

**SUPREME COURT OF CANADA**

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| **Citation:** Dubé *v.* Canada, 2011 SCC 39, [2011] 2 S.C.R. 764 | **Date:** 20110722  **Docket:** 33194 |

**Between:**

**Alexandre Dubé**

Appellant

and

**Her Majesty The Queen**

Respondent

- and -

**Assembly of Manitoba Chiefs, Grand Council of**

**the Crees (Eeyou Istchee)/Cree Regional Authority,**

**Assembly of First Nations, Chiefs of Ontario and**

**Union of Nova Scotia Indians**

Interveners

**Official English Translation:** Reasons of Deschamps J.

**Coram:** McLachlin C.J. and Binnie, Deschamps, Fish, Charron, Rothstein and Cromwell JJ.

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| **Reasons for Judgment:**  (paras. 1 to 33)  **Dissenting Reasons:**  (paras. 34 to 41) | Cromwell J. (McLachlin C.J. and Binnie, Fish and Charron JJ. concurring)  Deschamps J. (Rothstein J. concurring) |

Dubé *v.* Canada, 2011 SCC 39, [2011] 2 S.C.R. 764

Alexandre Dubé *Appellant*

v.

Her Majesty The Queen *Respondent*

and

Assembly of Manitoba Chiefs, Grand Council of

the Crees (Eeyou Istchee)/Cree Regional Authority,

Assembly of First Nations, Chiefs of Ontario and

Union of Nova Scotia Indians *Interveners*

**Indexed as:** Dubé ***v.* Canada**

2011 SCC 39

File No.: 33194.

2010: May 20; 2011: July 22.

Present: McLachlin C.J. and Binnie, Deschamps, Fish, Charron, Rothstein and Cromwell JJ.

on appeal from the federal court of appeal

*Aboriginal law — Taxation — Exemptions — Interest income — Status Indian living part time off‑reserve investing income in term deposits with caisse populaire located on reserve — Interest income earned on term deposits paid and deposited in savings account — Whether interest income exempt from income taxation as personal property “situated on a reserve” — Connecting factors approach to determining location of intangible personal property — Weight given to creditor’s place of residence, source of invested funds and location where investment income spent — Indian Act, R.S.C. 1985, c. I‑5, s. 87(1)(b).*

*Taxation — Income tax — Exemptions — Income from property — Interest income earned on term deposits deposited in status Indian’s savings account on reserve — Whether interest income exempt from tax as “personal property of an Indian situated on a reserve” — Income Tax Act, R.S.C. 1985, c. 1 (5th Supp.), ss. 3, 9 — Indian Act, R.S.C. 1985, c. I‑5, s. 87(1)(b).*

D is an Attikamek Indian and has been a member of the Obedjiwan Reserve since birth. During the relevant years, D lived part time off‑reserve and owned real property off‑reserve. As there were no financial institutions on the Obedjiwan Reserve, D used the services of the Caisse populaire Desjardins de Pointe‑Bleue situated on the Mashteuiatsh Reserve. He earned interest income on term deposits with the Caisse, which was deposited in a savings account at the Caisse. The Minister of National Revenue made an assessment in which he added the investment income to D’s income for each taxation year from 1997 to 2002. The Minister refused to consider this income to be property exempt from taxation under s. 87 of the *Indian Act*. The assessment was confirmed and D appealed unsuccessfully to the Tax Court of Canada and the Federal Court of Appeal.

*Held* (Deschamps and Rothstein JJ. dissenting): The appeal should be allowed.

*Per* McLachlin C.J. and Binnie, Fish, Charron and Cromwell JJ.: According to the analytical approach set out in *Bastien Estate v. Canada*, 2011 SCC 38, [2011] 2 S.C.R. 710, both the substance and the form of the term deposits provide strong connecting factors between the interest income and a reserve. The interest income derives from a contractual obligation entered into on a reserve with an institution carrying on business on that reserve to pay fixed sums of money on that reserve. Focusing on the nature of the taxpayer’s property, as opposed to the Caisse’s sources of revenue, the generation and payment of the income is strongly connected to a reserve. Therefore, the connecting factors of the place of contracting, the location of the Caisse and the place of payment should, when considered in light of the type of property, the nature of the taxation of that property and the purpose of the exemption, be given considerable weight.

