Indian and Northern Affairs Affaires indiennes et du Nord

REFERRED TO — DESTINATAIRE	PURPOSE — OBJET	DATE	INITIAL — INITIALES	P.A. DATE — DATE DE RANGEMENT	B.F. DATE — DATE DE RAPPEL	INITIAL — INITIALES	RECORDS INSPECTION — EXAMEN DU SERVICE DES ARCHIVES
~~A~~ R Hart	R	24/6/76 19/3/84	GR S	24/6/76		CAT	

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601/18-31 VOL 1
Customs and Excise Regulations

VOL. NO. — VOL. Nº	SUBJECT — SUJET
1	Customes and Excise Regulations
TO — À June 24/76 FROM — DE 3 JUNE 1975	FILE NUMBER — DOSSIER Nº 601/18-31

IAND 10-128 (1-73) 7530-21-023-9346

CROSS REFERENCE – RENVOI

FILE NUMBER – DOSSIER Nº	SUBJECT – SUJET
1	correspondence per seizure of Goods
2	prior to 1975 on Val 675 f 3-8
3	Letter dated 28 July 1971
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IMPORTANT

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Column 1 – Shows the office or name of the person to whom the file is routed.

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2 – indiquer les raisons de l'acheminement ou la date et le numéro d'identification de la lettre au dossier dont le destinataire doit s'occuper.

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CLOSED VOLUME / VOLUME COMPLET

CANADA

DATED FROM / À COMPTER DU	TO / JUSQU' AU
JUNE 3/75	June 24/76

AFFIX TO TOP OF FILE – À METTRE SUR LE DOSSIER

DO NOT ADD ANY MORE PAPERS – NE PAS AJOUTER DE DOCUMENTS

FOR SUBSEQUENT CORRESPONDENCE SEE – POUR CORRESPONDANCE ULTÉRIEURE VOIR

FILE NO. – DOSSIER Nº	VOLUME
6011 18-31	1

District Manager
Yorkton District

REGINA June 24, 1976

601/18-31(SLO)

Re: Seizure of Merchandize - Louis E. Taypotat

With reference to your letter of June 21, 1976 and attachment.

We have taken this matter up with the Customs and Excise Department and they have advised that Indians must pay duty on goods that they bring into Canada.from the United States or any other country.

A person who visits the United States is allowed to bring back $50.00 worth of merchandize duty free if he has stayed there for 48 hours.

Please refer to page 23 item 6 of the Handbook for Chiefs and Coucillors which provides some information on this matter.

I suggest that you bring this matter to the attention of all Chiefs and Councillors in your District.

Original Signed By
K. J. GAVIGAN

J. D. Leask
A/Director General
Saskatchewan Region

KG/abk

SLO

Indian and Northern Affairs / Affaires indiennes et du Nord

YORKTON DISTRICT,
520A Broadway West,
Yorkton, Saskatchewan.
S3N OP3

June 21, 1976

Your file *Votre référence*

Our file *Notre référence* 673/18-21

Director General,
SASKATCHEWAN REGION.

Attention: Mr. Keith Gavigan - Senior Liaison Officer

Further to our discussion on the phone this afternoon, attached is a copy of the Seizure Receipt issued to Louis E. Taypotat by Revenue Canada Customs and Excise on June 13, 1976, at North Portal, Saskatchewan.

The subject of Treaty Indians paying duty when returning to Canada from the United States was discussed at our Chiefs' meeting on Friday, June 18, 1976. At that time the writer was requested to obtain information on this matter.

Would you please contact the appropriate authorities and advise if Indians are obliged to pay duty on re-entering Canada from the United States.

Your early attention to this matter will be appreciated.

P.H. Watt,
District Manager.

PHW/sk
Enc.

cc Denzil Kitchemonia
Box 248
Kamsack, Saskatchewan.

Revenue Canada Customs and Excise / Revenu Canada Douanes et Accise

Seizure No. / *Saisie n°*

Port / Bureau: North Portal, Sask.

Date: June 13, 1976.

SEIZURE RECEIPT **REÇU POUR SAISIE**

108

Name of Person / *Nom de la personne*: Louis E. TAYPOTAT

Address / *Adresse*: Broadview, Sask.

The goods (and the conveyance, if any) described below are subject to forfeiture under the *Customs Act* for the following reason(s):

Les marchandises (et le moyen de transport, s'il y en a) énumérées ci-après sont passibles de confiscation aux termes de la Loi sur les douanes pour la ou les raisons suivantes:

That the said goods were smuggled or clandestinely introduced into Canada

Statement of goods / *Désignation des marchandises*	Value / *Valeur*	Rate / *Taux*	Duty / *Droits*	Sales Tax / *Taxe de vente*	Excise Tax / *Taxe d'accise*	Tariff Item / *N° tarifaire*
1 pr. Size 6½ Western Boots	50.00	25	12.50	Ex	Ex.	61105-1
1 pr. Ladies Shoes	5.47	25	1.47	Ex.	Ex.	61105-1
4 Cotton Towels	3.88	22½	.87	.57	Ex.	52305-1
1 pr. boy's ~~cotton~~ polyester jeans	7.00	~~22½~~ 25	1.75	Ex.	Ex.	56300-1
TOTAL	66.35		16.59	.57	Nil	

Conveyance / *Moyen de transport*	U.C.L. No. (if any) / *N° L.M.N.R. (s'il y en a)*	Deposit received / *Consignation reçue* — Goods / *Marchandises*	Conveyance / *Moyen de transport*	Total amount received / *Montant global reçu*	S.C.C.B. No. / *N° L.R.D.*
1976 FORD ½ TON S/N F25JKB76205 LIC: SK. F-154064		$ 83.51	$ Nil	$ 83.51	

The above mentioned goods (and the conveyance, if any) or the moneys paid or deposited in lieu thereof shall be deemed and taken to be condemned without suit, information or proceedings of any kind, unless notice of claim or intent to claim the same is given in writing to the Collector of Customs and Excise at the above named port within one month from the day of seizure, payment or deposit.

Les marchandises susmentionnées (et le moyen de transport, s'il y en a) ou la somme consignée à leur égard seront considérées comme confisquées et tenues pour tel sans poursuite, dénonciation ni procédure d'aucune sorte, à moins qu'un avis de revendication ou d'intention de revendiquer ne soit donné par écrit au receveur des Douanes et de l'Accise du bureau susmentionné dans un délai d'un mois à compter du jour de la saisie, du paiement ou du dépôt.

JUN 13 1976
NORTH PORTAL, SASK.

[signature]
Seizing officer / *Agent saisissant*

If notice of claim or intent to claim is given within the time aforesaid, such notice will be referred to the Deputy Minister and after the owner, claimant, or person alleged to have incurred the penalty or forfeiture has been afforded the opportunity of furnishing further evidence in the matter, decision may be given as to the terms, if any, upon which the thing seized or detained may be released or the penalty or forfeiture remitted.

Si un avis de revendication ou d'intention de revendiquer est donné dans le délai susmentionné, cet avis sera déféré au Sous-ministre et, après que le propriétaire, le réclamant ou l'individu censé avoir encouru l'amende ou la confiscation aura eu l'occasion de fournir les autres éléments de preuve qu'il désire apporter dans l'affaire, une décision pourra être rendue quant aux conditions, s'il y a lieu, auxquelles la chose saisie ou détenue peut être restituée.

SEE REVERSE SIDE / *VOIR AU VERSO*

K 19
6-74

ORIGINAL

Woodbine Place
2332 11th Avenue
REGINA, Saskatchewan
May 20, 1977

Lyle Bear
Social Services Probation Unit
PRINCE ALBERT DISTRICT OFFICE

601/18-31 P.A.

RE: PROPOSED PURCHASE OF AIRPLACE - UNITED STATES

Please refer to my letter dated May 19th when I indicated that we were attempting to obtain further clarification concerning the above matter.

Since writing to you we have received correspondence from Revenue Canada - Customs and Excise and I quote from their letter "The Customs Act does not specifically refer to Indians nor is there any other legislation currently being enforced which gives Indians preferential status as far as Canada Customs are concerned. As you will note from the attached decision rendered by the Exchequer Court of Canada and other related information, it would definitely appear that Indians are subject to the regular provisions of the Customs Taraff and Excise Tax Act."

It may be that you wish to explore this matter further. However, this is the information that we have received. A copy of the information received from Revenue - Canada is enclosed for your benefit.

A.J. Gross
A/Assistant Regional Director
Economic Development
SASKATCHEWAN REGION

AJG:tew

Encl.

cc G. MacPherson
District Superintendent of Economic Development
Prince Albert District Office

Cliff Starr
Federation of Saskatchewan Indians
1715 South Railway Street
REGINA, Saskatchewan

Woodbine Place
2332 11th Avenue
REGINA, Saskatchewan S4P 2G7
May 19, 1977

Lyle Bear
Social Services Probation Unit
PRINCE ALBERT DISTRICT OFFICE

601/18-31

RE: Proposed Purchase of Airplane - United States

We received your request for advice on whether or not you would be required to pay tax on an airplane purchased in the United States of America.

We have discussed the matter with the local Customs office. They are unable to provide us with the clarification required. We have since been in touch with our Ottawa Office and have been assured that we will receive clarification on the matter in the near future.

We will keep you informed.

Original Signed
A. Gross

A.J. Gross
A/Assistant Regional Director
Economic Development
SASKATCHEWAN REGION

AJG:tow

cc Cliff Starr
Federation of Saskatchewan Indians
1715 South Railway Street
REGINA, Saskatchewan

G. MacPherson
District Superintendent of Economic Development
Prince Albert District Office

R.H. Morehouse
Operational Policy Division
Customs Programs
Revenue - Canada OTTAWA

Revenue Canada
Customs and Excise

Revenu Canada
Douanes et Accise

Your file *Votre référence*

Our file *Notre référence* 7815-0

Mr. A.J. Gross,
A/Assistant Regional Director,
Economic Development,
Department of Indian and Northern
Affairs,
Woodbine Place,
2332-11th Ave.,
Regina, Saskatchewan.
S4P 2G7

May 17, 1977

Dear Mr. Gross:

As per our telephone conversation of May 16, 1977 relative to Customs laws and regulations with respect to Canadian Indians.

The Customs Act does not specifically refer to Indians nor is there any other legislation currently being enforced which gives Indians preferential status as far as Canada Customs are concerned.

Much has been said and written on the Jay Treaty, and the facts of the matter have become obscured. However, as you will note from the attached decision rendered by the Exchequer Court of Canada and other related information, it would definitely appear that Indians are subject to the regular provisions of the Customs Tariff and Excise Tax Act.

