

Aboriginal People and Labour Relations

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Résumé de l'article

Le nombre des indiens, Inuits et Métis, les premiers habitants du Canada, s'élèvent actuellement à environ un million. Bien qu'ils ne représentent qu'un peu moins de 4 % de la population du pays, ils jouent un rôle significatif dans l'économie canadienne. Il est donc étonnant de constater le peu d'intérêt que semble porter aux communautés et aux travailleurs autochtones le mouvement syndical.

Il existe actuellement un fort mouvement qui, au moyen d'un processus constitutionnellement autorisé de négociations directes avec les gouvernements fédéral et provinciaux, cherche à rétablir le gouvernement autonome, l'autodétermination et les lois des peuples autochtones. Le résultat de ces négociations influera nécessairement sur les relations industrielles. Le présent chapitre fait le point sur les incidences du droit du travail sur les peuples autochtones du Canada et sur les changements à venir.

DOCTRINE

Aboriginal People and Labour Relations

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ABSTRACT

The original inhabitants of Canada (the Indian, Inuit and Metis peoples) now number approximately one million people. Although they represent only about 4 % of the national population, they are a significant force in the Canadian economy. It is, thus, rather surprising to note the limited attention that aboriginal communities and aboriginal workers have received from the trade union movement.

There is currently an active movement for the restoration of self-government and self-determination for aboriginal peoples in accordance with their own laws through a constitutionally mandated process and by way of direct negotiations with federal and provincial governments. Developments in this regard will clearly impact on labour relations. This essay attempts to provide a brief review of the present state of labour law as it relates to the aboriginal peoples of Canada, to serve as a foundation on which change may be built.

RÉSUMÉ

Le nombre des indiens, Inuits et Métis, les premiers habitants du Canada, s'élèvent actuellement à environ un million. Bien qu'ils ne représentent qu'un peu moins de 4 % de la population du pays, ils jouent un rôle significatif dans l'économie canadienne. Il est donc étonnant de constater le peu d'intérêt que semble porter aux communautés et aux travailleurs autochtones le mouvement syndical.

Il existe actuellement un fort mouvement qui, au moyen d'un processus constitutionnellement autorisé de négociations directes avec les gouvernements fédéral et provinciaux, cherche à rétablir le gouvernement autonome, l'autodétermination et les lois des peuples autochtones. Le résultat de ces négociations influera nécessairement sur les relations industrielles. Le présent chapitre fait le point sur les incidences du droit du travail sur les peuples autochtones du Canada et sur les changements à venir.

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INTRODUCTION

One segment of Canadian society that has been largely untouched by the trade union movement specifically and labour relations in general has been the original inhabitants of Canada. Although union confederacies, such as the Canadian Labour Congress, have been very supportive of the demands of indigenous organizations for economic parity and respect for their unique legal rights as Aboriginal peoples, trade unions have only recently begun to turn their attention in a small way toward the possibilities for unionizing bargaining units consisting predominantly or exclusively of Aboriginal employees. The tendency to date has been to concentrate instead on traditional employers and workplaces in which Indian, Metis and Inuit people are non-existent or comprise only a small portion of the labour force. Trade unions have organized in these situations by relying upon their normal strategies under the federal or provincial labour relations legislation applicable to that employer.

Aboriginal communities have also not generally been inclined to approach trade unions to organize within their midst. This pattern has existed in the private sector, the Aboriginal public sector (regarding Indian, Metis or Inuit governments) and what might be characterized as the Aboriginal quasi-public arena (concerning Aboriginal political service organizations as well as economic enterprises formally or informally created by Aboriginal governments).

This experience has been replicated in other aspects of employer-employee relations. Thus, little attention has been paid to the application of minimum standards imposed by law (e.g., minimum wage, statutory holidays, maximum hours, workers compensation, pension plans, health and safety). This is particularly the case regarding

the Aboriginal public and quasi-public sector and in situations where the private employer is indigenous as is his/her workforce.

This is, however, not simply a matter of lack of initiative on the part of the trade union movement. It also does not merely reflect a lack of understanding of the prevailing law on employment and labour relations. There is, instead, a fair degree of uncertainty as to what labour law, if any, applies in these circumstances. There is additional concern as to the appropriateness to Aboriginal peoples of the employer-employee conflict paradigm of labour relations.

The original inhabitants, despite their extensive cultural, social, political and legal diversity, possess certain common values oriented toward communal sharing, relative economic and occupational equality, consensus decision-making, conflict avoidance, and the internal resolution of disputes in a way that promotes harmonious relations. Although the labour movement has largely shifted away from a class struggle ideology, it nevertheless faces a situation in the dominant society in which the private sector is composed of capitalists and managers of capital on one side of the table sitting across from workers' representatives. Profitability and wage increases remain the priorities of the two parties as they seek agreement on acceptable terms to govern their relationship for the short-term future. There is not, however, a sense of continuity, commitment, or partnership for generations to come as exists within indigenous communities. On the other hand, industrialization is occurring in a growing number of Aboriginal communities in terms identical to those in the larger society.

This article is intended to serve as a review of the limited case law on this relationship as well as a consideration of the numerous issues yet to be tested before the labour relation boards and the judiciary. The author will also briefly examine how the discussion revolving around Aboriginal self-government in the constitutional arena may touch on labour relations.

I. CONSTITUTIONAL AUTHORITY

The body of jurisprudence that has developed on this subject is extremely sparse indeed. Not only are the decisions few in number, but they are also relatively narrow in terms of the issues canvassed. The primary matter of attention has concerned the question of constitutional jurisdiction.

