The Effect of the Quebec Official Language Act on Federal Corporations

Daniel Ish*

I. Introduction

In July 1974, the Quebec *Official Language Act* received Royal assent. The Act contains many broad provisions regarding the use of the French language — the official language[1] — in the province of Quebec. The purpose of this paper is to analyse the possible constitutional limitations of the Quebec *Official Language Act vis-à-vis* its application to corporations[2] incorporated under the authority of the Parliament of Canada.

The matter to be considered herein must be broken down for analytical purposes. The first issue concerns the effect of the Act on companies incorporated by the federal Parliament under its "incorporation power", but whose business activities do not otherwise fall under federal jurisdiction. These corporations are, in the main, incorporated by virtue of the *Canada Corporations Act*[3] or its predecessor,[4] but such corporations may also come into being by virtue of a special act of Parliament.

The second aspect of the issue concerns the effect of the Act on federal companies which carry on activities falling exclusively under federal jurisdiction because they:

(1) are referred to by specific enumeration in the *British North America Act*,[4a] *e.g.*, banking, interprovincial railways, telegraph and telephone operations and shipping;

---

* Of the College of Law, University of Saskatchewan; Member of the Bar, Province of Alberta. I thank my former colleague, Professor F.R. Scott of McGill Law School, for the encouragement given to write and publish this paper. However, I am totally responsible for any deficiencies in the paper.

[1] *Official Language Act*, S.Q. 1974, c.6, s.1.

[2] The terms "corporation" and "company" will be used synonymously in this paper to denote an incorporated body. For a discussion of the terminology employed to describe incorporated bodies, see Wegenast, *Canadian Companies* (1931), 3.

[3] R.S.C. 1970, c.C-32.

[4] *The Dominion Companies Act*, R.S.C. 1952, c.53. The successor to the *Canada Corporations Act, supra*, f.n.3, has recently been passed by Parliament: *Canada Business Corporations Act*, S.C. 1974-75, c.33.

[4a] *British North America Act*, 1867, 30-31 Vict. (U.K.).

(2) fall within the federal general or residuary power, *e.g.*, radio, aerial, navigation and atomic energy;

(3) are brought within federal authority by a declaration under section 92(10)(c) of the *B.N.A. Act;* or

(4) involve federal government operations or federal Crown enterprises.

II. Regulation of Federal Corporations

A. Federal Power of Incorporation and Regulation

The federal power to incorporate companies emanates not from any specific enumeration of power in the *B.N.A. Act,* but from the residual power given to Parliament in section 91.[5] This was decided by the Judicial Committee of the Privy Council in the now classical case of *Citizens Insurance Co. of Canada* v. *Parsons.*[6] In that case, it was argued that the federal incorporation power must flow from one of the heads of power in section 91 of the *B.N.A. Act* and, if it did, the power would extend to the complete regulation of the business affairs of the companies incorporated thereunder — including the regulation by the federal government of insurance contracts of a federal insurance company, which was the immediate issue in question. Mr Justice Taschereau, dissenting in the Supreme Court of Canada,[7] agreed with this argument. He reasoned that if the Parliament of Canada had authority to incorporate an insurance company, it also had complete authority to regulate its activities. However, if no authority existed in Parliament to incorporate the company in question, then, of course, the issue of regulation did not arise. He saw the issue as an "either-or" proposition. He concluded that Parliament had authority under the trade and commerce power (section 91(2) of the *B.N.A. Act*) to incorporate insurance companies and regulate them.

The Privy Council disagreed with Justice Taschereau's dissent. Sir Montague Smith stated:

> But, in the first place, it is not necessary to rest the authority of the dominion parliament to incorporate companies on this specific and enumerated power. The authority would belong to it by its general power over all matters not coming within the classes of subjects assigned

---

[5] For an excellent article dealing with regulation of federal companies, see Ziegel, "Constitutional Aspects of Canadian Companies" in Ziegel (ed.), *Canadian Company Law* (1967), 149.

[6] (1881) 7 A.C. 96 (P.C.).

[7] (1880) 4 S.C.R. 215, 305.

> exclusively to the legislatures of the provinces, and the only subject on this head assigned to the provincial legislature being 'the incorporation of companies with provincial objects', it follows that the incorporation of companies for objects other than provincial falls within the general powers of the parliament of Canada.[8]

The Privy Council therefore held the federal incorporation power to be derived from the residual power and concluded that the power to regulate companies was not coincident with the power to incorporate. The Ontario *Fire Insurance Policy Act*,[9] which provided for certain statutory conditions to be contained in fire insurance contracts, was held applicable to federal companies. As Professor Laskin (as he then was) has said:

> From the *Parsons* case on, a distinction has been drawn between the federal power to incorporate a company and federal power to regulate its activities; the one did not necessarily carry the other, unless, as in the case of banking, interprovincial railways and aviation (to take a few examples), the activity was otherwise within federal regulatory competence.[10]

The further question must be asked: what is the extent of the federal power of incorporation and where is the dividing line between "incorporation" and "regulation"?

In *John Deere Plow Co.* v. *Wharton*[11] the Privy Council held that Parliament had power under the trade and commerce head "to prescribe to what extent the powers of companies the objects of which extend to the entire Dominion should be exercisable, and what limitations should be placed on such powers".[12] Viscount Haldane continued:

> For if it be established that the Dominion Parliament can create such companies, then it becomes a question of general interest throughout the Dominion in what fashion they should be permitted to trade.[13]

At first glance the above statement appears to give Parliament a broad power of control over its corporate creatures by virtue of section 91(2) of the *B.N.A. Act*. But Viscount Haldane immediately circumscribed the new-found power by indicating that the power to regulate trade and commerce cannot be exercised with regard to companies in such a way as to trench on the exclusive jurisdiction of the provinces over civil rights in general.[14]

---

[8] *Supra*, f.n.6, 116.
[9] R.S.O. 1877, c.162.
[10] Laskin, *Canadian Constitutional Law* 4th ed. (1973), 559.
[11] [1915] A.C. 330 (P.C.).
[12] *Ibid.*, 340.
[13] *Ibid.*
[14] *Ibid.*, 341.

The federal power has been interpreted to allow Parliament to "regulate" its companies if the legislation is of a "company law" character.[15] The distinction between "company law" legislation and that which is not chiefly concerned with the organic law governing the special forms of organization and incidents of corporateness of companies is still not clear. If legislation falls within "company law", it is within a field of law in which the federal Parliament has exclusive control over its corporate creatures.[16] It has been held that this power extends to:

(1) "... the authority to dictate the constitution of the company including the procedure by which membership in the corporation is acquired, as well as to prescribe the character of relations which shall obtain between the corporation and its members";[17]
(2) the raising of capital and the issuing of corporate securities;[18]
(3) the dating of letters patent;[19] and
(4) the imposition of liability on directors for declaring illegal dividends.[20]

The boundaries of the "company law" power are not exact, and have been expanded in recent years. Corporate legislation in Canada has moved from merely enabling to more regulatory in nature. For example, in 1931, Wegenast questioned whether the Dominion could legislate regarding pre-incorporation contracts of federal companies so as to affect existing provincial law in the area.[21] Today the new *Canada Business Corporations Act* contains provisions regarding pre-incorporation contracts;[22] and it is unlikely that the new provisions will be held to be invalid. It therefore appears that the company law power is expanding to areas not perhaps conceived to be within its purview in 1867 or 1931, but which may well be today.

