
Natural Parents v. Superintendent of Child Welfare

Douglas Sanders

Follow this and additional works at: <http://digitalcommons.osgoode.yorku.ca/ohlj>
Commentary

Citation Information

Sanders, Douglas. "Natural Parents v. Superintendent of Child Welfare." *Osgoode Hall Law Journal* 14.2 (1976) : 489-498.
<http://digitalcommons.osgoode.yorku.ca/ohlj/vol14/iss2/12>

This Commentary is brought to you for free and open access by the Journals at Osgoode Digital Commons. It has been accepted for inclusion in Osgoode Hall Law Journal by an authorized editor of Osgoode Digital Commons.

NATURAL PARENTS v. SUPERINTENDENT OF CHILD WELFARE

By DOUGLAS SANDERS*

A. INTRODUCTION

In the last decade, Indian cases have become a distinct part of the case load of the Supreme Court of Canada. A series of hunting rights cases began in the 1960's: *Sikyea*,¹ *White and Bob*,² *George*,³ *Sigeareak*,⁴ *Daniels*,⁵ *Cardinal*⁶ and *Myran*.⁷ At least three more hunting and fishing rights cases are presently on their way to the Court.⁸ The question of aboriginal title to land, argued in part in certain of the hunting cases, was directly raised in *Calder v. Attorney General of British Columbia*,⁹ decided by the Supreme Court early in 1973. The apparent settlement of the James Bay controversy promises to spare the highest court that politically contentious issue.¹⁰ Leave to appeal has been granted in the *Paulette*¹¹ case, bringing certain of the aboriginal title claims in the Northwest Territories before the Court.

The *Canadian Bill of Rights* cases, which began with the seemingly simple issue in the *Drybones* case,¹² became increasingly involved with the intricacies of the *Indian Act*. While the *Drybones* case can be discussed by lawyers who know nothing of the *Indian Act*, the subsequent cases of *Lavell*,¹³

© Copyright, 1976, Douglas Sanders.

* Douglas Sanders is a member of the bars of Alberta, British Columbia, Ontario and the Northwest Territories.

[Certain of the materials in this note are derived from the author's report *Family Law and Native People* prepared on contract with the Law Reform Commission of Canada, 1975, unpublished, available for reference in the library of the Commission's head office in Ottawa.]

¹ *R. v. Sikyee*, [1964] S.C.R. 642.

² *R. v. White and Bob* (1965), 52 D.L.R. (2d) 481.

³ *R. v. George*, [1966] S.C.R. 267.

⁴ *R. v. Sigeareak*, [1966] S.C.R. 645.

⁵ *R. v. Daniels*, [1968] S.C.R. 517.

⁶ *Cardinal v. Attorney General of Alberta*, [1974] S.C.R. 695.

⁷ *Myron v. R.* (1975), 58 D.L.R. (3d) 1.

⁸ *R. v. Kruger and Manuel*, [1975] 5 W.W.R. 167; *R. v. Derriksan*, [1975] 4 W.W.R. 761; *R. v. Frank*, Unreported, Supreme Court of Alberta, Appellate Division, August 14, 1975.

⁹ [1973] S.C.R. 313.

¹⁰ *Simard-Beaudry Inc. v. Kanatawat*, Unreported, Quebec Court of Appeal, November, 1975.

¹¹ Re *Paulette's Application to file a Caveat*, [1973] 6 W.W.R. 97.

¹² [1970] S.C.R. 282.

¹³ *Attorney General of Canada v. Lavell*, [1974] S.C.R. 1349.

*Canard*¹⁴ and, most recently, the *Natural Parents* case¹⁵ demand a detailed understanding of parts of Canadian Indian law and policy.

The *Natural Parents* case dealt with the question of whether provincial adoption laws could be applied to the adoption of a status Indian child by parents who did not have Indian status. The trial judge held that such an adoption would be inconsistent with the rights and status provided for under the *Indian Act*.¹⁶ The decision was reversed on appeal by the British Columbia Court of Appeal.¹⁷ The British Columbia Court of Appeal was upheld by the Supreme Court of Canada.

There have been questions relating to the adoption of status Indian children for a number of years.¹⁸ One question relates to the effect adoption has or should have on Indian status;¹⁹ another matter of controversy has been the movement of Indian children out of the native community and into the non-native community.

