



Labrador Inuit

TAX TREATMENT AGREEMENT

E100
.A31
L306
2005
c. 1

Published under the authority of the
Minister of Indian Affairs and
Northern Development
Ottawa, 2004

www.ainc-inac.gc.ca

1-800-567-9604

TTY only 1-866-553-0554

QS-5381-000-EE-A1

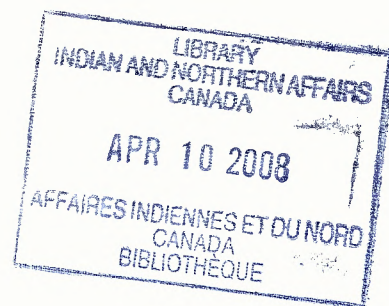
Catalogue: R2-383/2005E

ISBN: 0-662-39715-0

© Minister of Public Works and Government Services Canada

Cette publication peut aussi être obtenue en français sous le titre :
Accord sur le traitement fiscal

LABRADOR INUIT TAX TREATMENT AGREEMENT



THIS AGREEMENT is made the 12 day of April, 2005,
BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA, as represented by the Minister of Finance
("Canada")

AND:

HER MAJESTY THE QUEEN IN RIGHT OF NEWFOUNDLAND AND LABRADOR, as represented by
the Minister of Finance and President of Treasury Board and by the Minister for Intergovernmental
Affairs

("the Province")

AND:

THE INUIT OF LABRADOR, as represented by the President of the Labrador Inuit Association
(the "Inuit").

WHEREAS:

1. Section 20.7.1 of the Labrador Inuit Land Claims Agreement provides that the parties shall enter into a tax treatment agreement; and
2. This agreement is the tax treatment agreement referred to in recital 1 and shall be called the "Labrador Inuit Tax Treatment Agreement".

NOW THEREFORE, in consideration of the premises and the covenants and agreements set out below, the parties agree as follows:

Part 1 INTERPRETATION

1.1 In this agreement:

"claimant" means:

- (a) the Nunatsiavut Government;
- (b) an Inuit Community Government; or
- (c) a person, other than a financial institution, that is
 - (i) a trust, board, commission, tribunal or similar body, established by the Nunatsiavut Government, an Inuit Community Government, or by any combination of the Nunatsiavut Government or an Inuit Community Government; or
 - (ii) an eligible corporation incorporated under federal or provincial laws;

"eligible corporation" means

- (a) a corporation, all of the shares of which, except director's qualifying shares, are owned by the Nunatsiavut Government, an Inuit Community Government, an Inuit settlement trust, or any combination of those persons; or
- (b) a corporation, all of the shares of which, except director's qualifying shares, are owned by
 - (i) the Nunatsiavut Government, an Inuit Community Government, or an Inuit settlement trust;
 - (ii) a corporation that itself is an eligible corporation; or
 - (iii) any combination of the persons referred to in (i) and (ii);

"Income Tax Act" means the *Income Tax Act*, R.S.C. 1985, c.1 (5th supp);

"Interpretation Act" means the *Interpretation Act*, R.S.C. 1985, c.1-21;

"Inuit" means those individuals defined in clause (b) of the definition of "Inuit" in section 1.1.1 of the Labrador Inuit Land Claims Agreement;

"Inuit government corporation" means any corporation, commission or association, all of the shares, other than directors' qualifying shares, or capital of which are owned by the Nunatsiavut Government or any Inuit Community Government, any Inuit settlement trust, or any combination of the foregoing, or a wholly-owned corporation subsidiary to any such corporation, commission or association;

"Inuit settlement trust" at any time means a trust that has been designated before that time by the Minister of National Revenue pursuant to section 6.1 as an Inuit settlement trust and that is at that time designated as an Inuit settlement trust;

"permanent establishment" of a claimant means:

- (a) a fixed place of business of the claimant and includes:
 - (i) a place of management, a branch, an office, a factory, a workshop or other site; and
 - (ii) a mine, an oil or gas well, a quarry, timberland or any other place of extraction of natural resources;
- (b) a fixed place of business of another person (other than a broker, general commission agent or other independent agent acting in the ordinary course of business or any person established by the claimant) who is acting on behalf of the claimant;
- (c) a place at which the claimant uses substantial machinery or equipment; or
- (d) any real property owned, or supplied on a regular or continuous basis, by the claimant; and

"specified activity" of a claimant means:

- (a) a business or other activity that has the primary purpose of providing property or services to Inuit, the Nunatsiavut Government, an Inuit Community Government, eligible corporations or individuals resident on Labrador Inuit Lands or in an Inuit Community or any combination of those persons; or
- (b) any other business or activity that Canada and the Nunatsiavut Government agree is included under this section.

