PROVINCE OF NEWFOUNDLAND AND LABRADOR

LABOUR RELATIONS AGENCY

REPORT OF THE INDUSTRIAL INQUIRY COMMISSION

In a Matter Between

VALE NEWFOUNDLAND & LABRADOR LIMITED (VALE)

- and –

UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY,
ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION
(UNITED STEELWORKERS), LOCAL 9508

FINAL REPORT

MAY 11, 2011

Preamble

This second Report follows an earlier Report submitted to Government (the "December Report"). That Report dealt with Issues 1 and 6 of the Commission's Terms of Reference, matters which required comment upon and analysis of the details of the collective bargaining dispute between Vale and USW (referred to within this Report as either the 'Parties' or the 'Disputing Parties' as the context may require), together with the Commission's recommendations for resolution of that dispute. The recommendations were not accepted by the Employer and the strike continued.

Following submission of the December Report, Vale and USW met again in direct contract negotiations, with the assistance of mediator William Wells, at Goose Bay, Labrador on January 5 and 6, 2011, but once again they were unable to find sufficient flexibility to achieve resolution of the dispute. The Parties decided to meet again on January 25 and 26. This time the negotiators were successful in reaching a tentative agreement which was subsequently ratified by USW membership. As of the date of this Report, the vast majority of workers have returned to the workplace at Voisey's Bay.

Thus, the strike of Vale employees at the Voisey's Bay site is finally over, more than 18 months from when it first began. This was a lengthy strike from any viewpoint. Strikes of such length are indicative of a failure in the collective bargaining process.

Factual Background

For those not familiar with the Voisey's Bay site, some understanding of the site characteristics and local cultural factors may be necessary.

A mine and a concentrator necessary for the extraction of minerals, together with the significant infrastructure required to support that operation, have been constructed at Voisey's Bay and the facility has been operated since about 2005. The site does not have road access and is not adjacent to any community. There is an open pit mine, a

concentrator, a port facility to allow large vessels to remove the milled material, an airstrip and the necessary accommodation to allow a fly in/fly out operation. Employees are flown to the site from various locations within the Province of Newfoundland and Labrador. The employees work at the site on a two-week rotational basis. The accommodation contains living space, recreational areas, medical facilities, and all of the elements necessary to support the workforce.

The mineral deposits in Labrador are located on land in the area which, but for their agreement to exclude them, may have been subject to claims by two aboriginal groups, the Labrador Innu and the Labrador Inuit. There is considerable reference in the December Report to the Impacts and Benefits Agreements (IBAs) which these aboriginal groups have signed with the Employer. While the Commission was unable to review the confidential documents, it was advised that the objectives of the IBAs are to provide both employment and financial benefits to those two aboriginal peoples in return for their exclusion of the Voisey’s Bay area from their land claims. The Commission was also advised that the IBA's contain hiring preferences with objectives of 50% aboriginal employment, but with a minimum of 25% employment. In addition, a number of companies with aboriginal investment have been formed and operate to support Vale’s mining operation. Service contracts have been signed with these aboriginal firms requiring them to provide various site services, security, air transportation, housekeeping and maintenance.

The USW was certified as bargaining unit for a group of Vale employees at Voisey’s Bay in 2005 and signed its first collective agreement in 2006.

Issues within the Inquiry`s Mandate

It is worthwhile to repeat the mandated Issues as contained within the Commission’s Terms of Reference. This Industrial Inquiry process was to determine:

1. *the positions of the parties in relation to the outstanding collective bargaining issues;*
2. *the factors which have led to the existing labour-management relations climate at the Voisey's Bay project site in Labrador and options to improve these relations;*
3. *the identification of local, provincial, national or international matters that may be contributing factors in this dispute;*
4. *a discussion of any impacts this dispute may be having on other labour-management relationships;*
5. *a discussion of the ramifications of this dispute, and its costs to the Province and the parties involved;*
6. *the options to resolve this dispute, including proposed terms of settlement, should the parties fail to conclude a collective agreement before the filing of the Commission's report; and,*
7. *other matters the Commission may deem appropriate.*

The December Report

The Commission's December Report to Government must speak for itself with regard to the Observations and Recommendations contained within it. Those comments have been made and cannot be expanded or qualified. It has come to the attention of the Commission, however, that certain minor factual errors may have been made in that Report, particularly with respect to the Disputing Parties' positions as then stated. The Commissioners have considered the extent of the errors and the context in which they appear. It is the Commission's view that such errors do not detract from or negate the Observations and Recommendations contained therein. That being said, however, it is worthwhile to correct those errors and put that record straight.

The necessary corrections are set out in Appendix 'A' to this Report.

In addition, at Page 41 of the December Report, the Commission speculated on various remedies which might become the subject of further discussion in the context of this

dispute. Those issues were included in the following comments made by the Commission:

> *A protracted strike such as this, with*
>
> *a) inflexibility shown by the parties' negotiating approaches, plus*
>
> *b) replacement workers readily available to work at a remote site far from the scrutiny of the public, and*
>
> *c) a small bargaining unit which can easily find financial support from the national union*
>
> *invites consideration of* ***such options as legislating employees back to work, legislating the terms of a new collective agreement, banning the use of replacement workers and limiting the right of workers to accept or reject a new contract to only those who are actively engaged in a strike***. (emphasis added)

It must be noted that the December Report was not released publicly until January 7, 2011, although the Disputing Parties did have it somewhat earlier. The impact of the above statements from the Commission, together with the timing of the release of the December Report and the Christmas holiday season which intervened, resulted in the Commission deciding to invite additional comment from the Disputing Parties on those concepts, in order to give them a reasonable opportunity to have input.

The Remaining Broader Issues

This Report deals principally with broader issues which arise from the now-resolved dispute between Vale and the USW. Following the release of the December Report, the Commission's focus became that of acquiring sufficient information to allow it to make findings on Issues 2, 3, 4 and 5 plus, if appropriate, Issue 7.

Public engagement was invited through notices placed in the following newspapers widely circulated within the Province during December 2010:

The Telegram	The Norwester	The Packet
The Coaster	The Southern Gazette	The Beacon
The Charter	The Advertiser	The Georgian
The Gulf News	The Compass	The Northern Pen
The Pilot		

Public input was required by January 7, 2011. As of that date, the Commission had received a submission from each of the following entities (with their abbreviated names shown in italics for future reference):

- Newfoundland and Labrador Federation of Labour (*Federation of Labour*)
- Canadian Union of Public Employees (*CUPE*)
- Newfoundland and Labrador Chamber of Mineral Resources Inc. (*Mineral Chamber)*
- Canadian Manufacturers and Exporters Newfoundland and Labrador (*CME*)
- Newfoundland and Labrador Employers' Council (*Employers*' *Council*)
- St. John's Board of Trade (*Board of Trade*)
- Newfoundland and Labrador Business Coalition (*Business Coalition*)

The complete written briefs of each of these organizations have been reviewed by the Commissioners and have been submitted to Government. They may also be referred to or quoted from within this Report in the context of the various issues within the mandate of the Commission. Some groups directed their attention to most issues, some only to subject matters that were of particular interest to them. Since the excerpts and references that follow are only intended to convey an overall flavour of the comments received and are not intended to be comprehensive or exhaustive, the Commission urges readers to review the submissions in their entirety which are available through the following Government website: http://gov.nl.ca/LRA/voisey_bay.html

Because each of the organizations represents a particular interest group in the labour and employment field, and not the public interest generally, they will be referred to collectively within this Report as the "Interest Groups".

There were no representations from individual members of the public.

The Interest Groups were also invited to make further comment on the possible remedies identified on page 41 of the December Report, because the release of that Report on January 7, 2011 was the same date on which the initial responses from the Interest Groups were due.

Finally, Vale and the USW made extensive written submissions on all issues to the Commission which submissions will be referred to from time to time. Once again, brevity within this Report requires that only cursory references be made, but each party submitted briefs which fully outlined their positions. The Commission also conducted a full-day private meeting with each of the Parties to allow the Commission and the Party to explore issues in a less formal environment.

Issue 1: The positions of the parties in relation to the outstanding collective bargaining issues.

The Commission is satisfied that Issue 1 was adequately dealt with in the December Report. Subject only to correction of the minor errors referred to above, the Commission has no further comments on this Issue. In any event, because the Parties have resolved their differences by the signing of a new collective agreement, any further comment on their negotiating positions at one point in time would be of little purpose or effect.

Issue 2: The factors that have led to the existing labour-management relations climate at the Voisey's Bay project site in Labrador and options to improve these relations.

This question, which calls upon the Commission to both determine an existing labour relations climate and suggest options to improve it, presupposes the existence of a poor environment at the site, a presumption that is perhaps easy to assume, given the fact that this bargaining unit has resorted to strike action both times in the negotiation of its first two collective agreements and given the length of the most recent strike.

In the ordinary course of events when employees are performing their normal duties at their workplace, perhaps the best way to measure a labour relations climate would be to send investigators into the workplace to speak to and observe workers and management personnel. Candid interviews of employees and their managers, together with an inspection of how the work is being performed in the workplace, are often the best ways to obtain insights into how the two sides interact in the workplace. But that was not possible when, during the currency of this strike, temporary replacement workers were performing the work. Even now that the regular workforce has returned, the Commission believes it would not be able to obtain an untarnished view of normal workplace climate as the result of the continuing feelings of unease on both sides generated by the lengthy strike. Those investigative tools are not available to this Commission at this time.

In order to attempt an objective and independent determination as to whether a difficult climate existed even prior to the strike, the Commission sought other sources. A review of applications made to the Labour Relations Board is one such source. Since the declaration of Vale as the successor to Voisey's Bay Nickel Company (Inco) in 2007, the limited activity cannot be considered as indicative of any pattern. Of some limited interest are complaints of unfair labour practice in 2009 and 2010 (they have been withdrawn as a part of the recent settlement of the collective agreement dispute), a successful application for revocation of certification for a bargaining unit of

clerical/office employees at Vale's Labrador project in 2010, where USW had been the bargaining agent, and a granted application by USW for access to the remote site during the strike. Some recourse to Board activity during a difficult strike is not unexpected. These activities at the Labour Relations Board do not show a clear pattern of a difficult relationship before the strike commenced.

One can also sometimes obtain insights by looking at the number of grievances filed over a period of time and how they were processed. A high number of grievances filed, long delays in processing and many going through all steps culminating in arbitration might also demonstrate a poor labour relations environment. In this case, the record reveals a total of 2 grievances filed by employees in 2006, 6 filed in 2007, 10 filed in 2008 and 5 filed in 2009 prior to the strike which began midway through that year. These grievances cover a myriad of personnel issues and complaints; many were either resolved at the supervisory level or were not pursued by the Union, and only 4 of the total of 23 grievances proceeded to arbitration. The number of grievances is indicative of some level of dissatisfaction, but not necessarily a high level. There is no pattern of behavior or systemic difficulty displayed through these grievances. The USW now complains that it has many unresolved employee complaints, but cannot file grievances because of the lack of protective language in the Collective Agreement. It is difficult for an independent Commission to draw conclusions on labour relations climate arising from a union's inability to negotiate strong collective agreement language. Unfiled grievances are not measurable.

Every workplace in this Province is required to have an occupational health and safety (OHS) Committee made up of both management and employees, including bargaining unit members chosen through the union where a union is in place. A review of the minutes of meetings from the OHS Committee at the workplace might also provide insights on how the two sides deal with one another. The Commission has obtained from the Workplace, Health and Safety and Compensation Commission (WHSCC) copies of the minutes of the OHS Committee for Vale at the Voisey's Bay site. There appears to be no indication that the parties have not been dealing normally with one another in the

context of this workplace. These minutes do not disclose a difficult labour relations environment, even if one did exist.

And so the Commission turned to the Disputing Parties for their perspectives on the health of their relationship and as well to the Interest Groups for their comments.

The Disputing Parties

Vale: The Employer disagrees with the negative inference made to the relationship as contained in the wording of the Terms of Reference. It describes the overall relationship with the Union as a "positive one, notwithstanding the recent strike". It cites the fact that the settlement was unanimously recommended by the USW bargaining committee and the fact that it was "endorsed by the vast majority of the membership" as some evidence of a positive tone. In the Commission's final meeting with the Employer on March 8, 2011, Vale representatives advised that all but seven of the approximately 130 original employees had returned to the workplace following orientation processes. Vale stated that the return to work protocol was leading to an orderly resumption of working activities at the site. It explains that, in the long relationship involving Vale and its predecessor, Inco, there have been many strikes, some long and some short, but that those interruptions should not be considered as evidence of an ongoing poor relationship between the working parties. While difficulties often arose involving contract disputes, during normal workplace intervals it felt that all was normal. Vale's Director of Employee and Industrial Relations for Canadian operations stated that, in his view, most issues at Voisey's Bay were being resolved on a day-to-day basis; he was not aware that there was any negative undercurrent about how workplace disputes were being resolved.

In its final written submission to the Commission, Vale states that, if the USW abandons its "anti-Vale campaign", the Employer's relationship with the Union could be fostered and improved by such options as: a) the creation of a Labour-Management Cooperation Committee, meeting periodically to discuss matters of mutual interest; b) a Relationships

by Objectives ('RBO') Program convened by the Labour Relations Agency; c) the creation of a workplace-wide multi-employer OHS Committee; and d) an Interest Based Negotiations ('IBN') process for the next round of collective bargaining between the Parties. The Employer also believes there already are adequate resources within the existing legislative framework to assist the Parties in developing a better relationship.

USW: The Union has an entirely different view of the workplace environment. In its written submission, the USW explains that it believes that the Employer's attempt to "limit and restrict" the authority of the Union was evident even before the strike began and was generated by Vale's expressed desire to "align" the terms of employment of its Canadian employees with those in the rest of the world, an objective which it attributes to a reference made publicly by Vale's Canadian CEO. In the Commission's meeting with USW representative on February 18, 2011, USW's Director for Ontario and Atlantic Canada stated that it was clear to the Union that Vale's philosophy was that management was to run the business operation and that there was no real "relationship" with the Union. The USW believes that Vale's view of the Union's role in the workplace was to be there to help solve employee disputes, but otherwise, to "go away". The Union felt that even the return to work protocol was being extended more than was necessary by the Employer in its attempt to once again oppress the workforce. From the Union's perspective, there was clearly an ongoing difficulty in their working relationship with the Employer.

The USW local President described his efforts during the currency of the previous collective agreement to convince local management of the merits of a joint OHS Committee covering all employers and employees on site. He felt that Vale's rejection of this initiative was further evidence of its lack of desire to have a constructive relationship.

In its final written submission, the USW seeks additional legislative structures to help in its relationship-building process. Because there would appear to be no Canadian precedent for statutory enactments designed to promote good labour-management relations between employers and unions, the USW urges this Commission to consider

recommending to Government that it seek further submissions from labour and management groups within this Province about "*appropriate statutory models for developing and managing healthy workplace relationships.*"

The Interest Groups

Many of those Groups who made submissions had no comment on this Issue 2, leaving it to the Disputing Parties and the Commission to determine those factors. However, two Groups did make comment.

The Federation of Labour offered that certain actions of an employer could lead to a damaged labour-management relationship. The Federation believes that Vale's use of replacement workers here, its request in bargaining for concessions (a change in the 'Nickel Bonus' system) and the use of lawsuits against workers and union representatives have all *"contributed to what can, at best, be described as a severely damaged labour-management relationship. The fact that the strike lingered past the one-year mark before the provincial government acted to appoint an outside mediator allowed for the dysfunctional relationship to worsen."*

The Employers' Council places the blame at the Union's feet when it states that "*the United Steelworkers have publicly opposed foreign ownership of resources and are active in the anti-globalization effort………The United Steelworkers Union has also been forging relationships with other international unions representing Vale employees………In addition, throughout the current labour dispute the United Steelworkers Union has criticized Vale publicly……… The (Employers Council) contends that these factors must have, and continue to, contribute significantly to the labour-management relations climate at the Voisey's Bay site."*

Commission's Commentary on Issue 2:

1. **Factors:**

On a basic view, one can easily conclude that, if both parties do not share in a common view that their relationship is positive and working well, then there is a problem. It takes two parties both working cooperatively to make a good collective bargaining relationship perform as it should. There are natural stresses and strains which will arise in any working relationship, which is why dispute resolution mechanisms like grievance processes are in place, mandated by legislation.

There is, however, more to maintaining a collective bargaining relationship than having ways to resolve differences. To have a good relationship one must not only want it, but build and nurture it with effective two-way communication. Waiting until a dispute arises to find out how the workplace is behaving is not sufficient. Creating ways to ensure a good dialogue is necessary. It is the Commission's view that both Parties have failed to put the ingredients in place to ensure a good working environment at Voisey's Bay.

A tribunal such as this Inquiry can only infer the root causes of a strained relationship from the symptoms that are observed by it.

One such symptom which was observed was the contrast between the Union's tabled position seeking a full-time paid officer to conduct Union business at the Voisey's Bay site and the Employer's resistance to it on the one hand, and Vale's view on the other hand (as elicited during the Commission's meetings with them) as to how it would interact with the Union during the course of the Collective Agreement.

The Union sees the need to have its President or other local representative free from other working duties, without losing normal pay, to allow that officer time to deal with its members and all the employers at the Voisey's Bay workplace on a wide variety of issues. A consequence of that, it could be argued, would be that Vale would pay for the Union officer to be able to engage with the other employers as well, all at Vale's expense. That may be the cost and the natural consequence of Vale's decision to engage multiple contractors to perform some of the enterprise's necessary activities.

The Employer appeared to see its interaction with the Union as being primarily focused on resolving disputes arising from the application or administration of the collective agreement. It resisted the Union's proposal despite the urging of this Commission (in its December Report) to consider this as a valuable relationship-building option. Vale explained to the Commissioners its resistance on the basis that for it to contribute to the pay of a Union official at the workplace would constitute an improper interference with union independence. This argument is not one which has any support in Canadian labour law. Vale obviously saw no benefit to the relationship-building aspect of the proposal.

Another symptom manifested itself in the Parties' dealings on the contracting out issue. The Union expected to be able to work out this 'irritant' with management, even though the Collective Agreement did not contain language which significantly restricted the Employer in its ability to contract out work. Vale for its part did not respond favourably to resolving the matter during the term of the old agreement. In the new Collective Agreement, it held out for the existing non-restrictive language, adding one additional sentence regarding layoffs, which appears to add little to the existing language, together with a new forum for discussion, which may be helpful.

The Inquiry is left with the sense that the Union sees the relationship with the Employer as continuing with horizons beyond the language of the Collective Agreement, whereas the Employer sees the focus of its relationship with the Union as being the Collective Agreement, its negotiation and application through the grievance process as their only focus of interaction. While neither view is necessarily more legitimate than the other, the trend of federal and provincial regulation and the prevailing thought in Canadian labour relations philosophy is towards an engaged relationship during the term of a collective agreement.

Where there are diverse expectations of the relationship, there will inevitably be unhealthy tension in that relationship. A positive labour relations climate must be premised upon some common view of the function of the relationship. That common view has not existed at Voisey's Bay. In the context of those diverse expectations, there

are additional factors that have in the Commission's view come into play. Whether they are causes or symptoms of the strained relationship is often more difficult to determine.

a) Vale's Role as Dominant Employer

Vale as the lead Employer in Voisey's Bay implicitly, if not explicitly, sets the pace and limits for the course of labour relations at the site, and it understandably considers itself as the controlling entity there. However, there are also a number of other employers working together with and for Vale at the mine and mill site. Workers with subcontracted entities associated with aboriginal investment (see further details of these entities in Issue 4 below) such as Labrador Catering, Torngait Services, ASC Innu Security and Ushitau Maintenance, together with companies unrelated to the aboriginal communities (for example, Toromont Cat which provides some maintenance to the heavy equipment which is used in the mine) all work side-by-side with Vale employees in the workplace. These employers have separate managers, reporting systems and ultimately separate OHS and other committees. Comprehensive communication of workplace safety concerns is not enabled by a joint or multi-employer committee structure.

When asked by the Commission if it had considered creating a joint OHS committee for all employers working at Voisey's Bay, Vale initially could not understand why it would be important for such joint meetings; in fact, it had not even considered the possibility. It viewed all employers as being separate for all employment purposes. That multiple employment relationships may exist in one workplace does not mean that there cannot be cooperation and coordination on the many common issues among all the employers and employees at the site. Safety is one example of a common objective that can be fostered by full and open communication involving all parties. Multi-party discussion on how work at the site is shared between multiple employers might also avoid conflict between all the parties about jurisdiction over work. One example might be the ongoing difficulties involving outside contractors, like Toromont Cat, whose employees work on Vale's equipment, while Vale's employees as represented by the USW believe that it is their right to perform such work.

In its final meeting with to the Commissioners, Vale did acknowledge that the joint committee approach was worth exploring as an initiative.

b) The Remote Workplace

In a remote site having 14-day turnarounds with groups of employee arriving and departing on a periodic basis, having a permanent on-site union presence such as a paid union officer can be important to encouraging and maintaining good communication, not only between the union and its own membership, but also between the union and management. Having an employer assist financially in such a structure is not by any means a new concept in Canadian industrial relations. As has already been noted, the USW sought a paid leave provision for its local President in its negotiations on the new collective agreement. The Employer resisted such a benefit strenuously. Regrettably in the Commissioners' view, the final settlement in 2011 contained no provision of that sort. It appears to the Commission that the Employer saw such a benefit as "one-sided", that is, for the benefit of the USW and its membership only – hence its reluctance to agree to even sharing in the cost of the local President or some other paid union official. The Union relented on its demand for such a benefit, perhaps shortsightedly, given its own view of the unhealthy employer/union relationship at Voisey's Bay. In the end and for whatever reason, the USW dropped its demand in favour of other benefits for its membership.

The fact that Voisey's Bay is a remote worksite offers its own challenges to a good working relationship. Regular ongoing contact and communication on all aspects of the relationship is, for the Employer, the employees and the Union, more important in that environment while at the same time less easily achieved.

c) Limitations of Collective Agreement Language

The language of the former Collective Agreement did little to restrict the Employer's ability to contract out any portion of the work required at the site, as long as it was not done *"for the **sole** purpose of reducing the compliment of employees within the bargaining unit"* (emphasis added). The USW felt that it was unable to process to success any grievance alleging that any of the contracting out was done for the "sole"

purpose of reducing the size of its unit, but they clearly believed that it was having a negative impact of the bargaining unit. Vale believed that it was acting with full propriety when it retained contractors to do some of its required work.

