LABOUR RELATIONS AND
INDIAN SELF-DETERMINATION:
A FORT ALEXANDER CASE STUDY

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by
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DEDICATION

This thesis is dedicated to the Indian and Northern Education Programme (INEP), University of Saskatchewan, and to the goals it seeks to achieve. May INEP long flourish. This thesis is also dedicated to the First Nations of Canada and to teachers who carry the responsibility of educating First Nations' children in the belief that working in partnership will achieve the goal of quality education under the aegis of First Nations' governance.
ABSTRACT

This case study examines a labour relations issue which initially involves teacher employees of the Sagkeeng Education Authority of the Fort Alexander Band on one hand and the Sagkeeng Education Authority and the Fort Alexander Chief and Council on the other. The events of the issue transpire between 1981 and 1986.

Teacher employees, concerned with working conditions and job security, organized as a local of the Manitoba Teachers’ Society which was certified under the Canada Labour Code. The Chief and Council of the Fort Alexander Band rejected the formation of the local and the applicability of the Canada Labour Code to labour relations on the reserve. Teachers were fired for union activities. Hearings were held by the Canada Labour Relations Board. Orders were issued by the Labour Board and a collective agreement was imposed by the Labour Board. The Chief and Council refused to follow the Labour Board’s orders, and contempt of court hearings were held by the Federal Court. Fort Alexander officials, including the Chief and Council, were initially fined and subsequently jailed. The Minister of Indian Affairs, David Crombie, promised to initiate Department studies to examine the possibilities and implications of changing the labour relations regime to reflect Indian self-government. The dispute was eventually settled out of court but the issue of Indian government jurisdiction over labour relations remains unresolved.
Conceived and sanctioned by the Manitoba Teachers' Society, the Canada Labour Relations Board and the Federal Court as a labour dispute, the researcher argues that the issue is more readily understood within the context of Indian self-determination and self-government. Concepts concerning philosophical, socio-economic, cultural, legal, political and historical aspects of the relationship between Indian peoples and the Canadian state are brought to bear on the issue. Concepts of group rights versus those of individual rights are examined.

It is argued that the current labour relations legal regime is inconsistent with Indian self-determination and self-government. The researcher suggests jurisdiction over labour relations should be determined by First Nations' governments as consistent with the goals of self-determination and self-government. Conceptions of Indian labour relations jurisdiction are suggested.
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If you and I were sitting in a circle of people on the prairie, and if I were then to place a painted drum or an eagle feather in the middle of this circle, each of us would perceive these objects differently. Our vision of them would vary according to our individual positions in the circle, each of which would be unique.

Hyemeyohsts Storm, Seven Arrows

Aboriginal rights are a riddle only to those who do not want to hear or face the truth, who do not want their taking of the land interfered with by the aboriginal owners of this continent.

Fred Plain, Anicinabie-Aski official

It is the hallmark of a hinterland that it not only cannot generate its own solutions... but it cannot even generate its own problems.

Laxer (1974 110)

The problem in the underdeveloped nations is precisely the presence of the developed nations.

George Manuel, The Fourth World
CHAPTER 1

Introduction

Through the process of formulating this thesis, it has become apparent that if one is to examine an issue dealing with Indian peoples, it is necessary to construct a context which incorporates perspectives of Indian peoples, for there are other versions of how Canada came to be, what Canada is and what Canada should be. Such an undertaking should examine various aspects of the historical development of the relationship between Indian nations and the European settlers, between the Indian peoples and the Canadian state. Undertaking research for this thesis has involved constructing such a context.

Kellough argues that any attempt to change the impoverished situation of Native peoples must be based upon an understanding of how the institutions of mainstream society have affected Indian communities (343). This requires an historical perspective, yet "the emphasis of most histories subordinates or ignores the Indians' experience" (Patterson 6).

Choose an issue concerning Indian peoples; it is like pulling a thread. Pull, and the whole garment comes with the thread. The garment I refer to, is the perspective of First Nations members towards Canada, and what these nations consider their rightful
place in Confederation to be. A thread is what I began with in this study; an issue concerning labour relations at the Fort Alexander Reserve.

The principle actors in this issue include on one hand the Fort Alexander Band, the Four Nations Confederacy, the Assembly of First Nations (AFN), and the Prairie Nations Treaty Alliance (PTNA) and, on the other hand, the teachers of local 65 of the Manitoba Teachers' Society (MTS), the Society itself, the Canada Labour Relations Board (CLRB), the Federal Court, Indian and Northern Affairs, Canada (INAC) and/or the Federal Government.

The issues and events which comprise the Fort Alexander scenario concern the practice of trade unionism and initially centre around the unionization of teachers employed by the Sagkeeng Education Authority of the Fort Alexander Band. It is characterized by the MTS, the CLRB and the Federal Court as a labour relations dispute involving the right to associate freely and to bargain collectively according to existing legal principle and practice. The scenario also illustrates conflicts between resurgent Indian nationalism and the Canadian state. From the perspective of the Fort Alexander Band and supporting Indian political organizations the issue is fundamentally one of self-determination and self-government within which authority and jurisdiction over education and labour relations is but one aspect. In this respect the issue develops from an internal locus at Fort Alexander to one of national considerations and consequences. The Fort Alexander scenario is very much a creature
of its time and the issues and events which comprise it remain basically unresolved. INAC, as we shall see, plays an intermediary and less obvious role and has yet another perspective.

The Fort Alexander

Scenario: the Issues and the Times

The events and issues that comprise the Fort Alexander scenario transpire over a period of intensifying significance for Indian peoples in Canada. Indeed, the issue partakes of and contributes to this significance:

There is already a precedent setting case with the St. Regis Band which was negative. However the timing was not appropriate for capitalizing on the issue of Indian self-government. ("Labour-Union")

During this period the Constitution was expatriated to Canada. Subsequently, Sections 25 and 35 dealing with "existing aboriginal and treaty rights" were entrenched in the Constitution Act, 1982; the Penner Report became the nadir of Parliamentary understanding of Indian self-determination and self-government aspirations; self-government became perceived as the "overarching treaty and aboriginal right" (Tennant 321) and a series of First Ministers' Conferences were held according to Section 37 of the Constitution in an unsuccessful attempt to constitutionally entrench the right to self-government. This period also sees a split within the AFN between treaty and non-treaty Indians, and the subsequent birth of the PTNA to specifically defend and represent treaty Indian band interests.
Fort Alexander: Location,

Pre-contact and Fur Trading Periods

The Fort Alexander Indian Reserve lies near the southeast corner of Lake Winnipeg where the Winnipeg River flows into the lake at Traverse Bay. Figures from the early 1970's listed 2300 band members, of which approximately 2000 lived on the reserve (Lithman 6). A March 1987 figure records a total band population of 3,227 (Korchinski 22 April 1987). These figures show Fort Alexander to be the largest reserve in Manitoba and one of the larger reserves in Canada.

The present site of Fort Alexander was originally within an area occupied by the Cree. The site has been the location of a number of fur trading posts which were key links between the fur bearing country of the western Athabasca reaches and the commercial centres of the east (Lithman 13).

The first post, named Fort Maurepas, was built by Pierre de la Verendrye Jr. in 1739-40, six miles above the lake on the right hand side of the river (Morton 199). It was one of a string of posts conceived by la Verendrye Sr. in an attempt to outflank English interests and to secure the burgeoning western fur trade for the French. The fort was named after the Comte de Maurepas, the French Minister of Colonies who had given la Verendrye Sr. a mandate to search for the western sea. The search for the western sea was part of the grand European obsession with finding a route to the Orient. An earlier fort of the same name had been built
near the mouth of the Red River during la Verendrye Sr.'s first expedition of 1734, but this site was held to be too close to Fort la Reine and abandoned in favour of the Winnipeg River site (Innis 94). During 1749-50, Fort Maurepas on the Winnipeg River was rebuilt by la Verendrye Jr. after it had been burnt by Indians (Innis 94). Innis does not identify which Indians burnt the Fort. Towards the end of the eighteenth century the original Cree inhabitants of the area were displaced by Saulteaux through the dynamics of population movements caused by the fur trade (Lithman 13).

The forts built along the lower Winnipeg River during the fur trade period had various names. In Saulteau, the language of the present day inhabitants of the Fort Alexander Reserve, the area is called "SagKeeng", meaning "where the water widens" (Lithman 12). In 1792 Fort Bas de la Riviere Winnipee was built by Toussaint le Sieur of the North West Company on the left hand side of the river approximately two and a half miles from the mouth of the river. The post was also known as Le Sieur's Fort (Lithman 12). The Hudson's Bay Company built Fort Alexander in 1800 a mere 40 rods from le Sieur's Fort (Morton 428). These posts served as the most easterly of the pemmican posts (E. Morse 25-26). Buffalo meat for pemmican was collected from the Red and Assiniboine River valleys. Wild rice and fish were also collected as provisions for the fur traders moving through these posts (Innis 233).
Treaty One and the Making

of the Fort Alexander Reserve

Fort Alexander Reserve Number Three was established according to conditions set forth in Treaty One on August 3rd, 1871:

... and for the use of the Indians of which Ka-ke-ka-penais is the Chief, so much land on the Winnipeg River above Fort Alexander as will furnish one hundred and sixty acres for each family of five, or in that proportion for larger or smaller families, beginning at a distance of a mile or there about above the fort. (Canada 4)

Treaty One was signed during a turbulent period of the expanding Canadian nation. The Red River Resistance and the creation of Manitoba occurred in 1870, following the handing over of a vast area known as Rupert's Land held under charter granted to the Hudson's Bay Company in 1670 to the recently formed Dominion of Canada. Provision was made for the annexation of Rupert's Land according to Section 146 of the British North America Act, 1867 and the Rupert's Land Act of 1868 (Daugherty 2).

Treaty One was signed after these nation building events. It has been noted that

while the Canadian government had provided itself with the legal authority to assume control over the North West Territories, it had done nothing to prepare or consult the inhabitants of the country about the forthcoming change in administration. (Daughtery 3)

Both the Metis and the Indians were viewed by the Dominion as an impediment to the expansion of mercantile interests and to the settling of western Canada. Treaty One was an instrument for
removing the impediment (Kellough 345). Indians still held title to Rupert’s Land as the Hudson’s Bay Charter had never extinguished it (Daughterty 3). The government in effect was already buying and selling land which was really Indian land (Kellough 345). Hence, the treaty was negotiated “to legitimize white ownership of the land they were already using” (Kellough 345). Kellough, among others, remarks that treaties were negotiated according to different values and power bases (345). A statement of Lieutenant Governor Archibald of Manitoba bears this out:

In defining the limits of their reserves, so far as we could see, they wished to have about two-thirds of the Province. We heard them out, and then told them it was quite clear that they had entirely misunderstood the meaning and intention of reserves. We explained the object of these... and then told them that it was no use for them to entertain any such ideas, which were entirely out of the question. We told them whether they wished it or not, immigrants would come in and fill up the country, that every year from this one twice as many in number as their whole people there assembled would pour into the Province, and in a little while would spread all over it, and that now was the time for them to come to an arrangement that would secure homes and annuities for themselves and their children... If they thought it better to have no treaty at all, they might do without one, but they must make up their minds; if there was to be a treaty, it must be on a basis like that offered. (qtd. in Daughtery 10)

In effect, the treaty was offered on a ‘take it or leave it basis’ (Taylor 59). In exchange for lands ceded to the government, the government would have lasting responsibilities to the Indians (Kellough 345). As shall be examined later, there are varying interpretations about the intent and significance of Indian treaties.
Metis were subsequently included on the band list after the initial signing of Treaty One. Consequently, the population of the reserve rose from 320 in 1872 to 506 in 1876 (Lithman 20). Canadian government sessional papers make reference to community factionalism between the original band members and the Metis who later became band members. In 1887 'Metis' band members unsuccessfully attempted to elect their own chief; the Indian agent ruled against the election and determined that there would be one Chief for the Fort Alexander Band (Lithman 44).

**The White Paper: Indian Resistance and Self-Determination**

It is generally agreed among commentators that Canada pursued a policy of assimilation for the indigenous population following the treaty making period. Many contend that assimilation continues to be the operating force in federal Indian policy. However, with the advent of the White Paper of 1969, a new and vital Indian nationalism arose in Canada which would challenge and change the relationship between Canada and Indian peoples.

The Honourable David Crombie, Minister of Indian and Northern Affairs between 1984 and 1986 was widely quoted as saying he would be the last INAC Minister. Notwithstanding the former Minister's intention the Indian peoples' quest for self-determination has taken some strides since the Federal Government's White Paper, known as the *Statement of the Government of Canada on Indian Policy, 1969*. The White Paper was based on the premise that
federal policy had failed Indian peoples socially and economically. This failure was held to have arisen from a legal status which set the Indian people apart from mainstream Canadian society (Statement 3). Further, it was the opinion of the Federal Government that the rising expectations of Indian people could not be met by the existing structure of separate treatment. The purported aim of the White Paper was to create an opportunity for Indian people to become equal to other Canadians, so that Indian people could benefit from a full participation in Canadian society.

The Government believes that its policies must lead to the full, free and non-discriminatory participation of the Indian people in Canadian society. Such a goal requires a break with the past. It requires that the Indian peoples' role of dependence be replaced by a role of equal status, opportunity and responsibility, a role they can share with all other Canadians. (Statement 5)

To this end, the Federal Government, through the White Paper, proposed a number of changes in Indian policy. These changes included the removal of constitutional and legislative bases of discrimination, the transfer of services to the provinces, the eventual termination of treaty and aboriginal rights and the transfer of Indian lands to Indian people (Statement 8-11).

Bourgeault identifies the White Paper as another expression of liberal underdevelopment theory, with its proposal of modernization bridging the abyss between perceived Euro-Canadian progress and the traditional Indian backwardness reinforced by a policy of separateness (17). Kellough notes the White Paper
focused on the mobility of the individual with little conscious
consideration of the needs of Indian communities as wholes (348).
Indian peoples would acquire white middle class values by being
forced off the reserves.

The problems of underdevelopment are the same for both Indian
reserves and third world countries (Kellough 348; Bourgeault 17).
that underdevelopment results from the adherence to traditional
cultural characteristics or the failure of 'backward peoples' to
adapt to modern society by adopting proper attitudes and values in
order to become functional parts within the capitalist system
(17). Kellough argues that underdeveloped societies, including
Canadian Indian reserve communities, are already a part of world
capitalism, and that this condition arises from the capitalist
expansion of developed countries (348).

Gill says that Euro-North Americans project a pre-contact and
antithetical image upon indigenous North Americans (9). We tend to
interpret the validity of indigenous North Americans according to
this image. Weaver makes a similar comment in reference to the
Federal government's proposed policy: 'the White Paper viewed
Indian ethnicity as past tense or as folklore and as a negative
condition of being "without"' ("A Commentary" 4). Weaver,
commenting upon this static conception of ethnicity, says it has a
perceived quality of 'Indianess' dissipate with the passage of
time ("Federal Difficulties" 146).
Weaver says that the formulation of the White Paper on Indian policy can only be understood in a holistic manner; the White Paper was developed within the context of broader policy initiatives ("Canadian Indian" 1). Weaver argues that the "Indian problem" as addressed in the White Paper was largely defined by the Prime Minister’s Office which had usurped the Department of Indian and Northern Affairs’ (DIAND) role; the problem was largely defined as one of ‘discrimination’ ("Canadian Indian" 4). Weaver notes that the Trudeau administration was concerned with national unity and the Quebec question so that arguments espousing the continuation of special status for Indian peoples were negated. Trudeau believed cultures could neither survive nor thrive by a regime of legal protection. Rather, the viability of a particular culture could only be determined through competition ("Canadian Indian" 6).

While DIAND advised that the Government recognize aboriginal title as the basis for Indian claim settlements, opponents within Government held that such a premise would lead to similar claims by other ethnic groups. This would threaten the unity of the Canadian state. Weaver notes that the policy’s rejection of aboriginal title ignored its history in Canadian Indian administration and British colonial policy ("Canadian Indian" 6). The White paper can be described as being ahistorical and as manifesting modernization theory.

The White Paper is couched in the language of civil libertarian ideology emphasizing the rights of the individual,
equality, and freedom from discrimination. As Opekokew says, it
denies the Indian conception of collective group rights taking
precedence over the rights of individuals ("Indians" 6). Ponting
and Gibbins note that the Federal Government "... under the guise
of equality, would abrogate its legal obligation and lead to the
first Canadians becoming merely an ethnic minority like the
others" (Out of Irrelevance 176).

The thrust of the White Paper has been identified as aiming
at an accelerated assimilation of Indian peoples. (Kellough 1980;
Weaver 1981; Yuzdepski 1983). The National Indian Brotherhood
strongly opposed changes proposed in the White Paper, and in 1970
it was abandoned by the Federal Government.

The Advent of Indian

Control of Indian Education

The White Paper clearly rejected the treaties as a basis for
Indian rights to education:

The significance of the treaties in meeting the economic,
educational, health and welfare needs of the Indian people
has always been limited and will continue to decline. The
services that have been provided go far beyond what could
have been foreseen by those who signed the treaties.
(Statement 11)

The provinces were to assume responsibility and
jurisdictional authority for the delivery of education to Indian
people, education already being an area of provincial jurisdiction
according to Section 93 of the British North America Act 1867.
Weaver reveals that 59% of Indian children were already attending
provincial schools by 1968–69 as a result of DIAND’s post-war devolution or integration policy in education (Making 25). Rothman says the Hawthorn Report recommendation of increasing Indian integration into provincial school systems merely reiterated an existing federal policy (69–71). Aboriginal education policy in Canada has long intended "to eradicate and replace the languages and cultures of Canada’s aboriginal peoples" (Paquette 33). Tennant identifies education as a main element in Canadian Indian policy since Confederation which had the destruction of traditional Indian societies and the assimilation of Indian peoples as its motive (323). Yuzdepski states the advent of the philosophy of Indian control of Indian education arises out of the period of vigorous opposition to the White Paper (37–40).
Parliament’s Fifth Report of the Standing Committee on Indian Affairs and Northern Development, also known as the Watson Report, was presented to Parliament in June, 1971. The Report concluded that a combination of the Indian unemployment rate with an extremely high drop-out rate showed that the current system was deficient and recommended greater Indian involvement in education. The NIB supported these conclusions but was critical of Parliament’s lack of action upon the recommendations and of DIAND over the lack of Indian involvement in education (Rothman 33–34). Citizen’s Plus, or the Red Paper, presented to Parliament in June, 1970 by the Indian Chiefs of Alberta raised a number of concerns about the federal policy of integrated education for Indian
children and called for a policy of cultural pluralism and local control of educational policies and budgets (Rothman 46).

In 1972 the NIB articulated its position paper, Indian Control of Indian Education, in response to the recognition that education for Indian peoples was 'an education for failure.' The Brotherhood reclaimed the right of Indian peoples to be educated as provided for in the treaties and the Indian Act. From the Indian perspective, the intent of the White Paper was to abrogate the Federal responsibility for the education of Indian children. Indian peoples firmly believed that this Federal responsibility was a right negotiated and gained by Indian leaders at the time of the treaties. The text of Treaty One, signed between Her Majesty and Chippewa and Cree Indians in 1871, makes the following brief promise: "And further, Her Majesty agrees to maintain a school on each reserve hereby made whenever the Indians of the reserve should desire it" (Canada 4).

Education and treaty rights were major issues closely linked with the development of the National Indian Brotherhood (Rothman 35). George Manual, President of the NIB during the "White Paper" period, states that the NIB's formulation of Indian Control of Indian Education "was the first time that Indian people of Canada, through their own organization, had presented to the government a single position on a matter of vital interest to our daily lives" (248-49).
Initially, the NIB position paper was accepted and adopted as policy by Minister J. Chretien of Indian Affairs in May of 1973. To this end, Minister Chretien stated

Let me say, however, that I and the staff of my Department consider the Brotherhood's paper as a significant milestone in the development of Indian education in Canada. I have given the National Indian Brotherhood my assurance that I and my Department are fully committed to realizing the educational goals for the Indian people which are set forth in the Brotherhood's proposal.

The Department's role will increasingly become that of a service function to which Bands can turn as they feel the need for consultation, for discussion, and for provision of specialized educational services; however, the control and responsibility will rest with the Bands to chart their educational course seeking whatever assistance they require from whatever source they desire. (Chretien 1973)

The NIB, in Indian Control of Indian Education, argues the education of Indian children was to be based on two fundamental principles: parental responsibility and local or community control (Indian Control 3). The nature of local control is illustrated by the following:

Band Councils should be given total or partial authority for education on reserves, depending on local circumstances, and always with provisions for eventual complete autonomy, analogous to that of a provincial school board vis-a-vis a provincial Department of Education. (Indian Control 27)

The past practise of using the school committee as an advisory body with limited influence, in restricted areas of the school program, must give way to an education authority with the control of funds and consequent authority which are necessary for an effective decision making body. The Federal Government must take the required steps to transfer to local Bands the authority and the funds which are allotted for Indian education. (Indian Control 27)
As Weaver says, the concept of Indian control of Indian education was inherently part of the drive towards Indian self-determination and self-government ("A Commentary" 2). This was implicit in Indian Control of Indian Education:

The Band itself will determine the relationship between the Band Council and the School Committee; or more properly, the Education Authority. The respective roles of the Band Council and the Education Authority will have to be clearly defined by the Band, with terms of reference to ensure the closest cooperation so that local control will become a reality. (Indian Control 6)

"Indian Control" also demanded Federal legislation "which will allow the Federal Government to transfer the authority and the funds allotted for Indian education to local bands" (Indian Control 5).

Education at Fort Alexander: the Early Years

Traditional education for aboriginal peoples was a process by which individuals were able to develop their gifts and become productive and responsible adults contributing to the well-being of the community ("Position paper" 1).

During the Treaty signing period, education at Fort Alexander was not unlike that experienced by other Indian communities seeking to adapt to the realities of Euro-Canadian settlement. Between 1871-85, the mission funded day school at Fort Alexander was largely connected with church and missionary work emphasizing mostly religious indoctrination. ("Position paper" 18). At the
turn of the 20th century farming and domestic instruction were included in the curriculum.

In 1904 a Catholic day school began and remained in operation until 1968. Protestant children went to schools in nearby towns or cities. Lithman notes that the community has, on occasion, become divided along religious denominational grounds. It has been held that the school at Fort Alexander was 'operated to force religious indoctrination and cultural assimilation upon students resulting in the development by students of negative images of self and community':

We were taught to fear, despise and ridicule our ancestors' spiritual ways. They tried, in extremely cynical fashion, to lead us to repudiate not only our heritage as a whole, but even of our own immediate families. We were punished for speaking our own language, taught to despise all traditions... ("Position paper" 21)

The concerted efforts of Fort Alexander's political leadership to gain effective control over the education programme arises in no small way from educational experiences.

Beginning in 1962 under the federal integration policy high school students attended nearby Powerview Collegiate. The achievements of the integration policy speak for themselves: between 1962 and 1978 less than 10 students graduated from Powerview Collegiate ("Position paper" 24). While the Powerview high school program met the needs of the Powerview community, the relevance of the program to the Fort Alexander community was ignored ("Position Paper" 23). Integration was another name for assimilation and a denial of Indian culture, aspirations and
community involvement. Indian people were the object of integration rather than active subjects.

Initiating Indian Control at Fort Alexander

In remarking that education is taken seriously at Fort Alexander, Lithman reports "many people indeed claim that "politics" started... when the first school committee was established in 1962" (138). In Fort Alexander "a movement began... to achieve an elementary school... that would not be divided along Catholic and Protestant lines" ("Position paper" 23). Fort Alexander was "in the forefront of taking advantage of fairly recently introduced programs designed to promote local government" (Lithman 7). The Fort Alexander Band, along with the Peguis and Sandy Bay bands was among the first to initiate the goal of Indian control of Indian education, in the sense of administering an education budget allotted by Indian Affairs and the Treasury Board and selecting teachers and developing curriculum ("Delegates from"). Lithman recalls that

During the spring of 1973, the Band Administration in Fort Alexander worked out a proposal calling for the takeover of the reserve schools from the IAB, in combination with a research and implementation program... The takeover program, which was accepted by the IAB for funding, included the establishment of a community based education authority, headed by a director. This body's prime task was to establish a new and relevant educational program for the elementary schools in Fort Alexander, and also to run a teacher training program whereby Indians from Fort Alexander with limited educational background could become eligible for certification as teachers. (32)
Aspects of local control began in 1973. Full "local control" began in 1976 and included administration over staff matters such as hiring and firing ("Position Paper" 30). The year 1973 is significant if one recalls that Indian Control of Indian Education, articulated by the NIB was formally adopted in principle as federal policy in May, 1973. The time of initiation of a locally controlled education system at Fort Alexander indicates a politically vigorous and active band, determined to reclaim the responsibility for education as a cornerstone in the development of the community. A quotation from Lithman supports, in part, this assertion:

On the political level it has produced a number of the most radical and vocal of Indian leaders in Manitoba, and even Canada. (20)

Lithman provides an excellent account and analysis of events leading up to the initiation of local education control which illustrate the determination of the Fort Alexander Band to gain control over processes affecting the development of life on the reserve.

The Band take over of the reserve school system began with the 'North Shore School controversy.' In February 1973, the North Shore Action Committee, an elected group representing the educational concerns of parents on the north shore of the reserve, provided the impetus for events which resulted in the building of a much needed new school. After some sophisticated manoeuvering on the part of the Band through protracted negotiations, an agreement
with Indian Affairs was obtained. The band gained control over the planning, construction and financing of the school building process (Lithman 28). The Band was therefore one of the first to effectively challenge federal bureaucratic dominance and regulation of substantial capital expenditures (Lithman 101).

The school lacked in sewage and water treatment facilities threatening the health of students. Students also suffered from overcrowding in the school. Despite DIAND obstinacy and resistance to providing anything but temporary and superficial solutions to the problem, the Band was able to achieve its goal of gaining a new school. Lithman characterizes the events as "negotiable interaction bargaining" wherein both the band and DIAND realized they mutually held "effective means to sanction each other" (114).

An article on Indian education published in the Winnipeg Free Press, dated November 17, 1978 bears witness to the positive effect of the band gaining some semblance of control over the administration of education:

... the healthy upswing in the number of high school graduates... a spokesman for the Fort Alexander Reserve noted that seven students graduated from high school last year, and thirteen are expected to graduate this year. Before local control was established, when students went to a neighbouring school district, only seven students from the reserve graduated over a two-year span. (Lowery 17)
Circumscribing a Treaty

Right: Defining and Implementing Indian Control

Indian political perspectives on the nature of educational control and self-government evolved over the ten years following Indian Control of Indian Education. These perspectives differ radically from those prescribed by the Federal Government. The connection between education and self-government has recently been made more explicit by the Assembly of First Nations and other Indian organizations; the AFN clearly identifies the Band Council as having the ultimate authority over educational matters:

This means that Indian Bands, through their Chief and Council, will establish the policies, the guidelines, the duties and responsibilities, the selection and appointment, the terms and conditions, and any and all matters governing the operation of Band education authorities. This means, for example, the Band Council itself may act as the education authority; or the Band Council may provide for the election of a separate body as the education authority ... I simply wish to emphasize here that the education authorities are responsible and answerable to the Band through its representative, the Band Councils. (Starblanket 2-5)

Education is a key institution in any society. What is Indian control of education to accomplish? The concept of Indian control can be viewed according to various perspectives. Clifford says the pursuit of local control of education is the most effective means of internally restructuring Indian society: "Indian community control of education leads to the development and survival of the total Indian community" (5). However, he cautions that the process of making new structures must be dominated by Indian people,
otherwise, these structures will not be functional. Maclean (1972) considers community control of education to be one of the most important principles within the process of Indian self-determination.

Simpson says that Indian control is more than a political process; it is also an inherent part of a cultural revitalization movement. He identifies one of the key concepts of Indian control as a cultural process "aimed at developing a positive self-image and the development of Indian social institutions" (53). Boldt and Long distinguish between the political aspect of self-determination and its cultural component and see culture as the reason for the existence of Indian political organizations ("Tribal Traditions" 347).

Jordan observes Canadian Indians are challenging the power of the government to impose restrictive legislation (278). Therefore, the assertion of identity and the issue of the control of education occur within a context of legal considerations concerning the recognition of rights of indigenous groups.

Jordan identifies educational institutions as the pre-eminent site for the communication of values, for one of the functions of the school is to reproduce society and transmit its cultural values at the same time that it concerns itself with knowledge. Therefore indigenous groups regard schools as the major site where the battle for ethnic identity was lost and where it will be reclaimed (281).
Simpson connects local control with the issue of self-government:

Because local control of education is an effective way to strengthen communities it is also an effective way to bring about the development of self-government. Thus political issues continually enter into the educational discussion and Indian political bodies have to grapple with the vexing problem of how far they wish to push the idea of political sovereignty. (56)

The Assembly of First Nations lists 194 Bands across Canada which run Band operated schools. However, as Urion and Assheton-Smith point out, it is difficult to determine what constitutes a Band operated school as Indian control of Indian education lacks definition. Indian control has taken upon a myriad of forms. Urion and Kouri observe the meaning of local control depends upon who is using it and for what reasons. For Urion, any debate as to whether local control exists or not must focus on the administrative locus of control. He proposes a number of questions to determine the degree of its existence, including:

Does a local jurisdiction have the power to hire and fire teachers and administrators?
Does the local jurisdiction have the power to set goals, enunciate justifications for those goals, and choose policy alternatives, without review by other than judicial authority?
Are individuals in the community heard: is there some mechanism for parental, citizen, individual representation to local decision making boards? To whom is the board accountable?
Is the mechanism, the power, for change of administrative structure locally invested. (n.p.)

Maclean (1972) says that the most direct way in which community control is accomplished is by having Indian school
boards with full discretionary powers. However, MacLean does not define what "full discretionary powers" are. Bargen distinguishes between the political aspect of local control, meaning "the right or condition of self-government", and its philosophical dimension, which refers to "ethical self-determination of the will- the power of self-control, independent of external influences" (5). He considers the latter to be impractical for educational governance structures, but posits criteria for the realization of local control, wherein the community should be able to 'hire and fire all personnel, set goals and objectives, determine curriculum and resource materials, establish attendance zones and enrolment policies, establish standards for promotion, control and run the physical plant, establish examination and evaluation procedures, and have full control over budget decisions' (5).

Part of the difficulty in realizing local control may be attributed to the fact that although the Federal Government adopted Indian control of Indian education as policy in 1973, there never was, nor is there, agreement as to how the concept will be implemented. Education officials at Fort Alexander have this to say about the implementation of the policy: 'as with the NIB and other bands, we has no quarrel about the policy as we understood it and understand it still' ("Position Paper" 27). They continue

It is the implementation of that policy by federal officials... by which they have in effect maintained the power but not the responsibility, the authority but not the
accountability, that our experience has led us to reject. ("Position Paper" 27)

Jordan cautions that self-determination is a fragile process when communities are dependant upon funding from the dominant group, and wonders whether autonomy can be realized under the condition of externally controlled finances. If communities are to be dependant upon externally controlled finances, she suggests, then perhaps it is more realistic for indigenous political status to be defined in terms of self-management rather than self-determination (279). Simpson likewise identifies funding as a key issue (50). He asserts that Indian control will never be fully possible unless the Federal government and bands can make long term funding agreements which are relatively free of restrictions. Similarly Knoll identifies funding as the most contentious issue facing Indian control of education (6).

Under Section 81 of the Indian Act the Minister may enter into contribution arrangements with Indian Bands in order for the Bands to secure funds to run an education system. However, the terms and conditions of the contribution arrangements are prescribed by the Federal Financial Administrative Act, so that the administration of band education is primarily accountable to the funding department for the manner in which funds are used, rather than being accountable to band members. In short, Indian Bands deliver INAC programmes (Devrome). Yuzdepski notes two critical areas lacking as positive bases for the policy's implementation: a lack of consistent funding and a lack of
legislation which would legitimate local Indian education authorities (40).

Ward provides a critical and historical review of the debate between DIAND/Federal Government and the NIB over the implementation of Indian Control of Indian Education (10-21). She contends that the NIB as an Indian organization representative of collective Indian interests was effectively curtailed from implementing Indian Control of Indian Education at a national level. This curtailment is stated to be part of a Federal strategy by which the NIB was put in the position of reacting to government policies and proposals instead of being able to actively determine the direction of Indian Control of Indian Education (19-20). The Federal Government thereby did not recognize the legitimacy of the NIB as an organization representative of collective Indian interests (Ward 19-20). In contrast, Indian political organizations, such as the NIB, or later, the AFN or the PTNA regard themselves as legitimate alliances representing the collective interests of member Indian Bands, in the tradition of alliances such as the Iroquois Confederacy of Six Nations or the Blackfoot Confederacy.

In early 1975 DIAND introduced an implementation scheme for Indian Control of Indian Education in the form of the E-guidelines. Ward notes the guidelines were developed unilaterally by DIAND and therefore violated one of the principles of the policy statement which called for the input and involvement of Indian people in the implementation of Indian Control of Indian
Education (19). For Fort Alexander Band the use of the E guidelines

specifically confirmed that Indian self-determination was meaningless... (and) generally made irrelevant and meaningless the former ministerial agreement with Indian people."
("Position Paper" 32)

If one refers to statements made by the Honourable J.
Chretien, this contention is not unfounded:

In consultation and co-operation with the Indian organizations, my Department will begin immediately to effect the educational changes for the Indian people that they have requested. (Chretien 3-4)

We are prepared to reflect changes in our organization and in our procedures which will assist in implementing the National Indian Brotherhood's policy in ways acceptable to the Indian people and in cooperation with them. (Chretien 5)

The NIB, through the Joint Cabinet-NIB Committee and through meetings with appointed government officials, subsequently called for the withdrawal of the E-guidelines, which were criticized for providing no financial guarantees for education, among other things. Further, the NIB proposed that the education sections of the Indian Act be revised to give the Minister authority to delegate powers and jurisdictional authority to Indian Bands. In Ward's opinion, this proposal was rejected by the government officials because the government wished to retain executive, administrative and financial control over the practice of Indian control of Indian Education and to allow its version of implementation to proceed only on a band-by-band basis according
to DIAND criteria which would determine which bands were capable of control (Ward 12-13).