Notwithstanding the factual differences between *Bastien* and this case, all the relevant factors point to the Mashteuiatsh Reserve as the location of the interest income, and D should therefore be entitled to the s. 87 exemption from taxation. The facts that the Caisse was not on D’s reserve and that D’s principal residence was not on a reserve, while potentially relevant, should receive little weight when considered in light of the type of property, the nature of the taxation in issue and the purpose of the exemption. The taxation exemption refers to an Indian’s personal property situated on “a” reserve and not to property on his or her “own” reserve. Furthermore, given the strength of the connecting factors relating to the location where the contract of investment was entered into, where it was to be performed and the Caisse’s place of business, the fact that the bulk of the capital invested was not derived from the tax‑exempt activities on a reserve does not appreciably weaken the connection between the income and the Mashteuiatsh Reserve. Finally, when considered in light of the type of property, the nature of the taxation of that property and the purpose of the exemption, the location where the investment income was spent by D is not a relevant connecting factor in determining the location of the income earned on his term deposits.

*Per* Deschamps and Rothstein JJ. (dissenting): The interest accrued under D’s investment contract cannot be exempt from taxation. For the exemption provided for in the *Indian Act* to apply, an Indian’s personal property must have concrete and discernible connections with a reserve. The findings of fact of the Tax Court of Canada judge disclose no such connections in this case. D did not reside on the reserve, he was unable to explain where the deposits came from and the judge was unable to establish a connection between the deposited capital and the transportation company operated by D. To grant the exemption in such circumstances would be tantamount to turning the reserve into a tax haven for Indians engaged in unspecified for-profit activities off the reserve.

**Cases Cited**

By Cromwell J.

**Applied:** *Bastien Estate v. Canada*, 2011 SCC 38, [2011] 2 S.C.R. 710, rev’g 2009 FCA 108, 400 N.R. 349; *Williams* *v. Canada*, [1992] 1 S.C.R. 877; **referred to:** *Recalma v. Canada* (1998), 158 D.L.R. (4th) 59, aff’g [1997] 4 C.N.L.R. 272; *Nowegijick v. The Queen*, [1983] 1 S.C.R. 29; *R. v. Lewis*, [1996] 1 S.C.R. 921; *Union of New Brunswick Indians v. New Brunswick (Minister of Finance)*, [1998] 1 S.C.R. 1161; *McDiarmid Lumber Ltd. v. God’s Lake First Nation*, 2006 SCC 58, [2006] 2 S.C.R. 846; *Mitchell v. Peguis Indian Band*, [1990] 2 S.C.R. 85; *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235; *Lewin v. The Queen*, 2001 D.T.C. 479, aff’d 2002 FCA 461, 2003 D.T.C. 5476.

By Deschamps J. (dissenting)

*Bastien Estate v. Canada*, 2011 SCC 38, [2011] 2 S.C.R. 710.

**Statutes and Regulations Cited**

*Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), s. 12(4).

*Indian Act*, R.S.C. 1985, c. I‑5, ss. 87, 89.

APPEAL from a judgment of the Federal Court of Appeal (Nadon, Blais and Pelletier JJ.A.), 2009 FCA 109, 393 N.R. 143, 2009 DTC 5175 (p. 6215), [2010] 1 C.N.L.R. 249, 315 D.L.R. (4th) 372, [2009] F.C.J. No. 408 (QL), 2009 CarswellNat 2572, affirming a decision of Angers J., 2007 TCC 393, 2008 D.T.C. 4022, [2007] T.C.J. No. 540 (QL), 2007 CarswellNat 5432. Appeal allowed, Deschamps and Rothstein JJ. dissenting.

François Bouchard, Vassilis Fasfalis and Karine Boies, for the appellant.

Pierre Cossette and Bernard Letarte, for the respondent.

Jeffrey D. Pniowsky and Sacha R. Paul, for the intervener the Assembly of Manitoba Chiefs.