B. Provincial Power to Regulate Federal Corporations

Related closely to the issue discussed above is the question of provincial regulation of federal companies. Generally a company, like a natural person, is subject to the laws of the province within which it is situated. If the province enacts laws within its proper

---

[15] See generally Wegenast, *supra*, f.n.2, ch.3; Ziegel, *supra*, f.n.5.
[16] *Lukey* v. *Ruthenian Farmers' Elevator Co.* [1924] S.C.R. 56.
[17] *Ibid.*, 72 *per* Duff J.; see also Ziegel, *supra*, f.n.5, 158.
[18] *Supra*, f.n.16; *A.G. Man.* v. *A.G. Can.* [1929] A.C. 260 (P.C.).
[19] *Letain* v. *Conwest Exploration Co.* [1961] S.C.R. 98.
[20] *Reference Re s.110 of the Dominion Companies Act* [1934] S.C.R. 653.
[21] Wegenast, *supra*, f.n.2, 50.
[22] S.C. 1974-75, c.33.

legislative sphere, a Dominion company must obey those laws: federal incorporation does not immunize a company from laws of general application.[22a]

We have seen that Parliament has exclusive jurisdiction over matters of "company law" with respect to its corporate creatures. The corollary of the federal power is that attempts by the provinces to legislate regarding "company law" matters are futile *vis-à-vis* federal companies. Any such legislation is void *per se.* This is illustrated by the Privy Council decision in *Dobie* v. *The Temporalities Board*[23] where Quebec legislation, which purported to change the constitution of a pre-confederation company created in 1855 by an Act of the Province of Canada, was being considered. The last-mentioned Act applied equally to both Ontario and Quebec. It was held that since the province did not have the power under the *B.N.A. Act* to incorporate a body with the powers and functions of the Temporalities Board, it also lacked the jurisdiction to repeal or to modify the Act. Any such legislation would be affecting the corporate aspects of the Board, an area within the exclusive jurisdiction of the Canadian Parliament.

A more recent case has held that a province can confer on a federal corporation an additional power not contained in its corporate constitution. In *Sun Life Assurance Co.* v. *Sisters Adorers of the Precious Blood*[24] the Ontario Court of Appeal found a provincial provision to be valid which granted the power to federal companies to give guarantees. The case has been questioned by Professor Ziegel as being of dubious authority.[25] Surely the Act in question varied the corporate powers of the federal company; indeed it was aimed directly at a specific Dominion corporation and was not of a general character. It seems the case was wrongly decided as the legislation was clearly of a "company law" character and therefore within Parliament's exclusive jurisdiction.

Double Aspect Legislation

Provincial legislation which has the effect of impairing the essential capacities and status of a federal company is *ultra vires.* Such legislation may be justifiable as an exercise of a provincial power, but if it trenches on the status of a federal company the federal statute creating the company will take priority. In *John*

[22a] See, *e.g.,* Ziegel, *supra,* f.n.5, 160-187.
[23] (1881) 7 A.C. 136 (P.C.).
[24] [1942] O.R. 708 (Ont. C.A.).
[25] Ziegel, *supra,* f.n.5, 165.

Deere Plow Co. v. *Wharton*[26] and in *Great West Saddlery Co.* v. *The King*[27] legislation which required a Dominion company to be registered with a provincial official before it could commence business was declared *ultra vires.*

Also, provincial securities legislation requiring the registration of a company issuing shares as well as the brokers trading in the shares has been held to be invalid.[28] In one such case, *R.* v. *Henderson,*[29] the Act stated:

> No person or persons... shall sell or offer to sell... in the Province of New Brunswick any shares, stocks, bonds or other securities of any corporation or company, ... without first obtaining from the Board a certificate... .

Similarly, in *A. G. Man.* v. *A. G. Can.,*[30] the Act stated that "no company, however or wherever incorporated might sell or offer to sell" any securities without obtaining permission. Both provisions were found to affect the essential capacity and status of federal corporations by restricting the obtaining of capital, which is essential to their existence.

However, where the legislation does not require the corporation itself to be registered but merely calls for the registration of persons trading in securities, it is valid provincial legislation.[31] Such legislation does not impair the essential capacity of a federal corporation; in order to comply with the legislation, the company merely has to employ licensed brokers. Securities legislation is not exclusively within the area of "company law", as discussed above, and therefore not exclusively within federal jurisdiction. It has the aspect of protecting citizens within a province from unscrupulous dealings in corporate securities, and in this aspect it is valid provincial legislation. However, if it seriously affects the corporate status of a federal company by impairing its ability to raise capital, it is invalid.

Single Aspect Legislation

If provincial legislation falls under the enumerated powers of section 92 of the *B.N.A. Act* and does not have a double aspect, it is binding on federal companies. Thus single aspect legislation of general application applies to federal companies just as it would to any other person, natural or artificial, in the jurisdiction. An example

---

[26] [1915] A.C. 330 (P.C.).
[27] [1921] 2 A.C. 91 (P.C.).
[28] *A.G. Man.* v. *A.G. Can., supra,* f.n.18; *R.* v. *Henderson* (1924) 51 N.B.R. 346.
[29] *Ibid.,* 348.
[30] *Supra,* f.n.18.
[31] *Lymburn* v. *Mayland* [1932] A.C. 318 (P.C.).

may be the taxing power of the province under section 92(2) of the *B.N.A. Act*. A province may impose a direct tax so severe that it would seriously affect the powers of a federal company, but nevertheless it may be valid so long as it is not aimed only at federal companies. Mortmain legislation is another example. In the *Parsons* case it was stated:

> ... if a company were incorporated for the sole purpose of purchasing and holding land in the dominion, it might happen that it could do no business in any part of it, by reason of all the provinces having passed Mortmain Acts, though the corporation would still exist and preserve its status as a corporate body.[32]

Thus, certain provincial legislation may have the effect of virtually paralyzing the activities of the federal company. One writer has summarized the position as follows:

> There is a constitutional disjunction between creating or controlling or limiting the subjective status and powers and the field of operations of a Dominion... company incorporated for the purpose of carrying on the business of insurance, on the one hand, and the regulation of the objective exercise of its powers, in respect of property and civil rights in a province, on the other hand. The former class or regulation is within the exclusive competence of the Dominion Parliament: the latter is within the exclusive competence of the provincial legislatures.[33]

Masten J. A. in the *Insurance Contracts Reference* case[34] made the following statement regarding federal corporations and provincial regulatory power:

> But the granting of subjective status and powers of the company is one thing, and the regulation of the objective exercise of its powers in a particular Province is quite another thing.[35]

This statement supports Mr Plaxton's observation quoted above.

