COMMENTS
COMMENTAIRES

ANTI-INFLATION ACT—CONSTITUTIONALITY—NATIONAL EMERGENCY—PEACE, ORDER AND GOOD GOVERNMENT BURIED.—In the *Anti-Inflation Act Reference*[1] the Supreme Court of Canada gathered to bury the "Peace, Order, and Good Government" clause. Even the Chief Justice in his rather long oration failed to state expressly that he had come to preserve the clause not bury it. The introductory paragraph of section 91 of the British North America Act,[2] which includes this clause sometimes called the general power of Parliament, has given birth to three different interpretations, all of which have important consequences concerning the balance of legislative power in Canada.

Firstly, the introductory paragraph of section 91 has created a residual power in favour of Parliament as to subject matters that are not within exclusive provincial jurisdiction. It provides that Parliament can make laws "in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces".[3] However, insofar as there are

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[1] *Re Anti-Inflation Act* (1976), 9 N.R. 541. This judgment like many others of the Supreme Court suffers from being to a large extent a collage of Judicial Committee pronouncements. It would be preferable if their Lordships explain the precedents mainly in their own words as is generally the case with decisions handed down by the United States Supreme Court, the House of Lords as well as the Judicial Committee of the Privy Council. Has the court already forgotten that since 1949 it is the final court of and for Canada so that not only is obedience to the Judicial Committee not required but the court need no longer fear higher judicial criticism or overruling.

[2] (1867), 30 & 31 Vict., c. 3 (U.K.), hereinafter referred to as B.N.A. Act.

[3] The full paragraph reads as follows: "It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make Laws for the Peace, Order and Good Government

numerous enumerated provincial classes of subjects that have a great number of ramifications—for example, provincial jurisdiction over civil law and contracts was extended to cover prices as constituent elements of contracts as well as labour relations which are linked to the contract of work—it follows that this residual of the federal general power is infrequently applied. As well, the matters subsumed under this residual power have a certain specificity and they are easily segregated from matters coming within those classes of subjects already specifically assigned to Parliament or the provincial legislatures. This is the case with aeronautics, radio communications and the national capital area. It is difficult to see how general control over prices and income can fall under this residual power for the simple reason that this matter has been interpreted as already having been assigned by the enumerated heads of sections 91 and 92. There is also a provincial residual power founded on head 16 of section 92 which is in competition with the federal residual power.[4]

The second interpretation of the introductory paragraph is founded on the theory of a national emergency.[5] It has long been held that in a period of crisis Parliament is authorized to legislate even with regard to matters under exclusive provincial jurisdiction, but it can only do so on a temporary basis. The emergency doctrine provides for a provisional suspension of the division of powers in favour of Parliament in the case of very exceptional and temporary circumstances.

A third interpretation gave birth to the national dimension or national concern doctrine. Under this doctrine a matter such as

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of Canada, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater Certainty, but not so as to restrict the Generality of the foregoing Terms of this Section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next hereinafter ennumerated. ..."

[4] See, *Attorney General for Ontario* v. *Attorney General for Canada*, [1896] A.C. 348, at p. 365; *Attorney General for Manitoba* v. *Manitoba Licence Holders' Association*, [1902] A.C. 73, at p. 78; *Reference Re The Farm Products Marketing Act (Ontario)*, [1957] S.C.R. 198, at p. 212.

[5] Laskin C.J. points out, *supra*, footnote 1, at p. 574, that the *Fort Frances Pulp and Power Co.* v. *Manitoba Free Press*, [1923] A.C. 695 case "is curious in an important respect" because it was there suggested that there is an implicit emergency power in the Canadian constitution irrespective of sections 91 and 92. This curiosity is explored in H. Marx, The Emergency Power and Civil Liberties in Canada (1970), 16 McGill L.J. 39, at pp. 58-61.

labour relations, mainly under provincial jurisdiction, could because of the acuity of labour problems become a matter of national concern so that this matter falls completely under exclusive federal jurisdiction. The same can be said for environmental protection, regional development as well as many like matters. Furthermore this interpretation is justified solely on the basis of the national character and object of the legislation.

