



**Canadian Restaurant
and Foodservices
Association**

**Association canadienne
des restaurateurs
et des services
alimentaires**

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February 14, 2007

Premier Rodney MacDonal
Province of Nova Scotia
1700 Granville St.
P.O. Box 726
Halifax, NS B3J 2T3

Dear Mr. Premier:

On January 7, 2005 the Supreme Court of Canada, in a unanimous 9-0 decision, ruled that the Government of New Brunswick must pay back monies collected as a user fee from licensees for the purchase of beverage alcohol on the grounds that this was an illegal tax.

Licensees in this province believe that similar circumstances exists in Nova Scotia because for many years the government collected a Revenue Fee from licensees on their alcohol purchases. While you and your government must be recognized and commended for your efforts to eliminate this fee, the fact cannot be ignored that for many years, licensees in the province were forced to pay a fee that was subsequently found to be an illegal tax. In its decision, the Supreme Court of Canada stated, "To permit the Crown to retain an ultra vires tax would thus condone a breach of this most fundamental constitutional principle (no taxation without representation)." Given this decision, the Canadian Restaurant and Foodservices Association believes your government should do the right thing and return all money collected from the Revenue Fee back to licensees.

It is my understanding that government is considering a legislative response that would effectively apply a tax retroactively to licensees. CRFA opposes this course of action and submits that your government has a moral obligation to uphold the decision of the highest court in the land and return illegally collected monies back to the small business operators who paid these fees.

Some have argued that licensees should not be given back their money back because licensees passed along this charge to their customers. In fact, this was the primary defense of the New Brunswick government during the Supreme Court trial. On this matter, the Supreme Court found, "The defense is inconsistent with the basic premise of restitutional law" and, "The defense is also economically misconceived and creates serious difficulties of proof as there are inherent difficulties in a commercial marketplace of proving that the loss was not passed onto consumers."

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Given that fairness and the rule of law are the cornerstones of good government, CRFA respectfully requests that your government recognize and respect the decision of the Supreme Court of Canada and return all money collected from the Revenue Fee back to the licensees who paid these fees.

I would request a private meeting as soon as possible with your government to discuss this very important matter and look forward to hearing back from you at your earliest convenience.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Luc Erjavec', is written over a vertical blue line on the left side of the page.

Luc Erjavec, P. Eng.
Vice President - Atlantic Canada