- 1.2 The Interpretation Act applies to this agreement, except that the definition "government" in subsection 123(1) of the *Excise Tax Act* does not apply for the purposes of part 4.
- 1.3 Except as provided in section 1.1, the definitions of the Labrador Inuit Land Claims Agreement, other than the definitions "agreement", "beneficiary", "dispute", "government" and "person", apply to this agreement.

Part 2 GENERAL

- 2.1 This agreement does not form part of the Labrador Inuit Land Claims Agreement.
- 2.2 This agreement is not a treaty or a land claims agreement and does not recognize or affirm any aboriginal or treaty rights within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.
- 2.3 This agreement enures to the benefit of and is binding upon the parties and their respective successors. On the effective date the Nunatsiavut Government becomes the successor of Labrador Inuit Association for the purposes of this agreement.
- 2.4 Nothing in this agreement affects any entitlement of the Inuit, a designated Inuit organization, an Inuit Government or an Inuit settlement trust to any benefit available under any legislation.

- 2.5 No term or condition of this agreement, or performance by a party of a covenant under this agreement, shall be deemed to have been waived unless the waiver is in writing and signed by the party or parties giving the waiver.
- 2.6 No written waiver of a term or condition of this agreement, of performance by a party of a covenant under this agreement, or of default by a party of a covenant under this agreement, shall be deemed to be a waiver of any other covenant, term or condition, or of any subsequent default.
- 2.7 This agreement may not be assigned, either in whole or in part, by any party.
- 2.8 This agreement may be executed at one or more times and in one or more places. Each counterpart is deemed an original instrument as against any party who has signed it, and the aggregate of the counterparts are deemed to constitute a single executed document.
- 2.9 If section 2.1 or 2.2 is found or declared by a court of last resort to be void, voidable, invalid, illegal or unenforceable with respect to any provision of this agreement, for whatever reason, this agreement terminates in its entirety at the time of such decision.
- 2.10 Subject to section 2.9, if any provision of this agreement is declared or held to be void, voidable, invalid, illegal, or unenforceable for whatever reason, the provision shall be severed from the remainder of the agreement but all other provisions of the agreement remain in full force and effect and shall be construed as if this agreement had been executed without the invalid, illegal or unenforceable provision.

Part 3 TAXATION STATUS OF THE NUNATSIAVUT GOVERNMENT AND THE INUIT COMMUNITY GOVERNMENTS

- 3.1 For the purpose of paragraph 149(1)(c) of the Income Tax Act, the Nunatsiavut Government and the Inuit Community Governments are deemed to be public bodies performing a function of government in Canada.
- 3.2 Where the Nunatsiavut Government or an Inuit Community Government is exempt from tax under section 3.1 for a particular period, no income tax, paid-up capital tax or other capital tax may be imposed on the Nunatsiavut Government or the Inuit Community Government, as the case may be, by the Province in respect of that period.
- 3.3 For the purposes of paragraphs 149(1)(d) to 149(1)(d.6) and subsections 149(1.1) to 149(1.3) of the Income Tax Act, the Nunatsiavut Government is deemed to be a municipality whose boundaries consist of Labrador Inuit Lands and the Inuit Communities.
- 3.4 For the purposes of paragraphs 149(1)(d) to (d.6) and subsections 149(1.1) to (1.3) of the Income Tax Act, the Inuit Community Governments are deemed to be municipalities.
- 3.5 If, under section 3.3 or 3.4, no income tax is payable by a person for a particular period, no income tax, paid-up capital tax or other capital tax may be imposed on that person by the Province in respect of that period.
- 3.6 The Nunatsiavut Government and the Inuit Community Governments are each deemed to be a qualified donee for the purposes of the Income Tax Act.

