealing with structural and governance issues. However, these organizations, such as the Centre and the Shelter, continued to do their own training. NLS training was clearly supplemental to those clients.

55 The structure of the payment to NLS by the client was 5% of each leased employee's income for which the client received the benefits of payroll and benefits management, human resources support, training and shared information between other similar organizations. The leased native employee principally received the benefit of the tax exempt status.

- from the decision of Paris J. in *Roe v. Canada*, 2008 TCC 667, [2008] T.C.J. No. 509, the following paragraphs:

16 NLS and OI employees were able to access a range of optional benefits such as life and disability insurance and health and dental coverage that might not have been available if the worker had been employed directly by the client

organization. Mr. Obonsawin said that NLS and OI also provided training and retreats to evaluate the strategic plans of its employees, thus providing them with stability and direction. NLS and OI also maintained a library of training material on-site that could be accessed by any of the employees. Of the nine appellants in the cases at bar, only one took any training from NLS and none had used the library or participated in a retreat. NLS and OI also sent out newsletters and notices of job postings for different placement organizations to their employees.

18 NLS or OI would invoice the placement organizations four weeks in advance for the wages and fees for the NLS or OI employees working at the placement organization and, after receiving those funds, would pay the employees either by cheque or through direct deposit to their bank account. NLS and OI had bank accounts at an off-reserve bank in Ottawa for receiving direct deposits from clients and on the Hobbema Indian reserve in Alberta for paying employees and bills. No income tax was deducted from the salaries paid to the NLS or OI employees.

20 Mr. Obonsawin testified that one of the goals of NLS and OI was to assist in the development of a self-supporting native network in Canada. He said that the cross-country network of clients and employees that NLS and OI maintained, allowed employees to move between jobs and gain more skills and allowed them to give more back to their communities. He saw this as a means of dealing with native poverty. He said that the NLS and OI services could benefit any community and that the benefits to a reserve would come from the employees moving back to reserves with their new skills. Mr. Obonsawin estimated that NLS and OI had 1000 leased employees in 1999 and as many as 1400 in the years between 1999 and 2006.

- from the decision of Rossiter A.C.J. in *Googoo v. Canada*, 2008 TCC 589, 2009 DTC 1061, [2009] T.C.J. No. 48:

8 Mr. Obonsawin used his contacts with placement organizations to promote NLS. Because of his long history with NFCs, Mr. Obonsawin targeted them as clients. In his recruiting publicity he stated that if the services of NFC's were mainly provided off the reserve, one of the features that NLS could provide was a link to a reserve for tax exemption purposes. In marketing to prospective NLS employees, Mr. Obonsawin would emphasize the advantages he thought were offered by NLS including support services, a benefit package, training and the tax exempt status for Indian employees. Mr. Obonsawin felt that there was a need for strengthening of the NFC's programs, by providing a better system for training and for educating staff. Taxation exemption was one way to accomplish the purposes.

9 The NLS advantage that caught the attention of a placement organization and its employees was indeed tax exemption for status Indians employees. In effect, the placement organization's Native employees would become employees of NLS

and provide the same services to the placement organization as they did previously but with a different legal employer, NLS. The placement organization could provide a salary level higher in reality, than others, because the employees, if status Indians, were getting their salary exempt of tax. NLS completed all employee paperwork, including the payroll and source deductions and provided human resources support. If an employee became problematic the placement organization would inform NLS, would attempt to resolve the issue(s) and, if the issue(s) could not be resolved, then the employee was terminated. NLS would then follow through with employment counseling.

10 Once a Native employee of a placement organization became an employee of NLS, the employee would provide an executed release of liability form to the placement organization. A standard placement agreement was generated by NLS Human Resources defining the lease position, the annual cost, the relationship, notices if there was termination of the relationship, as well as confidentiality and conflict of interest issues. The Agreement would be sent to a placement organization for signature and returned to NLS for the signature of Mr. Obonsawin. The contractual obligations by NLS to the placement organizations were basically to provide payroll services, training, and some benefits as well as some human resources services. Once the placement agreement completed, a contract of employment was also completed for each of the employees.

11 The contract of employment is particular with respect to the benefits chosen by the employee. Employment Insurance and Canada Pension Plan deductions were not options of the employee as NLS was responsible for source deductions. NLS handled all remittances, did all the filings, dealt with modified work and return to work, kept track of vacation pay as well as paid leave or time off and was responsible for compliance with all employer standards legislation.

13 If a placement organization wanted to terminate its relationship with NLS, the employees were paid up to the final day with NLS including vacation pay. If an employee was terminated, NLS would try to place the employee with another organization depending on what was available. The assistance provided to terminated employees was limited to information about Native employment opportunities. NLS issued bi-weekly newsletters which showed opportunities that were available for employees.

14 In any dispute between leased employees and the placement organization the initial contact would be with a NLS Human Resources staff. They would receive the complaint, define the issues, and speak with the employee and the placement organization. If the issue was straightforward, they dealt with it, if not they would go to a labour lawyer.

15 Mr. Obonsawin felt that training was a benefit to NLS employees as it was provided free by NLS. According to Mr. Obonsawin this made it attractive for the placement organizations to do business with NLS. In 1996 NLS only paid $3,979

> in training and in 1997, $5,910, even though NLS had hundreds of employees. Training was contracted out by NLS and provided by non-Native entities (except for the Ojibuay Language Conference and a Counseling Workshop). No training was provided on a reserve and attendees could be Native or non-Native. None of the Appellants took any of the training offered. NLS would pay for the training registration but the wages and travel of the employees would be paid by the placement organization and the training would be treated as a work day. Also, the placement organizations provided some training to their own employees. The training provided by the placement organization was specific to the job services provided while the training provided by NLS through non-Native entities was more generic in nature. NLS did not know what training was needed by employee X or if employee X would benefit from any particular training. Employees would have an opportunity to file a training registration form, with their placement organization supervisor's approval.

[11] Unless stated otherwise, reference to tabs hereafter are intended to refer to those located within the Joint Book of Documents, Exhibit R-1.

[12] There are various references in documents and in testimony to OI Employee Leasing, OIEL and OI Group. They will be referred to simply as OI. In some instances, there was a change in the employer of an Appellant from OI to NLS. However, in all the within appeals, the employer is NLS, a sole proprietorship of Roger Obonsawin. Anduhyaun was pronounced by various witnesses as, “En-dye-on”, “An-dye-on” or – in Ojibway – “Awn-dye-on.”

Jules Koostachin: 2007-1026(IT)I
Taxation years: 2005 and 2006
Relevant documents are at tabs 1A, 2B, 3I

[13] Jules Koostachin (“Koostachin”) testified she resides in Toronto. As a result of Bill C-31, her mother – in 1985 – regained status previously been lost through marriage to a non-native. Koostachin grew up in Moosonee and Ottawa and never lived on a reserve. Recently, she graduated from Ryerson University in the Masters Program in Documentary Media. She has extended family on the Attawapiskat First Nation Reserve located in the Kenora district of Ontario and visited there in the autumn of 2009 but not during 2005 and 2006. Koostachin stated she has no real connection to that Reserve but her family hunted and fished in that territory. She is a jingle dress dancer and participates in powwows held at various locations. Koostachin decided to become employed by NLS to exercise her perceived right to an exemption from income tax. As a single mother with two young children, the opportunity to take home more income was important. Koostachin worked as Director at a facility (the “Shelter”) operated by Anduhyaun Inc. (“Anduhyaun”) – a

non-profit corporation pursuant to Letters Patent issued by the Province of Ontario on March 12, 1973. The Shelter – located in Toronto – was established to provide a place of refuge for Aboriginal women. Koostachin oversaw programs, handled intake and taught life skills within the context of an overall program designed to assist women fleeing violence in their homes or on the street. Since many Aboriginal people move from one area to another, many women seeking help had left their reserve. There are no reserves located within the geographical boundaries of Toronto. The program at the Shelter had a strong cultural component.

[14] In cross-examination, Koostachin stated women are free to choose whether to return to their own reserve or to remain away. NLS conducted performance reviews by obtaining information from Blanche Meawassige, the Executive Director of the Shelter. Koostachin stated her salary was determined by the Board of Directors of Anduhyaun.

[15] In re-direct examination, Koostachin was referred to a contract of employment between herself and NLS – within tab 3I – dated February 4, 2005 pursuant to which her salary was $50,000 per year, later increased to $53,435 by an amendment effective February 18, 2005.

Sandra King: 2007-807(IT)I
Taxation years: 1999, 2005, 2006, 2007
Relevant documents are at tabs 1A, 2B, 3H

[16] Sandra King (“King”) testified she has been a status Indian all her life. During the years at issue, she lived in Toronto. She is a member of the Wasauksing First Nation located north of Parry Sound, Ontario and she and her husband visit there. King was raised in foster or institutional care until age 16 when she moved to Toronto and has never lived on a reserve. Her brothers and sisters and members of her mother’s family live on the Reserve but she does not visit them. In 1996, King had signed a contract with NLS whereby she became an employee. She wanted to learn about native language and culture and to work with children under circumstances where her salary would be exempt from tax. By virtue of other contracts including one dated April 15, 2005, she worked for NLS until June 30, 2010. Pursuant to said contract, her salary per annum was $33,649.20. During the years 2005 to 2007, inclusive, she worked at the Shelter – in Toronto – as an Assistant Early Childhood Educator. Her duties involved caring for babies in the daycare and as a “float” to relieve others working with toddlers and pre-schoolers. The program included drumming, dancing and music, even in the room occupied by infants aged 5 to 18 months.

[17] In cross-examination, King stated she had one supervisor earlier and Koostachin in later years and both had provided performance reviews to NLS.

Janet Takata: 2007-1897(IT)I
Taxation years: 2005, 2006, 2007, 2008
Relevant documents are at tabs 1A, 2B, 3M

[18] Janet Takata ("Takata") testified she resides in Toronto and works as a Residential Counsellor at the Shelter operated by Anduhyaun. She has been a status Indian all her life and is a member of the Micmac (Mi'Kmaq) Nation in Nova Scotia. She was born in Sydney – off-reserve – but lived on the Reserve until age 19 when she went to Halifax, then Toronto where she remained. Her mother – aged 88 – currently lives in a home off-reserve but her brothers and sisters live on the Reserve. Her husband – John Y Takata – is not a status Indian. Takata stated she visits her Reserve two or three times a year. Her role as Residential Counsellor at the Shelter is to perform functions – associated with intake – to assist women and their children to access housing, medical treatment, upgrading in training and education, counselling for addictions and as victims of sexual assaults and to obtain child care. The majority of clients are Aboriginal women and children but Shelter has helped others from time to time. At the facility operated by Native Women's Resource Centre of Toronto Inc. – ("NWRC or Centre") – women from the Shelter participate in the Full Moon Ceremonies which are held once a month in cooperation with other organizations. As part of her intake duties, Takata refers clients to the health care facility which is Aboriginal in nature and to native organizations dealing with addictions.

[19] In cross-examination, Takata confirmed that she had been an employee of Anduhyaun since 2001 but became an employee of NLS in 2005. There was no change in the duties performed.

Simone Hillier: 2007-799(IT)I
Taxation years: 1995, 1998, 1999, 2005, 2006
Relevant documents are at tabs 1A, 2B, 3F

[20] With respect to the 1999 taxation year, counsel for the Respondent moved to quash the appeal on the basis no federal tax was payable. The motion was not opposed. In accordance with well-settled jurisprudence, beginning with the judgment of the Supreme Court of Canada in *Okalta Oils Limited v. Minister of National Revenue*, 55 DTC 1176, it is beyond dispute that when the Minister assesses no tax,

there is no appeal from it. Therefore, the purported appeal for the 1999 taxation year is hereby quashed.

[21] Simone Hillier testified she is employed by NLS as a Crisis Support Life Skills Counsellor and works at the Shelter. She is a status Indian but her mother had lost her own status due to marriage with a non-Indian. However, her mother regained it in 1985 as a consequence of Bill C-31, passed by Parliament on June 18, 1985 to amend certain provisions of the *Indian Act.* Hillier is a member of Six Nations of the Grand River ("Six Nations") located near Brantford, Ontario. She has never lived on that Reserve and her mother left there – when Hillier was 7 years old – and moved to Hamilton. Hillier stated she was unable to reside on the Reserve because she lacked status. In recent years - during August - she attends powwows at Six Nations and has visited other reserves for the purpose of gaming in a casino. Hillier stated the Six Nations Reserve is the birthplace of her mother and other members of their family and considers that territory to be her "roots." Hillier stated she chose to be employed by NLS because she was informed her salary would be exempt from taxation and she respected the advice received from those in charge at NLS and OI. As a counsellor, Hillier welcomed women and children seeking assistance and refuge from violence. Prior to 2005, she worked as a Residential Counsellor. In that position, she undertook an analysis of the situation with a view to satisfying the specific needs of clients who often required referrals to an appropriate organization dealing with Aboriginal culture. At the Shelter, residents participated in a "smudging" ceremony and other celebrations symbolic of purification were conducted by Elders who visited the Shelter for that purpose. Hillier stated she worked with various groups to empower women and to provide information concerning issues such as boundaries, assertiveness, defining and examining the nature of violence. The purpose of the program was to elevate self-esteem utilizing a variety of techniques. Some clients seeking help from the Shelter had been subject to certain troubling experiences while in residential schools.

