Docket: 2003-4543(IT)G

BETWEEN:

LINA GROS-LOUIS,

Appellant

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on October 23 and October 24, 2006, at Quebec City, Quebec.

Before: The Honourable Justice François Angers

Appearances:

For the Appellant:	The Appellant herself
Counsel for the Respondent:	Sophie-Lyne Lefebvre

JUDGMENT

The appeal from the assessment made under the *Income Tax Act* in respect of the 1997 taxation year is dismissed, with costs, in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 6th day of December 2007.

"François Angers"

Angers J.

Translation certified true
on this 29th day of May 2008.

Erich Klein, Revisor

Citation: 2007TCC725
Date: 20071206
Docket: 2003-4543(IT)G

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and

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REASONS FOR JUDGMENT

Angers J.

[1] This is an appeal from an assessment made on December 30, 1998, and confirmed on October 24, 2003, in respect of the 1997 taxation year. A total of $29,201 in interest income was added to the appellant's income for that year. The Minister of National Revenue ("the Minister") decided that the appellant's interest income was not personal property of an Indian situated on a reserve.

[2] The appellant is a Status Indian. She received the investment income in question from the Caisse populaire du Village Huron ("the Caisse"). She worked on the reserve for 25 years and is now retired. From 1953 to 1983 and from 1999 to 2003, she lived on the reserve. From 1984 to 1998, she lived in a Quebec City suburb. The money that she invested with the Caisse was what she had saved since 1974. This appeal is one of a number of similar appeals respecting which it was agreed that certain evidence would be submitted in each, that evidence being a partial agreement on the facts regarding the Caisse. These facts are as follows:

> [TRANSLATION]
>
> 1. During the period relevant to this case, the Caisse populaire Desjardins du Village Huron (the Caisse) was governed in particular by the *Savings and Credit Unions Act*, R.S.Q. c. C-4.1, and the *Act respecting financial services cooperatives*, R.S.Q. c. C-67.3 (the Act).

2. The Caisse was founded in 1965 and since then, its head office, which is its only place of business and only capital asset, has been located on the Village Huron reserve, a reserve within the meaning of section 2 of the *Indian Act* (S.C., c. I-5); copies of the articles of incorporation are produced by consent as Exhibit A-1.

3. The Caisse is located on the Reserve pursuant to the terms and conditions set out on the permit issued by the Minister of Indian Affairs and Northern Development, upon approval of the Band Council, all in accordance with section 28 of the *Indian Act*; copies of the permits in force at all times relevant to the dispute are produced by consent as Exhibit A-2.

4. All the founders of the Caisse were members of the Huron community and lived on the Reserve.

5. Between 1997 and 2003, the board of directors and the audit and ethics committee were composed entirely of Huron residents of the Reserve.

6. According to the articles of incorporation of the Caisse, at the beginning, its recruitment territory was the Wendake Indian reserve (the Reserve).

7. In 1992, the Caisse changed the territory in which it could recruit members, expanding it to include the Reserve and the Quebec City Urban Community.

8. The Caisse, in accordance with the Act, chose to consider two types of members: regular members, composed of members in the territory established by the Caisse in its articles of incorporation, and associate members, from outside its territory.

9. Lina Gros-Louis is a regular member.

10. Steven Lewin, in *Lewin v. Canada*, 1999-504 (IT)G was an associate member.

11. The regular and associate members had access to the same products and services. The main distinction was that associate members did not have the right to vote at the Caisse's meetings.

12. From 1996 to 2003, 60% of the Caisse's members were Indians. Of this percentage, the majority lived off the Reserve; at least 95% of the Hurons living on the Village Huron reserve are members of the Caisse.

13. The Caisse has an agreement with the Huron Nation Band Council under which it grants housing loans to Indians living on the Reserve who want to purchase or build a home on the Reserve.

14. Under the agreement, the Band Council guarantees the housing loan up to a certain amount, which it does by way of a suretyship in favour of the Caisse.

15. From 1997 to 2002, the maximum amount of the Council's sureties was $105,000 for purchases of existing housing. That amount was increased to $150,000 in 2003.

