

Aboriginal Taxation, Treaty 8 and others

Aboriginal Taxation - Effect of Treaty 8, *Royal Proclamation on 1763*, and the *United Nations Declaration on the Rights of Indigenous Peoples*

Laboucan v The Queen, [2013 TCC 357](#)

The taxpayer, like others argued that income of aboriginal persons, whether on or off reserve, is exempt from taxation. Reliance was placed on Treaty 8, *The Royal Proclamation of 1763*, the *Charter of Rights and Freedoms*, the *United Nations Declaration on the Rights of Indigenous Peoples* and the Supreme Court of Canada mandated duty to consult on issues relating to the rights of native peoples.

The Crown brought a motion to strike on the basis of a lack of reasonable grounds of appeal and, in part, the remedy being outside of the TCC's jurisdiction. The court granted the motion.

The Court held:

- [Treaty 8](#) was found not to contain a tax exemption: see *Canada v. Benoit*, [2003 FCA 236](#); *Dumont v. The Queen*, [2005 TCC 790](#); *Tuccaro v. The Queen*, [2013 TCC 300](#); NOTE the FCA in *Tuccaro v The Queen*, [2014 FCA 184](#), determined that the FCA decision in Benoit has no presidential value as it was based on a finding of fact and not of law.
- The [Royal Proclamation of 1763](#) does not contain any income tax exemption other than those granted in treaties;
- The duty to consult is not something that the TCC has jurisdiction over; see *Haida Nation v. British Columbia (Minister of Forests)*, [2004 SCC 73](#); *Acadia Band v. M.N.R.*, [2007 FC 259](#);
- The duty to consult in relation to Income Tax assessments in accordance with the ITA does not require more than the CRA audit review and proposed reassessment procedure: see *Sackaney v. The Queen*, [2013 TCC 303](#); *Hester v. The Queen et al*, [2007 CanLII 52015](#), aff'd: *Hester v. Canada*, [2008 ONCA 634](#);
- The [United Nations Declaration on the Rights of Indigenous Peoples](#) has been signed by Canada but has not been ratified by the Canadian Parliament

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