In 1932, the Ontario Court of Appeal summarized the applicable test in the following terms:

> A provincial Legislature may enact laws, province wide, of general application (*i.e.* including the public generally) in respect of any of the subjects enumerated in s.92 and in so doing may completely paralyze all activities of a Dominion trading company provided that in the enactment of such laws it does not enter the field of company law and in that field encroach upon the status and powers of a Dominion company as such.... The distinction between enactments affecting Dominion companies that are of general application and those that may be termed company law, is simply this: in the former case there is no attempt to interfere with

---

[32] *Supra*, f.n.6, 117.

[33] Plaxton, *Canadian Constitutional Decisions of the Judicial Committee of the Privy Council, 1930 to 1939* (1939), xxix, cited in Ziegel, *supra*, f.n.5, 175; also cited in Smith, *The Commerce Power in Canada and the United States* (1963), 98.

[34] [1926] 2 D.L.R. 204 (Ont. C.A.).

[35] *Ibid.*, 216.

> powers validly granted to the company by the Dominion nor with the status of the company as such. The circumstance that the company consistently with the general laws of the province may not exercise those powers, does not destroy or impair the powers. In the latter case the enactment prohibits or imposes conditions upon the exercise of the powers of Dominion company powers as such. In short it is aimed at and affects Dominion company powers as distinguished from being aimed at and affecting a trade or business in the province which Dominion companies may happen to be engaged in in common with provincial companies and natural persons.[36]

Mr Justice McGillivray in the above quote speaks of the object of the legislation involved. Although the object is an important factor, the effect of the legislation is the paramount criterion in determining its validity. For example, in *La Compagnie Hydraulique de St-François* v. *Continental Heat & Light Co.*[37] the Privy Council held that the province of Quebec could not grant a monopoly in an area within its exclusive jurisdiction so as to preclude a federal corporation from conducting operations. The business involved, the production and sale of electricity solely within the province, had no interprovincial aspect. Nevertheless, Sir Arthur Wilson stated that the argument favoring the validity of the provincial legislation,

> ... seems ... to be in conflict with several decisions of this Board. Those decisions have established that where, as here, a given field of legislation is within the competence both of the Parliament of Canada and of the provincial Legislature, and both have legislated, the enactment of the Dominion Parliament must prevail over that of the province if the two are in conflict, as they clearly are in the present case.[38]

However, no authority was cited to support this conclusion. Further, the legislation in question was not within the power of both levels of government since it did not fall within federal jurisdiction as being an interprovincial undertaking or the like. The federal government had merely incorporated a company for the purpose of conducting a business operation in Quebec with the capacity and power to go beyond provincial boundaries. In the opinion of the Board, this allowed the Dominion company to ignore provincial legislation validly enacted. Perhaps the case is a somewhat dubious authority on the point.[39]

In *Public Accountants Council for Ontario* v. *Premier Trust Co.*[40] there is an inference that a federal company could carry on an

---

[36] *R.* v. *Arcadia Coal Co.* [1932] 2 D.L.R. 475, 487.

[37] [1909] A.C. 194 (P.C.).

[38] *Ibid.*, 198.

[39] See Laskin, *supra*, f.n.10, 558; also see *Lymburn* v. *Mayland*, *supra*, f.n.31, 324.

[40] (1964) 42 D.L.R. (2d) 411 (Ont. H.C.).

accounting business in Ontario in the face of existing provincial legislation if the accounting aspect was the company's principal business. In other words, valid provincial legislation with a single aspect would not affect a federal company — a conclusion which goes counter to the decision in the *Parsons*[41] and the *Arcadia Coal Co.*[42] cases. The legislation in question in the *Premier Trust Co.* case was found to be valid by the Ontario High Court on the reasoning that accounting was not the main business of the trust company, and regulation of that aspect of the business did not impair the essential capacities and status of the corporation.

The decision of Chief Justice Lett of the British Columbia Supreme Court in *British Columbia Power Corp. Ltd.* v. *A. G. British Columbia*[43] may also possibly support the *St-François* case. In the *B. C. Power* case the province attempted to nationalize the electrical power industry. B. C. Power Corporation was a federal company whose only assets were shares in a provincial company, B. C. Electric Co. Ltd., which carried on the hydro-electric business in British Columbia. Chief Justice Lett held the legislation to be *ultra vires,* although it would have been valid had any other person, individual or corporate, owned the shares. The case has been distinguished on the basis that the B.C. legislation was aimed specifically at a federal company and thus was discriminatory;[44] indeed, this was the reasoning of the Judge. However, according to a leading treatise:

> To say ... that the expropriating provincial legislation was not a law of general application but was in truth selective legislation directed against a Dominion company, was simply to play a game of numbers without regard to the pervasiveness of the provincial company's business and the provincial government's policy in relation thereto.[45]

Professor Laskin then concludes that the judgment was wrongly reasoned. However, the matter was settled by negotiation subsequent to the decision, never going to the British Columbia Court of Appeal or the Supreme Court of Canada.

Thus there are judgments which conflict with those that state as a proposition that otherwise valid provincial legislation with a single aspect may have the effect of sterilizing the operations of a federal company, yet not be *ultra vires.* However, in two of the three conflicting cases cited, the level of the Court was that of a trial court; the Privy Council decision in the *St-François* case is somewhat

---

[41] *Supra,* f.n.6.
[42] *Supra,* f.n.36.
[43] (1965) 47 D.L.R. (2d) 633 (B.C.S.C.).
[44] Ziegel, *supra,* f.n.5, 181.
[45] Laskin, *supra,* f.n.10, 560.

superficial in its reasoning and has not been followed often in subsequent cases.[46]

Certain observations can now be made:

(1) The Parliament of Canada has the constitutional power to legislate regarding federal companies in relation to "company law" matters;

(2) The "company law" power is exclusive; thus, provincial legislation which is solely of a "company law" character is void *per se;*

(3) Provincial legislation which has a double aspect, that is, which may be valid legislation under a provincial head of power but may also be within federal legislative juridiction, will be *ultra vires* federal companies if it impairs the essential capacities and status of the federal corporation;

(4) Certain provincial legislation of general application which has a valid single aspect, that is, which has been passed under a specific head of power contained in section 92 of the *B.N.A. Act,* may be valid even though its effect is to paralyze the operations of a Dominion company. A distinction is drawn between regulation of the exercise of powers and the destruction of those powers by provincial legislation.[47] In other words, there is a distinction between subjective status and powers and objective exercise of those powers.[48] This distinction is a fine one and therefore a most difficult one.