[22] In cross-examination, Hillier stated she also provided her services to a facility known as Nekenaan Second Stage Housing ("Nekenaan or Second Stage") which is located in Toronto. Prior to 2005 and currently in her new position, the Shelter Coordinator is her supervisor. There are 12 shelters in Toronto but Anduhyaun is the only one dealing specifically with violence against Aboriginal women. On occasion, this facility will take in a homeless person but the primary focus is to shelter women and children from violence and threats and space is limited to only 16 beds and two cribs.

[23] Blanche Meawassige ("Meawassige") testified she resides in Toronto and has been employed under written contract with NLS since 2005 to provide her services to Anduhyaun as Executive Director. Beginning in 2003, after working as a Program Coordinator for the University of Toronto, she was employed by Anduhyaun to perform the same function. Subsequent to becoming employed by NLS, she continued as Executive Director and oversees day-to-day operations. Meawassige stated she is a member of the Serpent River First Nation located 2 hours north of Sudbury, Ontario. Her birth certificate, apart from containing the usual relevant information, also recorded her arrival as the "birth of a live Indian." She lost her status due to marriage to a non-Indian but regained it pursuant to the provisions of Bill C-31. Meawassige stated Anduhyaun operates the Shelter which accepts native women and children fleeing abusive situations regardless of their place of origin within Canada. The residential facility known as Nekenaan or Second Stage is a healing lodge that can house 42 Aboriginal women and children. Applicants seeking refuge provide information which is entered into a document titled Initial Application Form (near the back of tab 2B in the numbered tabs at the first part of Exhibit R-1.) Within the same tab, is a sheet titled Nekenaan Housing Policies. In accordance with the relevant funding agreement with Toronto Housing Authority, applicants must provide verification of their Aboriginal ancestry which can be in the form of a status card or a Métis card which may be issued by the Métis Nation of Canada or other authorized Métis Nation, Council, Federation or Alliance in a province. Other documents may be submitted to verify ancestry but must be approved by Nekenaan staff. Meawassige stated that if a woman is non-native but her children are status Indians, the housing program will accept her and the children. Non-native women are accepted at the Shelter but space is limited and if beds are required to accommodate an Aboriginal woman, the non-native will be referred to another facility. Meawassige stated the Anduhyaun mandate and vision is to support native women and their children in their efforts to maintain their cultural identity, self-esteem and their economic, physical and spiritual well-being. Anduhyaun operated Awashishuck Daycare ("Daycare") until June 30, 2010. During the years relevant to the within appeals, Daycare was specifically designed with a strong cultural foundation for Aboriginal children so they could learn about heritage and language. Currently, Anduhyaun provides an Aboriginal Crisis Intervention Program. The crisis counselling was an in-house program and also part of an outreach structure. Meawassige stated Hillier was involved in developing this program. Using healing circles, a program was created to counsel victims of sexual abuse. The Anduhyaun vision is depicted in the form of a Medicine Wheel and these programs are available only to Aboriginal women. Within Nekenaan, there is an Elders' Suite to accommodate teachers who attend the lodge to conduct ceremonies in which a fireplace plays an important role. The facility is restricted to women and children and

men are not permitted to visit. However, a male Elder may attend and be housed there for the purpose of participating in a cultural ceremony, provided he is accompanied by his spouse. Meawassige stated that – often – women arrive directly from a First Nation community but acceptance into the Shelter does not depend on origin. In one instance, a woman came from British Columbia. Her life was in imminent danger arising from threats by her spouse who was a member of a criminal gang and Shelter provided her with sanctuary. One woman with 5 children was fleeing her community as a result of threats to her safety. Many women come to the Shelter battered, hungry and under severe stress. In the event the Shelter has no space available, the intake workers consult a list of First Nations shelters and referrals are made to other facilities, perhaps to Six Nations Reserve in Brantford, the reserve closest to Toronto. The appropriate Police Service is called upon to provide assistance. The Shelter provides basic necessities as sometimes women arrive clad only in their nightgowns. Meawassige stated the majority of Anduhyaun staff are native as are all members of the Board which is responsible for strategic planning. The Board holds regular meetings 8 months a year. As Executive Director, Meawassige is required to attend each meeting unless unable to do so in which case the Acting Executive Director attends on her behalf. The Shelter Manager provides Meawassige with monthly reports but there is no attempt to distinguish between reserve and off-reserve clients since a person's specific place of origin or residence is not a significant factor in Aboriginal culture. Instead, the service provided to First Nations people – at the Shelter – is within a continuum. However, when women and children are accepted into the Anduhyaun housing component – Second Stage – they must have Indian status or a Métis card. Meawassige stated that not all workers at Anduhyaun were employed by NLS. Anduhyaun employed 36 people, some of whom were part-time or on-call but 8 permanent, full-time workers were employed by NLS, most of whom were status Indians. On occasion, Meawassige contacted the NLS office in regard to certain matters involving unionized staff and Anduhyaun retained counsel with expertise in labour law and NLS provided an individual who was knowledgeable in health and health and safety issues. Meawassige stated Anduhyaun relied heavily on NLS to resolve human resources issues and it was a mechanism to "bounce ideas off" from time to time or to discuss confidential matters. In Meawassige's personal situation, she had to leave her First Nations community in order to provide for herself and her children but, in doing so, did not consider that she had shed or abandoned her heritage through that relocation. NLS entered into a Placement Agreement with Anduhyaun on February 4, 2005, whereby it would provide employees to fill 6 full-time positions at an annual cost of $268,444.28, including those of Executive Director, Director of Daycare, Director of Shelter Administrative Management and Resident Relations/Cultural Coordinator. Performance reviews of other employees were undertaken by the manager of a

particular program and as Executive Director, Meawassige examined the performance of these managers. The performance reviews were not linked to any potential salary increase since the salaries of Anduhyaun workers were governed either by collective agreement or by the provisions of certain pay equity legislation and NLS played no role whatsoever in establishing those salaries. Clerical staff, counsellors and relief workers were represented by the Canadian Union of Public Employees ("CUPE") but the Executive Director and Program Managers were exempt. Meawassige stated CUPE was aware of the transition whereby certain Anduhyaun employees became employed by NLS even though they continued to perform the same function and occupied the same position.

[24] In cross-examination, Meawassige confirmed that when she chose to become employed by NLS to provide her services to Anduhyaun as Executive Director, there was no change in her duties. Anduhyaun retained an outside accountant to perform payroll duties.

June Robinson: 2007-154(IT)I
Taxation years: 1995, 1996, 1997, 1999, 2005, 2006, 2007, 2008
Relevant documents are at tabs 1A, 2B, 3L

[25] June Robinson ("Robinson") testified she resides in Scarborough, Ontario and is employed by Anduhyaun as a Residential Counsellor. As a result of Bill C-31, she regained her status which had been lost as a result of marrying a non-Indian. Robinson moved to Toronto in 1985 from the Hiawatha Nation located 20 kilometres south of Peterborough, Ontario and during the years relevant to her appeals, resided in Toronto. She lived on the Hiawatha Reserve for about 40 years but after marriage moved to Peterborough with her non-native husband to find employment. Many nieces and nephews continue to reside at Hiawatha and she travels there by bus to visit them and others. Robinson is a member of the Hiawatha Band and is aware that payments to the Band by the federal government are based on membership. She votes in Band elections. Robinson stated she decided to enter into a written employment contract with NLS after having been informed that pursuant to her treaty rights as a status Indian, her salary was exempt from income tax. During the period 1995 to 1999, Robinson worked at the Shelter as a Residential Counsellor and an intake worker where she encountered people who had left their Reserve – usually for economic reasons - and found themselves in precarious situations where they were homeless and – often – victims of violence. Robinson stated there was an Aboriginal cultural component integrated into all programs offered by Anduhyaun. The overall goal was to assist Aboriginal women with training and strategies to deal with addictions or other problems. Through feedback from former recipients of services

provided by Anduhyaun, Robinson was aware that some had returned to their reserve while others remained in the Greater Toronto Area ("GTA").

[26] In cross-examination, Robinson stated Anduhyaun clients had the choice whether to return to their native communities or to remain in the city.

Linda Cockburn: 2007-500(IT)I
Taxation year: 1995
Relevant documents are at tabs 1A, 2B, 3B

[27] Linda Cockburn ("Cockburn") testified she has been a status Indian all her life and is a member of the Cree nation in the James Bay region. She was born in Moose Factory, Ontario and lived on the Albany Reserve – near Fort Albany, Ontario – until age 5 when her mother moved to Toronto. Since then, Cockburn has not lived on any reserve. She is married to a non-native, has children, and wanted to provide them with opportunities not available on Albany Reserve. Her 5 brothers and sisters all live there as do several nieces, cousins and uncles. Cockburn stated she visits there at least once a year and has a personal connection through family and friends. Albany Reserve is a 10-hour drive from Toronto and Cockburn used to travel there by train or by airplane but in recent years the cost became prohibitive. In 1995, Cockburn was an employee of NLS which she considered would entitle her to "pay no income tax on her salary" and to have access to a broad range of employment opportunities by being able to transfer to other agencies and organizations. Cockburn had been a leased NLS employee since 1993 and was placed with Anduhyaun in the position of Children's Programmer. She also handled intake duties, taught arts and crafts and assisted with the family circles which had a component of cultural teachings. After 1995, Cockburn stayed home with her children for several years before returning to the work force where she is currently employed as a Provisioner.

[28] In cross-examination, Cockburn stated she received Cardiopulmonary Resuscitation ("CPR") and stress management training at the Shelter which she thought had been provided by NLS.

Julie Debassige: 2007-1110(IT)I
Taxation years: 1996, 1997, 2002, 2003
Relevant documents are at tabs 1A, 2B, 2C, 2D, 3C

[29] Julie Debassige ("Debassige") testified she is a Traditional Counsellor working at Anishnawbe Health Toronto ("AHT"). By Supplementary Letters Patent dated October 9, 1987, AHT became a successor to the previous non-profit corporation – Anishnawbe Health Resources – which was created pursuant to Letters

Patent dated October 9, 1987. Debassige has been a status Indian all her life. She was born at M'Chigeeng – formerly West Bay – on Manitoulin Island, Ontario. She resided there until she completed Grade 13. Between 1984 and 1994, Debassige resided on the Reserve where she taught the Ojibway language to children and sat on committees established by the Band Council. In 1994, she returned to Toronto to pursue higher education and obtained an Honours Degree in Psychology from York University. Two of her brothers and several first cousins live at M'Chigeeng where the family home is maintained. Debassige votes in Band elections. She stated her family is well-known and respected in that community and she could rely on the Band for assistance including funding for her Masters program. Her mother lives in a home for seniors on the Sagamok Reserve. Nearly every year during a 3-week vacation, Debassige travels by bus to visit her mother. Her other visits to a reserve are to Chippewas of Rama First Nation ("Rama") near Orillia where there is a large commercial casino. Debassige stated she came to Toronto originally to care for her sister. However, she wants to be buried on M'Chigeeng Reserve because it is her home and she does not want to abandon that link. When Debassige entered into a contract of employment with NLS – January 15, 1996 – to provide her services as a Language Teacher/Receptionist to Anduhyaun, she was aware this agreement could provide her with "a chance to not pay income tax." As an employee of NLS at some point in the working relationship, she was able to access certain extended health benefits – possibly through OI – that were not available previously. However, her primary motivation in becoming an employee of NLS was to exercise perceived treaty rights to claim an exemption from tax on her salary. Working at Daycare, she developed a format to teach Ojibway language to children and also in other pre-school classes. Debassige stated there are no harsh sounds in Ojibway and that it is important to impart a sense of the language at an early age to facilitate future learning. In addition to teaching, she performed secretarial services, assisted staff in playground supervision and provided support for the Director. Debassige also taught numeracy and participated in storytelling and smudging where sage and other medicines are burned as part of a cleansing ceremony. Most of her duties were performed at Anduhyaun but she also worked at home where she prepared individualized packages of instruction. Debassige left Daycare in 2002 and started working as a coordinator of a program involving young children and their mothers who required child care to enable them to access programs or to seek employment. NWRC operated a daycare program with an enrolment of 42 which was open to the general public. NWRC also offered an advocacy program, housing program, food bank, literacy instruction and activities with a cultural component such as excursions and Full Moon Ceremonies which were guided by Elders. On September 22, 2003, Debassige entered into an employment contract with NLS whereby she agreed to provide her services to AHT – for $38,000 a year – as a Program Coordinator to

assist in the implementation of services to reduce the impact of Fetal Alcohol Syndrome Disorder ("FASD") and to increase awareness of risks associated with alcohol consumption during pregnancy. Programs were also established to enable diagnosis and early intervention and Elders were part of the diagnostic team. Workshops were held dealing with dangers of alcohol abuse and healthy baby workshops were established to provide information and instruction concerning nutrition, health and preventative measures to ensure well-being. Debassige stated Ojibway people believe the first three years of a child's life are critical because the "womb is not an iron fortress" and various factors can influence the development of a fetus.

