

VOL. NO. - VOL. NO 3	FILE NUMBER - DOSSIER NO 1/3-3-14
TO - À Dec. 1967 FROM - DE June 1962	SUBJECT - SUJET MEMBERSHIP - STATUS OF INDIANS JAY TREATY - INTERNATIONAL BORDER PRIVILEGES

DEPARTMENT OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT
MINISTÈRE DES AFFAIRES INDIENNES ET DU NORD CANADIEN

REFERRED TO - DESTINATAIRE	PURPOSE - OBJET	DATE	INITIAL - INITIALES	P.A. DATE - DATE DE RANGEMENT	B.F. DATE - DATE DE RAPPEL	INITIAL - INITIALES	REGISTRY INSPECTION - EXAMEN DU SERVICE DES ARCHIVES
RL27 C-12	Reg. Reg.	5/7/72 5/7/72	15 15	8/1/72		RL	(3)
RL17	Reg.	17/10/72	22	19/7/72		RL-31	
ACR2	Reg.	20/10/72	22	18/10/72		RL17	
MR. BATTLE	Reg.	25/10/72	10	2/11/72		RL	
RL27	Reg.	16/4/73	11	18/4/72		JS	
RL17	R	5/5/78	DA	12/6/78		RL21	

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CLOSED
VOLUME

4

See Vol

A 2-29

RELATED FILES - DOSSIERS CONNEXES

FILE NUMBER - DOSSIER N°	SUBJECT - SUJET
1	
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INTRODUCTION

The REGISTRY is established to serve you but satisfactory service is largely dependent upon your prompt return of files. This file is charged to you and you are responsible for its return; unless you notify the Registry to transfer the charge to another person, the file will remain charged to you until it is returned. **If action cannot be taken within 48 hours B.F. File. Do not remove documents from the file, unless it is absolutely necessary for the proper conduct of any Division. If the paper is removed from file a sheet giving the nature of the paper withdrawn and stating where it is to be found should be placed on file in its stead.**

Particulars Re Use of File Cover

- Column 1 — Shows the office or name of the person to whom the file is routed. (Office designation where the system is in use.)
- 2 — Shows the reasons for the routing, or the date and identification number of the letter on file requiring your attention. May be used for cancellation of B.F. by entering a referral minute to this effect.
- 3 — Shows the date on which the file is routed to the user.
- 4 — Provides for initials of the person routing or rerouting a file.
- 5 — Provides space for the user to enter the date of P.A. (put away) when action is completed.
- 6 — Provides space for the user to write the BF (bring forward) date, the date the user wishes the file to be brought back to him.
- 7 — Provides space for the user to initial the entry when a file is to be P.A.'d, B.F.'d.
- 8 — Provides space for the Registry to enter the date on which the file is returned to the Registry and inspected before being put away.

L'objet du SERVICE DES ARCHIVES est de servir, mais la qualité du service est liée au prompt retour des dossiers. Il incombe à la personne au nom de laquelle le présent dossier est inscrit, de la renvoyer au service des archives; a moins qu'elle n'avertisse le service d'inscrire le dossier au nom d'une autre personne, le dossier restera inscrit à son nom, tant qu'il sera en circulation. **Si l'on ne peut s'occuper du dossier dans les 48 heures, indiquer la date de rappel. Ne pas enlever de documents du dossier, à moins qu'une Division en ait absolument besoin pour mener à bien ses travaux. Remplacer tout document retiré du dossier par une feuille précisant la nature du document et indiquant le service qui le détient, jusqu'à ce qu'il soit de nouveau versé au dossier.**

Détails concernant l'usage de la chemise

- Colonne 1 — indiquer le bureau ou le nom de la personne vers qui le dossier est acheminé. (La désignation du bureau qui a recours au système.)
- 2 — indiquer les raisons de l'acheminement ou la date et le numéro d'identification de la lettre au dossier dont le destinataire doit s'occuper. Peut servir à annuler une date de rappel, si l'on inscrit une note à cette fin.
- 3 — indiquer la date d'acheminement du dossier vers l'usage.
- 4 — réservée aux initiales de la personne acheminant ou réacheminant le dossier.
- 5 — réservée à l'inscription de la date de rangement par l'utilisateur, lorsqu'il a fini du dossier.
- 6 — réservée à l'inscription de la date de rappel, à laquelle l'utilisateur souhaite ravoir le dossier.
- 7 — réservée aux initiales de l'utilisateur, lorsque le dossier fait l'objet d'un rangement, d'un rappel.
- 8 — réservée au service des archives pour y inscrire la date où le dossier lui est renvoyé et où il est examiné avant d'être rangé.

RATTE & FRÈRE ENR.

IMPRIMEURS — PHOTO-LITHO

IMPRESSIONS EN COULEURS

370, RUE ST-ANSELME,

QUEBEC 2, QUE.

John Sickles Labourer

s.19(1)

[REDACTED] Oneidas of Thames.

do d - [REDACTED]

has often been in trouble
with the law.

Goes by name of Arnold John

John Sickles o K
B

Mother Julia Sickles

#292 Oneidas of the Thames
now deceased

20-8-62

000003

LES SPECIALISTES DU CALENDRIER



DATED FROM 1963

FILE No. 1 / 3.3.14

TO 1967

VOLUME No. 3

CLOSED VOLUME

DO NOT PLACE ANY CORRESPONDENCE ON THIS FILE

FOR SUBSEQUENT CORRESPONDENCE SEE:

FILE No. 1 / 3.3.14

VOLUME No. 4

PLEASE KEEP ATTACHED TO TOP OF FILE

1/3-3-14

14 DEC 1967

Mr. Gustave Blouin, M.P.,
House of Commons,
Ottawa 6, Ontario.

Dear Mr. Blouin:

This has reference to yours of October 30, 1967 requesting a copy of the Jay Treaty.

There are no complete copies of the treaty in the Department by reason of the fact that the Jay Treaty or, more properly, the Treaty of Amity, Commerce and Navigation signed by Great Britain and the United States of America in 1794 was not an Indian treaty although Indians were mentioned in one of its clauses.

It was considered by the United States to have been abrogated by the War of 1812 but if that was the case it was reinstated by the Treaty of Ghent which ended hostilities in 1815.

The question of rights which may have been conveyed on Indians by these treaties was considered and settled by the Supreme Court of Canada in the case of *Louis Francis vs Her Majesty, the Queen* (1956). It was held that, in the absence of confirmatory legislation, neither article had any application in Canada and consequently both immigration formalities and customs regulations must be observed by Indians crossing the border from the United States to Canada.

I am enclosing a copy of the pertinent articles of the Jay Treaty and the Treaty of Ghent and trust they will be of interest and value to you.

Yours sincerely,

ORIGINAL SIGNED BY
L. S. MARCHAND
L. S. Marchand, P. Ag.,
Special Assistant.

CONN/hw

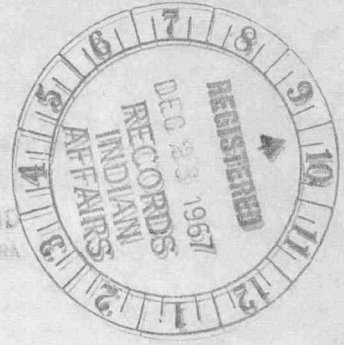
December 6, 1967.

0 2 7 1 3 9

CENTRAL REGISTRY

DEC 26 9 26 AM '67

INDIAN AFFAIRS



1 2 WABCHANE
ORIGINAL SIGNED BY

14 DEC 1967

TREATY OF AMITY, COMMERCE & NAVIGATION, 1794

commonly called the Jay Treaty

ARTICLE 3:

"No Duty on 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."

TREATY OF GHENT 1815

ARTICLE 9:

"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."

P. A. →

1/3-3-14 (AM3)

Ottawa 4

January 5, 1968.

Mrs. J. E. Powers,
Box 933,
Green Cove Springs,
Florida, 32043, U.S.A.

Dear Mrs. Powers:

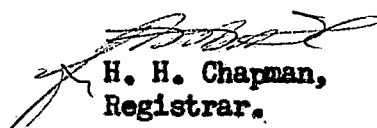
I wish to acknowledge your letter which we received on December 7 inquiring as to how you can obtain a Canadian Passport.

You should be able to obtain a passport by writing to The Canadian Consulate General, Suite 2110, International Trade Mart, 2 Canal Street, New Orleans, Louisiana.

Incidentally your marriage to Mr. J. E. Powers had not previously been reported to us. I wonder if you would be kind enough therefore to forward a copy of your marriage certificate to the Superintendent of the Caughnawaga Indian Agency, Caughnawaga, Quebec so that our records can be brought up-to-date.

I trust the above information will be helpful to you.

Yours sincerely,


H. H. Chapman,
Registrar.

AH/lhk

TEMPORARY FILE

BRANCH - DIRECTION

File No. [redacted] Serial No.

Subject - Sujat

Temp. File No. - Dossier provisoire no

Document disclosed under the Access to Information Act
Document divulgué en vertu de la Loi sur l'accès à l'information

Main File is charged to - Dossier principal inscrit au nom de

SAT 16-10

REFERENCE - RENVOI

ACTION TAKEN - MESURES PRISES

[illegible]

1/3-3-14

AM

Mrs J. E. Powers

Box # 933

Greentown Springs

Fla. 32043

s.19(1)

Dear Sirs:

My name is Marie Geraldine
Lathrine Powers NEE (CUROTTE).

I was born on the [REDACTED]
[REDACTED]

My parents are Mr. Hapshorn
Curotte and Jacqueline Bourassa
I am married to an American
service man.

Could you please advise
me on how to get a
Canadian passport as my
husband is stationed
overseas and I would

000010

SAT 16-10

like to join him as soon
as possible.

I would appreciate it
if you could answer as
soon as possible.

Thank you
Mrs J. E. Powers

021857

CENTRAL REGISTRY

DEC 7 12 00 PM '67

INDIAN AFFAIRS



000012

Ottawa 4, December 15, 1967.

1/3-3-11 (A.8)

Mr. Donald N. Salvetti,
2102 W. Genesee St.,
Westvale Shopping Center,
Syracuse, New York,
13219,
U.S.A.

Dear Mr. Salvetti:

This will refer to your letter of December 6, with attachments and previous exchange of correspondence concerning your client, Mr. Arnold John Sickles.

Your letter served to establish Mr. Sickles' Indian status, and the information contained therein corresponds with our records. Mr. Sickles is, therefore, a Canadian citizen.

As a Canadian citizen, Mr. Sickles has the right to enter Canada. It is suggested, however, that he carry with him some identifying document such as his birth certificate or his Indian Status Card as proof of his Canadian citizenship.

Yours sincerely,

for *McGibb*
H. G. Sprott,
A/Head of the Secretariat.

MEG/d1

Phone
488-4959

DONALD N. SALVETTI

Attorney at Law

2102 W. GENESEE ST.
WESTVALE SHOPPING CENTER
SYRACUSE, N. Y. 13219

1/3-3-14

A8

December 6, 1967

Department of Indian Affairs and Northern Development
Indian Affairs Branch
Ottawa, Ontario, Canada

Attention: H. G. Sprott,
Acting Head of the Secretariat

Re: Your file: 1/3-3-14 (A.8)

Dear Mr. Sprott:

You requested in your letter certain information from my client, Arnold John Sickles. I am sending you photostatic copies of his last two communication.

I thought it best to do it this way since this will give you, in more detail, all of the information that you requested from Mr. Sickles.

Yours very truly,

DONALD N. SALVETTI

Donald N. Salvetti
m.c.

Attorney at Law

DNS:mc
Encl.

0 2 2 3 3 1

CENTRAL REGISTRY

DEC 4 4 07 PM '67

INDIAN AFFAIRS

Pages 16 to / à 17
are withheld pursuant to section
sont retenues en vertu de l'article

19(1)

of the Access to Information Act
de la Loi sur l'accès à l'information

Director of Administration.

PA — 1/3-3-14
1/1-11

Acting Director, Policy and Planning.

November 27, 1967.

United States Indians Crossing Border

The following are a few thoughts I have on the subject:

1. What Rickard wants is something for Indians born in the United States that equates what the United States does for Indians born in Canada.
2. To be treated equally we would have to amend our Immigration Act to provide that nothing in the Act be construed to affect the right of an American Indian to pass the borders of Canada.
3. Americans now come into Canada with a minimum of regulation. It is a privilege and not a right. Some are refused - if they fall within the undesirable class. Such is the case of Mad Bear Anderson, an Iroquois Indian from the Tuscarora reservation near Niagara Falls, U.S.A., who is on the list of undesirables as a result of his participation in the Six Nations troubles in 1959. He is from the same reservation as Rickard.
4. The question to be answered is whether providing Indians born in the United States the same border crossing rights as Indians born in Canada will really cause any significant change. I suspect far fewer Indians from the United States will choose to come to Canada than the reverse. The inward flow of American Indians is not likely to increase. Therefore, I think we must consider the question from the point of view of what seems to be the wider issue of relations with Indians and whether there is any moral obligation to fulfil the spirit and intent of the Jay Treaty as restored by the Treaty of Ghent. True these were treaties entered into over 150 years ago between Great Britain and the United States and were drafted in light of conditions that then existed. Yet, there have been other provisions of these treaties that have been carried forward and become operative. For some reason which is not known, no steps were taken to permit Indians from the United States to pass the Canadian border freely. What passing did take place was usually Indians from the United States seeking refuge in Canada and the general policy of Canada was to permit them to stay.

.....2

-2-

* It is difficult to argue that Indians born in the United States should be treated less generously by Canada than the United States treats Indians born in Canada - especially since this treatment stems from common agreements - the Jay Treaty and Treaty of Ghent. The question we need to ask is whether there is any moral obligation to honour these international treaties entered into by Great Britain before Canada attained its own nationhood. On moral grounds I believe the United States Indians have a good case. To give special recognition to these Indians would not, in my view, alter significantly the privileges they now enjoy. There would be a few American Indians who would cross into Canada who now may be denied that privilege.

5. The question of what goods may be carried across is a different issue. At the time of the Jay Treaty the fur trade was of main concern and the goods received in trade. I know of no concession the United States has given Canadian Indians bringing goods into the United States authorities. I think one could argue that the type of goods that Indians carry now - cars, radios, etc. - are not the kind of goods contemplated by the Jay Treaty.
6. In the present circumstances the position of the Canadian Government should be stated by the Department of External Affairs, Immigration and Manpower and also possibly National Revenue. I doubt very much if this Department should attempt to take on the role of being the intermediary. I think we should recommend to the Minister that he not write to Rickard at all on this issue; otherwise he will become the focal point.
- * 7. I would therefore suggest that:
- (a) Mr. Turner be informed that
 - (i) the point at issue involves primarily immigration laws and possibly customs and therefore both Immigration and Manpower and National Revenue would want to state their position;
 - (ii) since the matter involves two international treaties and is of concern to nationals of another government the External Affairs Department should be consulted.
 - (b) We suggest the Minister of Immigration and Manpower respond to Mr. Rickard informing him that he has had the matter referred to him as it relates to Canadian Immigration laws and he has arranged to have the matter examined.
8. It is time other departments took on the responsibility of defending their policies in relation to Indians and not expect this Department to explain their position for them.

ORIGINAL SIGNED BY
C. I. FAIRHOLM

C. I. Fairholm.

000019



MEMORANDUM

CLASSIFICATION

TO
A

Director of Administration.

YOUR FILE No.
Votre dossier.

OUR FILE No. 1/1-11

Notre dossier
PA

DATE November 27, 1967.

FROM
De

Acting Director, Policy and Planning.

FOLD

SUBJECT
Sujet

United States Indians Crossing Border

The following are a few thoughts I have on the subject:

1. What Rickard wants is something for Indians born in the United States that equates what the United States does for Indians born in Canada.
2. To be treated equally we would have to amend our Immigration Act to provide that nothing in the Act be construed to affect the right of an American Indian to pass the borders of Canada.
3. Americans now come into Canada with a minimum of regulation. It is a privilege and not a right. Some are refused - if they fall within the undesirable class. Such is the case of Mad Bear Anderson, an Iroquois Indian from the Tuscarora reservation near Niagara Falls, U.S.A., who is on the list of undesirables as a result of his participation in the Six Nations troubles in 1959. He is from the same reservation as Rickard.
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It is difficult to argue that Indians born in the United States should be treated less generously by Canada than the United States treats Indians born in Canada - especially since this treatment stems from common agreements - the Jay Treaty and Treaty of Ghent. The question we need to ask is whether there is any moral obligation to honour these international treaties entered into by Great Britain before Canada attained its own nationhood. On moral grounds I believe the United States Indians have a good case. To give special recognition to these Indians would not, in my view, alter significantly the privileges they now enjoy. There would be a few American Indians who would cross into Canada who now may be denied that privilege.

5. The question of what goods may be carried across is a different issue. At the time of the Jay Treaty the fur trade was of main concern and the goods received in trade. I know of no concession the United States has given Canadian Indians bringing goods into the United States authorities. I think one could argue that the type of goods that Indians carry now - cars, radios, etc. - are not the kind of goods contemplated by the Jay Treaty.
6. In the present circumstances the position of the Canadian Government should be stated by the Department of External Affairs, Immigration and Manpower and also possibly National Revenue. I doubt very much if this Department should attempt to take on the role of being the intermediary. I think we should recommend to the Minister that he not write to Rickard at all on this issue; otherwise he will become the focal point.
7. I would therefore suggest that:
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 - (b) We suggest the Minister of Immigration and Manpower respond to Mr. Rickard informing him that he has had the matter referred to him as it relates to Canadian Immigration laws and he has arranged to have the matter examined.
8. It is time other departments took on the responsibility of defending their policies in relation to Indians and not expect this Department to explain their position for them.

ORIGINAL SIGNED BY
C. I. FAIRHOLM

C. I. Fairholm.

000021

Director of Development

P.A. → 1/3-3-14

Chief, Social Programs Division

November 3/67

Jay Treaty

There does not appear to be much connection between the provisions and legality of the Jay Treaty and the functions of this and other Divisions in your Directorate.

The only connection I can see would be with seasonal Indian labour migrating to the United States and as far as I know, there is no impediment to this movement across the boundary.

A.W. Fraser.

WENTON/11

Orig. passed to H.





MEMORANDUM

CLASSIFICATION

TO
A

A/Director of Development

YOUR FILE No.
Votre dossier

OUR FILE No. 1/3-3-14 (SAT)
Notre dossier

FROM
De

Director of Administration

DATE October 16, 1967.

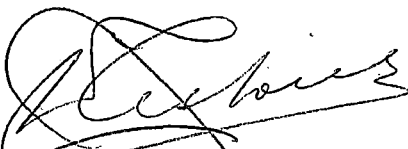
FOLD

SUBJECT
Sujet

The following was received from Mr. Battle in the form of a transmittal slip attached to a memorandum to the Minister relative to the Jay Treaty, a copy of which is attached.

"This must be examined very closely. What are we proposing to do? What has the U.S. done and why? What are the things they have done re Indian Rights that we have not done? For example, what about the tax question? I want to go to the Minister but with my facts straight."

I would be pleased to have your comments on the matters which relate to your administration.



Jules D'Astous.



Department of
Indian Affairs and
Northern Development

Deputy Minister

Ministère des
Affaires indiennes et
du Nord canadien

Sous-ministre

our file/notre dossier 1/3-3-14
your file/votre dossier
Ottawa 4, date October 12, 1967.

MINISTER

- The attached correspondence from the Indian Defense League of America over the signature of Clinton Rickard, Grand President, represents a new approach to the matter of border crossing rights of Indians under the Jay Treaty and the Treaty of Ghent.

Hitherto, the Indians on both sides of the border but particularly those of the United States have maintained that these privileges were incontrovertible. They have refused to accept the judgement of the Supreme Court of Canada in the case of Louis Francis vs The Queen 1956 which held that, in the absence of supporting legislation, these treaties were not applicable to Canada.

Apparently, the Indians have now recognized the validity of the legal position which has been taken by Canada as a result of the above judgement but are suggesting that the principle inherent in the above treaties be recognized and given effect by an Act of Parliament which would bring Canada into line with the American action of 1928.

This matter has come to the fore on numerous isolated instances in the past but there is no real indication of how important it is to Canadian Indians, generally. It is suggested, therefore, that the question be discussed with the National Indian Advisory Council with a view of developing a recommendation regarding the most appropriate course of action.

There are a number of matters in which invidious comparisons between Canadian and American policies have been made and I feel that any of these which can be remedied will react to the advantage of our administration.

R. F. Battle,
Assistant Deputy Minister,
(Indian Affairs).



Deputy Minister of
Indian Affairs and
Northern Development

Sous-ministre des
Affaires indiennes et
du Nord canadien

TO:

A:

Date

6 Dec

☐ Approval
Approbation

☐ May we discuss
Discussion avec nous

☐ Signature

☐ As requested
Selon indications

☐ Comment
Commentaire

☐ Note
Noter

☐ Action
Donner suite

☐ Note and return
Noter et retourner

☐ Direct Reply
Répondre directement

☐ Note and forward to
Noter et faire suivre à

☐ Copy for this office
Copie pour ce bureau

☐ Preparation of reply by
Réponse d'ici le

☐ Information

☐

Returned as
per our decision not
to send Memo to
Minister at this
time.

Emi

000025



MEMORANDUM

CLASSIFICATION

TO
A Director of Administration.

YOUR FILE No.
Votre dossier

OUR FILE No.
Notre dossier

113-3-14
1/1-11

PA

DR

DATE November 27, 1967.

FROM
De Acting Director, Policy and Planning.

SUBJECT
Sujet United States Indians Crossing Border

FOLD

The following are a few thoughts I have on the subject:

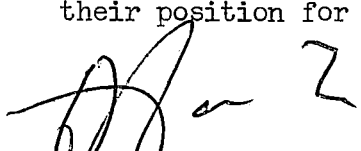
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.....2

-2-

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C. I. Fairholm.

000027



TO
A

Director of Development

MEMORANDUM

CLASSIFICATION

YOUR FILE No.
Votre dossier

OUR FILE No. 1/3-3-14
Notre dossier

FROM
De

Chief, Social Programs Division

DATE November 3/67

FOLD

SUBJECT
Sujet

Jay Treaty

There does not appear to be much connection between the provisions and legality of the Jay Treaty and the functions of this and other Divisions in your Directorate.

The only connection I can see would be with seasonal Indian labour migrating to the United States and as far as I know, there is no impediment to this movement across the boundary.

A.W. Fraser.

"Copy for Indian Affairs Branch"
"Return to SAT"

1/3-3-14

30 OCT 1967

SAT
Mrs. Tom Raines,
Box 17,
Winfield, B.C.

Dear Mrs. Raines:

This is in further reference to your letter of September 27, 1967, regarding the Jay Treaty, which was acknowledged by my Special Assistant.

The Jay Treaty or more properly, the Treaty of Amity, Commerce and Navigation signed by Great Britain and the United States of America in 1794 was not an Indian treaty although Indians were mentioned in one of its clauses. It was considered by the United States to have been abrogated by the War of 1812 but was reinstated by the Treaty of Ghent which was signed in 1815 which ended the hostilities.

The question of rights which may have been conveyed on Indians by these two treaties was considered and settled in 1956 by the Supreme Court of Canada in the case of Louis Francis vs Her Majesty, the Queen. It was held that, in the absence of confirmatory legislation neither article had any application in Canada. Consequently, the immigration laws and customs regulations must be observed by Indians crossing the border from the United States to Canada.

--- I am enclosing a copy of the pertinent articles of the Jay Treaty and the Treaty of Ghent and trust they will be of interest and value to you.

Yours sincerely,

ARTHUR LAING

Arthur Laing.

CONN/eh
October 13, 1967.

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CENTRAL REGISTRY

OCT 31 11 05 AM '67

INDIAN AFFAIRS



TREATY OF AMITY, COMMERCE & NAVIGATION, 1794

commonly called the Jay Treaty

ARTICLE 3 :

"No Duty on 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."

TREATY OF GHEENT 1815

ARTICLE 9 :

"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."

MEMORANDUM

CLASSIFICATION



TO
A

A/Director, Policy and Planning

YOUR FILE No.
Votre dossier

OUR FILE No. 1/3-3-14 (SAT)
Notre dossier

FROM
De

Director of Administration

DATE October 16, 1967.

FOLD

SUBJECT
Sujet

The following was received from Mr. Battle in the form of a transmittal slip attached to a memorandum to the Minister relative to the Jay Treaty, a copy of which is attached.

"This must be examined very closely. What are we proposing to do? What has the U.S. done and why? What are the things they have done re Indian Rights that we have not done? For example, what about the tax question? I want to go to the Minister but with my facts straight."

I would be pleased to have your comments on the matters which relate to your administration.

*memo
request
JH*



Jules B. Astous.



Department of
Indian Affairs and
Northern Development

Deputy Minister

Ministère des
Affaires indiennes et
du Nord canadien

Sous-ministre

our file/notre dossier
your file/votre dossier
Ottawa 4, date

1/3-3-14

October 12, 1967.

MINISTER

- The attached correspondence from the Indian Defense League of America over the signature of Clinton Rickard, Grand President, represents a new approach to the matter of border crossing rights of Indians under the Jay Treaty and the Treaty of Ghent.

Hitherto, the Indians on both sides of the border but particularly those of the United States have maintained that these privileges were incontrovertible. They have refused to accept the judgement of the Supreme Court of Canada in the case of Louis Francis vs The Queen 1956 which held that, in the absence of supporting legislation, these treaties were not applicable to Canada.

Apparently, the Indians have now recognized the validity of the legal position which has been taken by Canada as a result of the above judgement but are suggesting that the principle inherent in the above treaties be recognized and given effect by an Act of Parliament which would bring Canada into line with the American action of 1928.

This matter has come to the fore on numerous isolated instances in the past but there is no real indication of how important it is to Canadian Indians, generally. It is suggested, therefore, that the question be discussed with the National Indian Advisory Council with a view of developing a recommendation regarding the most appropriate course of action.

There are a number of matters in which invidious comparisons between Canadian and American policies have been made and I feel that any of these which can be remedied will react to the advantage of our administration.

R. F. Battle,
Assistant Deputy Minister,
(Indian Affairs).



1867 | 1967

000033

P. A

P. A. → 1/3-3-14

Mrs. Tom Baines,
Box 17,
Winfield, B.C.

Dear Mrs. Baines:

This is in further reference to your letter of September 27, 1967, regarding the Jay Treaty, which was acknowledged by my Special Assistant.

The Jay Treaty or more properly, the Treaty of Amity, Commerce and Navigation signed by Great Britain and the United States of America in 1794 was not an Indian treaty although Indians were mentioned in one of its clauses. It was considered by the United States to have been abrogated by the War of 1812 but was reinstated by the Treaty of Ghent which was signed in 1815 which ended the hostilities.

The question of rights which may have been conveyed on Indians by these two treaties was considered and settled in 1956 by the Supreme Court of Canada in the case of Louis Francis vs Her Majesty, the Queen. It was held that, in the absence of confirmatory legislation neither article had any application in Canada. Consequently, the immigration laws and customs regulations must be observed by Indians crossing the border from the United States to Canada.

I am enclosing a copy of the pertinent articles of the Jay Treaty and the Treaty of Ghent and trust they will be of interest and value to you.

Yours sincerely,

Arthur Laing.

CCBN/eh
October 13, 1967.

TREATY OF AMITY, COMMERCE & NAVIGATION, 1794

commonly called the Jay Treaty

ARTICLE 3 :

"No Duty on Entry shall ever be levied by either Party on Feltries 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."

TREATY OF GENT 1815

ARTICLE 9 :

"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."

1/3-3-14

S.A.T.

Ottawa 4, October 10, 1967.

Mrs. Tom Raines,
Box 17,
Winfield, B.C.

Dear Mrs. Raines:

On behalf of Mr. Laing I am acknowledging receipt of your letter of September 27 enquiring about the application of the Jay Treaty and also requesting a copy of it.

I shall be pleased to make some enquiries for the Minister and he will write to you personally as soon as he can.

Yours sincerely,

ORIGINAL SIGNED BY
L. S. MARCHAND
L. S. Marchand,
Special Assistant.

LSM:pjg
cc: Branch

S A T 5-10-67
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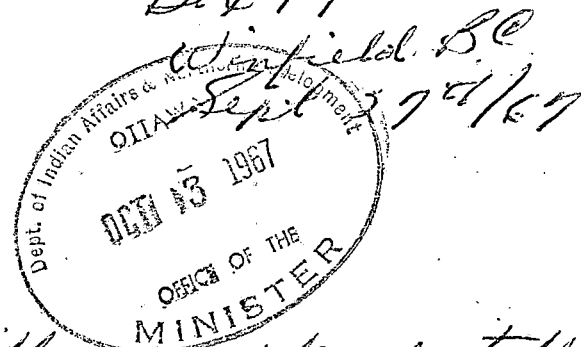
CENTRAL REGISTRY

OCT 11 1 50 PM '67

INDIAN AFFAIRS

Len

Box 17



Mr. Arthur Ling, Will you please tell me if an Indian is going back and forth across the border quite a lot has to pay for things he buys while in the states. I am very much in need of advice. I wrote to Henry Castillon. When he answered my letter. He said we are north American Indian so we should not have to pay duty on anything we buy. Then he said next time we went across the line not to pay duty on anything we buy. As North American Indians there is no such thing as a border. I sent that letter which Henry wrote when I sent to the queens printers for the Jay Treaty. I would like to get that book of the Jay Treaty very much. I've sent for it twice and there has been no answer yet. Will you please see what you can do for me concerning the Jay Treaty. If you can send me the book I will send the money for it. And about the duty at the customs duty paying. I would like more information on this. As we go into the states quite often as our relatives live in the states.

Thank you

Mrs Tom Laine. Winfu

000038

P. A. → 1/3-3-24

The Honourable John H. Turner, P.C., M.P.,
Registrar General,
Ottawa, Ontario.

My dear Colleagues:

In your letter of October 2, 1967, you enclosed material relative to the treaty, commonly known as the Jay Treaty. This had been sent to you by Clinton Richard, President of the Indian Defense League of America.

The Jay Treaty has long been a bone of contention because of the differences in border crossing procedures between Canadian Indians entering the United States of America, Indians from there entering Canada and Canadian Indians returning home from the United States.

Although the treaty in question makes reference to Indians it is not an Indian treaty in the ordinary sense of the word and the main implications of the present problem are in relation to immigration rather than Indian affairs. This situation is due to the fact that the United States Immigration Act provides more freedom to our Indians than we do for theirs and this difference has led to invidious comparisons.

This matter is principally the responsibility of the Minister of Empower and Immigration. I suggest, therefore, that you refer it to the Honourable Jean Marchand.

I am enclosing for your information a copy of my letter of even date to Mr. Richard and will await your comment before taking any further action on the subject.

Yours sincerely,

signed 19 Jan '68

Arthur Laing.

CONN/BOYD/D'ASTOUS/lc

December 6, 1967.

COPY FOR INDIAN AFFAIRS BRANCH
"RETURN TO SAT"

1/3-3-14

The Honourable John H. Turner, P.C., M.P.,
Registrar General,
Ottawa, Ontario.

My dear Colleagues:

In your letter of October 2, 1967, you enclosed material relative to the treaty, commonly known as the Jay Treaty. This had been sent to you by Clinton Richard, President of the Indian Defense League of America.