John Hurley and François Dandonneau, for the intervener the Grand Council of the Crees (Eeyou Istchee)/Cree Regional Authority.

Maxime Faille and Graham Ragan, for the intervener the Assembly of First Nations.

David C. Nahwegahbow and James Hopkins, for the intervener the Chiefs of Ontario.

Brian A. Crane, Q.C., and Guy Régimbald, for the intervener the Union of Nova Scotia Indians.

The judgment of McLachlin C.J. and Binnie, Fish, Charron and Cromwell JJ. was delivered by

Cromwell J. —

I. Overview

1. This appeal was heard at the same time as *Bastien Estate v. Canada*, 2011 SCC 38, [2011] 2 S.C.R. 710, the decision in which is released concurrently. As in *Bastien*,the issue here is whether Mr. Dubé is exempt from income tax otherwise payable on interest which he earned on term deposits with an on-reserve caisse populaire, a Quebec savings and credit union. The Tax Court of Canada and the Federal Court of Appeal held that he was not, and Mr. Dubé challenges that conclusion.
2. Applying the analysis set out in *Bastien*,my respectful view is that the Tax Court and the Federal Court of Appeal erred in both the approach they took and in the result they reached in this case. I would allow the appeal.

II. Facts, Proceedings and Issue

1. In *Bastien*, I set out ss. 87(1)(*b*) and (2) of the *Indian Act*, R.S.C. 1985, c. I-5, which establish the exemption from income tax for an Indian with respect to personal property situated on a reserve. As in *Bastien*, there is no dispute here that Mr. Dubé is an Indian within the meaning of the *Indian Act* and that his interest income is personal property; the only issue is whether it is situated on a reserve.
2. While the investment vehicles are the same here as they were in *Bastien*, there are some factual differences between the two cases. In light of the decision in *Bastien*, the main issue to be decided in this case is whether these differences result in finding that the investment income in this case was not situated on a reserve. I will give a brief overview of the facts and then turn to consider the impact of these factual differences on the analysis.
3. Mr. Dubé is an Attikamek Indian and has been a member of the Obedjiwan Reserve since birth. Since the early 1980s, Mr. Dubé has operated a passenger transport business focusing on transporting persons from the Obedjiwan Reserve to Roberval for medical treatment. As there are no financial institutions on the Obedjiwan Reserve, Mr. Dubé uses the services of the Caisse populaire Desjardins de Pointe-Bleue (“Caisse”) situated on the Mashteuiatsh Reserve.
4. During the years under review, Mr. Dubé held certificates of deposit issued by the Caisse. Interest received was deposited in a savings account at the Caisse. Mr. Dubé considered this income to be property exempt from taxation under the *Indian Act*. However, the Minister of National Revenue assessed Mr. Dubé’s income and added his investment income for each taxation year from 1997 to 2002. The Minister confirmed the assessment and Mr. Dubé appealed unsuccessfully to the Tax Court and the Federal Court of Appeal.
5. There are three potentially relevant factual differences between this case and *Bastien*. First, while Mr. Dubé invested in a caisse populaire that was situated on *a* reserve, he did not reside on that reserve and, in fact, the trial judge was not persuaded that his principal residence was on any reserve. Second, the trial judge was unable to conclude that a considerable part of the invested capital had been earned on a reserve. Finally, the trial judge found that Mr. Dubé had not spent his interest income on a reserve.
6. In the Tax Court (2007 TCC 393, 2008 D.T.C. 4022), Angers J. applied the Federal Court of Appeal’s decision in *Recalma v. Canada* (1998), 158 D.L.R. (4th) 59, and upheld the Minister’s assessment. He was of the view that the location of investment income should be analysed by having regard to four factors: its connection to the reserve; whether it benefited the traditional Native way of life; the risk that taxation would erode Native property; and the extent to which the investment income was derived from mainstream economic activity. Angers J. thought that this fourth factor — whether the income was derived from the economic mainstream — was the most important. He found that the Caisse earned its income from activities in the economic mainstream which were not closely connected to the reserve. Further, Angers J. was not persuaded either that the source of the capital that was invested in the term deposits or Mr. Dubé’s principal residence was on a reserve.
7. The Federal Court of Appeal (2009 FCA 109, 393 N.R. 143) dismissed Mr. Dubé’s appeal, essentially for the same reasons given in *Bastien Estate v. Canada*, 2009 FCA 108, 400 N.R. 349.
8. The issue, as noted, is whether Mr. Dubé’s interest income earned on the term deposits with the Caisse was exempt from income taxation because it was property situated on a reserve.