The first two interpretations restrict the scope of federal power whereas the third favours more power at the center to the detriment of provincial jurisdiction that is exorbitant of our federal system. It is only this third interpretation that was extinguished with the burial of the "Peace, Order and Good Government" clause.

The Anti-Inflation Act[6] whose long title is "An Act to provide for the restraint of profit margins, prices, dividends and compensation in Canada" provides for price and income controls in the private as well as the public sectors of the economy and in those areas that fall under exclusive provincial as well as federal jurisdiction. The preamble explains that "the Parliament of Canada recognizes that inflation in Canada at current levels is contrary to the interests of all Canadians and that the containment and reduction of inflation has become a matter of serious national concern". Section 46 provides that the Act is to expire on December 31st, 1978 but provision is made for its earlier or later expiration.

The Attorney General of Canada argued that the Act "concerned a matter which went beyond local or private or provincial concern and was of a nature which engaged vital national interests, among them the integrity of the Canadian monetary system which was unchallengeably within exclusive federal protection and control"; and, in the alternative, that "there was an economic crisis amounting to an emergency or exceptional peril to economic stability sufficient to warrant federal intervention, and if not an existing peril, there was a reasonable apprehension of an impending one that justified federal intervention".[7] The first argument was dismissed by a bare majority of the Justices and the second was upheld seven to two.

The national dimension doctrine dismissed

In answering the arguments presented by the Attorney General of Canada, Chief Justice Laskin (Judson, Spence and Dickson

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[6] S.C., 1974-75-76, c. 75.

[7] *Supra*, footnote 1, at p. 583.

JJ. concurring) reviewed in detail both theories of the Judicial Committee of the Privy Council concerning the federal power found in the introductory paragraph of section 91. The theory favouring centralized federalism is classically associated with the *Russell* case,[8] and the second viewed as promoting a more decentralized system is generally linked to the *Local Prohibition* case.[9] The Chief Justice canvassed these cases in addition to their well-known progeny down to the *Canada Temperance Federation*[10] and the *Japanese Canadians*[11] cases.

Both Chief Justice Laskin and Mr. Justice Beetz remain faithful to their previously expressed views on the scope of the peace, order, and good government power.[12] The Chief Justice never expressly makes clear his position on the national dimension doctrine. Insofar as he held that the Anti-Inflation Act can be supported as crisis legislation it was unnecessary to decide whether or not it could be sustained under the national dimension doctrine. He cautioned, however, "both against a loose and unrestricted scope of the general power and against a fixity of its scope that would preclude resort to it in circumstances now unforseen. Indeed, I do not see how this Court can", he wrote, "consistently with its supervisory function in respect of the distribution of legislative power, preclude in advance and irrespective of any supervening situations a resort to the general power . . .".[13] Nevertheless the majority of the court led on this point by Mr. Justice Beetz did see differently.[14]

Beetz J.'s reasoning can be summarized as follows. If Parliament is given the exclusive power to legislate as concerns a particular problem because of its gravity and impact on the

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[8] *Russell* v. *The Queen* (1882), 7 App. Cas. 829.

[9] *Attorney General for Ontario* v. *Attorney General for Canada, supra,* footnote 4.

[10] *Attorney General for Ontario* v. *Canada Temperance Federation,* [1946] A.C. 193.

[11] *Co-operative Committee on Japanese Canadians* v. *Attorney General for Canada,* [1947] A.C. 87.

[12] See, B. Laskin, "Peace, Order, and Good Government" Re-Examined (1947), 25 Can. Bar Rev. 1054; Canadian Constitutional Law (3rd ed. rev., 1969), ch. 5; J. Beetz, Les attitudes changeantes du Québec à l'endroit de la constitution de 1867, in P.-A. Crépeau and C. B. MacPherson, eds, The Future of Canadian Federalism (1965), p. 113.