The Parties believe they have made some progress on how they will deal with the problematic concern of contracting out activities that the Union considers to be work of the bargaining unit. Two new clauses have been added in Article 25 to the Collective Agreement to create a new joint committee to "discuss the use of contractors at the Voisey's Bay site". Some work performed by outside contractors from time to time is likely to be needed into the future, such as work which is dictated by warranties on the equipment. This work must often be done by factory-authorized personnel; but the Union is rightfully concerned that there be no erosion of work that it sees as work of the bargaining unit. An exchange of information on issues such as this one prior to finalizing decisions and implementing change is important to ensuring that both sides' legitimate interests are protected. That new dialogue can help to resolve irritants which are not necessarily problematic fact situations and can also promote a mutually beneficial means of operation. A lack of dialogue and information sharing will only foster and exacerbate the difficulties which have occurred in the past.

That being said, the USW has still not been able to obtain in this new Collective Agreement for its members at Voisey's Bay the kind of contract language which it has achieved for some of its other bargaining units outside the Voisey's Bay site. It is not surprising that the USW bargaining unit at Voisey's Bay finds this troubling. In reality, this is a manifestation of a power balance in this workplace that is unlike that existing in other workplaces where USW is certified.

d) A Multi-Employer Site

The existence of numerous contractors working toward a common objective at the Voisey's Bay worksite is a fact in itself that deserves further comment. While it is by no means unique to this project, the **existence** of separate contractors working in one small worksite brings with it additional challenges for all parties. Similarly, the **extent** to which

the work of the overall enterprise at Voisey's Bay is being performed by contractors brings with it even further challenges for all the parties. The right approach from a labour relations perspective would be for all of the parties on site to recognize that, while there may be a number of separate contracting entities working together, they are all engaged on one consolidated enterprise.

The concept of having a single or consolidated OHS committee for all on-site employers has not yet been implemented at Voisey's Bay. Why it has not been tried may be an indicator that there is not yet at this workplace the cooperation and coordination of effort which should prevail.

e) Challenges from Vale's Business Structure

The Employer has a small group of managers responsible for labour relations. There are two site supervisors called 'Human Resource Business Partners' who work on separate rotations at Voisey's Bay and are responsible for the day-to-day labour relations and human resources aspects of activities at the workplace. They interact with the Manager of Human Resources who is permanently posted to the St. John's office and visits the site only periodically, at best, monthly. Ensuring the flow of accurate and timely information from the site to management off-site is critical. Even one participant at the aboriginal meetings noted that there was "no one to talk to" since Vale took over from Inco, meaning that, in his view at least, there was an absence of sufficient senior management at the site.

While it is recognized that there are other management personnel working at Voisey's Bay, including a General Manager, Mine Manager, Mill Manager and other operational managers, their link to and interaction with the labour relations function is not at all clear.

In Vale's world, the role of the labour relations function is not at all prominent and, in the Commission's view, resides in somewhat of a silo. It appears to be segregated from and subordinate to the operations function. In all of the proceedings of this Inquiry, no person from the operations side of the business ever accompanied the human resources and labour relations personnel.

f) Challenges from USW's Staffing and Structure

The Union has its own internal challenges arising from its choice of business structure. The head of the local is the President, in effect a volunteer, who works onsite on the 14-day turnaround and thus is only at the workplace for a maximum of one-half of the time that the site is operating. The President is also off-duty and is entitled to a rest period and some sleep for at least part of the time he is actually at the site. There is also a Vice-President who can provide back-up, especially if that employee is on the other rotation. They are both only able to be engaged part-time in their union duties as they are both working employees of Vale. During their 12 hours off-work, both of those individuals have to clean up, eat and sleep, as well perform their union duties, before their next working day begins. There is little free time available for union duties in that cycle.

These local officials are supported by the USW's Staff Representative who works from and lives in the island portion of the Province. He also has responsibilities for many other USW organized workplaces in the Province. His visits to Voisey's Bay are important to providing support to the local, yet those visits occur only quarterly. And of course he must then gain access to the site with the permission of the Employer because an employer-sponsored flight into the workplace is the only method of access. One can understand in that factual context why the Union sought some additional leave privileges for its President in the last round of collective bargaining. Even though there is not a large workforce, in this remote and new working environment for many workers, having infrequent support for the bargaining unit may not be sufficient. Based on the current contract language, a larger investment of time and money from the USW may be the only way for it to ensure that its members at Voisey's Bay are adequately informed and represented.

g) The Long Labour Relations History

In the broader context, there is a considerable evidence of a sometimes difficult relationship between the Disputing Parties who have nationally known one another (through Vale`s predecessor, Inco) for many decades in Ontario (Sudbury and Port

Colborne) and in Manitoba (Thompson). A review of the history of strikes between Vale/Inco and the USW in Canada is quite instructive.

Sudbury, Ontario		**Manitoba**		**Labrador**	
Year	**Duration**	**Year**	**Duration**	**Year**	**Duration**
1966	24 days	1964	4 weeks	2006	9 weeks
1969	128 days	1981	13 weeks	2009	18 months
1975	10 days	1986	2 weeks		
1978/79	261 days	1996	12 weeks		
1982	32 days				
1967	26 days				
2003	89 days				
2007	1 day				
2009	257 days				

Put into the context of this history of sometimes lengthy disputes, it is perhaps understandable that there might be some spillover of ill-feeling, or at least a heightened level of tension, in the local region and in local relationships. The Parties' own relationship at this site has already created the opportunity for two strikes within a short period of time. These collective bargaining parties (the Employer and the Union) are not new to one another, even though many of the local membership might be new to the processes of collective bargaining. In that setting, more extensive dialogue must occur between the Union and its membership so that Labrador workers are aware that resolution of their issues are impacted, both positively and negatively, by the long-term relationship between the Parties.

2. Options to Improve Their Relationship

Thus, the options to improve relations for these Parties are a myriad of necessary efforts and changes which will not happen overnight. Because of all of the above factors, there is not a single 'quick fix' for them. Their relationship is clearly strained; it suffers from two

fundamentally different visions as to their respective rolls and functions; it has perhaps grown from a fractured history that predates the current players; it is challenged by the difficulties presented by local geography; it is challenged by its own brief and disrupted experiences in bargaining. Additional resources will have to be invested by both sides, but most importantly, an attitude change is necessary. Attitudes can change if opportunities for change are created. The Parties are 'partners' in this business venture in the broadest sense of that word. They must learn to respect and value each other's role. They are both sophisticated in labour relations and should be aware of the benefits of third party intervention, such as advice on mediation and relationships as is offered by the Labour Relations Agency. They know how to make it happen.

Both sides need to have more frequent interaction at all management and operational levels to ensure that everyone is aware of the issues and problems which may be developing. The bargaining unit needs to be able to act as a 'collective' and the Employer must recognize and respect that fact, as well as the communication consequences that flow from it. The Parties are not 'engaged' in their relationship here. At the current time, it seems that, from what the Commission has learned from the Parties, the only employer/union communication which happens at the site is that which arises from a problem which has already developed, usually a grievance. Identifying issues before they erupt, talking to one another about the challenges as they arise and finding solutions before conflict arises are the keys to achieving a peaceful and healthy workplace relationship.

Finally, Vale's organizational philosophy which does not integrate the labour relations function sufficiently with the operations function will continue to create difficulties for them if not changed. The USW's level of support and guidance for this remote bargaining unit must also change. These two features are small but are also vital ingredients to improving the overall labour-management climate at Voisey's Bay.

Issue 3: The identification of local, provincial, national or international matters that may be contributing factors in this dispute.

The Commission initially sought direction from the Parties and asked them to identify the matters that each of them believes are contributing factors.

1. Local Factors

The Disputing Parties

Vale: The Employer submits that the geographic dispersal of striking workers is a local factor which affected the strike. Geographic dispersal creates various impacts, including the fact that it is extremely difficult for the union leadership to be accountable among a widely-dispersed membership which has been described as “relatively inexperienced in labour relations matters”. Communication, the Employer says, is less effective and the picketing activities were severely and adversely affected as a result of that geographic dispersal. The Employer also suggests that the higher level of compensation available to striking members here (some strikers were working elsewhere and not entitled to receive strike pay, with the result those not working were able to receive larger strike pay) reduced the normal incentive to conclude a collective agreement on a timely basis. Finally, the Employer asserts that the Union’s course of conduct during collective bargaining, including the Union's ability to take a strike vote and commence the strike, without presenting to the membership its offer to the Company, effectively contributed to a lengthening of the strike.

In its final submission, Vale acknowledges and adds that the Union’s picketing ability was “severely diminished” as the result of the geographic challenges of the strike site, ie, the entrance to the air force base at Goose Bay. It also adds, without elaboration, that *“(p)icketing at a remote site raises serious safety concerns as well as logistical problems in that striking workers could not be accommodated, facilitated or transported”.*

USW: The Union offers two local factors that in its view have contributed to the strike: 1. the solidarity and resolve of the membership to obtain its bargaining objectives

and its support of the bargaining committee; and 2. its inability to effectively communicate and persuade others from dealing with the Employer because of the lack of access to picketing at the remote Voisey's Bay worksite.

In its final submissions, the USW offers the comment that "*where an employer is seeking concessions and a membership is united and committed to resisting them, long strikes can result.*" At the same time it speculates that, had a mechanism for resolving the strike earlier been accessible (presumably a reference to remedial legislation offering compulsory binding arbitration), the strike may have ended earlier.

The Interest Groups

Only the two labour-focused organizations identified in their submissions any local factors affecting the dispute.

The Federation of Labour has identified the remote nature of the Voisey's Bay worksite as a contributing factor. *"The fact that the mining corporation could easily transport replacement workers into the remote site without having to physically cross the USW's picket line, set up in the community of Happy Valley-Goose Bay, was just another card stacked in favour of the company."*

CUPE, relying on information from a Government website, said: *"The mine site is supplied by air and sea. Workers at Voisey's Bay are flown in from other communities in the province and reside at a work camp while onsite. There are no current plans to build a permanent settlement at Voisey."* and at paragraph 59: *"The isolated nature of the facility meant it was very difficult to engage in effective picketing or garner community support"*

2. Provincial Factors

The Disputing Parties

Vale: The absence of certain features in the *Labour Relations Act* was also a contributing factor to the lengthy strike, according to the Employer. The lack of ‘final offer vote’ provisions, the lack of expedited Labour Relations Board processes and remedial authority were cited as two examples. In addition, the labour movement’s provincial legislative agenda was seen as an adverse factor. The proposed advancement by USW of such principles as anti-replacement worker legislation and binding interest arbitration, together with the return to a "card-based certification process" in this Province, were also identified by the Employer as provincial factors aggravating the labour dispute.

In its final submissions, Vale simply expanded upon the various issues noted above. Without citing them as recommendations, it is clear that the Employer requests that the Commission not respond to any of the union movement’s agenda for legislative change. Vale does advance its own desire to see a legislative mechanism that would require a union to present the employer’s final offer as a proposal for settlement at some stage in a dispute.

USW: Many factors are offered by the Union: 1. the failure of *the Labour Relations Act* to allow ready access to the worksite for picketing, the *Act’s* lack of anti-replacement worker provisions and the *Act’s* lack of authority to impose interest arbitration to settle lengthy strikes; 2. the need to restore card-based certification processes to improve the labour relations climate after certification; and the need to have additional authority in an Industrial Inquiry Commission to settle strikes without the consent of the disputing parties.

The Union reiterated in its final submissions the two points raised in the preceding paragraph, but also added that the suggested solution (from page 41 of the Commission’s December Report) of banning striking workers from working elsewhere during a strike had not been the subject of much academic literature and had not been instituted anywhere else in Canada. The USW submitted that the Commission should recommend

to Government that it introduce legislation a) prohibiting the use of replacement workers and b) providing measures in which difficult disputes could be submitted to final binding resolution mechanisms.

The Interest Groups

Most of the submissions raised the issue of replacement worker legislation and the need to either have it or avoid it, depending on the perspective of the Group

The Mineral Chamber, the CME, the Employers' Council, the Board of Trade and the Business Coalition all, not surprisingly given their employer focus, urge the Commission to avoid recommending the introduction of anti-replacement worker legislation in the Province, generally on the basis that it would upset the delicate balance of power between employers and trade unions, giving too much power to unions.

The submissions from the Federation of Labour and from CUPE both understandably urge the Commission to recommend the introduction of such legislation to the Provincial Government on the basis that the use of replacement workers, known to the union movement as 'scab labour', unduly prolongs strikes and enables employers to *"break the strike and if possible the union"*.

Other aspects of provincial legislative jurisdiction also came up for attention by the Interest Groups.

CUPE has suggested that this Province consider enacting legislation (or perhaps simply an amendment to our *Labour Relations Act)* similar to that in Manitoba where *"a union or an employer can apply for a mediator to assist in concluding any collective agreement if more than sixty (60) days has elapsed since a strike or lockout has commenced."*

The Employers' Council suggests that this Province should have 'final offer vote' legislation as it exists in many other provinces, where the employer has one (and one

only) opportunity to require a mandatory vote by the bargaining unit to either accept or reject the employer's 'final offer'. (That procedure should not be confused with the 'final offer **selection**' arbitration process mentioned in the Commission's December Report, where both sides would put a final offer to an arbitrator who then must choose one offer or the other in its entirely as the final resolution of the dispute.)

The Employers' Council also believes that the *"significant geographic disbursement*" within the province of Vale's workers may have led to poor communication between USW as bargaining agent and the workers, such that Council doubts "*the claim that the majority of striking workers still support the job action."*

3. National Factors

The Disputing Parties

Vale: The Employer cited two issues of national impact, namely, the Union's active participation in a national campaign to promote anti-replacement worker legislation and the Union's agenda to align the various bargaining units of the Employer across Canada. Both were identified as factors that contributed to the length of the strike.

In its final submissions, the Employer reiterated the Union's objective to obtain common expiry dates for the separate collective agreements and suggested that the Union's duty to bargain in good faith with Vale may have been compromised by the USW linking its bargaining demands to those of other bargaining units. No suggestions on how the Commission might improve or change this factor were offered.

USW: The key national factor in the view of the USW is that the *Investment Canada Act,* federal legislation regulating the terms under which foreign investors can acquire business interests in Canada, does not impose sufficient terms to ensure the 'net benefits' to Canada effectively protect and advance employment benefits and relationships.

In its final submissions, the Union confronts the Employer's suggestion, made clear in the Commission's meeting with the Employer, that the USW had a national "anti-Vale campaign" and that this campaign, as opposed to the Labrador workers' desires, led to the long strike. In essence, USW denies the logic of Vale's position and points to the inconsistency between alleged purpose and adopted measures. The USW asks, for example, that if the strike was intended to support the Ontario bargaining units, why it had not ceased when those units settled. There were no suggestions on how this issue should be addressed by the Commission.

The Interest Groups

The Mineral Chamber believes and states that *"labour demand in the resource sector in Newfoundland and Labrador, as well as throughout Canada is such that striking workers with marketable skills can readily find alternative employment while a strike is in progress, thereby reducing the urgency to seek a solution to the dispute."*

The CME offers that *"The situation at Voisey's Bay is not being driven solely by local labour relations issues; rather it is the result of an orchestrated campaign on the part of USW to link in with the now-settled Ontario labour dispute and in their words – 'Bring Vale to its knees'."*

The Employer's Council identifies the national issue this way: *"The striking workers at Voisey's Bay are part of the United Steelworkers Union's national campaign for anti-replacement worker legislation…This is a union political strategy in which individuals at*

the local level are being used as leverage in a national issue, potentially without their knowledge or support."

The Board of Trade has a similar view, expressed in its brief: "*While there may be some strategic decisions made locally in consultation or collaboration with international entities, the fundamental issue is provincial and national: what should the legislative environment be with respect to replacement workers."*

For its part, the Federation of Labour, in a section entitled *"National Factors – Foreign Investment with Little Net Benefit form Canadians"* offers the view that: *"The rules governing foreign investment in Canada is another factor that should be considered by this Inquiry"*, and that "*….in the face of rampant globalization, Canada, many have argued, needs more tools to regulate foreign investment, to make sure that it helps our economy rather than hollowing it out. The current Canada Investment Act does not do this."*

4. International Factors

The Disputing Parties

Vale: The Employer identified two activities of the USW that it believed had international character. The Union's participation in the anti-globalization movement by the labour movement and the USW's anti-Vale campaign, attacking the Employer as a "Brazilian mining giant" throughout the dispute were both characterized as being contributing factors to the lengthy dispute.

These two factors were simply restated in the Employer's final submissions, without recommendations.

USW: The Union suggests two factors of an international nature: 1. the ability of Vale as a multinational company to continue production elsewhere in the world during the strike, thereby eliminating financial hardship to the Employer during the strike, and 2.

Vale's expressed desire, through the words of its CEO, to weaken the USW and the collective agreement through the strike process.

In its final submissions, the USW restated the two factors above that it had identified as international issues affecting the strike, without comment on how the Commission might effect improvement.

The Interest Groups

The Mineral Chamber has offered the suggestion that "*globalization of the resource sector has begun to pit large international sector unions……against large transnational companies. Both have sufficient resources to engage in a protracted labour dispute"*.

The Employer's Council submits in a similar vein that *"The globalization trend in business is forcing all unions to demonstrate to their membership and potential membership that unions are still relevant and valuable"*.

The Board of Trade's submission on page 1 comments that *"while both labour and management in this case have local organization, representation and leadership, both are part of a larger picture. The employer is part of a global organization and the union is affiliated with an international labour group."*

The Federation of Labour opens its detailed brief on the subject saying *"Trade unions throughout the world have decried and fought back against the erosion of workers' rights under globalization, viewed as a race-to-the-bottom economic system that is arguably at the root of the latest planet wide financial and economic crisis."*

CUPE, under the subject of "Globalization", sees the problem as being one-sided only when it notes*: "The Province could use its powers over labour legislation to attempt to restore the balance between a small group of employees in a certified bargaining unit in one work site in the Province dealing with one of the largest corporations in the world."*

Commission's Commentary on Issue 3:

This Issue directs the Commission to identify factors contributing to the strike, being focused on or originating from one of four geographic areas – local, (which we interpret to be the Labrador region of this Province), provincial, national or international. While it is the Commissioners' belief that some of the factors discussed below may have overlap from one area into the other, they will be discussed in terms of the region which has the closest connection, identifying the overlap into the other area. Some of these matters do not easily fall into just one of the four categories.

1. Local Factors

a) Remoteness of the Voisey's Bay Site

It is without doubt that one of the most compelling factors which contributed to the length of the dispute was that fact that Voisey's Bay is a remote and isolated workplace. Within this single factor, there are a number of matters arising from the location of the mill and mine workplace in Voisey's Bay.

The fact that ready access to the site for individuals was only available through flights controlled by the Employer made it an easier location into which replacement workers could be brought without conflict, as well as a more difficult place to establish a picket line. The isolation of Voisey`s Bay has been detailed in the discussion under Issue 2 above and does not require restatement here. The remote location did contribute to the length of the strike in the Commission's view. The Employer's decision to bring in replacement workers would have been more difficult to implement had the site been in the middle of an established community. At the same time, the Union's picket line as a means of peaceful persuasion was rendered ineffective because the Union could not picket at the remote site, rather they had to form their line outside the airport in Happy Valley-Goose Bay from which airport flights to Voisey's Bay were dispatched.

Individuals doing business with Vale simply did not have to confront or be confronted by Union members at the Employer`s place of business or operations. Replacement workers who chose to do the work of the strikers were effectively able to do so without crossing a picket line, a circumstance which is not usual. Thus, some of the ordinary and expected effects of a strike did not exist at Voisey`s Bay.

This remote site operates on a 24/7 basis, where only one-quarter of the entire workforce is available for a Union meeting at any one time, because the other rotation of 50% are away from the site and approximately 25% of the workforce (one-half of those on site) is actively working at any one time. Thus only the 25% who are 'at rest' would be available for a Union meeting. This would create challenges for the Union in development of local leadership and consensus building among the membership. There is no opportunity for all members of the bargaining unit to meet together, challenge each other, discuss and decide on collective issues. Once again, this issue was explored somewhat by this Commission in Issue 2 above. It is sufficient to say that this characteristic of the workplace would have slowed the communication process for the Union and may have impacted the strike by not allowing an environment where lively discussion among members could ensue. A bargaining unit able to meet fully would then become more cohesive in its position, following which the employer should have a better understanding of the real issues to which it must respond. The model upon which the labour relations world is developed assumes that a dialogue is to happen. It is difficult to believe that it happened here.

In a location such as northern Labrador, where none of the customers of the Employer are resident, where there is no community demand for the product and where there is little visibility of the site for both media and members of the public, the expected economic and social pressures on an employer and a union to settle a strike did not come into play. Even managers having to cross a picket line is an aspect of the normal model and, because co-workers want to `get along` with one another, crossing a picket line is uncomfortable Public expressions of support for or disagreement with the workers are another normal attribute. Compare for example the Purity products labour dispute in St. John's which also occurred during 2010. There, where customers were deprived of

access to the familiar products once supplies ran out, where competitors were able to substitute their products for those of the employer, and where the public were able to see and respond to the picket line and boarded up premises, daily either by driving by the building or watching coverage on television, the ordinary economic forces intended to arise from a work stoppage clearly could come into play. For Vale and the USW, this site did not allow those and other forces to be present.

b) The Aboriginal Community

The presence of aboriginal employees and their communities in the Labrador context is another local factor which may have impacted and lengthened the dispute. The USW has a right and duty to represent a unit of Vale's employees at Voisey's Bay in their employment relationship. At the same time, the Innu and Inuit groups each have a superseding agreement, an IBA, which gives their membership employment preferences at Voisey's Bay. There are aboriginal employment targets in these agreements which Vale (and its contractors) must maintain. A significant number of unionized employees at the site are aboriginal. Vale states publicly that the majority of workers at the site are aboriginal, but that statistic may include workers for the aboriginal subcontractors as well. There is a substantial variation in the level of experience and familiarity with collective labour relations among aboriginal workers. Although some aboriginal members on the Union's bargaining committee are more experienced with collective bargaining principles, others found themselves on a steep learning curve.

This variability in familiarity with the process would be a complicating factor in this dispute, but the Inquiry was unable to determine the extent to which it may have affected the strike.

Before the strike, the aboriginal communities were unhappy with the level and type of employment achieved by their membership, even though it may have exceeded minimum IBA requirements. This concern predates the change in ownership and control from Inco to Vale. The project has not yet delivered what these communities expected in terms of higher status jobs and cultural respect in the workplace. It is for a Union much easier to

engage and hold unhappy workers in a lengthy strike than to engage and hold content workers in the same process. The aboriginal communities were unhappy and disappointed with both the Union and the Employer because of the adverse effect that the lengthy strike had on life in their communities and the social unrest that it generated. The December Report identifies some of those societal impacts. Perhaps their disappointment arose from perception or a misapprehension of their rights, but disappointment is a subjective, not objective feeling. It drove the aboriginal community view and it was unambiguous.