III. Analysis

1. In *Bastien*, I reviewed the law about how to determine the location of investment income for the purposes of the s. 87 exemption from taxation.
2. The investment instruments here are of the same type as in *Bastien*: term deposits. As outlined in more detail in that decision, both the substance and the form of this investment provide strong connecting factors between the interest income and a reserve. The interest income derives from a contractual obligation entered into on a reserve with an institution carrying on business on that reserve to pay fixed sums of money on that reserve. Focusing on the nature of the taxpayer’s property, as opposed to the Caisse’s sources of revenue, the generation and payment of the income is strongly connected to a reserve. As discussed in *Bastien*, where the Caisse earns its own revenues is not a factor entitled to much, if any, weight given the nature of the investment vehicle. Mr. Dubé, like Mr. Bastien, was a creditor of the Caisse, not an investor in the wider market beyond the reserve. In this case, as in *Bastien*,there is nothing artificial about this analysis; both the form and the substance of the investment vehicle are consistent with this approach. Therefore, as in *Bastien*,the connecting factors of the place of contracting, the location of the Caisse and the place of payment, when considered in light of the type of property, the nature of the taxation of that property and the purpose of the exemption, suggest that considerable weight should be given to these connecting factors.
3. However, as discussed in *Bastien*,all potentially relevant connecting factors should be weighed. That brings me to the question of whether the three factual differences between this case and *Bastien*,individually or taken together, lead to a different conclusion concerning the location of the interest income in this case. I will discuss each in turn.