[13] *Supra,* footnote 1, at p. 578. This caution is again emphasized on p. 581.

[14] Mr. Justice de Grandpré concurred with Beetz J., Mr. Justice Ritchie agreed with Beetz J. on this specific issue, but not in the result. Martland and Pigeon JJ. concurred with Ritchie J.

country generally, then everything can devolve to the center—economic development, labour relations, protection of the environment, urban problems and *ad infinitum*. Yet just as Parliament can in part deal with these questions it can similarly deal with inflation. Parliament can fight inflation by virtue of its enumerated powers in section 91 of the B.N.A. Act such as those encompassing fiscal and monetary policy, and price and income control in the federal sector. Parliament, however, can only attack inflation frontally by invoking its emergency power.

In rejecting the national dimension doctrine Mr. Justice Beetz set aside those cases and doctrinal writings that favoured a centralized federalism. In his view, "the incorporation of companies for objects other than provincial, the regulation and control of aeronautics and radio, the development, conservation and improvement of the National Capital Region[15] are clear instances of distinct subject matters which do not fall within any of the enumerated heads of s. 92 and which, by nature, are of national concern [and so under s. 91 of the B.N.A. Act]".[16] As to the matter of inflation he wrote: "It is an aggregate of several subjects some of which form a substantial part of provincial jurisdiction. It is totally lacking in specificity. It is so pervasive that it knows no bounds. Its recognition as a federal head of power would render most provincial powers nugatory."[17] In endorsing this reasoning the majority of the court clearly opted for a decentralized federalism that is generally consistent with Judicial Committee precedents.

The national dimension doctrine has been more written about than actually applied in specific cases. Its direct application was essentially limited to the *Russell* and *Canada Temperance* cases. In other cases, where it was mentioned, the federal legislation could have been supported solely under the federal residual power—aeronautics, radio communication, the national capital area and labour relations as a component of the uranium industry. This doctrine although given expression by the Judicial Committee in rather formal and abstract terms would have required a prag-

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[15] The court decided in *Munro* v. *The National Capital Commission*, [1960] S.C.R. 663, that the National Capital Act, S.C., 1958, c. 37, was within federal jurisdiction. The only two justices sitting on that case as well as on the present *Anti-Inflation Act Reference* — Martland and Ritchie JJ. — agreed with Mr. Justice Beetz as to the scope of the peace, order and good government clause.

[16] *Supra*, footnote 1, at p. 618.

[17] *Ibid.*, at pp. 618-619.

matic approach similar to that of the United States Supreme Court with regard to the American commerce clause.

This latter approach would involve deciding that in practical workable terms the fight against inflation can only be effectively waged on a national level by the central Parliament and Government. Consequently, this matter falls under federal jurisdiction—but not necessarily exclusively. Room could be made as well for provincial legislation. In the result, such an interpretation could lead to the aspect theory—concurrency with federal paramountcy. This approach gives the courts a greater and more direct role in shaping the federal-provincial distribution of powers. If reasonably applied, the centralizing effect of an American style interpretation would probably fall somewhere between the Judicial Committee national dimension and emergency doctrines. This was not to be.

The fate of the national dimension doctrine was well summed up by Mr. Justice Ritchie: ". . . the aura of federal authority to which [the peace, order, and good government clause] . . . relates can in my view only be extended so as to invade the provincial area when the legislation is directed to coping with a genuine emergency. . . ." And, "the authority of Parliament in this regard is, in my opinion, limited to dealing with critical conditions and the necessity to which they give rise and must perforce be confined to legislation of a temporary character".[18] It was inevitable that the national dimension doctrine would not support the Anti-Inflation Act,[19] but surprising, since it was unnecessary to so decide, that a majority of the court would dismiss it altogether.[20]

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[18] *Ibid.*, at pp. 599-600.

