

PREPARATORY COMMISSION OF THE UNITED NATIONS

COMMITTEE 5:

PRIVILEGES AND IMMUNITIES

The Secretariat submits for the information of the members of Committee 5 a copy of a document on the status of the International Labour Office in Canada.

Status of the I.L.O. in Canada: Extract from Minutes of the 90th Session of the Governing Body of the International Labour Office (Oct. Nov. 1941).

THE TREATIES OF PEACE (STATUS OF THE INTERNATIONAL
LABOUR OFFICE) ORDER, 1941

The text of this Order, which defines in certain aspects the status in Canada of the International Labour Office and its staff, is as follows:

ORDER IN COUNCIL

AT THE GOVERNMENT HOUSE AT OTTAWA

Thursday, the 14th day of August, 1941

Present:

HIS EXCELLENCY THE GOVERNOR GENERAL IN COUNCIL

Whereas the Secretary of State for External Affairs, with the concurrence of the Minister of Labour, reports,

(1) That by Article 7 of the Covenant of the League of Nations and Article 6 of the Constitution of the International Labour Organization, the International Labour Office as part of the organization of the League enjoys diplomatic privileges and immunities:

(2) That by reason of the ratification of the Treaties of Peace, the provisions of the Covenant of the League of Nations and of the Constitution of the International Labour Organization constitute obligations of Canada as part of the British Empire towards foreign countries within the meaning of Section 132 of the British North America Act, 1867.

(3) That Section 1 of The Treaties of Peace Act 1919 (10 George V. Chap.30) empowers the Governor in Council to make such Orders in Council and do such things as appear to him to be necessary for carrying out these Treaties and for giving effect to any of their provisions:

(4) That with the approval of the Canadian Government, the Director of the International Labour Office has transferred a part of the staff of the International Labour Office to Montreal in order to permit of the continuance of the work of the International Labour Office in present circumstances; and

(5) That it is therefore desirable to define in certain respects the status in Canada of the International Labour Office and its staff.

Therefore, His Excellency the Governor General in Council, on the recommendation of the Secretary of State for External Affairs, and under and by virtue of the Treaties of Peace Act, 1919, is

pleased to order and doth hereby order as follows:

1. This Order may be cited as "The Treaties of Peace (Status of the International Labour Office) Order 1941".

2. The International Labour Office shall have legal capacity to conclude contracts and to assume and discharge obligations.

3. The International Labour Office shall have the right to sue and be sued, but no suit or other proceeding (other than a proceeding by way of set-off, counter-claim or cross-action) against the International Labour Office shall be entertained by any court without the express consent in writing of the Director of the International Labour Office.

4. The premises occupied by the International Labour Office are inviolable, that is to say, no peace officer, sheriff, bailiff, member of the armed forces, or other public authority of like nature, may enter them, in the exercise of his duties, without the consent of the Director of the International Labour Office.

5. The archives of the International Labour Office are inviolable.

6. (1) The members of the international administrative staff of the International Labour Office shall enjoy immunity from civil and criminal jurisdiction in Canada unless such immunity is waived by the Director of the International Labour Office.

(2) The list of the members of the international administrative staff shall be published from time to time in the Canada Gazette by the Secretary of State for External Affairs.

(3) The other members of the staff of the International Labour Office shall enjoy exemption from civil and criminal jurisdiction in Canada in respect of acts performed by them in their official capacity and within the limits of their functions unless such immunity is waived by the Director of the International Labour Office; but they shall be subject to the jurisdiction of the Canadian Courts in respect of acts performed by them in their private capacity.

7. The International Labour Office and all salaries paid by the International Labour Office to permanent members of its staff shall be exempt from all direct taxes imposed by the Parliament or Government of Canada, such as income tax and National Defence Tax.

Provided that this exemption shall not apply to salaries paid to temporary members of the staff, that is to say, members whose contracts of employment with the International Labour Office were made for a period of less than one year.

A. D. P. Heeney,
Clerk of the Privy Council.

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Internal Administrative Measures

Instructions regarding the purpose for which the above immunities have been accorded have been issued to the staff by General Office Instruction No.23 of 3 September 1941, the terms of which are in part as follows :

Internal Instructions relating to the above Order

The General Instruction relating to the Immunities of Members of the Staff of 15 March 1936 continues to be in force for members of the international staff in so far as applicable under the changed circumstances and subject to previous instructions respecting the position of members of the staff which have been issued in Montreal. It is not proposed to issue at the present time any new General Instruction on the subject, but members of the staff are particularly reminded of the following points.