16. For new housing construction, the Band Council would grant Huron members assistance or a contribution not exceeding $58,000 and was prepared to guarantee any loan by the Caisse up to $47,000 for 1997 to 2002. This amount may also have been increased in 2003, but the figures are not known.

17. This method, by which the Caisse loans money to Hurons on the Reserve on the strength of the Band Council's guarantee of the performance of their obligations, resulted from the difficulty experienced by Indians living on a reserve in getting loans because, under section 89 of the *Indian Act*, their property cannot be seized.

18. The Caisse cannot seize property or buildings on the Reserve. It does not lend unless surety is provided.

19. If the acquisition cost of the housing or the construction costs are higher than the amount guaranteed by the Band Council, the Caisse may, after reviewing the borrowing member's credit, grant a personal loan, not guaranteed by the Band Council. It would not require additional guarantees unless the borrowing member is able to provide some, in which case the Caisse will so require.

20. The Caisse is willing, on the basis of the guarantees provided by the Minister of Indian Affairs and Northern Development, to grant housing loans to Indians other than those on the Reserve for properties located on other reserves.

21. From 1996 to 2003, loan activities on the Reserve were not enough to make the Caisse's operations profitable.

22. From 1996 to this day, the Caisse has been seeking borrowers from off the Reserve and beyond its territory because its own market is insufficient.

23. From 1996 to this day, the Caisse has been carrying on an offensive aimed at gaining new hypothecary loan clients off the Reserve by consulting the land register and inviting borrowers with competitors to renew their hypothecs, but with the Caisse.

24. The Caisse also solicits businesses off the Reserve with a view to having them take out commercial loans.

25. Commercial activities on the Reserve are not sufficient to make the Caisse's operations profitable.

26. From 1996 to 2003, the Caisse had the following income-generating assets:

- Investments in the form of cash deposits and investments with the Fédération des Caisses Desjardins or elsewhere, and

- Loans to regular and associate members,

as seen from the financial statements for the Caisse's fiscal years ending from 1996 to 2003 and filed as Exhibit A-3 in support of this agreement and from the trial balance filed as Exhibit A-4 in support of this agreement.

27. Of the Caisse's funds used for loan activities, at most a third of them are lent to Indians on reserves.

28. In 2001, the Band Council provided surety to the Caisse for loans to Hurons totalling $824,488.76; a copy of a letter from the Band Council confirming this is filed as Exhibit A-5.

[3] The parties also agreed to enter on the record herein the testimony of Yvon Bastien given at the hearing in *Alexandre Dubé v. The Queen*, 2003-4665(IT)G.

[4] In addition to the facts concerning the Caisse populaire du village Huron, there is the testimony of its general manager, Yvon Bastien, who explained that while the Caisse has adopted the general credit organization standard of the Fédération des Caisses populaires Desjardins du Québec (the Federation) and the financing practice established by the Federation in the manual on credit for individuals, it also takes into account the adaptations and exceptions set out in other policies adopted by the board of directors. The manager made specific reference to a benchmark debt ratio for clients whose salary is net of tax; this is a ratio that was adopted by the Caisse's board of directors and that makes it possible to fully finance a house on the Reserve. Where necessary, the Caisse grants

personal loans amortized like hypothecs and confers authority on the manager to grant a loan under circumstances where the benchmark debt ratio is exceeded, if, in his judgment, it is appropriate to do so.

[5] However, the Caisse does have to justify this practice to the Federation because it contravenes the standards, and the Federation does not appreciate any deviation from its standards. The benchmark debt ratio and the granting of loans without a guarantee or with a guarantee provided by the band council only apply to Indians who live and work on the Reserve or, more particularly, to Indians whose income is non-taxable.

[6] In 2001, 60% of the members of the Caisse du Village Huron were Indians. The Caisse had between 4,000 and 5,000 members from 1996 to 2003. Its territory, as indicated in paragraph 7 of the agreement on the facts, corresponds to that of the Reserve and the Quebec City Urban Community. The services to Aboriginal and non-Aboriginal members are identical and there is no difference in the interest rates on investments for Aboriginal and non-Aboriginal persons. However, interest rates on unsecured loans, or loans guaranteed by the band council, are higher. Off-reserve hypothecary loans are offered at better rates.

