

1/3-3-14

VOL 1.

RG10

Acc 72/607

Vol 7103

See Vol.....2

FILE NO. 1/3-3-14

VOLUME 1

FROM DEC 11 1947

TO *MAV 1/1953*

INTERNATIONAL BORDER PRIVILEGES

REFERENCE			DISPOSAL				
REFERRED To	By	REMARKS	DATE	PA OR BF	By	Date	For C.R. Use
Adm 1	14	Req	14-11-63	PA	Adm 1	25/11/63	
CRA	Adm 1	" "	12/12/63	PA	CRA		
CRA	+	Req	12/3/64	PA	CRA	19/3/64	
Adm 2	+	Req	7/7/64	PA	Adm 2	10/7/64	TO 19
Adm 1A	16	Req	16/12/64	Re	Adm 1A	16.12.64	18-12-14
AS	11	Req	7-12-65	Re	AS	7.12.65	
ALSS	9	Req	30-3-67	PA	ALSS	31.3.67	
SAT	16	Req	15-11-67	PA	SAT	21.11.67	
EA	27	Req	4-12-67	PA	EA	7.12.67	
AM3	18	Req	8/8/68	PA	AM3	8/8/68	
SAT	6	Req	26-12-68	PA	SAT	26/9/69	(30)
TRANSFERRED TO P.A.R.C.							
TRANSFERRED TO P.A.R.C.							
7103							

See Vol. 2

TRANSFERRED
To P.A.R.C.

7103

CROSS REFERENCES

FILE NUMBER	SUBJECT
1.....
2.....
3.....
4.....
5.....
6.....
7.....
8.....
9.....
10.....

INSTRUCTIONS

1. This cover must not be folded under.
2. File should be retained no longer than is absolutely essential. If a file is frequently needed at short intervals, it is better to B.F. it for two or three days than keep it out of Central Registry indefinitely. This ensures its being completed and kept in order and also gives other officers an opportunity of using it.
3. Central Registry must be notified whenever a file is passed directly between one official and another.
4. All outgoing letters should bear the official file number and originator's designation.
5. ONE SUBJECT—ONE COMMUNICATION—Where the contents of outgoing letters necessarily refer to more than one subject, the originator will prepare additional copies for attachment to relevant files.
6. Correspondence must not be removed from file, except as provided in the regulations governing the conduct of correspondence.
7. Incorrectly filed material will not be removed without notification to Central Registry.
8. Official office designations are to be used for routing purposes.
9. Disposal entries on file jackets must be initialled and dated.
10. Urgent Tags, flags and other markers will be removed in Divisional Offices as soon as appropriate action on the folios has been taken.
11. Officials are reminded that strict adherence to the security regulations is essential when dealing with classified material.

WCB/KM

DEPARTMENT OF
 EXTERNAL AFFAIRS
 OTTAWA

to be addressed to:
 Under-Secretary of State
 for External Affairs
 OTTAWA

OTTAWA, May 21, 1953.

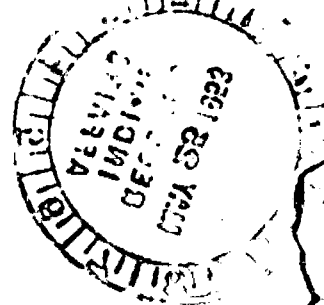
Our File No: 148-40

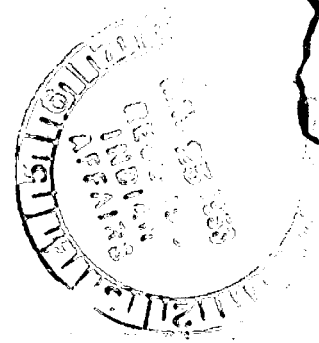
The Deputy Minister,
 Department of Citizenship and Immigration,
 O T T A W A.

I wish to acknowledge your letter of May 11 in reference to a delegation of Indians you recently received, who wished to complain that Canadian Indians going to the United States are compelled to register as aliens under the McCarran Act, and also that they are refused employment in American defence plants.

I have referred your letter to the Canadian Embassy in Washington with the request that they approach the U.S. authorities concerned, and I shall be glad to advise you as soon as I have received the Embassy's report.

(Sgd.) Hector Allard
 for the Acting Under-Secretary of State
 for External Affairs.





0/127-1-

EF/JEL

Copy for the Deputy Minister's file.

~~Copy for the Immigration Branch.~~

Copy for the Indian Affairs Branch. ✓



Ottawa, May 11, 1953.

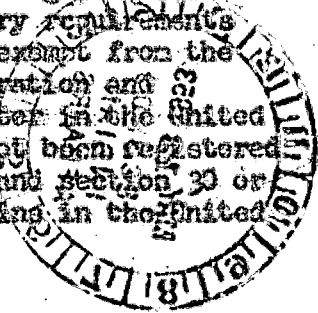
The Under-Secretary of State
for External Affairs,
Ottawa,
Ontario.

This Department being responsible for the administration of Indian Affairs in Canada, the undersigned recently received a delegation of Indians complaining that Canadian Indians going to the United States had to register as aliens and, furthermore, were refused the privilege of working in American defence industries.

According to our information, American Indians born in Canada enjoy exceptional status, since they are permitted to pass and repass the borders of the United States without restraint. This right is recognized in section 239 of the new Immigration Act and reads as follows:

"Nothing in this title shall be construed to affect the right of American Indians born in Canada to pass the border of the United States, but such right shall extend only to persons who possess at least 50 per centum of blood of the American Indian race."

Further, it is my understanding that although American Indians born in Canada are exempt from the documentary requirements of the United States Immigration laws, they are not exempt from the requirements of parts 262-265 inclusive of the Immigration and Nationality Act requiring "every alien now or hereafter in the United States who (1) is 14 years of age or over; (2) has not been registered and fingerprinted under section 221 (b) of this Act and section 30 or 31 of the Alien Registration Act, 1940; and (3) remains in the United



- 2 -

States for 30 days or longer" to apply for registration and to be fingerprinted before the expiration of such 30 days.

I believe that I am correct in assuming that Canadian Indians or American Indians born in Canada are being dealt with as other Canadian citizens. However, as you know, the American Indians born in Canada claim that they are the natives of this continent and take strong objection to being dealt with as aliens when they go to the United States. The delegation of Indians received took very strong objection to the fact that they were required to register and also that they were registered as aliens. I am aware that strong representations have been made against certain sections of the new Immigration and Nationality Act of the United States Government. I would not believe that the United States authorities would consider amending their new legislation only to class the American Indians born in Canada as non-aliens. However, if this Act is to be revised, I wonder if your Department would consider it appropriate to make representations to that effect to the American authorities.

Regarding the second question raised by the Canadian Indian delegation, I have no information as to the actual policy of the United States Government concerning employment in defence plants. If the information given is correct, it would appear as serious discrimination against the American Indians born in Canada, especially when we are aware that defence industries are advertising in Canadian newspapers for our Canadians and also for persons who have only recently arrived in Canada. I think that one may affirm without hesitation that Canadian Indians have no tendency to be subversive and certainly cannot be looked upon as supporting any communist, fascist or Nazi organizations. Many of our Indians going to the United States are experts in their trade and often proceed there on account of the fact that there are more opportunities for the utilization of their skill.

I think that in this last case it would be appropriate to inquire from the American Government authorities if it is true that Indians are not admitted in defence plants, and if so, to make representations supporting their employment in such plants.

....3

- 3 -

You may be aware of the fact that the Indians had planned to make personal representations to the President of the United States, and when they asked us for advice they were told that as they are Canadians, just and fair representations would be made for them by the Canadian Government.

Laval Fortier.

24563

1950 MAY 13 PM 2 49

INDIAN AFFAIRS

DEPARTMENT OF MINES AND RESOURCES

Indian Affairs Branch

NOTE: *This slip to be used for passing correspondence when the main file is charged out or is not required, and must not be removed but will be attached to the main file as soon as possible.*

Records Service Division

Slip No. **762**

Indian Affairs File No. **0/127-1-2**

Subject of File

MAIN FILE ON CHARGE TO *copy*

REFERENCE				DISPOSAL			
REFERRED To	By	REMARKS	DATE	PA OR BF	BY	DATE	FOR RECORDS USE
<i>Sery</i>	<i>18</i>	<i>06881</i>	<i>10/4/53</i>	<i>Pa</i>	<i>JAH</i>	<i>10.4.53</i>	

Note: If action cannot be taken without the file, please make statement to that effect and return paper to Records Division.

000614

Copy for Indian Affairs Branch

0/127-1-2 (Secy.)

06881

Secy

1953 APR 9 PM 2:47

Ottawa, April 1, 1953.

INDIAN AFFAIRS

E. M. Hawkins, Esq.,
Mayor,
Niagara Falls, Ont.

Dear Mayor Hawkins:

My colleague, the Honourable Mr. Bradley, has passed on to me your letter of March 20th concerning the Jay Treaty and the case of Louis Francis of the St. Regis Reserve.

A petition has been filed in the Exchequer Court of Canada on behalf of Louis Francis of the St. Regis Reserve for the return of a certain sum of money paid by him to the Department of National Revenue for duty and taxes payable on certain goods imported by him into Canada from the United States. Mr. Francis claims that he is entitled to exemption from all duty of entry or any impost of duty whatever on these goods under the provisions of Article 3 of the Treaty of Amity, Commerce and Navigation between Great Britain and the United States commonly known as the Jay Treaty of 1794. This case will be something in the nature of a test case to determine what rights, if any, the Indians may have under the Treaty to import certain classes of goods into Canada free of duty, which various groups believe they are entitled to do.

It might be explained to Mr. Rickard that in Canada claims against the Crown are brought before the Exchequer Court. I should mention that the department is not directly involved in the litigation and, as you will readily understand, we are not in a position to expedite having the case heard. While it is not known when the matter will come on for trial, those concerned will no doubt endeavour to have it heard as soon as they are ready to proceed.

I trust that the foregoing will enable you to explain the matter to Mr. Rickard.

Yours sincerely,

H. E. Harris

DMH.
copy
CIP/ND

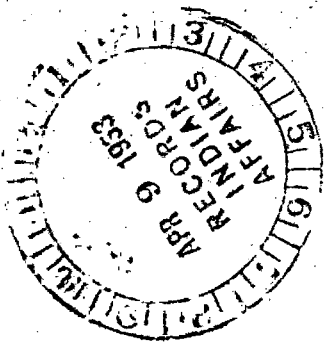
000615

(.vce2) 3-1-7510

GOV FOR INDIAN AFFAIRS BRANCH

18330

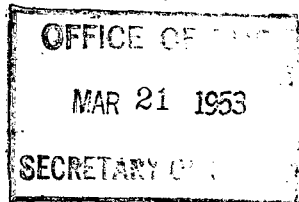
1975 2 11 2 PM 11



06882



PM 2:47



MAYOR'S OFFICE

INDIAN AFFAIRS

Niagara Falls, Canada

March 20th, 1953.

Hon. F. Gordon Bradley, Q.C.,
Secretary of State of Canada,
Parliament Buildings,
OTTAWA, Ontario.

Dear Sir:

I have been asked by Chief Clinton Rickard, Grand President of the Indian Defence League, of which I happen to be an Honourary Chief, to write to you seeking your co-operation in regard to the Jay Treaty for which the law firm of Gowling, McTavish, Osborne and Henderson are representing Louis Francis, an Iroquois of the St. Regis Reserve. *mf*

It is my understanding that this case will be heard in the Exchequer Court of Canada and they seem to be quite concerned that this case should be expedited as soon as possible and feel that the hearing in the Exchequer Court would cause delay.

If I may, Sir, impose upon you and ask that you might lend the support of your office to have this case heard as soon as possible. I believe that under the Jay Treaty, the Indians were given a certain right and it is felt, according to my information, that the Royal Canadian Mounted Police feel Louis Francis has violated the Jay Treaty.

Trusting that we may have a favourable answer, I extend to you, Sir, my very best wishes for your continued success.

Yours very sincerely,

EMH/JM



E.M. HAWKINS
Mayor.

06214

PA m 0/127-1-2

COPY

1953 APR 8 PM 4:11

Ottawa, March 26, 1953.

INDIAN AFFAIRS

MEMORANDUM FOR:

MAJOR MACKAY

I have your memorandum of March 23rd to which was attached copy of a letter from Mr. Andrew Paull concerning a resolution of the Restigouche Band of Indians which had voted an amount of \$500 for his use, in order to cover Mr. Paull's partial expenses to attend a conference on the JAY TREATY, to be held in Washington, D.C., U.S.A. I discussed this matter with the Minister who agreed that this resolution should not be approved.

The Jay Treaty, as I understand it, could be considered from two different approaches. It affects the Canadian Indians returning to Canada who claim that according to the Jay Treaty they are exempted from certain Canadian Custom duties. The effects of the Jay Treaty in this case are now being the subject of Court proceedings and a test case is being made by the St. Regis Band of Indians. On the other hand, the Jay Treaty has also some Indians going to the United States and who may be called upon to pay certain American Custom duties. The Canadian Government has representatives in the United States to look after the protection of all Canadian interests and, as Indians in Canada are Canadians we should ask External Affairs or the Department of Trade and Commerce to represent the Indians' interests, if such a conference on the Jay Treaty is to be held in Washington. In order to decide what participation Canada should have in the conference, it would be necessary to know what is the purpose of the conference, if the Canadian Indians have

- 2 -

reason to complain of the attitude of the American Government concerning the Jay Treaty on account of certain duties charged by the American Custom on what may be looked upon as personal property, or if the interpretation of the United States Government of the Jay Treaty may have an adverse effect on the export made by the Indians to the United States in their day-to-day trading.

(Sgd.) Laval Fortier

Laval Fortier.

DEPARTMENT OF MINES AND RESOURCES

Indian Affairs Branch

NOTE: This slip to be used for passing correspondence when the main file is charged out or is not required, and must not be removed but will be attached to the main file as soon as possible.

Records Service Division

Slip No. 704

Indian Affairs File No. 0/127-1-2

Subject of File

MAIN FILE ON CHARGE TO

copy

REFERENCE				DISPOSAL			
REFERRED To	By	REMARKS	DATE	PA OR BF	By	DATE	FOR RECORDS USE
Scry	18	05537	7/4/53	PA	677	7-4-53	

Note: If action cannot be taken without the file, please make statement to that effect and return paper to Records Division.

000620

DEPARTMENT OF EXTERNAL AFFAIRS
REFERENCE SLIP

SECURITY
UNCLASSIFIED

Ottawa,

April 1, 1953

To: *Hay MacKay*

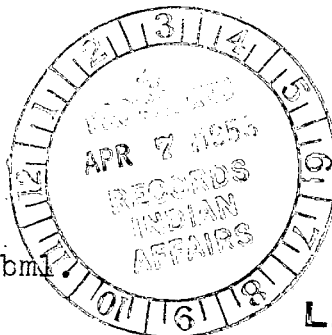
For:-

To Action. The Deputy Minister,
Direct reply to the
Department of Citizenship & Immigration,
Information O T T A W A.
Signature.

The documents described below are attached for your information or
for any action you consider necessary:

Copy of a letter to The Canadian Embassy, Washington, D.C.,
dated April 1, 1953. Subject: Conference in Washington concerning
the Jay Treaty.

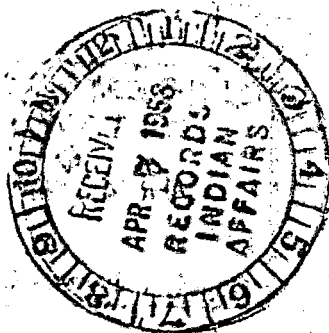
Also referred to:



Dept. of Citizenship & Immigration
OTTAWA
APR 4 1953
Deputy Minister's Office

Am. Divl/J.D. Foote/bml

L.D.
L. D. WILGRESS
Under-Secretary of State
for External Affairs



J. D. WILKINSON

DEPARTMENT OF EXTERNAL AFFAIRS, CANADA.

NUMBERED LETTER

TO: THE CANADIAN EMBASSY, WASHINGTON, D.C....

Security: UNCLASSIFIED.....

No:.....X.....

FROM: THE UNDER-SECRETARY OF STATE FOR
EXTERNAL AFFAIRS, OTTAWA, CANADA.

Date:.....April 1, 1953.....

Enclosures:.....

Reference:.....

Air or Surface Mail:.....

Subject: Conference in Washington concerning the
Jay Treaty.....

Post File No:.....

Ottawa File No.

References

I am attaching a copy of a letter dated March 27, 1953 from the Deputy Minister of Citizenship and Immigration in which he asks for further information concerning the above.

2. I should be grateful if you would consult the appropriate official on this matter so that I might be able to inform Mr. Fortier.

E. A. COTE

Under-Secretary of State
for External Affairs.

Internal
Circulation

Distribution
to Posts

DEPARTMENT OF MINES AND RESOURCES

Indian Affairs Branch

NOTE: This slip to be used for passing correspondence when the main file is charged out or is not required, and must not be removed but will be attached to the main file as soon as possible.

Records Service Division

Slip No. 591

Indian Affairs File No. 0/127-1-2

Subject of File.....

MAIN FILE ON CHARGE TO *Semy*

[illegible]

Note: If action cannot be taken without the file, please make statement to that effect and return paper to Records Division.

000624

Copy for Indian Affairs Branch

0/127-1-2 (Secy.)

13413

1953 MAR 30 PM 2:21

INDIAN AFFAIRS

Ottawa, March 27, 1953.

L. D. Wilgress, Esq.,
Under Secretary of State
for External Affairs,
Ottawa, Ontario.

Dear Mr. Wilgress:

It has been brought to our attention by a representative of an Indian organization that there is to be a conference or meeting in Washington at which the provisions of the Jay Treaty of 1794, in so far as it relates to Indians, are to be discussed. We have no particulars here regarding this proposed conference and I should be much obliged if you could have our Embassy in Washington make inquiries to ascertain whether such a conference is proposed, and if so the date on which it is to be held, by whom it is sponsored, and, as far as possible, to indicate the purpose. Any clarifying information that could be obtained would be greatly appreciated.

It may be that Mr. Edwin E. Ferguson, Chief Counsel, Bureau of Indian Affairs, Department of the Interior, would have some knowledge of any proposed meeting and could be of assistance in the matter.

Yours sincerely,

Laval Fortier

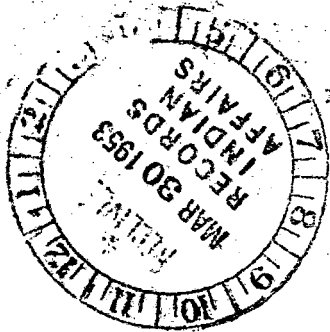
Laval Fortier.

697
CLF/ND



NOT FOR PUBLICATION

(2002) 1-1-1 (2002)



0/127-1-2 (Secy.)

Ottawa, April 1, 1953.

E. M. Hawkins, Esq.,
Mayor,
Niagara Falls, Ont.

Dear Mayor Hawkins:

My colleague, the Honourable Mr. Bradley, has passed on to me your letter of March 20th concerning the Jay Treaty and the case of Louis Francis of the St. Regis Reserve.

A petition has been filed in the Exchequer Court of Canada on behalf of Louis Francis of the St. Regis Reserve for the return of a certain sum of money paid by him to the Department of National Revenue for duty and taxes payable on certain goods imported by him into Canada from the United States. Mr. Francis claims that he is entitled to exemption from all duty of entry or any impost of duty whatever on these goods under the provisions of Article 3 of the Treaty of Amity, Commerce and Navigation between Great Britain and the United States commonly known as the Jay Treaty of 1794. This case will be something in the nature of a test case to determine what rights, if any, the Indians may have under the Treaty to import certain classes of goods into Canada free of duty, which various groups believe they are entitled to do.

It might be explained to Mr. Rickard that in Canada claims against the Crown are brought before the Exchequer Court. I should mention that the department is not directly involved in the litigation and, as you will readily understand, we are not in a position to expedite having the case heard. While it is not known when the matter will come on for trial, those concerned will no doubt endeavour to have it heard as soon as they are ready to proceed.

I trust that the foregoing will enable you to explain the matter to Mr. Rickard.

Yours sincerely,

Handwritten signature

0/127-1-2 (Secy.)

Ottawa, March 28, 1953.

Clinton Rickard, Esq.,
Grand President,
Indian Defense League of America,
Home Office, Box 305,
Niagara Falls, N.Y., U.S.A.

Dear Mr. Rickard:

Your letter of March 5 to the Secretary of State regarding the Jay Treaty has been referred to me for attention.

As you are aware, Mr. Louis Francis of the St. Regis Indian Reserve has brought an action against the Crown in which he relies upon certain provisions of the Jay Treaty to support his case, and I presume that this is the matter you had in mind. I might explain that in Canada claims against the Crown are brought before the Exchequer Court.

I trust this will clarify matters for you.

Yours sincerely,

CIF/LND

Sumner
- Director.

DEPARTMENT OF MINES AND RESOURCES

Indian Affairs Branch

NOTE: *This slip to be used for passing correspondence when the main file is charged out or is not required, and must not be removed but will be attached to the main file as soon as possible.*

Records Service Division

388

Slip No.....

Indian Affairs File No..... 0/127-1-2

Subject of File.....

MAIN FILE ON CHARGE TO

copy

REFERENCE				DISPOSAL			
REFERRED To	By	REMARKS	DATE	PA OR BF	By	DATE	FOR RECORDS USE
Sery	18	04437	18/3/55				

Note: If action cannot be taken without the file, please make statement to that effect and return paper to Records Division.

000629

To *Director of Indian Affairs*
For Attention *IA*

MH/GM

Scry
OTTAWA, MARCH 13, 1953. *IA*

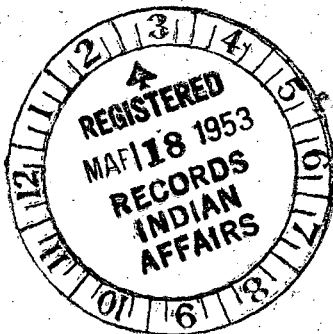
Chief Clinton Rickard,
Grand President,
Indian Defence League of America,
Box 305,
Niagara Falls,
New York, U.S.A.

Dear Sir:

I acknowledge the receipt of your
letter of March 5 on the subject of the Jay
Treaty.

Your representations are being
brought to the attention of the Minister
of Citizenship and Immigration.

Yours very truly,



Ph. Thibault,
for Under Secretary of State.



000630

NOTED
on 18.3.53
B.M.

INDIAN AFFAIRS

1953 MAR 13 PM 2:40

04437



Ne Skenno, Ne Gai Wuo, Ne Gashasda Sa

Peace, Prosperity, Power and Equality to All

Indian Defense League of America

Home Office, Box 305, Niagara Falls, N. Y.

CHIEF CLINTON RICKARD,
Grand President,
Tuscarora Reserve, Sanborn, N.Y.

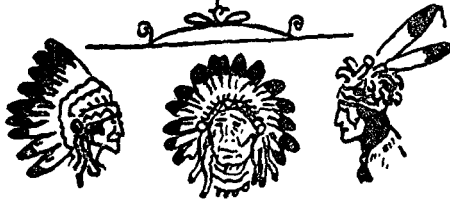
MISS EMILY GENERAL,
First Vice Grand President,
Ohsweken, Ontario, Canada

MR. GORDON MARTIN,
Second Vice Grand President

MRS. NORMA GILBERT,
Grand Secretary

MRS. GERTRUDE SCHULER,
Assistant Grand Secretary

MR. LEHIGH ANTONE,
MR. WALTER HUNTER,
Associate Grand Treasurers



Annual Border Crossing Celebration Every 3rd Saturday of July

BRANCHES

1. NIAGARA BRANCH
NIAGARA FALLS, N. Y.
2. BUFFALO BRANCH
BUFFALO, N. Y.
3. CONFEDERACY BRANCH
OHSWEKEN, ONT.
4. HAMILTON BRANCH
HAMILTON, ONT.
5. A-KWE-SAS-NE BRANCH
HOGANSBURG, N. Y.
6. BRANTFORD BRANCH
BRANTFORD, ONT.
7. ONEIDA BRANCH
MUNCEY, ONT.

March 5, 1953

Secretary of State of Canada

Ottawa, Ontario

Canada

Dear Sir:

We, the Indian Defense League of America, request that the Exchequer Court of Canada is not the proper court to discuss the Jay Treaty as this concerns three nations—Britain, Canada, The Indian, and cannot be tried in one court.

Sincerely Yours

Chief Clinton Rickard

CHIEF CLINTON RICKARD

Grand President

L.N.G.

1953 MAR 9 AM 8:47

UNDER SECRETARY
OF STATE

0/127-1-2 (Secy.)

Ottawa, March 27, 1953.

L. D. Wilgress, Esq.,
Under Secretary of State
for External Affairs,
Ottawa, Ontario.

Dear Mr. Wilgress:

It has been brought to our attention by a representative of an Indian organization that there is to be a conference or meeting in Washington at which the provisions of the Jay Treaty of 1794, in so far as it relates to Indians, are to be discussed. We have no particulars here regarding this proposed conference and I should be much obliged if you could have our Embassy in Washington make inquiries to ascertain whether such a conference is proposed, and if so the date on which it is to be held, by whom it is sponsored, and, as far as possible, to indicate the purpose. Any clarifying information that could be obtained would be greatly appreciated.

It may be that Mr. Edwin E. Ferguson, Chief Counsel, Bureau of Indian Affairs, Department of the Interior, would have some knowledge of any proposed meeting and could be of assistance in the matter.

Yours sincerely,

Laval Fortier.

hmu.
677
CLT/ND

MINISTER OF CITIZENSHIP AND IMMIGRATION

OTTAWA, March 25th, 1953.

TO: DEPUTY MINISTER

FOR: DIRECTOR OF INDIAN AFFAIRS

Preparation of reply for signature of..... the Minister xx

Discussion with.....

Perusal and necessary action.....

Report.....

to the attached letter dated March 20th addressed to the Hon. F.G. Bradley, from Mayor E. M. Hawkins, Niagara Falls, Ont., asking that the case of Louis Francis, an Indian of the St. Regis Reserve, be heard as soon as possible. He believes the case is to be heard in the Exchequer Court and feels that this would cause delay.

Major MacKay:

For draft reply, as requested.

for Deputy Minister.

RB

Private Secret 000634



Indian Affairs Branch

NOTE: This slip to be used for passing correspondence when the main file is charged out or is not required, and must not be removed but will be attached to the main file as soon as possible.

Records Service Division

Slip No. 474

Indian Affairs File No. 07127-1-2

Subject of File.....

MAIN FILE ON-CHARGE TO *M. Cassel*

[illegible]

Note: If action cannot be taken without the file, please make statement to that effect and return paper to Records Division.

000636

LABOR

WASHINGTON, D. C., SATURDAY, MARCH 21, 1953.

No 'Jaywalking' for Indians

BY STAFF REPRESENTATIVE

VICTORIA, March 18. — The edict was handed out this week to Vancouver Island Indians — "No pay wampum, lose-um scalps."

Indians here, in other words, will get "scalped," just like anybody else, if they try to invoke the Jay Treaty of 1794 and by-pass customs and immigration regulations at the Canada-U. S. border.

In Ottawa shortly, the Exchequer Court of Canada is to hear a test case of Montreal Indians to find out whether they are subject to border regulations. Based on a treaty signed between England and the United States in 1794 and 1796, the Montreal Indians' case comes up when Louis Francis of Quebec's Cote St. Regis reserve will claim duties, paid under protest, to Canadian border officials.

The Jay Treaty says in part: "No

duty of entry shall be levied by either parties or paltries 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 import or duty whatever, but goods in bales or other large packages unusual among Indians shall not be considered as goods belonging bona fide to Indians."

But Pacific coast Indians will not be allowed to "jay-walk" over the border even though the Jay Treaty may be upheld in Ottawa. Customs officials here bluntly declared: "It doesn't matter what they are carrying—paltries included—they have to cough up customs duties like everybody else. The Indians are treated just like everybody else when it comes to immigration procedures. We know of no change in prospect for Indians."

03979

1957 MAR 21 PM 4 09

PLEASE QUOTE

FILE 0/127/1-2
(Secy.)



CANADA

DEPARTMENT OF CITIZENSHIP AND IMMIGRATION
INDIAN AFFAIRS BRANCH

Ottawa, December 5, 1952.

*Mr. [unclear]
24-3-53
as per telephone call.*

MEMORANDUM TO THE DEPARTMENTAL LEGAL ADVISER

In response to your memorandum of November 10, 1952, regarding a Petition of Right arising out of the Jay Treaty, I am forwarding herewith our files, 600172-1, Volumes 1 and 2 (closed) and 0/127-1-2.

Flagged papers thereon include relevant passages from the Jay Treaty and various rulings given by the Department of Justice in respect to the application, or non-application, of this Treaty to Canadian Indians and also, from time to time, the policy of the Department in respect to claims.

Would you please ensure that these files are returned as soon as it is convenient to do so.

for Director.

0/127/1-2
(Secy.)

, December 5, 1952.

MEMORANDUM TO THE DEPARTMENTAL LEGAL ADVISER

In response to your memorandum of November 10, 1952, regarding a Petition of Right arising out of the Jay Treaty, I am forwarding herewith our files, 600172-1, Volumes 1 and 2 (closed) and 0/127-1-2.

Flagged papers thereon include relevant passages from the Jay Treaty and various rulings given by the Department of Justice in respect to the application, or non-application, of this Treaty to Canadian Indians and also, from time to time, the policy of the Department in respect to claims.

Would you please ensure that these files are returned as soon as it is convenient to do so.


for Director.

IN THE EXCHEQUER COURT OF CANADA

LOUIS FRANCIS,

- and -

Respondent.

TO THE QUEEN'S MOST EXCELLENT MAJESTY:

THE HUMBLE PETITION OF LOUIS FRANCIS, of the St. Regis
erve, in the Dominion of Canada, RESPECTFULLY SHEWETH:

2. On or about the 19th day of October, 1951, your petitioner entered Canada from the United States of America and transported with him one washing machine, one oil heater and one refrigerator being his own proper goods and effects and owned by him, which said goods and effects are usual among Indians.

4. Your petitioner notified the Deputy Minister of National Revenue that no duty and taxes were lawfully payable with respect to the said goods and under protest your petitioner paid to the custom officers or representatives of the Minister of National Revenue the sum of \$123.66 as a deposit for the amount of duty and taxes alleged to be payable. Your petitioner

000641

- 2 -

was then notified on July 21st, 1952, that the Minister had rendered his decision pursuant to Section 174 of the Customs Act that the deposit be retained as duty and taxes properly payable.