The Jay Treaty has long been a bone of contention because of the differences in border crossing procedures between Canadian Indians entering the United States of America, Indians from there entering Canada and Canadian Indians returning home from the United States.

Although the treaty in question makes reference to Indians it is not an Indian treaty in the ordinary sense of the word and the main implications of the present problem are in relation to immigration and customs rather than Indian affairs. This situation is due to the fact that the United States Immigration Act provides more freedom to our Indians than we do for theirs and this difference has led to invidious comparisons.

Although this matter involves my Department and the Department of National Revenue it is principally the responsibility of the Minister of Manpower and Immigration. I suggest, therefore, that you refer it to the Honourable Jean Marchand.

I am enclosing for your information a copy of my letter of even date to Mr. Richard and will await your comment before taking any further action on the subject.

Yours sincerely,

Arthur Laing.

CONN/BOYD/pmg
December 5, 1967.

*signed
green
dated
19 Jan 69
is in
vol 4
1/3-3-14*

"Copy for Indian Affairs Branch"
"Copy to Return to SAT"

*retyped
Dec. 5/67
1/3-3-14*

The Honourable John H. Turner, P.C., M.P.,
Registrar General,
Ottawa, Ontario.

My dear Colleague:

In your letter of October 2, 1967, you enclosed material relative to the treaty, commonly known as the Jay Treaty. This had been sent to you by Clinton Richard, President of the Indian Defense League of America.

The Jay Treaty has long been a bone of contention because of the differences in border crossing procedures between Canadian Indians entering the United States of America, Indians from there entering Canada and Canadian Indians returning home from the United States.

Although the treaty in question makes reference to Indians it is not an Indian treaty in the ordinary sense of the word and the main implications of the present problem are in relation to immigration and customs rather than Indian affairs. The United States provides by-law for considerably more freedom to our Indians than we do to theirs and this difference has led to invidious comparisons which I feel should not be permitted to continue.

It is my suggestion, therefore, that we two should meet informally with our colleagues, the Ministers of Manpower and Immigration and of National Revenue, to determine whether it would be feasible and appropriate to put forward for consideration in a joint submission to Cabinet a proposal that legislative action paralleling that of the United States be put forward on behalf of the Indians of Canada.

I am enclosing for your information a copy of my letter of even date to Mr. Richard and will await your comment before taking any further action on the subject.

Yours sincerely,

CONN/eh
November 15, 1967.

Arthur Laing.

P.A. → 1/3-3-14

The Honourable John H. Turner, P.C., M.P.,
Registrar General,
Ottawa, Ontario.

*not
sent*

My dear Colleague:

In your letter of October 3, 1967 you enclosed material relative to the treaty commonly known as the "Jay Treaty". This had been sent to you by Clinton Richard, President of the Indian Defense League of America.

This treaty has long been a bone of contention because of the differences in border crossing procedures between Canadian Indians entering the U.S.A. and American Indians entering Canada. The matter has implications, also in the application of customs regulations to Canadian Indians returning from the United States.

I will keep you informed before taking any action which may have implications in either immigration or customs matters.

Yours sincerely,

Arthur Laing.

CCM/eh
November 10, 1967.

SUPERINTENDENT GENERAL
OF INDIAN AFFAIRS



SURINTENDANT GÉNÉRAL
DES AFFAIRES INDIENNES

Re type please as per deletions

The Honourable John N. Turner, P.C., M.P.,
Registrar General,
Ottawa, Ontario.

My dear Colleague:

In your letter of October 2, 1967 you enclosed material relative to the treaty commonly known as the "Jay Treaty". This had been sent to you by Clinton Rickard, President of the Indian Defense League of America.

This treaty has long been a bone of contention because of the differences in border crossing procedures between Canadian Indians entering the U.S.A. and American Indians entering Canada. The matter has implications, also in the application of customs regulations to Canadian Indians returning from the United States.

No { At the moment, I am canvassing the opinion of the administrative officers of my department which will assist me in reaching a decision in the advisability of discussing the matter with representatives of the Indians, themselves.

I will keep you informed of developments and will take the matter to ~~Cabinet~~ before taking any action which may have implications in either immigration or customs matters.

Yours sincerely,

Arthur Laing.

A
please prepare
memo on lines
of our discussion
JP

SUPERINTENDENT GENERAL
OF INDIAN AFFAIRS



SURINTENDANT GÉNÉRAL
DES AFFAIRES INDIENNES

Mr. John N. Turner, P.C., M.P.,
Registrar General,
Ottawa, Ontario.

My dear Colleague:

in your letter of

Treaty commonly known as the "Jay Treaty"
Please refer to yours of October 2, 1967, with which you enclosed material relative to the ~~Jay Treaty~~, ~~so-called~~, which was sent to you by Clinton Rickard, President of the Indian Defense League of America. *This had been*

This treaty has long been a bone of contention because of the differences in border crossing procedures between Canadian Indians entering the U.S.A. and American Indians entering Canada. The matter has implications, also in the application of customs regulations to Canadian Indians returning from the United States.

At the moment, I am canvassing the opinion of the administrative officers of my department which will assist me in reaching a decision in the advisability of discussing the matter with representatives of the Indians, themselves.

I will keep you informed of developments and will take the matter to Cabinet before taking any action which may have implications in either immigration or customs matters.

Yours sincerely,

Arthur Laing.



CANADA
REGISTRAR GENERAL
LE REGISTRAIRE GÉNÉRAL

Ottawa 4, Ontario,
October 2, 1967.

Honourable Arthur Laing, P.C., M.P.,
Minister of Indian Affairs and Northern Development,
Centennial Towers,
Ottawa, Ontario.

My dear Colleague:

I am enclosing herewith, along with my interim reply, a copy of a letter sent to me on September 21 by Chief Clinton Rickard, Grand President, Indian Defense League of America, the contents of which are self-explanatory.

I would appreciate any guidance or assistance you can give me in dealing with this matter.

Yours sincerely,

John N. Turner.



S.A.T. 16-10-67

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CENTRAL REGISTRY

OCT 17 2 40 AM '67

INDIAN AFFAIRS

Ottawa 4, Ontario,
October 2, 1967.

Chief Clinton Richard,
Grand President,
Indian Defense League of America,
Home Office,
Box 305,
Niagara Falls, New York, U.S.A.

Dear Chief Rickard:

I wish to acknowledge and thank you for your letter of September 21, 1967, and the enclosures attached thereto, with reference to your request that I sponsor and introduce in Parliament a bill to implement Article III of the Jay Treaty of 1794.

I appreciate very much your bringing this situation to my attention, and can assure you that I regard your submission with the greatest sympathy. Since this is a matter which appears to fall within the area of responsibility of my colleague in the Cabinet, the Honourable Arthur Laing, Minister of Indian Affairs and Northern Development, I have taken the liberty of referring your letter to him. As soon as I have had the opportunity of conferring with Mr. Laing in this regard, I shall be in communication with you further.

Yours sincerely,

ORIGINAL SIGNED BY
JOHN N. TURNER

John N. Turner.

Sent to you at the request of
Chief Clinton Rickard
Indian Defense League of America

Re: Jay Treaty

45-Stat-1487

SEVENTIETH CONGRESS. SESS. I. CHS. 307-311. 1928.

401

CHAP. 307.—An Act To authorize the construction of a dormitory at Riverside Indian School at Anadarko, Oklahoma.

April 2, 1928.
[H. R. 8326.]
[Public, No. 233.]

Temporary

Riverside Indian School, Okla.
Boys' dormitory building authorized at Post, p. 901.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior of the United States be, and he is hereby, authorized, empowered, and directed to cause to be erected and constructed upon land now owned by the United States at the Kiowa Indian Agency near Anadarko, Oklahoma, at the Riverside Indian School, a building such as he may determine is necessary for a boys' dormitory at said Riverside Indian School, at a cost not to exceed the sum of \$40,000, which sum is hereby authorized to be appropriated.

Limit of cost.

Approved, April 2, 1928.

CHAP. 308.—An Act To exempt American Indians born in Canada from the operation of the Immigration Act of 1924.

April 2, 1928.
[S. 716.]
[Public, No. 234.]

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.

Immigration Act, 1924.
American Indians born in Canada exempt from restrictions of *Proviso.*
Adopted members excepted.

Approved, April 2, 1928.

CHAP. 309.—Joint Resolution Authorizing certain customs officials to administer oaths.

April 2, 1928.
[H. J. Res. 253.]
[Pub. Res., No. 21.]

Repealed
42:76

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That any officer or employee of the customs service designated by the Secretary of the Treasury or by a collector of customs is hereby authorized to administer any oath required or authorized by law or regulation promulgated thereunder in respect of any matter coming before such officer or employee in the performance of his official duties, but no compensation or fee shall be demanded or accepted for administering any such oath.

Customs service.
Officials of, authorized to administer oaths.

No fee allowed.

Approved, April 2, 1928.

CHAP. 310.—Joint Resolution To make immediately available the appropriation for a road across the Kaibab Indian Reservation.

April 2, 1928.
[H. J. Res. 245.]
[Pub. Res., No. 22.]

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the appropriation of \$10,000 for the improvement and maintenance of the road across the Kaibab Indian Reservation, northern Arizona, en route to Grand Canyon National Park, as contained in the Interior Department Appropriation Act for the fiscal year 1929, approved March 7, 1928, shall be available for expenditure upon the approval of this resolution.

Kaibab Indian Reservation, Ariz.
Appropriation for road across to Grand Canyon Park immediately available.
Ante, p. 225.

Approved, April 2, 1928.

CHAP. 311.—Joint Resolution Providing for the remission of duties on certain cattle which have crossed the boundary line into foreign countries.

April 2, 1928.
[H. J. Res. 217.]
[Pub. Res., No. 23.]

Cattle.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That, under regu-

McCANDLESS v. UNITED STATES

25 F.(2d) 71

71

We do not think this contention merits serious consideration. A statement by the Supreme Court of the principles of law which must govern the construction of railroad tariffs does not need citation of authorities. To avoid misapprehension, however, it may be stated that in our opinion the rule announced not only is supported by the citations made from the Interstate Commerce Reports, but also by other decisions of that tribunal, which we have heretofore cited. Not only so, but the principle enunciated is a broad one, and finds application generally in the construction of statutes and contracts, as we have heretofore pointed out.

The trial court committed no error in entering judgment for the plaintiff, and the judgment is affirmed.

McCANDLESS, Commissioner of Immigration.
v. UNITED STATES ex rel. DIABO.

Circuit Court of Appeals, Third Circuit.
March 9, 1928.

No. 3672.

1. Indians ⇔ 5,6—Indians are wards of nation, and general acts of Congress do not apply to them, unless clearly so intended.

Indians are all wards of the nation, and general acts of Congress do not apply to them, unless so worded as to clearly manifest an intention to include them in their operation.

2. Treaties ⇔ 6—Rights of Indians under treaty authorizing passage across Canadian boundary held not annihilated by War of 1812.

Rights of Indians of the Six Nations under the Jay Treaty of 1794, authorizing passage over Canadian boundary line, held not annihilated by subsequent War of 1812 between the United States and England, without reference to article 9 of the Treaty of Ghent, recognizing and restoring the Indian status of the Jay Treaty.

3. Aliens ⇔ 46—Member of Six Nations tribe residing in Canada held authorized to cross boundary to work as skilled structural iron worker.

Under article 3 of the Jay Treaty between Great Britain and the United States, authorizing passage across Canadian boundary, member of the Six Nations tribe residing in Canada held authorized to cross boundary line into the United States for purpose of engaging in work as a skilled structural iron worker.

Appeal from the District Court of the United States for the Eastern District of Pennsylvania; Oliver B. Dickinson, Judge.

Habeas corpus by the United States, on the relation of Paul Diabo, against John B. McCandless, Commissioner of Immigration

for the Port of Philadelphia. Order granting the writ (18 F.(2d) 282), and respondent appeals. Affirmed.

George W. Coles, U. S. Atty., and Robert M. Anderson, Asst. U. S. Atty., both of Philadelphia, Pa., for appellant.

Adrian Bonnelly, of Philadelphia, Pa., for appellee.

Before BUFFINGTON, WOOLLEY, and DAVIS, Circuit Judges.

BUFFINGTON, Circuit Judge. [1] In this habeas corpus case it appears that Paul Diabo, a full-blooded Indian of the Iroquois tribe, known as the Six Nations, was born on a reservation of that tribe in the Dominion of Canada. He first came to the United States in 1912, and from then on made a number of trips to and fro until 1925. These many trips were made by reason of the fact that he worked as a structural iron worker in putting up high buildings. About February 26, 1925, he was arrested on a warrant issued on complaint of the Commissioner of Immigration for the port of Philadelphia for an alleged violation of law in entering the United States without complying with the immigration laws. After hearing, he was by the immigration authorities ordered deported, whereupon he sued out in the court below this writ of habeas corpus.

No question of contagion, moral unfitness, or pauperism is in question, and, as stated in the government's brief, "the alien is personally unobjectionable, and no deliberate intention to violate the law has been established against him. Paul Diabo appears to be a skilled structural iron worker, constantly employed at a good salary; has a bank account and property in Canada." After hearing he was discharged from custody, whereupon this appeal was taken, and the question involved is whether the immigration laws of the United States apply to members of the tribe of the Six Nations born in Canada. Enlightened possibly by the status and relations of our own native Indians with reference to our own nation, we note that the unbroken line of decision has been that they stand separate and apart from the native-born citizen, that they are all wards of the nation, and that general acts of Congress do not apply to them, unless so worded as clearly to manifest an intention to include them in their operation. United States v. Rickert, 188 U. S. 432, 23 S. Ct. 478, 47 L. Ed. 532; Elk v. Wilkins, 112 U. S. 94, 5 S. Ct. 41, 28 L. Ed. 643. In Cherokee Nation v. Georgia, 5 Pet.

(30 U. S.) 17, 8 L. Ed. 25, Chief Justice Marshall said: "It may well be doubted whether those tribes which reside within the acknowledged boundaries of the United States can, with strict accuracy, be denominated foreign nations. They may, more correctly, perhaps, be denominated domestic dependent nations. They occupy a territory to which we assert a title independent of their will, which must take effect in point of possession when their right of possession ceases. Meanwhile they are in a state of pupillage. Their relation to the United States resembles that of a ward to his guardian."

By article III of the Jay Treaty, made in 1794 between Great Britain and the United States, whereby the boundary line between the latter and Canada was fixed, it was provided:

"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)."

The confederation of the Six Nations and the land held by it long preceded the Revolution. The proposed boundary line passed through this land. When the Revolution came, the Six Nations as a whole determined on neutrality, but left the constituent tribes to side with either party, which they did. Naturally the Six Nations resented the establishment of any boundary line through their territory which would restrict intercourse and free passage to their people, and remonstrance was made to the assumption of sovereignty over what they regarded, and then occupied, as their own. See *Makers of Canada*, vol. 3, p. 256. The situation was met by the two countries inserting the article quoted in the treaty. Evidently that article did not create the right of the Indian to pass over land actually in their possession, for, subject to the general dominant right of sovereignty claimed by all European nations based on discovery, the right of the Indian to possess the soil until he surrendered his right by sale or treaty has been recognized. In the case cited Chief Justice Marshall said: "The Indians are acknowledged to have an unquestionable, and heretofore unquestioned, right to the lands they occupy, until that right shall be extinguished by a voluntary cession to our Government."

Such being the historic relation of the Six Nations to the nations making the treaty, and the Indians not being parties thereto, it would seem clear that the quoted extract was not a temporary stipulation as to trade, commerce, mutual rights, and the like, but was in the nature of a *modus vivendi*, to be thereafter observed in the future by Canada and the United States in reference to the Indians. Two years later the provisions of this treaty were broadened by the Treaty of 1796, which provided:

"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 that all the said persons shall remain at full liberty freely to pass and repass, by land or inland navigation, into the respective territories and countries 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."

[2] If this treaty, which as a treaty would have the force of law, is still in force, the petitioner cannot be deported for entering the country under the provisions thereof. But it is contended that, on the general principle that a war between nations subsequent to a treaty ends all prior treaty rights, all provisions of the Jay Treaty came to an end by reason of the War of 1812. But it will be observed that we are not here dealing with the rights and obligations of the two signatories to that treaty to and from each other, but with the rights of a third party created by the joint action of the signatories. While it may be contended that in the nature of things treaties and treaty rights end by war, and if they are to again exist it must be by a new treaty, this reasoning does not apply to these Indians. If through the War of 1812 the Six Nations remained neutral, as they had through the Revolutionary War, there was no reason why either of the contending nations in 1812 should desire to change the status of the Six Nations and thereby anger and drive them into hostilities. They had contended, when the Jay Treaty was being negotiated, that they should have free access to all

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parts of their tribal territory by consent of both nations. And there was no reason why this right should come to an end because the two nations became involved in war, while they remained neutral. On the other hand, if any part of the Six Nations, as for example the Canadian tribe of which this petitioner is a member, took part against the United States, then the Treaty of Ghent, which in article 9 provided:

"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 one thousand eight hundred and eleven, previous to such hostilities," recognized and restored the Indian status of the Jay Treaty. But, apart from this, we think the rights of these Indians under the Jay Treaty were not annihilated by the subsequent War of 1812. In *Society v. New Haven*, 8 Wheat. 492, 5 L. Ed. 662, the effect of this last war upon the Treaty of Peace of 1783 and the Jay Treaty of 1794 was involved; the court therein stating:

"The last question respects the effect of the late war between Great Britain and the United States upon rights existing under the treaty of peace. Under this head, it is contended by the defendant's counsel, that although the plaintiffs were protected by the treaty of peace, still, the effect of the last war was to put an end to that treaty, and, consequently, to civil rights derived under it, unless they had been revived and preserved by the Treaty of Ghent."

Discussing this question the court says:

"But we are not inclined to admit the doctrine urged at the bar, that treaties become extinguished, ipso facto, by war between the two governments, unless they should be revived by an express or implied renewal on the return of peace. Whatever may be the latitude of doctrine laid down by elementary writers on the law of nations, dealing in general terms, in relation to this subject, we are satisfied, that the doctrine contended for is not universally true. There may be treaties

of such a nature, as to their object and import, as that war will put an end to them; but where treaties contemplate a permanent arrangement of territorial, and other national rights, or which, in their terms, are meant to provide for the event of an intervening war, it would be against every principle of just interpretation, to hold them extinguished by the event of war. If such were the law, even the Treaty of 1783, so far as it fixed our limits, and acknowledged our independence, would be gone, and we should have had again to struggle for both upon original revolutionary principles. Such a construction was never asserted, and would be so monstrous as to supersede all reasoning.

"We think, therefore, that treaties stipulating for permanent rights, and general arrangements, and professing to aim at perpetuity, and to deal with the case of war as well as of peace, do not cease on the occurrence of war, but are, at most, only suspended while it lasts; and unless they are waived by the parties, or new and repugnant stipulations are made, they revive in their operation at the return of peace."

[3] If, therefore, the independence of the United States and the fixing of its boundaries as provided by treaty was not affected by its subsequent entry into war, on how much stronger ground and reason can it be contended that the independence of the Indian to pass the boundary line passing through his own tribal territory was not affected when Great Britain and America entered the War of 1812. Both Great Britain and the United States have resident in them the Indians of the Six Nations, both have reservations where members of this tribe live and toward them both countries hold the guardian relation pointed out by Chief Justice Marshall in words quoted above. So far as we are advised, neither Great Britain nor the Dominion of Canada have denied to the Indians of the Six Nations resident in the United States passage across the boundary line, and if the Jay Treaty is in force, as we find it to be, good faith and the observance of the treaty calls for the same course of conduct by the United States.

Finding no justification for the arrest and deportation of this man, the order of the court below discharging him is affirmed.

Ne Skenno, Ne Gai Wuo, Ne Gasha Sa

Peace, Prosperity, Power and Equality to All

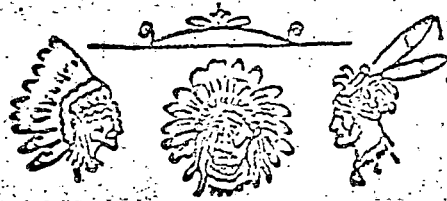
Indian Defense League of America

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

CHIEF CLINTON RICKARD
President

DAVID HILL
First Vice Grand President

MR. LEHIGH ANTONE
Grand Secretary



CHIEF DES-KA-HEH
Grand Chaplain
R.R. 1, Ohsweken, Ont.
Six Nation Reservation

LYNETTE JUSTIANA
Treasurer and Assistant Secretary

Annual Border Crossing Celebration Every 3rd Saturday of July, Niagara Falls, N.Y., and Niagara Falls, Ontario

C O P Y

September 21, 1967

The Rt. Hon. John N. Turner
Registrar General of Canada
Government House
Ottawa, Ontario
Canada

Dear Sir:

The Indian Defense League of America requests you to help us with an important problem involving the right of Indians to cross the border between the United States and Canada. Canada does not recognize the Jay Treaty of 1794 and the Treaty of Ghent of 1814 Between the United States and Great Britain. Both these treaties give our Indian people the right to cross the border without hindrance.

Our organization includes and represents North American Indians living on both sides of the border. We began our work in 1925, after the United States Immigration Act of 1924 excluded Indians born on your side of the border from entry into the United States, in violation of Article III of the Jay Treaty and Article IX of the Treaty of Ghent. After three years of hard work and much sacrifice and expense, we were gratified to see the United States Congress pass the Act of April 2, 1928, restoring the right of crossing the border to our Indian people coming into the United States from Canada. This Act stated:

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.

Our Indian Defense League also, at that same time, assisted a full-blooded Iroquois Indian named Paul Diabo, born on the Caughnawaga Reservation near Montreal, to resist deportation from the United States. From 1912 to 1925, Paul Diabo travelled several times across the border from Canada into the United States as a structural steel worker; but in 1925 he was arrested because of the Immigration

2794

The Rt. Hon. John N. Turner

- 2 -

September 21, 1967

Act of 1924. His case, *McCandless, Commissioner of Immigration vs. United States ex rel. Diabo* (25F (2d) 71), was tried in the United States Circuit Court of appeals, Third Circuit; and on March 9, 1928, that Court rendered its decision. This decision stated that Article IX of the Treaty of Ghent "recognized and restored the Indian status of the Jay Treaty." This Court also stated, "we think the rights of these Indians under the Jay Treaty were not annihilated by the subsequent War of 1812."

The Solicitor General of the United States recommended that there be no appeal in the *Diabo* case, and in making his recommendations stated on June 1, 1928, that he believed the War of 1812 did not abrogate the Jay Treaty but even if it did the Treaty of Ghent restored the border crossing right to the Indians. In commenting on the Act of April 2, 1928, he said further:

The Act of April 2, 1928, read in the light of the Congressional Record and Committee Reports, seems a definite legislative recognition of some right which American Indians born in Canada have to pass the borders of the United States which is peculiar to them as Indians. The act provides 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, thus recognizing the existence of a "right." I do not know what right could be referred to other than that recognized in the Jay Treaty and in the practice of allowing North American Indians to pass back and forth across the Canadian boundary in their wanderings without interference. The Report of the Committee on Immigration and Naturalization dealt with H. R. 11351, which became the Act of April 2, 1928, and refers to the fact that for over a century the Indians of the North American tribes resident in Canada and the United States adjacent to the Canadian boundary have been accustomed to going back and forth, and that this freedom of movement was not questioned until the enactment of the Immigration Act of 1924.

Then on July 18, 1928, General Order No. 109 of the United States Immigration Service set forth the following direction:

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.

You will note that Indians, the original inhabitants of this continent, did not need to pass through immigration inspection.

This border crossing right for Indians has been recognized in subsequent legislation by the United States Congress. For example, the Immigration and Nationality Act of June 27, 1952, (66 Stat. 234) states the following:

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The Rt. Hon. John N. Turner

- 3 -

September 21, 1967

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.

The purpose of this lengthy introduction is to give you the legal and historical background of the problem our Indian people have faced. The United States Government has by subsequent legislation and court decisions upheld Article III of the Jay Treaty and Article IX of the Treaty of Ghent giving protection and security to Indians in crossing the border from Canada into the United States. Indians born north of the border are now free to come into the United States without going through immigration proceedings, in accordance with the two treaties.

This right is of great benefit to Indians, who pass back and forth, seeking work on either side of the border, wherever work is to be found. As you know, my Indian people would rather support themselves than be a burden to the Government. Mohawk Indians from the Caughnawaga Reserve and the Six Nations Reserve on the Grand River have been especially famous in the United States for their work in structural steel. Also, our kinship ties are very close and many families on either side of the border are intermarried. This was always our custom; and Indians, before the coming of the Europeans, did not recognize any border shutting them off from their relatives living a few miles away.

Now a rather serious problem has arisen, since Canada does not have reciprocal legislation recognizing this border crossing right for Indians. The viewpoint of the Canadian Government is dealt with in the enclosed copy of a letter dated Nov. 20, 1963, from the Rt. Hon. Guy Favreau.

In 1956 in the case of Francis vs. the Queen, the majority of the Supreme Court of Canada decided that neither Article III of the Jay Treaty nor Article IX of the Treaty of Ghent applies in Canada since neither has been implemented by legislation.

The Indian Defense League of America is asking you, as a person who we believe is favorably inclined toward securing justice to all people, to sponsor and introduce a bill in Parliament to implement Article III of the Jay Treaty. We respectfully request that this be similar to the legislation that the United States Government has passed, as explained above, restoring this right to American Indians coming from Canada into the United States. We desire that Canada should pass legislation restoring this same right to American Indians from the United States passing into Canada, whether these Indians were born on or off an Indian reservation.

We believe that 1967, Canada's centennial year, would be an appropriate time to do this great thing for our Indian people. It would give us a security which we now lack, for we never know when our rights may be in question. We can never tell when we may be deprived of our former customs and traditions, and when our way of life and even our livelihood may be in jeopardy. Through the centuries, we have become strangers in our own land. We ask that you remember the former friendship that existed between your people and our people, and the assistance we gave your ancestors when they first came amongst us. We ask you to help us in restoring this

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The Rt. Hon. John N. Turner

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September 21, 1967

treaty right so that we may continue to help ourselves.

The enclosed article from the July 14, 1967, Niagara Falls Review (Ontario) will give some small inkling of the problem, which may well become quite serious for Indians. Every year on the third Saturday in July our organization celebrates the restoration of our border crossing rights by the United States by a special Border Crossing ceremony in honor of the Jay Treaty. This past July, the parade was from the United States side to the Canadian side. One of our women workers, who was going over ahead of the parade to work on the food booths, was stopped and given great difficulty by the Canadian immigration officials. She was an Indian born on the Canadian side and enrolled with her tribe there, but living in the United States. Her children were in the car with her. They were born in the United States. The Canadian immigration officials attempted to have this woman sign waivers for her children, even though she was going to be in Canada only a few hours. After long discussion and argument, the immigration officials allowed her to pass without signing the waivers. Our people want to be free to pass back and forth at will, to work, to marry, to visit family and friends.

Indians are very attached to their home communities and their own tribes. Many who work off the reservation eventually go back to their home reservations to live. This happens especially when their working days are over. They wish to go home to be among their own people and live out their days among them. They do not wish to lose this precious liberty.

We look to you to help us preserve a right which we practiced from time immemorial, long before the coming of the Europeans to these shores, long before there was anything called a border. This border between the two countries has not divided our people, and we do not wish it to do so. We feel that even as we helped the white man exist in the wilderness when he first came here, so we can continue to make contributions to the white man's communities today. We wish also still to be Indians.

It will mean much to our Indian people, both in Canada and the United States, to have this right recognized by the Government of Canada, even as it is recognized by the Government of the United States. The free passage of Indians back and forth across the border will, we know, be of benefit to both countries as well as to the Indians themselves. We wish nothing more than to live our lives as free human beings and to contribute, to the best of our abilities, to the communities in which we live and work.

If it is your wish, I can have sent to you complete copies of the legal documents which I have quoted above.

We trust in the Great Spirit and we pray that you may be His instruments to help our people.

Respectfully yours,

Clinton Rickard

Clinton Rickard
Grand President

2994-

Indians say Treaty terms not observed

The terms of the Jay Treaty, which permits North American Indians to cross the international border without having to answer questions from Immigration officials, apparently are not recognized by the Canadian government.

Local Indians claim that they can cross into the United States with no trouble but coming from the US into Canada they are forced to answer questions.

Winston Fischer, chief Immigration officer for the Port of Niagara Falls, said his instructions are that "North American Indians are subject to the same examination as anyone else."

Asked if there would be any difficulties at the annual border crossing ceremony Saturday in which the Indians celebrate the signing of the Jay Treaty, Mr. Fischer said "They will receive the same consideration as any other authorized group holding a parade from one country to the other. We don't interfere with a parade unless we are aware that someone in it is inadmissible to Canada."

The fastest homing pigeons can cover 1,500 miles in three days.

M. F. Russell

July 14-1967



CANADA

MINISTER OF CITIZENSHIP AND IMMIGRATION

Ottawa 4, November 20th, 1963

Lehigh Antone, Esq.,
Grand Secretary,
Indian Defense League of America,
Box 305,
Niagara Falls, N.Y.,
U. S. A.

Dear Mr. Antone:

I have only now been able to write in reply to your inquiry concerning any action by this Department on the rights of North American Indians to cross the International Boundary. Since receipt of your letter this question has received further study.

There seems to be a disagreement regarding the effect and present validity in Canada of the Treaty of Amity, Commerce and Navigation (commonly known as the Jay Treaty) concluded between the United States and Great Britain in 1794. Article III of the Treaty is usually quoted as the authority under which North American Indians should be allowed to cross the United States - Canada border without hindrance of any kind. This Article, however, stipulated that all persons resident on either side of the border, whether they were Indians or otherwise, should be free to pass into the other territory. It also exempted these people from paying duty on furs brought into either country and specifically exempted Indians from payment of duty on any of their ordinary possessions.

I am not in a position to discuss the reasons which have been advanced to show that the Jay Treaty, as it applies to Canada, is still valid. In 1956 the Supreme Court of Canada found that Article III of the Jay Treaty and Article IX of the Treaty of Ghent (which ostensibly re-instated the Jay Treaty after the War of 1812) are not applicable in Canada since they have not been implemented or sanctioned by legislation, as I believe has been done in the United States. Decisions by the Supreme Court of Canada are final and are not subject to amendment either by judiciary or executive branches of the Government of Canada, which must take the position that the Treaty, in relation to Canada, is invalid.

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- 2 -

The situation therefore, as it affects Canada, simply means that Indians who are citizens of the United States must comply with the requirements for entry to Canada in the same way as other citizens of the United States. However, these requirements are so minimal that they can hardly represent an obstacle to the vast majority of Americans, who ordinarily are able to enter Canada without any difficulty whatever. Today no one enters Canada more freely than Americans. Simple identification is sometimes asked and financial responsibility is required but persons who are believed or known to be undesirable may be refused.

I hope this will explain the Canadian position in respect of the Jay Treaty. In recognition of the ancestral and traditional mores of North American Indians the Government will accord Indian applicants for admission every possible consideration consistent with the law. I am sure they will be dealt with more than fairly by any representative of this Department.

Yours sincerely,

Guy Favreau
Guy Favreau,
Minister.

2994-

ARTICLE III OF THE JAY TREATY
(MALLOY'S TREATIES AND CONVENTIONS,
VOL. I. P. 590)

GOVERNMENT PRINTING OFFICE, WASHINGTON 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, 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 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."

