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1 -- Upon commencing at 10:10 a.m.

2 THE REGISTRAR: Calling Case

3 No. 1999-4687(IT)I Don J. Wilkinson v. Her Majesty the
4 Queen.

5
6

7 DONALD JAMES WILKINSON (Sworn):

8 THE REGISTRAR: Please state your full
9 name?

10 THE WITNESS: Donald James Wilkinson.

11 THE REGISTRAR: And your home address,
12 Mr. Wilkinson?

13 THE WITNESS: 34 Pevette Street,
14 Winnipeg, Manitoba.

15 THE REGISTRAR: And your occupation?

16 THE WITNESS: Truck driver.

17
18 EVIDENCE IN-CHIEF (CONTINUED):

19 HIS HONOUR: I do not think you need to go
20 any further with respect to the inverter.

21 THE WITNESS: Meals away from home, it
22 says --

23 HIS HONOUR: Did you write that?

24 THE WITNESS: Pardon me?

25 HIS HONOUR: Did you write that or did

1 your wife prepare that?

2 THE WITNESS: Well, we did it together.

3 HIS HONOUR: All right. You really are
4 not entitled to read material like that.

5 THE WITNESS: Oh, I see, okay.

6 HIS HONOUR: You can refer to it if you
7 need to remind yourself of something, but just tell me what
8 you need to tell me.

9 THE WITNESS: Okay, I understand now, Your
10 Honour.

11 I run in the United States and Canada. I
12 believe, just off the top of my head, I think I was in
13 the -- out of last year, or in 1997 I was gone 249 days, I
14 believe, and I was 176 of those in the United States and 46,
15 or whatever is left, I was in Canada. I'm in the United
16 States three to one kind of ratio.

17 When I go down to the United States I buy my
18 meals in the restaurants and that and I have to pay US
19 exchange.

20 Now I'm entitled to 80 percent, some places
21 it says 80 in the act, some places it says 50, but the US
22 exchange it says nothing about, and yet that is a cost.

23 To me, when I go to buy a meal here for
24 \$5.00, it costs me \$5.00. I get paid in Canadian funds, I
25 do not get paid in American funds. So when I go to the

1 United States and buy a meal for \$5.00, it costs me \$7.50.

2 It's 52 percent right now. It varies from
3 time to time. I think in 1997 the average was around
4 38 percent.

5 A lot of people say, "Oh, well, the States is
6 cheaper", unfortunately that is not true unless you get way
7 down, Louisiana, Missouri and that, sometimes they're a
8 little cheaper there, but once you get further down into
9 Texas and Florida, where the Canadians go on holidays, then
10 right away the prices go up again.

11 I can't go to a lot of places. I'm limited
12 to where I can eat because I have to have a place to park my
13 truck, so there's not a lot of shopping you can do for
14 places to eat, you just pretty well go to the truck stops.

15 That's pretty well --

16 HIS HONOUR: On what basis did you set the
17 amount that you claimed on a per day basis for meals?

18 THE WITNESS: The amount I -- I don't
19 understand?

20 HIS HONOUR: I understand from the
21 Minister's pleadings that the amount for meals was claimed
22 on the basis of \$40.00 per day for each of the days that you
23 travelled?

24 THE WITNESS: H'mn, h'mn. Well, if you
25 took the 50 percent --

1 HIS HONOUR: No, forget the 50 percent, I
2 want to know how you got the \$40.00.

3 THE WITNESS: We're allowed \$33.00 a day
4 without receipts.

5 HIS HONOUR: You were allowed \$33.00 by
6 the Minister.

7 THE WITNESS: H'mn, h'mn. And then I just
8 put some exchange on. Well, then you get 50 percent of the
9 \$33.00, you're only getting \$16.00 and something.

10 HIS HONOUR: I know that, I am just
11 wondering where the figure, \$40.00 per day, came from. How
12 was that arrived at? Was that based on receipts or was that
13 based on an estimate, or --

14 THE WITNESS: It was based on \$33.00, half
15 of that is \$16.00 and then exchange on top of that, US
16 exchange.

17 But I'm asking for way under what normally it
18 is like.

19 HIS HONOUR: A section of the act
20 provides, as I read it, that the amount shall be deemed to
21 be 50 percent of the lesser of the amount actually paid or
22 an amount that would be reasonable in the circumstances.