Weaver also comments on the relationship between the NIB and the federal government during this period (Making). In late 1974, she notes, the Federal Government created a Joint Cabinet-NIB Committee, wherein the Executive of the NIB met with Cabinet Ministers belonging to the Social Policy Cabinet Committee in order to come to agreement on major policy issues. In 1978 the NIB pulled out of this arrangement (Making). Price says this break down occurred "over the meaning of education as a treaty right" (xiii). The NIB had viewed the Joint Committee as a negotiating forum, whereas the government had intended it to be an advisory body. Weaver states that no new policies of mutual agreement came out of the Joint Cabinet-NIB Committee (Making).

In 1981, Ward recounts, the NIB initiated further action on implementing Indian control of Indian education by attempting to gain funding for a comprehensive implementation plan (14). A proposal stated

Indian people insist that it is Indian people themselves, and not the DIAND who will develop an implementation plan and process. The responsibility for producing such a blueprint lies with Indians. It would be a contradiction in terms for an non-Indian polity to develop the prescription for Indian control. Needless to say, such a prescription would not be acceptable to Indians. ("A Proposal" 6)

A paper entitled "The Rationale for a Process of Development Towards Indian Control of Indian Education" was subsequently developed by NIB staff and presented to then Minister J. Munro of
DIAND in order to acquire funding for an assessment stage of the Comprehensive Implementation Plan. Initially the Minister positively received the idea of the rationale (Ward 16). Yet in the meantime, DIAND proceeded with its own evaluation of Indian control of Indian education released in April, 1982 as the Indian Education Policy Review, Phase 1. The NIB was opposed to this review as it had taken place without Indian participation and was released without a Ministerial response to the NIB Rationale Paper. Consequently the NIB refused to participate in the planned Phase II. Eventually the NIB's Rationale Paper was rejected by the Minister on the grounds that local control meant that DIAND would work with bands on a band by band basis, and not through the NIB (Ward 17).

DIAND's Indian Education Policy Review, Phase 1 (1982) does admit to failings in Indian education policy. Included in DIAND's admissions are the failure to support Indian education organizations in the assumption of educational functions for quality education, the lack of a definition for Indian control, an inadequate preparation process for the Bands, inferior education management structures, and inferior funding levels in comparison to provincial funding levels (Indian Education 3). From the Department's perspective, these inadequacies led to "a considerable gap between expectations and realities" (Indian Education 6). This "considerable gap" may be located in the debate over the nature of control and its locus. For example, the Department states
... even if legislative changes provided a better base, the federal government would still retain a responsibility for the expenditure of funds and qualitative outcomes much the same as provincial departments of education. This must be clearly understood by all. (Indian Education 40-39)

The Indian Education Policy Review, Phase I acknowledges that "Indians have placed a great importance on the treaties" in regards to education, but, it notes, the treaties are not used for argumentation in the paper because "they are being dealt with in other forums" (Indian Education 8). Such an understatement is indicative of the difference in paradigms between the Federal Government and Indian political organizations. Opekokew examines the political dimension of education for treaty Indians and claims that an Indian education system should be a vehicle for the preservation of all treaty rights for future generations (Indian Government and the Canadian Confederation 84). From the perspective of a great number of Indian bands and political organizations the whole basis of the relationship between the Federal state and Indian bands is or, rather, should be, the treaties. For example, many Indian political organizations regard education as a pre-paid treaty entitlement, paid for by lands released by treaty ("Historical Overview" 31). As the Indian Chiefs of Alberta put it in Citizens Plus, "Our education is not a welfare system. We have a free education as a treaty right because we paid in advance for our education by surrendering our lands" (14). Ward notes that it is questionable whether the Federal Government views education as a treaty right (13-14). The Department has taken the position that there is no direct legal
basis in the Indian Act for the transfer of education programmes from the control of the Minister to Indian bands (Indian Education Annex B: 6). The federal stance on education as a treaty right is a major component in INAC’s reduction of the concept of Indian Control of Indian Education to a definition of administration rather than one of management or self-determination by First Nations.

First Nations’ Initiatives:

Determining Jurisdiction Over Education

Sterritt observes the effect of the Indian Self-Government Report in the fall of 1983 as dominating all developments. Education, conceived as a jurisdiction of Indian governments, is one of the critical programme areas requiring immediate change and is to be consistent with the Indian Self-Government Report, the constitutional process, and the bilateral process (n.p.).

Sterritt argues that "the obligation to fund education is not identical to the right to control education" (n.p). Knoll notes the argument made by Indian political organizations, such as the Federation of Saskatchewan Indian Nations (FSIN), that aboriginal or customary rights over education were never surrendered by treaty (53). The treaty merely recognized that in return for a release of their aboriginal interest in the land upon surrender, the Crown agreed to assist the Indians in the education of their children but not to terminate the Indians' responsibility to
educate them. For Knoll, then, the question is whether the customary or aboriginal right to education continues to remain under Indian jurisdiction.

A number of Indian political organizations, including the AFN, PTNA and the FSIN have issued comprehensive positions regarding education. These initiatives are premised on First Nations sovereignty and seek to actively legitimize and determine the First Nations' right to education. These initiatives contrast sharply with Federal perspectives on Indian control of Indian education.

A national review of education, termed the "most ambitious national endeavour in First Nations education since the Indian Control of Indian Education policy statement of 1972" has been undertaken by the AFN and will result in an updating of the NIB's Indian control policy statement (Sterritt). The review is being undertaken according to certain principles. It is stated that the Crown is obliged by treaty and aboriginal rights to fund First Nations education, which is held to be part of the Crown trust responsibility. The financial arrangements between the Crown and First Nations are to recognize the primacy of band governments so that accountability will be to band membership. It follows then that accountability mechanisms are to accommodate the legislative and regulatory powers of First Nations governments. It is declared that the right to education must be established through recognition and protection in the Constitution and appropriate Federal legislation. The review focuses on jurisdiction,
management, quality of education and funding. It is stated that First Nations must develop and enact educational legislation and policy, implement educational regulations and codes, exercise jurisdiction over curriculum and personnel, enforce quality control over the same, and establish standards for institutional development and fiscal arrangements. The Federal Government must therefore develop and enact complementary legislation to recognize and aid initiatives of First Nations' governments (Our Lands).

In Saskatchewan, the Saskatchewan Indian Education Commission of the FSIN has coordinated the development of Indian Education Acts, which exist at the band, district and provincial levels. The FSIN Legislative Assembly has ratified the acts which are premised on Indian peoples having a right to education as negotiated in the treaties by sovereign Indian nations which did not abrogate their right to self-government. Bands are held to be paramount, having exclusive jurisdiction and authority in education.

The acts are termed enabling legislation in which the duties and powers of boards of education are defined. The development of rules and regulations are to follow. The formulation of these acts is seen by the FSIN to be an important cornerstone in acquiring control over the process of developing Indian education systems.
Statement of the Problem:

Labour Relations, Indian Control and Self-Government

Teachers who work for the Department of Indian Affairs are members of the Public Service Alliance of Canada (PSAC). PSAC is a large union with approximately 180,000 members. PSAC represents federal teachers in the collective bargaining process. When an Indian Band takes over the reserve education system, the teachers cease to be members of PSAC; they may no longer have the protection that a large union offers.

One aspect of Indian control of Indian education concerns the nature of employer-employee relations. As Indian bands take over the responsibility for the education of Indian children, teachers employed by these Indian Bands may find themselves in situations where there is no teachers' association or union. Therefore, there may be no collective bargaining process and contracts are usually of an individual nature. Pauls notes problems concerning pension benefits, pension contribution transfers, job security, salary and living accommodations (35). INAC's Indian Education Policy Review Phase I reports many teachers consider pension plans inadequate and their jobs insecure without collective agreements. These conditions are said to contribute to low staff morale and high turnovers in band controlled schools. Both the kind and quality of employer-employee relations varies from band to band.

Opekokew, while remarking that Indians do not enjoy the right of defining community membership, states that developing labour
resources is difficult and will continue to be so as long as non-Indian interests are able to splinter off segments of communities. She states that non-Indians working within Indian communities "must be subject to labour and employment regulations devised by Indian governments alone" (Indian Government and the Canadian Confederation 42).

Employer-employee relations are a problematic aspect of Indian control of Indian education. Institutions, organizations and individuals have expressed various attitudes towards employer-employee relations within the Fort Alexander scenario. What are the attitudes, their characteristics and origins? Why did the Chief and Council resist the formation of collective bargaining unit and the practice of collective bargaining? How does collective bargaining conflict with self-determination and self-government? Why did teachers form a certified bargaining unit?

Significance of the Study

The nature of employer-employee or labour relations is a relevant and controversial aspect of Indian control and warrants research by virtue of the lacuna existing in the literature on Indian control of Indian education. The issues and events of the Fort Alexander scenario concern labour relations and occur within a context of Indian self-determination and therefore provide an opportunity for research into this complex topic.
There are a number of fundamental issues which, when analysed, will serve to clarify the nature of employer-employee relations within the context of Indian control of Indian education, and within the context of self-determination at Fort Alexander.

Definitions

For the purposes of this thesis, the following definitions are included:

**Aboriginal Right:*** "an inherent and original right possessed individually by an aboriginal person or collectively by aboriginal peoples" (Education Secretariat 4).

**Arbitration:** "a method of settling disputes through the intervention of a third party whose decision is final and binding. Such a third party can be either a single arbitrator, or a board consisting of a chairman and one or more representatives. Arbitration is often used to settle major grievances and for settling contract interpretation disputes. 'Voluntary arbitration' is that agreed to by the parties without statutory compulsion. 'Compulsory arbitration' is that imposed by law" ("Labour Relations" 82).

**Assembly of First Nations (AFN):** successor to the National Indian Brotherhood following the reorganization of the NIB.

**Assimilation:** absorbing indigenous peoples into mainstream society thereby erasing tribal culture and status.

**Band:** a legal term of the Indian Act denoting a group of Status Indian persons. The term "band" however, enjoys a nebulous status according to case law interpretation. Conversely, from an Indian political perspective, the term refers to a basic unit of social and political organization among a group of indigenous persons. Political organizations, such as the PTNA hold that "the band is paramount in all matters."

**Bargaining Agent:** "a union designated by a labour relations board or similar government agency as the exclusive representative of all employees in a bargaining unit for the purposes of collective bargaining" ("Labour Relations" 82).
Boundary Maintenance: "the preservation of social and/or physical boundaries between a people (typically an ethnic group) and the larger society in which they live. This is accomplished by various mechanisms, such as the prohibition of mixed marriages, the regulation of entry to and exit from the ranks of the ethnic community, and the establishment of institutions operated by the members of the ethnic community to meet the needs of other members of that ethnic community" (Arduous Journey 410).

Canada Labour Code: a statute of the federal parliament which defines aspects of labour law as applicable by federal prerogative according to the British North America Act, 1867.

Canada Labour Relations Board: a board established under federal labour relations legislation to administer labour law, including certification of trade unions as bargaining agents, investigation of unfair labour practices and other functions prescribed under the legislation (based on "Labour Relations" 84).

Case Law: "case law is constituted by the reported cases on a given subject. Where a subject is covered by statute, the statute will take precedence and case law will interpret, amplify or fill the gaps in the statute. Where there is no statute, case law will constitute the law on a particular subject" (Indian Government and the Canadian Confederation 48).

Case Study: a method of social science research by which the researcher examines a particular example of a phenomenon. Conclusions drawn from a case study may be extended into generalizations. However, such generalizations are open to questions of validity.

Certification: "official designation by a labour relations board or similar government agency of a union as sole and exclusive bargaining agent, following proof of majority support among employees in a bargaining unit" ("Labour Relations" 82).

Chief and Band Council: a governing body with limited powers created and sanctioned according to the Indian Act. As such, the authority Chief and Band Council is subject to the control of the Indian Act and Parliament. Under the current legal regime, a Band Council owes its existence to Parliament and not to band membership.

Collective Agreement: "a contract between one or more units acting as a bargaining agent, and one or more employers, covering wages, hours, working conditions, benefits, rights of workers and unit, and procedures to be followed in settling disputes and grievances" ("Labour Relations" 82).
Collective Bargaining: "a method of determining wages, hours, benefits and other conditions of employment through direct negotiations between a union and an employer. Normally the result of collective bargaining is a written contract which covers all employees in the bargaining unit, both union members and non-members" ("Labour Relations" 83).

Colonialism: "a form of imperialism by which a state extends sovereignty over others for the purpose of economic exploitation and national glorification. Inhabitants of the colony have inferior political and legal rights" (Booth 165).

Conciliation/Mediation: "a process which attempts to resolve labour disputes by compromise or voluntary agreement. The mediator, conciliator or conciliation board does not bring in a binding award and the parties are free to accept or reject its recommendations" ("Labour Relations" 83).

Control: the act of directing influence, regulation and governance. The AFN notes that "control" has been supplanted in favour of the term "jurisdiction" (Education Secretariat 4).

Covenant: "an international or multilateral treaty forming part of international law, as for example, the International Covenant on Economic, Social and Cultural Rights" (AFN Education Secretariat 4). With United Nations covenants, member states can choose to be or not to be party to the covenants. UN covenants are said to have moral rather than legally binding authority.

Crown: the head of executive power, based upon the former conception that the Sovereign is the formal head of state. Thus, the state has the appellation "the Crown." The Crown refers to both the Federal and Provincial governments.

Culture: "the customs, history, values and language that make up the heritage of a person or people and contribute to that person's or people's identity" (Education Secretariat 4).


De Facto: "a legal term meaning 'in fact', whether by right of law or not" (Arduous Journey 410).

De Jure: a legal term meaning by right of law.

Department of Indian Affairs and Northern Development (DIAND): a branch of the Federal Government which administers Indian matters
through policy and the Indian Act. DIAND, also known as Indian and Northern Affairs Canada (INAC), is usually described by Indian political organizations or alliances as a colonial institution.

**Education Authority:** any of a variety of band or tribal council structures which have some degree of administrative responsibility for educational matters. Presently there is no federal legislative basis for band education authorities. However, in Saskatchewan, education authorities are sanctioned according to the Saskatchewan Indian Education Act, a creation of the Legislative Assembly of the Federation of Saskatchewan Indian Nations. Indian political organizations or alliances declare that whatever representational form an education authority takes, it is ultimately responsible to the band membership through Chief and Council. It is assumed that education authorities will exercise recognized jurisdictional authority over education matters under First Nations self-government in the future.

**Ethnocentrism:** "a belief in the inherent superiority of one's own group or that group's way of doing things" (*Arduous Journey* 411).

**Etic Researcher:** a researcher who holds different values and beliefs from the persons, group, community or institution being studied. This being the case, the researcher may tend towards bias or interpret phenomena in a ways which deny the world view held by the subjects. The results of etic research can be influenced by the background of the researcher. An etic researcher should seek to be aware of his/her values and beliefs in relation to those of the subjects being studied. Realizing that one may have an etic perspective is an aspect of qualitative analysis in which it is admitted that objectivity applied to sociological phenomena may be an impossibility.

**Federal Court:** an institution created in 1970 to deal with federal administrative law and consisting of trial and appeal divisions. Federal Court decisions can be appealed to the Supreme Court.

**First Ministers' Conferences on Aboriginal Constitutional Matters:** a series of Constitutional Conferences held according to Section 37 of the Constitution Act, 1982 between 1982 and 1987. The conferences were largely concerned with the unsuccessful attempt to have an aboriginal and treaty right to self-government entrenched in the Constitution.

**Grievance:** "complaint against management by one or more employee, or a union, concerning an alleged breach of the collective agreement or an alleged injustice. Procedure for the handling of grievances is usually defined in the agreement. The last step of the procedure is usually arbitration" (*Labour Relations* 83).
Indian Act: 'a federal statute enacted under the authority of Section 91(24) of the British North America Act, 1867. The Act gives the Minister of DIAND considerable powers, similar to those of a colonial governor, over activities on reserves and over the lives of individuals the Act defines as Status Indians' (Indian Government and the Canadian Confederation 49).

Indian self-determination: the concept that a people have the right to decide their own future freely without outside interference.

Indian self-determination theory: the study of Indian self-determination premised on the concept that Indian peoples actively seek to define and enhance cultural, socio-economic and political well-being.

Indian Self-Government: the ability to govern autonomously and a right derived from the inherent rights of Indian peoples. For the purposes of this study, self-government is conceived as "the overarching treaty right." It was the subject of a series of non-conclusive First Ministers' Conferences held between 1982 and 1987. Treaty Indian political leaders believe the right to self-government cannot be given or devolved by Parliament but that the right exists and is confirmed by treaties and can only be recognized.

Indigenous: "native to a certain area" (Education Secretariat 5).

Institution: "the belief systems and the organizational structures that characterize relatively different sectors, or segments in society" (Arduous Journey 411).

International Bill of Rights: "a collective reference to the Universal Declaration of Human Rights, the Covenant of Civil and Political Rights and the Covenant of Economic, Social and Cultural Rights of the United Nations" (Education Secretariat 5).


International Labour Organization (ILO): "a tripartite world body representative of labour, management and government; an agency of the United Nations. It disseminates labour information and sets minimum international labour standards, called "conventions", offered to member nations for adoption" ("Labour Relations" 84).

Jurisdiction: the authority to make laws on a given matter.
Jurisdictional dispute: a dispute over who has the authority to determine which law or laws will apply in a given situation.

Liberal democracy: "a political system of majority rule, universal adult suffrage and secret ballot, where the major value is placed on the rights and freedoms of individuals and the role of the state is envisaged as primarily that of maintaining law and order impartially, achieving social and economic progress, and creating the conditions of individual liberty" (Arduous Journey 411).

Liberal democratic ideology: "belief in the justness and desirability and liberal democracy" (Arduous Journey 411).

Local: "the basic unit of union organization. Trade unions are usually divided into a number of locals for the purposes of local administration. Locals have their own constitutions and elect their own officers who are usually responsible for the negotiation and day-to-day administration of the collective agreements covering their members" ("Labour Relations" 84).

Manitoba Teachers' Society (MTS): a trade union representing the collective bargaining and representational interests of its members, created under authority of Manitoba legislation. As such, it members are organized into association to further mutual interests with respect to wages, hours, working conditions and other matters of interest to the members.

Minority Group: "a group of people living in a given country or locality, having a race, religion, language and traditions in a sentiment of solidarity, with a view of preserving their traditions, maintaining their form of worship, securing the instruction and upbringing of their children in accordance with the spirit and traditions of their race and mutually assisting one another" (Indian Government and the Canadian Confederation 69).

The Federal Government argues that Indian communities and entities are minorities. As such, they do not enjoy sovereign rights to land or government. Conversely, Indian political organizations argue that Indian entities are nations.

Nation: "a social group which shares a common ideology, common institutions, and customs and a sense of homogeneity" (Plano & Olton). The World Council of Indigenous People's Declaration of Principles, International Covenant on the Rights of Indigenous Peoples offers the following: "nations have a stable population, defined territory, a government and a capacity to establish relations with other nations." The AFN, PTNA, FSIN and the Chief and Council of the Fort Alexander Band all declare Indian communities are nations.

National Indian Brotherhood (NIB): "a national organization representing Indian organizations in most provinces and the
Northwest Territories, founded in 1968" (Indian Government and the Canadian Confederation 49). The NIB was reorganized as the Assembly of First Nations in 1982.


Prairie Treaty Nations Alliance (PTNA): a Status Indian political organization which represents some 119 treaty bands. The Alliance split from the AFN on August 31, 1985 at a meeting held in Calgary following the defeat of incumbent National Chief David Ahenakew by George Erasmus. The Alliance alleges the AFN is following Federal rather than Indian agendas, and is concerned about the Assembly's willingness to deal with the provinces at the First Ministers' Constitutional Conferences on Aboriginal Rights, and sees itself as being distinct from the "compromise and comprehensive claims" groups. The Alliance is a proponent of sovereign arguments for self-government and has sought seats at the First Ministers' Constitutional Conferences on Aboriginal Rights, and funding independent of the AFN.

Reserve: a tract of land set aside for the use and benefit in common of a band of Indians. According to the current legal regime, title is vested in the Crown and may not be sold until surrendered to the Crown by the band. Indian political organizations however hold that reserve title is based on land which was not surrendered and therefore resides with Indian peoples.

Social differentiation: "a conception of social change or a process of the development of new and distinct arrangements and structures for performing certain functions. As new structures emerge certain moral norms governing each unit change as do the relationships among them. Differentiation therefore means not only the change in the activities of a previously established unit but also the loss of certain activities, the right to perform them and the power to perform these activities. A new unit, assuming the functions and powers of an older one, threatens the existence of the old one, resulting in social conflict" (Gouldner 357-58).

Sovereignty: the supreme, absolute power by which any independent state is governed emanating from the will of a people (based on Indian Government and the Canadian Confederation 50).

Status Indian: "a person who is registered or is entitled to be registered as an Indian under the terms of the Indian Act. The criteria for registration are historical and legal" (Indian Government and the Canadian Confederation 49).
Treaty: "a compact or agreement between two or more independent nations" (Indian Government and the Canadian Confederation 13).

Treaty Rights: rights of First Nations as a result of treaties signed between themselves and the British or Canadian Crown. Treaty rights are enshrined in the Constitution Act, 1982, but are subject to widely differing interpretations.

Triangulation: a method of social science analysis by which the researcher compares and contrasts data from different sources to verify propositions.

Trust Obligation: "the obligations of the federal government to act in the best interests of Indians when acting on their behalf in a trusteeship capacity. These obligations, which are rooted in the treaties and the Indian Act, are like those exercised by one which has a protectorate relationship with another country" (Arduous Journey 412).

Usufructuary Right: the right to use a certain piece of land, as in hunting, fishing, trapping and gathering, but without full or fee simple ownership. The term, used in common law, is derived from Roman law and used to define aboriginal interest in the land. The term has been employed to restrict the unceded rights to land of aboriginal peoples and does not adequately reflect aboriginal conceptions of land usage or title (see "Aboriginal Rights").

Voluntary Recognition: "in lieu of certification, a union may gain the right to act as an exclusive bargaining agent if the employer voluntarily agrees to recognize its status" (Arthurs).

Working conditions: "conditions pertaining to the workers' job environment, such as hours of work, safety, paid holidays and vacations, rest period, possibilities of advancement, etc. Many of these are included in the collective agreement and are subject to collective bargaining" ("Labour Relations" 86).

World Council of Indigenous Peoples (WCIP): an international organization which represents the concerns of member indigenous peoples. The WCIP has non-governmental status at the United Nations.
CHAPTER 2

Method

A Priori

The research is case study and exploratory in nature. The phenomena were examined from a variety of perspectives and sources. The research can be further described as being qualitative and analytically descriptive. The research employed self-determination theory as the phenomena concerned a community with nationhood aspirations within an existing state. The main instrument of the research was the researcher as an interpretation of phenomena from various perspectives was sought.

A large part of the research involved gathering and analysing documents which arose from the scenario. Documents included newspaper articles, statements issued by the Chief of the Fort Alexander Band and supporting political organizations, statements made by MTS officials, and CLRB and Federal Court documents. Documents from the Manitoba Indian Brotherhood, the Assembly of First Nations and the Prairie Treaty Nations Alliance regarding Indian control of Indian education and the broader issues of Indian self-determination and Indian conceptions of sovereignty were examined. The United Nations' Universal Declaration of Human Rights and the Canadian Charter of Rights and Freedoms were also relevant to the study.
Case law relating to the issue of federal and provincial administrative jurisdiction on Indian reserves was analysed as it bears upon the Labour Board and Court decisions regarding the Fort Alexander case. Case law included *R. versus the St. Regis Band* (1982), *Whitebear Band Council versus the Carpenters' Provincial Council of Saskatchewan* (1982), and *R. versus the Paul Band* (1982). As the research of relevant literature was an ongoing process in the case study format, other law cases were used in the study.

A number of in-depth interviews were conducted with individuals who participated in the events. This interview format was chosen because the topic is relatively specific. The interviews were generally audio-recorded with the permission of the participants and then transcribed for analysis.

The research involved collecting data from a number of sources and perspectives. These were played off against each other in order to establish accuracy of the information and to determine the different attitudes towards phenomena. In qualitative research, this process is called triangulation. Triangulation also uses a reflexive process whereby one returns to previous sources equipped with critical insights gained from other sources. Indian self-determination theory was infused with the data to generate an interpretation of the Fort Alexander scenario.

The researcher became aware of the topic of study through contact with a Public Service Alliance of Canada (PSAC) representative in Saskatoon, during October, 1984. As a former
PSAC shop steward, the researcher initially viewed the issue as simply one of labour relations. The researcher sought to gain research funds from PSAC. However, it became apparent that this pursuit could have ethical implications and could be construed as a conflict of interest.

**Limitations of the Study**

The major limitation of the research was the willingness of the institutions, organizations and individuals involved to allow access to data.

**Delimitations of the Study**

This study of the Fort Alexander scenario was limited to the issues and events of the scenario itself, to literature dealing with Indian control of Indian education and to literature on Indian self-determination and Indian self-government.

**A Posteriori**

Indigenous peoples are often relegated to the role of "objects" in studies (Deloria, 1969; La Fromboise and Plake, 1983; Trimble, 1977). Often too, indigenous peoples are seldom asked to contribute to research design or procedures of investigation. It is often the case that etic researchers bring with them the baggage of ethnocentric assumptions, resulting in the misapprehension of indigenous realities. Further, as Maynard (1974) reports, those who have been objects of inquiry often do
not even receive the results of the research. In short, indigenous peoples are manipulated as having passive rather than active roles in research. Therefore, bands and political organizations often adopt a more cautious attitude towards participation in research, especially if researchers have an etic perspective, and when research results bring little benefit to indigenous communities and only serve academic interests (Cardinal, 1969; Deloria, 1969; La Fromboise and Plake, 1983; Trimble, 1977).

The first attempt to gain permission from the Fort Alexander Band Council to visit the reserve and conduct interviews occurred during the height of the issue and was rebuffed by the Chief and Council. The initial denial of permission is indicative of the highly sensitive and emotional nature of the issue. It is also indicative of the relationship between researchers and indigenous peoples. The Chief and Council, based upon their reading of a letter seeking research permission, concluded that the researcher held a 'pro-labour' bias and did not appreciate the issue from a self-determination perspective.

However, with the subsequent intervention of a thesis committee member, Dr. Cecil King, permission to visit Fort Alexander was gained. The Chief and Superintendent of Education agreed that the proposed study might contribute to some understanding of the issue within a context of self-determination. The researcher promised to give the Band Council the results of the study.
This study was not conducted "after the fact." Research took place while events were occurring. It was initially proposed that models of labour relations applicable to First Nations communities would be formulated. In this respect the study was overtaken by events. The Minister of Indian Affairs at the time of the events, the Honourable David Crombie, had directed DIAND officials to undertake research into labour relations applicable to Indian peoples on reserves. Officials were directed to look into the possibility of exempting First Nations from the Canada Labour Relations Code, of amending the Code, or of designing a labour code which would be ostensibly applicable to labour situations on reserves. The researcher had great interest in gaining information about these studies and INAC was originally contacted in March, 1986. However, despite assurances from INAC officials that information would be forthcoming, it did not, for the most part, come. The research in this respect has therefore been subject to the vagaries of officialdom.
CHAPTER 3

Case Development

Introduction

This chapter recounts events that comprise the Fort Alexander labour relations jurisdiction dispute. These events will include phenomena which are background to the dispute, and issues of the dispute. The chapter ends with the out-of-court settlement of the dispute. In this chapter, documents and news items, contemporary with the events themselves, have been used as sources. The researcher has attempted to forego an analysis of events in this chapter. However, it has been necessary to employ interview material to clarify aspects of these events. This should not be construed as analysis.

Beginnings of the Issue

During the time of events examined in this thesis, the Sagkeeng Education Authority (SEA) of the Fort Alexander Band operated three schools, employing 42 teachers. In the summer of 1981, teachers drafted a contract of employment, which was subsequently agreed to by the SEA and signed by each teacher individually in September, 1981 (CLRB Decision #4623). Shortly following this, the elected school board was terminated by the Chief and Council. A new board was subsequently appointed by the Chief and Council, with Carl Fontaine as its Chairman and Dave
Courchene Jr. as the school superintendent (CLRB Decision #462 3). The school board drew a new contract for teachers to sign. In the opinion of teachers already employed, it was inferior to the previous contract in terms of working conditions, and particularly in regard to evaluation and dismissal. No teacher already employed signed the contract (CLRB Decision #462 4).

Band Council Perspectives on the Offering of New Contracts

Chief Courchene viewed the offering of new contracts to the teachers as an attempt to try and address an imbalance: "it is a question of give and take" (K. Courchene interview). The new contracts, refused by teachers who already held contracts through the terminated board, provided for dismissal on one month's notice without cause and no notice with cause; a teacher could be dismissed at any time. ("Chief's refusal"). Dismissals could be appealed according to due process as defined in the SEA administrative policies and procedures manual. It was necessary for the administration to provide three negative summative evaluations in order for a teacher to be dismissed. Under terms of the old contracts, teachers could have a two year tenure. The new contracts were designed by a Winnipeg law firm. Lawyers of that firm opined to the SEA that "you'd be crazy to go with those (old) contracts" (Courchene Jr. 15 April 1985). On the topic of contracts and teachers, Superintendent Courchene noted that generally teachers were in supply and that boards could put
themselves in a position of "pick and choose" (Courchene Jr. 15 April 1985).

**Forming a Teachers' Union: Concerns Over Job Security and Stability**

Mike Gilbert, employed by the SEA since 1976 and a principal at the time of an interview (April 19, 1985), provided a general background description of teacher attitudes towards contracts and the SEA which led to the formation of local 65 of the Manitoba Teachers' Society. He recalled the attempt of one principal to have a teacher, related to board members, released for incompetence. This attempt was opposed by the Indian teachers at Anicinabie. The principal threatened to resign if the teacher was not dismissed. There were rumours that non-Indian teachers would resign in support of the principal's stand. The teacher in question was not certified, but neither were two others. The School Board made a ruling that teachers must be certified, and the teachers in question returned to University to gain their certification. However, another principal, uncertified as a teacher, was allowed by the board to continue (6-7).

Prior to the period of an appointed Education Authority, Gilbert says that teachers could be dismissed at the end of a year "just because somebody wanted you to go" (6-7). The appeal procedure for dismissal was informal; Gilbert spoke of instances where teachers had been dismissed, but, through discussions with the principal and, if necessary, the director, teachers could successfully appeal dismissal and have their contracts renewed.
Teachers wanted stability in their relationship with the SEA and job security. In Gilbert's view, teachers "just panicked" in the face of continually changing board composition, education philosophy and attitudes towards contracts, directors and superintendents and Chiefs and Councils. He reports that the reserve had six Chiefs in a period of six years. For the teachers, then, the best way to gain job security and stability was to form a union (6-7).

Gilbert recalls that teachers held

a couple of meetings at town, in the school, to see if they wanted a union... at that time there wasn't any real flack from the school board mainly because they didn't know what was going on; they really didn't know the teachers were trying to form a union with MTS. I think they knew the teachers were working on contracts they could agree upon, but unionizing was also going on at the same time. (5)

Gilbert was present at a meeting of all the teachers; they wanted to investigate the possibility of forming a union. In Gilbert's opinion, "the union was started by all the teachers." Sam Klippenstein and John Courchene were nominated to see Dave Courchene Jr., Superintendent, about the union and contracts more amenable to teachers.

Contracts offered by the new board in replacement of existing contracts caused concern among teachers, and in November of 1982 teachers met with MTS officials to gain advice on some form of teachers' association. It was decided that teachers would pursue voluntary recognition rather than certification (CLRB Decision #462 3-4). Chief Courchene claims that the teachers never
approached him directly to discuss the formation of a union, and that this was a unilateral move on their part (K. Courchene interview).

In December of 1982 Sam Klippenstein and John Courchene met with the school board to discuss voluntary recognition, evaluation and dismissal and proposed a collective agreement to the board. The school board had reservations about voluntary recognition and collective agreements and wanted to deal with evaluation and dismissal through a Policies and Procedures Manual. On January 15, 1983, teacher representatives presented the results of a questionnaire to the school board which showed the majority of teacher-respondents preferred a collective agreement. However, the school board rejected collective bargaining (CLRB Decision #4624). Following this, teachers held a meeting on February 2, 1983, elected an executive, adopted a constitution, and decided to join the MTS as a local (CLRB Decision #4625). Superintendent Dave Courchene Jr. states that the MTS never approached the Fort Alexander community, and only worked through certain individuals (Courchene Jr. 15 April 1985).

Teachers at Fort Alexander were formally accepted into the MTS as local 65 on February 4, 1983, although they were still seeking voluntary association and wished to discuss contracts at a meeting with the school board and Chief on February 28, 1983. At this meeting, the Chief indicated that he "had delegated full authority to the school board and would abide by their decision" (CLRB Decision #4625). Superintendent Courchene rejected the idea
of a teachers' union, saying "they don't work and cause trouble" (CLRB Decision #462 5). The school board again stated a preference for the Policies and Procedure Manual as a basis for board-teacher relationships and passed out a draft section on evaluation, dismissal and due process which were not discussed at the meeting (CLRB Decision #462 5-6).