SUPPLEMENTED UNDER DATE OF MAY 4th, 1796,
(DO. P. 607) BY AN EXPLANATORY ARTICLE declaring:—

"That no stipulation 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 that all the said persons shall remain at full liberty to pass and repass, by land or inland navigation into the respective territories and countries of the contracting parties on either side of the boundary line, and freely to carry on trade and commerce with each other, according to the stipulation of the third Article of the said treaty of Amity, commerce and navigation."

FOLLOWING THE WAR OF 1812 BETWEEN GREAT BRITAIN AND
THE UNITED STATES CAME THE TREATY OF GHENT IN 1814
"MALLOY'S TREATIES AND CONVENTIONS—VOL. I. P. 612"
PRINTED 1912

ARTICLE IX

"The United States of America engage to put an end immediately after the ratification of the present treaty to all 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 one thousand eight hundred and eleven, 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 engage on His part, to put an end, immediately after the ratification of the present treaty, to all 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 One Thousand Eight Hundred and Eleven, previous to such hostilities; provided always that such tribes or nations shall agree to desist from all hostilities against His Majesty and his subjects, upon the ratification of the present treaty being notified to such tribes or nations, and shall so desist accordingly."

2994-

COPY FOR MR. LAING

PA →

1/1-11

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

Dear Mr. Rickard:

Please refer to your letters dated September 21, 1967 to The Right Honourable Lester B. Pearson, Prime Minister, and to the Honourable John N. Turner, Registrar General, both of which dealt with the Jay Treaty and the Treaty of Ghent and more particularly the reference therein to Indians crossing back and forth across the Canada - United States border.

I note, with appreciation, your complete grasp of the legal situation as established by the Supreme Court, your realization that this decision is binding on the Government of Canada, as well as its citizens, and your understanding that there is no administrative action which may be taken to deal with the problem.

Your suggestion that legislation be enacted which will give force and substance to the principles which are inherent in these treaties is an interesting one, and I have referred it to the appropriate authorities for further study.

Thank you for writing and for providing me with a detailed account of this matter.

Yours sincerely,

signed 19 Jan. 1968

Arthur Laing.

CONN/BOYD/pmg
December 5, 1967.

c.c. The Honourable John N. Turner, Registrar General.

"Copy for Indian Affairs Branch"
Return to SAT

*retyped
Dec. 5/67*

1/1-11

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

Dear Mr. Rickard:

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I note, with appreciation, your complete grasp of the legal situation as established by the Supreme Court, your realization that this decision is binding on the Government of Canada, as well as its citizens, and your understanding that there is no administrative action which may be taken to deal with the problem.

Your suggestion that legislation be enacted which will give force and substance to the principles which are inherent in these treaties is interesting and I will avail myself of the first favourable opportunity to pursue the matter with my colleagues.

Yours sincerely,

Arthur Laing.

CONN/ihk
November 14, 1967.

c.c. The Honourable John N. Turner, Registrar General.

P. A.

1/1-11

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

Dear Mr. Rickard:

Please refer to your letters, dated September 21st, 1967 to The Right Honourable Lester B. Pearson, Prime Minister, and to the Honourable John H. Turner, Registrar General of Canada, both of which have been referred to me as the Minister responsible for Indian affairs.

You will understand that the legal position as established by the Supreme Court of Canada is binding on the Government of this country as well as its citizens and that there is consequently no administrative action which may be taken to deal with the situation.

Yours sincerely,

CONN/eh
November 10, 1967.

Arthur Laing.

not sent

*Referred by direction of The Prime Minister
Transmis à la demande du Premier ministre*

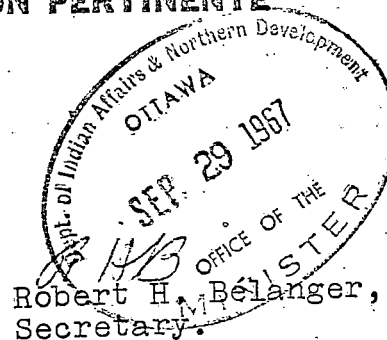
To The Minister of Indian Affairs and Northern Development
Au Ministre d

Attention: Mr. Gordon Gibson

**FOR INFORMATION AND ANY NECESSARY ACTION
POUR EXAMEN ET DECISION PERTINENTE**

Also referred to:
Également transmis à

Low



Sept. 28/67

Ottawa,

2994



COPY
COPIE

OFFICE OF THE PRIME MINISTER • CABINET DU PREMIER MINISTRE

OTTAWA (4),
September 28, 1967.

Dear Mr. Rickard:

The Prime Minister has asked me to acknowledge receipt of your letter of September 21, to which you had attached a copy of your letter to the Honourable John N. Turner, regarding Canada's position on the Jay Treaty as it affects Indians.

Mr. Pearson has noted your support for the enactment of legislation, and has directed that your views be brought to the attention of his colleagues most directly concerned.

Yours sincerely,

ORIGINAL SIGNED BY
R. H. BELANGER

Robert H. Bélanger,
Secretary.

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

✓ cc: Minister of Indian Affairs and Northern Development

Ne Shenno, Ne Gai Wuo, Ne Gasha Sa

Peace, Prosperity, Power and Equality to All

Indian Defense League of America

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

Seen By
E. H. PEARSON

CHIEF CLINTON RICKARD

President

DAVID HILL

First Vice Grand President

MR. LEHIGH ANTONE

Grand Secretary



CHIEF DES-KA-HEH

Grand Chaplain

R.R. 1, Ohsweken, Ont.

Six Nation Reservation

LYNETTE JUSTIANA

Treasurer and Assistant Secretary

Annual Border Crossing Celebration Every 3rd Saturday of July, Niagara Falls, N.Y., and Niagara Falls, Ontario

September 21, 1967

The Rt. Hon. Lester B. Pearson
Prime Minister
Government House
Ottawa, Ontario
Canada

Dear Sir:

Enclosed is a copy of a letter the Indian Defense League of America has sent to the Rt. Hon. John N. Turner regarding Canada's non-recognition of the Jay Treaty as it affects Indians.

You know that the Supreme Court of Canada in 1956 in the case of Francis vs. the Queen decided that the Jay Treaty of 1794 between the United States and Great Britain does not apply in Canada since it has never been implemented by legislation. Article III of that Treaty gave Indians the right to pass without hindrance back and forth across the Canada - United States border as they had always done. This has always been a most important right for the Indian people.

The United States in 1928 and thereafter has specifically recognized this right by legislation, as explained in the enclosed letter to the Rt. Hon. Registrar General.

We most respectfully request that you support legislation in Parliament to secure this valued right to American Indians crossing into Canada, even as the United States has done for Indians coming from Canada into the United States. I do believe that the enclosed letter will set forth the reasons we consider this right of great importance for all Indians from both countries. The United States Government has guaranteed that right to Indians coming from Canada into this country. We now trust that we may look to you to support reciprocal legislation for our Indian people entering your country.

Respectfully yours,

Clinton Rickard

Clinton Rickard
Grand President

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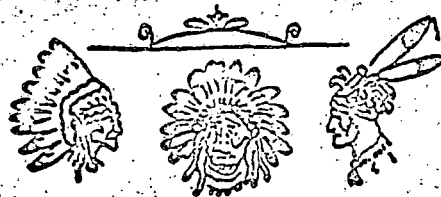
Ne Skenno, Ne Gai Wuo, Ne Gasha Sa

Peace, Prosperity, Power and Equality to All

Indian Defense League of America

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

CHIEF CLINTON RICKARD
President
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MR. LEHIGH ANTONE
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CHIEF DES-KA-HEH
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C O P Y

September 21, 1967

The Rt. Hon. John N. Turner
Registrar General of Canada
Government House
Ottawa, Ontario
Canada

Dear Sir:

The Indian Defense League of America requests you to help us with an important problem involving the right of Indians to cross the border between the United States and Canada. Canada does not recognize the Jay Treaty of 1794 and the Treaty of Ghent of 1814 between the United States and Great Britain. Both these treaties give our Indian people the right to cross the border without hindrance.

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The Rt. Hon. John N. Turner

- 2 -

September 21, 1967

Act of 1924. His case, *McCandless, Commissioner of Immigration vs. United States ex rel. Diabo* (25F (2d) 71), was tried in the United States Circuit Court of appeals, Third Circuit; and on March 9, 1928, that Court rendered its decision. This decision stated that Article IX of the Treaty of Ghent "recognized and restored the Indian status of the Jay Treaty." This Court also stated, "we think the rights of these Indians under the Jay Treaty were not annihilated by the subsequent War of 1812."

The Solicitor General of the United States recommended that there be no appeal in the *Diabo* case, and in making his recommendations stated on June 1, 1928, that he believed the War of 1812 did not abrogate the Jay Treaty but even if it did the Treaty of Ghent restored the border crossing right to the Indians. In commenting on the Act of April 2, 1928, he said further:

The Act of April 2, 1928, read in the light of the Congressional Record and Committee Reports, seems a definite legislative recognition of some right which American Indians born in Canada have to pass the borders of the United States which is peculiar to them as Indians. The act provides 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, thus recognizing the existence of a "right." I do not know what right could be referred to other than that recognized in the Jay Treaty and in the practice of allowing North American Indians to pass back and forth across the Canadian boundary in their wanderings without interference. The Report of the Committee on Immigration and Naturalization dealt with H. R. 11351, which became the Act of April 2, 1928, and refers to the fact that for over a century the Indians of the North American tribes resident in Canada and the United States adjacent to the Canadian boundary have been accustomed to going back and forth, and that this freedom of movement was not questioned until the enactment of the Immigration Act of 1924.

Then on July 18, 1928, General Order No. 109 of the United States Immigration Service set forth the following direction:

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.

You will note that Indians, the original inhabitants of this continent, did not need to pass through immigration inspection.

This border crossing right for Indians has been recognized in subsequent legislation by the United States Congress. For example, the Immigration and Nationality Act of June 27, 1952, (66 Stat. 234) states the following:

The Rt. Hon. John N. Turner

- 3 -

September 21, 1967

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.

The purpose of this lengthy introduction is to give you the legal and historical background of the problem our Indian people have faced. The United States Government has by subsequent legislation and court decisions upheld Article III of the Jay Treaty and Article IX of the Treaty of Ghent giving protection and security to Indians in crossing the border from Canada into the United States. Indians born north of the border are now free to come into the United States without going through immigration proceedings, in accordance with the two treaties.

This right is of great benefit to Indians, who pass back and forth, seeking work on either side of the border, wherever work is to be found. As you know, my Indian people would rather support themselves than be a burden to the Government. Mohawk Indians from the Caughnawaga Reserve and the Six Nations Reserve on the Grand River have been especially famous in the United States for their work in structural steel. Also, our kinship ties are very close and many families on either side of the border are intermarried. This was always our custom; and Indians, before the coming of the Europeans, did not recognize any border shutting them off from their relatives living a few miles away.

Now a rather serious problem has arisen, since Canada does not have reciprocal legislation recognizing this border crossing right for Indians. The viewpoint of the Canadian Government is dealt with in the enclosed copy of a letter dated Nov. 20, 1963, from the Rt. Hon. Guy Favreau.

In 1956 in the case of Francis vs. the Queen, the majority of the Supreme Court of Canada decided that neither Article III of the Jay Treaty nor Article IX of the Treaty of Ghent applies in Canada since neither has been implemented by legislation.

The Indian Defense League of America is asking you, as a person who we believe is favorably inclined toward securing justice to all people, to sponsor and introduce a bill in Parliament to implement Article III of the Jay Treaty. We respectfully request that this be similar to the legislation that the United States Government has passed, as explained above, restoring this right to American Indians coming from Canada into the United States. We desire that Canada should pass legislation restoring this same right to American Indians from the United States passing into Canada, whether these Indians were born on or off an Indian reservation.

We believe that 1967, Canada's centennial year, would be an appropriate time to do this great thing for our Indian people. It would give us a security which we now lack, for we never know when our rights may be in question. We can never tell when we may be deprived of our former customs and traditions, and when our way of life and even our livelihood may be in jeopardy. Through the centuries, we have become strangers in our own land. We ask that you remember the former friendship that existed between your people and our people, and the assistance we gave your ancestors when they first came amongst us. We ask you to help us in restoring this

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2994-

The Rt. Hon. John N. Turner

- 4 -

September 21, 1967

treaty right so that we may continue to help ourselves.

The enclosed article from the July 14, 1967, Niagara Falls Review (Ontario) will give some small inkling of the problem, which may well become quite serious for Indians. Every year on the third Saturday in July our organization celebrates the restoration of our border crossing rights by the United States by a special Border Crossing ceremony in honor of the Jay Treaty. This past July, the parade was from the United States side to the Canadian side. One of our women workers, who was going over ahead of the parade to work on the food booths, was stopped and given great difficulty by the Canadian immigration officials. She was an Indian born on the Canadian side and enrolled with her tribe there, but living in the United States. Her children were in the car with her. They were born in the United States. The Canadian immigration officials attempted to have this woman sign waivers for her children, even though she was going to be in Canada only a few hours. After long discussion and argument, the immigration officials allowed her to pass without signing the waivers. Our people want to be free to pass back and forth at will, to work, to marry, to visit family and friends.

Indians are very attached to their home communities and their own tribes. Many who work off the reservation eventually go back to their home reservations to live. This happens especially when their working days are over. They wish to go home to be among their own people and live out their days among them. They do not wish to lose this precious liberty.

We look to you to help us preserve a right which we practiced from time immemorial, long before the coming of the Europeans to these shores, long before there was anything called a border. This border between the two countries has not divided our people, and we do not wish it to do so. We feel that even as we helped the white man exist in the wilderness when he first came here, so we can continue to make contributions to the white man's communities today. We wish also still to be Indians.

It will mean much to our Indian people, both in Canada and the United States, to have this right recognized by the Government of Canada, even as it is recognized by the Government of the United States. The free passage of Indians back and forth across the border will, we know, be of benefit to both countries as well as to the Indians themselves. We wish nothing more than to live our lives as free human beings and to contribute, to the best of our abilities, to the communities in which we live and work.

If it is your wish, I can have sent to you complete copies of the legal documents which I have quoted above.

We trust in the Great Spirit and we pray that you may be His instruments to help our people.

Respectfully yours,

Clinton Rickard

Clinton Rickard
Grand President

000070

2994-

Indians say Treaty terms not observed

The terms of the Jay Treaty, which permits North American Indians to cross the international border without having to answer questions from immigration officials, apparently are not recognized by the Canadian government.

Local Indians claim that they can cross into the United States with no trouble but coming from the US into Canada they are forced to answer questions.

Winston Fischer, chief Immigration officer for the Port of Niagara Falls, said his instructions are that "North American Indians are subject to the same examination as anyone else."

Asked if there would be any difficulties at the annual border crossing ceremony Saturday in which the Indians celebrate the signing of the Jay Treaty, Mr. Fischer said "They will receive the same consideration as any other authorized group holding a parade from one country to the other. We don't interfere with a parade unless we are aware that someone in it is inadmissible to Canada."

The fastest homing pigeons can cover 1,500 miles in three days.

M. J. Remick
July 14-1967



CANADA

MINISTER OF CITIZENSHIP AND IMMIGRATION

Ottawa 4, November 20th, 1963

Lehigh Antone, Esq.,
Grand Secretary,
Indian Defense League of America,
Box 305,
Niagara Falls, N.Y.,
U. S. A.

Dear Mr. Antone:

I have only now been able to write in reply to your inquiry concerning any action by this Department on the rights of North American Indians to cross the International Boundary. Since receipt of your letter this question has received further study.

There seems to be a disagreement regarding the effect and present validity in Canada of the Treaty of Amity, Commerce and Navigation (commonly known as the Jay Treaty) concluded between the United States and Great Britain in 1794. Article III of the Treaty is usually quoted as the authority under which North American Indians should be allowed to cross the United States - Canada border without hindrance of any kind. This Article, however, stipulated that all persons resident on either side of the border, whether they were Indians or otherwise, should be free to pass into the other territory. It also exempted these people from paying duty on furs brought into either country and specifically exempted Indians from payment of duty on any of their ordinary possessions.

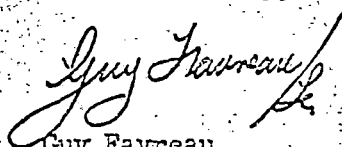
I am not in a position to discuss the reasons which have been advanced to show that the Jay Treaty, as it applies to Canada, is still valid. In 1956 the Supreme Court of Canada found that Article III of the Jay Treaty and Article IX of the Treaty of Ghent (which ostensibly reinstated the Jay Treaty after the War of 1812) are not applicable in Canada since they have not been implemented or sanctioned by legislation, as I believe has been done in the United States. Decisions by the Supreme Court of Canada are final and are not subject to amendment either by judiciary or executive branches of the Government of Canada, which must take the position that the Treaty, in relation to Canada, is invalid.

- 2 -

The situation therefore, as it affects Canada, simply means that Indians who are citizens of the United States must comply with the requirements for entry to Canada in the same way as other citizens of the United States. However, these requirements are so minimal that they can hardly represent an obstacle to the vast majority of Americans, who ordinarily are able to enter Canada without any difficulty whatever. Today no one enters Canada more freely than Americans. Simple identification is sometimes asked and financial responsibility is required but persons who are believed or known to be undesirable may be refused.

I hope this will explain the Canadian position in respect of the Jay Treaty. In recognition of the ancestral and traditional mores of North American Indians the Government will accord Indian applicants for admission every possible consideration consistent with the law. I am sure they will be dealt with more than fairly by any representative of this Department.

Yours sincerely,



Guy Favreau,
Minister.

**ARTICLE III OF THE JAY TREATY
(MALLOY'S TREATIES AND CONVENTIONS,
VOL. I. P. 590**

GOVERNMENT PRINTING OFFICE, WASHINGTON 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, 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 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."

**SUPPLEMENTED UNDER DATE OF MAY 4th, 1796,
(DO. P. 607) BY AN EXPLANATORY ARTICLE declaring:—**

"That no stipulation 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 that all the said persons shall remain at full liberty to pass and repass, by land or inland navigation into the respective territories and countries of the contracting parties on either side of the boundary line, and freely to carry on trade and commerce with each other, according to the stipulation of the third Article of the said treaty of Amity, commerce and navigation."

**FOLLOWING THE WAR OF 1812 BETWEEN GREAT BRITAIN AND
THE UNITED STATES CAME THE TREATY OF GHENT IN 1814
"MALLOY'S TREATIES AND CONVENTIONS—VOL. I. P. 612"
PRINTED 1912**

ARTICLE IX

"The United States of America engage to put an end immediately after the ratification of the present treaty to all 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 one thousand eight hundred and eleven, 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 engage on His part, to put an end, immediately after the ratification of the present treaty, to all 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 One Thousand Eight Hundred and Eleven, previous to such hostilities; provided always that such tribes or nations shall agree to desist from all hostilities against His Majesty and his subjects, upon the ratification of the present treaty being notified to such tribes or nations, and shall so desist accordingly."

1/3-3-14

P.A. →

Mr. Gustave Blouin, M.P.,
House of Commons,
Ottawa 4, Ontario.

Dear Mr. Blouin:

This has reference to yours of October 30, 1967 requesting a copy of the Jay Treaty.

There are no complete copies of the treaty in the Department by reason of the fact that the Jay Treaty or, more properly, the Treaty of Amity, Commerce and Navigation signed by Great Britain and the United States of America in 1794 was not an Indian treaty although Indians were mentioned in one of its clauses.

It was considered by the United States to have been abrogated by the War of 1812 but if that was the case it was reinstated by the Treaty of Ghent which ended hostilities in 1815.

The question of rights which may have been conveyed on Indians by these treaties was considered and settled by the Supreme Court of Canada in the case of *Louis Francis vs Her Majesty, the Queen* (1956). It was held that, in the absence of confirmatory legislation, neither article had any application in Canada and consequently both immigration formalities and customs regulations must be observed by Indians crossing the border from the United States to Canada.

I am enclosing a copy of the pertinent articles of the Jay Treaty and the Treaty of Ghent and trust they will be of interest and value to you.

Yours sincerely,

L. S. Marchand, P. Ag.,
Special Assistant.

CONN/hw

December 6, 1967.

TREATY OF AMITY, COMMERCE & NAVIGATION, 1794

commonly called the Jay Treaty

ARTICLE 3:

"No Duty on Entry shall ever be levied by either Party on Feltries 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."

TREATY OF GHENT 1814

ARTICLE 9:

"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."

1/3-3-14

SIAT



HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Ottawa, October 30, 1967

TO: Mr. L.S. Marchand,
Special Assistant to the
Minister of Indian Affairs
and Northern Development,
House of Commons,
Ottawa, Ontario.

Would it be possible to obtain a
copy of the Indian Treaty between Canada
and the United States? I believe this
Treaty was called the JAY Treaty. Would
appreciate very much your research in
localizing such document.

With many thanks, I am,

Yours sincerely

GUSTAVE BLOUIN
Member for Saguenay

GB/cs



130-

SPT 16-10

0 1 2 3 7 3

CENTRAL REGISTRY

Nov 7 3 13 PM '67

INDIAN AFFAIRS

S. A. T.

1 - See Mr. Battle's
note.

2 - I do not know
if American

Indians will be
able to enter
a claim with
the Canadian
Commission to be

but: . . .

3 - Please prepare
whatever submission
you will deem
appropriate.

000079

23, 10, 67

not
pertinent
17, 11, 67
JA

TO: **D.I.A.**

Date

☐ Approval
Approbation

☐ May we discuss
Discussion avec nous

☐ Signature

☐ As requested
Selon indications

☐ Comment
Commentaire

☐ Note
Noter

☐ Action
Donner suite

☐ Note and return
Noter et retourner

☐ Direct Reply
Répondre directement

☐ Note and forward to
Noter et faire suivre à

☐ Copy for this office
Copie pour ce bureau

☐ Preparation of reply by
Réponse d'ici le

☐ Information

THE GOVT WILL ALMOST
CERTAINLY BE GOING AHEAD
WITH THE CLAIMS BILL.
THIS MATTER CAN BE
PLACED BEFORE A CLAIMS
^{COMMISSION}
~~COURT~~ WHEN IT COMES
INTO EXISTENCE. I BELIEVE
WE SHOULD HAVE MINISTER
ACKNOWLEDGE, MAINTAINING
THE PREVIOUS POSITION, BUT
REFERRING TO THE
POSSIBILITY OF HAVING
THIS EXAMINED BY
THAT COMMISSION IF
ESTABLISHED.

000080
AND 22-14 (12-66)



Department of
Indian Affairs and
Northern Development

Indian
Affairs
Branch

Ministère des
Affaires indiennes et
du Nord canadien

Direction
des affaires
indiennes

our file/notre dossier 1/3-3-14 (SAT)
your file/votre dossier
Ottawa 4 date October 18, 1967.

ASSISTANT DEPUTY MINISTER
(Indian Affairs).

Re: Jay Treaty

This has reference to the aspects of the above mentioned problem which is of concern to the Administration Directorate, and others, since this question has been broadened beyond the original concept, having been referred to the responsible Sectors, i.e., Policy and Planning, Development and Federal-Provincial Relations.

With regard to the question as to what we are planning to do the first part has already been answered by the suggestion that the matter be discussed with the National Advisory Council in order to determine its importance to Indians, generally. If it is of sufficient importance the matter could be the subject of legislation or regulation which would provide for Indians of the United States the same measure of courtesy afforded to Canadian Indians going into their country and allow Canadian Indians returning to Canada to bring with them, free of duty, such goods as they had, bona fide, acquired while in the United States.

What was in the minds of the Administration Directorate in drafting the final paragraph of the memorandum to the Minister was primarily the appointment of a Claims Committee which, as you know, has been operating in the States for a number of years. Awards made by that Committee have dealt with matters related to lands, fisheries, unceded rights and a number of other matters which will no doubt be put forward by other Directorates and services of the Branch in reply to the enquiry of the Administration Directorate.



*See Mr. Churchman's
memo to Dir. of Admin.
Nov. 27/67, suggesting
referral to Immigration Dept
and others; and Hon. J. G. Loring
letters to Hon. J. G. Loring
& Mr. Clinton
Richardson, dated Jan 19/68.*

J.W. Churchman,
Director of Indian Affairs.

Ottawa 4 1/3-3-14 (SAT)
October 18, 1967.

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(Indian Affairs).

Re: Jay Treaty

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Original Signed by
J. W. CHURCHMAN

J.W. Churchman,
Director of Indian Affairs.

HRC/eh

000082

TO:
A:

DTH

Date *13.10.67*

- | | |
|---|---|
| <input type="checkbox"/> Approval
Approbation | <input type="checkbox"/> May we discuss
Discussion avec nous |
| <input type="checkbox"/> Signature | <input type="checkbox"/> As requested
Selon indications |
| <input type="checkbox"/> Comment
Commentaire | <input type="checkbox"/> Note
Noter |
| <input type="checkbox"/> Action
Donner suite | <input type="checkbox"/> Note and return
Noter et retourner |
| <input type="checkbox"/> Direct Reply
Répondre directement | <input type="checkbox"/> Note and forward to
Noter et faire suivre à |
| <input type="checkbox"/> Copy for this office
Copie pour ce bureau | |
| <input type="checkbox"/> Preparation of reply by
Réponse d'ici le | <input type="checkbox"/> Information |
| | |

Refer to 13.10.67 SAT 16.10.67

*This must be explained
very clearly. What are
we proposing to do?
What has the U.S.
done & why? What are
the things they have
done re Indian Rights that
we have not done? For
example, what about the
tap question? I want to
the Minister but with
very facts show*

000083

STXOS



Department of
Indian Affairs and
Northern Development

Deputy Minister

Ministère des
Affaires indiennes et
du Nord canadien

Sous-ministre

our file/notre dossier 1/3-3-14
your file/votre dossier
Ottawa 4, date October 23, 1967.

MINISTER

- The attached correspondence from the Indian Defense League of America over the signature of Clinton Rickard, Grand President, represents a new approach to the matter of border crossing rights of Indians under the Jay Treaty and the Treaty of Ghent.

Hitherto, the Indians on both sides of the border but particularly those of the United States have maintained that these privileges were incontrovertible. They have refused to accept the judgement of the Supreme Court of Canada in the case of Louis Francis vs The Queen 1956 which held that, in the absence of supporting legislation, these treaties were not applicable to Canada.

Apparently, the Indians have now recognized the validity of the legal position which has been taken by Canada as a result of the above judgement but are suggesting that the principle inherent in the above treaties be recognized and given effect by an Act of Parliament which would bring Canada into line with the American action of 1928.

This matter has come to the fore on numerous isolated instances in the past but there is no real indication of how important it is to Canadian Indians, generally. It is suggested, therefore, that the question be discussed with the National Indian Advisory Council with a view of developing a recommendation regarding the most appropriate course of action.

There are a number of matters in which invidious comparisons between Canadian and American policies have been made and I feel that any of these which can be remedied will react to the advantage of our administration.

R. F. Battle,
Assistant Deputy Minister,
(Indian Affairs).



1/3-3-14

Ottawa 4, October 23, 1967.

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CONN/bev

1/3-3-14

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CONN/bev

ADM's Office

Ottawa 4, 1/3-3-14
October 23, 1967.

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R. F. BATTLE

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Assistant Deputy Minister,
(Indian Affairs).

CONN/bev

Copy for Indian Affairs Branch
Return to SAT

Ottawa 4, 1/3-3-14²³
October 12, 1967.

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R. F. BATTLE


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Assistant Deputy Minister,
(Indian Affairs).

CONN/bev

*See note
on Mr. Churchill's
memo & ADM dated Oct 19/67.
re Mr. Churchill's memo
& Dir. of Admin. dated
Nov. 27/67.*

ROUTE SLIP

PASS TO:

1. 
2. ~~DIA~~(for signature please)
3. ~~ADM~~
4. SAT

Date October 18, 1967.

Initials HRC/eh

P. A. →

Ottawa 4

1/3-3-14 (SAT)
October 18, 1967.


ASSISTANT DEPUTY MINISTER
(Indian Affairs).

Re: Jay Treaty

This has reference to the aspects of the above mentioned problem which is of concern to the Administration Directorate, and others, since this question has been broadened beyond the original concept, having been referred to the responsible Sectors i.e., Policy and Planning, Development and Federal-Provincial Relations.

With regard to the question as to what we are planning to do the first part has already been answered by the suggestion that the matter be discussed with the National Advisory Council in order to determine its importance to Indians, generally. If it is of sufficient importance the matter could be the subject of legislation or regulation which would provide for Indians of the United States the same measure of courtesy afforded to Canadian Indians going into their country and allow Canadian Indians returning to Canada to bring with them, free of duty, such goods as they had, bona fide, acquired while in the United States.

What was in the minds of the Administration Directorate in drafting the final paragraph of the memorandum to the Minister was primarily the appointment of a Claims Committee which, as you know, has been operating in the States for a number of years. Awards made by that Committee have dealt with matters related to lands, fisheries, unceded rights and a number of other matters which will no doubt be put forward by other Directorates and services of the Branch in reply to the enquiry of the Administration Directorate.

HRB


Original Signed by
J. W. CHURCHMAN

J.W. Churchman,
Director of Indian Affairs.

HRC/eh

A/Director, Policy and Planning
A/Director of Development
Chief, Federal Provincial Relations Division

P. A. → 1/3-3-14 (SAT)

Director of Administration

October 16, 1967.

The following was received from Mr. Battle in the form of a transmittal slip attached to a memorandum to the Minister relative to the Jay Treaty, a copy of which is attached.


"This must be examined very closely. What are we proposing to do? What has the U.S. done and why? What are the things they have done re Indian Rights that we have not done? For example, what about the tax question? I want to go to the Minister but with my facts straight."

I would be pleased to have your comments on the matters which relate to your administration.



Jules D'Astous.

HRC/ihk



P. A. → 1/3-3-1A

Ottawa 4, October 12, 1967.

MINISTER

The attached correspondence from the Indian Defense League of America over the signature of Clinton Richard, Grand President, represents a new approach to the matter of border crossing rights of Indians under the Jay Treaty and the Treaty of Ghent.

Hitherto, the Indians on both sides of the border but particularly those of the United States have maintained that these privileges were incontrovertible. They have refused to accept the judgement of the Supreme Court of Canada in the case of Louis Francis vs The Queen 1956 which held that, in the absence of supporting legislation, these treaties were not applicable to Canada.

Apparently, the Indians have now recognized the validity of the legal position which has been taken by Canada as a result of the above judgement but are suggesting that the principle inherent in the above treaties be recognized and given effect by an Act of Parliament which would bring Canada into line with the American action of 1926.

This matter has come to the fore on numerous isolated instances in the past but there is no real indication of how important it is to Canadian Indians, generally. It is suggested, therefore, that the question be discussed with the National Indian Advisory Council with a view of developing a recommendation regarding the most appropriate course of action.

There are a number of matters in which invidious comparisons between Canadian and American policies have been made and I feel that any of these which can be remedied will react to the advantage of our administration.

E. F. Bettle,
Assistant Deputy Minister,
(Indian Affairs).

CONN/bev

NOTED

A

1/3-3-14

SAT

*Referred by direction of The Prime Minister
Transmis à la demande du Premier ministre*

To The Minister of Indian Affairs and Northern Development
Au Ministre d

Attention: Mr. Gordon Gibson

**FOR INFORMATION AND ANY NECESSARY ACTION
POUR EXAMEN ET DÉCISION PERTINENTE**

Also referred to:
Également transmis à

Low



Robert H. Bélanger,
Secretary.

