1991 CarswellBC 168, 1991 CarswellBC 920, [1991] 2 S.C.R. 525, [1991] 6 W.W.R. 1...

1991 CarswellBC 168
Supreme Court of Canada

Reference re Canada Assistance Plan (Canada)

1991 CarswellBC 168, 1991 CarswellBC 920, [1991] 2 S.C.R. 525, [1991] 6 W.W.R. 1, [1991] B.C.W.L.D. 2122, [1991] S.C.J. No. 60, 127 N.R. 161, 1 B.C.A.C. 241, 1 Admin. L.R. (2d) 1, 1 W.A.C. 241, 28 A.C.W.S. (3d) 652, 2 W.D.C.P. (2d) 443, 58 B.C.L.R. (2d) 1, 83 D.L.R. (4th) 297, J.E. 91-1267, EYB 1991-67051

REFERENCE RE CANADA ASSISTANCE PLAN, R.S.C. 1970, c. C-1; ATTORNEY GENERAL OF CANADA v. ATTORNEY GENERAL OF BRITISH COLUMBIA; ATTORNEY GENERAL FOR ONTARIO, ATTORNEY GENERAL OF MANITOBA, ATTORNEY GENERAL FOR ALBERTA, ATTORNEY GENERAL FOR SASKATCHEWAN, NATIVE COUNCIL OF CANADA and UNITED NATIVE NATIONS OF BRITISH COLUMBIA (Intervenors)

Lamer C.J.C., La Forest, Sopinka, Gonthier, Cory, McLachlin and Stevenson JJ.

Heard: December 10-12, 1990
Judgment: August 15, 1991
Docket: Doc. 22017

Counsel: *W.I.C. Binnie, Q.C., Peter W. Hogg, Q.C.*, and *Maureen E. Baird*, for appellant.
E. Robert A. Edwards, Q.C., and *Patrick O'Rourke*, for respondent.
Christopher D. Bredt and *Tanya Lee*, for intervenor Attorney General for Ontario.
Vic Toews, for intervenor Attorney General of Manitoba.
Stan Rutwind, for intervenor Attorney General for Alberta.
Donald J. Dow, for intervenor Attorney General for Saskatchewan.
Marvin R.V. Storrow, Q.C., and *Maria Morellato*, for intervenor Native Council of Canada and United Native Nations of British Columbia.

Subject: Public; Constitutional; Civil Practice and Procedure

Related Abridgment Classifications

Constitutional law

IV Status of Crown
IV.4 Effect of legislation on Crown
IV.4.d Power of Dominion to affect Crown in right of province

Constitutional law

XIV Procedure in constitutional challenges

XIV.1 Jurisdiction of courts
XIV.1.a General principles

Public law

V Social programs
V.1 Welfare benefits
V.1.a Constitutional issues
V.1.a.ii Miscellaneous

Headnote

Constitutional Law --- Status of Crown — Effect of legislation on Crown — Power of Dominion to affect Crown in right of province

Constitutional Law --- Procedure in constitutional challenges — Jurisdiction of courts — General

Social Assistance --- Welfare benefits — Constitutional issues — General

Constitutional law — Federal-provincial financial agreements — Canada Assistance Plan and Canada-British Columbia agreement made pursuant to plan obligating Canada to bear 50 per cent of provincial welfare costs — Plan and agreement subject to amendment by Parliament as well as by mutual consent — Doctrine of legitimate expectation not creating substantive rights and not operating to prevent Canada from introducing amending legislation to limit its obligation without consent of province.

Constitutional law — Judicial review of legislation — Procedure — References — On reference court having to determine whether question purely political or containing sufficient legal component to be justiciable — Questions involving interpretation of federal-provincial agreement and of federal statute, and applicability of doctrine of legitimate expectations, raising justiciable issues.

Following discussions between the provinces and the federal government undertaken to develop a federal-provincial arrangement for sharing the cost of welfare programs, Parliament enacted the *Canada Assistance Plan* in 1966. In 1967 the federal government and the government of British Columbia made an agreement pursuant to the plan whereby the federal government obligated itself to bear 50 per cent of the cost of welfare in the province. The agreement provided for its amendment only by mutual consent. In the 1990 federal budget, the federal government announced its intention to limit any increase in contributions to the province to 5 per cent and introduced legislation to amend the plan accordingly. Pursuant to the *Constitutional Question Act*, the province referred two questions to the Court of Appeal for hearing and consideration. The first question was whether the federal government had any statutory, prerogative or contractual authority to limit its obligation under the Plan and its agreement with the province. The second question was whether the terms of the agreement made pursuant to the Plan and the subsequent conduct of the federal government gave rise to a legitimate expectation that the federal government would introduce no legislation to limit its obligation under the agreement or the Plan without the consent of the province. The first question was answered in the negative, the second in the affirmative. The federal Crown appealed and argued, first, that the questions raised were political in nature and not justiciable.

Held:

Appeal allowed; answer to first question: Yes; answer to second question: No.

Justiciability

On the issue of justiciability, both questions posed had a significant legal component. The first required the interpretation of a statute of Canada and an agreement. The second raised the applicability of the legal doctrine of legitimate expectations to the process involved in the enactment of a money Bill. The matters raised were justiciable and the court was the only forum that could determine them authoritatively.

Question 1

The first question required a determination of whether the agreement obliged the federal government to pay to British Columbia the contributions that were authorized when the agreement was signed, or whether the obligation was to pay those contributions which are authorized from time to time. The contribution formula, which actually authorizes payments to the provinces, appears only in the Plan. The agreement provides that "Canada agrees ... to pay to the province of British Columbia the contributions or advances ... that Canada is authorized to pay to that province under the Act and Regulations." That refers to the contributions or advances authorized by the Plan, an instrument that must be construed as subject to amendment under s. 42(1) of the *Interpretation Act*. That subsection provides that "Every Act shall be so construed as to reserve to Parliament the power of repealing or amending it." The government could not bind Parliament from exercising its powers to legislate amendments to the Plan as that would negate the sovereignty of Parliament. That basic fact of Canadian constitutional life was, therefore, present in the minds of the parties when the Plan and agreement were enacted and concluded, and there was nothing in the agreement saying that the payment formula was frozen. Instead, the payment formula was left out of the agreement and placed in the statute where it was subject to amendment. Accordingly, the natural meaning to be given to the words "authorized to pay ... under the Act" is that the obligation to pay is to pay what is authorized from time to time. Further, the agreement was not amendable only under s. 8 of the Plan. Because payment obligations under the agreement are subject to change when s. 5 of the Plan is changed, s. 5 contains within it its own process of amendment by virtue of the principle of parliamentary sovereignty.

Question 2

There is no support in Canadian or English authorities for the proposition that the doctrine of legitimate expectations can create substantive rights. The doctrine is part of the rules of procedural fairness which can govern administrative bodies. Where it is applicable it can create a right to make representations or to be consulted; it does not fetter the decision following the representation or consultations. Moreover, the rules governing procedural fairness do not apply to a body exercising purely legislative functions. The formulation and introduction of a Bill are part of the legislative process with which the courts will not meddle. Parliamentary sovereignty would be paralyzed if the doctrine of legitimate expectations could be applied to prevent the government from introducing legislation in Parliament. Such expectations might be created by statements during an election campaign. A restraint on the executive in the introduction of legislation is a fetter on the sovereignty of Parliament itself. This is particularly true when the restraint relates to the introduction of a money Bill.

Where a statute is of a constitutional nature and governs legislation generally, it can impose requirements as to the "manner and form" of subsequent legislation. The Plan was not a constitutional statute and there was nothing in its language implying a requirement that it could not be altered by subsequent legislation without the consent of the province or provinces affected.

The proposed amendment to the Plan was not an indirect, colourable attempt to regulate in provincial areas of jurisdiction. It was simply an austerity measure and the simple withholding of federal money which had previously been granted to fund a matter within provincial jurisdiction did not amount to a regulation of that matter. The federal government did not act illegally in invoking the power of Parliament to amend the Plan without obtaining British Columbia's consent.

Table of Authorities

Cases considered:

Attorney General for New South Wales v. Trethowan, [1932] A.C. 526 (P.C.) — *referred to*

Bates v. Lord Hailsham of St. Marylebone, [1972] 1 W.L.R. 1373, [1972] 3 All E.R. 1019 — *considered*

Borowski v. Canada (Attorney General), [1989] 1 S.C.R. 342, [1989] 3 W.W.R. 97, 33 C.P.C. (2d) 105, 47 C.C.C. (3d) 1, 57 D.L.R. (4th) 231, 92 N.R. 110, 75 Sask. R. 82, 38 C.R.R. 232 — *referred to*

Canada (Attorney General) v. Inuit Tapirisat of Canada, [1980] 2 S.C.R. 735, 115 D.L.R. (3d) 1, 33 N.R. 304 — *referred to*

Canada (Auditor General) v. Canada (Minister of Energy, Mines & Resources), [1989] 2 S.C.R. 49, 97 N.R. 241, 40 Admin. L.R. 1, 61 D.L.R. (4th) 604 — *referred to*

Hogan v. R. (1974), [1975] 2 S.C.R. 574, 9 N.S.R. (2d) 145, 26 C.R.N.S. 207, 18 C.C.C. (2d) 65, 2 N.R. 343, 48 D.L.R. (3d) 427 — *referred to*

Lord's Day Alliance of Canada v. Manitoba (Attorney General), [1925] A.C. 384, [1925] 1 W.W.R. 296, 43 C.C.C. 185, [1925] 1 D.L.R. 561 (P.C.) — *referred to*