3.7 The Nunatsiavut Government will be treated as a public authority designated pursuant to subsection 32(2) of the *Cultural Property Export and Import Act*, and any non-profit organization established by the Nunatsiavut Government to receive, store and display cultural objects will be treated as an institution designated under that subsection of that Act, if the Nunatsiavut Government or the non-profit organization, as the case may be:

(a) has

(i) a facility that meets the environmental requirements of the Minister of Canadian Heritage in respect of long-term storage and display of cultural objects, or

(ii) the use, by virtue of an agreement with a public authority or an institution that is designated under subsection 32(2) of the *Cultural Property Export and Import Act*, of a facility that meets the environmental requirements of the Minister of Canadian Heritage until such time as the Nunatsiavut Government or the non-profit organization has a facility that meets those requirements; and

(b) uses the facility to store or display cultural objects, including any that are donated to it and that are included in "total cultural gifts" within the meaning of subsection 118.1(1) of the *Income Tax Act* for purposes of computing the income tax liability of the donor.

Part 4 GST REFUND

4.1 A claimant who acquires or imports property or a service in respect of which it pays tax under subsection 165(1) or section 212 or 218 of the *Excise Tax Act* is entitled to a refund of that portion of the tax that is not recoverable as an input tax credit under Part IX of that Act and is not otherwise recovered under any law, if:

(a) the property or service was not acquired or imported for consumption, use or supply in the course of a business or other activity, other than a specified activity, engaged in by the claimant for profit or gain;

(b) the property or service was acquired or imported for consumption, use or supply in the course of performing a function of government under the Labrador Inuit Land Claims Agreement or a subsequent agreement between Canada and the Province, together or separately, and the Nunatsiavut Government; and

(c) the property or service

(i) is a capital property of the claimant acquired or imported for consumption, use or supply, at any place, primarily in the course of engaging, on Labrador Inuit Lands or in an Inuit Community, in a business or other activity of the claimant;

(ii) is a service in respect of capital property referred to in (i) or is property supplied in conjunction with a service in respect of capital property referred to in (i); or

(iii) in the case of property or a service referred to in neither (i) nor (ii), was acquired or imported for consumption, use or supply, at any place, exclusively in the course of engaging, on Labrador Inuit Lands or in an Inuit Community, in a business or other activity of the claimant.

- 4.2 For the purposes of subsection 4.1(c), where a claimant is engaging in a business or other activity partly on Labrador Inuit Lands or in an Inuit Community and partly at or through one or more permanent establishments of the claimant that are not located on Labrador Inuit Lands or in an Inuit Community, the claimant is deemed not to be engaging, on Labrador Inuit Lands or in an Inuit Community, in the business or activity:
- (a) in the case of a business or activity that involved the making of supplies of real property on a regular or continuous basis by way of lease, licence or similar arrangement, if the property is not, and is not intended to be, located on Labrador Inuit Lands or in an Inuit Community; and
 - (b) in any other case, to the extent to which the claimant is engaging in the business or activity at or through one or more permanent establishments of the claimant that are not located on Labrador Inuit Lands or in an Inuit Community.
- 4.3 Despite paragraph 141.1(l)(b), subsection 200(3), section 1 of Part V. 1 of Schedule V and sections 2 and 25 of Part VI of that Schedule, of the *Excise Tax Act*, and despite section 2.4 of this agreement, if a claimant makes a supply by way of sale of property that is capital property of the claimant and in respect of which the claimant was entitled to receive a refund under section 4.1, the supply is deemed, for the purposes of Part IX of the *Excise Tax Act*, to be made in the course of a commercial activity of the claimant.
- 4.4 A refund of tax under section 4.1 will not be paid unless an application for the refund is filed with the Minister of National Revenue within four years after the tax was paid.
- 4.5 The provisions of Part IX of the *Excise Tax Act* apply, with such modifications as the circumstances require, in respect of claims under section 4.1 and in respect of amounts paid or payable as a refund under that section, as though the refund provided for under that section were a rebate provided for under Division VI of Part IX of the *Excise Tax Act*.