[30] In cross-examination, Debassige agreed that according to Schedule A in her employment contract with NLS – dated April 10, 2000 – she did not receive extended health care benefits. She conceded such benefits may have accrued to her through another mechanism. All duties performed for NLS were in Toronto. At the Shelter, she taught Ojibway language classes to all young children regardless of the First Nation to which they belonged. While placed at NWRC as a Family Support Counsellor, Debassige performed no duties on any reserve. During her tenure at NWRC, she worked for 8 different Executive Directors and was not aware of the method by which her salary was established but job descriptions always stated the salary payable. All community events organized – or participated in – by NWRC were held in Toronto.

Leanna Gerrior: 2007-1525(IT)I
Taxation years: 1995, 1996, 1997, 1998
Relevant documents are at tabs 1A, 2B, 2F, 3D

[31] Leanna Gerrior ("Gerrior") testified she resides in Toronto and did so during the relevant years. She is a status Indian as a result of her mother having regained – in 1986 – the status lost previously through marriage to a non-native. Gerrior is a member of the Wikwemikong First Nation situate on Manitoulin Island. Gerrior was born in Toronto and, after age 10, lived in Florida for the next 14 years. After returning to Canada, she attended the University of Western Ontario and obtained a Bachelor of Science degree in biology. Gerrior has never lived on a reserve and does not have a strong connection to Wikwemikong. Her mother left there, moved to Toronto and did not return. Gerrior visits her aunt and other relatives on the Sheguiandah Reserve on Manitoulin Island and has attended powwows on other reserves. Gerrior's husband is a status Indian from a reserve located southwest of London, Ontario and in the past she has spent some time there. During the taxation years under appeal, she was employed by NLS and entered into the initial contract to

receive a tax exemption on employment earnings and to obtain certain benefits. Between 1992 and 1995, Gerrior was placed at Anduhyaun where she worked as a Residential Counsellor and later assumed the position of Assistant Executive Director. The clients at the Shelter were Aboriginal women and children from various reserves within Canada and Anduhyaun designed programs to offer a cultural experience to those seeking refuge as many were not well-grounded in their own heritage. Monthly ceremonies were held and different training courses focused on Aboriginal culture. The Shelter did not require proof of ancestry and people were permitted to self-identify as Aboriginal but the housing component required proof in a satisfactory form as a pre-requisite for admission to the residential program. As a Counsellor, Gerrior handled intake, crisis calls and referrals to other centres where necessary. Action plans were developed for individual clients. In the role of Assistant Executive Director, Gerrior participated in hiring personnel and in developing certain programs. All work was performed in Toronto. In 1996, Gerrior was placed at a facility operated by Pedahbun Lodge Inc. ("Pedahbun"), an Aboriginal-designed-and-directed substances abuse treatment centre. At Pedahbun, the treatment philosophy is based on traditional concepts of healing with the purpose of facilitating healing and recovery from addiction and related problems. The program is based on positive cultural reinforcement, self-empowerment and the teaching of skills. The treatment program includes personal counselling, group therapy, workshop and discussion groups. The participants must be of Aboriginal ancestry and over 18 years of age. Some of the culture-based activities included smudging ceremonies, fire burning and the offering of tobacco for traditional ceremonial purposes. There were programs provided to encourage Pedahbun residents to follow a dietary regimen more in accord with traditional values and to understand the role of proper foods in the recovery and healing process. All duties performed by Gerrior for NLS were in Toronto.

[32] In cross-examination, Gerrior confirmed that as Assistant Executive Director, she informed NLS of the name of a potential employee and the salary applicable to the position. Gerrior acknowledged that no benefits were listed in Schedule A to her employment contract – with OI – dated February 19, 1996, nor were there any employment benefits available from NLS pursuant to the written contract dated January 9, 1997. However, she had participated in certain benefits offered in her contract dated January 21, 1993, pursuant to which she was placed at Anduhyaun as a Residential Counsellor. The benefits checked off in the boxes at Schedule A included Long Term Disability, Life Insurance, A. D & D, and Other, without any further description. Gerrior stated she worked at Pedahbun only from February 19 to September 27, 1996.

Taxation years: 1995, 1996, 1998, 1999, 2000, 2001
Relevant documents are at tabs 1A, 2A, 2B, 2D, 3G

[33] Joan Kennedy ("Kennedy") testified she lived in Brampton during the relevant years and is currently on leave from her employment. She is a status Indian as a result of regaining status in 1985 which had been lost as a consequence of her marriage to a non-native. She is a member of the Whitefish River First Nation located on Manitoulin Island. She was born there and remained until age 19 but the lack of employment caused her to leave and to move to Toronto where all her siblings resided. She completed Grade 12 and a summer course at Lakehead University where she enrolled in a business administration and management program. Kennedy owns property on Whitefish River Reserve and her sister lives there. She visits there two weeks a year and attends powwows at Six Nations Reserve and on another reserve. As an employee of NLS, she was placed at Anduhyaun and worked as a Receptionist greeting clients, answering the phone and carrying out administrative duties. She worked at the Shelter between 1994 and 1998 and then took leave for a few months. She returned to work as a receptionist at NWRC and between October, 1999 and March, 2000 performed the same type of duties as at Anduhyaun. Her next employment with NLS was as a Receptionist at Aboriginal Legal Services Toronto Inc. ("ALS").

[34] In cross-examination, Kennedy stated her residence in Brampton is not on a reserve and that all duties described in her testimony were performed in Toronto.

Bonnie Guarisco: 2009-1125(IT)I
Taxation years: 2005, 2006, 2007
Relevant documents are at tabs 1A, 2B, 2E, 3E

[35] Exhibit R-2 is the binder with documents at tab A followed by tabs 1-15, inclusive.

[36] Bonnie Guarisco ("Guarisco") testified she is employed by the Ontario Federation of Indian Friendship Centres ("OFIFC"). During the years relevant to her appeals, she resided in Toronto. She is a status Indian and a member of the Wauzhushk Onigum First Nation near Kenora. She was born in Toronto to a teenage mother and was apprehended and placed into care and later adopted - at age one - by a non-native family. Guarisco lived on that Reserve from 1998 to 2000, inclusive, where she worked as an Administrative Assistant and during that period had the opportunity to connect with her family and Aboriginal culture. She left her employment at the Reserve and enrolled at University of Toronto where she received

a Master of Social Work. During the past 4 years, she has visited her Reserve 3 or 4 times a year and to do so must travel by bus for 20 hours. On occasion, she travels there by airplane. She visits other reserves to attend powwows and participates therein as a jingle dress dancer. She also attends at casinos located on reserves. During the years relevant to her appeals, she was placed by NLS at Anduhyaun and her first job was aiding sexual assault workers. Later, she held other positions at the Shelter and at Second Stage which was at a different location in Toronto. At both facilities, there was a cultural aspect to programs and activities and Elders were brought in to offer traditional counselling to individuals and through group healing circles. In July 2007, pursuant to her written contract with NLS, she was placed at OFIFC which provided services to 29 Friendship Centres ("Centres") in Ontario in the form of program audits, on-site training pertaining to various subject matters including physical and mental health. Services also relate to court workers and to diversion, employment, addictions and anti-violence programs. Services can be accessed by any person who self-identifies as an Aboriginal. None of the 29 Centres are located on a reserve and in Guarisco's opinion that is because most reserves are located near a municipality where a broader range of services are available. There is also the issue of confidentiality if certain treatment is undertaken on a reserve with a small population. At OFIFC, Guarisco began as a Community Support Worker but now works in the Community Justice Program. At OFIFC, there is a mandatory cultural component in every program. Elders from various First Nations across Canada are brought in to provide instruction in cultural activities such as drum-making and to discuss a connection to history and the relationship of certain events occurring in the past – such as residential school programs – and their current effect on many Aboriginal people and their families. Guarisco stated she chose to work for Aboriginal organizations and believes this work is important and that she is part of the Aboriginal community. When NLS offered her an employment contract, she embraced the concept of that entity.

[37] In cross-examination, Guarisco stated she was never a direct employee of Anduhyaun and only provided her services pursuant to her contract with NLS. Service was available to any female who identified herself as Aboriginal, whether a status Indian, non-status, Métis or Inuit. However, in dire circumstances, shelter was provided – or a referral made – to any woman and her children who were seeking refuge. Guarisco stated OFIFC does not distinguish between people living on a reserve or off-reserve when providing services or administering programs.

[38] Maggie Wente ("Wente") testified she is a member of Serpent River First Nations whose territory is near Elliot Lake, Ontario. She is a lawyer, practising as a partner with Olthius, Kleer, Townshend LLP in Toronto. She has been a member of the Board of ALS - which also operates a Legal Clinic ("Clinic") within the same

overall framework – since 2005, and President since 2008. The majority of the Board are Aboriginals. Clinic provides a wide range of services in various areas such as housing problems and human rights, work-related disability claims matters arising pursuant to the *Employment Insurance Act*, *Canada Pension Plan*, complaints concerning police, criminal injuries compensation and various other issues pertaining to the *Indian Act.* ALS is also involved in law reform and intervenes in various courts at the Appellate level to provide an Aboriginal perspective even though the potential effect on Aboriginal people may be indirect. The Mission Statement – within tab 2A – is to strengthen the capacity of the Aboriginal community and its citizens to deal with justice issues and provide Aboriginal-controlled and culturally-based justice alternatives. Pursuant to section 718.2 (e) of the *Criminal Code of Canada* (“*Code”*) and a 1999 decision by the Supreme Court of Canada in *R. v. Gladue*, 1999 1 S.C.R. 688, three courts in Toronto – known as Gladue Courts – were established. The Supreme Court stated the provisions of that section of the *Code* applied to all Aboriginal offenders whether they lived on a reserve, in a rural area off-reserve or in large city. In Toronto, adult offenders can have their cases transferred to a Gladue Court which accepts guilty pleas, sentences offenders and hears bail applications. Three Gladue Caseworkers are employed by ALS and they write reports at the request of counsel or the presiding judge concerning the life circumstances of the offender and recommendations are included for consideration by the particular Gladue Court. ALS has developed alternative sentencing programs and provides victim services. All social programs have a cultural basis and the development of a strong cultural connection is important in attempting to reduce recidivism. ALS staff are mainly Aboriginals and attend cultural events and participate in sweat lodge, sweet grass and other ceremonies. Wente stated there is no other organization in Canada similar to ALS so it is called upon by other groups and organizations to offer advice. Self-identification as an Aboriginal person is the only requirement to become eligible to receive services provided by ALS but additional evidence of origin may be requested. If a person is charged with a crime in the urban centres of Toronto, Hamilton, Kitchener-Waterloo, Guelph, the ALS staff do not inquire about the home community of the applicant. Wente believes many people return to their reserve once the court process has been completed. NLS provided employees to ALS but at the initial interview people were provided with information and asked whether they wished to work for ALS. Some chose to be employed directly by ALS. With respect to certain employee benefits, the ALS workers assigned to the Clinic were entitled to participate because it was linked to Legal Aid Ontario which was a large group. Employees of NLS and others working directly for ALS who performed functions outside the scope of the Clinic were not permitted to access those benefits.

[39] In cross-examination, Wente acknowledged the objects of ALS as set forth in the Letters Patent – dated February 21, 1990 – at paragraph (c) was to "provide advice to Aboriginal people in Metropolitan Toronto on their legal rights and recourse in areas of civil and administrative law." However, when people were charged with an offence in Toronto, it did not matter where the individual was from, provided he or she identified themselves as an Aboriginal person. Wente stated ALS determined the appropriate salary for a particular position and advised NLS of the name of the potential employee and the amount payable. Workers employed directly by ALS and those working under an employment contract with NLS participated equally in cultural activities and there was no difference in day-to-day functions carried out by members of these two groups. Wente stated the distinction between the functions of ALS and those of the Clinic was illustrated by the draft contracts – within tab 2A – in which Aboriginal Legal Services was named as the placement organization in one, while in another the employee's services were to be provided to Aboriginal Legal Services ("Legal Clinic"). However, ALS paid workers' compensation premiums for the entire staff including those employed by NLS. Wente was not aware of any direct training provided by NLS but it was entitled to do so and ALS provided training to workers who delivered services to the Aboriginal community. The ALS office was located in Toronto but one person worked from an office on the Six Nations Reserve. Wente did not know whether this individual was a status Indian. When requested by a lawyer or another group or organization to provide a Gladue report - akin to an extensive pre-sentence report – the administrators of ALS decide whether to undertake that task and if a Caseworker is assigned, then a fee is charged to compensate for the cost of the worker's time and expenses related to the production of the report. The Clinic does not provide direct criminal defence assistance to individuals charged with offences as that is handled through Duty Counsel and other counsel provided by Legal Aid Ontario. Preparation of Gladue reports by ALS is not funded by Legal Aid Ontario. Wente stated that since January 1, 2010, NLS no longer leases employees to ALS.