Collective bargaining values are new to aboriginal communities. Picketing by some workers, other workers crossing picket lines and replacement workers who sometimes were family members of the picketers all created stresses in the close-knit native communities of Labrador. They were not ready for the inevitable consequences of a long strike.

The lack of familiarity with collective bargaining and the difficulties the remote site posed for effective Union meetings may go some way in explaining why the disappointment in the aboriginal communities did not generate proposals from USW to change the Collective Agreement to address that disappointment.

The Commissioners were able to see the tension when, at Inquiry meetings in Labrador in December 2010, Innu and Inuit leaders were brought together with Employer and Union representatives to discuss impacts that the dispute was having on the aboriginal communities. Did the consequences of that meeting itself shorten or lengthen the strike? It is difficult to determine in hindsight, but the discussion clearly impacted all of the parties in the room.

2. Provincial Factors

c) High Industry Demand for Skilled Workers

In Newfoundland and Labrador there was during 2009 and 2010 a high demand for many construction and higher skilled trades. A significant number of the workers from Voisey's Bay who were on strike were able, because of the high demand skills they possessed (equipment operators, for example), to find alternate employment elsewhere in the Province to supplement their incomes. Some found that alternate employment elsewhere in Canada, which may make this a 'national' factor as well. Because those working elsewhere were not entitled to receive strike pay, it allowed the USW to consolidate its strike pay into a relatively larger fund from which it paid a smaller number of striking but non-working members. As a result, those remaining USW members each received a larger amount per employee than that which would have been paid if none of the workforce had been able to gain other employment. Although strike pay was significantly less than what each worker would have received from active work, it was large enough to allow workers' families to more readily finance at least the essentials of daily living. The larger strike pay may have lengthened the strike because less economic pressure would have been exerted on workers.

d) Union's Communication Challenges

Because workers at Voisey's Bay often come from remote communities in Labrador, and elsewhere in the island of Newfoundland, once they left the worksite following the commencement of the strike continuing contact with and direction from them would be a challenge for the USW. Compare that circumstance to one where all the workers live in the same community as the workplace or in neighbouring communities, as for example a fish plant, where calling the workers together to discuss ongoing issues arising from the dispute would be an easy mechanism for union communication. In this case, there was a core of workers from the Happy Valley–Goose Bay area, some came from communities along the Labrador coast and some from communities scattered throughout the island of Newfoundland. Communicating a consistent, uniform and timely message to them would not be easy, given the geography.

e) ***The Labour Relations Act***

This multi-faceted provincial factor requires a somewhat detailed discussion.

On November 25, 2008, USW gave Vale notice of its intention to commence bargaining for a renewal of the collective agreement between them. This action engaged the provisions of section 75(a) of the *Labour Relations Act* which states as follows:

> ***75.*** *Where a party to a collective agreement has given notice under section 73 to the other party to the agreement*
>
> *(a) the parties or their authorized representatives shall, without delay, and no later than 20 clear days after the notice was given or a further time that the parties may agree upon, meet and begin to bargain collectively* ***in good faith*** *and make a reasonable effort to conclude a renewal or revision of the agreement or a new collective agreement;* (emphasis added)

While the *Act* does not further define 'good faith', there is a substantial body of decisions from the Board which adopt the approaches to the meaning of the phrase from other Canadian labour relations boards. It can be fairly said that the expectations cast upon the parties by the legislation would be well understood by both the USW and Vale.

One year later, November 23, 2009, Vale filed a complaint with the Newfoundland and Labrador Labour Relations Board that USW had contravened section 75(a) of the *Act*. At a point in August-September 2010, the USW filed with the Board a reply to certain allegations by Vale which the USW asserted amounted, amongst other things, to a complaint by it that Vale had contravened section 75(a). These complaints remained unresolved as of the settlement of the dispute, on January 26, 2011 and, as a part of the Return to Work Agreement between the Parties, they each consented to the withdrawal of all matters before the Board.

In Canada, the legal relationship of employer and employee is not a solely private matter. As a matter of civil rights, the regulation of that relationship predominantly lies with the provinces. The federal government only exercises jurisdiction in this respect over a small part of the Canadian workforce employed in federal undertakings. As a matter of public policy, Canadian provinces have generally decided to provide that employees should have the right to aggregate in groups for the purposes of dealing with their employers on

terms and conditions of employment. The public policy corollary of this right on the part of employees is an obligation on the part of employers to deal with employees through collective organizations, namely trade unions. Since the passing of the *Canadian Charter of Rights and Freedoms* in 1982, these policy decisions have been held to engage the constitutionally protected rights of free speech and free association.

In Newfoundland and Labrador, the principal statutory manifestation of this policy decision, both prior to and after the *Charter*, is the *Labour Relations Act*. The *Act* not only contains these rights and obligations, it also includes a structure of processes and supports providing: i) a framework for the acquisition of the right to bargain as a collective, both the facilitation of that right and the constraints upon it, and ii) protections in the event that either the right or the constraints are not honoured. For example, employees, unions and employers are told how the right to bargain must be acquired, the minimum length of agreements arising from the exercise of the right, when they must bargain, what they cannot say to the other parties, that they must ask the state for assistance in the bargaining process, and what they cannot do to settle their differences during and after the term of an agreement. Prime among the instruments that the *Act* creates, in order to implement the policy, is an administrative tribunal called the Labour Relations Board.

It is evident that the state's interest in employee/employer relationships goes well beyond the idea that matters should not get out of hand and lead to dangerous conflicts, as we have sometimes seen historically, but that there should be an optimal functioning of the relationship. The legislative scheme is designed to support public goals reflecting the desire for a strong economy as well as a fair distribution of the benefits of the economy. The mechanisms provided by the *Labour Relations Act* are not simply a means to structure the inherent conflict between a trade union and an employer, or as one writer referred to it, "regulated industrial warfare"; they are also the means to achieve these public goals. The events of this dispute have put in question the adequacy of these mechanisms to cover all fact situations that may arise.

Unresolved complaints to the Labour Relations Board potentially have a number of effects. Firstly, they may distract a party which believes the opposite party is not 'playing by the rules' from a focus on the bargaining issues at hand. Secondly, they may provide a justification for a party not participating in bargaining, pending the Board's determination of the complaint. Thirdly, such complaints can be used as a weapon in the war of words between the disputants, with the intent of undermining the confidence of the parties in their negotiators. Fourthly, a party may be able to frustrate the process by not 'playing by the rules' with the result that one of the conditions under which collective bargaining is required to occur does not exist and the purposes of the *Act* are defeated. All of the foregoing will tend to protract a dispute.

The powers of the Labour Relations Board to deal with a complaint of a breach of section 75 are outlined in section 122 of the *Act*, which reads as follows:

> *(1) Where a complaint is made to the board under section 122 the chief executive officer of the board may serve a notice of the complaint on the person against whom the complaint is made, and the chairperson may appoint an officer to inquire into the complaint and try to effect a settlement.*
>
> *(2) Where the chairperson does not appoint an officer under subsection (1) or where the officer is unable to effect a settlement within the period that the chairperson thinks reasonable in the circumstances, the board may inquire into the complaint.*
>
> *(3) The board may refuse to inquire into a complaint in respect of a matter that, in the opinion of the board, could be referred by the complainant to an arbitrator, arbitration board or other body under a collective agreement.*
>
> *(4) Where, in the opinion of the board, a complaint is without merit, the board may reject the complaint.*
>
> *(5) Where the board is satisfied after an inquiry that an employer, employers' organization, trade union, council of trade unions, employee or other person has failed to comply with subsections 122(1) to (3), the board*
>
> *(a) shall issue a directive to the employer, employers' organization, trade union, council of trade unions, employee or other person concerned to do or to stop doing the act in respect of which the complaint was made;*

(b) may, in the same or a later directive, require the employer, employers' organization, trade union, council of trade unions, employee or other person concerned, as the circumstances may require,

(i) to reinstate an employee suspended or discharged contrary to those provisions,

(ii) to pay to an employee or former employee suspended or discharged contrary to those provisions compensation not exceeding the amount that, in the opinion of the board, would have been paid by the employer to the employee,

(iii) to rescind a disciplinary action or monetary or other penalty taken or imposed contrary to those provisions,

(iv) to pay a person compensation not exceeding the amount that in the opinion of the board is equivalent to the monetary or other penalty imposed on a person contrary to those provisions, or

(v) to pay to an employee in respect of a failure to comply with the provisions referred to in subsection 122(1) compensation not exceeding the amount that, in the opinion of the board, is equivalent to the remuneration that would have been paid to the employee by the employer if the employer had complied with the provision referred to in subsection (1) of that section.

A review of this section makes it clear that the remedy for a breach of section 75 is directory in nature and essentially involves a finding of a contravention, followed by a direction to do, or to stop doing, the activity upon which the complaint was made. The limited range of options provided to the Board by this section should be compared with the broader authority of other boards, for example the Canada Industrial Relations Board, whose remedial authority is described in the *Canada Labour Code* as follows:

99. *(1) Where, under section 98, the Board determines that a party to a complaint has contravened or failed to comply with subsection 24(4) or 34(6), section 37, 47.3, 50 or 69, subsection 87.5(1) or (2), section 87.6, subsection 87.7(2) or section 94, 95 or 96, the Board may, by order, require the party to comply with or cease contravening that subsection or section and may*

b.1) in respect of a contravention of the obligation to bargain collectively in good faith mentioned in paragraph 50(a), by order, require that an employer or a trade union include in or withdraw from a bargaining position specific terms or direct a binding method of resolving those terms, if the Board

> *considers that this order is necessary to remedy the contravention or counteract its effects;*

The tools available in the federal jurisdiction are clearly more extensive than those available to the Newfoundland and Labrador Labour Relations Board. They offer a 'surgical' intervention in the bargaining process.

However blunt the mechanisms of Newfoundland and Labrador's *Labour Relations Act* may be, they are of no use at all if they cannot be accessed in a timely manner. As stated above, a delay in the determination of an unfair labour practice complaint may be to the advantage of one party or to both. It cannot be said that such delay ever serves the public interest in the optimal functioning of the collective bargaining process.

It is not fair to say that the delays in the processing of the complaints in this dispute were the 'fault' of the Labour Relations Board, if they are evaluated in the current context of how the system operates within this Province.

A convenient review of the procedural history of the complaints filed by Vale and the USW in this dispute is contained in the written reasons of the Board in *Vale Newfoundland and Labrador v. USW Local 9508*, [2011] L.R.B.D. No.1. The Board has the authority under the *Act* and its Rules to abridge or extend the time period for filing replies. It appears that the usual practice of the Board was followed in this dispute. As a result, it was February 10, 2010 before the matter was ready to be set down for a hearing. (Note: The USW's complaint arose in a reply to an amendment to the original Vale complaint against the USW.) Thereafter, a consensual process was used to establish dates for hearings; the first date for the hearing of the complaint was set as May 6, 2010. Various dates after that were scheduled and postponed, or not used, all at the instance of the parties (primarily Vale). In this dispute, it can be fairly said that the Board was available to a far greater degree than the Parties. One is caused to wonder at the sincerity of Vale's strong submissions before the Commission imploring it to deal with its

complaint of the Union's behaviour in light of the factual history of its own lack of availability to proceed promptly with its complaint before the Board.

From the viewpoint of the public interest in a determination of the good faith bargaining issues in a strike which had been ongoing for nearly four months by the time the first complaint was laid, the Board processes utterly failed.

It appears to the Commission that the Board and the Parties all fell into the trap of treating this dispute as a private matter, that is, without having public significance. There is in the Commission's view always a public interest in the proper functioning of the collective bargaining process. It was therefore incumbent on the Board to proceed with the complaint expeditiously.

This pattern of lengthy timeframes for the conclusion of matters before the Labour Relations Board is not unique to this dispute. The Commissioners are all practitioners in the area of labour law and recognize that the Board is made up of part-time individuals who have demands upon their time through their other jobs, such that at any given time they will have committed themselves for significant periods, perhaps over as much as a six-month period going forward. Similarly, the number of lawyers practicing in this Province in the area of labour law is relatively small and they are likewise at any given point in time committed to various other matters for many months into the future. The current date-setting practice involves coordination of the schedules of at least five individuals, that is, three Board members and a lawyer representing each side, plus any number of witnesses. This approach guarantees delay.

The Board already has a practice of setting the dates for a hearing regarding an unfair labour practice complaint involving the termination of an employee as soon as the complaint is filed. There is no reason why this practice could not be extended to other matters before the Board.

In this Province, the volume of matters before the Board makes it difficult to justify having a full-time Board. Over the ten-year period concluding at the end of 2010, the annual number of hearing days ranged from a low of 5 days to a high of 112, with all years but one being below 81 days. Given that Board members also have Board duties other than the actual hearing days, it would seem possible and prudent to assign a certain number of days per month as 'hearing days' in advance of any proceedings. Board members would have to be compensated for reserving these days. It would allow the Board to be much more assertive in setting dates as practitioners would be able to govern themselves accordingly with advance knowledge of the dates when the Board would be sitting.

There is yet another aspect of the scheduling conundrum. For matters in respect of which the Board does conduct hearings, those hearings can often be quite lengthy. The Labour Relations Board is a specialized administrative tribunal. The advantage of such an administrative tribunal is its ability to dispose of matters using its own expertise on the basis of filed evidence and its own investigation, without requiring a hearing on all matters. The Board does not hold hearings on all matters, but appears to feel that all issues within an application are appropriate to the hearing in the event that one is ordered.

The legislative mandate of the Board to limit the scope of a hearing is not clear and this may be the reason it does not currently limit the scope of hearings. Focused hearings, with the Board identifying the issues which are considered to require further evidence and argument, would also foster the prompt disposition of proceedings.

All of the above scheduling challenges related to the functioning of the Laour Relations Board may have contributed to the length of this dispute.

f) The Presence of an Industrial Inquiry

It is the Commission's view that the very creation of an Industrial Inquiry in the midst of a difficult labour dispute could be a contributing factor in the length of the strike and

probably lengthened the dispute here, even though Government's intention was exactly the opposite.

It is clear that there was a sense within the Union and its membership that, even if the Inquiry could not legislate terms of a new collective agreement or force the Parties to make compromises that they would otherwise not be willing to make, the very presence of a body imposed by the Provincial Government would cause the dispute to end earlier than it would have otherwise. That perception may not have been correct in hindsight.

The Inquiry's investigative processes were somewhat adversarial in nature in spite of the Commissioners' efforts to discourage that approach. The structure provided a forum for each of the Parties to criticize the behaviour of the other. As was explained more fully in the December Report, the Commissioners' efforts to mediate or arbitrate the dispute were fruitless.

The Parties were at a stalemate when this Inquiry was created. One often eliminates stalemates by making a bold move or a compromise. Why would a party choose to make a bold move when a third party entity might suggest something better? Once the December Report was out and the Commission's recommendations were known, the Union voted on accepting the Inquiry's proposals, perhaps intending to exert pressure on the Employer. Vale took the approach that their energies should be placed on direct communication with the USW, and Vale was quite reluctant to engage in the dispute resolution suggestions made by the Commissioners.

On the other hand, the Inquiry's recommendations contained in the December Report became a proxy for a final offer which the parties then had to accept or reject. Once this position was rejected by either party, the other would be obliged to re-evaluate its own position. Thus, ultimately there may have also been some acceleration effect from the Inquiry, such that its overall impact on the length of the dispute is more difficult to determine, but it certainly has an impact on the Parties.

g) The Parties' Conflicting Priority Demands

The Union local at Voisey's Bay had made, as a strategic decision, a demand for a contract expiry date that would allow line-up of the Voisey's Bay contract expiry with expiry of the contract achieved by the USW locals at other Vale operations in Ontario (Sudbury and Port Colborne),. It was an objective that the Union believed would enhance its bargaining power in the next round of negotiations. The Employer refused from the outset to allow that objective to be achieved; in fact, their denial of that objective was at one point a precondition to the Employer even looking at the Union`s other demands.

Similarly, the Employer made a demand for a change in the employee bonus structure from one tied to the world price of nickel (the so-called 'Nickel Bonus') to a new plan in which corporate return and employee productivity were the inputting factors. The Union saw this change as a form of contract stripping and compensation reduction. It resisted the change, initially opting for the continuation of the Nickel Bonus as a high priority in its negotiating position.

What stood in the way of progress was Vale`s one-by-one approach to negotiating the remaining items versus the USW`s desire to trade complete `packages` of outstanding items.

In the end, it appears that the Union realized that it would be unable to achieve its duration objectives. At the same time it also acceded to the Employer's demand for a new bonus plan. The deal that was achieved in February of 2011 was very similar to that which it could have achieved in the fall of 2010.

3. National and International Factors

h) Federal/Provincial Jurisdiction

Vale purchased Inco's businesses in Canada in 2006. Voisey's Bay Nickel Company (VBNC) was then a wholly owned subsidiary of Inco. VBNC already operated the mine and mill in Labrador as a going concern. Thus, Vale took over Inco's position without change. Vale is a corporation which finds its home and origins in Brazil. It is new to Canada.

The *Investment Canada Act* is federal legislation regulating, by a review process, the terms under which a non-Canadian company like Vale can acquire assets within Canada. The *Labour Relations Act* of Newfoundland and Labrador is provincial legislation regulating the terms under which employers and unions operate within this Province. There is no 'nexus' between these two pieces of federal and provincial legislation.

Because the federal government does not have labour relations jurisdiction for most business activities within Canada (it does with respect to interprovincial transportation, shipping, banking and generally what are known as 'federal undertakings', but not resource development), when the federal foreign investment review process is undertaken, provincial concerns for the labour relations aspects of that acquisition are not necessarily part of the federal review process. While there is already some communication between both governments on provincial aspects arising from the application by a foreign entity to take over control of an existing Canadian business, the amount of integration of federal and provincial interests may not be adequate to ensure that nothing 'slips between the cracks'. It is, after all, a federal review. The complexities of a change in corporate philosophy, especially the employment impacts, demand a multi-faceted and unified approach involving both levels of government.

This disconnect did not allow the provincial labour relations regime to be tuned or re-tuned to the consequence of new ownership. The labour relations consequences of that disconnect may be exacerbated when, as will be seen in the discussion below, the new owner is a foreign corporation with an approach to labour relations that may not be consistent with Canadian values.

i) Multi-National Corporations in Canada

The entry of global and diverse corporate entities into Canada to conduct business activities is a relatively new feature of Canadian business. In Newfoundland and Labrador, we already have had some but limited exposure to foreign investment in our business community. Based on international trends, more rather than less foreign investment is likely into the future. Because of the lack of expertise that the Commissioners have in this new and evolving business reality and its consequences, outside advice in the form of a 'Discussion Paper' with respect to the labour relations consequences was sought.

Professor Gregor Murray of the Interuniversity Research Centre on Globalization and Work (CRIMT) at the University of Montreal leads a group of academics and labour relations practitioners who are currently studying this new feature of Canadian business in the context of the labour relations implications. His qualifications and role, as well as a brief description of the group with whom he is associated, are described in his Biography appended to the Discussion Paper which he has prepared. That Paper is attached as Appendix 'B' to this Report.

The primary purpose for which the Inquiry commissioned this Paper was to open a provincial, and perhaps even a wider, dialogue on this very important topic. Whether one agrees with all of the conclusions of the Paper is not as important as using it as an opening for the necessary dialogue which must begin about the emergence of this growing feature of the business community.

The theme of Dr. Murray's study is that traditional methods of provincial labour regulation do not seem to be capable of influencing or determining the demeanour of a multi-national corporation (or 'MNC' as Dr. Murray abbreviates them) in respect of labour relations. That demeanour may be a feature of what Dr. Murray describes as their country of origin 'DNA' (another one of Dr. Murray's terms) or may be opportunistic, that is, taking advantage of local deficiencies/advantages depending on in which

jurisdiction they operate. Outsourcing to other jurisdictions is not a new feature of Canadian business. If a Canadian regulator wants to have the multi-national accommodate the prevailing national/regional/provincial labour relations values, it means that non-traditional tools, like imposing contract obligations such as mandatory disclosure (see Dr. Murray' paper for more details) may be required to ensure that Canadian labour relations values are preserved.

Moral suasion by government is a traditional tool often used to bring parties to the end of a labour dispute. The moral suasion effect from intervention by a provincial premier would likely be less on a large multi-national corporation than it would be on a local company or on a local/national trade union. Some of these corporate entities have annual budgets that are larger than those of a province. If they have operations in other jurisdictions, they can choose to allow one operation to remain closed and simply ramp up the volume at another location to achieve their overall production requirements. Although national and international trade unions have significant financial support that can be used to support a local union for a long period of time in a labour dispute, their economic 'clout' is far inferior to that of the multi-national corporation.

Vale is a large multi-national corporation headquartered in Brazil. The USW's international campaign against Vale was an attempt by the Union to respond to the agility/magnitude/flexibility of this powerful corporation. The success of that campaign was never explained at the Inquiry. It may have displayed to the Union's membership that they were engaged in a creative activity against the Employer and it may have had a short-term morale boosting effect on their membership, but the Commissioners are unable to determine that it had any real effect or impact on Vale. In the context of their negotiations, it was clearly a distraction that may not have assisted in the resolution of this dispute. If this campaign were to continue, it could also stand in the way of any relationship building efforts that may be initiated.

The fact that Vale is a multi-national entity is not necessarily a positive or negative thing in itself. How the USW adapted to its presence during the recent strike may have affected

the duration of the dispute. How Vale adopts Canadian industrial relations values and adapts to reasonable Canadian expectations will be the long term test for it, or for that matter, any other such corporation.

Trade unions like the USW will also have to be adaptive in their manner of dealing with such large international corporations because there may not be the same need for such entities to respond to the existing regime as there would be for domestic operators. Trade unions and regulators will have to find ways to make it beneficial for 'MNCs', to use Dr. Murray's acronym, to accommodate Canadian labour relations values.

Issue 4: A discussion of any impacts this dispute may be having on other labour-management relationships.