[7] It should be noted that, according to paragraphs 22 to 25 of the agreement on the facts, since 1996 the Caisse has expanded its activities beyond its territory in order to make its operations profitable. In 1992 it expanded its territory to include the Quebec City Urban Community.

[8] The financial statements for the Caisse populaire du Village Huron for 1996 to 2003 and the trial balance for 1999 to 2003 were submitted as evidence. The assets of the Caisse du Village Huron are composed mainly of cash deposits and investments with the Federation, which accounted for, on average, 25% of its assets in the years 1996 to 2003. The balance of the assets is composed in particular of housing loans on and off the Reserve, consumer loans and business loans.

[9] All of the Caisse du Village Huron's investments are made off the Reserve and all are managed by the Federation. These are term deposits with the Federation and mandatory participation deposits. Until 2000, the Caisse du Village Huron also purchased municipal bonds from the Federation. They were sold in 2001. As for loans to individuals and businesses, which were the most common at 75% of the Caisse's assets, around 30% of these loans were granted to Indians living on a reserve, including a reserve other than Wendake. This means that around two

thirds of the Caisse's assets were invested outside the Reserve. This was true from 1996 to 2003. During that period, the Caisse did not grant any housing loans guaranteed by the band council.

Analysis

[10] The issue is therefore whether the investment income of an Indian is property situated on an Indian reserve and whether it should be excluded from the Indian's income pursuant to paragraph 81(1)(*a*) of the *Income Tax Act* (the Act), which provides as follows:

> 81(1) Amounts not included in income — There shall not be included in computing the income of a taxpayer for a taxation year,
>
> (*a*) Statutory exemptions — 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.

[11] The exemption by another enactment of Parliament is that set out in section 87 of the *Indian Act* (the IA), which reads as follows:

> 87(1) Notwithstanding any other Act of Parliament or any Act of the legislature of a province, but subject to section 83, the following property is exempt from taxation, namely:
>
> (*a*) the interest of an Indian or a band in reserve lands or surrendered lands; and
>
> (*b*) the personal property of an Indian or a band situated on a reserve.
>
> (2) No Indian or band is subject to taxation in respect of the ownership, occupation, possession or use of any property mentioned in paragraph (1)(*a*) or (*b*) or is otherwise subject to taxation in respect of any such property.

[12] For paragraph 87(1)(*b*) of the IA to apply, three elements must therefore be present: being an Indian within the meaning of the IA, having possession of personal property, and that property being situated on a reserve. In the present case, it is admitted that the appellant is an Indian and that the investment income is

personal property. The dispute relates to the question of whether the property is in fact situated on a reserve. This question has been the subject of many decisions of the Tax Court of Canada and the Federal Court, and numerous legal principles have been developed in the case law.

[13] Therefore, it is possible today to determine the state of the law on this issue, which has to do primarily with the taxation of the investment income of Indians. The Federal Court of Appeal decision in *Recalma v. The Queen*, 98 DTC 6238, is the leading case on the issue of whether or not investment income is excluded from taxable income. This decision restates the principles enunciated in *Williams v. The Queen*, [1992] 1 S.C.R. 877 (QL). These principles are known as the connecting factors for determining the *situs* of property. *Recalma* has been applied and followed in Tax Court of Canada and Federal Court decisions (see *Lewin v. The Queen*, [2001] T.C.J. No. 242 and [2002] F.C.J. No. 1625, *Sero and Frazer*, [2001] T.C.J. No. 345 and 2004 FCA 6, and *Large v. The Queen*, 2006 TCC 509).

[14] It is important to be mindful of how the tax exemption granted to Indians in the two above-quoted statutory provisions has been interpreted in a number of important judgments, and in particular, to bear in mind the limits placed on the tax exemption by the Supreme Court of Canada in *Nowegijick v. The Queen*, [1983] 1 S.C.R. 29, at page 36.

> Indians are citizens and, in affairs of life not governed by treaties or the *Indian Act*, they are subject to all of the responsibilities, including payment of taxes, of other Canadian citizens.