The legislative responsibility over labour relations was not assigned at confederation when the division of powers was made through the *Constitution Act, 1867*. The courts have, however, conclusively resolved this omission by interpreting subsection 92(13) ("Property and Civil Rights in the Province") so as to encompass the regulation of

employer-employee relations.¹ Nevertheless, the judiciary has also interpreted sections 91 and 92 in such a way that Parliament has an exclusive area of competency in labour relations when the work is in regard to another aspect of federal legislative dominance.² The Supreme Court of Canada described the scope of Parliament's exclusive authority in these terms :

This jurisdiction of Parliament to so legislate includes those situations in which labour and labour relations are (a) an integral part of or necessarily incidental to the headings enumerated under s. 91; (b) in respect to Dominion government employees; (c) in respect to works and undertakings under ss. 91(29) and 92(10); (d) in respect of works, undertakings or businesses in Canada but outside of any Province.³

This apparent conflict has been clarified by the courts such that "exclusive provincial competence is the rule"⁴ in labour relations with Parliament having "no authority over labour relations as such nor over the terms of a contract of employment".⁵ Parliament can, however, assert its authority over these matters if they are an integral part of some other federal head of jurisdiction.⁶ This arrangement applies to all labour standards and master-servant relations as well as to collective bargaining.⁷

This rationalization, which exemplifies the co-operative federalism theory, does not generate a comprehensive description of when federal or provincial legislation will apply in a given field. In effect, one starts with a presumption of provincial jurisdiction subject to proof (1) that the particular employment situation falls within a federal head of power and (2) that labour relations are an integral or necessarily incidental aspect of Parliament's exercise of authority within its primary

1. *Toronto Electric Commissioners v. Snider*, [1925] A.C. 396. For a further discussion of the constitutional background to labour relations, see, Innis CHRISTIE, *Employment Law in Canada*, Toronto, Butterworths, 1980; A.W.R. CARROTHERS, *Collective Bargaining Law in Canada*, Toronto, Butterworths, 1965; and George W. ADAMS, *Canadian Labour Law: A Comprehensive Text*, Aurora, Canada Law Book, 1985.

2. *Reference re Validity of Industrial Relations and Disputes Investigation Act*, [1955] 3 D.L.R. 721, S.C.R. 529.

3. *Id.*, at 755-756.

4. *Montcalm Construction Inc. v. Minimum Wage Commission et al.*, [1979] 93 D.L.R. (3d) 641 (S.C.C.), at 652 per Mr. Justice Beetz.

5. *Ibid.*

6. *Ibid.* See, also, *Canada Labour Relations Board v. City of Yellowknife* (1977), 14 N.R. 72 (S.C.C.).

7. See, e.g., *Re Treaty of Versailles, Re Hours of Labour*, [1925] 3 D.L.R. 114, S.C.R. 505; *Reference re Minimum Wage Act of Saskatchewan*, [1948] S.C.R. 248; *Commission du salaire minimum v. Bell Telephone Co. of Canada*, [1966] S.C.R. 767; and Innis CHRISTIE, *op. cit.*, note 1, at 33-52.

jurisdiction. The courts have developed a "functional test" for application on a case-by-case basis in determining whether or not a specific operation is within federal or provincial jurisdiction. Mr. Justice Beetz summarized the law in this regard in *Montcalm Construction Inc. v. Minimum Wage Commission et al.* in these words :

The question whether an undertaking, service or business is a federal one depends on the nature of its operation: Pigeon, J., in *Canada Labour Relations Board et al. v. City of Yellowknife* (1977), 76 D.L.R. (3d) 85 at pp. 89-90, [1977] 2 S.C.R. 729 at p. 736, 14 N.R. 72. But, in order to determine the nature of the operation, one must look at the normal or habitual activities of the business as those of "a going concern" (Martland, J., in the *Bell Telephone Minimum Wage* case at pp. 148-9 D.L.R., p. 772 S.C.R.), without regard for exceptional or casual factors; otherwise, the Constitution could not be applied with any degree of continuity and regularity: *Agence Maritime Inc. v. Canada Labour Relations Board et al.* (1969), 12 D.L.R. (3d) 722, [1969] S.C.R. 851 (the "Agence Maritime case"); the *Letter Carriers* case.⁸

Even this standard has required further refinement as the "undertaking, service or business" to be examined is the precise employment situation rather than that of the business as a whole. For example, a railway company clearly operates within the federal jurisdiction, however, hotels owned by such a company would not as they must be analyzed independently and would not be found to be inextricably linked to the federal power over railways.⁹ This does not mean that the employer must be exclusively engaged in activities falling under Parliament's domain,¹⁰ but only that the work of the particular bargaining unit must be assessed rather than that of the employer as a whole.

A finding of federal or provincial constitutional jurisdiction does not completely conclude the necessary analysis. One then must determine if there is legislation of the relevant government that is applicable to the case at hand. The primary federal instrument in governing labour relations is the *Canada Labour Code*.¹¹ This statute contains the bulk of labour standards provisions in Part III and creates a collective bargaining regime in Part V. The precise scope of these

8. *Supra*, note 4, at 653.

9. *Canadian Pacific Railway Company v. Attorney-General of B.C. et al.*, [1950] A.C. 122 regarding the Empress Hotel in Victoria.

10. See, e.g., *supra*, note 2, and *Letter Carriers' Union of Canada v. Canadian Union of Postal Workers et al.*, (1973) 40 D.L.R. (3d) 105 (S.C.C.) where the courts held federal labour law to apply for employees who performed work at times which could be characterized as a federal matter and at other times as a provincial one on the basis that the former was dominant.

11. R.S.C. 1970, c. L-1, as amended.

substantive provisions is contained in similar terms other than regarding the private sector in the Yukon and NWT, in sections 27 and 108 respectively :

27.(1) This Part applies to and in respect of employees who are employed upon or in connection with the operation of any federal work, undertaking or business, other than a work, undertaking or business of a local or private nature in the Yukon Territory or Northwest Territories, and to and in respect of the employers of such employees and to employment upon or in connection with the operation of any such federal work, undertaking or business.

108. This Part applies in respect of employees who are employed upon or in connection with the operation of any federal work, undertaking or business and in respect of the employers of all such employees in their relations with such employees and in respect of trade unions and employers' organizations composed of such employees or employers.

The essential element of each, namely, "employees who are employed upon or in connection with the operation of any federal work, undertaking or business" turns upon inclusion or exclusion from "federal work, undertaking or business", which is defined in section 2 in these terms :

2. In this Act

"federal work, undertaking or business" means any work, undertaking or business that is within the legislative authority of the Parliament of Canada, including without restricting the generality of the foregoing :

- (a) a work, undertaking or business operated or carried on for or in connection with navigation and shipping, whether inland or maritime, including the operation of ships and transportation by ship anywhere in Canada;
- (b) a railway, canal, telegraph or other work or undertaking connecting any province with any other or others of the provinces, or extending beyond the limits of a province;
- (c) a line of steam or other ships connecting a province with any other or others of the provinces, or extending beyond the limits of a province;
- (d) a ferry between any province and any other province or between any province and any other country other than Canada;
- (e) aerodromes, aircraft or a line of air transportation;
- (f) a radio broadcasting station;
- (g) a bank;
- (h) a work or undertaking that, although wholly situated within a province, is before or after its execution declared by the Parliament of Canada to be for the general advantage of Canada or for the advantage of two or more of the provinces; and
- (i) a work, undertaking or business outside the exclusive legislative authority of provincial legislatures;

