

Readings

Case 13: Reference re Anti-Inflation Act, 1976

the courts and the constitution: leading cases (Russell et. al., 2008)

presented by
Shamsuddin Ahmed

October 29, 2011

for
Ian Greene
Course Director
GS/PPAL 6100 : Canadian Constitutional Law

MPPAL Program, Graduate Studies
York University

Content of Readings

- ❑ Anti-Inflation Act: Role and Case Background
- ❑ Enforcement Issues and Federal Government
- ❑ Public Opinions
- ❑ The Supreme Court
- ❑ The Attorney General's Clarifications
- ❑ Alternative Option: Crisis Legislation
- ❑ Further Discussion Points

Anti-Inflation Act: Role and Case Background

- The role of the Anti-Inflation Act was to authorize the federal government to control the level of incomes, prices, and profits in the key public sector areas *inter alia* to the provincial private sectors. The Act also regulated activities in the matter of 'property and civil rights' constitutionally admissible in the provinces.
- The Anti-Inflation Act was Canadian Act of Parliament passed in 1975 (by Pierre Trudeau's Government).
- Earlier 1975, the Bank of Canada advised the government about the risk of the ongoing inflation that was approximately 10 percent per year.
- In response, Government brought in the Act which created the Anti-Inflation Board to set regulation for standard wages and prices.
- The Act was enforced until 1978 and cancelled in 1979

Enforcement Issues and Federal Government

- Enforcement Issues concerned in twofold:
 - One is the National Dimension tests by supreme court- as national importance of combating inflation made the subject of legislation concerning the POGG (peace, order and good government).
 - The other is the National Emergency doctrine as a basis for the legislation.
- Federal Government's attitude to rely on:
 - Its general power of constitutional law to enact legislation on court challenges; and
 - Agreement- with the provinces to support the program and in access to emergency powers stimulated provincial interests.

Public Opinions

- Public Opinions emerged from two main concerns:
 - Provincial Wages and Labours- Ontario Public Employees' Union-obligating that Ontario Public Sectors had been brought to this program without passing provincial legislature
 - Economic Emergency Provisions- opinion by a large number (39) of Lead Economists concerning about the emergency doctrine which was weakly emphasized by the judges and perhaps in relation to 'peacetime economic regulation'
 - Federal economic legislation in peacetime, for example, similar to the cases had been indicated in the Cases 5, 6, and 8 (in "court and constitution: leading cases", the same book, written by Russell et. al.)

The Supreme Court

- The court upheld Anti-Inflation Act as emergency legislation- by a 7-to-2 majority.
- Majority of judges rejected inherent national importance or national dimension- whether such a broad subject-matter as combating inflation can be brought under POGG
- Five of Nine judges supported the Justice Beetz's opinion that combating inflation was subject to the provincial jurisdiction considering National Emergency Doctrine.
- The court has willingness to sustain the Anti-Inflation Act as emergency legislation but changes in provincial labour laws require an act of legislature

Attorney General's Clarification

- Option – 1 : Existing Peril or Economic Crisis
 - Support Anti-Inflation Act on alternative bases allowing Canada Temperance Federation Case¹ that probably admit Section 92 and solely within the federal jurisdiction as national interest, e.g. Section 91- in relation with POGG and Local Prohibition Case
 - Justification on federal intervention was instant to solving the economic crisis amounting to an emergency or exceptional peril (i.e., remarkable threat) to economic stability.
- Option – 2 : If Not Existing Peril
 - Federal Intervention through parliament and provincial legislation
 - To support measures and policies of fiscal and monetary character

1. “a famous Canadian constitutional decision (in 1946) of the JCPC was among the first cases to examine the POGG power of the Constitution Act, 1867 which was the first decision to bring back the "national concerns" branch of POGG since it was first suggested in the Local Prohibition Case, a famous constitutional decision made in 1896”
[http://en.wikipedia.org/wiki/Ontario_\(Attorney_General\)_v._Canada_Temperance_Federation#Background](http://en.wikipedia.org/wiki/Ontario_(Attorney_General)_v._Canada_Temperance_Federation#Background)

Alternative Option : Crisis Legislation

- The competing arguments synthesized in the case whether the Anti-Inflation Act is supportable as Crisis Legislation with four issues in questions:
 - Contradiction or disagreement with Federal contention?
 - Federal contention assisted by preamble to the statute?
 - Rational basis of the Act as crisis measures?
 - Sufficient grounds for the option, crisis legislation, with respect to the areas of admissible federal authority and relevant monetary policy?
- Associated factors
 - Matter concerning the public policies such as *social and economic policy, government and legislative judgement, prices and incomes policy, monetary policy, etc.*
 - Parliament's stern on intervention in the interests of the country

Further Discussion/Concluding Points

- The prevailing examples of laws, proclamations, and order-in-council support the provisions to emergency power of Parliament thus referred the 'preamble' in reliance (as defined in the statues of Canada and contained in the 'Canada Gazette') and strongly emphasized as "a matter of serious national concern".
- However, the case finding had been naked that the Anti-Inflation Act was enacted incorrectly as "the Parliament had the ordinary power to enact it under the national concern or national dimension doctrine that is the basis which coincides identically.... Parliament did not purport to enact extraordinary power which it possesses in time of national crisis"
- Finally, decision came apparently to the resolution where the judges opined the case that the Anti-Inflation Act and declared "the Act *ultra vires* of Parliament in whole".