[15] This being said, in *Mitchell v. Peguis Indian Band*, [1990] 2 S.C.R. 85 (QL), La Forest J. commented on the Crown's obligation to Aboriginal peoples that arises from the signing of the Royal Proclamation of 1763. He describes that obligation as an obligation not to dispossess Indians of their property. However, in his analysis of the interpretation of the IA, he stated the following at paragraphs 88, 91, 92 and 112:

Paragraph 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.

Paragraphs 91 and 92:

> . . . But I would reiterate that in the absence of a discernible nexus between the property concerned and the occupancy of reserve lands by the owner of that property, the protections and privileges of ss. 87 and 89 have no application.
>
> I draw attention to these decisions by way of emphasizing once again that one must guard against ascribing an overly broad purpose to ss. 87 and 89. These provisions are not intended to confer privileges on Indians in respect of any property they may acquire and possess, wherever situated. Rather, their purpose is simply to insulate the property interests of Indians in their reserve lands from the intrusions and interference of the larger society so as to ensure that Indians are not dispossessed of their entitlements. The Alberta Court of Appeal in *Bank of Nova Scotia v. Blood*, [1990] 1 C.N.L.R. 16, captures the essence of the matter when it states, at p. 18, in reference to s. 87, that: "In its terms the section is intended to prevent interference with Indian property on a reserve."

Paragraph 112:

> A reading of the *Indian Act* shows that this provision is but one of a number of sections which seek to protect property to which Indians may be said to have an entitlement by virtue of their right to occupy the lands reserved for their use. In addition to the protections relating to Indian lands to which I have already drawn attention, the range of property protected runs from crops raised on reserve lands to deposits of minerals; see ss. 32, 91, 92, 93. These sections restrict the ability of non-natives to acquire the particular property concerned by requiring that the Minister approve all transactions in respect of it. As is the case with the restrictions on alienability to which I drew attention earlier, the intent of these sections is to guard against the possibility that Indians will be victimized by "sharp dealing" on the part of non-natives and dispossessed of their entitlements.
>
> [Emphasis added.]

[16] At paragraph 123, La Forest J. goes into greater detail regarding the concept of *situs*:

> The conclusion I draw is that it is entirely reasonable to expect that Indians, when acquiring personal property pursuant to an agreement with that "indivisible entity" constituted by the Crown, will recognize that the question whether the exemptions of ss. 87 and 89 should apply in respect of that property, regardless of *situs*, must turn on the nature of the property concerned. If the property in question simply

> represents property which Indians acquired in the same manner any other Canadian might have done, I am at a loss to see why Indians should expect that the statutory notional *situs* of s. 90(1)(*b*) should apply in respect of it. In other words, even if the Indians perceive the Crown to be "indivisible", it is unclear to me how it could be that Indians could perceive that s. 90(1)(*b*) is meant to extend the protections of ss. 87 and 89 in an "indivisible" manner to all property acquired by them pursuant to agreements with that entity, regardless of where that property is held. What if the property concerned is property held off the reserve, and was acquired by the Indian band concerned simply with a view to further business dealings in the commercial mainstream?

[17] In *Williams*, *supra*, Gonthier J. made the exemption provided in section 87 subject to the manner in which Indian taxpayers choose to organize their affairs, particularly as regards the choice to situate their property on or off a reserve. At paragraphs 18 and 19, he comments as follows:

> Therefore, under the *Indian Act*, an Indian has a choice with regard to his personal property. The Indian may situate this property on the reserve, in which case it is within the protected area and free from seizure and taxation, or the Indian may situate this property off the reserve, in which case it is outside the protected area, and more fully available for ordinary commercial purposes in society. Whether the Indian wishes to remain within the protected reserve system or integrate more fully into the larger commercial world is a choice left to the Indian.
>
> The purpose of the *situs* test in s. 87 is to determine whether the Indian holds the property in question as part of the entitlement of an Indian qua Indian on the reserve. . . .