23 That is why I asked you why you picked
24 \$40.00. It does not reflect the amounts actually paid?

25 THE WITNESS: I took the -- you see, the

1 other part of the act states that with receipts you can
2 claim everything, like so much for receipts, without
3 receipts you can claim \$33.00 per day.

4 HIS HONOUR: Where does it say that?

5 MR. BOUVIER: If I may assist the Court?

6 HIS HONOUR: Yes.

7 MR. BOUVIER: He is referring to the
8 Employment and Expense Guide. Revenue Canada in it's --

9 HIS HONOUR: Well, it is just a guide.

10 MR. BOUVIER: -- not in the Income Tax
11 Act. Revenue Canada in their wisdom has allowed a
12 simplified method --

13 HIS HONOUR: Well, that is nonsense.

14 MR. BOUVIER: -- to claim, and that's what
15 he is referring to.

16 HIS HONOUR: With all due respect, that is
17 nonsense. I mean I hate to put it that way, that bluntly.

18 But the section of the act provides that you
19 can charge either the -- you charge the lesser of the amount
20 actually paid or an amount that would be reasonable in the
21 circumstances.

22 Now that is designed so that if you go to a
23 city like Toronto or Vancouver, where the meals are
24 expensive and you produce your receipts and they are
25 reasonable, that is it, you can claim whatever that amount

1 is. That is the way I read this section.

2 Now I do not know just how this arose.

3 You say that the \$40.00 per day does not
4 represent anything remotely resembling your actual costs?
5 How does the \$40.00 per day relate to your actual costs?

6 THE WITNESS: Well, that's the way we
7 figured it out was on the \$33.00 a day --

8 HIS HONOUR: Do you understand my
9 question?

10 THE WITNESS: I know, I'm telling you --
11 you asked me how we figured it out.

12 HIS HONOUR: No, I said, how does it
13 relate to your actual costs?

14 THE WITNESS: Oh, how does it relate?

15 HIS HONOUR: Yes.

16 THE WITNESS: Oh, that's about pretty well
17 accurate on what -- I mean your meals are costing you \$7.00
18 or \$8.00 per meal, plus it's in US funds, I get paid in
19 Canadian, so if I'm going to buy something for \$8.00, a meal
20 for \$8.00, it's going to cost me just about \$12.00, like
21 it's going to be \$11.00 or something.

22 Right now it's 52 percent. In 1997 it was, I
23 think, 38 percent. So now I'm paying \$11.00 for that meal.

24 Now when you get into dinners and that,
25 they're \$11.00, \$12.00, now you're paying \$16.00 for a meal,

1 you know. And when you figure that out, I just took an
2 average of it and put \$40.00 and that's what we left it at.

3 HIS HONOUR: All right. Anything else?

4 THE WITNESS: In the -- that's the two
5 items, the meals away from home and the inverter.

6 HIS HONOUR: Questions, counsel?

7 MR. BOUVIER: I believe --

8 HIS HONOUR: Is there another item?

9 MR. BOUVIER: There may very well be.
10 I believe that there is an exhibit or
11 something that you wanted to tender?

12 MRS. WILKINSON: These, Your Honour, are
13 proof of Mr. Wilkinson's trips to the States, indicating
14 locations, dates.

15 HIS HONOUR: I do not think anybody is
16 disputing that.

17 MRS. WILKINSON: Well, there was some
18 discussion of --

19 HIS HONOUR: Certainly there is nothing in
20 the pleadings that suggests that the Minister does not
21 accept the number of days travelled.

22 MR. BOUVIER: No, we accept the number of
23 days travelled and that he was in the States.

24 HIS HONOUR: Will you answer counsel's
25 questions?

1 CROSS-EXAMINATION BY MR. BOUVIER:

2 Q Mr. Wilkinson, I am going to show you a copy
3 of your 1997 income tax return. Can you identify that for
4 the Court, please?