Teachers requested a meeting in March to discuss the meaning and purpose of collective agreements:

It was explained to the board that the meeting was requested because it was clear to them that the members of the school board did not understand the implications of collective bargaining and agreements and felt that the matter should be clarified. (CLRB Decision #462 6)

The school board declined to meet on the matter and replied:

The school board feels strongly against a collective agreement and therefore, this leaves no room for discussion. (CLRB, Decision #462 6)

In the opinion of Superintendent Courchene Jr., unions are a part of an adversarial system and "too greedy." He noted that Fort Alexander teachers are well paid and have an excellent pension plan (Courchene Jr. 10 April 1985).

The teachers applied for certification through the MTS to both federal and provincial labour boards. Subsequently the provincial board ceded jurisdiction to the CLRB.

On May 6, 1983, Chief Courchene addressed the Joint Council of Chiefs, seeking their support in opposing the establishment of unions on Indian reserves in Manitoba:
... the Fort Alexander Indian Band and the Fort Alexander Band Education Authority do not want a union on the Fort Alexander Reserve... The Fort Alexander Band opposes the proposed union because we feel that the union threatens the management control of Indian education." (CLRB, Decision #462 7)

Chief Courchene also stated to the Joint Council that, in trying to form a union, the teachers were ignoring the authority of Chief and Council as the governing body of the Fort Alexander Band ("Teachers say"). On May 8, 1983, Chief Courchene met with Klippenstein and asked that the certification application be withdrawn. Klippenstein subsequently declined the request. At the end of June Superintendent Courchene Jr. in a meeting with teachers and school board members stated "going to outside bodies would be considered by the board to be insubordination and subject to disciplinary action" (CLRB Decision #462 8). Similarly, at an orientation meeting held in August, 1983, Chief Courchene stated the community did not want a union, and that teachers would be fired to stop the union. He also asked again that teachers withdraw the certification application (CLRB Decision #462 8).

Local 65 of the MTS was certified as bargaining agent by the CLRB on September 7, 1983. The teachers made a notice to bargain which was not replied to by the school board (CLRB Decision #462 8). At a band members meeting on September 20, 1983, the Chief and Council asked for community support in opposition to the union. On September 21, 1983, teachers Klippenstein, Mills and Hildebrande were banned from the reserve by the Chief and Council for union activities. In Klippenstein's opinion, the banning "was punishment
for going over his head in relation to our application for certification" ("Teachers say"). The three teachers were warned they would be thereafter treated as trespassers (CLRB Decision #462 8). Superintendent Coursichene Jr. told teachers at a staff meeting on September 22 that the school board was not responsible for the banning, which was a decision of Chief and Council (CLRB Decision #462 8-9). Subsequently the MTS filed an unfair labour practice complaint with the CLRB, and a CLRB hearing was scheduled in Pine Falls for October 15, 1983.

A September 29th meeting was held on aboriginal rights and chaired by band member and teacher Julie Coursichene who opposed the union. The meeting was attended by Superintendent Dave Coursichene Jr. Teachers were asked to vote against the union in an attempt to have the union decertified. The teachers did vote for decertification, but no formal decertification application was made to the CLRB (CLRB Decision #462 9). It should be noted that a number of native teachers were identified by non-native teachers as being anti-union and, conversely, "pro self-government." These teachers were said to have conducted their own meetings on the issue. On October 3 the three banned teachers were allowed to return to work on the reserve providing that they would recognize the authority of Chief and Council and recognize that the Canada Labour Code could not apply to labour relations on the reserve (CLRB Decision #462 9).

The scheduled labour board hearing was adjourned when the CLRB was told that an agreement to resolve the differences had
been made between the SEA and the teachers. Part of this agreement, according to Klippenstein was "that the Chief would leave the union alone and allow bargaining talks to start" ("Teachers say"). However, members of the school board did not reply to the second notice to bargain and did not attend a bargaining meeting requested for November 12, 1983, so that the agreement "was not honoured by the school board" (CLRB Decision #462 8).

At a meeting with the school board on November 22, 1983, four teachers' union representatives were presented with individual contracts to sign. Refusing to sign, the teachers were given termination notices, effective at the end of the school year. Although the termination notices were later confirmed by letter, the teachers requested but did not receive written reasons for their dismissal. The teachers requested CLRB conciliation in March, but as school board authorities did not respond to the letter nor attend the meeting, a request to the Minister of Labour under Section 113 of the Code for an inquiry according to section 171.1 was made (CLRB Decision #462 10). Chief Courchene recalls that the labour board conciliation officer was invited to hold a conciliation meeting on the reserve as the issue concerned the community. The offer was declined and the Chief felt it was insulting to the community for the meeting not to take place on the reserve (K. Courchene interview). The CLRB has a different perspective on the setting of hearings:
It is the policy of the Board to hold hearings on neutral ground. For example, we would not hold a hearing in an employer's board room. (G. T. Keeler 22 May 1987)

The CLRB Hearings Into

Unfair Labour Practice Complaints

The CLRB hearings into three unfair labour practice complaints made by the four teachers were held August 21-22, 1984. The existing certification was reviewed according to section 119 of the Code. The certification was amended to add as employer the Chief and/or Band Council in addition to the Fort Alexander School Board of the Sagkeeng Education Authority.

The respondents declined to attend the hearing but were represented by Counsel Ken Young who made no arguments against the complaints. Neither did Young submit the employer's proposal for a first contract, as did the Counsel for the teachers ("Chief's refusal"). Counsel Young instead offered that the respondents did not recognize the CLRB's jurisdiction nor the applicability of the Code over the Fort Alexander Band. Counsel Young argued that the band could not be delegated authority for education under Section 114 of the Indian Act; that the delegation as such was improper and that therefore the CLRB's hearings were a nullity. The CLRB rejected the argument on the grounds that there was a de facto delegation of authority despite the de jure claim that there was not, and that the claim could not be allowed to "work against the legitimate claims of the complainants" (CLRB Decision #462 11). The CLRB made reference to a previous CLRB decision concerning the
issue of INAC delegation of authority over education, *Conseil des Montagnais du Lac St. Jean* (1982) which resulted in the Band Council and Education Authority being found to be subject to the Code.

Counsel also debated the certification amendment that had included the Band Council as employer on the grounds that the Chief and Council's authority and decision making were "simply reflections of the desires of the community" (CLRB Decision #462 12). The CLRB rejected this as "decisions concerning the complaints were made by the Chief or in their name" (CLRB Decision #462 12). The CLRB also noted that a Band Council could be found to be an employer according to section 107(1) of the Code as decided by the Supreme Court in *Public Service Alliance of Canada and St. Regis Band* and *The Canada Labour Relations Board*.

The CLRB found the respondents in violation of sections 184(1)(a), 184(3)(a)(1) and 186 of the *Canada Labour Code* on the grounds that the respondents had discouraged the formation of the union, discouraged individuals from joining it, and coerced and intimidated members following its certification. Orders were issued that these activities cease. The employer was also ordered to reinstate the teachers. The CLRB imposed a collective agreement according to Section 171.1 of the Code; this had only occurred three times previously in the history of the CLRB. The board characterized the respondent's intransigence as "infinitely more blatant than any of the previous instances" (CLRB Decision #462 14). Kelleher observes that the fixing of actual terms in a
collective agreement is normally left to the bargaining powers of the parties and states that the intervention of the CLRB in the process of formulating a first collective agreement is a recently acquired jurisdiction (17). The results of the hearings were also unusual in that the CLRB's orders were filed with the Federal Court for enforcement; normally time is allowed to pass to see if the orders are being obeyed. The board notes that it does so because

The leaders of the Fort Alexander Indian Band hold the view that adherence to the laws of Canada are inconsistent with their claim for self-government. By doing so they have made this matter a political issue. The board does not deal with political issues. It exercises its jurisdiction and interprets the Code in accordance with the mandate given to it by Parliament. We are of the view that the Chief and his Council will, to further these political claims, choose to ignore the Orders of this Board... (CLRB Decision #462 15)

The CLRB's "Reasons for Decision" states that a Band refusal to comply with CLRB orders might result in contempt of court charges.

Mel Myers, lawyer representing the teachers and the MTS, opined that the issue did not concern teachers' salaries, paid by INAC, but concerned the belief of the Chief and Council that a union would undermine their authority.

It's a matter of power, whether the Chief and Council will share their power with a union... they have to recognize other people's rights in our society. ("Chief's refusal")

Shortly following the CLRB's decision, Ken Young, Counsel for the Band, announced that an appeal would be made to the Federal Court of Appeal based on the Charter of Rights and Freedoms and Section 114 of the Indian Act. The appeal was to be based on the
premise that "Indian people feel they have the right to make the rules with respect to life on the reserve" ("Band to appeal"). Subsequently, however, Chief and Council, supported by the 31 member First Nations Confederacy, decided to forgo an appeal and opted instead to ignore the CLRB’s orders. The premise for non-compliance was a "declaration of First Nations Indian governments for self-determination" rather than anti-labour attitudes and the belief that an appeal would not work in the Band’s favour: "I don’t think we have any faith in the court system... We’d rather do this politically" ("Indian band leaders").

The MTS Versus Fort

Alexander Authorities: Contrasting Positions

Ralph Kyritz, the official representing the MTS on the Fort Alexander issue, responded to the possibility of court action:

It’s unfortunate because all we really wanted was a collective agreement. Indian self-government, ... that’s something they have to fight with the federal government. I was hoping that they would respect the law. ("Indian band leaders")

A number of statements were issued by the Chief and supporters of the Fort Alexander position following the CLRB decision. These statements articulate the Fort Alexander position through the court, political forums and the media and are summarized in the following section.
A brief was presented by Chief Ken Courchene to the First Nations Confederacy in August, 1984 titled "Labour-Union Relations and Indian Self-Government." The brief bids for First Nations Confederacy support and is summarized as follows. Chief Courchene stated that the Band's opposition to the union and CLRB jurisdiction over labour relations was based upon a declaration of First Nations Indian government for self-determination, and not upon anti-labour perceptions. In Chief Courchene's view the media misinterpret the Band's intent. Government laws, acts, and legislation were described as being foreign and their enforcement was characterized as being contrary to the objectives of self-government. He declared that an Indian government has the right to organize according to its own rationale, to legislate concerning its interests, and to determine the jurisdiction and competence of its courts. Federal policies and legislation are attacked as "irrational authority." Chief Courchene argued that they are inconsistent, fail to recognize First Nations in a clear legal capacity and eliminate the principle of political and financial accountability to Indian peoples. A proposed court challenge would strive to eliminate these inconsistencies and prescribe Council accountability to band membership, establish a legislative base, and affirm First Nations' judicial and legal systems.

In a probable reference to the CLRB, Chief Courchene stated unqualified government public servants could no longer be allowed to determine the future of Indian people. The Chief described a
possible future scenario and feared that the unionization of band employees would create a condition beyond the capacity of Chief and Council to respond. He wondered whether a Chief and Council would be official negotiators in the collective bargaining process and whether INAC would have direct access to Treasury Board to gain additional funding needed to accommodate collective agreements. He suggested that if this was to be the case, then bands would deal directly with Treasury Board. This would result in increased First Nations dependency and an expanded role for INAC bureaucracy. The federal government perspective was characterized as being short-termed and focusing on the personal liability of Chief and Council. The predicament of the Band was termed 'a short term defeat' which the Band chose to absorb. Chief Courchene referred to the similar 1982 Supreme Court St. Regis case as a negative precedent: "the timing was not appropriate for capitalizing on the issue of Indian self-government" ("Labour-Union").

Chief Courchene gained First Nations Confederacy support resulting in a press release dated August 31, 1984. In this press release, the MTS was described as a colonialist institution with a paternalistic mentality that sought to impose values upon the band. Teachers supporting the MTS local of employees were described as having the best of conditions of any in the community and criticized for not being fair and honouring just agreements. They are criticized for refusing to trust the elected leadership and for not recognizing its authority by making their
certification application to a labour board of a foreign
government. This failure of the teachers was described as "removed
from an understanding of the lives within which their students
will function as adults" (First Nations Confederacy). It was held
in the press release that the certification of a provincially
based union would allow for an opening to provincial jurisdiction
on reserve lands. The enforcement of the CLRB's decision was
described as being against the stipulations of the treaties, as
the sovereign right to self-government was not ceded by treaties,
which were agreements to share resources. The press release stated
authority remains with people in the process of redeveloping
self-government and that authority is exercised through Chiefs and
Councils. The CLRB decisions were said to remove local authorities
from accountability to their constituencies. The issue was also
connected with a racist and paternalistic education system: the
funding level for band operated schools had secondary
consideration in comparison with provincially operated joint
schools. A letter from former INAC Minister John Munro to Treasury
Board Minister Herb Gray was quoted and described this situation
as being "discriminatory and both morally and politically
indefensible."

A "Statement by the Algonquin People of Sagkeeng, The Fort
Alexander Reserve" was presented to the media by Chief Courchene
who along with other subpoenaed band officials boycotted the show
cause court hearing. It was also presented by Bob Watson, lawyer
for the band, in Court on the same day, October 29, 1984. This
statement as summarized by the researcher reiterated principles
articulated in the previous statements and confirmed "A Declaration
of First Nations" of the National Indian Brotherhood, which was
attached to the statement as an appendix. The statement recalled the
sharing of land as an Indian value, and how Indian people
accommodated other peoples searching for freedom from political,
religious and economic persecution. The rights to self-government
and self-determination were identified as coming from the Creator,
as having never been ceded and as being re-established. These rights
apply exclusively to reserves; the "land left over" which is neither
ceded nor shared so that

Only those structures, institutions and organizations directly
accountable to our people through our duly constituted
governments will be allowed to establish and function on our
reserve homelands. ("Statement by the Algonquin People")

According to the document, it is the right of parents to decide
upon the direction of education and upon who will teach in the
community so that

no institutions reflecting outside values and capable of
imposing them upon our children and their duly constituted
government will be allowed to establish and to function upon
our reserve homelands. ("Statement by the Algonquin People")

References were made to the special responsibility of
Parliament to Indian people, to Canada being a signatory to the
Universal Declaration of Human Rights (Article 1, Appendix 2) which
states the right to self-determination of all peoples and to Pope
John Paul II's support of self-government and self-determination.
The Contempt of Court

Hearing

On November 15, 1984 the case was heard in the Trial Division of the Federal Court by Mr. Justice Rouleau. The hearing arose "because of non-compliance with an Order of the Canada Labour Relations Board" (Manitoba Teachers' Society et al. 15 November 1984, T-1754-84: 1). Justice Rouleau fined the Fort Alexander Band, Chief, Council and Education Authority $25,000 in contempt of court for refusing to follow the orders of the Labour Board. Justice Rouleau warned of further fines or of imprisonment if the respondents continued to refuse to follow the Court orders.

The Justice noted that the subpoenaed respondents had failed to attend an earlier show cause hearing, held on October 29, 1984, and that the respondents would not "attend to the jurisdiction of the Canada Labour Relations Board or the Federal Court of Canada" (Manitoba Teachers' Society et al. 15 November 1984, T-1754-84: 4). Justice Rouleau took exception to the termination of the elected board by the Chief and Council and its replacement by an appointed board.

Justice Rouleau referred to Public Service Alliance of Canada v. Chief Lawrence Francis et al. and the Canada Labour Relations Board [1982] 2 S.C.R. 72, and Whitebear Band Council v. Carpenters Provincial Council of Saskatchewan and Labour Relations Board of Saskatchewan [1982] 3 W.W.R. 554 as having satisfied him that the Canada Labour Relations Board has jurisdiction in the Fort

Justice Roleau referred to the statement of the Chief and Council and the Declaration of the First Nations issued by the Joint Council of the NIB, and turned them upon the respondents. In his view, the Fort Alexander authorities do not practice what they espouse through these documents, for they did not respect the will of the band members by terminating the elected board and by refusing to recognize the free association of the teachers (Manitoba Teachers' Society et al. November 15, 1984, T-1754-84: 8). Justice Roleau was emphatic in stating the Court's role in maintaining the protection of individual teachers, the right to associate freely and collective bargaining. In his view, the Fort Alexander challenged to the Court is disobedient and flagrant; Parliament is the proper forum for addressing political solutions, not the Canada Labour Relations Board nor the Courts (Manitoba Teachers' Society et al. November 15, 1984, T-1754-84: 8-10).

Justice Roleau also states that if the Band Council wished to challenge the constitutionality of the CLRB or of the Federal Court, then it should have appeared and made legal arguments. Paul Moloney, reporting for the Winnipeg Free Press, describes Justice Rouleau's decision as "strongly worded" ("Band fined"). The deadline for the enforcement of the court order was December 17, 1984.
Indian Political Support

for Fort Alexander: Forming the Prairie Treaty Nations Alliance

During the same week as the contempt of court hearing (November 15, 1984), the Prairie Treaty Nations Alliance was initially formed in Edmonton "to protect and enhance the Treaty Rights of the Nations in Manitoba, Saskatchewan and Alberta" (Prince Albert District Chiefs). The issues of control over labour relations and of education in general as aspects of self-government arising from the Fort Alexander scenario were initial issues for the fledgling organization.

Immediately following the contempt of court hearing, PTNA representatives met between November 19-21, 1984 in Winnipeg to discuss the Fort Alexander crisis. The meeting clearly made the connection between the Fort Alexander crisis and the issue of sovereign style self-government, and suggested that the issue be kept in that perspective:

We attended to show solidarity with Fort Alexander, but also to ensure that the issues were kept in perspective. The Fort Alexander matter is in our estimation a symptom of more serious problems. This is not to say that their concern is not important. It is critically important but the matter needs to be addressed in the context of the whole issue of sovereignty.

We feel we collectively accomplished a great deal. The Fort Alexander Band received our support, while at the same time, we gained ground in furthering the stance that our key fight is for Indian government and sovereignty, and that it is not for more pencils and better buses. (Prince Albert District Chiefs)
A resolution, passed at this meeting in support of Fort Alexander, stated that the court order "interferes with the internal affairs of their nation as it applies to the education of their children" ("Chiefs support"). Also, a "conclusive statement" regarding band control of education emanated from the meeting and summarized collective rights and principles held, as well as objectives and strategies for realizing the rights and principles. The concluding statement placed education within the context of sovereign self-government and the treaties ("Conclusive Statement"). A press release also followed the Winnipeg PTNA meeting.

Following the Federal Court hearing, a press conference was held at Fort Alexander on December 11, 1984. In addition to Chief Courchene, David Ahenakew, National Chief of the Assembly of First Nations, and Sol Sanderson, Executive Chief representing the Federation of Saskatchewan Indian Nations, gave their views on the issue and the support of their political organizations (Chiefs Ahenakew, Courchene and Sanderson). Chief Courchene noted that, in addition to the above, that Fort Alexander had support for its position from the Alberta Association of Indians and Treaty One Nations of Manitoba.

The main points made at the press conference are summarized as follows. The Chiefs stated that the basis of the bilateral relationship between Fort Alexander and the Federal Government is the treaties which are international in nature and part of the law. In their view, Treaty One was a confirmation of the Fort Alexander people's rights as a sovereign nation and the right to
self-government is one of these rights and has not been ceded. The right to self-government was said to apply exclusively to Indian lands. Further, it was maintained that the right to self-determination and self-government is an unceded aboriginal right, given to Indian peoples by the Creator. Based on the treaty perspective, Chief Courschene emphasized that Fort Alexander was bound to honour principles of the treaties and that a failure to do so would be irresponsible. In Chief Courschene's opinion, Indian signatories of Treaty One agreed to be subject to criminal law regarding theft, rape and murder.

Chief Courschene declared that Justice Roleau had erred in his decision by failing to take into account the Royal Proclamation, 1763, the British North America Act, 1867, and the Canada Act, 1982, which reaffirm treaty rights and self-government. Canada, he continued, is bound to respect the right to self-government by being a signatory to the Universal Declaration of Human Rights. For the Chiefs, self-government is the heart of an issue which is national in scope.

The Chiefs viewed the Federal government as contradictory, for it talks about self-determination and self-government but takes away band authority. In their view, the Federal government does not honour the treaties by imposing its will on Indian bands through its agencies and the courts. The imposition of this authority was said to undermine the social fabric of band society. Regarding self-government, the Chiefs maintained Indian peoples must assert the right to self-government for it will not be simply
given to them. The Chiefs observed that the courts cannot resolve the issue; it can only be achieved politically between Indian governments and the federal government.

It was noted that the Canada Labour Code does not recognize Indian government and jurisdiction and that this was not contemplated when the legislation was formed. From the Chiefs perspective, the Code is assimilative and is but one example of this tendency. The Chiefs argued that Indian governments require their own labour code(s) and that federal and provincial statutes must be changed to respect treaty and aboriginal rights (Chiefs AhenaKew, Courchene and Sanderson).

As indicated by the statements made at the Fort Alexander press conference, the Band Council had determined that it had nothing to gain by following the court orders. Chief David AhenaKew, while noting that the Court had touched upon "Fort Alexander's contention that the Labour Board has no jurisdiction", contended that "the Court, in typical fashion, evaded the issue" (AhenaKew 4 Dec. 1984). Supported by numerous Indian political organizations, the Band Council determined not to pay the fines and to face possible incarceration ("Indian leaders vow"). Following December 17, 1984- the date for the enforcement of the Court Orders statements were made by officials of the MTS about the non-enforcement of the Orders. The MTS wished to see the orders enforced but was also reluctant to see Fort Alexander officials jailed for refusing to comply ("Teachers' group"; "Teachers' society"; "Society shuns").
PTNA Education Conference:
Saskatoon, January 22-23, 1985

Documents emanating from the PTNA education Conference held during January in Saskatoon are largely similar in content to those of the previous PTNA Winnipeg Conference of November 21-23, 1984. The meeting was concerned with sovereign and treaty principles of jurisdiction over education and identified the fiduciary responsibility of the Crown to provide funding for quality education. Over three hundred band education representatives attended the Saskatoon conference. The PTNA wished to secure a representative proportion of funds from the AFN and sought Minister Crombie's recognition of the PTNA in order to gain funding.

Chief Couchene was a keynote speaker at this conference. For Fort Alexander, the Conference was another opportunity to explain the Fort Alexander position and to gain support. Chief Couchene told representatives that Fort Alexander was attempting to keep a foreign and provincially based teachers union off the reserve and that the issue affects other First Nations. Chief Couchene declared that Fort Alexander was exercising rightful jurisdiction and could cede this responsibility despite fines and possible incarceration sanctioned by foreign laws. He attacked the issue of unions as a motherhood issue for the Canadian public. He believed that the public viewed Indian peoples as having to automatically accept unions as part of band social development. For Chief
Courchene, sovereignty was the issue, not unions, and sovereignty meant developing institutions based on the authority of Sagkeeng’s people, not upon the authority of external institutions.

Chief Courchene purported that teachers were the best paid and had the best living conditions of any persons on the reserve. In his view, by supporting the union, teachers were refusing to recognize the authority of an elected Chief and Council. He maintained that the leaders of the community thought acquiescence would be a bad example for the children. Chief Courchene was critical of the role played by the MTS. He stated that the MTS was not concerned about the teachers but was really after control. As such, he continued, a union would be accountable to a foreign general membership and not to band members. In Chief Courchene’s opinion, unions are not necessarily applicable to peoples involved in national resurgence. He declared that the MTS is patronizing, arrogant and an institution of colonialism which does not support Indian nationhood: rather, the MTS reduces it to folklore. Chief Courchene believed that the MTS would propagate foreign values and impose on Band decision making. Further, its demands could not be met and these demands would affect other band priorities (Courchene “Address”).

Chief David Ahenakew of the AFN also addressed the conference. He stated that Indian nations never surrendered jurisdiction over education and that through treaties Indian nations delegated authority and responsibility for education delivery to Parliament. Chief Ahenakew characterized
the delegation to Parliament through the treaties as one of delivery, not authority. In his view, authority is sovereign and retained by First Nations so that presently Indian nations are reasserting and reasserting authority and jurisdiction over education. He maintained that First Nations were doing this because Parliament had failed in its treaty derived responsibility. He concluded that authority for education or self-government could not be devolved (Ahenakew “Address”).

In an interview during the Saskatoon conference, David Courchene Jr. stated that because federal funding is paltry and unreliable, bands would be unable to meet the demands of teachers' unions (Fowler B 6).

The Federal Court Hearing

for the Order of Committal

With the deadline for the paying of fines passed and it being public knowledge that the Fort Alexander Band would not follow the Court Orders, Judge Roleau issued a direction to counsel for the MTS to bring an application for contempt of court and an order of committal. In effect, the direction gives the applicants permission to proceed if they wish (“Teachers granted right”). The MTS subsequently filed the application (“Teachers to take”).

On February 14, 1985, Fort Alexander Band officials, including the Chief, Councillors, School Board members and Superintendent Dave Courchene Jr., were sentenced from between
three to 30 days in jail for refusing to follow the Court's order to reinstate the four teachers.

During the hearing, Chief Courchene read from a prepared text, asserting that the Algonquin Nation resident at Sagkeeng has been self-governing in all respects for tens of thousands of years and that self-government had not been ceded. He observed that First Nations were democratic before the arrival of Europeans and that the United States, Canada and the United Nations modelled political ideals and structures after First Nations' examples. Further, he stated that First Nations did not impose values and institutions upon European newcomers.

The Chief asserted that the Chief and Council are accountable to band membership and had consulted the membership in all decisions throughout the dispute. He noted that Canada is signatory to the United Nations Declaration of Human Rights which concerns the right of peoples to self-determination.

Chief Courchene reported that 38 of 42 teachers had chosen to sign a standard contract and therefore recognized the right of the Chief and Council to direct the process of education and that the Band Council had acted according to international labour standards. He held that Fort Alexander's leadership could not concede, for to do so would compromise identity, sovereignty and the future of Sagkeeng's people. Therefore, Fort Alexander was seeking a political solution to the dispute (Manitoba Teachers' Society et al. 14 Feb. 1985, T-1754-84: 6-10).
Mel Myers, counsel for the MTS, responded extemporaneously to Chief Courchene's submission. Myers stated that the MTS did not deny the right of Indian people to live their lives and to educate their children within the law and that it supported the right to self-determination. Myers contended that the issue concerned an employer-employee relationship, not the right to self-determination. He held that the right to freely associate and to bargain collectively did not necessarily contradict the right to self-determination, but that it must be recognized within that right if these rights were in competition. Myer's countered Chief Courchene's assertions about international labour standards. In Meyer's view, the Band Council violated these standards for teachers who signed the individual contracts really had no choice (<Manitoba Teachers' Society et al. 14 Feb. 1985, T-1754-84: 10-15>.

Justice Roleau mainly reiterated points made in his previous judgement and stated that the Court could not tolerate disobedience, particularly in regard to individual rights. He stated that the Band Council had violated the freedom of association and that the issue was not one of self-determination, but one of employer-employee relations. Justice Roleau speculated that self-determination would necessarily have to recognize free association and collective bargaining as basic principles accepted internationally. He was critical of the Band Council which, he said, had mocked democracy by replacing an elected school board. In his opinion, the school board was terminated because they were
willing to negotiate with teachers. Justice Roleau observed that it was his duty to uphold the law and that he could not make new ones. The Justice warned that a failure to follow court orders was a continuing offence and subject to further fines or imprisonment (Manitoba Teachers' Society et al. 14 Feb. 1985, T-1754-84: 15-18).

Following Justice Roleau's decision, Chief Courchene received permission from the Justice to make a further submission, which originated as a Band Council resolution. Chief Courchene read the resolution and stated that as the First Nation of Sagkeeng was found in contempt and the MTS had gained jurisdiction through the Canada Labour Code, the Court ruling had jeopardized Sagkeeng's sovereignty. As such, he continued, Sagkeeng would not compromise its sovereignty and therefore the Band was returning the education programme to INAC. He stated that INAC was the successor to the Chief and Council and therefore the employer. In future, he maintained, the Federal Court must deal with INAC. Chief Courchene qualified his statement by saying that INAC has a fiduciary and treaty obligation to provide education for Sagkeeng so that INAC must deal directly with Sagkeeng in receiving direction regarding the education programme (Manitoba Teachers' Society et al. 14 Feb. 1985, T-1754-84: 19-20).
Events Following the
Order of Committal Trial

The jailed Sagkeeng officials each served one day of their respective sentences and were released for good behaviour ("Reserve Leaders released"). Chief Courchene's fine of $5000.00 was paid the day of sentencing. According to Dave Courchene Jr., the Band Council wanted the Chief to be free to carry out the duties of his office (Courchene Jr. 15 April 1985). MTS officials expressed regret at the jailings (Graham 3; "Indian band's chief").

With the court sanctions and the apparent successor as employer status of INAC, MTS President Murray Smith believed that the dispute would end quickly, and that Minister Crombie should reinstate the four teachers. Smith sent a telex to Crombie requesting that INAC comply with the order (Graham 3; "Indian band's chief"). In the opinion of Ralph Kyriz, MTS official handling the Fort Alexander file, INAC would be legally bound to carry out the terms of the order as employer successor to the Sagkeeng Education Authority ("Indian band's chief").

In subsequent statements, Fort Alexander officials raised some supplementary questions about unions and their possible effect on the Band's education programme. Dave Courchene Jr. said the issue is also one of economics because band school boards receive less funding than provincial school divisions, and must impose conditions on employees to allow them to operate within
restricted budgets ("Reserve leader released"). In other words, the issue was also a question of whether the Band could meet the bargaining demands of a teachers' union. Chief Courchene held that a union would make it impossible for the band to replace white teachers when Indian teachers become available to fill positions (Tenszen 4). The principle that Indian teachers replace non-Indian teachers in band controlled education systems is a basic tenet of Indian Control of Indian Education.

Minister Crombie's Telex:

**INAC Perspectives on the Issue and the MTS Response**

MTS initial confidence in a quick resolution of the dispute was deflated when the MTS revealed that Minister Crombie had initiated INAC research into whether the existing labour law regime could be altered to accommodate some degree of First Nations control over labour relations on reserve lands. Minister Crombie had communicated his perspectives on the issue in a telex to Fort Alexander Band officials. One aspect of the MTS concern was about which party would be perceived as escalating the issue.

The Manitoba Teachers Society today released three documents which clearly establish that it is the Fort Alexander Chief rather than the Society who has sought the involvement of the Minister of Indian Affairs in the dispute over relations between the Fort Alexander School Board and the Fort Alexander Teachers' Association. ("McMaster House News Release")
The MTS revelation seemed to be in response to a Winnipeg Free Press editorial which was largely critical of the MTS handling of the issue:

Having locked up the Indians, the MTS now wishes to speak to David Crombie, minister of Indian Affairs. The labour relations board could not make the band comply. Perhaps the minister can bully them into submission... (“Muscle on the reserve”)

In fact, the MTS had been aware of the telex and its contents before the Court hearings of February 14, 1985. MTS President Murray Smith had written to Minister Crombie on December 13, 1984, expressing concern over issues raised by the Minister in his telex to Fort Alexander officials. On the other hand, both the MTS and Chief David Ahenakew had suggested that Minister Crombie might have been able to resolve the issue before it had reached the courts (“Indian band’s chief”; Ahenakew letter). No doubt different perspectives must have been in mind for the Minister’s possible role and the possible outcome in a pre-court hearing settlement. Nancy Bickford, a policy advisor for the Minister, stated that the Minister had not become aware of the issue until it had reached the courts (“Indian band’s chief”). However, Chief Courchene had met with Minister Crombie in ‘late October’- before the November 15, 1984 contempt of court hearing to apprise him of the situation and to give the Fort Alexander position on the issue. Minister Crombie himself gives an appraisal of his possible involvement in a pre-court resolution scenario of the dispute:
I am sorry and disturbed that I was unable to reply to you sooner after your visit to my office in late October. Since then the situation which you presented me has been overtaken by the events of the Federal Court judgement. I need not tell you that I feel very strongly about respect for the Federal Court system. I believe that it is very unfortunate that your principled position regarding jurisdiction has now taken a back seat while the Federal contempt action— a totally different matter— takes its course. Neither I nor any other member of the government will take any action whatsoever to intervene in regard to this Federal Court action. (Crombie)

Minister Crombie had responded to Chief Courchene’s concerns by telex on December 4, 1984:

... you have brought to the attention of the federal government a situation which is bound to reoccur and which requires attention... I am asking my officials to immediately undertake a legal policy study to examine the implications of exempting band councils from the labour code, including options to fill the void created by the exemption... it may be that there is a need for special consideration to be given to the employees of First Nations governments... I am also asking other officials to examine the potential of expanding by-law making powers of Indian government either by a revision of legislation or through policy adjustments permitted under present law. It might be possible for First Nation school authorities and teacher associations to have the benefit of full discussion of the collective bargaining process... (Crombie)

In MTS President Murray Smith’s letter to Minister Crombie of December 13, 1984, a number of concerns are raised, particularly regarding the contents of Minister Crombie’s telex to Chief Courchene and to David Ahenakew, National Chief of the AFN. Smith alleged Minister Crombie had made commitments and suggestions to the AFN and Fort Alexander which were of consequence to the Society and Local 65 members and therefore he wished that the Minister had contacted the MTS. Smith was relieved that no member of the government would intervene in the court action but was
concerned about the policy study which would examine exempting bands from the code. He wondered if this would involve a possible reduction or removal of the rights to free association and collective bargaining. He suggested a reduction or removal of rights would not honour Canada's commitment to the International Covenant on Economic, Social, Political and Cultural Rights, the International Covenant on Civil and Political Rights and to Convention #87 of the International Labour Organization. Smith commented on the possible revision of legislation or a policy adjustment which, in Minister Crombie's words, might make it "possible for first nation school authorities and teacher associations to have the benefit of full discussion of the collective bargaining process in order that they themselves might develop collective bargaining agreements suited to meet local requirements." In Smith's view, this objective was already being met by the MTS under the existing labour legislation regime. Smith said the issue was not Indian self-government but a matter of an employer not wishing to grant employees rights covered by the Code. In contrast to Mel Myer's court remarks, Smith stated that the MTS was neither in favour of nor opposed to self-government. Smith disputed the Band Council's contention that MTS involvement constituted outside provincial interference in local affairs, as local associations do the bargaining while the MTS provides advice and back up legal services. Smith stated that the Society was not opposed to a separate code for Bands provided it protects freedom of association and collective bargaining. He said the MTS could
not accept the Band's position that it has right to disregard any law it does not like or that the mere fact that it wants self-government is sufficient grounds for it to act as if had such status (Smith letter to Crombie).