5. Your petitioner, through his solicitors, notified the Deputy Minister of National Revenue pursuant to the provisions of Section 175 of the Customs Act that the said decision of the Minister was not acceptable and was advised on the 22nd day of August, 1952, that the Minister refused to refer the matter to the Court pursuant to the provisions of Section 176 of the Customs Act.

6. Your petitioner states that he is an Indian subject to the provisions of the Indian Act and entitled to exemption from all duty of entry or any impost of duty whatever under the provisions of Article 3 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 commonly known as the Jay Treaty, and pursuant to the provisions of the Treaty of Peace and Amity, between His Majesty and the United States of America signed on the 24th day of December, 1814, and referred to as the Treaty of Ghent.

7. Your suppliant has always and continues to claim exemption from impost or duty with respect to his own proper goods and effects transported by him by land or inland navigation into the Dominion of Canada, and such exemption has been continuously denied by the respondent.

8. The respondent is in possession of monies of the suppliant in the amount of \$123.66 and although demand has been made for the return thereof to the suppliant, the said monies have not been returned and are unlawfully retained by the respondent.

Your suppliant therefore humbly prays for:

- (a) Return of the sum of \$123.66 being monies in possession of the respondent and owed to the suppliant;

- 3 -

- (b) A declaration that 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 impost or duty whatever;
- (c) His costs of this petition.

Your suppliant humbly proposes that this petition be tried at the City of Ottawa, in the County of Carleton, in the Province of Ontario.

Dated at Ottawa, this 6th day of November,
A.D. 1952.

(Sgd.) A.G. Hewitt

of Counsel for the Suppliant Louis Francis

0/127-1-2

ADMINISTRATION
BRANCH



CANADA

DEPARTMENT OF CITIZENSHIP AND IMMIGRATION

OTTAWA, November 10, 1952.

MEMORANDUM:

Major D.M. MacKay

Please Forward ~~the~~ relevant files from your Branch herein. I should also like to obtain a statement of the facts of the case, together with such information and papers relating to the claim set forth in the Petition of Right as may be available. I understand that this matter relates to the Jay Treaty. Consequently, the historical data in connection therewith should be furnished.

Might I please have the above at your earliest convenience, since Justice requests such information so as to be in a position to file and serve a defence within a period of four weeks from the date of service of the Petition, which, herein, is the 7th instant.

L.A. Couture

L.A. Couture,
Departmental Legal Adviser.



DEC 4 PM 3:45

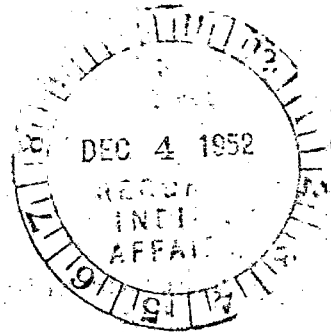
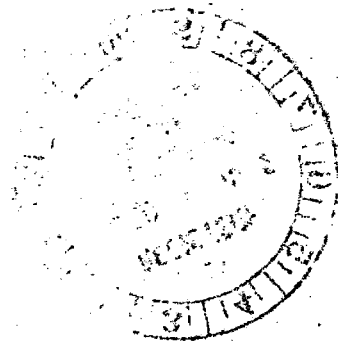
ELs.

INDIAN AFFAIRS

NOTE: 1000 DEC 4 1952 4.12.52 B.M.

26131

RA.



NOTE FOR FILE:

Re: Indian Rights under Jay Treaty

The question of Indian rights under the Jay Treaty between the United States and Great Britain, which was concluded in 1794 and proclaimed in 1796, has come up on a number of occasions.

This document is printed in a Report of the Canadian Archives "Constitutional Documents, 1791-1818."

Article 3 of the Treaty reads as follows:

The Treaty also provided for a commercial agreement. During the decade following 1800 relations between the United States and Great Britain became increasingly more strained until a state of war existed. Even prior to the declaration of war in 1812 the commercial provisions of the Treaty were to all intents and purposes aggregated by the United States Congress when the embargo laws were passed in 1807.

Following the cessation of hostilities in 1814, the Treaty of Ghent was signed ending the formal state of war. Article 9 of the Treaty, which is also printed in the Constitutional Documents referred to above, reads as follows:

It will be noted that whatever rights or privileges the Indians possessed as of the year 1811 were restored. It should be noted, also, that the provision with respect to Indians in the Jay Treaty was not limited to a specified number of years, and the Indians claim that it is still effective.

The right of passage and repassage mentioned in the Treaty have been accepted by the United States' authorities through the years. Following passage of the Immigration Act of 1924, which restricted entry of aliens into the United States, some doubt arose as to its application

- 2 -

to North American Indians living in Canada. In order to clarify the position a special provision was enacted in 1928 whereby the restriction of the immigration of 1924 did not apply to Indians living in Canada. This was given effect by Executive Order No. () dated (). The general position is, therefore, that Indians have the right to enter the United States without a passport for an indefinite period provided they are able to give proof of their identity as Indians (usually a letter or card from an official of the Indian Affairs Branch is acceptable by United States immigration authorities.)

The question of Indians trading or carrying on commerce freely is not quite so clearly defined. The records do not reveal whether or not the United States' authorities permit Indians to take goods from Canada into the United States free of duty. Insofar as Indians bringing goods into Canada from the United States is concerned, the position is that Indians must comply with the provisions of the Customs Act. The Canadian Customs Act does not take cognizance of the Jay Treaty, and it would appear that the Parliament of Canada would not be bound by the terms of the Treaty, notwithstanding the contentions of the Indians to the contrary.

0/127-1-2
(Secy.)

, November 18, 1952.

Mrs. Luella Phillips,
Box 22,
South Lancaster, Mass. U.S.A.

Dear Madam:

This will acknowledge your letter dated November 9th, 1952, in which you refer to the border crossing privilege accorded to Indians born in Canada, and to a law allowing Indians to enter the United States tax free.

It is not understood from your letter whether you refer to Canadian or American Indians.

If you are a Canadian Indian, will you please advise to what reserve you belong. When this is received your request will be referred to the proper authorities.

With regard to the law allowing Indians to enter the United States tax free, I regret to advise you that this Branch is not aware of such a law being in existence.

Yours truly,


for Secretary.

Document disclosed
Document divulgué en vertu de la Loi
Boy 22.
South Lancaster
Mass. 11-8-52.

INDIAN AFFAIRS

NOV 13 AM 10:26

09722

Dept. of Indian Affairs
Ottawa, Can.

~~Secy~~

Dear Sirs:-

Will you kindly send me
me, the American Indians
free entrance on either side
of Border. between United
States and Canada.

There is a law which leave
the Indians tax free on entering
U.S.A. made in the late
1920's.

May I await your early
response.

Sincerely,

Mrs Lulla Phillips



) 0/127-1-2
(Secy.)

, November 8, 1952.

Mrs. A. M. Peters,
423 Allanburg Road,
Thorold South, Ontario.

Dear Madam:

This will acknowledge receipt of your letter dated November 5, in which you inquire as to whether the border crossing privileges to Canadian born Indians could be accorded to you, in view of the fact that you are married to a Canadian Indian.

In reply, I would quote for your information, Section 289 of the Immigration and Naturalization Code passed by Congress of the United States in June 1952:

"American Indians born in Canada.
Section 289. Nothing in this title shall be construed to affect the right of American Indians born in Canada to pass the borders of the United States, but such right shall extend only to persons who possess at least 50 per centum of blood of the American Indian race."

From the above it would appear that the border crossing privileges extends only to those persons of Indian birth and would not extend to those whose Indian status is created by adoption or marriage.

Yours truly,



for Secretary.

0/127-1-2

05127

Therold South

Ontario

November 5th 1952

See

NOV 7 AM 11



Dear Sir

I would be pleased if you can give me some information on below question.

I am an English bride & I am married to an Indian from the Munciey Reservation. As I understand things North American Indians are allowed to reside either side of the border U.S. or Canada what I wish to know is being married to an Indian does that entitle me to the same rights or if I wish to go to the States do I have to go through all the immigration examinations etc.

An early answer would be appreciated.

Yours Truly

A. M. Petter

000651

WMC:SF

of 127-1-2
63678

cc: Indian Affairs Branch,

BEST COPY AVAILABLE

1952 OCT 23 PM 1:45

INDIAN AFFAIRS

Ottawa,
October 21, 1952.

Mr. Andrew Paull,
President,
North American Indian Brotherhood,
Box 211,
NORTH VANCOUVER, B. C.

Dear Mr. Paull:

Re: Douglas Simon, Customs
Seizure No. 57810/33661.

I have your letter of the 10th instant in connection with the above named and your request that representations be made to the Minister of National Revenue, in order that the said Minister may refer the question to the court in accordance with the provisions of section 176 of The Customs Act. The possibility of making representations as suggested by you have been carefully considered.

I am advised that the solicitors for Douglas Simon, namely, Messrs. Cowan, Millman and Hambling, of Sarnia, Ontario, have already approached that department along the lines of your representations and these solicitors have been advised that this is not a case that the Minister of National Revenue would refer to the court but that Mr. Simon could on his own initiative take steps to have the matter brought before the court.

In view of these circumstances, it is not possible to make the representations you suggest as it would be contrary to the policy of the Department of National Revenue expressed herein.

BEST COPY AVAILABLE

2.

I advised you on the 10th of September last that I had approved the expenditure of \$2,000 from the capital funds of the St. Regis Band for the purposes of retaining counsel to assert whatever rights the members of the band felt they had under the Jay Treaty.

As this approval will result in a test case, there will be no object in authorizing the expenditure of capital monies from the Sarnia Band for the same purpose.

Yours sincerely,

Approved as
to Legality

W. E. Harris
LEGAL ADVISER

W. E. Harris

Noted.
L.

0/127-1-2
165/19-2

Ottawa, October 16, 1952.

MEMORANDUM TO THE LEGAL ADVISER:

Please refer to your memorandum of September 16, attaching a copy of a letter from Mr. Paull, President of the North American Indian Brotherhood, concerning provision of counsel on behalf of Douglas Simon of the Sarnia Band, to be paid from Band Funds.

It may be mentioned that the request of the Sarnia Band Council for funds for legal fees did not specify the purpose for which the funds were to be used. They were advised that each case would be dealt with on its merits and a decision as to whether or not funds would be made available would be governed by the facts obtaining in the particular case.

As will be noted from the attached copy of letter dated October 10 from G. C. King of the Department of National Revenue, Douglas Simon retained the Law Firm of Cowan, Millman and Hambling of Sarnia to act for him. The solicitors were advised that the case was not one that the Minister of National Revenue would refer to the Exchequer Court, but that Mr. Simon could, on his own initiative, take steps to have the matter brought before the Court. It will be noted also that the time within which he would have to proceed may be limited to three months after a decision of forfeiture is rendered. Apparently National Revenue has heard nothing further as to whether he intends to proceed.

You are familiar with the case of Norman Diablo, charged with first degree murder in the State of Washington, U.S.A., referred to by Mr. Paull in his postscript. I may mention that Mr. Paull was advised October 9 that it was not the intention of the department to provide counsel to act for Indians charged with murder under foreign jurisdiction. However, no mention was made of having referred the matter to External Affairs to see if any funds were available through that Department for the purpose of employing defence counsel for destitute Canadians charged with murder in foreign courts.

697
CIE/MD

brun
Director.

000655



CANADA

DEPARTMENT OF NATIONAL REVENUE
CUSTOMS AND EXCISE

REFER TO FILE 57810

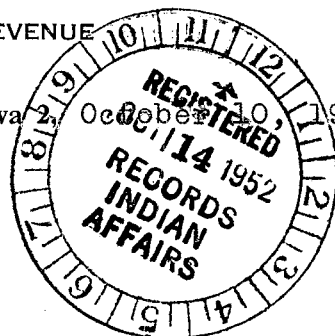
Your file 0/127-1-2
(Secy.)

55098

Secy

1952 OCT 14 AM 9:13

Ottawa



Secretary of INDIAN AFFAIRS
Indian Affairs Branch,
Department of Citizenship
and Immigration,
O t t a w a.

Dear Sir:

Customs Seizure No. 57810/33661.

This will acknowledge your letter of
October 3rd regarding the case of Douglas Simon of the Sarnia
Band, Ontario.

In the reply to the notice of seizure
was stated by Mr. Simon's solicitors that they were relying
entirely on the provisions of the Jay Treaty exempting Indians
from Customs duties. The solicitors who wrote to us were Cowan,
Millman and Hambling, Sarnia, Ontario.

A decision of forfeiture was rendered
notice of which was sent to Mr. Simon on August 11th and under
date of the 14th we received a notice from the solicitors stat-
ing that the decision was not accepted. We then advised the
solicitors that it was not a case that the Minister would refer
to the Court, which would be the Exchequer Court, but that Mr.
Simon could, on his own initiative, take steps to have the matter
brought before that Court. Attention was invited to Section 161
of the Customs Act which may limit the time to three months after
decision within which they would have to proceed.

We had heard nothing further in the
matter except about an article in the Windsor Daily Star dated
August 26, 1952, a copy of which is attached.

Yours truly,

G. C. King
G. C. King,
for Deputy Minister.

GCK:ak
Att.

C O P Y

TAKEN FROM THE WINDSOR DAILY STAR
AUGUST 26th, 1952.

Re: Douglas SIMON - Corunna, Ontario,
R.C.M.P. Customs Seizure No. 33661
"O" Div., Ref., 52 T 58/698.

SARNIA INDIAN TESTS JAY TREATY VALIDITY

Protests Seizure of Articles Brought to Canada from United States

By NORMAN WETHERUP
Of The Star's Sarnia Bureau

SARNIA-Validity of the Jay Treaty will be tested in the Exchequer Court of Canada within the near future as a result of action taken by Douglas Simon, a member of the Sarnia Indian Reserve, in protesting seizure of certain articles which he purchased in United States and attempted to bring into Canada duty free.

CLAIM EXEMPTION

Simon, through the North American Indian Brotherhood, has retained Don Hambling of the firm of Cowan, Millman and Hambling, to act for him in the litigation. His will be one of three cases to be heard by the Courts.

The Jay Treaty was signed by His Britannic Majesty in 1794 and the President of the United States in 1796, and it is under the terms of this treaty that Canadian Indians claim they are exempt from Customs duty when bringing goods from the United States into Canada.

According to Andy Paull, president of the Indian Brotherhood, the fourth paragraph of Article III of the Jay Treaty clearly stipulates that "no duty or tax shall be imposed upon the Indians when they bring into either country their own and proper goods." It permits them to cross and recross the international border without molestation.

WITHOUT DECLARATION

Members of the Sarnia detachment of the Royal Canadian Mounted Police seized two pairs of shoes, one vacuum cleaner and two radios at Simon's home on June 14, claiming they had been brought into Canada from the United States without customs declaration and duty.

His lawyer entered a protest, and on August 11 the Customs Department at Ottawa stated that under section 174 of the Customs Act, the goods seized and the deposit put up at the time of seizure had both been forfeited.

- 2 -

Sarnia Indians are joining with those in all parts of Canada in welcoming the hearing of Simon at Ottawa as a test case. According to Paull, whose home is in Vancouver, should the terms of the Jay Treaty be recognized as applicable to present day requirements of the Indians, they would then be allowed to bring into Canada motor cars, frigidaires, television sets, as well as radios, farming implements and other economic requirements.

Mr. Hambling pointed out that the Department of Indian Affairs will possibly be asked to testify for the defence as to their version of the Jay Treaty.

NOT RESCINDED

"The government hasn't officially rescinded the Jay Treaty, but if the Customs Department is to make their seizure stick, they will have to testify that the treaty has been cancelled," he claimed.

Sarnia is one of three places in Canada where Indians are denied the right to bring into the country their proper goods, according to Paull. The other two are at Caughnawaga, Que., and St. Regis, Que.

0/127-1-2
(Secy.)

, October 3, 1952.

G. C. King, Esq.,
Seizures Branch,
Customs and Excise Division,
Department of National Revenue,
Ottawa, Ontario.

Dear Mr. King:

This is with reference to telephone conversation regarding Douglas Simon of the Sarnia Band, Ontario, from whom certain articles have been seized.

As mentioned to you, representations have been received on behalf of Douglas Simon in which, among other things, a request is made to have the case referred to the Exchequer Court, as provided by Section 176 of the Customs Act. It is understood that your Department has had correspondence with a solicitor engaged by Douglas Simon, and that he was advised that Simon could take action on his own initiative to bring the case before the Exchequer Court.

It would be appreciated if you would let us have a brief summary of developments to date, particularly whether the case is still open or closed.

Yours truly,

CIF/LD


for Secretary.



CANADA

PLEASE QUOTE

FILE... 0/127-1-2
(T-1)

DEPARTMENT OF CITIZENSHIP AND IMMIGRATION
INDIAN AFFAIRS BRANCH

Ottawa
September 26, 1952.

MEMORANDUM TO MR. C. FAIRHOLM

With reference to Andrew Paull's letter to Mr. Harris, I think it is only necessary to observe that the request of the Sarnia Band of Indians was not specified as being for a definite purpose.

These Indians were told that each case would be dealt with on its merits and a decision as to whether or not the funds would be made available, in each case, to be governed by the facts obtaining in the particular case.

A.G. Leslie,
Trusts and Annuities Division.

0/127-1-2
(T-1)

September 26, 1952.

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A.G. Leslie,
Trusts and Annuities Division.

AL/ja

ADMINISTRATION
BRANCH



CANADA

LEGAL DIVISION

DEPARTMENT OF CITIZENSHIP AND IMMIGRATION

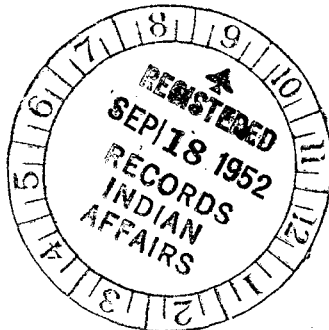
WMC:SF

Ottawa,
September 16, 1952.

MEMORANDUM TO MAJOR MACKAY:

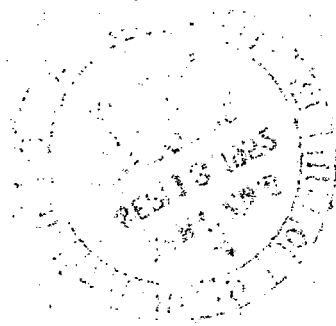
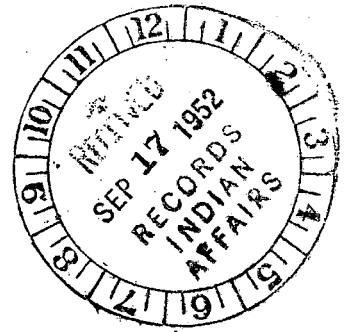
Attached hereto please find copy of a letter dated the 12th instant from Andrew Paull, President, North American Indian Brotherhood.

I would appreciate your observations with regard to the contents of this letter in order that a draft reply may be prepared for the Minister's signature to Mr. Paull.



[Signature]
Legal Adviser.

NOTED
17.9.52
B.M.



TO THE HON. CHIEF OF THE INDIAN AFFAIRS
OTTAWA, ONTARIO
FROM THE HON. CHIEF OF THE INDIAN AFFAIRS
OTTAWA, ONTARIO
SUBJECT: [Illegible]

C o p y

Sept. 12th. 1952.

Hon. W.E. Harris Q.C.M.P. P.C.
Minister of Citizenship and Immigration

Ottawa Ont.

Honourable Sir;-

I wish to thank you for your letter of the 9th. Inst. Re the Jay Treaty, and note that you have approved \$2,000.00 from the Band Funds of the St. Regis Indians.

I now wish you to also approve the resolution for this same purpose of the Indians at Sarnia for \$500.00 from band funds, and which was refused by the department, I think during your absence, as it is also necessary to protect the Indian involved, who effects were also seized by the RCMP. His name is Dougl's Simon.

I also wish you as our Minister to ask the Minister of National Revenue to implement Section 176 and order that the case against Douglas Simon be referred to the Exchequer Court, as he has not done so, he put the onus on the Indian to institute court action, which is if done not in his favor in a constitutional way.

The Minister MAY, according to the act, do this, but he has not done so, and pray that the government expedite and facilitate this action for decision, by the Minister of National Revenue, ordering that the case of Douglas Simon be proceeded in the Exchequer Court.

I am most anxious that this momentous issue should be adjudicated and pray for the above, and thanking you I have the honour, to be,

Respectfully yours,

(sgd)

Andrew Paull

ANDREW PAULL
President

North American Indian Brotherhood.

P.S. I have been asked to assist in the defence of five B.C. men three of whom are Indians the others are Indians but not under the Indian Act. They are charged with first degree murder at Mt. Vernon Wash. U.S.A.

2

I have asked the Director and our Indian Commissioner to ask the government to provide the money (\$2,500.00) for defence at Mt. Vernon, Wash.U.S.A. tentatively set for Oct. 28th. next.

The government had formerly paid for the defence of another B.C. Indian in the U.S. charged with murder.

This is a very hard case. The Indian who committed the crime is a veteran of War II. and he has a silver plate in his head, and he "Blacks Out" sometimes.

I need your sympathies and help. Their people are very poor and the evidence is so bad that only the best lawyer should be engaged. So please pity us.

Respectfully yours

(sgd) Andrew Paull

C o p y

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(sgd)

Andrew Paull

ANDREW PAULL
President

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Respectfully yours

(sgd) Andrew Paull

0/127-1-2
(Secy.)

, July 23, 1952.

R. Hamilton, Esq.,
Assistant Librarian,
House of Commons,
Ottawa, Ontario.

Dear Mr. Hamilton:

Pursuant to telephone conversation, I am enclosing quotations of the United States laws relating to border crossings by Canadian Indians which have been taken from information in our records. As mentioned, the United States Immigration Service would be in a better position to provide authoritative information on the subject and references to the appropriate statutes.

Yours truly,

CIF/MD

C. I. Fairholm.

According to our information, the Immigration and Naturalization Code of the United States, enacted in 1928, reads as follows:

"226a. American Indians born in Canada; right to cross Canadian border.
This chapter shall not be construed to apply to the right of American Indians born in Canada to pass the borders of the United States: Provided, That this right shall not extend to persons whose membership in Indian tribes or families is created by adoption."

It is understood that a new Immigration and Naturalization Code was passed by Congress in June, 1952, Section 289 of which reads as follows:

"American Indians born in Canada.
Sec. 289. Nothing in this title shall be construed to affect the right of American Indians born in Canada to pass the borders of the United States, but such right shall extend only to persons who possess at least 50 per centum of blood of the American Indian race."

Section 114.6 of Title 8 of the Code of Federal Regulations (United States) provided as follows:

"Canadian-born American Indians; exemption from immigration laws. American Indians born in Canada shall be permitted to enter the United States without inspection under the immigration laws. This right shall not extend to persons whose membership in Indian tribes or families is created by adoption."

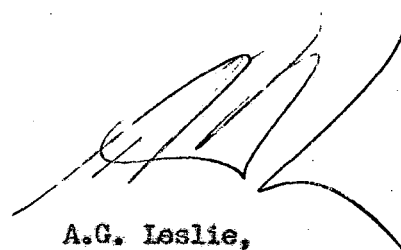
0/127-1-2
(T-1)

July 23, 1952.

T.L. Bonnah, Esq.,
Indian Superintendent,
Post Office Box 987,
CORNWALL,
Ontario.

Re: Resolution No. 1 - Saint Regis Band Council
May 5, 1952.

Reference is made to your letter, in the above connection, dated May 6, 1952, your file 33/1-9, and you are advised that the Minister has approved of an expenditure not exceeding \$2,000.00 to defray legal costs as referred to in the above mentioned resolution.



A.G. Leslie,
Trusts and Annuities Division.

AL/ja

File 0/127-1-2 (1-1)

Dept. of Citizenship & Immigration	
OTTAWA	
INDK	FFAIRS
B	MAY 30 1952
Deputy Minister's Office	



CANADA

OFFICE OF THE
DIRECTOR

DEPARTMENT OF CITIZENSHIP AND IMMIGRATION

Ottawa, May 30, 1952.

MEMORANDUM TO THE DEPUTY MINISTER

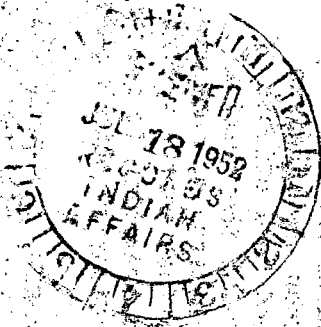
On May 5, 1952, the Saint Regis Indian Council adopted the following resolution:-

"On the motion of Dave Benedict and Richard Seymour Council reaffirms Resolution No. 6, April 7, 1952, in voting \$2000.00 from St. Regis Band Funds to defray legal costs to determine why the text of Article Three of the Treaty of Amity, Commerce and Navigation, commonly known as the Jay Treaty, relating to the passing or repassing of Indians with their own property needs and effect of whatever nature has not been honoured by the Canadian Government and more specifically under the Canada Customs Act and to further assure that the Canadian Government will in future undertake to see that its related Government Departments will not infringe on the rights of the Indians as guaranteed in the above Treaty thereby permitting in accordance with the said Treaty a disposition favourable to friendship and good neighbourhood."

Indians have claimed from time to time that they have certain rights under Article III of the Jay Treaty, 1794, to pass the boundary between Canada and the United States with their own proper goods and effects without paying duty. As a result of representations received from Mr. Andrew Paull, President, North American Indian Brotherhood, Justice was asked as to whether the Indians have any rights under the Treaty with respect to importation of goods into Canada from the United States free of duty. An opinion given June 1, 1951, was to the effect that Indians passing or repassing with their own proper goods and effects of whatever nature need pay no duty. Upon reviewing the opinion upon a reference by the Department of National Revenue, another opinion was given to that Department to the effect that a recent amendment to the Income Tax Act nullified the exemption in question. Neither opinion has been made known to the Indians by this Department.

A delegation of Indians from St. Regis, including Chief Peters, called at the Branch on November 26, 1951, with respect to customs seizures generally. They intimated that they were considering engaging counsel to look into the whole customs matter. They asked for historical information on the Jay Treaty and the Treaty of Ghent, which was forwarded to them. They were referred to the

000671



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Department of National Revenue, which is the administering authority for customs.

On February 29, 1952, Mr. John A.G. MacDonald, Barrister, Cornwall, Ontario, wrote to the Department to the effect that he had been retained by certain members of the Saint Regis Band to inquire into and determine the legality of the imposition of duties on goods and articles purchased in the United States for their own personal use. He wanted to know if funds were provided by Parliament for litigation purposes and whether Band funds could be used for such purposes. He was advised that no funds are provided by Parliament for such purposes, and with regard to payment of Band funds, Section 64 of the Indian Act was drawn to his attention.

There is no record of the question of rights of Indians to import goods into Canada free of duty under the provisions of Article III of the Jay Treaty having been decided in the courts in Canada. In the United States, however, the courts found against a Canadian Indian bringing goods into that country. The person involved was Mrs. Garrow of the Saint Regis Indian Reserve. The collector at the Port of Hogsburg, New York, imposed a duty under the Tariff Act of 1930 on baskets which Mrs. Garrow, a member of the Saint Regis Band, brought into the United States (December, 1934). Mrs. Garrow appealed to the United States Customs Court. This Court sustained her appeal, and the amount of duty paid by her was refunded. The case was carried by the United States authorities to the Court of Customs and Patent Appeals, which reversed the decision of the Customs Court.

The Court of Customs and Patent Appeals took the position that the Jay Treaty was in effect abrogated by the War of 1812 and that the Treaty of Ghent was held not to have been a self-executing treaty but dependent on legislative enactment, and that failure of Congress to properly legislate in accordance with the provisions of the Treaty renders the merchandise of Indians entering the United States dutiable. An appeal to the Supreme Court of the United States was denied.

Whether the Saint Regis Band of Indians intend to engage the services of counsel to investigate the whole matter and make a report to them indicating what their rights appear to be, or whether it is intended to bring a test case before the courts for determination, is not clear.

13

In any event, while Sections 64 (j) and 66 (1) of the Indian Act give to the Minister the discretionary powers in the matter of authorizing or rejecting requests for expenditures such as the one asked for by the Saint Regis Band of Indians in their resolution of May 5, 1952, it is felt that to approve it would be to establish an important precedent. Conceivably, Indians across the country would feel justified in asking that their funds be used in a similar manner for purposes not so readily justifiable. There is the further consideration that we would be assisting the Indians in contesting the regulations or statutes of another Government Department.

On the other hand to deny the request of the Indians in this case would be to leave the Branch open to the accusation of impeding the Indians in their endeavour to clarify their rights under the Jay Treaty and refusing them the right to use their monies for a purpose which they consider is in the interests of all members of the Band.

The matter is referred to you because important policy is involved and I would be pleased to have your direction.

Mr Harris


J. A. G. Reaney
Director

my own view is that if
the Indians feel they have legal grounds to contest a ruling
of the Dept of Justice, we should authorize them
to use their monies for this purpose. Only Court
of Justice render final judgment. I would therefore
recommend that you authorize them to use
their monies to take legal proceedings, even
if it is against a Crown Dept.

approved

H. G. R. July 16/52

J. A. G. Reaney
31-5-52

000674

DEPARTMENT OF MINES AND RESOURCES

Indian Affairs Branch

NOTE: This slip to be used for passing correspondence when the main file is charged out or is not required, and must not be removed but will be attached to the main file as soon as possible.

Records Service Division

Slip No. 2044

Indian Affairs File No. 0/127-1-2

Subject of File

MAIN FILE ON CHARGE TO D/A

REFERENCE				DISPOSAL			
REFERRED TO	BY	REMARKS	DATE	PA OR BF	BY	DATE	FOR RECORDS USE
Secy CR18		11223	4/7/52	PA	697	74-7-52	
		see letter of July 3					

Note: If action cannot be taken without the file, please make statement to that effect and return paper to Records Division.

000675

IN REPLY REFER TO:



UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON 25, D. C.

D:WZ

Secy.

July 2, 1952

Mr. T. R. L. MacInnes
Department of Citizenship and Immigration
Indian Affairs Branch
Ottawa, Ontario
Canada

Dear Mr. MacInnes:

This refers to my letter of June 24, concerning the immigration bill, H. R. 5678, then pending before the President for signature. No doubt, you have by now read in the press that the bill is law, the Congress having overridden the President's veto.