5 A Pardon me?

6 Q Can you identify that for the Court?

7 A Yes.

8 Q Is that your tax return?

9 A Yes.

10 Q Check the last page. Is that your signature
11 on the last page?

12 A Yes.

13 MR. BOUVIER: Can I have that as an
14 exhibit, please.

15 THE REGISTRAR: That will be R-1, Your
16 Honour.

17

18 EXHIBIT R-1: 1997 Income Tax Return of
19 Donald James Wilkinson.

20

21 BY MR. BOUVIER:

22 Q Now I am going to refer you to the yellow
23 sticky in the income tax return. Now for every month,
24 Mr. Wilkinson, you complete a form like this, correct, for
25 every month you work you complete a form for the meals --

1 A Yes.

2 Q -- that you spend money on?

3 Now did you keep receipts at all to tell you
4 exactly how much you spent in a month? Let's say in number
5 one, the first page here, in the top right-hand corner it's
6 marked "1", it's January 1997 to January 1997, actually.
7 And under "the method used", it says, "simplified".

8 Did you keep receipts for the amounts spent
9 on meals?

10 A No.

11 Q No, no receipts were kept?

12 A No.

13 Q Were any receipts kept throughout the entire
14 year?

15 A Not for 1997.

16 Q So you are unable to determine exactly how
17 much you spent on --

18 A Yes.

19 MR. BOUVIER: No more questions, Your
20 Honour.

21 HIS HONOUR: These amounts reflect the
22 amount that was claimed of \$4,580.00, do they?

23 MR. BOUVIER: Pardon me?

24 HIS HONOUR: These amounts that are shown
25 in these pages reflect the amount that was claimed by the

1 appellant of \$4,580.00?

2 MR. BOUVIER: Correct.

3 HIS HONOUR: All right.

4 Thank you, sir.

5 Is there anything else you wish to add to
6 that?

7 MRS. WILKINSON: Can we work it together?

8 HIS HONOUR: I beg your pardon?

9 MRS. WILKINSON: Can we speak together?

10 HIS HONOUR: Are you going to present an
11 argument, or --

12 MRS. WILKINSON: Yes, we have a couple of
13 other things we would like to go over, if that's okay.

14 HIS HONOUR: What do you mean, other
15 things?

16 MRS. WILKINSON: Well, it all has to do
17 with the meals away from home and the amount of US exchange
18 that we're not allowed.

19 HIS HONOUR: Just for a second do not
20 worry about it.

21 I want to ask counsel what the basis of the
22 Minister's \$33.00 per day is, other than an information
23 guide?

24 MR. BOUVIER: There is no basis for the
25 Minister's simplified method.

1 HIS HONOUR: But by pleading that it is an
2 assumption that that is reasonable.

3 MR. BOUVIER: Correct.

4 HIS HONOUR: And the Minister says, "I do
5 not know why it is reasonable"?

6 MR. BOUVIER: No, Your Honour. Every year
7 when they prepare the information for circulation to the
8 general public, the Minister of National Revenue prepares
9 guides to be circulated with your income tax returns.

10 HIS HONOUR: They obviously do not
11 distribute it to the civil servants.

12 MR. BOUVIER: No.

13 HIS HONOUR: Now will you tell me why it
14 is reasonable for the civil servants to be paid \$48.00 a day
15 for meals and for somebody who has to go down to the States
16 and buy his meals in Canadian currency down there, \$33.00 is
17 reasonable, Mr. Bouvier?

18 MR. BOUVIER: I cannot. I cannot come
19 before this Court and say that one is reasonable and one is
20 not. All I can say is the Minister's position, in this
21 case, is employment expenses are published in the employment
22 expense guide and the amount determined, in that year, by
23 the Minister to be reasonable was \$11.00 per meal or \$33.00
24 a day maximum. I cannot explain --

25 HIS HONOUR: And you do not disagree that

1 I have a right to disagree with that?

2 MR. BOUVIER: No, I am not going to
3 disagree with your right to disagree, of course.

4 HIS HONOUR: Quite frankly it just boggles
5 the mind that \$33.00 would be considered to be sufficient
6 when somebody has to go down and pay, as was very aptly
7 pointed out, you are paying a premium and it seems to me
8 that that should be taken into account.

9 \$33.00 a day, I mean down in the United
10 States. I do not think the Minister could eat on that.

11 MR. BOUVIER: No. And I can't say much.
12 All I can state is the employment guide is published, for
13 some reason they picked \$33.00 for that taxation year and
14 that's what truck drivers across the country have been
15 claiming, the \$33.00 a day.