Ottawa, Sept. 28/67

2994

001773

CENTRAL REGISTRY

OCT 1 3 11 PM '67

INDIAN AFFAIRS



COPY
COPIE

OFFICE OF THE PRIME MINISTER • CABINET DU PREMIER MINISTRE

O T T A W A (4),
September 28, 1967.

Dear Mr. Rickard:

The Prime Minister has asked me to acknowledge receipt of your letter of September 21, to which you had attached a copy of your letter to the Honourable John N. Turner, regarding Canada's position on the Jay Treaty as it affects Indians.

Mr. Pearson has noted your support for the enactment of legislation, and has directed that your views be brought to the attention of his colleagues most directly concerned.

Yours sincerely,

ORIGINAL SIGNED BY
R. H. BELANGER

Robert H. Bélanger,
Secretary.

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

✓ cc: Minister of Indian Affairs and Northern Development

Ne Skenno, Ne Gai Wuo, Ne Gasha Sa

Peace, Prosperity, Power and Equality to All

Indian Defense League of America

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

Seen By
L. B. PEARSON

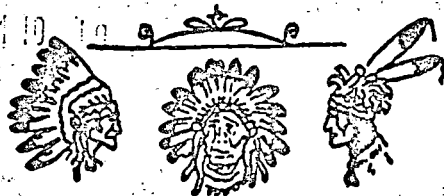
CHIEF CLINTON RICKARD
President

DAVID HILL

First Vice Grand President

MR. LEHIGH ANTONE

Grand Secretary



CHIEF DES-KA-HEH

Grand Chaplain

R.R. 1, Ohsweken, Ont.

Six Nation Reservation

LYNETTE JUSTIANA

Treasurer and Assistant Secretary

Annual Border Crossing Celebration Every 3rd Saturday of July, Niagara Falls, N.Y., and Niagara Falls, Ontario

September 21, 1967

The Rt. Hon. Lester B. Pearson
Prime Minister
Government House
Ottawa, Ontario
Canada

Dear Sir:

Enclosed is a copy of a letter the Indian Defense League of America has sent to the Rt. Hon. John N. Turner regarding Canada's non-recognition of the Jay Treaty as it affects Indians.

You know that the Supreme Court of Canada in 1956 in the case of Francis vs. the Queen decided that the Jay Treaty of 1794 between the United States and Great Britain does not apply in Canada since it has never been implemented by legislation. Article III of that Treaty gave Indians the right to pass without hindrance back and forth across the Canada - United States border as they had always done. This has always been a most important right for the Indian people.

The United States in 1928 and thereafter has specifically recognized this right by legislation, as explained in the enclosed letter to the Rt. Hon. Registrar General.

We most respectfully request that you support legislation in Parliament to secure this valued right to American Indians crossing into Canada, even as the United States has done for Indians coming from Canada into the United States. I do believe that the enclosed letter will set forth the reasons we consider this right of great importance for all Indians from both countries. The United States Government has guaranteed that right to Indians coming from Canada into this country. We now trust that we may look to you to support reciprocal legislation for our Indian people entering your country.

Respectfully yours,

Clinton Rickard

Clinton Rickard
Grand President

2994

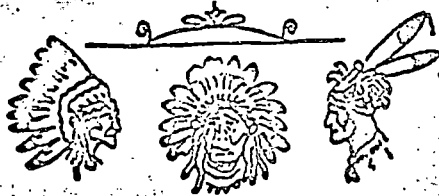
Ne Skenno, Ne Gai Wuo, Ne Gasha Sa

Peace, Prosperity, Power and Equality to All

Indian Defense League of America

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

CHIEF CLINTON RICKARD
President
DAVID HILL
First Vice Grand President
MR. LEHIGH ANTONE
Grand Secretary



CHIEF DES-KA-HEH
Grand Chaplain
R.R. 1, Ohsweken, Ont.
Six Nation Reservation
LYNETTE JUSTIANA
Treasurer and Assistant Secretary

Annual Border Crossing Celebration Every 3rd Saturday of July, Niagara Falls, N.Y., and Niagara Falls, Ontario

C O P Y

September 21, 1967

The Rt. Hon. John N. Turner
Registrar General of Canada
Government House
Ottawa, Ontario
Canada

Dear Sir:

The Indian Defense League of America requests you to help us with an important problem involving the right of Indians to cross the border between the United States and Canada. Canada does not recognize the Jay Treaty of 1794 and the Treaty of Ghent of 1814 between the United States and Great Britain. Both these treaties give our Indian people the right to cross the border without hindrance.

Our organization includes and represents North American Indians living on both sides of the border. We began our work in 1925, after the United States Immigration Act of 1924 excluded Indians born on your side of the border from entry into the United States, in violation of Article III of the Jay Treaty and Article IX of the Treaty of Ghent. After three years of hard work and much sacrifice and expense, we were gratified to see the United States Congress pass the Act of April 2, 1928, restoring the right of crossing the border to our Indian people coming into the United States from Canada. This Act stated:

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.

Our Indian Defense League also, at that same time, assisted a full-blooded Iroquois Indian named Paul Diabo, born on the Caughnawaga Reservation near Montreal, to resist deportation from the United States. From 1912 to 1925, Paul Diabo travelled several times across the border from Canada into the United States as a structural steel worker; but in 1925 he was arrested because of the Immigration

The Rt. Hon. John N. Turner

- 2 -

September 21, 1967

Act of 1924. His case, *McCandless, Commissioner of Immigration vs. United States ex rel. Diabo* (25F (2d) 71), was tried in the United States Circuit Court of appeals, Third Circuit; and on March 9, 1928, that Court rendered its decision. This decision stated that Article IX of the Treaty of Ghent "recognized and restored the Indian status of the Jay Treaty." This Court also stated, "we think the rights of these Indians under the Jay Treaty were not annihilated by the subsequent War of 1812."

The Solicitor General of the United States recommended that there be no appeal in the *Diabo* case, and in making his recommendations stated on June 1, 1928, that he believed the War of 1812 did not abrogate the Jay Treaty but even if it did the Treaty of Ghent restored the border crossing right to the Indians. In commenting on the Act of April 2, 1928, he said further:

The Act of April 2, 1928, read in the light of the Congressional Record and Committee Reports, seems a definite legislative recognition of some right which American Indians born in Canada have to pass the borders of the United States which is peculiar to them as Indians. The act provides 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, thus recognizing the existence of a "right." I do not know what right could be referred to other than that recognized in the Jay Treaty and in the practice of allowing North American Indians to pass back and forth across the Canadian boundary in their wanderings without interference. The Report of the Committee on Immigration and Naturalization dealt with H. R. 11351, which became the Act of April 2, 1928, and refers to the fact that for over a century the Indians of the North American tribes resident in Canada and the United States adjacent to the Canadian boundary have been accustomed to going back and forth, and that this freedom of movement was not questioned until the enactment of the Immigration Act of 1924.

Then on July 18, 1928, General Order No. 109 of the United States Immigration Service set forth the following direction:

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.

You will note that Indians, the original inhabitants of this continent, did not need to pass through immigration inspection.

This border crossing right for Indians has been recognized in subsequent legislation by the United States Congress. For example, the Immigration and Nationality Act of June 27, 1952, (66 Stat. 234) states the following:

2994-

The Rt. Hon. John N. Turner

- 3 -

September 21, 1967

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.

The purpose of this lengthy introduction is to give you the legal and historical background of the problem our Indian people have faced. The United States Government has by subsequent legislation and court decisions upheld Article III of the Jay Treaty and Article IX of the Treaty of Ghent giving protection and security to Indians in crossing the border from Canada into the United States. Indians born north of the border are now free to come into the United States without going through immigration proceedings, in accordance with the two treaties.

This right is of great benefit to Indians, who pass back and forth, seeking work on either side of the border, wherever work is to be found. As you know, my Indian people would rather support themselves than be a burden to the Government. Mohawk Indians from the Caughnawaga Reserve and the Six Nations Reserve on the Grand River have been especially famous in the United States for their work in structural steel. Also, our kinship ties are very close and many families on either side of the border are intermarried. This was always our custom; and Indians, before the coming of the Europeans, did not recognize any border shutting them off from their relatives living a few miles away.

Now a rather serious problem has arisen, since Canada does not have reciprocal legislation recognizing this border crossing right for Indians. The viewpoint of the Canadian Government is dealt with in the enclosed copy of a letter dated Nov. 20, 1963, from the Rt. Hon. Guy Favreau.

In 1956 in the case of Francis vs. the Queen, the majority of the Supreme Court of Canada decided that neither Article III of the Jay Treaty nor Article IX of the Treaty of Ghent applies in Canada since neither has been implemented by legislation.

The Indian Defense League of America is asking you, as a person who we believe is favorably inclined toward securing justice to all people, to sponsor and introduce a bill in Parliament to implement Article III of the Jay Treaty. We respectfully request that this be similar to the legislation that the United States Government has passed, as explained above, restoring this right to American Indians coming from Canada into the United States. We desire that Canada should pass legislation restoring this same right to American Indians from the United States passing into Canada, whether these Indians were born on or off an Indian reservation.

We believe that 1967, Canada's centennial year, would be an appropriate time to do this great thing for our Indian people. It would give us a security which we now lack, for we never know when our rights may be in question. We can never tell when we may be deprived of our former customs and traditions, and when our way of life and even our livelihood may be in jeopardy. Through the centuries, we have become strangers in our own land. We ask that you remember the former friendship that existed between your people and our people, and the assistance we gave your ancestors when they first came amongst us. We ask you to help us in restoring this

The Rt. Hon. John N. Turner

- 4 -

September 21, 1967

treaty right so that we may continue to help ourselves.

The enclosed article from the July 14, 1967, Niagara Falls Review (Ontario) will give some small inkling of the problem, which may well become quite serious for Indians. Every year on the third Saturday in July our organization celebrates the restoration of our border crossing rights by the United States by a special Border Crossing ceremony in honor of the Jay Treaty. This past July, the parade was from the United States side to the Canadian side. One of our women workers, who was going over ahead of the parade to work on the food booths, was stopped and given great difficulty by the Canadian immigration officials. She was an Indian born on the Canadian side and enrolled with her tribe there, but living in the United States. Her children were in the car with her. They were born in the United States. The Canadian immigration officials attempted to have this woman sign waivers for her children, even though she was going to be in Canada only a few hours. After long discussion and argument, the immigration officials allowed her to pass without signing the waivers. Our people want to be free to pass back and forth at will, to work, to marry, to visit family and friends.

Indians are very attached to their home communities and their own tribes. Many who work off the reservation eventually go back to their home reservations to live. This happens especially when their working days are over. They wish to go home to be among their own people and live out their days among them. They do not wish to lose this precious liberty.

We look to you to help us preserve a right which we practiced from time immemorial, long before the coming of the Europeans to these shores, long before there was anything called a border. This border between the two countries has not divided our people, and we do not wish it to do so. We feel that even as we helped the white man exist in the wilderness when he first came here, so we can continue to make contributions to the white man's communities today. We wish also still to be Indians.

It will mean much to our Indian people, both in Canada and the United States, to have this right recognized by the Government of Canada, even as it is recognized by the Government of the United States. The free passage of Indians back and forth across the border will, we know, be of benefit to both countries as well as to the Indians themselves. We wish nothing more than to live our lives as free human beings and to contribute, to the best of our abilities, to the communities in which we live and work.

If it is your wish, I can have sent to you complete copies of the legal documents which I have quoted above.

We trust in the Great Spirit and we pray that you may be His instruments to help our people.

Respectfully yours,

Clinton Rickard

Clinton Rickard
Grand President

2994-

Indians say Treaty terms not observed

The terms of the Jay Treaty, which permits North American Indians to cross the international border without having to answer questions from Immigration officials, apparently are not recognized by the Canadian government.

Local Indians claim that they can cross into the United States with no trouble but coming from the US into Canada they are forced to answer questions.

Winston Fischer, chief Immigration officer for the Port of Niagara Falls, said his instructions are that "North American Indians are subject to the same examination as anyone else."

Asked if there would be any difficulties at the annual border crossing ceremony Saturday in which the Indians celebrate the signing of the Jay Treaty, Mr. Fischer said "They will receive the same consideration as any other authorized group holding a parade from one country to the other. We don't interfere with a parade unless we are aware that someone in it is inadmissible to Canada."

The fastest homing pigeons can cover 1,500 miles in three days.

M. F. Review
July 14-1967



CANADA

MINISTER OF CITIZENSHIP AND IMMIGRATION

Ottawa 4, November 20th, 1963

Lehigh Antone, Esq.,
Grand Secretary,
Indian Defense League of America,
Box 305,
Niagara Falls, N.Y.,
U. S. A.

Dear Mr. Antone:

I have only now been able to write in reply to your inquiry concerning any action by this Department on the rights of North American Indians to cross the International Boundary. Since receipt of your letter this question has received further study.

There seems to be a disagreement regarding the effect and present validity in Canada of the Treaty of Amity, Commerce and Navigation (commonly known as the Jay Treaty) concluded between the United States and Great Britain in 1794. Article III of the Treaty is usually quoted as the authority under which North American Indians should be allowed to cross the United States - Canada border without hindrance of any kind. This Article, however, stipulated that all persons resident on either side of the border, whether they were Indians or otherwise, should be free to pass into the other territory. It also exempted these people from paying duty on furs brought into either country and specifically exempted Indians from payment of duty on any of their ordinary possessions.

I am not in a position to discuss the reasons which have been advanced to show that the Jay Treaty, as it applies to Canada, is still valid. In 1956 the Supreme Court of Canada found that Article III of the Jay Treaty and Article IX of the Treaty of Ghent (which ostensibly re-instated the Jay Treaty after the War of 1812) are not applicable in Canada since they have not been implemented or sanctioned by legislation, as I believe has been done in the United States. Decisions by the Supreme Court of Canada are final and are not subject to amendment either by judiciary or executive branches of the Government of Canada, which must take the position that the Treaty, in relation to Canada, is invalid.

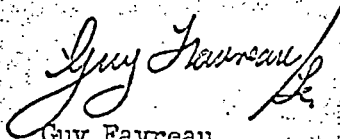
2994-

- 2 -

The situation therefore, as it affects Canada, simply means that Indians who are citizens of the United States must comply with the requirements for entry to Canada in the same way as other citizens of the United States. However, these requirements are so minimal that they can hardly represent an obstacle to the vast majority of Americans, who ordinarily are able to enter Canada without any difficulty whatever. Today no one enters Canada more freely than Americans. Simple identification is sometimes asked and financial responsibility is required but persons who are believed or known to be undesirable may be refused.

I hope this will explain the Canadian position in respect of the Jay Treaty. In recognition of the ancestral and traditional mores of North American Indians the Government will accord Indian applicants for admission every possible consideration consistent with the law. I am sure they will be dealt with more than fairly by any representative of this Department.

Yours sincerely,


Guy Favreau,
Minister.

2994-

ARTICLE III OF THE JAY TREATY
(MALLOY'S TREATIES AND CONVENTIONS,
VOL. I. P. 590
GOVERNMENT PRINTING OFFICE, WASHINGTON 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, 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 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."

SUPPLEMENTED UNDER DATE OF MAY 4th, 1796,
(DO. P. 607) BY AN EXPLANATORY ARTICLE declaring:—

"That no stipulation 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 that all the said persons shall remain at full liberty to pass and repass, by land or inland navigation into the respective territories and countries of the contracting parties on either side of the boundary line, and freely to carry on trade and commerce with each other, according to the stipulation of the third Article of the said treaty of Amity, commerce and navigation."

FOLLOWING THE WAR OF 1812 BETWEEN GREAT BRITAIN AND
THE UNITED STATES CAME THE TREATY OF GHENT IN 1814
"MALLOY'S TREATIES AND CONVENTIONS—VOL. I. P. 612"
PRINTED 1912

ARTICLE IX

"The United States of America engage to put an end immediately after the ratification of the present treaty to all 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 one thousand eight hundred and eleven, 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 engage on His part, to put an end, immediately after the ratification of the present treaty, to all 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 One Thousand Eight Hundred and Eleven, previous to such hostilities; provided always that such tribes or nations shall agree to desist from all hostilities against His Majesty and his subjects, upon the ratification of the present treaty being notified to such tribes or nations, and shall so desist accordingly."

Mr. Lehigh Antone,
Grand Secretary Indian Defence
League of America,
Box 305,
Niagara Falls, N.Y.
U.S.A.

P. A. → 1/3-3-14(A12)

August 10, 1967

Dear Mr. Antone:

I wish to acknowledge your letter of July 27 addressed to the Honourable Jean Marchand, Minister of Immigration and Manpower, in which you inquire about the Jay Treaty and whether it is recognized in Canada.

The Treaty of Amity, Commerce and Navigation between His Britannic Majestic and the United States of America, signed on November 19, 1794, and generally known as the Jay Treaty, is not a treaty between Canada and Indians, but was a treaty between the United States and Great Britain. Article 3 of the Treaty stipulated that:

"No Duty on 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."

With the outbreak of the War of 1812, the United States considered the Jay Treaty abrogated.

The contention has been put forward that the provisions of Article 3 of the Jay Treaty were restored by the 9th Article of the Treaty of Ghent, 1815, which reads as follows:

...2

*See Ltr Sept 4/67
1/24-2-13*

- 2 -

"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."

However, in the case of *Louis Francis vs. Her Majesty the Queen*, 1956, the Supreme Court of Canada found that Article 3 of the Jay Treaty and Article 9 of the Treaty of Ghent are not applicable in this country since they have not been implemented or sanctioned by legislation. Decisions by the Supreme Court of Canada are final and conclusive and are not subject to amendment either by judiciary or executive branches of the Government.)

I trust the above information provides an adequate answer to your inquiry and that it will assist you to resolve any problems you may have regarding this matter.

Yours sincerely,

G. S. Brown ✓

G. S. Brown
for Head of the Secretariat.

AD/bb

AD

1/3-3-14

MINISTRE DE LA
MAIN-D'OEUVRE ET DE L'IMMIGRATION

S.A.T.



MINISTER OF
MANPOWER AND IMMIGRATION

Transmis par avis du Ministre de la Main-d'oeuvre et de l'Immigration
Referred by Direction of the Minister of Manpower and Immigration



au Mr. L.S. Marchand
to Special Assistant to the
Minister of Indian Affairs and Northern Development
Ottawa
POUR RENSEIGNEMENT ET TOUTE SUITE QUE VOUS JUGEREZ NECESSAIRE
FOR INFORMATION AND ANY ACTION YOU MAY DEEM NECESSARY

Aussi transmis au
Also referred to

Pen

Ottawa, July 31 19 67

BERNARD DUFRESNE
Executive Assistant

M. & I. 168 (Rev. 7-66)

34/6

P.L.

Legal adviser 28-7-67

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Ne Shahnno, Ne Gai Wuo, Ne Gasha Sa

Peace, Prosperity, Power and Equality to All

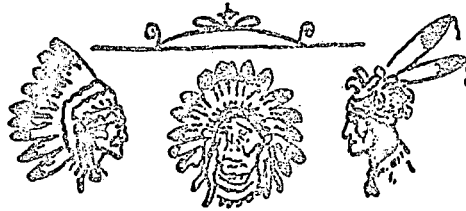
Indian Defense League of America

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

CHIEF CLINTON RICKARD
President

DAVID HILL
First Vice Grand President

MR. LEHIGH ANTONE
Grand Secretary



CHIEF DES-KA-HEH
Grand Chaplain
R.R. 1, Ohsweken, Ont.
Six Nation Reservation

LYNETTE JUSTIANA
Treasurer and Assistant Secretary

Annual Border Crossing Celebration Every 3rd Saturday of July, Niagara Falls, N.Y., and Niagara Falls, Ontario

July 27, 1967

Honorable Jean Marchand
Minister of Immigration and Manpower
Government House
Ottawa, Canada

Dear Mr. Marchand;

I have been instructed to write a letter of inquiry regarding the attached clipping from the July 14 issue of the Niagara Falls Review, Niagara Falls Ontario.

We have also been informed that some of our people, North American Indians, have been subjected to what they term 'unnecessary rigid interrogation' after having established their identity.

There is no objection to routine questions and establishing identity as North American Indians, to ferret out possible would be imposters. There are many non-Indians that would like to be classified as Aborigines of North America.

Will you please advise if it is true that "THE CANADIAN IMMIGRATION does not recognize the JAY TREATY in its present form.

Anxiously awaiting your reply

Lehigh Antone Secty
also Secty - Indian Relations for A.S.I.
International Inc.

Indians say Treaty terms not observed

The terms of the Jay Treaty, which permits North American Indians to cross the international border without having to answer questions from Immigration officials, apparently are not recognized by the Canadian government.

Local Indians claim that they can cross into the United States with no trouble but coming from the US into Canada they are forced to answer questions.

Winston Fischer, chief Immigration officer for the Port of Niagara Falls, said his instructions are that "North American Indians are subject to the same examination as anyone else."

Asked if there would be any difficulties at the annual border crossing ceremony Saturday in which the Indians celebrate the signing of the Jay Treaty, Mr. Fischer said "They will receive the same consideration as any other authorized group holding a parade from one country to the other. We don't interfere with a parade unless we are aware that someone in it is inadmissible to Canada."

The fastest homing pigeons can cover 1,500 miles in three days.

McGill's Review
July 14-1967
2416-

OTTAWA 4, August 10, 1967.

P.A. → 1/3-3-14 (A.11)

Mr. E. Commanda,
P. O. Box 345,
Sturgeon Falls,
Ontario.

Dear Mr. Commanda:

This will refer to your recent letter in which you enquire about documents required in order to cross the United States border.

A passport is not required for entry into the United States, however, a certificate of Indian status might be useful to an Indian person wishing to cross the border. This card may be obtained from the Superintendent of the Indian Agency concerned.

Information on U. S. work permits and citizenship status is not available here at headquarters, and I suggest that you approach the nearest Immigration Office for this information.

Yours sincerely,

H. G. SPROTT


for H. G. Sprott,
Head of the Secretariat.

IL/bjs



DEPARTMENT OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT
INDIAN AFFAIRS BRANCH

FALSE DOCKET SLIP

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.

SLIP NO.

FILE NO.

1 / 3-3-14

SUBJECT OF FILE

MAIN FILE ON CHARGE TO

LEGAL S 28-7-67

REFERENCE

DISPOSAL

REFERRED TO	BY	REMARKS	DATE	PA or BF	BY	DATE	FOR C.R. USE
AM	17	037974	2-8-67				

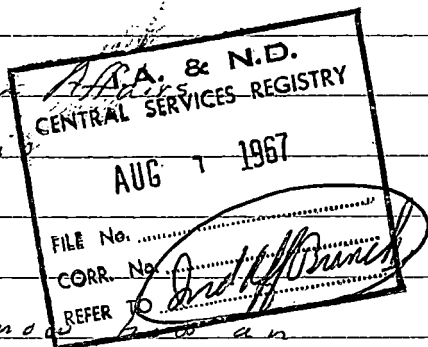
NOTE: If action cannot be taken without the file, please make statement to that effect and return paper to Central Registry.

000111

P.O. Box 345

Sturgeon Falls,
Ontario

Dept of Indian Affairs
Ottawa, Ontario



Sir

Would like to know how an
Indian stands when he cross
the Canadian and U.S. Border.
Does he need a passport?
Does he need a work permit
or a security card if he decides
to stay down in the U.S. or
Canada for any length of time
How often does he go across the
border to keep his citizenship in
either Country.

I am a treaty Indian.

not in R.I.R.
AM 3

Yours Truly
Ephrem Commanda
Ephrem Commanda

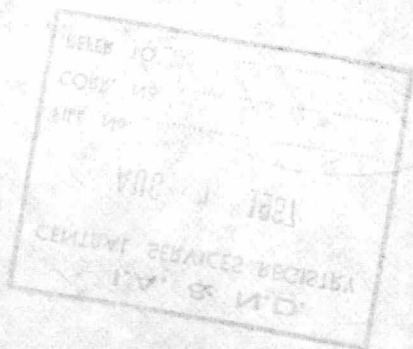
000112

037974

CENTRAL REGISTRY

AUG 7 12 00 PM '67

INDIAN AFFAIRS





Dept. of Indian Affairs

Ottawa, Ontario

000114

AM

Mr. advice
that he should
carry his Band Membership
Card (obtained from
Ag Sup. +)

PA
(Jay Treaty File)

Information Respecting the Jay Treaty

The Treaty of Amity, Commerce and Navigation between His Britannic Majesty and the United States of America, signed on November 19, 1794, and generally known as the Jay Treaty, is not a treaty between Canada and Indians, but was a treaty between the United States and Great Britain. Article 3 of the Treaty stipulated that:

" No Duty on 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."

With the outbreak of the War of 1812, the United States considered the Jay Treaty abrogated.

The contention has been put forward that the provisions of Article 3 of the Jay Treaty were restored by the 9th Article of the Treaty of Ghent, 1815, which reads 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 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."

However, in the case of *Louis Francis vs. Her Majesty the Queen*, 1956, the Supreme Court of Canada found that Article 3 of the Jay Treaty and Article 9 of the Treaty of Ghent are not applicable in this country since they have not been implemented or sanctioned by legislation. Decisions by the Supreme Court of Canada are final and conclusive and are not subject to amendment either by judiciary or executive branches of the Government.

BF
24-5-67

OTTAWA 4, May 12, 1967.

1/3-3-14 (A.8)

Mr. Donald N. Salvetti,
2102 W. Genesee Street,
Westvale Shopping Center,
Syracuse, New York,
13219,
U. S. A.

Dear Mr. Salvetti:

This will refer to your letter of May 1 concerning your client Mr. Arnold John Sickles, who claims he is a citizen of Canada and that he was born on an Indian reserve in this country.

It will be necessary to make a positive identification of your client as a Registered Indian, as defined in the Indian Act of 1951, before we can advise you with respect to the procedure he would need to go through in order to return to Canada. To make this identification we need to know:

1. Name of Band to which your client belongs.
2. Band number.
3. Names of Parents and numbers if available.
4. Birth date of client.

It would also be helpful if you would let us know whether or not Mr. Sickles is an American citizen, and whether or not he has a criminal record. If so, details should be provided.

We will be able to provide you with the Information you require upon receipt of the answers to the above questions.

Yours sincerely,

McGulchrist

for H. G. Sprott,
Acting Head of the Secretariat.

MEG/bjs

DONALD N. SALVETTI

Attorney at Law

Phone
488-4959

1/3-3-14

2102 W. GENESEE ST.
WESTVALE SHOPPING CENTER
SYRACUSE, N. Y. 13219

A. 8

May 1, 1967

I. A. & N. D.	
CENTRAL SERVICES REGISTRY	
MAY 9 1967	
FILE No.
CORR. No.
REFER. TO

Department of Indian Affairs
Province of Ottawa
Canada

Dear Sir:

I was retained by one, Arnold John Sickles, concerning a matter in which he was involved in trouble in Syracuse, New York resulting in his being sentenced to the Elmira Reformatory School.

He advised that he was a citizen of Canada and that he was born on a reservation in Canada. I do not have any additional facts concerning his birth date, etc. at this time but will furnish same to you in the event you are able to assist me in the request we are making.

My client wishes that he learn from your department what he needs in the way of applications on processing to return to Canada and to the reservation.

Please advise what help you may give us in the matter.

Yours very truly,

DONALD N. SALVETTI

Attorney at Law

DNS:mc

PERSONNEL DIVISION
OTTAWA

MAY 9 1967

INDIAN AFFAIRS BRANCH

013009

CENTRAL REGISTRY

MAY 11 2 06 PM '67

INDIAN AFFAIRS



TO: [illegible]

FROM: [illegible]

SUBJECT: [illegible]

[illegible text]

[illegible]

[illegible text]

[illegible text]

7-27/1

1/3-3-14

[illegible]

[illegible]

[illegible]

RECEIVED IN [illegible]

"COPY FOR INDIAN AFFAIRS BRANCH"

(Return to A.11)

RA
L
OTTAWA 4, 20 MAR 1967

1/3-3-14

Mr. Gus Gottfriedsen,
President,
North American Indian Brotherhood,
Box 27,
Kamloops, B. C.

Dear Mr. Gottfriedsen:

Your letter of February 16, written on behalf of the North American Indian Brotherhood, addressed to the Prime Minister, in which you question the honouring of the Jay Treaty by the Government of Canada, has been referred to me for reply. I believe you are aware of this referral from the interim reply which the Prime Minister's Secretary sent to you on February 28.

It is the concern of the Government of Canada to honour all its treaties with the Indian people. However, in the case of the Jay Treaty the situation is as follows:

The Treaty of Amity, Commerce and Navigation between His Britannic Majesty and the United States of America, signed on November 19, 1794, and generally known as the Jay Treaty, is not a treaty between Canada and Indians, but was a treaty between the United States and Great Britain. Article 3 of the Treaty stipulated that:

" No Duty on 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."

With the outbreak of the War of 1812, the United States considered the Jay Treaty abrogated.

The contention has been put forward that the provisions of Article 3 of the Jay Treaty were restored by the 9th Article of the Treaty of Ghent, 1815, which reads as follows:

...2

002047

CENTRAL REGISTRY

APR 7 2 05 PM '67

INDIAN AFFAIRS



- 2 -

" 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."

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I trust this answers the question you had in mind.

Yours sincerely,



Arthur Laing.

LANE/lm
March 15, 1967.

c.c. Mr. DON MACKENZIE
Prime Minister's Office.



Rec'd.
17.3.67.
HAS

see deletions
on copy in file
dated 25-11-66
1805
A.1
26-4-67

Information Respecting the Jay Treaty

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March 30, 1967.

MEMORANDUM FOR FILE

SEEN BY
E.A.

*DT HSD
A-10 for info noted sub
A-11 for info noted sub*

This afternoon Mr. R.J. Ingram referred to me an inquiry by Miss Griner of the Canadian Consulate in Cleveland, telephone No. 216-861-1660. She has been approached by the United States Department of Justice (Immigration Department) with the question whether a Canadian Eskimo is to be considered an Indian. It would appear that a young lady who claims to be an Eskimo arrived in the United States from Canada with a married member of the United States forces. The soldier told the United States Immigration Department that he intended to divorce his wife and marry the young lady. The United States Immigration Officer considers that he can classify the young woman under two headings. He can consider her simply a Canadian citizen in which case she would have to go back and apply in Canada for admission as an immigrant to the United States or he could consider her an Indian under the so-called Jay Treaty between Great Britain and the United States of 1794 and admit her without any further formalities. He would apparently do so if the Canadian authorities could assure him that she is an Indian within the meaning of the Treaty.

To my knowledge this question has never come before the courts in this fashion. However, in Francis v. The Queen [1956], S.C.R. 618, the Supreme Court of Canada held that whatever rights the Treaty gave are enforceable by the courts only where the Treaty has been implemented or sanctioned by legislation but that there was no such legislation in Canada. From this I would conclude that it is for the United States authorities to implement the Treaty with respect to immigration procedure by persons claiming to be of Indian status.

I briefly told Miss Griner the foregoing but added that, as far as Canada was concerned, we are taking the position that every Canadian Eskimo is to be considered an Indian under the British North America Act, 1867, because of the decision of the Supreme Court of Canada in the Reference case [1939] S.C.R. 104.