[40] In re-direct examination, Wente stated she understood NLS was responsible for payment of any amounts considered payable when settling a dispute with an NLS employee. Since 1992, the Executive Director of ALS has been an employee of NLS and the two divisions – ALS and Clinic – have a total of 25 employees.

[41] Ayn Cooney ("Cooney") testified she is an Advisor/Coordinator employed by the Ministry of Aboriginal Affairs, Province of Ontario. She works in the office of the Assistant Deputy-Minister and handles administrative duties and coordination of travel. She was a member of the Board of NWRC and served as Acting President. She has been a status Indian all her life and is a member of the Mohawk Nation on

Six Nations Reserve. She was educated at George Brown College and Ryerson University. The Centre operated by NWRC opened in 1985. It provides culturally appropriate programs and services to Aboriginal women and children, including housing, life skills, advocacy, self-help programs, pre-natal, infant and child development, nutrition, parenting skills and cultural development. There was a student advancement program offering Grade 12 equivalency to selected Native women on social assistance. Special events are sponsored such as winter solstice celebrations and health and wellness conferences. Some of the clientele are transitory and meals and access to showers are provided. The NWRC Vision Statement – within tab 2D – is to "… provide a safe environment, which gives holistic support (physical, mental, emotional and spiritual) to empower Aboriginal women and children in the City of Toronto." As stated, the intent was to "… provide in a spiritual and culturally appropriate manner, the necessary resources to prepare Aboriginal women and children to make changes in their lives and communities." Cooney stated NWRC may not record the origin of people accessing its services but there are instances where – upon referral to another agency – a link to a particular reserve may be required. The majority – 90% – of workers at the Centre are Aboriginal as are 11 of 13 members of the Board. NWRC has informal relationships with First Nations Communities in the region and travel arrangements are made to permit a client to attend an event – such as a powwow – on her own Reserve and a NWRC worker will accompany that individual. Cooney stated she believes that those women who choose to return to their reserve are able to provide a benefit to their community as a result of having participated in the services and treatment programs offered at the Centre. Potential employees were offered the choice of providing their services to NWRC directly or as an employee of NLS. Wente stated that most job applicants who were status Indians chose to be employed by NLS so their income would be exempt from income tax. The payroll for NWRC and related paperwork was handled by NLS.

[42] In cross-examination, Cooney stated the services provided by NWRC were in Toronto but staff participated in events held on Six Nations Reserve and other reserves. Cooney stated a majority of clients of the Centre accessed services on a repeat basis. With respect to the workers, Cooney agreed there was no distinction between those employed directly by NWRC and those employed by NLS because the contract between an individual and NLS required that worker adhere to the policy of the particular placement organization. The majority of the staff were single mothers so the potential to be exempt from tax was important.

[43] Joe Hester ("Hester") testified he is employed by NLS to provide his services as Executive Director to AHT. He has served in that position since 1998 and worked there for a total of 16 years. As Executive Director, he fulfills the function of Chief

Executive Officer. He is a status Indian and a member of the Cree Waskaganish First Nation, from Québec. His parents did not live on the Waskaganish Reserve nor did he. Hester obtained his Bachelor of Arts in Native Studies. Hester stated AHT – which has three locations in Toronto – belongs to a wider community comprised of over 100 health centres throughout Ontario. The Mission Statement of AHT – at tab 2C – is "… to improve the health and well being of Aboriginal People in spirit, mind, emotion and body by providing Traditional Healing within a multi-disciplinary health care model … based on our culture and traditions." The health care providers included Traditional Healers, Elders, Traditional Counsellors, Circle of Care Workers, Medicine People and physicians, nurses, chiropractors, naturopaths, FASD workers, massage therapists, psychiatrist, chiropodist and dentist. There are over 100 workers at AHT, the majority of whom are Aboriginal and AHT hires consultants when necessary. AHT has 9 Board members including one non-native. The services provided by AHT – including primary health care – have expanded considerably since 2003 in response to substantial migration of Aboriginal people to the GTA and adjoining municipalities. The majority of the recipients of services provided by AHT reside in Toronto. On occasion, a health practitioner will refer a patient to AHT but usually a person attends at AHT for the purpose of accessing traditional healing methods to deal with one or more troubling issues. Hester stated that culture-based services are the core of the operation. In some circumstances, Health Canada will provide a Travel Warrant to enable a person residing on a reserve to receive services from AHT. Some First Nations communities permit a worker from AHT to participate in cultural events and others have requested AHT to train band members how to conduct ceremonies. Hester stated that in his opinion the reason some programs fail is due to the lack of a culture-based program. AHT depends on Aboriginal communities to supply traditional medicines and – on occasion – uses their land for that purpose. He has travelled to various native communities to participate in Vision Quest. AHT provides services to 10,000 patients/clients per year, mainly to status Indians but also to others who assert Aboriginal heritage. AHT arranges for dental work to be performed and in most cases the patient qualifies for coverage by Health Canada and this agency pays the dentist. Hester stated he was the first employee of NLS in 1981 and by working for that entity considered he exercised a right – as a status Indian – that otherwise would have been lost. Hester stated that although NLS provided payroll and management services to AHT, the greater benefit was the opportunity to provide a range of services to Aboriginals residing off-reserve.

[44] In cross-examination, Hester confirmed there are no AHT facilities located on any reserve. He acknowledged that 30 workers were supplied by NLS and 70 were employed directly by AHT. Service providers had a choice whether to be employed by NLS and one non-native physician became an NLS employee. Interviews were

conducted by Hester or his designate depending on the type of position to be filled. Sometimes, a group or team working together was comprised of NLS employees and those employed directly by AHT. Hester advised NLS of the name of the prospective employee and the salary level attributable to the position. Only after the candidate accepted the offer of employment in that position, was there any discussion about the choice of employer, NLS or AHT. Hester recalled that certain non-native workers elected to be employed by NLS to receive certain training. Since 2003, NLS handled payroll only for NLS employees providing services to AHT but the current intention is for NLS to administer the payroll function for all 100 employees. AHT entered into a contract – within tab 2C – dated May 11, 1992 – whereby NLS would provide an Executive Director and – at paragraph 14 – agreed to hire "wherever possible" persons selected in accordance with the recruitment policies of AHT. AHT hired employees directly and carried out performance evaluations of all workers. Hester stated AHT could terminate the NLS contract in respect of the services of a particular individual. An example of an information sheet – Exhibit R-3 – was filed at the outset and pertains to the Appellant, Julie Debassige, who was applying to OI for employment. The signature – on page 2 – was that of Leona Jeffreys ("Jeffreys"), in her capacity as Acting Executor Director and she submitted the application to NLS. Jeffreys was an NLS employee. Hester stated there was no distinction based on which reserve a client was from unless that information was necessary to qualify for funding through Health Canada to enable that person to access non-reserve health services. AHT provides services to all status Indians throughout Canada and provides feedback to the local community concerning relevant matters such as whether the appointment had been kept. There is a high demand for services to deal with FASD and patients travelled to Toronto for treatment at AHT which over the course of many years had developed an expertise in the diagnosis and treatment of problems associated with that syndrome. For the most part, FASD treatment is not available in communities near reserves in Ontario.

[45] Linda Tufts ("Tufts") testified she is a Supportive Housing Worker/Counsellor at Pedahbun. She has worked there from 1994 to 1997 and among her varied duties was a requirement to keep the Sacred Fire burning through the night. Pedahbun was a co-educational treatment centre with 16 beds, 10 of which were allotted to males. Admittance was restricted to persons over age 18 who were of Aboriginal ancestry and men and women gathered separately in the course of treatment. Various ceremonies were held as part of the treatment and were conducted by Aboriginals. Tufts stated all programs were focused on heritage and culture since many residents were suspicious of western-based treatment programs. Usually, in the course of the 21 to 28 day stay at Pedahbun, after the process of "settling-in", a resident began to adjust to the surroundings and to open up and speak about their problems. The goal

of Pedahbun was to enable residents to leave and to live a “clean and sober life” and to return home with the skills necessary to maintain a healthy lifestyle. Tufts is a status Indian from the Cockburn Island First Nation on Manitoulin Island. She was born off-reserve and raised in a non-native environment. When working at Pedahbun, Tufts observed that the most important components of the treatment program was the cultural base and that it was operated by Aboriginal staff members. Attention was paid to proper nutrition based on traditional food – known as the “Three Sisters” – comprised of beans, squash and wild meat. Residents at Pedahbun attended from various parts of Canada, including those from Cree Nations in the West. At Pedahbun, nearly all staff were NLS employees and when a problem arose with a worker, it was handled by NLS or OI. Tufts stated she contacted the NLS office in respect of many matters pertaining to human resources, workshops and training. When a worker’s services were to be terminated, a representative of OI or NLS attended at Pedahbun for that purpose.

[46] In cross-examination, Tufts stated she did not carry out any managerial role at Pedahbun and was not involved in any hiring process. She thought that most of her colleagues were employees of either NLS or OI and – collectively – they discussed various matters including the claim for an exemption of income tax. Workers were offered the choice of working directly for Pedahbun or as a leased employee pursuant to a contract with NLS or OI, depending on the time frame. Some workshops were arranged by OI and training sessions were held twice yearly in Toronto and one or two were held at Six Nations Reserve. Certain awareness training was conducted at the NLS office in Toronto. Pedahbun accepted people based on Aboriginal ancestry but admission to the facility did not depend on their residence on any particular reserve or in any community. Tufts stated she is no longer an NLS employee and had intended to appeal her assessment for certain taxation years based on an exemption from tax arising from her Indian status and – at some point – had filed a Notice of Objection.

[47] In the course of their arguments, both counsel for the Appellants submitted the evidence demonstrated that as employees of NLS they were exercising their treaty rights and chose to connect with their home community as much as circumstances permitted. In some instances, travel to a reserve was onerous both in terms of time and cost. Often, an Appellant had chosen to leave her reserve to pursue education or employment opportunities or to join family living elsewhere. Sometimes, as an infant or young child, an Appellant had been removed involuntarily from her reserve whether through intervention of the child welfare authorities or relocation by a parent. Counsel submitted the Appellants exercised a choice recognized by the Supreme Court of Canada in *Williams, supra*, between residing on a reserve or to

relocate to another community, generally regarded as forming part of the "larger commercial world." In the view of counsel, the test utilizing the connecting factors has become restrictive to the point where it minimizes the intended purpose of section 87 of the *Indian Act* and – in the context of modern lifestyles – is tantamount to repeal. Counsel pointed out it was the treaty process which gave rise to the exemption from taxation and, as such, is a vital component of a greater constitutional package. It is not a loophole. Therefore, in any analysis the connecting factors test should be subjective. Counsel referred to jurisprudence which is supportive of the proposition that the degree of connection to a reserve is in the eye of the beholder and that treaties and statutes relating to Indians should be liberally construed to confer tax exemption rather than to pursue a technical interpretation which could have the effect of destroying that right. Counsel submitted the purpose of the exemption from tax should include the understanding – by Indians – of the legislation and that a just and liberal approach should be taken when deciding whether the primary location of tangible property or a chose-in-action is situated on a reserve. With respect to what has been referred to as the situs test, counsel referred to specific paragraphs in the judgment of the Supreme Court – delivered by Gonthier J. - in *Williams, supra*, and submitted that a careful reading of the entire reasons supports the theory that the comments therein were intended to be restricted to that fact situation where a status Indian received unemployment benefits for which he qualified as a consequence of employment by the Band on the reserve. In counsel's view, the judgment was crafted to permit the appellant to receive benefits under those circumstances and not to deny them merely because the debtor – Canada Employment and Insurance Commission – paid both regular and enhanced benefits via the regional computer centre in Vancouver. Since the Government of Canada resides everywhere in the nation, the usual, venerable, simple situs test was not appropriate. The judgment in *Williams, supra*, avoided an unjust result since the appellant had paid premiums and to decide otherwise would have been at odds with the purpose of the *Indian Act.* In that specific context, the residence of the debtor and the place where benefits were paid were connecting factors of limited weight. Counsel submitted the Tax Court of Canada can adapt the simple test of situs of income in accordance with ancient common law principles and in the within appeals, NLS, as an operating unit, was located on the Six Nations Reserve and the majority of the administrative staff were Six Nations Members, some of whom lived on that Reserve. The Appellants were paid from the office monthly in accordance with normal payroll and administrative functions. The Appellants employed by NLS chose to work for NLS, an on-reserve employer. In counsel's interpretation of the relevant jurisprudence, the guiding principle is that the application of common law principles to confirm the location of the debtor as the situs for taxation purposes of wages due should be preferred to the connecting factors test which is available as an alternative. However, the guiding

principle must acknowledge that a status Indian has the choice to situate property so as to be protected by the relevant provisions of the *Indian Act.* In the course of applying the test of those connecting factors referred to in the jurisprudence, the methodology should be consistent with the goal of avoiding assimilation, recognizing choice and achieving reconciliation. This modern approach would reject the concept of assimilation and acknowledge that rejection of status is not a condition precedent to improving the economic position of Indians in Canada. In the face of urbanization and modernization of the overall economy, protection from taxation only when the property is "situated on a reserve" does not afford that entitlement as a right and a status Indian should not be faced with Hobson's choice where only one option – "take it or leave it." – is available. Giving effect to choice by an individual, recognizes the right to choose in accordance with the well-accepted proposition that one may arrange their affairs in a manner giving rise to a favourable tax position. Those Appellants providing services to Aboriginal people in Toronto chose to do so while employed by NLS, an on-reserve employer.