The Manitoba Federation of Labour voiced similar concerns about proposed exemptions to the Canada Labour Code and planned to find out more about the study (Cole).

Minister Crombie's Visit to Fort Alexander

In early March, 1985, Minister Crombie visited the Manitoba Region, particularly Fort Alexander, as "part of a commitment to hear Indian people's concerns." Dave Courchene Jr. attributed the visit to the high profile of the dispute. He also stated that the Band had not agreed to a proposed $3.2 million education budget for 1985-86 because it was inadequate ("Indian leaders to press"). The next day, Crombie visited Fort Alexander to observe reserve conditions. The Band Council had proposed that Crombie help Fort Alexander to become a model for self-government. Minister Crombie promised to work with the Chief and Council to "make Fort Alexander an example to people in other communities." He also stated that "education funding for Indian people is unacceptably low. It is scandalous", promising to seek Treasury Board restoration of Indian education funding ("Crombie promises better"). The Band Council also presented a brief which condemned the inadequacies of school programmes and facilities and suggested
changes to the financing structure. Regarding the issue of the labour dispute, Minister Crombie would not say whether the four fired teachers would be reinstated or not ("Crombie promises to improve").

Who is the Employer: INAC

or the Fort Alexander Band Council?

An out of court settlement of the dispute was to be almost a year in the making from the February 14, 1985 Federal Court Order of Committal Hearing. Following the Order of Committal Hearing of February 14, 1985, MTS officials were stymied in their desire to resolve the dispute; they wanted to know who was responsible for education at Fort Alexander in order to take further court action. The MTS was waiting to hear from Minister Crombie on this matter. Director of Education for INAC, Manitoba Region, Gary Maxwell, held that the Band Council was still in charge and that the MTS would have to pursue court action against the Band Council. On the other hand, Chief Courchene asserted that the education programme had been given over to INAC, and that court actions would have to be against the federal government. This conundrum was based on the seemingly paradoxical Band Council resolution presented in Court on February 14, 1985: the Band passed responsibility to INAC, but also stated that the federal government had trust responsibilities arising from the treaties and could not make decisions without consulting the Band Council (Gair 6). From February 15, 1985 to July, 15, 1985, "in spite of a number of communications to the
Minister" the MTS was unable to contact Minister Crombie (Kyritz 15 July 1985).

**Revising the Canada Labour Code Revisited**

Regarding Crombie’s study into a proposed revision of the Canada Labour Code, that aspect of the issue slipped from the media’s rather short attention span, but Ralph Kyritz of the MTS asserted that through informal sources, I am informed that the Minister’s announcement of the revision of the Labour Code was not met with great enthusiasm by either the CLC or the Canada Labour Department. (Kyritz 15 July 1985)

However, for the sake of clarity, it should be noted that the Minister did not "announce" a revision of the Labour Code: he merely said that the possibility of a revision would be studied. Murray Randall, an official with the Canadian Labour Congress (CLC) in Ottawa, said that the CLC was "well aware of the situation" and that the matter had come to the attention of the CLC through the Manitoba Federation of Labour. He also said that the CLC sent a letter to Minister Crombie regarding the possible revision of the Canada Labour Code, but, to the best of his knowledge, that CLC representatives had not met with the Minister to discuss possible revisions, and that the CLC was not privy to any specific proposed revisions (Randall).
Negotiating an Agreement

During April, 1985, the MTS met with INAC officials in an attempt to resolve the matter out of court. There was, initially, an agreement in principle by which INAC would have obtained payment of the teachers' salaries through an appeal to the Treasury Board... INAC would place two addendums to the Band's contribution agreement in which the Band would promise to facilitate the formation of a local teachers' association (not necessarily as a local of the MTS), and promise to observe its policy manual unless the manual was changed by common agreement. (Kyritz 15 Oct. 1985)

Further, the MTS agreed to stop all legal proceedings but no longer called for reinstatement as ordered by the CLRB ("Ottawa killed").

The matter was to appear on the Treasury Board agenda in August, 1985. According to Ralph Kyritz, INAC had agreed to pressure the Band Council to accept the addendums by withholding funds until this was stopped by senior INAC officials who also overruled the agreement in principle at the end of August, 1985. (Kyritz 15 Oct. 1985). Minister Crombie stopped payment on the approximately $126,000 which was to have gone to the four teachers because it would have "interfered with local affairs" ("Ottawa killed"; MTS News update). Ralph Kyritz assumed there was direct interference by Minister Crombie. Don Goodwin, Assistant Deputy Minister of INAC, said the agreement was cancelled because the dispute was between the Band and the union; INAC felt it did not have a legal responsibility as a third party to the dispute, and
the school was a band controlled school, not a federal one ("Ottawa killed"). To the MTS, the federal government, by withdrawing from a tentative agreement, had decided to support Fort Alexander, which had "deliberately broken federal law" (MTS News update).

Although the tentative agreement fell through, the confusion of the MTS about who was responsible for the Fort Alexander education programme seems to have been cleared up. Also, Minister Crombie finally responded to the MTS on the whether he would meet with MTS officials. In a August 5, 1985 letter to the MTS, Crombie refused to meet with Society officials because it was unnecessary—INAC was dealing with the matter (MTS News update).

Following the failure to reach an agreement, the MTS began a publicity campaign to inform potential teacher candidates that Fort Alexander had been placed in an "in dispute" category by the MTS. Potential applicants were asked to contact the MTS before applying for teaching positions with the Band (Saskatchewan Bulletin). By October, 1985, the MTS, while keeping other avenues of resolution open, appeared before the CLRB on behalf of the four fired teachers

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. ("Aboriginal People" 680)

As had been done previously by the CLRB with the original decision of August 23, 1984, the CLRB order was filed with the Federal Court Trial Division for enforcement ("Aboriginal People" 680).
At the show cause hearing against Fort Alexander, the onus was on the MTS to prove that there was a need for a show cause hearing. Madam Justice Reed agreed to the hearing (Kyritz 15 Oct. 1985). The show cause hearing was held in late November, 1985, and all of the Fort Alexander respondents appeared, having been subpoenaed. However, Fort Alexander officials had sent an informal offer for a settlement to the MTS, two days before the actual show cause hearing. Negotiations began with Band officials. On the date of the show cause hearing, Judge Reed temporarily adjourned the hearings to permit negotiation of a satisfactory settlement. INAC officials facilitated the negotiations. (Kyritz 21 May 1987). A settlement was achieved on December 3, 1985 ("Aboriginal People" 680).

The settlement reached differed significantly from the previous tentative agreement. In effect,

the settlement reached was the payment of salaries and benefits to the teachers. The circumstances of each individual teacher were taken into account. Therefore, the settlement for each particular teacher was different. However, the net result was that the teacher was not out-of-pocket for the total period of time and, in three out of four cases, received some future compensation for some future period of time. (Kyritz 21 May 1987)

The settlement totalled $226,000 and was advanced by INAC. As in the previous tentative agreement, the MTS demand for reinstatement was dropped, but so were the other conditions wanted by the MTS ("Aboriginal People" 680).

In a certain sense, a settlement to a dispute was reached, but the issue of Indian self-government remained.
CHAPTER 4

Analysis

Selected Historical and

Legal Aspects of Labour Law in Canada

In this section historical and legal information concerning labour law in Canada will be presented.

Trade unionization was a product of the Industrial Revolution. Large numbers of people began migrating to urban centres. Supply and demand did not favour the largely unskilled workers who could readily be replaced through the surplus labour pool of the unemployed. Poor working conditions, long hours of work and poor pay were endemic. Trade unions and collective agreements were illegal in the early British industrial period and sanctioned by legislation such as the Combination Acts of 1799 and 1800, which were eventually repealed in 1824. Through trade unionism workers sought to "lessen the imbalance of power between themselves and employers..." ("Labour Relations" 8).

Trade unions in Canada were legalized in 1872 ("Labour Relations" 9). However, Morse notes this was far from the end of legal difficulties for the trade union movement as the courts demonstrated considerable innovativeness in developing a number of common law doctrines antithetical to the development of organized labour. ("Labour Relations" 9)
The Federal Government introduced the Conciliation Act in 1900. Although the act provided for third party conciliation and arbitration it was largely unused because participation in conciliation and arbitration processes was largely voluntary. ("Labour Relations" 10). The Industrial Disputes Investigation Act instituted compulsory investigation and conciliation. Morse reports Canada's present labour regime is "largely based upon this statute and subsequent refinements to it" ("Labour Relations" 11).

Canadian labour systems are largely regulated by statutes which generally govern labour relations in the private sector. However, as some labour relations are perceived to be of special public concern, there are often provisions for other sectors of the labour market, for example, labour relations in the civil service, or the labour relations of teachers in provinces (Arthurs 17).

The majority of Canadian workers are employed by individual contracts rather than through collectively bargained contracts (Arthurs 17). Although individuals may have enjoyed contractual rights in theory, they actually gained effective legal protection only with the advent of the collective system.

Arthurs et al offer some historical reasons for the development of the right to freedom of association for Canadian workers. They suggest that, whereas in previous decades workers had been denied this basis for collective bargaining by legislation, industrial discord of the 1930's brought focus to the
question of preventing the right of association because of the economic difficulties of the period (37-39).

Arthurs et al identify the American National Labour Relations Act of 1935, known as the Wagner Act, as a major influence upon Canadian labour legislation development (37-39). The Wagner Act legitimized the right to association, to choose a particular trade union and to participate in the collective bargaining process. It also forbade particular unfair labour practices used by employers to stymie unionization and imposed upon employers the duty to bargain in good faith. By 1937 both provincial and federal governments were being influenced by the Wagner Act (Arthurs 37-39). In 1939 the Federal Criminal Code was amended to prevent discrimination towards employees or the termination of employees due to union activities. Statutes were passed during 1937-42 recognizing the right of association and governments announced that public policy favoured collective bargaining. However, during this same period, employers who flaunted these statutes were sanctioned only through criminal prosecution and governments of this period did not create tribunals to police provisions.

The most significant adoption of a collective bargaining statute occurred with the federal passing of P.C. 1003, under the War Measures Act in 1944 (Arthurs 37-39). An expression of concern over disruptions to the war economy by labour conflict, this statute regulated major economic and industrial concerns and established the Canada Labour Relations Board. With war-time regulations lifted in 1948, most provinces and the federal
government adopted Wagner style labour relations statutes (Arthurs 37-39).

The Canada Labour Code is an instrument of the Federal Parliament covering federal labour standards and collective bargaining (Charlton and Tastad 7-8). The Canada Labour Relations Board (CLRB) administers and enforces the Code with its authority being ultimately derived from Parliament. The membership of the CLRB is neutral in comparison to the tripartite membership of some provinces wherein boards are composed of a neutral chairperson together with equal numbers of management and labour representatives (47). Decisions made by the CLRB may be appealed through the Federal Court system, the ultimate legal authority being the Supreme Court of Canada.

Case Law Development and Interpretation of Jursidiction Over Labour Relations

Charlton and Tastad, McLaren and Morse analyze the application of labour relations law as it pertains to Indian people on lands reserved for them. These commentators consider principles of jurisdiction, cases in law which have dealt with the determination of labour legislation jurisdiction, and related issues, such as whether band councils are employers or not.

Charlton and Tastad suggest that as reserve employment opportunities increase, both employers and employees need to gain an understanding of whether provincial or federal labour relations legislation is applicable in a particular instance (1). Morse says
aboriginal inhabitants of Canada have been largely ignored by the trade union movement and labour relations in general ("Aboriginal People" 664). There has been little attention paid to minimum federal standards in the case of aboriginal labour relations (Charlton and Tastad 1; "Aboriginal People" 664).

Legislative responsibility for labour relations was not specifically assigned according to the British North America Act, 1867 (Charlton and Tastad 3; "Aboriginal People" 665). Kelleher observes the Federal government as dominant in the emerging federalism following Confederation (7). The passing of the Industrial Disputes Investigation Act in 1907 was an expression of federal authority according to the 'peace, order and good government' aspects of the British North America Act 1867. However, federal authority was challenged in Toronto Electric Commissioners v. Snider (1925) A.C. 396. Therein the Privy Council focused on the private and contractual nature of employment and determined labour relations to be under provincial authority according to Section 92(13) which denotes property and civil rights (McLaren 1; Charlton and Tastad 3; "Aboriginal People" 665; Kelleher 7). This decision contributed to an amended Industrial Disputes Investigation Act within the legislative authority of Parliament (Kelleher 7).

The evolution of federal jurisdiction over some labour relations is traced by McLaren, Charlton and Tastad to Re Validity and the Applicability of the Industrial Relations and Disputes Investigation Act, ((1955 S.C.R. 529)) (McLaren 1; Charlton and
Tastad 3). In this case, the Court considered Section 53 of the above Act, (later to become Section 108 of the Canada Labour Code) which denoted "employees who are employed in connection with federal works, businesses or undertakings, and the employer of such employees." Estey J. defines federal jurisdiction regarding those labour relations which are "an integral part of the headings contained in Section 91 of the Constitution Act, or which are necessarily incidental to those same headings, in respect to Federal employees, to works and undertakings under Sections 91(29) and 92(10), and to works, undertakings or businesses outside of provinces in Canada." The decision in this case determined that a functional test is to be applied to decide whether the nature of a particular operation is federal (Charlton and Tastad 5; McLaren 21). Charlton and Tastad form three questions concerning labour jurisdiction:

1. Are the labour relations integral to or necessarily incidental to Parliament's primary jurisdiction over one or more federal subjects?

2. Does federal labour relations occupy the field?

3. If the labour relations are not integral or necessarily incidental to Parliament's primary jurisdiction over a federal subject, will provincial labour relations apply? (5)

Neither the Indian Act enacted under Section 91(24) of the Constitution Act, 1867 nor any other federal legislation provides specifically for the labour relations of Indians (Charlton and Tastad 2; Canada's Indian 30-31). Provincial labour codes can apply to Indian labour relations as long as the statute cannot be
construed as being in relation to Section 91(24) of the Constitution Act, 1867 or, as W. Henderson puts it, "so long as the provincial law does not encroach upon the "primary" or "integral" aspects of the federal jurisdiction" (McLaren 6; Canada's Indian 33). Conversely put, Federal labour jurisdiction is the exception to the rule and will only apply "where the work involved is necessarily incidental to another subject within exclusive federal competence" (Charlton and Tastad 3).

McLaren examines the decisions contained in Four B Manufacturing (77 CLLC 14,097), Paul Band v. The Queen (1983, Alta C.A., Appeal #16623), and Ontario Public Service Employees Union and Ontario Metis and Non-Status Indian Association [(1980) OLRB Rep 1304] and reports that "the functional test deals with the nature of the operation and not with the nature of the employer" (3). The ultimate determinate for deciding jurisdiction is based upon the legislative authority over the operation; for example, to determine federal jurisdiction, the operation must be related to a federal head of power.

The authority for federal jurisdiction over Indians and lands reserved for the Indians is founded in Section 91(24) of the Constitution Act, 1867. W. Henderson considers the two aspects of section 91(24) of the Constitution, "Indians and lands reserved for the Indians" and their relation to law, noting that it is not sufficient to refer to head 24 in it entirety. Section 91(24) is not conjunctive; the "lands reserved for the Indians" is "an independent and vital head of legislative power" and apart from
"Indians" (Canada's Indian 33). In other words, 91(24) contains two distinctive powers.

The notion of exclusive federal jurisdiction, or the "enclave theory," was rejected in Cardinal v. Attorney-General for Alberta ((1974) 40 D.L.R. (3d) 353). Harland, J. denied that the effect of Section 91(24) of the BNA Act was to create enclaves within a province and within which provincial legislation could have no application.

The Ontario Labour Relations Board (OLRB) in Yellow Jacket Welding Co., Ltd. ((1974 OLRB Rep. Oct. 709) and United Garment Workers of America v. Four B Manufacturing Ltd (77 CLLC 16,088), rejected the contention of the employers that their businesses came under federal jurisdiction because they were sited on reserves (McLaren 10-11). The basis for the decision in Four B was a consideration of the functional test used in Re Validity and the Applicability of the Industrial Relations and Disputes Investigation Act, ((1955 S.C.R. 529)). Thus, the functional test refers to the nature of the business, but not its location (McLaren 10-11; Charlton and Tastad 12).

The Supreme Court was not willing to legitimize the enclave theory in relation to labour relations when Four B was heard on appeal after being heard by the Ontario High Court of Justice (McLaren 16). W. Henderson likewise states the courts have determined "Indian labour relations are not subject to the exclusive control of Parliament as being in relation to lands reserved for the Indians" (Canada's Indian 30). Chief Justice
Laskin was the main proponent of the enclave theory. Morse says the courts have consistently rejected the enclave theory by which federal crown lands might be potentially exempt from the application of either federal or provincial legislation ("Aboriginal People" 672).

In *Conseil des Montagnais du Lac St. Jean* (1982, Decision #405), the Band Council argued that neither federal nor provincial government had jurisdiction on the reserve, and that only the Band Council had the authority to regulate labour relations. Noting that "Federal and provincial jurisdiction over labour relations on a reserve has already been established", the CLR rejected this extension of the enclave theory on the basis that its original formulation had been previously rejected by Supreme Court (McLaren 24).

Federal authority is not absolute. Provincial legislation can apply to Indians providing that it is within the authority of Section 92 of the *Constitution Act, 1867* and that it is not in relation to Indians and lands reserved for Indians. As Charlton and Tastad phrase it,

in what circumstances are labour relations an integral part of or necessarily incidental to the jurisdiction granted to Parliament by Section 91(24) of the *Constitution Act, 1867*? (5)

The above principle was modified in *Natural Parents v. Superintendent of Child Welfare* (1976) 60 D.L.R. (3d) 148. McLaren reports that the Supreme Court decided that provincial legislation "must not touch on Indianess"; in this case, it was
held that British Columbia’s Adoption Act would negatively affect Indian familial relationships and that its application would therefore infringe upon federal jurisdiction (7).

The courts make a distinction between Indian labour relations per se and the issue of Indian status (McLaren 15-16; Charlton and Tastad 5, 11; Canada’s Indians 27). In the case of employees being Indian, provincial legislation may apply as long as it does not deal with matters covered by the Indian Act, conflict with it, or delimit the quality of "Indianess", or, in the words of Beetz J., writing for the majority in the Supreme Court’s Four B Manufacturing decision, as long as the provincial labour legislation did not infringe upon

an Indian person’s status, not rights so closely connected with Indian status that they should be regarded as necessary incidents of status such for instance as registerability, band membership, the right to participate in reserve elections, etc.

Arguments claiming that the labour relations being examined were an aspect Indian civil rights on a reserve and therefore within exclusive federal jurisdiction under Section 91(24) were denied by the Supreme Court decision in Four B Manufacturing. The Court therefore made a distinction between the quality of "Indianess" and the aspect of civil rights. Beetz J.’s statement in this respect is noteworthy:

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 "Indianess"; 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 in 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.

The possibility of provincial labour code jurisdiction being applicable to Indians must be based upon a consideration of Section 88 of the Indian Act. Provincial legislation can have jurisdiction over Indians both on and off reserves providing it "does not concern matters dealt with in the Indian Act, if it is not inconsistent with the Indian Act, and if there is no federal legislation occupying the field" (McLaren 7-8). Provincial legislation meeting these criteria either apply by their own force or are referentially incorporated into the Indian Act. Although the Supreme Court decision in Four B Manufacturing holds that provincial labour laws are of general application within the contemplation of Section 88 of the Indian Act, it should be noted that Section 88 has been found to refer only to legislation touching on Indians and not legislation touching on lands reserved for the Indians" (Canada's Indian 31).

This study concerns the Fort Alexander Band Council and Education Authority and teacher employees engaged in running an education programme on an Indian reserve. An education programme is an undertaking associated with the administration of the reserve so that federal labour jurisdiction applies. The administration of an education programme relates to a Federal head of power, the Minister of Indian Affairs. McLaren identifies the
operation of an education programme as being within the ambit of Parliament's legislative authority over Indian reserves under Section 91(24) of the Constitution Act, 1867 (11).

The Court's consideration of the nature of a band council in Whitebear Band Council v. Carpenter's Provincial Council of Saskatchewan and Labour Relations Board of Saskatchewan, (1982) 3 W.W.R 554) is instructive in this regard:

... an Indian band council is an elected parliamentary authority, dependent upon parliament for its existence, powers and responsibilities, whose essential function it is to exercise municipal and government power-delegated to it by Parliament- in relation to the Indian reserve whose inhabitants have elected it; as such it is to act from time to time as the agent of the Minister and the representative of the band with respect to the delivery of certain federal programs for the benefit of Indians on Indian reserves, and to perform an advisory, and in some cases a decisive role in relation to the exercise of his statutory authority relative to the reserve.

A quote from Thurlow, C.J. in St. Regis (1981) 1 F.C. 225 also examines the nature of a band council:

The St. Regis Indian Band Council, in my view, is a group of members of the St. Regis Indian Band, who upon their election to the Council, are empowered by the Indian Act... to exercise certain defined powers and to perform certain defined functions. In some respects they seem to resemble the officers of an unincorporated association, but the resemblance is only superficial and does not stand scrutiny. The powers and authorities exercisable by these individuals as a Council are not given to them by the members of the Band nor do they arise from principles of agency law. They arise under and are limited to those conferred on the Council by the Indian Act. There is no federal statutory or other authority for any other activities in which, as a band council, they may engage or purport to engage.

What is clear from both these quotes is that band councils derive their limited authority through delegation from Parliament,
and not from the band members who elect them. As such, Band Councils do not have the authority to regulate labour relations on the reserve. However, because a band council has an administrative relationship with a federal head of power, they come within the jurisdictional authority of the Canada Labour Code.

The Supreme Court’s *St. Regis* (1982, SCC), applying the jurisdictional fact doctrine, dealt with the appealed issue of whether the Canada Labour Relations Board could consider a band council to be a person in the sense of being an employer, according to the purposes of the Canada Labour Code. Le Dain, holding the dissenting opinion in *St. Regis* (1981) 1 F.C. 225, had commented on the "ambiguous legal character of the Council and the Band" and "its lack of corporate status or lack of authority to make contracts of employment." However, he considered the "de facto situation of employment" and the "status of persons as employees" to be sufficient for the CLRB to determine the Band Council as employer, otherwise, the employees would be deprived of rights conferred by the Canada Labour Code. The Supreme Court agreed with Le Dain, thus overturning Thurlow’s opinion that the Band Council was not a person within the meaning of Section 118(p) of the Canada Labour Code (ie; "employer") and that the CLRB did not have the "jurisdiction to determine to decide that what is not a person is a person."

In *Conseil des Montagnais du Lac St. Jean* (1982, Decision #405) the Band Council argued that the Band Council could not be an employer as it was not a "person." Similarly, in *Manitoba*
Teachers' Society and Fort Alexander Indian Band (1984, Decision #462), Counsel for the Band Council argued that it could not be the employer according to the federal labour code because its decisions were merely reflections of the desire of the community. This may be seen as an aspect of the legal debate over whether the band or the band council ought to be considered the employer. However, the debate had already been resolved at the Supreme Court level in St. Regis. Charlton and Tastad observe "further judicial consideration of this question will be required to resolve this problem" (20).

In the cases of Manitoba Teachers' Society and Fort Alexander Indian Band (1984, Decision #462), St. Regis (1981) 1 F.C. 225 and Conseil des Montagnais du Lac St. Jean (1982, Decision #405) as presented by Charlton and Tarstad and McLaren we have no clear sense as to why band councils are challenging the authority of labour relations boards, both provincial and federal, and the courts. We can only note the fact that they are. Morse, however, says the employer-employee conflict paradigm may be inappropriate for aboriginal peoples ("Aboriginal People" 665). He identifies such generalized cultural features as communal sharing, relative economic and occupational equality, consensus decision making, conflict avoidance and a sense of continuity and commitment to future generations as being common among aboriginal peoples and as indicative of the possible inappropriateness of the employer-employee conflict paradigm ("Aboriginal People" 665). Morse also includes theoretical considerations of aboriginal
control over labour relations. Morse says that Parliament can legislate concerning lands set aside for or remaining in the hands of Indians. Morse suggests that Parliament could pass a complete legal code governing all aspects of Indian life, including labour relations, subject to the possible sovereign status of First Nations and their entrenched rights in the Constitution Act, 1982 ("Aboriginal People" 671).

In regard to this study, band governments do not owe their existence and legitimacy to either historical communities or band membership, but rather to the Indian Act. The interpretation of Indian persons as employees enjoying a civil right to associate freely is separate from the legal conception of "Indianess." "De facto" type decisions which ensure employees are not deprived of the Canada Labour Code protection point to the ambiguous legal status of the band and the band council. Finally, Parliament has not exercised a full extension of its powers according to 91(24) of the Constitution Act, 1867. Through examining other aspects of the Fort Alexander scenario, it will become apparent that Indian proponents of self-determination and self-government consider the existing legal regime to be ad hoc and irrational in nature; the existing regime for labour relations is one particular instance.

The Debate On the Nature and Significance of Canadian Indian Treaties

In this section, two contrasting perspectives concerning the nature, function and result of treaties will be analyzed. This includes interpretations of aboriginal title, the socio-political

As noted previously, Fort Alexander authorities did not present legal arguments concerning a treaty right to self-government according to an interpretation of Sections 25 and 35 of the Constitution Act, 1982. However, within the Fort Alexander paradigm, an interpretation of treaty is at the heart of the Fort Alexander perspective on labour relations. A number of statements were made by Fort Alexander authorities and supporting Indian political organizations concerning the nature of and function of treaties. Treaties affirm sovereign Indian nationhood and the right to self-government derived originally from the Creator. They are international in nature and concern sharing lands and resources rather than extinguishing or ceding a limited Indian title to Indian lands (Chiefs Ahenakew, Courchene and Sanderson). The Fort Alexander leadership and Indian political leadership in general view the spirit or intent of the treaties as being paramount over federal legislation ("Indians" 17):

as for the courts and its rulings, we are not above the law, but through the principles we represent as First Nations we are within the law as per our treaties. (Chiefs Ahenakew, Courchene and Sanderson)

This perspective predates the inclusions of Sections 25 and 35 in the Constitution Act, 1982, and indeed, it can be argued that it is an impetus for the constitutional inclusions. With the inclusion of Sections 25 and 35 in the Constitution Act, 1982,
Fort Alexander authorities argue that the right to self-government is subsumed within the recognition and affirmation of "existing treaty rights."

Section 25 of the Canada Act, 1982 approves, in principle the rights of the Fort Alexander Indian government. The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights of freedoms that have been recognized by the Royal Proclamation of October 7, 1763. Section 35 also approves in principle, our inherent rights; "the existing aboriginal and treaty rights of the aboriginal people of Canada are hereby recognized and affirmed"... (Chiefs Ahenakew, Courchene and Sanderson)

Gibbins comments on this kind of assertion:

Indians have effectively turned the "existing" qualification to their advantage, arguing that since the right to self-government was never surrendered through the treaty process it remains an "existing right" and therefore that Section 35.1 entrenches the right to self-government. ("Canadian Indians" 309)

The right to self-government was the object of unresolved debate and consideration throughout the First Ministers' Conferences held in accordance with Section 37 of the Constitution Act, 1982. According to Chief Courchene, the object of the treaties was to share lands and resources with European settlers searching for freedom from political, religious and economic persecution (Chiefs Ahenakew, Courchene and Sanderson).

Littlebear provides a philosophical analysis of the Indian world view as it pertains to the indigenous relationship to the land and the Indian meaning of treaties ("Aboriginal Rights" 425-47). According to Littlebear, the tribal members' interest in the land is undivided. The land is not simply owned by people in
the present living; tribal identity and its relationship to the
land also encompasses past and future generations. Ownership is
also extended to members of the plant and animal kingdoms
("Aboriginal Rights" 425-47). Gibson relates that an Indian's clan
association joined one supernaturally with an animal ancestor
which related one to all living things and the Creator. All
animate entities could possess soul whereas in the western world
view it is only human kind that possesses soul. Harmony with
nature and reverence for its processes and requirements were
essential in the Indian world view (55).

C. King also gives insight into the aboriginal world view. He
says aboriginal peoples see themselves as last in the order of
things. Human beings are not inherently superior to other living
things. In this scheme, the

physical world is the foundation upon which subsequent orders
depend. The plant world follows and depends upon the physical
world for existence. The animal world likewise depends upon
the physical world and the plant world to survive. Humankind
is the most dependent and the least necessary of all the
orders. Human existence depends upon the benevolence of those
with whom he must co-exist. That knowledge makes humans
regard other orders as parents, brothers and kin. So, there
is reference to the spirits of animals as the "grandfathers."
Human beings are very aware of the interdependency of all the
other orders: an awareness of our interdependence leads us to
respect the various orders, for without them there is no life
nor meaning. We learn to see meaning in inter-relationships,
that way in which things happen together. We see that only
together things have meaning and become whole." (C. King)

Littlebear explains that in the Indian world view land is, in
essence, inalienable. It is a gift from the Creator for the
enjoyment of all living things, including humans. Human beings
cannot sell the land for it is shared by all; it would be presumptuous for humans to claim a right to dispose of land in a manner which would affect the well being of other equal creatures. The land is shared by all living creatures and not limited to human ownership or to certain human classes. Community, both cosmically and socially, is the basis for social reality in contrast to a right to property or an aggregate ownership of land. This perspective is therefore at variance with western notions of property ("Aboriginal Rights" 245-47). Littlebear therefore asks: "what did Indians surrender when they signed treaties with European nations ("Aboriginal Rights" 245-47)?" In his opinion, Indians could not have given unconditional (fee simple) ownership to Europeans because they did not themselves have fee simple ownership having never been given such unconditional ownership by the Creator. He concludes that land is not transferable and is therefore inalienable. Therefore, the subject of treaties was not the alienation of the land but the sharing of the land ("Aboriginal Rights" 247).

An analogy can be used to explain how land title should reside with First Nations, rather than with the Crown. A landlord agrees to rent out a number of rooms in a house. The question is: "who owns the house, the landlord or the people who are renting (C. King conversation)?"

Regarding the question of ownership of Indian reserve lands, the proposed White Paper policy of 1969 stated "control of Indian
lands should be transferred to Indian people" (Statement 11). The Indian Chiefs of Alberta treated this assertion as a falsehood:

The government wrongly thinks that Indian reserve lands are held by the Crown. The Government is, of course, in error. These lands are held in trust by the Crown but they are Indian lands. (Indian Chiefs of Alberta 9)

Indian people commonly refer to reserve lands as "the lands left over." In other words, whether it was agreed that other lands were to be ceded or to be shared, Indian people hold that title to reserve lands rests with Indian people. If one accepts that an object of treaties was the surrendering rather than the sharing of lands, then it is logical that reserve land title would remain with Indian people. Otherwise, the Crown acquires all the land in the treaty area and then, as new owner, gives parcels back for Indian usage but holds the parcels in trust (FS1).

Chief Courchene is emphatic in stating that governance of the Fort Alexander reserve is a concern of the people of the community, and that neither the CLRB nor the Federal Court have jurisdiction over the "land left over." Chief Courchene declares that Fort Alexander's Band Council, as a First Nation Indian government, has the right to organize according to its own rationale, to legislate concerning its interests, and to determine the jurisdiction and competence of its courts ("Labour-Union").

Chief Courchene and political supporters of the Fort Alexander position make references to the Royal Proclamation of 1763. The Proclamation is sometimes referred to as the "Indian
Magna Carta" and has great significance for Indian peoples.

Section 25 of the Constitution Act, 1982 states in part,

The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal people of Canada including

(a) any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763.

The Royal Proclamation has come to be interpreted according to different paradigms. The Indian interpretation is that the Proclamation recognized aboriginal title to unceded lands and that Indian societies were nations. Chief Courchene states that Justice Roleau erred in his deliberations by failing to take into account the Royal Proclamation (Chiefs Ahenakew, Courchene and Sanderson).

However, the Proclamation has been interpreted differently in case law, primarily through St. Catharine's Milling and Lumber Company v. The Queen decided by the Privy Council of England in 1888. The St. Catharine's case "set the standard for Canadian treatment of aboriginal title" ("Aboriginal Rights" 250).

Ironically, the St. Catharines case was a constitutional fight between the Federal government and Ontario; it "did not involve the Indians who's interests were most at stake" ("Aboriginal Rights" 252; "Canadian Legal" 225). The St. Catharine's decision locates Indian title in the Royal Proclamation but characterizes title as a personal and usufructory right dependent on the good will of the sovereign, which could be annulled at any time. Therefore aboriginal title was construed as being less than fee
simple; aboriginal rights were not property rights, and were a "mere burden on the Crown's interest", which is a superior title. ("Canadian Legal" 224-225; "Aboriginal Rights" 253; Elliott 96-8). In effect, St. Catharine's defines what Indian title is according to non-indigenous property interests. The title is limited to a legalistically perceived Indian usage of land.

Davies comments on the principle of discovery as propounded by Marshall in Johnson v. Macintosh (1823) 21 US (8 Wheat.) 543 (35). Marshall states that an indigenous nation's ability to dispose of lands to whomever they wished was negated by the principle of discovery which gave exclusive title to the discoverers. Davies states that Marshall equates discovery with conquest (37). Vittoria rejected the principle of discovery on the basis that lands in the New World were inhabited by peoples; the lands were not terra nullis.