Failure to fall within the parameters of the foregoing will generally not lead to the application of provincial legislation in situations that have been determined to be within Parliament's exclusive jurisdiction. Instead, the consequences would be somewhat of a vacuum in that

labour standards and collective bargaining are statutorily based. The absence of alternative federal legislation would cause the employer-employee relationship to be governed by the limited principles of the common law.¹² The courts have given a broad, liberal interpretation to the definition of “federal work, undertaking or business” in part so as to avoid the repercussions of such a legislative vacuum.¹³

The position of Aboriginal Peoples raises several unique aspects to this general scheme of distribution of constitutional jurisdiction over labour relations. Firstly, Parliament obtained exclusive legislative authority over “Indians, and Lands reserved for the Indians” by virtue of subsection 91(24) of the *Constitution Act, 1867*. This allocation of jurisdiction has two clear components, namely, the distinct population of original peoples included within the term “Indians” as well as that portion of their lands remaining for their use. Aboriginal Peoples also possess unique rights recognized by sections 25 and 35 of the *Constitution Act, 1982*. These latter provisions have buttressed the longstanding argument of various Indian Nations that they continue to be sovereign nations under domestic and international law. As such, they would assert that they are exempt from both federal and provincial legislation in general, which would naturally include labour statutes.

Needless to say, numerous legal questions abound regarding these different issues due to the general paucity of jurisprudence in the area and the unknown implications generated by the new Constitutional provisions, which themselves were amended in 1984.

The precise scope of subsection 91(24) has yet to be definitively determined by the courts. The first portion (“Indians”) clearly includes the Inuit as “constitutional Indians” by judicial decree.¹⁴ Somewhat surprisingly, the extent to which people of Indian ancestry are regarded as constitutional Indians has been a subject of great debate. The federal government has, at various times, argued that only those people who are registered as Indians under the *Indian Act* can fall within the parameters of subsection 91(24). This position, the author asserts, is obviously incorrect even though there is some case law in support.¹⁵ Neither Parliament nor the provincial legislatures can usurp the exclusive jurisdiction of the judiciary to define constitutional language.

12. See, e.g., *Commission du salaire minimum v. Bell Telephone Co. of Canada*, *supra*, note 7.

13. *Supra*, note 6.

14. *Reference Re Eskimos*, [1939] S.C.R. 104. See, also, Richard J. DIUBALDO, “The Absurd Little Mouse: When Eskimos Became Indians”, (1981) 1 *Journal of Canadian Studies* 34.

15. See, e.g., *Regina v. Laprise*, [1978] 4 C.N.L.B. 118 (Sask. C.A.); aff’g, [1977] 1 C.N.L.B. 14 (Sask. Q.B.). For a critical commentary of this decision, see, Anthony J. JORDAN, “Who is an Indian? (R. v. Laprise)”, [1977] 1 C.N.L.B. 22.

The *Indian Act*¹⁶ itself contained a scheme through which non-Indian women could become status Indians upon marriage to a registered Indian male while registered Indians could lose this status through voluntary or involuntary enfranchisement. It is difficult to conceive that the contents of properly enacted legislation could alter the interpretation of the scope of the constitutional source justifying the legislation in question. In addition, there have been concerns regarding the validity of any provisions which discriminate, particularly on the basis of sex, in determining inclusion or exclusion as registered Indians under the Act. Although the Supreme Court of Canada upheld the membership provisions of the *Indian Act* when challenged through reliance on the *Canadian Bill of Rights*,¹⁷ the Act was amended in June of 1985¹⁸ in the hopes of complying with the *Charter of Rights and Freedoms* as well as international human rights law.¹⁹ By deciding to amend the *Indian Act*, the federal government was forced to alter its position regarding the scope of subsection 91(24) as the amendments are intended to reinstate or grant recognition as *Indian Act* Indians to tens of thousands of people of Indian ancestry who had been excluded under the statute's terms prior to the change. The jurisdiction to dramatically redefine statutory Indianness could only emanate from subsection 91(24) such that these non-status Indian people had to already have been constitutional Indians.

This shift in policy and legislation has further revived the debate concerning the constitutional position of those Indian people who will continue to remain non-status or non-registered Indians under the *Indian Act*. The national Native organization that represents the vast majority of them, the Native Council of Canada, believes that there are also tens of thousands of people in this category. Charter based challenges against the revised Act can be anticipated.

A similar dispute has raged regarding the situation of the Metis. Commentators have taken diametrically opposing position²⁰

16. R.S.C. 1970, c. I-6, as amended.

17. *Attorney-General of Canada v. Lavell*, [1974] S.C.R. 1349; *Isaac et al. v. Bedard*, (1972) 25 D.L.R. (3d) 551.

18. S.C. 1985, c. 27.

19. *Lovelace v. Canada*, U.N. Doc CCPR/C/DR(XII)/R.6/24, 31 July 1981; 2 *Human Rights L.J.* 158. Canada was found in violation of Article 27 of the International Covenant on Civil and Political Rights by the United Nations Human Rights Committee. For a thorough review of the decision and its background, see, William F. PENTNEY, "Lovelace v. Canada: A Case Comment", (1982) 5 *Canadian Legal Aid Bulletin*, Nos. 2 & 3, 259.

20. Clem CHARTIER, "Indian': An Analysis of the term as used in section 91(24) of the British North America Act, 1867", (1978-79) 43 *Sask. L.R.* 37; and Bryan SCHWARTZ, *First Principles: Constitutional Reform with Respect to the Aboriginal Peoples of Canada 1982-1984*, Kingston, Institute of Intergovernmental Relations, Queen's University, 1985.

while the Government of Canada has asserted complete absence of authority in recent years. The provinces have tended to assume that the Metis are under their general jurisdiction and fall outside of subsection 91(24). Alberta has had legislation for almost five decades that creates a special regime for Metis people who reside within lands set apart for their use,²¹ which are ironically called “colonies” by the Metis. The express inclusion of the Metis within the definition of “aboriginal peoples” in subsection 35(2) of the *Constitution Act, 1982* has further fueled and confused the debate. Although the Manitoba Metis Federation and the Native Council of Canada initiated legal proceedings to resolve the question concerning their inclusion within subsection 91(24) several years ago, they have yet to proceed to trial. As a result, the uncertainty remains surrounding exclusive federal jurisdiction over this portion of the indigenous peoples of Canada.