[48] Counsel submitted that if I decide the connecting factors test must be applied, that I take into account these points:

1. The location of the employer is on Six Nations Reserve and the situs of the debt is there once proper principles are applied to that determination and that the situs test has not been specifically rejected nor foreclosed by recent decisions.

2. NLS conferred significant benefits to the reserve and, although the most recent financial statements are for the 1997 year, even then, the salaries paid to employees living on that Reserve were in the sum of $250,000 and it paid $21,000 in rent to the Band Council. Apart from the specific economic contribution to that reserve, NLS contributed to the well-being of First Nations people generally. Over many years, NLS employed between 800 and 1500 people, including 1400 between the years 1999 and 2006. The concept of NLS, as envisaged by Obonsawin and Ms. Irwin, was to assist in the development of a self-supporting native network in Canada and the cross-country network of clients and employees maintained by NLS and OI allowed employees to move between jobs, thereby acquiring skills which would enable them to give more back to their communities, another means of dealing with native poverty. Benefits would accrue to a reserve as a result of an NLS/OI employee taking up residence on their own reserve or another reserve and using their new skills. The placement organizations delivered

benefits directly and indirectly to urban Aboriginal communities and the programs and services provided were culturally appropriate as demonstrated by the testimony of the Appellants employed by NLS and others engaged in similar work for other organizations. Counsel submitted the concept of preservation of property "held by Indians *qua* Indians" was overly restrictive.

3. Although all Appellants employed by NLS lived in the GTA, for many it had not been by choice – initially – and attempts were made by most to re-connect with their own reserve or to participate in ceremonies and powwows held on other reserves. Many had lost – or been ineligible for – their Indian status as a consequence of the marriage of their mother to a non-Indian and when their mother regained status pursuant to the provisions of Bill C-31, they also obtained status and with it the ability to exercise – if they chose – the rights and privileges attached thereto. Those Appellants who chose to visit their First Nation communities – despite the cost and the time that could be spent otherwise during annual vacation leave - did so in such a way that it is not difficult to find they made a contribution to their particular native community.

[49] The position advanced by both counsel for the Respondent is that section 87 of the *Indian Act* does not confer a tax exemption in the absence of an immediate and discernible nexus between the particular property – in the within appeals the employment income – and the occupancy of reserve lands by the owner of that property, as required by established jurisprudence. There must be circumstances which link the acquisition of that employment income to a reserve as an economic base or physical location and the purpose of the protection from tax provided by paragraph 87(1)(*b*) of the *Indian Act* was to shelter reserve lands rather than personal property owned by Indians while situated on a reserve. Counsel submitted the purpose of that exemption was not to address the general economically disadvantaged position of Indians in Canada and when Indians chose to enter in the so-called "commercial mainstream", they did so on the same basis as all Canadians for whom there is no exemption from income tax on employment income. The position of counsel is that the decision in *Williams, supra*, established the analytical framework to be utilized when determining the situs of the receipt of income and that the Supreme Court rejected the concept that the residence of the debtor was determinative of the situs of intangible personal property for the purpose of section 87. Instead, it developed the connecting factors test which requires that factors which are capable of connecting property to a reserve be identified, analyzed and weighed in light of three important considerations. Counsel submitted it is clear that the

Supreme Court – in *Williams, supra* – decided a single factor cannot determine the situs of the receipt of income and specifically rejected the application of general conflicts of laws principles in that process for the purposes of the *Indian Act* and the *Act.* If any expansion of the scope of section 87 is to occur, that is for Parliament to undertake. Counsel pointed out that the connecting factors test had been applied by the Federal Court of Appeal in several cases and had identified therein those factors which have the potential to connect employment income to a reserve. Despite recent *obiter* comments in recent decisions accepting the proposition that the language of section 87 permits the income of the person claiming the benefit to be situated on "a" reserve, and not necessarily his or her own reserve, counsel submitted the better view is that the income must be situated on the particular reserve and that there is no decision to the contrary directly on point.

[50] With respect to the connecting factors as they apply to the Appellants employed by NLS, counsel submitted the following:

1. The location of the work in each instance was performed off-reserve and merely because the nature of the employment was to provide social services to Indians via non-profit entities that does not connect the employment to an Indian reserve as a physical place.

2. Even though the location of the employer was on the Six Nations Reserve, little weight should be given to this factor and that a location of convenience is insufficient to provide a strong connection between that location and the purpose of section 87 of the *Indian Act.*

3. There was no identifiable benefit accruing to any reserve as a consequence of the employment of the Appellants with NLS, although there was some benefit resulting to the Six Nations Reserve as a result of NLS carrying out administrative functions there but the overwhelming majority of the business was carried on off-reserve across Canada, and in the within appeals – exclusively in Toronto.

4. There should be little weight accorded to the place of payment – particularly when that location was chosen for the purpose of conferring a tax advantage – and that the established jurisprudence recognized that section 87 was not intended to confer a general benefit on Indians from activities taking place in the commercial mainstream in Canada.

[51] Counsel for the Respondent prepared grids included in the binder – titled Written Representations – at Schedule A, tabs 1-13, inclusive – setting out in table form specific points pertaining to the connecting factors analysis as they relate to each Appellant's employment income received from NLS.

[52] Counsel submitted the evidence adduced by the Appellants was insufficient to establish a nexus between the employment income of any Appellant and the occupancy of reserve lands. Instead, the location, nature and circumstances of each Appellant's employment connected the income earned to a location off-reserve and not to their own reserve, or any other reserve. As a consequence, that income is not exempt and their appeals should be dismissed but without costs.

[53] **Relevant Legislation**

> *Property exempt from taxation*
>
> **87. (1)** Notwithstanding any other Act of Parliament or any Act of the legislature of a province, but subject to section 83 and section 5 of the *First Nations Fiscal and Statistical Management Act*, the following property is exempt from taxation:
> …
>
> (b) the personal property of an Indian or a band situated on a reserve.
>
> **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;

Analysis

[54] The Supreme Court of Canada in *R. v. Nowegijick*, [1983] 1 S.C.R. 29, decided that property within the meaning of paragraph 87(1)(*b*) of the *Indian Act* included income. This decision gave rise to the situs test. At page 5 – in part – Dickson J. stated:

> One point might have given rise to argument. Was the fact that the services were performed off the reserve relevant to situs? 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 the wages were payable.

[55] In *Williams, supra*, the Supreme Court of Canada established a series of connecting factors to be utilized when determining the situs of personal property. As referred to by counsel for the Appellants in their submissions, that case concerned an appellant Indian who received regular unemployment insurance benefits as a result of working with a logging company and for his Band in a specially-funded project. In both cases, the work was performed on the reserve. At paragraphs 33 to 38, inclusive of the judgment of Gonthier J. – delivered for the Court – he stated:

> **33** Because the transaction by which a taxpayer receives unemployment insurance benefits is not a physical object, the method by which one might fix its situs is not immediately apparent. In one sense, the difficulty is that the transaction has no situs. However, in another sense, the problem is that it has too many. There is the situs of the debtor, the situs of the creditor, the situs where the payment is made, the situs of the employment which created the qualification for the receipt of income, the situs where the payment will be used, and no doubt others. The task is then to identify which of these locations is the relevant one, or which combination of these factors controls the location of the transaction.
>
> **34** The appellant suggests that in deciding the situs of the receipt of income, a court ought to balance all of the relevant "connecting factors" on a case by case basis. Such an approach would have the advantage of flexibility, but it would have to be applied carefully in order to avoid several potential [page892] pitfalls. It is desirable, when construing exemptions from taxation, to develop criteria which are predictable in their application, so that the taxpayers involved may plan their affairs appropriately. This is also important as the same criteria govern an exemption from seizure.
>
> **35** Furthermore, it would be dangerous to balance connecting factors in an abstract manner, divorced from the purpose of the exemption under the Indian Act. 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.
>
> **36** However, an overly rigid test which identified one or two factors as having controlling force has its own potential pitfalls. Such a test would be open to manipulation and abuse, and in focusing on too few factors could miss the purposes of the exemption in the Indian Act as easily as a test which indiscriminately focuses on too many.

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 [page893] 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.

[56] At paragraphs 55 and 56, Mr. Justice Gonthier continued:

55 Furthermore, as can be seen from our discussion of the test for the situs of unemployment insurance benefits, the creation of a test for the location of intangible property under the Indian Act is a complex endeavour. In the context of unemployment insurance we were able to focus on certain features of the scheme and its taxation implications in order to establish one factor as having particular importance. It is not clear whether this would be possible in the context of employment income, or what features of employment income and its taxation should be examined to that end.

56 Therefore, for the purposes of the present appeal, we merely note that the employment of the appellant by which he qualified for unemployment insurance benefits was clearly located on the reserve, no matter what the proper test for the situs of employment income is determined to be. Because the qualifying employment was located on the reserve, so too were the benefits subsequently received. The question of the relevance of the residence of the recipient of the benefits at the time of receipt does not arise in this case since it was also on the reserve.

[57] The judgment – at paragraphs 61 to 63, inclusive – concluded as follows:

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 [page900] 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.
>
> **62** With regard to the unemployment insurance benefits received by the appellant, a particularly important factor is the location of the employment which gave rise to the qualification for the benefits. In this case, the location of the qualifying employment was on the reserve, therefore the benefits received by the appellant were also located on the reserve. The question of the relevance of the residence of the recipient of the benefits at the time of receipt does not arise in this case.
>
> **63** The appeal is therefore allowed and the cross-appeal dismissed, with costs throughout. The matter is referred back to the Minister of National Revenue to be reassessed on the basis that all of the unemployment benefits in question are exempt from taxation.

[58] In *Mitchell v. Peguis Indian Band*, [1990] 2 S.C.R. 85, the issue before the Supreme Court was whether a garnishing order should be set aside because it sought to attach fees earned from representing Indians in settlement negotiations. The trial judge and the Manitoba Court of Appeal both held that the funds could not be garnished. In a separate opinion also dismissing the appeal, the reasons of Lamer, Wilson and L'Heureux-Dubé JJ. were delivered by Wilson J. who – at paragraphs 86 to 88, inclusive, commented as follows:

> **86** I take it to be obvious that the protections afforded against taxation and attachment by ss. 87 and 89 of the Indian Act go hand-in-hand with these restraints on the alienability of land. I noted above that the Crown, as part of the consideration for the cession of Indian lands, often committed itself to giving goods and services to the natives concerned. Taking but one example, by terms of the "numbered treaties" concluded between the Indians of the prairie regions and part of the Northwest Territories, the Crown undertook to provide Indians with assistance in such matters as education, medicine and agriculture, and to furnish supplies which Indians could use in the pursuit of their traditional vocations of hunting, fishing, and trapping. 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. [page131] 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.
>
> **87** 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 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.
>
> **88** 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.

[59] In *Shilling v. Canada (Minister of National Revenue – M.N.R.),* [2001] 4 F.C. 364 (also [2001] F.C.J. No. 951) the appellant lived off-reserve but was a status Indian and a member of the Rama Band who maintained strong ties with her community. She worked at AHT in Toronto and chose to work for this organization as an employee of NLS to claim the tax exemption pursuant to section 87 of the *Indian Act.* Her salary was deposited directly to her band account on the Rama Reserve from the NLS account which was also on a reserve. The Trial Judge, applying the connecting factors test from *Williams*, *supra*, held that the location of NLS was important because of the substantive legal and commercial consequences of her employment relationship and concluded the employment income of Rachel Shilling was exempt from tax. The Federal Court of Appeal - at paragraphs 29 to 35, inclusive of the judgment stated:

> **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 (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 [page375] 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 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.