Martineau v. Matsqui Institution Disciplinary Board, [1980] 1 S.C.R. 602, 13 C.R. (3d) 1, 15 C.R. (3d) 315, 50 C.C.C. (2d) 353, 106 D.L.R. (3d) 385, 30 N.R. 119 — *considered*

Objection by Quebec to a Resolution to Amend the Constitution, Re, [1982] 2 S.C.R. 793, *(*sub nom. *Re Quebec (Attorney General) and Canada (Attorney General))* 140 D.L.R. (3d) 385, 45 N.R. 317 — *applied*

Old St. Boniface Residents Assn. Inc. v. Winnipeg (City), [1990] 3 S.C.R. 1170, [1991] 2 W.W.R. 145, 46 Admin. L.R. 161, 2 M.P.L.R. (2d) 217, 75 D.L.R. (4th) 385, 116 N.R. 46, 69 Man. R. (2d) 134 — *considered*

Ontario (Attorney General) v. Canada (Attorney General), [1912] A.C. 571, 3 D.L.R. 509 (P.C.) — *referred to*

Penikett v. R. (1987), 21 B.C.L.R. (2d) 1, [1988] N.W.T.R. 18, [1988] 2 W.W.R. 481, *(*sub nom. *Penikett v. Canada)* 45 D.L.R. (4th) 108, *(*sub nom. *Yukon Territory (Commissioner) v. Canada)* 2 Y.R. 314, leave to appeal to S.C.C. refused [1988] 1 S.C.R. xii, 27 B.C.L.R. (2d) xxxv, [1988] N.W.T.R. xliv, [1988] 6 W.W.R. lxix, 3 Y.R. 159, 46 D.L.R. (4th) vi, 88 N.R. 320 — *considered*

R. v. Drybones, [1970] S.C.R. 282, 71 W.W.R. 161, 10 C.R.N.S. 334, 9 D.L.R. (3d) 473, [1970] 3 C.C.C. 355 — *referred to*

R. v. Mercure, [1988] 1 S.C.R. 234, [1988] 2 W.W.R. 577, 39 C.C.C. (3d) 385, 48 D.L.R. (4th) 1, 65 Sask. R. 1, *(*sub nom. *Mercure v. Saskatchewan)* 83 N.R. 81 — *referred to*

Reference re An Act Respecting the Jurisdiction of Magistrate's Court, [1965] S.C.R. 772, 55 D.L.R. (2d) 701 — *referred to*

Reference re Upper Churchill Water Rights Reversion Act, [1984] 1 S.C.R. 297, *(*sub nom. *Churchill Falls (Labrador) Corp. v. Newfoundland (Attorney General))* 8 D.L.R. (4th) 1, 47 Nfld. & P.E.I.R. 125, 139 A.P.R. 125, 53 N.R. 268 — *distinguished*

Reference re Waters & Water-Powers, [1929] S.C.R. 200, [1929] 2 D.L.R. 481 — *referred to*

Resolution to Amend the Constitution, Re, [1981] 1 S.C.R. 753, *(*sub nom. *Manitoba (Attorney General) v. Canada (Attorney General))* [1981] 6 W.W.R. 1, *(*sub nom. *Reference re Amendment of Constitution of Canada)* 125 D.L.R. (3d) 1, 11 Man. R. (2d) 1, 34 Nfld. & P.E.I.R. 1, 95 A.P.R. 1, 39 N.R. 1 — *applied*

West Lakes Ltd. v. South Australia (1980), 25 S.A.S.R. 389 (S.C.) — *applied*

Statutes considered:

Canada Assistance Plan, S.C. 1966-67, c. 45

s. 5(2)(c)*considered*

Canada Assistance Plan, R.S.C. 1970, c. C-1

s. 4*considered*

s. 5(1), (2)(c)*considered*

s. 6(2), (3)*considered*

s. 8(1), (2)*considered*

s. 9(1), (2)*considered*

Canada Assistance Plan, R.S.C. 1985, c. C-1

s. 4*considered*

s. 5(1), (2)(c)*considered*

s. 5.1 [en. 1991, c. 9, s. 2]*considered*

s. 6(2), (3)*considered*

s. 8(1), (2)*considered*

s. 9(1), (2)*considered*

Canadian Bill of Rights, S.C. 1960, c. 44 — *referred to*

Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B of the Canada Act 1982 (U.K.), 1982, c. 11 — *referred to*

Constitution Act, 1867

s. 54*referred to*

s. 92(13), (16)*referred to*

Constitution Act, 1907 — *referred to*

Constitution Act, 1982, being Schedule B of the Canada Act 1982 (U.K.), 1982, c. 11

s. 36(1)*referred to*

Constitutional Question Act, R.S.B.C. 1979, c. 63

s. 1*considered*

s. 6*considered*

Emergencies Act, R.S.C. 1985, c. 22 (4th Supp.) (also c. E-4.5)

s. 40(1), (2)*referred to*

Government Expenditures Restraint Act, S.C. 1991, c. 9

s. 2*considered*

Guaranteed Available Income for Need Act, R.S.B.C. 1979, c. 158 — *referred to*

Indian Act, R.S.C. 1952, c. 149 — *referred to*

Interpretation Act, R.S.C. 1985, c. I-21

s. 10*considered*

s. 42(1)*considered*

North-West Territories Act, R.S.C. 1886, c. 50

s. 110*referred to*

Statute Revision Act, R.S.C. 1985, c. S-20

s. 6(e), (f)*referred to*

Supreme Court Act, R.S.C. 1985, c. S-26

s. 36*referred to*

Words and phrases considered:

AUTHORIZED TO PAY UNDER THE ACT

In these circumstances the natural meaning to be given to the words "authorized to pay . . . under the Act" in cl. 3(1)(a) [of the agreement between the federal Minister of Health and Welfare and the province of British Columbia] is that the obligation is to pay what is authorized from time to time.

IMPACT

In oral argument, counsel said that the *Government Expenditures Restraint Act*, [S.C. 1991, c. 9] "impacts upon [a] constitutional interest" outside the jurisdiction of Parliament. That is no doubt true, but it does not make the Act ultra vires. "Impact" with nothing more is clearly not enough to find that a statute encroaches upon the jurisdiction of the other level of government.

LEGITIMATE EXPECTATION

There is no support in Canadian or English cases for the position that the doctrine of legitimate expectations can create substantive rights. It is a part of the rules of procedural fairness which can govern administrative bodies. Where it is applicable, it can create a right to make representations or to be consulted. It does not fetter the decision following the representations or consultation.

. . . . .

Parliamentary government would be paralyzed if the doctrine of legitimate expectations could be applied to prevent the government from introducing legislation in Parliament. Such expectations might be created by statements during an election campaign. The business of government would be stalled while the application of the doctrine and its effect was argued out in the courts. Furthermore, it is fundamental to our system of government that a government is not bound by the undertakings of its predecessor. The doctrine of legitimate expectations would place a fetter on this essential feature of democracy.

MANNER AND FORM

[The issue is whether] even a sovereign body can restrict itself in respect of the "manner and form" of subsequent legislation.

. . . . .

Any "manner and form" requirement in an ordinary statute must overcome the clear words of s. 42(1) of the *Interpretation Act*, [R.S.C. 1985, c. I-21] . . . :

42(1) Every Act shall be so construed as to reserve to Parliament the power of repealing or amending it, and of revoking, restricting or modifying any power, privilege or advantage thereby vested in or granted to any person.

. . . . .

It is no coincidence that when this court has found "manner and form" restrictions, the instrument creating the restrictions has not been an ordinary statute . . . It may be that where a statute is of a constitutional nature and governs legislation generally, rather than dealing with a specific statute, it can impose requirements as to manner and form. But where a statute has no constitutional nature, it will be very unlikely to evidence an intention of the legislative body to bind itself in the future.

OVERRIDING PRINCIPLE OF FEDERALISM

[It was argued] that the "overriding principle of federalism" requires that Parliament be unable to interfere in areas of provincial jurisdiction. It was said that, in order to protect the autonomy of the provinces, the court should supervise the federal government's exercise of its spending power. But supervision of the spending power is not a separate head of judicial review. If a statute is neither ultra vires nor contrary to the *Canadian Charter of Rights and Freedoms*, the courts have no jurisdiction to supervise the exercise of legislative power.

Appeal by federal Crown from judgment of the British Columbia Court of Appeal (1990), 46 B.C.L.R. (2d) 273, 45 Admin. L.R. 34, 71 D.L.R. (4th) 99, on reference concerning federal government's authority to limit its obligations under the Canada Assistance Plan.

The judgment of the court was delivered by *Sopinka J.*:

1 This is an appeal by the Attorney General of Canada from a decision of the British Columbia Court of Appeal [46 B.C.L.R. (2d) 273, 45 Admin. L.R. 34, 71 D.L.R. (4th) 99], answering two questions which were referred to it under the *Constitutional Question Act*, R.S.B.C. 1979, c. 63. The issues raised by the questions include whether and in what circumstances a court should answer questions referred to it that have a political connotation, the interpretation and binding effect of federal-provincial agreements, and whether the doctrine of legitimate expectations applies to prevent the Cabinet from introducing a money Bill.

2 The Attorneys General for Ontario, Manitoba and Alberta intervened in the Court of Appeal, as did the Native Council of Canada and the United Native Nations of British Columbia. In addition, the Attorney General for Saskatchewan intervened in this court.