The precise nature of the second aspect of subsection 91(24), “Lands reserved for the Indians”, has also not been definitively determined by the courts. The use of the label “reserves” to describe the landholdings set aside for the use and benefit of Indian bands as administered by the Crown in right of Canada under the *Indian Act* has occasionally led to the assumption that “Indian reserves” and “Lands reserved for the Indians” are one and the same. This writer believes that such an assumption is erroneous as the constitutional term is far broader. Historically, there are numerous situations of lands being recognized as being for exclusive Aboriginal use that have never become reserves as such through a positive Crown act. This is particularly the case where the Aboriginal group involved does not qualify as a band of status Indians. It is also clearly possible that the word “Indians” does not have the same constitutional meaning when used in the latter part of subsection 91(24) as it has in the former.

One can readily deduce from the foregoing that the law is in an unsatisfactory state. The courts have yet to pronounce as to whether Metis people are encompassed within subsection 91(24) as a distinct people who call themselves Metis. Many individuals within the Metis population have chosen, or still can choose, to qualify within the terms of the *Indian Act* as Indians only, refuse to do so and remain excluded as Metis, or opt for both categories as, in effect, “status Metis”. At the very least, Parliament seems to have the authority to regulate membership rules in such a way as to declare anyone of Indian ancestry and their spouses to be Indians. Parliament also can legislate regarding the Inuit. Finally, Parliament can pass laws concerning lands set aside for or remaining in the hands of « constitutional Indians ». It further appears that

21. *Metis Betterment Act*, R.S.A. 1973.

this jurisdiction includes the power to enact statutory provisions affecting any aspect of constitutional Indian lands (e.g., subsurface right and the development thereof²²) as well as an undefined range of activities affecting constitutional Indians collectively (e.g. concerning their governments, treaty rights, justice system, money, etc.) or individually (e.g., education, estates, mental illness, alcohol use, etc.). This latter category arguably could be unlimited such that Parliament could pass a complete legal code regulating all fundamental aspects of their lives, including labour relations, subject to the possible sovereign status of First Nations and their entrenched rights in the new Constitution. The federal government has yet to attempt to exercise its jurisdiction to the fullest extent possible, however, this practice may not continue.

II. LITIGATION TO DATE

1) Private Sector

The vast majority of the decisions have focussed upon the application of federal or provincial statutes to status Indians on reserve. Since there has been no special labour law regarding subsection 91(24) Indians in place, the courts have declared that either the federal or provincial general legislation must apply rather than there being a federal enclave potentially exempt from both.²³

The leading judgement in this subject has been that of the Supreme Court of Canada in *Four B Manufacturing Ltd. v. United Garment Workers of America et al.*²⁴ Four band members incorporated a company under the laws of Ontario to produce the upper portion of shoes. The plant was located on the Tyendinaga Reserve occupying premises pursuant to a permit granted by the Minister under subsection 28(2) of the *Indian Act* with the consent of the Indian government. The company received federal subsidies and was actively promoted by

22. *Indian Oil and Gas Act*, S.C. 1974-75-76, c. 15.

23. Chief Justice Laskin particularly suggested this option in relation to federal crown lands (s. 91(1A) and s. 91(24), while an academic, *Canadian Constitutional Law*; 4th ed. rev., Toronto, Carswells, 1975), 523, 529, and as Chief Justice in dissenting opinions in *Cardinal v. Attorney-General of Alberta*, [1974] S.C.R. 695; *Natural Parents v. Superintendent of Child Welfare*, [1976] 2 S.C.R. 751; *Monicalm Construction Inc. v. Minimum Wage Commission*, *supra*, note 4; and *Four B Manufacturing Ltd. v. United Garment Workers of America*, [1980] 1 S.C.R. 1031. The majority of the Supreme Court clearly rejected this view in relation to Indians in general in *Cardinal*, *supra*, and *Natural Parents*, *supra*, and specifically concerning labour law on reserves in *Four B Manufacturing*, *supra*.

24. *Four B Manufacturing Ltd. v. United Garment Workers of America et al.*, [1979] 4 C.N.L.R. 21; [1980] 1 S.C.R. 1031; aff'g. [1977] 1 C.N.L.B. 10 (Ont. Div. Ct.).

the Department of Indian Affairs and Northern Development. The ministerial permit also contained a hiring clause giving preference to "local people". The majority of the employees were, in fact, band members with many of the remainder being former band members. The employer challenged the jurisdiction of the Ontario Labour Relations Board to certify the trade union in these circumstances by arguing that the provincial legislation was not applicable. Mr. Justice Beetz, for the majority, articulated that subsection 91(24) consists of two separate heads of jurisdiction but the presence of both does not reinforce or expand the federal power such that the civil rights of Indians would become solely within federal jurisdiction whether actually exercised or not.²⁵ He described the situation in these terms :

I think it is an oversimplification to say that the matter which falls to be regulated in the case at bar is the civil rights of Indians. The matter is broader and more complex : it involves the rights of Indians and non-Indians to associate with one another for labour relations purposes, purposes which are not related to "Indianness"; it involves their relationship with the United Garment Workers of America or some other trade union about which there is nothing inherently Indian; it finally involves their collective bargaining with an employer who happens to be an Ontario corporation, privately owned by Indians, but about which there is nothing specifically Indian either, the operation of which the Band has expressly refused to assume and from which it has elected to withdraw its name.²⁶

This does not mean that Parliament could not enact provisions governing labour relations of Indians on or off reserves. Instead, it signifies that subsection 91(24) does not automatically exclude the application of provincial *law ab initio*. The general functional test of labour law is to be employed concerning the employer and employees in question in the individual case in order to make the initial determination as to which government's labour statute may apply.

In the *Four B Manufacturing* case, the majority found the evidence did not disclose anything which truly involved "Indian status [...] nor rights so closely connected with Indian status that they should be regarded as necessary incidents of status [...]"²⁷ In other words, it did not intend to regulate them *qua* Indians, so as to be *ultra vires*,²⁸ nor did it indirectly affect their Indianness so as to become suspect.²⁹

25. *Id.*, at 26.

26. *Id.*, at 25.

27. *Ibid.*

28. On this point see, e.g., *R. v. Sutherland*, [1980] 5 W.W.R. 456 (S.C.C.); and *Natural Parents v. Superintendent of Child Welfare*, *supra*, note 23.

29. The Supreme Court of Canada has suggested that provincial law can not affect essential attributes of Indianness through its own force, but only via referential incorporation by Parliament, *Dick v. The Queen*, (1986) 23 D.L.R. (4th) 33, per Dickson, C.J., for the court.