Applying the Framework

(a) Location of employer

34 The Trial Judge concluded that the location of the employer was the most important factor in determining the location of Ms. Shilling's employment income for the purpose of paragraph 87(1)(b). She stated that the employer, NLS, had its head office on the Six Nations of the Grand River Reserve, and that Mr. Obonsawin, the proprietor of the business, resided and carried on its business

there. She inferred that the [page376] on-reserve business and its owner, Mr. Obonsawin, must have profited from the employment relationship and benefits to the reserve must have resulted therefrom.

35 In our respectful opinion, the Trial Judge erred in ascribing such significance to the location of the employer in this case. In the absence of more factual information than is contained in the agreed statement of facts, and the transcript of the examination for the discovery of Ms. Shilling, it is difficult to discern a strong connection between the location of the employer and the purpose of section 87. For the on-reserve location of the employer to be accorded significant weight requires evidence in addition to the bare fact that an employment relationship with an on-reserve employer exists. It has already been held that the location of the employer is not important because it is where the debt, i.e. the right to employment income, may be enforced. That conflict of laws rule was expressly rejected by Gonthier J. in Williams, supra, at page 891:

> 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.

[60] In the concluding paragraphs – 62 to 67 inclusive, of the judgment, the Court commented as follows:

62 In this case, only the location of the employer's head office connects the respondent's employment income to a reserve, and there is no evidence to justify giving this factor the significant weight that the learned Trial Judge attached to it. On the other hand, the location and nature of the employment, which have been held to be generally the most important factors in a connecting factors analysis in employment income cases, as well as the respondent's place of residence, indicate that Ms. Shilling's employment income was situated off-reserve.

63 The factors connecting the employment income with an off-reserve location outweigh those connecting it with a reserve. Therefore, Ms. Shilling's employment income for 1995 and 1996 is not situated on a reserve and is not exempt from taxation under paragraph 87(1)(b) of the Indian Act.

64 It follows that Ms. Shilling's employment is to be regarded as in the "commercial mainstream". This conclusion may appear counter-intuitive when applied to a Native person who identifies with her Band and First Nation, and is working with a social agency delivering programmes to assist Native people, in large part through reconnecting them with their culture and traditions.

> **65** However, in the context of determining the location of intangible property for the purpose of section 87, "commercial mainstream" is to be contrasted with "integral to the life of a reserve": Folster, supra, at paragraph 14. There is no doubt that, if Ms. Shilling had been an employee of AHT, her employment [page386] income would not have been exempt from income tax. The purpose of the tax exemption in paragraph 87(1)(b) is not to address the general economically disadvantaged position of Indians in Canada.
>
> **66** Hence, Ms. Shilling's work must be characterized as being in the "commercial mainstream", unless the fact that she is employed by a business with its head office and bank account on reserves is in itself sufficient to make her employment "integral to the life of the reserve". For the reasons that we have given, we think not.
>
> **67** Accordingly, we would allow the appeal and set aside the order of the Trial Judge with costs. The question of law stated for determination is answered as follows:
>
> > Rachel Shilling is not entitled by operation of section 87 of the Indian Act to exemption from income tax with respect to the salary paid to her by Native Leasing Services for the years 1995-1996 in the circumstances described in the Agreed Statement of Facts.

[61] In *Horn et al. v. M.N.R.*, 2008 FCA 352, 2008 DTC 6743 (*Horn and Williams*) the Federal Court of Appeal dismissed the appeal from the judgment of Phelan J. of the Federal Court. The taxpayers were both status Indians employed by NLS, an on-reserve employer which leased their services to two off-reserve non-profit entities. The appellants argued that the decision of the Supreme Court of Canada in *McDiarmid Lumber Ltd. v. God's Lake First Nation*, [2006] 2. S.C.R. 846 (*God's Lake*) was authority for the proposition that the appropriate test for determining the location of the employment income of the appellants was the location of the debtor and that the Trial Judge had erred in applying the connecting factors test. The appellants asserted the Supreme Court decision in *God's Lake* had implicitly overruled a previous line of decisions issued by the Federal Court of Appeal in which the connecting factors approach had been used to determine whether employment income was situated on a reserve for the purposes of section 87 of the *Indian Act.* The brief judgment of the Court was delivered by Evans J.A. and paragraphs 3 to 10, inclusive, are reproduced below:

> **3** We do not agree. The issue in *God's Lake* was whether funds in a bank account were exempt by section 89 of the *Indian Act* from seizure. The Court determined this issue by looking solely to the location of the debtor, that is, the branch of the bank where the funds had been deposited.

4 However, the Court expressly stated (at para. 18) that the "contextual form of analysis" was appropriate for, *inter alia*, cases involving a taxation transaction "where the location is objectively difficult to determine". It quoted (at para. 17) the observation of the court below that *God's Lake* was "not concerned with where a transaction is located for the purposes of taxation." The Court also referred with approval to the adoption of the connecting factors approach in Williams v. Canada, [92 DTC 6320] [1992] 1 S.C.R. 877, the origin of this Court's jurisprudence on the location of employment income as personal property for the purpose of section 87, even though *Williams* concerned employment insurance payments.

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

6 Second, the appellants argue, if the connecting factors test is applicable, Justice Phelan erred in his application of it to the facts. Since the application of the law to the facts is a question of mixed fact and law, the appellants must establish that his decision is vitiated by palpable and overriding error, or that he did not apply the correct legal test.

7 For the most part, the appellants criticise the Judge's reasons on the ground that they attach too much weight to the location, surrounding circumstances and nature of their work with the clients to whom they were "leased" by their employer, Native Leasing Services. The appellants work for not-for-profit organizations delivering social services off-reserve in Hamilton and Ottawa to aboriginal people (some of whom resided off-reserve and some on-reserve) and, in the case of Ms. Horn, to non-aboriginals as well. Conversely, the appellants say, the Judge gave insufficient weight to the on-reserve location of the employer, to the benefits accruing to the reserve from both the employer's presence on the reserve and its activities, and the appellants' employment, and to Ms Williams' residence on and Ms Horn's continuing connections to a reserve.

8 It is primarily the function of a trial judge to assess the relative weight to be given to the constituent elements of a multi-factored test in the particular circumstances of a case. Applying the "connecting factors" test is a very fact specific exercise. This Court may not substitute its view for that of the judge, absent a palpable and overriding error in the application of the test or an error of law.

> **9** In our opinion, Justice Phelan's analysis is consistent with the guidance provided by this Court in its previous decisions, including the particular weight given by Shilling v. Canada (Minister of National Revenue), [2001 DTC 5420] [2001] 4 F.C.R. 364, 2001 FCA 178, to the location, nature and other circumstances surrounding the work which gave rise to the employment income. We can detect no overriding and palpable error in the Judge's treatment of the relevant factors, either individually or as a whole.
>
> **10** However, we agree with the appellants that whether employment income is earned in the "commercial mainstream" is a conclusion to be drawn from an examination of the connecting factors, and not a reason in itself for concluding that employment income is not situated on a reserve: Recalma v. Canada [98 DTC 6238] (1998), 158 D.L.R. (4th) 59 (F.C.A.) at para. 9.

[62] The Supreme Court of Canada dismissed the application for leave to appeal on April 16, 2009.

[63] In *Akiwenzie v. Canada*, 2003 FCA 469, the Federal Court of Appeal allowed an appeal from a decision by the Trial Judge that the taxpayer's personal property could be situated on each and every reserve in Canada. The judgment of the Court was delivered by Noël J.A. who stated at paragraphs 12 and 13:

> **12** On the facts before him, the Tax Court Judge found, correctly in my view, that the respondent's income was not sufficiently connected with the reserve on which he lived by virtue of his occupancy of the reserve and the amounts which he would have spent on it to support himself and his family (see Bell v. Canada, 2000 DTC 6365 at paragraph 41). However, the "true connection" which he did find is a virtual connection with "each and every reserve in Canada" based on the exceptionally beneficial nature of the services rendered by the respondent through his employment and his genuineness qua Indian (see paragraph 5, supra).
>
> **13** With respect, these factors have nothing to do with the preservation of the respondent's personal property qua Indian on these reserves. Specifically, it cannot be said that the taxation of the respondent's income would result in the erosion of his entitlement qua Indian on any or all of these reserves as there is no connection whatsoever between this income as such and these reserves as economic bases or physical locations (Monias, supra, paragraphs 46 and 67).

[64] In the case of *McKay v. The Queen*, 2007 TCC 757, 2008 DTC 2326, Little J. heard the appeal of the taxpayer who resided in Fort Smith, Northwest Territories. She was employed in that town by the Salt River First Nation #195 Indian Band at its Band Office as well as by the Government of the Northwest Territories. The Minister refused to exempt her salary on the basis it was not property situated on a reserve.

After applying the criteria arising from the relevant jurisprudence, Little J. allowed the appeal. At paragraphs 49, 50 and 52 of his judgment, he commented:

> **49** Although the Appellant did not live on the reserve, the other connecting factors suggest that the income received by the Appellant should be exempt from tax. The purpose of her position was to connect all members of the Band both on and off-reserve, providing information on the status of treaty negotiations and the capturing and recording of significant historical events. The monies earned by the Appellant were intimately connected to the Native way of life by maintaining historical accounts and publicizing the negotiations and status of land claims engaged in by the Band, there was a discernible nexus between the Appellant's employment income and the reserve as her duties were in the furtherance of establishing reserve status.
>
> **50** Additionally, the activities of the Appellant were not connected to the "commercial mainstream". As set out in the Appellant's written arguments the purpose of the Band Office was to govern its own peoples and provide leadership in dealing with political issues affecting and ensuring that treaty obligations were fulfilled by the Canadian Government.
>
> **52** Based on the foregoing, I have concluded on the unique facts of this case that the employment income received by the Appellant from the Salt River First Nation NO. 195 and the employment income received from the Government of the Northwest Territories would be exempt from taxation by virtue of section 87 of the Indian Act.

[65] The Federal Court of Appeal heard the appeal – *Her Majesty The Queen In Right of Canada v. Margaret McKay*, 2009 FCA 43 – and delivered judgment on February 12, 2009. Noël J.A. – writing for the Court – at paragraphs 7 to 9 inclusive - stated:

> **7** The Tax Court Judge went on to conclude that the respondent's income from the Salt River First Nation and the Government of the Northwest Territories was property situated on a reserve and therefore exempt from taxation by virtue of section 87 of the Act.
>
> **8** The evidence establishes that the Band Office of the Salt River First Nation was located on a lot in the town of Fort Smith that was not yet a reserve, but was going to become a reserve in the future.
>
> **9** The confusion appears to result from the fact that there is a reserve called Salt Plains Reserve which is located outside of the town of Fort Smith on the banks of the Salt River. At times, the respondent and her witnesses referred to the Salt Plains Reserve as the "Salt River reserve", rather than by the name that was designated by Order in Council. Regardless of what the reserve 30 miles from the

> town of Fort Smith is called, the record establishes that the Band Office was not on a reserve.

[66] Apart from the error concerning the location of the purported reserve, Noël J.A. went on to say – in the third sentence of paragraph 10:

> … Similarly, there was no basis for the Tax Court Judge's conclusion that the income earned from the Government of the Northwest Territories was located on a reserve since there was no evidence how this income was earned.

[67] In the case of *McIvor v. Canada*, 2009 TCC 469, Sheridan J. heard several appeals – together – where the appellants had been employed by NLS or OI and the evidence of Obonsawin and Diane Wallace from NLS applied to all appeals. Justice Sheridan reviewed the jurisprudence and considered the facts particular to each appellant. In each instance, she concluded there was insufficient connection with an appellant's employment income and a reserve to render employment income exempt from tax.

[68] In *Joseph Hester v. Her Majesty The Queen*, 2010 TCC 647, Woods J. heard the appeal of Hester – a witness in the within appeals – who was employed as either Acting Executive Director or Executive Director of AHT during certain taxation years ranging from 1995 to 2003. In her judgment dated – December 20, 2010 – Woods J. found Hester was a status Indian and a member of the Waskaganish First Nation in Québec and that he had never lived on a reserve although he maintained cultural ties with – and sometimes visited – certain reserves. Woods J. was not satisfied the evidence had demonstrated that these visits were a "frequent part of his duties at AHT." (paragraph 19). The appeal of Mildred Bondy was heard together with the Hester appeal. Bondy was a member of the Wikwemikong First Nation on Manitoulin Island and maintained cultural and familial ties there. She worked for AHT – in Toronto – as a secretary/assistant during 1999 and 2000. At paragraphs 24 and 25, Woods J. stated:

> [24] As for Ms. Bondy, she is also a status Indian who has lived in Toronto for many years. She is a member of the Wikwemikong First Nation on Manitoulin Island and maintains familial and cultural ties there.
>
> [25] Ms. Bondy was placed by NLS at AHT as a secretary/assistant in 1997 and she carried out general administrative work there until early in 2000 when she left for other employment. Her AHT duties were carried out in Toronto.