The greatest problem, then, is the classification of legislation in a way which may be conclusive of its validity. As witnessed in the above discussion, the guidelines set down by the courts are vague, uncertain and sometimes conflicting.

C. *Regulation of Federal Corporations Falling Under Federal Jurisdiction*

If a company comes within the jurisdiction of Parliament because:

(1) it falls within federal authority by specific enumeration;

(2) it falls within the federal general or residuary power;

(3) it is declared under section 92(10) to be a work for the general advantage of Canada; or

(4) it is a government operation or federal Crown enterprise;

the federal Parliament has regulatory power over it. Thus, for

---

[46] An exception is the *B.C. Power* case, *supra,* f.n.43, 690.

[47] *Supra,* f.n.36.

[48] *Supra,* f.n.33; also, *supra,* f.n.34.

example, Parliament has jurisdiction over the labour relations and rate regulation of interprovincial railways. Do the provinces have any jurisdiction over matters falling within federal competence if Parliament has not exercised its legislative power in this respect? If Parliament legislates with regard to enterprises falling under its jurisdiction, provincial legislation has no application.[49] But is Parliament's power exclusive in all four situations outlined above? Absent governing federal legislation, some cases have held provincial legislation to be applicable in the first three situations. In *Canadian Southern Railway* v. *Jackson*[50] the Supreme Court of Canada held that workmen's compensation legislation was applicable to a railway which was under federal jurisdiction. The Privy Council came to the same conclusion in *Workmen's Compensation Board* v. *C.P.R.*[51]

The question here is whether the provinces should have any authority to regulate such enterprises, not merely whether Parliament has paramount authority. The leading treatise on Canadian Constitutional Law suggests that the test to be applied to determine the validity of provincial legislation, in the absence of federal legislation, is whether it attempts to control those phases of a "federal activity" which are clearly integral to it as opposed to those which are merely incidental or peripheral to it. Professor Laskin then poses the following question in hypothetical form: is an interprovincial railway, shipping line or air line subject to provincial liquor control and licensing legislation where there is no such federal legislation; and, on the other hand, would such enterprises be subject to provincial rate regulation if there were no federal regulation? He continues: "The answer in this last mentioned situation is quite definitely 'no'; in the former, the precedents suggested an affirmative answer".[52] The test that the cases articulate seems to be the following: does the provincial legislation in question attempt to affect a "vital part" of the enterprise[53] and does it attempt to affect those phases of the enterprise which are integral to it, or is the legislation merely a regulation of a "non-vital" phase of the business? Hours of work, rates of wages, working conditions and the like have been considered to be vital parts of the management of an enterprise.[54]

---

[49] *Sincennes-McNaughton Lines Ltd.* v. *Bruneau* [1924] S.C.R. 168.

[50] (1890) 17 S.C.R. 316.

[51] [1920] A.C. 184 (P.C.).

[52] Laskin, *supra*, f.n.10, 455.

[53] *Commission du Salaire Minimum* v. *The Bell Telephone Co.* [1966] S.C.R. 767, 772.

[54] *Ibid.*; see also *Reference as to the Validity of the Industrial Relations and Disputes Investigation Act* [1955] S.C.R. 529, 592.

It may be noted here that even in the case of existing federal legislation, Parliamentary jurisdiction may be precluded over certain aspects of a federal undertaking where the particular phase is not an integral part of, or is not necessarily incidental to, the principal undertaking. Thus in *C.P.R.* v. *A.G. B.C.*[55] an hotel belonging to the Canadian Pacific Railway (the Empress Hotel located in Victoria, B.C.) was held to come under provincial labour legislation, notwithstanding an existing federal regulation, because the hotel was not integral to the railway undertaking. The Privy Council indicated that the result might have been different if the hotel were solely or principally for the benefit of the railway travellers, which it was not. Also, their Lordships found that the hotel had not been included in the declaration in the *Railway Act* that the railway was a work for the general advantage of Canada; that is, the declaration was not sufficiently wide to include such hotels.

If the railway company involved in the above case had been the Canadian National Railway rather than the Canadian Pacific Railway, would the result have been different because the C.N.R. is a Crown corporation?[56] The federal "property power" would not, it seems, protect a federal Crown corporation from provincial regulation. If the federal Crown carries on a business directly it can do so "in the teeth of a provincial regulatory system or in derogation of a provincial franchise scheme";[57] however, this immunity does not obtain if the Crown business is carried on through a corporation. In the case of Crown corporations, the traditional separation between shareholder and company[58] is maintained for constitutional purposes.

This separation was upheld in a recent Supreme Court case[59] concerning Jasper Park Lodge, an hotel owned by the C.N.R. The facts of the case are somewhat similar to the *Empress Hotel* case,[60] here concerning whether the Canada Labour Relations Board had jurisdiction to certify a union as bargaining agent for the employees of the hotel. It was agreed that if the federal Act was inapplicable, then the provincial (Alberta) labour relations legislation would apply. The fact that the C.N.R. is a Crown corporation did not automatically render the federal Act applicable and the provincial Act inapplicable. Although the issue arose in the context of the wording

---

[55] [1950] A.C. 122 (P.C.).

[56] See the *Financial Administration Act*, R.S.C. 1970, c.F-10, s.66.

[57] Laskin, *supra*, f.n.10, 536 *et. seq.*

[58] *E.g., Salomon* v. *Salomon & Co.* [1897] A.C. 22 (H.L.).

[59] *Canada Labour Relations Board et al.* v. *Canadian National Railway Co.* (1974) 45 D.L.R. (3d) 1 (S.C.C.).

[60] *Supra*, f.n.55.

of a particular Act, the essential question seemed to be whether the Crown corporation was an agent of the federal Crown. The agency relationship can be established by the federal Parliament by legislation, such as the constituent Act of the corporation, or the *Financial Administration Act*[61] or, in the *Jasper Park Lodge* case, the *Industrial Relations and Disputes Act.*[62] Without the essential finding of agency, the Crown corporation would have no special constitutional status; if the agency relationship existed,[63] the so-called "property power" could reserve exclusively to the federal domain the legislative jurisdiction over all the aspects of the business.[64] In the *Jasper Park Lodge* case it was found that the C.N.R. was not an agent of the federal Crown: in the precise terms of the labour legislation in issue, the C.N.R. was not a "corporation established to perform any function or duty on behalf of the Government of Canada".[65]

The following observations can thus be made:

(1) Activities which fall under the jurisdiction of the federal Parliament are of course subject to federal regulation, and federal legislation regulating these enterprises is paramount;

(2) If Parliament has not legislated to regulate the activities falling under its jurisdiction, the validity of provincial regulatory legislation depends on whether it affects an aspect vital and integral to the federal activity or is merely incidental to the activity: in the former case the provincial legislation is invalid; in the latter case the authorities suggest it is valid;

(3) Activities involving federal government operations or federal Crown enterprises are not subject to provincial regulation. This immunity does not extend to federal Crown corporations unless the federal Crown corporation in question is an agent of the

---

[61] *Supra,* f.n.56.