ORIGINAL SIGNED BY
H. FISCHER

Hugo Fischer,
Legal Adviser.

cc: Mr. Côté
Mr. Battle
Fischer/lr

055121

CENTRAL RECORDS

MAR 31 4 11 PM '67

RECEIVED



P. A → 1/3-3-14

Mr. Gus Gottfriedsen,
President,
North American Indian Brotherhood,
Box 27,
Kamloops, B. C.

Dear Mr. Gottfriedsen:

Your letter of February 16, written on behalf of the North American Indian Brotherhood, addressed to the Prime Minister, in which you question the honouring of the Jay Treaty by the Government of Canada, has been referred to me for reply. I believe you are aware of this referral from the interim reply which the Prime Minister's Secretary sent to you on February 28.

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...2

*The above repeats standard
information on this file dated 28-11-66.
A.1*

- 2 -

" 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."

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I trust this answers the question you had in mind.

Yours sincerely,

Arthur Laing.

LANE/lm
March 15, 1967.

C.C. MacKenzie
Prime Minister's Office.

Deceased J

1/3-3-14

Referred by direction of The Prime Minister
Transmis à la demande du Premier ministre

To The Minister of
Au Ministre d'INDIAN AFFAIRS AND NORTHERN DEVELOPMENT

FOR INFORMATION AND ANY NECESSARY ACTION
POUR EXAMEN ET DÉCISION PERTINENTE

Also referred to:
Également transmis à

Ottawa, 28/2/67

Don MacKenzie,
Secretary.

571

[Signature]

[Handwritten mark]

4 7 1 3 0

THE REGISTRY

MAR 9 3 45 PM '67

INDIAN AFFAIRS

Office of the Prime Minister



Canada

Cabinet du Premier ministre

COPY
COPIE

OTTAWA (4);
February 28, 1967.

Dear Mr. Gottfriedsen:

The Prime Minister has asked me to acknowledge your letter on behalf of the North American Indian Brotherhood, with regard to the Jay Treaty.

After noting your comments, Mr. Pearson directed that a copy of your letter be forwarded to his colleague, the Minister of Indian Affairs and Northern Development, for attention.

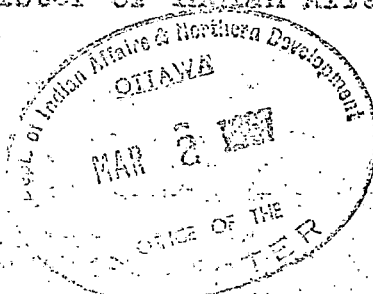
Yours sincerely,

Don MacKenzie,
Secretary.

Mr. Gus Gottfriedsen,
President,
North American Indian Brotherhood,
Box 27,
Kamloops, B.C.

MC/rj

c.c.--Minister of Indian Affairs and Northern Development



571

NORTH AMERICAN INDIAN BROTHERHOOD

President:
GUS GOTTFRIEDSEN,
Box 27, Kamloops, B.C.

Treasurer:
EDDIE THEVARGE,
D'Arcy, B.C.

1st Vice-President:
RICHARD MALLOWAY,
Chilliwack, B.C.

2nd Vice-President:
VICTOR ADRIAN,
Seton Portage, B.C.

3rd Vice-President:
MRS. GERTRUDE GUERIN,
Vancouver, B.C.

4th Vice-President:
HERBERT MANUEL,
Douglas Lake, B.C.

Kamloops B.C.

Feb 16th 1967.

Prime Minister of Canada
Mr. Lester. Pearson

At a recent meeting of the North American Indian Brotherhood I was asked to write you, in regards to the Jay treaty. The question, does the prime minister of Canada honor the Jay treaty. Indians of Canada and U.S.A. feel this treaty too many times it is broken. I would appreciate an answer soon in this regard. Wishing you every success in all your endeavours, I remain yours sincerely,
Gus Gottfriedsen
President North American Indian Brotherhood

Box 27

Kamloops

B.C.

Can.

OFFICE OF THE PRIME MINISTER

CABINET SECRETARIAT

67 FEB 18 AM 9 03

Ottawa 4, January 23, 1967.

1/3-3-14 (A.8)

(A.1)

Mr. Steven O. Obe,
1035 Delaware,
Buffalo (14209),
New York, U.S.A.

Dear Mr. Obe:

This will refer to your letter of January 6, concerning a notice you received from the United States Selective Service requesting that you register for the draft.

In this connection I have to inform you that Canadian Indians employed and living in the United States are subject to the draft like any other Canadian citizens in similar circumstances. As long as you remain in the United States I believe you have no choice but to register. I am not familiar with the United States Selective Service laws except that I am told the draft age is 18 to 26. There are probably rules relating to deferment of draft call and this information could be obtained from the United States authorities.

If you have further questions, you may wish to get in touch with the Canadian consul at Buffalo.

Yours sincerely,

Original signed by
H. G. SPROTT...
H. G. Sprott,
A/Head of the Secretariat.

MEG/dd

c.c. Regional Director, Ontario Regional Headquarters

c.c. Superintendent, Six Nations Indian Agency

*re your memo Jan-3,
your file 479/3-9*

January 6, 1967

Steven D. Obe

1035 Delaware

Buffalo (14209) N.Y.

1/3-3-14

AKA.8

To whom it may concern:

I am a full blooded
Mohawk Indian and a member
of the Six Nations Indians.
I was born on April 1st 1948
In Buffalo. A week ago I
received a notice from the
U.S. draft board to report
for physical examination on
January 10th 1967. I have
already recieved my identification
card from you (#48982). I
recently graduated from
Hutchinson Technical H.S.-
at Buffalo. I am presently
employed as a trainee printer
and would like to accomplish
it. I would like to know
if you know of any legal
way I can avoid the dr. 000133

0 2 9 4 2 3

CENTRAL REGISTRY

JAN 11 4 36 PM '67

INDIAN AFFAIRS

by means of a treaty or
other Indian rights.

Regards
Steven D. Obe

Ottawa 4, January 6, 1967.

1/3-3-14 (A.8)

Mr. George Goll,
64 Lynndale Road,
Calgary, Alberta.

Dear Mr. Goll:

This will refer to your letter of January 2, in which you inquire as to passport requirements for an Indian travelling abroad.

An Indian who wishes to travel abroad requires a passport in the same manner as any other Canadian. For information as to obtaining a passport you might write to The Passport Office, Department of External Affairs, Ottawa, Canada.

A Certificate of Indian Status card might be useful to an Indian wishing to cross the border into the United States, although a passport is not required. This card may be obtained from the Superintendent of the Indian Agency concerned.

I hope this information will prove helpful to you.

Yours sincerely,

Original signed by

H. G. SPROTT

H. G. Sprott,
A/Head of the Secretariat.

HEG/dd



CANADA

DEPARTMENT OF CITIZENSHIP AND IMMIGRATION
INDIAN AFFAIRS BRANCH

FALSE DOCKET SLIP

SLIP NO.

SUBJECT OF FILE

FILE NO.

Document disclosed under the Access to Information Act
Document divulgué en vertu de la Loi sur l'accès à l'information

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.

1 | 3-3-14

MAIN FILE ON CHARGE TO

REFERENCE

REFERRED TO

BY

REMARKS

DATE

PA
OF
BF

DISPOSAL

BY

DATE

FOR C.R. USE

A-8

21

270-18

5/1/67

A.5

Is there some
card identifying
a registered Indian
that is not a good
one in U.S.?
as compared to
Canadian

Law Hb.

A-1
5-1-67

NOTE: If action cannot be taken without the file, please make statement to that effect and return paper to Central Registry.

113-3-14

A+
A.8

From George Goll

64 Lynndale Road

Calgary Alberta

January 2 1967.

To The GOVERNMENT of CANADA
INDIAN AFFAIRS Dep.
OTTAWA ONT.

Dear Sir.

Does a person, who is born in Canada,
and is an Indian living on an Indian reserve
or outside it, and want to travel abroad,
need a Canadian passport to do so?
Are there any other special passports
for Indians living in Canada ?
Thank You very much

Your Truly

George Goll

George Goll

R' 5-1

0 2 7 5 1 8

CENTRAL REGISTRY

JAN 4 4 10 PM '66

INDIAN AFFAIRS

MEMORANDUM

1/3-3-14
CLASSIFICATION



TO
A

Head, Secretariate Division,
Ottawa.

AKA.8

YOUR FILE No.
Votre dossier

OUR FILE No.
Notre dossier

479/3-9

DATE

3 January, 1967.

FROM
De


Superintendent, Six Nations Agency

FOLD

SUBJECT
Sujet

Draft - United States Army

Attached hereto please find copies of a letter from a Six Nations Indian to this office and our reply. Will you kindly review this situation and offer any further advice which you may have at this time. We frequently receive queries of this type and I feel that we perhaps should be a little more specific, if possible, in our advice to these young band members.


D. R. Cassie, Superintendent,
Six Nations Indian Agency.

DRC:fn

Encl.

0 2 7 3 6 2

CENTRAL REGISTRY

JAN 4 1 29 PM '66

INDIAN AFFAIRS

RECEIVED

DEC 31

STATIONARY ENGINEERING
P. H. GAGNE, SUPERINTENDENT

more abundant in quantity, in our regard to these long and narrow
respective direction of this side and I feel that we should be able to
offer our products which you will find at this time. We respectfully
to this office and our staff. With our kind regards to your family and
affectionate regards to your mother of a letter from a very young man

RECEIVED - PETER GAGNE

STATIONARY ENGINEERING, STATIONARY ENGINEERING

3 JANUARY 1966

1966-1-3

STATIONARY ENGINEERING

STATIONARY ENGINEERING

RECEIVED

STATIONARY ENGINEERING, STATIONARY ENGINEERING

MEMORANDUM

STATIONARY ENGINEERING

① 1035 Delaware
Buffalo, New York
December 31, 1966

To whom it may concern:

I am a Mohawk Indian
and a member of the Six
Nation Indians in Canada.

My father & Mother
are both Six Nations Indians
in Canada, now living in
Buffalo, New York.

I just graduated from
Hutchinson Technical Institute
of Buffalo this past summer.

I recently was employed
as an apprentice printer. I
would like to continue in
this field and accomplish it.

a few days ago I received
notice from the Draft Board
in Buffalo to report on Jan
10/67 for duty.

I understand an
Indian can't be drafted
under the Jay Treaty.

I have a lawyer who
advised me to get some
written information from
your office concerning this
matter.

Something to prove my
status as a Cardian
Indian. I have my
identification card (#48982)
I was born [REDACTED]

s.19(1)

(3)

[REDACTED]

Further information from
Ottawa would very likely
exempt me from the
draft which I would
greatly appreciate.

Regards
Steven Ohe

SUP'T SIX NATIONS	
Indian Office Brantford	
JAN 3 1987	
File	479/3-9

- 1. INDEPENDENT
- 2. ASSISTANT
- 3. PRINCIPAL CLERK
- 4. ESTATES
- 5. MEMBERSHIP
- 6. EDUCATION

Brantford, Ontario, January 3, 1967.

479/3-9

Mr. Steven Obe,
1035 Delaware,
BUFFALO, New York.

Dear Mr. Obe:

I have your letter of December 31, 1966, noting your concern about the American Draft Regulations in relation to your status as a member of the Six Nations Indian Band.

Attached for your use is a memo taken from our records which would indicate your status. However, I would expect your Indian identification card (number 48932) would also serve this purpose and allow the American authorities to check your membership direct with Indian Affairs Headquarters at Ottawa.

I suggest that you refer the matter of your eligibility for the draft to the U.S.A. authorities for the necessary information. It would appear that, as you have consulted a solicitor, he might be willing to act on your behalf, particularly when you are able to present the attachment to this letter.

Yours truly,

ORIGINAL SIGNED BY
D. R. CASSIO

D. R. Cassio, Superintendent,
Six Nations Indian Agency.

DRC:fn

Brantford, Ontario, January 3, 1967.

479/3-9

TO WHOM IT MAY CONCERN:

The Registered Indian Record shows that Steven Orville Obe was born on
[REDACTED] and is registered under number 63, Bay of Quinte Mohawk,
Six Nations Indian Band.

ORIGINAL SIGNED BY
D. R. CASSIE

D. R. Cassie, Superintendent,
Six Nations Indian Agency.

WH:fn

ROUTE SLIP

PASS TO: 

1. *Central Registry*
2. *File on "Gay Iwaty" file*
3.
4.

Date *25.11.66*

Initials

1/3-3-14

25-11-66

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With the outbreak of the War of 1812, the United States considered the Jay Treaty abrogated.

The contention ^{has been} put forward that the provisions of Article 3 of the Jay Treaty were restored by the 9th Article of the Treaty of Ghent, 1815, which reads 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 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."

However, in the case of *Louis Francis vs. Her Majesty the Queen*, 1956, the Supreme Court of Canada found that Article 3 of the Jay Treaty and Article 9 of the Treaty of Ghent are not applicable in this country since they have not been implemented or sanctioned by legislation. ~~Decisions by the Supreme Court of Canada are final and conclusive and are not subject to amendment either by judiciary or executive branches of the Government.~~

Memor sent
to Minister
from ADM
May 26/66
on 1/3-3-14
c.c. 1/3-8-2

attaching a
statement on the
Jay Treaty.

No add'l
info action
requested on
the OKa letter
of May 17/66.

A.3.

21-6-000148

May 17, 1966
Oka Indian Reservation
Kanesatake

Hon. Arthur Laing
Minister of Northern Affairs
Ottawa, Ont.

P. A. 7/3-3-14

The Six Nation Iroquois Confederacy, Oka Branch of the Mohawk Nation, wish to list the following complaints against the Canadian Government and others,

No.1- The Six Nations held their lands in fee simple title and this has never been extinguished. Since the Six Nations never sold or ceded land to the French king, he had no legal right to grant to the Seminary of St. Sulpice or the Jesuits any land already occupied or administered by the Six Nations. Thus, the title to the lands occupied by the Mohawks at Oka and Caughnawaga are still vested in the Six Nations Iroquois Confederacy. The Indian right of occupancy is unlimited, it is not a life tenancy, and the power of the government to control and manage the property and affairs of the Indians in good faith for their betterment and welfare does not extend so far to enable the government to give the land to others or to appropriate it for their own use. Our Lake of Two Mountains, Kanesatake property has been appropriated for illegal sale to white settlers, various religious institutions, golf courses and a provincial park and above all the mines in the area. The statute of limitations does not apply to any nation suing for its rights, this also applies to the sale of liquor on the reserve, which has two hotels and a golf course who have licenses issued by the Provincial government, who have no legal authority to legislate any laws on and off the reserve concerning Indians of the Six Nation Iroquois Confederacy.

No.2- We accuse the elected Indian Act council of conspiring with the Federal, Provincial, Municipal authorities to make the Indian Reservation an incorporated municipality under provincial laws and provincial control. The Indian Act council is loaded with French speaking councillors and business is conducted in French and whose interests serve the French Catholics and the white municipality, not the Mohawks of the Six Nations, since even the Indian Agent attends and supervises the meetings and also the secretary on the Catholic School Commission where most of the Indian funds are channeled because of a small percentage of half-breeds attending their school. The Indian Act council in other words is under complete control by the government and being used to defraud and dispossess Indians of their lands. The Indian Act council cannot speak for the Indians of the Six Nation Iroquois Confederacy. They are enfranchised people, most of whom are Metis or half-breeds and vote in federal elections and lose their rights as Indians because of this. This is the Indian Act puppets recognized by the holders of the strings, you people in Ottawa must be very proud of yourselves in church on Sunday mornings.

No.3- Another illegal act of the Quebec Provincial government is their voting enumerators who last week collected names off mail boxes and from children in the area, they don't identify themselves properly or ask the Indian householder if he or she votes in the provincial elections. This is one more illegal act which we have not sanctioned, since we are completely opposed to enfranchisement by provincial or federal government.

No.4- Another being that the Province of Quebec has imposed a sales tax contrary to existing TREATIES between Great Britain, United States and the Six Nation Iroquois Confederacy, and which the Canadian Government and the British Governments resident agent are to blame in their

page 2

failure to intervene in the Indians behalf to prevent the violations of Anglo-Indian treaties and British Proclamations. Article III, of the JAY TREATY, 1794, between Britian, U.S., and the Six Nation Iroquois Confederacy it is provided that no duty or tax shall be levied or licence collected on the property, goods and effects of whatever nature of Indians dwelling on either side of boundary line (Canada & U.S.) or within the limits of either country.

The Indians, as members of a tribe occupying a reserve in common are by law exempt from taxes and assessments, and confession of judgment cannot be taken against them, nor can any debt be recovered from an individual Indian.

No.5- Another is the clothing chits issued by Indian Agent, the quality of clothes and footwear is either the cheapest or are rejects or seconds. The clothes and footwear would betwell worn between periods of receiving another chit. The food chits are also very low, too low in fact for an adequate diet. Some of the Indians would rather be self supporting by working their lands, but are discouraged by the Indian Agent from pursuing such projects. Requests for farm implements or the use of bulldozers to clear the land have been repeatedly denied, usually from lack of funds. Where do the Indian Funds go to, the Six Nation Indians do not benefit or see any of it working for their betterment, the Department of Indian Affairs should look into books of the reserve funds more often. The Indians of the Confederacy have the right to the Six Nation Indian Trust Fund, if this is being used by others not entitled to it, this amounts to theft.

The national image which Canada is trying to project as champion of the oppressed of other lands will be subject to world wide ridicule in the bright glare of bad publicity. These are but a few of the numerous treaties still in existance and cannot be broken;

Treaty of Utrecht---1713

Treaty of Ghent

King George III--Charter to Five Nations (later known as Six Nations)

Capitulation of Montreal - 1760

Proclamation of 1763

Proclamation of Sept. 6, 1766

Treaty of 1784 - Britian-U.S.-Six Nation Iroquois Confederacy

Jay Treaty 1794-Britian-U.S.-Six Nation Iroquois Confederacy

The greivances can be clarified by the above treaties.

Signed:

Hereditary Chiefs
Kanesatake

KANA WATO. Gabriel

KANE-RA-ti-ico Gabriel

Ottawa 2, September 6, 1966.

1/3-3-14

Mr. Russ Jones,
R.R. #2,
Nanaimo, B.C.

Dear Mr. Jones:

I acknowledge your letter of August 7 requesting information concerning dual citizenship for Indians in Canada and the United States.

In this connection, I should point out that in order to establish whether or not any individual Indian is a dual citizen of Canada and the United States, determination of status by the appropriate authority in each country would be required. For such a determination with respect to the United States, you could write to, United States Department of Justice, Immigration and Naturalization Service, Washington 25, D.C. For determination of Canadian citizenship, you might write to the Registrar of Canadian Citizenship, 305 Rideau Street, Ottawa, who can rule whether or not any individual is a Canadian citizen.

With regard to the payment of tariff on personal items purchased in the United States for use in Canada, a Canadian Indian is in the same situation as any other Canadian.

Yours sincerely,

MEG/vm

meb
for H.G. Sprott,
Acting Head of the Secretariat.

Ottawa 2, September 6, 1966.

1/3-3-14

Director,
Home Branch,
Canada Immigration Division,
Bourque Building,
305 Rideau Street,
Ottawa 2, Ontario.

Dear Sir:

Attached is a letter from Mrs. John Black of Windsor, Ontario, requesting information concerning American Indians crossing the border into Canada.

As matters of this nature come under the purview of your Division, I am referring this letter to you for attention and direct reply. Mrs. Black's letter has been acknowledged.

Yours sincerely,

Attach.
H.G./vni

mll
H.G. H.G. Sprott,
Acting Head of the Secretariat.

Ottawa 2, September 6, 1966.

1/3-3-14

Mrs. John Black,
3590 Charlevoix Avenue,
Windsor, Ontario.

Dear Mrs. Black:

I acknowledge your letter of August 11, concerning Indians from the United States crossing the border for the purpose of visiting in Canada.

As matters of this nature come under the purview of the Canada Immigration Division, I have referred your letter to that office for a direct reply.

Yours sincerely,

mtg

for H.G. Sprott,
Acting Head of the Secretariat.

MEG/vm



DEPARTMENT OF CITIZENSHIP AND IMMIGRATION
INDIAN AFFAIRS BRANCH

FALSE DOCKET SLIP

Document disclosed under the Access to Information Act
Document divulgué en vertu de la Loi sur l'accès à l'information

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.

SLIP NO.	FILE NO.
	1/3-3-14
SUBJECT OF FILE	

MAIN FILE ON CHARGE TO

Trans

11-8-66

REFERENCE				DISPOSAL			
REFERRED TO	BY	REMARKS	DATE	PA or BF	BY	DATE	FOR C.R. USE
A M	10	38020	16-8-66				

NOTE: If action cannot be taken without the file, please make statement to that effect and return paper to Central Registry.

Trans- 11-8

3540 Charlevoix Ave.

Windsor, Ontario

August 11, 1966

1/3-3-14

Director of Information
Department of Citizenship
Parliament Bldg, Ottawa

Dear Sir, AM

Could you give me some information concerning Indians crossing from Canada to the United States & vice versa?

On a recent trip to Colorado, Montana & Wyoming, I met an Indian woman who is extremely interesting and a wonderful person. I am now corresponding with her.

I would like, at a later date, to invite her for a several week visit but I thought it would be best to see what was involved in crossing the border.

I was told by an Indian gentleman that if he heard of a job in Alberta, he simply got on a bus and crossed over.

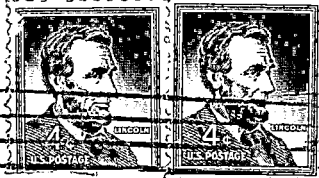
000155

and has never been asked for identification. He told me it was in their treaty with the government that Canadian and American Indians, are free to travel back and forth across the border.

I would greatly appreciate any information you can give me.

Sincerely yours,
Mrs. John Black,
3590 Charlevoix Ave.,
Windsor, Ontario.

MRS. JOHN H. BLACK
3590 Charlevoix St.
Windsor, Ontario



Director of Information
Department of Citizenship,
Parliament Building,
Ottawa

1966
AUG
21
1966
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21
000157

AM

1/3-3-13

R.R. #2,
Nanaimo, B.C.
August 7, 1966

Dept. of Citizenship and Immigration,
Indian Affairs Branch,
Ottawa 2, Ont.

Dear Sirs:

Recently I wrote a letter asking if an American Indian possessed a dual citizenship in Canada and the United States. In your reply, I was unsure of one minor point.

You said that Indians born in Canada (with at least 50% American Indian blood) have the right to enter the United States without restriction. Does this give them an American citizenship thus entitling him to an American citizens rights? Or does he only possess the rights of the country he is living in?

Also, does he have to pay tariff on personal items not intended for sale which he buys in the United States? I am only interested in the view of the Canadian Indian.

Yours truly,

Russ Jones

Russ Jones

035487

CENTRAL REGISTRY

AUG 10 10 23 AM '66

INDIAN AFFAIRS



WASS LONES

JOHN CROWLEY

DOUGLAS SMITH

of the collection of the
Indian Affairs. I am only interested in the area
that has been designated as being under the
control of the Indian Affairs.

the Indian Affairs
I am only interested in the area
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designated as being under the control of
the Indian Affairs.

DOUGLAS SMITH

DOUGLAS SMITH
INDIAN AFFAIRS
DOUGLAS SMITH

DOUGLAS SMITH
INDIAN AFFAIRS
DOUGLAS SMITH

Ottawa 2, le 31 août 1966

1/3-3-14

Madame Yvette Nicolas
Case postale 261
St-Pamphile
L'Islet (P.Q.)

Madame,

J'accuse réception de votre lettre du 29 juin à laquelle vous aviez joint la formule remplie le 27 juillet par les fonctionnaires à l'immigration des Etats-Unis, à Jackman, Main, pour vous signifier qu'on vous refusait l'admission aux Etats-Unis, ainsi qu'à vos deux enfants.

Normalement, les Indiens nés au Canada sont autorisés à entrer aux Etats-Unis, s'ils peuvent montrer qu'ils sont inscrits comme membres d'une bande d'Indiens au Canada. Dans votre cas, il se peut que d'autres considérations soient entrées en cause. De toute façon, les fonctionnaires de l'immigration américaine ont certainement le droit de décider qui ils admettront dans leur pays.

Je ne saurais guère vous conseiller à cet égard sans avoir des renseignements plus complets sur les raisons pour lesquelles vous voulez aller aux Etats-Unis. Qu'avez-vous l'intention de faire dans ce pays et combien de temps vous proposez-vous d'y rester? Est-ce que votre mari, Maurice, réside et travaille au Canada ou aux Etats-Unis? A quel endroit vous et votre mari avez-vous élu domicile? Les fonctionnaires à la frontière vous ont-ils donné quelque raison pour vous refuser, ainsi qu'à vos enfants, le privilège de passer la frontière normalement accordé aux Indiens du Canada.

Vous trouverez sous ce pli l'avis de refus d'admission, que vous voulez sans doute qu'on vous renvoie.

Veuillez agréer, Madame, l'expression de mes sentiments distingués.

Le registraire,

ORIGINAL SIGNED BY
H. H. CHAPMAN

H. H. Chapman

Pièce jointe
09/1b

Ottawa 2, August 11, 1966.

1/3-3-14

Mrs. Yvette Nicolas,
C. P. 261, St. Pamphile,
de L'Islet, Quebec.

Dear Mrs. Nicolas:

I wish to acknowledge your letter of June 29, together with the enclosed form completed by the United States Immigration officials, at Jackman, Main, on July 27, indicating that you and your two children were refused admission to the United States.

Normally, Indians born in Canada are permitted to enter the United States if they can show that they are registered as members of a band of Indians in Canada. Possibly in this instance there were other considerations involved. In any case, the United States Immigration officials certainly have the right to determine who will be admitted into their country.

I am afraid that I cannot advise you in this matter without being provided with more complete information as to why you were going to the United States. What do you intend to do there and how long do you intend to stay? Is your husband Maurice residing and working in Canada or in the United States? Where do you and your husband make your home? Did the officials at the border give any reasons for not granting you and your children the border crossing privileges normally afforded to Canadian Indians?

I have enclosed the Notice of Refusal of Admission form which I expect you wish to have returned to you.

Yours sincerely,

ORIGINAL SIGNED BY
H. H. CHAPMAN

H. H. Chapman,
Registrar.

Enc.

HHC/hw

CITIZENSHIP & IMMIGRATION	
TRANSLATION	
250	RECEIVED 12-8-66
RETURNED	AUG 30 1966
INITIALS	Tranes

July

I am writing you concerning an Indian passport card which I have in my possession. It bears no. 12 556. I wanted to move in the United States and the American Immigration of Jackson^{ville} Bureau did not let me and my two children cross the border.

I am writing to ask you if they really had the right to act in this manner. I am enclosing a paper concerning our refusal. Would you please answer me immediately in order that I may know what to do.

Thanking you in advance,

St. Raphael, 29 juillet 1966

A 8

Indian Affairs Branch
Ottawa

À qui de droit

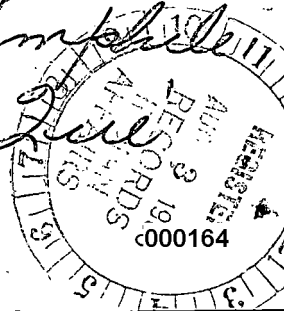
Je vous écris
à propos d'une carte
de passe-part ^{indienne} que j'ai en
ma possession. Elle porte
le n^o 12556. Je voulais
demander aux Etats
Unis et le bureau
d'immigration américain
de Jackman Maine, n'a pas
voulu me laisser passer
moi et les deux enfants

Je vous écris pour vous
demander si réellement
ils avaient le droit d'agir
ainsi. Ci-joint un
papier attestant ce refus.

S'il vous plaît voudriez-
vous me répondre immédia-
tement pour pouvoir à peu
mieu tenir.

Je vous prie de m'en
répondre à l'avance.

Mrs Yvette Nicolas
C. P. 261 - St. Campbell
L'Islet. Prov. Qué.



UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE

Please refer to this file No.

s.19(1)

NOTICE OF REFUSAL OF ADMISSION, OR PAROLE OF AN INDIVIDUAL
INTO THE UNITED STATES

Port of JACKMAN, MAINE Date JULY 27, 1966
Name MRS. YVETTE NICOLAS Nationality CANADA
& 2 minor children: Marie Elise Claudelle, 4 years and
Address ST. PAMPHILE, L'ISLET, P.Q. Jos. Martin Gerald, 6 years
Place and Date of Birth [REDACTED]
Destination GREENVILLE, NEW HAMPSHIRE
Age 33 Height 5'3" Eyes Grey Hair Brown Complexion Dark
Cause of Refusal No Immigrant Visas
Waived S.I.H. X Referred for S.I.H. _____
Paroled into U.S. to _____
(Date)
For _____

To DEPARTMENT OF CITIZENSHIP AND IMMIGRATION
IMMIGRATION BRANCH ARMSTRONG, P.Q., Canada.

The above named has been: (3 refusals)

- ☒ - (a) Refused admission to the U.S. and is being
returned to Canada.
☐ - (b) Paroled into the U.S. as indicated above.

[Signature]
Immigration Officer

NE-94
5-61 (10)

GPO 953-414

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE

Please refer to this file No.

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[Signature]
Immigration Officer

NE-94
5-61 (10)

GPO 953-414

Indian Commissioner for B. C.

Registrar.

P. A. → 1/3-3-14(AM).
August 12, 1966.

Indian Entry to United States.

This is further to my letter of March 11, concerning the recent difficulties being experienced by Canadian Indians gaining access to the United States at various points of entry.

The difficulties appear to have resulted from a belief by some American Immigration officials that the privileges granted to Canadian Indians seeking entry to the United States are being abused. As you know the United States Immigration and Nationality Act provides that Indians born in Canada have the right to enter the United States without restriction, but that right extends only to persons who possess at least 50 per centum of blood of the American Indian race. Their attitude is not surprising, therefore, when they are approached by blue eyed, fair complexioned individuals claiming to be Indians and requesting border crossing privileges.

I discussed this problem with Mr. Joseph A. Mongiello, United States Immigration Attaché in Ottawa and pointed out that percentage of Indian Blood is not a factor in determining Indian Status in Canada and that it would be difficult, if not impossible, for Canadian Indians to obtain information as to percentage of Indian Blood which is being requested by American Immigration officials. Mr. Mongiello has now informed me that he has been in communication with American Immigration officials in Seattle and he believes that they will not continue to insist on a strict interpretation of the provisions of the Immigration and Nationality Act as it pertains to Indians in view of the difficulty of establishing the percentage of Indian Blood of Canadian Indians. Verification of band membership will be sufficient, although in some cases it may be necessary to confirm Indian status back one or two generations.

It is appreciated, of course, that the governing legislation remains unaltered and these unofficial arrangements will not completely eliminate the possibility of future difficulties. However, I believe that as a result of the efforts of Mr. Mongiello, we may expect an easing of the enforcement of the letter of the law which will be beneficial to the Indians in your area.

ORIGINAL SIGNED BY
H. H. CHAPMAN

H. H. Chapman.
HHC/lw

P.A. 1/3-3-14

MEMORANDUM TO FILE

On July 25 Miss Gilchrist talked with Mr. De Wolf, of the Legal Branch of the Department of National Revenue, with respect to Indians, such as those living at Caughnawaga, who work through the week in the United States and come back to the Reserve for the weekend. There has been some complaint in that area about paying taxes in the United States on income earned in that country and paying income tax on the same money when it is brought into Canada.