In Littlebear's opinion, the St. Catharine's decision is an anomaly according to international law standards ("Aboriginal Rights" 256). The decision should have limited the Crown's interest to discovery rights consistent with international law ("Aboriginal Rights" 256). Davies, in reference to Johnson v. Macintosh, says that "from an international perspective, the doctrine of conquest is quite distinct from that of discovery" (37). J. Y. Henderson argues that the right of a country that had "discovered" a part of the New World was actually rather limited, and merely gave the state the right to trade with the aboriginals and to seek their voluntary relinquishing of their existing rights
(188). This means that European nation states made exclusive
claims to territories on a "first come, first serve" basis, to the
exclusion of other nation states. Thereby a given European power
could expand its mercantile interests. Littlebear states that the
purpose of treaties was to protect British discovery rights, and
any underlying European title should be limited to discovery
rights. ("Aboriginal Rights" 250, 256). Littlebear concludes that
Canadian jurisprudence has yet to reasonably determine how the
Crown acquired title from Indian nations within the context of
British law and international law ("Aboriginal Rights" 255).

From a Canadian jusprudence perspective, the Royal
Proclamation is the basis by which Indian title can only be
alienated to the Crown (Elliott 90). Once Indians cede their
limited title to land through treaty, all encumberances are
removed and the Crown's interest becomes unrestricted and complete
("Aboriginal Rights" 253, 256).

Indigenous conceptions of community have not been recognized
as being sufficient to constitute property. Gormley notes early
European settlers thought that Indian peoples were irrational
savages incapable of forming proper communities, and that this
perspective an is arbitrary preference based upon European
political culture. That Indian communities developed apart from
the European tradition, Gormley posits, is neither in itself a
good reason for denying Indian social organization and land usage
or for dispossessing them of their lands (38). Gormley refers to
Vittoria as establishing the rationality of the Indian peoples
when Vittoria pointed to "a definite method in their communal affairs" (38). Gormley also reports that Vittoria believed "these societies were sufficiently organized to occupy definite territories... to the exclusion of other societies" (38). As Jennings relates, Governor John Winthrop Sr. of Massachusetts in 1629 employed the legal principle of vacuum domicillium to declare that most land in America came under this definition for Indian peoples had not subdued the land and therefore only had a natural right to it, which was less than a civil right (82). Lands indigenously used for hunting pursuits were used wastefully and could therefore be seized despite whatever status the lands held according to Indian custom. Jennings argues that Justice Marshall of the United States Supreme Court in his landmark decision, Johnson v. Macintosh (1823) 21 US (8 Wheat.) held that the prime factor in being savage was the mode of subsistence, and that both the kind and place of that activity were important (61-62). Marshall followed theorists of international law, such as Vattel, who have

held consistently that civilized people stay in one place and thus acquire such a right in their inhabited lands as uncivilized wanderers cannot rightfully claim. (Jennings 60)

Berger identifies the European idea of increase or growth as an operating principle in the dispossession of aboriginal peoples for their lands: "land should be worked for the profit it yields; an owner who did not profit from the land did not deserve to hold it..." (Village 38). Berger's opinion is illustrated by a
quotation from Vattel, an eighteenth century Swiss jurist and international law theorist, who provides a typical European legal rationale for the acquisition of Indian lands:

There is another celebrated reason to which the discovery of the new world had principally given rise. It asked whether a nation may lawfully take possession of some part of a vast country in which there are but erratic nations, whose scanty population is incapable of occupying the whole? We have already observed in establishing the obligation to cultivate the earth, that these nations cannot exclusively appropriate to themselves more land than they have occasion for, or more than they are able to settle and cultivate. Their unsettled habitation in those immense regions, cannot be accounted a true and legal possession, and the people of Europe, too closely pent up at home, finding land of which the savage had no particular need, and of which they made no constant actual use, were lawfully entitled to take possession of it and settle it with colonies. The earth, as we have already observed, belongs to mankind in general, and was designed to furnish them with subsistence. If each nation had from the beginning resolved to appropriate to itself a vast country, that the people might live only by hunting, fishing and wild fruits, our globe would not be sufficient to maintain a tenth part of its present inhabitants. We do not, therefore, deviate from the views of nature, in confining the Indians within narrower limits... (qtd. in Surtees 33)

Likewise John Locke, British social and legal philosopher, held that agriculturalists were justified in moving hunters and gathers off lands. In Locke's view, the Indian usage did not produce surplus value, and therefore did not contribute to trade and progress (Gormley 39). Clearly the European world view did not recognize a hunting and gathering mode of subsistence as being sufficient to yield possession and property, or as being a basis for community.

Jennings says that an "Englishman at any given time formed his views in accordance with his purposes" (59). During the period
of the post Confederation treaties, the "main purpose" was the speedy acquisition of land. Colborne and Zlotkin observe "the relationship between the immediate requirements of internal imperialist expansion and the treaties is remarkable" (164). So it is that the prairie treaties are made somewhat before the huge influx of settlers coming for agricultural lands.

Jennings conveys that inherent in the doctrine of *vacuum domicilium* was the notion that no Indian government could be recognized as sovereign over any domain (82). Berger remarks that Thomas Hobbes, social philosopher and author of *Leviathan*, considered American natives to be subhuman. Such a people, "having no government at all", could therefore have no rights (*Village* 78).

Littlebear and J. Y. Henderson, referring to the question of sovereignty and self-government, point to Locke’s principle of treaty commonwealth ("Aboriginal Rights" 250; J. Y. Henderson 196). According to this principle, treaties were specifically limited in purpose and did not involve a comprehensive subordination of the Indians’ will to the Europeans. Therefore, a weaker Indian nation would be protected by a stronger nation state; yet, protection does not mean that the weaker nation surrenders sovereignty ("Aboriginal Rights" 256). Opekokew quotes Marshall’s decision in *Worcester v. Georgia* (1832) 31 US (6 Pet.) as supporting the maintainance of Indian self-government through treaties:
... the very fact of repeated treaties with them recognizes (the Indians' right to self-government) and the settled doctrine of the law of nations is that a weaker power does not surrender its independence—its right to self-government—by associating with the stronger, and taking its protection. (Indian Government and the Canadian Confederation 10)

Swiss jurist Vattel also held that protected states remain sovereign with their governments intact. Littlebear states that Indian treaties and the Royal Proclamation should be understood in this light rather than being interpreted as a guardian/ward type of relationship through which Indian peoples are under the authority and control of the federal government ("Aboriginal Rights" 256). When Chief Courchene says Judge Roleau "did not take into account the British North America Act of 1867", he means that Parliament bears responsibilities towards First Nations, but that the responsibility does not mean having authority over First Nations.

Elliott, W. B. Henderson and Littlebear report that the Calder v. the Attorney General of British Columbia (1973) decision determines that aboriginal title is derived from occupation by a previously organized society and is not dependent upon the Royal Proclamation (Elliott 75; W. B. Henderson 224; "Aboriginal Rights" 254). However, the court was divided on whether the title in question had been extinguished. The seventh judge refused to rule on a technicality: the Nishga could not sue the province without an authorization from the province. Raunet reports an insightful comment from a Nishga tribal member:
One judge ruled on a technicality that we had not obtained a fiat from the provincial government. Put it in simple language: if someone stole your property, you had to get that person's permission, - the robber that stole your property, - to even go to court and sue him. That is exactly what it means. (159)

However, the Calder case does not re-examine the nature of aboriginal title.

The Vienna Convention on the Law of Treaties states that "treaty" is an international legal term meaning

... an international agreement concluded between states in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.

Opekokew provides a more compact definition: "a treaty is a compact or agreement between two or more independent nations" (Indian Government and the Canadian Confederation 13)

Opekokew notes the disparity between the written text of the Treaties and the Indian understanding of them (Indian Governments in the Community of Man 16-17). However, she contends, this disparity is alleviated if the verbal promises made by the Treaty Commissioners during the negotiations of the Treaties are considered as part of the Treaties. She notes one of these promises as being "What I have offered does not take away your way of life, you will have it then as you have it now, and what I offer is put on top of it" (Indian Governments in the Community of Man 17). Opekokew refers to the Elders, the living vessels of Indian history, who state Indian people retained the right to govern themselves through the signing of the Treaties (Indian
Governments in the Community of Man 17). The FSIN states that the rights of government and jurisdiction over reserve lands is not present in the treaties because they were not subjects of negotiation (FSI). Davies states that the fact that treaties were signed between aboriginal nations and European powers is indicative of the aboriginal nations being sovereign (28).

Jennings, observing "the ideology of power produces many strange contradictions", states that European declarations about Indians living without government and in anarchy were contradicted by the practice of negotiation through the protocol of diplomacy with sovereign states (111). Jennings observes further that treaty making was neither an outcome of people who lived in anarchy nor was it a form conceived by the English in order to make Indian peoples governable (123). Jennings says that Indian peoples manufactured the protocol of treaty making, and that the English adapted to the treaty instrument which made "coexistence possible between two organized societies, interdependent and 'ambidependent'" (123).

Jennings reports European contentions that Indian communities were anarchial is belied by evidence about Indian communities implying structures of political association (123). Anthropology supplies the conception of the "kinship state" which is

a community of families and clans in which some of the ordering functions of society are performed by the kin groups individually while others are assigned to officers and councillors chosen cooperatively. (Jennings 111)
Commentators often point to the status of Indian treaties within American law to support arguments for the sovereign status of Canadian Indian nations. The international legal nature of treaties between Indian nations and the United States is recognized in American law. In the American Supreme Court decision, *Worcester v. Georgia* (1832) 31 US (6 Pet.) 515 Marshall declared

The words "treaty" and "nation" are words of our own language, selected in our diplomatic and legislative proceedings, by ourselves, having each a definite and understood meaning. We have applied them to Indians as we have applied them to other nations of the earth; they are applied to all in the same sense.

Bartlett and Opekokew both state that the Crown recognized traditional Indian governments for the purposes of negotiating land surrenders through the signing of treaties (Bartlett 16; Indian Governments in the Community of Man 15). However, the Crown thereafter curtailed the ability of indigenous governments to exercise powers of management and control (Bartlett 16).

Bartlett considers the Indian Act as the prime tool of federal jurisdiction over Indian people and contends that the Act has changed little, particularly regarding its basic intent, which he identifies as being "the civilization of the Indians" (11). Through an analysis of the Act's history and relative jurisprudence and legislation, Bartlett is able to demonstrate that due to an inherently contradictory nature the Act has failed to achieve its intent in a fair and meaningful manner, and, in so doing, does not meet Indian needs and aspirations for cultural
survival. He notes that the Act "demands civilization and responsibility from the Indian population while denying Indians control over the forces affecting their lives" (13).

The Indian Act, according to oral tradition, is a unilateral creation of the Federal Government, designed to govern the Indian people and deny the spirit and intent of the treaties (Indian Governments in the Community of Man 17). Bartlett also contends that the Indian Act, with its failure to allow any meaningful form of self-government, is inconsistent with the treaties (16). The powers of self-government are denied by the Indian Act. Indeed, Justice Thurlow, in a 1977 Federal Court decision determined that the Federal Court had jurisdiction over Band Councils as an "arm of the federal government", describing them as "a somewhat restricted form of municipal government" ("Federal Court decides"). Bartlett considers the power of determining the form of government. He argues that the making of the Indian Act sought to perpetrate the elective system although traditional Indian governments took many different forms. Tennant remarks that the purpose in establishing an elective system for Indian governments in the Indian Act was to destroy traditional Indian political structures that were based on a belief in community (325). The elective system has often been resisted by Indian peoples, and many commentators, including Bartlett and Tennant, suggest the elective system promotes factionalism and is not conducive to the traditionally desired goal of group consensus in decision making. Tennant also says the elective system has undermined the tradition
of individual obligation and accountability to community and that it contributed to an instability in leadership and inconsistent public policy (321). However, the Canadian legal system has upheld the supremacy of the elective mode of government. Bartlett offers us the case of Issac v. Davey (1977) 16 N. R. 29., in which the Supreme Court determined the primacy of an elected form of government over a traditional hereditary form (19).

Opekoke states that Canadian governments and courts have argued that Canadian treaties were not treaties in the international sense so as to deny First Nations the right to sovereignty and self-government (Indian Government and the Canadian Confederation 13). A phrase frequently used by prairie Indian political leaders, "nations make treaties, treaties don't make nations" encapsulates the sovereign type perspective on the significance of Indian treaties. According to Bartlett, the treaties reinforce an inherent right to self-government (16). Bartlett hypothesizes that Indian peoples might have more successfully adjusted to changing conditions as a result of European settlement if their governments had kept traditional powers (16).

Sanderson contends that the current failure of Canada's Indian policy as it pertains to Treaty Indians is simply the failure of the Federal government to implement the spirit of the Treaties; any new relation between Canada and Treaty Indians must be based on the Federal government's ability to recognize and
implement the treaties (Indian Government and the Canadian Confederation x-xiv).

Chief Courschene conveys that oral tradition at Fort Alexander holds that Indian signatories to Treaty One agreed to abide by laws dealing with murder, rape and theft (K. Courschene interview). The Federal Government and case law bring a different and more restrictive interpretation to Canadian Indian treaties. J. Y. Henderson says that the Federal interpretation of Section 35 of the Constitution Act, 1982 does not recognize or revive or affirm aboriginal or treaty rights that have ceased to exist because of their having been superseded by legislation prior to the Act. (217)

Davies says that "Aboriginal Peoples have been considered to be the objects rather than the subjects of international law" (43). Plain makes a similar observation regarding Canadian municipal law and wonders about the ramifications of Section 35(1) "existing aboriginal and treaty rights." He wonders how the state's courts can unilaterally define aboriginal rights without taking into account indigenous law?

... according to the government of Canada, which makes the laws, aboriginal rights are to be determined by a court interpretation. As far as the courts are concerned, aboriginal rights are conceptual rights only; that is to say, they are a concept that exists only in the mind until drafted into some kind of law that makes sense in a legal system. The government makes the law defining aboriginal rights... appoints the judges who interpret law dealing with aboriginal rights. (34-35)

Treaties were never ratified by the Federal state in Parliament (Francis v. The Queen (1956) Supreme Court Reporter,
628). It follows that they lack definition and have a weak and nebulous interpretation in Canadian law ("Aboriginal Peoples"). Bartlett examines the status of the treaties according to Canadian law and reports that judicial decisions seem to recognize a treaty as a "promise or agreement" in the nature of a contract (24).

W. Henderson considers the doctrine of parliamentary supremacy ("Canadian Legal" 225-226). The doctrine holds that Parliament and its legislation are paramount over the treaties. Henderson argues that the doctrine will continue to apply in court interpretations of Sections 25 and 35, or to any further amendments regarding aboriginal rights. This doctrine is applied in the sense that the terms of a treaty may be unilaterally abrogated by the federal legislature although they are supreme in relation to provincial legislation. This was declared by the Supreme Court in R. v. George, (1966) 3 C.C.C. 137 at 151, 55 D.L.R. (2d) 286. J. Martland states:

(Section 88) was not intended to be a declaration of the paramountcy of treaties over federal legislation. The reference to treaties was incorporated in a section the purpose of which was to make provincial laws applicable to Indians, so as to preclude any interference with rights under treaties resulting from the impact of provincial legislation.

Cumming and Mickenburg relate that, historically and legally, Indian treaties are not treaties of an international nature; between two or more independent nations. They refer to Regina v. White and Bob, (1964), 50 DLR (2d) 613 (BCCA) which states an Indian treaty is not an
executive act establishing relationships between what are recognized as two or more independent states and in sovereign capacities.


It is not necessary to attempt a comprehensive definition of the legal nature of Treaty No. 8. Clearly, it is not a concurrent executive act of two or more sovereign states.

Referring to the Huron Robinson Treaty, prototype for the western numbered treaties, the Court declares in Pawis v. R., [1980] 2 F.C. 18, 102 D.L.R. (3d) 602 at 607:

It is obvious that the Lake Huron Treaty, like all Indian treaties, was not a treaty in the international law sense. The Ojibways did not then constitute an "independent power", they were subjects of the Queen.

More recently, in The Queen v. The Secretary of State for Foreign and Commonwealth Affairs, (1982), 2 WLR 641) it is stated

Although the relevant agreements with the Indian peoples are known as "treaties" they are not treaties in the sense of international public law. They were not treaties between sovereign states...

However, these decisions demonstrate the ethnocentric limitations of Canadian law when applied to Indian peoples. That the Crown may not have considered Indian societies as nations at the time of treaty signings is not in itself a sufficient reason to deny the existence of Indian nations. Ultimately, this assumption states a preference for the European socio-political
and legal worldview and denies the existence of non-European social and political organization.

With the decline of the fur trade, Indian people were viewed as a hindrance to western development. Kellough states that Indian social, political and economic autonomy was lost to a condition of colonization; that the relationship between Indian peoples and the colonizers has been a function of the development of capitalism and that it is power which finally distinguishes the colonizers from the colonized (343). Kellough and Colborne and Zlotkin make similar observations about the treaties being negotiated from different power bases and from different perspectives as to their meaning. For example, in the west, treaties were offered to the Indians on a take-it or leave-it basis and served to legitimize white ownership, as the government was already selling Indian land to white settlers. Colborne and Zlotkin hold that the treaties and the subsequent creation of reserves were vehicles for shifting the economic base of native peoples in order to provide for settlement (168). What is clear, according to Kellough, is that there was no consensus of values as to what the treaties were about (347). This continues to be the case. As Chief John Snow says, "There is the Indian version of the treaties and there is the government version, and the difference is like night and day" (44). A similar conclusion can be drawn from our examination of the nature, function and result of Indian treaties according to different paradigms.
**International Law, the**

**Conception of Rights and the Fort Alexander Scenario**

Both Fort Alexander and the MTS make reference to contemporary international law in their arguments on the issue. So does Justice Roleau in both the Contempt of Court Hearing and the Order of Committal Hearing. However, different perspectives and applications are brought to bear upon these international law references.

Fort Alexander officials and political supporters use these references to support self-determination as nations and sovereign self-government assertions. On the other hand, the MTS and Justice Roleau use them to legitimize an existing regime premised on the rights of individuals. This is a basis of conflict in the Fort Alexander scenario: the conflict between a paradigm which asserts collective rights to self-determination and self-government and the paradigm which recognizes the rights of individuals as the basis for social and political organization. One desires to come into existence, to be recognized and legitimized; the other exists and is recognized and legitimized as the current status quo.

Fort Alexander officials refer to Convention 107 of the International Labour Organization, which deals with Indigenous and Tribal Populations (Part 11, Article 11), the Universal Declaration of Human Rights, including the International Covenant on Economic, Social, Political and Cultural Rights, the

Chief Sol Sanderson of the Federation of Saskatchewan Indian Nations declares Indian Nations have "successfully reasserted sovereignty towards their homelands and have begun to re-establish international personalities in the courts and political assemblies of the world" (Indian Governments in the Community of Man ix). Indian political organizations cite various international documents in dealings with Canadian governmental and judicial authorities and use United Nations forums and agencies to make claims. They also participate in international indigenous organizations which advance self-determination, such as the World Council of Indigenous Peoples (WCIP), and the International Indian Treaty Council.

Seeking international forums is not a new strategy for Indian nations. For example, during the 1920's, the Six Nations Confederacy strongly refuted the Indian Act and the usurpation of a hereditary Chief and Council by an elected one. The Confederacy argued that it was a sovereign nation and therefore not subject to the impositions of the Act. The Confederacy unsuccessfully attempted to have its case heard before the League of Nations (Titley 1986).

The contemporary prominence of the idea of collective self-determination can be traced to the post-World War One period (Indian Government and the Canadian Confederation 54; Davies 774;
O'Brien 20; "Fourth World" 11). American President Woodrow Wilson espoused self-determination in peace treaties and in the League of Nations mandate system under which the Allies were to administer mandated territories which would ultimately wield rights to self-determination.

OpekOke and Reeves locate the international ascendancy of individual human rights in the response to the genocides of the Second World War (Indian Government and the Canadian Confederation 52; Reeves 345). It was realized that the emphasis on collective rights by the International Protection of Minorities System administered by the League of Nations after the First World War in order to protect displaced minorities was insufficient. Territorial conflicts marred the protection of minority rights in the post-World War One period. Thereafter protection was conceived in terms of the individual and on the basis of nondiscrimination which would offer a more general protection of human rights.

Reeves states that in the post-Second World War period the United Nations, in addition to focusing on individual human rights, supported collective rights to self-determination for "peoples" in territories formally designated as non-self-governing (345). However, self-determination has not been applied to national minorities or peoples residing in sovereign, independent nation states to avoid territorial conflicts. Therefore, in international law peoples designated as minorities do not have a collective right to self-determination in the sense of having a right to self-government and a land base. The denial of collective
rights to self-determination on this basis is termed the "blue water" or "salt water" theory, meaning that a collective right to self-determination is limited in application to overseas colonies and does not apply to "enclaves" within existing states ("Untitled" 42; O'Brien 23; Indian Government and the Canadian Confederation 57). For example, the United Nations Special Committee on Decolonization works from the premise that territories to be considered for independence must be geographically separate from the colonial administrative state ("Untitled" 42). Berger says indigenous peoples of the fourth world seeking self-determination face greater odds than those faced by nations of the third world. This is largely because nation states fear the implication of territorial rights and sovereignty in competition with the nation state ("Fourth World" 8).

Opekokew and Davies examine the International Bill of Rights, which is comprised of the Universal Declaration of Human Rights, the Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and Optional Protocol (Indian Governments in the Community of Man 29; Davies 763). The two Covenants have been identified as "constituting the first all embracing and legally binding international treaty in the field of human rights" according to the General Assembly's resolution passing the Covenants in 1976.

The two Covenants were made because the Universal Declaration of Human Rights did not provide for a peoples right to
self-determination (Indian Governments in the Community of Man 44). Article 1 in both these Covenants are identical:

1. All peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

OpeKoKew identifies the principle of equal rights and the self-determination of peoples as the most important of principles in international law concerning friendly relations between states. In her view, self-determination is the fundamental right and the basis for human rights as there can be no real human rights without the right of self-determination (Indian Governments in the Community of Man 29).

Reeves says that self-determination means

the ability to participate freely in the choice of institutions and structures of authority which will shape one’s life, It also concerns the sharing in the distribution of goods, services and valued experiences in that society. (342)

However, he continues, the concept can be divided into two subsets, one being

the positive right of an ethnic group to self-government as a vehicle for replacing colonial authority and promoting a collective interest in survival as a distinct group

and the other being

the negative right of an individual to equal rights of citizenship or human rights to freedom from discrimination involving the removal of restrictions that prevent an individual's full participation in the political, social and economic institutions of a country. (342)
The human rights orientation of the West and that of international law is identified as being largely premised on the rights of individuals (Reeves 346; "Fourth World" 8, 16; O'Brien 20; Opekokew Indian Government and the Canadian Confederation 52; "Tribal Philosophies" 179).

Berger argues that Article 27 of the United Nations International Covenant on Civil and Political Rights has a positive application for the rights of indigenous peoples as minorities, for it upholds the rights of a minorities to "enjoy their own culture" ("Fourth World" 13):

> In those states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

He argues that Article 27 applies to indigenous people who are closely linked to their land and its resources, for, if the loss of land leads to the extinguishment of their culture, the nation that took the land has violated the Covenant ("Fourth World" 13).

Reeves, however, contends that while Article 27 appears to establish collective rights of self-determination regarding culture, religion and language, it does not oblige nation state governments to sponsor institutions connected with these rights; a nation state "only has the duty not to deny individuals the right to participate in a minority culture" (345).

Sanders notes that the international legal usage of self-determination for peoples does not apply to minorities but
that indigenous minorities contend that they are not simply minorities but the victims of colonialism ("The Search" 293). OpekoKew argues that as a political strategy, claiming minority rights is an insufficient vehicle for Indian self-determination; international law does not recognize minorities as having a collective right to self-determination in a broad sense or as having a sovereign right to self-government and a right to use natural resources. Rather, minority status provides for the right to physical existence, and the right to preserve a separate identity (Indian Government and the Canadian Confederation 69). However, claiming minority status offers possibilities for education and religion. OpekoKew argues that Indian peoples must seek international recognition as peoples (Indian Government and the Canadian Confederation 69). Canada consistently maintains aboriginal peoples are ethnic and domestic minorities and therefore do not have a right to self-determination according to international law (Le Blanc 22).

Reeves reports that the Charter of the United Nations and the Universal Declaration of Human Rights are based on human rights and equal rights of citizenship and contain provisions regarding nondiscrimination, but are silent on the collective rights of national, minority, ethnic, religious or linguistic groups (346).

Boldt and Long argue that the formulation of universal human rights, as exemplified by the United Nations Universal Declaration of Human Rights, is not a practical goal because of the social, economic, philosophical and political diversity which exists among
the nations of the world. Most nation states do not have cultural heritages which readily embody the western-liberal notion of human rights premised upon individualism. Therefore, they posit, such an ideology may not be relevant to non-western and non-capitalist societies, and there may not be an inherent justification in insisting its imposition upon such societies. Boldt and Long suggest a shift from emphasizing a universal doctrine guarding individual human rights to one concerning the broader concept of human dignity in order to reflect cultural relativity ("Tribal Philosophies" 178-79).

Berger recognizes native peoples in Canada as not wishing to assimilate and adhere to the values of the dominant society. Rather, they desire to retain cultures which are essential to their communities and lives and to determine their own futures as peoples; they are attempting to retain control over their own lives and land ("Fourth World" 6). Berger's view substantiates views held by Fort Alexander authorities. Berger identifies the re-emergence of the Fourth World as "the greatest challenge facing the west since the third world decolonization period" ("Fourth World" 10).

Berger and Opekokew argue that scholars have rejected the principles of discovery and terra nullis as principles in international law which have been used to justify the unequitable occupation of lands occupied by indigenous peoples ("Fourth World" 11; Indian Governments in the Community of Man 8). The doctrine of intertemporal law holds when a legal system which has existed by
virtue of these rights disappears, the rights can no longer be claimed. This has occurred with the end of the colonial era (Indian Governments in the Community of Man 8). Both Berger and Opekokew suggest self-determination has replaced discovery and terris nullis as operative principles in international law ("Fourth World" 11; Indian Governments in the Community of Man 8).

Fort Alexander’s leadership makes references to the International Labour Organization’s Indigenous Tribal Populations Convention 107 Part 11, Article 11, which states in part;

> The right of ownership, collective or individual, of the members of the populations concerned over the lands which these populations traditionally occupy shall be recognized.

The International Labour Organization’s Convention 107 of 1957 is the only international convention pertaining particularly to indigenous peoples (Indian Governments in the Community of Man 43; Davies 787; "Untitled" 44). The Convention is criticized as being assimilationist and paternalistic. For example, Opekokew says the Convention "accepts as inevitable or desirable the integration of indigenous people, thereby accepting the notion of our disappearance as peoples" (Indian Governments in the Community of Man 43). The World Council of Indigenous Peoples (WCIP) has rejected the Convention on the same grounds. Davies and Opekokew also observe that the Convention is not binding on signatories (Davies 787; Indian Governments in the Community of Man 43).

Davies states that Canada has failed to ratify the Convention (788).
However, Davies identifies Article 11 of Convention 107 - the article quoted by Fort Alexander authorities, as "a positive contribution in the field of land rights" (787). Little Bear reports a process of amending the Convention has begun, and that the WCIP and other international Non-Governmental Organizations (NGOs) will be active participants ("Untitled" 44).

Both the Manitoba Teachers’ Society and Justice Roleau also make reference to an ILO Convention. However, they refer to Convention 87. This Convention concerns the freedom of association and protection of the right to organize. As Justice Roleau notes, Canada has ratified this Convention (Manitoba Teachers’ Society et al., T-1754-84, 15 Nov. 1984: 8).

Self-Determination and Education

Education is identified as a prime aspect of self-determination at the international level by indigenous groups. The World Council of Indigenous Peoples, in its International Covenant on the Rights of Indigenous Peoples (1981 draft) contains an article under Social and Political Rights which declares:

The Indigenous Peoples have the right to fully control the care and education of their children, including the full right to determine the language or languages of instruction.

Little Bear and Davies report on the formation of the Working Group on Indigenous Populations (WGIP) whose goal is to develop
international standards for indigenous populations in the areas of land, self-determination, culture, education and language ("Untitled" 40-1; Davies 752).

The WGIP was established in May of 1982 under the authority of the Economic and Social Council of the United Nations (the body responsible for the International Bill of Rights) (Davies 753). The WGIP reports to the Sub-Commission on Prevention of Discrimination and the Protection of Minorities, which is under the auspices of the Commission on Human Rights.

The WGIP has reported that indigenous NGO participants express the need to guarantee access to education, but that education should not be premised on concepts of integration into dominant societies to the detriment of indigenous cultures. NGOs also identify education in terms of self-determination; indigenous populations should have the right to autonomously structure, conduct and control their education systems so that education is an instrument of maintaining and developing culture (Davies 762).

The Movement Towards 

Recognizing Rights of Indigenous Peoples in International Law

The WGIP has been using as a working document the Study of the Problem of Discrimination against Indigenous Peoples, usually referred to as the Cobo Report after its rapporteur, Martinez Cobo (Jones 50; "Untitled" 41; Davies 753). The Cobo Report was originally commissioned in 1971 by the United Nations Economic and Social Council (Indian Governments in the Community of Man 43;
Jones 50). As such, it is the first United Nations report on indigenous populations, and makes proposals and recommendations for creating international standards for the treatment of indigenous peoples. The Cobo Study, as its formal title indicates, began with the orientation that the problem facing indigenous peoples is one of discrimination (Jones 53). However, by the time the report was completed in 1984, the rapporteur had come to conceptualize the problem in terms of the lack of self-determination for indigenous peoples. It recommends that state governments give autonomous political rights to indigenous peoples and curtail the ubiquitous practice of intervening in their organization and development (Jones 53).

Sovereign Nationhood

Arguments

Fort Alexander authorities maintain that Fort Alexander has a sovereign right to self-government, and that they are exercising a right to self-government by refuting the application of the Canada Labour Code to Fort Alexander and by denying the formation of a teachers' organization as a branch of a provincially organized union. Further, they argue that this right can only be recognized bilaterally, or "between governments" as an existing right by the Federal Parliament, and that this right was never the subject of treaty negotiations and therefore not abrogated.

Indian nations hold they are sovereign and independent states according to criteria of Article One of the Montevideo Convention
of 1933 (Davies 26; Indian Government and the Canadian Confederation 58). These include a permanent population, a defined territory, a government and the capacity to enter into relations with other states (Davies 26; Indian Government and the Canadian Confederation 57). NGOs at an 1977 international Conference on Discrimination Against Indigenous Populations in the Americas issued a Declaration for the Defense of the Indigenous Nations and Peoples of the Western Hemisphere adopting the criteria as used by the Montevideo Convention for those of indigenous nations (Davies 27).

The concept of sovereignty is debated among those examining the place of indigenous peoples within modern nation states. Davies identifies sovereignty as linking notions of independence and statehood (24). Kingbird defines sovereignty as "the supreme power from which all specific powers are derived" (46). Sanderson asserts sovereignty is a quality that nations have and which is derived from a people. As such, it can be neither given or taken away. It is a quality which Indian nations have by virtue of their aboriginal rights to the land (Indian Government and the Canadian Confederation v).

Bartlett and Kingbird identify the fundamental right of a sovereign nation as that of governing its people and territory according to its own laws and customs (Bartlett 16; Kingbird 47). Further, this sovereign right to self-government cannot be granted by Parliament. The broad powers of self-government are identified by Bartlett as the ability to determine the form of government,
defining conditions of membership, regulating the domestic
relations of its members, levying and collecting taxes, and
administering and enforcing laws (16).

Opekokew asserts Canadian governments and courts do not
regard Indian treaties as being international in nature in order
to deny Indian nations the right to sovereignty and
self-government ("Indians" 13).

Boldt and Long provide a philosophical analysis of the
essentially Western-European idea of sovereignty, as it is
currently employed by Indian political organizations as a means to
achieve political and cultural self-determination ("Tribal
Traditions"). They examine the implications of sovereign
conceptions of nationhood in relation to traditional tribal
customs, values, institutions and social organization.

Boldt and Long posit that the thrust to self-determination
which has subsequently required the legitimization of Indian
notions of sovereign statehood has resulted in a manufactured
fiction that Indian tribes "traditionally had hierarchical
governments which executed authority through ruling entities, and
held lands defined by political and territorial boundaries"
("Tribal Traditions" 341). In considering statehood as a
fundamental feature of sovereignty, Boldt and Long argue that,
prior to the arrival of Europeans, Indian peoples did not have
statehood, for the definition of state requires that social order
be based on a hierarchical authority held by central political
entity ("Tribal Traditions" 340). In Indian society, there was no
institutionalized distinction between authority and community as the latter performed all necessary political functions. They also refute the notion of traditional Indian societies as states on the grounds that the basis for nationhood was community, not a geographically defined citizenship. Tribal land was not fixed in terms of fixed territorial boundaries and neither were there concepts of private or collective land ownership, for land belonged to the Creator ("Tribal Traditions" 340-41).

Boldt and Long argue that both traditional and contemporary Indian communities would be more properly defined politically as nations. They employ Plano and Olton's definition of nation: "a social group which shares a common ideology, common institutions, and customs and a sense of homogeneity" ("Tribal Traditions" 344).

Noting that the Federal Government has steadfastly rejected the concept of sovereignty for Indian government, Boldt and Long proffer a paradigm developed by Vernon Van Dyke as a possible model for the negotiation of internal self-determination or nationhood as an alternative. They believe that Canada's federal system could incorporate Van Dyke's paradigm ("Tribal Traditions" 343).