I trust this information will prove helpful to you.

Yours truly,

R.H. Morehouse

R.H. Morehouse,
Operational Policy Division,
Customs Programs.

Ottawa
K1A 0L5

Ottawa
K1A 0L5

Ottawa, Ontario. K1A 0H4

JUN 6 1973

Mr. John H. Martin,
Redman Steel Fabrication,
58 English Range Road,
R.F.D. 3,
Derry, New Hampshire 03038
U.S.A.

Dear Mr. Martin:

Mr. Chrétien has asked me to thank you for your letter of April 3, concerning your planned training program and fabricating plant on the Eel River Reserve. You also ask about your rights in bringing goods across the Canadian border, and mention in this respect the Jay Treaty of 1794.

Much has been said and written on the Jay Treaty, and the facts of the matter have become obscured. I should like briefly to review for you the history of this Treaty, and explain the situation as it now stands.

In 1794 the United States and Great Britain concluded a treaty, officially called "The Treaty of Amity, Commerce and Navigation" but commonly known as the Jay Treaty. Article III of the Treaty is usually quoted as the authority under which North American Indians should be allowed to cross the U.S. - Canada border without hindrance of any kind. But this Article stipulated that all persons from either side of the border, whether Indian or not, should be free to cross the border without hindrance. It also exempted them from paying duty on furs brought into either country, and specifically exempted Indians from payment of duty on any of their ordinary possessions.

With the outbreak of the War of 1812, the United States considered the Jay Treaty no longer valid, but some people have always contended that it was restored by the Treaty of Ghent in 1815. However, on March 5, 1937, the United States Court of Customs and Patent Appeals declared in a decision that the provision exempting Indians from paying customs duty had, in fact, been abrogated by the War of

..../2

1812. As a result of this decision, Indians entering the U.S. are treated by U.S. Customs in the same manner as other persons. The situation in Canada is similar. The Supreme Court, in a case brought before it in 1956, found that the articles of the Jay Treaty in question, and of the Treaty of Ghent, had no application in Canada since they had not been sanctioned by legislation. There is, in fact, no legislation in Canada which gives Indians special customs rights when crossing the border between the United States and Canada.

The situation at present, therefore, is that Indians who are United States citizens must comply with the normal requirements for temporary entry to Canada. These requirements are minimal, however, and can hardly represent an obstacle to the vast majority of Americans (including of course U.S. Indians) who are able to enter Canada without any difficulty whatever; they need only establish their identity as United States citizens. It should be noted too that customs officers do exercise a certain amount of discretion in dealing with United States Indians, especially in cases where a tribe is split by the International Boundary.

Early this March, there was a demonstration at the International Bridge, Pigeon River, and a demand was made that Canada take legislative action to recognize the validity of the Jay Treaty. Such recognition would, in effect, mean the unrestricted entry into Canada of all United States citizens. United States Indians seeking temporary entry to Canada are, like all other United States citizens, admitted with a minimum of formality on establishing their identity as United States citizens. On the other hand, the implementation of special procedures for United States Indians would mean that immigration officers would first have to establish the individual's identity as a United States Indian. This would necessitate additional questioning, especially if the persons concerned were not carrying appropriate identification. Such measures might impede their admission and cause delays. The possibility exists, too, that despite the best intentions, United States Indians might be left with the impression that they were being singled out for additional questioning.

You ask in your letter about your own legal rights with respect to payment of duty. For confirmation of your position, I suggest that you write to the Department of National Revenue, Customs and Excise, who would, I know, be pleased to provide you with the information. Their

..../3

address is:

The Department of National Revenue,
Customs and Excise,
Ottawa, Ontario. K1A 0L5

In connection with your planned training program and fabrication plant, we would ask that you send your cost estimate to our Maritimes Regional Office, since all training programs are now handled at the Regional level. Our Regional officers will be pleased to help you in any way they can. The address to write to is:

Mr. R.D. Brown,
Regional Director,
Department of Indian Affairs
and Northern Development,
P.O. Drawer 160,
Amherst, Nova Scotia.

Yours sincerely,

IRVIN GOODLEAF

Irvin Goodleaf,
Special Assistant.

c.c. The Honourable Robert Stanbury,
Minister of National Revenue.

way of Lake Champlain and the Richelieu. In the following year another ordinance relating to the inland commerce of the province ventured to recognize that, under due restrictions, commercial intercourse with the neighbouring states might prove useful to the province and beneficial to Great Britain. The Canadians were thereafter to be permitted to export to the adjoining states, by way of Lake Champlain and the Richelieu route, all ordinary goods, the product of the province or such as might be lawfully imported into it. Exception, however, was made of beaver skins and other furs. A detailed list was given of the articles which might be imported from the neighbouring states. This may be summarized as including all kinds of timber and naval stores, such as hemp, pitch, etc., all kinds of grain, dairy products, live stock, and other natural products of the country, also gold and silver coin or bullion. Genuine settlers were permitted to bring in their personal effects. Rum, spirits, manufactured goods, and all other goods not mentioned in the preceding lists were prohibited. In 1790 pig iron from Vermont was added to the list of permissible imports, and in 1793 wampum was also included.

Jay's Treaty

The treaty of 1794, commonly known as Jay's Treaty, was the first commercial treaty between the United States and Great Britain. It provided that the western posts in United States territory—which, as we have seen, had been held by Britain since the treaty of 1783—should be given up within two years. Free intercourse between the people of the United States and those of the British provinces, including Indians, was provided for. United States vessels were still excluded from the seaports of the British American colonies, but inland navigation, including navigation of the Mississippi, remained free to both parties. All goods not prohibited from entering the British colonies might be imported from the United States by land or inland navigation subject to the regular duties on such goods coming from Europe. Similarly, goods might freely be sent to the United States from British territory by land or inland navigation subject to no higher

duties than were paid on European goods imported by American vessels at the Atlantic ports. No duty was to be levied by either party on furs or on goods belonging to the Indians. The port of St Johns on the Richelieu was declared to be the sole port of entry for all goods coming from the United States by land or inland navigation, and there the appointed duties were to be paid.

The treaty provided that additional articles might be added to it from time to time by mutual consent. An explanatory article was added in May 1796, stating that various agreements made between the United States and certain Indian tribes were not to be understood as interfering with free trade between the Indians and either of the high contracting parties.

An act of the legislature of Quebec was passed in 1796 authorizing the lieutenant-governor by order-in-council to alter any clauses in the existing acts or ordinances relating to trade with the United States which might prove to be inconsistent with the treaty. This act, which held good for a year from its date, was renewed from year to year thereafter until 1801. Similar acts were passed in Upper Canada and renewed yearly, until European complications intensified the friction between Great Britain and the United States which finally culminated in the War of 1812.

III

ECONOMIC EFFECTS OF THE PARTITION

Results of the Constitutional Act

THE Constitutional Act of 1791, by dividing Quebec into two provinces, coincident, as nearly as possible, with the distribution of the two races, and by granting representative government to each, professedly gave the French a dominant voice in Lower Canada and the English a corresponding control in Upper Canada. Pitt, the prime minister of the day, defended this act by stating his belief that within a short time the French Canadians, seeing the superiority of English laws and institutions in the upper

hostilities.[1] At the same time the colonial secretary fairly admitted that it was extremely difficult to follow the policy of forbearance when every indication pointed to the necessity of preparing for armed resistance.

Dorchester's Resignation

This communication was considered by Lord Dorchester as a censure on his conduct and drew forth a statement in self-defence. After reviewing the conditions which at the time existed, he declared that it was impossible for him to have given the Indians any hope of peace, and that he saw no reason for concealing his opinion on a subject which was of such great interest to them.

> Private inclination and public Duty apart, it would be folly in the extreme for any Commander in Chief circumstanced as I find myself here, without Troops, without authority, amidst a People barely not in arms against the King, of his own accord to provoke Hostility, or to begin (as Mr Secretary Randolph is pleased to call it) 'Hostility itself.' You will perceive, Sir, with me, that various Reasons concur to make it necessary for the King's Service that I retire from this Command; I am therefore to request you will have the goodness to obtain for me His Majesty's Permission to resign the Command of His Provinces in North America, and that I may return home by the first opportunity.[2]

Meanwhile negotiations were proceeding between Jay and Lord Grenville, and on November 19, 1794, the treaty, since known as Jay's Treaty, was signed. Great Britain agreed to withdraw by June 1, 1796, all troops and garrisons from the posts within the boundary-line assigned by the treaty of 1783. Doubts had already arisen regarding the real meaning of the boundary definition contained in the Treaty of Paris, and, accordingly, provision was made in Jay's Treaty for the appointment of joint commissions to determine the boundary west of the Lake of the Woods and to declare

[1] See Dundas to Dorchester, July 5, 1794: the Canadian Archives, Q 67, p. 177.

[2] Dorchester to Dundas, September 4, 1794: the Canadian Archives, Q 69, pt. 1, p. 177.

what river was intended by the treaty as the St Croix. Several articles regulating the commerce between the two nations were limited to twelve years' duration and were allowed to expire in 1807.

The war with the Indians still dragged on until the notification of the terms of Jay's Treaty definitely determined the fate of the border posts. In this connection nothing remained for Lord Dorchester but to arrange for the withdrawal of the British troops and the strengthening of the Canadian posts to protect the interests of trade. At Quebec the legislature soon undertook the consideration of the more serious questions of public policy. The constitution of the courts of justice was discussed during the session of 1793, though the bill creating a new judicial organization did not become law until the following year.[1] In January 1796 Major-General Robert Prescott was appointed lieutenant-governor of Lower Canada, and in June he arrived at Quebec.

The last months of Lord Dorchester's administration were clouded by further disagreements with Simcoe. Dorchester disapproved of Simcoe's scheme of military settlements.[2] The disposition of the troops after the evacuation of the border posts afforded another ground for dispute. Now that danger from the south had been removed, Dorchester did not see the necessity of maintaining extensive garrisons. On the other hand, the withdrawal of the troops from the province thwarted Simcoe's plans of colonization.

In a dispatch to the Duke of Portland, written within a few weeks of his departure from Canada, Lord Dorchester expressed in terms which could not be mistaken his opinion of the prevailing system of colonial administration.