[69] She continued at paragraphs 27 to 29, inclusive, as follows:

> [27] Based on the evidence before me, the facts in these appeals do not warrant a different outcome than that reached in *Shilling* and *Horn*.
>
> [28] The appellants worked at the same community health centre that Ms. Shilling worked. Like the appellants, her duties were primarily performed in Toronto although she did visit reserves as part of her duties.
>
> [29] I would note in particular the following comments of the Federal Court of Appeal in *Shilling*:
>
> > [62] In this case, only the location of the employer's head office connects the respondent's employment income to a reserve, and there is no evidence to justify giving this factor the significant weight that the learned Trial Judge attached to it. On the other hand, the location and nature of the employment, which have been held to be generally the most important factors in a connecting factors analysis in employment income cases, as well as the respondent's place of residence, indicate that Ms. Shilling's employment income was situated off-reserve.
> >
> > [63] The factors connecting the employment income with an off-reserve location outweigh those connecting it with a reserve. Therefore, Ms. Shilling's employment income for 1995 and 1996 is not situated on a reserve and is not exempt from taxation under paragraph 87(1)(*b*) of the *Indian Act.*

[70] In *Roe, supra*, counsel for the appellants relied on the location of NLS and OI on the Six Nations Reserve and pointed out the benefits accruing to the reserve from the business conducted there. The appellants were paid from a bank account located on a reserve – in Alberta – and some received their salary through direct deposit to accounts in branches of financial institutions located on a reserve. The position taken by counsel for the respondent was that the location of the employer(s) on the reserve was not a relevant factor since none of the appellants lived on that reserve and was an attempt to connect employment income of the appellants to a reserve that was not their own. In the alternative, if the location of NLS and OI on a reserve was a relevant connecting factor, counsel for the respondent submitted little weight should be accorded in connecting the employment income of each appellant because the activities NLS and OI were carried out off-reserve and the amount of money spent on that Reserve was a small percentage of total business revenue. In his judgment – dated December 5, 2008 - at paragraphs 113 to 116, inclusive, Paris J. commented as follows:

> **113** With respect to the respondent's first argument, I do not believe that paragraph 87(1)(*b*) requires that the property for which an Indian is seeking a tax

exemption be located on his or her own reserve, so long as it is located on a reserve. I agree with the comments of the Federal Court Trial Division in *Shilling* that:

> The language of section 87 is very broad, and refers to property situated on "*a* reserve", not "*the* reserve", and not "the reserve belonging to the band of which the Indian is a member".

114 I am aware that the Federal Court of Appeal has expressed doubt as to the correctness of this position in its decisions in *Desnomie* and *Shilling*. More recently, however, the Supreme Court took the opposite view in *McDiarmid Lumber Ltd. v. God's Lake First Nation*, [2006] 2 S.C.R. 846, 2006 SCC 58. One of the issues in that case was whether money deposited in the God's Lake Band's account at a Winnipeg bank was notionally located on reserve and therefore exempt from seizure under Section 89 of the *Indian Act*. The relevant portion of Section 89 reads:

> 89(1) Subject to this Act, the real and personal property of an Indian or a band situated on a reserve is not subject to charge, pledge, mortgage, attachment, levy, seizure, distress or execution in favour or at the instance of any person other than an Indian or a band.

115 The evidence showed that the God's Lake Reserve was in a remote location and that there was no bank located on the Reserve. In the minority reasons, Binnie J. suggested that a finding that the money was not located on a reserve would mean that Indian bands that did not have a bank on their reserve would have no means of protecting money they kept in bank deposits against seizure. In response, McLachlin C.J. writing for the majority, stated that a Band could protect its deposits from seizure by depositing the funds in a financial institution located on the reserve of *another* band. The Chief Justice said, at paragraph 62:

> ...even if there is no deposit-taking financial institution on the God's Lake Reserve, it was open to the God's Lake Band to deposit its funding in financial institutions on other reserves. The funds would then have been protected, by virtue of s. 89 of the *Indian Act*. As Gonthier J. noted in *Williams*, at p. 887, "under the *Indian Act*, an Indian has a choice with regard to his personal property. ... Whether the Indian wishes to remain within the protected reserve system or integrate more fully into the larger commercial world is a choice left to the Indian."

116 It is reasonable to assume that the use of the same wording ("property...situated on *a* reserve") in paragraph 87(1)(*b*) of the *Indian Act* should be interpreted in the same way, especially given that the two provisions share a similar purpose.

[71] Paris J. concluded his judgment – at paragraphs 146 and 147 – stating:

> **146** In the absence of any special circumstances that would tie the appellants' work to a specific reserve, and in the absence of evidence of a significant connection between their work and the Six Nations Reserve or any other reserve, there is no basis for concluding that the taxation of their employment income from NLS or OI would result in the erosion of their entitlement to property they held as Indians on a reserve.
>
> **147** As a result, I find that appellants' employment income from NLS and OI is not exempt from income tax.

[72] In the case of *Googoo, supra*, Rossiter A.C.J. – at paragraph 97 – stated:

> **97** I agree with the comments of Justice Paris in *Roe et al. v. The Queen*, [2008] T.C.J. 509, where he analyzed the meaning of the phrase "property... situated on a reserve". I think he quite rightly interpreted Chief Justice MacLachlin's comments in *McDiarmid Lumber Ltd. v. God's Lake First Nation*, [2006] 2 S.C.R. 846, 2006 SCC 58, in holding that it is reasonable to assume that the use of the phrase "property...situated on a reserve" in paragraph 87(1)(*b*) of the *Indian Act* should be granted the same interpretation as in section 89(1) of the *Indian Act*, given that the two provisions basically share the same purpose.

[73] In the course of analyzing the evidence as it related to the nature and circumstances of the work performed, Rossiter A.C.J. – at paragraphs 113 to 117, inclusive, stated:

> **113** Of all the factors to be considered in the connecting factors test, I believe the nature and circumstances of the work performed is a factor to which significant weight ought to be attached because this factor goes to the heart of the purpose of the exemption under section 87.
>
> **114** In all of these appeals, NLS was leasing the services of Native people to placement organizations where the Native people were originally employed, and receiving a service fee of 4% to 5% of the payroll of the employee in question. NLS had no nexus to any reserve of any of the Appellants save and except Ms. Masching -- and then the only connection was that Ms. Masching was a member, but not a resident, of the Six Nations Reserve where NLS Office was located. Mr. Obonsawin, sole proprietor of NLS, was not a member of the Six Nations Reserve, and did not and could not live under the Six Nations Reserve.
>
> **115** Notwithstanding Mr. Obansawin's assertion that NLS wanted to strengthen NFC's programs, given the NLS' lack of involvement in training and educating NLS' employees and the lack of real benefits to them, it is difficult to comprehend how the NLS services could do so.

> **116** The relationship between NLS and the Appellants was contractual in nature but contractual at its most basic level. The employees in question accumulated their overtime with the placement organization; they took instructions and received directions from the placement organization; evaluations were conducted by the placement organization; and recommendations for pay increases came from the placement organizations. The employees performed the same duties with the placement organizations as they did before they entered into a relationship with NLS. Notwithstanding the contractual employer/employee relationship between NLS and the Appellants, the employer from a functional point of view was really the original placement organization. NLS did not even maintain a personnel file system for the Appellants in question and none took any of the employee benefits package from NLS because they had their own health care coverage through Health Canada. NLS did not maintain a résumé of the Appellants in their files. The training offered to the Appellants was so limited it was almost nil and if there was training, the expense was mostly carried by the placement organizations. It certainly appeared that the only advantage that the Appellants were receiving from their employment relationship with NLS was the tax-exempt status and even then, in most circumstances, the Appellants knew this was in jeopardy when they originally signed on as an employee with NLS.
>
> **CONCLUSION**
>
> **117** The factors connecting the employment of the Appellants to a reserve are very limited. I have discussed each factor, some more specifically as they relate to each Appellant, and others more generally. In the end, I do not find the evidence sufficient to conclude that the taxation of each or any of the Appellants' employment income from NLS in the relevant taxation years would result in the erosion of their entitlement to property they hold as Indians on a reserve. As such I find that the Appellants' employment income from NLS is not exempt from income tax. The appeals are dismissed, without costs.

[74] I was urged by counsel for the Appellants to apply the situs test on the basis of the judgment of the Supreme Court in *Nowegijick, supra,* and to hold that the decision in *Williams, supra,* and subsequent decisions in the Federal Court of Appeal and the Tax Court of Canada had failed to consider the peculiar nature of the circumstances in *Williams, supra*, giving rise to the potential unjust denial of unemployment insurance benefits flowing from an employment relationship where the services were provided to an employer on the reserve by the taxpayer who lived on the reserve. I cannot accept that proposition in light of the extent and depth of analysis in that case and in the subsequent appeals heard by the Federal Court of Appeal. Traditionally, the Supreme Court will not decide more than is necessary to dispose of a particular appeal. In my view, the Supreme Court did not decide *Williams, supra,* for the purpose of avoiding what – in ordinary language – could be considered an inequitable result. Instead, important legal principles were discussed

and the resultant establishment of the connecting factors test did not depend on those particular facts. It is significant that the Supreme Court – in April 2009 – dismissed an application for leave to appeal from the decision of the Federal Court of Appeal in *Horn and Williams*, *supra.* The issues in that case were obvious and a careful review of the judgment of Phelan J. was undertaken. The Supreme Court could have chosen to grant the leave application and to revisit the connecting factors test and – perhaps – to expand the relevant indicia to be considered in determining when the income of an Indian is situated on a reserve. It is not as though the jurisprudence on this point is out of date. Instead, the current decisions issued by courts having jurisdiction over this issue have consistently followed the methodology approved in *Williams*, *supra*, and have applied the connecting factors test when confronted with a variety of appeals stemming from different facts.

Application of connecting factors test to the within appeals of Appellants employed by NLS

Location of the employer:

[75] NLS was located on the Six Nations Reserve and employed some people living on that Reserve. Some employees lived there but none of the Appellants lived on Six Nations or any other reserve during the periods relevant to their appeals. It is clear on the evidence – including the Agreed Facts – that Obonsawin located NLS on Six Nations Reserve so employees could claim a tax exemption pursuant to section 87 of the *Indian Act.* Not that there is anything wrong with that. The contracts between NLS and each Appellant employed in the within appeals were genuine and legal rights and obligations were created. It is obvious the economic benefit to Six Nations Reserve was very modest, particularly in the context of overall revenue generated by NLS through its business operations where – in 1997 – 94% of its gross income went to pay employees. At one point, 1400 people were employed by NLS and there is no evidence that after 1997 any amount of revenue was available to benefit the Six Nations Reserve. There is no evidence as to the number of people employed in the NLS office who lived on the Reserve or – if off-reserve – whether they were sufficiently nearby to engage in activities that could be beneficial to the Reserve by providing even a modest economic benefit. On the evidence before me, there was no significant benefit flowing to the Six Nations Reserve from the business activities of NLS when examined in the larger context of its purpose and business operations throughout Canada. None of the Appellants in the within appeals worked on nor lived on that Reserve and there is no evidence any of them spent any money there. In *Canada v. Monias (C.A.)*, 2001 FCA 239, [2001] 3 C.T.C. 244, the Federal Court of Appeal held that although the location of the employer can be regarded as a

connecting factor, the evidence must demonstrate the scope of the employer's activities on the reserve or some benefit flowing to the reserve attributable to the employer's location. A location mainly as a convenience will not assist to any significant extent in making the necessary connection of employment income to a reserve. On March 14, 2002, the Supreme Court dismissed the application for leave to appeal.

[76] Having regard to the evidence before me, I conclude that little weight should be assigned to this particular factor.

Location of employment:

[77] The services performed by each Appellant employed by NLS during the relevant taxation years in each appeal were performed in Toronto. The location is significant because unless the work is performed, no salary will be earned. The provision of the services to NLS and – through that mechanism – to the placement organizations in Toronto was inextricably linked to the right to receive employment income. Each Appellant employed by NLS lived off-reserve but most of them either visited their own reserve or other reserves to maintain a connection with family or to connect with their roots or to participate in powwows and other important cultural events.

[78] Anduhyaun operated a Shelter in Toronto that offered various services as well as a housing facility at another location in that city. The Appellants who worked there as NLS employees performed their services in Toronto unless they were authorized by a Band Council to travel with a resident of a particular reserve to attend some cultural or other event on that reserve. There was no evidence that such travel occurred at any point relevant to the within appeals.

