

Canada-U.S. Free Trade Agreement

nature in that Clause 8 gives Bill C-130 pre-eminence over all other federal legislation. Clause 8 states:

Notwithstanding anything in any other Act or law, in the event of any inconsistency or conflict between

- (a) this Act, or any regulation made under this Act, or the Agreement, and
- (b) a provision of any other Act of Parliament or of any regulation within the meaning of section 2 of the *Interpretation Act*, other than a provision as enacted or amended by Part III or IV of this Act or any regulation made under a provision as so enacted or amended, the provision is inoperative and of no force or effect to the extent of the inconsistency or conflict.

Then there is a rather strange subclause (2) which states:

No person shall, in the purported performance of duties or functions under any law of Canada, do any act, exercise any power or carry on any practice that is inconsistent with or contravenes this Act or any regulation made under this Act, or the Agreement.

I would argue that Clause 8 gives what might be called a constitution-like cast to the Bill, and has some grave implications for other legislation which I would say might be described as being of a quasi-constitutional nature, including such matters as the Official Languages Act, the Canada Elections Act, for example, dealing with election advertising, and many, many more statutes that are of a fundamental and organic nature and have what I might describe as a quasi-constitutional cast to them.

Also, there is a very serious problem with respect to Clause 8 in that it purports to give the Cabinet the power to amend other legislation. There is nothing in this clause giving Parliament any role in debating or passing upon the amendments that could be carried out under Clause 8. There is no way of defining or stating the extent to which under the exercise of this power the federal Cabinet would render a provision of another statute to be inoperative and of no force or effect.

Furthermore, if we look at subclause (2) we see that a person is forbidden, in the purported performance of his or her duties or functions under any law of Canada, to do any act, exercise any power, and so on, that is inconsistent with or contravenes this Act or any regulation made under this Act, or the agreement. People are put at risk not only of discipline within the Public Service, including the losing of their jobs, but also of possible criminal prosecution without being able to know exactly what it is they are not being allowed to do.

I can see a situation—and I hope it never arises—if this Act is passed of a public servant acting in good faith being deemed by his employer to be operating contrary to this subclause (2) and facing not only discipline up to dismissal but a possible criminal charge. It may be argued that there is nothing in this Act as such imposing criminal penalties for its breach. But if I am not mistaken there is a section in the Criminal Code imposing penalties for the breach of that section which creates a general offence of acting contrary to a federal statute.

● (1620)

Therefore, I say to you, Mr. Speaker, that what is stated in subclause (2) of Clause 8 may well be contrary to the Charter

of Rights and Freedoms. I do not think it is appropriate for the House to put hundreds of thousands of people in jeopardy through the vague wording which creates vast, unspecified, and undefined powers given to the federal Government.

With respect to the duties and responsibilities of the elected representatives of the Canadian people, it is not proper to have Clause 8(1) in effect which would take away from Parliament and give to the Cabinet the vast powers it would appear to do to amend and change any present or future Act of Parliament without the public being aware of what will be done, and without giving the House of Commons and the Senate, on behalf of the Canadian people, the authority to debate these changes and say yes or no to them.

There are grave problems of what I call a constitutional procedural aspect with Clause 8, subclauses (1) and (2). I make my comments with respect to Clause 8 at this time in order to save the time of the House. I ask you to consider what I have said with respect to Clause 8, subclauses (1) and (2), quite apart from the distinct arguments I have made with respect to the clause in the Bill arising out of what is purported by the Government to be carried out by Clauses 6 and 9.

There is always a problem with respect to our parliamentary system created, on the one hand, by the desire of the government of the day to exercise all the powers that it feels it needs to carry out its mandate, and on the other hand the desire, not only of the Opposition, but of Members generally to ensure there is some appropriate system of checks and balances upon the full and possible arbitrary exercise of that power. The problem is very much highlighted by the language of Clause 8, and also Clauses 6 and 9.

Speaking generally, Clauses 6 and 9, and Clause 8, perhaps as much as the omnibus nature of the Bill itself which was argued on Monday, create grave concerns about the proper operation of our parliamentary system and the ability of elected Members of Parliament, especially those who are not on the government side, to carry out their duties, to properly scrutinize legislation, to attempt to amend it, and see it is adopted, if it is adopted, in the best interests of the Canadian people, and generally of the rights of Members of Parliament, especially those in opposition to the Government of the day, to act in a manner that provides some appropriate system of checks and balances and enables them to hold to account the Government of the day.

The balance between the normal and understandable desires of the Government and the normal and understandable role of Members of Parliament, particularly those in Opposition to the Government of the day, has been tilted in a questionable and improper manner by the way this Bill has been drafted and presented to the House. That should be taken into account not only by you, Sir, but by the House and the people of the country in passing judgment on this Bill.

Mr. Lewis: Mr. Speaker, in brief reply to my hon. friend's interesting argument, with respect to Clauses 6 and 9 of Bill