[62] R.S.C. 1952, c.152 (now included in the *Canada Labour Code,* R.S.C. 1970, c.L-1).

[63] Of course, the agency relationship does not arise solely by reason of shareholding in a corporation, even if it is a one shareholder corporation; see *Salomon's* case, *supra,* f.n.58. However, there is nothing prohibiting a corporation — a separate legal entity — from acting as agent for its shareholders if this is expressly provided for by agreements or by statute; see, *e.g., Rainham Chemical Works* v. *Belvedere* [1921] A.C. 465 (H.L.).

[64] *Supra,* f.n.57; see also *Gauthier* v. *The King* (1918) 56 S.C.R. 176, where at 182 Chief Justice Fitzpatrick stated: "... the provinces have... neither executive, legislative nor judicial power to bind the Dominion Government", and Anglin J. at 194 commented: "Provincial legislation cannot *proprio vigore* take away or abridge any privilege of the Crown in right of the Dominion."

[65] *Industrial Relations and Disputes Investigation Act,* R.S.C. 1952, c.152, s.54.

federal Crown. The mere fact that it is a federal Crown corporation does not render it an agent of the federal Crown.

III. The Quebec Official Language Act

This part will concern itself specifically with the Quebec *Official Language Act*,[65a] analyzing it to determine its constitutional validity in relation to federal corporations. The concern here is solely the Act's application to federal corporations; therefore, arguments concerning its validity or invalidity on other grounds, *e.g.* that it may conflict with section 133 of the *B.N.A. Act* or that language legislation *per se* is beyond provincial competence, will on the whole be ignored. Assumptions will be made concerning the Act's validity on these other grounds.

A. Public Utilities

The first sections of the Quebec Act which appear to have application to federal companies are sections 18 to 20, which state:

> 18. Public utilities and professional corporations must see to it that their services are offered to the public in the official language.
>
> 19. Public utilities and professional corporations must use the official language when addressing the public administration.
>
> 20. Notices, communications, forms and printed matter issued by public utilities and professional corporations and intended for the public must be in the official language; this section also applies to passenger tickets and bills of lading.
>
> The texts and documents mentioned above may nevertheless be accompanied with an English version.

It seems that these sections are intended to apply to federally regulated enterprises since Schedule B of the Act defines "public utilities" as:

> Establishments within the meaning of the Act respecting health services and social services, the telephone and telegraph companies, the air, ship, autobus and rail transport companies, the companies which produce, transport, distribute or sell gas, water or electricity, and those enterprises which hold authorization from the Transport Commission.

Many of the activities listed in the Schedule clearly fall within federal jurisdiction under the *B.N.A. Act*: telephone and telegraph companies, by specific enumeration; air companies, by virtue of the peace, order and good government provision; and interprovincial transport companies, by specific enumeration in section 92(10). Moreover, many of the enterprises listed in the schedule are busi-

---

[65a] S.Q. 1974, c.6.

nesses operated by the federal government through Crown corporations, such as Air Canada and Canadian National Railways.[66]

In addition to federally regulated enterprises, the Schedule includes "companies which produce, transport, distribute or sell gas, water or electricity". This category would include federally incorporated companies which deal in gas, water or electricity but do not otherwise fall within federal jurisdiction, as none of these subjects are within the legislative competence of Parliament. These companies are not federally regulated companies and Parliament can only legislate with regard to them under its "company law" power.

Thus, included in the definition of "public utilities" are the two types of companies that were referred to earlier in this paper. They are:

(1) federally incorporated companies which do not fall specifically under Parliament's jurisdiction; and
(2) federally incorporated companies which do fall otherwise under federal jurisdiction.

Sections 18 to 20 essentially say that public utilities must offer their services to the public in French, including all notices, forms, communications, passenger tickets and bills of lading. These documents may also have an English version. Furthermore, the public utilities must use French when communicating with the public administration (another defined term in Schedule A).

The effect of these sections on federal companies will now be considered. Firstly, let us consider the effect of the sections on federal Crown corporations coming within their ambit. The federal government has legislated with regard to such Crown corporations in the *Official Languages Act*.[67] Section 9(1) of this Act provides as follows:

> Every department and agency of the Government of Canada and every judicial, quasi-judicial or administrative body or Crown corporation established by or pursuant to an Act of the Parliament of Canada has the duty to ensure that within the National Capital Region, at the place of its head or central office in Canada if outside the National Capital Region, and at each of its principal offices in a federal bilingual district established under this Act, members of the public can obtain available services from and can communicate with it in both official languages.

The federal Act is legislation within Parliament's power which specifically states that Crown corporations must offer their services to the public in both "official languages", that is, French and

---

[66] *The Financial Administration Act*, R.S.C. 1970, c.F-10, s.66 and Sch. D.
[67] R.S.C. 1970, c.0-2 (the "federal Act").

English.[68] Therefore, assuming the province exercised a proper legislative power, the Quebec *Official Language Act* must be given a limited construction so as to exempt from its operation application to federal concerns falling within the Canada *Official Languages Act*.[69] Of course, this limited construction applies to all sections of the Quebec Act which purport to affect or are broad enough to encompass federal concerns covered by the provisions of the Canada *Official Languages Act*.

The sections of the Quebec Act under discussion do not appear to conflict with the federal Act. The former says French must be the language of communication of public utilities but also says English may be included: it does not say French is to be the only language used. The federal Act requires both languages to be used. Thus, if the federal Act applies, any company complying with it also automatically complies with the Quebec Act.

Corporations which are not federal Crown corporations but are under federal jurisdiction — other than under the federal company law power — do not come within the terms of the Canada *Official Languages Act*. Section 9(1) of the Act (quoted above) contains the broadest provisions but only applies to "[e]very department and agency of the Government of Canada and every judicial, quasi-judicial or administrative body or Crown corporation established by or pursuant to an Act of the Parliament of Canada". Clearly the section would not apply to enterprises which merely fall within federal jurisdiction, *e.g.*, an interprovincial railway such as the C.P.R.

Moreover, section 2 of the federal Act states that French and English are the official languages of all the "institutions" of the Parliament of Canada. The word "institution" is not defined in the Act but is said, in section 36(3), to include the Canadian Forces and the Royal Canadian Mounted Police. If bodies so close to the federal government as the armed forces and the R.C.M.P. must be included in the meaning of "institution", surely it was not intended to include bodies so far removed as private enterprises which merely fall within federal legislative competence. Furthermore, as we have seen,

---

[68] *Ibid.*, s.2. "Crown corporation" is defined as meaning a Crown corporation under Part VIII of the Canada *Financial Administration Act*, *supra*, f.n.66, which contains a broad definition of Crown corporation but specifically includes Air Canada and the C.N.R.