In the *Natural Parents* case, a status Indian child was to be adopted by a non-Indian couple. Adoption laws sever the connection between the natural parents and the adopted child. Yet a child derives Indian status, under the *Indian Act*, from his or her parents. Counsel for the natural parents argued that adoption under provincial laws could not affect the Indian status of a child for, if it did, the provincial law would be inconsistent with the *Indian Act*. The well established view of the Department of Indian Affairs was that provincial adoption laws could apply to status Indian children but could not result in a child gaining or losing Indian status. In effect, they only applied in part. Counsel for the natural parents argued against that view as well. He argued that one category of adopting parents would be treated unequally in comparison to other categories of adopting parents. If the child had Indian status, then legal ties to the natural parents and a reserve community continued after the adoption. No such legal ties continued if the adopted child did not have Indian status. Since confidentiality has been a very distinct feature of Canadian adoption laws, one category of adoptive parents was getting what could be considered a "second class" adoption order.²⁰ This discrimination, counsel argued, was incompatible with the *Canadian Bill of Rights*.

¹⁴ *Attorney General of Canada v. Canard* (1975), 52 D.L.R. (3d) 548.

¹⁵ *Natural Parents v. Superintendent of Child Welfare*, Unreported, Supreme Court of Canada, October 7, 1975.

¹⁶ [1974] 1 W.W.R. 19.

¹⁷ (1974), 44 D.L.R. (3d) 718.

¹⁸ See, Sanders, *Family Law and Native People*, Law Reform Commission of Canada, 1975, unpublished.

¹⁹ In many ways this is the opposite question to that posed in the *Lavell* case, *supra*, note 13. The rules relating to mixed marriages, challenged in *Lavell*, placed legal kinship factors above racial factors. The rules in relation to adoption, challenged in the *Natural Parents* case, placed racial factors above legal kinship factors.

²⁰ It appears that the concern with confidentiality is lessening. One of the distinguishing features of Inuit customary adoption has been the complete lack of concern for confidentiality: see, Sanders, *supra*, note 18 at 62-73.

In summary, if provincial adoption laws altered Indian status, they were in conflict with the *Indian Act*. If they did not alter Indian status, they were in conflict with the *Bill of Rights*. Either way they could not apply to status Indian children, unless those children were being adopted by a status Indian couple.

B. INDIAN STATUS AND PROVINCIAL LAW

In the *Natural Parents* case, it was argued that the family relationship was "the essence" of Indian status. Chief Justice Laskin referred to two of the cases cited by counsel for the province as:

. . . simply illustrative of the amenability of Indians off their reservations to provincial regulatory legislation, legislation which, like traffic legislation, does not touch their 'Indianness'. Such provincial legislation is of a different class than adoption legislation which would, if applicable as provincial legislation *simpliciter*, constitute a serious intrusion into the Indian family relationship. It is difficult to conceive what would be left of exclusive federal power in relation to Indians if such provincial legislation was held to apply to Indians.

The adoption law would:

. . . strike at a relationship integral to a matter outside of provincial competence.

The law affected Indians as Indians.

In contrast, Mr. Justice Martland ruled that the area of adoption laws, as they affect Indians, is a double aspect area. He ruled:

I do not interpret s. 91 (24) as manifesting an intention to maintain a segregation of Indians from the rest of the community in matters of this kind, and, accordingly, it is my view that the application of the Adoption Act to Indian children will only be prevented if Parliament, in the exercise of its powers under that subsection, has legislated in a manner which would preclude its application.

He ruled that the legislation did not apply to Indians as Indians for it did not "restrict the rights of Indians."

Mr. Justice Ritchie ruled that the provincial adoption law did not affect the "status, rights, privileges, disabilities and limitations" acquired by Indians under the *Indian Act*.²¹ He did not state whether he felt the area of Indian adoptions was a double aspect area which the federal government could occupy by legislation. He went no further than explaining his view that the provincial law did not affect the rights and status of Indian children as determined by the present membership provisions of the *Indian Act*.

Mr. Justice Beetz approached the resolution of this issue in quite a different manner than the other judges. He stated:

The *Indian Act*, in s. 2 (1), explicitly contemplates legal adoption although it does not otherwise provide for it. Provincial laws must therefore apply; there are no others.

²¹ The British Columbia legislature, during the life of the *Natural Parents* case, passed an amendment to the provincial adoption act which specified that it did not affect the "status, rights, privileges, disabilities and limitations" acquired by Indians under the *Indian Act*. Mr. Justice Ritchie was quoting that wording. The Judgments in the Supreme Court of Canada varied as to whether the amendment was constitutionally valid or not. The issue seemed to the writer to be significant and is not treated in this case note.

