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Parliament acted legally when it passed Bill C-18

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Last week, in an op-ed column on Bill C-18, the Marketing Freedom for Grain Farmers Act (the legislation that ends the Canadian Wheat Board's monopoly of wheat and barley sales), Peter H. Russell, professor emeritus of political science at the University of Toronto, said the government of Canada took the position that "it could simply ignore legislation passed by a previous Parliament." There are three problems with his opinion.

First, the government did not take that position. It held that Bill C-18 was introduced and passed in a manner completely consistent with parliamentary and constitutional law and practice.

Second, the argument that the previous Section 47 of the Wheat Board Act is a "manner and form" requirement is simply not legitimate. The vote required in that section was dependent on the action of others. A "manner and form" requirement must be limited to the actions of the minister and of Parliament. The insertion in Section 47 of a future requirement dependent on the participation of third parties was not consistent with parliamentary and constitutional law and practice. If any law is illegal, it's the previous

Section 47. One Parliament can't play politics and require a future Parliament to include non-MPs in the law-making process.

Third, and most important, Mr. Justice Douglas Campbell of the Federal Court was wrong to say that Parliament violated the Wheat Board Act. If Judge Campbell had not prevented the Attorney-General from explaining, in his court, the Constitution of Canada and parliamentary law and procedure, he would likely have heard the following legal principles fully argued:

Speakers' rulings are not subject to challenge in court.

The only time and place a challenge may be made to the manner and form of a bill is during first, second or third reading of a bill in Parliament. In such event, the challenge is made to the Speaker of the House or to the Speaker of the Senate. The Speaker's ruling is not subject to challenge in a court of justice.

This is not a surprising principle. We never see MPs sprinting out of Parliament to begin a lawsuit against the Speaker. It just does not happen because the Court of Parliament is co-equal with the courts of justice, including the Supreme Court of Canada, and each respects the jurisdiction of the other.

Based on this principle, Judge Campbell should have found that the lawsuit before him did not disclose a cause of action. The rulings of the Speaker may not be challenged in Federal Court directly or (as in the case of the Wheat Board) indirectly.

This principle has been applied many times by the courts to throw out cases where the plaintiff has argued that Parliament missed a step or precondition or otherwise made a mistake in the process of passing a bill. Once the Sovereign has signed the bill into law, all such questions become irrelevant.

No legal challenge may be made to an act of Parliament.

Judge Campbell should have read these words from the High Court of England in Cheney v. Conn [1968] 1 Weekly Law Reports 242: "It is not for the court to say that a parliamentary enactment, the highest law in this country, is illegal."

The proper approach for a court is set forth in this extensively quoted statement from Lord Campbell in 1842: "All that a court of justice can look to is the parliamentary roll: they see that an Act has passed both Houses of Parliament, and that it has received the royal assent, and no court of justice can inquire into the manner in which it was introduced into Parliament, what was done previously to its being introduced, or what passed in Parliament during the various stages of its progress through both Houses of Parliament." [Edinburgh & Dalkeith Railway Co v. Wauchope (1842)]

Prof. Russell and Judge Campbell are both wrong to have said that Parliament acted illegally in passing Bill C-18:

1. Only the Speaker of the House or Senate has jurisdiction to make such a ruling (and no such ruling was made).

2. The Federal Court must never question the legality of the enactment of an act by Parliament (this does

not in any way limit the right of a court to look into the constitutionality of an act).

3. As a matter of substantive parliamentary procedure, a condition such as in the previous Section 47 of the Wheat Board Act requiring the participation of a third party in the process of introducing a bill has never in the history of Parliament been described as a "manner and form" condition.

There can be no doubt that the legal challenges under way will fail. If there is any criticism to be made regarding Section 47, it is of the ill-fated attempt by a previous Parliament to insert third parties into the statute-making process. That attempt was wrong in parliamentary law and procedure.

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