[69] See Abel, "Constitutional Legal Competence as to Establishment of Language of Work in Quebec" (study prepared for the Commission of Inquiry on the Position of the French Language and on Language Rights in Quebec), vol.2, 364 (hereinafter referred to as *Gendron Report*).

in section 9(1) of the federal Act, "institution" is not used but specific mention is made of the bodies to be included.

It seems then that it can safely be said that the Canada *Official Languages Act* is

> ... confined to dealings with and of federal agencies and instrumentalities acting in an official capacity. Nothing in it purports to have any application to the conduct of enterprises outside those categories.[70]

The mere investiture of corporate status does not in itself render the corporation in question an "institution" of the legislative body which granted that status. Being an "institution" of the federal Crown denotes an official attachment to the Crown; indeed, it is suggested that even a legal agency relationship existing between the Crown and a corporation may not render the latter an "institution" of the Crown.[71]

However, the preclusion of the application of the federal Act to companies falling within federal jurisdiction but which are not "federal agencies" does not mean that the Quebec Act is valid legislation with regard to those companies. As seen above, the question that must be asked is whether the Act, in the sections under discussion, attempts to affect a vital and integral part of the enterprise whose functions fall under federal jurisdiction.[72] Whether legislation which regulates the language to be used by a company in its dealings with the public is valid, as opposed to the language used in its "management", is open to question.

At this point the issue becomes both subjective and uncertain. The characterization of a regulation as affecting a vital and integral part of a federal company whose activities lie within federal competence is determinative of its constitutional status. Whether that characterization will be applied to the legislation in question is unhappily not much more than a matter of speculation. Sections 18 to 20 do not attempt to control the internal communications of public utilities; this, as will be seen later, is quite important. The regulation of intra-corporate activities and communications necessarily affects essential aspects of a corporation since a corporation is by definition an association of persons.[73] However, can it be said that sections 18 to 20 affect the vital operations of a corporation even

---

[70] *Ibid.*, 368.

[71] *Canada Labour Relations Board et al.* v. *Canadian National Railway Co., supra*, f.n.59.

[72] See text, *supra*, at f.ns.51 *et seq.* and cases cited therein.

[73] See *Hague* v. *Cancer Relief & Research Institute* [1939] 4 D.L.R. 191 (Man. K.B.). However, contrast *Bank of N.S.W.* v. *The Commonwealth* (1947) 76 C.L.R. 1 (Aust. H.C.).

though they do not control internal matters? Of course the "vital and integral" test used to determine the validity of provincial legislation affecting these corporations is more difficult to meet from the province's point of view than the "essential capacities and status" test which is applied in the case of "bare federal corporations". It can be argued, for example, that the specific reference to "passenger tickets and bills of lading" in section 20 affects a vital and integral aspect of a transport company and is therefore beyond provincial competence. What is more vital to such a company than the regulation of its contracts with its customers? Does not this affect vitally its business operations? It is suggested that it does.

Section 20 also contains the requirement that "notices, communications, forms and printed matter by public utilities ... intended for the public must be in the official language". Perhaps a distinction can be drawn between this requirement and the one concerning tickets and bills of lading since it does not affect the contractual relationship of the company with its clientele. On the other hand, is not communication with the public short of specific contractual engagements, such as in advertising, a vital aspect of such an enterprise? These are the types of factors which must ultimately be considered by a court in making a determination as to constitutionality.

One more type of corporation must be looked at in this regard: the "bare federal corporation", or a company incorporated under the authority of the federal Parliament by virtue of its "incorporation power" but not otherwise falling under federal jurisdiction.[74] The sections in question do not appear to be "company law" legislation which would be void *per se* as a provincial enactment. On the other hand, it is not like single aspect legislation under a provincial head which may have the effect of paralyzing the operations of a federal company yet still be valid. However, it seems the issue can be resolved without addressing oneself to the latter matter.

Let us assume the legislation may be classified as double aspect legislation, that is, within provincial competence as perhaps being for the protection of citizens in the province, but also affecting the operations of federal companies. As we have seen, the provision will only be invalid if it affects the "essential capacities and status" of the federal corporation. It seems clear that sections 18 to 20 of the Act do not do this. By analogy to the securities legislation cases,[75] a federal company can comply with the legislation by employing

[74] See text, *supra*, at f.ns.23 *et seq.*

[75] *Lymburn* v. *Mayland*, *supra*, f.n.31; and *A.G. Man.* v. *A.G. Can.*, *supra*, f.n.18.

agents who communicate in French and who can draft communications in French. For example, in the *Lymburn* case the federal companies could comply with the securities legislation by employing brokers who met the provincial requirements, and thus the provincial legislation was held valid.[75a]

One could argue, however, that the legislation in the *Lymburn* case and the legislation here in question are not analogous in that the requirements of the *Official Language Act* are much broader in scope and cannot be met with as much ease as could the requirements in *Lymburn.* On balance, it is suggested that the *Lymburn* analogy would succeed provided the Act only affects external communications (which it does) and does not attempt to control communication in the more intimate organs of the company, such as the board of directors (which it does not).

In summary, the provisions of the Quebec *Official Language Act* contained in sections 18 to 20 would appear to have the following effect:

(1) they do not apply to Crown corporations or federal agencies by reason of the provisions of the Canada *Official Languages Act;*
(2) federally regulated enterprises may or may not be subject to the provisions depending on whether the provisions are deemed to affect a vital phase of the enterprise; and
(3) "bare federal corporations" are likely subject to the provisions because their essential capacities and status are not impaired.

The analysis contained above applies to virtually all provisions of the Quebec Act which may affect federal corporations. Therefore, to avoid repetition in the analysis of the remaining provisions of the Act, much of the foregoing will be assumed but may be expanded upon where necessary.

B. *The Language of Work*

Sections 24 and 25 of the Quebec Act provide as follows:

> 24. Employers must draw up in French the notices, communications and directions addressed to their personnel.
> The texts and documents mentioned above may however be accompanied with an English version when the personnel are partly English speaking.
>
> 25. French is the language of labour relations, to the extent and in accordance with the terms and conditions provided in the Labour Code.