Van Dyke rejects the concept of the individual and the state as being the sole basis for defining rights in a state. Therefore, ethnic communities satisfying certain criteria should be recognized as unities or corporate bodies. Unities would be accorded moral rights and legal status as groups in order for them to preserve integrity ("Tribal Traditions" 343).
The strongly politicized desire of Indian peoples to maintain cultural boundaries invigorates their political integration as nations and acts as a barrier to political integration into Canadian society ("Tribal Traditions" 344). In this regard, the authors quote Connor: "national consciousness is therefore accompanied by a growing aversion to being ruled by those deemed aliens."

Applying Van Dyke’s paradigm, Boldt and Long suggest Indian nations would be subject to Canadian sovereignty and control over external affairs but the control over internal affairs would be limited constitutionally. Indian nations would "exercise jurisdiction over their legal political, social and economic institutions" ("Tribal Traditions" 345).

Boldt and Long hold that the degree to which autonomous nationhood is complementary to traditional beliefs is more significant than the political-economic feasibility of autonomous nationhood to Indian people. Further, the Canadian government has at least a moral obligation to negotiate Indian nationhood in the face of the Indian peoples’ persistent perception of injustice which can continue to curtail the alleviation of the Indian condition ("Tribal Traditions" 346).
Contracts: the Elected

School Board, Appointed Board and CLRB Imposed Collective Agreement

According to Ralph Kyritz, the contract negotiated by teachers with the elected School Board

was reasonably close to that held by public school teachers. It contained similar clauses on sick leave, some general leaves and in particular, protection against arbitrary dismissal. (Kyritz 21 May 1987)

In other words, this contract provided for an arbitration process for appeals upon dismissal. The contract called for one year's notice in the event of termination by either party. This notice period is considerably longer than that enjoyed by most teachers under collective agreement regimes.

The new contracts, refused by teachers who already held contracts through the terminated board, provided for dismissal on one month's notice without cause and no notice with cause ("Chief's refusal"). In a technical sense this termination clause meets minimum federal requirements under Section 60.4 of the Labour Code which calls for two weeks notice unless there is just cause. However, in Kyritz's opinion, "the board would always consider its dismissal 'just cause' and therefore need no notice" (Kyritz 1 Sept. 1987).

Regarding the requirement for teachers' giving notice, the Labour Code has no time limitations placed upon employees who wish to resign. Kyritz says the imposed contract has employment being
terminated as "provided therein" and that "one must assume that they (teachers) are engaged for the entire year" (Kyritz letter 1 Sept. 1987). In Mr. Kyritz’s opinion,

the new contract imposed... was worse than nothing. It bound the teacher to the (School) Board but did not bind the (School) Board to the teacher. (Kyritz 21 May 1987)

There was no arbitration process within the internal administrative context of the Sagkeeng education system. The only avenues available to a teacher who felt he/she was unjustly dismissed would therefore have to be either through a wrongful dismissal court action or by a complaint as provided by Division V.7 Section 61.5 of the Canada Labour Code. In Ralph Kyritz’s opinion, "Section 61.5 is usually not very successful" and "the courts can only provide damages." Regarding the imposed contract, damages "are limited by contract to the end of the year" (Kyritz 1 Sept. 1987).

It was necessary for the administration to provide three negative summative evaluations in order for a teacher to be dismissed. The imposed contract also reduced sick leave significantly and removed rights to other leaves, particularly bereavement leave, which is a requirement according to Section 59.6 of the Code. Mr. Kyritz notes that bereavement leave could be argued by management as being contained under a clause covering personal leave.

In Mr. Kyritz’s opinion, the concern over arbitrary dismissal is the fundamental issue arising from the imposition of the new
contracts by the School Board; it is this issue which was the main
impetus for teachers seeking union certification and a collective
agreement (Kyritz 21 May 1987).

Mr. Kyritz says "the contract leaves open to future
interpretation the obligations of the school board and also
restricts employee rights as narrowly as possible." (Kyritz 21 May
1987). According to both Mr. Kyritz and Dave Courchene Jr., the
contract was made by one of the top management lawyers in
Manitoba.

Teacher-proponents of collective bargaining expressed the
view that the Fort Alexander leadership may have feared collective
bargaining as an unknown:

It was explained to the board that the meeting was requested
because it was clear to them that the members of the school
board did not understand the implications of collective
bargaining and agreements and felt that the matter should be
clarified. (CLRB Decision #462 6)

In considering the imposed collective agreement, it should be
firstly noted that the Band Council/Education Authority had no
opinion of it regarding particulars; it was an agreement that they
had not negotiated and which was rejected on principle. However,
aspects of the agreement should be noted. It was formulated by the
officials of local 65 and accepted as an agreement to be imposed
by the CLRB because of the Band's refusal to bargain. Naturally,
it contains what the teachers wanted, and, conversely, what the
Education Authority was unwillingly to provide through its
negating the existing contract and imposing another contract. The
imposed collective agreement therefore provides protection against arbitrary dismissal. There is an avenue for arbitration in the event of termination or in the event of disciplinary action being brought against a teacher. The School Board cannot terminate its agreement with a teacher if a complaint has been made to the School Board concerning either the competency or character of a teacher. A teacher has the opportunity of answering the complaint before the School Board and of requesting arbitration if unsatisfied with the School Board's decision. The same applies in the case of disciplinary action by the School Board: the School Board is not to take action without cause. In the event that a disciplinary action of the School Board is arbitrated, the arbitration committee can substitute any action it deems just and reasonable under the circumstances if cause is found on the part of the teacher for the disciplinary action of the School Board (Collective Agreement, 1984). According to Kyritz, a collective agreement "must contain a reasonable dismissal clause. If this is unobtainable, I advise teachers they are better off without a collective agreement" (Kyritz 21 May 1987). A "reasonable dismissal clause" means that teachers would have the right to appeal dismissal through an arbitration process. The imposed collective agreement employs a tribunal arbitration model: both parties select an arbitrator and then these two arbitrators select a Chairman who is mutually agreeable to them both. In the event that the two arbitrators fail to agree upon a Chairman, the Federal Minister of Labour is responsible for the appointment.
How would arbitration compromise the Band Council? An arbitration decision is held to be binding upon both parties. Secondly, the Minister of Labour potentially has a role in the selection of an arbitration board Chairman (Collective Agreement, 1984). Arbitration, as for example, provided by Division V.7 Section 61.5 of the Canada Labour Code, or the arbitration process, as provided for in the imposed collective agreement, does not recognize the Chief and Council as being "the ultimate authority in all matters on the reserve." For the arbitration process puts a binding and final obligation upon the parties involved in the arbitration process.

The Canada Labour Code provides minimum standards for various kinds of leaves. Division 61.4 covers sick leave. Leave for employees with child care responsibilities including maternity leave is dealt with in Section 59.2. Division V.11, Section 59.6 concerns bereavement leave. Employer obligations and employee rights to general holidays are stated in Division IV, Sections 47-49. Division III, Sections 39-44, deal with standards for determining vacation pay monies upon an employee's termination. Division V. 4 Section 61 states standards for severance pay. By recognizing minimum federal standards, the Education Authority might have circumvented the perceived need among teachers for a union. However, while this may have been achieved in instances of leave and termination monies, this researcher contends that the essence of the issue was the Band Council's perceived need for
control over dismissal. It is doubtful whether this aspect of the
dispute's development could have been mitigated.

Band Council Concerns

Over a Collective Bargaining Regime

Chief Courchene held that a union would make it impossible
for the band to replace non-Indian teachers when Indian teachers
became available to fill positions (Tenszen 4). Indian Control of
Indian Education, adopted by the Federal Government as policy in
1973, provides a philosophical impetus for the goal of having
Indian teachers in Band controlled education systems. The NIB
position paper provides a number of statements which might serve
as the basis for constructing such a policy goal:

Decisions on specific issues can only be made in the context
of local control of education. We uphold the right of the
Indian Bands to make these specific decisions and to exercise
full responsibility in providing the best possible education
for our children. (Indian Control 4)

The local education authority would be responsible for
directing staff hiring and curriculum development with
special concern for Indian languages and culture. (Indian
Control 6)

It should be accepted practice that only the best qualified
teachers are hired for Indian schools, and always in
consultation with the local Education Authority. (Indian
Control 29)

... The Federal Government must take the initiative in
providing opportunities in every part of the country for
Indian people to train as teachers. The need for native
teachers is critical... (Indian Control 29)

federal and provincial/territorial authorities are urged to
use the strongest measures necessary to improve the
qualifications of teachers and counsellors of Indian children. (Indian Control 29)

From the above statements, we can see the grounds for an education policy which would have as a goal the replacement of non-native teachers by either teachers who are members of the community itself, or Metis, Non-Status Indian or Status Indian teachers from outside the community. Indeed, a goal of numerous Teacher Education Programmes, as called for in Indian Control of Indian Education and formed throughout Canada during the 1970s, was to provide aboriginal teachers for aboriginal communities. These teachers would be familiar with the community, its people, mores, values and aspirations, and also be aboriginal in an acquired and/or given cultural sense. The premise is that Native teachers would be better equipped to contribute towards the building of positive identities within the community which would lead to the enhancement and survival of the community.

Fort Alexander had included this goal early in its education policy development. Native individuals were to be given preference in hiring over non-Native individuals if both had the same qualifications as teachers ("Sagkeeng Education" 26). There was a goal recommendation that in 4-5 years all teachers would be native, possibly from the community ("Sagkeeng Education" 12). Paradoxically, though, the research implementation proposal/interim report says teachers were to be placed on permanent status following a successful year-long probation period ("Sagkeeng Education" 27). A 1980 Fort Alexander document
unequivocably states the Band has the right to hire and fire teachers ("Position Paper" iv).

By article 15.02 of the collective agreement imposed by the CLRB, the School Board is required to give a reason for termination of employment if requested by the employee. In the case of a teacher employed by the Education Board for more than a year, article 15.02(a) provides that the Teachers' Association can require the matter to be submitted to an arbitration board. Article 15.02(b) says the arbitration board is to determine whether the reason for termination constitutes just cause. The arbitration board effectively determines whether a teacher will be terminated or not.

What would happen if the reason for termination is that a non-Indian employee is to be replaced by an Indian teacher, particularly by a teacher who is a band member? Could a reason such as this be considered just cause before an arbitration board, or would it be held to be arbitrary? The collective agreement is silent on the subject of replacing non-Indian teachers when Indian teachers become available as a condition of employment and would seem to deny the capacity of the Band to replace non-Indian personnel with Indian personnel.

Would such a reason be considered just cause before the Courts? If the Charter of Rights and Freedoms was brought to bear upon the issue, which section of the Charter would prevail: those upholding the rights of the individual, or Sections 25 and 35 providing for existing aboriginal and treaty rights?
Education is recognized as an essential institution for the continuance and survival of society and culture. Whatever form it takes, a society through its education system seeks to answer a perennial question: "what type of individual do we want for this society?" (Whyte 21) Education was a right of traditional indigenous societies and one that is being reclaimed under the aegis of self-determination. Being able to determine who is to be a teacher as well as what is to be taught is a requirement for band controlled systems. As bands take over their education it is also reasonable to assume that perceived educational needs may change over relatively short periods of time; there is a need to be innovative and responsive as educational goals are modified and defined. The kind of administrative and policy flexibility that is required may have affects upon educational personnel. With the failure of negotiations to provide constitutional bases for self-government it may be necessary for Indian Bands to argue through the courts that jurisdiction over education is either an aboriginal or a treaty right. The question also revolves around what would be perceived as arbitrary dismissal. In a hypothetical action wherein a non-Indian teacher has been replaced by an Indian teacher, it is the right of an individual to be protected from arbitrary measures versus the right of the community to determine who can best meet educational needs.

Fort Alexander Band Council officials were opposed to the formation of a teachers' association and the idea of collective bargaining for budgetary reasons. Band officials held that they
could not meet collective bargaining demands and described federal funding for band run education as "paltry and unreliable" (Fowler B6). Band school boards received less funding than provincial school divisions and, therefore, were required to impose conditions on employees ("Reserve leader released"). Indeed, former INAC Minister John Munro described the level of funding available to band operated schools in comparison to that of federal-provincial joint schools as being "discriminatory and both morally and politically indefensible" to former Treasury Board President Herb Gray (First Nations Confederacy: "Press Release"). In the case of Fort Alexander the Band's education budget was restricted by a $100,000 debt incurred by INAC over a 25 year period in joint school agreements with the nearby Agassiz School Board. Paquette makes a general observation which lends support to this contention: "by any standards, the Band Authorities have tended to inherit a legacy of inadequate facilities and funding" (6). With budgeting occurring on a year-to-year basis, the Band remained in a crisis-to-crisis situation. While the Band planned its education programme budget on the basis of needs, INAC allotted funding on the basis of decisions already made at the national and regional levels ("Position Paper" 35-37). Paquette makes a similar observation:

Even where the form of local control exists in the guise of an Education Authority, however, the influence of such units of local governance on the fiscal and educational policy-making activities of the central authority is highly questionable. (34)
Indian control of education for the Fort Alexander Band was a frustrating experience which did not live up to the early promise of the policy:

After three and one half years of experiencing local control of education—"local control" as presently understood by the Department of Indian Affairs!—we, the Fort Alexander School Board, realize that the system of "local control" as it functions at present is nothing more than a farce. It does not and cannot meet the present and future needs of our people: of our individual students, of our community as a whole. It is not local control at all, and we cannot continue within it, for to do so would be to acquiesce in a departmental administrative farce. It is this farce, together with another massive departmental administrative farce—its so-called "economic development" program—that will combine to condemn yet another generation of our people (and the taxpayer upon whom they will be dependent to maintain life itself) to welfare, social and personal disintegration, to a future whose statistics will continue to reflect despair.

("Position Paper" ii)

Chief Curchene wondered about the locus of authority and structures for dealing with collective bargaining demands in the future—would a Chief and Council be official negotiators and have a direct relationship with Treasury Board to access funding? He suggests that the possibility of 500 or more First Nations doing this is implausible ("Labour-Union"). On the other hand, the MTS asserted that the issue did not concern teachers' salaries, because they are funded by INAC ("Chief's refusal"). The collective agreement imposed by the CLR8 has teachers paid "according to the current salary scale established by the Treasury Board for federal education personnel in the province of Manitoba" (Collective Agreement, 1984). When collective agreements for federal education personnel are negotiated by PSAC with Treasury
Board, existing salary scales held by teachers within each province are used for comparison. According to INAC,

At that time, the Manitoba Region funded all Band Administered Schools on a formula for salaries. If through the staffing process the Education Authority hired staff within the allowed pupil teacher ratio and salary requirements exceeded the formula, the additional resources would be allocated for salaries. This allocation would be based upon the current collective agreement between the Treasury Board and the Public Service Alliance of Canada and would thus meet the actual requirement for the Education Authority. (Korchinski 18 Aug. 1987)

However, Chief Coughene feared that the unionization of band employees would create a future condition beyond the capacity of Chief and Council to respond. He wondered whether a Chief and Council would be official negotiators in the collective bargaining process and whether INAC would have direct access to Treasury Board to gain additional funding needed to deal with collective agreements. He suggested that if this were to be the case, then bands would deal directly with Treasury Board. This would result in increased First Nations dependency and an expanded role for INAC bureaucracy. Chief Coughene characterizes the Federal Government perspective as being short term and focusing on the personal liability of Chief and Council ("Labour-Union").

The Certification of

Local 65 Under the Canada Labour Code

W. Henderson refers to a "double aspect" which arises when two laws deal with the same matter, and both are in relation to exclusive heads of power (Canada's Indian Reserves 17). In such
cases, the law of Parliament is said to be paramount. Local 65 of the MTS applied for certification to both federal and provincial labour boards. The provincial board subsequently ceded jurisdiction to the CLRB.

Certification is recognition by the CLRB that a bargaining unit has collective bargaining rights. The basis for obtaining these rights under the Canada Labour Code is evidence of trade union membership. The CLRB must determine the employees' wishes as provided by Section 126(c) of the Code. By "wishes" it is meant whether individuals wish to associate freely and have union representation. Membership is evidence of a wish for union representation. It must be established that the employee has applied for union membership and has paid either an initiation fee or dues (Arthurs 169). Establishing the employees' wishes occurs by way of Code regulations 26 and 27 (Dorsey 135). If it is established that a majority of employees in the bargaining unit are union members, trade unions can acquire certification without an employee vote being taken by way of Section 126.

An employee vote is considered to be a secondary method for determining union representation (Arthurs 170). If the union does not have majority membership then it must receive the support of the majority of votes cast in a representation vote. Section 127(2) states the CLRB must order such a vote if the level of union support is between 35 and 50% of the employees in the unit or if no other trade union exists as a bargaining agent for the union (Kelleher 13, 95; Dorsey 136).
Under Section 129(2) a certification vote is valid if 35% of eligible voters participate (Arthurs 170; Kelleher 95; Dorsey 136). Kelleher notes that it is not necessary for a certification applicant to have as members a majority in the unit. Certification votes are conducted by an officer of the CLRB and scrutinized by employer and the union (Arthurs 170). Certification can follow if the majority of this figure support certification. In the case of MTS local 65, teachers passed a resolution authorizing Ralph Kyritz, an MTS business agent, to apply for certification (CLRB Decision #462 6). The CLRB states "the applicant had in excess of 50% membership in the proposed bargaining unit and a representation vote was not required" (Keeler 22 May 1987).

Comments Upon the Method of Organizing a Local and the Certification Process

It is useful to comment upon the method of organizing a local and the subsequent certification process in order to gain insight into the rejection of the collective bargaining paradigm. The formation of the union and its subsequent certification is opposed because of the manner in which it is done. Superintendent Dave Courchene Jr. says the process of union formation and certification should have occurred publicly but that in any event teachers would not have received support from the band membership. In other words, there should have been community support for the move rather than just among employees who desired a union. Superintendent Dave Courchene Jr. claims that teachers were
approached individually on the matter of certification, and that not all teachers were approached (Courchene Jr. 15 April 1985). Chief and Council were opposed to the teachers acting on their own as one segment within the community.

It required no less than 22 and no more than 42 individuals out of an on-reserve population of 2000+ to form a union, acquire certification and to change an existing socio-political and economic regime.

Indian Control and

Education Authority Representation

Paquette comments on the issue of separation or integration of education with other areas of governance for Band communities, noting that there is no simple answer to the question and "that the issue is a potentially troublesome one" (70).

Community representation and responsibility for education programmes in Indian communities under the aegis of Indian control takes various forms. Workshop participants at a Canadian Indian Teachers Education Program Conference held in March, 1985, considered the positive and negative characteristics of four models ("Elected Vs. Appointed"). The models and their characterizations are as follows:

(1) an elected board- An election process can bring out key resource persons, but it may be a popularity contest;
(2) an appointed board—The Band Council has control over the appointment of key resource people, but decision making may lack enthusiasm because of accountability to Council;
(3) a board combining elected and appointed members—combines political know-how with ideals of grassroots to ensure success. However, there may be conflict over the basis of power;
(4) a sub-committee of the Band Council—participants suggested four Council members plus four community members. However, decisions sent to the Band Council for ratification may neutralize decision making power.

The participants preferred option three. This preference would seem to indicate a need for the recognition of the Chief and Council’s authority but balanced with a need to provide educational expertise and interest.

Accountability, Executive Privilege and the Issue of Terminating an Elected Board

Indian political organizations or alliances, as for example, the AFN, hold the Band Council to be the paramount authority in community matters. Regarding an education programme, as Starblanket says, "I simply wish to emphasize here that the education authorities are responsible to the Band through its representative, the Band Councils" (1983: 5). In other words, whatever the form an education authority or school board takes, it is ultimately responsible to the government of the reserve—the Band Council. Paquette says that "exact pattern of separation and
Integration of educational and general local government is best decided at the local level" but that "an awareness of the tradeoffs involved" must inform the determination of a governance structure (70-71).

Mike Gilbert, employed by the SEA since 1976 and a principal at the time of an interview (April 19, 1985), recalled the general administrative tenor of education at Fort Alexander as being conflict laden:

... the conflict between the last elected board and the teachers,... there was a conflict between the board and the Superintendent, there was conflict among the board members and there was conflict with the board and the community itself, they were doing more things than just being board members... the majority of the board members were involved in trying to cede from Treaty One... so they were involved in outside... political things... nothing to do with education, they wanted complete control over Anicinabie School. (5-6)

The "Sagkeeng Education Research Project, Research Implementation Proposal, Interim Report, April 1, 1974–April 10, 1975" states the board was to be comprised of seven members. Three were to be from the north shore, and three from the south shore, with one additional member being a Band Council appointee. Re-elections for board positions were to occur in a staggered manner, presumably to maintain some degree of policy knowledge and continuity. Yet, as the recollection of Gilbert relates, there were conflicts of a serious nature; board members were allegedly involved in an secession movement. Gilbert continues,

The North Shore Action Committee was pretty well the board. It wasn't board members on the action committee but it was close relatives on the action committee, it was so easy to
put two and two together at that time. . . so they seemed to be using a lot of board time, information and knowledge for the action committee. (6)

Board members and action committee members belonged to the Catholic Church, and Gilbert states that they were "trying to do a lot of Catholic religion in the school" (8). Dave Courchene Jr. also referred to the desire of North Shore residents to have Roman Catholicism taught in the schools. Courchene Jr. believed that the SEA could not accommodate Roman Catholic religious instruction in the schools and viewed the teaching of a traditional Christian religion as an instrument of assimilation. Superintendent Courchene advocates traditional Indian religion (Courchene Jr. 15 May 1985).

Gilbert had sat in on board meetings and witnessed tension between the board and Superintendent Ken Courchene. Chief Courchene, as a former Superintendent had "seen the reserve fighting itself into separation" (Gilbert 6). Upon being elected Chief in September, 1982, Chief Courchene and Council decided to terminate the existing elected board and replace it with an appointed board. The Council "didn't want to lose control of one of their schools" (Gilbert 8). According to Chief Courchene and Principal Mike Gilbert, the new board members were selected to reflect the needs and representation of the reserve at large and appointed on the basis of their committment to the education of children at Sagkeeng (K. Courchene interview; Gilbert 8). The Chief refers to a meeting with INAC officials to discuss the termination of the elected board. These ex-board members admitted to "having other interests" (K. Courchene interview).
Chief Courchene's election was initially contested by north shore residents ("Reserve faction"). The conflict between Chief Courchene, the newly appointed board and the North Shore Action committee came to a head over the firing of Gary Watkins, principal of Anicinabe School situated on the north shore of the reserve. According to Gilbert, Watkins was actively involved in the politics of North Shore Action Committee, which was advocating the separation of Anicinabe from the reserve school system, and the separation of the north shore from Fort Alexander and Treaty One. Watkins also allegedly had difficulty administrating the school (Gilbert 8). The North Shore Action Committee and parents of north shore students demanded that Watkins be reinstated, threatened to pull children out of school, and subsequently had their children boycott classes for a day. A busdriver sympathetic to the North Shore Action Committee refused to drive students to Anicinabe School. Watkins described the new board as being comprised of mainly south shore individuals who wanted Anicinabe School to be placed under the control of the entire reserve, whereas north shore residents were struggling for increased control of Anicinabe. Watkins stated that he was told by the new board that the influence of north shore parents was becoming too strong and that they probably felt he was sympathetic to the North Shore Action Committee. Jake Epp, the Member of Parliament for Provencher who had discussed the dispute with North shore residents, stated that the "dispute was tied to the reserve's long standing treaty dispute" ("Pupils Kept"; "Reserve faction").
However, in the opinion of the Regional Director of Indian Affairs the treaty dispute was not long standing:

The perspectives that north shore residents are descendants of signatories to a different treaty is a fairly recent one (c. 1982). It would seem that those of the north shore community who desired to separate from the Band for various reasons seized upon the fact that the boundary lines of Treaties One and Three meet along the Winnipeg River. That is to say, the north shore is within the boundaries of Treaty Three and the south shore is within Treaty One boundaries. (Korchinski 22 April 1987)

The internal conflict over the formation of a teachers' association and its externalization in the form of a jurisdictional dispute about the right to associate freely are connected with an internal political dispute. The Band Council terminated an elected board which was held to be involved in the politics of the North Shore wherein a group was attempting to gain greater control over the Anicinabe School and of possibly seeking to divide the community along treaty lines. The Chief and Council Terminating the elected board was held to be necessary in contending with divisive forces within the community. Lithman (1984 156) referred to election time for Chief and Council wherein there were usually attempts to create a "North Shore slate."

Within that part of the community, there was a generally held opinion that they had been unfairly treated, and had received less of the financial resources coming into the community than was their due.

What begins as a community dispute ends up as a legal consideration. However, the law is limited in its purview by what
is considered to constitute fact. Neither the CLRB nor the Federal Court is able to consider the Band Council's reasoning for terminating an elected board in relation to community politics and the issue of control over the Anicinabie School. Rather, the CLRB deals with the issue of the boards insofar as the appointed board broke an existing contract between teachers and the elected board, imposed a less generous contract and refused to recognize a legally sanctioned right to associate freely. Indeed, the imposition of the less generous contract is, to the CLRB and more particularly to Justice Roleau, the reason for terminating the elected board.

Democracy, you have made a mockery of it by replacing duly elected school board officials and replacing them because they were obviously prepared to negotiate. This is what dictators do when they are not satisfied with the performance of their officials (2-17).

Justice Roleau in both Federal Court decisions commented upon the termination of the elected board. However, his strongly worded comments go beyond the perception of a causal link between a change in a school board and the imposition of contracts which were less satisfactory to teachers. It was held by Justice Roleau that the Chief and Council had interfered with the process of community representation by terminating an elected board and replacing it with a appointed one.

It is the Court's responsibility to maintain that properly elected bodies, in this case the School Board, should not be subjected to the dictates of the Band Council and forced resignations; all this imposed by an intolerant Council, who have derived their authority from their constituents and
remain in office because of respect for the electoral process. (Manitoba Teachers' Society et al 15 Nov. 1984, T-1754-84: 8)

... it is ironic that they suggest to this Court that one should have respect for freedom from social, political and religious and economic oppression, but in turn have failed to respect the will of the members of the Band who had previously elected a school board... (Manitoba Teachers' Society et al 15 Nov. 1984, T-1754-84: 7-8)

From the perspective of the Federal Court, democracy means having elections and insuring that the electoral process is upheld. Yet, as previously indicated, the phenomena of the internal political dispute is significant in itself, in addition to its legal significance.

The type of action taken by Chief and Council in terminating an elected board is not without precedent in other administrative systems. We can refer to this action as an example of executive privilege. In Great Britain, Margaret Thatcher fired the Inner London Council. In British Columbia, an elected school board in Vancouver was terminated by the Provincial Government for refusing to accept certain budgetary restrictions. In the Saskatchewan Education Act, there are provisions for the replacement of an elected board by an advisory board appointed by the Minister.

The Right to Freedom of
Association and Collective Bargaining

In this section, the right to freedom of association and collective bargaining will be examined.

Chief Courchene refers to
... the righteous disapproval of the Canadian public for whom unions are a motherhood issue, and if we are accorded our people human status at all, are supposed to be automatic white-liberals with feathers. (Courchene "Address")

The freedom of association and the right to collective bargaining are relatively new adjuncts in the historical development of labour relations. For example, in Manitoba, teachers were not always members of a large and powerful teachers' association. The rights of teachers and the rights of workers in general have developed over time.

There is recent evidence to suggest that society changes its attitudes towards trade unions. For example, in British Columbia, the Social Credit government has fragmented the provincial teachers' union, with the obvious aim of delimiting that body's bargaining power. Through a teaching profession act tabled as Bill 20, the BC government takes away mandatory membership in the BC Teachers Federation and has made membership voluntary ("B.C. labour"). In that province also, the government has tabled Bill 19 which would eliminate the provincial labour code and replace the labour relations board with an industrial relations council and a powerful industrial relations commissioner ("B.C. teachers").

Indeed, regarding the Charter of Rights and Freedoms, the Supreme Court of Canada, through three separate decisions, has recently held that the right to freedom of association guarantees neither the right to bargain collectively nor the right to strike; they are not fundamental rights. These rights may be limited through provincial legislation and take the form of limitations on
salary increases, banning of strikes and lockouts and the imposition of compulsory arbitration. Justice McIntyre states that "the right to strike was an invention of the 20th century and "has not become so much a part of our social and historical traditions that it has acquired the status of an immutable, fundamental right." Labour spokesmen are critical of the decisions, arguing that freedom of association exists to protect workers' rights to bargain collectively and to strike if necessary (Maclean's).

Legal Versus Political Strategies

Usually Section 119 of the Code is used to appeal a review of CLRB orders. However, if it is contended that the CLRB has exceeded its jurisdiction and that an order is a nullity, then a party can have the order judicially reviewed by the Federal Court which is a creation of the Federal Court Act of 1970. The Federal Court consists of a Trial Division and the Court of Appeal. Court of Appeal decisions can be appealed to the Supreme Court. The review of labour relations has been criticized as being inconsistent with the policy choice of having labour relations decisions made by expertise in the field. Thus judicial review has been criticized as being "absentee management" (Kelleher 59-60). Obviously this criticism is from a labour perspective. From the perspective of the Fort Alexander Band, the whole regime of labour relations is seen as being inconsistent with the principle of self-determination.
David Ahenakew, National Chief of the AFN, asserted that "the Court, in typical fashion, evaded the issue" (Ahenakew letter). While this may be true in a broader moral sense, the statement does not stand up to legal scrutiny. Justice Roleau said that if the Band Council wished to challenge the constitutionality of the CLRB or of the Federal Court, then it should have appeared and made legal arguments (Manitoba Teachers' Society et al. 15 Nov. 1984, T-1954-84: 10). Morse says that "there remains the possibility that the Canada Labour Code may not apply to Indian governments" ("Aboriginal Peoples" 679). Morse also identifies the unique rights of First Nations peoples recognized by Sections 25 and 35 of the Constitution Act, 1982, as contributing to sovereign assertions of First Nations, including the assertion that labour statutes do not apply ("Aboriginal Peoples" 669).

Why did not the Band Council do this? At one point, after the CLRB decision and orders of August 23, 1984, the Band Council announced that it was considering an appeal to the Federal Court of Appeal based on the Charter of Rights and Freedoms and Section 114 of the Indian Act ("Band to appeal"). However, the Chief and Council decided to forego an appeal and opted instead to ignore the CLRB's orders. The premise for non-compliance was a "Declaration of First Nations Indian Governments for Self-Determination" rather than anti-labour attitudes and the belief that an appeal would not work in the Band's favour: "I don't think we have any faith in the court system... We'd rather do this politically" ("Indian band leaders").
Therefore, throughout the court actions, the Band did not present legal arguments about the constitutionality of the CLRB or Federal Court jurisdiction over Indian Bands and Band Councils. As noted, the Supreme Court had already determined that the CLRB had jurisdiction over labour relations of the type in the Fort Alexander situation, and the Federal Court had determined that it had jurisdiction over band councils. As to challenges under the Sections 25 and 35 of the Constitution Act, 1982, it can be concluded that the Band Council and political organizations supporting the Band had determined that there was possibly more to lose through a court challenge at the time. As Chief Courchene said: "we want a political solution: an agreement between governments." With constitutional talks on self-government in the background, the Band Council and the political organizations had more to gain by keeping a legal constitutional challenge on the issue of self-government out of the courts, because the major initiative was a political one. An unsuccessful court challenge would have undermined the potential results of the political negotiations. There was more to be gained by making political statements and refuting CLRB and Federal court jurisdiction in a non-legal sense. Of course, this is just what the Band Council did.

Rolland Penner, Attorney General for the Province of Manitoba, addressed court versus political strategies in reference to the First Ministers' Constitutional Conferences on self-government. Although he was speaking from Manitoba's perspective, he made a
...I would like to express a word of caution and, again, probably you don’t need that message from me but I would like you to know where we’re at and that is any reliance on the courts to interpret the treaties is not a winning tactic. The court process, as we know, takes you into another kind of judicial sphere, not essentially your judicial sphere and it is long, slow, dilatory, expensive and ultimately it is not a productive way of fulfilling the spirit and the letter of the treaties. The political process is clearly, and that is something the Indian people of Canada have learned slowly but now, I would say, triumphantly, the political process is the most... fruitful way of carrying on the struggle... As you know, Section 35(1) of the Charter guarantees and affirms existing rights but in a way that is a blank cheque. It doesn’t say what those existing rights are and in particular it doesn’t say, yet, that one of the existing rights of the aboriginal people is self-government. The question arises of who fills in the blank cheque. Will it be left to the courts or to the political process? Perhaps in a way they are not necessarily mutually exclusive but in this regard the political process may be better because,... it raises the conscience of those who are involved in the political struggle and that is tremendously important. If you go to court, then a lot of the time and resources... is expended on lawyers... leaving, in a sense, the people outside of the courtroom whereas the political process has the potential of involving the people. ("PTNA Minutes")

The Fort Alexander issue, being fundamentally one of self-government from the Indian perspective, and the manner in which was developed by Fort Alexander officials and supporters, did achieve what Penner considers to be one of the benefits of a political process. It served as a focal point and rallying issue for those organizations seeking a recognition of Indian self-government and "raised the conscience of those involved in the political struggle."
Reeves says that the recognition of "existing aboriginal rights" in the Constitution Act, 1982 potentially marks a considerable doctrinal shift but the significance of this recognition and these rights remains to be seen (346). Boldt and Long note that in Canada Indian peoples are amongst the most vehement critics of the Charter of Rights and Freedoms, yet the Charter is touted as being especially beneficial for disadvantaged minority groups ("Tribal Philosophies" 165). Indian peoples fear the Charter, based upon individualism, will be used to further erode and threaten their cultural identity, and to achieve the final assimilation of Indian peoples into a non-Indian dominant society. Boldt and Long charge that to insist that the Charter of Rights and Freedoms is best for Indian peoples is a continuation of a deeply engrained and ethnocentric belief that Indian cultures are inferior in comparison to European cultures. As such, this follows earlier rationales for imposing Christianity, the racist provisions of the Indian Act, the elective system, hierarchial governmental structures, and for generally pursuing a policy of assimilation ("Tribal Philosophies" 174).