Since labour legislation does not directly affect the use of lands, the majority relied upon section 88 of the *Indian Act* as authorizing the provincial statute and its tribunal to apply. In doing so, the Government followed the previous jurisprudence involving non-Aboriginal employers. This key provision declares the following :

88. Subject to the terms of any treaty and any other Act of the Parliament of Canada, all laws of general application from time to time in force in any province are applicable to and in respect of Indians in the province, except to the extent that such laws are inconsistent with this Act or any order, rule, regulation or by-law made thereunder, and except to the extent that such laws make provision for any matter for which provision is made by or under this Act. R.S., c. 149, s. 87.

Section 88, then, allows provincial laws of general application to apply to status Indians whether on or off a reserve subject to four exceptions. It is now settled law that provincial labour legislation qualifies in this category as a law of general application. There is, therefore, a presumption that private sector employers and employees will be treated in a universal fashion disregarding the presence of Aboriginal people as owners, managers or workers.³⁰ Possible limitations on this general rule will be discussed below.

2) Public Sector

Within the last few years there has suddenly developed greater interest on the part of the trade union movement in seeking certification for bargaining units consisting of people working on Indian reserves for the band or its agent. It appears that one of these initiatives was sparked by the transfer of a previously unionized federal government service to the band³¹ while others encompass situations where unions are normally very active.³²

30. *John Murdock Ltd. v. La Commission de relations ouvrières et al.*, 56 C.L.L.C. 564 (Que. S.C.); *Yellow Jacket Welding*, [1974] O.L.R.B. Rep. Oct. 709. Federal legislation of course apply where the bargaining unit normally falls within federal jurisdiction, such as over airlines. See, e.g., *Syndicat des travailleurs de Air Creebec Inc. et Air Creebec Inc.* (C.L.R.B., unreported, June 6, 1984, File No. 555-2024). The certification order was later revoked (unreported, November 8, 1985, File No. 565-266).

31. *Syndicat des travailleurs de l'enseignement de Louis-Hémon v. Conseil des Montagnais du Lac St-Jean*, (1982) 50 di 190, [1985] 1 C.N.L.R. 179 (C.L.R.B.). A request for reconsideration was rejected by the Board without a hearing on March 6, 1984, 53 di 3.

32. For example, carpenters and school teachers. The latter group was the relevant party in note 31, *supra*, *Chief and Council of the Fort Alexander Indian Band et al.*, (1986) 56 di 43 (C.L.R.B.); and *Commission scolaire crie and l'Association des enseignants du Nouveau-Québec*, [1980] 2 Can. L.R.B.R. 374 (Que. Lab. Ct.).

Employment by a band raises additional problems over and above the constitutional distribution of authority question regarding labour relations, namely, who is the proper employer and does the band or a band council have the legal capacity to be an employer. It is essential, however to resolve the constitutional issue first as the language of the relevant labour statute will then become important in the resolution of these other questions.

There were some initial decisions which attempted to distinguish between types of employees such that provincial labour law would apply where the function of the operation was an ordinary industrial activity in nature within the borders of one province.³³ The words of Mr. Justice Beetz in *Four B Manufacturing* seemed to allow this distinction when he said

The conferring upon Parliament of exclusive legislative competence to make laws relating to certain classes of persons does not mean that the totality of these persons' rights and duties comes under primary federal competence to the exclusion of provincial laws of general application [...] A similar reasoning must prevail with respect to the application of provincial laws to Indians, as long as such laws do not single out Indians nor purport to regulate them *qua* Indians, and as long also as they are not superseded by valid federal law.³⁴

Thus, the Saskatchewan Labour Relations Board concluded³⁵ that carpenters building houses on a reserve could be certified under the *Trade Union Act*³⁶ even though they were all band members employed by the band council under a contribution agreement with the Department of Indian Affairs and Northern Development. Likewise, special police constables appointed by the Solicitor General of Alberta under the provisions of the *Police Act*³⁷ were held at trial to be entitled to the benefits of the *Alberta Labour Act*³⁸ in a claim for outstanding wages owed to them by the band.³⁹

The appellate courts, however, have clearly eliminated such a distinction. Mr. Justice Cameron, speaking for the Saskatchewan Court of Appeal, carefully considered the law and the difficulty in applying the

33. *R. v. Paul Band Indian Reserve No. 133*, [1982] 4 C.N.L.R. 120 (Alta. Prov. Ct.); aff'd without reasons by Alta. Q.B.; and *Carpenters Prov'l Council of Saskatchewan v. Whitebear Band Council* (unreported, February 3, 1981, Sask. L.R.B.).

34. *Supra*, note 24, at 25-26.

35. *Carpenters Prov'l Council of Saskatchewan v. Whitebear Band Council*, *supra*, note 33.

36. R.S.S. 1978, c. T-17.

37. S.A. 1973, c. 44, s. 38.

38. S.A. 1973, c. 33.

39. *R. v. Paul Band Indian Reserve No. 133*, *supra*, note 33.

functional test in relation to a unique category of federal persons as opposed to occupational categories or the business of the employer. He decided that one must first determine the exact nature of Indian band governments. He concluded that :

The primary function of an Indian band council is to provide a measure of self-government by Indians on Indian reserves. In enacting by-laws pursuant to their power to do so, and in performing generally their local government function, an Indian band council is doing that which Parliament is exclusively empowered to do pursuant to s. 91(24) of the *B.N.A. Act* but which Parliament, through the *Indian Act*, has delegated band councils to do. In this sense, the function of an Indian band council is very much federal. So too, in my opinion, are their associated functions — acting at once as the representative body of the inhabitants of the reserve and the agent of the minister with regard to federal programs for the reserves and their residents — and participating in certain of the decisions of the minister in relation to the reserve. Given this, the provisions of the *Indian Act* to which I have referred and the origin and nature, purpose and function of an Indian band council, I am satisfied that the power generally to regulate the labour relations of a band council and its employees, engaged in those activities contemplated by the *Indian Act*, forms an integral part of primary federal jurisdiction in relation to “Indians, and Lands reserved for the Indians” pursuant to s. 91(24) of the *B.N.A. Act*.⁴⁰

Since the normal activities of the employer in this case was part of its general function as the governing body of the band under the *Indian Act*, and it was operating within that role in building houses on the reserve, the Court of Appeal concluded that provincial legislation could have no application in the circumstances. It was, then, a situation falling within the *Canada Labour Code*'s authority over a “federal work, undertaking or business”.