[79] AHT operated three centres in Toronto. There are no AHT facilities located on any reserve. The mandate of AHT is to improve the health and well-being of Aboriginal people. The majority of the 10,000 recipients of AHT services each year are residents of Toronto. On occasion, Health Canada will issue a Travel Warrant to enable an individual living on a reserve to access services offered by AHT at one or more of its facilities.

[80] Pedahbun operated a treatment centre and offered other programs from its location in Toronto. The residential treatment for addictions was available to any person over age 18 who claimed Aboriginal ancestry. Pedahbun did not provide any

services to any reserve but clients who were members of various First Nations attended from different parts of Canada.

[81] ALS employed Kennedy as a receptionist in the Toronto office from September 5, 2000 to April 27, 2001. None of her services were performed on a reserve.

[82] Guarisco was employed by NLS and – after July, 2007 – she was transferred to OFIFC where she provided her services.

The nature and circumstances of the employment including any benefit to a reserve

Anduhyaun:

[83] The evidence demonstrated that to access services at the Shelter operated by Anduhyaun, it was necessary only to self-identify as an Aboriginal woman or a non-native woman with Aboriginal children. Apparently, there was no record maintained of origin or residence on a reserve anywhere within Canada. Only when women were accepted into the housing component – Nekenaan/Second Stage was it necessary for them to produce either a status Indian card, Métis card or proof of Aboriginal status in some other form satisfactory to the management of Nekenaan. Anduhyaun also operated Daycare at the Shelter and a connection of the children to any reserve was not a requirement of admission.

NWRC:

[84] NWRC operated a daycare during some years prior to 2003 and those child care services were available to the general public. NWRC offered a variety of programs – described earlier in these Reasons – and organized or participated in cultural events, all of which were held in Toronto. The mandate of NWRC as expressed in the Vision Statement was to provide a safe environment in which clients could access services designed to empower Aboriginal women and children in Toronto. Rarely did NWRC staff record the origin of women seeking services unless it was necessary to do so as part of the process to refer a woman to another agency, in which case a link to a specific reserve might be required. There was no evidence to indicate the frequency of such events during the relevant periods or whether it occurred at all. NWRC had informal travel arrangements with various Bands and – if approved by a Band Council – a NWRC worker could accompany a client to attend a powwow or other cultural event on a reserve. There was no evidence adduced as to whether that occurred during the time frame applicable to the within appeals.

Members of NWRC staff – which I presume included those workers employed by NLS – participated in events held on Six Nations Reserve and other reserves.

AHT:

[85] The particular reserve of any client/patient was not relevant unless a specific link was required by Health Canada. In a document titled Our Principles – within tab 2C – AHT stated it would "accept and provide care to Aboriginal people regardless of history and background". It went on to state this "includes Métis and non-status Aboriginal people and non-Aboriginal people in certain circumstances and that the holistic health care was provided through an intra-disciplinary team of Western and Traditional health care practitioners. There were beneficial relationships established between AHT and some reserves, often for the purpose of obtaining a supply of traditional medicines.

Pedahbun:

[86] Pedahbun operated an Aboriginal-designed-and-directed substances abuses centre and its various functions were described earlier in these Reasons. Through a treatment philosophy emphasizing proper nutrition and relying heavily on an Aboriginal cultural component as comprising the core of successful treatment, the hope of Pedahbun staff and management was that the residents would leave the facility and return home – whether on a reserve or elsewhere – to live a clean and sober life. Admission to the treatment facility required a client to be over the age of 18 and of Aboriginal ancestry. Aboriginal people from all across Canada – including members of Cree First Nations in the West – were admitted to Pedahbun.

ALS:

[87] The mandate of this organization is to provide assistance to Aboriginal people requiring assistance in connection with a variety of legal and human rights issues. Self-identification as an Aboriginal is sufficient to access services and the services are delivered to clients in Toronto whether through the ALS arm of the organization or via the Clinic which provides legal assistance in certain cases and seeks leave to intervene in cases at the Appellate level that can impact – directly or indirectly – native people within Canada.

OFIFC:

[88] None of the Friendship Centres receiving services from OFIFC were located on a reserve. Other services available to Aboriginal people did not depend on whether they lived on-reserve or elsewhere.

[89] As noted in paragraph 116 of the judgment of Rossiter A.C.J. in *Googoo*, *supra*, the small amount of training provided by NLS to the Appellants in the within appeals from time to time took place in Toronto. Often, when an Appellant stated that a particular benefit or training had been provided by NLS, then, on reflection - she would concede that it was likely such training had been carried out by the placement organization and that access to benefits was obtained through some mechanism such as a collective agreement or by affiliation with a larger group.

Connections to a reserve

June Robinson:

[90] Robinson visits family 4 or 5 times a year on the Hiawatha Reserve where she lived for many years until she left – following marriage to a non-native – to seek employment in Peterborough.

Linda Cockburn:

[91] Cockburn has not lived on a reserve since age 5 but visits the Albany Reserve at least once a year.

Simone Hillier:

[92] Hillier was removed by her mother from the Six Nations Reserve at age 7. She visits there and at other reserves and frequents casinos located on reserves.

Sandra King:

[93] King was taken from Wasauksing Reserve when she was a child and visits with her husband but does not have contact with family there.

Jules Koostachin:

[94] Koostachin never lived on the Attawapiskat Reserve and visited there in 2009 but not during 2005 and 2006. She has no real connection to that Reserve but her family hunted and fished there. She is a jingle dancer and attends powwows on other reserves.

Julie Debassige:

[95] Debassige lived and worked on the M'Chigeeng Reserve between 1984 and 1994. Her family home is there and she visits her mother who lives on another reserve. She also visits the casino on the Rama Reserve.

Joan Kennedy:

[96] Kennedy has property on the Whitefish Reserve and visits her sister there twice a year. She attends powwows on the Six Nations Reserve and on other reserves.

Leanna Gerrior:

[97] Gerrior never lived on a reserve and has no strong connection with the Wikwemikong Reserve on Manitoulin Island. She visits relatives residing on another reserve, attends powwows on other reserves and has spent time on her husband's reserve.

Janet Takata:

[98] Takata left her home on the Mi'Kmaq Reserve when she was 19. She visits two or three times a year.

Bonnie Guarisco:

[99] Guarisco worked and lived on the Wauzhushk Onigum Reserve between 1998 and 2000. During the past 4 years, she visited there 4 times a year. She is a jingle dress dancer and participates at powwows held on other reserves and attends casinos located on reserves.

[100] The evidence demonstrated that the Appellants who sought out, re-established or maintained contact with family and friends on their own reserve or other reserves

did so purely for personal reasons unconnected with their employment by NLS. For valid reasons including personal growth, spiritual enhancement, broadening of their knowledge of Aboriginal people and culture or to trace their roots, a pursuit particularly important if the removal from a reserve was due to an event beyond their control or in the face of a specific circumstance such as marriage to a non-native or to seek employment or to care for a family member living off-reserve.

Residence of the employee

[101] All Appellants in the within appeals who were NLS employees resided in Toronto at all times material.

Place of payment

[102] The method of payment was described in paragraph 11 (b) of the Agreed Facts – Exhibit R-4, as follows:

> 11. From a business perspective, the employee leasing business is the *sine qua non* of NLS's operations. NLS financial statements show:
>
> > b. 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 where the employee's 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 those employees leased to the client;

[103] There is no evidence that connects the employment income of any Appellant employed by NLS to any reserve either as a physical location or an economic base.

[104] As noted by Paris J. in *Roe*, *supra*, – at paragraph 109 – and by Rossiter A.C.J. in *Googoo*, *supra*, – at paragraph 95 – any expansion of the scope of the exemption pursuant to section 87 of the *Indian Act* rests with an appropriate amendment by Parliament. In *Horn and Williams*, *supra*, Evans J.A. – at paragraph 5 – commented that because the Supreme Court refused leave to appeal from Federal Court decisions in section 87 cases, that any variation to the framework would require intervention by Parliament.

[105] With respect to contrary viewpoints, I do not consider that the Appellants employed by NLS in the within appeals were participating in the commercial

mainstream of a modern – largely urban – Canadian economy. The Appellants provided their services to the placement organizations, all of which were not-for-profit entities created or established for the purpose of aiding people of Aboriginal ancestry, whether status Indians, Métis, Inuit or others who identified themselves as Aboriginal. The funding for those organizations flowed from various levels of government either directly or through agencies and it is highly unlikely there will be any stampede by venture funds, corporations or individuals to invest in the construction and operation of similar facilities to provide competing services, barring – of course – massive subsidies by various levels of government. The Appellants were carrying out worthwhile social work for the benefit of thousands of people on an annual basis in return for modest pay and limited employment benefits available through NLS, the placement organization or an affiliated group. The work undertaken was righteous and flowed from a highly commendable choice on their part to devote their efforts to assist those seeking shelter and to offer compassionate assistance to combat hunger, physical harm and mental hurt. I accept fully that the cultural component of all programs offered by the placement organizations referred to in these Reasons was integral to the success of the treatment or management of a variety of problems affecting their clients.

[106] There is no doubt that many people living on reserves do so under conditions of grinding poverty. Even those residents on more prosperous reserves in Canada that generate revenue from petroleum or mineral production, manufacturing, leasing residential or commercial land, casinos or other sources, are dependent on policies administered by the Band Council. If their particular Chief and Councillors are adherents of a home grown variation of the trickle-down theory of economics or – even worse – a sort of reverse osmosis where money passes in the opposite direction rather than making the concentration of revenue on two sides more nearly equal – then the benefits to the ordinary resident will be minimal and the circumstances of soul-destroying poverty will be perpetuated.

[107] The issues that Parliament – through committees, panels, commission, inquiries or other means – might consider is the development of a protocol that would deem certain institutions such as Anduhyaun, NWRC, AHT, Pedahbun, ALS and others to have the status either fully – or in part – of a reserve in recognition of their mandate to provide necessary social services to Aboriginal people. A partial exemption of tax on employment income could be made available to status Indian employees of these institutions and to those providing services either directly or through business entities like NLS. The exemption could be linked to the particular percentage of the total clients/patients who were status Indians connected with a reserve. This would require the creation and implementation of an overall policy

establishing guidelines for eligibility and sophisticated software could be utilized to record the origin of recipients of services, their circumstances, links to a reserve and to track the progress of those individuals should they choose to return to their own reserve following treatment or other improvement in their personal circumstances. In that way, the benefit flowing to a reserve would move from the category of intangible to that of tangible. If people were treated at AHT and returned to their reserve to become employed and thereafter able to support themselves and their families, that would constitute a measurable economic benefit. Historically, Revenue Canada was – and its successor Canada Revenue Agency is – adept at calculating amounts to be attributed between personal and business expenses, use of assets, sources of income and so on. This expertise could be put to good use in administering any ameliorative legislation passed by Parliament that put in place a system that was not dependent on the all-or-nothing approach.

[108] Another possibility would be to deem a particular organization or institution as equivalent – in whole or in part – to a reserve so that status Indians employed to provide services to Aboriginal people could be granted some degree of exemption. Again, the notion that status Indians left – or are leaving – their reserves as a matter of free choice to engage in the so-called commercial mainstream requires a thorough analysis by Parliament. Increasing urbanization generally and the movement of Aboriginal people to large cities is inevitable and the ongoing impoverishment of reserves will accelerate that exodus.

[109] The issue in the within appeals concerns taxation and all forms of taxation – or exemption therefrom – is about money, pure and simple, within the sometimes complicated framework of the *Indian Act* and the *Act.* Counsel for the Appellants strove mightily to overcome the barrier composed of the unbroken chain of recent jurisprudence. However, the factors connecting the employment of the Appellants employed by NLS to a reserve are extremely limited. I have considered each factor and the circumstances relevant to each of those Appellants. Having considered the evidence and reviewed the relevant jurisprudence, I cannot conclude that the taxation of any of the employment income – in the taxation years relevant to the appeal of each Appellant – would result in the erosion of her entitlement to property held as an Indian on a reserve. Therefore, I find the employment income of each Appellant is not exempt from income tax.

[110] The purported appeal of Simone Hillier for the 1999 taxation year was quashed earlier in these Reasons. Her appeal for the remaining taxation years is also dismissed.

[111] The appeal of each Appellant employed by NLS during the taxation year(s) relevant to said appeal is dismissed for all of these reasons.

[112] Each of the appeals of Douglas Cockburn, Martin John, and John Y Takata is dismissed because each was tied to the result of the appeals of their spouses, Linda Cockburn, Leanna Gerrior and Janet Takata, respectively.

[113] The Respondent did not seek costs and none are awarded.

Signed at Sidney, British Columbia this 22nd day of December 2010.

"D.W. Rowe"

Rowe D.J.

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