He saw the application of provincial adoption laws as part of the legislative scheme of the *Indian Act*. Any assessment of the character of the adoption law, separate from that ruling, he found unnecessary. Mr. Justice Pigeon and Mr. Justice de Grandpré concurred with Mr. Justice Beetz.

The "Indians as Indians" question was lost in the intricacies of a four to three to two division of the court.

The status system in the *Indian Act* is primarily concerned with the nuclear family unit and has, as an imperfectly achieved goal, the end that all members of a nuclear family unit should have the same legal status (either as registered Indians or not). This family orientation to the *Indian Act* results in the use of the terms wife, child, legitimate child, illegitimate child, minor, descendant, father and widow. There are no family law provisions in the *Indian Act*. There are no provisions for marriage, divorce, custody, maintenance, adoption, legitimation or age of majority.

The Registrar appointed under the *Indian Act* to administer the membership system employs the following rules:

- 1) A marriage recognized by provincial law is recognized for the purposes of the *Indian Act* and can result in the acquisition or loss of Indian status.²²
- 2) Separation and divorce have no effect on Indian status.
- 3) An annulment will restore the parties to the status they had prior to the annulled marriage.
- 4) Children are legitimate if they are legitimate or have been legitimated under the provision of provincial laws. Provincial laws relating to legitimacy can result in the acquisition or loss of Indian status.
- 5) The age of majority is determined by provincial law. In practice this does not have the effect of altering the status of individual people, though the *Indian Act* could be so applied as to have that result.
- 6) Custody has no effect on Indian status.
- 7) Adoption under provincial laws can result in a child being shifted from membership in the band of his natural parents to the band of his adoptive parents, but cannot result in either the acquisition or loss of Indian status.

The Supreme Court ruled, in the *Natural Parents* case, that provincial adoption laws cannot result in the acquisition or loss of Indian status. Three judges, in minority, left that question open.²³

What of provincial legitimation laws? The illegitimate child of a non-

²² Mr. Justice Beetz commented on this point:

One finds nothing startling in the possible impact of provincial law upon Indian status if one keeps in mind that, in certain cases, the *Indian Act* makes the acquisition or loss of Indian status dependent upon marriage, (as in *Attorney General of Canada v. Lavell*, [1974] S.C.R. 1349), and that provincial laws relating to the solemnization of marriages may affect the validity of the contract.

²³ Mr. Justice Beetz left the question open. His judgment was concurred in by Mr. Justice Pigeon and Mr. Justice de Grandpré.

Indian mother and a status Indian father will not be registered on birth as an Indian. If the parents subsequently marry, the child will be legitimated by that marriage and both the mother and child will gain status. The common law never recognized adoption, but always recognized a distinction between legitimacy and illegitimacy. To introduce adoption by statute is to substantially alter the common law. To modify the concept of legitimacy by adding legitimation by a subsequent marriage does not introduce a dramatically new concept into the law. It is the writer's view that the distinction between adoption and legitimation laws, historical and social as it is, is sufficiently real to justify a court separating the two and upholding the present practices of the Registrar in relation to legitimacy.

The judgments of the Supreme Court of Canada differ on why provincial adoption laws apply to Indians. Chief Justice Laskin, for himself and three others, ruled that the provincial adoption law would not apply on its own to Indians, but has been incorporated by reference by s. 88 of the *Indian Act* and made to apply as federal law. Mr. Justice Martland and Mr. Justice Ritchie both ruled that the provincial adoption law would apply to Indians of its own strength and did not affect any rights established under the *Indian Act*. Mr. Justice Beetz ruled that the provincial adoption law applied of its own strength to Indians. He saw that as implicit in the *Indian Act* itself. He left the question open whether adoption by non-Indian parents would terminate the status of an Indian child; that question, he said, could only be determined by the procedures set out in the *Indian Act* and appeals through the federal court system.