The Commission is aware that there are at least four other collective bargaining regimes which are working at the Voisey's Bay site and in which USW is involved as bargaining agent. Each of these entities is a joint venture or partnership type of business entity having aboriginal investment. Each entity performs work for Vale in support of the business enterprise.

a) **Labrador Catering Limited Partnership,** a partnership involving East Coast Catering, an existing provincial business, and the Innu Nation, provides catering and housekeeping services to the site. USW Local 9508 is the certified bargaining agent. In August 2009, during first collective agreement negotiations, a strike was commenced and it continued until February 2011 when negotiations resumed following the settlement of the Vale dispute. A four-year agreement has been achieved.

b) **Torngait Services Inc**., a national company (ATCO Frontec) operating in partnership with the Nunatsiavut Government (representing the Inuit people) performs such site services as snow clearing, loading and the movement of concentrate material to the ship loading facility. The USW is certified bargaining agent, but the employer there disputed whether USW Local 9508 or USW Local 6480 represented the employees. According to

the USW, that dispute, together with complaints of unfair bargaining filed by both sides, have all been set aside and the parties have now engaged in collective bargaining. The existing contract expired in March 2011. There was no strike by Torngait employees during the currency of the Vale strike.

c) **ASC Innu Security Limited Partnership,** a joint venture involving an existing operating company (Atlantic Safety Centre) and the Innu Nation, provides security and airport support services at the site. USW Local 9508 is certified bargaining agent. In August 2009, in the midst of first collective agreement negotiations, a strike commenced and continued until the settlement of the Vale dispute, after which negotiations quickly resumed and concluded with a new collective agreement for a three-year term.

d) **Ushitau Maintenance Limited,** a joint venture with the Innu Nation and GJ Cahill/ Iskueteu ABB, a national business entity, provides maintenance in the concentrator and to the ship loading facility. For this company, the USW Local 9508 is certified bargaining agent. During renewal negotiations in June 2010 following the expiry of a first collective agreement on March 31, 2010 a strike was commenced and it continued until negotiations resumed once again in March 2011 following the settlement of the Vale dispute.

The Disputing Parties

Vale: The Employer takes the position that this labour dispute was limited to the Voisey's Bay worksite only and submits to the Commission that accordingly its current Report "*should not extend beyond the scope of the relationship and the labour dispute between Vale and USW*". With respect to the four contractors at the site whose employees are also represented by USW, Vale takes the position that they are independent contractors who have not been involved in the Inquiry. Vale has no comment on any possible impact that the dispute may have had on them. Similarly, with respect to the other contractors at the site (presumably including Toromont Cat) whose employees may be represented by other unions, Vale is not aware of any impact that the strike may have had on their labour-management relationships.

In its final submissions to the Commission, the Employer simply restates that position and encourages the Commission not to allow this dispute to be used as a "*forum to advocate for the fundamental overhaul of the labour relations regime in the Province…*"

USW: The Union makes the following succinct statement on its view of the broader impacts of this dispute: *"Typically, a long and difficult strike about concessionary proposals may have a number of effects on workers. The strike may have a chilling effect on workers exercising their rights to strike – they may be reluctant to do so, fearing that their employer will force a long and difficult strike. The strike may prompt other employers to engage in similar bargaining strategies and tactics."*

The USW did not make a specific reference to this suggested impact in its final submissions.

The Interest Groups

Some of the comments with regard to provincial impacts made by the organizations that made submissions could also be considered as relevant here, but none of the submitters made reference to the other more immediate collective bargaining units working at the Voisey's Bay site. They are the closest other labour-management relationships which could be impacted by the Vale/USW dispute.

The Employers' Council saw only minimal short-term impacts, but cautioned that: *"The short term impact on labour-management relations in this province as a direct result of this dispute has been minimal. However, the calls for anti-replacement worker legislation from third parties to the dispute………have caused anxiety among unionized employers."*

The Federation of Labour noted the following concern: *"Workers at other mines in Newfoundland and Labrador, indeed throughout the country, are worried that their*

employers will copy Vale's actions and tactics and also try to seek concessions. The potential for future labour unrest is great if this were to occur."

Commission's Commentary on Issue 4:

It is the Commission's view that this part of its mandate requires it to investigate and inquire into the dispute's impact on labour-management relationships beyond the Vale/USW dispute. Although Vale urged the Commission not to look further than the immediate dispute between it and USW, it is clear that government desired a wider ranging inquiry.

The Commission has determined that there are two spheres of labour-management relationships that may be affected by the dispute between Vale and the USW. The first encompasses those employers who are contractors supplying services to Vale at the Voisey's Bay site. The second sphere involves employers in the rest of the Province who may be affected by the dispute, its outcome and the attendant awareness. This second sphere also includes labour-management relationships that have not yet been established.

1. Impacts at Voisey's Bay

The employers of non-Vale employees at Voisey's Bay in the first sphere all have collective bargaining relationships involving the USW:

1. Ushitau Maintenance Limited: the USW was certified as bargaining agent for these employees on 17 October 2005.
2. Torngait Services Inc.: the USW was certified as bargaining agent on 21 March 2006.
3. ASC Security, a Division of Atlantic Safety Inc.: the USW was certified as bargaining agent for ASC employees on 12 December 2007.
4. Labrador Catering Limited Partnership – the USW was certified as bargaining agent for these employees on 30 June 2008.

The collective agreement involving Ushitau employees expired during the summer of 2009, close to the same time as the Vale/USW agreement expired, and they then went on strike once they were able; Labrador Catering and ASC employees had not yet achieved a first collective agreement and commenced strike action once the Vale strike commenced; however, Torngait Services employees did not go on strike during this period as their agreement was extended for one year.

Thus, during the currency of the Vale/USW strike, Ushitau, ASC and Labrador Catering employees were also on strike for much of the same time. These three units also settled their disputes shortly after the Vale/USW settlement.

For the purposes of the Inquiry, the Commission accepts that these four employers are independent employers and are not related to Vale. That, however, is not the end of the matter.

The USW perceived that Vale was directing the negotiations between each of the four employers and the USW. That is not the finding of the Commission. It is our view that each employer conducted its negotiations with USW on its own. They had different negotiators and those negotiators did not take instructions from Vale.

That does not mean, however, that the course or outcomes of the Vale/USW negotiations did not have significant impact on the four contractors. Vale is the major, if not sole, customer of these four businesses. Even without explicit instructions, it would not be in the commercial interest of any of the contractors to establish a settlement precedent for its major customer. It would also not be in the interest of any contractor to create dissatisfaction in its own workforce by settling on terms that were less beneficial for their workers than for those of the lead employer on the site. The same conclusions apply to the Union. It could not be seen to be settling with any of the four employers at something less than the members of the same local might receive from Vale nor could it obtain a resolution for any of the four that was greater than it could obtain from Vale.

As a consequence of the above, both the employer and the union side of the labour-management relationship at each of the four contractors were captive to the negotiations between Vale and the USW.

Interestingly, because the employees at Torngait Services did not strike, they benefited from the Vale/USW deal without having lost some 18 months of wages. While this was advantageous to the Torngait members of the USW local, it reduced the leverage that the local had with Vale. But for the consequences of the site being a remote, fly-in/out workplace (see the Issues 2 and 3 of this Report where that feature is fully explained), the continuing to work by Torngait Services employees could have created additional tensions in the dispute (compare for example the circumstances in Ontario, where the USW office, clerical and technical bargaining unit at Vale reached a settlement and continued to work during the USW production strike at that location.

It is to the USW's advantage to have all four contractors at the site on strike at the same time as Vale employees. In much the same way as a common expiry with the USW locals in Ontario would provide additional bargaining leverage to the Union, a common expiry among all the employers at the Voisey's Bay site would provide further leverage for the Union. It is to be noted that in the recent settlements with the contractors, while there were almost identical monetary settlements, some other aspects of the new Vale agreement did not find their way into the contractor collective agreements. For example, the contractors did not adopt any of the Vale/USW changes to their health and safety provisions nor to the contracting out language. And, of course, the bonus plans, while reflecting the 25% that is the cap in the Vale plan, do not have the detail related to the Vale organization as found in the Vale agreement. One contractor settlement does not have any of the other non-monetary language in the Vale agreement, such as union leave provisions. More significantly, there is no common expiry, either with Vale or among the four contractors.

2. Impacts further afield

There is no doubt that both Vale and the USW view this dispute and how each has conducted itself during its course as a harbinger of the potential future relationships between them elsewhere in the Province, notably at the Long Harbour hydromet site once the development work is completed.

Additionally, organized labour and other employers have been watching the dispute to see what it portends for other labour-management relationships. It must be remembered that, in their submissions to the Inquiry, the employer groups stated their clear opposition to the introduction of legislation prohibiting replacement workers, while at the same time the union groups just as clearly advocated for the introduction of such legislation. This labour dispute has heightened the anxiety of all interested in the regulation of collective bargaining.

Issue 5: A discussion of the ramifications of this dispute, and its costs to the Province and parties involved.

This Issue engages two separate impacts – one broadly mandating a discussion of the ‘ramifications’ of the dispute, which can be fiscal and/or social, while the other seeks only a discussion of the financial impacts on the Parties and on the Province.

<u>The Disputing Parties</u>

Vale: Because the dispute has been settled with the vast majority of employees returning to work, the Employer is of the view that the ramifications from the strike are “manageable” in the short term (defined as being the 5-year term of the collective agreement) and not threatening to their relationship with the USW in the medium to long term.

On the issue of additional costs incurred, Vale was not prepared to give any indication to the Commission of its incremental costs arising from this labour dispute. It claimed that

its own private costs were considered as corporately confidential and privileged (by virtue of some undisclosed law, principle or document) and accordingly such information would not be disclosed to the Commission. To ameliorate that position, Vale did offer that it already provides Government with: a) monthly reports that include financial and commercial information relating to its activities within the Province, b) quarterly reports that include similar information, c) annual `Corporate Social Responsibility Reports` which include aggregate expenditures in the Province, d) annual filings to the Minister of Natural Resources which include aggregate operating expenditures related to the mine and concentrator in Labrador, and e) annual income tax returns filed with the Province. As a consequence, Vale submits that Government, which constituted this Inquiry, already has within its information resources the capacity to determine Vale's additional costs arising from the strike.

Whether that position is sound and correct cannot be established by the Commission without resort to the subpoenae process and, in all probability, a dispute over the jurisdiction of this Commission to require such information. Government has, however, advised the Commission that further investigation into the costs to Vale is not required.

In its final submissions, Vale once again proposes that, now that the dispute has been settled by the signing of a new Collective Agreement, the impact of the strike on the Parties has been minimal. The employees returning to work are stated to be "happy to be returning to work", without evidence of "hard feelings". As to costs, while acknowledging that the dispute caused each Party to incur additional costs, the Employer reiterates its position that its costs are confidential, except to the extent that they are disclosed in its financial reporting to Government.

USW: On ramifications, the USW's first attempted to determine the loss of production by Vale and its consequent loss of revenues, using publicly available information as a source. It also believes that the strike has had significant impact on the Provincial treasury, on the aboriginal communities in Labrador and on the workers themselves. It has determined that, by its estimate, the total financial impact on Vale was

$500 million to $1 billion, but that is only an estimate. On the subject of personal and social impacts, it refers to the emotional stress and hardship experienced by its members, their families and the aboriginal communities in which they live.

On the question of its own costs arising from the strike, the USW candidly admits that it incurred many significant costs. It incurred legal expenses associated with the strike and the related activities involving appearances before the Labour Relations Board and before this Inquiry, together what is calls "corporate campaign costs" (which are understood to include advertising, union officer travel and other disbursements associated with the strike), all of which are all difficult to estimate because some are included within the USW`s overall operating budget. But entirely separate and readily quantifiable are the direct costs of strike pay to its qualifying members, which it estimates at about $3.4 million for the 18-month period. This was simply the money paid from the national organization to support the striking members during the dispute. If one were to estimate the additional non-quantified legal and campaign costs, a total estimate for the cost of the strike to USW might well exceed $4 million.

In its final submissions to the Commission, the USW did not specifically deal with the ramifications and costs as a separate issue.

The Interest Groups

The Mineral Chamber, in the context of attracting risk capital to Newfoundland and Labrador, makes the following comment in its submission that could well fit within this Issue: *"……… the province's labour relations climate as well as its labour legislation and government's handling of disputes, will be factored into decisions by investors and corporations as to whether it is our province or other areas of Canada and the world that will benefit from this capital."*

The CME cautions against broadening the implications of this dispute into province-wide remedies when it said: *"………the Industrial Inquiry Commission………should focus only*

on recommending local solutions to this labour dispute and not focus on legislative change or binding arbitration."

The Employer's Council also cautions against seeing larger ramifications and making province-wide legislative changes from this fact situation. It says in its brief: *"The NLEC believes that generally there will be no long-term negative impacts on the labour relations climate of the province as a result of the Voisey's Bay dispute. Strikes are a normal and sometimes unavoidable part of the collective bargaining process."*

The Board of Trade on the other hand sees wider implications arising from this dispute when it notes in its submission: *"The end result of the labour dispute will provide labour and management with a series of expectations for their next set of negotiations; that is, precedence could potentially be set depending on how this dispute is resolved."*

The Federation of Labour focused on not only the financial ramifications but also the family and social implications when it commented: *"We can without question say that the strikers and their families have experienced incredible financial hardship."* and: *"We know that financial stress causes family stress."* and *"………our northern communities will pay a steep price as well. In addition to the financial impact, the division and discord created when scab labour is employed and when neighbour is pitted against neighbour will be difficult to overcome."*

CUPE sees more dire provincial consequences from this dispute when it cautioned: *"CUPE is concerned the overall positive labour relations climate in our province of late will be adversely affected if other employers attempt to replicate the 'hard ball' tactics of VALE."*

Commission's Commentary on Issue 5

1. Ramifications of the dispute

Under this heading, the social and other non-direct cost consequences of the strike are considered and discussed. While there are some financial aspects to these issues, they are not considered as a direct consequence. That impact will be dealt with under 'Costs'.

On the Parties:

In this labour dispute, there was considerable rhetoric between the Disputing Parties. Vale filed a number of unfair labour practice charges against the USW at the Labour Relations Board, the USW mounted a publicity campaign criticizing Vale, picket lines displayed posters with anti-Employer statements (which sometimes included individuals' names, labelling them as "scabs"), and much criticism was uttered by each Party of the other in the heat of battle. Now they have made industrial peace on some terms, but the hurt of some of the words spoken and printed during the dispute will take much longer to heal. While there are 5 years of new contract to be lived before the next round of negotiations, history teaches that "least said, easiest mended". It will take some considerable period of time before the wounds are fully healed. How that will impact the workplace in the interim is yet to be determined.

On Labrador Communities:

In the Labrador communities, where hopes for the future were pinned on the new economy being generated out of the significant wages earned by workers who had not experienced such steady employment in the past, and where the new pride of the workers was to create a new positive atmosphere for the future, there has been a setback created by this 18-month strike. The financial hardship will be replaced relatively quickly once the revenue streams flow again, but the injury caused by the social impact may take longer to heal. In these communities, where striking workers and replacement workers lived side by side and were sometimes even related, being called a "scab" was very hurtful. This is an injury not experienced previously in the more isolated Labrador communities.

This impact is not just in the aboriginal context. In smaller communities, the adverse impact would still be apparent. Even in Happy Valley-Goose Bay, the largest town affected directly by the strike, business premises frequented by replacement workers were initially boycotted by USW members. How long those bitter feelings will continue is difficult to measure precisely at this time.

Of significant and additional concern in the long run would be negative feelings created for the aboriginal communities and their leaders with respect to future developments in Labrador. It is clear to the Commissioners from our visit to Labrador in December 2010 that the "once bitten, twice shy" principle is evident. Leaders expressed concerns that, in any future applications for development of lands upon which they have historic claims, considerable thought will be given as to how resource development might take place so as to avoid the kinds of social upheaval created here. The trust in outside entities, both corporations and trade unions, will be more difficult to establish. In resource rich Labrador, it would be short-sighted to not expect more challenging negotiations surrounding future developments.

On Business Generally:

One must be cautious not to overstate this ramification. This was only one strike, but it must be considered in the context of other labour unrest happening at the same time and the combined consequences for the business community. It must be remembered that at the same time as this Vale/USW dispute was ongoing, there was another long labour dispute on the Burin Peninsula involving workers for disabled persons, workers at a food manufacturing facility in St. John's were locked out for many months, and a transit strike happened in St. John's. All gained significant public notoriety. An atmosphere of concern was created. Because investment naturally chases profit, an atmosphere challenged by labour unrest may be deemed inhospitable for such investment.

The use of replacement workers in this dispute must also be placed in context. While hiring replacement workers is a completely lawful activity within Newfoundland and

Labrador, employers must be aware that unionized workers consider the practice to be highly inflammatory. Nobody should take from the circumstances here that the use of replacement workers would be without conflict in a more urban and visible workplace. Picketers have the right to inform such workers that their presence is not welcome Striking workers are entitled to take the time to try to persuade replacement workers not to enter the premises. That quite lawful and judicially sanctioned process brings delays and creates opportunity for frustrations and more heated discussions. Sometimes the frustration and discussions lead to violence, which is unlawful. This strike had unique site characteristics (discussed earlier) that took away those opportunities for conflict. No employer should get the wrong message from this strike. The process of replacement workers is lawful, but normally has attendant risks.

2. Costs of the Dispute to the Parties and to Government

On the USW:

The Union freely admitted at the Inquiry that its direct costs of the dispute may have been in excess of $4 million. It admitted that there were additional costs, including legal and other supports from the national union, as well as costs at the local level arising from the loss of monthly dues. The USW nationally is a large trade union and was obviously able to incur and sustain those costs.

The direct costs to the individual workers, including loss of income, were not able to be determined by the Commission. That is private information which is not available from any third party source. The Commissioners considered it inappropriate to ask workers to reveal their financial losses. The workers decided, however, to take strike action and must assume and accept the direct consequences of their decision.

On Vale:

The Commissioners were unable to obtain from Vale an estimate of their costs from the strike. There was clearly some loss of production, at least for a period while replacement workers became familiar with the site; there were likely some additional costs related to

the hiring of replacement workers from third party entities who provide this service to employers; there would have been outside legal and other costs related to the negotiations, the unfair labour practices and the Inquiry process itself; and finally the back to work protocol for striking workers would have involved some non-recoverable costs.

Under its statutory authority, the Inquiry could have issued subpoenae in an attempt to compel production of such information. That process was not undertaken, and its success might have been in doubt if Vale was entitled to the confidentiality that it claimed. To engage in that legal process in order to obtain as much information as possible, the completion of the Commission's mandate would have been significantly prolonged. In any event, Government directed the Commission not to pursue that avenue.

On Aboriginal Groups:

Following the December 2010 meeting with them, both the Innu and the Inuit groups provided some indications that they had suffered financial losses as a result of the strike, but details were not available at that time. Those losses were associated with a) employees on strike pay not having as much income to bring into their communities, and b) less payments being made under the IBAs to the groups by Vale because of the reduced production levels from the mine.

It is impossible for this Inquiry to establish with certainty the losses associated with the reduction of production arising from normal fluctuations in mine production and those associated with the labour dispute, As well, the timing for financial reporting does not allow the aboriginal groups to give firm figures for 2010 at this time; but it is fair to say that there was a significant loss arising from the 18-month dispute. One aboriginal group roughly estimated its losses in the hundreds of thousands of dollars for 2010 alone.

From the Commission's perspective, it is perhaps not as necessary to establish the precise amount of the losses as it is to recognize that there were 'ramifications' of a financial

nature on both aboriginal groups, as well as the social impacts mentioned elsewhere in this Report.

On Government:

The Commission also sought assistance on this Issue from i) the Economics and Statistics Branch and ii) the Taxation and Fiscal Policy Branch of the Provincial Department of Finance to consider a reasonable methodology to calculate financial impacts on the Province.

Newfoundland and Labrador receives financial benefits from the operation of the mine and mill at Voisey's Bay. Three revenue streams are produced - one from the provincial portion of corporate income tax paid by Vale, one from the provincial mining tax and one from the provincial income tax remitted by the workers. When mineral production is lost and/or employment of provincial workers is reduced, there can be financial impacts on the revenue received by the Province. Finally, the Gross Domestic Product (GDP) can be affected and that may impact the economic strength of the Province as viewed by financial markets.

Because of timing delays in the remittance of income tax information, statistics from 2009 are able to be established, but for 2010 they could only be estimated because, when this information was requested by the Inquiry, reporting of 2010 income tax (required to be done by April 30, 2011) was not yet due.

Province's GDP Loss from Vale's Lower Production:

To determine this issue, Government had to make many assumptions about the amount of production lost by Vale during the strike and the value of the ore not produced based on world pricing, although Government realized that, since Vale was producing for itself, its achieved internal pricing might have been somewhat lower than competitive world prices. Ultimately, Government calculates the assumed value of that loss to Vale to be less than $1 billion. Translating that loss into a GDP loss for the Province, the nominal

loss for 2009 would be 1.4% of GDP in 2009 and 2.6% of GDP in 2010. These percentages, while significant as an annual variation, are not considered significant in the long term measurement of GDP.

Income Loss from Workers' Employment

Once again many assumptions were made. Government has assumed that, for the purposes of these calculations, 76 persons were on strike pay and the remainder received equivalent pay from other employment. Replacement workers were assumed to have all been from outside the Province, although it is likely that some were from within the Province. After all other adjustments, the total employment impacts are determined to be only 0.003% of total provincial employment in 2010, a negligible amount in terms of provincial consequences. In 2009, that translates into a net loss of $3.4 million in direct labour income, which is only 0.004% of total labour income in the Province for that year. In 2010, the net loss is estimated at $5.9 million, which is only 0.05% of the Province's total labour income for that year.

Loss of Mining Tax Revenues From Vale:

In this subject, Government is unable to disclose any reliable statistics because of the confidentiality provisions of the federal *Income Tax Act,* which provisions affect mining tax disclosure as well. That is, however, not an issue which is ultimately relevant in the long run.

The Finance Department cautions that "*the labour dispute is just one of many factors that would impact on the companies'* (sic) *tax liability, and any attempt to attribute an impact on any single factor would be highly subjective, at best."* In addition, the Department's Tax Policy Division holds the view that *"the impact on provincial revenue is a timing difference only, and that we would expect the actual loss, over time, not to be material."* This is so because there is an export cap on ore production in the period of the strike that expires when the hydromet plant is commissioned. Any production lost during the strike

will be produced during the life of the mine and monies not paid to the Provincial Government now will be paid at the time the material is produced will be reflected in taxes paid in other years.

Commission's Comments on Costs

In the end, while personal financial losses might have been significant to individuals on strike, and while the Parties themselves may have expended many millions of dollars during the conflict and the aboriginal communities may have suffered setbacks in their path towards more prosperity, the loss to the Provincial economy arising from this strike was negligible in the overall context. That is not to say that this dispute was not a significant event of the industrial relations life of the Province. It clearly was, but its financial impacts in the long run are not significant on the Province. To the Parties, without being able to measure their overall financial health, which information was neither sought nor provided, it would be impossible for this Commission to measure the labour dispute's real impact.