[19] It was noted that the Energy Supplies Emergency Act, S.C. 1973-74, c. 52, could hardly be supported otherwise than on the emergency doctrine. "[I]t would be quite difficult to defend such allocation [and pricing of petroleum products] as being under federal jurisdiction because the matter is one of national dimensions. If the subject matter of petroleum energy supplies can be justified as being under federal jurisdiction by virtue of the national dimensions theory, the provinces would be ousted from what have long been considered traditional areas of provincial jurisdiction. And, if petroleum allocation falls under permanent federal control, what is next? To so decide would also require tortuous distinguishing, if not outright overruling of Judicial Committee and Supreme Court decisions." H. Marx, The Energy Crisis and the Emergency Power in Canada (1975), 2 Dal. L.J. 446, at p. 448.

[20] Formally the decision of Mr. Justice Beetz (de Grandpré J. concurring) on this point can be classed as a *ratio decidendi* and that of Mr. Justice Ritchie (Martland and Pigeon JJ. concurring) as an *obiter* dictum.

The emergency doctrine upheld

The decentralized nature of the judgment in the *Anti-Inflation Act Reference* is relative. It has this effect insofar as the court dismissed a very centralized orientated doctrine in favour of one that is less so orientated. Is this, however, an illusion to be followed by disillusion?

The federal principle, Professor K. C. Wheare explained, is one that requires that between the regional and the federal legislatures each "should be limited to its own sphere and, within that sphere should be independent of the other".[21] He questioned whether the Australian federal system could or would survive another crisis such as that of World War II.[22] He was perhaps overly pessimistic. But mere survival of federalism can mean survival within significantly altered and unbalanced spheres of jurisdiction. Insofar as the life of the modern state is more and more shaped by a series of repetitive strains, stresses and crises, it is not difficult to foresee the impact that a constitutional emergency doctrine can have on the division of powers between our provincial legislatures and the federal Parliament.

Between 1914 and 1976 Canada has been subject to emergency federal legislation for about forty per cent of the time. Throughout both world wars and for a time afterward, during the Korean War, and at the time of the 1970 apprehended insurrection, legislation was in effect that permitted the federal authorities to deal unilaterally with matters that are normally under exclusive provincial jurisdiction. Since October 1975 federal trenching on provincial jurisdiction has been possible by virtue of the Anti-Inflation Act. Had Parliament adopted temporary legislation during the 1930's, which the Judicial Committee would probably have held valid due to the economic depression, Canada would have been subject to emergency federal legislation for more than fifty per cent of the time since World War I. Not only does the emergency doctrine have important consequences for the federal principle in Canada, but it is also evident that Parliament and the federal Government are not at all hesitant about supporting legislation on this constitutional doctrine.

Is inflation a more or less semi-permanent emergency? Contemporary inflation, wrote a French economist, is a phenomenon that has become part of our system and such inflation is made to

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[21] K. C. Wheare, Federal Government (4th ed., 1963), p. 14.

[22] *Ibid.*, p. 239.

last to the extent that it "n'est pas tant le fait d'un excès de la demande globale sur la capacité de production que d'une tension permanente entre le revenu disponible et le statut social désiré dans une société ouverte".[23] John Kenneth Galbraith is of the opinion that western industrial countries are faced with three choices: inflation, high employment or permanent price and income controls.[24] If the Canadian Government and Parliament rule out the first two choices, and if Galbraith's analysis is correct, the emergency doctrine allowing for complete temporary federal control over prices and income will prove to be insufficient. Now that the national dimension doctrine has been rejected, effective permanent measures to fight inflation can only result from federal-provincial agreement or constitutional amendment rather than from judicial interpretation or fiat.

Chief Justice Laskin provided a "rational basis" test for the validity of federal emergency legislation. He set out the test as follows: "Does the extrinsic evidence put before the Court, and other matters of which the Court can take judicial notice without extrinsic material to back it up, show that there was a rational basis for the Act as a crisis measure?"[25] To this must be added the "very clear evidence" rule formulated by the Judicial Committee.