1. The Background

3 The *Canada Assistance Plan* (the "Plan") was enacted by S.C. 1966-67, c. 45; it is now R.S.C. 1985, c. C-1. By its s. 4, it authorizes the government of Canada to enter into agreements with the provincial governments to pay them contributions toward their expenditures on social assistance and welfare. Section 5 of the Plan authorizes payments to the provinces pursuant to such agreements, and broadly speaking it authorizes contributions amounting to half of the provinces' eligible expenditures. The Plan (s. 6(2)) specifies certain prerequisites for eligibility of provincial expenditures, but leaves for the provinces the determination of which programmes will be operated and how much money will be spent. By its s. 8(1), the Plan further provides that agreements under it shall continue in force so long as the relevant provincial law remains in operation; but, that they may be terminated by consent or on one year's notice from either party (s. 8(2)). Agreements can also be amended by consent (s. 8(2)). The Plan provides (s. 9(1)) for regulations under it to govern such things as how eligible costs are to be calculated; but, regulations affecting the substance of agreements are ineffective unless passed with the consent of any province affected (s. 9(2)). The Plan is silent as to the authority of Parliament to amend the Plan.

4 The government of Canada entered into agreements with each of the provincial governments in 1967. It entered into an agreement with the government of British Columbia on March 23, 1967. Amounts paid to the provinces under all agreements rose from $151 million in 1967-68 to an estimated $5.5 billion in 1989-90. The Plan itself has never been amended, although the regulations under it have been.

5 In 1990 the federal government decided to cut expenditures in order to reduce the federal budget deficit. The government has created an Expenditure Control Plan. One feature of this plan is to limit the growth of payments made to financially stronger provinces under the *Canada Assis tance Plan*. Such payments are to grow no more than 5 per cent per annum for fiscal 1991 and fiscal 1992. The provinces affected are those which are not entitled to receive equalization payments from the federal government; currently, this means British Columbia, Alberta and Ontario. This change, and others, were embodied in Bill C-69, *An Act to amend certain statutes to enable restraint of government expenditures*. That Bill was introduced in the House of Commons on March 15, 1990. It received royal assent on February 1, 1991, and is now the

Government Expenditures Restraint Act, S.C. 1991, c. 9.

6 On February 27, 1990, O.C. 287 was approved and ordered by the Lieutenant Governor of British Columbia. Via this order, the government of British Columbia referred the following questions to the British Columbia Court of Appeal:

> (1) Has the Government of Canada any statutory, prerogative or contractual authority to limit its obligation under the *Canada Assistance Plan Act* [sic], R.S.C. 1970, c. C-1 and its Agreement with the Government of British Columbia dated March 23, 1967, to contribute 50 per cent of the cost to British Columbia of assistance and welfare services?
>
> (2) Do the terms of the Agreement dated March 23, 1967 between the Governments of Canada and British Columbia, the subsequent conduct of the Government of Canada pursuant to the Agreement and the provisions of the *Canada Assistance Plan Act* [sic], R.S.C. 1970, c. C-1, give rise to a legitimate expectation that the Government of Canada would introduce no bill into Parliament to limit its obligation under the Agreement or the *Act* without the consent of British Columbia?

2. Relevant Provisions of Statutes and the Agreements

Canada Assistance Plan, R.S.C. 1970, c. C-1

7 The questions on this reference ask about the meaning of the Plan in the Revised Statutes of Canada 1970. The reason for this is not clear, as the Revised Statutes of Canada 1985 came into force on December 12, 1988, and O.C. 287 containing the questions was approved and ordered on February 27, 1990. The only difference between the R.S.C. 1970 version and the R.S.C. 1985 version which could be relevant to this reference is in s. 5(2)(*c*), and will be discussed below.

> 4. Subject to this Act, the Minister [of National Health and Welfare] may, with the approval of the Governor in Council, enter into an agreement with any province to provide for the payment by Canada to the province of contributions in respect of the cost to the province and to municipalities in the province of
>
> (*a*) assistance provided by or at the request of provincially approved agencies, and
>
> (*b*) welfare services provided in the province by provincially approved agencies,
>
> pursuant to the provincial law.
>
> 5. (1) The contributions payable to a province under an agreement shall be paid in respect of each year and shall be the aggregate of
>
> (*a*) fifty per cent of the cost to the province and to municipalities in the province in that year of assistance provided by or at the request of provincially approved agencies; and
>
> (*b*) fifty per cent of either
>
> (i) the amount by which
>
> (A) the cost to the province and to municipalities in the province in that year of welfare services provided in the province by provincially approved agencies

exceeds

(B) the total of

(I) the cost to the province, in the fiscal year of the province coinciding with or ending in the period commencing April 1, 1964 and ending March 31, 1965, of welfare services provided in the province, and

(II) the cost to municipalities in the province, in the fiscal years of such municipalities coinciding with or ending in the period commencing April 1, 1964 and ending March 31, 1965, of welfare services provided in the province,

or

(ii) the cost to the province and to municipalities in the province in that year of the employment by provincially approved agencies of persons employed by such agencies

(A) wholly or mainly in the performance of welfare services functions, and

(B) in positions filled after March 31, 1965,

at the election of the province made at such time or times and in such manner as may be prescribed.

(2) In this section, "cost" does not include,

(*c*) any cost that Canada has shared or is required to share in any manner with the province, or that Canada has borne or is required to bear, pursuant to any other Part or pursuant to any Act of the Parliament of Canada passed before, on or after the 15th day of July 1966.

(Section 5.1, added to the Plan effective February 1, 1991, by the *Government Expenditures Restraint Act*, S.C. 1991, c. 9, s. 2, is set out below in an extract from the latter Act.)

6 ...

(2) An agreement shall provide that the province [there is a series of provincial obligations which must appear in an agreement].

(3) An agreement shall provide that Canada

(*a*) will pay to the province the contributions or advances on account thereof that Canada is authorized to pay to the province under this Act and the regulations [and certain other obligations].

8. (1) Every agreement shall continue in force so long as the provincial law remains in operation.

(2) Notwithstanding subsection (1),

(*a*) an agreement may, with the approval of the Governor in Council, be amended or terminated at any time by mutual consent of the Minister and the province;

(*b*) any schedule to an agreement may be amended at any time by mutual consent of the Minister and the province;

(*c*) the province may at any time give to Canada notice of intention to terminate an agreement; and

(*d*) Canada may, at any time on or after the 31st day of March 1969, give to the province notice of intention to terminate an agreement;

and, where notice of intention to terminate is given in accordance with paragraph (*c*) or (*d*), the agreement shall cease to be effective for any period after the day fixed in the notice or for any period after the expiration of one year from the day upon which the notice is given, whichever is the later.

9 ...

(2) No regulation that has the effect of altering any of the agreements or undertakings contained in an agreement entered into under this Part with a province, or that affects the method of payment or amount of payments thereunder, is effective in respect of that province unless the province has consented to the making of such regulation.

The Agreement of March 23, 1967

8

2. The Province agrees

[the obligations required by s. 6(2) of the Plan are set out].

3. (1) Canada agrees

(a) subject to this clause and to Clause 4, to pay to the province of British Columbia the contributions or advances on account thereof that Canada is authorized to pay to that province under the Act and the Regulations;

[the other obligations required by s. 6(3) of the Plan are set out].

6. (2) Subject to subclause (3), this agreement shall continue in force so long as the provincial law remains in operation.

(3)

(a) Notwithstanding subsection (1)

(i) any schedule to this Agreement may be amended at any time; and

(ii) the Agreement may, with the approval of the Governor-in-Council, be amended or terminated at any time,

by mutual consent of the Minister and The Province;

(b) The Province may at any time give to Canada notice of intention to terminate this Agreement and Canada may at any time on or after the 31st day of March, 1969, give to The Province notice of intention to terminate this agreement; and where notice of intention to terminate is given in accordance with this paragraph (b), the Agreement shall cease to be effective for any period after the day fixed in the notice or for any period after the expiration of one year from the day that notice is given, whichever is the later.

Government Expenditures Restraint Act, S.C. 1991, c. 9

9

2. The *Canada Assistance Plan* is amended by adding thereto, immediately after section 5 thereof, the following section:

5.1 (1) Notwithstanding sections 5 and 8 and any agreement, where no fiscal equalization payment is payable to a province pursuant to section 3 of the *Federal-Provincial Fiscal Arrangements and Federal Post-Secondary Education and Health Contributions Act* for the year ending on March 31, 1991, the contributions to that province in respect of that year shall not exceed the product obtained by multiplying

(*a*) the amount of the contributions payable to the province for assistance and welfare services provided in the year ending on March 31, 1990

by

(*b*) 1.05.

(2) Notwithstanding sections 5 and 8 and any agreement, where no fiscal equalization payment is payable to a province pursuant to section 3 of the *Federal-Provincial Fiscal Arrangements and Federal Post-Secondary Education and Health Contributions Act* for the year ending on March 31, 1992, the contributions to that province in respect of that year shall not exceed the product obtained by multiplying

(*a*) the amount of the contributions payable to the province for assistance and welfare services provided in the year ending on March 31, 1990

by

(*b*) 1.1025.

Interpretation Act, R.S.C. 1985, c. I-21

10

> 42. (1) Every Act shall be so construed as to reserve to Parliament the power of repealing or amending it, and of revoking, restricting or modifying any power, privilege or advantage thereby vested in or granted to any person.

Constitutional Question Act, R.S.B.C. 1979, c. 63

11

> 1. The Lieutenant Governor in Council may refer any matter to the Court of Appeal or to the Supreme Court for hearing and consideration, and the Court of Appeal or the Supreme Court shall then hear and consider it.
>
> 6. The opinion of the Court of Appeal or the Supreme Court is deemed a judgment of the Court of Appeal or of the Supreme Court, as the case may be, and an appeal lies from it in the manner of a judgment in an ordinary action.