Turning Education Back

Over to INAC: Control, Responsibility and Legal Ramifications

Did Fort Alexander actually turn the education programme over to INAC? During the Federal Court hearing of February 15, 1985, Chief Courchene reveals Band officials met with the Regional Director of INAC, and it was decided that the Band would turn the
education programme back to INAC. Yet, E. Korchinski, Regional Director, INAC, Manitoba Region, states that

during the legal proceedings, Chief Ken Courchene requested that INAC take over the full administration of the education programme at Fort Alexander, however, this was never done. INAC simply set up a direction of payment on behalf of the Band, and for a short time all bills and salaries were paid by INAC. The administration was left in the hands of the Band. (Korchinski 12 June 1987)

What was the Band Council’s intent in turning over the education programme to INAC? The action does make a statement about the nature of Indian control of Indian education. It illustrates the difference between the Fort Alexander perspective on the concept and what the Band Council’s self-determination aspirations are, and what INAC says the policy is. In short, the Band Council seems to be saying, "look, we don’t have control anyways: the labour board and court proceedings are but one indication of this. So, we are turning it over to INAC, because it is INAC which really has the control, and we are just running an INAC programme." This analysis would seem to be confirmed in a statement of Chief Alvin Head, a PTNA representative from Saskatchewan and Chairman of the Winnipeg, November, 1984 and of the Saskatoon, January 1985 PTNA education conferences:

Fort Alexander has taught us the lesson that Band control does not truly exist. The issues at Fort Alexander prove that our Nations are not respected by foreign institutions as sovereign. The Indian government of Fort Alexander was thrown in jail because they would not bow down to foreign laws... Fort Alexander also taught us that we have failed to protect our jurisdiction with legislation such as Education Acts, Labour Acts and Administrative Acts. If we don’t get our act
together we will have a non-Indian people dragging us before foreign courts over and over again. (Head)

Paradoxically, the Band Council submission to the Court states "INAC has a fiduciary and treaty obligation to provide education for Sagkeeng and that INAC will deal directly with Sagkeeng in receiving direction regarding the education programme" (Manitoba Teachers' Society et al. 14 Feb. 1984, T-1954-84: 19).

This statement becomes clearer when it is recalled that the Treaty Nations perspective holds that the authority for education belongs with each First Nation, but that the Federal Government has the responsibility of delivering quality education. This perspective is in fact a complete reversal of the existing legal status quo: Band Councils and the programmes they operate are subject to the discretion and control of the Minister of INAC.

The tactic taken by the Chief and Council during the Order of Committal Trial is not without conceptual precedent in the history of the education programme at Fort Alexander. Out of frustration with INAC's interpretation and limitations upon "local control" of the education programme, the Band Council in 1980 proposed that the responsibility and accountability for financial administration of the education programme be returned to INAC with terms acceptable to the Band. To Fort Alexander, education is a right derived from Treaty One, not a privilege granted by INAC or the Federal Government ("Position Paper" 52). Denied responsibility and accountability to the Band membership by INAC and governmental restrictions, the Band sought the inverse by
holding INAC responsible and accountable to the Band ("Position Paper" 52-61). Turning the education programme over to INAC would further remove the threat of continuing liability and sanctions against the Chief and Council.

The Band Council resolution, presented to the Court in the Order of Committal Hearing was a source of confusion for the MTS in the matter of further court action: who was responsible for the Fort Alexander education programme and therefore legally liable as employer? INAC and the Band Council pointed the finger at each other on this one. Ralph Kyritz, MTS official, states,

> a complicating factor at that time was that the Minister of Indian Affairs was attempting to give Indians more self-government and greater control over their administration. As such, an imposed settlement may have been contrary to the government's professed direction. (Kyritz 21 May 1987)

While Crombie may have been supportive of some form of Indian self-government, the resolution also presented a legal conundrum to INAC: there is the question of the relation between control and responsibility in that INAC may not have wanted to be potentially legally responsible and liable in any possible legal proceedings by the Band against INAC. With control comes responsibility, and responsibility has potential legal ramifications. INAC therefore determined it was a "band controlled school, not a federal school" and opted out of the tentative agreement ("Ottawa killed"). So it was that Fort Alexander officials, with facilitation by INAC officials, became party to the actual settlement of December 3, 1985.
Minister Crombie's Telex:

INAC's Research into Alternatives for Indian Labour Relations

Although Minister Crombie had indicated that he could not intervene in the court proceedings, the December 4, 1987 telex from Minister Crombie probably served to reinforce the Chief and Council's steadfastness and to persist in the demand for a political solution, which they did during the December contempt hearing. Essentially, that is what the substance of Minister Crombie's telex suggests, that the Chief and Council may have a legitimate grievance, and that the nature of the grievance may require a political solution.

Minister Crombie indicated that a number of alternatives would be considered, including the undertaking of a legal policy study which would examine the implications of exempting band councils from the labour code, including options to fill the void created by the exemption (Crombie). Subsequently, however, a revision to the Canada Labour Code was "not seriously contemplated at the time", although an INAC official stated that Indian labour relations legislative revision would be "examined within the context of Indian self-government at a later time" (Coulter 16 April 1986).

Morse says that the Canadian Labour Congress has "been very supportive of the demands of indigenous organizations for economic parity and respect for their unique legal rights as Aboriginal peoples" ("Aboriginal People" 664). However, according to Ralph
Kyritz, MTS official, the idea of revision was not "met with great enthusiasm by either the CLC or the Canada Labour Department" (Kyritz 15 July 1985). As also noted both the Canadian Labour Congress and the Manitoba Federation of Labour had written to Minister Crombie, expressing reservations about possible amendments to the Code.

However, Labour Canada's perspective on the subject of labour code revision differs from that of Mr. Kyritz. Labour Canada did not know of the legal policy study, but had neither participated in the study nor been apprised of the study's results. In the opinion of Associate Deputy Minister W.P. Kelly, "it is not correct to assume that any changes to the Labour Code proposed by DIAND were discussed with, or rebuffed by, Labour Canada officials" (Kelly 19 Sept. 1985). Labour Canada's Industrial Relations Programme had, however, commissioned a legal study of labour relations jurisdiction on Indian reserves, which was done by a Queen's University law student in August of 1985 (MacPherson 21 March 1986). A proposal entitled "Labour Canada's Policies and Roles Pertaining to Indian Bands, Companies and Employees" had been received by Labour Canada in 1984 from the I.M.S. Corporation. However, no reply was received from the company when Labour Canada requested further funding details in order to consider the proposal for a grant in the 1985/86 budget year (Kelly 13 March 1987).

Later correspondence with Labour Canada determined that Labour Canada had not been requested to undertake any labour Code
revision by INAC (Kelly 13 March 1987). Further, there were no immediate plans to amend the Code (Part V) which would affect jurisdiction over Indian labour relations (Meager; Rutkus; Kelly 13 March 1987). Currently, the labour regime remains as it was during the Fort Alexander dispute (Buchan).

Chiefs Courchene and Ahenakew state at various times throughout the issue that labour relations as applied to Indian peoples were not a consideration in the formulation of the Canada Labour Code, basing this statement upon conversations with "an architect of the Code." With the dropping of the labour code revision option, this original lacunae is retained.

Band Council Decision Making:

The Issue of Community Support

Throughout the development of the issue, Chief Courchene and other Fort Alexander Band officials consistently maintained that band members support actions taken. Lithman observes that an effective band leadership must maintain credibility within the community by ensuring that it retains a substantive following (105). This difficult task occurs in the face of bureaucratic and reserve factions which attempt to undermine Band Council authority by claiming it does not truly represent community consensus. These kinds of claims were made by the North Shore Action Committee when Ken Courchene initially became Chief. Lithman says during the election time for Chief and Council there are usually attempts to create a "North Shore slate" (156). Within that part of the
community, there is a generally held opinion that they have been unfairly treated and have received less of the financial resources coming into the community than is their due.

Lithman observes that the Indian Act names the band council (Section 81) and band member meetings (Section 80) as the two fundamental institutions in reserve communities (142). The function of the band member meeting is to hold the chief and council accountable to the community between elections, but Lithman argues that it is largely inconsequential in community politics and rarely called (142).

At the time of an interview, Chief Courchene asserted 21 band meetings had taken place since he had taken office. Actions taken by Chief and Council were said to have occurred after presenting the particulars to band meetings wherein band members directed the Chief and Council. An exception occurred when the elected school board was terminated by Chief and Council and replaced by an appointed board. At that time, the action of Chief and Council was ratified after the board had changed (K. Courchene interview). Chief Courchene emphasizes that he acts as a representative of the will of the band members. In the opinion of Superintendent Dave Courchene Jr., the four teachers had isolated themselves from the community; these teachers should have listened to what band members were saying, which was "no union at Fort Alexander" (Courchene Jr. 15 April 1985). Similarly, Ken Young, representing band officials at the CLRB hearings, reports "the Council believes it is acting on the wishes of the people by opposing unions on the
reserve" and that "the issue of unions on the reserve is a crucial one to band members... unions being imposed on them is not what they want." Likewise Dave Courchene Jr., referring to the CLRB decision says "all I know is the position of the community... they'll challenge it" ("Band to appeal"). In reference to the CLRB decision, Band officials "decided to circulate a petition to gauge residents' feelings... Courchene feels he has the support of the reserve's 1,500 residents" ("Teachers seek").

Mel Myers, Counsel representing the fired teachers and the MTS, claimed during the October contempt of court hearings, said that the Chief and Council were using the issue to garner votes in an upcoming election: "I do know that it is in the political interests of the Chief to become a martyr- it might win the election for him" (Rance). Regardless of Myer's claim, Chief Courchene was re-elected, and his re-election, at least in part, would seem to confirm community support of the Band Council's handling of the issue.

The Funding of Band

Controlled Education Systems

The Fort Alexander Band, various Indian political organizations and, indeed, INAC itself, observed that Indian education is underfunded. The underfunding of education was a basis for the Band's contention that it could not afford to negotiate with a teachers' union. During the issue, the Fort
Alexander Band rejected a proposed $3.2 million education budget for 1985-86 because it was inadequate ("Indian leaders to press").

What is the current status of Indian control of Indian Education at Fort Alexander? A quote from Regional Director Korchinski is relevant and bears scrutiny:

The Sagkeeng Education Authority currently administers the education programme on behalf of the Fort Alexander Band, and this authority does, in fact, fit under the rubric of a band controlled system, but perhaps not to the full extent as expressed by some. There are still INAC set rules, regulations and procedures which must be followed, however, the day to day operation is under the control of the band. (Korchinski 12 June 1987)

It might be more accurate to say that the Sagkeeng Education Authority currently administers the education programme on behalf of the Minister of INAC, and that this is a federal policy which has no legal basis in the Indian Act. Korchinski's phrase "not to the full extent as expressed by some" is perhaps indicative of the distance between sovereign self-government aspirations and the reality of the Indian Act and the policy of Indian Control of Indian Education. The phrase "the day to day operation is under the control of the band" is perhaps the closest indicator of the reality of Indian Control of Indian Education: Indian Bands "operate" or "deliver" what are, in the final analysis, INAC programmes, and that such a programme is accountable to INAC, not the community it is intended to serve.

The Fort Alexander Band currently receives block funding. This means that the Band administers the funds according to its own various programme needs and is able to prioritize programmes. In
this sense the block funding regime is more reliable than the previous data-base regime (Buchan).

The Move to Decertify

Local 65

At an Aboriginal rights meeting held in Fort Alexander, a vote for decertification took place (CLRB Decision #462: 9). However, the teachers did not subsequently make an application to the CLRB for decertification. The CLRB states that the vote was conducted "in the face of pressure being exerted against them." Representatives of Local 65 were also asked to apply for decertification by the Chief and Council.

The Code provides for both a legitimate opposition to the certification of a bargaining agent and a decertification of a bargaining agent. Teachers who were members of local 65 but opposed to its certification could have filed a petition in opposition to the local and cast aspersions upon its representation. However, the CLRB must determine whether a petition represents a voluntary expression of the desires of those employees who have signed it. If the board decides that the bargaining agent's representation is debatable, then a vote is taken on the question. Most petitions do not meet this condition as employers tend to influence the rationale for conducting petitions (Arthurs 169).
The Demise of MTS Local

65: Current Legal Versus Actual Status

There was never an application made to the CLRB for
decertification of local 65 or an actual decertification hearing.
G.T. Keeler, Regional Director for the CLRB, notes that the
certificate for local 65 of the MTS "is still active" (Keeler 22
May 1987).

A similar inquiry to Ralph Kyritz yielded this reply:

The local disappeared but there was never any official
decertification hearing. I believe the Band did not use that
route since the Band did not recognize the Labour Board's
jurisdiction. From a practical point of view, there was not
much need for such an action since we had lost most of the
members during the latter part of the confrontation...
currently there is no local at Fort Alexander and we have no
members. (Kyritz 21 May 1987)

Kyritz's second point is of interest; it corresponds with an
opinion expressed by Dave Courchene Jr. Courchene said that he had
heard that the teachers might move to have the local decertified
"in the summer." He also expressed disinterest in the idea of
decertification; it was up to the teachers and not a concern of
the Band Council because they did not recognize the legitimacy of
the local or the jurisdiction of the CLRB (Courchene Jr. 15 April
1985).
Concepts of Community,

the Individual and Authority

It is useful to present some concepts as generalized by Boldt and Long about the nature of community, the individual's place in community and the location of authority in traditional Indian societies. Boldt and Long contrast these with western-European concepts ("Tribal Philosophies"). Although it is not implied that Boldt and Long's generalizations portray social reality at Fort Alexander, it is contended social reality at Fort Alexander arises from traditions similar to those as presented by Boldt and Long. These generalizations can serve as bases for indicating the nature of the community at Fort Alexander and its rejection of collective bargaining and the right to associate freely.

Boldt and Long assert Indian tribes were communally defined and based upon spiritual contracts rather than social contracts. Therefore, a tribal will was a spiritual principle expressed through cooperation and sharing, in contrast to the western-European conceptions of private property and competition ("Tribal Philosophies" 166).

The western-European development of egalitarianism can be identified as a positive and humanizing reaction to the feudalistic hierarchical doctrine of authority ("Tribal Traditions" 337). In contrast, Indian societies traditionally derive concepts of equality from the Creator's founding prescription. As for comparing the placement of authority in a
society, delegation and election were methods for humanizing ruling entities in the western-European tradition, but this type of authority could not be transferred to any particular entity in Indian societies. Rather, people ruled collectively and exercised authority as one undivided body ("Tribal Philosophies" 168).

Boldt and Long identify impersonal custom as "a sacred blueprint for survival derived from the Creator" and as the locus of authority and power in traditional tribal governance. All members were subject to an impersonal and external customary authority not readily changed or manipulated for ritual linked custom to sacred beginnings. Custom is moral authority obliging individuals to conform by appealing to individual conscience. By following custom, "each member would be assured of equality, self-worth, personal autonomy, justice, and fraternity— that is, human dignity" ("Tribal Philosophies" 169). Elders held no personal authority to order individuals. Rather, they were vessels and dispensers of customary knowledge and authority respected for their knowledge of custom, traditions and ritual, and their ancestral links with Creation. Similarly, chiefs led without personal authority. In a face-to-face society, with no need for a separate enforcement agency, autonomy was each person's prerogative ("Tribal Traditions" 337-38). Boldt and Long maintain that an undifferentiated and custom regulated face-to-face society did not require coercive personal power, hierarchical authority relationships or a separate ruling entity to maintain order ("Tribal Philosophies" 168). Indigenous North American world views
are cosmoecentric rather than homocentric and focus upon the whole rather than the individual ("Tribal Philosophies" 166). In traditional world views, life is conceived of as being harmonious and unified wherein every living thing is interrelated. In tribal societies, the individual has responsibilities towards others rather than being a claimant of individual rights. The individual good and general good are the same. Members derive their whole experience from the immediacy of mutual contact and shared purposes. There is no condition for bringing about individual self-consciousness or conceiving rights in terms of the individual ("Tribal Philosophies" 167). Individual rights would be contrary to the general good and ultimately imprecate the well-being of the individual ("Tribal Philosophies" 169). In the Fort Alexander scenario, teachers claimed rights as individuals and employees, whereas the Band Council perceived the teachers as having responsibilities towards the children and the community. Within the community as a whole, teachers were also claiming employment rights which the majority of the community, being unemployed, could not claim.

In the western-liberal tradition as exemplified in the philosophies of Rousseau, Locke and Hobbes, the individual is the fundamental unit of society. One is a possessor of natural and inalienable rights. Society is the aggregation of individuals, but individual self-interest has priority over group rights and claims; freedom is conceived as being the absence of restraint ("Tribal Philosophies" 166). Authority exists to protect society
and its members against the dynamism of self-interest and the arbitrary use of power, but is an instrument emanating from and agreed upon by individual self-interests ("Tribal Philosophies" 164-165). The western-liberal idea of human rights arises from a concern with and in response to a particular set of negative historical conditions as indicated by hierarchical European feudalism and the belief that men were inherently unequal. It also serves as an ideological rationale for competitive individualism,—a fundamental principle in capitalist economic development theory and practice ("Tribal Philosophies" 168).

Boldt and Long suggest traditional customs, as they relate to group rights, have become the "charter myth" for contemporary Indians as a basis for the vision of their evolving communities, just as equality and individual rights are the charter myth for western democratic societies.

Jennings (1976: 115) says that a government based on kinship can be effective only so far as generic or fictive kin relationships are conceivable. Such a government depends on clearly understood interpersonal relationships, which must be maintained in a preliterate society through face-to-face contacts. Kinship states are by their nature local governments. The Fort Alexander community is analogous to a kinship state as characterized by Jennings; it is essentially a group of families. Perhaps the formation of a teachers' union based upon a principle of an individually held right to associate freely, wherein the majority of the members are outsiders, was perceived as an overt
and codified denial of kinship, and of a way of going about things within the kinship mode.

**Indian Control: The Reality of Myth**

Kouri examines the social organization of knowledge as it pertains to the concept of Indian control of Indian education as experienced by one band. She derives her method from Smith (1974), who identifies a tendency in the social sciences to abstract concepts from the world of human interactions in which they are produced. Divorced from social phenomena, concepts which are used as objects of social science theorizing lose their original meanings as "social facts" (Kouri 9).

Kouri therefore examines Indian control from the perspectives of various entities which give the concept different meanings—the Band Council, the Education Authority, Band members, INAC and teachers. She concludes that Indian control of Indian education, envisaged as a "radical change" by the NIB, is largely mythic in nature, as an appearance of Indian control is produced while actual federal government control is maintained. As such, Indian control is an ideological concept imposed on the Band and serves to extend INAC's principles of education management and maintenance; the Band only administers an education programme.

The illusion of Indian control is created by the existence of the formal structure of the Band education system (Kouri 62). However, the employees of the Band education system are actually
engaged in reproducing INAC education policy so that the locus of control remains with INAC, particularly through the processes of accountability and budget allocation. Education must be administered by the Band in a manner prescribed by INAC; failure to do so would result in "control" being taken from the Band. Control therefore is tentative in nature. Kouri also notes that "bands are not yet legal autonomous governing bodies." By extension, then, the education authority of a band has no legislative basis to run an education programme on a reserve. That legal authority resides with the Minister of Indian Affairs. "Indian control" then is a governmental policy with no legislative definition. Under the Indian Act, the Minister may enter into agreements with public and separate school boards, religious and private organizations, but not with Indian bands themselves. Kouri purports that the actuality of Indian control is further delimited because key administrative positions are occupied by white professionals. These people make decisions because Education Authority members lack the required documentary skills which are necessary to manage the education system according to INAC's principles of management and maintenance. The net effect of the administrative reality is that it "differentiates and further separates groups of Indian people from each other in a classing practice while appearing to represent the interests of Indian people" (Kouri 37-38).

Kouri remarks upon the process of specialization as a way of organizing social reality. On the reserve, education is one of a
number of programs initially conceived by INAC. It is separated from other programs such as economic development and housing. Specialization means that the Band Council is unable to construct a complete vision of what is required on the Reserve. This contributes to the Band Council’s inability to make coordinated and integrative decisions which would allow for the locus of planning and control to be located on the Reserve.

Kouri’s main assertion is that in order to have the locus of control at the Band level, education should actually develop out of the needs of the band members as identified by the band members. These needs cannot simply be limited to education; rather, they relate to other aspects of community development.

Fort Alexander’s experience with Indian control as analyzed by Band officials is congruent with Kouri’s analysis in many respects. Fort Alexander officials describe Indian control as "quickly becoming the new departmental panacea" ("Position Paper" 27). Educational forecasts prepared at regional and national levels are perceived as "a waste of time" which deny the idea of local control:

... in truth, the Band’s education authority is simply administering a departmental program... with no real authority, no real participation in the development of the program, but none-the-less in all respects accountable for it. ("Position Paper" 34)

Fort Alexander Band officials contend the education programme is underfunded and does not arise from the needs of the community. The reality of the education programme is also connected with the
lack of an economic base for the community: "what is the point in going to school if the life that lies ahead of you is the same as that in which your family despairs?" ("Position Paper" 8). The Band Council proposed to establish a direct link between education needs and economic viability ("Position Paper" 8).

The Social Network as Indicator of Local Control

Assheton-Smith (1977) begins with a reference to Uron's "What Ever Happened to Local Control?" Assheton-Smith reviews the concept of local control as it has developed since Uron's article noting particularly the perspectives of various Indian organizations. Negatively put, she reports "what it is not": it is not simply the decentralization of services, nor is it replacing non-Indian personnel with Indian personnel. These types of approaches would result merely in a transition from colonialism to neo-colonialism. Assheton-Smith notes that Indian organizations prefer to use the term "Indian control" rather than "local control". More positively, then, Indian control, according to a number of Indian organizations, is based upon "the right to create and determine the nature of the institutions which will serve each people." However, Assheton-Smith contends that the question "what is local control?" remains unanswered and readdresses the question with the aim of identifying conceptual features and distinguishing different forms of local control. In essence, she is saying that, whatever it is, "local control" can be best understood by looking
at the social fabric of school/community relations. Assheton-Smith defines local or community control as being fundamentally "the ability of parents to influence and often determine outcomes in the classroom..." Local control is further described as "concentrating solely on the dimension of community/school relations in which the community influences the school."

Assheton-Smith notes that such a definition ignores both the claims of professionals to control educational activities and the demands of the state but asserts that this neglect is based more upon the elaboration of the notion of local control rather than the necessary denial of such claims and demands.

However, despite Assheton-Smith's viewpoint, local control, by its very nature, may very well necessarily encompass the controlling tendencies of educational professionals and the demands of the state. This is especially true if one re-examines the implications of such a statement as "... the right to create and determine the nature of the institutions which will serve each people."

Assheton-Smith posits "it is informal mechanisms which operate to determine the actual control of the school," after examining articles by Fein (1971), Kleinfeld (1972) and Parry (1977). Therefore, the question of whether local control exists or not can be more readily answered by considering the nature of social networks effecting the school/community, rather than by considering formal structures. For example, the degree to which local control exists "will partially depend upon whether or not
teachers and parents share a social network or are socially isolated from each other." What does this statement offer an analysis of the internal dynamics at Fort Alexander? Would the lack of a shared social network between teachers and parents and the social isolation of teachers tend to indicate that local control does not exist?

Regarding the nature of sharing social networks to either a positive or negative degree, the following observations can be made. The substantial majority of teachers did not live within the community but resided in adjacent towns. It may be that this condition contributed to the social isolation of teachers. Secondly, the application of R. King's concept of role shock and indeed, the events themselves demonstrate that teachers were isolated from the community's social fabric. It is noted Fort Alexander officials consistently held that the attempt to form a union was opposed by the community.

Assheton-Smith's contention that the degree to which local control exists "will partially depend upon whether or not teachers and parents share a social network or are socially isolated from each other" may be applicable to the Fort Alexander scenario. It can be argued that the conflict which developed between the Band administration and unionizing teachers as it burgeoned from an internal dispute to a legal and self-determination issue indicates that local control existed to a lesser degree.

Assheton-Smith's focus upon the concept of social networks in a community may be one valid indicator of the degree to which
local control exists. However, other aspects, such as the demands of the state or notions of professionalism, may also be competing factors vying for legitimization and control. Further, "Indian control", preferred by Indian political organizations over "local control" as a label for a concept is indicative of differing interpretations which are being brought to bear upon the concept. These interpretations point to debates over demands of the state and the nature of control itself.

Role Shock: Authority,

Schisms, and Ambiguity in Community Dynamics

R. King analyzes the difficulties encountered in one Indian community as people set up a community education programme. In characterizing role shock, King notes that

... new authority statuses intensify schismatic tendencies within the community and create ambiguities for outsiders (educators, in this case) who have previously been confident in their abilities to manifest appropriate role behaviours. (74)

King's characterization of role shock is pertinent to the events and issues within the Fort Alexander scenario. We can divide the concept of role shock into two subsets for the purposes of application. These are the notions of "new authority statuses intensifying schismatic tendencies within the community" and the "creation of ambiguities for outsiders."

"New authority statuses" means firstly, that Fort Alexander obtained control of the education programme according to INAC's policy, and secondly, the manner in which control was developed,
interpreted and practiced by different band administrations. The concept of role shock can be applied to the internal struggle for control of the North Shore Anicinabie School when Ken Courchene was elected Chief and subsequently terminated the elected board. In this case, the North Shore Action Committee contested the election of a Chief who had been a former Superintendent of Education and whose administration sought to keep the North Shore School within the reserve education system. The contest over control of the Anicinabie School is an aspect of a broader issue which becomes active within the community from time to time. The conflict also revolves around the fact that the reserve is actually covered by two treaty areas. During the Anicinabie School controversy, it was held by Chief Courchene that the North Shore was trying to gain control of Anicinabie School as part of a larger political design which possibly involved the cessation of the North Shore from the existing administrative set up.

However, when applying the concept of role shock to the internal dynamics of the Fort Alexander scenario, we should state that the "new authority status" can be characterized as being highly ambiguous in itself. As both Assehelton-Smith and Kouri argue, the idea of local control means different things to different groups. For Indian peoples, Indian control of Indian education is a highly charged symbol, intimately connected with the past, present and future, with their relationship with the Canadian state and with a desire for self-determination and self-government. Again we must return to the questions "what is
local control?", "what is its nature?" and "who has the authority status?"

The teachers are caught up in both an internal and external struggle for authority and legitimacy. Ambiguity for teachers' concerns an uncertainty in conditions of employment as a result of changing administrations and administrative attitudes towards employer-employee relations. In effect, teachers had to ask themselves, "what is our role as employees?" Teachers sought to have their concerns recognized and legitimized and their employment conditions regulated through legally sanctioned unionization and collective bargaining processes. These forms and processes were perceived as being normative by the teachers and are generally accepted as normative in mainstream society. Teachers claimed rights available to individuals within mainstream society.

Role shock is also an aspect of self-determination; for, self-determination is not a given for the Fort Alexander Band. The various institutions and actors within the Fort Alexander scenario seek to answer the question "who has the authority to make decisions?" The Fort Alexander leadership claims authority which is denied by the existing legal regime. Thus, self-determination can be viewed as a process wherein Indian peoples are trying to gain authority over community life, striving for self-government. Self-determination is a process of decision making, of discovery and learning, and of community development. It is being able to
direct community matters internally without relying on external authorities for legitimization.

Starblanket avows that teachers need to acquire a familiarity with the goals of Indian government, and "establish a loyalty to those goals" (3). Possibly such loyalty would lessen the chance of role shock. It was felt by the Chief and Council that teachers, who embarked upon an extensive unionization process to the point of involving the CLRB and the Federal Court, had neither a loyalty to the Chief and Council nor an understanding of the goals of self-determination and self-government. Their actions were proof of non-belief and perceived by Fort Alexander officials as undermining these goals.

One might also interpret Starblanket's avowal of loyalty to the goals of self-government as a positive sharing of a social network in the sense that Asseheton-Smith refers to a valid indicator of the existence of local control.

Rejecting INAC's

Conception of Local Control

Kouri's analysis is applicable to the Fort Alexander scenario in certain respects. As Kouri observes, various entities employ different interpretations of "Indian control", INAC's being paramount and largely mythic in nature in comparison to what the NIB envisaged. In effect, INAC's policy denies effective self-determination and control at the reserve level. Fort Alexander officials and supporting Indian political organizations
are highly cognizant of these dissonant interpretations and seek to exercise control according to principles articulated under the rubric of self-determination and sovereign self-government. They contend that "control" does not exist and is denied by the Federal state. The issue of jurisdiction over labour relations and the kind of labour relations which would come under this purview is one aspect of the debate over "control" concerning education but is also an issue of within the broader context of self-determination and self-government. In Kouri's sense then, Fort Alexander rejects INAC's notion of control and seeks to ground the development of control in social fact.

Conceptions of Equality:

Fair Share and Fair Play: Group Rights and Individual Rights

Kouri asserts that an INAC controlled administrative reality "differentiates and further separates groups of Indian people from each other in a classing practice while appearing to represent the interests of Indian people" (37-38). This statement is of particular interest to this study. The legal sanctioning of a collective bargaining unit may be perceived as a means of further differentiating a relatively homogenous community. This differentiation was effectively resisted by the Chief and Council. We must also ask, "what are the implications of differentiation for the Fort Alexander community?"

The MTS, the CRLB and the Federal Court assert the Chief and Council are intolerant and do not wish to share power. However,
the reality of collective self-determination is more complicated and suggests that the Chief and Council are rejecting externally prescribed notions of how the community should develop and how resources should be divided for the prescription is the antithesis of collective self-determination. Therefore, we must ask "what are the implications of sharing power?" and "within what context is power to be shared in the community?"

Community leaders are highly cognizant of "colonial and economic forces and the underdevelopment process that have and do oppress our people" which occurs "despite a heritage of self-sufficiency" ("Position Paper" 3). The community economy is based largely upon welfare. Fort Alexander has "an unemployment rate of 80 to 100% on a seasonal basis despite the fact it is located in an area of great resource and economic potential" ("Position Paper" 4). "The Pine Falls mill is the largest local employer followed by the Band with its INAC funded and controlled Band and education administrations and an assortment of essentially band aid, make work projects." Community leaders assert INAC policies and programs are designed to keep people in dependence and poverty and that the amount of money available for economic development is negligible compared with millions available for social programs. INAC "has nothing approaching an economic development policy" ("Position Paper" 3, 6).

In a situation of chronic unemployment the opportunity to gain material wealth and dignity through participation in a wage economy are limited. Collective bargaining as a concept may not
fit into this reality. The demand of a group of teachers for legally sanctioned rights to freedom of association and collective bargaining may be incongruous. Collective bargaining may be perceived as a demand for special privilege by a group "that has" in a community which can be characterized as suffering from chronic unemployment or "does not have". It may also be perceived to be inappropriate in the sense that teacher-proponents of collective bargaining are claiming rights within a community that is denied collective rights and which is collectively seeking to determine equity within a context of social and cultural survival.

Lithman observes that the most noticeable characteristic of the community's political system is the equal distribution of resources or the common good which is perceived as a limited quantity to be shared equally by all community residents (142). Political considerations enter into almost every decision about the distribution of the common good. Lithman also notes that political processes in the community prevent the accumulation of financial as well as political capital (148-149). The key concepts of how the distribution of goods is to take place are equal share, fairness, and similar expressions of an egalitarian ideology. It is possible to view the objections of the community's leadership and their actions concerning the formation of a union with collective bargaining powers as being premised upon the community's notion of how the common good is to be distributed. As Chief Courchene says, "teachers are amongst the best paid and have the best living conditions of those that live on the reserve."
Teachers' forming a union may have put themselves in the position of potentially asking for too much and of using a form and process which does not fit into the community's conception of the equal distribution of goods.

Ryan's analysis of the philosophy and practice of equality in the United States is also useful in a consideration of why Fort Alexander officials rejected the formation of a teachers' union and the concept of collective bargaining. Ryan holds the American idea of equality is a counterfeit ideology which falsely justifies the accrualment of disproportionate benefits to a small select segment of society, while denying a reasonable standard of living to the majority. Ryan's perspective can be analogous to that of the Fort Alexander leadership.

Ryan's notion of fair play, or playing by the rules of the game, denotes an equality of opportunity and can conceptually apply to the teachers, the MTS, the Labour Code and the Federal Court. The contrasting notion of fair share denotes equality of results and applies to the community, its leadership and supporting Indian political organizations.

Ryan traces the philosophical basis of the fair play or counterfeit ideology of equality to the Lockean precept that the individual is the basic unit of society, and that human activity is primarily the behaviour of individuals (49). This belief system emphasizes internal differences among individuals. The justification for an equality of opportunity is that the meritorious person, through individual effort and talent, deserves
and will receive a greater reward; some persons are worth more than others because they can perform certain tasks better than others and there should be as little interference as possible with the individual pursuing happiness, seeking and attaining various forms of property. However, Ryan asserts that hardwork and ability do not result in upward social mobility and that the economic status of most individuals is vulnerable to external control.

Ryan contends that this justification is really the foundation for inequality. He identifies this belief system accordingly with Marx and Engel’s notion of false consciousness, because it reflects, not actual reality, but the illusions that provide a justification for the interests of the dominating class (38). Therefore, the prevalence of inequality is to a large extent dependent upon the existing belief system, in which its characteristic elements are considered to be obvious realities rather than hypotheses or premises (Ryan 40).