Part 5 TAX TREATMENT OF THE NUNATSIAVUT GOVERNMENT AND OF THE INUIT COMMUNITY GOVERNMENTS IN RESPECT OF PROVINCIAL SALES TAXES

- 5.1 The Nunatsiavut Government and the Inuit Community Governments may claim a rebate or refund in respect of any tax payable to the Province under the *Gasoline Tax Act* that is not otherwise recoverable under any law on the same basis as, and subject to the provisions and limitations applicable to, municipal governments or trusts, boards, commissions or similar bodies established by a municipal government, or a corporation wholly owned by any such entity or combination thereof, in Newfoundland and Labrador in respect of such a rebate or refund.
- 5.2 Subject to section 2.4, if the Nunatsiavut Government or an Inuit Community Government claims a rebate of the Provincial portion of the Harmonized Sales Tax, and so requests, the rebate will be calculated as though the claimant was a municipality under paragraph (a) of the definition of "municipality" in subsection 123(1) of the *Excise Tax Act*, and Part IX of the *Excise Tax Act* will apply in respect of a rebate claimed under this section.

Part 6 INUIT SETTLEMENT TRUST

6.1 On written application, the Minister of National Revenue shall designate as an Inuit settlement trust any trust whose terms have, in the opinion of the Minister, the following characteristics:

- (a) the trust is resident in Canada;
- (b) the beneficiaries of the trust are limited to the following:
 - (i) the Nunatsiavut Government;
 - (ii) the Inuit Community Governments;
 - (iii) another Inuit settlement trust;
 - (iv) an Inuk or Inuit;
 - (v) any registered charity or non-profit organization, within the meaning of the Income Tax Act, that in the reasonable opinion of the trustees directly or indirectly benefits at least one or more Inuit; and
 - (vi) any combination of the entities and persons referred to in clauses (i) to (v);
- (c) investment of the trust's funds is restricted to:
 - (i) investment instruments that are described as qualified investments for a trust governed by a registered retirement savings plan within the meaning of section 146 of the Income Tax Act or any other investments that may be agreed upon from time to time among the Nunatsiavut Government, Canada, as represented by the Minister of Finance and the Province;
 - (ii) loans to Inuit, the Nunatsiavut Government, an Inuit Community Government, or an Inuit Government Corporation, at a rate of interest equal to the rate prescribed under paragraph 4301(c) of the *Income Tax Regulations* in effect at the time the loan was made or last renewed;
 - (iii) investments in a share of an Inuit government corporation where the average annual rate of dividends on the share over any five-year period cannot exceed the rate prescribed under paragraph 4301(c) of the *Income Tax Regulations* at the beginning of the five-year period, and on condition that the amount receivable on redemption of the share or on liquidation of the Inuit government corporation is limited to the amount of the consideration for which the share was originally issued; and
 - (iv) loans, that are interest free or at a rate of interest less than that referred to in (ii), to Inuit, or partnerships or trusts in which no persons other than Inuit hold the interests as partners or beneficiaries where, at the time the loan was made, arrangements were made for repayment of the loan and where the purpose of the loan is to assist the borrower, or where the borrower is a partnership or a trust, to assist a partner or a beneficiary, to:
 - (A) acquire, construct or renovate a residential property in Newfoundland and Labrador for his own habitation;

- (B) attend courses to further his education, technical or vocational skills, or attend courses in native studies, culture or language programs;
 - (C) acquire funding for purposes of carrying on a business within Labrador Inuit Lands, within an Inuit Community or in the upper lake Melville area where the borrower is unable to borrow from ordinary commercial lenders at normal commercial rates; or
 - (D) participate in Inuit domestic harvest or Inuit domestic fishery programs;
- (d) the trust is not permitted to:
- (i) carry on a business as a proprietor or member of a partnership; or
 - (ii) acquire any beneficial interest in a trust engaged in a business where one or more Inuit Governments, Inuit government corporations, Inuit settlement trusts or Inuit, either alone or in combination, hold more than ten percent of all of the beneficial interests in the trust;
- (e) the trust is not permitted to borrow money except as required to finance the acquisition of its investments or to carry out its operations;
- (f) contributions to the trust are limited to contributions by either an Inuit Government or a designated Inuit organization of amounts which reasonably can be considered to be capital transfer payments received by it under chapter 19 of the Labrador Inuit Land Claims Agreement or amounts contributed by another Inuit settlement trust where substantially all of the funds of that contributing trust reasonably can be considered to have been derived from a contribution to an Inuit settlement trust by either an Inuit Government or designated Inuit organization of capital transfer payments received by it under chapter 19 of the Labrador Inuit Land Claims Agreement and income and gains derived therefrom; and
- (g) the trust is not permitted to make any distributions other than to one or more beneficiaries of the trust, or to another Inuit settlement trust.
- 6.2 Any refusal by the Minister of National Revenue to designate a trust as an Inuit settlement trust under section 6.1 is subject to the same right of appeal as applies to a refusal to register an applicant for registration as a registered charity under the Income Tax Act, with such modifications as the circumstances require.
- 6.3 An Inuit settlement trust, a beneficial interest in an Inuit settlement trust, and any amount contributed to an Inuit settlement trust or distributed as income or capital by an Inuit settlement trust to a beneficiary of the Inuit settlement trust shall not be taxable except that:
- (a) any amount of income or capital distributed in a particular year to a beneficiary of the Inuit settlement trust shall be deemed for purposes of subsection 104(13) of the Income Tax Act to be income of the trust that was payable to the beneficiary in the particular year;
 - (b) an Inuit settlement trust shall be subject to the provisions of Part XI of the Income Tax Act, as if that Part was stated to be specifically applicable to Inuit settlement trusts and was amended as required to take into account the investments referred to in subsection 6.1(c);