This rule was summarized by their Lordships in the *Japanese Canadians* case as follows: ". . . if it be clear that an emergency has not arisen or no longer exists, there can be no justification for the exercise or continued exercise of the exceptional powers. The rule of law as to the distribution of powers between the Parliament of the Dominion and the Parliaments of the Provinces comes into play. But very clear evidence that an emergency has not arisen, or that the emergency no longer exists, is required to justify the judiciary, even though the question is one of ultra vires, in overruling the decision of the Parliament of the Dominion that exceptional measures were required or were still required."[26] The effect of this rule coupled with the approach to the finding

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[23] R. Maury, La société d'inflation (1973), p. 95.

[24] The Montreal Star, June 14th, 1976, p. B-11.

[25] *Supra*, footnote 1, at pp. 584-585.

[26] *Japanese Canadians* case, *supra*, footnote 1, at p. 101; see too the *Fort Frances Pulp and Power Co.* case, *supra*, footnote 5, at p. 706. This rule was followed in the *Reference re Validity of the Wartime Leasehold Regulations*, [1950] S.C.R. 124 and in the *Anti-Inflation Act Reference*, *supra*, footnote 1, at p. 574, per Laskin C.J., and p. 602, per Ritchie J. For a comparison with Australian and United States tests see, Marx, *op. cit.*, footnote 5, at pp. 62-65.

of fact in these cases is for all practical purposes to make an attack on federal emergency legislation essentially unproveable and unsuccessful.

The Judicial Committee rule seemingly implicitly incorporates the Chief Justice's test. Combining both dicta we can reformulate the rule as follows: very clear evidence has to be adduced to show that there is no rational or reasonable basis for the emergency legislation thought necessary by Parliament. In the *Anti-Inflation Act Reference*, after reviewing the evidence including that of a noted economist who wrote that Canada did not face an economic crisis in October 1975, the Chief Justice stated that the "Court would be unjustified in concluding . . . that the Parliament of Canada did not have a rational basis for regarding the Anti-Inflation Act as a measure which, in its judgment, was temporarily necessary to meet a situation of economic crisis . . .".[27] Mr. Justice Ritchie cited the statement from the *Japanese Canadians* case[28] and concluded that in his opinion "the evidence presented to the court by those opposed to the validity of the legislation did not meet the requirements"[29] there set by the Judicial Committee.

How can a litigant possibly prove that an inflation related emergency has not arisen or has passed? What about apprehended inflation?

North American economists generally agree that double digit inflation is one of crisis proportions. Assuming this is so, does the crisis end when inflation drops to eight or to five per cent? The Judicial Committee and the Supreme Court have also noted that the federal emergency power can remain operative so that controls can be properly phased out. A certain rate of inflation is probably inevitable in our economic system. The normal rate before the 1970's was about two or three per cent .Will the normal rate now level off somewhere between five and ten per cent? An inflation based emergency, real, apprehended or being eliminated, can continue for years without much practical difference between permanent and temporary federal legislation being either evident or relevant.

The Chief Justice and Mr. Justice Ritchie gave considerable weight to the preamble of the Act and to various federal Government documents including a *White Paper* on inflation. This approach is indicated by the fact that "very clear evidence . . . is

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[27] *Supra*, footnote 1, at pp. 589-590.
[28] *Supra*, footnote 11, at p. 101.
[29] *Supra*, footnote 1, at p. 602.

required to justify the judiciary . . . in overruling the decision of the Parliament of the Dominion [or the Government in the case of a proclamation under the War Measures Act][30] that exceptional measures were required."[31] Such material, however, can be fabricated or feigned in order to satisfy constitutional judicially determined imperatives. The following is an example of supposedly tainted extrinsic evidence.

