LABOUR RELATIONS

Judicial review of decision by referee finding that respondents federally regulated for labour relations purposes — Applicant, based in Ontario, providing interprovincial charter, coach bus services — Operating municipal transit services in York region with two divisions: "Can-Ar Coach" (Coach), "Can-Ar Transit Services" (Transit) — Canada Labour Relations Board (CLRB) concluding in 1995 that applicant federal undertaking for purposes of *Canada Labour Code*, R.S.C., 1985, c. L-2, Transit's labour relations within federal jurisdiction — Coach downsized in 2003; applicant awarded major contract to operate municipal transportation for York Region Transit — Contract then awarded to Veolia Transportation Services (Canada) Inc. (Veolia) in 2010 —Amalgamated Transit Union, Local 113 obtaining provincial certification in 2010 to represent Transit employees re-hired by Veolia — Order issued to pay severance to Transit employees under Code, s. 235 following termination of their employment — Applicant bringing wage recovery appeal under Code, Part III, arguing Transit's operations falling under provincial jurisdiction — Referee relying on 1995 CLRB decision, writing, *inter alia*, that once determination made that employer within federal jurisdiction, its status should remain constant — Concluding that Transit, Coach "single undertaking" providing interprovincial transportation services, that Transit employees federally regulated for labour relations purposes — Issue whether Transit employees federally or provincially regulated — Transit not within federal jurisdiction, falling under provincial regulation, Referee having no authority to deal with matter of severance pay based on Code, s. 167 — Referee erring in mentioning provincial presumption, then failing to apply it — Where federal jurisdiction over matter the exception, not rule, decision makers having to take that as starting point — Provincial presumption not falling away merely because labour tribunal determining constitutional issue — Referee's "consistency" rationale inconsistent — Referee erroneously focusing on "compelling" reasons to depart from 1995 CLRB decision, not engaging with whether Transit employees successfully rebutting presumption of provincial jurisdiction over Transit's labour matters — *Westcoast Energy Inc v. Canada (National Energy Board)*, [1998] 1 S.C.R. 322 (*Westcoast*) setting out test by which decision makers determine whether undertaking "single", in constitutional sense of being "indivisible", "integrated" — "Single undertaking" test addressing situations where one organization containing discrete operations or divisions *prima facie* distinguishable from one another by some feature — Physical connection between two operations insufficient to establish "single undertaking" — "Single undertaking" test guarding against danger that decision maker will erroneously confuse company's particular commercial arrangement with functional integration of its related operations required under constitutional law — Focus should not be on whether two related operations functionally different, but on degree, quality of functional integration — "Derivative" jurisdictional analysis addressing varying factual situations where particular undertaking not itself federal in nature, but may be drawn into federal jurisdiction by virtue of its association with another federal undertaking — "Single undertaking", "derivative jurisdiction" tests characterized by "integration" inquiry — Referee determining incorrectly that "functional integration" relevant only to "derivative jurisdiction" test, not "single undertaking" test — Not selecting or applying correct constitutional tests — Not conducting analysis with reference to constitutional principles set out in *Westcoast* — Focusing instead on degree of "centralization", effectively directing herself not to consider "functional integration" unless derivative analysis arising — Misunderstanding role that "functional integration" playing in both direct, derivative jurisdiction — Important to distinguish "functional integration" inquiry into jurisdiction over labour relations, from issue of whether business interprovincial transportation undertaking — Coach interprovincial undertaking within meaning of *Constitutional Act, 1867*, s. 92(10)(a) — "Federal" undertaking for purposes of functional test, provincial presumption rebutted with respect to Coach's labour relations — To

rebut provincial presumption regarding Transit, necessary to find that Transit "federal" undertaking either because it was (i) "single" undertaking with Coach (direct jurisdiction), or (ii) "integral" to Coach (derivative jurisdiction) — Here, "direct", "derivative" tests turning on relationship between Coach, Transit — Transit, Coach not working together towards any purpose — Operating out of a single physical location as matter of business convenience only — Transit not supporting or performing its work for Coach in manner envisioned by *Westcoast* — Transit neither "single" undertaking with Coach, nor "integral" to its operations, therefore not "federal" — Application allowed.

TOKMAKJIAN INC. V. ACHORN (T-1110-15, 2017 FC 1057, Diner J., judgment dated November 22, 2017, 50 pp.)