Docket: 2007-579(IT)I

BETWEEN:

JACQUELINE DALE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on March 15, 2011, at Toronto, Ontario

Before: The Honourable N. Weisman, Deputy Judge

Appearances:

For the Appellant:	The Appellant herself
Counsel for the Respondent:	Brandon Siegal

JUDGMENT

The appeals from the assessments made under the *Income Tax Act* for the 2002 and 2003 taxation years are dismissed, without costs, in accordance with the attached Reasons for Judgment.

Signed at Toronto, Ontario, this 12th day of April 2011.

"N. Weisman"

Weisman D.J.

Citation: 2011 TCC 206
Date: April 12, 2011
Docket: 2007-579(IT)I

BETWEEN:

JACQUELINE DALE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Weisman D.J.

[1] Jacqueline Dale (the "Appellant") is a status Indian and a member of the Six Nations of the Grand Territory band whose reserve is situated at Ohsweken, Ontario.

[2] At all material times, the Appellant lived off the reserve in Hamilton, Ontario. There she worked as a fundraiser and then as a tenant counsellor assistant. In both positions, her clients were Native American Indians, some of whom resided on reserves.

[3] While her daily duties were assigned and supervised by a placement agency called Urban Native Homes Corporation ("UNH"), she entered into a contract of employment with, and received her remuneration from, an entity named OI Employee Leasing ("OIEL"), which has its offices on the Six Nations reserve. It seems that she also received direction and advice from one David Martin, an employment consultant at Grand River Employment and Training ("GREAT"), which is also situated on the Six Nations reserve.

[4] Representatives of OIEL, GREAT and UNH all assured her that, as an employee of OIEL, leased to UNH to help status Indians living either on or off reserves, she would be exempt from payment of income taxes. She was also advised that her husband could claim the spousal deduction provided for in paragraph 118.(1)(*a*) of the *Income Tax Act* (the "*Act*")[1] since she had no taxable income.

[5] When she was assessed by the Respondent for the 2002 and 2003 taxation years because her salary was not personal property of an Indian situated on a reserve, she brought this appeal.

[6] From her testimony, it became apparent that her grievance was not so much with the Respondent as it was with the three organizations that were in positions of authority over her and in whom she placed her trust. She feels they should be held accountable for their mistakes. While she willingly contributed to a legal fund, she was never told that it was required to defend people in her position against the jeopardy she was in from the Respondent, as a result of the employment scheme of which she was a part.

[7] Accordingly, she did not reply when asked by the Respondent if her case was factually comparable to the test cases covering this area of the law, such as *Shilling v M.N.R.*[2] and *Horn v M.N.R.*[3].

[8] She also declined to identify the relevant factors connecting her income to a reserve so that they could be given appropriate weight in the circumstances, and a determination made as to whether her salary qualified for the exemption from taxation contained in paragraph 87(1)(*b*) of the *Indian Act*[4], pursuant to *Williams v The Queen*[5].

[9] She gave the following explanation: "To me this is not a native issue, as much as my putting trust in authority figures. This is an act of neglect for which someone should be held accountable." Interestingly, these sentiments resonate with the comments expressed by Associate Chief Justice Rossiter in *Googoo et al v The Queen*[6].

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[1] R.S.C. 1985, c.1 (5th Supp.)
[2] 2001 FCA 178, 201 D.L.R. (4th) 523
[3] 2008 FCA 352, [2008] F.C.A. 352
[4] R.S.C. 1970, c. I-6
[5] [1992] 1 S.C.R. 877, at paragraphs 37 and 38
[6] 2008 TCC 589, 2009 D.T.C. 1061 at paragraph 118

[10] She apparently now looks to this Court for protection against OIEL, GREAT and UNH. She relies on subsection 1. (a) of the *Canadian Bill of Rights*[7], which guarantees "the right of the individual to equality before the law and the protection of the law", and on the *Canadian Charter of Rights and Freedoms*[8]. Presumably, she invokes subsection 15. (1) which provides as follows:

> 15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, with discrimination based on race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability.

Unfortunately, this Court does not have the jurisdiction to redress her grievances against OIEL, GREAT or UNH.

[11] As far as the nature and location of the work performed by the Appellant and the circumstances surrounding it are concerned[9], the evidence establishes that, in 2002 and 2003, she was a status Indian working off the reserve to assist other Indians residing both on and off reserves, to obtain housing. Those living on reserves comprised a small portion of her caseload, which portion she estimates to be about ten percent. Unfortunately for the Appellant, it has been held in *Shilling*[10] that the fact that the nature of the employment is to provide services to Indians does not connect that employment to an Indian reserve as a physical place.

[12] The chief factor connecting the Appellant's income to a reserve is that her employer, OIEL, has its offices on the Six Nations reserve. *Shilling* also established, however, that the location of the employer on a reserve will be afforded little weight in the absence of evidence regarding how the reserve benefits from the Appellant's employment contract, the scope of the employer's activities on the reserve and whether any residents of the reserve are employed by OIEL.[11]

[13] Counsel for the Respondent adduced evidence that OIEL employed approximately ten people on the reserve, that little of their income was spent there and that OIEL paid minimal rent to the reserve. This connecting factor will accordingly be afforded little weight.

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[7] R.S.C. 1985, App. III
[8] Part 1 of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (U.K.), 1982 c. 11
[9] *Shilling, supra*, at paragraph 31
[10] *Supra*, at paragraph 51
[11] *Supra*, at paragraph 36

[14] The Appellant is employed in the commercial mainstream. Subjecting her remuneration to taxation under the *Act* does not in any way erode her entitlement as an Indian to personal property on the reserve.[12]

[15] She is clearly an honourable person. She found employment so as to be able to "stand on her own two feet". She is currently an Aboriginal Cultural Advisor on Aboriginal parole hearings. She feels that Indian rights should be the same whether they are working on or off the reserve. The jurisprudence, however, establishes that to exempt her income from taxation would afford her an advantage over others working in the commercial mainstream, be they Indian or not.

[16] In the result, it is ordered that the Appellant's appeal from the assessments made under the *Act* for the 2002 and 2003 taxation years is dismissed without costs.

Signed at Toronto, Ontario, this 12th day of April 2011.

"N. Weisman"

Weisman D.J.

[12] *Williams, supra*, at paragraph 37

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REASONS FOR JUDGMENT BY:	The Honourable N. Weisman, Deputy Judge
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APPEARANCES:

For the Appellant:	The Appellant Herself
Counsel for the Respondent:	Brandon Siegal

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

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