Issue 6: The options to resolve this dispute, including proposed terms of settlement, should the parties fail to conclude a collective agreement before the filing of the Commission's report.

By its very wording, this Issue 6 anticipated different outcomes depending on the timing of the Report. The Commission is now satisfied that this Issue is also adequately dealt with in its December Report. In any event, because the Parties have resolved their differences by signing a new collective agreement, any further comment would be not helpful.

Issue 7: Other matters the Commission may deem appropriate.

The Commission invited comment from the Disputing Parties and the Interest Groups (who responded to the initial invitation to have input) on several topics which had been identified in the December Report as being possibly relevant in the context of remedies to resolve a long and difficult strike.

1. **Legislating employees back to work and legislating the terms of a new collective agreement, i.e., imposing settlement mechanisms.**

Although the December Report identified them separately, because these two concepts are clearly connected as related outcomes, most parties dealt with them as a single issue.

The Disputing Parties

Vale: The Employer is clearly not interested in or in support of any proposal that would allow greater legislative involvement in the contractual bargaining rights and obligations of the parties to a collective agreement. Vale's view in this regard is that legislative interference in collective bargaining should be kept to the bare minimum.

USW: Although they did not make a direct submission on the issue of legislating employees back to work, it is clear from their overall position that the USW does contemplate circumstances under which imposing the terms of a collective agreement might be appropriate, although not when imposed by the legislature itself. Under some exceptional circumstances, as a long drawn out dispute, the Union does propose interest arbitration, that is, a process under which a neutral third party would have the right to determine any outstanding items in a collective bargaining dispute. Access to interest arbitration would have to come from a legislated change to the *Labour Relations Act* of the Province and would have to carry with it the provision that the terms of the new collective agreement, once settled by the arbitrator, would be binding on both the

employer and the union. Implicit in that process is that striking workers would have to return to work as a part of the overall arbitration process.

The Interest Groups

The Mineral Chamber believes this issue is intrinsically connected to the concept of legislating the terms of a new collective agreement and maintains that these remedies should only be considered in the context of the public sector, not private industry.

The Employers' Council, connecting items (a) and (b), also objects strongly to any suggestion that government should become this engaged in legislating private sector employers and employees. It also suggests that such interventions often leave the core difficulties between the parties unresolved.
The Business Coalition associates itself with the comments of the Employers' Council and adds that it does not understand how the earlier Report would bring the Commission to even consider such outcomes, noting that a "local dispute" should generate "local resolutions" only.

The CME concurs with the comments of the Employers' Council and the Business Coalition.

The Board of Trade agrees with the employer groups that legislating employees back to work and imposing collective agreement terms should only occur when government is the employer and never when private industry is involved in a strike.

The Federation of Labour argues that industrial globalization may mean that our laws and institutions may need to be reconsidered to protect workers' rights and encourage constructive settlement of disputes. It points to the Manitoba legislation, which identifies circumstances when, following a strike, a collective agreement may have to be imposed by a third party arbitration process. The Federation believes that this is a better solution than having government itself impose contract terms.

CUPE opposes any suggestion that government should ever legislate employees back to work or impose new collective agreement terms in the context of a private sector industrial dispute.

Commission`s Commentary on Imposing Settlement Mechanisms:

Generally speaking, the Commission subscribes to the principle that government should not be intervening extensively in private parties' contractual relations. While the *Labour Relations Act* of Newfoundland and Labrador does not have an explanatory section or preamble, the following extract from Ontario's *Labour Relations Act*, comparable legislation from another Canadian provincial jurisdiction, reflects the policy underpinnings and the societal considerations behind the legislation. From section 2 of that legislation, the following purposes are stated:

> *"1. To facilitate collective bargaining between employers and trade unions that are the freely-designated representatives of the employees.*
> *2. To recognize the importance of workplace parties adapting to change.*
> *3. To promote flexibility, productivity and employee involvement in the workplace.*
> *4. To encourage communication between employers and employees in the workplace.*
> *5. To recognize the importance of economic growth as the foundation for mutually beneficial relations amongst employers, employees and trade unions.*
> *6. To encourage co-operative participation of employers and trade unions in resolving workplace issues.*
> *7. To promote the expeditious resolution of workplace disputes."*

Society has recognized that some intervention beyond the minimum of creating the regime is appropriate, hence the creation of labour relations legislation in Canada. There is a public interest in the smooth functioning of labour relations within a business enterprise. Where the public interest is implicated, governments have decided in the past that intervention is appropriate, as for example, when the first collective agreement for a new bargaining unit cannot be settled by the parties, an agreement can be imposed by the

Labour Relations Board. Here may be another situation in which intervention is appropriate 'in the public interest' as that phrase may be defined on a case by case basis by the Labour Relations Board. If the public has an interest in the smooth functioning of the collective bargaining process, it follows that a remedy for a failure of the collective bargaining process is in the public interest.

This type of long and difficult dispute brings the problem into focus, even though this case might not set the appropriate standard. It has to be said, however, that the collective bargaining system is not working well when it takes 18 months to find the deal. The passage of time alone may not be enough by itself to justify intervention.

Other provinces have found it necessary to add to their legislative structures a mechanism to involve the state further in the private collective agreement. The legislation in the Province of Manitoba is worthy of examination**.** Under the provisions of a 2000 amendment to their labour relations legislation, if any strike or lockout continues in that province for at least 60 days, and the parties have worked with a conciliation officer or mediator for at least 30 days, and a new collective agreement has not been successfully reached, either the employer or the union may apply to the labour relations board of that province for an order to settle the terms of the new agreement. The board must determine if the parties are bargaining in good faith and if there is a probability that the parties might reach a new agreement by themselves. If all the preconditions are met, the board can either set the terms of the new agreement or, if the parties agree, forward the matter to an arbitrator for settlement of those terms. A legislative review of this amendment is required once every two years. In its 2009 review, it was noted that between years 2000 and 2007, only four applications had been made under that amendment.

The Manitoba model may not be the best approach for Newfoundland and Labrador. Some may say that the timeframe of 60 days is somewhat short and arbitrary. Perhaps time may not be always a consideration. The passage of time in and of itself may on its own not be the best indicator of the need for intervention in the public interest. Other factors may come into play. The applying party should establish that it has bargained in

good faith and has been unsuccessful in achieving a new agreement with the other party. It must also show how it is in the public interest to intervene in the labour dispute. The Labour Relations Board, not the parties and not Government, should decide if the tests have even met.

2. **Limiting the right of workers to accept or reject a new contract to only those who are actively engaged in a strike, (i.e., limiting the right to vote)**

The Disputing Parties

Vale: The Employer has, perhaps understandably, chosen not to make representations to the Inquiry on this labour-focused issue.

USW: The Union reminds the Commission that, although strike pay is available, it does not replace an employee's income and is often insufficient to allow workers to meet their financial commitments during a strike. It submits that the key factor in deciding whether a worker should be permitted to vote is whether he/she has a sufficient interest in the new collective agreement being voted upon, this interest arising from the worker's intention to return to the workplace. Accordingly, whether or not the worker is temporarily employed elsewhere should have "no bearing on his/her right to vote". The Union also acknowledges that it would be very difficult to enforce such a prohibition if enforcement was required.

The Interest Groups

The Mineral Chamber identifies this issue as one which should come only out of a periodic review of legislation jointly by government, labour and employers working together, not as the result of an Inquiry into a specific strike.

The Employers' Council speculates that such a limitation could both lengthen and shorten a strike depending on the circumstances and so, without independent research on impacts and outcomes, the Council is not prepared to offer a position on this issue. It accordingly cautions the Commission to avoid such a recommendation.

The Business Coalition once again associates itself with the comments of the Employers' Council and reiterates that it does not understand how the earlier Report would bring the Commission to even consider such outcome.

The CME believes that such changes as this should only come from a collaborative and periodic review of labour legislation in the Province.

The Federation of Labour, questioning whether this suggestion might create a suspension of workers' legal rights as members of a union, points out the complexity of actually applying such criteria in any fact situation (i.e., what does 'actively engaged in a strike' mean and who monitors the criteria to determine entitlement to vote?)

CUPE contends that the right to vote on any collective agreement should only be governed by a union's constitution and that accordingly those rights should not be interfered with by legislation.

Commission's Commentary on Limiting the Vote:

While this may be an interesting theory to discuss, in the Commission's view it would be very difficult to define the appropriate group of persons, other than the full bargaining unit, who would be entitled to determine that a strike is to be ended. The application of the theory would be almost impossible to enforce. How does one determine who is 'employed elsewhere' and what is the evidence of the other work that would be appropriate? Workers in the so-called 'underground economy' who could not be eliminated from voting with any degree of accuracy because of the lack of evidence of

their employment might be inadvertently allowed to vote, while those who 'play by the rules' and report their employment income would be disentitled. How would one deal with the person who has a second income source even when working during the currency of a collective agreement? Would that other employment disentitle one from voting? What would be the level of income generated to disqualify a voter?
All of these questions underlie the problems associated with attempting to create a new rule. The Commission is not prepared to make any recommendation in this regard.

Other Issues Requiring Comment

There were other issues raised during the course of the Inquiry that require further comment by the Commission because they are generated by facts which arose during the course of this dispute. Some issues raised by some of the Interested Parties, such as the request that this Inquiry revisit the issue of certification of bargaining units based on card membership only and not on a vote, were not factors relevant to this particular dispute and are not appropriately arising from the Inquiry's investigations. They will not be discussed by the Commission in this Report.

Other types of intervention could also be considered for inclusion in the 'toolbox' of intervention processes. An employer requested bargaining unit vote on the employer's final offer is available in some jurisdictions. During the course of the initial hearings for Phase 1 and later during the Commission's meetings with each of the Parties individually, there were criticisms from both sides regarding the crystallization of offers, counter-offers and settlement packages. The Employer was critical of the fact that there was no vote by the bargaining unit on the Employer's offer; the USW was critical that it never received a final offer from Vale to take to the bargaining unit for a vote. Indeed, during the Commission's hearings in December 2010 on terms for a settlement, it was apparent that there was unexpressed flexibility on both sides. As was pointed out earlier, at that point in the dispute, it was clear that neither side was willing to make any bold moves to break the impasse. The Employer should not have expected the Union to take a package

for a vote when there were such strong hints that there was additional flexibility available.

In a number of the submissions to the Commission, the Employer and the employer groups expressed a desire for a legislative amendment to provide an employer with the opportunity to obtain a mandatory vote on its final offer. In the Commission's opinion, that might have been a useful mechanism in this particular dispute. Firstly, for Vale to seek such a vote, it would have had to very clearly detail a 'final offer' to present to the Union and then their membership. At the very least, this would have precluded the Union from asserting that it had never gotten a final offer from the Employer. Secondly, a vote among the bargaining unit would have either (a) resulted in acceptance, in which circumstance the strike would have been over or, (b) resulted in rejection which would have sent a message to the Employer which it could not ignore.

Employers in this province who advocate for this final offer vote opportunity ought to be cautious about their optimism regarding its use as a tool. In other jurisdictions, the Commissioners understand that in the early years the vast majority of outcomes were overwhelmingly against acceptance of an employer's final offer. Only more recently, and only in select sectors, have such mandatory offers resulted in acceptance of the employer's final position.

3. **The Role of Replacement Workers**

As the topic of replacement workers has already been canvassed extensively with respect to the Disputing Parties and Interest Groups in the outline of their written submissions mentioned earlier in this Report, their comments are not repeated here.

After the strike had been in place for about six months, Vale recommenced production on a gradually increasing scale. This involved the use of replacement workers, a substantial number of whom were supplied by a contractor who brought in workers from outside of the Province. There were also some replacement workers hired who resided in the same

communities as the members of the bargaining units which were on strike. By the time production resumed, the employees of some of the subcontractors on the site were also on strike. This caused considerable community tension between persons who are neighbours and, in some cases, relatives of one another. Representatives of the Innu Nation spoke eloquently of the disruptive force this situation visited upon their community.

Vale indicated in its discussions with the Inquiry that the purpose of the resumption of production was operational, not a matter of labour relations strategy. Whatever the reason for the resumption of production, it did enable Vale to go forward without the economic pressure which the traditional notion of strike presupposes. Given the size of Vale and the relatively small portion of its business represented by the Voisey's Bay operation, it is difficult to say whether the level of production, estimated by Vale to be one-half of normal production, was a significant factor. Whether the use of replacement workers extended or shortened the strike is equally imponderable. There is no clear indication of what the reaction of bargaining unit members was to this aspect of the dispute. Certainly in other disputes the use of replacement workers has either diminished the resolve of the bargaining unit or strengthened it, depending on the circumstances.

The Commission has been urged by representatives of the labour movement to recommend to Government that it legislate against the use of replacement workers. Employer groups have cautioned that it should recommend leaving matters as they are. Such legislation does exist in two Canadian jurisdictions, British Columbia and Quebec. Among the arguments in favour of banning replacement workers one finds the proposition that the escalation of tensions inherent in the use of replacement workers has been associated with picket line violence in the past. This was not the case here, as the fly-in/fly-out remote location of the Employer's operation diminished the effectiveness of picketing and facilitated easy access to the site by replacement workers. Picketers were faced with replacement workers being mixed in with members of the general public accessing the airport for reasons totally unrelated to Vale. The tension between the members of the bargaining unit and those who worked for the Employer during the strike manifested itself in the agreement between the Employer and the Union that returning

members of the bargaining unit would not be required to work alongside replacement workers during the return to work protocol. Use of replacement workers can exacerbate the ill feelings between employees and employers that are often the residual effect of a lengthy strike.

It is obviously a concern for a regulator if the forces that are designed to push one or other of the parties to a settlement position cease to exist. Use of replacement workers is not, however, the sole manner in which this kind of radical shift in the balance between union and employer can occur. The opportunity for bargaining unit members to obtain work elsewhere during the course of a strike might have a similar effect. The capacity of an employer to obtain the product it produces elsewhere is analogous to using replacement workers to continue operations, and as with bargaining unit members obtaining work elsewhere, any restriction on this activity would be virtually impossible to enforce.

In short, there are any number of events that can alter the balance in collective bargaining. The system has its weaknesses, but presumes a balance between the parties. However, if the use of replacement workers is seen by regulators to undermine the ability of employees and their unions to both engage in meaningful collective bargaining and impose economic sanction against their employer, then the pressure for rebalancing will be very substantial.

Banning the use of replacement workers is a significant change, with implications for all employers in the Province. The focus of this Inquiry has been one particular dispute. It would not be sound to extrapolate from the particular circumstances of this dispute the need for a change of general application in this instance. Similarly, because the unique circumstances of this worksite seemed to mitigate some of the negative effects of the use of replacement workers, it would be equally unsound for anyone to infer that this practice can become a regular part of our labour relations milieu. It is a matter which requires greater examination than this Inquiry has had the opportunity to undertake.

4. Concerns of the Aboriginal Peoples

In the December Report, this Commission made the following observations arising from comments made at our meetings with leaders of the aboriginal communities:

> *"The Commission met in private sessions with each aboriginal group in the presence of representatives of the two disputing parties. While the presentations were individual and unique to each group, the messaging from them was clear and common. The two aboriginal peoples of Labrador are clearly disappointed and upset with both Vale and USW over the adverse impact that this strike has had on their peoples. Not only are the individuals whom they represent losing the financial advantages of steady and reasonably paid employment because they are on strike, more importantly the negative social impacts of the strike on their communities has been devastating. Both groups also advised the Commission that, as a consequence of the loss of household income, many aboriginal families were experiencing the hardship and the emotional fallout that it often brings – increased domestic violence and substance abuse."*

What was not stated clearly in that December Report, because it was less relevant to the Inquiry's objectives at that time, but had been also evident at the meeting, was the obvious dissatisfaction that the aboriginal groups had with both the Employer and the Union, which dissatisfaction even predated the strike. From the perspective of the aboriginal groups it appeared that a) the Union had let them down by not educating them on collective bargaining and not explaining to their new Union members the possible negative impacts of their decision to join and participate in a trade union, and b) the Employer had failed to advance those employees in more meaningful and higher rated jobs once they had gained the initial job experience. The aboriginal leaders felt that their members had been left with only the lower rated jobs.

Social responsibility goes beyond simply providing jobs and a percentage of total employment. Social responsibility is applicable to trade unions as well as to business enterprises. It is likely that Vale has complied fully with the strict requirements of its commitments under the IBAs. It claims employment levels for aboriginals exceeding the

thresholds established in those agreements. The Union believed that it had provided its membership with an understanding that a strike would have profound consequences on the strikers. At the same time, there was clear evidence of disappointment within the aboriginal communities. Their expectations do not match the deliverables. Are expectations realistic or do they exceed the requirement? Are the deliverables within the IBAs sufficiently high? During our investigative processes, the Commission was unable to obtain and review copies of these agreements, as they are considered highly confidential and there was clear reluctance on the part of the Employer and the aboriginal governments to provide us with copies.

As additional evidence of the lack of a full understanding of each other's requirements and expectations, the Commissioners learned of a situation where training for native workers was provided by training institutes within the Province for skills that are not required at the Voisey's Bay site – once again, a mismatch. The Province has a role in encouraging skills training and providing opportunities to residents. Some construction unions also have found a role in providing training for skills that their members can use on the job. Employers have an interest in having individuals acquire appropriate skills for the company's operational requirement and for succession planning. Engagement of all stakeholders on the need and requirements for Voisey's Bay needs to start, not simply because of these complaints, but because it is the appropriate thing to do.

The International Standards Association has developed many globally accepted standards for undertaking business activities. Their new ISO 26000 Code, while not developed for the purposes of an entity gaining certification (like many other ISO Standards), contains values on seven core activities: community involvement and development, human rights, labour practices, the environment, fair operating practices and consumer issues, all being tied to organizational governance. ISO describes the objectives of Clause 5 of this Code as follows:

> *"Addresses two practices of social responsibility: an organization's recognition of its social responsibility, and its identification of and engagement with its stakeholders. It provides guidance on the relationship*

between an organization, its stakeholders and society, on recognizing the core subjects and issues of social responsibility and on an organization's sphere of influence."

If the Parties were to adopt the spirit of this standard, significant improvements in many of their challenges would undoubtedly follow.

Final Recommendations and Observations

Some have cautioned the Inquiry against broadening its horizons to include commenting upon matters beyond the boundaries of this now settled dispute and the differences between these Parties. After they had settled their contract differences in February 2011, however, Government confirmed that the Inquiry should continue and respond on the remaining matters within the Terms of Reference that had not been dealt with in the December Report, even though the dispute itself had been settled.

While the Employer and the Union have made a contract settlement, they will be back to the bargaining table in less than 5 years to once again renegotiate their collective agreement. They may then be confronted with the same or similar problems that beset them this time around, unless progress in their interactions is made. In additional, their relationship with the aboriginal communities will continue and needs improvement.

This dispute also brings into focus issues which are not unique to Vale or the USW.

As Newfoundland and Labrador`s economy grows, particularly in the area of resource development, it is more likely than not that the ownership and management of such enterprises will be anything but `home grown`. The increasing globalization of trade and the organizations that engage in such trade, identified by Dr. Murray in his Discussion Paper, presents challenges for a regulatory system developed in the context of more traditional patterns of industrial organization.

The economy of this Province is inextricably linked to the exploitation of natural resources, as opposed to manufacturing which may be the dominant feature in some other provinces. Global corporations having operations in many jurisdictions, whether they are vertically integrated or horizontally related, are a feature of large resource developments. The entire community is affected by the advent of these corporate entities and a holistic view of the challenges that they present is required.

Some of the traditional tools of labour relations regulation can be adapted to solve some of the difficulties observed. Other challenges will require innovative thought and new policy direction and/or legislation from Government. Now is the time to begin the discussion. Any new labour relations milieu may require that Government find the appropriate place to make the required changes. It may not be within the boundaries of labour relations legislation – it may be in other places within which the province has legislative dominance.

Newfoundland and Labrador is not a ‘conceptual island’ in terms of the development of its appropriate industrial relations practices. Other provinces in Canada face similar challenges. There are societal issues here that require further investigation and comment.

In addition to matters of employer organization and ownership patterns, this dispute brings into focus a new approach to structuring worksites which is equally challenging for the traditional model of labour relations regulation. The remote site with limited periodic fly in/fly out access is a relatively new development often associated with resource extraction, where the prior approach was more likely to be the ‘company town’ being built to support the endeavor (for example, Wabush, Labrador City and Churchill Falls).

This Voisey’s Bay strike has opened the eyes of many observers. In making recommendations, the Commission has been careful to distinguish those circumstances which this dispute may have in common with other workplaces from those which are not necessarily replicated in the broader area of industrial relations.

As such, while the Vale-USW dispute is the genesis of the Recommendations, it is apparent that the challenges have a broader application than simply to this relationship. Accordingly, the Commissioners have determined that it is appropriate within the scope of the current mandate to make the following observations and recommendations.

Recommendation 1:

The Commissioners recognize that global enterprises or as Dr. Murray`s paper refers to them, MNCs, bring characteristics that are not necessarily susceptible to the traditional model of labour relations regulation. Decision making power may be physically remote and insulated from the social pressures implicit in the traditional model of collective bargaining. The decision makers may never meet or see the workers, let alone have to work with them after the strike is over. Corporations which produce the same product in multiple locations may be able to easily replace the production that a strike seeks to deny. The employer may have such market dominance that the loss of production from one striking operation only serves to increase the price of its production elsewhere. The corporation may have an approach to labour relations that is born of its jurisdiction of origin and at odds with Canadian labour relations values. Canadian values direct the parties to a process of continuing engagement rather than one of dispute based interaction. An organization that sees the role of collective bargaining in a manner that is inconsistent with Canadian labour relations values is likely to have difficulty reaching agreement with a union which has come to expect that employers will buy into such approaches. If there is no effective economic or social pressure that can be brought upon a multi-national corporation, what then is the incentive to negotiate? Facilitating collective bargaining in that context requires tools not currently in the labour relations toolbox. Dr. Murray`s Discussion Paper poses some creative options for the regulator to consider.

The Commission recommends that Government now re-examine the mechanisms by which it facilitates collective bargaining to take account of a) the organizational structure of multi-national corporations, b) the need to ensure that such

corporations respond to Canadian labour relations values, and c) the relative economic weight of the parties in the collective bargaining relationship. Such re-examination must involve government in all its mandates vis-à-vis such enterprises and not simply the traditional labour relations regulating mandate. Such re-examination must recognize that, where the current adversarial model creates advantages to any of the participants, such advantages will not easily be forgone.