GENERAL PRINCIPLES

Part I of the General Instruction of 15 March 1936 (General Provisions) remains in force in full, and is as follows:

(1) The immunities conferred on officials of the International Labour Office have not been instituted for the furtherance of the personal interests and convenience of these officials. They are intended only to secure, in all circumstances, the free working of the international organizations and the complete independence of their agents. The immunities attach to the function and not to the person, of those who hold them;

(2) It is evident that the Director can in no circumstances permit the exercise of the immunities for other than their legitimate purpose, and he will have no hesitation in waiving them in every case where they constitute an obstacle to justified demands that do not affect the interests of the International Labour Office The Director will take stern measures against any official endeavouring to take advantage of his immunities in order to evade his private obligations.

(3) The attention of members of the staff is also called to the duties devolving upon them from their particular situation. The officials of the Office have been entrusted with a public international function and they are protected by immunities established in the interest of the States Members of the Organization as a whole. The position imposes upon them the duty of maintaining a correct and reserved attitude towards the public authorities and the population of the country in which they reside.

There is no question of expecting members of the staff to forgo in any way their national sentiments or their political and religious convictions; but at any public demonstrations at which they may be present they should never forget the reserve and tact imposed upon them by their international functions.

Members of the staff are reminded that the above instruction is merely an expansion of Articles 1 and 2 of the Staff Regulations which define the fundamental basis of service in the Office. Those articles are as follows:

Article 1

(a) The officials of the International Labour Office are exclusively international officials and their duties are not national, but international. By accepting appointment, they pledge themselves to discharge their functions and to regulate their conduct with the interests of the International Labour Organization alone in view. They shall be subject to the authority of the Director, and shall be responsible to him in the exercise of their functions, as provided in these Regulations. They may not seek or receive instructions from any Government or other authority external to the International Labour Office.

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Article 2

(a) The diplomatic privileges and immunities attaching to officials ... furnish no excuse to the officials who enjoy them for non-performance of their private obligations or failure to observe laws and police regulations ...

(b) Any official guilty of a breach of the responsibilities entailed by enjoyment of diplomatic privileges and immunities may be subjected to any one of the sanctions prescribed in Chapter XI of these Regulations.

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Banking and Exchange Transactions

The position of the Office bank accounts in Canada has been defined in formal correspondence between the Secretary of State for External Affairs of Canada and the Acting Director.

The Secretary of State's letter is in the following terms:

Sir, Ottawa, 10 October, 1941.

I have the honour to inform you that the Chairman of the Foreign Exchange Control Board has submitted to me a draft understanding covering the operation of the bank accounts in Canada of the International Labour Office, Montreal, which it is understood has been drawn up by a representative of the Foreign Exchange Control Board, in collaboration with Mr. Wilfred Jenks, Legal Adviser of the International Labour Organization. This understanding, as submitted by the Chairman of the Foreign Exchange Control Board, is in the following terms:

The Canadian Bank selected by the Director of the International Labour Office is authorized to open, in the name of the International Labour Office, U.S. dollar accounts.

No restrictions will be placed on the operation of such accounts. In respect of such accounts, the International Labour Office will be granted all facilities which are or may be enjoyed by non-residents of Canada.

The Canadian Bank selected by the Director of the International Labour Office is authorized to open, in the name of the International Labour Office, Canadian dollar accounts having international status. Credits to such accounts must result from remittances from the Canadian Government or from the sale of U.S. funds or other currencies freely convertible thereto, to an authorized dealer of the Foreign Exchange Control Board of Canada. The International Labour Office may at any time purchase foreign exchange with sums standing to its credit in such accounts. No restrictions will be placed upon the remittance of such foreign exchange outside Canada.

The funds of the International Labour Organization in Canada shall not be subject to any embargo or similar restriction.

The International Labour Office undertakes that all transactions involving the purchase or sale of Canadian dollars by the International Labour Office will be handled through an authorized dealer of the Foreign Exchange Control Board of Canada.

The text, as it appears above, is acceptable to the Canadian Government. I should be grateful, therefore, if you would accept this as official notification. If it is acceptable also to the International Labour Organization, your formal acknowledgment will be taken to constitute an understanding between the Canadian Government and the International Labour Office.

I have the honour etc.,
(Sgd) W.L.Mackenzie King,
Secretary of State for External Affairs.

The Acting Director's reply is in the following terms:

Sir, Montreal, 13 October, 1941.