Before a proclamation was declared activating the War Measures Act in October, 1970, Prime Minister Trudeau received letters from Mayor Drapeau and Premier Bourassa.[32] The latter's letter referred to efforts to intimidate and overthrow the government and democratic institutions by unlawful means including "insurrection". The Mayor wrote that the assistance of superior governments was required to protect society from an "apprehended insurrection". The War Measures Act can be made operational when an insurrection, real or apprehended, exists.[33] In an interview in October 1975 Premier Bourassa stated that he had used the words he did because he was juridically compelled to do so. Prime Minister Trudeau predictably affirmed that there really was an apprehended insurrection in Quebec in October 1970.[34] What weight should the courts have given to the declarations of various government leaders?

The important consideration given to such statements as well as other materials submitted by the federal Government must be balanced by the plaintiff's opportunity to present contrary evidence. If the emergency test is to be a meaningful test, the plaintiff must have a fair and reasonable chance to refute the proposition that crisis legislation is necessary. This is especially true of peace time emergencies—in contrast to those related to war—that may not be clearly evident. It would seem that a refutation that an emergency exists can only be made on the basis of fact. As well, the possibility or probability of making convincing proof depends on the reason for the emergency and whether it is existent or merely apprehended. An apprehended inflation related emergency is obviously more subjective and much harder to disprove than an existent national housing crisis, the basis of which is an insufficiency of

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[30] R.S.C., 1970, c. W-2.

[31] See, *supra*, footnote 26.

[32] Both letters were published in Le Devoir, October 17th, 1970, p. 6.

[33] *Supra*, footnote 30, s. 2.

[34] The Bourassa statement was reported in Le Devoir, October 27th, 1975, p. 1. For Prime Minister Trudeau's reply, see Le Devoir, October 31st, 1975, p. 7.

housing units in Canada. This latter crisis is also quantifiable whereas the former is not.[35]

A finding of fact is particularly difficult in a reference case. To lay a proper foundation would require a hearing at first instance where the long, arduous and intricate process of fact-finding is possible. This forum also affords both sides the possibility of examining and cross-examining expert witnesses rather than having their reports simply deposited in court. The reference case as presently structured lends itself with difficulty to a finding of fact even given the well-known patience of our Supreme Court.

Mr. Justice Beetz found the Anti-Inflation Act wanting as sustainable under the emergency doctrine because there was no declaration from a "politically responsible body" that a state of emergency exists. There must be an "unmistakeable signal", he held, that Parliament is "acting pursuant to its extraordinary power. Such a signal is not conclusive to support the legitimacy of the action of Parliament but its absence is fatal".[36] In fact, the signal in the Act was that Parliament was probably relying on the national dimension doctrine.[37]

We agree with Beetz J. that such signaling be made a procedural requirement before the emergency power can support federal legislation. This requirement does not place an undue burden on the use of the emergency power. In effect, it simply requires that Parliament express clearly that it intends to use this power and such intention only requires the use of a few words in the preamble or in the long title of the Act.[38] Such an exigency

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[35] In *Chastelton Corp.* v. *Sinclair* (1924), 264 U.S. 543, federal emergency rental controls were contested. The United States Supreme Court remanded the case to a lower court for a determination of housing conditions in Washington so as to be better able to decide if an emergency in fact did exist.

[36] *Supra*, footnote 1, at p. 623.

[37] The preamble refers to a "matter of serious national concern". These words evoke the national dimension or national concern doctrine rather than the emergency doctrine. See too Mr. Justice Beetz's references to House of Commons Debates and to the Minutes of Proceedings and Evidence of the Standing Committee on Finance and Economic Affairs, *supra*, footnote 1, at pp. 629-630.

[38] This signal has frequently been given in the preamble of emergency legislation, see, *e.g.*, Continuation of Transitional Measures Act, 1947, S.C., 1947, c. 16. For an example of its inclusion in the title, see the long title of the Energy Supplies Emergency Act, S.C., 1973-74, c. 52 which reads as follows: "An Act to provide a means to conserve the supplies of petroleum products within Canada during periods of national emergency caused by shortages or market disturbances affecting the national security and welfare and the economic stability of Canada."

would be similar to that found in section 92, head 10(c) of the B.N.A. Act that requires a rather clearly expressed intention in legislation that Parliament intended to avail itself of its declaratory power. The courts should not be asked to second guess Parliament as to whether or not it intended to suspend the distribution of powers in its own favour. Parliament should take the political responsibility with the legislative power.