Ryan questions why false consciousness is maintained and observes determining the response to perceived injustice has to do with the perception of whether accepted norms are being violated (38). These terms, or the rules of the game, derive their legitimacy from custom and tradition. Clearly Fort Alexander officials hold that the condition of the community is a result of injustice and that the imposition of collective bargaining as a form and means of the distribution of the common good has no legitimate basis in the custom and tradition of the community.
Arguing that human endeavours, although individual in nature, occur in the context of a human community and are dependent upon membership in social entity, Ryan hypothesizes a fair share theory of achieving greater equality which emphasizes collective rather than individual action and is directed towards external goals rather than towards altering internal characteristics, and assuming that participants are similar and seek collective rather than individually differentiated benefits (164). He argues for the right of access to resources as a necessary condition for equal rights to life, liberty and happiness. He suggests that the historical evidence of achievements gained by labour unions and civil rights groups support his theory of equality praxis. Ryan's theory of fair share or equality praxis is analogous to the concept of collective self-determination predicated upon the tradition and practice of the equal distribution of the common good.

Lithman reveals Fort Alexander to be a politically dynamic and aggressive community in its dealings with the federal government. He concludes that Indian people, being excluded from achieving a desired standard of living through participation within the dominant society, desire to maintain and develop reserve communities. In the case of Fort Alexander, he states the whole tenor of the community effort is at present to establish an Indian community, within which rich and satisfying lives can be lived... with the community residents in full control. (167, 173)
Lithman determines that a politicized or "opposition ideology" indicates that Indians will probably decrease their participation in the dominant society, and that current efforts by members of the larger society are inadequate in alleviating the causes of the Indians' condition, and that this inadequacy will probably continue in the foreseeable future (5).

In characterizing the Band Council's attitude during the North Shore controversy as a challenging strategy, Lithman observes that the Band Council presented itself as being an equal partner to INAC, and thereby "reserved the right to decide what to do and when" (164-66). This strategy stems from the conviction that injustices are a result of the dominant society's advantageous power position. In this imbalanced condition, Indian peoples realize they will only be able to redress injustices through united political action within the context of the Indian community.

Lithman's observations remain pertinent for the present case study. Fort Alexander actively pursues what Lithman identifies as an oppositional ideology but what may be more positively put as a self-determination ideology through its perspective on treaty and a right to self-government. Fort Alexander sees itself as a nation which is seeking to achieve a more equitable relationship with the Canadian state through collective self-determination.

The Chief and Council reject structurally assimilative and legally sanctioned notions of collective bargaining and the right to associate freely. They are reacting to what is externally
prescribed as "what should be", but this prescription does not adequately reflect either the community's existing method and rationale for distributing the common good or the idea of "what should be" under the rubric of forward looking self-determination.

In the preceding sections various analyses were used to explicate the complex dynamics of internal aspects of the Fort Alexander scenario. It is concluded that self-determination is an ongoing process which is premised on custom-derived egalitarian concepts, that the Chief and Council reject externally derived prescriptions for community development, that Indian control is subject to interpretation according to different paradigms and that teachers could not reconcile needs for form and process within the context of existing community forms and processes. It is also contended that the prescription for collective bargaining and the organization of a union is contrary to a process of collective self-determination.

Conceptions of Democracy

Teacher-proponents of collective bargaining, the MTS, CLRB, and the Federal Court locate the theory and practice of democracy in liberal-individualism, particularly in the right of individuals to associate freely and to bargain collectively and also in the legitimacy of the electoral system.

Kellough's observation that the condition of Canadian reserve communities is the same as that of developing third world nations has been noted elsewhere. Chief Courchene has stated that
unions deriving from conditions in industrialized nations are not necessarily, as many developing third world nations have discovered, applicable to a population involved in a national resurgence. (Cournenee "Address")

This statement and others which identify Fort Alexander's perspectives as being concerned with self-determination and a rejection of colonialism leads us to the theory and practice of democracy in post-colonial African states as examined by Mcpherson and Nursey-Bray. Parallels can be drawn between the African experience and that of Fort Alexander, for the political leadership of Fort Alexander and supporting Indian political organizations identify their struggle as one of self-determination and as a rejection of colonialism.

Mcpherson notes the meaning of democracy has become ambiguous through the practice of many extant varieties. Further, western liberal democracies can no longer claim an exclusive and correct interpretation of the word while denying the legitimacy of other forms. Mcpherson cautions that the evolution of the modern western-liberal state is predicated upon and follows the development of liberal economic conditions which revolve around "the society and politics of choice, of competition, of the market" (6). As such, these traditions are foreign to those inherent in many third world societies. Nursey-Bray characterizes pre-colonial African communities as being engaged in production for immediate consumption, as having a general absence of economic classes based upon inequalities of wealth, as being based upon kinship and age group arrangements which served to reinforce the
ideals of equality and unified community, and as employing
decision making processes which reflected community consensus by
proceeding from discussion (97-98). Nursey-Bray's characterization
of pre-colonial African communities is similar to Boldt and Long's
characterization of traditional North American indigenous
communities.

In reference to Jules Nyere, political theoretican and first
president of Tanzania, Nursey-Bray notes that the organized
pursuit of selfish ends was foreign to this society (99).
Therefore the alien values of European colonizers induced class
divisions and disrupted the classless equality and unity of
traditional society. In Lithman's estimation, the historical
premise for Fort Alexander's opposition ideology arises from the
Treaty period, the Indian interpretation being focused on the
deceit of Whitemen, which is seen as the basis for a contemporary
imbalance condition, in which the whites have become exploiters,
and the Indians, the exploited (171-172).

African political theorists, such as Nyere and Senghor,
through the rediscovery of traditional society, perceived and
articulated a socialist past in order to create socialist future.
Self-determination as espoused by Fort Alexander's leadership and
Indian political organizations is similar in this respect. It
views cultural aspects of an indigenous past as a golden age
mirror in which the future is reflected.

Mcpherson characterizes the third world non-liberal
conception of democracy as predating the liberal state, as
resorting to simpler pre-industrial society and as being "the rule by and for oppressed people" (24). Striving to free peoples from the oppressions of colonialism, it is closer to the original notion of democracy. It does not have the liberal-individualism content of the western variety or the class pattern of Marxism. Berger makes a similar observation about indigenous peoples, noting conceptions of community and life are derived from traditions other than capitalism and Marxism which arise from the Industrial Revolution ("Fourth World" 6).

While observing that although both liberal and third world non-liberal democratic theory share the goal of freedom and dignity and moral worth for the individual, Mcpherson and Nusey-Bray find parallels between Rousseau's writings and third world notions of democracy. There are similar emphases on practice or the means of achieving the goal according to an exercise of the general will of the mass of people rather than through separate and individual means. The mass of people sharing the exercise of the general will take precedent over the operation of individual wills, which, in Mcpherson's opinion, is the politics of choice, wherein everything may be considered in terms of choice except for the fundamental notions of liberal society and its democratic franchise (33). In both Rousseau's theory and that espoused by third world nationalists, a present and negative socio-economic condition is mired in inequality, and only an exercise of the general will of an undifferentiated people is perceived as being a legitimate basis for political power. Mcpherson identifies
emphasis according to practice in third world political
independence movements and neophyte states as being a
characteristic of classic democratic doctrine (29). The Fort
Alexander leadership and supporting political organizations view
Indian peoples as being constrained in a condition of
socio-political inequality. Self-determination, as premised on the
rights of groups, is an expression of a general will.

Rousseau and the African political theorists have a
fundamental interpretation about the nature of man. In this view
democracy is possible only in a community that is not
factionalized through the ascendency of private over public
interests (Nursey-Bray 102). Selfishness and factionalism are
considered negatively as products of inequality. Inequality itself
is premised upon an unequal access to society's resources.
Nursey-Bray holds Rousseau's central criticism of Locke's civil
contractarian theory to be that Locke was firstly concerned with
the maintaining the unequal division of property or the
"institutionalization of inequality" in society (102). It is
possible to view Fort Alexander's rejection of collective
bargaining in this light. Claiming a right to bargain collectively
is perceived as an act of selfishness, for teachers already enjoy
the dignity of work and receive substantial wages whereas most
individuals within the community do not. Teachers are already more
equal than others and the community through its leadership rejects
collective bargaining as an "institutionalization of inequality."
Regarding the ideal of consensus in political decision making, Nursey-Bray reports Rousseau and African political theorists recognize that it is easier to characterize consensus than to design a consensus yielding form (103). Furthermore, it is asserted that the political or mechanical means by which consensus exists are not as important as the underlying features of the society that ensure its continuing existence. If consensus does not exist as an essential aspect of the society, it is unlikely that it can be manufactured. Rousseau and the African political theorists are expressing a philosophically preferential premise about the nature of man. We can identify the termination of an elected board and the rejection of collective bargaining as negative aspects of the ideal of consensus.

Nyere and his contemporaries were left with the colonial legacy of realizing social-democratic theories based upon traditional notions of equality and unity arising from relatively small communities within the reality of the nation state. As such, they faced the problem of manifesting optimum consensus style decision making by advocating a parliamentary type of one party elected representation. Nursey-Bray reports Nyere was not comfortable with the western liberal-democratic belief that divisions in society or its competing interests could be usefully expressed and safely contained within an emerging African political system (104-05). The western liberal-democratic multi-party system, in Nyere’s opinion, is not a healthy manifestation of differing views within a broad consensus.
Instead, he views it as the result of selfish and mischievous factional interests, or as being indicative of basic and conflictual social divisions.

The consensus or single party aspect often inherent in emerging third world states tends to belie class divisions and liberal development. The politics of self-determination and independence dictate a limitation upon the exercise of the politics of choice. Choice in this sense is perceived by the general mass of people as an non-existent luxury: why speak of choice when the options for choice are few for the many? By extension, what follows independence is often a one party system wherein legal and political powers restrict competition from other parties. Mcpherson states opposition to a dominant party may be destructive of the opportunity for nationhood, and that if opposition is connected to foreign interests, opposition can be regarded as treasonable (26). The dynamism of independence and its maintenance also may mitigate against civil liberties taken for granted in western liberal democracies, such as the freedom of speech and publication, and the freedom of association (Macpherson, 27). Although Fort Alexander does not have a one party system per se, we can note that the Chief and Council restricted both an elected board and the formation of a certified collective bargaining unit which were perceived as representing competing and negative interests. Once the issue of forming a collective bargaining unit was externalized in the sense that the MTS, the CLRB and the Federal Court were involved, the
teacher-proponents of collective bargaining were regarded as being connected with foreign interests. The freedom of association and collective bargaining were denied as being contrary to the practice of self-determination.

Boldt and Long argue about the undesirability and improbability of achieving of universal human rights premised on western liberal-individualism because it is often discordant with other socio-economic and political traditions ("Tribal Philosophies"). Nursey-Bray similarly notes that utopic democratic theories such as those envisioned by Rousseau and African political theorists inherently establish a link between the political process that they propose and the socio-economic characteristics of the society for which it is designed.

It has been suggested that the community of Fort Alexander retains conceptions of community and equality similar to those of Africa as presented and analysed by McPherson and Nursey-Bray. Fort Alexander seeks to develop through an exercise of collective self-determination which is largely based upon these conceptions. The community's leadership is rejecting unionism as an inadequate expression of equality; for, unionism is a means of protecting specialized group access to a competitive labour market. They also reject unionism and its legitimization and the jurisdiction of the CLRB and the Federal Court on the basis that these institutions, laws and processes are foreign expressions of socio-political organization and that their imposition is an act of colonialism.
The rejection by the Fort Alexander leadership of CLRB and Federal Court jurisdiction which legitimized the formation of a teachers' union and upheld rights of free association and collective bargaining seems to verify an observation of Boldt and Long's. They hold that the current appeal of sovereignty style arguments is probably largely based upon resisting intrusions of external federal and provincial authority into Indian social and political structures. In this sense, self-determination and sovereign style assertions for self-government are often reactive rather than proactive; the realization of self-government involves the proscription of impinging authority and externally accepted institutions and processes as given and as being inappropriate ("Tribal Traditions").
CHAPTER 5

Conclusions

In this chapter conclusions regarding the scenario will be summarized, considerations of changing the labour law status quo will be presented and suggestions for future studies will be made.

The issues and events that comprise the Fort Alexander scenario are complex and can be viewed according to different paradigms. Fort Alexander's leadership and supporting Indian political organizations seek to practise self-determination in a bid for a political solution to a problem. The problem can be encapsulated as a question of self-government: of what self-government consists and how it is to be achieved. For Fort Alexander's leadership, seeking self-government encompasses the rejection of externally prescribed forms of structural assimilation:

The greater the intersection between law and morality, the more people in society will feel that the law makes a moral claim on them. But where the law and morality intersect very little or contradict each other, people will lose the sense that it is wrong to break the law... the law is able to make moral claims only when there is a sufficient degree of intersection between law and morality. (Wexler)

The rejection of a CLRFB imposed collective bargaining regime resulted in contempt of court actions against Fort Alexander's leadership. However, the issue of rejecting a legally prescribed collective bargaining regime cannot be understood simply by
examining the issue of collective bargaining and the right to associate freely. Rather, conceived as a bid for self-determination, the rejection arises out of a profound sense of injustice whereby it is held that Canada has denied the spirit of the treaties and practised colonial exploitation and subjugation of Indian peoples who formerly existed as viable communities. Fort Alexander's leadership actively practices collective self-determination with a goal of achieving meaningful self-government and community revitalization.

As Lithman's study from the 1970's shows, Fort Alexander is a dynamic and politically active community. This continues to be the case and Fort Alexander exercises a leadership role in the broader arena of Indian self-determination. The active political tradition in Fort Alexander has continued with the present generation of leaders. Dave Courchene Jr. says prophecies identify Fort Alexander as "a mother nation from which other bands derive their strength and direction." Other prophecies identify the "seventh fire" or the "seventh generation" from the treaty making period as being the generation which will lead the re-establishment of First Nations. Dave Courchene clearly identifies with the prophecy and considers members of his generation to be the seventh generation (Courchene Jr. 15 April 1985).

Lithman says Indian political leaders practise an oppositional ideology. Borrowing from Blau (1964) and Schwimmer (1972) he says an oppositional ideology provides symbols for internal solidarity which emphasize the good moral characteristics
of the minority group while denigrating the values and practises of the majority group. Thus, for example, teachers are described as asking for too much in a community that has too little, as being disrespectful and undermining the authority of the community's leadership and as putting the leadership in the position of becoming objects of scorn for the children which they teach. Likewise the MTS, the CLRB and the Federal Court are characterized as being assimilative, colonial, unqualified, irrational and generally destructive of Indian values and institutions through their actions. On the other hand, the actions of Fort Alexander's leadership are described as being morally correct, community grounded and consistent with both the means and ends of self-determination.

While Lithman's characterization of an oppositional ideology is a useful description, it is perhaps better to focus on the premise and goal of such an ideology. Otherwise the conception is readily identified as being a majority description of a minority group. In this respect, it might be more proper to describe the Indian concept of issues and events within the Fort Alexander scenario as self-determination ideology. The practice of this ideology is premised on the destruction of Indian community and values and has as its goal the reconstruction, maintenance and enhancement of communities based on Indian values.

Kluckhohn says

every community tends to resent outside interference and change will be less disturbing and more permanent if it grows
from within and is promoted by natural leaders of the community.

Clearly the prescription of a collective bargaining regime is perceived as outside interference and deeply resented. Collective bargaining as an externally derived imposition sanctioned by law is also distinguished from collective bargaining as a concept. This study has sought to determine why collective bargaining is rejected within a broad context of considerations which include concepts of self-determination and colonialism and such factors as political, cultural and socio-economic characteristics of the Fort Alexander community. It is concluded that an examination of these concepts and factors does provide a basis for understanding the rejection of collective bargaining. Collective bargaining is not a concept indigenous to the community nor is it currently endorsed as a component of community socio-economic and political development. The present attitude towards collective bargaining may change as the community changes.

The study has sought to provide an understanding of why teachers thought it was necessary to gain a collective bargaining regime and to apply for Federal bargaining agent certification in the face of an adamant and entrenched resistance to the idea. In a word, teachers desired a rationalization of working conditions and particularly a protection against arbitrary dismissal. This need grew out of a situation of changing attitudes on the part of management towards the employer-employee relationship. Collective bargaining as a means of balancing the employer-employee relationship and working conditions may be generally accepted
within mainstream society, yet it has undergone changes within
different jurisdictions as the socio-economic and political
climate changes.

The study has also shown the issue of collective bargaining
and certification of local 65 grew, in a certain respect, out of a
change in Band Council administrations. A new Chief and Council
through an executive type action replaced an elected board with an
appointed board. The elected board was perceived as being engaged
in an attempt to fragment the community's education programme and,
indeed, was held to be involved in a political move to split the
community along treaty lines. The appointed board was obviously
more closely tied to Chief and Council and to overall policy
development. A Canada Labour official makes the general
observation that disruptions in employer-employee relationships
amongst Indian bands tend to occur with the change in Band
Councils (Jones 9 Oct. 1987).

As Bands actively pursue aspects of control over their own
development arising out of conditions of socio-economic and
political insolvency it may be realistic to assume that
developments will be characterized by role shock and internal
schisms. Yet community conflicts and struggles are not particular
to Indian communities; they are features of any society.

Some general comments can be made about the notion of group
rights versus individual rights. Firstly, Fort Alexander's
leadership, by rejecting a collective bargaining regime and the
right to associate freely for the purposes of collective
bargaining is exercising a group right as representative of the Band membership.

The MTS, in saying that the issue was one of labour relations and not one of self-government also held that the MTS was neither in favour nor against self-government. This kind of perception leads Chief Coursens to observe that the MTS limits the conception of Indian communities to one based upon folklore. At one point, Ralph Kyritz the MTS official wrote an article on Indian self-government. Kyritz identifies self-government as having something like municipal status.

Justice Roleau supported the MTS contention that the issue was one of labour relations and not one of self-government. Therefore the rights of individuals in this instance at law take precedent over group rights which is conceived at best as a notion which requires a political solution through Parliament. Justice Roleau also took statements made by Chief Coursens about the nature of rights and respect for them and interpreted the statements against the notion of group rights in support of individual rights. The Justice suggests any recognition of self-government would probably require self-government to be premised on a recognition of such individual rights as the freedom to associate. Within an Indian self-determination paradigm, being compelled to recognize the rights of employees to freely associate and to bargain collectively without having a meaningful right to self-government is irrational and unjust.
A consideration of group versus individual rights also leads us to consider the fair share paradigm versus the fair play paradigm as articulated by Ryan. The position taken by Fort Alexander officials is analogous to a fair share paradigm: Band members do not enjoy a collective right to socio-economic, cultural and political development, but seek this right. The position taken by the MTS, the CLRBB and the Federal Court is analogous to the fair play paradigm. This paradigm is premised on the rights of individuals. It is argued that the fair play paradigm denies collective concepts of self-determination and does not in itself meet the community development needs of Indian communities. An editorial supporting the right to free association and collective bargaining is particularly illustrative and deserving of comment. The impression gained from the the editorial is that by following the rules of the game, or by adhering to law, Indian people will achieve meaningful self-government. The decision of the Chief and Council to not adhere to CLRBB orders is described as "a lamentable one."

If the government is to make a 'political' decision on this matter now, it should be to lay one fundamental rule down at the outset: the rights and obligations of the Canadian Constitution must apply on the reserves. That includes the freedom of assembly, the right to belong to a union of a person's choice.

The goal of self-government is to create self-determination for native peoples, not create an all powerful local lordship of band governments. The checks and balances on the power of government must apply on reserves, where, like in any small town, a select group tends to hold power for a long time like feudal lords overseeing their demise. The last twenty years has seen the positive growth of native political awareness,
but self-government must not allow the growth of petty
dictatorships scattered in small pockets throughout the
country. The idea that the band council has the right to
control all aspects of human activity on a reserve— the idea
that power can be totally centralized on a reserve is a most
dangerous, anti-democratic concept that should be nipped in
the bud. (The Northern Times)

The editorial is noteworthy in that it does not mention or
consider aspects of the Constitution other than those concerning
individual freedoms; particularly, it does not mention Sections 25
and 35. The perception of self-determination is limited to a
concept based upon individual rights. Neither does the editorial
distinguish between self-determination as a process and
self-government as a goal. Somehow, by following the rules of the
game, Fort Alexander will gain self-government, and that
government will be similar to existing municipal governments.

The Fort Alexander scenario occurs within a period of
intensifying political significance for Indian peoples as
exemplified by the patriation of the Constitution, the inclusion
of Sections 25 and 35 in the Constitution Act, 1982, the Penner
report and a series of First Ministers' Conferences on aboriginal
matters. During this period the issue of self-government for
aboriginal peoples dominated aboriginal political agendas and
became perceived as the "overarching aboriginal or treaty right"
(Tennent 321). Principles articulated by Indian political
organizations regarding the goal of self-government contribute to
the conception of an employer-employee dispute by Fort Alexander's
political leadership as one of self-government.
Lithman observes that as an oppositional ideology is refined it exerts an organizational potential which increasingly permeates the Indian social and political sphere and energizes a desire to re-establish an Indian value-based community. A labour relations dispute is conceived as an issue of self-government. A labour relations dispute becomes an expression rejecting externally prescribed and sanctioned rights to associate freely and bargain collectively. It becomes an assertion for self-government. The Fort Alexander scenario is a reflection of the period but also becomes a vehicle for group solidarity. The Fort Alexander scenario brings the topic of Indian control of education to the forefront of Indian political concerns and self-government aspirations. It serves not only as a topic of policy debate and formulation but also as a unifying issue for the fledgling PTNA giving impetus to Indian political leaders to press forward on a number of related fronts: it 'pulled people together on the issue of education' (Healey). Whatever the Fort Alexander scenario is in sum it cannot be reduced to the issue of a labour dispute. It became other things: the issue enabled Indian political organizations to elevate the question of self-government both internally and externally, and to bring Indian control of Indian education in all its complexity to the fore again.

The debate over Indian self-government involves questions of jurisdiction. The question of jurisdiction over Indian labour relations as revealed by the Fort Alexander scenario becomes a topic of consideration for INAC:
You have brought to the attention of the federal government a situation which is bound to reoccur and which requires attention. (Crombie)

The problem is perceived by Minister Crombie as one of jurisdiction over Indian labour relations: the labour relations status quo is possibly inadequate in respect to Indian labour relations:

It may be that there is a need for special consideration to be given to the employees of first nation governments. (Crombie)

Therefore, the Minister committed INAC to examine Indian labour relations from a number of perspectives:

... to examine the potential for expanding by-law making powers of Indian government either by revision of legislation or through policy adjustments permitted under present law.

... to undertake a legal policy study to examine the implication of exempting band councils from the Labour Code including options to fill the void created by the option. (Crombie)

The issue may have also placed Fort Alexander in a position to propose a self-government pilot project to Minister Crombie: Fort Alexander is in competition for limited resources with other bands.

We propose that the federal government take one smaller segment of the Canadian First Nations population and... direct all the attention and resources that will be required. ("Crombie promises")

Fort Alexander, said Chief Courchene, was a natural choice for such a pilot project ("Crombie promises").
Suggestions for Further Studies

The present research is a case study. It may be constructive to conduct a broadly conceived study of labour standards and their application to Indian peoples. Based upon a wider data base such a study might more effectively characterize the type of problems which arise and offer suggestions for mitigating the status quo.

Voluntary recognition exists with particular Indian Bands. What conditions give rise to voluntary recognition? What limitations are placed upon voluntary recognition? An examination of voluntary recognition can be considered as a possible study.

The present study has not examined the transitional aspect in Indian education programmes. What of the question of successor rights? How are Bands to deal with teacher perceived needs for security and protection against arbitrary dismissal and relate these to education and community development policy? What type of contracts could be offered under individual regimes which reflect policy initiatives such as acquiring status Indian teachers? What conditions of employment will be recognized or restricted? What mechanisms can be made short of a certified collective bargaining regime? Transitions from Federal to Band or Tribal controlled programs offer a source of further analyses.

Under the present collective bargaining regime, might a First Nation argue that a policy of replacing a non-Indian person is not arbitrary dismissal or is not bargaining in bad faith? What arguments in law could be made for such a policy? What relation
would such arguments bear upon gaining a constitutionally recognized right to self-government in the instances of education or labour relations?

With the failure of the First Ministers' Conference to achieve consensus on the entrenchment of an aboriginal right to self-government, the federal government pursues a policy of negotiating self-government on a band-by-band basis, as with the Sechelt Band Act. This Act creates a federal municipality. It does not recognize an inherent right to self-government and falls within the legislated or devolved form of self-government. Further studies might examine existing models of self-government such as the Nascapi Act or the Sechelt Band Act to determine the possibilities for labour law jurisdiction and whether through these acts First Nations might gain control of labour relations, in full or in part.

Considerations of labour relations as an aspect of Indian self-government are lacking in the literature of self-government. It is hoped that researchers will undertake further studies of this complex and overlooked aspect of self-determination.

Indian Labour Relations: Aspects for Consideration

The Fort Alexander scenario, as well as a review of labour law as it applies to Indian peoples, suggests present principles of jurisdiction and the general applicability of the existing labour law regime may be ad hoc or possibly irrational in nature from the perspective of First Nations seeking self-government. In
certain instances, the federal labour code applies; in others, it is a provincial code. In some, Indian status as federal persons is a determining factor in deciding jurisdiction. The fact that the labour relations transpire on lands reserved for the Indians is not a determinant and has been largely discarded at law as the "enclave theory." "Indianess" is a legal and ethnocentric conception. As such it is perceived by the courts as being distinct from the civil rights of Indian persons. First Nations, in contrast, hold that their distinctiveness and group rights arise from the existence of their communities from time immemorial (Tennant 324).

It is suggested that the application of labour law to Indian labour relations can be rationalized. Models can be aligned along a spectrum, from a conservative mitigation of the current status quo to labour relations jurisdiction conceived under a third order of government.

As noted, the notion of an exclusive application of the Federal labour code to Indian peoples and lands reserved for Indians has been rejected by the Supreme Court. However, Parliament could use its powers under 91(24) of the Constitution Act, 1982 to exclude the application of provincial law to the extent that such laws violate the rights of aboriginal people. If this were to be the case, then presumably provincial labour codes would not apply to Indians and lands reserved for Indians. Currently the occupation of the field by provincial labour law is the rule.
To accomplish the exercise of federal powers under 91(24), Lancaster suggests status Indians may be able to achieve leverage through the Supreme Court as a result of the precedent setting Guerin (1984) case (Lancaster 3 April 1987). In the Guerin case, the nature of the federal trust responsibility to Indian peoples over the administration of lands was debated. The Federal government argued the trust was political and therefore unenforceable through the courts. The Court recognized that this relationship did not meet the strict requirements of Canadian trust law. However, it held that the relationship had a fiduciary nature and could therefore be enforced on the same basis as if there had been a legal trust. This would oblige the Crown to act in good faith and not place its own interests first (Longboat 34).

With the Guerin decision Lancaster opines that First Nations may be legally in the position to take the Federal government to court and demand that the Federal government occupy a specific field relative to Section 91(24) (Lancaster 3 April 1987). They may be able to effectively argue that Section 88 Indian Act incursions of provincial law are a threat to "Indianness" and that therefore the Federal Government has a responsibility to occupy a particular field exclusively. Presumably then, First Nations might employ this method to exclude provincial jurisdiction over labour relations on the grounds that it violates "Indianess." Again, if this would simply allow for an exclusive application of the Canada Labour Code to Indian labour relations, it is doubtful that the use of federal powers under 91(24) would accomplish much in terms
of labour relations jurisdiction from a first nations perspective. Yet, it may be possible to conceive this strategy as a basis for an amendment to the Canada Labour Code which could deal more explicitly with Indian labour relations.

If the federal labour code were to apply through an exclusive occupation of 91(24) it may be also reasonable that collective bargaining should not be prescriptive for Indian communities based upon socio-economic, cultural and political considerations. It is suggested that Indian communities might choose whether or not Part IV of the Canada Labour Code should apply to their community. Other aspects of the Code covering minimum federal standards could continue to apply.

Status Indians are faced with the demise of a comprehensive constitutional entrenchment of the right to self-government. The negotiation of regional models of self-government such as the Cree-Naskapi Act or individual models of self-government such as the Sechelt Act will possibly continue to be the method of devolving a municipal style self-government within an existing federal bilateral framework. As Paquette suggests in a consideration of Indian education policy development, centralized Federal policy development has not worked in the best interest of Indian peoples. Therefore there should be a mechanism for the inclusion of a stronger aboriginal voice in central policy making (76-77). The same observation can be made for labour relations.

Indian political organizations argue the right to self-government exists according to Section 35 as an "existing
treaty right." Fort Alexander’s leadership decided to forego an appeal based on a Sections 25 and 35 argument. As Morse suggests, it may be possible for First Nations to argue for exemption from the Canada Labour Code through Sections 25 and 35 arguments.

In considering the constitutional entrenchment of a right to self-government a general proposal has a "Section 93" substituting valid First Nations law for Federal law. In this case, provincial law would apply unless a First Nation government passed legislation appropriate as constitutionalized powers (Green 58-60; Schwartz 259). The creation of section 93 could allow for development of either specific band-by-band labour codes or a national Indian labour code.

Labour law from a First Nations' perspective encompasses issues of self-determination and self-government. The events of the Fort Alexander scenario imply that the existing labour regime be rationalized to provide some degree of First Nations jurisdiction, presently lacking, on the basis of community: self-government could include jurisdiction over labour relations as labour relations closely relates to economic development and control. However, this does not simply mean "Indianizing" a collective bargaining regime as a given under First Nations jurisdictions.

Could labour codes and the administration of labour relations be implemented on a band-by-band basis? Although the PTNA and FSIN insist on the primacy of each band over government matters, it is necessary to distinguish between principle and administrative
probability. A number of practical reasons defy implementing specific Indian labour relations on a band-by-band basis. The development of actual labour codes and labour administrations may be implausible for individual communities given small populations, the resulting restrictions on deploying human resources and the cost of administration. It may be necessary for Bands to federate as Tribal Councils for various administrative and programme purposes, including labour relations: in Northwestern Ontario the Windigo and Shigogama Tribal Councils, each comprised of a number of bands, have combined for the purposes of running an education programme.

The same considerations of scale can be brought to bear upon a consideration of collective bargaining. If collective bargaining is acceptable as a model for employer-employee relations under Indian self-government, bargaining units may have to be defined in broader terms. Small populations would make the creation of unions relating specifically to the nature of various employment redundant and possibly difficult to bargain with or administer. It could also be argued that the creation of various associations representing different interests, making different demands upon Indian government and coming under various collective agreements, would be conducive to the development of further factionalism and classism. With the Band Council as employer, individuals working for the Band in any occupational capacity might comprise a bargaining unit. This makes it necessary for Bands to develop employer-employee relations policy on a broader basis and not
restrict policy development to particular occupational sectors by fiat or in a piece meal manner. Bands must take care to develop employer-employee policies which reflect the general will of the band.

Whether conceived under collective regimes or according to individual contracts, a consideration of methods of dispute settlement is necessary for the development of First Nations labour policy. This would include considerations of arbitration versus conciliation/mediation models.

How would just cause be defined under First Nations labour jurisdiction? The present study suggests that First Nations labour policy should be developed in reference to employing First Nations members over non-members. Tenure as an aspect of collective bargaining may have to be restricted. Contracts might accommodate projections for replacing non-Indian with Indian personnel.

The right to freedom of association was not recognized by the Band Council when teachers proposed that an association be voluntarily recognized. From the band perspective, a right to jurisdiction over Indian labour relations is antecedent to the practice of freedom of association on the reserve. Although rejected by the Fort Alexander Band Council, voluntary recognition may be a reasonable existing alternative to certified bargaining agents. For example, in education, positions are still dominated by non-Indian individuals. Under a voluntary recognition regime, a policy goal of replacing non-Indian personnel with Indian personnel might be enhanced through hiring practices, by defining
terms of employment and through a mutual recognition that the policy goal of having a certain percentage of Indian teachers is, in essence, non-negotiable. Voluntary recognition has its limitations however as it depends on the employer and employee parties to maintain an understanding. There is nothing to prevent a group of employees from seeking federal certification.

From a federal perspective, it may be implied that the right to freedom of association would necessarily be an inherent feature of any federal accommodation of Indian labour relations, the freedom of association being a recognized right according to Section 2(d) of the Charter of Rights and Freedoms. The requirement that federal legislation applicable to Indians be aligned with the Charter has already been demonstrated with the amendment to the Indian Act dealing with the recovery of Indian status by persons who lost it through marriage or as the result of marriage not deemed acceptable under the "pre-amendent" Indian Act. This took place despite the resistance of Indian political organizations and particular bands who insist on the right of individual First Nations to determine membership. From the federal perspective, the amendment had to accrue to the "anti-discrimination on the basis of sex section" of the Charter, Section 15(1). It is generally recognized by commentators that any recognition of Indian group or collective rights will probably have to be in harmony with the Charter, said to be generally an instrument for the protection of individual rights. That employees of First Nations might necessarily enjoy the right to bargain
collectively based upon the freedom of association is obliquely referred to by Minister Crombie when he suggests

It may be possible for first nation school authorities and teacher associations to have the benefit of full discussion of the collective bargaining process in order that they themselves might develop collective bargaining agreements tailored to suit local requirements... in considering how to deal with this new need to balance individual and collective rights. (Crombie)

As indicated elsewhere in another context, the above possibility outlined by Minister Crombie may be lacking as it is limited to a conception of labour relations which specifically concerns teachers.

The concept of transferring labour jurisdiction with the right to collective bargaining intact and prescribed under the nominal jurisdiction of Indian bands does not address the problem. The question in this instance is whether such a regime is applicable or not. Indian Bands should have the right to determine this as a right inherent in the conception of Indian self-government.
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