C. THE MYSTERY OF SECTION 88

Section 88 of the *Indian Act* reads as follows:

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

The section was enacted in 1951. Shortly after the enactment of the section, an Alberta District Court Judge commented:

Section 87 (now 88) is a new section, not appearing in any of the prior legislation affecting Indians. It seems to be a clarification and restatement of previous case law which, in so far as offences against provincial statutes are concerned, is found mainly in these cases: *R. v. Hill* (1907), 15 O.L.R. 406; *R. v. Beboning* (1908), 13 Can. C.C. 51, (1923) 3 D.L.R. 414, 33 Man. R. 139; *R. v. Cooper* (1925), 44 Can. C.C. 314, 35 B.C.R. 457; *R. v. GrosLouis*, 81 Can. C.C. 167, (1944) Rev. Leg. 12.²⁴

The view that s. 88 was a mere "clarification and restatement" was challenged by Lysyk in his leading article in the *Canadian Bar Review* in 1967. While seeing it in part as a codification of existing law, he felt that there were in-

²⁴ *R. v. Shade* (1952), 102 C.C.C. 316 at 317-18, District Court Judge Feir.

stances in which it would make certain laws apply to Indians which otherwise would not apply:

. . . section 87 [now 88] would seem to have at least one (albeit limited) effect. Reference was made above to authority for the proposition that a provincial law, even though of general application, would not apply to a federally incorporated company in certain circumstances, such as a provincial enactment which would have the effect of interfering with the status and capacity of the federal company. By analogy a particular provincial law of general application may be such as would be characterized as a law so affecting the essential status, capacities and activities of Indians as to be inapplicable to them (or *ultra vires* to the extent the provincial law purported to apply to Indians). By the force of section 87, presumably such law would now be made applicable to Indians.²⁵

In other words, provincial laws which would not apply to Indians because they dealt with Indians as Indians would be the only laws affected by s. 88. By the section, those laws would now apply to Indians.

Section 88 appeared to play a role in certain of the hunting rights cases. Whether that role is vital can probably be expected to be determined when the Supreme Court of Canada decides the appeal from *R. v. Kruger and Manuel*.²⁶

In 1971 an Ontario District Court Judge, citing the earlier Alberta District Court decision, referred to s. 88 as designed to "further clarify the situation."²⁷

The Manitoba Court of Appeal, in *Nelson v. Childrens Aid Society of Eastern Manitoba*,²⁸ while agreeing with the decision of the British Columbia Court of Appeal in the *Natural Parents* case, seemed to rely on s. 88 to make the Manitoba Child Welfare Act apply to Indians.

The view that s. 88 was a restatement, a clarification or a codification of existing law finds support in certain judgments in the Supreme Court decision in the *Natural Parents* case. Mr. Justice Martland described the section as a "statement of the extent to which provincial laws apply to Indians" and concurred in the following statement of the British Columbia Court of Appeal:

In my opinion, Sec. 88 does not have the effect of converting provincial legislation to federal legislation whenever it applies to Indians. Sec. 88 simply defines the obligation of obedience that Indians owe to provincial legislation. Parliament is neither delegating legislative power to the province nor adopting provincial legislation as its own by declaring in Sec. 88 what was true before Sec. 88 existed, namely, that Indians are not only citizens of Canada but also are citizens of the province in which they reside and are in general to be governed by provincial laws.²⁹

²⁵ Lysyk, *The Unique Constitutional Position of the Canadian Indian* (1967), 45 Can. Bar Rev. 513 at 539.

²⁶ *Supra*, note 8. Section 88 may have played a vital role in *White and Bob*, *supra*, note 2. See, also, *R. v. Discon and Baker* (1968), 67 D.L.R. (2d) 619, which is identical on its facts to the *Kruger and Manuel* case.

²⁷ District Court Judge Little in *R. v. Pawis*, [1972] 2 O.R. 516 at 520.

²⁸ [1975] 5 W.W.R. 45.

²⁹ *Supra*, note 17 at 722.

Mr. Justice Ritchie made two statements on the meaning of s. 88:

In my view, when the Parliament of Canada passed the *Indian Act* it was concerned with the preservation of the special status of Indians and with their rights to Indian lands, but it was made plain by s. 88 that Indians were to be governed by the laws of their province of residence except to the extent that such laws are inconsistent with the *Indian Act* or relate to any matter for which provision is made under that Act.

And, at the end of his judgment:

In the light of the above, I am of the opinion that s. 88 of the *Indian Act* should be construed as meaning that the provincial laws of general application therein referred to apply of their own force to the Indians resident in the various Provinces. Accordingly, in my view, the *Adoption Act* here in question applies to the Indians resident in the Province of British Columbia just as it does to the other residents of that Province.

Mr. Justice Beetz expressed no opinion on the effect of s. 88. Mr. Justice Pigeon and Mr. Justice de Grandpré concurred with Mr. Justice Martland on the meaning and effect of s. 88, otherwise concurring with Mr. Justice Beetz.