> Public censure from a Minister affords such open Encouragement to disorder that this alone rendered it necessary for the King's Service I should retire, to prevent the Evils which must naturally result therefrom, even if I had not found on my last arrival in this Country, the old Colonial System greatly strengthened, and that all my Endeavours to shew from former Examples its ruinous Consequences seemed only to encrease the zeal

[1] See p. 455. [2] See p. 176.

but it is clear that the agreements entered into with the Indians are neither international treaties nor simple private contracts, and while certain similarities exist between the treaties and legislative enactments, this analogy is also somewhat inappropriate.

1. International Treaties. Both historically and legally, it seems that the Indian treaties are not international treaties in the sense of agreements between two or more independent nations.[10] In *Regina* v. *White and Bob*,[11] Davey, J.A., stated clearly that an Indian treaty is not an "executive act establishing relationships between what are recognized as two or more independent states acting in sovereign capacities."[12] Historically, it also seems clear that the Government did not consider the Indians to be independent nations at the time the original treaties were made, and in the Commissioner's reports on the post-Confederation treaties, both the Government representatives and the Indian negotiators indicate that they considered the Indian peoples to be subjects of the Queen.[13]

The Indian treaties made by Canada and those made by the United States differ in several respects. In the United States, the Federal power to make treaties was the basis for both international treaties and agreements with the Indians.[14] During the treaty-making period, American Indian tribes were described as dependent nationalities and a tribal Indian was a legal alien.[15] In 1828, the United States Attorney-General examined the contention that the treaties between the Indians and the United States were ineffective because they were not treaties with an independent nation. In his opinion, he concluded that the Indian tribes had sufficient independence for the purpose of entering into treaties. The limitations on their independence in other spheres of competence were not directly on point and hence were irrelevant in determining the legal capacity of the Indian tribes to enter into binding compacts with the American government.[16] Although this argument assumes the existence of the very point at issue (i.e. that the Indian tribes possessed the necessary degree of independence), it seems to have settled the question in the United States.

In American law, the ratification of a treaty involves both executive action and approval by the United States Senate. Having the same legal status as Congressional legislative action, it can override previous legislation and can be annulled by subsequent enactments. In 1871, the United States Congress prohibited

8. Id.

9. *Webster's New World Dictionary* (Nelson, Foster & Scott Ltd., Toronto: 1964) p. 1551.

10. Green, "Canada's Indians: Federal Policy, International and Constitutional Law," (1970), 4 *Ottawa L. Rev.* 101, at p. 106.

11. (1965), 50 D.L.R. (2d) 613, 52 W.W.R. 193 (B.C.C.A.), aff'd, (1966), 52 D.L.R. (2d) 481 (S.C.C.).

12. 50 D.L.R. (2d) at p. 617, 52 W.W.R. at p. 197.

13. Morris, supra, footnote 5, at pp. 34, 47, 93.

14. U.S. Constitution, art. II, s. 2(2).

15. United States Dep't of the Interior, *Federal Indian Law* (Gov't Printing Office, Washington: 1958) p. 138.

16. 2 Opinions Attorney-General 110 (1828).

In Canada, the power of the Dominion Government to enter into agreements with the Indians does not appear to have been questioned. Under s. 91(24) of the British North America Act, the Federal Government has authority over "Indians, and Lands reserved for the Indians."[18] Consequently, there has been no need to justify the Federal authority to engage in agreements with the Indians under its power to enter into international treaties.

In Canadian law, the "ratification" of an international treaty is procedurally and legally distinct from the "implementation" of the treaty. The completion of a treaty constitutes the legitimate exercise of the prerogative power. The concurrence of Parliament or the provincial legislative bodies is not required. On the other hand, domestic law is not affected by the provisions of a treaty until the treaty agreements are formally implemented by legislation. This distinction was made explicit by the Supreme Court in *Francis* v. *The Queen*.[19] The accused in this case was an Indian charged with importing goods from the United States without paying the requisite customs duty. The defence relied upon the partial exemption from import duties granted to Indians by the Jay Treaty of 1794. The Court, however, held that since the provisions of the Jay Treaty were never enacted by legislation, the accused could not rely upon the exemptions contained in that agreement:

> The *Jay Treaty* was not a Treaty of Peace and it is clear that in Canada such rights and privileges as are here advanced of subjects of a contracting party to a treaty are enforceable by the Courts only where the treaty has been implemented or sanctioned by legislation.[20]

The reasoning of this argument would be of some importance in regard to the binding effect of Indian treaties, if the analogy between international agreements and the Indian treaties were carried to its logical extreme. The Indian treaties have not formally been implemented by the appropriate provincial or Federal legislation,[21] as would be required to make effective an international agreement. Notwithstanding this non-implementation, the Canadian courts have considered the various treaties with the Indians to constitute obligations enforceable at law.[22] Therefore, in this fundamental way, Canadian law considers Indian treaties

17. 25 U.S.C. s. 71 (1964). There is no indication in the American materials examined that the power of Congress to terminate treaty-making with the Indians was open to challenge.

18. British North America Act, 30 & 31 Vict. c. 3, s. 91 (24).

19. [1956] S.C.R. 618.

20. Id., at p. 621.

21. It is arguable that s. 88 of the Indian Act, R.S.C. 1970, c. I-6, has implicitly given legislative recognition to the provisions contained in the Indian treaties. Section 88 provides that: "Subject to the terms of any treaty and any other Act of the Parliament of Canada, all laws of general application from time to time in force in any province are applicable to and in respect of Indians in the province. . . ." Judicial interpretation of this section has established that the provisions of an Indian treaty are to prevail over conflicting provincial legislation. See Regina v. White and Bob (1965), 50 D.L.R. (2d) 613, 52 W.W.R. 193 (B.C.C.A.) and Regina v. Cooper (1969), 1 D.L.R. (3d) 113 (B.C.S.C.). The courts have, however, interpreted s. 88 as allowing Federal legislation to prevail over conflicting treaty provisions. See The Queen v. George, [1966] S.C.R. 267, 55 D.L.R. (2d) 386.

22. See, e.g., Rex v. Wesley, [1932] 4 D.L.R. 774, 2 W.W.R. 337 (Alta. App. Div.); Prince v.

No. 68057

I N T H E E X C H E Q U E R C O U R T O F C A N A D A

B E T W E E N:

LOUIS FRANCIS,

Suppliant,

- and -

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Cameron J.

In this Petition of Right the suppliant asks for a declaration of this Court that as an Indian, subject to the provisions of the Indian Act, Statutes of Canada, 1951, c. 29, he is entitled to transport by land or inland navigation into the Dominion of Canada his own proper goods and effects of whatever nature, free of any import or duty whatsoever; and also for the return of the sum of $123.66 paid by him to the respondent, under protest, for certain Customs and Excise duties in respect of goods imported by him into Canada.

This is a test case and in the main the facts are not in dispute. The suppliant is an Indian within the definition of that term in s. 2(1)(g) of the Indian Act and at all relevant times resided on the St. Regis Indian Reserve in St. Regis village. That village is situated on the south side of the St. Lawrence River, about opposite Cornwall, Ontario, but is in the most westerly tip of the Province of Quebec and adjacent to the State of New York. It adjoins an American Indian reserve, the members of which are also part of the St. Regis tribe of Indians. Like some other residents of the St. Regis Indian Reserve of Canada, the suppliant's employment has been mainly in the United States and he served for

some years with the American Army in the Second World War. Following his discharge from the American Army in 1946, he returned to his home in St. Regis and has since resided there.

For the purpose of this case only, certain admissions were agreed to by the parties hereto and duly filed. Thereby it was agreed that on or about October 19, 1951, the suppliant imported from the United States into Canada one washing machine, one oil heater, and one electric refrigerator, being his own property acquired by him in the United States. No duty was paid by him on the importation of the said articles either under the Customs Tariff Act or the Excise Tax Act. The three articles were seized while on the premises and in the possession of the suppliant and detained on behalf of His Late Majesty under the provisions of the Customs Act for failure to pay duty and taxes on the importation into Canada of the said goods under the Customs Tariff Act and the Excise Tax Act. Following the seizure, the suppliant claimed exemption from duty and taxes with respect to the said articles by reasons of the provisions of Article III of the Treaty of Amity, Commerce and Navigation, between His Britannic Majesty and the United States of America, signed on the 19th day of November, 1794, and which is commonly known, and will be hereinafter referred to as the Jay Treaty.

The claim for exemption of duty and taxes was not recognized and the Crown demanded payment of the sum of $132.66 for duty and taxes. The suppliant thereupon under protest paid the said sum and the goods were released to him; he then filed this Petition of Right.

The evidence at the trial indicated that the date of entry of the said goods was not on October 19, 1951, as stated in the agreement of the parties. It showed that the suppliant imported them on the following dates - the washing machine in December, 1948; the refrigerator on April 24, 1950; and the oil heater on September 7, 1951. The Petition of Right was amended accordingly but the change in the date of importation, however, is not of importance in determining

the main issue between the parties. It is shown by the evidence, also, that each of the articles when imported was taken directly to the home of the suppliant and was not taken to a Custom-house at a port of entry, or reported to any collector or other Customs officer.

The main case put forward on behalf of the suppliant is that as an Indian he is entitled to the benefit of certain provisions contained in Article III of the Jay Treaty (Ex. 2), the relevant part being as follows:

> "No duty of entry shall ever be levied by either party on peltries brought by land, or inland navigation into the said territories respectively, nor shall the Indians passing or repassing with their own proper goods and effects of whatever nature, pay for the same any impost or duty whatever. But goods in bales or other large packages unusual among Indians shall not be considered as goods belonging <u>bona fide</u> to Indians."

At the trial the suppliant relied also on the provisions of s. 86 of the Indian Act, R.S.C. 1952, c. 149. Notwithstanding the fact that that Act had not been referred to in the pleadings, counsel for the respondent made no objection to its being considered, and the scope of the argument is regularized by his approval.

For the respondent it is submitted that the suppliant is not entitled to the exemptions claimed on any ground. First it is said that the Jay Treaty - or at least the relevant provisions of Article III - was terminated by the War of 1812. If it were not so terminated, then it is contended that it is enforceable by the courts only when the Treaty has been implemented or sanctioned by legislation rendering it binding upon the subject, and that at the time the goods here in question were imported, there was no such legislation in effect in Canada. Then it is submitted as a further alternative that even if the Treaty was in full force and effect at the relevant times, the nature of the goods imported is not such as to be within the purview of the goods mentioned in Article III. The respondent also submits that s. 86 of the Indian Act does not assist the suppliant. Finally, the respondent relies on the provisions of s. 49 of the Income Tax Act and the Income War Tax Act, Statutes of Canada, 1949, 2nd Session, c. 25, as barring any right

to exemption which the suppliant might otherwise have had.