Recommendation 2:

The re-examination inherent in Recommendation 1 contemplates the development of non-traditional labour relations tools. However, within the traditional toolbox of some jurisdictions there already is a simple mechanism, the labour-management committee, which can advance labour relations in the workplace. In any workplace there is a danger that labour relations can exist in a silo. It must be recognized that labour relations affects all aspects of an enterprise`s operations, and operations inevitably affect labour relations. Thus, the parties to collective bargaining need to engage each other on a continuing basis in order to foster an understanding of workplace issues, to prevent irritants from festering during the life of the collective agreement and becoming strike issues, and to promote the common interests of the employer and the bargaining unit.

An example of such a provision is found in s.53 of the British Columbia's *Labour Relations Code*. Among other things, it provides:

> **53** (1*) A collective agreement must contain a provision requiring a consultation committee to be established if a party makes a written request for one after the notice to commence collective bargaining is given or after the parties begin collective bargaining.*
> ...
> *(4) The purpose of the consultation committee is to promote the cooperative resolution of workplace issues, to respond and adapt to changes in the economy, to foster the development of work related skills and to promote workplace productivity.*

The legislation also provides collective agreement language should the parties not agree on such a provision.

Multi-national corporations based in Europe are quite accustomed to 'Works Councils' under EU Regulations. These have a similar objective, ensuring that there is ongoing communication between the employer's management and the front-line workers. Indeed, some significant operational changes may not occur without prior discussion with Works Councils. Although these Works Councils do not arise from collective bargaining or have an official role for trade unions, worker representation invariably comes from union ranks. Some research indicates that more progressive European-based multi-national corporations include representation on their Works Councils in their non-European operations.

The Commission recommends that Government seek to amend the *Labour Relations Act* to provide that all collective agreements contain a provision that a mandatory Labour-Management Committee be established.

There is division among the Commissioners on whether such a provision should be mandatory in every unionized workplace in the Province. There is one view that another mandatory committee should not be imposed on smaller employers or in workplaces where there is already sufficient dialogue between management and the bargaining unit. Another view is that there is not a workplace that would not benefit from such a formalized medium for dialogue.

As there is no consensus, consultation with the stakeholders through the tripartite process should occur to provide guidance for Government on the advisability of any legislative amendment and the parameters of any such amendment.

Recommendation 3:

The Commissioners have identified that: 1. picketing in this dispute was virtually of no benefit to the process because of the remote site; 2. the remote site facilitated the use of replacement workers, thereby eliminating significant economic pressure which is a

presumed element in the traditional model of strike/lockout; and 3. the availability of alternate employment for a significant portion of the members of the bargaining unit eliminated significant economic pressure on the members of the bargaining unit, another presumed element in the traditional model of strike/lockout.

The Commissioners were also left with the distinct impression that both sides to this dispute were unsure of the other party's bottom line until very late in the strike. The Commissioners further observe that Vale and USW had not really exchanged 'final' offers until January 2011.

The recommendations for settlement made by this Commission in December 2010 did not lead to a settlement. They did, however, provide a proxy for a final offer which gave each party substantial information about the other's position, when either accepted or rejected by the other party. No person or body is able to make two parties who do not need or want to settle a collective agreement do so. What can be done under the current legislative regime is oblige the parties to confront the realities of an available settlement position prior to their being able to take strike or lockout action. Just as the December 2010 recommendations of this Commission provided a proxy for a 'final' offer, so may the report of a conciliation board.

The appointment of conciliation boards under the *Labour Relations Act* has fallen into disuse over the last number of years. The Commissioners presume this is because it is felt that the conciliation officer appointed to assist the parties can perform the same function. This is not so. The report of a conciliation board requires the parties to respond and identify where they stand in relation to specific settlement proposals. Such a report may also engage the public sentiment.

The circumstances of this case, while unusual, are not unique to Vale and the USW. Other organized workplaces could confront similar facts. In cases where three of the normal pressures presumed by the traditional strike/lockout model are unlikely to operate

and pressure parties to settlement, a conciliation board can be a useful tool in moving the parties towards settlement.

The Commission recommends that Government re-evaluate the use of conciliation boards and appoint such boards to report in circumstances where it appears that the traditional pressures of the strike/lockout model are unlikely to be effective in bringing about a collective agreement.

Recommendation 4:

The Commissioners have found that some of the Labour Relations Board processes, as they were applied to the failure to bargain in good faith complaints of Vale and USW, were ineffective in that the complaints were not dealt within a timeframe which could be said to respond to the public interest in having this matter resolved promptly. This delay manifested itself both in the length of time it took to set the matter down in the first place and in the prolonged series of unused hearing dates scheduled over a period from February to December of 2010.

The Commissioners feel that there are a number of ways that this issue can be addressed involving principally administrative changes on the part of the Labour Relations Board.

The Board must recognize that a failure to bargain in good faith undermines the public interest in an effective collective bargaining system. It is not simply an issue between the parties. As such, the public interest must drive the scheduling of hearings, especially in circumstances where a strike/lockout has been ongoing for an extensive period of time. Several steps can be taken to achieve this end.

The Commission recommends that:

(a) the Labour Relations Board establish dates for the hearing of unfair labour practices immediately upon the receipt of them by the Board;

(b) the Labour Relations Board exercise its authority to abridge the time for filing of 'Replies to Applications' and 'Replies to Replies' to one-half of the current time periods in unfair labour practice complaints and in any other matter where urgency is indicated; and

(c) Government allocate funding to the Labour Relations Board so that the Board can establish and publish, in advance, an annual calendar of at least five hearing dates per month to be used as matters necessitate, with priority being given to matters of urgency.

The Labour Relations Board must be enabled to manage its hearings so as to address those matters which cannot be decided by the administrative processes outside of hearings. As the *Labour Relations Act* is currently written, there may be a question about the jurisdiction of the Board to limit a hearing, once called, to a specific issue (or issues) arising in the complaint or application that is before the Board. It is possible then that the Board will spend valuable hearing time dealing with an issue which in and of itself would not have generated a hearing. This issue requires legislative clarification.

The Commission recommends that Government seek to amend section 18 of the *Labour Relations Act* dealing with powers of the Board in order to specifically authorize the Board to limit the scope of any hearing which it might order.

The remedies available to the Board in respect of a complaint of failure to bargain in good faith are limited to a direction to cease certain behaviours. Other Canadian jurisdictions provide for a more interventionist approach, allowing boards to redress the consequences of a party not having bargained in good faith. Newfoundland and Labrador needs mechanisms to ensure that the collective bargaining process works as it is intended. This involves more than telling a party to change its behaviour.

The Commission recommends that Government seek to amend the remedial provisions of the *Labour Relations Act* so as to provide the Labour Relations Board

with the authority to fashion those remedies its deems necessary to redress the consequences of a party's failure to bargain in good faith.

<u>Recommendation 5:</u>

There are times when, for whatever reason, the parties to negotiations simply cannot by themselves compromise their positions and find settlement. When they are private parties and no public interest is engaged, they should be left to take whatever action is lawful. Government should not impose a settlement simply because the parties are unable to do it themselves.

Some jurisdictions, like the Province of Manitoba, have established a process whereby the parties can, under a defined set of circumstances which include a strike or lockout of some duration, apply to a labour relations board to impose a new collective agreement on the employer and bargaining unit. The right to strike and lockout are fundamental to our current system of collective agreement negotiation. The tools of strike and lockout do not always work and it must be accepted that there are circumstances where the collective bargaining process is not working. The Commission believes that, where the collective bargaining process has failed to produce a collective agreement despite the use of the strike or lockout, the public interest may require that a collective agreement be imposed.

The Commission recommends that Government seek to amend the *Labour Relations Act* to provide a process for the imposition of a collective agreement in the following circumstances when:

a) **one of the employer or the bargaining agent makes application; and**
b) **the applicant shall have been found by the Labour Relations Board to have bargained in good faith; and**
c) **all of the conditions precedent to a strike or lockout have been met;**
d) **it is apparent that strike and/or lockout mechanisms have been ineffective in bringing about resolution of the dispute;**

e) **the Labour Relations Board is satisfied that the collective bargaining process has failed; and**
f) **the public interest requires the imposition of a collective agreement.**

Once such an application is successful, the terms of the new collective agreement should still be set by the parties themselves, if they are able or, failing success, by an independent third party.

The Commission further recommends that Government seek to amend the *Labour Relations Act* to provide that, once an application is successful in establishing that the public interest requires the imposition of a collective agreement, the following steps should be taken:

a) **the employer and the bargaining agent shall have a further 30 days in which to reach a collective agreement;**
b) **failing agreement, the Labour Relations Board shall refer the dispute to a three-person arbitration panel appointed by the Board to settle the terms of a collective agreement between the employer and the bargaining agent;**
c) **the arbitration panel shall have the powers of a conciliation board under the *Act*; and**
d) **the panel's decision on the collective agreement shall be binding on the parties for a period of not less than one year.**

Recommendation 6:

The Commission is satisfied that, although both Vale and the USW may have met their strict legal requirements to the Innu and Inuit peoples of Labrador under the Impacts and Benefits Agreement, there remains a sense on the part of the Innu and Inuit of Labrador that the Voisey's Bay project has fallen short of their expectations for their communities. Strict compliance may meet the words of those documents, but still be inadequate in order for each organization to demonstrate that they have fully embraced the aboriginal peoples into their structures and recognized their cultural differences. The strike has shaken the confidence of these aboriginal peoples

The reasonable needs and expectations of the Innu and Inuit can only be met following information disclosure, collaborative thought and discussion, followed by innovative idea exchanges on ways of building bridges between the Employer and the Union and these aboriginal groups. More needs to be done to ensure that Voisey's Bay is a success story for these aboriginal communities.

The Commission recommends to Vale and the USW that they now jointly engage the Innu Nation and the Nunatsiavut Government in an effort to ensure that the aboriginal peoples of Labrador as stakeholders in the Voisey's Bay enterprise are fully able to participate in the benefits associated with the spirit and intent of the Impacts and Benefits Agreements.

Acknowledgments

An Inquiry such as this, assigned to three busy practitioners who are unrelated to the Parties and generally unfamiliar with the factual backdrop, requires a considerable learning curve and the assistance of many other persons. Their input should be acknowledged.

The two Disputing Parties were our primary source of information. Their cooperation was both required and necessary for us to understand the background facts and the differences between them.

The Interest Groups - Canadian Union of Public Employees, Newfoundland and Labrador Chamber of Mineral Resources, Canadian Manufacturers and Exporters Newfoundland and Labrador, Newfoundland and Labrador Employer's Council, St. John's Board of Trade, Newfoundland and Labrador Business Coalition and Newfoundland and Labrador Federation of Labour - all took an interest in our processes and outcomes and took significant time to present us with written submissions on matters that were of concern to them. We thank them for their interest and involvement.

Representative of the Labour Relations Agency of the Province of Newfoundland and Labrador not only gave administrative and logistic support, but also provided information about the operation of various aspects of industrial relations in this Province. Their assistance was invaluable.

The Chair of the Labour Relations Board of Newfoundland and Labrador and its Chief Executive Officer took time not only to provide us with information but also to meet with the three Commissioners. We thank them for their help and understanding.

The Workplace Health Safety and Compensation Commission of Newfoundland and Labrador provided valuable information from their records about OHS committee meetings.

Representatives of two divisions - the Economics and Statistics Branch and the Taxation and Fiscal Policy Branch – of the Department of Finance for the Province met with us on a number of occasions and provided statistical information which we could not have obtained elsewhere. Their input was quite valuable.

Executives with the Manitoba Labour Relations Board were most helpful in explaining the nuances of their legislation and their experience in respect of settlement of dispute mechanisms. Representatives of other labour boards also provided useful information and comment about their jurisdictional experiences.

Finally, Dr. Gregor Murray and his colleagues at CRIMT allowed the Commissioners to achieve insights into the world of multi-national corporations and their impact on employment in Canada. They were very supportive of our endeavour.

This Report and our insights into the Issues would not have been possible without the assistance of all of those parties.

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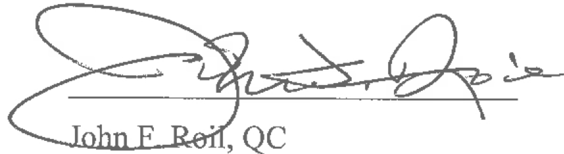
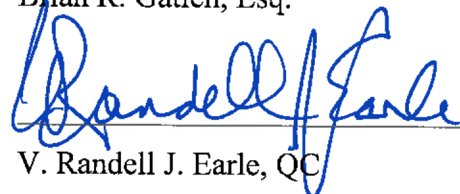
Respectfully submitted on May 11, 2011 as the final Report of the Commission.



John F. Roil, QC

Brian R. Gatien, Esq.



V. Randell J. Earle, QC

Appendix 'A'

Errata from Report 1

At page 3 in the third paragraph, the sentence

> "*Ontario operations resumed in June 2010…*"

should read

> *"Ontario operations resumed in July 2010…"*

At Page 3 in the forth paragraph, the sentence

> *"The Employer's business has been able to continue with the mine and mill being operated by replacement workers."*

should read

> *"The Employer's business has been able to, in an evolutionary manner and following an initial 6 month shutdown period, continue production at almost 50% while being operated by replacement workers."*

At page 4 in the fourth paragraph, the sentence

> *"In this round, the parties originally met in meetings on February 12-13, 2009 when Vale presented some initial proposals"*

should read

> *"In this round, the parties originally met in meetings on February 12-13, 2009 when Vale and USW each presented some initial proposals."*

At page 4 in the sixth paragraph, the sentence

> "*The next negotiating meetings were not conducted until January 22-24, 2010, then with the assistance of two conciliation officers. During these sessions,*

Vale submitted additional proposals and USW tendered their initial negotiating proposals."

should read:

"*The next negotiating meetings were not conducted until January 22-24, 2010, then with the assistance of two conciliation officers. Prior to and during these sessions, both parties submitted additional proposals."*

<u>At Page 9 in the second paragraph, the sentence</u>

"*It should also be noted that 12 additional Innu members now work in the mine as replacement workers, another factor which creates conflict in their small communities."*

should be replaced with:

"It should also be noted that 12 additional Innu members now work at the site as replacement workers, either for Vale or for one or more of the contractors engaged by the Employer, another factor which creates conflict in their small communities."

<u>At page 19 in the section "Duration", the sentence</u>

"The Union proposes an almost 5-year term…"

should read

"The Union proposes a term in excess of 4 years…"

<u>At pages 37/38, in the bridging paragraph, the sentence</u>

"…the Union made significant movement…..by accepting the Employer's position on Wages…"

should read

> *"the Union made significant movement…by accepting the Employers' increments on wages, although with somewhat different timing…"*

Consequently, further references in the Report (for example, at page 45) to the Parties' agreement on wages for the first three years must be read in the light of the above correction.

Any other disagreements or differences that the Parties have with the contents of the earlier Report can perhaps be characterized as differences of opinion, and not necessarily factual errors.

Appendix 'B'

Dr. Gregor Murray's Discussion Paper

"THINKING OUTSIDE THE BOX": GLOBALIZATION, LABOUR RELATIONS AND PUBLIC POLICY IN PROVINCIAL JURISDICTIONS

Gregor Murray

Interuniversity Research Centre on Globalization and Work (CRIMT)
School of Industrial Relations, Université de Montréal
<gregor.murray@umontreal.ca>

Discussion Paper Prepared for the Newfoundland and Labrador Industrial Inquiry Commission into the Voisey's Bay Labour Dispute*

May 2011

* *The arguments presented in this paper are those of the author and do not reflect the view of the Newfoundland and Labrador Industrial Inquiry Commission into the Voisey's Bay Labour Dispute. The author wishes, however, to express his gratitude for the many insightful comments made by the Commission members (John Roil, Randell Earle and Brian Gatien) with regard to the arguments developed in this discussion paper.*

Introduction

This discussion paper explores some of the dimensions of the impact of globalization on provincial labour relations and the ability of provincial regulation to deal with that impact. In particular, it explores the implications of the growing transnationalization of production for labour relations actors (especially multinational firms and union organizations) and their possible ramifications for labour relations practices and regulatory frameworks. Given the very short timelines relative to the breadth of the topic and the inability to conduct original empirical research, this discussion paper can only be preliminary in nature and is not grounded in a detailed analysis of the policies and institutions of Newfoundland and Labrador. It does seeks to identify important features of this new context for labour relations, to highlight key challenges and to sketch out possible areas for innovation in approaches to increasingly globalized labour relations. The purpose of this paper is to place these issues in a larger context and to assist the Commissioners (of the Newfoundland and Labrador Industrial Inquiry Commission into the Voisey's Bay Labour Dispute) in drawing on current international thinking on these issues in order to broaden possible approaches beyond a narrow labour relations box.

The paper first provides an overview of some of the major trends in multinational companies (MNCs), their possible ramifications for labour relations in the context of globalization and the key issues that stem from this analysis. It then presents a framework for understanding a range of potential public policy approaches to the new realities of globalized workplaces and seeks to draw out some of the implications of this framework. These same issues confront most national and provincial/regional governments and the Industrial Inquiry Commission's interest in developing an analysis of these issues offers an opportunity for the kind of creative policy thinking required in this new context. This discussion paper should be seen as one attempt to contribute to that policy thinking.

I. Multinational Companies (MNCs) and Their Employment Relations Practices

Globalization

Globalization is "the process whereby domestic product, capital and labour markets become more integrated across borders" (OECD 2007: 186). Since the end of the Second World War, with a marked acceleration from the mid-1970s, globalization is seen as a cumulative process whereby technological and institutional changes leading to increased international trade through free trade zones, the integration of new markets into the world economy, and the growth of multinational firms and foreign direct investment modify the nature of relationships between actors across the globe.

The transnational organization of production and services means that industrial relations actors have to think differently about their relationships with each other. Their connectedness to different parts of the world sparks new waves of investment, the adoption of technologies and managerial practices, and the migration of ideas and persons from one location to another. The role of local actors in these production networks and their links to other actors in these production networks are likely to have a pronounced impact on local practice.

Multinational Companies (MNCs)

Multinational companies (MNCs) are firms that carry out their activities in more than one national jurisdiction. The United Nations Conference on Trade and Investment (UNCTAD) regularly analyzes the activities of MNCs. It estimated that there were 82,000 multinational companies in 2008 with 810,000 subsidiary operations in different countries. They employed 77 million people and accounted for a third of exports in the global economy (see UNCTAD, *World Investment Report*, 2010).

Canada's economic development and prosperity are uniquely linked to the history of MNCs. From the first European exploration of North America by international ventures focused on fishing and the fur trade, to the creation of Canadian branch plants of U.S. and British firms under the tariff protections of the National Policy in the late nineteenth century and the early twentieth century, the multiple activities of MNCs in Canada have made its economy one of the most open in the globe. MNCs also play a pivotal role in the current internationalization of economic relations.

The Canadian economy is characterized by a very high presence of U.S.-based MNCs. This integration of corporate structures in Canada and the U.S. is by no means a new reality; but the patterns through which such integration is currently being reconfigured in a more global economy is highly relevant for practitioners, scholars and public policy makers. The ways in which subsidiaries relate to parent corporations, the type of mandates and jobs allocated to the Canadian operations of global firms and the leeway subsidiaries have in devising employment policies and pursuing innovation are all indicators of these patterns of development (see Bélanger et al. 2006).

Composition and Trends in Foreign Direct Investment (FDI) in Canada

MNCs in Canada have been overwhelmingly associated with the U.S. and Europe. In terms of the dollar value of the stock of foreign direct investment in 2009, according to Foreign Affairs and International Trade Canada (2010), the top three sources by country of origin account for more than 70 per cent of the total stock of FDI. These are the United States (52.5 per cent), the United Kingdom (11.6 per cent) and the Netherlands (8.5 per cent). No other country accounts for more than 4 per cent of the total among the top ten national sources of FDI (Switzerland 3.9 per cent, France 3.3 per cent, etc.). There are, however, important new players among this list of the top ten holders of FDI stock in Canada. These are Brazil (3.3 per cent) and China (1.6 per cent). Moreover, the greatest percentage growth between 2004 and 2009 in FDI stock by country comes from China (139.2 per cent) and Brazil (51.5 per cent). Among the other

emerging economies with small FDI stock, India also posted strong growth (+100.4 per cent) over this same period.

It should also be noted that FDI stock is overwhelmingly in manufacturing (35.5 per cent), in mining and oil and gas extraction (19.0 per cent), in finance and insurance (13.9 per cent) and in management of companies (10.9 per cent). In terms of size by employment, 39.7 percent of large firms are foreign-controlled, as opposed to 15.4 per cent of medium-sized firms and less than 1 per cent (0.4 per cent) of small firms. The activities of MNCs are concentrated in large firms in certain key sectors of the economy. Of course, these MNCs then exert multiple influences on other sectors of local economies with which they interact.

Four trends therefore stand out in relation to FDI stock in Canada as regards employment relations practices. First, employment relations practices in MNC operations in Canada are overwhelmingly in firms originating in the U.S. and to a lesser degree from Europe. Second, we are witnessing rapid growth in FDI stock in Canada from the emerging economies and notably what are known as the BRIC economies (Brazil, Russia, India and China). This represents a shift from traditional patterns of foreign investment. Third, FDI is traditionally in more unionized sectors such as manufacturing and resource extraction. This means that labour relations are an important dimension of the employment relations activities of MNCs in Canada. Finally, FDI stock is more prevalent in large firms; it is largely absent from medium-sized firms and completely absent from small firms. From a policy perspective, these trends suggest that there are new sources of influence on employment relations practices. The concentration of foreign ownership also means that it is possible to target policy initiatives to large firms in leading sectors of the economy and even to experiment with such policy initiatives because of the high degree of concentration of their activities.

Degree of Transnationality

The United Nations Conference on Trade and Development (UNCTAD 2010) also calculates a Transnationality Index that takes account of the average of three ratios: foreign assets to total assets, foreign sales to total sales and foreign employment to total employment. For some firms, their foreign operations are merely a small part of their domestic operations or are simply focused on sales and services. In the case of more extensively transnational firms, the scale of their foreign operations may greatly exceed that of their domestic operations.