Mr. De Wolf explained the situation as follows:

We have a treaty with the United States, whereby a resident of Canada shall be exempt from ~~the~~ income tax on income earned in the United States provided it is earned over a period of less than 183 days per annum, and the compensation received does not exceed \$5,000. If the income is less than \$5,000 it is not taxable and income tax paid thereon should be refunded by the U.S. Government. If the income is more than \$5,000 income tax ^{in U.S.} must be paid.

When the assessment is made up in Canada, the taxpayer is allowed credit for what he had to pay in the United States. Individual cases differ and all cases must be considered individually.

In the case of the Indians of Caughnawaga, these people are required to pay income tax in Canada, because they are earning their incomes off the reserve. They are allowed credit on what has been paid in the United States, just as are other residents of Canada.

M. E. Gilchrist
M.E. Gilchrist.

?
HSD
What if they
earn over \$5,000.
all in U.S. working
more than 183 days.

Ottawa 2, July 22, 1966.

1/3-3-14 (A.8)

Mr. Russ Jones,
R.R. #2,
Nanaimo, B.C.

Dear Mr. Jones:

I refer to your letter of July 8, inquiring as to whether an American Indian possesses dual citizenship in Canada and the United States.

Under the provisions of the Immigration and Nationality Act, Indians born in Canada have the right to enter the United States without restriction, but that right extends only to the persons who possess at least 50 per centum of blood of the American Indian race.

On the other hand, although a Canadian Indian might be recognized by the United States authorities, it does not necessarily follow that an Indian from the United States would be recognized by the Canadian authorities as having Canadian citizenship.

Yours sincerely,

Original signed by
H. G. SPROTT ✓
H. G. Sprott,
A/Head of the Secretariat.

MEG/dd

enter as immigrants?

1A M

1/3-3-14

R.R. 2, Nanaimo
B.C., Canada
July 8, 1966

Department of Indian Affairs
Parliament Buildings
Ottawa, Canada

Gentlemen:

I have been told that the American Indian possesses a dual citizenship in Canada and the United States. Could you tell me more about this?--The rights it entitles him to and the qualifications for being an American Indian.

Yours truly,

Russ Jones

Russ Jones

A. J. G. 4.6.66

CENTRAL REGISTRY

JUL 15 2 33 PM '66

INDIAN AFFAIRS

1978-80 1999
1980-82 2000
1982-84 2001

c.c. Regional Director of Indian Affairs - Quebec

c.c. Superintendent, Caughnawaga Indian Agency

Ottawa 2, July 22, 1966.

1/3-3-14 (A.1)

PA →

Chief Andrew Delisle,
Caughnawaga Indian Reserve,
Caughnawaga, Quebec.

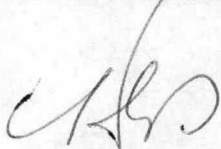
Dear Chief Delisle:

I refer to your letter of July 13, concerning re-assessment of Income Tax for the year 1962, on money brought from the United States into Canada by members of the Caughnawaga Indian Band.

You have indicated that you have used your interpretation of the Jay Treaty as a basis for advising these people not to pay such taxes without finding out why they have to be paid. In this connection I am attaching a statement on the Jay Treaty which may be of interest to you. If the men of Caughnawaga have been informed that they are liable for the payment of income tax in Canada, I would think it would be advisable for them to communicate with the income tax office and make every effort to obtain clarification of the situation.

As a general rule one would expect that, by some means or other, provision would be made in the Canadian taxation laws to avoid double taxation. In any event, the circumstances vary and each case must be considered on its own merits by the Department of National Revenue. This is a personal matter between the individual and the tax department.

Yours sincerely,



H. G. Sprott,
A/Head of the Secretariate.

WCS/dd

PEACE

UNITY

STRENGTH

MOHAWKS OF KANAWAKE

CAUGHNAWAGA, QUEBEC

(OFFICE OF THE COUNCIL OF CHIEFS)



A1

July 13, 1966

Mr. C.I. Fairholm,
Secretariate,
Indian Affairs Branch,
Bourque Building,
Ottawa, Ontario

Dear Sir:

In recent months, the men of Caughnawaga have been plagued with Income Tax Re-assessments for the year 1962.

These re-assessments were brought about by the fact that the men worked part of the year in the United States and part in Canada.

They are now being assessed tax on money that they brought into Canada from the U.S.

I have written to the Department of Revenue on several occasions to have an explanation as to why this has come about, and the only reply that I have is that they do not visit people to explain their reasons for taxing.

Well, I have told the men of Caughnawaga not to pay these taxes without finding out why the taxes have to be paid and I have referred to the Famous document known as the Jay Treaty, especially referring to the sentence "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".

I suppose, we can find many interpretations of this sentence, but it only means one thing as far as I am concerned.

Therefore, may I request the Department legal assistance in notifying the parties concerned with the taxing of Indian people.

Your action on this request would be most appreciated.

Yours in friendship,

Andrew T. Delisle

Andrew T. Delisle
(Grand Chief)

cc: R.L. Boulanger
cc: C. Saylor

000173

0 2 9 8 9 3

CENTRAL REGISTRY

JUL 18 3 44 PM '66

INDIAN AFFAIRS



JAY TREATY - 1794 - 1796

"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 boundry 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."

"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 bonafide to Indians.

Phines Bond Esq.,
for
His Britannic Majesty

Timothy Pickering Esq.,
for the
President of the U.S.A.

Copy for Indian Affairs Branch

1/3-3-14

A1

OTTAWA 4, June, 20 1966

Mr. Mark Larratt-Smith,
Special Assistant to the
Minister of Labour,
Ottawa, Ontario.

Dear Mr. Larratt-Smith:

I refer further to our telephone conversation of May 3 and my letter of May 24, with respect to correspondence addressed to the Honourable John Nicholson from Mr. James E. Mitchell of Oliver, British Columbia, concerning Indian dual citizenship and the American draft.

We have now been advised by our Agency Superintendent that he has made extensive inquiries among members of the Indian bands in the districts concerned and has been unable to find any report of Canadian Indians recently being drafted into the United States Military Service. A letter to this effect was sent to Mr. Mitchell from our field office on May 31.

It will be appreciated, of course, that Canadian Indians employed in the United States are subject to the draft like any other Canadian citizen in similar circumstances. Their recourse would be to return to Canada if they did not wish to serve in the United States forces and continue to live in that country.

Yours sincerely,

ORIGINAL SIGNED BY
L. S. MARCHAND

L.S. Marchand, P.Ag.,
Special Assistant.

GILCHRIST/DARLING/sc

June 13, 1966.

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see
green of May 24/66

A1, 4-6

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CENTRAL REGISTRY

JUN 23 9 12 AM '66

INDIAN AFFAIRS



c.c. Indian Commissioner for B.C.

c.c. Superintendent, Kootenay-Okanagan Indian Agency.

1/3-3-14

Mr. Mark Larratt-Smith,
Special Assistant to the
Minister of Labour,
Ottawa, Ontario.

Dear Mr. Larratt-Smith:

I refer further to our telephone conversation of May 3 and my letter of May 24, with respect to correspondence addressed to the Honourable John Nicholson from Mr. James E. Mitchell of Oliver, British Columbia, concerning Indian dual citizenship and the American draft.

We have now been advised by our Agency Superintendent that he has made extensive inquiries among members of the Indian bands in the districts concerned and has been unable to find any report of Canadian Indians recently being drafted into the United States Military Service. A letter to this effect was sent to Mr. Mitchell from our field office on May 31.

It will be appreciated, of course, that Canadian Indians employed in the United States are subject to the draft like any other Canadian citizen in similar circumstances. Their recourse would be to return to Canada if they did not wish to serve in the United States forces and continue to live in that country.

Yours sincerely,

L.S. Marchand, P.Ag.,
Special Assistant.

GILCHRIST/DARLING/sc

June 13, 1966.



DEPARTMENT OF CITIZENSHIP AND IMMIGRATION
INDIAN AFFAIRS BRANCH

FALSE DOCKET SLIP

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.

SLIP NO.

FILE NO.

1/3-3-14

SUBJECT OF FILE

MAIN FILE ON CHARGE TO

A8 4-5-66

REFERENCE

DISPOSAL

REFERRED TO	BY	REMARKS	DATE	PA or BF	BY	DATE	FOR C.R. USE
A8	12	18442	3/8/66	PA	A8	3/6/66	

NOTE: If action cannot be taken without the file, please make statement to that effect and return paper to Central Registry.

000179



TO
A

MEMORANDUM

CLASSIFICATION

Indian Affairs Branch

AS

YOUR FILE No.
Votre dossier

1/3-3-14 (A-8)

OUR FILE No.
Notre dossier

982/18-1 (Ad.1)

DATE

FROM
De

Indian Commissioner for B. C.

FOLD

SUBJECT
Sujet

June 6, 1966

Induction of Canadian Indians -
U. S. Armed Forces

Reference is made to your letter dated May 12, 1966, addressed to the Superintendent, Kootenay-Okanagan Indian Agency.

This office has made enquiries to all Superintendents in the Region to ascertain whether any Indians from their particular Agencies have been inducted into the American Armed Forces.

A copy of the letter from Magistrate Mitchell of Oliver concerning the subject was also received at this office prompting our enquiry to all Superintendents in the Region.

The Department will be advised of the replies to our correspondence when they are received.

J. V. Boys
J. V. Boys
Indian Commissioner for B.C.

noted AS

AS
9-000180

018442

CENTRAL REGISTRY

JUN 8 1 26 PM '66

INDIAN AFFAIRS

Indian Commissioner for B.C.
1966

When they are received.
The Department will be advised of the results of our correspondence
subsequent to the receipt.
The Department will also be advised of the results of our correspondence
with the various Indian Bands in the region of the Province of Ontario
concerning the
been included into the American Armed Forces.
to ascertain whether any Indians from their jurisdiction have
this office has made enquiries to all subcommittees in the region
to the subcommittee, possibly-organized Indian Agency.
reference is made to your letter dated May 15, 1966, addressed

Indian Commissioner for B.C.
Indian Affairs Branch

Indian Commissioner for B.C.

Indian Affairs Branch

June 8, 1966

(L. 17) 1-81/586

(L. 17) 1-81/586

c.c. Superintendent, Kootenay-Okanagan Indian Agency

c.c. Indian Commissioner for B.C.

1/3-3-14

Mr. Mark Larratt-Smith,
Special Assistant to the
Minister of Labour,
Ottawa, Ontario.

Dear Mr. Larratt-Smith:

I refer further to our telephone conversation of May 3 and my letter of May 24, with respect to correspondence addressed to the Honourable John Nicholson from Mr. James H. Mitchell of Oliver, British Columbia, concerning Indian dual citizenship and the American draft.

We have now been advised by our Agency Superintendent that he has made extensive inquiries among members of the Indian bands in the districts concerned and has been unable to discover any foundation for Mr. Robert Euphiste's claim that Canadian Indians have recently been drafted into the United States Military Service. A letter to this effect was sent to Mr. Mitchell from our field office on May 31.

Yours sincerely,

Gilchrist/vm
June 3, 1966.

L.H. Marchand, P.Ag.,
Special Assistant.

Retyped

PR

*ms
6/1
17*

1/3-3-14

MEMORANDUM

CLASSIFICATION



TO
A

Head of the Secretariat,

YOUR FILE No. 1/3-5-14 (A8)
Votre dossier

OUR FILE No. 982/18-1
Notre dossier

A8

FROM
De

Kootenay-Okanagan Indian Agency

DATE May 31, 1966

FOLD


SUBJECT
Sujet

Stated Induction of Canadian Indians
into U.S. Armed Services

We enclose a copy of our letter to Magistrate James H. Mitchell of Oliver, B. C.

We have been unable to discover any foundation for Mr. Robert Baptiste's claim that Canadian Indians have recently been drafted to U.S. Military Service. Indian Band Council Members of Vernon, Penticton and soyoos have no knowledge of any Members of their Bands who have been so drafted.

We will forward any further information on the matter which reaches this office.


G. H. Ferret,
Superintendent,
Kootenay-Okanagan Indian Agency.

RS:tb
Encl.
c.c. Indian Commissioner for B. C.

10/11/66 1742
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10/11/66 1742

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CENTRAL REGISTRY

JUN 2 1 56 PM '66

INDIAN AFFAIRS

Room 3, Federal Bldg.,
3101 32nd Avenue,
Vernon, B. C.
May 31, 1966.

982/18-1

Magistrate James H. Mitchell,
OLIVER, B. C.

Dear Sir:

RE: Stated Induction of Canadian Indians
into U.S. Armed Services


We refer to your letter of the 27th April 1966 and our reply of May 5th 1966 in the above connection.

We have made extensive inquiries with the Band Council Members of both the Penticton and Osoyoos Indian Bands and have been unable to find anyone who has information that Canadian Indian have been drafted into the U.S. Armed Services.

It has not been possible to contact Robert Baptiste for the source of his story but it would appear that there is no knowledge of the claim amongst the Indian people here in Vernon, or in Penticton or Osoyoos.

We do thank you for your interest and ask that you contact us again should you hear anything further which might throw light on the matter.





Yours truly,


G. H. Ferret,
Superintendent,
Kootenay-Okanagan Indian Agency.

RS:tb
c.c. Head of Secretariate.
Indian Commissioner.

ROUTE SLIP

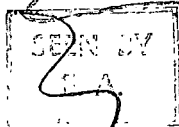
PASS 

1. 
2. 
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4. 

 Date May 26

Initials HGS/vm





PA

Ottawa 4, May 26, 1966.

1/3-3-14 ✓

cc 1/3-8-2

MINISTER

When Miss Kahn-Tineta Horn and her group visited you on May 18, one of the papers they left with you contained a list of complaints from the Oka Branch of the Six Nations Iroquois Confederacy (copy attached). It contained a reference to the Jay Treaty, in support of the proposition that Indians are exempt from sales taxes, etc. You asked for background information about the Jay Treaty.

The Jay Treaty has been quoted by the Oka group and others on previous occasions to support representations with regard to tax exemption. A brief statement was therefore drawn up some time ago, and a copy is attached, which shows that any exemptions which may have been permitted under section 3 of the Jay Treaty are not applicable in Canada, since they have not been implemented or sanctioned by legislation. This decision was reached by the Supreme Court of Canada in 1956.

Original Signed by
R. F. BATTLE

R.F. Battle,
Assistant Deputy Minister,
(Indian Affairs).

Sprott/vm

[Handwritten signatures and initials]

May 17, 1966
Oka Indian Reservation
Kanesatake

*Mr. Arthur Loring
Minister of Northern Affairs
Ottawa, Ont.*

The Six Nation Iroquois Confederacy, Oka Branch of the Mohawk Nation, wish to list the following complaints against the Canadian Government and others,

No.1- The Six Nations held their lands in fee simple title and this has never been extinguished. Since the Six Nations never sold or ceded land to the French king, he had no legal right to grant to the Seminary of St. Sulpice or the Jesuits any land already occupied or administered by the Six Nations. Thus, the title to the lands occupied by the Mohawks at Oka and Caughnawaga are still vested in the Six Nations Iroquois Confederacy. The Indian right of occupancy is unlimited, it is not a life tenancy, and the power of the government to control and manage the property and affairs of the Indians in good faith for their betterment and welfare does not extend so far to enable the government to give the land to others or to appropriate it for their own use. Our Lake of Two Mountains, Kanesatake property has been appropriated for illegal sale to white settlers, various religious institutions, golf courses and a provincial park and above all the mines in the area. The statute of limitations does not apply to any nation suing for its rights, this also applies to the sale of liquor on the reserve, which has two hotels and a golf course who have licenses issued by the Provincial government, who have no legal authority to legislate any laws on and off the reserve concerning Indians of the Six Nation Iroquois Confederacy.

No.2- We accuse the elected Indian Act council of conspiring with the Federal, Provincial, Municipal authorities to make the Indian Reservation an incorporated municipality under provincial laws and provincial control. The Indian Act council is loaded with French speaking councillors and business is conducted in French and whose interests serve the French Catholics and the white municipality, not the Mohawks of the Six Nations, since even the Indian Agent attends and supervises the meetings and also the secretary on the Catholic School Commission where most of the Indian funds are channeled because of a small percentage of half-breeds attending their school. The Indian Act council in other words is under complete control by the government and being used to defraud and dispossess Indians of their lands. The Indian Act council cannot speak for the Indians of the Six Nation Iroquois Confederacy. They are enfranchised people, most of whom are Metis or half-breeds and vote in federal elections and lose their rights as Indians because of this. This is the Indian Act puppets recognized by the holders of the strings, you people in Ottawa must be very proud of yourselves in church on Sunday mornings.

No.3- Another illegal act of the Quebec Provincial government is their voting enumerators who last week collected names off mail boxes and from children in the area, they don't identify themselves properly or ask the Indian householder if he or she votes in the provincial elections. This is one more illegal act which we have not sanctioned, since we are completely opposed to enfranchisement by provincial or federal government.

No.4- Another being that the Province of Quebec has imposed a sales tax contrary to existing TREATIES between Great Britain, United States and the Six Nation Iroquois Confederacy, and which the Canadian Government and the British Governments resident agent are to blame in their

(continued over)

000188

page 2

failure to intervene in the Indians behalf to prevent the violations of Anglo-Indian treaties and British Proclamations. Article III, of the JAY TREATY, 1794, between Britian, U.S., and the Six Nation Iroquois Confederacy it is provided that no duty or tax shall be levied or licence collected on the property, goods and effects of whatever nature of Indians dwelling on either side of boundary line (Canada & U.S.) or within the limits of either country.

The Indians, as members of a tribe occupying a reserve in common are by law exempt from taxes and assessments, and confession of judgment cannot be taken against them, nor can any debt be recovered from an individual Indian.

No.5- Another is the clothing chits issued by Indian Agent, the quality of clothes and footwear is either the cheapest or are rejects or seconds. The clothes and footwear would betwell worn between periods of receiving another chit. The food chits are also very low, too low in fact for an adequat diet. Some of the Indians would rather be self supporting by working their lands but are discouraged by the Indian Agent from pursuing such projects. Requests for farm impléments or the use of bulldozers to clear the land have been repeatedly denied, usually from lack of funds. Where do the Indian Funds go to, the Six Nation Indians do not benefit or see any of it working for their betterment, the Department of Indian Affairs should look into books of the reserve funds more often. The Indians of the Confederacy have the right to the Six Nation Indian Trust Fund, if this is being used by others not entitled to it, this amounts to theft.

The national image which Canada is trying to project as champion of the oppressed of other lands will be subject to world wide ridicule in the bright glare of bad publicity. These are but a few of the numerous treaties still in existance and cannot be broken;

Treaty of Utrecht---1713

Treaty of Ghent

King George III--Charter to Five Nations (later known as Six Nations)

Capitulation of Montreal - 1760

Proclamation of 1763

Proclamation of Sept. 6, 1766

Treaty of 1784 - Britian-U.S.-Six Nation Iroquois Confederacy

Jay Treaty 1794-Britian-U.S.-Six Nation Iroquois Confederacy

The greivances can be clarified by the above treaties.

Signed:

Hereditary Chiefs
Kanesatake

KANA WA TO Gabriel

KA-NE-RA - ti-ico Gabriel

Information Respecting the Jay Treaty

The Treaty of Amity, Commerce and Navigation between His Britannic Majesty and the United States of America, signed on November 19, 1794, and generally known as the Jay Treaty, is not a treaty between Canada and Indians, but was a treaty between the United States and Great Britain. Article 3 of the Treaty stipulated that:

" No Duty on 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."

With the outbreak of the War of 1812, the United States considered the Jay Treaty abrogated.

The contention has been put forward that the provisions of Article 3 of the Jay Treaty were restored by the 9th Article of the Treaty of Ghent, 1815, which reads 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 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."

However, in the case of *Louis Francis vs. Her Majesty the Queen*, 1956, the Supreme Court of Canada found that Article 3 of the Jay Treaty and Article 9 of the Treaty of Ghent are not applicable in this country since they have not been implemented or sanctioned by legislation. Decisions by the Supreme Court of Canada are final and conclusive and are not subject to amendment either by judiciary or executive branches of the Government.

Copy for Indian Affairs Branch

AI

1/3-3-14

MAY 2 4 1966

Mr. Mark Larratt-Smith,
Special Assistant to the Minister of Labour,
Department of Labour,
Ottawa, Ontario.

Dear Mr. Larratt-Smith:

I refer to our telephone conversation of May 3 and to correspondence dated April 27, addressed to the Honourable John Nicholson from Mr. James H. Mitchell, Magistrate, of Oliver, British Columbia, concerning Indian dual citizenship and the American draft.

I think it must be understood that many Indians do go to the United States to work and we would not want to take any action which might lead to any tightening up of regulations on the part of the United States Government which would prevent many Indians from accepting employment in the United States.

The position taken by the Government of the United States is that Canadian Indians employed and living in the United States are subject to United States Selective Service laws in the same manner as other Canadian citizens, and as long as they are employed there, they have no choice but to register. The alternative to this is to return to Canada and take up residence with the intent to live here, and in some cases the person affected has chosen to do this. In another case the Indian concerned renounced his American citizenship and returned to live on the Canadian side of the Border.

These are the general principles governing the application of United States Selective Service laws to Canadian Indians. We do not have the details of the particular circumstances that gave rise to the Magistrate's enquiry but we have written to our Agency Superintendent for further information, and when it is received, I will be glad to write to you again.

Yours sincerely,

ORIGINAL SIGNED BY
L. S. MARCHAND

L.S. Marchand, P.Ag.,
Special Assistant.

Gilchrist/vm
May 12, 1966

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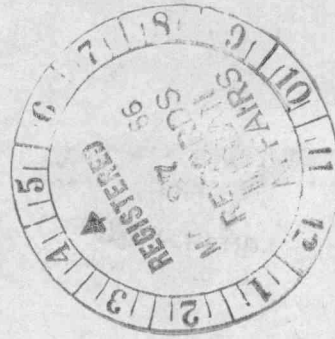
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CENTRAL REGISTRY

MAY 27 4 06 PM '66

INDIAN AFFAIRS



1/3-3-14

*Guila
Smith*
Mr. Mark Larratt-Smith,
Special Assistant to the Minister of Labour,
(Department of Labour,)
Ottawa, Ontario.

Dear Mr. Larratt-Smith:

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Yours sincerely,

L.S. Marchand, P.Ag.,
Special Assistant.

me
Gilchrist/vm
May 12, 1966
HH

Superintendent, Kootenay-Okanagan Indian Agency,

1/3-3-14 (A.8)

Head of the Secretariate.

May 12, 1966.

Induction of Canadian Indians into
United States Military Service.

Attached are photocopies of correspondence dated April 27, to the Minister of Labour from Mr. James H. Mitchell, Magistrate, of Oliver, B.C., concerning the above subject, and a copy of our letter to the Special Assistant to the Minister of Labour.

I would appreciate your comments concerning the particular circumstances that gave rise to the Magistrate's enquiry, including the number of Canadian Indians who have been affected thereby.

C.I. Fairholm.
Attach.
MEG/va

c.c. Indian Commissioner for B.C.

7/2/66

OFFICE OF THE
MINISTER OF LABOUR

AS



CANADA

CABINET DU
MINISTRE DU TRAVAIL

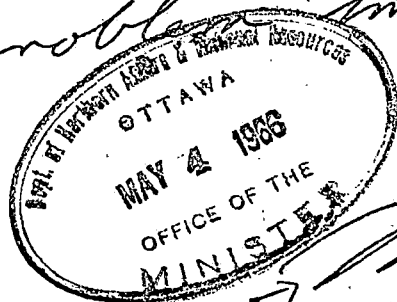
1/3-3-18

May 3, 66

Dear Len -

Here is the correspondence
which I referred to in
our telephone conversation
of this afternoon on the
subject of Indian
dual - citizenship and
the American draft.

Thanks for your offer
to look into the
problem immediately.



Yours.

→ *M. J. [Signature]*
SPECIAL ASST. to JRW

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P.T.

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CENTRAL REGISTRY

MAY 9 10 43 AM '66

INDIAN AFFAIRS



Oliver, B.C.,
27 April 1966.

The Honourable Jack Nicholson,
Minister of Labour,
Ottawa, Ont.

Sir:

Re: INDUCTION OF CANADIAN INDIANS INTO
U. S. MILITARY SERVICES.

Recalling to your memory my brief interview with you at the Hotel Reopel in Oliver concerning the above circumstance, I enclose copy of my letter to the Indian Agent at Vernon, B.C., embodying your request to be furnished copies of any correspondence he may initiate, and your assurance of support.

I am very indignant concerning the many indignities our Canadian Indians suffer across the Border. There seems nothing one can do to alleviate the circumstances. Induction of our people into the Armed Services, however, is not only an indignity upon our Indian citizens but also an affront to Canada, and I hope Canada moves promptly and effectively to cure it.

Respectfully yours,

James H. Mitchell
James H. Mitchell
MAGISTRATE

Minister of Labour OTTAWA	
MAY 2 1966	
Min	
Ex. Asst.	
Sp. Asst.	
Adm. Asst.	
Pri Sec.	



Oliver, B.C.,
27 April 1966.

The Indian Agent,
Dept. of Indian Affairs,
Vernon, B.C.

Dear Sir:

Re: Induction of Canadian Indians into
U. S. Armed Services.

My friend Robert Baptiste of the Inkameep Band made one of his occasional appearances in Magistrate's Court this week, and although he is a "customer" of several years standing, so far as is known officially his brushes with John Barleycorn are not too frequent, so that although the current incident was somewhat on the spectacular side, his penalty was set at a fine of \$15.00 plus costs.

He made the usual request for time to pay his fine, and I had to inform him that since he is employed as a ranch-hand at Mons, Washington, I could not extend the privilege and suggested he make local arrangements to meet the amount and reimburse whoever would assist him.

Actually, this was what he was able to do, but at the time he said he might as well sit out the default time, since he expected to be picked up any day for the Viet Nam War.

I asked him to explain, and was told that because of his "dual citizenship" and also of the fact that he owns some property in Washington State, he was liable to the draft. Questioned further, he said that two carloads of Canadians were recently drafted, orchard workers whose homes were in Williams Lake, Chase and Vernon - and he may have mentioned Penticton, as well.

I find this very disturbing: The "dual citizenship" these people so proudly but rather pathetically claim only amounts to the privilege as North American aborigines to freely come and go across the International Boundary: it confers neither special privileges nor obligations. Neither does possession of property confer voting privileges - nor liability to a military draft.

That same day the Hon. Jack Nicholson, Federal Minister of Labour, was in Oliver, and knowing that at one time he had had to do with Indian affairs, I expressed my concern to him and stated my intention of drawing the matter to your attention. The Minister not only expressed agreement with my concern but also stated that if these were indeed facts, representations looking to the immediate release of Canadian Indians being drafted would be in order. He also was so good as to request that if you will furnish him with copies of the correspondence you may initiate, he will give you all the support he is able to afford.

Such goodwill at the very highest level is invaluable to the cause and I imagine should go far to obviating unnecessary delay through channels. I am taking the liberty of forwarding a copy of this letter to the Honourable the Minister of Labour.

Yours truly,
James H. H. H. H.

156/3-3

AM

IMM VCR

IMM OTT

UV BOYS
INDIAN AFFAIRS

RE YOUR TELEX MY REPLY TO YOUR MEMO 156/3-3 CONCERNING WILLIAM
FRANCIS ROBERTS OF CAMPBELL RIVER BAND MAILED TODAY OUR FILE
1/3-3-14.

HH CHAPMAN
REGISTRAR

03-584

IMM OTT

TELEX
Despatched from Ottawa
Date 1/3/66
Originator HHC
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Time 5:18

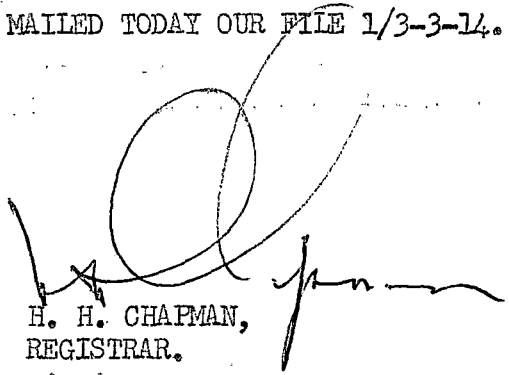
CONFIRMATION
ONLY

T E L E X

OTTAWA, MARCH 11, 1966

J. V. BOYS,
INDIAN COMMISSIONER FOR BRITISH COLUMBIA,
303 FEDERAL BUILDING,
VANCOUVER, B.C.

RE YOUR TELEX MY REPLY TO YOUR MEMORANDUM 156/3-3 CONCERNING WILLIAM
FRANCIS ROBERTS OF CAMPBELL RIVER BAND MAILED TODAY OUR FILE 1/3-3-14.



H. H. CHAPMAN,
REGISTRAR.

TELEX

OTTAWA, MARCH 11, 1966

J. V. BOYES,
INDIAN COMMISSIONER FOR BRITISH COLUMBIA,
303 FEDERAL BUILDING,
VANCOUVER, B.C.

RE YOUR TELEX MY REPLY TO YOUR MEMORANDUM 156/3-3 CONCERNING WILLIAM
FRANCIS ROBERTS OF CAMPBELL RIVER BAND MAILED TODAY OUR FILE 1/3-3-14.

ORIGINAL SIGNED BY
H. H. CHAPMAN

H. H. CHAPMAN,
REGISTRAR.

TELEX

OTTAWA, MARCH 11, 1966

J. V. BOYS,
INDIAN COMMISSIONER FOR BRITISH COLUMBIA,
303 FEDERAL BUILDING,
VANCOUVER, B.C.

RE YOUR TELEX MY REPLY TO YOUR MEMORANDUM 156/3-3 CONCERNING WILLIAM
FRANCIS ROBERTS OF CAMPBELL RIVER BAND MAILED TODAY OUR FILE 1/3-3-14.

ORIGINAL SIGNED BY
H. H. CHAPMAN

H. H. CHAPMAN,
REGISTRAR.

IMM OTT

IMM VCR

FOR INDIAN AFFAIRS BRANCH

RE OUR MEMORANDUM AND ATTACHMENTS FEBRUARY 25, 1966
FILE 156-3-3. PLEASE ADVISE BY RETURN TELEX ON YOUR RULING OR
IF A LETTER CAN BE ISSUED FROM THIS OFFICE FOR MR. ROBERTS.

J V BOYS

INDIAN AFFAIRS V3-77

IMM OTT

IMM VCR

156-3-3-14

2.9

INDIAN AFFAIRS V3-77

TELEX

RECEIVED

Date 9-3-66 Time 9-

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1/3-3-14

Indian Commissioner for B. C.

1/3-3-14 (AM)

Registrar

March 11, 1966.

William Francis Roberts,
No. 42 Campbell River Band

This will refer to your letter of February 25, together with the enclosed memorandum from Field Officer R. Kendall referring to discussions with United States Immigration Officials concerning William Francis Roberts who is employed at Ferndale, Washington, USA.