The first question for consideration is this. Is the suppliant entitled to an exemption from the duties claimed by reason of that part of Article III of the Jay Treaty which I have cited above? Here I should emphasize the fact that in this opinion, my comments and conclusions - unless otherwise stated - are referable only to that part of Article III and to no other part of the Treaty.

I have given this matter the most careful consideration and after referring to the authorities cited to me, I have reached the conclusion that this question must be answered in the negative. Briefly, the reason for so finding is that at the time the goods were imported into Canada by the suppliant, there was in force in Canada no legislation sanctioning or implementing that term of the Treaty.

The first authority to which I would like to refer on this point is the case of Arrow River & Tributaries Slide & Boom Co., Ltd. v. Pigeon Timber Co. Ltd. (1). The facts in that case were as follows: The appellant, which had constructed certain works upon that part of the Pigeon River which was in Ontario (the remaining part being in the United States) was desirous of charging tolls upon timber passing through such works, under the authority of the Lakes and Rivers Improvement Act, R.S.O., 1927, c. 43. The respondent applied for an injunction restraining the District Judge from acting on the appellant's application to fix the tolls on the ground that the Pigeon River being an international stream, its use under the Ashburton Treaty is free and open to the use of the citizens of both the United States and Canada and that Part V of the Lakes and Rivers Improvement Act, in so far as it purports to authorize the appellant company to charge tolls for the use of improvements on that river, is ultra vires of the Ontario Legislature. Application for an injunction was refused by Wright, J. on the ground that in British countries treaties to which Great Britain is a party are not as such binding on the individual subject in the absence of legislation. The appellate Division of Ontario agreed with that

principle and apparently would have upheld the decision of Wright, J. had there been, in their view, legislation in Ontario that authorized the construction of the works in question. In the Supreme Court of Canada, the appeal was allowed and the judgment of Wright, J. restored. At p. 510, Lamont, J. speaking also for Carmon, J. said:

> "The Act, must, therefore, be held to be valid unless the existence of the Treaty of itself imposed a limitation upon the provincial legislative power. In my opinion, the treaty alone cannot be considered as having that effect. The treaty in itself is not equivalent to an Imperial Act and, without the sanction of Parliament, the Crown cannot alter the existing law by entering into a contract with a foreign power. For a breach of a treaty a nation is responsible only to the other contracting nation and its own sense of right and justice. Where, as here, a treaty provides that certain rights or privileges are to be enjoyed by the subjects of both contracting parties, these rights and privileges are, under our law, enforceable by the courts only where the treaty has been implemented or sanctioned by legislation rendering it binding upon the subject. Upon this point I agree with the view expressed by both courts below:

(1) (1932) S.C.R. 495.

> 'that, in British countries, treaties to which Great Britain is a party are not as such binding upon the individual subjects, but are only contracts binding in honour upon the contracting States.'
>
> In this respect our law would seem to differ from that prevailing in the United States, where, by an express provision of the constitution, treaties duly made are 'the supreme law of the land' equally with Acts of Congress duly passed. They are thus cognizable in both the federal and state courts. In the case before us it is not suggested that any legislation, Imperial or Canadian, was ever passed implementing or sanctioning the provision of the treaty that the water communications above referred to should be free and open to the subjects of both countries. That provision, therefore, has only the force of a contract between Great Britain and the United States which is ineffectual to impose any limitation upon the legislative power exclusively bestowed by the Imperial Parliament upon the legislature of a province. In the absence of affirming legislation this provision of the treaty cannot be enforced by any of our courts whose authority is derived from municipal law. Walker v. Baird, (1892) A.C. 491; In re The Carter Medicine Co's Trade Mark, (1892) 61 L.J. Ch. 716; United States v. Schooner 'Peggy', (1801) 1 Cranch, 103; The Chinese Exclusion Case, Chee Chan Ping v. United States, (1889) 130 U.S.R. 581; Oppenhaim's International Law, 4th ed., 733-4.
>
> I am, therefore, of opinion that section 52, in question in this appeal, must be considered to be a valid enactment until the Treaty is implemented by Imperial or Dominion legislation."

Reference may also be made to Albany Packing Co. v. Registrar of Trade Marks (1), in which the late President of the Court said at p. 265:

> "Before proceeding to do so, however, I should perhaps here add that, I think, it is correct to say that the terms of the Conven-

(1) (1940), Ex.C.R. 256.

tion of The Hague may be referred to by the Court as a matter of history, in order to understand the scope and intent of the terms of that Convention, and under what circumstances any of the provisions of the Unfair Competition Act were enacted, in order to give legislative effect to the same. But the terms of the Convention cannot, I think, be employed as a guide in construing any of such provisions so enacted, for the reason that in Canada a treaty or convention with a foreign state binds the subject of the Crown only in so far as it has been embodied in legislation passed into law in the ordinary way."

And in the case of Attorney-General for Canada v. Attorney-General for Ontario (2), Lord Atkin said at p. 347:

"It will be essential to keep in mind the distinction between (1.) the formation, and (2.) the performance, of the obligations constituted by a treaty, using that word as comprising any agreement between two or more sovereign States. Within the British Empire there is a well-established rule that the making of a treaty is an executive act, while the performance of its obligations, if they entail alteration of the existing domestic law, requires legislative action. Unlike some other countries, the stipulations of a treaty duly ratified do not within the Empire, by virtue of the treaty alone, have the Force of law. If the national executive, the government of the day, decide to incur the obligations of a treaty which involve alteration of law they have to run the risk of obtaining the assent of Parliament to the necessary statute or statutes. To make themselves as secure as possible they will often in such cases before final ratification seek to obtain from Parliament an expression of approval. But it has never been suggested, and it is not the law, that such an expression of approval operates as law, or that in law it precludes the assenting Parliament, or any subsequent Parliament, from refusing to give its sanction to any legislative proposals that may subsequently be brought before it. Parliament, no doubt, as the Chief Justice points out, has a constitutional control over the executive: but it cannot be disputed that the creation of the obligations undertaken in treaties and the assent to their form and quality are the function of the executive alone. Once they are created, while they bind the State as against the other contracting parties, Parliament may refuse to perform them and so leave the State in default. In a unitary State whose Legislature possesses unlimited powers the problem is simple. Parliament will either fulfil or not treaty obligations imposed upon the State by its executive. The nature of the obligations does not affect the complete authority of the Legislature to make them law if it so chooses. But in a State where the Legislature does not possess absolute authority, in a federal state where legislative authority is limited by a constitutional document, or is divided up between different Legislatures in accordance with the classes of subject-matter submitted for legislation, the problem is complex. The obligations imposed by treaty may have to be performed, if at all, by several Legislatures; and the executive have the task of obtaining the legislative assent not of the one Parliament to whom they may be responsible, but possibly of several Parliaments to whom they stand in no direct relation. The question is not how is the obligation formed, that is the function of the executive; but how is the obligation to be performed, and that depends upon the authority of the competant Legislature or Legislatures."

Following the signing of the Jay Treaty, the relevant part of Article III was in fact implemented in Canada. In 1796, the Legislature of Lower Canada by c. VII of its Statutes passed "an Act for

(2) (1937) A. C. 126

making a Temporary Provision for the Regulation of Trade between this Province and the United States of America, by land or by Inland Navigation".

Thereby power was conferred on the Government with the advice and consent of the Executive Council to give directions and make orders with respect to importation and duties, for carrying on trade between the province and the United States. Section II of the Act was as follows:

> "And be it further enacted by the authority aforesaid, that this Act shall be in force and have effect from and after the passing thereof, until the first day of January, one thousand, seven hundred and ninety-seven, and from thence to the end of the then next session of the Provincial Parliament, and no longer."

Pursuant to that authority and in conformity with the terms of the Jay Treaty, a regulation was passed and duly gazetted on July 7, 1796 (Ex. 4), such regulation putting into effect the same exemption in respect to the goods of Indians passing between the two countries as is found in the Jay Treaty, the language used being practically identical with that in the Jay Treaty itself.

As I have said, the Act of 1796 was of a temporary nature; the regulation appears to have been renewed from time to time, the last renewal being found in the Statutes of 1812, c. 5, by virtue of which it expired on June 1, 1813.

That part of the Jay Treaty was first implemented in Upper Canada in 1801 by s. VI of c.V of the Statutes of that year (Ex. 6), th relevant part thereof being as follows:

> "VI. And be it enacted by the authority aforesaid, That no duty of entry shall be payable, or levied, or demanded by any Collector or deputy on any Peltries brought by land or inland navigation into this Province, and that Indians passing or re-passing with their proper goods and effects, of whatever nature, shall not be liable to pay for such goods and effects any impost or duty whatever, unless the same shall be goods in bales or other packages unusual among Indians for their necessary use, which shall not be considered as goods belonging <u>bona fide</u> to Indians, or as goods entitled to the foregoing exemption from duties and imposts;"

It will be noted that the wording is similar to but not precisely the same as that found in Article III. That Act remained in force until 1824, when it was repealed by c. XI, 4th George IV - 4th Session. The Jay Treaty was also implemented in part by the Imperial

Act of 1797, c. 97. It would seem that thereby no attempt was made t implement those parts of the Treaty which concerned only the Province of Canada, and in particular that the Act did not implement that part of Article III relating to Indians which is here in question.

In so far as I am aware, there has been no legislative enactment in Canada implementing in any way this particular provision in favour of Indians other than those in Upper and Lower Canada to which I have referred, and those statutes either lapsed or were repealed more than 125 years ago. Moreover, there is nothing to indicate that by usage, practice or custom, any Indian in Canada for that length of time has claimed or been allowed the exemption conferred by the Jay Treaty. The suppliant did give evidence that for a few years after taking up residence on the Reserve in 1946, he did bring certain small articles such as food and clothing into Canada from the United States without paying any duty. The fact, however, is that on those occasions he neglected to report the matters to any Customs officer, and it is not shown that he was at any time authorized to import anything without declaring the goods and paying proper duties in respect thereto.

