

No taxes rule at Indian Tea Party

By *Chris J. Kitchikesik-McLeod*

It is my understanding that normal Canadian citizens are provided for under Section 92 of the Constitution and that we as Indians had to be removed from there because of our indigenous status and because of this, the Treaties and the Royal Proclamation of 1763, we were removed from Section 92 and moved to Section 91(24).

Indians and the institutions that were recognized and through which/whom the treaties were made were pre-Indian Act so that the Indian Act Indian Band is an administration vehicle through which the Section 92 citizenship benefits flow. It makes sense because these benefits could not flow through Section 92 through the provinces, municipalities and school divisions. They had to flow through some vehicle and after the federal Indian Agent ran its course, the Indian Bands came to perform this function of administrative government.

However, and as alluded to in the Hawthorn Report of 1966, there is another institutional function of the the Band beyond the administrative and he was referring to the Pre-Indian Act Bands who signed treaties with Canada and Great Britain as bona fide government entities.

Now government entities are also covered specifically in the Constitution at Section 125 and Section 53. At Section 125 one level of government cannot tax another so Canada cannot tax the provinces or its institutions such as municipalities, school boards and their corporate entities, whether



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commercial or not.

Section 53 confirms this again and is similar to the rule in the Boston Tea Party demonstration of "No taxation without representation". In other words, if you are not allowed to vote by the Constitution, you are also not obligated to pay any taxes. In fact, the provinces are only allowed to tax for "provincial purposes". So, if they collect taxes from Indians and Indian bands, they are in breach of Section 53s and 92 because they cannot use such taxes for the benefit of Indians and Indian Bands. Finally, the Supreme Court of Canada confirmed the foregoing in the *Westbank v. BC Hydro* and so did the Manitoba Court of Appeal Case of *Otineka Mall* which was never appealed by Canada.

So, Canada and the Provinces do not have the Constitutional authority to tax individual Indians, Indian Bands and their corporate entities, commercial or not, because Indians and Indian Bands are Section 91(24) citizens and the Indian Bands and Indians come under Sections 125 and 53 of the Constitution.

These arguments may be more compelling than using Treaty Rights which are less understood and which rednecks hate.

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