The Federal Court of Appeal came to a similar opinion regarding the employees of the St-Regis Indian Band who worked as bus drivers, garbage collectors, teachers, carpenters, stenographers, housing clerks, janitors and road crews. All of these individuals were characterized as essential elements of the administration of the life of the community. As such, they were an integral component of the exercise of the federal legislative competence over “Indians, and Lands reserved for the Indians” within subsection 91(24).⁴¹ The subsequent decision of the Supreme Court of Canada did not disturb the conclusion.⁴²

40. *Whitebear Band Council v. Carpenters Provincial Council of Saskatchewan et al.*, [1982] 3 C.N.L.R. 181, 3 W.W.R. 554 (Sask. C.A.), at 190.

41. *St. Regis Indian Band Council v. Canada Labour Relations Board et al.*, [1981] 2 C.N.L.R. 126, (1980) 33 N.R. 56 (F.C.A.)

42. [1982] 4 C.N.L.R. 94 (S.C.C.). The Supreme Court allowed the appeal solely on the issue as to the status of the Band Council as an employer within the meaning of the *Canada Labour Code*.

The Alberta Court of Appeal likewise concluded that the lower courts were incorrect in applying provincial labour legislation to two special police constables employed by the Paul Indian Band.⁴³ Despite the appointment of the constables as police officers under provincial law and the fact that many of their duties involved the enforcement of provincial statutes, the court emphasized that it is the character of the operation of the employer, and the constitutional authority over that operation, that is the decisive test. The Court unanimously decided that band councils derive their authority directly from Parliament such that their normal operations or activities as a government are exclusively a matter within federal jurisdiction. As such, the council and its employees are immune from provincial legislation over labour relations.

This does not mean, however, that all Indians working on a reserve will be covered, if at all, by the federal legislation. Private sector employees will still largely be governed by provincial statutes under the functional test as enunciated in *Four B Manufacturing*.⁴⁴ Individuals employed by the band itself could also conceivably be subject to provincial legislation where their work is not part of the normal activity of an Indian band as the government of the reserve community. That is, if the band were to develop a business that functioned in a manner virtually identical to its private sector counterparts (e.g. a motel, restaurant, cattle ranch, farm, etc.), then one could submit that this was not a function of its normal capacity as a government such that it should be “approached on the basis that provincial competence over labour relations is the rule and federal competence is the exception”.⁴⁵

One must approach such a distinction with the greatest of care, which was not done in *Francis and Tobique Band Council*.⁴⁶ The adjudicator in this case, appointed under Part III of the *Canada Labour Code*, heard the unlawful dismissal grievance of Ralph Francis who had been employed by the Tobique Band Council of New

43. *Paul Band v. R.*, [1984] 1 C.N.L.R. 87 (Alta C.A.), reversing note 33, *supra*.

44. *Supra*, note 24.

45. Peter HOGG, *Constitutional Law of Canada*, 2nd ed., Toronto, Carswell Co., at 465. See also, e.g., *Kw'alooms Band Council and Canadian Union of Public Employees* (C.L.R.B., unreported, December 4, 1985, File No. 530-1287) in which the Band Council's application to exclude employees of its herring roe-on-kelp operation from a certified bargaining unit was rejected. *Public Service Alliance of Canada and Baker Lake Housing Association* (C.L.R.B., unreported, September 6, 1985, File No. 555-2285); *Public Service Alliance of Canada and Blackfoot Tribal Council and Old Sun Community College* (C.L.R.B., unreported, June 8, 1984, File No. 555-2053) although the latter certification order was later rescinded (Unreported, October 18, 1985, File No. 530-1269).

46. Unreported Adjudication Decision, September 21, 1985.

Brunswick as a labourer in the construction of new homes on the Reserve. The adjudicator placed great weight on the wording of the contribution agreement between the Band and the Canadian Employment and Immigration Commission for the housing project as it set minimum wages based on provincial standards and included assessments for the provincial worker's compensation scheme. After reviewing the Supreme Court's decision in *Four B*⁴⁷ and citing the leading constitutional text by Professor Hogg,⁴⁸ Mr. Collier concluded that he had no jurisdiction as the *Canada Labour Code* did not apply.

Unfortunately, the decision is very likely bad law. The adjudicator failed to consider any of the cases on the Indian band public sector including the Court of Appeals' judgement in *Whitebear Band Council*⁴⁹ which has almost identical facts.

Therefore, it appears that provincial labour legislation will have no application whenever an Indian band is fulfilling a governmental role in providing services to its community or exercising its authority as a government other than in unique circumstances such as *Commission scolaire crie et l'Association des enseignants du Nouveau-Québec*⁵⁰ where the James Bay Agreement's terms were implemented through the creation of the Cree School Board under provincial law as a successor to a previously provincially certified school board. The assumption then has generally been made that general federal legislation on labour relations should apply for such band employees. There is, however, an intervening legal question of interest which is usually overlooked: namely, are these band labour relations which are subject to federal constitutional authority immune from provincial legislation irrespective of whether Parliament has occupied the field by legislating in respect of these labour relations? This doctrine of interjurisdictional immunity was originally developed in federally incorporated company cases, but it has been extended to labour-management relations regarding federal works, undertakings and businesses.⁵¹ Its application to Indian bands was raised, but not answered, in the *Whitebear*⁵² and *St. Regis*⁵³ cases. So long as the *Canada Labour Code* does apply in the circumstances of a given situation, this question is not required to be addressed. The

47. *Supra*, note 24.

48. *Supra*, note 45.

49. *Supra*, note 40. For a different conclusion and a proper application of the *Whitebear Band Council* decision see, *Desjarlais v. Muskowekwan Education Centre* (Unreported adjudication decision of R.Y. Walmsley, July 3, 1986).

50. *Supra*, note 32.

51. See, e.g., *supra*, notes 7 and 10.

52. *Supra*, note 40.

53. *Supra*, note 41.

Saskatchewan Court of Appeal suggested, however, that the doctrine might not apply to Indians on grounds that are dubious at best.⁵⁴

The subject which has received some substantive judicial attention is the capacity of the band council to be an employer. The judges of the Federal Court of Appeal split on this issue in the *St. Regis* case.⁵⁵ The dissenting judgement of LeDain J. was adopted by the Supreme Court of Canada on appeal⁵⁶ when it concluded that the *Indian Act* creates band councils as statutory bodies having sufficient administrative and legislative powers to be an employer even though it is not legally incorporated by that Act. This debate has now been conclusively resolved for this purpose,⁵⁷ although the general legal status of band councils and band governments remains unclear.

