

To: River First Nation (Prof. Murray Sholty)
From: Dermot Loneragan
Re: Distinguishing Prov. Complaint from Fed. Complaint
Student Number: T00692031

River First Nation v. Mr. Williams

Memorandum

This memorandum is written to answer and dive into the termination of an employee (*Mr. Williams*) of the *River First Nation* negotiations office, and if the filed complaint made would fall under provincial or federal employment law jurisdiction. The legal issue at hand is determining whether the *Canadian Labour Code* would be applicable for this subject matter. Mr. Williams was let go from his job at the negotiations office on May 16, 2024. Due to this termination, he has filed a complaint to the CLC in the steps to get reinstated. River First Nation has multiple reasons for due diligence to determine the correct jurisdiction. The arguments that they can make of where they would like to challenge could rely on these factors. If Mr. Williams' complaint applies to the CLC framework, River First Nation will have to abide by any reinstatement and other necessary precautions towards resolving the issue. If Mr. Williams had filed under the wrong framework, the complaint would be invalid and the usage of CLC would be dismissed.

Advisory on Jurisdiction

River First Nation needs to take the necessary precautions to provide a proper understanding of what jurisdiction the complaint should be filed under for a couple potent reasons. RFN can use this as a tool to corroborate that the complaint under CLC is inadequate by proving that it is a provincial issue, rather than a federal issue. The Canadian Labour Board will only apply to federal frameworks and governs employment standards for only businesses that fall under section 91 of the Constitution Act. In the case we are looking at now, Mr. Williams may have made the mistake of mixing up River First Nation and the negotiation office. RFN is federally regulated under the Indian Act, but the negotiations office itself is provincially regulated. We can find this out by doing the Functional Test and seeing which side it may fall under. By asking the right questions, we can see that the negotiations office does not go on to administer any core functions of the first nation under the Indian act. Whereas the office was solely created to deal with commercial functions of agreements with other businesses. The federal law did not create the negotiations office itself; RFN did. The office is also located outside the reserve, in Smithers as stated. If River First Nation can successfully make this argument as to why the office is a business body rather than a federal body, this would mean the Canadian Labour Board would be an arbitrary usage of an employment complaint. Taking the Employment Standards Act (ESA) into consideration, if a tribunal decides that the case is actually provincial instead of federal, there could be a whole restart process to this lengthy legal case. Depending on how mitigatable these delays were, the penalties and fines could result in higher legal costs and damage to the reputation of the first nation.

The Verdict

As previously mentioned, the negotiations office is not regulated under the Indian Act. It is in place to deal with BC Hydro and other private corporate entities on agreements and negotiations. What this means is that the office deals with business affairs rather than Indigenous governance. Because it is located in Smithers (off-reserve), the federal jurisdiction over employment will only apply to on-reserve cases or those performing under governance. RFN can also argue and prove that the negotiations office is covered by industry components rather than the federal government. This is a strong argument for the first nation, as if the office was funded federally, it would likely be from Indigenous Services Canada or some other sort of body. Legal precedent would also be very supportive in this case as backbone. Using case law as a point, *Conseil des Innus de Pessamit v. Québec (Commission des lésions professionnelles)*, 2014 SCC 48¹ can be used in relevance to the fact that the negotiations office does not work under the Indian Act. In said relevance, the case deals with business negotiations that suggest provincial jurisdiction decisions.

The Problem Mr. Williams Made

Without a quick readjustment of changing the complaint from federal to provincial, Mr. Williams will likely lose this case. For the reason stated before, the Canadian Labour Board is the wrong framework to assess when looking for support; BC Employment Law would be the right place to go. It is also worth noting again that Mr. Williams is also off-reserve in Smithers; meaning that provincial law would be established by default. Since the business he is complaining about is not only not a provincial entity, but off reserve as well, his argument is severely weak at this point of time. This should be a great starting point for River First Nation to capitalize against Mr. Williams' complaint and provide this evidence that it is an invalid use of federal complaint and Canadian Labour Board usage.

What should RFN do moving forward?

Due to this being a provincial matter, River First Nation should state that this is not federal to avoid any sort of problems arising from the wrong usage of framework. This would help provide less confusion for future reference and help other employees follow the right legal path. The negotiations office should have a HR Policy that provides this information *explicitly* so a slippery slope like this can be easily avoided. Moving forward, RFN should look into turning the negotiations office into a corporation under BC Law to help nail the fact that it is provincially regulated. This would also mean that it would not be regulated from the first nation anymore. This would also be a smart idea as it is already off reserve. The dispute should have also been handled privately beforehand to avoid any litigation in the future.

¹ <https://decisions.scc-csc.ca/scc-csc/scc-csc/fr/item/16959/index.do>

Summarized Answer

This is a provincial matter, not federal. River First Nation must handle this mishap from Mr. Williams, then go onto looking at upgrading the HR Policy code, and making these situations more understandable and guidelines easier to follow. Without simple and clear clarification, complaints that are more confusing could arise and become a complete waste of time for both parties involved.