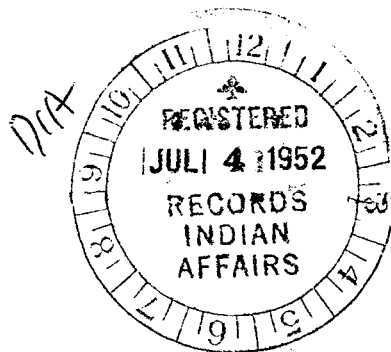
The new Section 289, affecting American Indians born in Canada, of course, is now effective. As I said in my earlier letter, it is my feeling that the blood requirement contained in this section may create some difficulty, particularly for Indians residing on the New York-Ontario border, and perhaps in time some amendment may be needed.

Sometime at your convenience, I should be interested in having your reaction to this new section and its possible effect on the border Indians.

With all good wishes,

Sincerely yours,

William J. Zimmerman
Associate Director



O/127-1-2 (Secy.)

Ottawa, July 3, 1952.

William Zimmerman, Jr., Esq.,
Associate Director,
Bureau of Land Management,
Department of the Interior,
Washington 25, D.C.,
U. S. A.

Dear Mr. Zimmerman:

This will acknowledge your letter of June 24th addressed to Mr. MacInnes.

You will be sorry to know that Mr. MacInnes passed away on May 20th following an operation. He had not been well for some months. I know he was looking forward to calling upon you last winter when he planned to go south for an extended vacation and intended to spend a few days in Washington.

Mr. MacInnes was regarded as an authority on Canadian Indians and Indian administration, and his passing is a real loss to the department and the Indians of Canada on whose behalf he served so well and so long.

Thank you very much for bringing to our attention the provision concerning border crossings by Indians contained in the new Immigration and Naturalization Code, which I understand from press reports has now become law. It is not known what effect the blood requirement may have upon Indians passing the border. One group who will no doubt be affected are women of non-Indian status who have married Indians and for the purposes of our Act are deemed to be of Indian status. I imagine much will depend upon the practice adopted by the Immigration Service in administering the provision. In the past they have relied, with some exceptions, upon the definition of Indian contained in our Indian Act.

I am enclosing a copy of the new Indian Act which came into force September 4th, 1951. I believe Mr. MacInnes may have forwarded a copy to you last fall.

2

If you should come to Ottawa at any time in the future, I should be very pleased to have you visit the office.

Yours sincerely,

W. J. ...

Director.

CIF/MD

627

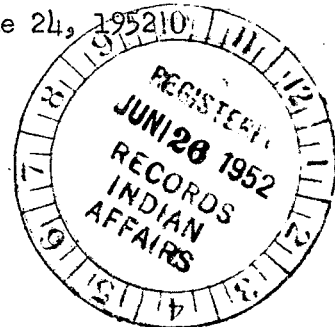


03483
UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON 25, D. C.

IN REPLY REFER TO:

D:WZ

June 24, 1952



See
Mr. T. R. L. MacInnes
Department of Citizenship and Immigration
Indian Affairs Branch
Ottawa, Ontario
Canada

Dear Mr. MacInnes:

Passed over President's veto.
You may have seen references to the new immigration and naturalization code which has just been passed by the Congress. Whether or not the President will sign it, no one seems to know. In all the controversy about it, no public reference seems to have been made to the proposed section 289, which now reads as follows:

"American Indians born in Canada.
Sec. 289. Nothing in this title shall be construed to affect the right of American Indians born in Canada to pass the borders of the United States, but such right shall extend only to persons who possess at least 50 per centum of blood of the American Indian race."

Jay Treaty?
I am not sure how much effect the blood requirement will have. I should think it might raise a serious problem on the border between New York and Ontario. In any event, the section looks to me like a modification of the Webster-Ashburton treaty, presumably made without consulting Canada. For your convenience, I quote also the language of section 226a, of the existing Code as enacted in 1928:

"226a. American Indians born in Canada; right to cross Canadian border.
This chapter shall not be construed to apply to the right of American Indians born in Canada to pass the borders of the United States: Provided, That this right shall not extend to persons whose membership in Indian tribes or families is created by adoption."

I see no chance of coming to Canada in the near future, but I hope you will stop in to see me whenever you are in Washington.

Sincerely yours,

William Zimmerman Jr.
Associate Director

000679

*NOTED
26.6.52
B. G.*

0070

0/127-1-2
(Secy.)

JUN 17 AM 9:17

P.A. 12/6/52

, June 18, 1952.

Mrs. Helen Sharpe,
263 Simcoe St. S.,
Oshawa, Ont.

Dear Mrs. Sharpe:

Your letter of June 1 to His Excellency the Governor General, requesting information about papers of identification so that you may visit the United States, has been referred to this Branch.

It is understood that you are married to a non-Indian. In these circumstances it would not be possible for the Superintendent to give you a letter of identification indicating that you are of Indian status. The Superintendent of the Tyendinaga Agency, Mr. D. R. Cassie, is being asked, however, to give you any information that he may be in a position to give regarding your band membership prior to your marriage. Such information might be sufficient to establish a racial origin for the purpose you have in mind.

I trust that this will be of help to you.

Yours truly,

CIF/LD

E.F.
for Secretary.

0/127-1-2 (Secy.)

, June 16, 1952.

D. R. Cassie, Esq.,
Supt., Indian Agency,
Deseronto, Ont.

Enclosed is a copy of a letter from Mrs. Helen Sharpe, 263 Simcoe St. S., Oshawa, Ontario, who claims to be the daughter of Indian parents and is now the wife of a non-Indian.

It will be noted that Mrs. Sharpe states that she wrote to you about a matter of identification. There would appear to be no objection to advising Mrs. Sharpe that according to the Agency records she was a member (if that is actually the case) of the Mohawks Bay of Quinte Band of Indians prior to her marriage to a non-Indian (presumably Mr. Sharpe).

It is true that an Indian woman who marries a non-Indian is no longer an Indian within the meaning of the Indian Act. Whether such a person would be a North American Indian born in Canada for the purposes of the United States Immigration laws would, of course, be a matter for the Immigration authorities of that country to determine.

For your information, Section 114.6 of Title 8 of the Code of Federal Regulations (United States) reads as follows:

"Canadian-born American Indians; exemption from immigration laws. American Indians born in Canada shall be permitted to enter the United States without inspection under the immigration laws. This right shall not extend to persons whose membership in Indian tribes or families is created by adoption."

According to our understanding, the application of the regulation under the United States Immigration Service practice is generally upon a racial rather than upon a political ground.

CIF/MD


for Secretary.

000681



CANADA

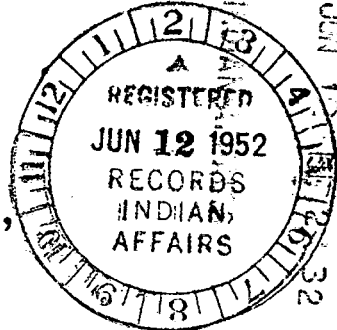
DEPARTMENT OF CITIZENSHIP AND IMMIGRATION
CANADIAN CITIZENSHIP REGISTRATION BRANCH

IN YOUR REPLY PLEASE REFER TO **General file.**
CITIZENSHIP FILE NUMBER.....

DO NOT WRITE ON MORE THAN ONE
SUBJECT IN ANY ONE LETTER

Ottawa, June 10, 1952.

E. Acland, Esq.,
Administrative Officer,
Indian Affairs Branch,
Dept. Citizenship and Immigration,
Ottawa, Ontario.



55517

Dear Sir:

The Department of External Affairs has sent to our Branch the attached letter of June 1, 1952, addressed to the Governor General by Mrs. Helen Sharpe of 263 Simcoe Street, South, Oshawa, Ontario, who is the daughter of Indian parents and is now the wife of a non-Indian.

In so far as the Citizenship Law is concerned, Mrs. Sharpe is a natural-born Canadian citizen within the meaning of Section 4 (a) of the Canadian Citizenship Act and from a Citizenship Act point of view I would think that there would be nothing to prevent her from filing with this Branch an application for a certificate of proof of Canadian citizenship in accordance with the provisions of Section 34 (1)(i) of the Act.

There may, however, be certain factors with respect to the Indian birth of Mrs. Sharpe of which I am not aware and regarding which you might wish to write to her. Therefore, I have not replied to her letter and I suggest that you might wish to communicate with her and advise her with respect to a solution of her problem. In so far as we are concerned, there would be no objection to the filing of an application for a certificate of proof of Canadian citizenship on the enclosed form of petition, the fee for which is one dollar payable to the Receiver-General of Canada.

Yours sincerely,

J. E. DUGGAN
Registrar of Canadian Citizenship.

Form J



CANADA

THE CANADIAN CITIZENSHIP ACT

PETITION FOR A CERTIFICATE OF PROOF
OF CANADIAN CITIZENSHIP BY
A CANADIAN CITIZEN

To the Minister of Citizenship and Immigration:

The Petition of.....
of the.....of.....in
the County of....., in the Province of.....
respectfully sheweth:

1. My name in full is.....
(Surname) (BLOCK LETTERS) (Christian Name(s))
2. My occupation is.....
3. My address in full is.....
4. I was born on the.....day of.....19.....
at.....of.....
in.....

5. I am a Canadian Citizen:

- (a) by birth in Canada;
- (b) by birth outside Canada;
- (c) by residence in Canada prior to the 1st January, 1947;
- (d) by naturalization in Canada;

On the following grounds:

.....
.....
.....
.....

6. My parents were ^{subjects}_{citizens} of.....

7. I came to Canada from*.....
and arrived at the port of.....on the.....
day of.....19..... on the vessel.....
or by the.....Railway.

* If the Petitioner was born in Canada he is not required to complete paragraphs 7 and 8 (b).

FORM J

8. (a) My name above set out is that under which I have been known at all times.

(b) I came to the Dominion of Canada under the name of.....

.....and I am now known under the name above set forth.

9. I am.....married. My ^{wife's}
husband's name is.....

She
He was born at.....

She
He now resides at.....

Place and date of marriage.....

10. I have.....children under the age of twenty-one years and their names, residences and dates and places of birth are as follows:

(1).....resides at.....
born.....at.....

(2).....resides at.....
born.....at.....

(3).....resides at.....
born.....at.....

(4).....resides at.....
born.....at.....

(5).....resides at.....
born.....at.....

(6).....resides at.....
born.....at.....

(7).....resides at.....
born.....at.....

FORM J

11. Your petitioner, therefore, humbly prays that a certificate of citizenship be issued to him.

12. The following are correct particulars of my description for endorsement on the certificate of citizenship:

Age.....years. Height.....feet.....inches

ColourComplexion

Colour of eyes.....Colour of hair.....

Visible distinguishing marks.....

That the statements made in the said petition are true in substance and in fact.

SWORN before me at the.....

of.....

in the County of

and Province of.....

this.....day of.....

A.D. 19.....

.....
Petitioner's Signature

.....
Notary Public
Commissioner
Justice of the Peace.

Office of the
Secretary to the Governor-General

This letter has been acknowledged

Sunday June 1/53
263 Service St S

Oshawa Ont.

Citizenship	

His Excellency.

The Governor General.

Dear Sir

I am an all Canadian woman. Born in Kleseronto Ont. Can. of Six Nation Indian Parents. My Father's name was John Day Claus. and my Mother's name Harriett Janet (Maracle) Claus. and in later years I married an English man. I wanted to go to the USA to join my sister

000686

after much questioning
that his mother was ~~an~~
~~an~~ Mohawk Indian girl
of the Six Nations. they told
him to tell me to get the
necessary papers to prove my
Nationality and that would
be all he would need
would you please pass this
letter to the right Channel
or tell me what I must do to
get the necessary papers to
go to the States, And again
let me mention of the same
Case as my own, was settled
in Court where an Indian
girl married a white man

she advised me to write to
the Indian Agent Mr. Cassie
at Kesseronto for a (visa) or
a paper of some sort to
prove my nationality at
the Canadian USA Border.
I did so he wrote me saying
I could not get one as since
I had married an English
man I come under the white
law. Well a short time
later my son also wanted
to go to Buffalo N.Y. He
went to the American Consul
in Toronto Can. He told them

And it was proved that
no marriage of any kind
could change a nationality
or the rights of an Indian girl

Hope to hear from you
at your Earliest opportunity

I am

Mrs Helen Sharpe
263 Semcoe st S

Ashawa Ont

ES:6 MR Can

File 6/12/1-1-2 (1-1)

Ottawa, May 31, 1952.

MEMORANDUM TO THE DEPUTY MINISTER

On May 5, 1952, the Saint Regis Indian Council adopted the following resolution:-

"On the motion of Dave Benedict and Richard Seymour Council reaffirms Resolution No. 6, April 7, 1952, in voting \$2000.00 from St. Regis Band Funds to defray legal costs to determine why the text of Article Three of the Treaty of Amity, Commerce and Navigation, commonly known as the Jay Treaty, relating to the passing or repassing of Indians with their own property needs and effect of whatever nature has not been honoured by the Canadian Government and more specifically under the Canada Customs Act and to further assure that the Canadian Government will in future undertake to see that its related Government Departments will not infringe on the rights of the Indians as guaranteed in the above Treaty thereby permitting in accordance with the said Treaty a disposition favourable to friendship and good neighbourhood."

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A delegation of Indians from St. Regis, including Chief Peters, called at the Branch on November 26, 1951, with respect to customs seizures generally. They intimated that they were considering engaging counsel to look into the whole customs matter. They asked for historical information on the Jay Treaty and the Treaty of Chent, which was forwarded to them. They were referred to the

000690

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Department of National Revenue, which is the administering authority for customs.

On February 29, 1952, Mr. John A.G. MacDonald, Barrister, Cornwall, Ontario, wrote to the Department to the effect that he had been retained by certain members of the Saint Regis Band to inquire into and determine the legality of the imposition of duties on goods and articles purchased in the United States for their own personal use. He wanted to know if funds were provided by Parliament for litigation purposes and whether Band funds could be used for such purposes. He was advised that no funds are provided by Parliament for such purposes, and with regard to payment of Band funds, Section 64 of the Indian Act was drawn to his attention.

There is no record of the question of rights of Indians to import goods into Canada free of duty under the provisions of Article III of the Jay Treaty having been decided in the courts in Canada. In the United States, however, the courts found against a Canadian Indian bringing goods into that country. The person involved was Mrs. Garrow of the Saint Regis Indian Reserve. The collector at the Port of Hogsburg, New York, imposed a duty under the Tariff Act of 1930 on baskets which Mrs. Garrow, a member of the Saint Regis Band, brought into the United States (December, 1934). Mrs. Garrow appealed to the United States Customs Court. This Court sustained her appeal, and the amount of duty paid by her was refunded. The case was carried by the United States authorities to the Court of Customs and Patent Appeals, which reversed the decision of the Customs Court.

The Court of Customs and Patent Appeals took the position that the Jay Treaty was in effect abrogated by the War of 1812 and that the Treaty of Ghent was held not to have been a self-executing treaty but dependent on legislative enactment, and that failure of Congress to properly legislate in accordance with the provisions of the Treaty renders the merchandise of Indians entering the United States dutiable. An appeal to the Supreme Court of the United States was denied.

Whether the Saint Regis Band of Indians intend to engage the services of counsel to investigate the whole matter and make a report to them indicating what their rights appear to be, or whether it is intended to bring a test case before the courts for determination, is not clear.

/3

In any event, while Sections 64 (j) and 66 (1) of the Indian Act give to the Minister the discretionary powers in the matter of authorizing or rejecting requests for expenditures such as the one asked for by the Saint Regis Band of Indians in their resolution of May 5, 1952, it is felt that to approve it would be to establish an important precedent. Conceivably, Indians across the country would feel justified in asking that their funds be used in a similar manner for purposes not so readily justifiable. There is the further consideration that we would be assisting the Indians in contesting the regulations or statutes of another Government Department.

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The matter is referred to you because important policy is involved and I would be pleased to have your direction.



Director



AL/ja



PLEASE QUOTE

FILE... 0/127-1-2
1/18-31-2

(T-1)

DEPARTMENT OF CITIZENSHIP AND IMMIGRATION
INDIAN AFFAIRS BRANCH

Ottawa
May 16, 1952.


I

MEMORANDUM TO THE DIRECTOR

Your attention is directed to Mr. Fairholm's memorandum hereunder concerning an expenditure of \$2,000.00 from Saint Regis Band funds to defray legal costs to ascertain the rights of Indians under the Jay Treaty.

Sections 64 (j) and 66 (1) of the Indian Act give to the Minister the discretionary powers in the matter of authorizing or rejecting requests for such expenditures. It is felt by this Service that the decision as to whether or not this matter should be proceeded with at present involves policy at a higher level.

Your direction in the matter is requested before preparing the necessary submission to the Minister.


Acting Superintendent,
Reserves and Trusts Division.

II
12
P.2.

In view of the resolution of the Band Council it would be advisable to submit the matter to the deputy minister for direction.



0/127-1-2

1/18-31-2

(T-1)


May 16, 1952.

MEMORANDUM TO THE DIRECTOR

Your attention is directed to Mr. Fairholm's memorandum hereunder concerning an expenditure of \$2,000.00 from Saint Regis Band funds to defray legal costs to ascertain the rights of Indians under the Jay Treaty.

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Acting Superintendent,
Reserves and Trusts Division.


AL/ja



CANADA

PLEASE QUOTE

FILE...0/127-1-2
(Secy.)
1/18-31-2

DEPARTMENT OF CITIZENSHIP AND IMMIGRATION

INDIAN AFFAIRS BRANCH

Ottawa, May 9, 1952.

MEMORANDUM TO T.1

As requested, herewith comments regarding resolution of the St. Regis Band Council requesting \$2,000 from Band Funds to defray legal costs to ascertain the rights of Indians under the Jay Treaty to import goods into Canada from the United States, quoted in the Superintendent's letter of May 6.

Indians have claimed from time to time that they have certain rights under Article III of the Jay Treaty, 1794, to pass the boundary between Canada and the United States with their own proper goods and effects without paying duty. As a result of representations received from Mr. Andrew Paull, President, North American Indian Brotherhood, Justice was asked as to whether the Indians have any rights under the Treaty with respect to importation of goods into Canada from the United States free of duty. An opinion given June 1, 1951, was to the effect that Indians passing or repassing with their own proper goods and effects of whatever nature need pay no duty. Upon reviewing the opinion upon a reference by the Department of National Revenue, another opinion was given to that Department to the effect that a recent amendment to the Income Tax Act nullified the exemption in question. Neither opinion has been made known to the Indians by this department. A draft letter to Mr. Paull advising him of the opinion was not sent by the Minister, and in fact any further answer has been held up.

A delegation of Indians from St. Regis, including Chief Peters, called at the Branch on November 26, 1951, with respect to customs seizures generally. They intimated that they were considering engaging counsel to look into the whole customs matter. They asked for historical information on the Jay Treaty and the Treaty of Ghent, which was forwarded to them. They were referred to the Department of National Revenue, which is the administering authority for customs.

On February 29, Mr. John A. G. MacDonald, Barrister, Cornwall, wrote to the department to the effect that he had been retained by certain members of the St. Regis Band to inquire into and determine

the legality of the imposition of duties on goods and articles purchased in the United States for their own personal use. He wanted to know if funds were provided by Parliament for litigation purposes and whether band funds could be used for such purposes. He was advised that no funds are provided by Parliament for such purposes, and with regard to payment of band funds, Section 64 of the Indian Act was drawn to his attention (file 1/18-31-2).

There is no record of the question of rights of Indians to import goods into Canada free of duty under the provisions of Article III of the Jay Treaty having been decided in the courts in Canada. In the United States, however, the courts have found against a Canadian Indian bringing goods into the United States. The person involved was Mrs. Garrow of the St. Regis Reserve. This is referred to briefly in memorandum to the Director dated November 29 hereunder, and also in letter dated December 5, 1951, from Mr. Edwin E. Ferguson, Chief Counsel, United States Bureau of Indian Affairs.

There does not appear to be anything on file to indicate just what action the Indians intend to take. Whether they intend to engage the services of counsel to investigate the whole matter and make a report to them indicating what their rights appear to be, or whether it is intended to bring a test case before the courts for determination, is not clear. Probably the only way the claims of the Indians can be determined with any degree of finality is to have the courts rule on the question in a specific case.

In view of the fact that the Deputy Minister of Justice has given^{an} opinion to the effect that Section 49 of Chapter 25, Statutes of 1949, Second Edition, appears to nullify the exemption which the provision of the Jay Treaty purports to give to Indians, perhaps it would be advisable that the St. Regis Indians should be made aware of this opinion before pursuing the matter further. The Band Council may then wish to reconsider the advisability of engaging counsel to look into the matter. Before the purport of the latest opinion of the Deputy Minister as given to National Revenue is communicated to the Indians, I believe it would be advisable to bring it to the attention of the Director, who may wish to clear it with the Deputy Minister or Minister.



C. I. Fairholm.

0/127-1-2
(Secy.)
1/18-31-2

, May 9, 1952.

MEMORANDUM TO T 1

As requested, herewith comments regarding resolution of the St. Regis Band Council requesting \$2,000 from Band Funds to defray legal costs to ascertain the rights of Indians under the Jay Treaty to import goods into Canada from the United States, quoted in the Superintendent's letter of May 6.

Indians have claimed from time to time that they have certain rights under Article III of the Jay Treaty, 1794, to pass the boundary between Canada and the United States with their own proper goods and effects without paying duty. As a result of representations received from Mr. Andrew Paull, President, North American Indian Brotherhood, Justice was asked as to whether the Indians have any rights under the Treaty with respect to importation of goods into Canada from the United States free of duty. An opinion given June 1, 1951, was to the effect that Indians passing or repassing with their own proper goods and effects of whatever nature need pay no duty. Upon reviewing the opinion upon a reference by the Department of National Revenue, another opinion was given to that Department to the effect that a recent amendment to the Income Tax Act nullified the exemption in question. Neither opinion has been made known to the Indians by this department. A draft letter to Mr. Paull advising him of the opinion was not sent by the Minister, and in fact any further answer has been held up.

A delegation of Indians from St. Regis, including Chief Peters, called at the Branch on November 26, 1951, with respect to customs seizures generally. They intimated that they were considering engaging counsel to look into the whole customs matter. They asked for historical information on the Jay Treaty and the Treaty of Ghent, which was forwarded to them. They were referred to the Department of National Revenue, which is the administering authority for customs.

On February 29, Mr. John A. G. MacDonald, Barrister, Cornwall, wrote to the department to the effect that he had been retained by certain members of the St. Regis Band to inquire into and determine

the legality of the imposition of duties on goods and articles purchased in the United States for their own personal use. He wanted to know if funds were provided by Parliament for litigation purposes and whether band funds could be used for such purposes. He was advised that no funds are provided by Parliament for such purposes, and with regard to payment of band funds, Section 64 of the Indian Act was drawn to his attention (file 1/18-31-2).

There is no record of the question of rights of Indians to import goods into Canada free of duty under the provisions of Article III of the Jay Treaty having been decided in the courts in Canada. In the United States, however, the courts have found against a Canadian Indian bringing goods into the United States. The person involved was Mrs. Garrow of the St. Regis Reserve. This is referred to briefly in memorandum to the Director dated November 29 hereunder, and also in letter dated December 5, 1951, from Mr. Edwin E. Ferguson, Chief Counsel, United States Bureau of Indian Affairs.

There does not appear to be anything on file to indicate just what action the Indians intend to take. Whether they intend to engage the services of counsel to investigate the whole matter and make a report to them indicating what their rights appear to be, or whether it is intended to bring a test case before the courts for determination, is not clear. Probably the only way the claims of the Indians can be determined with any degree of finality is to have the courts rule on the question in a specific case.

In view of the fact that the Deputy Minister of Justice has given opinion to the effect that Section 49 of Chapter 25, Statutes of 1949, Second Edition, appears to nullify the exemption which the provision of the Jay Treaty purports to give to Indians, perhaps it would be advisable that the St. Regis Indians should be made aware of this opinion before pursuing the matter further. The Band Council may then wish to reconsider the advisability of engaging counsel to look into the matter. Before the purport of the latest opinion of the Deputy Minister as given to National Revenue is communicated to the Indians, I believe it would be advisable to bring it to the attention of the Director, who may wish to clear it with the Deputy Minister or Minister.

FIELD SERVICE

69353



CANADA

PLEASE QUOTE

FILE 33/1-9

DEPARTMENT OF CITIZENSHIP AND IMMIGRATION

1952 MAY 8 AM 8:58

INDIAN AFFAIRS BRANCH

INDIAN AFFAIRS

P. O. Box 987,
Cornwall, Ontario,
May 6th, 1952.


Indian Affairs Branch, Ottawa, Ontario.

RE: Resolution No. 1,
St. Regis Council,
May 5th, 1952.

With reference to your letter of April 26th your file O/127-1-2 (T.1) referring to Resolution No. 6 of the Council meeting of April 7th last, please be advised that the following resolution was passed at the Council meeting held on the fifth instant.

"On the motion of Dave Benedict and Richard Seymour Council reaffirms Resolution No. 6, April 7, 1952, in voting \$2000.00 from St. Regis Band Funds to defray legal costs to determine why the text of Article Three of the Treaty of Amity, Commerce and Navigation, commonly known as the Jay Treaty, relating to the passing or repassing of Indians with their own property needs and effect of whatever nature has not been honoured by the Canadian Government and more specifically under the Canada Customs Act and to further assure that the Canadian Government will in future undertake to see that its related Government Departments will not infringe on the rights of the Indians as guaranteed in the above Treaty thereby permitting in accordance with the said Treaty a disposition favourable to friendship and good neighbourhood"

The above resolution was passed without a dissenting vote. It is believed that the above resolution sets out very well the intention of the Band Council insofar as money voted under Resolution No. 6 of the meeting of April 7 last is concerned. A reference to Departmental file quoted above along with your file O/126-7-2 Secy. will, I believe, give you all the information you desire concerning various complaints by the Indians on seizures made under the Canada Customs Act and which the Indians maintain their exemption from this Act by virtue of the Jay Treaty.


T. L. Bonnah,
Superintendent,
St. Regis Indian Agency.

000699

0/127-1-2
(T-1)

April 26, 1952.


T.L. Bonnahe, Esq.,
Indian Superintendent,
Post Office Box 987,
CORNWALL,
Ontario.

Re: Resolution No. 6, Saint Regis Indian Council
Meeting of April 7, 1952.

Receipt is acknowledged of your letter dated April 10, 1952, your file 33/1-9, reporting on the above and attaching resolution of the Band dated April 7th. Particular reference is made to the statement - "\$2000.00 - Jay Treaty".

Before submitting the matter of the expenditure to the Minister for his decision, we would like a resolution in more specific terms so that we may know and advise the Minister exactly what purpose the Indians have in mind in retaining counsel.

The resolution as submitted is not satisfactory and the matter is in abeyance until we hear further from you in this regard.



Acting Superintendent,
Reserves and Trusts Division.



AL/ja

FIELD SERVICE

54372



CANADA

0/127-1-2
PLEASE QUOTE

FILE 33/1-9

DEPARTMENT OF CITIZENSHIP AND IMMIGRATION

1952 APR 16 AM 10:58 INDIAN AFFAIRS BRANCH

TP
Seef
INDIAN AFFAIRS

P. O. Box 987,
Cornwall, Ontario,
April 10th, 1952.

Indian Affairs Branch, Ottawa, Ontario.

RE: Resolution No. 6,
St. Regis Council,
April 7th, 1952.

The above resolution deals with the approval of Council to an expenditure in the amount of \$2000.00 to defray legal costs in connection with the Jay Treaty. Your office is quite familiar with this matter and correspondence has already been forwarded to you outlining the interests of the Indians in this matter. It is, I believe, the intention of the Indians to take this to the Supreme Court of Canada if necessary. It is, however, unfortunate that since the Department supplies legal assistance for the Indians it should be necessary for them to vote band funds to pay fees of a private lawyer.

T. L. Bonnah
T. L. Bonnah,
Superintendent,
St. Regis Indian Agency.

0/127-1-2

33/3-6

Tf

000

ORIGINAL

File 16083-116

P. O. Box 987,
Cornwall, Ontario.
April 10th, 1952.

Indian Affairs Branch, Ottawa, Ontario.

RE: Minutes St. Regis Council
April 7th, 1952.

In connection with the above please find form I.A.514
signed by the Chief and Councillors in connection with the
expenditures from Band Funds as noted under resolution Nos. 1,
2 and 6.

Sgd. T. L. Bonnah,
Superintendent,
St. Regis Indian Agency.

ST. REGIS

Indian Reserve,

COPY

Made on

April 7th, 1952

We, the undersigned, Chief and Councillors of the

St. Regis Band of Indians owning the Reserve situated

at St. Regis, in the St. Regis

Indian Agency, in the Province of Quebec

at a council summoned for the purpose, according to the rules of the

Band, and held on the said Reserve, this 7th day

of April, A.D. 1952, in the presence of the Indian

Agent for the said Reserve, representing thereat the Minister of

Mines and Resources for the Dominion of Canada;

Do hereby for ourselves, and on behalf of the Indian owners of
the said Reserve, request that a sum not exceeding Two Thousand Three

hundred & Eighty Dollars & Seven cents,
Dollars, be paid out of money standing

to the credit of this Band, for the purpose of loan to Mitchell Peters

in the amount of \$200.00 to purchase Louis Smoke's share of Drummond Is.

\$180.07 for repairs to Band Scow.

\$2000.00 - Jay Treaty

Signed and sealed in the

presence of

Indian Agent

John J. Peters, Chief.

Richard J. Peters, H. M.

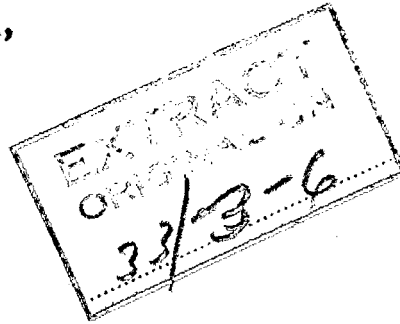
Michael J. Peters, H. M.

Frank J. Peters, H. M.

David J. Peters, H. M.

0/127-1-2

St. Regis Council,
April 7th, 1952.



x

x

x

- 6 -

On the motion of Richard Seymour and Dave Benedict Council
authorizes expenditure from Band Funds in the amount of \$2000.00
to defray legal and Court costs in connection with Jay Treaty.
Council.

x

x

x

51887

APR 10 PM 2:47

ST. REGIS INDIAN AGENCY

Sgd. T. L. Bonnah,
Superintendent,
St. Regis Indian Agency.

