

New Brunswick Indians lose tax case in Supreme Court

OTTAWA-The Supreme Court of Canada settled a sometimes ugly, five-year squabble between New Brunswick and its status Indians on Thursday by ruling the province was within its rights to charge them sales tax.

The decision, which was being watched by several provinces, was denounced as a blow to native rights that will drive a further wedge between aboriginals and governments.

The high court ruled the New Brunswick government was not violating the Indian Act when it imposed an 11 per cent sales tax on off-reserve purchases five years ago as the province tried to balance its books.

The tax sparked angry demonstrations during Easter weekend in 1993 when riot squads were called in and dozens of protesters were arrested for blocking highways in the province.

Until then there was a blanket sales tax exemption of everything Indians bought, both on reserves and off.

The Supreme Court, overturning a decision from the New Brunswick Court of Appeal, ruled 5-2 that a section of the Indian Act exempting taxes for property on reserves does not apply to goods purchased off reserve and then taken home.

"In the case of a retail sale, the act of purchase, not the act of consumption, triggers liability for the sales tax," said Justice Beverley McLachlin, writing the majority opinion.

"It is largely irrelevant

how, why, where, when and by whom they are consumed once they are purchased at a retail sale within the province."

New Brunswick Finance Minister Edmond Blanchard said the decision is a moot point in the province, since the provincial sales tax was replaced last year with the federally administered and collected Blended Sales Tax of 15 per cent in three Atlantic provinces.

"It has a far greater impact on other jurisdictions than on New Brunswick," Blanchard said in Fredericton.

"I feel it's important that all governments have a sense of direction in knowing how the Indian Act applies."

The blended tax, a combination of PST and GST, isn't charged on reserves or for off-reserve purchases if the goods are delivered to the reserve, said a federal official.

That means there's a taxation hodgepodge in New Brunswick, where Indians would likely be exempt from tax for big-ticket items that can be delivered, but not on smaller, everyday goods such as drugstore toiletries or cleaning supplies.

The ruling will not change that, the federal official said.

Several other provinces, however, still charge PST on off-reserve purchases, including British Columbia and Manitoba, which intervened in the court case on New Brunswick's side.

Native leaders warned the court ruling will irritate

Indians' troubled relationship with governments.

"This decision highlights the government's segregationist attitude toward First Nations peoples in Canada," Phil Fontaine, grand chief of the Assembly of First Nations, said in a statement.

ØIn their view, we have rights when we accept to remain on the reserve but these disappear when we are off the reserve."

Two justices sided with the Union of New Brunswick Indians, the defendant in the case.

"Given the realities of reserve life in that province, and in particular the lack of on-reserve shopping facilities, restricting the tax exemption to shopping on reserves in New Brunswick means for all practical purposes that no exemption is available," wrote Justice Ian Binnie, the newest judge on the Supreme Court.

The court said it had no comment about the federal government levying the BST on off-reserve purchases.

Quebec Indian leader Ghislain Picard said the ruling was the second tax blow to natives in as many weeks.

"It's really going to put pressure on the chiefs to reaffirm our rights," he said in Quebec City.

Mohawks on the Kahnawake reserve on Montreal's South Shore have been threatening to set up toll barricades to protest an announcement by the Quebec government last week of new tobacco tax laws to combat the sale of tax-free cigarettes on reserves.-CP-