Three major MNCs in the mining and resource extraction industries provide an interesting illustration of these variations. While Vale SA is a very large company as judged by its total assets, its transnationality index score is only intermediary (38.3 per cent) and is driven primarily by sales (82.3 per cent outside its home country), as opposed to assets (24.6 per cent outside the home country) or employment (7.6 per cent outside the home country). Rio Tinto PLC scores 47 per cent on the transnationality index, with 52.5 per cent of its assets, 37.3 per cent of its sales and 51.2 per cent of its employees outside the country of origin. BHP Billiton Group is more transnational again (57.8 per cent on the transnational index) with 43.7 per cent of its assets, 69.3 per cent of its sales and 60.3 per cent of employees outside the home country. Expressed another way, in relation to overall size, Vale SA is managing just 4,725 of its 62,490 employees (7.6 per cent) in its foreign operations, as opposed to the 24,730 employees (60.3 per cent) and the 54,156 employees (51.2 per cent) managed abroad by BHP Billiton Group and Rio Tinto PLC respectively.

These comparisons potentially help to gauge the relative importance of home country influences on MNC employment practices. The proportion of an international workforce outside the home country suggests both the relative importance of a home country influence and the extent to which an MNC is likely to have developed its international employment practices.

Institutional Determinants of Employment Practice

There has been a great deal of interest in the impact of so-called national business systems on the practices of MNCs. Indeed, MNCs offer a unique laboratory for understanding the interface between and within different types of national business systems. Much of this literature can be traced to the notion that the national business system of the country of origin of an MNC plays a significant role in shaping the behaviour of its subsidiaries abroad. Indeed, in many of the studies of international firms, MNCs are seen to carry the DNA of their home country business system (Berger 2006: 47). In this respect, there are marked differences between, for example, a Japanese and a Swedish MNC. In other words, much of the literature suggests that firms operate within and transmit the institutional structures in which they operate (Hall and Soskice 2001). This can be conceived in terms of "home" or country-of-origin or region-of-origin effects, "host" country effects and various forms of institutional duality.

Home: An analysis focused on the influence of home-country or country-of-origin institutions on MNC subsidiary behaviour suggests that firms carry particular sets of attitudes and behaviours forged in their home environment into their global operations (Ferner 1997; Harzing 1999; Almond et al. 2005). In particular, research indicates that MNCs emanating from the United States aspire to implement business policies and practices in their subsidiary operations that are consistent with those found in the U.S. system, rather than necessarily amending their home-country behaviour to conform to the host context (cf. Jacoby 1991; Ferner 1997; Edwards and Ferner 2002). These results are especially relevant when looking at labour relations practices. This is often observed in the case of the employment relations practices of U.S. MNCs that take practices developed in, permitted by and even mandated within the U.S. national business system to other jurisdictions. Such practices can include a preference for union avoidance and/or an adversarial approach to union-management relations or strong equal opportunity practices (Ferner 1997; Almond et al. 2005; Gunnigle et al. 2005; Lavelle 2008). Such practices abroad simply reflect traditions in the U.S. business system. Similarly, for MNCs originating in national business systems with strong traditions of mandated social dialogue between management and employee representatives, their country of origin predisposes them to continue such traditions of

employee consultation and union involvement in their foreign operations. This might be the case with MNCs from continental Europe where firms are accustomed to regular information-sharing and consultation with representative union bodies about different aspects of their operations.

Host: An alternative line of analysis emphasizes the importance of the influence of the host country. Employment relations are deeply embedded in national institutional arrangements and varieties of economic coordination. According to this view, foreign MNCs cannot simply transport their home country practices; they must instead adapt to local context (Child 2000; Geppert and Clark 2003; Ferner et al. 2005). For example, it can be argued that firms with long-standing operations in host countries will increasingly adopt local practice and this is especially true for employment practices since legal requirements and local labour market considerations are so strongly embedded in host as opposed to country-of-origin environments.

Dualities: The MNC's institutional duality (being from one country but established in another) is one of its compelling features. As studies on the influence of "home" and "host" factors have evolved, a third approach to understanding the diffusion of different kinds of MNC practices point to hybridization or dual institutional effects. Here the MNC can be seen as a strategic actor seeking to take advantage of "institutional distance" by operating in host environments in order to escape particular structures found within their home countries. For instance, some German MNCs may choose to operate in environments wherein they are not subjected to co-determination and works councils (Dörrenbächer 2004; Meardi et al. 2009).

A particular example of this can be found in a recent Human Rights Watch (2010) study examining the employment practices of European-controlled MNCs in the United States. It reports on a number of European companies that, although committed to practices of union involvement and consultation with employee representatives in their home country or region, had committed documented violations of freedom of association in their sites in the United States. Whether this was an adaptation to prevailing host country practices or an example of institutional duality, it demonstrates the variability of MNC employment practices and the interest in understanding the sources of this variation.

Decision-Making and Control in MNCs

Behaviour in MNCs on employment relations issues is not simply an expression of home and host country effects or some combination thereof. As expressed by Westney and Zaheer (2009: 361), the MNC is "a political system as well as an organizational design, with conflicts of interest built into its configuration." Numerous studies therefore highlight the scope for strategic choice in subsidiaries as local managers seek to define and enlarge their role within the MNC (see Geppert et al. 2003; Kristensen and Zeitlin 2005). Relative autonomy in local decision-making might sometimes express corporate policy that seeks to be attuned to local markets; it might also reflect continuing competition for influence within the MNC, where headquarters might be seen to be out of touch with local realities or currently be pursuing policies that are not seen to favour the development of the local subsidiary. Since such policies can change frequently, local managers will seek to mitigate their effects and seek to protect the core competencies of their subsidiary operations for the longer term.

There is evidence of this variability in respect to labour relations policies. In their analysis of the policies of U.S. MNCs in the UK, Ferner et al. (2005: 722) point to how UK managers use their institutional context "to counter the institutional pressures exerted by the centre" (p. 721). Ferner at al. (2001: 124), in their study of German MNCs in the UK and Spain, also emphasize how subsidiary managers can mobilize the constraints of the local environment and thereby "win the right to interpret and adapt global policies; in short, they may be able to negotiate more freedom of action with respect to the center." These results invite particular attention to the degree to which local autonomy, i.e. policy discretion (the ability of subsidiary managers to interpret MNC policies), has come to be defined and practised in MNC subsidiaries. In other words, decision-making in MNCs is not simply a question of "command and control" from corporate headquarters but reveals an ebb and flow, subject to an ongoing search of influence by different parts of the larger firm.

Many studies emphasize the importance of resources available to local managers to make the arguments within their MNC. They need traction and they cannot simply rely on hierarchical relations within MNCs to develop their position (Kristensen and Zeitlin 2005; Bouquet and Birkinshaw 2008). That is the importance of institutional or community interface and how local jurisdictions can influence behaviour within MNCs.

There is an additional aspect to this dynamic. As we saw above, MNCs in Canada are traditionally from countries with strong and fairly compatible systems of labour relations. The growing importance of MNCs from emerging economies, with quite different labour and employment relations regimes, further highlights the scope for enhancing the institutional interface with local managers.

Production Networks

One of the key changes in the organization of MNCs and other firms has been the reorganization of production into production networks (see, for example, Bélanger et al. 2002). This changing architecture of the workplace concerns what is produced within the boundaries of the firm, what happens outside those boundaries, and the links between them. Firms used to integrate many different functions into a single hierarchical structure so as to reduce risk, ensure continuity of supply, integrate process innovation and protect intellectual property. This has changed dramatically as the guiding organizational precepts for good corporate practice have been to "re-engineer" these firms to concentrate on core value-creating functions, while outsourcing other functions to suppliers and other intermediaries (see Berger 2006; Roberts 2004; Reich 2007). In particular, the transformation of information and communications technologies means that the coordination of functions inside and outside the firm can be integrated in real time. Reduced trade barriers and innovation in transport infrastructure and technologies (for example, containerization) further allow firms to contract across borders.

These new production networks represent a shift from the more integrated structures that characterized MNCs in preceding decades. Corporate structures are more transient, subject to multiple forms of restructuring, both within and beyond national borders. Firms engaged in manufacturing in Canada, for example, can readily displace operations to lower-cost jurisdictions. This is notably the case for recourse to sub-assembly operations in manufacturing in Mexico. It can also apply, for example, to the subcontracting of white-collar and technical work to specialized services in India. It also opens up ongoing discussions on the location of work and the advantages of one particular location as opposed to another. MNCs are certainly able to do comparison shopping between jurisdictions, playing one off against another in the search for more advantageous conditions in relation to grants, fiscal treatment, labour force training and the like. This changes the paradigm for traditional public policy approaches.

Public Policy Jurisdictions and Competitiveness

The transnational reorganization of production poses considerable challenges to national and regional (provincial, state, local) governments. In the memorable phrase of one geographer (Markusen 1996), they seek to be "sticky places in slippery spaces." In a context of increasing capital mobility, facilitated by free trade, new technologies and the rise of multinational firms, governments seek to fix sets of policies likely to be attractive to mobile capital in terms of basic infrastructure, access to markets (through trade rules), location incentives, taxation, quality and cost of labour, regulatory load, etc. Since these conditions are easily replicated in multiple jurisdictions, regional locations in the most developed economies seek to innovate in other areas of policy.

Faced with contradictory expectations, regional governments seek to promote a complex policy mix that will influence MNC decisions about where they locate their new investments. They need to facilitate capital mobility but they have to try to capture it or to make it "sticky". How do they do this? For Rutherford and Holmes (2007: 523), there are two complementary strategies. First, in providing concentrations of knowledge and expertise (pools of qualified

labour, access to universities and colleges with research and development capacities), they seek to make their investment location more attractive than others. Second, in promoting intangible assets such as cooperative learning and behaviour, they offer a platform for enhancing the value of investments and ensuring that they are replicated over the longer term.

For example, in a study of the automobile industry in Southern Ontario, Rutherford and Holmes (2008) identify a range of direct and indirect policies that have contributed to the success of this industrial cluster. These include programs supporting research and development in Canadian suppliers (Industrial Research Assistance Programme), tax credits for innovation (Scientific Research and Experimental Development), government programs to promote industry-university research links, a publicly-funded health care regime, the overall quality of education, the specific role of community colleges in providing training for the industry, and the development of stakeholder and partnership institutions to provide on-going policy input. These authors also make the argument that labour relations in the auto industry have benefited from strong labour relations and progressive employment legislation that shifts the focus towards innovation and institutional coherence as to how to achieve it (Rutherford and Holmes 2007).

A similar argument can be made with regard to the aerospace sector in Montreal where a range of government policies (federal and provincial), a long-term multipartite industry training initiative and labour relations focused on the future development of the industry have all contributed to the expansion of this sector, despite the offshoring of some manufacturing functions to lower-cost production facilities in Mexico and elsewhere in the global production networks of the major MNCs operating in this sector. These kinds of success stories highlight the complexity and the challenges of the policy mix facing policy-makers in the context of the transnationalization of production. Investment location decisions for increasingly mobile capital depend on a range of factors. Ongoing dialogue between different types of actors in the host community can contribute to those decisions.

This dynamic is all the more complex because of the development of production networks. With substantial investments and excess capacity in different regions, financial pressures on

publicly-trade MNCs from market valuations and from other forms of financing for privately-held MNCs push these MNC production networks to attain maximum flexibilities and cost-savings in their regional operations and supplier networks (Rutherford and Holmes 2008). This can occur to an extent that is even detrimental to their own innovative capacities in these broader production networks. However, the pressures are real and have to be brokered within decision-making processes between often contending groups within the MNC hierarchy. For example, MNCs focused on resource extraction are subject to often severe cyclical fluctuations. Even where fixed investments in local production facilities are that much greater (because of the nature of the capital expenditure required) and labour costs are a very small proportion of the overall costs of operations, there are continuous market pressures to achieve cost savings and flexibilities.

A final but critical piece of the argument concerns the role of local managers. Are MNCs simply top-down hierarchies or are they networks of capabilities developed in different locations in which the ability to draw on innovations developed within those networks becomes a key source of competitive advantage? In other words, are decisions inevitably top-down or are they subject to an ongoing deliberative process where there is considerable scope for local input and defence of local mandates and capabilities? In fact, many MNC local managers are grounded in their localities and local economies; others make their reputation by differentiating the capacities of their particular facility over time. They want to make the arguments for their part of the firm and will not readily relinquish that vocation, especially if they have the tools to buttress their arguments. A key question therefore becomes to what extent local MNC managers have, at the ready, a range of tools to develop their autonomy and make the argument for their segment of the global operations.

Unions and the New International Division of Labour

National and local trade unions face huge change in these new production networks. First, MNCs are larger and more geographically dispersed. Local or even national negotiations now only pertain to a small segment of overall operations. Second, key functions are accomplished at

different points in the production network and can often be replicated elsewhere within the production network. The logic of a subsidiary serving a national (domestic) market from a production platform in one country (or even in adjacent countries) is quite different from that of a subsidiary seeking to carve out a continuing role in an ever shifting transnational production network. Third, units in these networks are not always unionized or operate according to different assumptions about the role of unions. Fourth, many sites or units in these production networks are in fierce competition for jobs and productive capacity. Whether it be explicit or tacit, MNCs seek to encourage competition and solicit concessions in their different sites and workers and their union leaders are keenly aware of this and feel obliged to deal with these pressures. Finally, through transfer pricing and the use of proprietary technologies and processes within their overall operations, MNCs do have some discretion as to how and where they allocate their profit. This means that there is scope for considerable variability in the analysis of the profitability of particular business units (Schindler and Schjelderup 2010; Micossi and Parascandolo 2010).

These changes certainly destabilize traditional notions of union solidarity. The size effect is considerable as the continuing growth of MNCs appears to change the rules of the game whereby multinational firms are larger in scale and more transnational in nature. They therefore have more options about where to locate and ensure the continuity of their productive capacity, including during interruptions of supply from particular locations. Pattern bargaining, whereby a union at one MNC site builds on the improvements negotiated at another MNC site, has therefore been literally turned on its head. Local negotiators often now feel compelled to introduce forms of flexibility that will protect their particular location in the production network. Such concessions can sometimes explode into significant labour-management confrontations, even when it is apparent that such disputes do not have the same impact on the MNC that they once might have had.

This new situation can also give rise to new forms of locally negotiated partnership. There are multiple indicators of this latter trend. The increasing length of collective agreements in many industries in Canada over the past decades is one sign of these increased pressures as both parties seek longer periods of stability (see Annis 2008 on the continuous increase in the length of major

collective agreements in the federal private sector over the last two decades, Chart 2-8; Bourque 2011: 56). Significant changes in work organization are another manifestation of these changes as local unions offer both functional flexibility (reducing the number of job classifications) and numerical flexibility (reducing the number of employees and altering shifts and overtime schedules) in ways to accommodate firms' requirements. Another sign is the increased frequency of problem-solving approaches in bargaining, such as mutual gains bargaining, and the introduction of partnership mechanisms as a regular feature of labour-management relations and the application of collective agreements.

Bargaining units are, however, increasingly fragmented and must seek to develop strategies to deal with their relative isolation. Unions in Canada have traditionally sought to do this through pattern bargaining and formal and informal linkages with unions in the United States in a number of key industries. But the relevant comparators have shifted dramatically and the decentralized and often fragmented union structures that characterize labour relations in Canada have not really kept pace with significant change in the organization of MNC production networks.

From the 1970s onwards, there were early attempts to develop international union coordination structures in a few flagship industries, such as automobile assembly and chemicals, which were seen to be at the forefront of internationalization. However, it is primarily in the last decade that more significant forms of coordination have begun to take place. First, the end of the Cold War saw a progressive unification of the international union structures that had previously been subject to bitter ideological and organizational rivalries competed in the context of Cold War politics (Croucher and Cotton 2009). Second, the social legislation introduced by the European Union provided a new model for forms of transnational employee consultation and social dialogue (Marginson and Sisson 2004).

There are three important factors at work in these new forms of international union coordination.

First, from 1994, the European Union established a procedure for information and consultation in firms that were present in more than one member state. MNCs are thereby obliged to consult employee representatives on an annual basis. Even though the employee representatives are not necessarily trade unionists, unions tend to play a significant role in these bodies. An important effect of this development has been to bring these employee and union representatives into a regular cross-border dialogue on different aspects of company business plans. Of course, the incipient competition between different national sites means that these exchanges can be complicated but they do provide the basis for ongoing exchange. In a few cases of MNCs headquartered in Europe (Rolls Royce, Volvo, Volkswagen), company management has further extended this social dialogue during regular European Works Council meetings to employee/union representatives from their sites in countries outside of the European Union.

Second, another major impetus for these new forms of international union coordination is the development of what are now called Global Union Federations, which bring together national union movements in particular industries into a single overarching coordination structure for related industries. For example, national unions in the auto industry in different countries are affiliated to the International Metalworkers' Federation. At the most basic level, Global Union Federations can facilitate the exchange of information between different sites of the same company. This information exchange can develop into more enduring forms of coordination such as world company councils (in a particular firm) that engage in more active reciprocal support or in international campaigns to support particular groups of workers or advance particular issues. There are, however, few examples of actual coordination of bargaining and fewer again of joint cross-border bargaining. Not only is the alignment of objectives quite complex but MNCs have not found it in their interest to do so.

Another significant form of international union stemming from the actions of the new Global Union Federations is the development of International Framework Agreements. The first of these dates from 1988 with the French MNC Danone and by 2010 there were somewhat more than 70 such agreements between MNCs and Global Union Federations. They are not so much collective agreements as sets of principles which establish a framework for good relations and

continuing social dialogue, most notably beyond the borders of strong industrial relations systems typical of Europe. However, they are not legally binding and often remain at the level of general principles. Nevertheless, they are potentially of particular importance for operations in developing countries and sometimes in supplier networks, when union and civil society activists want to flag a discrepancy between espoused MNC principles and actual subsidiary practices. A typical agreement would commit the MNC to agree to observe core International Labour Organization standards, such as the freedom of association throughout its production network. Despite the fact that these international framework agreements are largely a moral commitment, their originality is the ambition to cover MNC operations in their entirety, which is something that current national labour legislation is manifestly ill equipped to do. Such agreements are also a way for MNCs to deal with international pressures emanating from non-governmental organizations (NGOs) on appropriate standards of conduct for MNCs on issues such as labour and environmental standards.

A third impetus for the development of international coordination is the expressed need by local bargaining units in different parts of the globe to benefit from information exchange. As MNCs grow in size and their production networks become increasingly complex, there are clearly power asymmetries between highly coordinated MNCs controlling production networks across the globe and quite decentralized local unions governed by local labour laws. While industrial action pursued by a local union in a highly decentralized bargaining structure like that of Canada might occasionally exert strategic control over a production bottleneck – i.e. a strategic node within the network – the more typical situation is one of isolation. This is further reinforced by the difficulty of engaging in secondary or sympathy actions in support of other bargaining units outside of their local jurisdiction. In such circumstances, it is likely that there will be increasing exchange between local union bargaining units in different jurisdictions. Of course, this is already the case on the management side through extensive human resources and labour relations manager networks.

Other Community Stakeholders and Corporate Social Responsibility

Another significant trend affecting the relationships between governments, MNCs and unions is the advent of various community and interest group associations concerned with particular aspects of the behaviour of MNCs. These can concern issues such as sustainable development, the environment and working conditions, sometimes locally and sometimes internationally. Good examples include associations such as the World Wildlife Association, the Sierra Club and different church organizations. These associations are increasingly visible in their ability to engage MNCs in a variety of forums, be they shareholder meetings, parliamentary committees, public meetings, and the like. One line of argument suggests that as MNCs are increasingly brand conscious, as is the case with many readily identifiable consumer goods, they are also vulnerable to adverse publicity about their corporate practices that can result in market pressures on the value of their stocks or in consumer reluctance to purchase their products or services.

These pressures can take a variety of forms. Student and faith-based associations have been increasingly concerned with labour conditions in developing countries and the environmental practices of MNCs. MNCs operating in resource extraction must also ensure the agreement and respect of indigenous peoples whose land rights and practices are affected by the economies activities they pursue. These groups in turn impact on a variety of ethical investors who express concerns that environmental and human rights considerations are respected in MNC development projects.

In this context, MNCs are therefore increasingly proactive in their use of corporate social responsibility. This is, in part, brand protection and, in the case of many resource firms, in part risk minimization. It is also another form of corporate branding since "good" is normally "better" and many firms seek to cultivate that image for both internal purposes (employee identification and mobilization) and external purposes (supply chain clients and end user clients). As we shall see below, although such corporate codes of conduct were once primarily seen as unilateral company expressions of good intentions – mere public relations exercises –, a new generation of

corporate social responsibility initiatives are more complex and multilayered inasmuch as they entail ongoing engagement with multiple stakeholders who are essential to the enhanced accountability of corporate policies and practices.

New Regulatory Mechanisms and their Interconnections

This context has given rise to the emergence of new mechanisms to regulate the activities of MNCs.

There is increasing international consensus on the importance of norms for human rights and labour practices. In particular, both the United Nations and the tripartite International Labour Organization (ILO) have adopted universal standards on basic human and labour rights. Moreover, expressions of these principles are increasingly seen in domestic judicial decisions (most notably, for example, by the Supreme Court of Canada in recent decisions on collective bargaining and the freedom of association). These international standards are also explicitly recognized in most International Framework Agreements and, increasingly, in other private expressions of corporate social responsibility.

In particular, there are a number of United Nations and voluntary initiatives around improving standards of corporate social responsibility. In particular, the Global Compact initiative of the United Nations Secretary General seeks to commit firms to aligning their operations and strategies with ten universally accepted principles in the areas of human rights, labour, the environment and anti-corruption. Approximately 3,500 firms have signed onto this initiative (Vogel 2010).

These initiatives can give rise to a range of mechanisms for the exchange of information. For example, The Forest Products Association of Canada has engaged a number of major companies (both supplier and consumer) in the forest products industry in a Canadian Boreal Forest Agreement that commits these companies to sustainable harvesting practices (Marotte

2011). This initiative also involves nine civil society environmental organizations who pledge to suspend "do not buy" campaigns against the signatories of this agreement. This kind of stakeholder initiative marks an important movement beyond traditional direct state regulation in the way that companies develop strategies to deal with their communities. They are also indicative of the importance of the pressures bearing on MNCs in different communities.

One of the most comprehensive initiatives concerns the new International Standards Organization (ISO) norm on corporate social responsibility, known as ISO 26000. This initiative seeks to set a new international norm, adopted in 2010, for best practice in social responsibility. This norm covers, inter alia, human rights, labour practices, the environment, fair operating practices (notably suppliers in production networks), consumer issues, and community involvement and development. It can be expected, like other ISO norms, that the development of this norm will be quite exacting and introduce a kind of competitive benchmarking on social standards. Unlike some ISO norms, it will not give rise to any specific certification but it has been the result of extensive deliberation by interested stakeholders.