I am of the opinion, also, that notwithstanding the fact that the legislatures of Upper and Lower Canada did for a time implement that part of Article III now under consideration, those legislatures had full authority to alter or amend or annul such legislation at any later time, as was in fact done. Reference may be made to the case of Hoani Te Heu heu Tukino v. Actea District Maori Land Board (1), in which the following statement appears at p. 327:

> "If then, as appears clear, the Imperial Parliament has conferred on the New Zealand legislature power to legislate with regard to the native lands, it necessarily follows that the New Zealand legislature has the same power as the Imperial Parliament had to alter and amend its legislation at any time. In fact, as pointed out by the learned Chief Justice, s. 73 of the Act of 1852 was repealed by the New Zealand legislature by the Native Land Act, 1873. As regards the appellant's argument that the New Zealand legislature has recognized and adopted the Treaty of Waitangi as part of the municipal law of New Zealand, it is true that there have been references to the treaty in the statutes, but these appear to have invariably had reference to further legislation in relation to the native lands, and, in any event, even the

(1) (1941) A.C. 308.

> statutory incorporation of the second article of the treaty in the municipal law would not deprive the legislature of its power to alter or amend such a statute by later enactments."

My conclusion on this point, therefore, is that, as there was no legislation in effect at the time of the importation of the goods into Canada which sanctioned or implemented the particular terms of the Jay Treaty which are here under consideration, the suppliant is no entitled to exemption from the duties claimed by reason of the terms o that Treaty.

Counsel for the respondent submitted also that in any event th relevant provision of the Jay Treaty was terminated by the War of 1812 and for the following reasons I am of the opinion that that contention must be upheld.

It is not altogether settled whattreaties are annulled or suspended by war and what treaties remain in force during its continuance or revive at its conclusion. The diversity of opinion in regard thereto is very substantial as will be seen by reference to such texts as Pitt Cobbett's Leading Cases on International Law (Walker), Vol II, 5th Ed., p. 50 ff., and Hall's International Law, 8th Edition, p. 453 ff. In 5 Moore's Digest of International Law, s. 779, p. 383, it is stated that the view now commonly accepted is that "Whether the stipulations of the treaty are annulled by war depends upon their intrinsic character".

Counsel for the suppliant stresses the provision of Article 28 of the Treaty as indicating that the terms of Article III were to be "permanent" and that therefore they remained unaffected by the outbreak of war in 1812. The relevant part of that article is as follows:

> "Art. 28. It is agreed that the first ten articles of this Treaty shall be permanent, and that the subsequent articles except the twelfth, shall be limited in their duration to twelve years, to be computed from the date on which the ratification of this Treaty shall be exchanged . . . ."

Reference was made to Sutton v. Sutton (1). That was a decision of the Master of the Rolls in 1830 in which it was declared th under the Jay Treaty and the Act of 37, Geo. III, ch. 97, American

(1) Russell and Mylne's Reports Vol. I, p. 663.

citizens who held lands in Great Britain on the 28th of October, 1795, and their heirs and assigns, are at all times to be considered, so far as regards these lands, not as aliens but as native subjects of Great Britain.

The Act referred to provided for carrying into effect certain of the terms of the Jay Treaty, and s. 24 thereof incorporated the provisions of Article IX of the Treaty relating to the rights of American citizens who then held lands in the British Dominions, and of British subjects holding lands in the United States to continue to hold and dispose of them as if they were natives and not aliens. By s. 27 it was provided that the Act would remain in force so long only as the Jay Treaty remained in effect. The Act was continued by 45 Geo. III, ch. 35, in which it is interesting to note that both in the recital and in the enactment, it is stated that "The said Treaty has ceased and determined". The Act was further continued, and finally by 48 Geo. III, ch. 6, it was extended to the end of that Session of Parliament and it would appear that thereafter no Act was passed to revive or prolong the operation of the Treaty. The Judgment of the Master of the Rolls in that case was as follows:

> "The relations, which had subsisted between Great Britain and America, when they formed one empire, led to the introduction of the ninth section of the treaty of 1794, and made it highly reasonable that the subjects of the two parts of the divided empire should, notwithstanding the separation, be protected in the mutual enjoyment of their landed property; and, the privileges of natives being reciprocally given, not only to the actual possessors of lands, but to their heirs and assigns, it is a reasonable contstruction that it was the intention of the treaty that the operation of the treaty should be permanent, and not depend upon the continuance of a state of peace.
>
> "The act of the 37 G. 3. gives full effect to this article of the treaty in the strongest and clearest terms; and if it be, as I consider it, the true construction of this article, that it was to be permanent, and independant of a state of peace or war, then the act of parliament must be held, in the twenty-fourth section, to declare this permanency; and when a subsequent section provides that the act is to continue in force, so long only as a state of peace shall subsist, it cannot be construed to be directly repugnant and opposed to the twenty-fourth section, but is to be understood as referring to such provisions of the act only as would in their nature depend upon a state of peace."

Similarly, in the case of The Society for the Propagation of th Gospel in Foreign Parts v. New Haven (1) the Supreme Court of the Unite

(1) 8 Wheat. 464.

States upheld the right of a British corporation to continue to hold lands in Vermont. It was held that the title to the property of the Society was protected by the 6th Article of the Treaty of 1873; was confirmed by Article IX of the Jay Treaty, and was not affected by the War of 1812. The applicable rule was stated at p. 494 in the following words:

> "But we are not inclined to admit the doctrine urged at the bar, that treaties become extinguished, ipso facto, by war between the two governments, unless they should be revived by an express or implied renewal on the return of peace. Whatever may be the latitude of doctrine laid down by elementary writers on the law of nations, dealing in general terms in relation to this subject, we are satisfied, that the doctrine contended for is not universally true. There may be treaties of such a nature, as to their object and import, as that war will put an end to them; but where treaties contemplate a permanent arrangement of territorial, and other national rights, or which, in their terms, are meant to provide for the event of an intervening war, it would be against every principle of just interpretation to hold them extinguished by the event of war. If such were the law, even the treaty of 1783, so far as it fixed our limits, and acknowledged our independence, would be gone, and we should have had again to struggle for both upon original revolutionary principles. Such a construction was never asserted, and would be so monstrous as to supersede all reasoning.
>
> "We think, therefore, that treaties stipulating for permanent rights, and general arrangements, and professing to aim at perpetuity, and to deal with the case of war as well as of peace, do not cease on the occurrence of war, but are, at most, only suspended while it lasts; and unless they are waived by the parties or new and repugnant stipulations are made, they revive in their operation at the return of peace."

Both these cases were considered by the Supreme Court of the United States in Karnuth v. United States (2). That case arose under s. 3 of the Immigration Act of 1924, ch. 190. Two persons resident in Canada sought to enter the United States either to continue or to secure work, and both were denied admission by the immigration authorities. In habeas corpus proceedings, the Federal District Court sustained the action of the immigration officials and dismissed the writ, but that judgment was reversed by the Circuit Court of Appeals. In reaching its conclusion, that Court seemed to be of the opinion that if the Immigration Act were so construed as to exclude the aliens, it would be in conflict with the opening words of Article III of the Jay Treaty, which result it thought should be avoided if it could reasonably be done. By certiorari the matter was brought to the Supreme Court. There the Court considered the pertinent provisions of

(2) U. S. Reports, Vol. 279 (1928) p. 221.

Article III of the Jay Treaty, which is as follows:

> "It is agreed that it shall at all times be free to his Majesty's subjects, and to the citizens of the United States, and also to the Indians dwelling on either side of the said boundary line, freely to pass and repass by land or inland navigation, into the respective territories and countries of the two parties, on the continent of America (the country within the limits of the Hudson's bay Company only excepted) and to navigate all the lakes, rivers and waters thereof, and freely to carry on trade and commerce with each other . . . ."

The main point for consideration by the Court was the contention made by the Government that the treaty provision relied on was abrogated by the War of 1812. The Court reached the conclusion that the view now commonly accepted was that "whether the stipulations of a Treaty are annulled by war depends upon their intrinsic character".

Then, after referring to the cases of Sutton v. Sutton (1) and Society, etc. v. New Haven (2) (supra), the Court said at p. 239:

> "These cases are cited by respondents and relied upon as determinative of the effect of the War of 1812 upon Article III of the treaty. This view we are unable to accept. Article IX and Article III relate to fundamentally different things. Article IX aims at perpetuity and deals with existing rights, vested and permanent in character, in respect of which, by express provision, neither the owners nor their heirs or assigns are to be regarded as aliens. These are rights which, by their very nature, are fixed and continuing, regardless of war or peace. But the privilege accorded by Article III is one created by the treaty, having no obligatory existence apart from that instrument, dictated by considerations of mutual trust and confidence, and resting upon the presumption that the privilege will not be exercised to unneighborly ends. It is, in no sense, a vested right. It is not permanent in its nature. It is wholly promissory and prospective and necessarily ceases to operate in a state of war, since the passing and repassing of citizens or subjects of one sovereignty into the territory of another is inconsistent with a condition of hostility. See 7 Moore's Digest of International Law, s. 1135; 2 Hyde, International Law, s. 606. The reasons for the conclusion are obvious - among them, that otherwise the door would be open for treasonable intercourse. And it is easy to see that such freedom of intercourse also may be incompatible with conditions following the termination of the war. Disturbance of peaceful relations between countries occasioned by war, is often so profound that the accompanying bitterness, distrust and hate indefinitely survive the coming of peace. The causes, conduct or result of the war may be such as to render a revival of the privilege inconsistent with a new or altered state of affairs. The grant of the privilege connotes the existence of normal peaceful relations. When these are broken by war, it is wholly problematic whether the ensuing peace will be of such character as to justify the neighborly freedom of intercourse which prevailed before the rupture. It follows that the provision belongs to the class of treaties which does not survive war between the high contracting parties, in respect of which, we quote as

(1) Russell and Mylne's Reports, Vol. I, p. 663.

(2) 8 Wheat. 464.

apposite, the words of a careful writer on the subject: . . . . ."

Reference was then made to Hall, International Law (5th Ed.), pp. 389-390; Westlake International Law, Part II, pp. 29-32, and to Fauchille, Traite de Droit International Public, 1921, Vol. II, p. 55, and the judgment continued at p. 241:

> "These expressions and others of similar import which might be added, confirm our conclusion that the provision of the Jay Treaty now under consideration was brought to an end by the War of 1812, leaving the contracting powers discharged from all obligation in respect thereto, and, in the absence of a renewal, free to deal with the matter as their views of national policy, respectively, might from time to time dictate.
>
> "We are not unmindful of the agreement in Article XXVIII of the Treaty 'that the first ten articles of this treaty shall be permanent, and that the subsequent articles, except the twelfth, shall be limited in their duration to twelve years.' It is quite apparent that the word 'permanent' as applied to the first ten articles was used to differentiate them from the subsequent articles - that is to say, it was not employed as a synonym for 'perpetual' or 'everlasting,' but in the sense that those articles were not limited to a specific period of time, as was the case in respect of the remaining articles. Having regard to the context, such an interpretation of the word 'permanent' is neither strained nor unusual. See Texas, etc. Railway Co. v. Marshall, 136 U. S. 393, 403; Bassett v. Johnson, 2 N. J. Eq. 154, 162."