Supreme Court Act, R.S.C. 1985, c. S-26

12

> 36. An appeal lies to the Court from an opinion pronounced by the highest court of final resort in a province on any matter referred to it for hearing and consideration by the lieutenant governor in council of that pro vince whenever it has been by the statutes of that province declared that such opinion is to be deemed a judgment of the highest court of final resort and that an appeal lies therefrom as from a judgment in an action.

3. Judgment Below

13 The case was argued in the British Columbia Court of Appeal before Hinkson, Lambert, Toy, Southin and Legg JJ.A. Judgments were delivered by Lambert, Toy and Southin JJ.A. The case is reported at (1990), *(*sub nom. *Reference re Constitutional Question Act)* 46 B.C.L.R. (2d) 273, 71 D.L.R. (4th) 99, 45 Admin L.R. 34 (hereinafter cited to B.C.L.R.).

Toy J.A., Hinkson and Legg JJ.A. concurring

14 On Q. 1, Toy J.A. said that the Attorney General of Canada did not seriously contend that the federal government could limit its obligations under the current Plan and the agreement except by legislation. The very introduction of Bill C-69 was aimed at limiting those obligations. Turning to Q. 2, he began by considering the doctrine of legitimate expectations. He reviewed some of the leading cases in this area.

15 Toy J.A. accepted British Columbia's contention that it had a legitimate expectation that the federal government would proceed in accordance with the terms of the Plan and the agreement. He quoted from the judgment of Estey J. in *Canada (Attorney General) v. Inuit Tapirisat of Canada*, [1980] 2 S.C.R. 735 at 758-59, 115 D.L.R. (3d) 1, 33 N.R. 304, to the effect that even the decisions of the federal cabinet are reviewable in respect of whether they are made within the parliamentary mandate which authorizes them.

16 Toy J.A. rejected the submission of the Attorney General of Canada that Q. 2 is non-justiciable. He then turned to the submission that the principle of parliamentary sovereignty is a complete answer to Q. 2. He said that this did not meet the complaint of the Attorney General of British Columbia, since that party's submission was directed, not to Parliament's powers, but to the conduct of the government of Canada.

17 Toy J.A. stated his conclusion in this way (at p. 311):

> In my opinion, upon the basis of the doctrine of legitimate expectations, the government of Canada was required to obtain the consent of British Columbia under the existing circumstances.

He said that precipitate action without consent might be justified in some circumstances. He did not comment on the intervener's submissions. He answered "No" to Q. 1 and "Yes" to Q. 2.

Lambert J.A.

18 Lambert J.A. noted that the court was not bound to answer the questions exactly as phrased, but rather was free to address the "matter" in question (citing *Re Resolution to Amend the Constitution*, [1981] 1 S.C.R. 753, *(*sub nom. *Manitoba (Attorney General) v. Canada (Attorney General))* [1981] 6 W.W.R. 1, *(*sub nom. *Reference re Amendment of Constitution of Canada)* 125 D.L.R. (3d) 1, 11 Man. R. (2d) 1, 34 Nfld. & P.E.I.R. 1, 95 A.P.R. 1, 39 N.R. 1).

19 Pursuant to the concession of the Attorney General of Canada, Lambert J.A. answered the first question in the negative. Looking at the second question, he said (at p. 287):

> In my opinion, if there is an obligation, binding on Canada, to pay to British Columbia 50 per cent of the cost of providing assistance to those in need in British Columbia as determined under the Canada Assistance Plan and the Canada-British Columbia Assistance Agreement, then there would be and should be a legitimate expectation on the part of British Columbia that Canada would not break that binding obligation. In those circumstances, British Columbia could also hold a legitimate expectation that the government of Canada would not introduce a bill into Parliament which would break the binding obligation.

20 Lambert J.A. then turned to the matter of whether there was indeed an obligation on Canada to pay 50 per cent of the expenditures in question. He said that in this case the ordinary private law rules of interpretation should govern the determination of the scope of the obligations imposed by the agreement.

21 Lambert J.A. set out cl. 3(1)(a) of the agreement, which is required by s. 6(1)(*a*) of the Plan and which provides that Canada undertakes to make the contributions authorized under the Plan. He then stated the issue in this way (at p. 290):

> The question is whether, when the agreement was made in 1967, that clause meant that Canada must pay the contribution proportion that it was authorized to pay when the agreement was made in 1967, or whether, on the other hand, Canada was to be required to pay each year the contribution proportion that it was authorized to pay under the Act [the Plan] and the regulations as the Act and regulations were currently in effect and as they might be amended by Canada from time to time.

He concluded that the former is correct, and gave six reasons. These will be discussed in more detail later in this judgment.

22 Since he thought that the government of Canada was obliged to pay contributions at the levels authorized in 1967, Lambert J.A. concluded that if the federal government were to pay to British Columbia less than 50 per cent of the eligible expenditures made by British Columbia, then that would be a breach of an undertaking and a breach of an obligation. This would be so even if this action were pursuant to Bill C-69, now the *Government Expenditures Restraint Act*. Lambert J.A. said that the introduction of Bill C-69 was a form of anticipatory breach. He said that the *Government Expenditures Restraint Act* would authorize and in fact require the breach, but the non-payment would still be a breach of Canada's undertaking and of its obligations under the agreement.

23 Lambert J.A. noted that if the federal government asserted that its actions were required by a state of national emergency, then the questions might be non-justiciable; but no such assertion was made.

24 In the result, because the proposed federal action would be a breach of an obligation, Lambert J.A. answered "Yes" to Q. 2. He stated that British Columbia could have had a legitimate expectation that Canada would not breach its obligations; but he stressed that he was using the words "legitimate expectation" in a non-technical way. Lambert J.A. also summarized

all of the other arguments made, although he did not accept or reject any of them.

Southin J.A.

25 Southin J.A. agreed that the answer to Q. 1 is "No." She said that the *Constitutional Question Act* does not authorize references on questions concerning practices, usages, customs, or conventions of the Constitution, and so Q. 2 must be interpreted as asking a legal question.

26 She looked at some old constitutional learning and said that the executive aspect of the federal government is subordinate to the legislative aspect; that is, executive action is subject to the expressed will of Parliament. She noted that there have been many decisions interpreting the Constitution, and said (at pp. 314-15):

> I am not aware of any decision since Confederation which suggests there is any limitation on the exercise of the Executive Power conferred on the Governor General in Council and on the Lieutenant Governor in Council by, respectively ss. 9-13 and ss. 58 and 65 of the Constitution Act, 1867, save those limitations within the Acts themselves.
>
> It has generally been accepted that the Executive Power so conferred cannot go beyond the applicable Legislative Power and, of course, is subject to statutes restricting that Executive Power.
>
> What Mr. Edwards postulates is a limitation on Executive Power.
>
> But he cannot point to any provision in the Constitution Acts which expressly or by necessary intendment creates the limitation which he postulates.
>
> He asks us to engraft onto the Executive Power of the Constitution Acts a doctrine of "legitimate expectation".
>
> In my opinion, the duty of the judiciary, when confrontations take place between a province and Canada, is limited to the interpretation of the Constitution Acts.

Southin J.A. noted that s. 36(1) of the *Constitution Act, 1982*, expressly says it does not alter the legislative authority of the several legislative bodies. She said that it would be wrong to engraft upon the Constitution a doctrine limiting the powers which are therein declared. This is especially so of the doctrine of legitimate expectations, which is a recent development in cases having nothing to do with our Constitution. She said (at p. 316):

> There is not a word in the Constitution Acts about "legitimate expectation" and I, for one, am not prepared to put such words into the legal framework of Canada.

27 Southin J.A. said that this dispute is a quarrel about money, and cannot be resolved in the courts. She rejected other arguments, saying that the Plan does not purport to control the "manner and form" of subsequent legislation; that since the question posed was a legal one, issues of conventions did not arise for resolution; and that the provinces have no proprietary right to receive money from the federal government (save under the *Constitution Act, 1907*). Hence her answer to Q. 2 was "No."

28 In the result, all five judges answered the first question "No." Four of them answered the second question "Yes," while one would have answered it "No."

4. Issues

29 The issues raised are as follows:

30 (1) Are the matters raised in the questions justiciable? The Attorney General of Canada submits that the questions are

political in nature and that therefore the court should not answer them.

31 (2) If the questions raise justiciable issues which should be answered by the court, the questions must first be interpreted and then answered.

5. Justiciability

32 The *Constitutional Question Act*, like similar enactments of other provincial legislatures, allows the Lieutenant Governor in Council to refer "any matter" to the court. This broad wording imposes no limit on the type of question which may be asked. Nevertheless, the court has a discretion to refuse to answer questions which are not justiciable. In *Re Resolution to Amend the Constitution*, supra, the majority in Pt. I said (at p. 768):

> The scope of the [reference] authority in each case is wide enough to saddle the respective courts with the determination of questions which may not be justiciable and there is no doubt that those courts, and this Court on appeal, have a discretion to refuse to answer such questions.