We are aware that Canadian Indians during recent months have been experiencing some difficulty in gaining access to the United States at various points of entry. Under the provisions of the Immigration and Nationality Act, Indians born in Canada have the right to enter the United States without restriction, but that right extends only to the persons who possess at least 50 per centum of blood of the American Indian race. As percentage of Indian blood is not a factor in determining Indian status in Canada, it is difficult, if not impossible, for Canadian Indians to obtain the information required by the American Immigration Officials.

I expect to discuss this problem with Mr. Joseph A. Mongiello who has recently been appointed American Immigration Attaché and is expected to take up his duties in Ottawa sometime this week. It is hoped that through him we may be able to arrive at an acceptable arrangement with United States Immigration Officials which will overcome our present difficulties.

In the meantime I suggest that you prepare a letter to Mr. Roberts confirming that he is registered as a member of the Campbell River Band of Indians and that he was born [REDACTED] to William and Frances Roberts who are also registered as members of that Band. I suggest that you avoid making any reference to the percentage of Indian blood.

ORIGINAL SIGNED BY
H. H. CHAPMAN

H. H. Chapman

s.19(1)

RHC/mb

MEMORANDUM

1/3-3-14
CLASSIFICATION



TO
A

Indian Affairs Branch

YOUR FILE No.
Votre dossier

OUR FILE No.
Notre dossier

156/3-3 (RSA)

DATE

February 25, 1966

FROM
De

Indian Commissioner for B.C.

SUBJECT
Sujet

William Francis Roberts Jr.
Campbell River Band

Attached is a memorandum dated February 23, 1966 from the Field Officer, Mr. R. Kendall, resulting from discussions he has had with Immigration officials and W. F. Roberts Jr. of the Campbell River Band.

As this is the first time to our knowledge that the U. S. Immigration has taken a definite stand with regard to the definition of an Indian under the Immigration and Nationality Act, 1952 we would appreciate a ruling as no doubt similar cases have been brought to your attention from other parts of Canada.


J. V. Boys

Indian Commissioner for B. C.

att.

0 5 2 9 2 1

CENTRAL REGISTRY

MAR 1 9 01 AM '66

INDIAN AFFAIRS

RECEIVED INDIAN AFFAIRS

~~CONFIDENTIAL~~

TO: THE CHIEF OF THE INDIAN BANDS
FROM: THE CHIEF OF THE INDIAN BANDS
SUBJECT: [illegible]
[illegible]
[illegible]

RE: [illegible]
[illegible]
[illegible]
[illegible]

RE: [illegible]
[illegible]

RE: [illegible]

s.19(1)

Indian Commissioner for B.C.

156/3-3(D.1)

Regional Field Officer

February 23, 1966

William Francis Roberts Jr.
Campbell River Band - bd. [REDACTED]

The above named Indian of the Campbell River Band is working for Bechtel Limited at Ferndale, in Washington. He commutes from his home in Burnaby. Recently, he has been challenged by the United States Immigration officers at Blaine regarding his Indian status. As you are aware, under the Jay Treaty bona fide Indians are permitted free entry to the United States. In this regard, Mr. Roberts is in possession of the card issued by the Department for this purpose.


The problem appears to stem from the fact that in 1952 the U.S. passed an "Immigration and Nationality Act" which covers all immigration in and out of the United States of America and defines Indians for the purpose of the Jay Treaty. This Act states that in order to have free entry he must have at least 50 per cent North American Indian blood.

Apparently there has been no pressure up until recently and it was suggested to me by Mr. Ray Brimmer, U.S. Immigration at Blaine and Mr. George Elms, U.S. Immigration in Vancouver that recent infringements of this privilege have caused Immigration officials to be more careful in their screening. It would appear that there will be an increase of this problem.

As you have stated, providing a letter from the Agency or Regional Office, as has been done in the past, is not the answer as we are not in a position to determine the amount of Indian blood in an individual Indian, as we are only concerned with the terminology of the Canadian Indian Act.

As Mr. Roberts must provide the information indicating he is at least 50 per cent Indian at an early date, I would appreciate Branch consideration of the problem so that I will be in a better position to reply to him.

Incidentally, Mr. Brimmer has stated he will relax the pressure on Mr. Roberts, at least for the time being.


R. Kendall,
Regional Field Officer

Indian Affairs Branch.

Ottawa 4, January 7, 1966.

1/3-3-14

Mrs. A. Perley,
Tobique Indian Reserve,
Maliseet, N.B.

Dear Mrs. Perley:

I refer to your recent letter addressed to the Honourable John R. Nicholson, concerning payment of duty on goods imported into Canada by your family.

The question of the importation of goods into Canada from the United States was reviewed by the Supreme Court of Canada a number of years ago, in the case of Louis Francis vs. Her Majesty The Queen, and it was found by the Supreme Court that Indians are not exempt from payment of duty and are in the same position as other persons in this regard. Decisions by the Supreme Court of Canada are final and conclusive and are not subject to amendment by any department of government.

For your further information regarding payment of duties on goods imported into Canada, may I suggest that you write to the Department of National Revenue, Ottawa, or consult the Customs Officer at the nearest port of entry.

I regret that we are unable to advise you further in this matter. The Customs slip which you enclosed with your letter is returned herewith.

Yours sincerely,

ORIGINAL SIGNED BY
J. D. DARLING

Darling/vm

C.I. Fairholm,
Head of the Secretariate.

Tobique Indian, Musome
Maliseet, N.B. 1/3-3-14
Dec 165

NO. 1 BY
A.D.M.

P/

Hon. John R. Nicholson
Minister Citizenship & Indian
Affairs Branch
Ottawa 2, Ontario

Sir;

the matter I am about to bring
to your attention is one I have
been neglecting for some time.

Though I assure you it has
presented a big obstacle in the
way of my husband's providing
a reasonably decent living for our
family.

Within his income; namely

when he is employed in
Maine he travels from home to
work and back.

and he occasionally picks up
a few items of food that are
on special in the town where
he works.

to stretch our food dollar.

only to be forced to pay
duty at this border.

For which we were not
responsible for its existence in
the first place.

But was erected by non-Indians
and though toys may be considered
a luxury by some.

they are a must at
Christmas time.

Considering the sad plight
some of our people are subjected
to.

We consider it a God sent
privilege that we can purchase

0 3 2 4 7 1

CENTRAL REGISTRY

DEC 30 8 58 AM '65

INDIAN AFFAIRS



2
The Christmas wishes of our
Children.

at a price we can manage.
But only in the states does
one occasionally find such luck.
Maybe in some parts of
Canada too.

But I don't think there are
many if any who can travel
from town to town in search
of cheap toys for Christmas.

However shopping is not
the issue here and without going
into further details.

enclosed you will find
a Customs slip of a ridiculous
price of duty. We had to pay
recently.

which is a form of tax
not to mention the Sales Tax
that was added on.

and as North American Indians
and for your information.
Band number 119 of the Tobique
Indian band.

We are exempt from taxation
of any form imposed by Federal
and Provincial Governments
established here in our country.

and we are; By the same
rights (Free) to cross the border
between Canada and United States.

and in the future it would
be appreciated if your employees
at the border were notified of
this.

3

and I trust on your part,
as Minister of Citizenship and
Immigration as well as the
Attorney General of Indian affairs,
which subjects you to
intercede on behalf of the Indians.

and I am sure my memory
serves me well in remembering
a paragraph in one of your
addresses: if I may "quote"

one of the major objectives
of the Superintendent General of
Indian affairs of Canada, and his
branch is to assist the Indian of
Canada to participate more fully
in the economic, social and Political
life of the Community.

the branch must do this, however,
without relinquishing the traditional
safeguards held by the Federal Gov;
to ensure that the Indian population
is (adequately protected from
external pressures) unquote.

We should be equally assured
of protection from internal
pressure.

Therefore I trust you will
take steps to rectify the
inclosed costons slips and hone
this money refunded.

Sincerely
Mrs. Perley

c.c. Regional Director, Northern Ontario.

Superintendent, Fort Frances Indian Agency.

1/3-3-14 (A.2)

Head of the Secretariate.

November 15, 1965.

Border Crossing Privileges.

I refer to the material you left with us last summer respecting a number of Indians held up at International Falls, Minnesota, by the United States Immigration authorities because they were unable to give evidence of being over 50% Indian blood.

Subsequently we wrote to the United States Immigration and Naturalization Service in Washington, D.C., a copy of which letter was forwarded to you for your information on August 31. We have now heard from the United States authorities, who advised us that the Certificate of Indian Status is not accepted as evidence that the bearer qualifies for the exemption relating to Indians.

We had considered sending a circular letter to Indian Agencies throughout the country informing them of the situation and suggesting that Indians who plan to cross the border at a point some distance from home carry with them a letter from their Agency Superintendent indicating that both their parents are members of Indians bands. However, it was decided that this would create more problems than it would solve since at most border points Indians are apparently having no difficulty in crossing into the United States to work and if some begin showing letters of the kind in question, then all Indians may be required to produce such documentation.

Insofar as we know, International Falls, Minnesota is the only point where the difficulty which you brought to our attention has occurred. We suspect that the practice in your Agency of providing Indians with documentation showing their ancestry has led the United States Immigration officers at International Falls to expect all Indians to produce such evidence. We suggest that you cease attempting to produce evidence of blood content, and instead confine yourself to statements indicating the band membership of the subject's parents (only when documentation is requested of you).

While we foresee no change in the attitude of the United States Immigration officers at International Falls, the problem may tend to be resolved when it becomes generally known to the Indians that they may have trouble in attempting to cross the border at that point and, consequently, will cross elsewhere.

No doubt there will be some Indians in the future who will attempt to cross the border at International Falls, who will be held up and you will be put in the position again of having to obtain documentation from their Agency Superintendents. We see no way in which this can be presented. However, should the problem again become serious, please let us know.

ORIGINAL SIGNED BY

E. P. Fairholm
JED/vm

000214

DEPARTMENT OF CITIZENSHIP AND IMMIGRATION
INDIAN AFFAIRS BRANCH

ROUTE SLIP

Document disclosed under the Access to Information Act
Document divulgué en vertu de la Loi sur l'accès à l'information

☐ FIELD MANUAL (Amend't.)

☐ FORMS DRAFT

DATE

28/10/65

• YOUR APPROVAL OR COMMENTS ON THE ATTACHED CIRCULAR ARE REQUESTED •

D

INITIALS

DATE

29/10/65

AS

INITIALS

DATE

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5/11/65

ORIGINATOR

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DR

INITIALS

DATE

8/11/65

FOR APPROVAL

INITIALS

DATE

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INITIALS

DATE

• FOR USE OF AR4 ONLY •

TO PRINTER

DATE MAILED

CIRCULAR NO.

DATE

DATE

000215



DEPARTMENT OF CITIZENSHIP AND IMMIGRATION

INDIAN AFFAIRS BRANCH

FILE No.

1/3-3-14

SUBJECT

BORDER CROSSING PRIVILEGES

CIRCULAR No.

Indian Commissioner For B.C.,
Regional Directors,
Superintendents of Indian Agencies.

Under United States law, Canadian Indians are permitted to enter the United States to take employment and reside there, without meeting the visa requirements applicable to others, provided they are "50 per centum Indian blood".

It has recently come to the attention of the Branch that a number of Indians attempting to cross the border to work have been held up when unable to produce evidence of their ancestry. This was particularly inconvenient as the Indians in question were crossing the border at a point far removed from their home reserve and considerable delay was experienced in obtaining documentation from the Agency Superintendent.

Although the same difficulty may not be experienced at all border points, it would be desirable for Indians crossing into the United States at a point some distance from home, to carry with them the necessary ^{a letter from the} Agency Supt. ^{indicating that both their parents were born as members of} documentation in case they are asked to produce evidence of their ^{Indian} ancestry. ^{bands.}

There would be less need for this in the case of Indians crossing the border at a point near their home reserve where documentation can be obtained with little delay or where the Indians are likely to be known to the United States border officials.

It would be appreciated if this information would be brought to the attention of those bands whose members are likely to cross the border to work, at some distance from their reserves.

What kind of documentation

- 2 -

It should be noted that certificates of Indian status issued by the Branch are not in themselves evidence of the degree of Indian ancestry as required under the United States regulations. Indians producing only these certificates of status might therefore encounter difficulty in being admitted for employment.

R. F. Battle,
Assistant Deputy Minister,
(Indian Affairs).

*secretly we would
get the U.S. to
accept them.
Don't they have
petitions? I'm
glad I don't have to
know I'm 50% English or of
some other breed.*

Ottawa 2, October 27, 1965.

1/3-3-14 (A.8)

MEG/vm

Mr. Merrill C. Crowe,
1733 Shaw Avenue,
Akron, Ohio,
U.S.A.

Dear Mr. Crowe:

This will refer to our recent telephone conversation concerning a request from the United States Selective Service that you register for the draft. I assume you had no difficulty returning to the United States.

I have been in touch with the United States Embassy and they confirm that Canadian Indians employed and living in the United States are in the same position as other Canadian citizens. They are subject to United States Selective Service laws and as long as you remain there, I believe you have no choice but to register. I am not familiar with the Selective Service laws except that I am told the draft age is 18 to 26. There are probably rules relating to deferment of draft call but you can best get this information from the United States authorities.


In a similar case we dealt with a few months ago, the person affected chose to return to Canada in order to avoid having to register. I should imagine, however, that you have decided to make your home permanently in Akron.

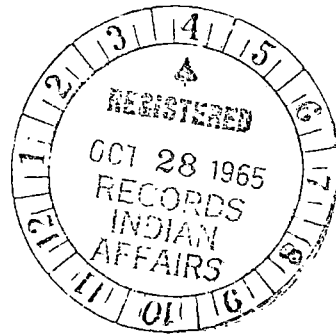
I wish you well in whatever you choose to do.

Yours sincerely,

Original Signed By
R. F. BATTLE

R.F. Battle,
Assistant Deputy Minister,
(Indian Affairs).





Telephoned the United States Embassy
re status of ~~Indians resident~~ Canadian
Indians resident in the United States
with respect to the draft.

The position of the U.S. government
remains the same as outlined in the
letter from the Department of External
Affairs dated January 10, 1963, and signed
by H.B. Stewart, on this file.

A Canadian Indian, A 8
between 18 and 26, resident - 000220 -
U.S. is subject to the draft.

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE
WASHINGTON, D.C. 20536

PLEASE ADDRESS REPLY TO

SEP 13 1965

AND REFER TO THIS FILE NO.

CO 289-P
CO 235.74

Mr. C. I. Fairholm,
Head of the Secretariate
Indian Affairs Branch
Department of Citizenship and Immigration
Ottawa, Canada

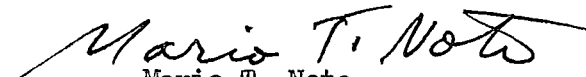
Dear Mr. Fairholm:

Reference is made to your letter of August 31, 1965, File 1/3-3-14 (Sec.1), concerning the immigration inspections at International Falls, Minnesota of Canadian Indians in possession of Certificates of Indian Status.

I have asked the Regional Commissioner of the Service in St. Paul, Minnesota to furnish me with a report concerning the procedures at International Falls, Minnesota.

As soon as the necessary information is available, I shall be pleased to inform you further. In the interim you are assured that your inquiry is receiving prompt attention.

Sincerely,


Mario T. Noto
Associate Commissioner
Operations

U. S. DEPARTMENT OF JUSTICE

IMMIGRATION AND NATURALIZATION SERVICE

WASHINGTON, D. C. 20536

OFFICIAL BUSINESS

Document disclosed under the Access to Information Act
Document divulgué en vertu de la Loi sur l'accès à l'information

POSTAGE AND FEES PAID
IMMIGRATION AND NATURALIZATION SERVICE

3-3-14
Awaiting reply

A

Mr. C. I. Fairholm,
Head of the Secretariate
Indian Affairs Branch
Department of Citizenship and Immigration
Ottawa, Canada



UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE
WASHINGTON, D.C. 20536

PLEASE ADDRESS REPLY TO

AND REFER TO THIS FILE NO.

OCT 18 1965

CO 289-P
CO 235.74

Mr. C. I. Fairholm
Head of the Secretariate
Indian Affairs Branch
Department of Citizenship and Immigration
Ottawa, Canada

Dear Mr. Fairholm:

Further reference is made to your August 31, 1965 letter, your file 1/3-3-14 (Sec. 1), regarding our procedures at International Falls, Minnesota, in regard to the inspection of Canadian Indians in possession of Canadian Certificates of Indian Status.

Our inquiry into the matter disclosed that the cases referred to in your letter concerned persons seeking admission into the United States as immigrants who claimed exemption from the regular provisions of law relating to immigrants on the ground that they were American Indians born in Canada. Under the provisions of the Immigration and Nationality Act, American Indians born in Canada have the right to enter the United States without restriction but that right extends only to persons who possess at least 50 per centum of blood of the American Indian race.

As you pointed out in your letter, Indian status in Canada is determined by descent in the male line rather than on the blood percentage. Consequently, in those cases involving persons of mixed blood who seek to enter the United States as immigrants, this Service cannot accept a Certificate of Indian Status as evidence that the bearer qualifies for the exemption relating to American Indians.

Sincerely,

Mario T. Noto
Mario T. Noto
Associate Commissioner
Operations

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CENTRAL REGISTRY

OCT 20 10 53 AM '65

INDIAN AFFAIRS

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OCT 18 1965

OCT 18 1965

MINISTER OF INDIAN AFFAIRS
OTTAWA, ONTARIO
K1P 6K1

c.c. Regional Director - Northern Ontario.

c.c. Superintendent, Indian Agency - Fort Frances, Ont.

Ottawa 2, August 31, 1965.

P. A. → 1/3-3-14 (Sec.1)

United States Immigration and
Naturalization Service,
311 Old Post Office Building,
12th & Pennsylvania Avenue, N.W.,
Washington, D.C. 20536.

Dear Sirs:

We have been advised by our Fort Frances Indian Agency office, Ontario, that a number of Canadian Indians attempting to cross into the United States at International Falls, Minnesota, have been held up pending proof of their ancestry.

We understand that the Indians in question had in their possession Certificates of Indian Status cards as issued by this Department. However, these cards were apparently not recognized by the Immigration officer at International Falls for the purpose of entry and it was necessary to obtain additional identification. As the Indians were from Western Canada, this had to be done by communicating with Indian Agency offices in Alberta and Saskatchewan. There was consequently some delay before confirmation could be obtained and the Indians admitted.

Indian status in Canada is determined by descent in the male line and Certificates of Status are issued to persons so qualifying as Indians. It had been our experience that provided Canadian Indians are able to show their Certificates of Indian Status, they may be admitted into the United States in accordance with the immigration laws relating to Indians.

In order that we may be in a position to advise Canadian Indians regarding the type of document they require for admittance into the United States, we would appreciate receiving confirmation as to the validity of the Certificates of Indian Status for this purpose.

Yours sincerely,

J. I. L.
C.I. Fairholm,
Head of the Secretariate.

JDD/vm



TO
A

MEMORANDUM

CLASSIFICATION

YOUR FILE No.
Votre dossier

OUR FILE No.
Notre dossier

DATE

August 4th, 1965.

FROM
De

FOLD

SUBJECT
Sujet

Mrs. Garnet Councillor
#67 Naicatchewenin Band
Fort Frances Agency

s.19(1)

Mrs. Councillor is legally married to Garnet Councillor but they have been separated since May 1960.

This women has been living common-law with Howard Ness, an American citizen, at Island View Route, International Falls, Minnesota for two years.

On [REDACTED] a baby girl Donna Lee Councillor was born to Florence Councillor and Howard Ness in La Verendrye Hospital, Fort Frances. The baby was taken to Minnesota and has been with her parents until August 2, 1965.

On July 30, 1965 Mrs. Councillor brought Donna Lee with her to Fort Frances to visit her sister. She had crossed the border at least ten times with the baby Donna Lee, since the child was born.

On August 1, 1965 the child's father Howard Ness came to get her and take her back to International Falls, Minnesota.

He was told by the United States Immigration officer that the child could not re-enter the United States without a visa. The father was allowed to take Donna Lee home that night but was told to return the child to Canada and next morning.

The mother called the Children's Aid Society and Mrs. Joe Skinner the local Director responded.

On August 2, 1965 a hurried meeting was called between Mrs. Councillor, Mr. Skinner and George Bryan of the Fort Frances Indian Agency to find a solution to the problem.

Since the girl Donna Lee is only 44% Indian blood she can not re-enter the United States without a visa but her mother may re-enter as she is 85% Indian Blood.

This has the effect of separating mother and child, if the mother wishes to return to her common-law husband.

Mrs. Councillor requested the Children's Aid to take Donna into care so that she could return to Howard Ness in International Falls.

Donna Lee Councillor is now in the care of the Children's Aid Society, District of Rainy River.

G. W. Bryan

- GWB/cvg

000226



MEMORANDUM

CLASSIFICATION

TO
A

YOUR FILE No.
Votre dossier

OUR FILE No.
Notre dossier

FROM
De

DATE

August 4th, 1965.

FOLD

SUBJECT
Sujet

Mrs. Garnet Councilor
#67 Naicatchewenin Band
Fort Frances Agency

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Mrs. Councilor requested the Children's Aid to take Donna into care so that she could return to Howard Ness in International Falls.

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G. W. Bryan

- GWB/cvg

000227



s.19(1)

MEMORANDUM

CLASSIFICATION

TO
A

YOUR FILE No.
Votre dossier

OUR FILE No.
Notre dossier

FROM
De

DATE

August 4th, 1965

FOLD

SUBJECT
Sujet

Border Crossing Regulations

The following persons were taken off the Royal American Shows train at International Falls, Minnesota on August 2, 1965, by American Immigration Authorities and returned to Canada:

Sam Edward Ward
Albert Jack Ward
Alfred Henry Ward
Paul Joseph Stamp

Enoch Band
Enoch Band
Enoch Band
Enoch Band

all are from the Edmonton Agency

Byearl Goforth
Raymond Thompson
William Gordon

Kahkewistahaw Band
Carry The Kettle Band
Pasqua Band

all are from File Hills Qu'Appelle Agency

The reason for not allowing them to cross the border into the United States was that they could not prove that they were over 51% Indian Blood.

Phone calls were made to the Edmonton Agency and File Hills Qu'Appelle Agency to ascertain the percent of Indian Blood for these seven men. Upon receiving confirmation of their status and blood quantum, letters were given to each one at the Fort Frances Agency stating they they were more than 51% Indian blood.

Considerable time and money was spent in straightening out this problem, not to mention the loss of wages suffered by the men involved.

G. W. Bryan

GWB/cvg

000228



MEMORANDUM

CLASSIFICATION

s.19(1)

TO
A

YOUR FILE No.
Votre dossier

OUR FILE No.
Notre dossier

FROM
De

DATE

August 4th, 1965

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G. W. Bryan

GWB/cvg

000229

c.e. Indian Commissioner for B.C.

1/3-3-11 (Ad.2)
HTV/mm

Ottawa 4, November 16, 1964.

Mr. H. L. G. Kelly,
2035 West 1st Avenue,
Suite 6,
Vancouver 9, B.C.

Dear Mr. Kelly:

I have your undated letter requesting a letter of identification to facilitate crossing the U.S.-Canada border.

The only official identification issued by this Department to persons of Indian status is the Certificate of Indian status, which I note you have already obtained. As far as I am aware, these certificates have always been accepted at border-crossing points and I know of no case where persons of Indian status have experienced any difficulty in this regard.

It may well be that the U.S. Consul to whom you spoke did not know that you were already in possession of a Certificate of Indian status. In emergencies, such as where there is insufficient time to issue a certificate, we have provided a letter of identification.

I suggest you again get in touch with the U.S. Consul informing him of the foregoing. In any event, I believe this letter may serve as sufficient identification of your status as an Indian and of your membership in the Skidegate Band of Indians.

Yours sincerely,

Original Signed by
R. F. BATTLE

R. F. Battle,
Assistant Deputy Minister
(Indian Affairs).

1/3 - 3 - 14

NOTED B.
A.D.M.

2035 West 1st Ave.

Suite 6.

Vancouver 9, B.C.

Director:

Dept. of Indian Affairs.

s.19(1)

Ottawa, Ont.

Dear Sir:

AD.

My name is Horace L.G.Kelly, I am the youngest son of Rev. Dr. Peter R. and Mrs. Kelly of 33 Acacia St. Nanaimo, B.C. I am No. [REDACTED] of the Skidegate Band of the Queen Charlotte Islands. My certificate of Indian Status No. (plasticised) is 7503. My brother is a superintendent in your department at ST. PAUL, Alta. - T.R.Kelly (Reg). Enclosed you will find a small snapshot of me.

I am a T.V. actor and I want to cross the U.S. border at will. In order to do that the U.S. Consul here tells me that I need a letter from an official source that I am an Indian. This letter would give me border entry ~~at any~~ any time all the time. I do not want to take residence in the U.S. I had planned to leave here on the 20th of Nov. and do hope that I can still do so with your assistance.

I would appreciate if you could expedite this matter with all possible speed,

Sincerely,

Kelly

H.L.G.Kelly

Ottawa 4,
30 October, 1964.

1/3-3414(M)

Mrs. James F. Maracle,
Shannonville Post Office,
Ontario.

Dear Mrs. Maracle:

I wish to acknowledge your letter of October 6 enquiring
as to whether you have been registered in our books.

According to the Registered Indian Record you are registered
under No. 757 Mohawks of the Bay of Quinte Band, Tyendinaga
Indian Agency. Your date of birth is shown as February 24,
1900.

Our office does not issue birth certificates, and if you
require one I suggest that you write to the Deputy Registrar
General, 70 Lombard Street, Toronto, Ontario.

I trust this is the information you require.

Yours very truly,

ORIGINAL SIGNED BY
H. H. CHAPMAN

H.H. Chapman,
Registrar.

HHC/mlm

Shannonville P.O.

Oct 6th/64

Dear Sirs.

1/3-3-19

I am writing in regards
to a ~~birth~~ birth certificate
I would like to know if you
have me registered in your
books down there.

My Maiden Name was

Mary Ellen Brent

My Mother's Name was Lucy Brent
I was believed born in 1980
Nineteen hundred.

I would like an answer at
your earliest convenience.

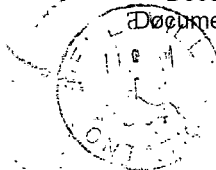
I remain Sincerely.

Mrs James F. Maracle.

Shannonville P.O.

Ont.

Document disclosed under the Access to Information Act
Document divulgué en vertu de la Loi sur l'accès à l'information



Birth Registration Office
Indian Affairs Branch
Ottawa
Can.

000234

RE = MRS JAMES F. MARBLE

Document disclosed under the Access to Information Act
Document divulgué en vertu de la Loi sur l'accès à l'information

SHANNONVILLE PO

ONT

000235

c.c. Superintendent, Caughnawaga Indian Agency

c.c. 1/3-3-14
5/29-1 (Adm.2)
HTV/mm

P.A.

Ottawa 4, July 16, 1964.

Mrs. Adelaide Burns Layman,
Legal Counsel,
Oakland County Bureau of Social Aid,
Department of Social Welfare,
1200 N. Telegraph Rd.,
Pontiac, Michigan,
U. S. A.

Dear Mrs. Layman:

Your letter of June 11, 1964, concerning Angus and Mary Ann Delorimer addressed to the Superintendent of the Caughnawaga Indian Agency, has been referred to me for attention and reply.

Apparently these two people left the Caughnawaga Indian Reserve many years ago and are actually no longer registered as members of the Caughnawaga Indian Band. Even if they were of Canadian Indian status, I doubt that this would exempt them from payment of city, county and state real estate taxes in the State of Michigan.

It seems to me that this is a matter which can only be resolved in accordance with United States laws and it is my view that the Delorimers are in the same position as other Canadian citizens residing in your community. In Canada, except for the special provisions of the Indian Act, persons of Indian status are subject to federal, provincial and municipal laws in the same manner as other Canadian citizens. Indians may sue and be sued and may enter freely into contractual obligations in ordinary business transactions. However, their real and personal property held on a reserve is normally exempt from taxation and legal seizure except by another Indian.

We are not familiar with the case cited by Mr. Delorimer which is being dealt with by the United States Federal Court in Buffalo.

- 2 -

However, the statement by Mr. Delorimer that he is a ward of the Canadian Government by virtue of the Treaty of Ghent is not correct. Indians are not wards of the Federal Government but are citizens and with the exceptions previously noted subject to Canadian laws.

I hope the foregoing information will be of assistance to you in dealing with the Delorimers' case.

Yours sincerely,

Original Signed by
R. F. BATTLE

R. F. Battle,
Director.

Ottawa 4, July 9, 1964.

1/3-3-14 (Adm.1B)

Mr. Dennis H. Delorme,
Box 632,
Lac Du Bonnet, Manitoba.

Dear Mr. Delorme:

I acknowledge receipt of your recent request for information concerning the possibility of working in the United States.

The United States Government grants border-crossing privileges to persons of Indian status. For the purpose of identification, it would be advisable to have a Certificate of Indian Status. This may be obtained through your Agency Superintendent.

Yours sincerely,



H. T. Vergette,
for Senior Administrative Officer.

WGD/mm





FALSE DOCKET SLIP

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.

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 Central Registry. 000239

Mr. D. H. Delorme

Box # 632

Las Due Bonnet

Man., Canada.

Adm

Dept. of Citizenship.
& Immigration
Ottawa, Canada.

Dear Sir:

Would you be so
kind as to send me some
information. what would I have
to do if I wanted to go and
work in the U.S.A. would I need
a Visa or a special permit.

I am from the Cowessess
Band # 73, Crooked Lake Agency
age. [REDACTED], Birth [REDACTED]
married, Treaty Number =

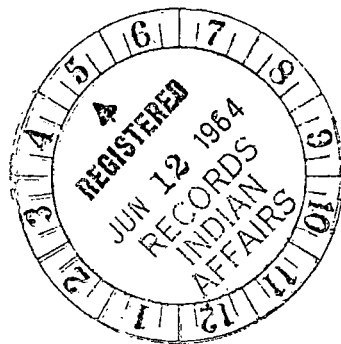
s.19(1)

Yours Truly

Dennis H. Delorme

000240

m 4/6



c.c. 1/3-3-14

1/1-10-9 (Adm.1)
JDD/mm

Ottawa 4, June 29, 1964.

Rev. Andrew C. Maracle,
Box 365,
Hogansburg, New York,
U. S. A.

Dear Mr. Maracle:

I am now able to advise you on the basis of information transmitted by the Department of External Affairs that your son, Brant Joseph Maracle, is, in the view of the Deputy Director of the United States Selective Service, subject to the United States Selective Service as an American citizen by birth.

We have been further advised that your son would also be subject to the United States Selective Service if he had been born in Canada and was a permanent resident of the United States.

Apparently the attitude of the United States Selective Service is not to compel your son to serve and they suggest that if he is considered a Canadian citizen and wishes to renounce his United States citizenship and live on the Canadian side of the border, no further action will be taken by them. On the other hand, if he is under "call up" and returned to the United States at any time, he would be subject to legal action.

We have been informed by the Registrar of Canadian Citizenship that if a person born in the United States was a minor on January 1, 1947, he will be a Canadian citizen if he was, or is, domiciled in Canada on his 24th birthday or if he has filed a declaration of retention. Under the circumstances I would recommend that if your son wishes to

. . . 2

- 2 -

retain Canadian citizenship he file a declaration of retention with the Registrar of Canadian Citizenship, Department of Citizenship and Immigration, Ottawa, before his 24th birthday which I believe is on July 31 next.