COPY

62281
P.A. 26/4/52

1/18-31-2 (Secy.)
0/127-1-2

1952 APR 28 AM 9:11 Ottawa, March 5, 1952.

INDIAN AFFAIRS

John A. G. MacDonald, Esq.,
Barrister and Solicitor,
Notary Public,
The Orange Block,
102 Pitt Street,
Cornwall, Ontario.

Dear Mr. MacDonald:

This will acknowledge your letter of February 29th, in which you advise that you have been retained by certain members of the St. Regis Band of Indians to inquire into and determine the legality of the imposition of duties on goods and articles purchased in the United States for their own personal use.

In reply to your questions I would advise as follows:

1. There is nothing in the Indian Act to prevent Indians from taking action to have their rights adjudicated in the Exchequer Court of Canada in the same manner as other Canadian citizens.

2. There are no funds provided by Parliament to assist Indians to defray costs incurred in litigation. As to payment of costs of litigation from Band Funds, I would refer you to Section 64 of the enclosed copy of the Indian Act, which provides as follows:

"64. With the consent of the council of a band, the Minister may authorize and direct the expenditure of capital moneys of the band

- (a).....
- (b).....
- (c)..... etc.
- (j) for any other purpose that in the opinion of the Minister

is for the benefit of the band".

It is considered that this authority will permit payments of this nature from Band Funds when a resolution has been passed by the Council of a Band and when the Minister has authorized and directed expenditures of this nature.

Yours sincerely,
(Signed)
Director.

000705

1/18-31-2

0/127-1-2

Mr. A. G. MacDonald
Barrister and Solicitor
Notary Public

The Orange Block
102 Pitt Street
Cornwall, Ontario

29th February, 1952.

The Department of Indian Affairs,
Parliament Buildings,
OTTAWA, Ontario.

Dear Sirs,

Re: Customs Duties Levied on certain articles
purchased by members of the Akwesasne Branch
in the St. Regis Indian Reservation.

I have been retained by a duly authorized delegation of the above mentioned Branch to inquire into and determine the legality of the imposition of duties on goods and articles purchased by the members of the above mentioned Branch in the United States for their own personal use.

At the present moment there are a number of articles under seizure by the R.C.M.P. and I understand that instructions issued to the R.C.M.P. are to the effect that these duties must be paid forthwith or else the goods under seizure will be sold.

I further understand that the Customs and Excise Branch of the Department of National Revenue has obtained a legal opinion from the Department of Justice to the effect that the imposition of customs duties is quite legal, and that the Jay Treaty no longer has any legal validity.

The Indians wish me to investigate their status and to furnish them with an opinion as to the validity of the Jay Treaty. If the opinion should be that the Jay Treaty is still valid they would like to obtain a Court ruling for the whole question is a very important one to all the Indians in the St. Regis Indian Reservation.

There are several questions which I would like to ask your Department, and they are as follows:-

1. Since the Indians on the Reservation are wards of the Government is it permissible for them to have their rights adjudicated in the Exchequer Court of Canada?
2. Is there any fund set aside upon which the Indians can draw for litigation purposes? Can the Band Fund be used for this purpose?

I should be glad to hear your comments in regard to the above two questions, and also to hear any other comments you wish to make.

Yours very truly,

(Signed)

JOHN A.G. MacDONALD.

(See Mr. Cory's memo of Feb. 7 as to the law with respect to payment from band funds, on file 0/121-1-17)
(Sgd) C.I.F.

Copy for Indian Affairs Branch

0/127-1-2 (Secy.)
1/18-31-2

BEST COPY AVAILABLE

Ottawa, February 19, 1952.

Andrew Paull, Esq.,
President,
North American Indian Brotherhood,
P. O. Box 211,
North Vancouver, B. C.

Dear Mr. Paull:

Please refer to my letter of January 11th and previous correspondence, in which I advised you that the general question of the rights of the Indians under the provisions of the Jay Treaty with respect to the importation of goods into Canada from the United States free of duty had been referred to the Law Officer of the Crown for review.

With respect to the provision in the Jay Treaty of 1794 which purports to exempt from Custom duties "their own proper goods and effects of whatever nature" of Indians, the Law Officer has advised that a provision in the Income Tax Act, namely, Section 49 of Chapter 25 of the Statutes of 1949 (2nd Session), would appear to nullify the exemption in question. Section 49 provides that no person is entitled to any exemption or immunity from any duty or tax by an Act of the Parliament of Canada unless provision for such exemption or immunity is expressly made by the Parliament of Canada.

Yours sincerely,

CIV/ND

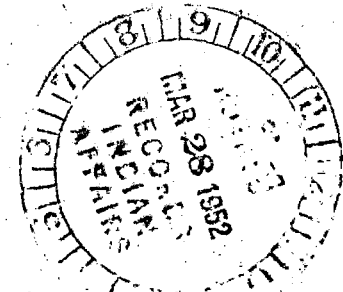
*This was not sent
at this time. - In fact
the Minister has held up
any further answer for
26-3-52*



38922

1952 MAR 28 PM 3:00

INDIAN AFFAIRS



BEST COPY AVAILABLE

Ottawa, February 19, 1952.

Andrew Paull, Esq.,
President,
North American Indian Brotherhood,
P. O. Box 211,
North Vancouver, B. C.

Dear Mr. Paull:

Please refer to my letter of January 11th and previous correspondence, in which I advised you that the general question of the rights of the Indians under the provisions of the Jay Treaty with respect to the importation of goods into Canada from the United States free of duty had been referred to the Law Officer of the Crown for review.

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Yours sincerely,

[Signature]
CIF/WD

[Signature]

67127-1-2
CONF

File CS49242

CANADA

DEPUTY MINISTER OF NATIONAL REVENUE
CUSTOMS AND EXCISE

OTTAWA 2.

January 31st, 1952.

Laval Fortier Esq., K.C.,
Deputy Minister of
Citizenship & Immigration,
Ottawa, Ont.

Dear Mr. Fortier:

RE: Customs Seizure No. 49242/28894

With further reference to your letters of July 20th and November 29th, 1951 and mine of July 26th and December 7th, I have now received from the Deputy Minister of Justice a letter of which I enclose a copy and which you will find self-explanatory. In view of Mr. Varcoe's opinion as expressed therein, I must insist on Mr. Francis and all other Indians complying with the provisions of the Customs Act with respect to goods which they import from the United States or elsewhere and paying duty thereon when any duty is imposed by the Customs Tariff.

As I appreciate that many Indians have been acting in the bona fide belief that they were exempt by law from the payment of duties, I shall try to avoid prosecution or the exaction of penalties so far as I consistently can do so.

Yours very truly,

(Sgd) D. Sim

Access to Information
Loi sur l'accès à l'information
195
decision

P Y

Department of Justice, Ottawa.

January 29th, 1952.

The Deputy Minister,
Department of National Revenue,
Customs and Excise,

Dear Sir:

RE: Exemption of Canadian Indians under
the Jay Treaty of 1794.

Since I last expressed an opinion upon the effect of the provision in the Jay Treaty of 1794 which purports to exempt from customs duties "their own proper goods and effect of whatever nature" of Indians, my attention has been called to a recent amendment to the Income Tax Act, namely Section 49 of Chapter 25 of the Statutes of 1949 (2nd Session). This provides that no person is entitled to any 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.

It appears to me that this recent amendment nullifies the exemption here in question and I beg to advise you accordingly.

Yours truly,

(sgd) F.P. Varcoe

Deputy Minister.

BEST COPY AVAILABLE

Department of Justice, Ottawa.

January 29th, 1952.

The Deputy Minister,
Department of National Revenue,
Customs and Excise.

Dear Sir:

RE: Exemption of Canadian Indians under
the Jay Treaty of 1794

Since I last expressed an opinion upon the effect of the provision in the Jay Treaty of 1794 which purports to exempt from customs duties "their own proper goods and effect of whatever nature" of Indians, my attention has been called to a recent amendment to the Income Tax Act, namely Section 49 of Chapter 25 of the Statutes of 1949 (2nd Session). This provides that no person is entitled to any 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.

It appears to me that this recent amendment nullifies the exemption here in question and I beg to advise you accordingly.

Yours truly,

(sgd) F. P. Varcoe

Deputy Minister.

1/3-9 (Secy.)
0/127-1-2

Ottawa, February 19, 1952.

A. D. P. Heeney, Esq., Q.C.,
Under-Secretary of State
for External Affairs,
Ottawa, Ontario.

Dear Mr. Heeney:

This will acknowledge your letter of February 12th, your file 148-40, enclosing a copy of a letter from our Consulate in Detroit, Michigan, concerning two specific inquiries in connection with the status of Canadian Indians residing in the United States.

With reference to the first inquiry, it may be mentioned that Mrs. Moses has written to me in regard to military service of her husband in the United States. I am enclosing a copy of my letter to her. It will be noted that she was advised that there is no record of a treaty between the United States and Canada with respect to military service of Indians in the United States or Canada, and that the Jay Treaty would not appear to have any bearing on the question. Indians would appear to be in the same position with regard to military service as any other Canadian citizen living in the United States.

As to the second inquiry regarding Mr. Roy Jacobs of the Caughnawaga Reserve, the only information available here is that in 1947 Mrs. Jacobs laid a charge against him for non-support and the local Royal Canadian Mounted Police Detachment rendered assistance to the Quebec Provincial Police in putting Mr. Jacobs under arrest. Apparently another charge has been laid against Mr. Jacobs, and it would, of course, be a matter for the Quebec Provincial Police to execute the warrant to apprehend, as the enforcement of the Criminal Code is the responsibility of the Provincial authorities. It is possible that the Police authorities did not consider that it would be advisable to institute extradition proceedings.

While I am not familiar with the grounds on which Canadian citizens may be deported from the United States, it would appear that

2.

the circumstances that would warrant deportation of a non-Indian Canadian citizen would also be applicable in the case of a Canadian Indian.

It is true that Canadian Indians may enter the United States without inspection under the immigration laws under the provisions of Section 114.6 of Title 8 of the United States Code of Federal Regulations, which reads as follows:

"Sec. 114.6 CANADIAN-BORN AMERICAN INDIANS; EXEMPTION FROM IMMIGRATION LAWS. American Indians born in Canada shall be permitted to enter the United States without inspection under the immigration laws. This right shall not extend to persons whose membership in Indian tribes or families is created by adoption."

It will be recalled that there was some correspondence with your Department regarding this matter last summer. Please refer to your letter of August 28, 1951, your file reference 10136-40.

With this exception it is suggested, for the guidance of consulate officials, that Canadian Indians residing in the United States be regarded as being in the same position as any other Canadian citizen. There is nothing in the Indian Act to prevent an Indian, who may wish to do so, from leaving Canada; no departmental consent is required. I may add that apart from their special status under the Indian Act, Indians are subject to the laws of the land, federal and provincial, in the same manner as other members of the community.

I trust that the foregoing will be of assistance to our Canadian Consulate in Detroit in dealing with these two cases.

Yours sincerely,


CIP/MD

Director.

O/127-1-2 (Secy.)
1/3-9

Ottawa, February 18, 1952.

Mrs. Betty Moses,
5604-14th St.,
Detroit 8, Michigan,
U. S. A.

Dear Mrs. Moses:

This will acknowledge your letter of February 11th, concerning military service of Indians in the United States.

I understand that you and your husband wish to make your home in Detroit, and accordingly your husband would like to know exactly what his status is with regard to military service in the United States. It may be mentioned that this is a matter that is governed by the laws of the United States. In so far as I am aware, however, there is no distinction between Canadian Indians and other Canadian citizens living in the United States with respect to military service in that country.

The Branch has no record of a treaty between the United States and Canada in regard to military service of Indians in the United States or Canada. The Jay Treaty of 1794 would not appear to have any bearing on the question, as there is no reference to military service contained in its provisions. It is regretted that the Branch has no copy of the Treaty available for distribution. It is printed, however, in S. F. Bemis's "Jay's Treaty: A Study in Commerce and Diplomacy", New York, The MacMillan Company, 1923, and no doubt a copy would be available in one of the libraries in Detroit.

I trust that the foregoing will help to clarify the matter.

Yours sincerely,


CIE/MD

original signed
Director.

This point of the eligibility of Canadian-born Indians for the draft in the United States is one which has presented quite a problem not only to ourselves, but to other Indians, Canadian-born, who are now residing here. We wish to make our home here and are, of course, unable to settle down until we find out just exactly what our status is. If you would be so kind as to clear this point up for us, we would be most grateful.

If my understanding that the Six Nations Indians are subject to the Jay Treaty is correct, I wonder if you could inform me where I could obtain a copy of same, together with amendments to the present date. If, however, the Six Nations are subject to some other Treaty, would you be good enough to so inform me, and also advise me if it is possible to obtain a copy of that Treaty and amendments thereto.

An early reply would be very much appreciated.

Very truly yours,

(Mrs.) Betty Moses

bm

4/12/77
5604-14-11
Detroit 8, Mich

February 11, 1952

The Director
Indian Affairs Branch
Department of Citizenship and
Immigration
Ottawa, Ontario



RECEIVED
FEB 14 1952
INDIAN AFFAIRS

05041

Dear Sir:

My husband is a member of the Delaware tribe of the Six Nations Indians in Canada.

At various times between 1948 and 1950 he sought and obtained employment in Buffalo, New York. In December of 1948 he was advised that he must register for the draft even though he is Indian. During the fall of 1950 he left Buffalo, New York and moved to Hamilton, Ontario. There he received a draft questionnaire from the Selective Service of the United States which he duly filled out and returned. In the spring of 1951 he moved to Detroit, Michigan and obtained employment. He was given a draft exempt card by the Selective Service authorities, stating that, as he was a North American Indian, he was not eligible for draft. During the summer of 1951 he had occasion to return to Buffalo, New York and was there summoned before the Selective Service Board as a draft evader, and informed that he was eligible for immediate military service. He produced the draft exempt card and was informed that it was of no effect. (Upon later checking this point in Michigan, I was informed that the card had been issued in error). He refused to consent to join the army and was informed that he was free to return to Canada, which he has so done.

I wrote to the Indian Affairs Office in Brantford, Ontario, in quiring about my husband's rights under the Jay Treaty (under the jurisdiction of which Treaty I believe the Six Nations fall) and received a very brief, unsatisfactory reply from Lt.-Col. Randle who merely stated that the Jay Treaty was made in 1792 and as far as he knew stated nothing about the draft laws, but merely gave Indians the right to cross freely the border between the United States and Canada.

NOTED
13/2/52
S.J.

ADMINISTRATION
BRANCH



CANADA

LEGAL DIVISION

DEPARTMENT OF CITIZENSHIP AND IMMIGRATION

WMC:SW

Ottawa,
February 6, 1952

1952 FEB 8 AM 9:22

INDIAN AFFAIRS

99741

MEMORANDUM TO MAJOR MACKAY:

Jay Treaty, 1794.

Attached hereto please find copy of a letter to the Deputy Minister from the Deputy Minister of Customs and Excise, dated the 31st ultimo, to which is attached a copy of a recent opinion from the Deputy Minister of Justice to the Deputy Minister, Department of National Revenue, Customs and Excise, which said opinion is dated the 29th idem, in connection with the above subject.

The Deputy Minister has advised me that several Indians have written to the Minister and other officials of the Department and the Branch concerning this question, and directs that the new opinion, a copy of which is attached, be communicated to them.

I have searched both the Deputy Minister's file and the Minister's file and can find only representations from Mr. Andrew Paull. I presume that you will wish to have the direction of the Deputy Minister complied with from your office.

Enc.



[Signature]
Legal Adviser.

NOTED
7/2/52
S.J.

000719

copy

File CS49242

CANADA

DEPUTY MINISTER OF NATIONAL REVENUE
CUSTOMS AND EXCISE

OTTAWA 2.

January 31st, 1952.

Laval Fortier Esq., K.C.,
Deputy Minister of
Citizenship & Immigration,
Ottawa, Ont.

Dear Mr. Fortier:

RE: Customs Seizure No. 49242/28894.

With further reference to your letters of July 20th and November 29th, 1951 and mine of July 26th and December 7th, I have now received from the Deputy Minister of Justice a letter of which I enclose a copy and which you will find self-explanatory. In view of Mr. Varcoe's opinion as expressed therein, I must insist on Mr. Francis and all other Indians complying with the provisions of the Customs Act with respect to goods which they import from the United States or elsewhere and paying duty thereon when any duty is imposed by the Customs Tariff.

As I appreciate that many Indians have been acting in the bona fide belief that they were exempt by law from the payment of duties, I shall try to avoid prosecution or the exaction of penalties so far as I consistently can do so.

Yours very truly,

(sgd)

D. Simm

ENC.

000720

Copy for Director of Indian Affairs

81606

CIF/MD
WMC/KM

1952 JAN 15 AM 10:04

OTTAWA, January 11, 1952.

See INDIAN AFFAIRS

Mr. Andrew Paull,
President,
North American Indian Brotherhood,
P.O. Box 211,
NORTH VANCOUVER, British Columbia.



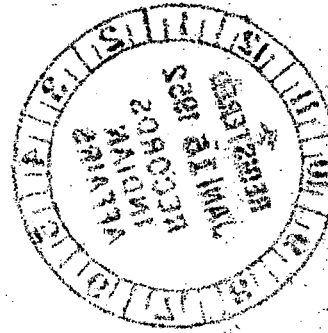
Dear Mr. Paull:

Please refer to my letter of December 1st, in reply to your letter of November 26th, regarding the payment of a \$10.00 bond at the Canadian border on cars brought by Indians returning from the United States to the Caughnawaga Indian Reserve.

On receiving your representations the Department took the matter up with the Department of National Revenue which, as you are aware, is the responsible administering authority.

That Department investigated the matter. According to information received it appears that a number of Indians have brought into Canada under bond motor cars purchased in the United States, the premium for the bond being the sum of \$10.00.

Canadians working in the United States, who are bona fide residents of Canada, are not entitled, under the above circumstances, to permits to operate these motor cars in Canada, but may only use them for direct



- 2 -

transportation from the International Boundary to their homes. Any right to otherwise use them would undoubtedly lead to serious complications.

On the general question of the Jay Treaty, the rights of the Indians thereunder are now being carefully considered by the law officer of the Crown.

Yours sincerely,

Approved as
to Legality

D. E. Harris
LEGAL ADVISER

H. E. Harris

Copy for Indian Affairs Branch

0/127-1-2 (Secy.)

BEST COPY AVAILABLE

Ottawa, January 4, 1952.

Andrew Paull, Esq.,
President,
North American Indian Brotherhood,
P. O. Box 211,
North Vancouver, B. C.

Dear Mr. Paull:

Please refer to my letter of December 1st, in reply to your letter of November 26th, regarding the payment of a \$10 bond at the Canadian border on cars brought by Indians returning from the United States to the Caughnawaga Indian Reserve.

On receiving your representations the department took the matter up with the Department of National Revenue which, as you are aware, is the responsible administering authority.

That Department investigated the matter. According to information received, it would appear that a number of Indians have brought in cars bought in the United States under Commercial Vehicle Permit under bond, which no doubt accounts for the fee of \$10 mentioned in Mr. Beauvais's telegram to you, as apparently this is the premium charged by the company for the execution of the bond.

On the general question it may be mentioned that Canadians working in the United States who are bona fide residents of Canada are not entitled to be issued with Travellers' Vehicle Permits for their cars purchased in the United States while working there. The only way by which cars purchased in these circumstances may be brought into Canada is as a direct means of transportation from the frontier to their homes, local use beyond this not being permitted.

Yours sincerely,

CIF/MB

bmus

000724

0/127-1-2 (Secy.)

BEST COPY AVAILABLE

Ottawa, January 4, 1952.

Andrew Paull, Esq.,
President,
North American Indian Brotherhood,
P. O. Box 211,
North Vancouver, B. C.

Dear Mr. Paull:

Please refer to my letter of December 1st, in reply to your letter of November 26th, regarding the payment of a \$10 bond at the Canadian border on cars brought by Indians returning from the United States to the Caughnawaga Indian Reserve.

On receiving your representations the department took the matter up with the Department of National Revenue which, as you are aware, is the responsible administering authority.

That Department investigated the matter. According to information received, it would appear that a number of Indians have brought in cars bought in the United States under Commercial Vehicle Permit under bond, which no doubt accounts for the fee of \$10 mentioned in Mr. Beauvais's telegram to you, as apparently this is the premium charged by the company for the execution of the bond.

On the general question it may be mentioned that Canadians working in the United States who are bona fide residents of Canada are not entitled to be issued with Travellers' Vehicle Permits for their cars purchased in the United States while working there. The only way by which cars purchased in these circumstances may be brought into Canada is as a direct means of transportation from the frontier to their homes, local use beyond this not being permitted.

Yours sincerely,

hucy.
CIT/ND

000725



Copy

*You may keep this
copy if you wish*

Ed.

*Noted
Well*

18-12-51

ROUTE SLIP

PASS TO:

1.

2.

3.

4.

Date

Initials



000727

NOTE: This slip to be used for passing correspondence when the main file is charged out or is not required, and must not be removed but will be attached to the main file as soon as possible.

Records Service Division

Indian Affairs File No. 9727-1-2

Subject of File.....

MAIN FILE ON CHARGE TO

[illegible]

000728

LHT/MD



CANADA

DEPARTMENT OF NATIONAL REVENUE
CUSTOMS AND EXCISE

REFER TO FILE 7613-2

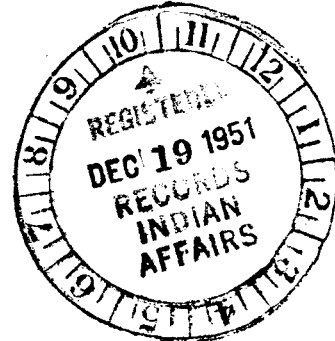
64324

1951 DEC 19 AM 8:59

Ottawa 2, December 18, 1951.

INDIAN AFFAIRS

Sacy
T. R. L. MacInnes, Esq.,
Secretary, Indian Affairs Branch,
Dept. of Citizenship and Immigration,
Ottawa, Ontario.



Dear Sir:

This will refer to your letter of the 30th November, your reference O/127-1-2, and my acknowledgment of December 6, regarding automobiles brought by Indians returning from the United States to the Caughnawaga Reserve.

The report from the Collector of Customs at Lacolle indicates that in the opinion of the R.C.M.P. most of these Indians cannot be considered as bona fide non-residents of this country. It is true that they work in the United States, but they only rent living accommodation there and their families remain on the Reserve, so that to all intents and purposes they are still residents of this country. As such they are not entitled to be issued with travellers' vehicle permits for their cars, and the only way by which the latter may be imported is as a means of transportation only from the frontier to the Reserve, local use being prohibited.

Yours truly,

L. H. Taylor
L. H. Taylor,
Secretary, Customs Division.

LHT/SM



CANADA

DEPARTMENT OF NATIONAL REVENUE
CUSTOMS AND EXCISE

REFER TO FILE 7613-2

Secy

Ottawa, (2),
December 6, 1951



T. R. L. MacInnes, Esq.,
Secretary, Indian Affairs Branch,
Department of Citizenship and Immigration,
Ottawa, Ont.

Dear Sir:

Mr. Hicklin has referred to me for reply your letter to him dated November 30, Reference 0/127-1-2 (Secy.), with respect to a communication received from Mr. A. Paull, President, North American Indian Brotherhood concerning automobiles brought by Indians returning from the United States to the Caughnawaga Reserve.

While your letter was on my desk I received a visit from Mr. Norman Saylor, K.C., of Montreal, who, I understand, is himself an Indian and who lives on the Caughnawaga Reserve. Mr. Saylor intimated to me that these difficulties have only recently arisen and that some of the men who work in the United States have been put on what might be called a black list and refused entry of their cars except under Commercial Vehicle Permit with bonds. This matter of bonding accounts for the fee of \$10.00 mentioned in Mr. Paull's telegram to you since this, undoubtedly, is the company's premium for the execution of the bond.

I am taking steps to ascertain from the Collector of Customs at Lacolle what the exact difficulty is and shall then attempt to reach a decision as to future action. The difficulty seems to be that some of these men are genuine non-residents of Canada and others are bona fide residents. The latter, of course, are not entitled to tourists' privileges in respect of their cars purchased in the United States while working there, and one of the suggestions might be to have the Indian Agent at the Reserve give us a list of the men and indicate their proper residential status. However, if I may, I will defer giving you a definite answer to your letter until I have received a report from the Collector at Lacolle.

Yours truly,

L. H. Taylor,
Secretary, Customs Division.

1-10-11 11:10 AM 11:10 AM

7 AM 9:13 AM

RECORD
INDIAN
AFFAIRS

1. The first step in the process of the investigation is the identification of the problem. This is done by the investigator who is responsible for the study. The investigator must first identify the problem that is being investigated. This is done by the investigator who is responsible for the study. The investigator must first identify the problem that is being investigated. This is done by the investigator who is responsible for the study.

Copy for Indian Affairs Branch

0/127-1-2 (Secy.)

BEST COPY AVAILABLE

Secy

Ottawa, December 1, 1951.

Andrew Paull, Esq.,
President,
North American Indian Brotherhood,
P. O. Box 211,
North Vancouver, B. C.

Dear Mr. Paull:

This will acknowledge your letter of November 26th, enclosing a telegram received by you from Mr. J. A. Beauvais, Chief Councillor of the Caughnawaga Indian Band, Quebec, with regard to the payment of a \$10 bond at the Canadian border on cars brought by Indians returning from the United States.

The matter has been referred to the appropriate authorities, and I shall communicate with you again on the subject in due course.

Yours sincerely,

H. E. Harris



53484

AM 9:13

INDIAN AFFAIRS

CLERK

1951 DEC 12

truss

T.R. 217



CANADIAN PACIFIC TELEGRAPHS

World Wide Communications

W.D. NEIL, GENERAL MANAGER, MONTREAL

NV.CP8 48/46 NL 2 EX VIA ADIRONDACK JCT QUE = CAUGHNAWAGA QUE. 25J
=MR ANDY PAULL
=PRES N A I N B NORTH VANCOUVER BC BOX 211

NOV 28 1

MINISTER'S OFFICE

CAUGHNAWAGA BOYS WHO WORK IN UNITED STATES ARE MADE TO PAY TEN
DOLLARS BOND AT CANADIAN BORDER FOR THEIR CARS ON WAY TO
CAUGHNAWAGA AND ARE RESTRICTED FROM USING CAR WHILE VISITING
CAUGHNAWAGA UNDER SURVEILLANCE OF MOUNTED POLICE PLEASE CONTACT
OTTAWA WITH PROPER MINISTER :

=J A BEAVAIS CHIEF COUNCILLOR BOX 243.

President:
LEW PAULL
P.O. Box 211
North Vancouver, B.C.

Asst. President:
F. ASSU
Campbell River, B.C.

Vice-President:
JOSEPH DELISLE, JR.
P.O. Box 11,
Caughnawaga, Que.

Treasurer:
CHIEF TELFORD ADAMS
R.R. 1,
Corunna, Ont.

Rec. Sec'y.
JOSEPH BEAUVAIS
Caughnawaga, Que.

MRS. MARGUERITE DIABO
9041 Inkster Road
Garden City, Mich.

Secretary:
CHESTER DIABO
9041 Inkster Road
Garden City, Mich.

GRAND COUNCIL NORTH AMERICAN INDIAN BROTHERHOOD

Office of President

November 26th. 1951

INDIAN AFFAIRS

DEC 6 AM 9:13

53485

CHIEF BEN E. CHRISTMAS

CHIEF THOS. GEDEON

GEO. A. CREE

EDDIE BEAUVAIS

PAUL K. DIABO

CHARLES K. CANADIAN

RAYMOND DIABO

CHIEF NELSON GREEN

JOHN C. JONES

CHIEF TOM ROY

CHIEF ROBERT MARSDEN

CHIEF THOS. FAVELL, Sr.

WALTER SANDS

JOHN B. TOOTOOSIS

JOHN SKEEBOSS

CHARLIE BLACKMAN

DANIEL W. ASSU

CHIEF ALEX. McKINNON

WM. JEFFREY

ANGUS HORNE

WM. SMITH

JAMES MARTIN

JACK HANHAWK

CHIEF STEPHEN KNOCKWOOD

CHIEF WILFRED SHAWKENCE

JAMES FRIDAY

DOMINICK ODJIG

CHIEF SOLOMON BRANT

ELIJAH LABOBONDONG

WM. MINAWASIGA

LAWRENCE PELTIER

WILLIAM AQUASH

BAZIL GREY

CHIEF ANDREW JOE

THOS. R. JONES

CHIEF ISAAC BEBAMISH

ALEX. PADGENA

CHIEF MICHEL ANTHONY

E. A. CREE

GUS MAINVILLE

HENRY RILEY

JOHN McC. POKINGFIRE

LOUISE McC. POKINGFIRE

CHIEF OMAR PETERS

CHIEF JOHN TWAIN

CHIEF GORDON SAHANATIE

CHIEF GILBERT FARIES

TOM LEFEVRE

SIMEON SCOTT

CHIEF JOHN THOMPSON

CHIEF GEORGE BARKER

Hon. W.E. Harris K.C.M.P. P.C.
Superintendent General of Indian Affairs

Ottawa Ont.

Honourable Sir:-

We were all very sorry to hear and read of your recent motor car accident, but some what consoled in the fact that it was no worse, and hope, you have now recovered from your injuries. You may be consoled to learn that in the national game of lacrosse these things often happened, but this should not happen to a Minister of the Crown.

I take the liberty to enclose a night letter received this morning from the Chief Councillor of the Indians at Caughnawaga, and as you know, many of these members are steel workers, and travel and work south of the International Boundary.

I have learned that in some instances, contracting firms in the U.S. telephone the Indian Agent at Caughnawaga, to supply the Indian steel workers.

I ask you most sincerely to speak to the proper Minister of the Government, to have this apparent discrimination against Indians stopped, as my many entries into the U.S. and back by motor car, has never brought the indignities, and they should not be treated as criminals.

I respectfully ask, that you again read the "JAY TREATY" and in that document you will see that it was agreed by the high contracting parties, that it shall at all times be free for the Indians to travel across the International Boundary, also, that they shall be free to bring their own proper goods, without impost or duty.

In the JAY TREATY it was also agreed by the parties, that no one shall in the future change these

You had in response to my communication the Jay Treaty, informed me that you had referred to the proper authorities. I hope you can still be convenient to come west, as this is one of the matters I would like to discuss with you. In future, please ask, that these imposts of tax be applied, and that Indians be allowed to enter the Jay Treaty. With warm regards

Respectfully yours

Andrew Paul
President

North American Indian

REGISTERED
DEC 8 1951

000734

MINISTER OF CITIZENSHIP AND IMMIGRATION

OTTAWA, November 28th, 1951.

