

Government Orders

The government ought to be moving forward into reliance on private sector investments to ensure that a properly managed and balanced portfolio of investments would provide Public Service pension plans as profitable as they should be to ensure their future adequate funding.

The second thing I would like to point out, especially for the benefit of Canadians who are not fully informed about the nature of the Public Service pension plan, is that it is indexed. There is a cost of living indexation to the pension benefits that are payable.

What many Canadians fail to realize is that the indexation has been contracted, paid for, by public servants. They pay an extra 1 per cent of their salaries into a supplementary benefits fund, which is the fund to provide the assets available to fund indexing of their pension plans.

Indexing is not some kind of gift from Canadians to retired public servants. Indexing is something that has been bought and paid for by public servants making additional contributions under their plans.

That being the case, it is of great concern that the regulation making authority given to the government under this bill is so broad that in fact the government can even pass regulations that are inconsistent with the act being passed by Parliament itself.

This occurs in a number of provisions of the act. One of them is on page 59 of the bill as reported. I think it is section 80 of the Canadian Armed Forces Superannuation Act. I am referring to subsection (3) as it would read if this act were passed in its present form: "In the event of any inconsistency between the provisions of any regulations made under subsection (1) or (2) and the provisions of this act or any other regulations made under this act, the provisions of the regulations made under subsection (1) or (2) prevail to the extent of the inconsistency".

In other words, the Governor in Council, the cabinet, can enact regulations without coming to Parliament that are inconsistent with the law being passed tonight, or whenever it is voted on, under Bill C-55. They can pass those regulations without further consultation with Parliament and even if they are inconsistent they prevail as the law.

I practised law for a reasonably long time before I came to this place. I must say I had not been aware of any other statutes that had that kind of regulation making authority built into them.

The ability to pass regulations known as subordinate legislation, subordinate because it is subordinate to the main law, normally is required to be consistent with the act or the law passed by Parliament.

I did a little research to find out whether in fact this was appropriate and legal. I discovered in an old book an old report of a British parliamentary committee on minister's powers dated April 1932 that this kind of regulation making authority has been granted in the past. It's called a Henry VIII clause, and I am quoting from the British parliamentary committee:

• (1850)

—because that King is regarded popularly as the impersonation of executive autocracy. Indeed it may be considered to resemble the famous Statute of Proclamations, 1539 which gave the King power to legislate by proclamation until it was repealed on Henry's death in 1547. The comparison is certainly far-fetched.

The purpose of Henry VIII was to enlarge his powers to make proclamations having the force of law. The sole purpose of Parliament on the nine occasions when it passed modern enactments was to enable minor adjustments of its own handiwork to be made for the purpose of fitting its principles into the fabric of existing legislation—

The comments of the British committee on this are quite telling. The committee says as follows:

Even though it may be admitted that Parliament itself has conferred these powers upon ministers and must be presumed to have done so with the knowledge of what it was doing, it cannot but be regarded as inconsistent with the principles of parliamentary government that the subordinate law-making authority should be given by the superior law-making authority power to amend the statute which has been passed by the superior authority.

In referring to this dusty old text of this British parliamentary committee, I want to make this point; that in modern 1992 Canada the government has no more right, in my opinion, to put forward a law that would enable cabinet to pass laws inconsistent with what Parliament has done than did Henry VIII back in the 16th century.

The fact that the President of the Treasury Board fancies himself a 20th century Henry VIII is very cold comfort to the thousands of public servants and pensioners who concern themselves with whether this government, which has done so many things behind closed doors without full consultation, which has proven itself in so many ways to be less than fully trustworthy in its administration of public issues, to trust that it is not going to turn around and put forward regulations that will end the right to indexed pensions that public servants through their own contributions have already