

Ottawa, Friday, June 23, 1989

Appeal No. 2949

IN THE MATTER OF an application heard  
February 16, 1989, pursuant to section 81.19 of the  
*Excise Tax Act*, R.S.C. 1985, c. E-15 (the Act) as  
amended;

AND IN THE MATTER OF a notice of decision of  
the Minister of National Revenue dated January 8,  
1988, with respect to a notice of objection filed  
pursuant to section 81.15 of the Act.

**BETWEEN**

**THE PROVINCE OF PRINCE EDWARD ISLAND**

**Appellant**

**AND**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is dismissed. The Tribunal finds that the appellant is not eligible to claim a refund under section 68 or 68.19 of the Act for the federal sales tax paid on culverts.

Robert J. Bertrand, Q.C.

Robert J. Bertrand, Q.C.

Presiding Member

John C. Coleman

John C. Coleman

Member

Arthur B. Trudeau

Arthur B. Trudeau

Member

Robert J. Martin

Robert J. Martin

Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. 2949**

**THE PROVINCE OF PRINCE EDWARD ISLAND**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

*Excise Tax Act - Determination of sales tax - Whether the province may claim a refund under section 68.19 for federal sales tax paid on culverts installed in provincial highways and roads within municipal boundaries - Alternatively, whether taxes paid for culverts, which are exempt goods under section 1, Part XII, Schedule III of the Act are refundable as taxes paid in error pursuant to section 68 of the Act - Whether the province may be declared a municipality under paragraph 1(e), Part XII, Schedule III for the purpose of claiming the exemption.*

**DECISION:** *The appeal is dismissed. As the province is a party to a reciprocal taxation agreement with the Government of Canada referred to in section 68.19, it has expressly waived its right to apply for a refund under that section. Also, the province is not entitled to apply for a refund of sales tax under section 68 as the culverts were not purchased under exempt conditions as provided in section 1, Part XII, Schedule III of the Act. In regard to the second ground of appeal, the Tribunal has no jurisdiction to review the exercise of the Minister's discretionary power of decision to refuse to declare the province a municipality under paragraph 1(e) of that Part.*

*Place of Hearing: Ottawa, Ontario  
Date of Hearing: February 16, 1989  
Date of Decision: June 23, 1989*

*Panel Members: Robert J. Bertrand, Q.C., Presiding Member  
John C. Coleman, Member  
Arthur B. Trudeau, Member*

*Counsel for the Tribunal: Donna J. Mousley*

*Clerk of the Tribunal: Janet Rumball*

*Appearances: David F. Lunnen, for the Appellant  
Brian J. Saunders, for the Respondent*

*Cases Cited: Pullman v. The Queen, [1983] 2 F.C. 452*

*Statutes Cited: Excise Tax Act, R.S.C. 1985, c. E-15, ss. 1, 2, 68 and 68.19, Part XII, Schedule III; Federal-Provincial Fiscal Arrangements and Federal Post-Secondary Education and Health Contributions Act, 1976-77, c. 10; 1984, c. 13, s. 32; Municipalities Act, R.S.P.E.I. 1983, c. 33, s. 32; Roads Act, R.S.P.E.I. 1974, c. R-15, s. 4.*

*Other References Cited: "Reciprocal Taxation Memorandum of Agreement" between the Government of Canada and the province of Prince Edward Island, 1981; The Concise Oxford Dictionary, 7th ed., Clarendon Press.*

**Appeal No. 2949**

**THE PROVINCE OF PRINCE EDWARD ISLAND**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

TRIBUNAL: ROBERT J. BERTRAND, Q.C., Presiding Member  
JOHN C. COLEMAN, Member  
ARTHUR B. TRUDEAU, Member

**REASONS FOR DECISION**

**SUMMARY**

This is an appeal under section 81.19 of the *Excise Tax Act*, R.S.C. 1985, c. E-15 (the Act) as amended from the Minister's notice of decision, dated January 8, 1988, disallowing a refund of federal sales tax paid on culverts purchased by the appellant and installed in provincial highways and roads lying within municipal boundaries.

The province seeks a declaration that it is entitled to a refund under section 68.19 of the Act for tax paid on goods purchased by a province for a purpose not excluded under that section. In the alternative, the appellant argues that taxes paid on culverts or goods for use directly in a water distribution, sewerage or drainage system, which are exempt goods under section 1, Part XII, Schedule III of the Act, are refundable as taxes paid in error pursuant to section 68 of the Act. With respect to this alternative, the appellant asks that the province be declared a municipality pursuant to paragraph 1(e) of Part XII for the purpose of claiming the exemption.