The finding in that case, it is true, was limited to "the provision of the Jay Treaty now under consideration", which, as noted, was the opening part of Article III relating to the rights of the subjects of both contracting parties and of Indians dwelling on either side of the boundary line freely to pass and repass into the territories of the two contracting parties. It seems to me, however, that the ratio decidendi in that case is of equal application to the other part of Article III now under consideration. It involves the right of free entry of peltries brought by land or inland navigation and the particular rights of Indians when passing or repassing from one country to the other with their proper goods and effects. If such rights were not abrogated by war and the rights of passing and repassing were to continue during war, the door would likewise be open for treasonable intercourse.

However, the precise part of Article III with which we are here concerned has also been considered in the American courts. In United States v. Garrow (1), the second headnote is as follows:

(1) 88 Federal Reporter, 2d Series, p. 318.

"Provision of article 3 of Jay Treaty of 1794 permitting Indians to import their own proper goods and effects free of duty held terminated by War of 1812, as regards rights of Indians residing in Canada, and hence Canadian Indians' right subsequently to import goods free of duty depended on statutes rather than treaty."

In that case, which was decided in 1937, an Indian woman, also of the Canadian St. Regis Tribe and residing in Canada near the international border, entered the United States carrying twenty-four baskets which she had manufactured in Canada and intended to sell in the United States. The Collector at the port of entry imposed a duty under the existing Tariff Act. She filed a protest, claiming the baskets to be free under Article III of the Jay Treaty. She alleged also that these provisions were in substance carried into the various Tariff Acts from 1799 to August 28, 1894, and that, while that provision was repealed by the Tariff Act of 1897, such repeal in effect abrogated that part of the Jay Treaty and was, therefore, invalid. The United States Customs Court sustained her protest, holding that the case was controlled by McCandless v. United States, (2), a decision of the Circuit Court of Appeals for the Third Circuit. The Government then appealed to the Court of Customs and Patent Appeals on the following grounds:

1. Article 3 of the Jay Treaty of 1794 was annulled by the War of 1812.

2. Alternatively, if article 3 of the Jay Treaty was not abrogated by the War of 1812, it is, nevertheless, in conflict with the subsequent statute. It is well settled that when a Treaty and a Statute are in conflict, that which is later in date prevails.

3. Assuming, for the sake of argument, that article 3 was not abrogated but is still in force and effect, the importation is not within the purview of the language of said article 3.

The Court, after pointing out that these terms of the Treaty were at that time self-executing, referred to the fact that they were also incorporated in an Act of Congress in 1799, and in substance were continued by various later amendments and revisions; that, however, in the Session of 1897, that provision was omitted and has not been carried into any later revision; that both by that Act and any succeeding Acts duties have been imposed upon similar goods. The Court

(2) 25 F. (2d) 71.

then considered the McCandless case (1) (supra) in which the United States District Court in 1928 held that the declaration of the War of 1812 did not end the Treaty rights secured to the Indians through the Jay Treaty so long as they remained neutral; that their rights were permanent and were at most only suspended during the instance of the war; and that therefore the petitioner, a full-blooded Indian, might pass and repass freely under and by virtue of Article III. The Court of Customs and Patent Appeals pointed out, however, that that case had not been appealed to the Supreme Court of the United States, possibly because of an Act of Congress in 1928 which provided that the Immigration Act of 1924 should not apply to Indians crossing the international border.

The Court then considered and followed the Karnuth case (2) (supra), concluding its opinion on this point as follows:

> "The view of the Supreme Court on this interesting question, expressed in the case last cited, was confirmatory of views held by that court from the initiation of our government. See Society for Propagation of Gospel in Foreign Parts v. Town of New Haven and William Wheeler, 8 Wheat. 464, 494, 5 L. Ed. 662.
>
> "It was also obviously in conformity with the current of authority both in the United States and England. Moore's International Law Digest, vol. 5, par. 779."

The Court then proceeded to consider the submission that the Karnuth case was not applicable to Indians and stated its conclusion in these words:

> "It is contended by the appellee that some distinction should be made between the members of an Indian tribe and the immigrants in the Karnuth Case, supra. We know of no authority which states or indicates that any such distinction exists, especially as to Indians domiciled in a foreign country. There is no such line of demarcation indicated in the opinion of Mr. Justice Sutherland, hereinbefore quoted. If article 3 of the Jay Treaty was nullified by the War of 1812, as to Canadian citizens or subjects, it certainly was nullified, so far as Indians residing in Canada were concerned, for, although wards of the Canadian government, they were certainly within the category of citizens or subjects.
>
> "We think, therefore, it must be said that so far as the provision under which the appellee here claims is concerned, the War of 1812 ended the right which the appellee now claims of bringing her goods across the border and into the United States without the payment of duty."

Finally, the Court came to the conclusion that at least since 1812 the rights of the Indians of Canada to bring their peltries

(1) 25 F (2d) 71.

(2) U. S. Reports, Vol. 279 (1928) p. 221.

and goods into the United States free of duty were granted by Statute and not by Treaty; and that as the right of exemption was dropped from the Revising Act of 1897 and duties imposed thereafter, the appeal should be allowed, there being at the time of importation no treaty or statutory exemption in regard thereto.

Counsel for the suppliant herein laid considerable stress on the fact that the goods imported in the Garrow case were goods intended to be sold, whereas the goods imported by the suppliant herein were for his own personal use. In the Garrow case, however, the protestant relied entirely on the particular part of Article III which is here in question - the general right conferred on Indians to pass or repass with their own proper goods and effects; and the Court clearly held that that part of the article in the Treaty was terminated by the War of 1812. As I read the judgment, it is not based on the fact that the goods there imported were or were not for sale, but on a general consideration of the words of the provision itself.

The Supreme Court of the United States in the Karnuth case has held that the outbreak of the War of 1812 annulled the provisions of the opening part of Article III of the Treaty, which conferred the right upon citizens (including Indians) on either side of the boundary to pass and repass freely across the border. The reasons in that case would seem to be relevant also to that part of Article III now under consideration, which conferred an exemption upon Indians from payment of duties while passing and repassing the border with their own proper goods and effects. The Court of Customs and Patent Appeals in the Garrow case reached a similar conclusion. While it is true that these cases are not binding upon me, the reasons given in each case commend themselves to me and with respect I shall adopt them in this case. My conclusion, therefore, is that the particular provision of the Jay Treaty on which the suppliant relies was annulled by the War of 1812. In view of that finding, it becomes unnecessary to consider the further submission made on behalf of the respondent that in any event the nature of the goods imported by the suppliant is not such as to

be within the purview of the goods mentioned in Article III.

Counsel for the Crown also relies on the provisions of s. 49 of the Statutes of Canada, 1949, 2nd Session, ch. 25, which is as follows:

> "49. For greater certainty it is hereby declared and enacted that, notwithstanding any other law heretofore enacted by a legislative authority other than the Parliament of Canada (including a law of Newfoundland enacted prior to the first day of April nineteen hundred and forty-nine), no person is entitled to
>
> (a) any deduction, exemption or immunity from, or any privilege in respect of,
>
> (i) any duty or tax imposed by an Act of the Parliament of Canada, or
>
> (ii) any obligation under an Act of the Parliament of Canada imposing any duty or tax, or
>
> (b) any exemption or immunity from any provision in an Act of the Parliament of Canada requiring a licence, permit or certificate for the export or import of goods,
>
> unless provision for such deduction, exemption, immunity or privilege is expressly made by the Parliament of Canada."

I have thought it advisable to set out the section in full although counsel relies only on para. (a) (i).

That Act is entitled "An Act to amend The Income Tax Act and the Income War Tax Act" and was assented to on December 10, 1949. Most of the sections have to do with income tax throughout the whole of Canada. Counsel for the suppliant suggests that inasmuch as this section appears between sections 48 and 50 which have to do specifically with Newfoundland, and as the enactment was made just prior to the entry of Newfoundland into Confederation, s. 49 should be read as applicable to the province of Newfoundland only. I am quite unable to agree with that submission. Were I to do so, I would be disregarding the clear meaning of the words of the section itself which are general in their application and relate to "any other law heretofore enacted by a legislative authority other than the Dominion of Canada". The words "including a law of Newfoundland" could not be construed so as to exclude all other laws.

Now the clear effect of that part of the section when applied to the facts of this case is this - that thereafter no person is entitled to an exemption or immunity from any duty or tax imposed

by an Act of the Parliament of Canada unless provision for such exemption or immunity is expressly made by the Parliament of Canada, notwithstanding any other law theretofore enacted by any other legislative authority which might have granted such exemption or immunity. The exemption must now be found in the Acts of the Parliament of Canada. All such exemptions, for example, as may have been made prior to 1867 by any of the previous legislative bodies such as those of Lower or Upper Canada, even if continued in practice, would after the enactment of s. 49 and in the absence of an Act of the Parliament of Canada conferring the exemption, be of no effect.

This section, as I have said, was assented to on December 10, 1949. It was therefore in effect at the time the suppliant imported the refrigerator and oil heater, but not in effect when the washing machine was imported in 1948. So far as the first two articles are concerned, the provisions of s. 49 (supra) are sufficient in my opinion to bar any right of exemption from duty or tax unless by some Act of the Parliament of Canada the exemption is provided. The duties here in question were levied under the provisions of the Customs Tariff Act and the Excise Tax Act and it is common ground that neither of these Acts confers any exemption upon Indians as such.

Counsel for the suppliant, however, claims that such an exemption is to be found in s. 86 (1) of the Indian Act, R. S. C. 1952, ch. 149, which reads in part as follows:

> "86. (1) Notwithstanding any other Act of the Parliament of Canada or any Act of the legislature of a province, but subject to subsection (2) and to section 82, the following property is exempt from taxation, namely,
>
> (a) the interest of an Indian or a band in reserve or surrendered lands, and
>
> (b) the personal property of an Indian or band situated on a reserve,
>
> and no Indian or band is subject to taxation in respect of the ownership, occupation, possession or use of any property mentioned in paragraph (a) or (b) or is otherwise subject to taxation in respect of any such property . . . ."