33 While there may be many reasons why a question is non-justiciable, in this appeal the Attorney General of Canada submitted that to answer the questions would draw the court into a political controversy and involve it in the legislative process. In exercising its discretion whether to determine a matter that is alleged to be non-justiciable, the court's primary concern is to retain its proper role within the constitutional framework of our democratic form of government. See *Canada (Auditor General) v. Canada (Minister of Energy, Mines & Resources)*, [1989] 2 S.C.R. 49 at 90-91, 97 N.R. 241, 40 Admin. L.R. 1, 61 D.L.R. (4th) 604, and *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342 at 362, [1989] 3 W.W.R. 97, 33 C.P.C. (2d) 105, 47 C.C.C. (3d) 1, 57 D.L.R. (4th) 231, 92 N.R. 110, 75 Sask. R. 82, 38 C.R.R. 232. In considering its appropriate role the court must determine whether the question is purely political in nature and should, therefore, be determined in another forum or whether it has a sufficient legal component to warrant the intervention of the judicial branch. In *Re Resolution to Amend the Constitution*, supra, at p. 884, the majority in Pt. II of the judgment said:

> We agree with what Freedman C.J.M. wrote on this subject in the Manitoba Reference at p. 13:
>
> > In my view, this submission goes too far. Its characterization of Question 2 as 'purely political' overstates the case. That there is a political element embodied in the question, arising from the contents of the joint address, may well be the case. But that does not end the matter. If Question 2, even if in part political, possesses a constitutional feature, it would legitimately call for our reply.
> >
> > In my view, the request for a decision by this Court on whether there is a constitutional convention, in the circumstances described, that the Dominion will not act without the agreement of the Provinces poses a question that it, [*sic*], at least in part, constitutional in character. It therefore calls for an answer, and I propose to answer it.

34 This was reiterated in *Re Objection by Quebec to a Resolution to Amend the Constitution*, [1982] 2 S.C.R. 793 at 805, (sub nom. *Re Quebec (Attorney General) and Canada (Attorney General))* 140 D.L.R. (3d) 385, 45 N.R. 317. The court reaffirmed the validity of the above passage from the judgment of Freedman C.J.M. While the passage speaks to a "constitutional feature," it is equally applicable to a question which possesses a sufficient legal component to warrant a decision by a court. Since only a court can authoritatively resolve a legal question, its decision will serve to resolve a controversy or it will have some other practical significance.

35 Applying the foregoing to this appeal, I am of the view that both of the questions posed have a significant legal component. The first question requires the interpretation of a statute of Canada and an agreement. The second raises the question of the applicability of the legal doctrine of legitimate expectations to the process involved in the enactment of a money Bill. Both these matters are in contention between the so-called "have provinces" and the federal government. A

decision on these questions will have the practical effect of settling the legal issues in contention and will assist in resolving the controversy. Indeed, there is no other forum in which these legal questions could be determined in an authoritative manner. In my opinion, the questions raise matters that are justiciable and should be answered.

6. The Questions

36

(a) Question 1

37

> (1) Has the Government of Canada any statutory, prerogative or contractual authority to limit its obligation under the *Canada Assistance Plan Act* [sic], R.S.C. 1970, c. C-1 and its Agreement with the Government of British Columbia dated March 23, 1967, to contribute 50 per cent of the cost to British Columbia of assistance and welfare services?

38 Before turning to the interpretation of and answers to the question, it is convenient to set out certain basic principles of our Constitution.

39 The Queen of Canada is our head of state, and under our Constitution she is represented in most capacities within the federal sphere by the Governor General. The Governor General's executive powers are of course exercised in accordance with constitutional conventions. For example, after an election he asks the appropriate party leader to form a government. Once a government is in place, democratic principles dictate that the bulk of the Governor General's powers be exercised in accordance with the wishes of the leadership of that government, namely, the Cabinet. So the true executive power lies in the Cabinet. And since the Cabinet controls the government, there is in practice a degree of overlap among the terms "government," "Cabinet" and "executive." In these reasons, I have used all of these terms, as one or another may be more appropriate in a given context. The government has the power to introduce legislation in Parliament. In practice, the bulk of the new legislation is initiated by the government. By virtue of s. 54 of the *Constitution Act, 1867*, a money Bill, including an amendment to a money Bill, can only be introduced by means of the initiative of the government.

40 The interpretation of the questions does not take place in a vacuum but in the context of the above constitutional facts and the events giving rise to the questions. Of particular significance is the fact that the government of Canada introduced Bill C-69 and the allegation that this was a breach of the agreement. The question must be given an interpretation that will make the answer of assistance in resolving the dispute.

41 In the Court of Appeal, this first question was interpreted as asking whether the federal government, in the absence of any new legislation amending the Plan, could unilaterally modify its obligations under the Plan and the agreement. With respect, this interpretation has insufficient regard for the facts which gave rise to this dispute, and in particular for the introduction of Bill C-69. Moreover, this interpretation leads to an answer which is of no use in resolving the dispute with which the court is faced. In my opinion, the first question asks the court to determine whether the agreement obliges the government of Canada to pay to British Columbia the contributions that were authorized when the agreement was signed, or rather whether the obligation is to pay those contributions which are authorized from time to time. Adopting the terminology of Lambert J.A. in the Court of Appeal, the former may be called a "static" interpretation and the latter an "ambulatory" one. If the former interpretation is correct, the government of Canada acted contrary to the agreement in introducing Bill C-69 in Parliament, whereas if the latter is correct the government acted in accordance with the agreement.

42 In general, the language of the Plan is duplicated in the agreement. But the contribution formula, which actually authorizes payments to the provinces, does not appear in the agreement. It is only in s. 5 of the Plan. Clause 3(1)(a) of the agreement provides that "Canada agrees ... to pay to the province of British Columbia the contributions or advances ... that Canada is authorized to pay to that province under the Act and the Regulations." That means, of course, the contributions or advances authorized by s. 5 of the Plan, an instrument that is to be construed as subject to amendment. This is the effect of s.

42(1) of the *Interpretation Act* which states:

42. (1) Every Act shall be so construed as to reserve to Parliament the power of repealing or amending it, and of revoking, restricting or modifying any power, privilege or advantage thereby vested in or granted to any person.	42. (1) Il est entendu que le Parlement peut toujours abroger ou modifier toute loi et annuler ou modifier tous pouvoirs, droits ou avantages attribués par cette loi.

43 In my view this provision reflects the principle of parliamentary sovereignty. The same results would flow from that principle even in the absence or non-applicability of this enactment. But since the *Interpreta tion Act* governs the interpretation of the Plan and all federal statutes where no contrary intention appears, the matter will be resolved by reference to it.

44 It is conceded that the government could not bind Parliament from exercising its powers to legislate amendments to the Plan. To assert the contrary would be to negate the sovereignty of Parliament. This basic fact of our constitutional life was, therefore, present to the minds of the parties when the Plan and agreement were enacted and concluded. The parties were also aware that an amendment to the Plan would have to be initiated by the government by reason of the provisions of s. 54 of the *Constitution Act, 1867*. If it had been the intention of the parties to arrest this process, one would have expected clear language in the agreement that the payment formula was frozen. Instead, the payment formula was left out of the agreement and placed in the statute where it was, by virtue of s. 42, subject to amendment. In these circumstances the natural meaning to be given to the words "authorized to pay ... under the Act" in cl. 3(1)(a) is that the obligation is to pay what is authorized from time to time. The government was, therefore, not precluded from exercising its powers to introduce legislation in Parliament amending the Plan.

45 The case for the contrary view, labelled as the "static" interpretation by Lambert J.A., was summarized by him in six points. I will examine each in turn.

46 First, he said that it is unlikely that the parties would have agreed to an arrangement in which Canada could change the arrangement unilaterally while British Columbia could not. There would be a "want of mutuality." It may be noted, though, that by s. 8(1) of the Plan, which is mirrored in cl. 6(2) of the agreement, the agreement is terminated if the provincial welfare and assistance legislation ceases to be in force. The parties, therefore, acknowledged that both were free to terminate the agreement by appropriate legislation.

47 Second, he said that agreements must be interpreted to accord with the intention of the parties. He said that the ordinary rule of interpretation is that if an agreement refers to something which could change, it will be taken to refer to the state of affairs at the time the agreement was made and not from time to time. He cited certain cases which deal with statutory provisions making legal rules applicable by reference. None of the cases dealt with an agreement, let alone an agreement between levels of government, each of which can spend money only under the authority of its corresponding legislative body. If this rule of construction applies to an agreement such as this, it is subject to contrary indications in the agreement. For the reasons stated above, insertion of the formula for payment in a statute which by law is to be construed as subject to amendment is a very strong indication that there was no intention that the formula should remain forever frozen.

48 Third, he observed that the formula governing the contribution level was placed in the Plan (in s. 5(1)) but not in the agreement. Lambert J.A. said that this was not done to allow Canada to alter the contribution levels unilaterally, but rather due to the "fragile constitutionality" of the federal spending power. That fragility, he said, required that the spending authorization be embodied in an Act of Parliament. Assuming that this was the reason for placing the payment formula in the Plan, the parties were aware that by so doing it became subject to amendment. No attempt was made to structure the formula in a way that would have suggested that there was a fetter on the amending power. For instance, the Plan could have simply

authorized a level of contributions calculated according to a formula in the agreement. Moreover, the formula could have been placed in both the Plan and the agreement. This was not done.

49 The fourth point made by Lambert J.A. referred to s. 9(2) of the Plan, which stipulates that the regulations to the Plan cannot be changed substantively without the consent of the province. He said this was only consistent with the conclusion that the contribution levels could not be changed unilaterally, either by the federal executive or by Parliament. He said that this inability of Parliament to amend the Plan was not made express in the Plan, as Parliament would not consider such a limitation on its powers as appropriate. With respect, there is some inconsistency here; Lambert J.A. is saying that Parliament has indirectly limited its own power to amend the Plan, via s. 9(2), which seems to deal only with regulations, while also saying that Parliament would consider any such limit to be inappropriate. Why is an indirect limit any more appropriate than a direct one?