The appeal is not allowed. As a party to a reciprocal taxation agreement with the Government of Canada, the appellant has waived its rights to a claim under section 68.19 of the Act. Furthermore, the appellant is not entitled to a refund of taxes under section 68 as it has not satisfied the conditions on which the exemptions in section 1, Part XII, Schedule III of the Act are based. The culverts were not purchased by a municipality for its own use, and the province is not a municipality for the purpose of claiming the exemption. In regard to the second ground of appeal, the Tribunal does not have jurisdiction to review the exercise of the Minister's discretionary power of decision to refuse to declare the province a municipality for the purpose of claiming the exemption under paragraph 1(e), Part XII, Schedule III of the Act.

## THE LEGISLATION

For the purpose of this appeal, the relevant statutory provisions are as follows:

(a) The Excise Tax Act

2. (1) "municipality" means

(a) an incorporated city, metropolitan authority, town, village, township, district or rural municipality or other incorporated municipal body however designated, or

(b) such other local authority as the Governor in Council may determine to be a municipality for the purposes of this Act;

...

68. Where a person, otherwise than pursuant to an assessment, has paid any moneys in error, whether by reason of mistake of fact or law or otherwise, and the moneys have been taken into account as taxes, penalties, interest or other sums under this Act, an amount equal to the amount of those moneys shall, subject to this Part, be paid to that person if he applies therefor within two years after the payment of the moneys.

...

68.19(1) Where tax under Part III, IV or VI has been paid in respect of any goods and Her Majesty in right of a province has purchased or imported the goods for any purpose other than

(a) resale,

(b) use by a board, commission, railway, public utility, university, manufactory, company or agency owned, controlled or operated by the government of the province or under the authority of the legislature or the lieutenant governor in council of the province, or

(c) use by Her Majesty in that right, or by any agents or servants of Her Majesty in that right, in connection with the manufacture or production of goods or use for other commercial or mercantile purposes,

an amount equal to the amount of that tax shall, subject to this Part, be paid either to Her Majesty in that right or to the importer, transferee, manufacturer, producer, wholesaler, jobber or other dealer, as the case may require, if Her Majesty or the dealer applies therefor within two years after Her Majesty purchased or imported the goods.

(2) No amount shall be paid pursuant to subsection (1) to an importer, transferee, manufacturer, producer, wholesaler, jobber or other dealer who supplies goods to Her Majesty in right of a province in respect of which there is in force at the time the goods are supplied a reciprocal taxation agreement referred to in section 32 of the Federal-Provincial Fiscal Arrangements and Federal Post-Secondary Education and Health Contributions Act.

*SCHEDULE III  
PART XII  
MUNICIPALITIES*

1. *Certain goods sold to or imported by municipalities for their own use and not for resale, as follows:*

(a) *culverts,*

...

(e) *goods for use directly in a water distribution, sewerage or drainage system; ... and, for the purposes of this exemption, any agency operating a water distribution, sewerage or drainage system for or on behalf of a municipality may be declared by the Minister to be a municipality,*

...

(b) Federal-Provincial Fiscal Arrangements and Federal Post-Secondary Education and Health Contributions Act, 1976-77

*Reciprocal Taxation Agreements*

32. *Notwithstanding any other Act, the Minister may enter into reciprocal taxation agreements with the government of any province, providing, without restricting the generality of the foregoing, for all or any of the following matters, namely*

(a) *for the payment by Her Majesty in right of Canada of any provincial tax or fee imposed or levied under a law of that province that would be payable by her Majesty in right of Canada if that law were applicable thereto;*

(b) *for the payment by Her Majesty in right of that province of any tax or fee imposed or levied under the Excise Tax Act that is payable by Her Majesty in right of that province and the waiver of the right to a refund of that tax or fee provided in subsection 68(3) of that Act;*

...

THE FACTS

The parties to this appeal submitted an agreed statement of facts. It was noted that the goods in question are steel corrugated culverts of varying sizes which are purchased by the province of Prince Edward Island and are installed in the drainage systems of provincial highways and roads. The provincial highways and roads may be outside or within the boundaries of municipalities.