In summary, four judges ruled that s. 88 represented an incorporation by reference of certain provincial laws which would not otherwise apply to Indians (those which deal with Indians as Indians). Those laws apply to Indians as federal laws. Four judges ruled that s. 88 represented a restatement, a codification or a clarification of existing law and not an incorporation by reference. They ruled that the *Adoption Act* applied to Indians as provincial law. One judge made no comment on the meaning or effect of s. 88.

The argument that s. 88 merely codifies the law appears to avoid the complexities of the section. On the other hand, there seem to be serious problems with the position presented by Lysyk and Chief Justice Laskin. Did the drafters of s. 88 seriously intend that provincial legislation which affected the "status, rights, privileges, disabilities and limitations"³⁰ of Indians should now apply to them? If Chief Justice Laskin is right that adoption under provincial laws strikes at the root of Indianness, then the legal analysis parallels exactly the nature of the concern of Indian leaders on the question. The loss of status Indian children into non-Indian families weakens even further the link between Indian status and Indian culture. It therefore threatens the basic Indian political goal of distinct group survival. Yet both the legal and Indian characterization of the adoption laws as hitting at Indianness is dismissed because of s. 88. Surely that was not the legislative intent.

D. THE BILL OF RIGHTS ARGUMENT

The British Columbia Court of Appeal disposed of the *Bill of Rights* argument on alternative grounds. They ruled that the *Adoption Act* applied to Indian children as provincial legislation. It was not incorporated by reference by s. 88 of the *Indian Act* and made to apply to them as a federal law. The *Bill of Rights* did not apply to provincial laws. Secondly, they ruled that the allegation of discrimination or inequality could not be sustained:

³⁰ See, *supra*, note 21.

. . . in the light of the acknowledgment by counsel for the respondents that the *Indian Act* is valid legislation and does not contravene the *Canadian Bill of Rights*.³¹

Surely the Court was remiss in reading so much into that general statement of counsel. Counsel was, in the alternative, challenging the effect of particular provisions of the *Indian Act* as in conflict with the *Bill of Rights*. Counsel's statement that the *Indian Act* as a whole was valid legislation should not have detracted from the limited challenge being made.

The Supreme Court of Canada divided on the *Bill of Rights* argument. Chief Justice Laskin, for himself, Judson, Spence and Dickson, stated:

The Court did not call upon the respondents or the intervenors to make submissions on the *Canadian Bill of Rights*, being of the opinion that, on the assumption that the Adoption Act, by referential incorporation, is federal legislation, there was nothing in it to bring any of the prescriptions of the *Canadian Bill of Rights* into play. I would in this connection adopt the remarks of the British Columbia Court of Appeal on this issue.

The five remaining members of the Court ruled that the adoption law applied as provincial legislation and therefore found it unnecessary to comment on the *Bill of Rights* argument.

The decision is an interesting contrast to that in *Drybones*. There the Court focused its attention completely on the *Bill of Rights* without any examination of the history or purpose of the liquor sections of the *Indian Act*. In *Natural Parents*, the *Bill of Rights* argument was treated summarily and the judgments are almost exclusively concerned with the *Indian Act* and the constitutional questions.

E. CONCLUSIONS

The result in the *Natural Parents* case is correct in the very practical sense that neither the Indian communities nor the non-Indian communities were prepared to handle Indian child care outside the established provincial framework. A judicial determination that provincial adoption laws did not apply to status Indian children would have prompted considerable pressure to reverse the ruling by federal legislation.

After the post-war "baby boom", the birth rate among the English and French populations in Canada dropped dramatically. During the whole post-war period, in contrast, Indian population increase has continued to be strong. Non-Indian Canada used to face a situation where there were more children available for adoption or foster care placement than homes to receive them. During that period it was common knowledge that racially different children had the least chance of placement. In the last ten to twenty years there has been a gradual increase in acceptance of inter-racial adoption by non-Indian couples and a decline in the availability of English Canadian and French Canadian children. The increase in the number of native children in care and the number of native child placements with non-Indian families has now coincided with a cultural awakening among the native population in Canada.

³¹ *Supra*, note 17 at 722.

White institutional attitudes have always favoured the integration of the native population. Gradually and reluctantly provincial child welfare programmes have been responding to the Indian cultural revival by modifying their purely integrationist posture. There is now limited provincial support for Indian run group homes for native children and special programmes to locate native homes for native children.