TO: DEPUTY MINISTER

FOR: DIRECTOR OF INDIAN AFFAIRS

Preparation of reply for signature of..... the Minister xxx

Discussion with.....

Perusal and necessary action.....

Report.....

to the attached letter dated November 26th from Mr. Andrew Paull of Vancouver, enclosing a wire he has received from Mr. J.A. Beauvais, Chief Councillor of the Caughnawaga Reserve, stating that the Caughnawaga Indians who work in United States are made to pay \$10.00 bond at the Canadian border for their cars, and are restricted from using their cars while visiting the Reserve. Mr. Paull refers to the Jay Treaty and asks that this matter be investigated.

RB


Private Secre000735



0/127-1-2
(Secy.)

, December 19, 1951.

Edwin E. Ferguson, Esq.,
Chief Counsel,
United States Department of the Interior,
Bureau of Indian Affairs,
Washington 25, D.C., U.S.A.

Dear Mr. Ferguson:

This will acknowledge, with thanks, your
letter of December 5th, your file Chief Counsel,
18163-45-810, regarding the position of the Indians
in the United States under the Jay Treaty with
respect to Customs duties.

Yours truly,

T. R. L. MacInnes,
Secretary.

CIF, MD

PA
0/127-1-2
TREATY OF AMITY, COMMERCE AND NAVIGATION
Commonly known as the JAY TREATY

Concluded November 19, 1794; Ratification exchanged at London
October 28, 1795; Proclaimed February 29, 1796.

Article III

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. But it is understood that this article does not extend to the admission of vessels of the United States into the seaports, harbours, bays or creeks of His Majesty's said territories; nor into such parts of the rivers in His Majesty's said territories as are between the mouth thereof, and the highest port of entry from the sea, except in small vessels trading bona fide between Montreal and Quebec, under such regulations as shall be established to prevent the possibility of any frauds in this respect. Nor to the admission of British vessels from the sea into the rivers of the United States, beyond the highest ports of entry for foreign vessels from the sea. The river Mississippi shall, however, according to the treaty of peace, be entirely open to both parties; and it is further agreed, that all the ports and places on its eastern side, to whichever of the parties belonging, may freely be resorted to and used by both parties, in as ample a manner as any of the Atlantic ports or places of the United States, or any of the ports or places of His Majesty in Great Britain.

All goods and merchandize whose importation into His Majesty's said territories in America shall not be entirely prohibited, may freely, for the purposes of commerce, be carried into the same in the manner aforesaid, by the citizens of the United States, and such goods and merchandize shall be subject to no higher or other duties than would be payable by His Majesty's subjects on the importation of the same from Europe into the said territories. And in like manner all goods and merchandize whose importation into the United States shall not be wholly prohibited, may freely, for the purposes of commerce, be carried into the same, in the manner aforesaid, by His Majesty's subjects, and such goods and merchandize shall be subject to no higher or other duties than would be payable by the citizens of the United States on the importation of the same in American vessels into the Atlantic ports of the said States. And all goods not prohibited to be exported from the said territories respectively, may in like manner be carried out of the same by the two parties respectively, paying duty as aforesaid.

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 bona fide to Indians.

No higher or other tolls or rates of ferriage than what are or shall be payable by natives, shall be demanded on either side; and no duties shall be payable on any goods which shall merely be carried over any of the portages or carrying-places on either side, for the purpose of being immediately re-embarked and carried to some other place or places. But as by this stipulation it is only meant to secure to each party a free passage across the portages on both sides, it is agreed that this exemption from duty shall extend only to such goods as are carried in the usual and

2.

direct road across the portage, and are not attempted to be in any manner sold or exchanged during their passage across the same, and proper regulations may be established to prevent the possibility of any frauds in this respect.

As this article is intended to render in a great degree the local advantages of each party common to both, and thereby to promote a disposition favorable to friendship and good neighborhood, it is agreed that the respective Governments will mutually promote this amicable intercourse, by causing speedy and impartial justice to be done, and necessary protection to be extended to all who may be concerned therein.

Copied from S. F. Bemis's "Jay's Treaty: A Study in Commerce and Diplomacy", New York, The MacMillan Company, 1923.

52239

→ 1/18-31-2
0/127-1-2
(Secy.)

1951 DEC 4 PM 4:13

, December 4, 1951.

INDIAN AFFAIRS

T. L. Bonnah, Esq.,
Supt., Indian Agency,
Box 987,
Cornwall, Ontario.

This will acknowledge your letter of November 13th concerning the request of the St. Regis Band Council to have a legal adviser look into the text of the 'Treaty of 1812' between Great Britain and the United States.

There does not appear to be any record of a treaty between the United States and Great Britain in the year 1812. There was, however, a treaty following the War of 1812 known as the Treaty of Ghent, which was concluded in 1814, in which reference is made to Indians, and possibly this was in mind. Please clarify.

As you know, a delegation of Indians from St. Regis, including Chief Peters and five others, called at this office on November 26th with respect to Customs seizures generally. Mr. Benedict, who acted as spokesman for the delegation, asked for a copy of Article IX of the Treaty of Ghent. Article IX has been copied and is enclosed herewith for transmission to him. He also asked for a reference source for Article III of the Jay Treaty, which was given to him. A copy of Article III is also enclosed.

Encl. 2
CIP/LND

T. L.
T. R. L. MacInnes,
Secretary.

Treaty of Peace and Amity, between His Britannic Majesty
and The United States of America.

Signed at Ghent, The 24th December, 1814.

(Ratifications exchanged 17 February, 1815).

Article IX. The United States of America engage to put an end, immediately after the Ratification of the present Treaty, to hostilities with all the Tribes or Nations of Indians, with whom they may be at War at the time of such Ratification; and forthwith to restore to such Tribes or Nations respectively, all the Possessions, Rights, and Privileges, which they may have enjoyed, or been entitled to in 1811, previous to such hostilities; Provided always, that such Tribes or Nations shall agree to desist from all hostilities against the United States of America, their Citizens and Subjects, upon the Ratification of the present Treaty being notified to such Tribes or Nations, and shall so desist accordingly.

And His Britannic Majesty engages, on his part, to put an end, immediately after the Ratification of the present Treaty to hostilities with all the Tribes or Nations of Indians with whom he may be at War at the time of such Ratification; and forthwith to restore to such tribes or Nations, respectively, all the Possessions, Rights and Privileges, which they may have enjoyed or been entitled to in 1811, previous to such hostilities; Provided always, that such Tribes or Nations shall agree to desist from all hostilities against His Britannic Majesty, and his Subjects upon the Ratification of the present Treaty being notified to such Tribes or Nations, and shall so desist accordingly.

The Treaty of Ghent is published in "Treaties and Agreements Affecting Canada in Force between His Majesty and the United States of America, with Subsidiary Documents, 1814-1913." Ottawa, 1915. New ed. (1814-1925), 1927, published by the Department of State, Canada.

BEST COPY AVAILABLE

51605

0/127-1-2 (Secy.)

17
1951 DEC 3 PM 1:30

P.A.
3-12-51
[Signature]
Ottawa, December 1, 1951.

INDIAN AFFAIRS

Andrew Paull, Esq.,
President,
North American Indian Brotherhood,
P. O. Box 211,
North Vancouver, B. C.

Dear Mr. Paull:

This will acknowledge your letter of November 26th, enclosing a telegram received by you from Mr. J. A. Beauvais, Chief Councillor of the Caughnawaga Indian Band, Quebec, with regard to the payment of a \$10 bond at the Canadian border on cars brought by Indians returning from the United States.

The matter has been referred to the appropriate authorities, and I shall communicate with you again on the subject in due course.

Yours sincerely,

[Signature]
CLP/ED

bnul.
T.R.L.M.

MINISTER OF CITIZENSHIP AND IMMIGRATION

OTTAWA, November 28th, 1951.

TO: DEPUTY MINISTER

FOR: DIRECTOR OF INDIAN AFFAIRS

Preparation of reply for signature of the Minister. xxx

Discussion with

Perusal and necessary action.

Report

INDIAN
AFFAIRS

1951 NOV 30 AM 8:47

48765

to the attached letter dated November 26th from Mr. Andrew Paull of Vancouver, enclosing a wire he has received from Mr. J.A. Beauvais, Chief Councillor of the Caughnawaga Reserve, stating that the Caughnawaga Indians who work in United States are made to pay \$10.00 bond at the Canadian border for their cars, and are restricted from using their cars while visiting the Reserve. Mr. Paull refers to the Jay Treaty and asks that this matter be investigated.

Major MacKay:

For preparation of reply,
as requested.

W. J. R. [Signature]
for Deputy Minister.

RB



Private Secre000743

NOTED
28/11/51

BEST COPY AVAILABLE

Ottawa, November 30, 1951.

Andrew Paull, Esq.,
President,
North American Indian Brotherhood,
P. O. Box 211,
North Vancouver, B. C.

Dear Mr. Paull:

This will acknowledge your letter of November 26th, enclosing a telegram received by you from Mr. J. A. Beauvais, Chief Councillor of the Caughnawaga Indian Band, Quebec, with regard to the payment of a \$10 bond at the Canadian border on cars brought by Indians returning from the United States.

The matter has been referred to the proper authorities, and I shall communicate with you again on the subject in due course.

Yours sincerely,


CIF/MD

6mm.

1-11-2 17

0/127-1-2
(Secy.)

, November 30, 1951.

W. L. Hicklin, Esq.,
Chief, Seizures Branch,
Department of National Revenue,
Ottawa, Ontario.

Dear Mr. Hicklin:

This department has received a communication from Mr. A. Paull, President, North American Indian Brotherhood, concerning the payment of a \$10 bond on cars brought by Indians returning from the United States, which is quoted in part as follows:

"I take the liberty to enclose a night letter received this morning from the Chief Councillor of the Indians at Caughnawaga, and as you know, many of these members are steel workers, and travel and work south of the International Boundary.

"I have learned that in some instances, contracting firms in the U.S. telephone the Indian Agent at Caughnawaga, to supply the Indian steel workers.

"I ask you most sincerely to speak to the proper Minister of the Government, to have this aparent discrimination against Indians stopped, as my many entries into the U.S. and back by motor car, has nevr brought these indignities, and they should not be treated as criminals.

"I respectfully ask, that you again read the 'JAY TREATY' and in that document you will see that it was agreed by the high contracting parties, that it shall at all times be free for the Indians to travel across the International Boundary, also, that they shall be free to bring their own proper goods, without impost or duty.

"In the JAY TREATY it was also agreed by the parties, that no one shall in the future change these terms.

"You had in response to my communications on the Jay Treaty, informed me that you had referred this to the proper authorities. I

2.

hope you can still find it convenient to come west, as this is one of the important matters I would like to discuss with you. In the immediate future, please ask, that these imposts of ten dollars be not applied, and that Indians be allowed to enjoy the privileges guaranteed in the Jay Treaty."

A copy of the telegram from the Chief Councillor of the Caughnawaga Band referred to in Mr. Paull's letter is enclosed herewith.

It would be appreciated if you would give this matter your consideration and advise me at your earliest convenience.

Yours truly,

sf
CIF/MD

T. R. L. MacInnes,
Secretary.

T.R.L. 17

—> 0/127-1-2 (Secy.)
1/18-31-2

Ottawa, November 29, 1951.

D. Sim, Esq.,
Deputy Minister,
Customs and Excise Division,
Department of National Revenue,
Ottawa, Ontario.

Dear Mr. Sim:

Please refer to your letter of July 26th, in reply to my letter of July 20th, concerning the seizure of certain articles from Mr. Neil Bent of the Lower Similkameen Indian Band, B.C., and with respect to privileges of Canadian Indians under the Jay Treaty.

In the meantime, a report has been received from the Indian Superintendent in charge of the St. Regis Indian Reserve near Cornwall, Ontario, advising that the R.C.M. Police have seized the following articles, apparently for non-payment of duty, from Mr. Louis Francis, a member of the St. Regis Band:

- 1 General Electric refrigerator, Serial No. 01083225.
- 1 electric washer manufactured by Mercantile Stores Company Incorporated, Serial No. 1906, Model 100P.
- 1 second hand Ivanhoe oil burner, Model 2205B, Serial No. 6794496.

It may be mentioned that the St. Regis Indian Reserve comprises a number of islands in the St. Lawrence River and a parcel of land on the south side of the river contiguous with the boundary. Because of the geographical position of the Reserve the Indians have had close business relations with neighbouring communities in the United States for many years.

2.

It is pointed out by the Indian Superintendent, moreover, that the St. Regis Indians believe that they may bring in articles from the United States under the terms of the Jay Treaty for their own personal use but not for resale.

It is noted in your letter above mentioned that disposition of the goods seized from Mr. Bent is being held in abeyance pending further consideration. I understand that you are consulting the Deputy Minister of Justice as to the specific privileges granted under the Jay Treaty and the classes of persons to whom the privileges extend.

In view of this, possibly you might wish to withhold action in the case of Mr. Francis also until the general question has been clarified. I should be much obliged if you could let me know where the matter now stands.

Yours sincerely,

CIF/MD

Laval Fortier.

Self

man

N.B.

0/127-1-2
1/18-31-2
(Secy.)

BEST COPY AVAILABLE

, November 29, 1951.

MEMORANDUM TO THE DIRECTOR:

It will be recalled that the general question of the rights of the Indians under the Jay Treaty was referred to the Department of Justice for review following receipt of a submission by the President of the North American Indian Brotherhood. The opinion of the Deputy Minister of Justice, dated June 1st, is to the effect that the Jay Treaty is of full force and effect in so far as it relates to the Indians.

For your information, relevant provisions of the Jay Treaty are quoted with a brief historical summary of events. A more detailed statement on the Jay Treaty is appended hereto. The provisions of Article III of the Treaty, in so far as they relate to Indians, are 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.....

"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 bona fide to Indians."

2.

The Treaty was self-executing and did not require legislation to give effect to its provisions.

Following the War of 1812, the Treaty of Ghent, concluded December 24, 1814, restored to the Indians the privileges they may have enjoyed or been entitled to in 1811.

While there do not appear to have been any special concessions granted to Indians under the Canadian tariff laws, it would seem that they were given certain privileges in regard to bringing in goods from the United States in exchange for handicraft articles sold there. The Department was advised by the Customs Department in 1893 that field officials at St. Regis were to permit the free interchange of articles between the St. Regis Indians and adjacent United States traders. The importation of articles by Indians in exchange for Indian wares sold in the United States was referred to the Governor in Council by the Minister of Customs. By Order in Council 3053, dated November 2, 1897, the Governor General in Council declined to entertain the recommendation of the Minister of Customs. Apparently since that date the Customs Department has required Indians to pay duty on articles brought into Canada from the United States. The position of Indians as to importing goods from Canada into the United States has been somewhat different in that in the Tariff Act of 1799, and in subsequent acts, provision was made for the free entry of Indian goods. Under the tariff revision of 1897, however, no such provision was made, nor, according to my understanding, has any such provision been made since that time.

The question of imposition of duty on Indian merchandise entering the United States was dealt with in the United States courts in the case of the United States v. Mrs. P. L. Garrow. The collector at the Port of Hogansburg, N. Y., imposed a duty under the Tariff Act of 1930 on baskets which Mrs. Garrow, a member of the St. Regis Band, brought into the United States (December, 1934). Mrs. Garrow appealed to the United States Customs Court. This Court sustained her appeal, and the amount of duty paid by her was refunded. The case was carried by the United States authorities to the Court of Customs and Patent Appeals, which reversed the decision of the Customs Court.

The Court of Customs and Patent Appeals took the position that the Jay Treaty was in effect abrogated by the War of 1812 and that the Treaty of Ghent was held not to have been a self-executing treaty but dependent on legislative enactment, and that failure of Congress to properly legislate in accordance with the provisions of the Treaty renders

BEST COPY AVAILABLE

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the merchandise of Indians entering the United States dutiable. An appeal to the Supreme Court of the United States was denied.

My understanding, therefore, has been that the United States does not recognize that the Indians have any rights under the Jay Treaty to import goods from Canada free of duty, but information as to the present legal position is being obtained.

The department has no record of the question of the right of Indians to import goods into Canada from the United States under the provisions of the Jay Treaty having been dealt with by the courts in Canada. For this reason, and as a result of repeated representations from the President of the North American Indian Brotherhood, who insisted that the Indians had rights under the Treaty, the reference to Justice above mentioned was made in order to clarify the position of the Indians.

Pursuant to the opinion of June 1, above mentioned, a specific case was referred to Justice on the question of the legality of the seizure of certain articles from Mr. Neil Bent, a member of the Lower Similkameen Band, B. C. In an opinion dated July 13, the Deputy Minister of Justice advised that the articles, with the exception of two tires and shirts, were free from Customs duty and had been illegally seized, and that the tires and shirts, if it could be proved that they were intended for personal use of the Indian, would also be free of duty.

The Deputy Minister then wrote to the Deputy Minister of National Revenue, Customs and Excise Division, on July 20, drawing attention to the opinion from Justice on the particular case and also on the general question of the rights of Indians under the Jay Treaty. It was suggested that steps be taken to return the goods seized from Mr. Bent.

In his reply, letter dated July 26, the Deputy Minister of National Revenue expressed surprise that that Department had only received notice of the opinion from Justice through this department. He also advised that a reference was being made to Justice to determine the precise nature of the privileges given and as to the classes of persons to whom the privileges extend. From the tone of the letter and some conversations that have taken place between officials of this Branch and the Customs Division, it would appear that an impression has been gathered in Customs circles that this department was seeking to establish rights for the Indians under the Treaty. Actually, however, as stated above, the reference to Justice was made because of representations by Indians on the subject. As a matter of fact, the opinion has come as somewhat of a surprise to this office as it appears to be at variance with the established

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position of the Canadian Government as laid down by the Order in Council referred to above and since maintained. From the viewpoint of administration and policy, moreover, it may be pointed out that differentiation between Indians and other members of the community in respect to Customs duties is hardly in keeping with declared policy of extending full responsibility as well as rights of citizenship to Indians. It is recognized also that to exempt Indians from Customs duties might lead to many abuses, such as bringing in goods to accommodate other persons or for resale--practices which might easily develop into a racket. At the same time, it must be kept in mind that the reference to Justice was made simply to clarify the legal position, and Justice of course would not be concerned with policy or administration either of this department or of the Department of National Revenue. It is understood that a communication has been received by Justice from the Department of National Revenue and that the opinion of June 1 is being reviewed.

It is recalled that some years ago on a reference to Justice by this department on the question of the liability of Indians to pay income tax an opinion was given, the effect of which was that Indians who resided on Indian reserves were not liable for income tax on wages even when earned off a reserve. This opinion, however, was changed in a subsequent opinion given to the Department of National Revenue on a reference by that Department. This gave rise to considerable confusion, as the department, in accordance with the first opinion, circularized the Indian Superintendents and, through them, the Indians. When the opinion that was given to the Department of National Revenue was made available, it was necessary to notify the Indian Superintendents of the effect of the new opinion. Some of the Indians, of course, who had been made aware of the effect of the first opinion took strong exception, and we have never heard the end of it.

This experience emphasizes the undesirability of making any information regarding the opinion given in respect to Customs duties exemption under the Jay Treaty available to officials in the field, much less the President of the North American Indian Brotherhood and other interested Indians, until the whole question has been clarified.

Since the above-mentioned exchange of correspondence the Superintendent of the St. Regis Agency has reported that certain articles have been seized by the Royal Canadian Mounted Police from Mr. Louis Francis for non-payment of duty.

In a letter dated November 13th, the Superintendent advised that the general question came up for discussion at a meeting of the

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Band Council held on November 5th, at which the Council requested him to ask the department to have a legal adviser look into the matter.

On November 26th a delegation of Indians from St. Regis, including Chief Peters and five others, bearing a letter of introduction from the Indian Superintendent, called at this office with regard to Customs seizures generally. Apparently there have been a number of seizures in recent months. They mentioned the Francis case in particular and intimated that they were considering engaging counsel to look into the whole Customs matter. They asked for historical information on the Jay Treaty, which was given to them. Naturally, no information was given regarding the opinion from Justice or its implications. It was pointed out to them that the administering authority was the Department of National Revenue. It is understood that they discussed the seizures with officials of that Department.

In order to expedite clarification of the general question, which undoubtedly will continue to be very active, it is thought that it would be advisable to have the case brought to the attention of the Deputy Minister of National Revenue. Accordingly, a draft letter has been prepared for the Deputy Minister's signature and is submitted herewith.

T. R. L. MacInnes,
Secretary.

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RE: JAY TREATY

A Treaty of Amity, Commerce and Navigation, between the United States and Great Britain, known as the Jay Treaty, was concluded November 19, 1794; ratification exchanged at London, October 28, 1795, proclaimed February 29, 1796.

Relevant provisions of Article III of the Treaty, in so far as they relate to Indians, are quoted 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.....

"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 bona fide to Indians." (Bemis, S.F., Jay's Treaty: A Study in Commerce and Diplomacy, New York, 1923).

The first ten articles of the Treaty were to be permanent by virtue of Article XXVIII.

The United States Tariff Act of 1799 contained a provision as follows:

"United States Statutes at Large: Vol. I, page 702, Tariff Act 1799:

"Sec. 105. And be it further enacted. That no duty shall be levied or collected on the importation of peltries brought into the territories of the United States, nor on the proper goods and effects of whatever nature, of Indians passing, or repassing the boundary line aforesaid, unless the same be goods in bales or other large packages unusual among Indians, which shall not be considered as goods belonging bona fide to Indians, nor be entitled to the exemption from duty aforesaid. * * *

The Canadian authorities do not seem to have enacted any legislation giving effect to the provisions of Article III of the Jay Treaty. Legislation such as the United States enacted would not appear to have been necessary as the Treaty was self-executing.

Following the War of 1812, the Treaty of Ghent, concluded December 24, 1814, restored to the Indians the privileges they may have enjoyed or been entitled to in 1811. Article IX of the Treaty reads in part as follows:

"And His Britannic Majesty engages, on his part, to put an end, immediately after the ratification of the present treaty, to hostilities with all the tribes or nations of Indians with whom he may be at war at the time of such ratification; and forthwith to restore to such tribes or nations, respectively, all

Mr. Faulstich's
opinion on
Jay's Treaty

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the possessions, rights and privileges which they may have enjoyed or been entitled to in one thousand eight hundred and eleven, previous to such hostilities. & & &." *Copy article 18 appended hereto.*

In a copy of a letter on file dated March 15, 1873, from the Acting Secretary, Treasury, Washington, to the Hon. C. Delano, Secretary of the Interior, after referring to the provision in the tariff laws regarding Indians, states as follows: "this provision of law was enacted to carry out the provision of Article 3rd of the Treaty of Commerce between the United States and Great Britain ratified 19th November 1794 it being almost in the precise language of the Treaty."

The United States tariff laws continued to grant the free entry of Indian goods up to 1897 when this privilege was withdrawn by the Customs Act approved on July 24th of that year.

In a letter dated October 16, 1897, Mr. John Martin, Special Deputy, Office of the Collector of Customs, Port of Plattsburg, N. Y., advised the Assistant Secretary, Department of Indian Affairs, as follows:

"The Act, Approved July 24, 1897, repeals the old tariff law and does not contain any section authorizing the free entry of Indian goods which has been the feature of all our tariff laws since 1798."

While there does not seem to have been any special concessions granted to Indians under the Canadian tariff laws, it would appear that they were given certain privileges in regard to bringing in goods from the United States in exchange for handicraft articles sold there.

According to the records, the Assistant Commissioner, Customs Department, Canada, communicated with the Deputy Superintendent General of Indian Affairs on May 2nd, 1893, enclosing a copy of a letter to the Sub-Collector of Customs, St. Regis, Quebec, dated April 28, 1893, in which he instructed him as follows:

"I am desired by the Controller of Customs to advise you that, in view of the disposition which has always been evinced by the Government to extend to the Indians the greatest possible consideration in the matter of goods obtained by them in the United States, contiguous to their Reserves, as the result of the exchange of articles of Indian handiwork for articles of United States manufacture or production, you are hereby instructed to permit the free interchange of articles as between the Seven Nations Indians or other Indians occupying the Reserves near your station, and the adjacent United States traders, who, as the Department is advised, are in the habit of taking from Canadian Indians baskets and other articles produced by their own labour, and giving them in exchange such goods as they may need.

"The Council of the Seven Nations Indians have been advised from this Department that these instructions would go to you, and that all past privileges which they had enjoyed would not be interfered with by you."

The importation of articles by Indians in exchange for Indian wares sold in the United States was referred to the Commissioner of Customs in 1897. The question of the free interchange of articles between the Seven Nations Indians or other Indians occupying the Reserve at St. Regis and the United States traders, who bought Canadian Indian baskets and other articles, was ^{then} referred to the Governor in Council by the Minister of Customs. By Order in Council 3053 dated November 2, 1897, the Governor General in Council declined to entertain the recommendation of the Minister of Customs

on the question of the free interchange of articles between Indians occupying the Reserve at St. Regis and the United States traders. Copy of Order in Council is appended hereto.

Following enactment of the United States Customs Act, 1897, the Department gave consideration to approaching the United States authorities to allow the Indians to take goods into the United States for sale. In view of the decision of the Governor in Council, however, no further action was taken at that time to approach the authorities of the United States as it was considered that it would be out of the question that representations should be made to the United States Government for privileges for Canadian Indians which our own Government did not see its way to grant.

In 1911 the headmen of the Indians at St. Regis made application to the Department of Customs for free entry of goods imported into the Indian Reserve at St. Regis in exchange for Indian wares taken to the United States. In a letter dated March 30, 1911, the Commissioner of Customs communicated with the Department and referred to the decision made by the Government in 1897 on a similar request.

In a letter to the Deputy Superintendent General, dated April 24, 1930, the Commissioner of Customs suggested that it would be well for the Indian Agent, Port Arthur area, to impress upon the Indians that "it is their duty to report at Customs and pay duty on any goods that they may bring in from the United States." In a letter dated December 3, 1930, the Departmental Solicitor, for Commissioner of Customs, after quoting the Order in Council of November 2, 1897, advised as follows: "Since that date the Department has required Indians to pay duty on articles of any consequence brought into Canada."

In 1931 a delegation of St. Regis Indians asked to have representations made to the Government of the United States with a view to having the duty removed from Indian products such as baskets, moccasins, and other distinctively Indian products, entering the United States. The matter was referred to the Department of External Affairs with the request that the matter be brought before the Government of the United States with a view to having Indian goods enter the United States free of duty as was done prior to the tariff revision of 1897. The reply of the Under-Secretary of State for External Affairs, letter dated January 29, 1931, is quoted in part as follows:

"I note that there is no provision in the Canadian Customs Act or Tariff or regulations thereunder, permitting free entry into Canada from the United States of Indian products as such. Moreover, goods of any kind imported by Indians are subject to the same tariff requirements as if imported by persons other than Indians.

"In the circumstances, therefore, it does not appear that the Canadian Government would be justified in making a request for exemption from duty, unless it is itself prepared to grant equivalent exemption to goods made by Indians domiciled in the United States."

In accordance with the advice received from Customs from time to time, the Indians were advised that they were subject to customs laws and regulations in the same manner as other people. There does not appear to be any record of the position of the Indians under the Jay Treaty to import goods into Canada from the United States having been decided by the courts in Canada. In the United States, however, there have been a number of court decisions with respect to the provisions of Article III of the Treaty.

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The question of imposition of duty on Indian merchandise entering the United States was dealt with in the United States courts in the case of the United States v. Mrs. P. L. Garrow. The collector at the Port of Hogsburg, N. Y., imposed a duty under the Tariff Act of 1930 on baskets which Mrs. Garrow, a member of the St. Regis Band, brought into the United States in December, 1934. Mrs. Garrow appealed to the United States Customs Court. This Court sustained her appeal, and the amount of duty paid by her was refunded. The case was carried by the United States authorities to the Court of Customs and Patent Appeals, which reversed the decision of the Customs Court (1937).

The Court of Customs and Patent Appeals took the position that the Jay Treaty was in effect abrogated by the War of 1812 and that the Treaty of Ghent was held not to have been a self-executing treaty but dependent on legislative enactment, and that failure of Congress to properly legislate in accordance with the provisions of the Treaty renders the merchandise of Indians entering the United States dutiable. The Court cites in part a Supreme Court judgment, Karnuth, Director of Immigration, et al. v. United States ex rel. Albro, 1929 (279 U.S. 231), on the question of the force and effect of the Jay Treaty, concluding part of the citation as follows:

"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 obligations 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."

An appeal to the Supreme Court of the United States in the Garrow case was denied.

According to my understanding, Great Britain, following the War of 1812, also took the position that the War had abrogated the Jay Treaty.

Following a submission this year by the President of the North American Indian Brotherhood, a reference was made to the Department of Justice with regard to the rights of the Indians under the provisions of the Jay Treaty with respect to the importation of goods into Canada from the United States free of duty and crossing the border without restriction. The opinion of the Deputy Minister of Justice dated June 1, 1951, is to the effect that the Jay Treaty, in so far as it relates to Indians, is still in force.

The foregoing is based on the following sources:

1. Bemis, S.F., Jay's Treaty: A Study in Commerce and Diplomacy, New York, The MacMillan Company, 1923.
2. Departmental File 190994, Vol. 1 & 2.
3. " " 1/18-31-2, Vol. 1 & 2.
4. " " 0/127-1-2, Vol. 1.
5. " " 492-19-2, Mrs. P. L. Garrow Case.
(Including Judgment of United States Customs Court and Court of Customs and Patent Appeals in Garrow Case).


G. I. Fairholm.

November 20, 1951.

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Privy Council

Canada

Extract from a Report of the Committee of the

Honourable the Privy Council, approved by

His Excellency on the 2nd November 1897.

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Customs.

That the recommendation of the Minister of Customs as to the expediency of authorising by Order of the Governor in Council, the free interchange of articles as between the Seven Nation Indians or other Indians occupying the Reserves at St. Regis and the United States traders, which privilege is now exercised under the terms of a letter addressed to George Lang, Sub-Collector at St. Regis, by the Assistant Commissioner of Customs on the 26th day of April 1893, be not entertained. (Annex)

(Sgd) John J. McGee

Clerk of the Privy Council.

The Honourable

The Superintendent General

of Indian Affairs.

