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The appeal in the Ontario Court of Appeal of a stay of charges for Excise Tax evasion against Keith Maracle, the owner of Tyendinaga Propane has been withdrawn by the Canada Revenue Agency (CRA). On October 30, 2020 CRA's lawyers abandoned their appeal after receiving the legal argument from Mr. Maracle's defense counsel. The appeal was scheduled to be heard November 6, 2020.

The Canada Revenue Agency (CRA) announced charges against Maracle in 2017 after a lengthy investigation which lasted several years and included interviewing over 500 witnesses. CRA alleged Maracle had not reported sales or collected GST/HST from customers he sold to off the Tyendinaga Mohawk Territory. The offenses were said to have occurred from 2008 to 2013.

The CRA said it's investigation showed Maracle generated \$5.7 million in sales but did not remit approximately \$440,000 in GST/HST. From the beginning of CRA's investigation Maracle took the position that as an Indigenous person he was not a tax collector for the federal or provincial government and that he possessed Indigenous and treaty rights. Maracle also relied on a by law passed by the Tyendenaga Band Council in 1980 that purported to absolve Community members from collecting taxes. Based on his Indigenous rights and the Community by law, Maracle did not collect or remit GST/HST.

CRA elected to proceed by indictment even though Maracle did not charge his customers with GST or HST nor did he collect GST or HST from them. In 2017 Maracle plead guilty and admitted that he did not collect or remit Excise tax but did so because of his Indigenous rights and the Community by law that absolved him from collecting and remitting taxes. On October 2, 2017 CRA issued a press release proclaiming Maracle's guilty plea.

Maracle's case proceeded to a sentencing hearing which was presided over by Mr Justice Peter Jeffrey Wright of the Ontario Court of Justice. At the hearing defense counsel argued that the charges against Maracle should be stayed because of an officially induced error. Justice Wright ultimately agreed with defense counsel and found that Maracle, a status Indian and a member of the Mohawks of the Bay of Quinte, honestly believed he did not have to collect taxes from anyone.

In fact Maracle did not collect GST/HST from any customers and in turn did not remit money to the CRA. Mr. Justice Wright said Maracle had consulted the Mohawks of the Bay of Quinte Band Council several times and was repeatedly told he did not have to collect taxes due to his Indigenous and treaty rights and the Community by law.

During the sentencing hearing Justice Wright was presented with evidence that the Band Council had passed a by-law in 1980 saying their members did not have to collect taxes and that Maracle was following this by law, namely a law passed by Maracle's own government. Maracle was following the law of his Community. Although there was evidence that the by law had been rejected by the Minister of Indian affairs at the time, this rejection was never communicated to the Band Council. It was also found that in 2006 Indian Affairs wrote the Band Council and advised that the 1980 by law was in full force an effect, essentially affirming that members of the

Mohawks of the Bay of Quinte did not have to collect taxes.

The judge found Maracle to be an honest, trustworthy, and hard-working man who had built a successful business over the years in light of the many disadvantages incurred by Indigenous businesses. Maracle could not operate his business on or off the Tyendenga reserve the same way non-Indigenous peoples could operate their businesses. This meant that Maracle could not secure loans or other financing arrangements with banks, putting him at a decided disadvantage. Justice Wright commented that despite these crippling circumstances Maracle was able to develop his business.

In 2019 Maracle agreed to collect and remit taxes in compliance with CRA guidelines. Recent Quebec Court of Appeal and Federal Court of Appeal cases have affirmed that the collection and remission of GST/HST are administrative in nature and do not impact Indigenous rights.

When charges are stayed no other legal proceedings on the charges can be launched.

In May of 2019 Mr Justice Peter Jeffrey Wright stayed the charges against Maracle, who is now
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The Federal government appealed that decision but dropped their appeal last October and the charges will remain stayed.