This provision first appeared in that form in the Indian Act, Statutes of Canada, 1951, ch. 29, s. 86; prior thereto a somewhat

similar right was provided in a different form in the Indian Act, R. S. C. 1927, ch. 98, s. 102. I am of the opinion that subsection (11) (b) is of no assistance to the suppliant in this case. The exemption from taxation therein provided relates to personal property of an Indian or band situated on a reserve, and not elsewhere. The importance of that limitation is seen also from a consideration of sections 88 and 89.

Whatever be the extent of the exemption from taxation granted to Indians in respect of their personal property on a reserve, it does not in my view extend to an exemption from customs duties and excise taxes payable on the importation of goods into Canada. Indians, when they buy imported goods subject to such duties, must, like the others, pay a higher price.

Section 9 of the Customs Act provides:

> "All goods imported into Canada, whether by sea, land, coastwise, or by inland navigation, whether dutiable or not, shall be brought in at a port of entry where a Custom-house is lawfully established."

Now the suppliant did not comply with the provisions of that section, which is imperative in its terms and applicable to everyone, including Indians. The evidence is that there was no custom-house on the St. Regis Reserve at the time the goods were imported, and it was therefore the duty of the suppliant to report at the nearest custom-house, declare the goods, and pay all duties in respect thereto before taking them to his home. In effect, the contention of the suppliant is this: "The reserve on which I live is adjacent to the American border. I brought the goods directly from the United States to the reserve, and, while I may have been guilty of non-compliance with the provisions of the Customs Act in that I failed to report the entries at a custom-house and there pay the proper duties, such duties cannot now be collected from me because, as an Indian, my goods are exempt from taxation as they are on a reserve."

It seems to me, however, that the suppliant is not entitled to take advantage of his own illegal actions to obtain an exemption in this manner. Were he permitted to do so, the result would be that t relatively few Indians who happen to reside on a reserve adjacent to

REGINA S4P 2G7

April 26, 1976

Doris Folbar,
Boxx244,
Frontier, Saskatchewan.
SOV 0W0

601/1-2-10 (CA2)
601/18-31

PA

Dear Ms. Folbar:

This is in reply to your letter dated April 20, 1976.

We were told to refer you to Customs Operations, Customs and Excise Branch, Department of Revenue Canada, Swift Current, Saskatchewan about the paying of duty on goods bought in the U.S.A.

We were told to refer you to the American Consulate, 6 Donald Street, Winnipeg, Manitoba regarding the question on the need for a visa.

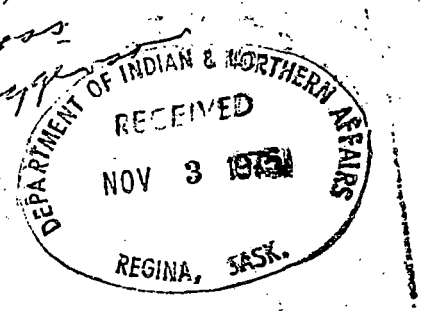
Yours truly,

ORIGINAL SIGNED by
H. S. LAMMER

H. S. Lammer,
Asst. Regional Supervisor of
Social Services,
Saskatchewan Region.

R.D.

cc P. Jarvis
A. Gross
w/disp



Ottawa, Ontario K1A 0H4
October 29, 1975.

PA Athabaska Tulen
cc
601/18-31

Mr. O. Potvin,
Chief Compliance Division,
Ottawa Region Excise Branch,
Department of National Revenue,
5th floor, 219 Argyle Street,
Ottawa, Ontario
K1G 3H7

1/18-31

Dear Mr. Potvin:

We have been requested by our Saskatchewan Regional Director to forward the following information to you for consideration in respect to the amendment to the Excise Tax Act and local authorities -

> The Fond du Lac, Lac La Hache, and Stony Rapids Bands in the Prince Albert District receive funding based on the individual Band entitlement, however the funds are administered on their behalf by a joint administrative unit known as the Athabaska Band Administration with an office at Stony Rapids, Saskatchewan. The three Band Councils meet on a regular basis and provide overall supervision to the Administrative Unit.

On the basis of the foregoing information it would appear that the Athabaska Band Administration is a local authority under the criteria established by your Department. I would appreciate it therefore if you would include them in our listing for the appropriate order in council.

If further information is required I would be happy to obtain it for you.

Yours sincerely,

ORIGINAL SIGNED BY
S. A. ROBERTS

J.R. Tully,
A/Director,
Local Government - Operations.

S.A. ROBERTS/dd

c.c. Saskatchewan Regional Director.

1874 Scarth Street,
REGINA, Saskatchewan S4P 2G7
June 25, 1975.

1/18-31

601/18-31 (F2)
PA

Mr. J.G. McGilp,
Director of Operations,
Indian & Northern Affairs,
OTTAWA K1A 0H4

Amendment - Excise Tax Act

As requested in your letter dated June 3, 1975 the following is a list of names of local Indian authorities which we believe would qualify for the tax exemption, by order-in-council to the extent applicable to municipalities. The list includes all Band Councils in our Region with the exception of the 7 Bands which were previously exempted as shown on Appendix "C" attached to your letter. In our opinion no other committees qualify for this tax exemption.

List of Bands to be considered for sales tax exemption:

1. Saskatchewan Regional Office (601)

Band No.	Band
24	Lakeview (Long Lake No. 80A)

2. North Battleford District (671)

Band No.	Band
14	Mosquito-Grizzly Bear's Head
17	Little Pine-Lucky Man
18	Island Lake
22	Moosomin
25	Poundmaker

(671) cont.

Band No.	Band
28	Red Pheasant
32	Saulteaux
35	Sweet Grass
38	Thunderchild
44	Onion Lake
46	Loon Lake

3. Prince Albert District (672)

Band No.	Band
11	Cumberland House
14	Lac La Ronge
17	Montreal Lake
22	Peter Ballantyne
25	Red Earth
28	Shoal Lake
31	Sturgeon Lake
34	Sioux Wahpaton
37	Lac La Hache
41	Fond du Lac
43	Stony Rapids

4. Yorkton District (673)

Band No.	Band
12	Cowessess
18	Ochapowace
22	Sakimay
26	White Bear
28	Cote
32	Keeseekoose
42	Key

5. Saskatoon District (674)

Band No.	Band
11	Big River
12	Beardy's & Okemasis
17	Mistawasis
21	Muskeg Lake
24	Pelican Lake
26	One Arrow
27	Sandy Lake
31	Witchekan Lake
33	Moose Woods
35	Nut Lake
37	Kinistino

6. Touchwood-File Hills-Qu'Appelle District (675)

Band No.	Band
12	Carry the Kettle
16	Fishing Lake
19	Maple Creek
27	Okanese
34	Peepeekisis
41	Standing Buffalo
45	Star Blanket
49	Wood Mountain
51	Day Star
53	Gordons
55	Muskowekwan
57	Poorman

7. Meadow Lake District (676)

Band No.	Band
12	Joseph Bighead
15	Canoe Lake
21	Turnor Lake
31	Waterhen Lake
34	Portage La Loche
37	English River
48	Peter Pond
51	Meadow Lake

Original Signed by
J. R. WRIGHT
Original Signé Par

J.R. Wright,
A/Regional Director,
Saskatchewan Region.

E.P. Deckrbb

19/6/75

Bill Heggtveit please action for me reply for Jim

Indian and Northern Affairs / Affaires indiennes et du Nord

DEPARTMENT OF INDIAN & NORTHERN AFFAIRS
RECEIVED
JUN 9 1975
REGINA, SASK.

Mr. J.R. Wright,
A/Regional Director,
Saskatchewan Region.

F-2

SALES TAX 12 %
CONST./SELF MATERIAL - 5 %
EXCISE TAX - LUXURY ITEMS

OTTAWA, Ontario K1A 0H4
June 3, 1975.

Regional Directors.

Your file *Votre référence*

Our file *Notre référence* 1/18-31

Amendment
Excise Tax Act

Under the Excise Tax Act, municipalities are not liable for the excise tax on specified goods under certain conditions. Prior to 1963 unincorporated local authorities, including some Indian bands, were declared by orders-in-council pursuant to the legislation to be municipalities for the purposes of the Act, and thereby qualified for this exemption.

In 1963, the section of the Act defining municipalities was amended so that only "incorporated" local authorities could be so exempted. This definition excluded Indian bands, and such exemptions could not be obtained since that time notwithstanding the number of requests received from various Band Councils. However, by an amendment to the Excise Tax Act on February 27, 1975, the word "incorporated" has been removed from the appropriate part of the definition so that it is again possible for unincorporated local authorities to be exempted from the tax, by order-in-council and to the extent applicable to municipalities.

It has been suggested by the Department of Revenue - Excise Branch, that we advise them of the names of all local Indian authorities which we believe would qualify for this exemption and who may wish to be so included. You are requested, therefore, to forward such names to this office prior to June 30, 1975, where they will be compiled and sent to the Department of Revenue for their consideration. A copy of the approved order-in-council will subsequently be filed with you when available so that the appropriate local authorities may be notified.

ALL 67 BANDS.

...2

BF Jun 26/75

NOTE

To qualify for this exemption a local authority must meet all of the following criteria, set by the Department of Revenue. It must be:

(i) performing or authorized to perform a service or services common to a bona fide incorporated municipal body (i.e. not merely operating in an advisory or administrative capacity);

(ii) provincially acceptable as a local authority (note - for Indian authorities read "federally acceptable");

(iii) operating in the public interest for the constituent members;

(iv) funded by the raising of taxes, or by grants from local authority sources or other levels of government;

(v) governed by elected representatives or by officers appointed by other local authorities or other levels of government. (it is anticipated that Band Councils chosen by custom under the Indian Act will meet the criteria of "elected representatives")

In compiling your list please note:

(a) all band Councils will probably meet the above criteria by virtue of their "authorization" to perform local services (e.g. to enact local by-laws pursuant to the Indian Act, or to assume responsibility for local services such as road maintenance, fire protection, sewer and water systems, etc., under this Department's Local Government Program.) It is not necessary for the Band to actually be performing this service to be included. Except as indicated in (b) below the names of all Indian Band Councils within your Region should be listed.

(b) it is not mandatory for an Indian Band Council, or other local Indian authority, to be included. If they do not so desire please omit their names from the list; but it must be emphasized that without being included in this or other orders-in-council, no municipal-like tax exemption can be obtained. For this reason, it is not necessary to include those Bands which were previously exempted as shown on the attached, (Appendix 'C');

...3

(c) the names of committees, or other similar agencies of Band Councils should be included on your list (subject to (b) above) immediately after the name of the Band Council itself. However, such committees should only be shown where in fact they have the power to exercise or perform the local function, purchase materials, or equipment etc. (e.g. a volunteer fire brigade with power). If the Council or its staff actually controls the funds, and purchases the equipment and supplies, and the committee merely directs the program on behalf of the Council, or is advisory in nature, the name of the committee should not be shown.