The following additional facts were brought out in evidence. In response to an enquiry concerning the application of federal sales tax to culverts which the province purchased for installation within municipalities, the appellant received a letter dated February 24, 1984, from the Department of National Revenue, Customs and Excise. The letter stated that the province could

file a claim with that office to recover the federal sales tax. A claim was made and the province subsequently received a refund cheque for the tax paid, calculated as a percentage of the total tax paid for culverts purchased by the province. It appears that two subsequent claims were submitted on the same basis, and by letter dated August 22, 1985, these further claims were refused. In addition, the previous ruling in the letter of February 24, 1984, was cancelled. The reason cited was that the exemption in section 1, Part XII, Schedule III of the Act is for "certain goods sold to or imported by municipalities for their own use and not for resale." The Department of National Revenue considered that as there had been no transfer of title of those culverts to the local authorities in question, the goods had not been sold to municipalities and therefore the exemption did not apply.

On April 7, 1987, a further refund claim was filed by D.F. Lunnen Tax Refunds (Canada) Limited (D.F. Lunnen) on behalf of the appellant covering culverts installed in provincial highways and roads lying within municipal boundaries. By Notice of Determination dated May 22, 1987, the respondent rejected the refund claim citing the reasons given in the letter of August 22, 1985. On May 29, 1987, D. F. Lunnen filed a Notice of Objection on behalf of the appellant which included a request that the province of Prince Edward Island be declared a municipality for the purpose of claiming the exemption. By Notice of Decision dated January 8, 1988, the Minister of National Revenue disallowed the appellant's objection stating that information from the province's Transportation and Public Works Department indicated that the culverts are ordinarily installed in provincial highways. The exemptions provided in paragraphs 1(a) and (e), Part XII, Schedule III of the Act did not apply under the circumstances. The notice also stated that the appellant's request to be declared a municipality was a separate and discreet matter and would not be considered incidentally as part of a reconsideration of a determination. Thereafter, a further application was made to the Minister to have the province declared a municipality in order to claim the exemption. By letter dated March 12, 1988, the Minister declined to make the requested declaration as the province was not operating a water distribution, sewerage or drainage system as an agency for or on behalf of a municipality.

At all times material to this dispute, the province of Prince Edward Island was party to a reciprocal taxation agreement with the Government of Canada entered into under the *Federal-Provincial Fiscal Arrangements and Federal Post-Secondary Education and Health Contributions Act, 1976-77*, c. 10, section 1; 1984, c. 13, section 1 (hereinafter referred to as the *Federal-Provincial Fiscal Arrangements Act, 1977*). The province first became a signatory in October 1977 for a three and a half year term. The agreement was renewed in 1981 and again in 1987.

## THE ISSUES

The argument for the appellant has been made on two grounds. The Tribunal is first asked to find that the province of Prince Edward Island qualifies for a refund under section 68.19 of the Act for tax paid on goods purchased by a province for a purpose not excluded under paragraphs (a) through (c) of that section. In the alternative, the appellant argues that taxes paid for culverts, which are exempt goods under section 1, Part XII, Schedule III of the Act, are refundable as taxes paid in error pursuant to section 68 of the Act. In regard to the second ground, the appellant claims it is entitled to be declared a municipality pursuant to paragraph 1(e) of Part XII for the purpose of claiming the exemption.

Under section 68.19, a refund of taxes paid under Part III, IV or VI of the Act may be granted under certain conditions when goods have been purchased or imported by a provincial government. Subsection 68.19(1) makes the refund conditional on the goods being used for a purpose other than those excluded under paragraphs (a) through (c). The appellant argues that none of the exclusions apply to the purchase of the goods in question and this assertion is not disputed by the respondent.

Counsel for the appellant further contends that the province is not precluded from claiming a refund by the condition imposed under subsection 68.19(2). That subsection disallows payment under subsection 68.19(1) to an "importer, transferee, manufacturer, producer, wholesaler, jobber or other dealer" who supplies goods to a province in respect of which there is in force a reciprocal taxation agreement referred to in section 32 of the *Federal-Provincial Fiscal Arrangements Act, 1977*. It is the appellant's position that subsection 68.19(2) operates to disallow the payment of a refund only to those parties specifically identified in that section and not to disallow claims made directly by a province. As the party making the claim in this case is the province and the goods were purchased for a purpose not excluded under subsection 68.19(1), the appellant claims it has satisfied the two conditions set forth in section 68.19 entitling the province to a refund.