16 HIS HONOUR: They may start claiming more
17 after this.

18 MR. BOUVIER: They may start claiming more
19 after this one. They haven't, the government, or the
20 Minister of National Revenue has not put a regulation in the
21 back of the Income Tax Act that would say, you know, "\$33.00
22 a day is a prescribed rate", they haven't done that. They
23 have just included it in the employment expense guide.

24 Now there is no way that I can argue that --

25 HIS HONOUR: In all fairness, considering

1 that the vast proportion of this appellant's travel is in
2 the United States, I just do not see \$33.00 per day as being
3 nearly what I would call reasonable in the circumstances.

4 I am going to allow the appeal, as you gather
5 from my comments.

6 MR. BOUVIER: Yes, well, I think enough is
7 said.

8 HIS HONOUR: It is the same sort of thing
9 as the Minister allowing 8 cents per kilometre for mileage
10 and paying its own people 35 cents, or whatever it is, per
11 kilometre to make the same trip for the same purpose.

12 It just boggles the mind that these kinds of
13 aberrations can occur.

14 MR. BOUVIER: Unfortunately he had to
15 argue that case in front of you.

16 HIS HONOUR: Yes, he did.

17 All right, the appeal is allowed.

18 MR. BOUVIER: With respect to the power
19 inverter, however.

20 HIS HONOUR: Oh, yes, I better hear you on
21 the power inverter.

22 MR. BOUVIER: There is a power inverter
23 expense of \$113.00.

24 HIS HONOUR: Yes. Where is that
25 deductible?

1 MR. BOUVIER: It's not a deductible
2 expense, simple.

3 HIS HONOUR: All right, I want to hear you
4 or your wife on where, in the Income Tax Act, you can find a
5 location that permits an employee to deduct a power
6 inverter.

7 MR. WILKINSON: It states in the letter
8 from the Minister, I think it's in the act, I'm not sure,
9 that an employee going to work will not be required to pay
10 out of pocket expense for things that it costs him to go to
11 work.

12 HIS HONOUR: What section?
13 Have you got the section there?
14 Show it to counsel.

15 What is the reference to, Mr. Bouvier?

16 MR. BOUVIER: It's actually a letter from
17 the Honourable Paul Martin to Mr. Don Wilkinson, setting out
18 why he shouldn't be allowed more than \$33.00 per day.

19 MR. WILKINSON: Mr. Martin, in his letter,
20 states that --

21 HIS HONOUR: Let me see it, rather than
22 you paraphrasing it.

23 I do not see anything here so far. What is
24 it you are specifically referring to?

25 MR. WILKINSON: "In the private sector

1 travelling and other business expenses incurred in the
2 course of carrying out one's duties ..."

3 MRS. WILKINSON: Page 2.

4 HIS HONOUR: One of you at a time, please.

5 MR. WILKINSON: Excuse me.

6 HIS HONOUR: What are you reading now?

7 MR. WILKINSON: I'm reading out of the
8 letter from Paul Martin.

9 MRS. WILKINSON: Page 2.

10 HIS HONOUR: This one?

11 MR. WILKINSON: Yes, page 2.

12 MRS. WILKINSON: Yes.

13 HIS HONOUR: Paragraph?

14 MR. WILKINSON: No. 5.

15 HIS HONOUR: Yes?

16 MR. WILKINSON: "In the private sector
17 travelling and other business expenses incurred in the
18 course of carrying out one's duties are not expected to be
19 paid with taxable personal income. The pay and benefits
20 arranged for members reflects ..."

21 HIS HONOUR: My only comment to
22 Mr. Martin is, where, in the Income Tax Act, does he find
23 that power inverters are deductible.

24 This is just a -- I hate to put it bluntly,
25 but I will, it is a politician's letter, it has nothing to

1 do with the Income Tax Act. It will get the --

2 MR. WILKINSON: It seems that --

3 HIS HONOUR: I will give it the weight it
4 deserves.

5 MR. WILKINSON: That's where we have a
6 problem when we're filling out our income tax, because they
7 have all these policies and they have this and they have
8 that and they --

9 HIS HONOUR: Counsel, what is your
10 position on the power inverter again?

11 MR. BOUVIER: There is no section in the
12 Income Tax Act that would allow an employee to deduct the
13 expense of a power inverter, quite simply put.

14 HIS HONOUR: Employee deductions, you find
15 them in section 8 and section 6 and they are all listed
16 there in detail and if they are not in those sections, they
17 are not deductible. It is as simple as that.

