

*Canada-U.S. Free Trade Agreement*

an expenditure or to impose or alter the instance of a tax may be initiated by any Member other than a Minister.

While certain Standing Orders exist with regard to royal recommendations and to Ways and Means notices in order to assist the Chair with these matters, the fact remains that the financial initiative of the Crown is a constitutional principle. The Speaker is frequently called upon to rule on this constitutional principle and his rulings require a considerable degree of discretion and interpretation on his part.

The Standing Orders that flow from the Constitution, Standing Order 82, Standing Order 84 and Standing Order 86, provide only the bare bones for procedural rulings. Successive Speakers have been called upon and have answered the call to interpret these essentially constitutional points by defining and applying definitions as to what kind of proposals constitute expenditure for taxation.

As the House will recall, Standing Order 82 deals with the matter of Supply motions, Standing Order 84 deals with the matter of Ways and Means motions, and Standing Order 86 deals with the matter of the requirement that there be what is called a royal recommendation in order for the House to consider and adopt any matter that would call for expenditure. I submit that Standing Order 86 is basically a restatement of something which is set out very explicitly in our current Constitution, that is, that there cannot be any measure considered and adopted by this House unless it is preceded by the royal recommendation.

• (1610)

I have said that these Standing Orders provide only the bare bones for procedural rulings. I pointed out that successive Speakers have been called upon and have answered the call to interpret these essentially constitutional points. I repeat this because I think it is important.

I also want to say that these rulings often dwell upon extremely fine constitutional points, and the Chair's involvement in such matters clearly qualifies the general precept that the Chair does not involve itself in interpreting constitutional law.

Clauses 6 and 9 of Bill C-130 present similar cases in that here in the point of order that I am making with regard to Clauses 6 and 9, the Speaker is not being asked by me to rule on the constitutional legality of the clauses but, rather, on the procedural propriety of the Government in attempting to amend the Constitution by this method with another distinct procedure. I submit the more appropriate and correct procedure is set out in the Constitution Act.

In asking the Chair to rule that Clauses 6 and 9 of Bill C-130 make it impossible for the House to proceed with Bill C-130, I am not asking the Speaker to rule on the constitutionality or legality of these clauses. Instead, I am asking the Chair to determine that these clauses do in fact attempt to amend the

federal-provincial division of powers set out in the Constitution, and as such require the special procedure for such amendments set out in the Constitution Act.

In this regard I want to stress that there is an alternate means of accomplishing what the Government wants to accomplish through Clauses 6 and 9 of Bill C-130. However, that alternate means is through the procedure set out in the Constitution Act. That is to say the adoption of resolutions by this House and the other place, and the adoption of resolutions by the appropriate number of provincial legislatures. I submit that the Government in not adopting that course of action is doing something which is procedurally wrong and which makes impossible the acceptability of Bill C-130 for second reading debate and its subsequent stages.

I repeat that in asking Your Honour to rule along the lines that I have just argued I am not asking Your Honour to delve into the matter of constitutional law which Speakers have hesitated to get into in the past. Rather, I am asking Your Honour to rule in the kind of area Speakers have made rulings upon on many occasions in the past, areas arising out of our Standing Orders 82, 84 and 86, all of which deal with the financial initiatives of the Crown, a definite constitutional principle. In fact, when it comes to Standing Order 86, that Standing Order reflects and is based on a specific clause of the Constitution Act. The other Standing Orders 82 and 84 arise out of a well-established constitutional principle with respect to orders for Ways and Means and orders for Supply.

Speakers have not hesitated to rule on issues arising out of those Standing Orders simply because in some way they deal with constitutional matters. Thus I am saying by analogy, or in like case, that you, Mr. Speaker, have the authority to rule, and I think that you must rule, along the lines I am submitting. Because Clauses 6 and 9 deal with the division of powers between the federal Government and the provinces, this Bill is not acceptable and instead must deal with what the Government intends to accomplish in Clauses 6 and 9 through the procedure for constitutional amendment set out in the Constitution Act.

I point out to you, Mr. Speaker, that it is a generally accepted principle followed in our courts that when they rule on the law they do not look behind the law at the procedure followed by Parliament in enacting it. They are not inclined nor do they accept arguments that a law should be struck down because there was some flaw in the procedure in adopting it in Parliament or a legislature. Therefore, Sir, I submit it is very much the responsibility of the Chair to ensure that all the procedural proprieties are followed. It is definitely incumbent upon the Chair to take up the point I am making at this time and to consider it on its merits.

In order to save the time of the House I want to raise a concern in the form of a point of order with respect to Clause 8 since I think that in relation to that clause there is something that I would say is a constitutional point of a procedural