50 Moreover, there are many statutes in which the power of the federal government to regulate is limited in order to ensure that certain matters are reserved to Parliament and therefore are only dealt with in the full light of the public and accountable legislative process. For example, by s. 40(1) of the *Emergencies Act*, R.S.C. 1985, c. 22 (4th Supp.), the federal Cabinet is granted a very wide power to regulate when a declaration of a war emergency is in effect. But by s. 40(2), that power may not be used to conscript persons into the armed forces. As a result, conscription can only be effected via the legislative process. So it is with the Plan. Parliament has authorized the federal government to enter certain agreements, and has given the federal government certain regulatory powers in connection therewith. Those regulatory powers cannot be used by the federal government to alter substantively its obligations under the agreement. But it is a far cry from that arrangement to conclude that Parliament, by a restriction on the regulatory powers of the federal government, intended to fetter its own sovereign legislative power.

51 Fifth, Lambert J.A. referred to s. 5(2)(*c*) of the Plan. That provision stipulates that for the purposes of s. 5, "cost" does not include any cost that Canada bears pursuant to any federal Act passed "before, on or after the 15th day of July 1966." Lambert J.A. said that this shows that where Canada intended to create an ambulatory cross-reference, as opposed to a static one, it did so specifically. Two points present themselves in this regard. The Plan is a statute passed by Parliament; in the agreement, we seek the common intention of the governments of Canada and British Columbia. The two documents were not created by the same entity, nor by the same process, so the use of an expression in one document is not necessarily helpful in the interpretation of the other. In any event, this suggests that the parties should have added the words "as amended from time to time" to cl. 3(1)(a). This was unnecessary because by referring to the Plan, s. 42 of the *Interpretation Act* added it for them.

52 When the Plan was originally enacted as S.C. 1966-67, c. 45, s. 5(2)(*c*) ended with the words "pursuant to any Act of the Parliament of Canada passed before or after the coming into force of this Act." The Plan came into force on July 15, 1966, and when the Revised Statutes of Canada 1970 were compiled the wording was changed to that set out above. I have observed that the questions on this reference ask about the meaning of the Plan in the R.S.C. 1970. It is of some significance that in the R.S.C. 1985, s. 5(2)(*c*) ends simply with the words "pursuant to any Act of Parliament." Presumably the Statute Revision Commission, acting under s. 6(*e*) or s. 6(*f*) of what is now the *Statute Revision Act*, R.S.C. 1985, c. S-20, removed the words referring to July 15, 1966, on the view that such a removal effected no substantive change. I agree that those words do not have a substantive effect, as any reference in a federal statute to the Acts of the federal Parliament must be taken to mean those Acts as they exist from time to time: see s. 10 of the *Interpretation Act*.

53 The last point made by Lambert J.A. is rather difficult to follow. It relates to cl. 1(a) of the agreement, which reads in relevant part:

> 1. In this Agreement,
>
> (a) words and phrases to which meanings have been assigned by the Act or the Regulations shall have the same meanings, respectively, as are assigned to them in the Act and Regulations ...

Lambert J.A. noted that by s. 9(2) of the Plan, the definitions in the regulations, and hence the meaning in the agreement of the terms defined in the regulations, cannot be changed without provincial consent. He said that it followed that Canada could have no power to change the definitions in the Plan, as that would mean that it could unilaterally change the meaning in the

agreement of those terms defined in the Plan, whereas consent is required to change the meaning in the agreement of those terms defined in the regulations. Two points immediately present themselves. First, this again amounts to saying that there is no difference between regulation and legislation, which assertion refutes itself. Second, if I am correct that the agreement contemplated that the authority to pay was an authority subject to amendment, the power to amend the Plan must have included any necessary change to definitions.

54 Finally, although not included as one of the six points, the respondent submitted that the government of Canada was bound by s. 8 of the Plan which is set out above. That section provides that the agreement is to continue in force so long as the provincial legislation (*Guaranteed Available Income for Need Act*, R.S.B.C. 1979, c. 158) remained in force. It could also be terminated on notice by either party and amended with the consent of the parties. The contention is that the agreement could only be amended in accordance with s. 8. This submission fails to take into account that the agreement which is subject to the amending formula in s. 8 obliges Canada to pay the amounts which Parliament has authorized Canada to pay pursuant to s. 5 of the Plan. Hence, the payment obligations under the agreement are subject to change when s. 5 is changed. That provision contains within it its own process of amendment by virtue of the principle of parliamentary sovereignty reflected in s. 42 of the *Interpretation Act*.

55 If this appears to deprive the agreement of binding effect or mutuality, which are both features of ordinary contracts, it must be remembered that this is not an ordinary contract but an agreement between governments. Moreover, s. 8 itself contains an amending formula that enables either party to terminate at will. In lieu of relying on mutually binding reciprocal undertakings which promote the observance of ordinary contractual obligations, these parties were content to rely on the perceived political price to be paid for non-performance.

56 The result of this is that the government of Canada, in presenting Bill C-69 to Parliament, acted in accordance with the agreement and otherwise with the law which empowers the government of Canada to introduce a money Bill in Parliament.

57 The answer to Q. 1, therefore, is "Yes."

(b) Question 2

58

> (2) Do the terms of the Agreement dated March 23, 1967 between the Governments of Canada and British Columbia, the subsequent conduct of the Government of Canada pursuant to the Agreement and the provisions of the *Canada Assistance Plan Act* [sic], R.S.C. 1970, c. C-1, give rise to a legitimate expectation that the Government of Canada would introduce no bill into Parliament to limit its obligation under the Agreement or the *Act* without the consent of British Columbia?

59 The first step is the interpretation of the question, which will determine which arguments must be considered on the issue of whether there was a legitimate expectation. The members of the court below took differing views on the interpretation of this question. Toy J.A. interpreted the question as seeking a declaration that Canada breached a legal duty to act fairly. He considered the question to be asking about the doctrine of legitimate expectations that has developed in administrative law.

60 Lambert J.A. took another view. In discussing the interpretation of the questions, he said (at p. 278):

> The two questions provide a framework within which the "matter" is to be considered. We should be guided to the heart of the "matter" by the way the questions have been composed. But since they have been composed by one party only, namely, the Executive Government of British Columbia, we should not feel bound by a narrow literalism in answering the questions. Within the broad constraints of the language of the questions, we should feel free to address the "matter" which they encompass.

61 While I agree that the court should avoid a "narrow literalism," care must be taken that the interpretation of a question does not amount to a new question. In the language of the dissenting judges in Pt. II of *Re Resolution to Amend the Constitution*, supra, the court "may not conjure up questions of its own which, in turn, would lead to uninvited answers" (p. 850). No issue was taken by the majority with this proposition which appears to be self-evident and is amply supported by authority: *Reference re An Act Respecting the Jurisdiction of Magistrate's Court*, [1965] S.C.R. 772 at 779-80, 55 D.L.R. (2d) 701; *Lord's Day Alliance of Canada v. Manitoba (Attorney General)*, [1925] A.C. 384 at 388-89, [1925] 1 W.W.R. 296, 43 C.C.C. 185, [1925] 1 D.L.R. 561 (P.C.); *Ontario (Attorney General) v. Canada (Attorney General)*, [1912] A.C. 571, 3 D.L.R. 509 (P.C.); and *Reference re Waters & Water-Powers*, [1929] S.C.R. 200, [1929] 2 D.L.R. 481.

62 It is a misplaced concern to state that the questions were composed by one party. The Lieutenant Governor is authorized by the *Constitu tional Question Act* to ask any question of the court, and this should not be held against him. No principle analogous to contra proferentem is applicable. If a question is clear, then the court is indeed bound to answer it on its terms, so long as it is justiciable. Even if it is not clear, like the questions in this reference, the court must do its best to determine what is being asked and to provide a response, again subject to the questions being justiciable.

63 Lambert J.A. said (at p. 286):

> I have concluded that the answer ought to turn on whether the executive arm of the federal power, which could be called either the government of Canada or the federal Crown, would be in breach of a binding obligation owed by it to British Columbia if it failed to pay 50 per cent of the cost to British Columbia of providing the type and quality of assistance to those in need that is contemplated by the Canada Assistance Plan.

Thus Lambert J.A. viewed the question as asking whether Canada would be in breach of its obligations were the contemplated amendment to be effected. I have explained that in my view that was the issue under the first question. Finally, in answering "Yes" to the second question, Lambert J.A. said that he was using the words "legitimate expectation" in their ordinary meaning and not in any technical sense. Because he thought that Canada breached an obligation by introducing Bill C-69, he said that British Columbia had a legitimate expectation that Canada would not introduce the Bill. Since it was based solely on the finding that an obligation had been breached, the finding that there was a legitimate expectation did not add anything of legal significance to his conclusions. It was just a way of describing those conclusions.

64 Southin J.A. said that in her view the *Constitutional Question Act* only authorizes the asking of questions of law. Hence, she said that the second question could not be seen as asking about customs or conventions. She said (at p. 313):

> I interpret it as asking whether there is any legal impediment to the Governor in Council, through the Minister of Finance, asking Parliament, i.e. the Senate, the House of Commons and the Sovereign, to enact Bill C-69 or any legal impediment to Parliament doing so.

65 When regard is had for the jurisprudence in the area of administrative law, it can be seen that Q. 2 is not ambiguous. It asks about the presence of legitimate expectations. With respect to Lambert J.A., that is a term of art. It is a technical phrase, and its use in a question asked of a court of law of course implies that it is being used in its legal sense. I respectfully agree with the interpretation of the second question by Southin J.A. with the addition that the legal impediment involved is that which is alleged to be imposed by the legal doctrine of legitimate expectations.