An important aspect of these different initiatives is their increasing interconnectedness where private norms are picking up on international public norms. There are to date, however, only a few European jurisdictions (Denmark and Sweden since 2010, the United Kingdom since 2007 and France since 2001) where corporate social responsibility reporting for large companies is mandated by public legislation. Such public mandating can be seen as an important element of an emerging patchwork of private and public regulation as MNCs, along with other firms meeting certain reporting thresholds related to their size, are then compelled to engage in such reporting and, ultimately, the deliberation that goes with stakeholder engagement. Inasmuch as stakeholder engagement is mandated in the process, this creates an obligation to consult and a space for subsidiary managers to do so, thereby enhancing their capacity to interact with local environments and ultimately to use these resources in other decisions linked to their MNC.

Key Issues

This overview of key trends in MNCs and their transnational organization of production and of their implications for public policy actors, trade unions and other civil society actors allows us to identify a number of important issues.

First, MNCs represent one of the most important segments of the economy and their influence through the development of transnational production networks is certainly growing. Indeed, the tremendous growth of MNCs through mergers and acquisitions that has characterized recent decades of MNC growth gives rise to a number of concerns in host countries. When compared with greenfield or new investments, these include whether the MNC is actually enhancing local capital stock (as opposed to simply increasing its size and dominating markets), whether the mergers and acquisitions result in better technologies, whether they generate new employment and whether they reduce competition and/or lead to anti-competitive behaviour in local and international markets (UNCTAD 2000: xxiv). The continued growth of MNCs also raises concerns about information and other asymmetries in employment relations since the bargaining power of these firms and their ability to induce employees to undercut working conditions from one jurisdiction to another is simply much greater.

Second, in terms of regional economic policy and prosperity strategies, in addition to the classic issues of MNC investment locations as related to infrastructure, market access and cost, intangible assets are increasingly seen to be an important feature in attracting and maintaining segments of MNC production networks. Such intangible assets can include cooperative labour relations, training strategies and forums, the quality of educational institutions and industry links with those institutions.

Third, this analysis highlights the importance of providing resources and forms of leverage to local managers if they are to make the economic and political arguments within their corporate structures. MNCs are far from homogeneous and various factors are at play in decision-making processes. Host jurisdictions and other actors can be influential in this process and are

often filtered through the local managers themselves who require institutional interface and allies within the jurisdiction to make their arguments.

Fourth, as MNCs from emerging economies grow in importance, they will increasingly come from a variety of labour relations cultures. This raises the issue of acclimatization of MNC practices to host-country policies and practices and highlights the need to reinforce institutional mechanisms and forums for bilateral exchange and learning. This is a key element for establishing effective relationships. Indeed, such information exchange could be a mandated requirement in the case of changes in corporate ownership or in the case of such changes for firms beyond a certain size threshold.

Fifth, traditional labour relations mechanisms appear ill adapted to respond to many of these challenges. There is a need to think "outside the box". In particular, it can be suggested that an approach focused exclusively on labour relations and ministries of labour is too narrow to sustain the more collaborative kinds of relationship that many would hope to see between representative worker organizations and MNCs in local jurisdictions. To move beyond a narrow labour relations focus, it is necessary for initiatives that cut across traditional functional areas of public policy since it is such inter-ministerial and inter-agency initiatives that can garner the attention of MNC managers and ultimately provide them with resources and networks that can feed back into their firms. Such initiatives can also draw worker organizations into a broader exchange about economic development and thereby engage workers and their unions in economic education for the development of their communities. This requires a more comprehensive approach involving multiple stakeholders.

The limits of the narrower approach can be seen in the efforts of Peter Annis (2008) who recently did a comprehensive report for the federal minister of labour on disputes in the federal private sector. His core recommendations were the result of a bipartite consultation process to secure a labour-management consensus on solutions to private sector disputes in that jurisdiction. He first recommended the establishment of a tripartite council with labour-management representation in that segment of the federal labour jurisdiction (i.e., the private sector). Second,

he argued for an improved conciliation and mediation service. Finally, he highlighted the importance of timelier decisions from the Canada Labour Relations Board (CLRB). We can presume that these recommendations were designed, first, to enhance stakeholder responsibility for input and outcomes; second, to increase the resources available to the mediation and conciliation service so that it might be more proactive in helping to improve information flows and the quality of labour-management exchange; finally, to reduce the kinds of delays in Board decision-making processes that stem from legal gamesmanship and proceduralism.

While these are fruitful avenues, they barely scratch the surface as to the changing dynamics of the transnational organization of production and the role of MNCs and other actors therein. In the second part of this discussion paper, we outline an alternative framework for thinking about engaging MNC employment practices.

II. Potential Public Policy Approaches and Their Implications

We argue here for the need to enlarge our understanding of public policy options to MNC relations with host jurisdictions. Table 1 gives an overview of this enlarged approach. We first set out a three-tiered approach to labour relations, ranging from traditional adversarialism to partnership and stakeholder approaches. We then explore how these approaches can be expanded from the single domain of labour-management relations to multiple domains. The core argument is that labour relations policy alone does not provide a sufficient basis to found more comprehensive approaches to the societal impacts of MNCs in local jurisdictions.

Adversarialism. Our labour relations regime is founded on the premise of a conflict of interests between workers and the management that hires and directs them in the use of its property. Our labour law protects workers' right of association within this relationship and seeks to express, channel and regulate this conflict according to a number of basic ground rules (Murray and Verge 1999). Among these are the obligation not to interfere in the right of association, the duty to bargain in good faith towards the objective of concluding a collective agreement and a peace

obligation during the life of collective agreements. This is the basis of our adversarial system and most of the other details are left to the parties to the negotiation to work out as they see fit. The parties can adopt different postures – be they more conflictual or consensual in nature, as appropriate to their circumstances – but the ultimate recourse to the possibility of a strike or lockout in the context of negotiating the collective agreement remains a central tenet of that basic adversarialism and also of the freedom of association itself.

Partnership. One of the impacts of globalization has been to move the parties in the adversarial relationship towards new forms of dialogue. While the partnership model does not deny basic conflicts of interest in the union-management relationship, it also emphasizes the commonality of interest of the parties at play and the need to develop mutual understandings about the role of their workplace in a larger context that transcends in many respects the adversarial model. This can give rise to joint problem-solving approaches in the context of high-performance work practices and other strategies to secure the viability of bargaining units in a more tumultuous economic environment. Such partnerships are sometimes enshrined in the collective agreement and even give rise to new parity mechanisms, such as joint labour-management committees engaged in continuous negotiation and problem-solving, in order to favour a continuing dialogue within the workplace. Other partnerships develop in parallel to the collective agreement. Such partnerships are often fragile, vulnerable to both the periodic evaluation of the union members concerned and to changing orientations of local managers at the site and of corporate managers within the larger MNC and beyond the site.

Stakeholder. A narrow interpretation of the firm suggests that only the shareholder or owner is a stakeholder. The notion of partnership introduces employees as stakeholders who have an interest in the survival and development of their employing organization. As the perception of the firm and its social importance to the lives of citizens in the community evolves, a more encompassing notion of stakeholders has taken place. According to this view, and it is of particular importance given the evolution of MNCs into broader production networks and also into the more complex areas of resource exploitation and extraction, there are multiple stakeholders in the community, beyond the shareholder and beyond the immediate workforce. These include native peoples

whose land rights must be respected according to conditions negotiated in specific agreements, suppliers, consumers, particular groups within the population affected by MNC activities, Non-Governmental Organizations, educational establishments, etc. Corporate policies and practices, as expressed through corporate social responsibility and other mechanisms, should therefore take account of these other community interests. While this is a relatively new approach, not least in labour-management relations, an example might be the introduction of other interests related to community impacts into the bargaining relationship. For example, in the mediation-adjudication process around determining essential services in the Quebec public sector, other community interests have a voice in the process because of the impact of the labour-management relationship on those interests. The key point is not simply that the impact on them is taken into consideration but that they are also participants in a multi-partite determination process, which inevitably has an impact on the perceptions of labour and management in the traditional adversarial relationship.

Public policy approaches can also be distinguished by the range of their concerns: from the single labour-management domain to broader labour market concerns to community and economic development.

Single labour-management domain. Public policy focuses here on the traditional labour-management relationship. It is epitomized by labour relations acts and the adjudicative processes related to the exercise of the rights and responsibilities of the parties, as specified in those acts.

Broader labour market domains. Public policy here addresses concerns about employment that go beyond the labour-management relationship. These entail labour market access and equity issues for different stakeholders. They are also related to vocational training and continuing renewal of workforce skills.

Community and economic development domains. Beyond the labour-management relationship at the worksite and related labour market concerns, there is a wide range of issues related to community and economic development and the place of the firm in those development strategies.

These are of particular relevance to societal competitiveness strategies and policies to pursue economic prosperity and goals of social equity.

Table 1 combines these two sets of concerns to demonstrate how we might think about enlarged and interrelated policy approaches to MNCs in local jurisdictions. Each cell seeks to elaborate on a mix of softer and harder policy tools. We briefly develop a few examples below. Policy-makers are invited to think creatively about how these combinations can give rise to new policy mixes and innovative solutions to the problems that they face.

Adversarial/Single Labour-Management Domain. Soft policy approaches include enhanced quality of bargaining and labour-market information to support the parties in their bargaining relationship. Similarly, mediation and conciliation services at the time of negotiation can facilitate bargaining dialogue. This was the primary focus of a recent report on work stoppages in the federal private sector (see Annis 2008).

Although most jurisdictions have moved away from compulsory conciliation and mandated cooling-off periods, it remains a potential hard policy tool among other approaches available to a Minister of Labour or Labour Relations Board seeking to intervene in a bargaining relationship.

Partnership/Single Labour-Management Domain. Increasingly, as cooperative labour relations are seen to be an intangible asset in broader economic debates about the location of MNC activities, governments seek to encourage labour-management partnership as a policy objective.

In most jurisdictions, policy to support this approach takes the form of mechanisms to improve regular communication and encourage the parties to engage in problem-solving. Cooperation cannot be legislated and depends on "soft" approaches that make services available to help parties develop more constructive relationships. A typical preventive mediation strategy

can include training in strategies such as joint problem-solving, establishing joint labour-management committees and developing relationships by objectives. The approach tends to be voluntary and requires the consent of both parties.

There is, however, little legislative support for such approaches or the kinds of mandated information-sharing that might inform them. A number of European jurisdictions in fact mandate information-sharing and consultation as a basic part of the labour-management relationship, as does the European Union on a community-wide (EU) basis for MNCs operating in more than one of its member states. Indeed, it can be argued that given important information asymmetries in the multinational bargaining relationship, mandated information-sharing and consultation provide both the substance and the procedure for enhancing potential social dialogue around partnership objectives. This issue can be of particular importance where many of the relevant activities of a firm take place outside of the local jurisdiction.

Partnership/Broader Labour Market Domains. When partnership is tied to a broader set of labour market objectives, there is scope to develop non-adversarial aspects of the labour-management relationship. Union and management involvement in training councils and forums provides an important example of the potential for this type of relationship-building beyond the single labour-management relationship. In placing trade unionists and local management in interaction with their community, for example with local educational establishments, there is clearly a broadening of the focus on at least some aspects of the labour-management relationship. A simple but eloquent example concerns how collective agreements deal with student placements. This can often be an issue of concern, raising suspicions about "cheap labour" and too easily leading to comprehensive prohibitions of practices that might have a positive impact on the development and renewal of skills in the broader labour market. In our earlier examination of local public policy initiatives in the context of globalization, forums on training and labour market issues, as developed in key industries in Quebec and Ontario, proved to be very important in developing relationships based on a view of the industry as a whole. Moreover, they were often an intermediary step in the development of broader community and economic development strategies in which union representatives were also involved (see below).

Partnership/Community and Economic Development. When partnership is linked to broader community and economic development objectives, there is potential to involve local managers and unions in a wider discussion of economic development and prosperity goals. One example might concern relationships with universities on work process innovation and research and development. As in the case of partnership and related labour market domains such as training, employment and job quality, the key argument is that an enlarged approach to partnership that locates its role in broader community development strategies gives local unionists and managers an enhanced understanding of the stakes at play and their potential role in them. It also means that government has a larger set of levers to seek to influence the development of partnership initiatives. Moreover, because many of these objectives are linked to union concerns that transcend the immediate bargaining relationship, they are likely to have a strong pedagogical effect on more proactive union positions. In other words, this type of engagement inevitably has an impact on the traditional bargaining relationship and probably requires more active support for efforts to enhance education and training around broader economic and social objectives as they relate to particular industries and communities.

Stakeholder/Community and Economic Development. The same sets of arguments apply to stakeholder/community and economic development approach but enlarge the nature of the deliberations because they introduce multiple actors or stakeholders into those exchanges. The consideration of a wide range of community impacts – both within and beyond local jurisdictions – is at the heart of the new movement towards enhanced corporate social responsibility. These can include questions of environment sustainability, the respect and involvement of native peoples, ethical purchasing obligations, relationships with local suppliers, etc.

There is a range of soft but underdeveloped policy tools to encourage such initiatives. A key part of this policy approach entails cross-ministerial initiatives that engage different stakeholders in a broader set of considerations. One avenue is the selective introduction of different types of stakeholder forums, depending on the types of behaviour that policy-makers seek to influence. Such forums can entail voluntary participation. It is especially important to

involve local union and management representatives so that exchanges over a wider range of policy issues exert spillover effects on labour-management relations. In essence, relationships are built through issues of common concern. Moreover, this institutional engagement is likely to have multiple effects in the resources available to local managers in their interactions elsewhere in their larger MNC. As we argued above, this engagement is of some consequence in the determination of MNC employment practices in host jurisdictions.

There are also examples of harder policy approaches that concern multiple stakeholders and broader objectives of community and economic development. Such approaches are currently little developed in Canada but our argument suggests that they need to be considered in terms of the more comprehensive approach advocated in this discussion paper. Environmental assessments related to permits to exploit natural resources provides one potential option for specifying community and economic development concerns. They also offer an opportunity for a deliberative process involving multiple stakeholders. Foreign Investment Review provides another option, though it appears to be stronger in the setup than in the follow through. In involving multiple stakeholders and in specifying some of the community concerns raised in foreign takeover reviews, there is likely to be an impact on the kinds of arguments put forward in such reviews and the types of corporate undertakings in the process.

Several European jurisdictions have sought to mandate various forms of corporate social responsibility and community impact reporting, tying firms to a self-evaluation process and a dialogue with stakeholders on objectives and their attainment. This is likely to become much more important with the development of the ISO 26000 norm on social responsibility, which itself supposes a range of interconnections between different company practices.

Table 1 Public Policy Approaches

	Single Labour-Management Domain	Broader Labour Market Domains	Community and Economic Development
Adversarial	- Labour Code and its adjudicative processes - Collective bargaining relationships	- - -	- - -
Partnership	- Preventive mediation and training on problem-solving - High performance workplace practices initiatives - Labour-management partnership forums	- Industry training committees (i.e., links on training between union and management representatives and community colleges - Joint initiatives between ministries on these issues (i.e., human resources, labour and employment; innovation and trade)	- Community forums i.e., links with universities on research and development - Joint initiatives between ministries (human resources and labour; innovation, trade and rural development; environment and conservation; etc.) involving labour-market (employer and union) partners
Stakeholder	- Community input on labour relations i.e., the model of essential services mediation involving consumers and other stakeholders	- Multiple training and employment initiatives involving a wide variety of stakeholders from the community, including those most affected by access to employment and employment equity issues (i.e., native communities) - Joint initiatives between ministries involving a wide variety of stakeholders (including union and management representatives but in ways that move beyond traditional bipartite and tripartite forums	- Regional prosperity and competitiveness initiatives - Corporate social responsibility initiatives (Global Compact, ISO 26000) - Social audits - Sustainability and environmental issues - Rights of native peoples - Other human rights (within and beyond local jurisdiction) - Supplier forums on the social dimensions of their business relationships - Mandatory corporate social responsibility reporting

Implications

The central argument in this discussion paper concerns the shifting balance of power between national or local jurisdictions and MNCs. It suggests that an enhanced range of policy tools can favour both connectedness to the local economy and the interconnectedness of different forms of regulation. Connectedness to the local economy ensures ongoing dialogue with multiple stakeholders. Interconnectedness ensures that policy objectives in one area are achieved through their integration in multiple policy areas and approaches.

A number of policy issues flow from this analysis.

- In the light of the increasing importance of MNCs from dissimilar home-country labour relations regimes, there is the question of acculturation and pedagogy in terms of establishing prevailing norms for good industrial relations practices. Local labour relations institutions should have a range of policy initiatives, as makes sense in their particular jurisdiction, to ensure regular interchange with local institutions and actors. Jurisdictions should establish clear expectations about MNC behaviour in their jurisdiction and explicitly identify these expectations in both traditional industrial relations policy and in other cross-cutting policy areas such as environmental regulation and community relations. For example, jurisdictions can specify the expectation of best practice as espoused in the core areas of ISO 26000 norms or the guiding principles of the UN Global Compact initiative.

- Government policy and practice should aim to ensure a range of institutional interface for local MNC subsidiary managers so that they might draw on institutional resources and alliances to make the arguments for their local operations within their larger MNC. This will influence the adoption of employment practices in host jurisdictions (and even elsewhere in the MNC).

- There is the need to develop approaches that go beyond the traditional adversarial framework of labour relations. This framework remains entirely relevant but, in the absence of other policy tools, is unlikely to exert a strong influence on key decisions relating to the behaviour of MNCs.

These should target different aspects of relationships linked to community impacts and jurisdictional competitive advantage and bring MNCs into dialogue with multiple local actors, including representative worker organizations such as unions, on a range of policy issues that cut across different ministerial jurisdictions.

- There is a need to embrace a wider range of interrelated concerns than traditional labour-management issues. These include societal justice in terms of access to labour markets, attracting young people to stay in their home province for labour market opportunities and the rights of native peoples. They also include environmental sustainability issues as any corporate endeavour must be assessed in terms of its overall impact on the community. They also relate to societal competitiveness in the new international division of labour, which points to links between MNC networks of production, the education system, and various prosperity initiatives.

- Finally, it is argued that these broader objectives necessitate deliberative stakeholder processes where generating mutual understanding is a key dimension of policy development that is likely to exert multiple impacts in different areas of labour-management relations over the longer term.

The framework presented in this discussion paper therefore identifies some of the potential policy tools.

First, there is a need for a more comprehensive approach to thinking about the relationships between MNCs and unions in their jurisdictions. This entails moving beyond – but not denying - traditional IR approaches in order to reinforce both partnership mechanisms and a broader range of policy concerns, embracing both labour market and community and economic development objectives. There will clearly be significant disputes in the future but the parties involved will be linked by a web of ties to other actors and will likely be more sensitive to the multiple ramifications of their conflicts.

Second, it is suggested that governments require a range of both soft (pedagogical) and hard (straight regulation) policy tools. In particular, soft policy tools (for example, partnership mechanisms and forums and corporate social responsibility reporting) ensure continuing interface within the jurisdictions and will contribute to dialogue and exchange that develop mutual understandings. Hard policy tools, such as mandating some forms of behaviour and ensuring that governments have the power to ensure cooperation from all parties potentially concerned by labour-management disputes, provide a range of options that can be particularly effective in the context of long-term investments. Obligations to provide information and engage with local institutions then become a regular part of business practice and are likely to prove unobtrusive when the soft policy tools are being embraced by the stakeholders and integrated into their practices.

Third, given the potential for MNCs to move between jurisdictions, it is recommended that jurisdictions develop a web of interrelated strategies that ensure inter-linkages between different policy objectives. For example, mandatory corporate social responsibility reporting and stakeholder consultation in the process and the links that this entails with harder international norms offer a vision of increasing interconnections between different forms of regulation. There is no evidence that the observance of these norms (for example, as recommended by the International Standards Association in its ISO 26000 norms or the UN Global Compact in its ten guiding principles) conflicts with the competitive practices of firms. Indeed, the clear espousal of such practices by public policy makers will give strong signal as to the importance of these norms in building a vibrant local economy. Expectations about good practice in this respect can be specified in a range of policy areas, including permits and licenses in environmental planning and resource extraction, foreign investment review, as well as more traditional areas of labour relations and employment practice.

Fourth, with regard to resource-rich jurisdictions where existing investments are already substantial, it is suggested that policy makers can enhance obligations for institutional interface and thereby provide local managers with intangible assets for ongoing discussions within the MNC. This suggests the possibility of the increased effectiveness of such policy tools in

resource-rich jurisdictions where the scope for multi-stakeholder initiatives around broader community and economic development initiatives is much greater. The key proposition is that such an approach will have multiple positive effects on labour-management relationships over the longer term.

Finally, it is critical that policy-makers and local labour market and community actors have the confidence to engage in experimentation with new approaches to common problems. There is an ambient discourse that suggests that policy-makers and local actors are completely constrained in the face of pressures from economic globalization. In fact, when we examine the societies that are most highly ranked in terms of economic competitiveness and social equity, it is readily apparent that there is a rich and persistent variety of labour market institutions and approaches to labour relations. Norwegian solutions are different from German solutions that are in turn different from American or Japanese solutions to similar problems. Globalization and the growth of multinational firms and their transnational production networks certainly raise new challenges but the responses to these challenges are likely to vary from one institutional context to another. There are of course lessons to be learned from the experiences of others, but policy-makers need to have the confidence to undertake institutional innovations through processes where they engage community stakeholders in the development of their local economies and societies. The patchwork of jurisdictions in Canada offers particular scope for experimentation on the part of local policy-makers. The argument presented in this discussion paper suggests that it is in placing labour-management relations in a larger context, in terms of the range of stakeholders involved and the types of issues addressed, that new solutions to these challenges are likely to emerge.

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Author Biography

Gregor Murray is director of the Interuniversity Research Centre on Globalization and Work (CRIMT) and is a professor in the School of Industrial Relations at the University of Montreal. He holds the Canada Research Chair on Globalization and Work. He is originally from Ontario, did his PhD at Warwick University in the UK and now works at University of Montreal, which has one of the major schools of industrial and employment relations in North America.

Gregor is currently leading a multidisciplinary and international team of more than 75 researchers—coordinated through the Interuniversity Research Centre on Globalization and Work (CRIMT)—to examine how people contend with workplace change. Funded through the Social Sciences and Humanities Research Council of Canada's Major Collaborative Research Initiatives program and the Fonds québécois de recherche sur la société et la culture, the CRIMT team is asking key questions about worker well-being in a global age and how fairness is a fundamental part of ensuring organizational efficiency.