Nevertheless, there remains open the possibility that the *Canada Labour Code* may not apply to Indian governments. The litigation to date has largely focussed on the federal-provincial division of powers. Since the *Indian Act* itself does not directly address labour relations, the courts have immediately turned to the existing federal legislation for the private sector and applied it to Indian band employees. This approach was challenged before the Canadian Labour Relations Board (C.L.R.B.) by the Fort Alexander Band in a dispute in which the Band refused to recognize a trade union previously certified by the Board.⁵⁸ This was, however, a rather unusual proceeding as the counsel for the band stated at the commencement of the hearing that his client did not accept the jurisdiction of either the Board or the *Code* over the Fort Alexander Band. The Chief and Council were of the view that "adherence to the laws of Canada as embodied in the Canada Labour Code is inconsistent with their claim for self-government".⁵⁹ This political position was not fully articulated through legal argument such that it was readily discarded by the Board as a "political issue" to which the Board does not respond.

54. *Supra*, note 40, at 192.

55. *Supra*, note 41.

56. *Supra*, note 42.

57. See, also, *supra*, notes 31 and 32. A recent decision on a preliminary argument in a Part III *Canada Labour Code* unjust dismissal arbitration made it very clear that the Band Council was not only the employer but also the real decision-maker within the Reserve. Therefore, the arbitrator ruled that even the band administrator was a mere employee and not ineligible for relief provided by the *Code* under the managerial exclusion, *Conseil de bande des Hurons de Lorette et Jean-Marie Gros Louis* (unreported, February 28, 1986). An unfair labour practice complaint was withdrawn from the C.L.R.B. recently in another case involving the Montagnais reserve of Pointe-Bleue, Québec, such that a jurisdictional issue was not raised (*Launière et Gill*, Unreported, August 26, 1986, File No. 745-2218).

58. *Supra*, note 32.

59. *Id.*, at 53.

The order of the Board in this instance was filed with the Federal Court. Since the Band continued to refuse to recognize the jurisdiction of the C.L.R.B., a Show Cause Order of the Court was issued. The Band did not attend either the first or second such hearing. The Band was represented by legal counsel at the second hearing who advised the Court that none of the respondents would appear as they did not recognize the authority of the Board and, therefore, that of the Federal Court in this matter.⁶⁰ Mr. Justice Rouleau concluded that the C.L.R.B. did have jurisdiction based on the *St. Regis*⁶¹ and *Whitebear*⁶² cases. He ruled that political solutions should be sought through Parliament rather than before the C.L.R.B. or the courts. On the other hand, if the Band wished to challenge the constitutionality of either legal forum, then Rouleau J. stated that the Council should appear and make its legal arguments. In the absence of such arguments, he found the Band, its education authority, the Chief, all councillors, the School Board members, and the School Superintendent in contempt of court with fines totally \$24,850 or imprisonment in default for three to thirty days. Some of the individuals subsequently spent time in jail for refusal to pay the fines. The four teachers who were unlawfully dismissed by the Band ultimately received a \$226,000 settlement from the Band advanced by the Department of Indian Affairs and Northern Development as back pay in return for dropping their demand for reinstatement.⁶³

As a result, the argument has yet to be made before a judicial tribunal that the *Canada Labour Code* should not apply to bands as a matter of law. Such an argument could be based on submissions that Indian First Nations are sovereign governments exempt from general federal legislation; or that, as in the United States, they retain residual sovereignty rendering them immune to federal laws unless the latter are expressly intended to apply to Indian governments;⁶⁴ or that certain

60. *Manitoba Teachers' Society et al. v. Chief and Council of the Fort Alexander Indian Band et al.*, (unreported, November 15, 1984, T-1754-84).

61. *Supra*, note 42.

62. *Supra*, note 40.

63. A further proceeding occurred before the C.L.R.B. to establish the right to reinstatement with backpay with an imposed obligation on the Band to pay their salary every two weeks until they were rehired. (Unreported, C.L.R.B., November 27, 1985). This was followed immediately by the filing of the Board's decision with the Federal Court Trial Division for enforcement by the Manitoba Teachers Society. Two adjournments were granted by Madam Justice Reed to permit negotiation of a satisfactory settlement, which was achieved on December 3, 1985. See also the decision of the C.L.R.B. dated December 5, 1985 (Unreported, File Nos. 745-2221, 745-2222 and 760-66).

64. For further information see, e.g., Bradford W. MORSE, *Indian Tribal Courts in the U.S. : A Model for Canada?*, Saskatoon, University of Saskatchewan, Native Law Centre, 1980.

legislative powers delegated to bands under the *Indian Act* already occupy the field.

3) Quasi-Public Sector

Literally hundreds of Aboriginal non-governmental organizations exist across Canada at the national, provincial/territorial, regional and local level. Their *raison d'être* ranges from providing social or legal services, to operating a community centre, to representing the interests of a professional group, to functioning as the political voice of Aboriginal peoples as distinct collectivities. These associations are generally federally incorporated charitable entities working to promote the aspirations of the Indian, Metis and Inuit peoples.

The question that naturally arises is how are their labour-management relations governed in a statutory sense. The general view has been that provincial labour legislation regulates any charitable or non-governmental public organization situated within its territorial limits. For example, the Ontario Labour Relations Board assumed jurisdiction over the employees of a Federally incorporated charitable organization designed to provide social and recreational services exclusively to federal civil servants.⁶⁵ This occurred even though the club was located on lands owned by the Government of Canada.

It appears that the only reported case in which the application of labour law to an off-reserve Aboriginal organization arose was *Ontario Metis and Non-Status Indian Association*.⁶⁶ The provincial labour relations board held that it had jurisdiction to certify the applicant trade union on the basis that the charitable entity represented Aboriginal peoples who were not within the federal government's jurisdiction under subsection 91(24) as they were not "Indians" for the purposes of the *Indian Act*. This conclusion, which is clearly arguable at the very least, was buttressed by a far stronger rationale. That is, the board also emphasized that the employer had no sufficient connection to lands reserved for Indians or to issues relating to the *Indian Act* and its operation so as to render federal labour law more constitutionally appropriate than the provincial statute.⁶⁷

65. *Ottawa Civil Service Recreational Association*, [1971] OLRB Rep. Nov. 764.

66. [1980] OLRB Rep. Sept. 1304. The author has been advised that the employees of the Native Courtworkers Association of British Columbia were certified by the B.C. Labour Relations Board without dispute in the late 1970's.