[18] In his judgment, Gonthier J. describes the legal analysis that must be applied to determine whether taxation violates section 87 of the IA. He addresses the issue of the weighting of the connecting factors at paragraph 37:

> . . . The first step is to identify the various connecting factors which are potentially relevant. These factors should then be analyzed to determine what weight they should be given in identifying the location of the property, in light of three considerations: (1) the purpose of the exemption under the *Indian Act*; (2) the type of property in question; and (3) the nature of the taxation of that property. The question with regard to each connecting factor is therefore what weight should be given that factor in answering the question whether to tax that form of property in that manner would amount to the erosion of the entitlement of the Indian qua Indian on a reserve.
>
> [Emphasis added.]

[19] Lastly, at paragraph 61, Gonthier J. explains how the *situs* of the property in question is to be determined:

> Determining the *situs* of intangible personal property requires a court to evaluate various connecting factors which tie the property to one location or another. In the context of the exemption from taxation in the *Indian Act*, there are three important considerations: the purpose of the exemption; the character of the property in question; and the incidence of taxation upon that property. Given the purpose of the exemption, the ultimate question is to what extent each factor is relevant in determining whether to tax the particular kind of property in a particular manner would erode the entitlement of an Indian qua Indian to personal property on the reserve.

[20] These are the connecting factors reiterated in *Recalma*, *Lewin* and *Sero and Frazer*, and which have been used to decide whether investment income should be excluded from taxable income on the ground that it is situated on a reserve. In *Recalma*, *supra*, at page 6240, the Federal Court of Appeal affirmed the judgment of Judge Hamlyn of this Court and recognized four factors to be considered in determining the *situs* of investment income.

> So too, where investment income is at issue, it must be viewed in relation to its connection to the Reserve, its benefit to the traditional Native way of life, the potential danger to [*sic*] the erosion of Native property and the extent to which it may be considered as being derived from economic mainstream activity. In our view, the Tax Court judge correctly placed considerable weight on the way the investment income was generated, just as the Courts have done in cases involving employment, U.I. benefits and business income. Investment income, being passive income, is not generated by the individual work of the taxpayer. In a way, the work is done by the money which is invested across the land. The Tax Court judge rightly placed great weight on factors such as the residence of the issuer of the security, the location of the issuer's income generating operations, and the location of the security issuer's property. While the dealer in these securities, the local branch of the Bank of Montreal, was on a Reserve, the issuers of the securities were not; the corporations which offered the Bankers' Acceptances and the managers of the Mutual Funds in question were not connected in any way to a Reserve. They were in the head offices of the corporations in cities far removed from any reserve. Similarly, the main income generating activity of the issuers was situated in towns and cities across Canada and around the world, not on Reserves. In addition, the assets of the issuers of the securities in question were predominantly off Reserves, which in case of default would be most significant.
>
> Less weight was properly accorded by the Tax Court judge, in this case of investment income, to factors such as the residence of the taxpayer, the source of the capital with which the security was bought, the place where the security was purchased and the income received, the place where the security document was held and where the income was spent. We can find no fault with the reasoning of the Tax

> Court judge in the way he balanced the various connecting factors involved in this case in the light of the purpose of the legislation.
>
> Thus, in our view, taking a purposive approach, the investment income earned by these taxpayers cannot be said to be personal property "situated on a reserve" and, hence, is not exempt from income taxation.
>
> [Emphasis added.]

[21] This approach was followed by this Court in *Lewin*, *supra*, and by the Federal Court of Appeal in *Sero and Frazer*, *supra*. In *Sero and Frazer*, Sharlow J.A. also considered certain criticisms regarding *Recalma*, but saw in these none that could change her finding that the investment income was not situated on a reserve. In fact, only Linden J.A., in *Recalma*, and Judge Tardif, in *Lewin*, recognized the possibility that investment income might be generated on a reserve. In *Recalma*, Linden J.A. stated the following at page 6240:

> . . . The result may, of course, be otherwise in factual circumstances where funds invested directly or through banks on reserves are used exclusively or mainly for loans to Natives on reserves. When Natives, however worthy and committed to their traditions, choose to invest their funds in the general mainstream of the economy, they cannot shield themselves from tax merely by using a financial institution situated on a reserve to do so.
>
> [Emphasis added.]