18 And that may be a hard and cold statement,
19 but as you heard me say to the previous appellant, unless
20 there is a specific section that provides for a deduction
21 for a class of items or whatever it might be, you are not
22 entitled to deduct it from income. It is just as simple as
23 that.

24 MR. WILKINSON: Could I ask you something?

25 HIS HONOUR: You win your case on the

1 meals, you lose it on the power inverter.

2 MR. WILKINSON: Can I ask a question
3 before we close?

4 HIS HONOUR: Well, as long as it is not
5 advice.

6 MR. WILKINSON: On the meals, can I get
7 paid back the money that they have taken already from --

8 HIS HONOUR: From what?

9 MR. WILKINSON: Well, I claimed all these
10 meals and everything, they did a full, in-depth audit on me
11 and then they took it all away, they took \$8,000.00 off of
12 me and now --

13 HIS HONOUR: What are you talking about,
14 this year?

15 MR. WILKINSON: The meals.

16 HIS HONOUR: This particular taxation
17 year?

18 MRS. WILKINSON: No.

19 HIS HONOUR: No, this is the only taxation
20 year that is before me. It is the only matter before me, it
21 is the only thing I can deal with.

22 MR. WILKINSON: So I have to appeal every
23 year?

24 HIS HONOUR: You have to appeal every
25 year, whatever you wish to do. They may reassess, they may

1 not.

2 They should all have been dealt with at the
3 same time. I mean if you had other assessments --

4 MR. WILKINSON: We have been saying --

5 MRS. WILKINSON: They went back --

6 HIS HONOUR: Whoa, one at a time, please.

7 Sir?

8 MR. WILKINSON: We have been trying to do
9 that for years. Since 1995 we've been trying to do this and
10 we keep getting advice from the people at income tax and we
11 keep hitting walls all the time. Now they said the way to
12 get into Tax Court to get this is to, "Take the 1997, take
13 your inverter and that and go in and get it. Then when you
14 win on that, then ask the judge to get the other years
15 back". That's what I was told.

16 HIS HONOUR: I do not think they would
17 have said that, they know better.

18 With all due respect, Revenue knows very,
19 very well, unless some uninformed employee gave you -- that
20 I can only deal with, this Court can only deal with an
21 appeal from a specific assessment.

22 Each year is assessed separately. If you
23 want to appeal 1996, 1997, 1998, 1999 on the same basis
24 because it raises the same grounds, you have to file an
25 appeal with respect to each of those years.

1 You can combine them in one notice of appeal,
2 but the fact is they are separate assessments and we have to
3 deal with them separately.

4 And I cannot give any advice to you to
5 sorting your problems out with Revenue Canada, but I really
6 would suggest, if you have a number of years and you are
7 starting to run into time problems, that you had better get
8 some professional advice. That is the best advice I can
9 give you and that is the last bit of advice I am giving
10 anybody this morning.

11 MR. WILKINSON: Yes, I understand exactly
12 what you're saying, Your Honour, because I've said exactly
13 the same thing all the time and they assured me that, "Oh,
14 no, no, this is the way you do it". So I guess we'll start
15 doing it a different way.

16 HIS HONOUR: You have been partly
17 successful.

18 MR. BOUVIER: There is one more small
19 issue in your notice of appeal that was raised that I just
20 want to address, it was the interest charged on balances
21 owing.

22 There was one more issue, "Interest charged
23 on balances is excessive and illegal", and I just wanted to
24 make sure that --

25 HIS HONOUR: Well, that goes with my

1 order, though.

2 MR. BOUVIER: That the interest charged is
3 excessive and illegal, or --

4 HIS HONOUR: No. It cannot be charged --
5 I am sorry, I do not follow you?

6 MR. BOUVIER: Well, she raises four points
7 in her notice of appeal, the fourth point is, "Interest
8 charged on balances owing is excessive and illegal".

9 HIS HONOUR: I do not have any
10 jurisdiction over that as far as I am aware.

11 MR. BOUVIER: Fair enough. I just wanted
12 a ruling on it, so the record was clear.

13 Thank you.

14 THE REGISTRAR: Order, Tax Court of Canada
15 in Winnipeg is now concluded.

16 -- Upon adjourning at 10:35 a.m.

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Certified Correct:



Cyrena Sallis
Court Reporter