- (c) an Inuit settlement trust shall be subject to tax under Parts I and I.1 of the Income Tax Act and for that purpose its taxable income will be calculated as the total of:
 - (i) the amount of any income derived during the year from a property, including any taxable capital gain from the disposition of the property, that is not a qualified investment for the Inuit settlement trust or that is not acquired in the course of carrying on a permitted activity of the Inuit settlement trust; and
 - (ii) any amount contributed to the Inuit settlement trust that is not permitted under the terms of the Inuit settlement trust; and
 - (d) goods and services tax or similar taxes may be imposed on goods or services consumed by the Inuit settlement trust or the trustee.
- 6.4 Where the Minister of National Revenue is of the opinion that an Inuit settlement trust has failed to comply with sections 6.1 and 6.3:
- (a) the Minister may notify the Inuit settlement trust of the default and request a remedy to address the default; and
 - (b) if within 100 days after the registered mailing of the notice referred to in subsection 6.4(a) the Inuit settlement trust does not address the default to the satisfaction of the Minister, then the Minister may revoke the designation of the Inuit settlement trust as an Inuit settlement trust.
- 6.5 Any revocation under subsection 6.4(b) is subject to the same right of appeal as applies to a revocation of the registration of a registered charity under the Income Tax Act, with such modifications as the circumstances require.
- 6.6 If the Minister of National Revenue revokes the designation of an Inuit settlement trust, the taxation year of the trust that would otherwise have included the time of revocation shall be deemed to end immediately before the time of the revocation, and the Inuit settlement trust shall be deemed to have disposed of all its assets immediately before that time for proceeds equal to their fair market value and to have re-acquired those assets at the time at a cost equal to their fair market value, and for the purposes of calculating the taxable income of the Inuit settlement trust referred to in subsection 6.3(c), an amount equal to the amount by which their fair market value exceeds the cost amount of the assets of the Inuit settlement trust shall be deemed to be a capital gain from the disposition of property that is not a qualified investment for the Inuit settlement trust.
- 6.7 For purposes of sections 6.3 and 6.4, the distribution by an Inuit settlement trust of any amount to a beneficiary of the trust in respect of the beneficiary's interest in the trust shall not be considered to be cause for the revocation of the designation of the Inuit settlement trust.
- 6.8 The rule against perpetuities does not apply to an Inuit settlement trust.

Part 7 INUIT CAPITAL

- 7.1 Any transfer of Inuit Capital, other than cash, between the Nunatsiavut Government, any Inuit Community Government, a designated Inuit organization, any Inuit Community Corporation and any Inuit government corporation shall not be taxable.

Part 8 FUTURE AGREEMENTS IN NEWFOUNDLAND AND LABRADOR

- 8.1 If within 15 years of the effective date, Canada or the Province ratifies another land claims agreement applicable within Newfoundland and Labrador which provides, in that land claims agreement or in a tax treatment agreement similar to that contemplated in part 20.7 of the Labrador Inuit Land Claims Agreement, tax powers or exemptions to an Indian band as defined under the *Indian Act*, First Nation or other aboriginal political body in Newfoundland and Labrador that are not available to the Nunatsiavut Government or an Inuit Community Government, Canada and the Province, at the request of the Nunatsiavut Government, will use best efforts to negotiate an agreement with the Nunatsiavut Government to provide appropriate adjustments to the tax powers and exemptions available to the Nunatsiavut Government or an Inuit Community Government, as the case may be, taking into account the particular circumstances of the Indian band, First Nation or other aboriginal political body.