[22] In *Lewin*, at first instance, Judge Tardif stated the following at paragraph 36:

> If it had been a financial institution created solely for the purposes, concerns and needs of the Indians living on the reserve and if the bulk of its income had primarily been reinvested on the reserve to strengthen, develop and improve the social, cultural and economic well-being of the Indians living there, the situation could have been different.

[23] Coming back, then, to the four criteria enunciated by Linden J.A. in *Recalma* for determining the *situs* of investment income, the first three must certainly be met, but the fourth is the most important, and it is the extent to which the income is derived from economic mainstream activity or solely or mainly from Aboriginal economic activity. The four criteria are:

1. the investment income's connection to the reserve (residence, source of income, etc.);
2. the benefit of the investment income to the traditional Native way of life;
3. the potential danger of the erosion of Native property;

4. the extent to which the investment income may be considered as being derived from economic mainstream activity.

[24] Having heard *Dubé*, *supra*, and the other related cases in which some of the same evidence was entered on the record, I do not want to repeat my entire analysis therefrom. I will therefore limit myself to reproducing a few passages from my judgment in *Dubé*, namely, paragraphs 45, 46, 47, 48, 49 and 50.

> [45] Lastly, we must determine if the Caisse's activities have a connection to the reserve. It is clear from the evidence adduced that the Caisse populaire de Pointe-Bleue is situated on the reserve, that it serves Aboriginal clients, that it hires Aboriginal staff and that Aboriginals sit on its board of directors. However, it must also be acknowledged that the Caisse is not exclusively Aboriginal as regards its structure and mission. It has the same objectives as any other credit union, and these are explicitly stated in the statute governing credit unions. It is a co-operative that anyone may join and it offers its services to all its members, whether they are Aboriginal or not. The Caisse is subject to federal and Quebec legislation. The only distinctive characteristic of this credit union is that it is situated on a reserve and, in my view, that factor carries little weight in the present case.
>
> [46] In the case at bar, it seems obvious to me that the investment income, in the form of the interest paid to the appellant, was beneficial to the traditional way of life of the Aboriginals living on the Obedjiwan or Pointe-Bleue reserves. However, as Judge Tardif pointed out in *Lewin*, the operations of the credit union that paid the appellant the interest did not serve only the interests of the reserve, and any banking institution situated off the reserve could have provided the same services. Judge Tardif went on to say that the services provided and offered by the credit union on the reserve were basically ordinary services related to the economic aspects of life; they had nothing to do with the Aboriginals' culture and traditional way of life.
>
> [47] I do not believe that there is any potential risk here of erosion of Native property. The investment income is the product of capital invested with the Caisse and that capital is not threatened. It is the growth of that capital and the means used to accomplish that growth that are the object of the last factor, namely, whether the income-generating activity is tied to the economic mainstream and to what extent.
>
> [48] The question at issue relates to this last factor, that is, the source of the investment income. In the context of this case, the appellant must show that the investment income was generated on the reserve. To that end, the appellant attempted to show that the Caisse has some autonomy in how it carries on its general operations beyond its obligations to the Federation. He stressed the fact that most of the Caisse's members are Aboriginals and that it is their capital that