In sum, if the emergency signal is properly given and there is no clear evidence before the court that the emergency legislation lacks a rational basis, the legislation will be sustained unanimously by the present court. This type of federal emergency power is inevitable and not unreasonable in our federal system.

When, if ever, would the court seriously consider striking down federal emergency legislation? Perhaps that rare occasion would occur if the emergency legislation were patently colourable, or if judicial interference were essential to protect the federal principle and the federal system, or if such interference were required to protect the democratic system itself. The court has had experience with the striking down of federal colourable legislation.[39] The second question is one of degree and the point of no return can vary from one Justice to another as the *Anti-Inflation Act Reference* illustrates. As to the third point, the judiciary may be unable to exercise meaningful control if that situation arises.

Conclusion

The peace, order, and good government clause has now been examined, considered, re-examined, re-considered and finally buried. Will it be resurrected? The Chief Justice has provided the necessary rationalization for would-be resurrectionists.[40] It should also be noted that the burial was essentially by way of an *obiter* dictum and not by a formal *ratio decidendi*. Consequently, a resurrection of the clause—in effect the national dimension doctrine—should not be completely ruled out.

The introductory paragraph of section 91 of the B.N.A. Act—or the general power of Parliament or the "Peace, Order, and

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[39] See, for example, *Attorney General for Ontario* v. *Reciprocal Insurers*, [1924] A.C. 328, where federal insurance legislation was held *ultra vires*.

[40] *Supra*, footnote 13.

Good Government" clause, to use its various designations[41]—permits permanent transfers of new specific subjects to federal jurisdiction by way of the federal residual power, and temporary transfers of any subject by virtue of the emergency power. In some cases this distinction amounts to an indistinguishable difference. The Anti-Inflation Act is such a case.

Parliament and the Government have stated that it is only a question of time until inflation is beaten. The time frame, however, has not been fixed. In effect, to carry out Parliament's legislative policy the Anti-Inflation Act need only be supported under the federal emergency power. The Supreme Court's decision has therefore in no way frustrated Parliament's stated objectives.

The *Anti-Inflation Act Reference* is a landmark case as concerns the scope of federal power. It is only a minor case as to Parliament's emergency power because it is the logical and necessary conclusion to a long line of Judicial Committee and Supreme Court precedents.

FRANÇOIS CHEVRETTE*

HERBERT MARX†

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ONTARIO COUNTY COURTS—JURISDICTION IN ADMIRALTY—PERSONAL INJURY AND WRONGFUL DEATH—CONSTITUTIONAL LAW.—There was a surprising unanimity of views on the part of the seven judges who decided *Heath* v. *Kane*[1] at the various levels of trial and appeal considering the serious practical consequences of the holding: actions for personal injury and wrongful death arising out of a collision between small boats engaged in water skiing on Balsam Lake, a resort lake north of Toronto, are not

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[41] Professor Lederman uses the expressions "the federal general power" and "the provincial general power"; W. R. Lederman, Unity and Diversity in Canadian Federalism — Ideals and Methods of Moderation (1975), 53 Can. Bar Rev. 597, at p. 600. Perhaps the advantage of using the labels residual power and emergency power is that these terms describe as well as designate federal power.

* François Chevrette, of the Faculty of Law, University of Montreal.

† Herbert Marx, of the Faculty of Law, University of Montreal.

[1] *Heath, et al.* v. *Kane, et al.*; *Hartikainen* v. *Kane* (1975), 10 O.R. (2d) 716 (C.A.), affirming the judgment of Callon J., dismissing the actions on a preliminary motion at trial. Motions for leave to appeal in both actions to the Supreme Court of Canada were dismissed December 1st, 1975 (Laskin C.J.C., Ritchie and Spence JJ.).