1. *Property Situated on a Reserve*

1. As noted, the Caisse issuing the deposit certificates, while it is located on a reserve, is not located on Mr. Dubé’s reserve. Moreover, the trial judge was not persuaded that Mr. Dubé’s principal residence was on *any* reserve. In my view, the first fact — that the Caisse was not on Mr. Dubé’s reserve — does not make the income ineligible for the exemption and that fact, as well as the fact that his principal residence was not on a reserve, while potentially relevant, should receive little weight when considered in light of the type of property, the nature of the taxation in issue and the purpose of the exemption. The text of the *Indian Act* and the Court’s jurisprudence lead me to this conclusion.
2. The taxation exemption under s. 87(1)(*b*) of the *Indian Act* refers to an Indian’s personal property situated on “a” reserve and not to property on his or her “own” reserve. The Court has consistently held that the meaning of the words “on a reserve” should be approached having regard to their substance and their ordinary, common sense meaning: *Nowegijick v. The Queen*, [1983] 1 S.C.R. 29, at p. 41; *R. v. Lewis*, [1996] 1 S.C.R. 921, at p. 958; *Union of New Brunswick Indians v. New Brunswick (Minister of Finance)*, [1998] 1 S.C.R. 1161, at paras. 13-14; *McDiarmid Lumber Ltd. v. God’s Lake First Nation*, 2006 SCC 58, [2006] 2 S.C.R. 846, at para. 19. The ordinary, common sense meaning of “on a reserve” does not require that the property be on any particular reserve. As my colleague Deschamps J. points out, the legislative history of the exemption provides further support for the view that residence on the reserve where the property is located is not a requirement.
3. At least two decisions of the Court also support this interpretation. In *Union of New Brunswick Indians*, the Court observed that on-reserve sales to Indians living off-reserve were exempt from sales tax: para. 43. My reading of this conclusion is that it is not necessary for an Indian to hold property on his or her own reserve, nor is it necessary that he or she reside on a reserve, to be eligible for the tax exemption provided for in s. 87. Similarly, in *God’s Lake*, McLachlin C.J., writing for a majority of the Court, noted that a band’s property would be situated on a reserve and therefore exempt from seizure even if it were on deposit at a financial institution on a reserve other than the band’s own reserve: para. 62. Both of these decisions support the view that the exemption applies to property on a reserve, not just to property on a particular reserve.
4. In *Mitchell v. Peguis Indian Band*, [1990] 2 S.C.R. 85, La Forest J. stated at one point in his reasons that the exemptions in ss. 87 and 89 have “no application” absent “a discernible nexus between the property concerned and the occupancy of reserve lands by the owner of that property”: p. 133. In my view, this brief reference cannot be taken as authority for the view that the Indian claiming the exemption must occupy reserve lands where the property is situated. Rather, when read in the context of the reasons as a whole, the passage in my view was intended simply to emphasize the need for a strong connection between the property and the reserve. As noted earlier, imposing a requirement that the Indian claiming the exemption needs to occupy reserve land where the property is situated would be inconsistent with the text and legislative history of the provisions as well as with the subsequent jurisprudence from this Court.
5. I conclude that, having regard to the ordinary meaning of the words and the Court’s decisions interpreting them, the expression “situated on *a* reserve” means any reserve, not just a reserve where the Indian taxpayer resides or to which community he or she belongs. In other words, Mr. Dubé’s investment income is not excluded from the exemption simply because he did not reside on the reserve where the income was paid.
6. That, however, does not end the matter. We must still apply the analytical approach set out in *Bastien* to determine the location of the property in issue.
7. The residence of the creditor is a potentially relevant connecting factor and Mr. Dubé does not reside on the reserve where the term deposits were made and the interest on them was payable. The question is how much weight this factor should be given, having regard to the type of property, the nature of the taxation of that property and the purpose of the exemption. Taking those factors into account, my view is that Mr. Dubé’s place of residence should be given little weight in the circumstances of this case.
8. As discussed in *Bastien*, the type of property in issue here — income earned on term deposits — strongly connects it to the Mashteuiatsh Reserve. Also, as in *Bastien*, the nature of the taxation of the interest income supports giving considerable weight to the place of contracting, the place of payment and the location of the Caisse. As to the purpose of the exemption, the absence of a financial institution on Mr. Dubé’s own reserve tends to weaken the importance of his own place of residence as a possible connecting factor: he would not be able to invest his capital on his own reserve even if he lived there. I conclude that Mr. Dubé’s place of residence should be given little weight in the circumstances of this case. I note that this view is consistent with the Federal Court of Appeal’s opinion in *Recalma*, at para. 12, that, having regard to the nature of the investment income, less weight is properly accorded to the residence of the taxpayer.

2. *The Origin of the Capital Used to Invest in Term Deposits*

1. At trial, the appellant was asked about the source of the funds used to invest in the term deposits. The trial judge found that the appellant failed to provide a satisfactory answer and held that he was unable to conclude that the appellant’s business income was the source of the capital deposited. The trial judge found, at para. 43 :

In addition, the nature of the appellant’s income is a factor that may create a connection with the reserve. In the present case, the income generated by the business is connected to a reserve because it comes from the activities of his business, which consists in the provision of a service to Aboriginals by Aboriginals, with the exception of a few off-reserve services. Where there is some difficulty in terms of a connection with the reserve is the fact that the Court is not able to conclude that the appellant’s business is the source of the income deposited, which, in turn, generated investment income. The appellant was unable to establish the source of a quite considerable sum of money used to generate the investment income, and consequently I am unable to establish a connection with a reserve for this part of his investments.

