Rice V. Canada (Attorney General), File No. 37077, Supreme Court of Canada, 22 December 2016

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The Supreme Court of Canada dismissed a leave application in regards to the 2016 order of the Québec Court of Appeal (2016 QCCA 666).

The appellants in this proceeding are status Indians who operate gasoline stations on the Kahnawake Reserve near Montréal. They claimed that they were exempt from the obligation to collect and remit taxes from the sale of gasoline. The Court of Appeal upheld a trial judgment that there was no "right to trade freely" based upon either section 35 of the Constitution Act, 1982 or the Royal Proclamation of 1763 . The Court of Appeal also agreed with the trial judge that section 87 of the Indian Act had no application, since the taxes were imposed on the customers, not merchants such as the appellants. The budget measures of the Québec government to administer these fuel taxes were not in relation to "Indians", and therefore ultra vires the provincial government, but were valid provincial laws. The doctrine of interjurisdictional immunity also had no application. The Court of Appeal decision was summarized in our e-Newsletter of 29 June 2016.

A summary of the case found on the Supreme Court of Canada's website was as follows:

Taxation ¯ Goods and services tax ¯ Fuel tax ¯ Aboriginal law ¯ Applicants are Status Indian, as defined in the Indian Act, R.S.C., 1985, c. I-5 ¯ Applicants assessed under Excise Tax Act, R.S.C. 1985, c. E-15, and An Act Respecting the Québec Sales Tax, CQLR c. T-0.1 for failure to collect and remit taxes from sales of gasoline to non-Indian consumers ¯ Whether the Royal Proclamation, 1763, an autonomous source of Aboriginal rights, grants Natives a right to free and open trade with all subjects of the Crown ¯ Whether Natives' right to free and open trade with all subjects of the Crown granted by the Royal Proclamation, 1763 is constitutionally protected ¯ Whether the tax compliance and administrative burdens uniquely placed upon Status -Indian merchants carrying on business within a reserve and trading with Natives and non-Natives are an infringement of their constitutional right to trade freely and openly with all subjects of the Crown ¯ Whether the Fuel Tax Act, CQLR c. T-1, the Excise Tax Act and the Québec

Sales Tax Act are inoperative insofar as they infringe on this right ¯ Whether the liabilities that applicants are made to bear under these statutes are contrary to the protections afforded them by ss. 87 to 90 of the Indiant Act ¯ Whether Status Indians carrying on business entirely within the protected confines of the reserve are meant to have an economic advantage resulting from the protections afforded them by ss. 87 to 90 of the Indian Act ¯ Whether the courts below misapplied the principles relevant to economic advantage put forth by this Court.

The applicants are Status Indians and members of the Mohawk Nation. They own gasoline stations on a reserve. The majority of gasoline consumers are not Indian, but they purchase gas on the reserve in order to save money because merchants are not collecting applicable taxes on gasoline. Unlike Status Indian consumers who live on the reserve, other consumers must pay the federal goods and services tax (GST) and Québec sales tax (QST) when they purchase gasoline. The applicants are required to collect and remit these taxes to Revenue Québec which collects and administers GST on behalf of Canada. The applicants pay neither GST nor QST when they purchase fuel from their suppliers, but they do pay fuel tax, which is compensated when a retail sale is made.

Québec's Minister of Revenue sought to assess the applicants for the sales taxes that should have been collected and remitted. In response, the applicants sought a declaration that, as Status Indians, they had no obligation to act as collection agents of the applicable taxes, and that certain provisions of the Indian Act, the Excise Tax Act, the Québec Sales Tax Act and the Fuel Tax Act be declared inapplicable to them. The applicants further argued that they had the right to trade freely, based on the Royal Proclamation, 1763, and an ancestral right within the meaning of s. 35 of the Constitution Act, 1982. They also challenged Québec's fuel tax exemption program designed to benefit Indians from the exemption to pay fuel taxes when purchasing gasoline on a reserve.

The Supreme Court of Canada dismissed the leave application with costs.

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