Legitimate Expectations

66 The doctrine of legitimate expectations was discussed in the reasons of the majority in *Old St. Boniface Residents Assn. Inc. v. Winnipeg (City)*, [1990] 3 S.C.R. 1170, [1991] 2 W.W.R. 145, 46 Admin. L.R. 161, 2 M.P.L.R. (2d) 217, 75 D.L.R. (4th) 385, 116 N.R. 46, 69 Man. R. (2d) 134. That judgment cites seven cases dealing with the doctrine, and then goes on (at p. 1204 [S.C.R.]):

> The principle developed in these cases is simply an extension of the rules of natural justice and procedural fairness. It affords a party affected by the decision of a public official an opportunity to make representations in circumstances in which there otherwise would be no such opportunity. The court supplies the omission where, based on the conduct of the public official, a party has been led to believe that his or her rights would not be affected without consultation.

It was held by the majority of the court below, and it was argued before us by the Attorney General of British Columbia, that the federal government acted illegally in invoking the power of Parliament to amend the Plan without obtaining the *consent* of British Columbia. The action was illegal because it violated a legitimate expectation of British Columbia. These submissions were adopted by the Attorney General for Alberta. This must be contrasted with a claim that there was a legitimate expectation that the federal government would not act without *consulting* British Columbia. If the doctrine of legitimate expectations required consent, and not merely consultation, then it would be the source of substantive rights; in this case, a substantive right to veto proposed federal legislation.

67 There is no support in Canadian or English cases for the position that the doctrine of legitimate expectations can create substantive rights. It is a part of the rules of procedural fairness which can govern administrative bodies. Where it is applicable, it can create a right to make representations or to be consulted. It does not fetter the decision following the representations or consultation.

68 Moreover, the rules governing procedural fairness do not apply to a body exercising purely legislative functions. Megarry J. said so in *Bates v. Lord Hailsham of St. Marylebone*, [1972] 1 W.L.R. 1373, [1972] 3 All E.R. 1019, and this was approved by Estey J. for the court in *Canada (Attorney General) v. Inuit Tapirisat of Canada*, supra, at p. 758. In *Martineau v. Matsqui Institution Disciplinary Board*, [1980] 1 S.C.R. 602, 13 C.R. (3d) 1, 15 C.R. (3d) 315, 50 C.C.C. (2d) 353, 106 D.L.R. (3d) 385, 30 N.R. 119 , Dickson J., as he then was, wrote (at p. 628 [S.C.R.]):

> The authorities, in my view, support the following conclusions:
>
> 2. A purely ministerial decision, on broad grounds of public policy, will typically afford the individual no procedural protection, and any attack upon such a decision will have to be founded upon abuse of discretion. Similarly, public bodies exercising legislative functions may not be amenable to judicial supervision.

These three cases were considered in *Penikett v. R.* (1987), 21 B.C.L.R. (2d) 1, [1988] N.W.T.R. 18, [1988] 2 W.W.R. 481, (sub nom. *Penikett v. Canada)* 45 D.L.R. (4th) 108, (sub nom. *Yukon Territory (Commissioner) v. Canada)* 2 Y.R. 314 (Y.T.C.A.), leave to appeal to the Supreme Court of Canada refused [1988] 1 S.C.R. xii, 27 B.C.L.R. (2d) xxxv, [1988] N.W.T.R. xliv, [1988] 6 W.W.R. lxix, 3 Y.R. 159, 46 D.L.R. (4th) vi, 88 N.R. 320, and the court concluded (at p. 120 [D.L.R.]):

> In these circumstances, the issues sought to be raised in paras. 12 and 12(a) [right to be consulted and duty of fairness] are not justiciable because they seek to challenge the process of legislation.

69 The respect by the courts for the independence of the legislative power is captured by G.A. Beaudoin, *La Constitution du Canada* (1990), in the following passage (at p. 92):

> [Translation]
>
> The courts do not intervene, however, during the legislative process in Parliament and the legislatures. They have no interest as such in parliamentary procedure. They have made this clear in certain decisions. They respect the *lex parliamenti*.

The formulation and introduction of a Bill are part of the legislative process with which the courts will not meddle. So too is the purely procedural requirement in s. 54 of the *Constitution Act, 1867*. That is not to say that this requirement is unnecessary; it must be complied with to create fiscal legislation. But it is not the place of the courts to interpose further procedural requirements in the legislative process. I leave aside the issue of review under the *Canadian Charter of Rights and*

Freedoms where a guaranteed right may be affected.

70 The respondent seeks to avoid this proposition by pointing to the dichotomy of the executive on the one hand and Parliament on the other. He concedes that there is no legal impediment preventing Parliament from legislating but contends that the government is constrained by the doctrine of legitimate expectations from introducing the Bill to Parliament.

71 This submission ignores the essential role of the executive in the legislative process of which it is an integral part. The relationship was aptly described by W. Bagehot, *The English Constitution*, 2nd ed. (1872) (at p. 14):

> A cabinet is a combining committee — a *hyphen* which joins, a *buckle* which fastens, the legislative part of the state to the executive part of the state. [Emphasis in original.]

72 Parliamentary government would be paralyzed if the doctrine of legitimate expectations could be applied to prevent the government from introducing legislation in Parliament. Such expectations might be created by statements during an election campaign. The business of government would be stalled while the application of the doctrine and its effect was argued out in the courts. Furthermore, it is fundamental to our system of government that a government is not bound by the undertakings of its predecessor. The doctrine of legitimate expectations would place a fetter on this essential feature of democracy. I adopt the words of King C.J. of the Supreme Court of South Australia, in banco, in *West Lakes Ltd. v. South Australia* (1980), 25 S.A.S.R. 389, a case strikingly similar to this one (at p. 390):

> Ministers of State cannot, however, by means of contractual obligations entered into on behalf of the State fetter their own freedom, or the freedom of their successors or the freedom of other members of parliament, to propose, consider and, if they think fit, vote for laws, even laws which are inconsistent with the contractual obligations.

While the statement deals with contractual obligations, it would apply, a fortiori to restraint imposed by other conduct which raises a legitimate expectation.

73 A restraint on the executive in the introduction of legislation is a fetter on the sovereignty of Parliament itself. This is particularly true when the restraint relates to the introduction of a money Bill. By virtue of s. 54 of the *Constitution Act, 1867*, such a Bill can only be introduced on the recommendation of the Governor General who by convention acts on the advice of the Cabinet. If the Cabinet is restrained, then so is Parliament. The legal effect of what the respondent is attempting to impugn is of no consequence to the obligations between Canada and British Columbia. The recommendation and introduction of Bill C-69 has no effect per se, rather it is its impact on the legislative process that will affect those obligations. It is therefore the legislative process that is, in fact, impugned.

74 A variety of other submissions were made in respect of Q. 2. I observe first of all that none of these matters was properly raised by the question. It asks about the doctrine of legitimate expectations. I do not interpret it as asking whether there is any factor which has created a legitimate expectation, in a non-technical sense, that the federal cabinet would not introduce legislation such as Bill C-69. While this is the general response to these submissions, in the alternative, I have the following observations.

(i) Constitutional Convention

75 The Attorney General for Ontario argued, in the words of his factum, that "with respect to federal-provincial cost-sharing agreements a constitutional convention exists that neither Parliament nor the legislatures will use their legislative authority unilaterally to alter their obligations." Presumably the last two words mean "the obligations of the governments which are responsible to them." These submissions were adopted by the Attorneys General for Alberta and Saskatchewan. Additionally, the Attorney General for Alberta argued that there is a convention that the federal government will not introduce legislation to alter unilaterally Canada's obligations under the Plan.

76 The question, as I have interpreted it, does not ask about conventions. The existence of a convention can only relate to

the question as an aspect of legitimate expectations. I have concluded that that doctrine does not apply to the legislative process and therefore does not apply here. The existence of a convention, therefore, is irrelevant and need not be considered further in answering this question.

(ii) Manner and Form

77 Again, this is not properly raised by either question. This argument was presented by the Native Council of Canada and the United Native Nations of British Columbia. I refer to them together hereinafter as N.C.C.

78 This submission differs from all of those heretofore discussed in that it is an argument that the addition of s. 5.1 to the Plan by s. 2 of the *Government Expenditures Restraint Act* is ultra vires Parliament. The argument is based on the idea that even a sovereign body can restrict itself in respect of the "manner and form" of subsequent legislation. N.C.C. cited *Attorney General for New South Wales v. Trethowan*, [1932] A.C. 526, in which the Privy Council found that the legislature of New South Wales had so restrained itself. Also, it referred to *R. v. Mercure*, [1988] 1 S.C.R. 234, [1988] 2 W.W.R. 577, 39 C.C.C. (3d) 385, 48 D.L.R. (4th) 1, 65 Sask. R. 1, *(*sub nom. *Mercure v. Saskatchewan)* 83 N.R. 81 , in which it was held that the legislature of Saskatchewan was bound to enact statutes in both English and French.

79 N.C.C. said that when one reads ss. 8(2) and 9(2) of the Plan together, there is revealed, by necessary implication, a requirement that subsequent legislation cannot alter the Plan unless the consent of the affected province or provinces is obtained. By these sections Parliament prevented the federal government from unilaterally terminating its obligations under the Plan or an agreement; hence, by implication, Parliament imposed upon itself a requirement that provincial consent be obtained before the legislation could be amended. Further, N.C.C. submitted that if the Plan does not reveal an intention that Parliament has bound itself to obtain provincial consent before amending the Plan, then at least an intention is revealed that the government is bound to do so before introducing amending legislation.

80 I reject this argument. Neither intention is revealed in the Plan. Any "manner and form" requirement in an ordinary statute must overcome the clear words of s. 42(1) of the *Interpretation Act*, which I set out again for ease of reference:

> 42. (1) Every Act shall be so construed as to reserve to Parliament the power of repealing or amending it, and of revoking, restricting or modifying any power, privilege or advantage thereby vested in or granted to any person.