1. This is a finding of fact that will not be interfered with on appeal, absent a “palpable and overriding error” in the trial judge’s assessment of the evidence: *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235, at para. 10. I find no such error.
2. The question is whether the absence of a connection between the bulk of the invested capital and a reserve should be given significant weight. *Williams* *v. Canada*, [1992] 1 S.C.R. 877,could be read as suggesting that it should because, as noted in *Bastien*, there are some parallels between the unemployment insurance benefits at issue in *Williams* and the interest income in issue here.
3. In *Williams*, the entitlement to the benefits in issue was earned through qualifying employment. The Court reasoned that there was a connection between the receipt of benefits and the place of the employment which gave rise to those benefits: pp. 894-95. There is an analogy between the qualifying employment in *Williams* and the capital invested in this case: in *Williams*, it was the employment that gave rise to the benefits, and in this case, the capital is what gave rise to the interest. On that reasoning, the location where the capital was earned may be seen as an important connecting factor and one which in this case does not connect the income to a reserve.
4. The Court in *Williams* held that the weight of this factor was strengthened by another consideration: the tax treatment of premiums and benefits. In general, the benefits are taxable but the premiums are deductible so that overall, the unemployment insurance scheme has fairly minimal impact on general tax revenues. However, in the case of an Indian who receives tax-exempt employment income, taxing the benefits earned because of that income does more than merely offset the tax saved by virtue of the premiums being deductible. Where the qualifying employment income is tax exempt, taxing the benefits erodes the entitlements created by the Indian’s employment on a reserve: pp. 895-96. Similarly, it could be said in the case of capital derived from non-taxable sources that to impose tax on the interest earned by that capital would to some extent erode the entitlement to tax-exempt capital.
5. These parallels between unemployment insurance benefits and interest income suggest that some weight should be given to the absence in this case of a connection between the location where the capital was accumulated and a reserve. However, I am not persuaded that the reasoning that led the Court in *Williams* to attach considerable weight to this factor applies with equal force to the circumstances of this case. There are three considerations that have led me to this conclusion.
6. First, it is important to take into account the significant differences between unemployment insurance benefits and interest income, in other words, to pay careful attention to the type of property. As Gonthier J. pointed out in *Williams*, connecting factors may have a different relevance with regard to unemployment insurance benefits than in respect of other types of income: p. 892. With respect to unemployment insurance benefits paid by the federal government, the “traditional test” of the residence of the debtor was given limited weight because the debtor C the federal Crown C is present throughout Canada, and the purposes behind fixing the *situs* of an ordinary person do not apply to the Crown and in particular to the Canada Employment and Immigration Commission in respect of the receipt of unemployment insurance benefits: pp. 893-94. In this case, unlike in *Williams*, the potentially relevant connecting factors such as the place of contracting, place of the debtor and place of payment can be applied meaningfully: the Caisse is physically present and carries on business on the reserve and the interest income was payable there. In short, there is no reason in this case, unlike the situation in *Williams*, to discard or give little weight to these factors which connect the interest income to the Mashteuiatsh Reserve.
7. Second, absent in this case is the symmetry between the tax implications of premiums and benefits that existed in *Williams*. That symmetry was found in *Williams* to strengthen the connection between the place of employment and the benefits. The same cannot be said here. The fact that capital (such as, for example, the aggregation of profits from a business on the reserve) is accumulated in a way that was exempt from tax bears no necessary relationship to the tax treatment of investment income arising from that capital. Moreover, to give determinant weight to this factor in these circumstances could open the door to tax exemption for investment income wherever and however earned, provided that the sums invested had been accumulated on a tax-exempt basis on a reserve.
8. Finally, in weighing the connecting factors on a case-by-case basis, it is easy to lose sight of the fact that in particular categories of cases, one connecting factor may have much more weight than another: *Williams*, at p. 892. Given the strength of the connecting factors relating to the location where the contract of investment was entered into, where it was to be performed and the Caisse’s place of business, the fact that the bulk of the capital invested was not derived from the tax-exempt activities on a reserve does not in my view appreciably weaken the connection between the income and the Mashteuiatsh Reserve.

3. *Where the Income Was Spent*

1. During the years under assessment, the appellant lived part time off-reserve and owned real property off-reserve. The trial judge thus inferred that a portion of the interest income may well have been spent off a reserve. The location where the investment income is spent was identified as a potentially relevant factor by the trial judge in *Recalma v. Canada*, [1997] 4 C.N.L.R. 272 (T.C.C.), although one entitled to little weight in determining the location of investment income: pp. 278-79. This factor has also been considered in subsequent investment income cases: see, e.g., *Lewin v. The Queen*, 2001 D.T.C. 479 (T.C.C.), at paras. 43 and 63, aff’d 2002 FCA 461, 2003 D.T.C. 5476. However, in my view, this consideration is not a relevant connecting factor in determining the location of the income earned on the term deposits in issue here. As I see it, the type of property, the nature of the taxation of that property and the purpose of the exemption do not support giving any weight to where the money received as interest income is spent.