As a second ground of appeal, the province claims that it is entitled to a refund under section 68 for taxes paid in error. As the goods in question are culverts installed within municipalities for use in a drainage system, the appellant argues that they qualify as exempt goods under paragraphs 1(a) and (e), Part XII, Schedule III of the Act. The exemptions in that section are available on certain goods sold to or imported by municipalities, and the appellant concedes that the province has not sold the goods to a municipality. However, counsel for the appellant argues that the Tribunal may consider that there has been a "deemed sale" when the culverts are installed for the use of a municipality. Alternatively, the appellant argues that when the province is acting in the capacity of a municipality, that is, when it undertakes certain functions such as drainage which are normally the responsibility of a municipality, it may be considered a municipality for the purposes of claiming the exemption.

Counsel for the appellant finds authority for this proposition in the province's *Roads Act* and *Municipalities Act*. In section 4 of the *Roads Act*, the Minister of Public Works and Highways is given the "supervision and general control over the laying out, opening, altering, building, improving, maintenance, and repair of all bridges and other works pertaining to roads, highways and bridges in the province." Counsel then referred to the sections of the *Municipalities Act* which set out the various powers of municipal bodies. He noted that while "towns and villages" under section 31 have powers in regard to drainage, "community improvement committees" under section 32 do not. When the two acts are read together, he argues, it is evident that the province is required by law to build, service and provide drainage for roads within those municipalities which do not have the municipal powers or the financial resources to provide drainage for themselves. When the province of Prince Edward Island is required by law to perform the functions of a municipality, the province may avail itself of any exemption which would otherwise be available to a municipality.

As a final submission on the basis of the above evidence, the appellant claims that the province is an "agency operating a water distribution system for or on behalf of a municipality" and is therefore entitled to a declaration by the Tribunal under paragraph 1 (e) of Part XII that the province is a municipality for the purpose of claiming the exemption. In withholding such a declaration, the appellant states that the Minister acted in an arbitrary and capricious manner without a proper consideration of the facts of the case and without giving adequate reasons for his refusal. The appellant further submits that the decision of the Minister was capricious in that the Department of National Revenue accepted an initial claim and refused to accept and pay subsequent refund claims in regards to the same goods.

The respondent's answer to the first ground of appeal is that the province has waived its right to a refund under section 68.19, as it is a party to a reciprocal taxation agreement with the Government of Canada. The respondent contends that when that provision is viewed in conjunction with section 32 of the *Federal-Provincial Fiscal Arrangements Act, 1977*, to which it makes reference, the law is clear that only those provinces not party to a reciprocal taxation agreement with the federal government may make a claim for payment under section 68.19.

In regard to the second ground of appeal, the respondent argues that the province does not qualify for a refund under section 68 for taxes paid in error because it has not satisfied the conditions in section 1 of Part XII which qualify the exemptions. The first condition is that the goods must be "sold to or imported by municipalities" and it is acknowledged by the appellant that the goods have not been sold to a municipality. Secondly, the goods must be for the municipalities' "own use." As the province is responsible for building and maintaining the roads in question, the goods are for the use of the province and not the municipality. Furthermore, the appellant is prevented from taking the position that the province is, in law, a municipality by virtue of engaging in certain activities by obvious constitutional impediments and by the definition of "municipality" in section 2 of the Act.

In regard to the appellant's final submission, the respondent argues that the Tribunal has no jurisdiction to review the decision of the Minister or to make a declaration that the province is a municipality for the purpose of claiming the exemption. First, there is no jurisdiction because the application to the Minister was made after the time had expired in which the province could claim a refund. Secondly, while the Tribunal, by section 81.27, may make such findings and declarations as the case may require, the declaration sought is not one which is contemplated by that section. In the alternative, the respondent argues that if the Tribunal has jurisdiction to review the Minister's decision, that decision was not arbitrary or capricious in the circumstances. In order to declare an agency to be a municipality, there must be evidence that the agency is operating a drainage system for or on behalf of a municipality. While the appellant claims that 30 per cent of culverts purchased by the province are installed within municipal boundaries, the only evidence offered to show that a drainage system is being operated is a provincial statute requiring the province to maintain roads. Counsel for the respondent argues that the government is not an agent of a municipality when it is fulfilling a mandate prescribed by its own legislation, and therefore the Minister's refusal to declare was justified. As the appellant has not met the conditions which qualify the exemptions for municipalities, the province is not entitled to a refund under section 68 for taxes paid in error.



## DECISION

On the first ground of appeal, the Tribunal finds that the appellant is not entitled to a refund under section 68.19 of the Act. A refund under that section of the Act can only be granted if two conditions are met. First, the goods purchased by a province must be used for a purpose which is not excluded under paragraphs (a) through (c) of that section. Secondly, the province must not be a party to a reciprocal taxation agreement referred to in section 32 of the *Federal-Provincial Fiscal Arrangements Act, 1977*, at the time the goods were supplied. It was not disputed by either party to this appeal that the goods were purchased for a purpose not excluded under subsection 68.19(1) and the Tribunal agrees that the appellant meets the condition in this subsection.