67. It is interesting to note that the employer ceased operations in Toronto and reduced its range of activities in order to avoid the effect of the Board's certification order.

Another way of viewing the matter is to examine the *Canada Labour Code* to determine if it could have any application such as to override the general presumption in favour of provincial legislative competence in labour relations. The *Code's* description of its scope turns on the definition of "federal work, undertaking or business" in section 2. The definition expressly includes certain listed areas none of which are relevant to the subject under review. Although this specificity is not intended to restrict the generality of the basic statement that "any work, undertaking or business that is within the legislative authority of the Parliament of Canada" falls within the definition, this broad description is insufficient to include Aboriginal organizations merely on the basis that they are federally incorporated or that their constituents are within the purview of subsection 91(24). Therefore, it would seem that all such organizations will be treated as being subject to provincial labour law. It would be difficult even for political organizations representing Indian bands and situated on a reserve to be exempt from provincial law as they still are unlikely to be perceived as being an integral part of Parliament's primary jurisdiction in relation to "Indians, and Lands reserved for the Indians" pursuant to subsection 91(24) of the *Constitution Act, 1867*.

III. FUTURE DIRECTIONS

If one can judge from the evident resistance of Indian bands to unionization as demonstrated in these few decisions, the trade union movement has yet to build the necessary bridges to Aboriginal communities. Although there is a very positive relationship between the Canadian Labour Congress and two national Aboriginal organizations, (*i.e.*, the Assembly of First Nations and the Native Council of Canada), this has yet to be translated into a similarly supportive one at the local level.

At the same time, existing Aboriginal governments are growing rapidly. The federal government's intention to reduce the size of the Department of Indian Affairs and Northern Development through dramatic staff cuts involves the assumption that hundreds of federal employees will be transferred to the authority of band councils. This event on its own would be likely to generate situations in which the issue of unionization will be thrust upon reserve communities. It will be supplemented, however, by the natural growth of Indian governments and the current efforts to develop light industry on reserves. Indian communities are also undergoing a transformation, for numerous reasons, resulting in an increasing tendency to seek individual material advancement as opposed to collective development.

Thus, the climate is developing in which the present movement toward enhanced Aboriginal self-government will include an exploration

of indigenous legislative control over employer-employee relations within Aboriginal territories. Although the author is unaware of any Indian, Metis or Inuit group that has actively pursued to date the concept of Aboriginal control over labour relations as a component of a comprehensive land claim settlement or a tripartite (federal-provincial-Aboriginal) self-government agreement, one can readily envision that this may occur in the near future. The publicity garnered by the dispute on the Fort Alexander Reserve in Manitoba can be expected to increase this likelihood. It is of course to be hoped that the precise circumstances of that event are not replicated.

At the present moment, the opportunities for Aboriginal control over labour relations are exceedingly meager. Since Canadian courts have yet to address the issue of full or residual sovereignty of the First Nations on a thorough basis, it is possible that such litigation may arise in the future resulting in a general judicial pronouncement that might encompass Aboriginal jurisdiction over labour relations. It is not at all apparent, however, that any Aboriginal group is currently prepared to run the risk of articulating such an argument before domestic tribunals.

The only other limited option at present is restricted to Indian bands who have been declared by the Governor in Council to have "reached an advanced stage of development" within the parameters of subsection 83(1) of the *Indian Act*. A large percentage of the 587 Indian bands in Canada have been so "blessed" by the federal government. Subsection 83(1) empowers these bands to enact by-laws, subject to the approval of the Minister, for the following purposes :

- (a) the raising of money by :
 - (i) the assessment and taxation of interests in land in the reserve of persons lawfully in possession thereof, and
 - (ii) the licensing of businesses, callings, trades and occupations ;
- (b) the appropriation and expenditure of moneys of the band to defray band expenses ;
- (c) the appointment of officials to conduct the business of the council, prescribing their duties and providing for their remuneration out of any moneys raised pursuant to paragraph (a) ;
- (d) the payment of remuneration, in such amount as may be approved by the Minister, to chiefs and councillors, out of any moneys raised pursuant to paragraph (a) ;
- (e) the imposition of a penalty for non-payment of taxes imposed pursuant to this section, recoverable on summary conviction, not exceeding the amount of the tax or the amount remaining unpaid ;
- (f) the raising of money from band members to support band projects ; and
- (g) with respect to any matter arising out of or ancillary to the exercise of powers under this section.

Although subparagraph 83(1)(a)(ii) might at first glance suggest the power to govern labour relations, the opening wording of

this subparagraph suggests that the sole purpose of the “licensing” is for the generation of revenue. Paragraph (c) in conjunction with paragraph (g) could form the basis for an argument that bands have the power to enact their own labour law such as to exclude provincial labour legislation through section 88 of the *Indian Act* as well as to substitute for the general federal statute. This is not, however, a particularly strong argument. It also does not readily mesh with reality on reserves as band employees are only rarely paid from money raised through the use of paragraph 83(1)(a), which is a required element to the exercise of legislative jurisdiction under paragraph 83(1)(c).

CONCLUSION

Employment opportunities are starting to escalate in Aboriginal communities — at long last. It is to be hoped that we will soon witness an explosion of economic potential within Indian, Metis and Inuit communities across Canada. Accompanying this will be questions of autonomy and self-sufficiency along with concerns for acceptable employment standards, working conditions, and collective rights of employees *vis-à-vis* their employers and their community. As economic initiatives develop that closely parallel those in the general society, one can anticipate increasing pressure to extend the existing scheme of employee rights and benefits to these communities. This will lead directly to a growing need to clarify whether federal, provincial or Aboriginal legislation sets the minimum standards and regulates unionization.

The limited case law extant proffers several initial principles to guide these developments. The paucity of jurisprudence, however, indicates that these questions are only beginning to receive attention. Nevertheless, major advances have been made from 30 years ago when a union argued, and the Quebec Labour Board agreed, that Indians were unsuited to labour organization and did not live in similar conditions to other workers. The Superior Court of Quebec granted prohibition in that case by stating that racial segregation was unlawful.⁶⁸ It is to be hoped that the desire for equality does not do disservice to the continuing collective rights of employees and of Aboriginal peoples. Accommodating these different, and sometimes competing, individual and collective rights will be the challenge of the coming years.

68. *John Murdock Ltd. v. La Commission de relations ouvrières et al.*, [1956] R.L. 257, 56 CLLC 564 (Que. S.C.)