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# FEDERAL JURISDICTION OVER HEALTH UNDER THE MEDICINE CHEST OF TREATIES SIX, SEVEN AND EIGHT

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# Outline

1. Background
2. Position of the Parties
3. The Decision
4. Narrow View
5. Treaty Right
6. Impact on Core of Federal Power
7. Conclusion

# Background

- It is not always apparent which level of government has jurisdiction over an entity's labour relations
- This difficulty arises frequently with First Nations entities

# The Functional Test

- Supreme Court of Canada clarified the test in *NIL/TU, O*
  1. Is the entity a federal work, undertaking, or business?
    - Otherwise, presumed to be provincial
    - Nature, habitual activities and daily operations
  2. If first question is inconclusive, does provincial regulation impair the core of the federal head of power?

# Facts

- Siksika Health Services
  - Emergency ambulance service
  - Funded by Siksika First Nation & Federal Government
  - Operates primarily on reserve, serving Siksika First Nation
- Ambulance attendants – Unionization
  - HSAA seeks certification from ALRB

# ALRB Decision

- Delivery of health services and ambulance services determined to fall under provincial regulation
- HSAA is certified as bargaining agent

# Judicial Review

- SHS applied for judicial review of ALRB decision
- ALRB erred in determining it had jurisdiction to hear certification application

# Positions on review

- HSAA
  - Delivery of health care is provincial undertaking
- SHS
  - Holistic view of services
    - Treaty right to health care (Medicine Chest) integral part of providing services
  - Delivery of health services pursuant to treaty is federal undertaking



# Queen's Bench Decision

- Services are the provision of health care, generally, and emergency medical services, specifically
- Treaty right is irrelevant – does not impact *what* services are
- Health is not core to 'Indianness'

# Holistic View

- *What* the services are cannot be only an inspection of the physical task performed by employees
- Queen's Bench choice of where to stop the inquiry of *what* the services was arbitrary
- Eg. Mechanic vs Aeroplane mechanic
  - *Butler Aviation of Canada Ltd. v IAM*
- Eg. Hospital vs Veterans Hospital
  - *Nemours v Canada (Department of Veterans Affairs)*

# Treaty Right

- No determination made on treaty right to health care
- No treaty right in NIL/TU,O
- Treaty right integral part of Siksika Health Services
- Does not require looking at additional factors beyond what the services are

# Treaty Right

- Treaty rights-based services fall within Federal jurisdiction
  - *Waycobah First Nation and UFCW, Local 864*
  - *“These reasons satisfy the Board that Waycobah’s Fishery does not constitute a treaty rights-based fishery which would come within its jurisdiction.”*

# Impact On Core Federal Head of Power

- Provincial vs federal statute impacts delivery of services
- Alberta has ignored Siksika and the Blackfoot Hospital since 1877
- Provincial regulation is a derogation of Siksika sovereignty
- Treaty rights at core of 'Indianness'
- Reserve created by Royal Proclamation of 1763