I have the honour to acknowledge receipt of your communication of 10 October, 1941, stating that the Chairman of the Foreign Exchange Control Board has submitted to you a draft understanding covering the operation of the bank accounts in Canada of the International Labour Office, which was drawn up by a representative of the Foreign Exchange Control Board in collaboration with the Legal Adviser of the International Labour Office. This understanding, as submitted to you, by the Chairman of the Foreign Exchange Control Board, is in the following terms:

The Canadian Bank selected by the Director of the International Labour Office is authorized to open, in the name of the International Labour Office, U.S. dollar accounts. No restrictions will be placed on the operation of such accounts. In respect of such accounts, the International Labour Office will be

granted all facilities which are or may be enjoyed by non-residents of Canada.

The Canadian Bank selected by the Director of the International Labour Office is authorized to open, in the name of the International Labour Office, Canadian dollar accounts having international status. Credits to such accounts must result from remittances from the Canadian Government or from the sale of U.S. funds or other currencies freely convertible thereto, to an authorized dealer of the Foreign Exchange Board of Canada. The International Labour Office may at any time purchase foreign exchange with sums standing to its credit in such accounts. No restrictions will be placed upon the remittance of such foreign exchange outside Canada.

The funds of the International Labour Organization in Canada shall not be subject to any embargo or similar restriction.

The International Labour Office undertakes that all transactions involving the purchase or sale of Canadian dollars by the International Labour Office will be handled through an authorized dealer of the Foreign Exchange Control Board of Canada.

In your communication of 10 October you indicate that the text, as it appears above, is acceptable to the Canadian Government, and state that, if it is acceptable to the International Labour Organization, my formal acknowledge will be taken to constitute an understanding between the Canadian Government and the International Labour Office.

I have the honour to convey to you herewith the requested formal acknowledgment, in virtue whereof, as proposed in your communication of 10 October, the text, as it appears above, constitutes an understanding between the Canadian Government and the International Labour Office.

I have the honour etc.,

(Sgd) E.J. Phelan,
Acting Director.

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Postal and Telegraphic Facilities

The postal facilities which have been accorded are indicated in correspondence from Dr. O. D. Skelton, Under-Secretary of State for External Affairs, which is in the following terms:

Ottawa, 26 September, 1940.

I wish to state that I am informed by the Deputy Postmaster General that he has given instructions for the exemption from examination of mail addressed to, or sent by, the International Labour Office or the Director, in Montreal, provided this mail is enclosed in official covers. You will

understand that these are the usual instructions given in the case of Foreign Legations in Canada:

Ottawa, 3 October, 1940.

It is understood that the official envelopes and wrappings of the International Labour Office will not be used by members of the staff for personal mail, as such mail remains liable to censorship, and that all due precautions will be taken to prevent International Labour Office stationery, envelopes and wrappings from falling into unauthorized hands.

The telegraphic facilities which have been accorded are indicated in the following letter from the Under-Secretary of State for External Affairs:

Ottawa, 19 August, 1940.

Dear Mr. Winant,

I wish to inform you that authorization has been given for the use of the cable and telegraphic address "Interlab, Montreal" by the International Labour Office for official communications. Arrangements for the registration of this address have been made and the competent authorities in Canada and in the United Kingdom are being informed.

Arrangements are also being made for the passage through the Canadian Censorship of official telegrams of the International Labour Office, whether in clear or in code. The Censor is being instructed to pass all incoming telegrams. With regard to outgoing, the same privileges will be allowed yourself, as Director, as are accorded to the heads of diplomatic missions in Canada. For the exercise of these privileges, you should name one or more franking officers, presumably yourself and an officer of senior rank such as your deputy. The signature of each outgoing telegram by a franking officer is taken as certification that the message may properly be sent out by the telegram company without reference to the Censor.

If you will kindly supply me with three specimen signatures (on separate sheets of paper) of your franking officers, I shall forward them to the Chief Telegraph Censor and the above arrangement will be put into effect at once ...

Yours faithfully,

(Signed) O. D. Skelton

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Passport Facilities

The Canadian Government has made arrangements regarding passports which enable the members of the staff to enter and leave Canada freely in the discharge of their duties. Senior officers have been granted permanent diplomatic visas good for all journeys to Canada so long as they retain in Canada their positions as

senior officers of the Organization. Other members of the staff have been granted permanent special visas good for all journeys to Canada so long as they retain in Canada their positions on the staff.

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Customs Facilities

The Director was informed by letter of 10 September 1940 from the Under-Secretary of State for External Affairs that it had been decided that "as regards matters of Customs and Customs duties, the position of the International Labour Office in Canada is analogous to that of a Foreign Legation". Under the item of the Canadian Customs Tariff (Item 705) which is applicable in virtue of this decision, articles for official use may be imported free of duty and taxes.