[75a] *Ibid.*

Canada's *Official Languages Act* does not purport to regulate the internal language of a body falling within its purview. Nevertheless, the federal power to regulate enterprises whose functions fall exclusively within federal competence may win the day. Applying the "vital and integral" test, the language used internally in a company may be a proper subject of federal regulation.[76] In a 1955 Supreme Court of Canada case,[77] working conditions were considered to be sufficiently integral to a federal enterprise to fall under federal regulatory jurisdiction. Although a possible distinction may be drawn between internal communication of management and communication of management with personnel, one commentator has preferred to refer simply to communication within an enterprise, concluding that:

> There can be no enterprise without communication, and its communications control all its activities. It follows that the language of work cannot, in enterprises subject to exclusive federal regulation, be controlled by provincial legislation. The scope of operation of federal labour legislation can serve as a working guide to which enterprises these are.[78]

Such a conclusion seems to be beyond doubt, as what is more vital to an enterprise than its internal communications?

If the distinction suggested above by the writer between internal management communications and management-personnel communications does apply in the case of a "bare federal corporation", does the regulation of management-personnel language affect the "essential capacities" of such a corporation? The language of work provisions strike at the essence of a corporation to a greater degree than those previously considered which dealt with public utilities and their communications with the public. Would a provision requiring corporate management to use French *inter se* affect the essential capacities and status of a federal corporation? While no such express provision appears in the Act proper, a reference is made to it in the Preamble. Would a requirement that corporate documents, including letters patent and by-laws, be in French apply to federal companies?

The answer to the last question posed is clearly "no": such legislation would be clearly of a "company law" nature and thus within Parliament's jurisdiction. Moreover, it clearly affects the essential capacities of a federal corporation. The letters patent and

---

[76] *Supra*, f.n.54.

[77] *Reference as to the Validity of the Industrial Relations and Disputes Investigations Act, supra*, f.n.54.

[78] S.A. Scott, "Some Concepts Basic to Legal Rights" in *Gendron Report, supra*, f.n.69, vol.2, 403.

by-laws are the constitution of the company; the company's essential power and capacity is granted through the letters patent and its internal functioning is controlled by its by-laws. It is therefore beyond doubt that a province cannot legislate in this regard *vis-à-vis* any type of federal corporation.[79]

Requiring the management to use French in the board room would also seem to be beyond provincial jurisdiction. A distinction can be drawn between such a provision and that contained in the securities legislation upheld in *Lymburn* v. *Mayland*.[80] In the securities regulation situation, one is dealing with agents or brokers who sell corporate securities but who may be somewhat removed from its central decision making body; whereas in the board room situation, the province would be attempting to regulate in an important respect the essential decision making body of the corporation. Although the corporate personality exists in law separate from its directors and managers, in reality it is they who are the corporation in that they are the essential decision makers of the corporation. The so-called "corporate veil" should not be used to mask this reality. As previously indicated, the Quebec Act does not go this far except in the Preamble.[81] Section 24 applies only to management-employee relations. It seems to be only another small step to require management to utilize French in this situation, but perhaps it is a step sufficiently large to keep the present enactment in the field of provincial labor legislation.

Professor S. A. Scott, quoted above, clearly limited his statement to enterprises subject to federal regulation. However, in his opinion, "[t]here can be no enterprise without communication, and its communications control all its activities".[82] This statement applied to section 24 of the Act may lead one to the conclusion that com-

---

[79] See cases cited *supra*, f.ns.16-20.

[80] *Supra*, f.n.31.

[81] The rule concerning the preamble of a statute is that it may be an aid to interpretation. It may not, however, be used to control or qualify enactments which are in themselves precise and unambiguous. If any doubt exists as to the meaning of a particular enactment, recourse may be had to the preamble to ascertain the reasons for the statute, and hence the intentions of the legislature: see *The Spray* v. *St. Clair* [1928] Ex. C.R. 56; *Re Mossing* [1941] 2 W.W.R. 137 (Sask.). It is suggested that nothing in the Quebec Act proper indicates that the official language must be used in intra-management communication and thus there is no ambiguity in the Act on this point which should be resolved by reference to the words in the Preamble, which states *inter alia*: "Whereas the French language must be in use at every level of business activity, especially in corporate management...".

[82] *Supra*, f.n.78.

munication in general goes to the existence of an enterprise; if it does, section 24 would not apply to any federal companies because the essential capacity and status of the corporation would be affected.

Section 25 of the Quebec Act in itself does not appear to add any substance to section 24. It appears to apply by definition only to those matters within provincial jurisdiction because of the reference to the Labour Code. However, that is not to say that all provisions in a Labour Code concerning language would be valid provincial legislation. Any specific enactment in the Code would have to be studied to determine its constitutional validity. Section 25 does not give a *carte blanche* to legislate in the Labour Code regarding language; it simply is a reference to the Code and does not in itself add any substantive constitutional issues in addition to those raised by reason of section 24.

The above discussion assumes that section 24 is double aspect legislation. However, if it were deemed to be single aspect legislation falling exclusively within section 92 of the *B.N.A. Act*, then it would be valid even if it resulted in the elimination of the business of a federally-incorporated company.[83]

Sections 26 to 29 of the Quebec Act concern the issue of certificates to firms to indicate that a francization program has been adopted or that the firm is sufficiently francized to meet the requirements of any such program. Firms without such certificates may not "receive the premiums, subsidies, concessions or benefits from the public administration determined by regulation, or to make with the government the contracts of purchase, service, lease or public works also determined by regulation". There is no sanction provided for in the Act if a firm does not undertake a francization program. Section 27 says the *Régie de la langue française* may request a firm to take up the elaboration and implementation of a francization program but goes no further; that is, no enforcement measures are contained in the Act.

These sections are most likely a valid exercise of the provincial "spending power". The governments, both provincial and federal, can use their financial resources for virtually any purpose, even purposes other than those falling strictly within their respective

---

[83] See text, *supra*, at f.ns.23 *et seq.* esp. the *Parsons* case and the *Arcadia Coal* case; see also Lederman, "Corporate Bodies and Public Monopolies" in Lang (ed.), *Contemporary Problems of Public Law in Canada* (1968), 123.

jurisdictions.[84] The Supreme Court judgment in the *Unemployment Insurance* case[85] contains illuminating statements concerning the federal spending power. Kerwin J. stated:

> It is quite true that Parliament, by properly framed legislation may raise money by taxation and dispose of its public property in any manner that it sees fit. As to the latter point, it is evident that the Dominion may grant sums of money to individuals or organizations and that the gift may be accomplished by such restrictions and conditions as Parliament may see fit to enact. It would then be open to the proposed recipient to decline the gift or to accept it subject to such conditions. As to the first point, it is also undoubted, I conceive, that Parliament, by properly framed legislation may raise money by taxation, and this may be done either generally or for the specific purpose of providing the funds wherewith to make grants either before or after the conferring of the benefit.[86]

La Forest suggests that the real legal issue regarding the federal Parliament's power of making grants is the extent to which it can indirectly legislate by imposing conditions and restrictions on gifts.[87] In this respect it is important to distinguish between a mandatory law compelling an act, and a directory law offering aid on certain conditions.[88]

The spending power is inherent in Canadian federalism and applies to the provinces as well as the federal Parliament. They too can use their money as a lever to promote policies which they consider desirable[89] by making grants to individuals and public bodies. As La Forest points out, "there seems no constitutional impediment to prevent the provinces from encouraging schemes falling largely within federal regulatory control in the absence of inconsistent federal legislation".[90] As Duff C.J. stated in the *Unemployment Insurance* case in reference to section 92(2) of the *B.N.A. Act* ("Direct Taxation within the Province in order to the raising of a Revenue for Provincial Purposes"), "the words 'for provincial purposes' mean neither more nor less than this: the taxing

---

[84] See generally La Forest, *Natural Resources and Public Property Under the Canadian Constitution* (1969), 136-143, regarding federal spending power, and 169-170 regarding provincial spending power.