Part 9 DISPUTE RESOLUTION

- 9.1 The parties desire and expect that most disagreements will be resolved by informal discussion, between or among the parties, without the necessity of invoking a dispute resolution mechanism.
- 9.2 Except for a dispute under parts 3 to 6, in the event of a dispute between any of the parties arising under this agreement, the parties involved in the dispute will use a mediation process before pursuing any other legal remedy.

Part 10 TERM OF THIS AGREEMENT

- 10.1 This agreement comes into effect on the effective date and, unless the parties agree otherwise, terminates at the end of March 31st of the calendar year following the year in which a party notifies the others that it wants the agreement to terminate.
- 10.2 A party may not give notice that it wants this agreement to terminate before the fiscal year in which the fifteenth anniversary of the effective date occurs.
- 10.3 At least one year before this agreement is expected to terminate, the parties shall use best efforts to negotiate a new tax treatment agreement.

Part 11 AMENDMENT AND REVIEW

- 11.1 Any amendment to this agreement must be in writing and executed by all parties.
- 11.2 Any party may at any time request the other parties to review this agreement and to consider amendments to this agreement.

Part 12 NOTICES

- 12.1 Unless otherwise provided, a notice, document, request, approval, authorization, consent or other communication (each a "communication") required or permitted to be given or made under this agreement must be in writing and may be given or made in one or more of the following ways:
- (a) delivered personally or by courier;
 - (b) transmitted by facsimile transmission; or

(c) mailed by prepaid registered post in Canada.

12.2 A communication will be considered to have been received:

- (a) if delivered personally or by courier, at the start of business on the next business day after the business day on which it was received by the addressee or a responsible representative of the addressee;
- (b) if sent by facsimile transmission and if the sender receives confirmation of the transmission, at the start of business on the next business day on which it was transmitted; or
- (c) if mailed by prepaid registered post in Canada, when the postal receipt is acknowledged by the addressee.

12.3 A communication must be delivered, transmitted to the facsimile number or mailed to the address of the intended recipient set out below:

For Canada:

Attention: Minister of Finance
House of Commons
Confederation Building
Ottawa (Ontario) K1A 0A6
Fax number: 613-995-1534

For Newfoundland and Labrador:

Attention: Minister of Finance and President of Treasury Board
Confederation Building
P.O. Box 8700
St. John's, Newfoundland and Labrador, A1B 4J6
Fax number: 709-729-2070

Minister for Intergovernmental Affairs
Confederation Building
P.O. Box 8700
St. John's, Newfoundland and Labrador, A1B 4J6
Fax number: 709-729-5038

For the Labrador Inuit Association:

Attention: The President
Labrador Inuit Association
17 Sandbanks Road
P.O. Box 70
Nain, Labrador A0P 1L0
Fax number: 709-922-2931

12.4 A party may change its address or facsimile number by giving a notice of the change to the other Parties in the manner set out above in 12.2.

For the Inuit of Labrador

Signed at Nain,
Newfoundland and Labrador,
this 15th day of March,
2005.



William Andersen
President of the Labrador
Inuit Association



Witness

**For the
Government of Canada**

Signed at Ottawa
Ontario,
this 12 day of April,
2005.



Ralph Goodale
The Honourable
Minister of Finance



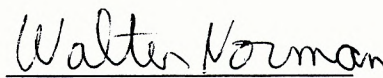
Witness

**For the
Government of
Newfoundland and
Labrador**

Signed at St. John's,
Newfoundland and Labrador,
this 24 day of March,
2005.



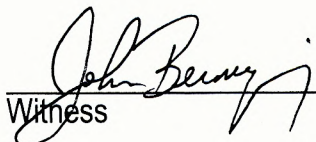
Loyola Sullivan
The Honourable
Minister of Finance and
President of Treasury Board



Witness



Tom Marshall
The Honourable
Minister for
Intergovernmental Affairs



Witness