This provision requires that federal statutes ordinarily be interpreted to accord with the doctrine of parliamentary sovereignty.

81 In order for this argument to succeed, it would first have to be shown that Parliament intended, in the face of s. 42(1), to bind itself or to restrict the legislative powers of those of its members who are also members of the executive. The sections of the Plan which are supposed to reveal this intention are ss. 8(1) and 9(1). They say absolutely nothing about the amendment of the Plan, and so reveal no parliamentary intention of the sort argued for by N.C.C.

82 It is no coincidence that when this court has found "manner and form" restrictions, the instrument creating the restrictions has not been an ordinary statute. Regard may be had for *R. v. Drybones*, [1970] S.C.R. 282, 71 W.W.R. 161, 10 C.R.N.S. 334, 9 D.L.R. (3d) 473, [1970] 3 C.C.C. 355, in which a provision of the *Indian Act*, R.S.C. 1952, c. 149, was held to be inoperative pursuant to the *Canadian Bill of Rights*, S.C. 1960, c. 44 (reprinted in R.S.C. 1985, App. III). The latter statute was described as "a quasi-constitutional instrument" by Laskin J. (as he then was) in *Hogan v. R.* (1974), [1975] 2 S.C.R. 574 at 597, 9 N.S.R. (2d) 145, 26 C.R.N.S. 207, 18 C.C.C. (2d) 65, 2 N.R. 343, 48 D.L.R. (3d) 427. Similarly, in *R. v. Mercure*, supra, s. 110 of the *North-West Territories Act*, R.S.C. 1886, c. 50, as re-enacted by S.C. 1891, c. 22, s. 18, was held to impose "manner and form" limitations on the legislature of Saskatchewan. But s. 110 was explicitly directed at the legislature, and the court observed that the section was continued in force by the constituent statute of the province. Both the *Canadian Bill of Rights* and s. 110 of the *North-West Territories Act* have a constitutional nature. It may be that where a statute is of a constitutional nature and governs legislation generally, rather than dealing with a specific statute, it can impose requirements as to manner and form. But where a statute has no constitutional nature, it will be very unlikely to evidence an intention of the legislative body to bind itself in the future.

83 That is the case here. The sections of the Plan relied upon address amendments to the agreement and amendments to

the regulations under the Plan. They say nothing about amendments to the Plan. The Plan has no constitutional nature. It does not purport to impose any "manner and form" requirement.

84 There is a further problem with this argument. It is clear that parliamentary sovereignty prevents a legislative body from binding itself as to the substance of its future legislation. The claim that is made in a "manner and form" argument is that the body has restrained itself, not in respect of substance, but in respect of the procedure which must be followed to enact future legislation of some sort, or the form which such legislation must take. In *West Lakes Ltd. v. South Australia*, supra, a "manner and form" argument was rejected. King C.J. said (at pp. 397-98):

> Even if I could construe the statute according to the plaintiff's argument, I could not regard the provision as prescribing the manner or form of future legislation. A provision requiring the consent to legislation of a certain kind, of an entity not forming part of the legislative structure ... does not, to my mind, prescribe a manner or form of lawmaking, but rather amounts to a renunciation pro tanto of the lawmaking power.

Those words are fully applicable here.

(iii) Jurisdiction

85 The Attorney General for Manitoba argued that Parliament lacked legislative jurisdiction to make the proposed change to the Plan. Again, this is not raised by the questions, but I will consider these submissions briefly.

86 Like the N.C.C., the Attorney General for Manitoba argued that s. 2 of the *Government Expenditures Restraint Act* is ultra vires Parliament. The argument begins with the observation that the federal spending power is wider than the field of federal legislative competence. So, as with the Plan, Parliament can authorize the disbursement of federal funds to the provinces for use in areas within provincial jurisdiction. Manitoba said that once Parliament authorized the federal government to enter into an agreement with British Columbia and such an agreement was executed, Parliament became disabled from unilaterally changing the law so as to change the agreement. There are two reasons for this.

87 First, the agreement is enforceable as a private law agreement. This would admittedly be subject to applicable constitutional principles; but it was argued that there are no such principles in this case. This argument was not pressed in the oral submissions on behalf of the Attorney General of Manitoba. I find no merit in it. The agreement was between the Government of British Columbia and the federal government. It does not bind Parliament. Apart from that, the "applicable constitutional principle" is the sovereignty of Parliament which I have discussed above.

88 Second, the Attorney General of Manitoba said that once the agreement authorized by Parliament was executed, the province acquired vested rights to monetary contributions for a matter within provincial competence; hence, a unilateral termination of the agreement by Parliament would be ultra vires Parliament. Alternatively, even if it were within Parliament's authority in respect of the division of powers, it would be unconstitutional for another reason: the "overriding principle of federalism" requires that Parliament be unable to interfere in areas of provincial jurisdiction. It was said that, in order to protect the autonomy of the provinces, the court should supervise the federal government's exercise of its spending power.

89 The first branch of this submission is based on the judgment of this court in *Reference re Upper Churchill Water Rights Reversion Act*, [1984] 1 S.C.R. 297, (sub nom. *Churchill Falls (Labrador) Corp. v. Newfoundland (Attorney General)*) 8 D.L.R. (4th) 1, 47 Nfld. & P.E.I.R. 125, 139 A.P.R. 125, 53 N.R. 268. A company was granted a lease of land and water rights by the Government of Newfoundland to permit the development of the hydro-electric resources of Churchill Falls. The lease was embodied in a statute of the provincial legislature. Later, the company contracted with Hydro-Quebec to deliver most of the generated hydro-electric power to the latter. The development of Churchill Falls could not have proceeded in the absence of this contract. Later again, the Government of Newfoundland decided that it needed more power. The legislature of Newfoundland purported to enact a statute which repealed the statutory lease and expropriated all of the generating equipment which previously belonged to the company. On a reference, this court was of the opinion that the second statute was ultra vires.

90 It was argued for the Attorney General of Newfoundland that the legislature was merely repealing existing legislation.

McIntyre J., for the court, rejected this argument, adopting the words of Morgan J.A. in the Newfoundland Court of Appeal to the effect that the new legislation also had the effect of expropriating rights. McIntyre J. said that the new legislation was a colourable attempt to interfere with the contract and to derogate from the contractual rights of Hydro-Quebec, which rights were held to be situate in Quebec. The only heads of power under which the second statute could have been enacted were ss. 92(13) and (16) of the *Constitution Act, 1867*; namely, property and civil rights *in the province*, and matters of a purely local or private nature *in the province*. Because of the territorial restrictions on provincial legislatures, and the extraterritorial effect of the new legislation, the legislation was beyond the competence of the Newfoundland legislature.

91 The Attorney General of Manitoba argues by analogy that in this case, the Plan has an impact on areas of provincial jurisdiction. Hence, it was submitted, the alteration of the Plan would amount to regulation of an area outside the federal jurisdiction. I reject this argument. The legislation in the *Churchill Falls* case was a colourable attempt to do indirectly something which could not be done directly because of the territorial restrictions on the Newfoundland legislature. For an analogy to exist, a similar state of affairs would have to obtain here. There was no allegation, nor could there have been, that Bill C-69 was an indirect, colourable attempt to regulate in provincial areas of jurisdiction. It is simply an austerity measure. So the question of colourability can be disregarded, and the question directly considered: is the *Government Expenditures Restraint Act* ultra vires Parliament as being, in pith and substance, legislation in relation to areas of exclusive provincial competence?

92 The written argument of the Attorney General of Manitoba was that the legislation "amounts to" regulation of a matter outside federal authority. I disagree. The agreement under the Plan set up an open-ended cost-sharing scheme, which left it to British Columbia to decide which programmes it would establish and fund. The simple withholding of federal money which had previously been granted to fund a matter within provincial jurisdiction does not amount to the regulation of that matter. Still less is this so where, as in this case, the new legislation simply limits the growth of federal contributions. In oral argument, counsel said that the *Government Expenditures Restraint Act* "impacts upon [a] constitutional interest" outside the jurisdiction of Parliament. That is no doubt true, but it does not make the Act ultra vires. "Impact" with nothing more is clearly not enough to find that a statute encroaches upon the jurisdiction of the other level of government.

93 Finally, I turn to the second branch of this argument of the Attorney General of Manitoba. This was the argument that the "overriding principle of federalism" requires that Parliament be unable to interfere in areas of provincial jurisdiction. It was said that, in order to protect the autonomy of the provinces, the court should supervise the federal government's exercise of its spending power. But supervision of the spending power is not a separate head of judicial review. If a statute is neither ultra vires nor contrary to the *Canadian Charter of Rights and Freedoms*, the courts have no jurisdiction to supervise the exercise of legislative power.

94 The answer to the second question is "No."

7. Disposition

95 The appeal is allowed and the answers to the questions are as follows:

> (1) Has the Government of Canada any statutory, prerogative or contractual authority to limit its obligation under the *Canada Assistance Plan Act* [sic], R.S.C. 1970, c. C-1 and its Agreement with the Government of British Columbia dated March 23, 1967, to contribute 50 per cent of the cost to British Columbia of assistance and welfare services?

Answer: Yes.

> (2) Do the terms of the Agreement dated March 23, 1967 between the Governments of Canada and British Columbia, the subsequent conduct of the Government of Canada pursuant to the Agreement and the provisions of the *Canada Assistance Plan Act* [sic], R.S.C. 1970, c. C-1, give rise to a legitimate expectation that the Government of Canada would introduce no bill into Parliament to limit its obligation under the Agreement or the *Act* without the consent of British Columbia?

Answer: No.

Appeal allowed.