With regard to the second condition, counsel for the appellant argues that the province may make a direct claim for a refund even though it is subject to a reciprocal taxation agreement because it is not identified as one of the parties in subsection 68.19(2) which are excluded from applying for a refund. On this point, the Tribunal agrees with the respondent that when section 68.19 is read in conjunction with the *Federal-Provincial Fiscal Arrangements Act, 1977*, to which it refers, this interpretation is not tenable. The reason that a province is not identified in the list of parties excluded from applying for a refund is that a province which is party to such an agreement has expressly waived its rights to apply for a refund under subsection 68.19(1).

The culverts were purchased while there was in force a reciprocal taxation agreement between the province of Prince Edward Island and the Government of Canada referred to in subsection 68.19(2) of the Act and section 32 of the *Federal-Provincial Fiscal Arrangements Act, 1977*. Section 32 of the latter Act provides that a reciprocal taxation agreement entered into between a province and the government of Canada shall provide for "the payment by...that province of any tax or fee imposed or levied under the *Excise Tax Act* that is payable by...that province and the waiver of the right to a refund of that tax or fee provided in subsection 68(3) of that Act." Subsection 68(3) is now subsection 68.19(1) of the amended Act. This principle is reiterated in clause 2 of the "Reciprocal Taxation Memorandum of Agreement" signed by the Ministers of Finance for Canada and the province of Prince Edward Island as follows:

*2.(1) The Province covenants to satisfy any tax exigible under the Excise Tax Act R.S.C. 1970 c. E-13, herein referred to as the Federal Act.*

...

*(3) The Province covenants that it shall neither apply for, nor claim the benefit of, any refund of tax paid under Parts III, IV or V of the Federal Act for which provision is made in subsection 44(2) of the aforesaid Act, and further, that the Province agrees that no refund of tax paid under the aforesaid Parts shall be granted under subsection 44(2) to a manufacturer, producer, wholesaler, jobber or other dealer as the case may require.*

Clearly, the appellant may not apply for a refund under section 68.19 (formerly subsection 44(2) of the *Excise Tax Act*, R.S.C., 1970) because it is party to an agreement in which it has expressly waived its right to claim tax refunds under that section. This does not mean that a province which has signed a reciprocal taxation agreement is prevented from applying for exemptions that may be available under other sections of the Act. However, it cannot claim a refund of taxes under section 68.19.

It is the appellant's alternative ground of appeal that it is entitled to a refund under section 68 for taxes paid in error by virtue of the exemptions available in Part XII, Schedule III of the Act, for goods sold to municipalities. The appellant states that it is eligible for the exemptions in paragraphs 1(a) and (e) of that Part for "culverts" and "goods for use directly in a water distribution, sewerage or drainage system." In order for the exemptions to apply, the conditions imposed under section 1 must be satisfied. That section states that the exemptions apply to "Certain goods sold to or imported by municipalities for their own use and not for resale...." First, the goods must be those enumerated in paragraphs (a) through (k) of that section. As a second condition, the goods must be "sold to or imported by municipalities;" and thirdly, the goods must be "for their own use and not for resale."

As the goods in question are "culverts" as in paragraph (a), and may also be "goods for use directly in a water distribution, sewerage or drainage system" as in paragraph (e), the first condition is met. In regard to the second condition, the parties are in agreement that the culverts have never been purchased by a municipality. Counsel for the appellant asks the Tribunal to consider that there has been a "deemed" sale of the goods. While there is no authority in the Act which would allow this interpretation, it could not stand in any event, as there has been no transfer of property in the goods to a municipality. Therefore, the second condition has not been met.

Much of the appellant's argument in this appeal focused on the third condition, that the goods in question are for the municipalities' "own use." According to the appellant, where a municipality is not empowered by statute to provide drainage, the province is required by law under the *Roads Act* to do so. In support of this argument, the appellant's counsel referred to various sections of the province's *Roads Act* and *Municipalities Act*, and the following comments on this legislation are offered.

It is admitted by the appellant that the culverts in question are owned by the province, there being no sale or otherwise transfer of title in those goods to a municipality. This being the case, it is not necessary for the Tribunal to consider the definitions and questions of ownership of roads and highways in the province. While counsel for the appellant claims that the province owns the property in the roads in question, no evidence was adduced on this point, and in any event, it is difficult to see how this assertion contributes to the appellant's argument.