[85] *Reference re Employment and Social Insurance Act* [1936] S.C.R. 427; aff'd [1937] A.C. 355 (P.C.).

[86] *Ibid.* [1936] S.C.R. 427, 457.

[87] *Supra*, f.n.84, 142.

[88] *Angers* v. *M.N.R.* [1957] Ex. C.R. 83.

[89] See F.R. Scott, *Our Changing Constitution* (1961) 55 Proc. Royal Soc. of Can. 83, cited in La Forest, *supra*, f.n.84, 169.

[90] La Forest, *supra*, f.n.84, 169.

power of the legislatures is given to them for raising money for the exclusive disposition of the legislature".[91]

Sections 26 to 29 of the Quebec *Official Language Act* provide a criterion that the government is obliged to consider before it confers certain advantages, such as subsidies, benefits or contracts The province can clearly confer such benefits, with or without conditions, in areas coming within its jurisdiction. The "matter" of sections 26 and 29 may be considered "property and civil rights in the Province"[92] or "matters of a merely local and private nature in the Province",[93] both of which come within section 92.

Failing such characterization, the legislation would still seem to be a valid use of the province's spending power. There are other examples in Quebec of similar uses of the spending power, *i.e.*, making grants and subsidies subject to certain conditions. The *Quebec Industrial Devolpment Assistance Act*[94] is an example of legislation which contains certain criteria to be considered before financial assistance is given by the province. The criteria include:

(1) the investment of at least $150,000 in the province of Quebec in making use of advanced technology to manufacture a newly conceived product;
(2) although profitable, the business should contribute more effectively to the economic development of the Province of Quebec;
(3) a manufacturing business must be managed by administrators who give evidence of competence and efficiency.[95]

Now the Quebec *Official Language Act* requires, in addition to the above stated requirements, a certificate attesting to the adoption of a francization program.

C. *The Language of Business*

Sections 30 to 39 make specific provision for the use of French in the business community. Section 30 states:

> 30. Juridical personality shall not be conferred unless the adopted firm name is in the French language. Firm names may nevertheless be accompanied with an English version.
>
> Changes of firm names are subject to the same rules. The same applies to the registration of firm names effected in virtue of the

---

[91] *Supra*, f.n.85: [1936] S.C.R. 427, 434.
[92] *B.N.A. Act, supra*, f.n.4a, s.92(13).
[93] *Ibid.*, s.92(16).
[94] S.Q. 1971, c.64.
[95] *Ibid.*, s.2.

Companies and Partnerships Declaration Act (Revised Statutes, 1964, chapter 272).

This stipulation has application only to Quebec companies: certainly the province cannot prevent the coming into existence of federal companies because the firm name is not in the French language. The corporate name is clearly a matter of "company law" and thus within the jurisdiction of Parliament *vis-à-vis* federal companies. Furthermore, the *Canada Corporations Act*[96] and the *Canada Business Corporations Act*[97] contain provisions respecting corporate names.

Federally incorporated companies need not register under the Quebec *Companies and Partnerships Declaration Act*,[98] so the second paragraph of section 30 has no application to these corporations.[99]

Section 31 allows proper names or artificial names to be used without a corresponding version in the official language. Thus, for example, "Peter White and Co. Ltd.", even if a provincial company, does not have to adopt the firm name of "Pierre LeBlanc et Cie Ltée". Like section 30, section 31 has no application to federal corporations. Nor does section 32, which requires that French firm names be as prominent in texts and documents as their English versions. Parliament has in fact already legislated in this respect: section 25(1) of the *Canada Corporations Act*[100] and section 10 of the *Canada Business Corporations Act*[101] allow a company possessing a French and English name to use both versions interchangeably.

Section 33, which requires contracts predetermined by one party, contracts containing printed standard clauses, and printed order forms, invoices and receipts to be in French, is probably valid as applied to federal corporations not otherwise falling within federal jurisdiction, so long as the legislation comes within one of the provincial powers contained in section 92. This conclusion is based on the *Citizens Insurance Co. of Canada* v. *Parsons* case,[102] which clearly indicated that a province may regulate the contracts of a federal company.

The section would not, however, apply to a federal Crown corporation because of the Canada *Official Languages Act*. Section 9(1) of that Act states that, with regard to such enterprises, "members of the public can obtain available services from and can communicate

---

[96] *Supra*, f.n.3, s.9(4).
[97] *Supra*, f.n.4, s.10.
[98] R.S.Q. 1964, c.272.
[99] See *John Deere Plow Co.* v. *Wharton*, *supra*, f.n.11.
[100] *Supra*, f.n.3.
[101] *Supra*, f.n.4.
[102] *Supra*, f.n.6 and text thereat.

with it in both official languages". However, there may not be a conflict between the Quebec and Canada Act on this point because both require substantially the same compliance, as was indicated above.

With regard to federal corporations falling under federal jurisdiction but not falling within the Canada *Official Languages Act*, the "vital and integral" test would apply. The analysis contained above on the point would apply *mutatis mutandis* here.

One other section requires brief comment. Section 35 requires public signs to be in French, or in French and another language. In addition to the obvious issues which arise here with regard to federal companies, the corporate names of federal companies, which may be an important part of any public sign sponsored by them, would not be required to be in French. Again, this is a matter solely within federal competence as being of a "company law" nature and is specifically provided for in federal legislation.[103]

IV. Conclusion

This paper obviously does not contain an exhaustive analysis of all the legal points raised in considering the effect of the Quebec *Official Language Act* on federal companies. To do so would require a very long and elaborate treatise, which would most likely be premature in any event, since it is impossible to envisage all possible applications of the Act. The existing law regarding regulation of federal corporations has been perused in an attempt to arrive at some basic principles which may aid in analyzing the *Official Language Act*. Specific provisions of the Act were also dealt with in terms of their possible application to federal corporations. It is the author's hope that this analysis revealed some of the basic constitutional questions involved and suggested reasonable methods to approach them based on the existing precedents.

---

[103] *Supra*, f.n.3, s.25(3).