(Annex to C.C. 3053, 2nd November 1897)

Customs)

The Treasury Board had under consideration a memorandum from the Hon. Minister of Customs reporting that a letter in the following terms was addressed to Geo. Lang, Sub Collector of Customs at St. Regis by the Assistant Commissioner of Customs on the 28th day of April 1893:-

"I am desired by the Controller of Customs to advise you that in view
"of the disposition which has always been evinced by the Government to
"extend to the Indians the greatest possible consideration in the matter
"of goods obtained by them in the United States, contiguous to their
"Reserves, as the result of exchange of articles of Canadian Indian
"handiwork for articles of United States manufacture or production, you
"are hereby instructed to permit the free interchange of articles as
"between the Seven Nation Indians or other Indians occupying the Reserves
"near your station, and the adjacent United States traders, who, as the
"Department is advised are in the habit of taking from Canadian Indians
"baskets and other articles produced by their own labour, and giving them
"in exchange such goods as they may need".

"The Council of the Seven Nations have been advised from this
"Department that these instructions would go to you, and that all past
"privileges which they had enjoyed would not be interfered with by you."

The Minister states that John Angus, one of the Head Men of the Seven Nations has applied in person on behalf of the Seven Nation Indians for a confirmation of this letter by his Excellency the Governor General in Council, and he recommends for consideration the expediency of authorizing the free interchange of articles as between the Seven Nation Indians or other Indians occupying the Reserves at St. Regis, and the United States Traders, who are in the habit of taking from Canadian Indians baskets and other articles produced by their own labour and giving them in exchange such goods as they may need for their own use.

The Treasury Board regret that they cannot submit the memorandum for the favourable consideration of Council.

TREATY OF AMITY, COMMERCE AND NAVIGATION
Commonly known as the JAY TREATY

Concluded November 19, 1794; Ratification exchanged at London
October 28, 1795; Proclaimed February 29, 1796.

Article III

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. But it is understood that this article does not extend to the admission of vessels of the United States into the seaports, harbours, bays or creeks of His Majesty's said territories; nor into such parts of the rivers in His Majesty's said territories as are between the mouth thereof, and the highest port of entry from the sea, except in small vessels trading bona fide between Montreal and Quebec, under such regulations as shall be established to prevent the possibility of any frauds in this respect. Nor to the admission of British vessels from the sea into the rivers of the United States, beyond the highest ports of entry for foreign vessels from the sea. The river Mississippi shall, however, according to the treaty of peace, be entirely open to both parties; and it is further agreed, that all the ports and places on its eastern side, to whichever of the parties belonging, may freely be resorted to and used by both parties, in as ample a manner as any of the Atlantic ports or places of the United States, or any of the ports or places of His Majesty in Great Britain.

All goods and merchandize whose importation into His Majesty's said territories in America shall not be entirely prohibited, may freely, for the purposes of commerce, be carried into the same in the manner aforesaid, by the citizens of the United States, and such goods and merchandize shall be subject to no higher or other duties than would be payable by His Majesty's subjects on the importation of the same from Europe into the said territories. And in like manner all goods and merchandize whose importation into the United States shall not be wholly prohibited, may freely, for the purposes of commerce, be carried into the same, in the manner aforesaid, by His Majesty's subjects, and such goods and merchandize shall be subject to no higher or other duties than would be payable by the citizens of the United States on the importation of the same in American vessels into the Atlantic ports of the said States. And all goods not prohibited to be exported from the said territories respectively, may in like manner be carried out of the same by the two parties respectively, paying duty as aforesaid.

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 bona fide to Indians.

No higher or other tolls or rates of ferriage than what are or shall be payable by natives, shall be demanded on either side; and no duties shall be payable on any goods which shall merely be carried over any of the portages or carrying-places on either side, for the purpose of being immediately re-embarked and carried to some other place or places. But as by this stipulation it is only meant to secure to each party a free passage across the portages on both sides, it is agreed that this exemption from duty shall extend only to such goods as are carried in the usual and

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direct road across the portage, and are not attempted to be in any manner sold or exchanged during their passage across the same, and proper regulations may be established to prevent the possibility of any frauds in this respect.

As this article is intended to render in a great degree the local advantages of each party common to both, and thereby to promote a disposition favorable to friendship and good neighborhood, it is agreed that the respective Governments will mutually promote this amicable intercourse, by causing speedy and impartial justice to be done, and necessary protection to be extended to all who may be concerned therein.

Copied from S. F. Bemis's "Jay's Treaty: A Study in
Commerce and Diplomacy", New York, The MacMillan
Company, 1923.

0/127-1-2(Secy.)

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Citizenship and Immigration

, November 21, 1951.

Personal

Theodore H. Haas, Esq.,
Chief Counsel,
United States Department of the Interior,
Bureau of Indian Affairs,
Washington 25, D.C., U.S.A.

Dear Mr. Haas:

I should be very much obliged for any information you can let me have as to the present position of Indians in the United States under the 'Jay' Treaty of 1794, with particular reference to customs duties on goods imported from Canada.

Insofar as I am aware no exemption from the payment of duty is allowed either to Canadian Indians or to returning United States Indians, but there have been so many contradictory reports on the question in the press and at meetings of Indians that any clarifying information would be welcome.

With kind personal regards.

Yours truly,

T-R. L. MacInnes

T. R. L. MacInnes,
Secretary.

Field Service

COPY

Canada
DEPARTMENT OF CITIZENSHIP AND IMMIGRATION
Indian Affairs Branch

P. O. Box 987,
Cornwall, Ontario,
October 23rd, 1951.

Indian Affairs Branch, Ottawa, Ontario.

This is to advise you that on the afternoon of October 19th Mrs. Louis Francis called at the office advising that the R.C.M.P. had seized certain household appliances in her home in St. Regis Village, Quebec. Mr. Morris, our Regional Supervisor, who was at the office at the time Mrs. Francis complained about the seizure will bear me out when I state that this woman was emotionally upset.

A check with the local R.C.M.P. officer discloses that the following articles have been placed under seizure in the name of Louis Francis:

- 1 General Electric refrigerator, Serial No. 01083225
- 1 electric washer manufactured by Mercantile Stores Company Incorporated, Serial No. 1906, Model 100P
- 1 second hand Ivanhoe oil burner, Model 2205B, Serial No. C794496.

It is well known to your office that the matter of seizures by the R.C.M.P. such as noted above is the cause of constant trouble on the Reserve. I have no fault to find with the R.C.M.P. on this matter as they are only carrying out their instructions. On the other hand, I am firmly convinced that from the Indians' point of view articles brought in are done so with the firm belief that they are protected under the Jay Treaty. During my term of office here, I cannot recall of any case where an Indian of St. Regis has been convicted of reselling household effects and the like brought onto the Reserve. For some reason or other, it has always been the contention amongst the Indians that while they were protected by the Jay Treaty in bringing in goods for their own personal use, they were breaking the Treaty by reselling.

Oct. 1951
Francis
Case

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In the case of Louis Francis, this man is getting established under the Veterans' Land Act and has made a magnificent contribution himself as well in constructing a substantial home which is a credit to himself and an example to others. He, like most of our Indians, must depend upon United States industry to earn a livelihood and I might add, were it not for the co-operation received through American industry, we would have, in this geographically isolated part of Canada, a relief bill running into many thousands of dollars per annum as a direct charge against the taxpayers of Canada. Further, our Indians, like many other Indians in Canada, have never been given the advantage and protection in former years where they could purchase household appliances, etc. on a time payment basis. Over a period of years, the merchants on the American side in our district have built up a great confidence with the Indian people with the result that they extend to our Indians credit despite the fact that these merchants knew that they were unable to take possession of any article sold. The Indians in this locality also have the added inconvenience of paying additional charges on merchandise brought in from Cornwall due to distance and bridge toll.

In the last analysis, it would appear to the writer that if we are to expect the co-operation of the Indians in carrying out any programme for their economic betterment, a definite ruling should be had from the Justice Department or the Exchequer Court of Canada as to whether or not the Indians have the right by treaty to bring any goods into Canada duty-free for their own use.

(Sgd) T. ~~R.~~ L. Bonnah,
Superintendent,
St. Regis Indian Agency.

0/127-1-2

October 16, 1951.

Dear Madam:

In reply to your letter of July 29th last, I wish to advise that investigation at Maniwaki discloses that you are of non-Indian status on account of your marriage to a white man. Therefore we could not issue you a certificate to the effect that you are an Indian. You relinquished your Indian status on marriage.

Yours truly,



M. McCrimmon,
Status and Membership Division.

Mrs. Annie Cooko Chausse,
General Delivery,
Port Colborne, Ontario.

MMcC/VB

FIELD SERVICE

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CANADA

DEPARTMENT

OF

18 OCT 15 AM 9:34
CITIZENSHIP AND IMMIGRATION

INDIAN AFFAIRS BRANCH

0/127-1-2
PLEASE QUOTE

FILE 18/3-3

INDIAN AFFAIRS

Maniwaki, Oct. 11th. 1951.

Indian Affairs Branch,
Dept. of Citizenship & Immigration,
Ottawa, Ont.

Re: File 0/127-1-2 (M.1)

In reply to your letter of
Oct. 6th re Annie Cooko Chausse, I wish to advise
you that since she is married to a whiteman John
Chausse she is no longer considered of indian status.

Mrs. Chausse is registered on the
River Desert Band Interest Pay List under No. 365 as
a red ticket holder, and cannot be given a certificate
showing her to be of indian status, because of her
marriage to a whiteman.

Russell Baker
Russell Baker,
Superintendent,
Maniwaki Indian Agency.

0/127-1-2
(M.1)

6 October, 1951

R. Baker, Esq.,
Superintendent, Indian Agency,
Maniwaki, Que.

I am enclosing copy of a letter received from Annie Cooko Chausse, Port Colborne, Ontario, in which she states that she is a member of the Maniwaki Band, and requests a certificate to the effect that she is of Indian status.

I am unable to locate her name on the membership list, and would appreciate a report indicating if you have any record as to whether or not she is of Indian status.



M. McCrimmon,
Status and Membership Division.

MMC/mh

0/127-1-2(Secy.)

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Citizenship and Immigration

, September 26, 1951.

Mrs. Angus Pine,
12 Mill Street,
Guelph, Ontario.

Dear Mrs. Pine:

This will acknowledge receipt of your letter of August 26, in which you request particulars concerning border crossing privileges accorded to Indians and also information regarding taking up residence in the United States.

With regard to your inquiry concerning border crossing privileges, I am quoting hereunder for your information Section 114.6 of Title 8 of the Code of Federal Regulations (United States):

"Sec. 114.6 CANADIAN-BORN AMERICAN INDIANS; EXEMPTION FROM IMMIGRATION LAWS. American Indians born in Canada shall be permitted to enter the United States without inspection under the immigration laws. This right shall not extend to persons whose membership in Indian tribes or families is created by adoption.

With regard to your request for information concerning taking up residence in the United States, I would inform you to obtain this information from the United States Immigration authorities, who are in a better position to advise you on the subject.

Yours truly,



T. R. L. MacInnes,
Secretary.

0/127-1-2



12 Mill St.,
Guelph Ont.,
Aug 26, 1951.

Dear Sir:-

I am writing this letter to ask you if you will tell us all the particulars of crossing the border into the United States.

My husband is an Indian, & he has his papers proving his birthright, but we would like to have all the information possible.

2.

concerning an Indian's
rights crossing the
border. Also any
information about
taking up residence
over there in the
States. An Immigrant
Officer told us all
we need is my
husband's papers
proving he is an
Indian, and our
marriage license.
But we would
like to have
official information
concerning this.

We certainly will

000770

3.

appreciate any and
all information you
can give us.

Please answer
as soon as
possible.

Respectfully yours

Mrs. Angus Pine
12 Mill. St.,
Guelph
Ontario
Canada

83671

1981 AUG 23 AM 8:45

INDIAN AFFAIRS

000772

DEPARTMENT OF MINES AND RESOURCES

Indian Affairs Branch

NOTE: This slip to be used for passing correspondence when the main file is charged out or is not required, and must not be removed but will be attached to the main file as soon as possible.

2681

Records Service Division

Slip No.....

Indian Affairs File No. *0/127-1-2*

Subject of File.....

MAIN FILE ON CHARGE TO *MI*

REFERENCE				DISPOSAL			
REFERRED To	BY	REMARKS	DATE	PA OR BF	BY	DATE	FOR RECORDS USE
<i>Secy. Gen.</i>		<i>F7573.</i>	<i>5-9-57</i>				
<i>Records</i>		<i>Please return to</i>	<i>6-9-57</i>				
		<i>file</i>					

Note: If action cannot be taken without the file, please make statement to that effect and return paper to Records Division.

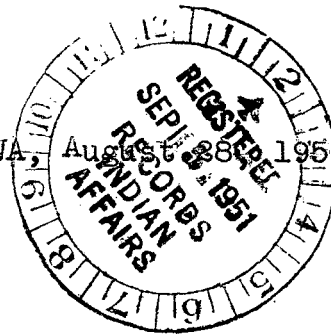
000773



DEPARTMENT OF
EXTERNAL AFFAIRS

REPLY TO BE ADDRESSED TO:
THE UNDER-SECRETARY OF STATE
FOR EXTERNAL AFFAIRS
OTTAWA

OTTAWA, August 28, 1951.



Our File: 10136-40, INDIAN AFFAIRS
Your File: 0/127-1-2 (Secy.)

The Director,
Indian Affairs Branch,
Department of Citizenship & Immigration,
O T T A W A.

I refer to your letter of May 3, 1951, concerning the interpretation of General Order No. 109 of July 18, 1929 of the United States Department of Labor, Bureau of Immigration, with respect to its application to enfranchised Indians or persons whose Indian status is acquired by adoption or marriage, and I enclose a copy of letter No. 2673 of August 17, 1951 from the Canadian Embassy in Washington which states that General Order No. 109 has been superseded by Section 114.6 of Title 8 of the Code of Federal Regulations. A copy of this section is also enclosed.

It will be seen that Section 114.6 definitely excludes persons whose membership in Indian tribes is created by adoption. In the case of wives, however, it is apparently the established practice to extend the provisions of this Section to them regardless of race if their Indian status is recognized by the Canadian Government.

The interpretation of Section 114.6 with respect to its application to the two specific groups mentioned in your letter under reference would appear to be:

- (a) there is no distinction on the basis of enfranchisement;
- (b) it is the established practice of the United States Authorities to apply this section to women who have acquired Indian status by marriage provided they are recognized as "Indians" by the Canadian Government.

h. Leshyhaue
(A.D.P. Heeney)
Under-Secretary of State
for External Affairs.

000774

NOTED
5/10/51
J.J.

Ext. 18.

DUPLICATE

OTTAWA FILE

No...10136-40.....

Letter No....2473.....

Date.....August 17th, 1951.....

SECURITY CLASSIFICATION

NONE

FROM: CANADIAN EMBASSY, WASHINGTON, D.C.

TO: THE UNDER-SECRETARY OF STATE FOR EXTERNAL AFFAIRS, CANADA

Reference.....Your letter No. C.1935 of May 9th, 1951.....

Subject:....General Order No. 109 of July 18, 1928 - United States...
Department of Labour, Bureau of Immigration

1. The questions contained in your above letter with respect to enfranchised Canadian Indians and women who had acquired Indian status by marriage to Canadian Indians in the light of General Order No. 109 were referred to the United States Immigration authorities here for clarification.

2. We have just received a reply from them dated August 10th, 1951, the relevant portions of which read as follows:

"General Order No. 109 has been superseded by section 114.6 of Title 8 of the Code of Federal Regulations. The application of that regulation under Service practice as to Indians is generally upon a racial rather than upon a political ground. However, it is the established practice of this Service in applying the provisions of that regulation to accord to the wives, regardless of race, of Canadian-born American Indians the status of Canadian-born Indians when such wives are recognized by the Canadian Government as "Indians"

"That regulation with respect to Indians entitled to enter the United States without immigration inspection makes no distinction based on enfranchisement."

3. For your convenience, we are attaching a copy of section 114.6 referred to by the Immigration Service.

W.D. MATTHEWS
THE EMBASSY

:emmi

Copies Referred

To.....

No. of Enclosures

.....

Post File

No.....

000775

Sec. 114.6 CANADIAN-BORN AMERICAN INDIANS; EXEMPTION FROM IMMIGRATION LAWS. American Indians born in Canada shall be permitted to enter the United States without inspection under the immigration laws. This right shall not extend to persons whose membership in Indian tribes or families is created by adoption.

Copy for Indian Affairs Branch

WCB/KM

DEPUTY MINISTER OF NATIONAL REVENUE
CUSTOMS AND EXCISE

Ottawa, 2. July 26th, 1951.

P.A. *[Signature]*
Laval Fortier Esq., K.C.,
Deputy Minister of Citizenship and Immigration,
O t t a w a .

Dear Mr. Fortier:

Re: Privileges of Canadian Indians
under the Jay Treaty.

I have your letter of July 20th and note that recently, as a result of a submission by one of the Indian organizations, you have received an opinion from the Deputy Minister of Justice which is, I gather, to the effect that the Jay Treaty of 1794 is still in force and that under it, Indians are entitled to import "their own proper goods and effects" free of Customs duty. You also mention a particular case, in which certain goods have been seized from one Neil Bent, and ask that they be restored to him.

Dealing first with the particular instance, the situation is that the goods seized from Bent have been declared forfeit to the Crown by Ministerial decision under section 174 of the Customs Act. They were about to be sold by public auction, but instructions have been issued to cancel this sale, in view of your letter, pending further consideration.

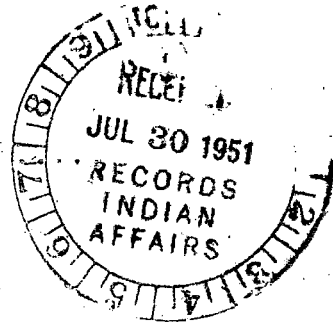
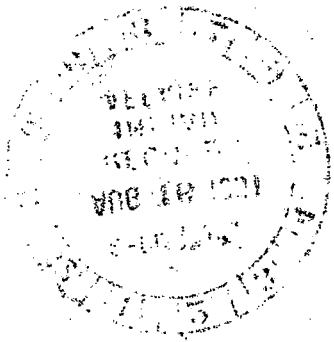
On the general question, you as a lawyer will appreciate that I am somewhat surprised to hear of Mr. Varcoe's opinion only from you. I have not yet heard from Mr. Varcoe, but I am writing to him by concurrent mail. If the state of the law is as your letter suggests I must, of course,



INDIAN AFFAIRS

AUG 15 PM 1:36

77256



Lt. Fortier Esq., K.C.....2

endeavour to apply it, but before I undertake to give any general instructions to officers in the field, I must know more than your letter tells me as to the precise nature of the privileges given and as to the class of persons to whom these privileges extend.

I will communicate with you again as soon as I have heard from Mr. Varcoe.

Yours faithfully,

(Sgd.) D. Sim

25/7/51
CH

Ottawa, July 25, 1951.

MEMORANDUM TO THE DEPUTY MINISTER:

It will be recalled that the general question of the rights of Indians under the Jay Treaty was referred to the Department of Justice for review following receipt of a submission by Mr. A. Paull, President, North American Indian Brotherhood. In a letter dated June 1, a copy of which is appended hereto for your convenience, the Deputy Minister of Justice advised that the Jay Treaty would appear to be of full force and effect.

Mr. Andrew Paull called at the Branch on July 23 and raised the question of the rights of Indians under the provisions of the Jay Treaty to the importation of goods into Canada from the United States free of duty. He was advised that the matter had been receiving the attention of the appropriate authorities. As the whole question is rather delicate and is not a matter that comes within the jurisdiction of this department, but of the Department of National Revenue, it was thought that it would not be in order to advise Mr. Paull or any other Indians, or to circularize our Indian Superintendents until the position had been clarified. It is expected that the department will be advised of the position of Customs in the matter when a reply is received to your letter of July 20 to the Deputy Minister, Customs and Excise, Department of National Revenue.

It will be noted also from the opinion that Indians dwelling on either side of the boundary line between Canada and the United States may pass freely into the respective countries. This would not concern Canadian Indians who, it may be mentioned, are permitted to enter the United States without inspection under the immigration laws under a general executive order, but would apply to Indians who are citizens of the United States. It is suggested that the position of these Indians with respect to border crossing be brought to the attention of officials concerned with the administration of immigration laws and regulations.

TR. 2 M
CIE/MD
Director.

000780

Records

*please place on Jay
Treaty file - P.A.*

C
O
P
Y

DEPARTMENT OF JUSTICE

CANADA

Please Address
The Deputy Minister of Justice
Ottawa

OTTAWA, July 13, 1951.

160997

Re: Rights of Indians under Jay Treaty of 1794

Dear Sir:

Referring to your letter of June 19th last, I am of the opinion that all of the goods referred to by you, with the exception of the two new U.S. tires and the two shirts (girl's), were free from Customs duty and consequently were illegally seized by the R.C.M.P.

If the Indian can satisfy the authorities that he bought the tires and shirts for his own personal use, then I should think that these items also are free from duty.

Yours truly,

(Sgd) F. P. Varcoe
Deputy Minister.

The Deputy Minister,
Department of Citizenship and Immigration,
OTTAWA, Ontario.

Not sent

Ottawa, July 10, 1951.

MEMORANDUM TO THE DEPUTY MINISTER:

This is with reference to the opinion of the Deputy Minister of Justice, dated June 1st, a copy of which is appended hereto, concerning the rights of Indians under the Jay Treaty to import goods into Canada from the United States free of duty. The question was referred to Justice following receipt of a letter to the Minister from Mr. Andrew Paull, in which he claimed that the Indians have certain rights under the Jay Treaty to import goods into Canada from the United States free of duty.

It will be noted that the opinion is rather far-reaching, as it appears to be at variance with the position taken by the Department of National Revenue.

It will be recalled that, some years ago, on a reference to Justice by this Department on the question of the liability of Indians to pay income tax, an opinion was given, the effect of which was that Indians who resided on Indian reserves were not liable for income tax on wages even when earned off a reserve. A copy of this opinion is appended hereto. This opinion, however, was changed in a subsequent opinion given to the Commissioner of Income Tax, a copy of which is attached. This gave rise to much confusion and considerable embarrassment, as Indian Superintendents throughout Canada had been advised in accordance with the first opinion. In view of this, it is suggested that consideration should be given as to the extent to which the gist of the opinion from Justice regarding the Jay Treaty should be made available to Mr. Paull and other Indians. It is thought that it might be advisable to bring the matter to the attention of the Minister for his consideration.

1/10

CIF/LD

Acting Director.

N.B.

Ottawa, July 10, 1951.

MEMORANDUM TO THE DEPUTY MINISTER:

This is with reference to the opinion of the Deputy Minister of Justice, dated June 1st, a copy of which is appended hereto, concerning the rights of Indians under the Jay Treaty to import goods into Canada from the United States free of duty. The question was referred to Justice following receipt of a letter to the Minister from Mr. Andrew Paull, in which he claimed that the Indians have certain rights under the Jay Treaty to import goods into Canada from the United States free of duty.

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CIF/MD

Acting Director.

0/126-7-2
0/127-1-2
(Secy.)

, July 4, 1951.

W. S. Arneil, Esq.,
Indian Commissioner,
P. O. Box 70,
Vancouver, B. C.

This is with reference to your letter of June 27th, and previous correspondence, concerning the seizure of a $1\frac{1}{2}$ ton pickup truck by the United States Customs authorities from Mr. Neil Bent, of the Lower Similkameen Band.

The question of the release of Mr. Bent's truck has been referred to the Department of External Affairs, with the request that the matter be taken up with the appropriate authorities in Washington.

CIF/AD

original signed on 126-7-2
T. R. L. MacInnes,
Secretary.

To be returned to Indian Affairs 45801

0/127-1-2

0/126-7-2

(Secy.)

1951 JUN 25 PM 2:07

INDIAN AFFAIRS
Ottawa, June 19, 1951.

F. P. Varcoe, Esq., K.C.,
Deputy Minister of Justice,
Ottawa, Ontario.

Dear Mr. Varcoe:

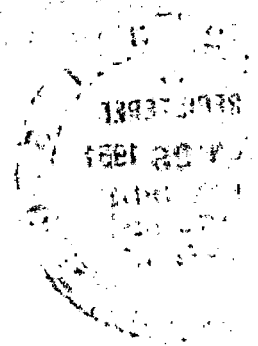
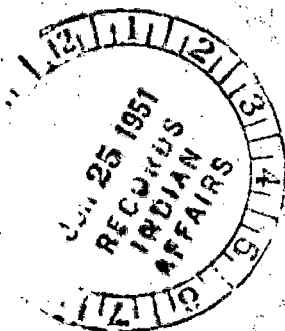
This will acknowledge your letter of June 1st, your file reference 160997, wherein you give your opinion as to the rights of Indians under the Jay Treaty.

Recently certain articles have been seized from Mr. Neil Bent, an Indian of the Lower Similkameen Band, British Columbia. The details of the seizure are set out in the report of the Indian Superintendent who investigated the matter, which is quoted in part as follows:

On April 9th, R.C.M.P. came to Chopaka and searched house when whole family was away, but Antoine Qualtier was there. Antoine Qualtier says R.C.M.P. gave him a paper then went in and searched house for U.S. funds. In course of search brought out two new U.S. tires, 650-16 between \$40 and \$50 bought at Nighthawk, Wash. (no duty) new hat bought at Oroville, Wash., and worn home (\$2.00), suit coat value \$20 bought at Oliver a week previously at Collens Department Store, pipe-wrench value \$3.00 at Tonasket, Wash., (no duty), one flashlight from Camston, B.C. (old), one flashlight from workman who left it there, George Shackley from Spences Bridge, three used hammers (one from Nighthawk), pliers, one saddle, 3 or 4 years old - second hand when bought - originally from Oroville, Wash., value about \$40. Two shirts (girl's) from Oroville last fall bought by Qualtier girls - phonograph, second hand table - from U.S., \$30 also bought by Qualtier girls last fall.



000785



2.

R.C.M.P. pried boards off gable on kitchen (2 boards) and left them lying on ground. Witnessed by Antoine Qualtier. Also broke window in log store house accidentally.

R.C.M.P. searched Neil Bent in shed for money belt but found no money.....

S/Sgt. Brabazon stated that Cpl. Wallace, who searched the Bent home had authority of Writ of Assistance under Foreign Exchange Control Board, and that there is no obligation upon searching officer to restore searched building to original condition, such as replacing boards torn from gable of Bent's home. Also officer had authority to search Bent's person under same document.

Goods seized are in charge of R.C.M.P. at Penticton and may be obtained by Bent if he will pay full duty paid price. Canadian goods seized will be returned to Bent when R.C.M.P. are ordered to do so by Customs Dept.

S/Sgt. Brabazon states Indians are not being especially picked on by R.C.M.P. in these investigations, that whites are also being searched and that recently two white men have been prosecuted and truck seized, fined \$100 under excise Act. S/Sgt. Brabazon also stated that there is strong suspicion and some evidence that Indians are bringing liquor from the U.S. and R.C.M.P. intend continuing watching this illegal activity and may be searching other places and persons for liquor in future. (Extract from report dated May 29th, Okanagan Agency).

I have noted your observation that the question as to whether the importation of goods into Canada from the United States free of duty by Indians would depend upon the particular facts of each case. It would be appreciated if you would advise me of the legality of the seizures of the articles referred to in the Indian Superintendent's report above quoted.

Approved as
to Legality

LEGAL ADVISER

Yours sincerely,

LAVAL FORTIER

Laval Fortier.

CIF/MD

kmml.

000787

Port Colborne

66912

July 29. Ont.
of 127-1-2

1956 JUN 24 11:08 AM
Dept of Indian Affairs
Ottawa.

INDIAN AFFAIRS

Dear Sir ~~Mr.~~ M.

I am an Indian
woman from the Manitowish
Indian reserve. I would
like to have a paper
to Certify that I am an
Indian. as I want to
cross the border to go to
work in the U.S.A.

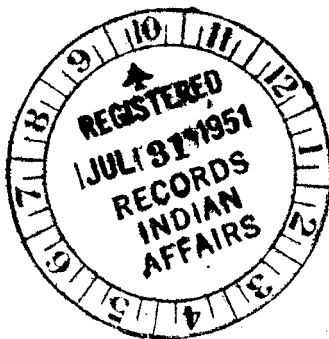
My name is
Annie Cooko Chausse.
m/

000788

(66912)

I am the daughter
of Joseph Cooke Bond
no 57 I was married
to John Patrick Chausse
son of Patrick Chausse
in July 1939 & have ~~been~~
^{been} living separately for
about 3 yrs. I would
appreciate a quick
reply. find enclosed
stamped addressed
envelope Sincerely

Annie, Cooke, Chausse
General Delivery
Port Colborne 000789



0/127-1-2

0/126-7-2

(Secy.)

Ottawa, June 19, 1951.

F. P. Varcoe, Esq., K.C.,
Deputy Minister of Justice,
Ottawa, Ontario.

Dear Mr. Varcoe:

This will acknowledge your letter of June 1st, your file reference 160997, wherein you give your opinion as to the rights of Indians under the Jay Treaty.

Recently certain articles have been seized from Mr. Neil Bent, an Indian of the Lower Similkameen Band, British Columbia. The details of the seizure are set out in the report of the Indian Superintendent who investigated the matter, which is quoted in part as follows:

On April 9th, R.C.M.P. came to Chopaka and searched house when whole family was away, but Antoine Qualtier was there. Antoine Qualtier says R.C.M.P. gave him a paper then went in and searched house for U.S. funds. In course of search brought out two new U.S. tires, 650-16 between \$40 and \$50 bought at Nighthawk, Wash. (no duty) new hat bought at Oroville, Wash., and worn home (\$2.00), suit coat value \$20 bought at Oliver a week previously at Collens Department Store, pipe-wrench value \$3.00 at Tonasket, Wash., (no duty), one flashlight from Camston, B.C. (old), one flashlight from workman who left it there, George Shackley from Spences Bridge, three used hammers (one from Nighthawk), pliers, one saddle, 3 or 4 years old - second hand when bought - originally from Oroville, Wash., value about \$40. Two shirts (girl's) from Oroville last fall bought by Qualtier girls - phonograph, second hand table - from U.S., \$30 also bought by Qualtier girls last fall.

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Yours sincerely,

B. M. M.
AT
CIP/MD
Laval Fortier.



OTTAWA
JUN 8 1951
Deputy Minister's Office

SS/RJ

PLEASE ADDRESS
THE DEPUTY MINISTER OF JUSTICE
OTTAWA

OTTAWA June 1, 1951.