In section 4 of the *Roads Act*, the Minister of Public Works and Highways is given the supervision and general control over all works pertaining to roads in the province, and counsel for the appellant argues that this may be interpreted as requiring the province to provide drainage to those municipalities which do not have powers in regard to drainage. In so far as this is the basis of the appellant's argument, it can only be made in respect of those municipalities described as community improvement projects as all other municipal bodies are given powers in regard to drainage. However, for the purpose of claiming the refund, the appellant has not discriminated between these two categories of municipality. It is evident that the appellant considers all culverts installed within the roadbeds of any municipality to be for the use of a municipality in providing drainage, and the reference to the powers of municipalities must be taken as only incidental to this main argument.

In regard to the third condition qualifying the exemptions in section 1 of Part XII, the Tribunal is in agreement with the respondent that where the legislation of a province obligates it to perform certain duties, which performance requires it to purchase and install culverts in roadbeds, those culverts are purchased for the province's own use. While the Tribunal accepts that the culverts qualify under paragraph 1(e) as "goods for use directly in a water distribution, sewerage or drainage system," it does not accept that the goods were purchased for the use of a municipality. Rather, the culverts in question were purchased for use by the province in the fulfilment of its mandate under the *Roads Act*. The Tribunal finds that the installation of culverts in roadbeds primarily concerns the building and maintaining of roads in the province and consequently, providing for the adequate drainage of those roads. If drainage is provided within municipalities incidentally, that does not alter the purpose for which the culverts are purchased and installed.

It is also argued by the appellant that when the province undertakes functions normally ascribed to a municipality, it may be considered a municipality in order to claim the exemption. If this proposition is accepted, the second and third conditions under section 1 would be satisfied, enabling the province to claim the exemption. However, for the reasons just stated, the Tribunal does not accept this argument. When the province installs culverts in provincial highways, it is fulfilling its own legislative mandate and not acting in the capacity of a municipality. Furthermore, the province is not a municipality as defined in section 2 of the Act.

In regard to the second ground of appeal, the appellant claims it is entitled under paragraph 1(e) to be declared by the Minister to be a municipality. The power to make such a declaration is clearly permissive and discretionary as indicated by the word "may" in that clause, and it is the opinion of the Tribunal that it does not have jurisdiction to review this exercise of a discretionary power of decision by the Minister. Even if the Tribunal had jurisdiction, it would not disturb the decision of the Minister as the province is not "operating a water distribution, sewerage or drainage system for or on behalf of a municipality." First, that clause implies that a party is actively providing a service to the municipality and the installation of culverts in roadbeds cannot be considered such a service. Secondly, that service is to be provided by an "agency ... for or on behalf of a municipality." At the very least, as stated by Justice Dubé in the case of *Pullman v. The Queen*, [1983] 2 F.C. 452 at p. 458, "An agent is one who acts for someone else." And in the *Concise Oxford Dictionary*, 7th ed., "agency" is defined, *inter alia*, as the "function of an agent or representative." For the reasons stated above, the province is not acting on behalf of a municipality when it is required to build and maintain roads in the province even if drainage is provided incidentally to roads within municipal boundaries. While counsel for the appellant referred to sections of the *Roads Act* and *Municipalities Act* in support of his contention, he offered no evidence to show that the province was operating a drainage system on behalf of a municipality. In summary, as the culverts were not purchased under the tax exempt conditions set forth in Part XII, Schedule III of the Act, a refund of tax paid on those goods is not available to the appellant under section 68.

CONCLUSION

The Tribunal decides that the appellant is not eligible to claim a refund under section 68.19. As a party to a reciprocal taxation agreement with the Government of Canada, at the time the goods were purchased, the province of Prince Edward Island has waived its rights to a claim under section 68.19 of the Act. Furthermore, the appellant is not entitled to a refund of taxes under section 68 as it has not satisfied the conditions on which the exemptions in section 1, Part XII, Schedule III of the Act are based. The goods in issue were not purchased by a municipality for its own use, and the province is not a municipality for the purpose of claiming the exemption. Accordingly, the Tribunal dismisses the appeal and upholds the determination of the Minister refusing the refund application under section 68 or 68.19.

Robert J. Bertrand, Q.C.  
Robert J. Bertrand, Q.C.  
Presiding Member

John C. Coleman  
John C. Coleman  
Member

Arthur B. Trudeau  
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Member