> the Caisse invests. In my view, the appellant is seeking to show through these arguments the connection between the Caisse and the reserve and, possibly, to identify the source of the Appellant's income, but does that adequately address the question of how the Caisse generates its investment income?
>
> [49] It is true that the Caisse loans money to its members and that many of these are Aboriginals. However, the Caisse has three main sources of income, the first being deposits and investments with the Federation. The Federation has a statutory obligation to put these funds in investment funds and liquidity funds that, in turn, are invested in the economic mainstream off the reserve. These investments with the Federation are managed solely by the Federation and the evidence shows that the Caisse populaire de Pointe-Bleue has had surpluses for several years. The evidence also reveals that approximately 25% of its members' deposits are invested with the Federation. The remaining 75% constitutes the Caisse's second source of income and is loaned to its members residing on the reserve and off the reserve, notably in the form of lines of credit and consumer loans. This type of loan by the Caisse is offered to all members, both Native and non-Native, living on a reserve or off-reserve. The departmental guarantees covering housing loans for Aboriginals are offered to all financial institutions located on or off a reserve and the Caisse populaire de Pointe-Bleue therefore does not hold a monopoly on housing loans on the Pointe-Bleue or Obedjiwan reserves. It should also be noted that, according to its financial statements, the Caisse has invested with the Federation funds equal to the amount of its loans to its members. Lastly, there is the income generated from accessory products such as administration fees and brokerage fees.
>
> [50] It is true that, in the case at bar, a majority of the members of the Caisse populaire de Pointe-Bleue appear to be Aboriginals. I say "appear" because customers are not asked, when they open an account, if they are Aboriginals, and the Certificate of Indian Status number is not required. The percentage of Aboriginal members is based on an unofficial evaluation by the Caisse's management. Regardless, even if the majority of the Caisse's clients are Aboriginals, it must be acknowledged that these Aboriginal investors do not control the surpluses invested with the Federation and the Caisse cannot avoid its obligation to make these investments in the economic mainstream. The Caisse's bylaws cannot prescribe that its board of directors be composed solely of Aboriginals since the statute governing the Caisse provides that members of the board of directors must be elected by the Caisse's regular members. Accordingly, it is virtually impossible to distinguish this case from *Lewin* on this point.

[25] In the case at bar, it is true that the Reserve was the appellant's place of residence, the source of the capital, the location of the Caisse populaire, the place where the investment income, or a good part of it was used, the location of the investment vehicle, and the place where the investment income was paid. However, these are factors of lesser importance in determining the *situs* of

investment income, as for that purpose the emphasis is mainly on the connection between the investment income and the Reserve and the extent to which that income can be considered as being derived from an economic mainstream activity. We must also take into account the beneficial effect of the income on the traditional Native way of life and the potential danger of the erosion of Native property. It is thus in this context that the analysis must be carried out, as Linden J.A. held in *Recalma*, *supra*. Obviously, that analysis must also be carried out bearing in mind the purpose of the exemption set out in the *Indian Act*, the type of property involved and the nature of the taxation of this property (*Mitchell*, *supra*, and *Williams*, *supra*).

[26] The exercise that must be engaged in is to determine how the income was earned. It must be determined what the Caisse did with the money, that is to say, what the income generating activities were, and then whether these activities were, at the time, closely connected to the Reserve. In my opinion, the legal entities in question and the contractual nature of the investment certificates under the *Civil Code* do not help us carry out the analysis required under the case law. We must focus on the intended purpose of section 87 of the *Indian Act*.

[27] I cannot accept counsel for the appellant's arguments concerning the Caisse's policies regarding unsecured commercial loans to Aboriginals and the debt ratio, or the argument that interest income is only taxable when paid. None of this creates a close connection with the Reserve. As for the first two arguments, what are actually involved are benefits for the Aboriginal members of the Caisse populaire. Regarding the interest income, it is taxable even if the taxpayer did not receive it (paragraph 12(1)(*c*) of the *Income Tax Act*). Lastly, I also cannot accept the argument that there is ambiguity in the interpretation of the Act. The Federal Court of Appeal has precisely formulated the analysis that is required in order to rule on the point at issue.

[28] In this case, the credit union, its income-generating activities and the connecting factors are the same as in *Lewin*. As a result, I must conclude that the appellant's investment income is not situated on a reserve and is therefore not tax-exempt.

[29] The appeal is dismissed and the respondent is entitled to her costs.

Signed at Ottawa, Canada, this 6th day of December 2007.

"François Angers"

Angers J.

Translation certified true
on this 29th day of May 2008.

Erich Klein, Revisor

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PLACE OF HEARING:	Quebec City, Quebec
DATE OF HEARING:	October 23 and October 24, 2007
REASONS FOR JUDGMENT BY:	The Honourable Justice François Angers
DATE OF JUDGMENT:	December 6, 2007

APPEARANCES:

For the Appellant:	The Appellant herself
Counsel for the Respondent:	Sophie-Lyne Lefebvre

COUNSEL OF RECORD:

For the Appellant:	
For the Respondent:	John H. Sims, Q.C. Deputy Attorney General of Canada Ottawa, Canada