I trust this information will prove helpful.

Yours sincerely,

Original Signed by
R. F. BATTLE

R. F. Battle,
Director.

Senior Administrative Officer

P.A. 
C.C. 1/3-3-14
1/1-10-9 (Adm.1)

Adm.1

June 24, 1964.

Rev. Andrew G. Maracle,
Brant Joseph Maracle,
Re: Liability to the United States Selective Service

Mr. Brisson of External Affairs called this morning about the above-noted case and said that they had received a letter from the Canadian Embassy in Washington referring to an Embassy communication of January 16, 1963 in the case.

I checked our files and found we have a copy of this communication on 1/3-3-14 (Jay Treaty and International Border Privileges). The communication outlines the United States' position which is that Brant Maracle "is subject to United States Selective Service as an American citizen by birth" and that "he would also be subject to Selective Service if he had been born in Canada and was a permanent resident of the U.S.A."

It seems clear from this that Canadian Indians are subject to United States Selective Service laws when living in the United States in the same way as others.


J. D. Darling.

JDD/em

REGISTERED MAIL

Ottawa 4, June 18, 1964.

1/3-3-14 (M.2)

C.C.24/3-3-2

C.C.8024-3

Mr. Jack Anderson,
10 Montrose Avenue,
TORONTO 3,
Ontario.

Dear Mr. Anderson:

I wish to acknowledge your letter of May 26 requesting information concerning your father Hiram John Anderson.

Our records show that Hiram Anderson and his wife Evelyn Victoria May, residents of the City of Toronto, Ontario, were both registered as members of the Rama Band of Indians in the Province of Ontario when they were enfranchised on June 24, 1929.

The Birth Certificate forwarded together with your letter indicates that you were born to Mr. and Mrs. Hiram Anderson more than nine years after they were enfranchised. The Certificate of Birth is returned and I trust the information concerning Mr. and Mrs. Hiram Anderson may be of some assistance to you.

No doubt by this time you have heard from the Citizenship Registration Branch of this Department with regard to the right to return to Canada after your proposed lengthy absence.

Yours very truly,



for H. H. Chapman,
Registrar.

FOEG/ERJ

2.00.



CANADA

DEPARTMENT OF CITIZENSHIP AND IMMIGRATION
INDIAN AFFAIRS BRANCH

FALSE DOCKET SLIP

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.

SLIP NO.

FILE NO.

1/3-3-14

SUBJECT OF FILE

MAIN FILE ON CHARGE TO

m 4/6

REFERENCE

DISPOSAL

REFERRED TO	BY	REMARKS	DATE	PA OF BF	BY	DATE	FOR C.R. USE
Bdm	4		12/6/64	PA	Bdm	15/6	

NOTE: If action cannot be taken without the file, please make statement to that effect and return paper to Central Registry. 000246

c.c. Director of Indian Affairs

OFFICE OF THE DIRECTOR

BUREAU DU DIRECTEUR

IMMIGRATION BRANCH

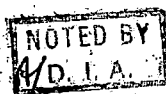


CANADA

DIVISION DE L'IMMIGRATION

DEPARTMENT OF CITIZENSHIP AND IMMIGRATION

MINISTÈRE DE LA CITOYENNETÉ ET DE L'IMMIGRATION



Adm

OUR FILE NO.
Notre dossier n°

554-16-2

OTTAWA 4, June 9, 1964.

MEMORANDUM TO THE DEPUTY MINISTER

**SUBJECT: Minister's invitation to the Annual
Border Crossing of North American
Indians at Niagara Falls and possible
embarrassment by Wallace "Mad Bear"
Anderson.**

The Minister has recently received an invitation from the Indian Defense League of America to be guest of honor at their Annual Border Crossing celebration to be held in Niagara Falls, New York on July 18. This is an annual event intended to mark the right of unmolested passage across the border for Indians as stipulated in the Jay Treaty of 1794. Incidentally, in accordance with the Supreme Court of Canada judgement in 1956, Canada does not recognize the existing validity of the Jay Treaty, whereas the United States does. This point has led to considerable correspondence between the Department and the Indian Defense League of America and other persons similarly interested in the rights supposedly in perpetuity, accorded Indians by this Treaty.

Last July, Mr. John Munro, Parliamentary Secretary to the then Minister, attended as guest of honor this Annual celebration. The crossing is made from Canadian to the American side of Niagara Falls by a procession of automobiles. At the commencement of last year's activities an incident took place involving a United States citizen, who was also a North American Indian, who was previously deported from Canada because of his criminal record. This person is known as Wallace "Mad Bear" Anderson, and he has a reputation as an agitator and troublemaker, and it is feared that if the Minister accepts the invitation of the Indian Defense League to attend this year's celebrations, Anderson may seize on the opportunity to create a further

..2.

- 2 -

disturbance in order to attract publicity and cause embarrassment to the Minister. Anderson is not a member of the Indian Defense League of America and they condemn his actions.

Anderson contends that under the terms of Article III of the Jay Treaty, he has unrestricted rights to enter Canada and our deportation order against him is a violation of his right. This we cannot accept for obvious reasons. During last year's incident, Anderson joined the official parade in the manner of a gate-crasher and refused to comply with the proper request of our Immigration officers, in addition to which he and four followers displayed signs stating that the parade was a mockery and that Canada does not recognize the Jay Treaty.

I am apprehensive about the Minister accepting this invitation, lest Anderson and others like him slip through our inspection and attempt to use the opportunity to harass or embarrass the Minister, particularly over the familiar matter of our not recognizing the Jay Treaty.

*Minister to see
C.M.I.
10-6-64*

RECORDED
JUN 10 1964
ORIGINAL SIGNED BY
R. B. CURRY

R. B. Curry,
Assistant Deputy Minister
(Immigration)



Tue 26 1964

Mr. J. D. Darling

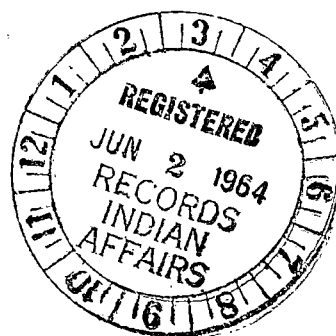
218893

8024-3

I have found out what I need to know. I can not understand how you could not find my father's name in your files. maybe this should help you. Thomas Anderson No. [redacted] chippewas of Rama band who was enfranchised April 19, 1932 Thomas Anderson is the son of John Anderson No. [redacted] Rice lake band. In 1923 Christopher married and took his own number [redacted] Rice lake band. In 1924 he transferred to No. [redacted] Rama band. In 1925 John Anderson transferred to No. [redacted] Rama band. In 1928 Hiram Anderson married and took his own number [redacted] Chippewas of Rama band. Ryerson Anderson took his own number [redacted] Rama Band. Howard Anderson took his own number [redacted] Rama band.

s.19(1)

000250



... And Thomas Anderson
took his own number [REDACTED] Rama
band. The file No. you should
look up is 24/3-3-2 (M)
and the man that should know
is H. H. Chapman Registrar.

s.19(1)

The main thing is I want to
make my home in the United States,
and that means I have to work
there. But the Immigration officer
told me I could not work in the
United States I am sending a proof
of my birth certificate. So I would
like to know what to do, and
what I would need to live in
United States. So I would not
have any trouble with the police
or Immigration officers. I ~~not~~ would
like to know before June or the ending
of June if possible.

Yours Truly
Jack Anderson

Page 253

**is withheld pursuant to section
est retenue en vertu de l'article**

19(1)

**of the Access to Information Act
de la Loi sur l'accès à l'information**

Ottawa 4, May 13, 1964.

1/3-3-1/4 (Adm.1)

Mr. Jack Anderson,
10 Montrose Avenue,
Toronto 3, Ontario.

Dear Mr. Anderson:

I refer to your letter of April 27 in which you request identification papers to assist you in obtaining entry into the United States and in which you request information concerning your right to return to Canada following a lengthy absence.

We apparently have no record on our files of a John Miram Anderson who belonged to the Chippewas of Rama Band and we are therefore unable to provide you with the identification you request. If you would care to write to us again giving us the birth date or approximate age of your father, your mother's name, your father's and your mother's date of marriage, the names of your grandparents and the bands in which these people may have been registered, we will go through our records again to see whether we can help you in any way.

With regard to the question of your right to return to Canada after a lengthy absence, I am referring your letter to the Citizenship Registration Branch of this Department for their attention and direct reply to you.

Yours sincerely,

9.00
J. D. Darling,
for Senior Administrative Officer.

JDA/cm

Registrar, Citizenship Registration Branch

1/3-3-14 (Adm.1)

for Senior Administrative Officer

May 13, 1964.

Inquiry from Mr. Jack Anderson,
10 Montrose Avenue, Toronto 3.

I attach herewith a photocopy of a letter received by this Administration from Mr. Jack Hiram Anderson of Toronto concerning his wish to work in the United States.

We have written to Mr. Anderson regarding the question of his identification and I attach herewith for your information a copy of our reply to him.

With regard to his question concerning his right to return to Canada following a lengthy absence in the United States, I would ask that you provide him with the information he requires.

J. D. Darling.

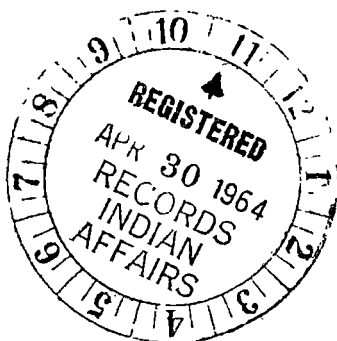
JDD/mm

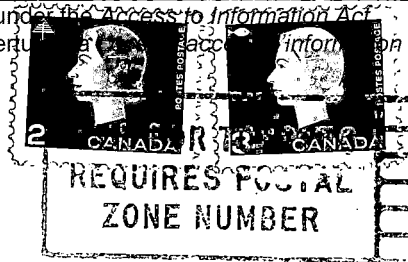
No record of John Hiram
Anderson in Chippewas of Rama
Bands. Birth date or approx. age?
Mother's name? Date of marriage?
Grandparents' names? Bands in
which they may have been registered?

I would like working papers or a visa, so I can work in the United states. I am Indian decent. My father was born on Rama reserve. His name is John Hiram Anderson. I was not born on the reserve. My name is the same as my dad's, it is Jack Hiram Anderson ~~the~~ age 25 years old.

address 10. Montrose Ave Toronto
3 Ont. And I would like to know, when I live in the United states a very long time, can I come back to Toronto to live again?

Thank you very much.





Minister of Indian
Affairs Ottawa

000259

(Sender)

Jack Anderson

10 Montrose Ave
Toronto 3, Ont

000260

OFFICE OF THE DEPUTY MINISTER

DEPARTMENT OF CITIZENSHIP AND IMMIGRATION

DATE 23-10-63

TO:

- ☐ MINISTER
☐ ASSISTANT TO DEPUTY MINISTER
☐ DIRECTOR OF IMMIGRATION
☒ DIRECTOR OF INDIAN AFFAIRS
☐ DIRECTOR OF CANADIAN CITIZENSHIP
☐ REGISTRAR OF CANADIAN CITIZENSHIP
☐ DIRECTOR OF ADMINISTRATIVE SERVICES
☐ DIRECTOR OF INSPECTION SERVICES
☐ DIRECTOR OF RESEARCH
☐ DIRECTOR OF INFORMATION SERVICES
☐ DIRECTOR OF PERSONNEL DIVISION
☐ LEGAL DIVISION
☐

ACTION:

- ☐ FOR ACTION
☐ FOR DIRECT REPLY
☐ FOR REPLY AND SIGNATURE ON D.M.'S BEHALF
☐ FOR PREPARATION OF REPLY
1. ☐ FOR D.M.'S SIGNATURE
2. ☐ FOR ASSISTANT TO D.M.'S SIGNATURE
3. ☐ FOR EXECUTIVE ASSISTANT'S SIGNATURE
- ☐ FOR REPORT OR COMMENTS
☐ FOR DISCUSSION WITH UNDERSIGNED
☒ FOR INFORMATION
☐ TO NOTE AND RETURN
☐ TO NOTE AND PASS TO
☐

REMARKS:

a useful memorandum.

Adm
This memo
or the number to
it would usefully
be circulated to
staff & be included
in the Policy
Manual.
Y.

PA-1/3-3-14

OPERATIONS MEMORANDUM
TO ALL IMMIGRATION OFFICERS

No: 80

August 9, 1963

Subject: Admission of United States Indians

1. In recent months there have been several cases in which representations have been made on behalf of Indians from the U.S.A., who had been denied admission to Canada. In at least one instance, the Indian in question had previously been ordered deported.

2. Representations received have sometimes made reference to the Jay Treaty of 1794 and to the Treaty of Ghent, of 1815, as permitting the free movement of all North American Indians across the International Boundary. It is therefore considered advisable to inform all officers of the provisions of the treaties mentioned, in order that they will have no doubt regarding action to be taken on such cases.

3. The Treaty of Amity, Commerce and Navigation between His Britannic Majesty and the United States of America, signed on November 19, 1794, and generally known as the Jay Treaty, was not a treaty between Canada and the Indians, but was a treaty between the United States and Great Britain. Article 3 of the Treaty (the section usually quoted in support of the arguments mentioned above) stipulated that:

"No Duty on 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".

With the outbreak of the War of 1812, the United States considered the Jay Treaty abrogated.

4. The contention has also been put forward that the provisions of Article 3 of the Jay Treaty were restored by the 9th Article of the Treaty of Ghent, 1815, which reads as follows:

Operations Memorandum No. 80 (con.)

- 2 -

"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".

5. However, in 1956, the Supreme Court of Canada found that Article 3 of the Jay Treaty and Article 9 of the Treaty of Ghent are not applicable in this country since they have not been implemented or sanctioned by legislation. Decisions by the Supreme Court of Canada are final and conclusive and are not subject to amendment either by judiciary or executive branches of the Government.

6. (M) While the United States has, for some years, permitted Canadian Indians free access to that country, there are no special provisions under Canadian legislative or administrative practice, with regard to the border crossing of U. S. Indians. Such persons are in the same position as other U. S. citizens when applying for admission to Canada and must comply with the applicable requirements.

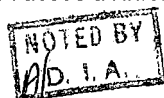
BHQ file: 554-16

J. P. House

for A/Chief of Operations.

Oct 23 12 06 PM '69

316120



OFFICE OF THE DEPUTY MINISTER

DEPARTMENT OF CITIZENSHIP AND IMMIGRATION

TO:

DATE

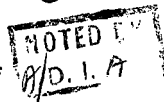
April 22 1964

1/3-3-14

- ☐ MINISTER
- ☒ DIRECTOR OF IMMIGRATION
- ☒ DIRECTOR OF INDIAN AFFAIRS
- ☐ DIRECTOR OF CANADIAN CITIZENSHIP
- ☐ REGISTRAR OF CANADIAN CITIZENSHIP
- ☐ DIRECTOR OF INFORMATION SERVICES
- ☐ DIRECTOR OF PERSONNEL DIVISION
- ☐ LEGAL DIVISION

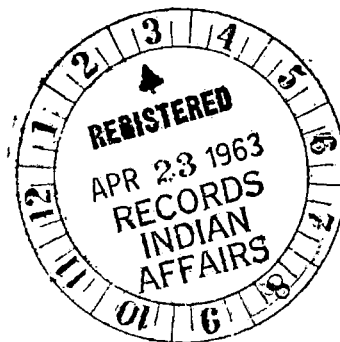
ACTION:

- ☐ FOR ACTION
- ☐ FOR DIRECT REPLY
- ☐ FOR REPLY AND SIGNATURE ON D.M.'S BEHALF
- ☐ FOR PREPARATION OF REPLY
 - 1. ☐ FOR D.M.'S SIGNATURE
 - 2. ☐ FOR ASSISTANT TO D.M.'S SIGNATURE
 - 3. ☐ FOR EXECUTIVE ASSISTANT'S SIGNATURE
- ☐ FOR REPORT OR COMMENTS
- ☐ FOR DISCUSSION WITH UNDERSIGNED
- ☒ FOR INFORMATION
- ☐ TO NOTE AND RETURN
- ☐ TO NOTE AND PASS TO



REMARKS:

H. M. JONES



DEPARTMENT OF EXTERNAL AFFAIRS

REFERENCE SLIP

000367

SECURITY

UNCLAS.

Ottawa, April 18, 1963.

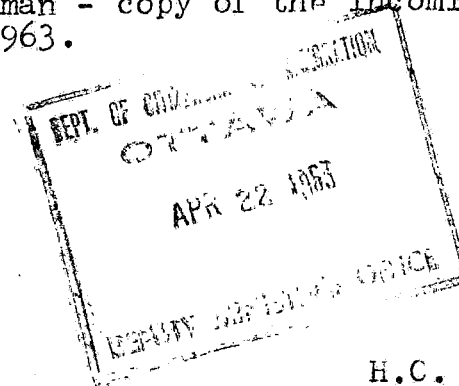
To: The Deputy Minister,
Department of Citizenship and Immigration,
Ottawa, Ont.

APR 22 6 36 AM '63
CITIZENSHIP & IMMIGRATION
OTTAWA

The documents described below are attached for your information:

copy of a letter dated April 18, 1963 to Mrs. L.G. Stillman - copy of the incoming letter dated March 27, 1963.

Also referred to:



H.C. KINGSTON

FOR THE

Under-Secretary of State
for External Affairs

Ottawa, April 18, 1963.

Dear Mrs. Stillman,

The Minister of Justice referred to me your letter of March 27, 1962 concerning Jay's Treaty of 1794. It is noted that you have already written in the same sense to President Kennedy.

In the context in which it is raised, your question calls for an appreciation of law and facts, and I regret, therefore, to have to inform you that it is not considered appropriate for this Department to give legal opinions in such cases.

Yours sincerely,

JH "M. H. Werelof"
Under-Secretary of State
for External Affairs.

Mrs. L.G. Stillman,
6 Frear Ave.,
Troy, N.Y.,
U.S.A.

March 27, 1963

The Honorable Donald M. Fleming
Minister of Justice and Attorney General,
Government House,
Ottawa, Canada.

Honorable Sir:

I have written the President of the United States, the Honorable John F. Kennedy, requesting information relative to the status of Jay's treaty of 1794 by and between Great Britain and the United States.

Unless it has been properly and publicly abrogated, the Canadian Immigration authorities, at Rainbow Bridge, had no legal right to prevent "Indians" visiting Brantford Reservation on Sunday morning, March 24 as reported in the Courier-Express-Niagara Bureau, Niagara Falls on March 28, 1963.

Article III of that treaty grants the "Indians" freely to pass and repass the boundary line.

Do you have a record proving that the context of that treaty has been voided?

Respectfully submitted,

Mrs. L.G. Stillman,
6 Frear Ave.,
Troy, N. Y.--USA

0 2 7 0 4 4

APR 23 11 33 AM '63

INDIAN AFFAIRS

17/11 → 1/3-3-14 (Adm.1)

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

Ottawa 4, January 30, 1963.

ATTENTION: Mr. J. A. Donald

I refer to the telephone conversation of January 25 between Miss Kilsby of your Consular Division and Mr. O'Donnell of this Branch concerning Brant J. Maracle, a Canadian Indian, who has been called up for Selective Service in the United States.

In regard thereto I have to confirm that in our view Mr. Maracle would be in the same position with respect to the Selective Service law of the United States as any other Canadian citizen resident in that country.

I also have to confirm that the Jay Treaty to which Mr. Maracle's father has referred has not been sanctioned by Canadian legislation and would not in our opinion have any bearing on the attitude of Canada toward Mr. Maracle's case.

For your information regarding the nature of the Jay Treaty I enclose herewith a paper on the subject prepared by this Branch.

Yours sincerely,



Eric Acland,
Senior Administrative Officer.

JDD/mn

Jay Treaty file

confirm conversation
by memo to

Miss Kilsby - 2-5460

Cooper

000271



DEPARTMENT OF EXTERNAL AFFAIRS
CANADA

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

OTTAWA, January 25, 1963.

Quoting File No. 709-40

Administrative Services,
Indian Affairs Branch,
Department of Citizenship & Immigration,
OTTAWA.

Attention: Mr. O'Donnell

I refer to a telephone conversation today between Miss Kilsby of our Consular Division and Mr. O'Donnell of your Branch concerning Brant J. Maracle, a Canadian Indian, who has been called up for Selective Service in the United States.

I enclose a copy of a letter dated January 16, 1963, received from our Embassy in Washington outlining the circumstances of the case and asking for advice. As you will note, there is some urgency about the matter as the United States authorities have deferred the case, at our Embassy's request, for two weeks (i.e. until January 30, 1963).

It would be appreciated, therefore, if you would let Miss Kilsby at 2-5460 know by telephone, and confirm by letter, what reply we might make to our Embassy in Washington.

*Information Telephoned to
Ext. Affairs that Maracle is
the same as any other Can.*

*Citizen insofar as call up for
American Selective Service is concerned.
no legality in deferring him.*

Donald
Under-Secretary of State
for External Affairs

*"Jay" Treaty has
J. O'Donnell 28/1/63*

DEPARTMENT OF EXTERNAL AFFAIRS, CANADA

(DUPLICATE)

NUMBERED LETTER

DUPLICATE

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

Security: UNCLASSIFIED

No: 84

Date: January 16, 1963

Enclosures: 1

Air or Surface Mail: Courier

Post File No:

FROM: The Canadian Embassy,
Washington, D.C.
Reference: None
Subject: U.S. Selective Service - Brant J.
Maracle

Ottawa File No.	

References

Andrew C. Maracle (1012 Mohawks, Bay of Quinte) recently called on us regarding the U.S. Selective Service of his son Brant J. Maracle. Andrew C. Maracle is a pastor of a religious group known as "The Assembly of God". His postal address is Box 365, Hogansburg, N.Y. Mr. Maracle was of the opinion that his son would not be subject to Service in the U.S. forces in view of his Indian status and The Jay Treaty.

2. Brant J. Maracle holds Certificate of Indian Status No. 43795 (1452 Mohawks, Bay of Quinte Reserve) issued by the Department of Citizenship and Immigration, Ottawa. He was born at Rochester, New York on 31 July 1940. Brant was to report for medical examination for service at Selective Service Board No. 41, P.O. Building, Malone, N.Y., before 15 January 1963. You will see from the attached letter to Brant's father that we were successful in obtaining a deferment.

3. We reviewed with the Deputy Director of Selective Service to-day Brant's Selective Service file. The file indicates that Brant has been deferred on three occasions. First when attending High School and two successive years when attending a divinity school (Andrew Maracle mentioned at the time of his visit that his son wished to be a pastor). The file also contains a letter from Brant to Selective Service written from Cornwall wherein he states he is a Canadian Indian and returning the U.S. registration for service form uncompleted. This letter is dated subsequent to the three deferments mentioned above. We assume Brant subsequently returned to Hogansburg and as he is not now a student he has been asked to report for Selective Service.

Internal
Circulation

Distribution
to Posts

...2

-2-

4. The Deputy Director of Selective Service is of the opinion that Brant is subject to U.S. Selective Service as an American citizen by birth. He would also be subject to Selective Service if he had been born in Canada and was a permanent resident of the U.S.A. A Federal Court in the State of New York has so ruled in another case in which The Jay Treaty was mentioned.

5. The attitude of the Selective Service is not to compel Brant to serve and suggest that if he is considered a Canadian citizen and wishes to renounce his U.S. Citizenship and live on the Canadian side of the border no further action will be taken by the U.S. Selective Service. On the other hand if he is under "call up" and returned to the U.S.A. at any time he would be subject to legal action.

6. It would be appreciated if you would discuss this case with the Indian Affairs Branch of the Department of Citizenship and Immigration. Possibly previous cases are known to them. We wish to advise Andrew C. Maracle further and to let the Deputy Director of Selective Service know the opinion of the Canadian authorities. The Deputy Director has agreed to hold the Malone, N.Y. file here in Washington for two weeks in the hope that we will have a further meeting with him. Your early advice would be appreciated.

H. B. STEWART

The Embassy

1746 Massachusetts Ave., N.W.,
Washington 6, D.C.,
January 10, 1963.

P

Y

Reverend Sir,

You will recall that at the time of your recent visit I advised that I would discuss with the U.S. authorities the Selective Service call of your son Brant J.

I called on Colonel Omer, Deputy Director of Selective Service here in Washington. Colonel Omer advised that he would get in touch with the Local Board at Malone, N.Y. asking that Brant's call be deferred and at the same time requesting particulars from the Malone file. At a later date Colonel Omer will get in touch with me again and I will advise you further.

I gathered from my conversation that if Brant was on a reserve and not gainfully employed in the U.S. economy it would be doubtful if he would be "called up".

I will be writing shortly with more complete information.

Yours truly,

Sgd. H. B. Stewart,
Consul

Rev. Andrew C. Maracle,
Box 365,
HOGANSBURG, N.Y.

Regional Supervisor - Toronto

86/1-11

PA → 1/3-3-11(Adm.1)

Senior Administrative Officer

July 3, 1962

Jay Treaty

This will refer to your 86/1-11 of June 28, 1962 in which you request a copy of the Jay Treaty and information regarding the case of Louis Francis vs Her Majesty.

Copies of the Jay Treaty and the judgement on the above noted case are not available for distribution from this Administration. However, I am pleased to attach herewith information respecting the Jay Treaty which I think will provide you with the information you require.

JDD/o'c


Eric Acland.

Encl.

13-2-14
CLASSIFICATION



MEMORANDUM

TO
A

Indian Affairs Branch, Ottawa

YOUR FILE No.
Votre dossier

Adm 1

OUR FILE No.
Notre dossier

86/1-11

FROM
De

DATE

June 28, 1962

Regional Supervisor, Toronto

FOLD

SUBJECT
Sujet

We would appreciate if you could provide this office with a copy of the Jay Treaty.

We would also appreciate if you would obtain for us the ruling of the case of Louis Francis vs The Crown - the case being held around the year 1955. It was a matter in which Louis Francis had brought over goods from United States being charged duty, and the St. Regis Indian Band took the case to court.

PM:rmc

T. L. Bonnah
T. L. Bonnah

JUN 29 10 54 AM '62

010619

FILE NO. 1/3-3-14

— INDIAN AFFAIRS BRANCH —

DEPARTMENT OF CITIZENSHIP AND IMMIGRATION

SUBJECT

MEMBERSHIP

STATUS OF INDIANS

JAY TREATY

INTERNATIONAL BORDER PRIVILEGES

VOLUME

3

FROM

TO

REFERENCE				DISPOSAL			
REFERRED TO	Br	REMARKS	DATE	PA OR BF	Br	Date	For C.R. Use
Adm	9	027044	23/4/63	PA	Adm	23/4/63	APR 24 1
Adm	26	Request	23-7-63	PA	Adm	23/7	JUL 24 5
Adm	5	Returned to Minister's Office 066779	30/9/63	PA	Adm	1/10	1-10-3
Adm	5	021544	16/1/64	PA	Adm	1-64	
Adm	17		2-7-2-64	PA	Adm	2-3-64	
Adm	20		30-4-64	PA	Adm	13-5-64	
Adm B	16	Req.	3/6/64	PA	Adm B	4/6/64	
CRA	Adm B		3/6/64	PA	CRA	4/6/64	
M	CRA		4/6/64	PA	M	18/6/64	JUL 7 13
Adm 1	8	Request	24/6/64	PA	Adm 1	20/6/64	JUL 2 19
Adm B	15	Req.	7-7-64	PA	Adm B	7/7/64	JUL 8 19
Adm 2	6	Request	15/7/64	PA	Adm 2	15/7/64	JUL 15 19
M	13		8/10/64	PA	M	30/10/64	2/11/64
Ad 2	19		20-11-64	PA	Ad 2	23/1/64	24-11-64
Ad 10	14	Request	16-12-64	PA	Ad 10	16/12/64	
Sec 1	+	Req.	28/4/65	PA	Sec 1	29/4/65	
Sec 1	Rm	Request	14/5/65	PA	Sec 1	14/5/65	17/5/65
Prof 1	12	Req.	7-9-65	PA	Prof 1	14/9/65	
A 2	10	6919	21-10-65	PA	A 2	28/10/65	
A 2	12	Req.	10-11-65	PA	A 2	15/11/65	
AM 3	12	17211 (trans to 8009-57)	18-11-65	PA	AM 3	14/12/65	12
A 1	10	32471	30-12-65	PA	A 1	7/1/66	
A 1	25	52921	1-3-66	PA	A 1	22/4/66	
A 8	7	Req.	9/5/66	PA	A 8	23/6/66	
A 1	10	29793	18-7-66	PA	A 1	28/7/66	
A 8	10	34706	3-8-66	PA	A 8	3/8/66	
AM	A 8	34706	3-8-66	PA	AM	31/8/66	

DO NOT WRITE BELOW THIS LINE

ACR 23

N. Carver

CROSS REFERENCES

FILE NUMBER	SUBJECT
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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.

CLOSED
VOLUME

4

FILE NO. 1/3-3-14

See Vol.

— INDIAN AFFAIRS BRANCH —

VOLUME

SUBJECT

MEMBERSHIP
STATUS OF INDIANS
JAY TREATY
INTERNATIONAL BORDER PRIVILEGES

FROM

3

TO

FILE NO. 1/3-3-14 VOL. 3

REFERENCE				DISPOSAL			FOR C.R. Use
REFERRED To	By	REMARKS	DATE	PA OR BF	By	DATE	
P	16	Reg	8/10/66	PA	P	3/10/67	
A1	16	27362	5-1-67	PA	A1	6-1-67	
A1	16	29423	12-1-67	PA	A1	24-1-67	
A11	16	Reg	9-2-67	PA	A11	9-2-67	
A1	21	(Docket) 47130	9/3/67	PA	A11	21-3-67	
A153	9	Re	30/3/67	PA	A153	31-3-67	
A1	21	53121	3/4/67	PA	A1	26-4-67	
DR.8	A1	Request	26-4-67	PA	DR.8	27-4-67	
A1	21	13009	11/5/67	PA	A8	21-5-67	
A8	12	BF	24/5/67	PA	A8	30-6-67	
A9	21	Reg	23/6/67	PA	A9	25-6-67	
A8	29	BF PA 30/6/67	28/6/67	PA	A8	28-7-67	
P	A8	request	28/7/67	PA	P	28-7-67	
Legal M. P.		Reg	28/7/67	PA	Legal	22-8-67	
A8	10	Request	31-8-67	PA	A8	7/9/67	
A8	12	Reg	20/9/67	PA	A8	26/9/67	
SAT	12	01773	5/10/67	PA	A8	7-12-67	
A8	16	22331	11-12-67	PA	A9	12-12-67	
AM	A8	"	12-12-67	PA	A8		
EA	A8	Request	15-12-67	PA	EA	15-12-67	
A8	3	Reg	26/1/68	PA	A1/Hes	5-2-68	
P	16	Reg	9-2-68	PA	P	16-2-68	
AM6	16	Reg	16-5-68	PA	AM6	6/6/68	
Am3	3	Reg	8/8/68	PA	AM3	8/8/68	
A16	16	Reg	12-9-68	PA	A16	13/9/68	22
A2	22	Reg	2-12-68	PA	OP25	26/9/69	
ACR23	8	Cover					

CROSS REFERENCES

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