4. *Conclusion*

1. In this case, as in *Bastien*, I am of the view that the relevant factors point to the Mashteuiatsh Reserve as the location of the interest income, and I would hold that it was situated on a reserve and entitled to the s. 87 exemption from taxation.

IV. Disposition

1. I would allow the appeal with costs throughout.

English version of the reasons of Deschamps and Rothstein JJ. delivered by

1. Deschamps J. (dissenting) — This appeal was heard together with *Bastien Estate v. Canada*, 2011 SCC 38, [2011] 2 S.C.R. 710. In *Bastien*, I explain why the interest accrued under Alexandre Dubé’s investment contract cannot be exempt from taxation. I express the opinion in that case that for the exemption provided for in s. 87(1) of the *Indian Act*, R.S.C. 1985, c. I‑5, to apply to an Indian’s personal property, the property must have concrete and discernible connections with a reserve.
2. In the instant case, the findings of fact of the Tax Court of Canada judge disclose no such concrete connections. The connections resulting from the investment contracts that generated the interest that accrued in the taxation years in issue are of limited weight for the purposes of the *Indian Act*. Under the provision governing the tax treatment of interest income, the taxpayer must include any accrued interest in his or her income, even if it has not been paid (*Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), s. 12(4)). For this reason, the place of payment should be given little weight. Moreover, any significance of the place of payment is further reduced by the fact that the taxpayer can have access to his or her money without going to the reserve.
3. The place at which a contract was signed is a factor that cannot be considered in isolation for the purposes of the *Indian Act*,since the parties would have been free to choose a place without regard to any objective requirement that it be connected with a reserve. The factors established by the Court must not be open to contractual manipulation in ways that are inconsistent with the purpose of the exemption. Experience has shown that it is easy for taxpayers to set up contractual frameworks that create legal relationships that are not based on real requirements. This is why it is necessary to identify concrete and discernible connections with a reserve.
4. The creditor’s place of residence might be of some relevance, but it cannot be determinative, since this factor ceased to be a condition of eligibility for the exemption more than a century ago.
5. Where a taxpayer has a right to be paid interest that is provided for in an investment contract, the particular nature of this type of property makes it necessary, in order to take account of the purpose of the exemption, to consider the activity that resulted in the accumulation of the capital deposited with the financial institution. If that capital results from an on‑reserve activity that generates exempt property, this factor could justify giving the interest provided for in the contract the same tax treatment as the product of the activity. This approach would make it possible to maintain a form of symmetry between the tax treatment of the property that results in the accumulation of the capital and the tax treatment of the interest.
6. In light of the findings of fact of the Tax Court of Canada judge, it is impossible to identify a sufficient concrete connection with the reserve in this appeal. Those findings are set out in *Bastien*, and it will not be necessary to repeat them here in their entirety. It will suffice to mention that Mr. Dubé did not reside on the reserve, that he was unable to explain where large deposits made at the Caisse populaire Desjardins de Pointe‑Bleue came from and that the judge was unable to establish a connection between the deposited capital and the transportation company operated by Mr. Dubé. No reason was given for entering into the contract on the reserve that would enable the Court to hold that this fact furthers the purpose of the exemption. Even though the debtor was situated on the reserve and even though this factor does connect the property with the reserve, the other concrete factors outweigh it significantly. While it is true that the contract in this case was signed on the reserve, this factor cannot be considered significant, since the debtor’s place of residence was also on the reserve.
7. To grant the exemption in such circumstances would be tantamount to turning the reserve into a tax haven for Indians engaged in unspecified for-profit activities off the reserve.
8. For these reasons, I would dismiss the appeal.

Appeal *allowed with costs,* Deschamps *and* Rothstein JJ*. dissenting.*

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Solicitor *for the respondent:  Attorney General of Canada, Montréal.*

Solicitors *for the intervener the Assembly of Manitoba Chiefs:  Thompson Dorfman Sweatman, Winnipeg.*

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