160997

Re: Rights of Indians under Jay Treaty of 1794

JUN 12 1951

Dear Sir:

You have requested my opinion as to whether the Indians have any rights under the provisions of the Jay Treaty with respect to the importation of goods into Canada from the United States free of duty, and crossing the border without restriction.

I am of the opinion that insofar as the reference to Indians in the Jay Treaty is concerned, it would appear to be of full force and effect. It seems therefore that, in view of Article III of the Treaty, Indians dwelling on either side of the boundary line between Canada and the United States may pass freely into the respective countries.

With reference to the importation of goods into Canada from the United States free of duty, I am of the opinion that it will depend on the particular facts of each case as it arises. In view of Article III, "... Indians passing or repassing with their own proper goods and effects of whatever nature ..." need pay no duty. Consequently, it will depend in each instance whether the article in question is the Indian's own proper goods and effects. When the goods are in bales "... or other large packages, unusual among Indians ...", they would be liable for duty.

Yours truly,

F. P. Vance
Deputy Minister.

The Deputy Minister,
Department of Citizenship and Immigration,
OTTAWA, Ontario.

000793

36864



1951 JUN 12 PM 4:17

INDIAN AFFAIRS

O
P
Y

DEPARTMENT OF JUSTICE

Please Address
The Deputy Minister of Justice
Ottawa

CANADA

Ottawa June 1, 1951.

160997

Re: Rights of Indians under Jay Treaty of 1794

Dear Sir:

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Yours truly,

(Sgd) F. P. Varcoe
Deputy Minister.

The Deputy Minister,
Department of Citizenship and Immigration,
OTTAWA, Ontario.

BEST COPY AVAILABLE

DEPARTMENT OF JUSTICE

Please Address
The Deputy Minister of Justice
Ottawa

CANADA

Ottawa June 1, 1951.

160997

Re: Rights of Indians under Jay Treaty of 1794

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Yours truly,

(Sgd) F. P. Varcoe
Deputy Minister.

The Deputy Minister,
Department of Citizenship and Immigration,
OTTAWA, Ontario.

0/127-1-2

0/126-7-2

(Secy.)

BEST COPY AVAILABLE

Ottawa, June 21, 1951.

A. D. P. Heeney, Esq., K. C.,
Under-Secretary of State for External Affairs,
Ottawa, Ontario.

Mr. Heeney. (to be changed).

Dear Sir:

Representations have been received by this Department concerning the seizure of a one and one-half ton pick-up truck by the United States Customs authorities from Mr. Neil Bent, an Indian of the Lower Similkameen Band, British Columbia.

The Indian Superintendent in charge of the Okanagan Indian Agency investigated the case, and the details are set out in his report of May 29th, together with memorandum of interviews with persons concerned, copies of which are appended hereto.

It would appear that Mr. Bent's truck was seized because he is alleged to have used it to transport money he received from a Mr. A. Lenton, Nighthawk, Washington, for the sale of sixteen head of cattle which apparently were not cleared through Customs in accordance with existing regulations. According to the report, Mr. Bent denies using the truck for the purpose of transporting the money.

It will be noted, from the report of the Superintendent, that in an earlier sale of cattle by Mr. Bent to Mr. A. Lenton, the necessary Customs requirements were complied with. This case would appear to be the first on record in which Mr. Bent has not complied with the regulations governing the export of cattle. He is seventy-one years old and, by his education and background, may not be fully aware of the need for strict adherence to the regulations. I may mention that the Indians from the Lower Similkameen Reserve, because of its geographical position and transportation facilities, have had, over a long period of time, close business and commercial relations with residents of the State of Washington.

BEST COPY AVAILABLE

2.

As a matter of fact, it is necessary for them to go through the United States in order to make purchases in some of the nearby towns in Canada. It is being brought to the attention of Mr. Bent and other Indians of this area that they must comply with the regulations governing the export of cattle from Canada to the United States.

It would be appreciated if the matter could be taken up with the appropriate authorities in Washington with a view to the release of Mr. Bent's truck.

Yours sincerely,

Laval Fortier.

[Handwritten signature]
CIP/MD

[Handwritten signature]

T.R.Z M

DEPARTMENT OF MINES AND RESOURCES
Indian Affairs Branch

NOTE: This slip to be used for passing correspondence when the main file is charged out or is not required, and must not be removed but will be attached to the main file as soon as possible.

Records Service Division

1342

Indian Affairs File No. *0/127-1-2*
0/126-7-2

Slip No.

Subject of File

MAIN FILE ON CHARGE TO *Secy*

REFERENCE

DATE

PA
OR
BF

BY

DATE

DISPOSAL
FOR RECORDS USE

REMARKS

REFERRED
TO

BY

Secy *CK-17**36564**13-6**Records please put on file**0/127-1-2**& return to
secy*

Note: If action cannot be taken without the file, please make statement to that effect and return paper to Records Division.

000799

BEST COPY AVAILABLE

0/127-1-2 (Secy.)
0/126-7-2

Ottawa, May 21, 1951.

F. P. Varcoe, Esq., K.C.,
Deputy Minister of Justice,
Ottawa, Ontario.

Dear Mr. Varcoe:

Please refer to my letter of May 7th, requesting your opinion as to whether the Indians have any rights under the provisions of the Jay Treaty with respect to the importation of goods into Canada from the United States free of duty, and crossing the border without restriction.

In the meantime the following have been forwarded to the Department by Mr. Andrew Paull, President, North American Indian Brotherhood, with the request that they be referred to the appropriate authorities:

- (1) Memorandum entitled "The Jay Treaty."
- (2) Memorandum on "Border Crossing."
- (3) A copy of a letter dated March 15, 1878, from a certain Mr. J. F. Horthey to the Treasury Department, Washington, D.C.

It may be mentioned that the Department has been unable to locate any record of the letter from Mr. Horthey to the Treasury Department above-mentioned.

The foregoing is being referred to you for your information and consideration.

Yours sincerely,

Laval Fortier.

T.R.L.M.
fms.
CIE/MD
[Signature]

000800

BEST COPY AVAILABLE

Ottawa, May 21, 1951.

Andrew Paull, Esq.,
President,
North American Indian Brotherhood,
P. O. Box 211,
North Vancouver, B. C.

Dear Mr. Paull:

This will acknowledge your letter of May 10th,
together with enclosures, with respect to the Jay Treaty.

Your brief on the Jay Treaty which you submitted to the Director, Indian Affairs Branch, in connection with the seizure of a truck from Mr. Neil Bent of the Lower Similkameen Reserve by the United States Customs, is being brought to the attention of the appropriate authorities, as requested.

Yours sincerely,


CIF/MD

T.R.Z.M.
K. M. M.

Indian Affairs Branch

NOTE: This slip to be used for passing correspondence when the main file is charged out or is not required, and must not be removed but will be attached to the main file as soon as possible.

Records Service Division

Indian Affairs File No. *07/27-1-2*

Subject of File.....

MAIN FILE ON CHARGE TO

[illegible]

Note: If action cannot be taken without the file, please make statement to that effect and return paper to Records Division.

000802

Copy for Indian Affairs Branch

0/127-1-2 (Secy.)

BEST COPY AVAILABLE

Ottawa, May 21, 1951.

Andrew Paull, Esq.,
President,
North American Indian Brotherhood,
P. O. Box 211,
North Vancouver, B. C.



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Your brief on the Jay Treaty which you submitted to the Director, Indian Affairs Branch, in connection with the seizure of a truck from Mr. Neil Bent of the Lower Similkameen Reserve by the United States Customs, is being brought to the attention of the appropriate authorities, as requested.

Yours sincerely,

N.E. Harris

[Signature]
CIF/MD

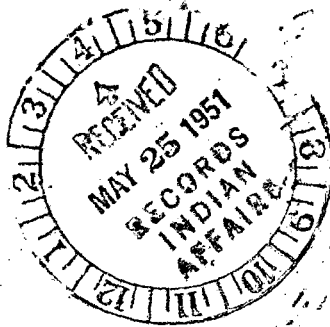
sum.

Secy

35790

1951 MAY 26 AM 8:51

INDIAN AFFAIRS



MINISTER OF CITIZENSHIP AND IMMIGRATION

JL.
OTTAWA, May 12, 1951.

TO: The Deputy Minister:

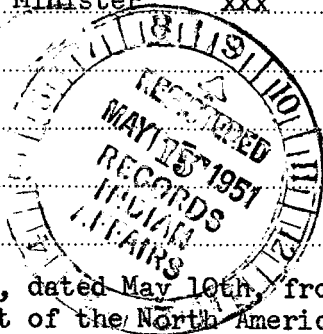
FOR: Director of Indian Affairs:

Preparation of reply for signature of the Minister. xxx

Discussion with.....

Perusal and necessary action.....

Report.....



to the attached letter, dated May 10th, from Andrew Paull, President of the North American Indian Brotherhood, North Vancouver, B.C., concerning the Jay Treaty and enclosing part of a brief he sent to Major MacKay for the consideration of those examining the Jay Treaty.

Major MacKay:

For preparation of reply,
as requested.

W. T. Ruffalo

for Deputy Minister.

Noted

14/5/51

Q.S.

im

[Signature]

Private Secrecy 000805



000806

ANDREW PAULL
President
North American Indian Brotherhood
P.O. Box 211.
North Vancouver B.C.

Tel. North 1489-R.

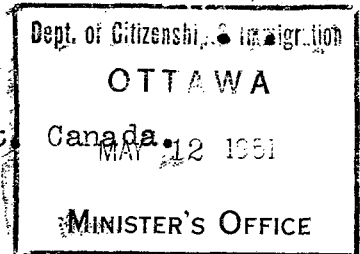
May 10th. 1951.

Hon. W.E. Harris M.P.
Minister of Citizenship and Immigration

Ottawa Ont. Canada. 12 1951

Honourable Sir:-

Re:-JAY TREATY.



I have received your letter in the matter of Calvin Adams, and note what you say, and that the matter of the Jay Treaty was under examination by the proper authorities.

In this connection I am most anxious for your support, as there must have been some reason for the Indians across Canada to believe in the Jay Treaty and its provisions and privileges guaranteed to them, and hope that Canada will not abrogate the terms of the Jay Treaty.

I have recently sent to Director MacKay a long brief on the Jay Treaty, and wish you to instruct him to have copies made for the consideration of those examining the Jay Treaty. This was in connection with a truck seized by the U.S. Customs at Osooyoos B.C. the property of Neil Bent a Similkameen Indian.

One of the stipulations is that "no subsequent treaty by the contracting parties shall derogate in any manner from the rights of free intercourse and commerce".

The United States has by the Supreme Court upheld the Jay Treaty. See, McCandless vs. United States, in Re; Diabo, 25 F (2) 71 aff'g 18 F (2nd) 282. Also Malloy's Treaties and Conventions Vol IP 590, Government Printing Office, Washington D.C. 1910.

I enclose a part of my submission to Major MacKay. This is of the utmost importance to the Indians of Canada. Thanking you,

Respectfully yours

ANDREW PAULL

President
North American Indian Brotherhood.



Copy

Jay Treaty

The international boundary laid down by Great Britian and the United States actually cut through the Great Lakes and upland territory which, which was the domain of the Six Nation people, and the occupants were under no sort of obligation reconize that line.

These two Powers, therefore, came together in 1796, in a new treaty intended to perfect peace between themselves, and then took cognisance of the rights of these aboriginal nations, and agreed upon an erticle which recited their right to freedom of movement, as though the British American boundary did not exist. It is Article lll of the Jay Treaty, so called (Malloy's Treaties and Conventions, Vol, 1P, 590 Government Printing Office Washington, /~~98~~ 1910;-

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 boundary line, freely to pass and repass by land, and inland nevagation, 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 navaigate all the lakes, rivers and waters thereof, and freely to carry on trade and commerce with each other.

No duty of ontry shall ever be levied by either party on peltries brought by land or inland navigations into the said territories respectively, nor shall the Indians passing or repassing with their own proper goods and effects of whatever. But goods in bales or other large packages unusual among Indians, shall not be considered as goods belonging bona fide to Indians.

COPY

AA TRUE COPY

Treasury Department,
Washington, D.C.

March, 1878.

Referring to your letter of the 11th, instant, addressed to the secretary of the interior, and by leave referred to this Department, in which you ask, in behalf of the Iroquois and other Indians in Canada, that they be relieved of all taxes or duties in their trade and intercourse with the people of the United States. I enclose herewith for your information that all Indians are free of duties passing or repassing the boundary lines of the United States and Canada and also free of taxes- License in trading, and selling bead-work, bark-work, baskets, snow-shoes, moccasins, medicines, etc. etc. of their own Manufacturing Premises.

A Copy of Department reply thereto.

I am, very respectfully

J.F. M orthey,
Assistant.

BORDER CROSSING

Explanatory Article to the Third Article of the Treaty of November 19th, 1794, respecting the Liberty to Pass and Repass the Borders and to carry on Trade and Commerce.

Concluded May 4th, 1796; Ratification advised by Senate May 9th, 1796.

Whereas by third Article of the Treaty of Amity, commerce and navigation, concluded at London on the 19th day of November 1794, between His Britannic Majesty and the United States of America, it was agreed that it should 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 boundary line, by the Treaty of Peace to the United States, freely to pass and repass by land or navigation, into the respective territories and countries of the two contracting parties, on the continent of America (the property within the limits of the Hudson 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, subject to the provisions and limitations contained in the said Article; And whereas by the Article of the Treaty of Peace and friendship concluded At Greenville on the third day of August 1795. between the United States and the Nations or Tribes of Indians called the Wyandots, Delawares, Shawanoes, Ottawas, Chippewas, Putawatimes, Miamis, El River, Weeas, Kickapoos, Piankashaws and Kaskaskias. It was stipulated that no person should be permitted to reside at any of the towns or hunting camps of the Indian Tribes, as a trader who is not furnished with a license, for that purpose under the authority of the United States, which latter stipulation has excited doubts, whether in its operation, it may not interfere with the due execution of the third Article of the Treaty of Amity, commerce and navigation. And it being the sincere desire of His Britannic Majesty and the United States that mutual satisfaction and friendship, and for that purpose His Britannic Majesty having named His Commissioners Phines Bond Esquire, Consul-General for the Middle and Southern States of America. (And now His Majesty's charged affairs to the United States) And the President of the United States having named for their Commissioner, Timothy Pickering, Esquire, Secretary of State of the United States to whom agreeable to the laws of the United States, he has instructed to each other their full powers, having in virtue of the same, and do by these presents explicitly agree and declare, that no stipulations in any Treaty subsequently concluded by either of the contracting parties with any other State or Nation, or with any Indian Tribe, can be understood to derogate in any manner from the rights of free intercourse and commerce, and

and conformably to the spirit of the last Article of the said Treaty of Amity, commerce and Navigation, entered in this explanatory article, and do by these presents explicitly agree and declare, that no stipulations in any Treaty subsequently concluded by either of the contracting parties with any other State or Nation, or with any Indian Tribe, can be understood to derogate in any manner from the rights of free intercourse and commerce, secured by the aforesaid third Article of the Treaty of Amity, commerce and navigation, to the subjects of His Majesty and to the citizens of the United States, and to the Indians dwelling on either side of the boundary line aforesaid. But all the said persons shall remain at full liberty, freely to pass and repass, by land or inland navigation, into the respective territories of the contracting parties, on either side of the said boundary line. And freely to carry on trade and commerce with each other according to the stipulations of the said third Article of the Treaty of Amity, commerce and navigation. This explanatory Article, when the same shall have been ratified by His Majesty and by the President of the United States, by and with the advice and consent of their Senate. And the respective ratifications mutually exchanged, shall be added to and make a part of the said Treaty of Amity commerce and navigation, and shall be permanently upon His Majesty and the United States.

In witness whereof we the said Commissioners of His Majesty the King of Great Britain and the United States of America, have signed the present explanatory Article, and hereto affix our seals.

Done at Philadelphia, this 4th, day of May, A.D. 1796.

"P. Bond"

Seal.

"Timothy Pickering" Seal

The Treaty of Peace 1784 clearly recognizes the Indians as allies. It will be remembered that in that year, Col. Joseph Brant Ambassador of the Indians, met Lord Sydney, then Governor General, and the latter subsequently received from King George III a message for Brant and the Indians, This message was recognition of the rights and position of the Five Nations, as the Indians then were called, as allies of the Crown.

Further evidence that the Indians were always considered as allies rather than subjects of the Crown may be found in various United States enactments and judgments. Article III of the Jay Treaty, entered into 1794, refers to three groups of peoples, namely "His Majesty's Subjects" (being British Subjects) "Citizens of the United States" and Indians dwelling on either side of the boundary line. Quite obviously the Indian was not regarded as being a citizen and subject of either country.

Article III of the said Treaty between Great Britain and the United States, whereby the boundary line was fixed between Canada and the U.S.A. provides:-

"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 Expected)

Two years later, the provisions of the aforementioned Jay Treaty were broadened by the Treaty of 1796 which provides:-

"That no stipulations in any treaty subsequently concluded by either of the contracting parties with any other state of nations, or within any Indian tribe can be understood to derogate in any manner from the rights of free intercourse and commerce secured by the aforesaid third article of the Treaty of Unity, Commerce and Navigation (referring to the said Jay Treaty) to the subjects of His Majesty and to the citizens of the United States and to the Indians dwelling on either side of the boundary line aforesaid.

The first ten articles of the Jay Treaty, which includes article III, cited above, were made permanent by article XXVII of the said second Treaty) and thereby the Indians are permanently treated as a class and category entirely separate and distinct from that of British subject or United States subject. Again in 1832. The Supreme Court of the United States:-

The British Crown, previously to the Revolution, considered the Indians as Nations competent to maintain the relations of Peace and War and capable of governing themselves under its protection (quoted from Wheaton, 4th, p. 64)

From the foregoing it would appear that Indians, formerly allies of the Crown, never really lost that status by any mutual agreement and consequently, they, must, in law, still be regarded as allies and not as subjects.

Copy for Indian Affairs Branch

0/127-1-2 (Secy.)
0/126-7-2

BEST COPY AVAILABLE

Secy



Ottawa, May 21, 1951.

F. P. Varcoe, Esq., K.C.,
Deputy Minister of Justice,
Ottawa, Ontario.

Dear Mr. Varcoe:

Please refer to my letter of May 7th, request-
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It may be mentioned that the Department has been
unable to locate any record of the letter from Mr. Horthey to the
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Yours sincerely,

Laval Fortier.

Approved as
to Legality

LEGAL ADVISER

CIF/MD

000813



Tel. North 1489-R.

ANDREW PAULL
President
North American Indian Brotherhood
P.O. Box 211.
North Vancouver B.C.
May 10th.1951.

Hon. W. E. Harris M.P.
Minister of Citizenship and Immigration
Ottawa Ont.

Honourable Sir;-

Re:-JAY TREATY.

I have received your letter in the matter of Calvin Adams, and note what you say, and that the matter of the Jay Treaty was under examination by the proper authorities.

In this connection I am most anxious for your support, as there must have been some reason for the Indians across Canada to believe in the Jay Treaty and its provisions and privileges guaranteed to them, and hope that Canada will not abrogate the terms of the Jay Treaty.

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The United States has by the Supreme Court upheld the Jay Treaty. See, McCandless vs. United States, in Re; Diabo, 25F (2) 71 aff'g 18 F (2nd) 282. Also Malloys Treaties and Conventions Vol IP 590, Government Printing Office, Washington D.C. 1910.

I enclose a part of my submission to Major MacKay. This is of the utmost importance to the Indians of Canada. Thanking you,

Respectfully yours

(Signed)

ANDREW PAULL
President

North American Indian Brotherhood.

O
P
Y

Tel. North 1489-R.

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President
North American Indian Brotherhood
P.O. Box 211.
North Vancouver B.C.
May 10th.1951.

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Minister of Citizenship and Immigration
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(Signed)
ANDREW PAULL
President
North American Indian Brotherhood.

000816

Copy

Jay Treaty

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COPY

A TRUE COPY

Treasury Department,
Washington, D.C.

March, 1878.

Referring to your letter of the 11th, instant, addressed to the secretary of the interior, and by leave referred to this Department, in which you ask, in behalf of the Iroquois and other Indians In Canada, that they be relieved of all taxes or duties in their trade and intercourse with the people of the United States. I enclose herewith for your information that all Indians are free of duties passing or repassin the boundary lines of the United States and Canada and also free of taxes- License in trading, and selling bead-work, bark-work, baskets, snowshoes, mocasins, medicins, etc. etc. of their own Manufacturing Premises.

A Copy of Department reply thereto.

I am, very respectfully

J.F. Horthey,

Assistant.

BORDER CROSSING

Explanatory Article to the Third Article of the Treaty of November 9th, 1794, respecting the Liberty to Pass and Repass the Borders and to carry on Trade and Commerce.

- - - - -

Concluded May 4th, 1796: Ratification advised by Senate, May 9th, 1796.

- - - - -

Whereas by third Article of the Treaty of Amity, commerce and navigation, concluded at London on the 19th day of November 1794, between His Britanic Majesty and the United States of America, it was agreed that it should 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 boundary line, by the Treaty of Peace to the United States, freely to pass and repass by land or navigation, into the respective territories and countries of the two contracting parties, on the continent of America (the property within the limits of the Hudson 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, subject to the provisions and limitations contained in the said Article: And whereas by the Article of the Treaty of Peace and friendship concluded at Greenville on the third day of August 1795, between the United States and the Nations or Tribes of Indians called the Wyandots, Delawares, Shawanoes, Ottawas, Chippewas, Putawatimes, Miamis, Eel River, Weeas, Kickapoos, Piankashaws and Kaskaskias. It was stipulated that no person should be permitted to reside at any of the towns or hunting camps of the Indian Tribes, as a trader who is not furnished with a license for that purpose under the authority of the United States: which latter stipulation has excited doubts, whether in its operation it may not interfere with the due execution of the third Article of the Treaty of Amity, commerce and navigation. And it being the sincere desire of His Britanic Majesty and the United States that mutual satisfaction and friendship, and for that purpose His Britanic Majesty having named His Commissioners Phines Bond, Esquire, Consul-General for the Middle and Southern States of America. (And now His Majesty's charge d'affaires to the United States). And the President of the United States having named for their Commissioner, Timothy Pickering, Esquire, Secretary of State of the United States to whom agreeable to the laws of the United States, he has instructed to each other their full powers, having in virtue of the same, and conformably to the spirit of the last Article of the said Treaty of Amity, commerce and Navigation, entered into this explanatory article, and do by these presents explicitly agree and declare, that no stipulations in any Treaty subsequently concluded by either of the contracting parties with any other State or Nation, or with any Indian Tribe, can be understood to derogate in any manner from the rights of free intercourse and commerce, secured by the aforesaid third Article of the Treaty of Amity, commerce and navigation, to the subjects of His Majesty and to the citizens of the United States, and to the Indians dwelling on either side of the boundary line aforesaid. But all the said persons shall remain at full liberty, freely to pass and repass, by land or inland navigation, into the respective territories of the contracting parties, on either side of the said boundary line. And freely to carry on trade and commerce with each other, according to the stipulations of the said third Article of the Treaty of Amity, commerce and navigation.

This explanatory Article, when the same shall have been ratified by His Majesty and by the President of the United States, by and with the advice and consent of their Senate. And the respective ratifications mutually exchanged shall be added to and make a part of the said Treaty of Amity, commerce and navigation, and shall be permanently binding upon His Majesty and the United States.

In witness whereof we the said Commissioners of His Majesty the King of Great Britain and the United States of America, have signed the present explanatory Article, and hereto affix our seals.

Done at Philadelphia, this 4th, day of May, A.D. 1796.

"P. Bond" Seal.
"Timothy Pickering" Seal.

000819

The Treaty of Peace 1784 clearly recognizes the Indians as allies. It will be remembered that in that year, Col. Joseph Brant, Ambassador of the Indians, met Lord Sydney, then Governor General, and the latter subsequently received from King George III a message for Brant and the Indians. This message was recognition of the rights and position of the Five Nations, as the Indians then were called, as allies of the Crown.

Further evidence that the Indians were always considered as allies rather than subjects of the Crown may be found in various United States enactments and judgments. Article III of the Jay Treaty, entered into in 1794, refers to three groups of peoples, namely "His Majesty's Subjects" (being British Subjects) "Citizens of the United States" and "Indians dwelling on either side of the boundary line." Quite obviously the Indian was not regarded as being a citizen and subject of either country.

Article III of the said Treaty between Great Britain and the United States, whereby the boundary line was fixed between Canada and the U.S.A. provides:

"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)

Two years later, the provisions of the aforementioned Jay Treaty were broadened by the Treaty of 1796 which provides:

"That no stipulations in any treaty subsequently concluded by either of the contracting parties with any other state of nations, or within any Indian tribe can be understood to derogate in any manner from the rights of free intercourse and commerce secured by the aforesaid third article of the Treaty of Unity, Commerce and Navigation (referring to the Said Jay Treaty) to the subjects of His Majesty and to the citizens of the United States and to the Indians dwelling on either side of the boundary line aforesaid.

The first ten articles of the Jay Treaty, which includes article III, cited above, were made permanent by article XXVII (of the said second Treaty) and thereby the Indians are permanently treated as a class and category entirely separate and distinct from that of British subject or United States subject. Again in 1832. The Supreme Court of the United States:-

The British Crown, previously to the Revolution, considered the Indians as Nations competent to maintain the relations of Peace and War and capable of governing themselves under its protection (quoted from Wheaton, 4th, p,64)

From the foregoing it would appear that the Indians, formerly allies of the Crown, never really lost that status by any mutual agreement and consequently, they, must, in law, still be regarded as allies and not as subjects.

DEPARTMENT OF MINES AND RESOURCES

Indian Affairs Branch

NOTE: *This slip to be used for passing correspondence when the main file is charged out or is not required, and must not be removed but will be attached to the main file as soon as possible.*

Records Service Division

Slip No. **931**

Indian Affairs File No. **0/127-1-2**

Subject of File.....

MAIN FILE ON CHARGE TO *secy*

REFERENCE				DISPOSAL			
REFERRED TO	BY	REMARKS	DATE	PA OR BF	BY	DATE	FOR RECORDS USE
<i>secy</i>	<i>CRB</i>	<i>29657</i>	<i>15/5/57</i>				

Note: If action cannot be taken without the file, please make statement to that effect and return paper to Records Division.

000821

0/127-1-2
EXT. 67

Heeney
THE DEPARTMENT OF EXTERNAL AFFAIRS

OTTAWA, May 9, 1951.

To: The Director of Indian Affairs Branch,
Department of Citizenship and Immigration, Ottawa.

The documents described below are attached for your information
or for any action you consider necessary:

Also referred to: Your file: 0/127-1-2(Secy.)

A.D.P. Heeney
f (A.D.P. Heeney)
Under-Secretary of State
for External Affairs

000822

E 181 C

DUPLICATE

OTTAWA FILE

No. 10136-40

Letter No. C: 1935

Date: May 9, 1951

SECURITY CLASSIFICATION

none

FROM: THE UNDER-SECRETARY OF STATE FOR EXTERNAL AFFAIRS, CANADA

TO: THE CANADIAN EMBASSY, WASHINGTON, D.C.

Reference: none

Subject: General Order No. 109 of July 18, 1928 - United States -
Department of Labour, Bureau of Immigration.

The Indian Affairs Branch of the Department of Citizenship and Immigration have understood that the above Order does not apply to enfranchised Indians or to persons whose Indian membership is created by adoption, including adopted children and the wives of Indians who are not Indians by birth. In connection with this Order, I attach the following:

1. General Order No. 109 of July 18, 1928 of the United States Department of Labour, Bureau of Immigration, Washington;
2. Letter of March 19, 1943 from the Acting Inspector-in-Charge of the United States Immigration and Naturalization Service, Oroville, Washington, to Mrs. Ilene Derichson, of Osoyoos, B.C.;
3. Letter of April 16, 1951, from the Superintendent of the Okanagan Indian Agency, Vernon, B.C. to Indian Affairs Branch, Department of Citizenship and Immigration, Ottawa.

2. You will notice from the letter from the Acting Inspector-in-Charge at Oroville, No. 2 above, that Mrs. Derichson is being regarded as having Indian status as a member of the Okanagan Band under the provisions of the Act of April 2, 1928. Mrs. Derichson had white status before her marriage to William Derichson, No. 049, Okanagan Band.

3. It would be appreciated therefore, if you would ascertain whether General Order No. 109 is still in effect and, if so, whether it has been amended, and what is the present interpretation of the Order with respect to:

- (a) an enfranchised Canadian Indian; and
- (b) a woman who has acquired Indian status by marriage to a Canadian Indian.

Under-Secretary of State
for External Affairs.

000823

MINISTER OF CITIZENSHIP AND IMMIGRATION

OTTAWA, May 12, 1951.

TO: The Deputy Minister:

FOR: Director of Indian Affairs:

Preparation of reply for signature of the Minister..... ~~xxx~~

Discussion with.....

Perusal and necessary action.....

Report.....

to the attached letter, dated May 10th, from Andrew Paull, President of the North American Indian Brotherhood, North Vancouver, B.C., concerning the Jay Treaty and enclosing part of a brief he sent to Major MacKay for the consideration of those examining the Jay Treaty.

im

Private Secret 000824

0/127-1-2

0/126-7-2 (Secy.)

Ottawa, May 7, 1951.

F. P. Varcoe, Esq.,
Deputy Minister of Justice,
Ottawa, Ont.

Dear Mr. Varcoe:

Appended hereto is a copy of a letter to the Minister, dated April 7th, from Mr. Andrew Paull, President, North American Indian Brotherhood, with respect to the seizure by the R.C.M. Police of a pump and food mixer from Mr. Calvin Adams of the Sarnia Reserve.

On the particular case in question, the matter was referred to the Department of National Revenue, and according to information received from that Department, the goods were seized in July 1950 (customs seizure No. 4407/26620). It is stated that Mr. Adams admitted obtaining the goods in the United States and transporting them to his home by boat. The goods were forfeited to the Crown November 1950, advertised for sale by tender, and sold, and the Department of National Revenue advises that the case is closed and that it would not be possible to re-open it.

It will be noted that on the general question of importation of goods from the United States, Mr. Paull alleges that the Indians have certain rights under the Jay Treaty, which was negotiated between the United States and Great Britain in 1794 and proclaimed in 1796. Indians have claimed that Article III of the Jay Treaty is still in force by reason of Article IX of the Treaty of Ghent, 1814, and that under the provisions of Article III they have the right to import goods from the United States without payment of duty and also to freely pass and repass the boundary.