It is in this general context that the *Natural Parents* case and the parallel challenge in the *Nelson* case³² in Manitoba occurred. Both the *Nelson* case and the *Natural Parents* case had some support from Indian organizations in their provinces. They presented opportunities for Indian organizations to work with the provincial governments on alternatives to the primarily integrationist thrust of provincial child welfare laws and policies. But the Indian community did not have sufficient unity or organization to adequately respond to the opportunity. In the end, the native organizations did not use the occasion of the litigation to put forward any proposals on child welfare programmes.³³

The same criticism can be directed to the governments involved. The government of British Columbia and the Union of British Columbia Indian Chiefs jointly sponsored a small scale study which gave a very useful overview of the situation.³⁴ The provincial interest in Indian group homes, which had existed for a number of years, continued.³⁵ A regional pilot project to locate Indian homes for Indian children was initiated. It was run by the Union of British Columbia Indian Chiefs and involved a staff person seconded from the Department of Indian Affairs and funding from the provincial Department of Human Resources. The pilot project ended abruptly in the spring of 1975 when the Union of British Columbia Indian Chiefs rejected all government funding and terminated its programmes. Since that time there has been no indication of interest on the part of the provincial government in reviving the project.

The Indian concern with distinct group survival was not argued in the *Natural Parents* case, though the concern with cultural survival can be seen as part of the Laskin analysis that adoption would affect Indians as Indians. Non-Indian goals of integration, whether argued or not, appear in certain of the judgments. Chief Justice Laskin indicated a reluctance to come to a conclusion that excluded Indian children from possible adoption, unless "clearly compelled to do so by unambiguous legislation." Mr. Justice Martland, as earlier quoted, stated that federal jurisdiction over Indians did not manifest "an intention to maintain a segregation of Indians from the rest of the community in matters of this kind. . . ." The application of the provincial adoption

³² *Supra*, note 28.

³³ The native women's organizations showed more interest in the issue although none of those organizations became involved in any way in either the *Nelson* or *Natural Parents* cases. Some information on the activities of the native women's organizations around this issue is found in Sanders, *supra*, note 18, chapter 4.

³⁴ Gene Elmore, Sharon Clark, Sharon Dick, *A Survey of Adoption and Child Welfare Services to Indians of B.C.*, February 18, 1974, unpublished.

³⁵ See, Gibson, *A Small and Charming World* (Collins, 1972) at 56, 57, and 61 for an account of the establishment of one such home.

law to Indian children made it possible for them to have the "same right to become adopted as that of all other children in the province." The best statement of the values of cultural survival and equality or integration came in the judgment of Mr. Justice Matas of the Manitoba Court of Appeal in the *Nelson* case:

As part of the argument as to deprivation of status and consequential invalidity of the Act as it affects Indians, it was said that placing an Indian child in a non-Indian home would weaken or sever the child's ties with his culture and heritage and would create problems of identity for the children. To support this submission counsel relied on the affidavits of Mr. Nelson and that of Jocelyn Bruyere.

The questions raised in these affidavits were not explored in depth, nor was it suggested that Indian children in non-Indian foster or adoptive homes were in a different position than any Indian children living in a non-Indian environment generally.

As well, the opinions expressed by Nelson and Bruyere are not universally shared. For example, by agreement between Canada and Manitoba, provincial child care services have been made available to Indians, as defined in the agreement. The Rousseau River band (of which applicants and their children are members) expressed its views about the society's program, in a resolution passed by the band council on 29th July 1964. By that resolution the council expressed its agreement with the society entering its program onto the Rousseau River reserve for the benefit of band members and agreed to support the program, to promote its acceptance and work in liaison with the society.

The logical result of the applicants' argument would be to deprive Indian children of the opportunities which non-Indian children have in Manitoba for the full range of child care services.

In my opinion, this aspect of appellants' argument does not warrant declaring the provincial legislation to be *ultra vires* as it affects Indians.⁸⁶

The technical character of the issues argued in the *Natural Parents* case did not correspond well to the issues as they would have been perceived by Indian people or by provincial child welfare officials. While the decision must be treated as correct for both legal and administrative reasons, it retains a somewhat unreal character. In the end, little light is shed on the technical issues around which the Supreme Court judgments focus. Additionally, those issues are isolated from the political and social realities behind the litigation.

⁸⁶ *Supra*, note 28 at 50-51.