(d) the names of any District, Area, Regional, Tribal, or similar Council (whether incorporated or not) which actually administers, or is empowered to administer, a municipal type program on behalf of the contributing local Councils should be included together with the names of the Bands for which it operates (subject to (b) above). This does not extend to such joint councils or other organizations whose duties are of an advisory nature.

(e) there may be a few authorities that are borderline cases and will require a special ruling of the Department of Revenue. For instance, although the Oo-Za-We-Kwun Centre in Manitoba is primarily a training centre, it also acts in a sense as a local government supplying such local services as sewer and water, garbage collection, road maintenance, fire protection, etc. Authorities of this type should be included with sufficient details to permit the Department of Revenue to make a decision.

(f) if you are in doubt as to whether an authority should or should not be included, please:

(i) check with the appropriate Regional Office of the Department of Revenue - Excise Branch, which is shown on the attached list (Appendix 'A'); OR

(ii) include the name on a separate list giving sufficient explanation to allow us to discuss its applicability with the Department of Revenue in Ottawa.

...4

It should be noted that under the applicable sections of the Excise Tax Act the tax exemption applies only to a highly selective and specified number of goods. It is not all inclusive (see Appendix 'B' for the current listing).

In this respect also note that the exemption only applies where the goods are to be used for the purposes of the authority and not for resale. The Department of Revenue may demand payment of any tax exemption if goods were purchased exempt from taxation and subsequently used for private purposes or resold. In addition, the decision as to whether or not a local authority complies with the criteria rests with the Department of Revenue. It is not necessarily automatic.

I would like to reiterate that only authorities meeting the above-mentioned criteria - particularly that of performing or authorized to perform a local government service - are to be included in your listing. The list of the goods for which the exemption applies (Appendix 'B') may be of assistance in determining this aspect.

J.G. McGilp,
Director of Operations.

Encls.

REGION	ADDRESS	R.D. - EXCISE	REGIONAL CHIEF COMPLIANCE	DISTRICT MANAGER	DISTRICT MANAGER	DISTRICT MANAGER	DISTRICT MANAGER	RESIDENT AUDITOR
Halifax	Halifax Insurance Bldg. 5670 Spring Garden Rd. P.O. Box 1658, Halifax, N.S. B3J 2Z8	A.N. Steeves	B. White (acting)		R. Menard MacSpear Bldg., 77 Vaughan Harvey Bldg., P.O. Box 1070, Moncton, N.B. E1C 8P2	J.A. Allaby, Customs Bldg., Prince Wm. St., P.O. Box 865, St. John, N.B. E2L 4C3		R.D. MacNeil Fred. N.B. G.R. Drodge, Charlottetown, P.E.I. A.H. Langille, Sydney, N.S.
Quebec	P.O. Box 9664 St. Foy Station, Quebec, P.Q. G1V 4C2	P. Gagnon (acting)	A. Arcand	R.L. Jones, Federal Bldg., P.O. Box 847, Trois-Rivières, P.Q., G9A 5J9	P. Calvert 50 Couture St. P.O. Box 1177 Sherbrooke, P.Q. J1H 5L5			
Montreal	515 St. Catherine St. W P.O. Box 6092, Montreal, P.Q. H3C 3H3	P.V. Bartolini		C. Gaudreault (Acting)	C. Lamoureux 535 Fleury St. E. Montreal, P.Q. H3J 1G6	A. Francoeur, Room 502, 5250 Ferrier St., Place Décarie, Montreal W. P.Q. H4P 1L4		
Ottawa	5th Floor, Teron Bldg., 219 Argyle Ave., P.O. Box 8257, Ottawa, Ontario K1G 3H7	R.J. Ash	J.W. Hill	J.P. Wagar Room 455, 101 Worthington St. E., P.O. Box 123, North Bay, Ont. P1B 8G8				
Toronto	5th Floor, 25 St. clair Ave. E., P.O. Box 100, Station "Q", Toronto, Ontario. M4T 2L7	D.R. Monck		B.W. Hoyle Federal Bldg., 11 Station St., P.O. Box 87, Belleville, Ont. K8N 4Z9	S.T. Down Toronto West 2 Eva Road Etobicoke, Ont. M9C 2A8	J.C. Campbell Toronto East,	D.P. Michaelides Toronto Centre,	

REGION	ADDRESS	R.D. - EXCISE	REGIONAL CHIEF COMPLIANCE	DISTRICT MANAGER	DISTRICT MANAGER	DISTRICT MANAGER	DISTRICT MANAGER	RESIDENT AUDITOR
Hamilton	Dominion Public Bldg. Room 653, 10 John St., P.O. Box 588, Hamilton, Ontario. L8N 3K7	F. Arlett	C. Grant	E.F. Denton Federal Bldg., 32 Church St., P.O. Box 697, St. Catharines, Ontario. L2R 6Y3				
Kitchener	3rd Floor, Waterloo Square Bldg., 75 King St., Waterloo, Ontario. N2J 1P2	L.J. Kluger	P.D. Field	L.H. Brock, Suite 53, 320 Bayfield St. Bayfield Mall, Barrie, Ontario. L4M 3C1				
London	457 Richmond St., Dominion Public Bldg., 3rd Floor, P.O. Box 5548, Terminal "A", London, Ontario. N6A 4R3	C.S. Hoare	V.L. Carlin	H. Norwood, 6th Floor, Federal Bldg., P.O. Box 360, 185 Ouellette Ave. Windsor, Ontario. N9A 6L7				
Winnipeg	13th Floor, Royal Bank Bldg., 220 Portage Ave., Winnipeg, Manitoba. R3C 0A5	N.M. Holmes	M.C. Hanna	E. Salte 2140 Hamilton St., Regina, Sask. S4P 2E3 569-5870	J.M. Decae 808 Financial Bldg., Saskatoon, Sask. S7K 0E9	B.J. Davis, Room 220, 33 S. Court St., Thunder Bay, Ont. P7B 2W6		

REGION	ADDRESS	R.D. - EXCISE	REGIONAL CHIEF COMPLIANCE	DISTRICT MANAGER	DISTRICT MANAGER	DISTRICT MANAGER	DISTRICT MANAGER	RESIDENT AUDITOR
Calgary	Suite 605, MacLeod Place, P.O. Box 5555, Station "A", Calgary, Alberta. T2H 2C8	J.P. Traber	G. Minty	K.S. Mitchell, 330 Sir Alex- ander Bldg., 9828-104 Ave., Edmonton, Alta. T5J 0J9				
Vancouver	460 Nanaimo St., P.O. Box 69090, Station "K", Vancouver, B.C. V5K 4X2	J. Rollingson		W.C. Tomlinson, Room 105, Custom House, 816 Gov't St., Victoria, B.C. V8W 1W9	K.D. Langley, Room 219, 3205-32nd St., Vernon, B.C. V1T 5M7			

EXCISE TAX ACT AS AMENDED TO JANUARY 1975 (EXCERPTS)

Section 2 (1) in this Act

"municipality" means:

(a) an incorporated city, metropolitan authority, town, village, township, district or rural municipality or other incorporated municipal body, however designated, or;

(b) such other local authority as the Governor-in-Council may determine to be a municipality for the purposes of this Act.

SCHEDULE III - Part XII

Municipalities

1. Certain goods sold to or imported by municipalities for their own use and not for resale, as follows:

(a) culverts,

(b) equipment, at a price in excess of five hundred dollars per unit, specially designed for use directly for road making, road cleaning or fire fighting, but not including automobiles or ordinary motor trucks,

(c) fire hose including couplings and nozzles therefor,

(d) fire truck chassis for the permanent attachment thereon of fire fighting equipment for use directly in fire fighting,

(e) goods for use as part of water distribution, sewerage or drainage systems, chemicals for use in the treatment of water or sewage, and, for the purposes of this exemption, any agency operating the water distribution, sewerage or drainage system for or on behalf of a municipality may be declared by the Minister to be a municipality,

(f) laminated timber for bridges,

(g) precast concrete shapes for bridges in public highway systems,

...2

(h) structural steel and aluminum for bridges,

(i) instruments and materials, not including motor vehicles, aircraft, ships, or office equipment, to be used directly and exclusively to detect, measure, record or sample pollutants to water, soil, or air,

(j) truck chassis for the permanent attachment thereon of equipment, at a price in excess of five hundred dollars per unit, specially designed for use directly for road making or road cleaning,

(k) passenger transportation vehicles and parts therefor (not including vehicles designed to carry less than twelve passengers) for use directly and principally in the operation of a municipal public passenger transportation system, which each day provides a regularly scheduled service to the general public, owned or operated or to be owned or operated by or on behalf of a municipality.

2. Articles and materials for use exclusively in the manufacture of the tax-exempt goods mentioned in section 1 of this part.

APPENDIX "C"

Indian Bands considered to qualify for sales tax exemptions as municipalities prior to June 14, 1963 (by Province).

Nova Scotia	Eskasoni	
New Brunswick	Tobique	
Quebec	Abitibi-Dominion	Pointe Bleue
	Bersimis	St-Regis
	Caughnawaga	Temiskaming
	Maniwaki	
Ontario	Cape Crocker	Mudd Lake
	Christian Island	Nipissing
	Dokis	Rama
	Georgina Island	Rice Lake
	Gibson	Saugeen
	Kettle Point	Sarnia
	Manitoulin Island	Six Nations
	Moravian	Walpole Island
Manitoba	Birdtail Sioux	Oak River
	Fishing Lake	Peguis
	Fisher River	Swan Lake
	Long Plain	The Pas
	Oak Lake	Waywayseecapo
Saskatchewan	James Smith	Muscowpetung
	John Smith	Pasqua
	Khahkewistahaw	Piapot
	Little Black Bear	
Alberta	Alexander	Montana
	Alexis	Pauls
	Blackfoot	Peigan
	Blood	Saddle Lake
	Duncan's	Samson
	Enoch	Sarcee
	Ermineskin	Stony
	Louis Bull	
British Columbia	Bella Bella	Musqueam
	Cowichan	Nimpkish
	Hazelton	Paughauchin
	Kamloops	Penelakut
	Kitimat	Port Simpson
	Kitsasoo	St. Mary's
	Klahoose	Sechelt
	Mamallilikulla	Skidgate
	Metlakatla	Sliammon
	Moricetown	Squamish