Insofar as I am aware, the Government of Canada has never recognized that the Indians have any rights with respect to importation of goods into Canada from the United States free of duty under

BEST COPY AVAILABLE

2.

the terms of the Jay Treaty. The Department has no record of the question having been dealt with by the courts in Canada. There have been a number of court cases in the United States in which the Indians claimed the right to import goods from Canada into the United States free of duty under the provisions of the Jay Treaty. According to our understanding, the present position is that Indians are not allowed any special privileges with respect to the importation of goods into the United States by reason of the Jay Treaty.

On the question of border-crossing privileges, it is true that the Indians are permitted to enter the United States without inspection under the immigration laws under General Order No. 109 of the United States Department of Labour, Bureau of Immigration, of July 18, 1928, a copy of which is appended hereto. This Order apparently was based on the legislative authority of Congress rather than any right under the Jay Treaty.

The Canadian Customs and Immigration authorities do not recognize any rights of Indians under the Jay Treaty either to enter or leave Canada or to be relieved of the payment of duties or imposts on goods brought into Canada from the United States.

Various groups of Indians have been bringing this question up over a long period of time, and accordingly, it would be appreciated if you would kindly advise me if in your opinion the Indians have any rights under the provisions of the Jay Treaty with respect to the importation of goods into Canada from the United States free of duty, and crossing the border without restriction.

Yours sincerely,

CIF/MD

Laval Fortier.

TRZM

C
O
P
Y

U.S. DEPARTMENT OF LABOR
BUREAU OF IMMIGRATION
WASHINGTON

July 18, 1928.

GENERAL ORDER NO. 109.

SUBJECT: Inspection of Canadian-born American Indians.

On April 2, 1928, the following Act was passed by Congress:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Immigration Act of 1924 shall not be construed to apply to the right of American Indians born in Canada to pass the borders of the United States: Provided, That this right shall not extend to persons whose membership in Indian tribes or families is created by adoption".

In view of the interpretation placed upon this statute by the Attorney General, it is hereby directed that American Indians born in Canada be permitted to enter the United States without inspection under the Immigration Laws. This right shall not extend to persons whose membership in Indian tribes or families is created by adoption.

Harry E. Hull
Commissioner General.

Approved:

Robt Carl White
Acting Secretary.

Referred to
Indian Affairs
Immigration

BEST COPY AVAILABLE

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BUREAU OF IMMIGRATION
WASHINGTON

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U.S. DEPARTMENT OF LABOR
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In view of the interpretation placed upon this statute by the Attorney General, it is hereby directed that American Indians born in Canada be permitted to enter the United States without inspection under the Immigration Laws. This right shall not extend to persons whose membership in Indian tribes or families is created by adoption.

Harry E. Hull

Commissioner General.

Approved:

Hobe Carl White

Acting Secretary.

Referred to
Indian Affairs
Immigration

0/127-1-2(Secy.)

Ottawa, May 3, 1951.

The Under-Secretary of State,
External Affairs,
Department of External Affairs,
Ottawa, Ontario.

Dear Sir:

Herewith are enclosed copies of correspondence regarding Special Order 109 of the United States Department of Labor, Bureau of Immigration, Washington, dated July 18, 1929, received from our Indian Superintendent, Mr. R. H. S. Sampson, Okanagan Indian Agency, Vernon, B.C.

Our understanding of the Order has been that it does not apply to enfranchised Indians or to persons whose Indian membership is created by adoption, including adopted children and the wives of Indians who are not Indians by birth.

It would be appreciated if you would ascertain through the appropriate channels if this Order is in effect or if it has been changed in any way and also what the present interpretation of the Order is with respect to -

- (a) an enfranchised Canadian Indian, and
- (b) a woman who has acquired Indian status by marriage to a Canadian Indian.

Yours sincerely,

W. L. Mackenzie King
Director.

7-12-51

FIELD SERVICE



CANADA

11633

PLEASE QUOTE

FILE.....

DEPARTMENT OF CITIZENSHIP AND IMMIGRATION

INDIAN AFFAIRS BRANCH

PM 1:48

INDIAN AFFAIRS

Vernon, B.C.,
April 16, 1951.

Seery
Indian Affairs Branch, Department of Citizenship and Immigration, Ottawa.

Re: Entry into United States

The question of the right of a white woman married to an Indian, to enter the United States regardless of quota regulations has arisen on two occasions recently. This matter is covered under section 74 of the References and Regulations, but as the result of reading the attached copy of a letter to Mrs. Ilene Derrickson of Okanagan I.R. #9, some doubt has arisen.

Mrs. Derrickson had white status before marrying Wm. Derrickson, No. 049, Okanagan Band.

May this office be instructed whether the ruling set out in paragraph 2 of section 74 of the Indian Agent's References and Regulations is still considered correct?

R.H.S. Sampson
R.H.S. Sampson,
Superintendent,
Okanagan Indian Agency.

C O P Y

U.S. DEPARTMENT OF JUSTICE
Immigration and Naturalization Service
Oroville, Washington

File Number
1071/324

March 19, 1943

Mrs. Ilene Derichson,
Osoyoos, B.C., Canada.

Dear Madam:-

Reference is had to your exclusion at this port on August 3, 1942, in which you elected to appeal to the Attorney General at Washington D.C.

I wish to advise that this office has been advised that your appeal has been sustained and that you can be admitted to the United States as an Indian born in Canada under the provisions of the Act of April 2, 1928. As you have previously submitted evidence to this office that you are recognized as a member of the Okanogan I.R. #10, at the time of your exclusion, no further evidence as to your present status is needed.

Very truly yours,

(Sgd) L.J. Brunner
Acting Inspector in Charge

FIELD SERVICE



CANADA

DEPARTMENT
OF

MINES AND RESOURCES

INDIAN AFFAIRS BRANCH

PLEASE QUOTE

FILE 32/1-9

1378

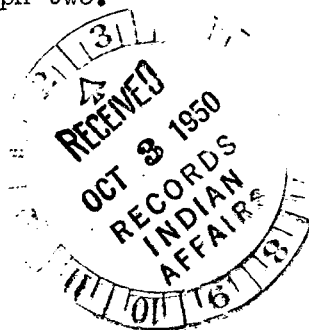
Brantford, Ontario
October 2, 1950

Indian Affairs Branch, Dept. Citizenship and Immigration, Ottawa.

In reply to your 0/127-1-2 of the 6th September with reference to the Resolution forwarded by the Indian Association of Alberta, this office on enquiring cannot establish the existence of cards of the nature you speak of.

The group here who call themselves the Six Nations Confederacy Council, issue a card which states the holder is a member of the Six Nations and has some reference to border crossings under the Jay Treaty, but we know nothing of such a card giving anyone exemption from paying duty.

Most of the Indians come to this office for a certificate stating they are members, which gets them to and fro across the border without much question, but a few who believe in the old system, prefer, we understand, to pay \$1.00 to the officials of the so-called Confederacy Council and receive the card mentioned in paragraph two.



E. P. Randle

Lt.-Col. E. P. Randle,
EPR:GJ

Indian Superintendent



PLEASE QUOTE

FILE 0/127-1-2

DEPARTMENT OF CITIZENSHIP AND IMMIGRATION
INDIAN AFFAIRS BRANCH

Ottawa, September 6, 1950.

Lt. Col. E.P. Randle,
Superintendent, Indian Agency,
Brantford, Ontario.

SUPT. SIX NATIONS Indian Office Brantford.	
SEP 11 1950	
Letter No	2395
File	1-9

Appended hereto is a copy of a resolution forwarded by the Indian Association of Alberta in which reference is made to cards issued to members of the Six Nations for the purpose of bringing goods into Canada from the United States without payment of duty.

This Office has no knowledge of the cards referred to and any light you could throw on the matter would be appreciated.

T.R.L. MacInnes
T.R.L. MacInnes,
Secretary.

Copy of an extract from the General Meeting of the Indian Association of Alberta held June 9th-10th, 1950. Blood Agency.

X

X

X

3. "Resolved that all Treaty Indians returning from the United States be permitted to bring into Canada, without payment of duty, according to the Jay Treaty 1794, any goods which they may have received in the U. S. A. Be it further resolved that the matter be brought to the attention of the proper authorities so that cards similar to those issued members of the Six Nations for the same purpose be issued by the proper authorities to Treaty Indians of Western Canada."

Sponsored by two Blood locals. Carried unanimously.

X

X

X

(Sgd) R. D. Ragan,
Supt., Blood Agency.

0/127-1-2

, September 6, 1950.

Lt. Col. E.P. Randle,
Superintendent, Indian Agency,
Brantford, Ontario.

Appended hereto is a copy of a resolution forwarded by the Indian Association of Alberta in which reference is made to cards issued to members of the Six Nations for the purpose of bringing goods into Canada from the United States without payment of duty.

This Office has no knowledge of the cards referred to and any light you could throw on the matter would be appreciated.



T.R.L. MacInnes,
Secretary.



CANADA

DEPARTMENT
OF
MINES AND RESOURCES

OFFICE OF THE
DIRECTOR

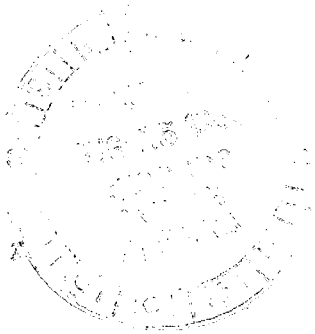
INDIAN AFFAIRS
BRANCH

... at from the General Meeting of the Indian Association of Alberta
held June 9 - 10 , 1950. Blood Agency.

12051

3. "Resolved that all Treaty Indians returning from the United States be permitted to bring into Canada, without payment of duty, according to the Jay Treaty 1794, any goods which they may have received in the U.S.A. Be it further resolved that the matter be brought to the attention of the proper authorities so that cards similar to those issued members of the Six Nations for the same purpose be issued by the proper authorities to Treaty Indians of Western Canada."

Sponsored by two Blood locals. Carried unanimously.



E. J. Brown
Agent, Blood Agency

Copied: V.C.

490-3-3(Secy.)

, December 7th, 1948.

TO THE U.S. IMMIGRATION AUTHORITIES

AND

TO WHOM IT MAY CONCERN.

This is to certify that Andrew Morrow
is an Indian of the Long Plain Indian Reserve, Portage
la Prairie Indian Agency, Portage la Prairie, Manitoba.

It would be appreciated if the usual
courtesies customarily extended to Canadian Indians
would be granted to him.

T.R.L. M

T.R.L. MacInnes,
Secretary,
Indian Affairs Branch, Canada.

Father's Name Andrew
Mother's " Emma

*Account
Library file*

600172-1(Secy.)

, November 25th, 1948.

Mr. Louis Cadreau,
102 6th Avenue East,
Sault Ste. Marie, Mich.

Dear Sir:

This will acknowledge your communication of
November 22nd regarding your request for a copy of the Jay
Treaty.

In reply thereto, I regret to advise you that
we have no copies available for distribution.

Yours truly,

T.R.L. 17

T.R.L. MacInnes,
Secretary.

Indian Affairs Branch
Department of Mines & Resources
Ottawa, Canada.

Dear Sirs;—

2331

Will you please
send me The J. Treaty,
which is the Treaty between
Great Britain and the
United States Government
for the Indians And Oblige

Chief Louis Cochran

1026th Ave E.

Sault Ste Marie Mich.

600172-1 (Secy.)

, October 6th, 1948.

TO THE U.S. IMMIGRATION AUTHORITIES

and

TO WHOM IT MAY CONCERN

This is to certify that Leo Jocko is
an Indian of the Algonquin Band of Indians, Golden
Lake Indian Agency, Golden Lake, Ontario.

It would be appreciated if the usual
courtesies customarily extended to Canadian Indians
would be granted to him.

T.R.L. 2 17

T.R.L. MacInnes,
Secretary,
Indian Affairs Branch, Canada.

/TTH

C.C. sent to Indian Agent Ruddy, Golden Lake, Ont.

000844

600172-1

P.A.

FROM
EDITORIAL AND INFORMATION SECTION

Mounts Globe and Mail

July 19 19 *48*

Indians Observe Border Crossing For 21st Time

Niagara Falls, July 18 (Special).—

A colorful ceremony, which saw Indians from both sides of the international border in full regalia, was held Saturday to mark the annual free crossing, held this year for the 21st time. Sponsored by the Indian Defense League of America, the parade drew thousands of spectators from both sides of the river.

From the Canadian side, Indians were present from Oshweken, Hamilton, Niagara Falls and other points, while their American brothers gathered from Higansburg and Sanborn, N.Y.

Led by Chaplain James Scheur, the parade included floats from several reservations, incidental additions of white cowboys and cowgirls, the Indian brass band from Oshweken and a Niagara Falls girls' band.

After parading along the Ontario side, the Indians crossed the Whirlpool Rapids bridge, marking the dividing point between Canada and the United States.

In the centre of the bridge a brief ceremony was held, with Chief Clinton Rickard of Sanborn presenting Ald. Harry Parm of Niagara Falls Ont., and Acting Mayor Wilbur S. Connell of ~~Niagara~~ Falls, N.Y., with hand-made moccasins.

*Copy forwarded to
Indian Agent G. W. Mason
June 10, 1948*

600172-1

, June 10th, 1948.

TO THE U.S. IMMIGRATION AUTHORITIES

AND

TO WHOM IT MAY CONCERN

This is to certify that the bearer,
Mr. Albert H. Antone, is an Indian of the Oneida
of the Thames Band, Caradoc Indian Agency, Muncey,
Ontario.

It would be appreciated if the usual
courtesies customarily extended to Indians would
be granted to him.



T.R.L. MacInnes,
Secretary,
Indian Affairs Branch, Canada.

Please return to Indian Affairs Branch when signed.

COPY

600172-1 Sec'y

21116

OTTAWA, May 22, 1948.

Dear Sir:

This will acknowledge your letter of
May 14.

It is noted that the Department of Agriculture of the Province of Saskatchewan has been in communication with the Regional Supervisor of Indian Agencies, who was favourable to the request for permission to allow 150 Indians to go to Chinook, Montana, for sugar-beet thinning between June 1st and July 15th.

In these circumstances this Department will have no objections whatsoever to the granting of the request and would welcome the opportunity for employment which such an offer would provide for the Indians concerned.

Your file is herewith returned for your records.

Yours very truly,



Director,
Administration & Personnel.

Mr. A. MacNamara,
Deputy Minister of Labour,
OTTAWA.

DR/FL

600172-1 Sec'y

OTTAWA, May 22, 1948.

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Director,
Administration & Personnel.

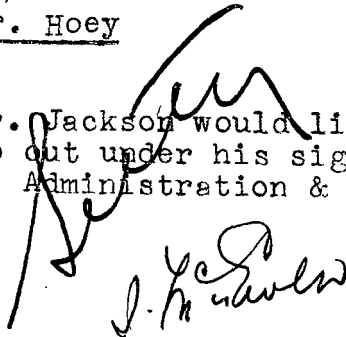
T.R.Z.M.
DR
Mr. A. MacNamara,
Deputy Minister of Labour,
OTTAWA.

DR/FL

MEMORANDUM

Mr. Hoey

Mr. Jackson would like this letter to go out under his signature as Director, Administration & Personnel.



May 20/48.

000849

600172-1

20237

OFFICE OF THE
DEPUTY MINISTER



CANADA

DEPARTMENT
OF
MINES AND RESOURCES

OTTAWA, May 18,



Dear Sir:

This will acknowledge your letter of May 14, to the ~~Secretary and Executive Assistant of this Department.~~

It is noted that the Department of Agriculture of the Province of Saskatchewan has been in communication with the Regional Supervisor of Indian Agencies, who was favourable to the request for permission to allow 150 Indians to go to Chinook, Montana, for sugar-beet thinning between June 1st and July 15th.

In these circumstances this Department will have no objections whatsoever to the granting of ~~the~~ request and would welcome the opportunity for employment which such an offer would provide for the Indians concerned.

✓ Your file is herewith returned for your records.

Yours very truly,


Deputy Minister.

Mr. A. MacNamara,
Deputy Minister of Labour,
OTTAWA.

Please return to Indian Affairs Branch when signed.

600172-1 Sec'y

OTTAWA, May 18, 1948.

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Your file is herewith returned for your records.

Yours very truly,

Deputy Minister.

Mr. A. MacNamara,
Deputy Minister of Labour,
OTTAWA.

DR/FL

000851

600172-1 Sec'y

EX'D.
A.

OTTAWA, May 18, 1948.

Dear Sir:

This will acknowledge your letter of May 14 to the Secretary and Executive Assistant of this Department.

It is noted that the Department of Agriculture of the Province of Saskatchewan has been in communication with the Regional Supervisor of Indian Agencies, who was favourable to the request for permission to allow 150 Indians to go to Chinook, Montana, for sugar-beet thinning between June 1st and July 15th.

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Your file is herewith returned for your records.

Yours very truly,

Deputy Minister.

Mr. A. MacNamara,
Deputy Minister of Labour,
OTTAWA.

IR/FL

000852

NOTE: *This slip to be used for passing correspondence when the main file is charged out or is not required, and must not be removed but will be attached to the main file as soon as possible.*

Records Service Division

Subject of File.....

Date	P.A. or B.F.	Initials	Referred To	For Remarks	Initials	Date
	P.A.	Sec'y	Sec'y	19238 File with you	C.S.	17/5
				If action cannot be taken without _____ file, please make statement to that _____ effect and return paper to Records _____		

Document divulgué en vertu de la Loi sur l'accès à l'information
DEPARTMENT OF MINES AND TECHNICAL SURVEYS
DEPARTMENT OF MINES AND RESSOURCES

OFFICE OF THE DEPUTY MINISTER

OTTAWA, 15/5/48

To: *Mr. Roy*

For your attention and
necessary action

For preparation of reply

For suggested reply

For your comments

For noting and return

X

Log 17-4-8

000854

COPIE

Deputy Minister
of Labour

Ottawa,
May 14th, 1948.

Mr. C.W. Jackson,
Secretary and Executive Assistant,
Department of Mines and Resources,
Ottawa, Ontario.

Dear Mr. Jackson:

You will note there is a suggestion that we permit 150 Indians and half-breeds to go to Chinook, Montana, for sugar-beet thinning between June 1st and July 15th.

Apparently, the farmers in Montana need workers so badly that they are willing to get along with these chaps from Saskatchewan.

Before giving authority I thought I should consult you.

I don't see any reason why we should hesitate to encourage this movement. They can probably go anyway if they want to. Will you let me know promptly, and oblige.

Kindly return the file.

Yours very truly,

Sgd. A. MacNamara.

Encl.

Province of Saskatchewan
Department of Agriculture.

Regina, May 11, 1948.

Mr. W. W. Dawson,
Supervisor,
Immigration & Farm Placements,
Department of Labour,
OTTAWA, Ontario.

Daar Mr. Dawson:

Re: Beet Workers - Montana

Yesterday we had a call from Mr. Rowland M. Cannon, Agricultural Superintendent, Utah-Idaho Sugar Company, Chinook, Montana, with respect to the possibility of securing not more than 150 labourers from this province for work in blocking and thinning beets in the Milk River area, Montana.

Mr. Cannon suggested the possibility of securing some halfbreeds from the Lac Pelletier and Maple Creek areas. They had some crews from these areas last Fall which proved very satisfactory. He, also, advised that one of the operators had secured a full crew of Treaty Indians from a reserve near Battleford. We understand that Mr. Cannon has also approached the Superintendent of Indian Affairs, Regina, regarding the possibility of securing labour from this source again this year. He, also, advised that the Superintendent seemed favourable to this request and left him with the impression that there was need for some work of this type for residents of some of the reservations this Spring.

You may anticipate a request being forwarded through the regular channels to Washington for a limited movement of workers from southwestern Saskatchewan this Spring. Mr. Cannon expects the work to start not earlier than June 1 and continue not later than July 15.

This matter has been discussed with Mr. Hartnett and he is favourable to a limited movement, providing that it does not interfere too greatly with our own farm labour requirements.

At the present time, it does not appear that this movement will interfere materially with seeding and should be completed before the demand for labour for haying has reached its peak.

Yours very truly,

E. E. Brockelbank,
Director Farm Labour Division

Per;

jrb-amk

Ottawa, May 14, 1948.

To: Mr. A. MacNamara.

From: W.W. Dawson.

I had a telephone call from Mr. Freeman of the United States Employment Service in Washington this morning with reference to the possibility of a group of about 150 Indians and half-breeds going from Saskatchewan to Chinook, Montana, for beet thinning between June 1st and July 15th. The attached letter from Saskatchewan came in this morning.

If the beet growers in Montana are willing to use this type of labour, I would be inclined to approve the movement, especially so in view of the fact that Saskatchewan offer no objections.

If we approve it, it would be understood of course that there would be no expense involved so far as the Dominion is concerned.

Would you please advise me.

W.W. Dawson.

WWD/mn

COPY

U.S. DEPARTMENT OF LABOR
BUREAU OF IMMIGRATION
WASHINGTON

July 18, 1928.

GENERAL ORDER NO. 109.

SUBJECT: Inspection of Canadian-born American Indians.

On April 2, 1928, the following Act was passed by Congress:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Immigration Act of 1924 shall not be construed to apply to the right of American Indians born in Canada to pass the borders of the United States: Provided, That this right shall not extend to persons whose membership in Indian tribes or families is created by adoption".

In view of the interpretation placed upon this statute by the Attorney General, it is hereby directed that American Indians born in Canada be permitted to enter the United States without inspection under the Immigration Laws. This right shall not extend to persons whose membership in Indian tribes or families is created by adoption.

Harry E. Hull

Commissioner General.

Approved:

Robt Carl White

Acting Secretary.

Referred to
Indian Affairs
Immigration

102.6
DEC:ar



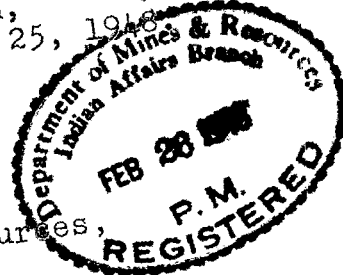
THE FOREIGN SERVICE
OF THE
UNITED STATES OF AMERICA

American Embassy,
Ottawa, Canada,
February 25, 1948

0473

EXD.

M



Seery
28.2.48

Director,
Indian Affairs Branch,
Department of Mines and Resources,
Ottawa, Ontario.

Sir:

There is enclosed a copy of a self-explanatory letter of February 20, 1948, from the District Director, Immigration and Naturalization Service, St. Albans, Vermont.

It will be appreciated if you will transmit to the Embassy the requested information.

Very truly yours,

D. E. Cyphers
D. E. Cyphers
American Vice Consul

Enclosure:

Copy of letter.

U.S. DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE

St. Albans, Vermont

Please Refer to This File
Number

0100-17356

February 20, 1948

American Embassy
Ottawa
Ontario, Canada.

Gentlemen:

In connection with an applicant for admission at our Montreal office, the question has arisen whether, upon the termination by divorce or the death of the husband of the marriage of an Indian woman born in Canada to a person of the white race which had resulted in the loss of Indian status under Section 14 of the Canadian Indian Act, the woman automatically reverted to Indian status, and, if not, whether there is any procedure other than marriage to another Canadian Indian by which she can regain her status as an Indian in Canada.

Will you please obtain and forward to this office the opinion of the Director of the Indian Affairs Branch of the Department of Mines and Resources.

Very truly yours,

/s/ James W. Butterfield
District Director
St. Albans District.

97-1-2 Med.

, January 24th, 1948.

MEMORANDUM

Dr. Falconer
Indian Health Services

E.V.D.

Please refer to your memorandum of January 21st hereunder regarding seasonal migration of Canadian Indians to the United States. As I stated to you verbally, this is a broad question and takes in a lot of territory and must be considered from a more general angle than the local issues made within Vancouver.

The position is, that under Executive Order No. 109 dated July 18th, 1928, pursuant to the United States Immigration Act, Canadian Indians are permitted to enter the United States regardless of quota regulations. This is a great privilege and has meant a lot to the Indians in many parts of Canada by affording them opportunity for employment in the United States which has been of great value particularly in depressed periods. At the present time United States Immigration regulations are being tightened and there is some danger that the Indians' privilege might become less generous than it now is, or even removed altogether. Therefore, the present time would be inopportune to raise the issue at all with the United States authorities. The situation is rendered more difficult by the fact that Canada does not make any reciprocal provision for American Indians entering this country.

There is of course no objection to agents or other officials giving the Indians any kind of a certification of identification and the practice varies at different places along the border in respect to strictness in regard to entry to the United States. It is preferred to let the matter be dealt with locally rather than having a fixed form for use everywhere. Furthermore, while certificates of identification are given for the convenience of the Indian concerned, it would not be desirable to make them obligatory by arrangement with the United States Immigration authorities, as this might be the thin edge of the web to bring about further restrictions.

It is noted that one reason given by Dr. Tennant for the proposed action, is to control movements of V.D. cases, apparently by going so far as to refuse to give them certificates with the result that they would not be able to enter the United States. As matters stand, however, a V.D. Indian is not barred from entering the United States and it would not be our desire to initiate such a restriction especially where it would be a discrimination against Indians, as similar restrictions are not, as far as I know, applied to V.D. cases other than Indians entering the United States.

- 2 -

In my opinion, any action to prevent V.D. cases entering the United States is the responsibility of the United States authorities and unless they initiate it, I do not think any action on our side is called for. Under International procedure we have no responsibility with regard to V.D. cases once they leave the country.

In the circumstances, I believe this matter should be allowed to rest.

Eugene Deland

Dictated by *T.R.L. MacInnes,*
Secretary.

TRM/ITH

① Referred
② Noted
③ [unclear]
C O P Y.

EX'D.
M

J. S. JUDGE DECIDES INDIAN IS INDIAN, DESPITE MARRIAGE.

BUFFALO, N.Y., Nov. 28 (AP).--

Judge John Knight ruled today that an Indian remains an Indian regardless of political status.

The question arose July 13, 1946, when Mrs. Dorothy Winnifred Goodwin, born a member of the Six Nations at Brantford, was taken into technical custody on the ground that under the Indian Act of Canada she had lost her Indian status by marriage to Gordon Hubert Goodwin, a white resident of Niagara Falls, Ont.

The United States immigration service contended she entered the United States illegally as an immigrant not in possession of a valid immigration visa instead of as an Indian entitled to cross the border without restrictions under provisions of the Jay Treaty. Mrs. Goodwin was freed under a writ of habeas corpus pending the decision.

The federal judge declared that "it is this court's opinion that North American Indians, born in Canada, racially remain Indians regardless of their political status".

(Copied from Toronto Globe and Mail.)

N O T E.

This would tend to the opinion that Indian Women of Canadian Birth married to Non Indian men, as far as the U. S. A. Immigration laws are concerned, have the right to cross the International Border, as freely as they have as Indians, previous to their marriage, when according to Canadian Indian Act they lose Indian status.



C. H. Taggart
C. H. Taggart.
Commissioner.

600172-1 Sec'y

EX'D.
A.

December 3, 1947

T. L. Bonnah, Esq.,
Indian Agent,
Cornwall, Ontario

In reply to your letter of December 1, enquiring about procedure for returning persons to the United States, under Extradition Act, it may be explained that there is no distinction made between Indians and others in regard to Extradition laws or proceedings.

T.R.L.M.

T. R. L. MacInnes
Secretary

DR/FL

600172 - 1

OF THE
AGENT



CANADA

DEPARTMENT
OF
MINES AND RESOURCES
INDIAN AFFAIRS BRANCH

PLEASE QUOTE

FILE _____

3.12.47.

P. O. Box 987,
Cornwall, Ontario,
December 1st, 1947.

Indian Affairs Branch, Ottawa, Ontario.

As you know, a considerable number of our Indians work in various centres in the United States. On many occasions some of the men get into trouble covering anything from theft to crimes of more serious nature. In many cases, having committed an offence they seek the protection afforded them on the Canadian side of the Reserve. In other cases, parole is violated and despite the efforts of American parole officers the offenders will not return to the United States but remain on this side of the line.

As you are aware, at this centre the Indians have pretty much the freedom of the border and the question has arisen at this time, in view of this freedom, as to whether or not an Indian is subject to the Extradition Act. It may be that the offenders coming under the above category who seek sanctuary on this side of the boundary can be turned over to American authorities without any proceedings.

Clarification on the above matter is requested at an early date.



T. L. Bennah
T. L. Bennah,
Indian Agent.

LE NO. 490-3-3

DEPARTMENT OF MINES AND RESOURCES

INDIAN AFFAIRS BRANCH

JAY TREATY

POLICY

CROSS REFERENCE

CENTRAL REGISTRY	P.A. or B.F.	DATE	INITIALS	REFERRED TO	FOR REMARKS	INITIALS	DATE
		(If purpose for which referred cannot be expressed on one line, add minute to file, and enter here "With Minute")					
	Ph.	30-9	\$	Med	Request	CR3	30/9/48
8-10-10	P.A.	10.6.48	J.S.H.	Secy			30-9-48
29-11-10	P.A.	25.11.48	J.S.H.	Secy	2331	CR-10	24-11
7-12-10	P.A.	2.12.48	J.S.H.	Secy	Request	CR-5	7-12-48
2-2-13	PA.	7/3/	\$	AR		CR3	20-2-50

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— INDIAN AFFAIRS BRANCH —
DEPARTMENT OF CITIZENSHIP AND IMMIGRATION

SUBJECT

FROM

TO

[illegible]

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00086

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INSTRUCTIONS

1. This cover must not be folded under.
2. File should be retained no longer than is absolutely essential. If a file is frequently needed at short intervals it is better to B.F. it for two or three days than keep it out of Central Registry indefinitely. This ensures its being completed and kept in order and also gives other officers an opportunity of using it.
3. Central Registry must be notified whenever a file is passed directly between one official and another.
4. All outgoing letters should bear the official file number and originator's designation.
5. ONE SUBJECT—ONE COMMUNICATION—Where the contents of outgoing letters necessarily refer to more than one subject, the originator will prepare additional copies for attachment to relevant files.
6. Correspondence must not be removed from file, except as provided in the regulations governing the conduct of correspondence.
7. Incorrectly filed material will not be removed without notification to Central Registry.
8. Official office designations are to be used for routing purposes.
9. Disposal entries on file jackets must be initialled and dated.
10. Urgent Tags, flags and other markers will be removed in Divisional Offices as soon as appropriate action on the folios has been taken.
11. Officials are reminded that strict adherence to the security regulations is essential when dealing with classified material.