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"THE ECONOMIC STABILISATION ACT 1948 - A GIANT'S POWER ?"

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PART I

INTRODUCTION

The ambit of the regulation making power under the Economic Stabilisation Act 1948 has been of great significance in the general government control of the economy. Most commentators have recognised the width of the powers but at the same time have appreciated that there are limitations. [1.] Mr Muldoon was reported to have said of the power "You can do anything provided you can hang your hat on economic stabilisation" (The Times 14th April 1976 p.18). The Act provides the Government, through the Executive, with the power to introduce and implement broad policy measures which promote the economic stability of New Zealand. Regulations have been made pursuant to S.11 of the Act to freeze wages and prices, to freeze rents and other incomes and to introduce a carless days scheme.

The great width and scope of the subjective empowering language means that when attacking the validity of regulations made under it, the attack would be better based on a specific limitation of regulation-making itself rather than arguing that the regulations were not permitted by the Act. Indeed the history of the power shows that no regulation has been held to be unauthorised by the Act unless it has conflicted with a constitutional principle which fetters the power of regulation makers.

This note will focus mainly on the three most recent cases that have arisen in relation to this Act. In Brader v Ministry of Transport [2.] the Court of Appeal held that the Economic Stabilisation (Conservation of Petroleum) Regulations (No.3) 1979 [3.] were authorised by the 1948 Act. The regulations set up a scheme whereby each car owner was required to nominate a carless day - one on which the car would not be driven (an exemption was allowed for essential users). A car salesman was being prosecuted by the Ministry for driving a car on its carless day. The case went to the Court of Appeal on a point of law and it was held unanimously that the regulations were valid.

There was a challenge made to the validity of the latest set of Wage Freeze Regulations [4.] made under the 1948 Act in The New Zealand Drivers Association v New Zealand Road Carriers [5.] In that case the Drivers Association had claimed, prior to the regulations coming into force, an increase in wages. Before the matter could be heard by a Conciliation Council the regulations came into force.[6.] The matter was then set down to go to the Arbitration Court but before it got there an Amendment to the regulations came into force which prevented the Arbitration Court from hearing disputes of interest. When the challenge was made on the validity of the regulations the Arbitration Court referred the matter to the Court of Appeal. In a split decision [7.] the majority held that the Amendment to the regulations, the only part really at issue, was valid.

The latest case to come before the Court of Appeal was Combined State Unions v State Services Co-ordinating Committee.[8.] The C.S.U. had sought an increase in expense allowances and also of the trades classification of one group of their members (with the purpose of achieving a higher rate of wages). They were supposed to take up the matter under the State Services Conditions of Employment Act 1977 with the respondents. The respondents refused to proceed with the matter because they considered it impossible during the period of the wage freeze. The majority held that the Committee had decided that it would not exercise its normal statutory function because it was prevented by the regulations from so doing. The C.S.U. challenged the validity of the regulations in so far as they interfered with the operation of the 1977 Act. The majority upheld the challenge and the regulations were held invalid in so far as they purported to interfere with the operation of the 1977 Act.

The regulation making power prior to the Amendment Act of 1982 is best looked at as a combination of SS. 3, 4 and 11.

Section 3 states that the general purpose of the Act is to promote the economic stability of New Zealand.

Section 4 (1) provides:-

> "Functions of Minister - (1) The Minister shall be charged with the general function of doing all things he deems necessary or expedient for the general purpose of this Act, and in particular for the stabilisation, control and

adjustment of prices of goods and services, rents, other costs, and rates of wages, salaries and other incomes." 9.

Section 11 provides:-

"Stabilisation Regulations - (1) The Governor-General may from time to time by Order in Council, make such regulations (in this Act referred to as stabilisation regulations) as appear to him to be necessary or expedient for the general purpose of this Act and for giving full effect to the provisions of this Act and for the due administration of this Act."

Section 11 continues, without limiting the general power, to provide some particular purposes for which regulations may be made.

Since the decisions in the three cases that will be discussed in some depth in this note, Parliament has passed the Economic Stabilisation Amendment Act 1982. This has made some changes which will be discussed in more detail later in this note. It is sufficient to say now that the powers have been extended 10. and a provision for disallowance has been enacted. 11.

A very close and detailed examination of these powers and the regulations made under them up until 1978 was undertaken by Deborah Shelton in her thesis "Government, The Economy and The Constitution". In discussing the powers conferred by SS. 3, 4 and 11, she concluded:-

"Although the precise limits of the power conferred in the Economic Stabilisation Act 1948 are not clearly defined, the Act, when compared with the Emergency Regulations Act 1939 or the Supply Regulations Act 1947, appears to confer not a wide emergency type power but a narrower more restrained power, for instance there is no power conferred to amend, suspend or repeal statutes by regulations made under the Act.

The Act does specifically grant certain unusual and potentially wide powers in the section authorising the making of regulations - a power to sub-delegate the delegated legislative power, a power to appoint officials and committees and a certain power to legislate on matters of principle. 12.

The recent cases that will be discussed show that although there was no express power to interfere with statutes there was authority to do so. The power to make regulations has been interpreted widely and literally.

Part II of this note will discuss one approach used for testing the validity of the regulations. It will focus on the 'reasonably capable' test for validity as discussed and applied in Brader's Case [13.] and the Drivers' Case. [14.]

Part III will examine a second approach used to test the validity of regulations. It discusses the effect of the constitutional considerations the Court takes into account: (1) the interpretive presumption that the executive may not make regulations which interfere with or are repugnant to statutes, (2) the presumption that regulations may not detract from the jurisdiction of the ordinary Courts.

Part IV will attempt to evaluate the present position of judicial review of delegated legislation as demonstrated by these cases. It will make some brief comments on the state of the Constitution and separation of powers theory in the light of these decisions and the recent amendment to the Economic Stabilisation Act.

PART II

THE 'REASONABLY CAPABLE' TEST

1. THE TEST

Although the regulation making power in S.11 is worded subjectively - "as appear to him..." [15.] the Courts have held that this does not confer an unbridled power. Richmond J in Shop Employees v Attorney General [16.] quoted from Attorney General for Canada v Hallet & Carey Ltd [17.] where Lord Radcliffe said of a similar subjective empowering provision:

> "Parliament has chosen to say explicitly that he (the Governor-General) shall do whatever things he deems necessary or advisable. That does not allow him to do whatever he may feel inclined, for what he does must be capable of being related to one of the prescribed purposes, and the Court is entitled to read the Act in this way."

This extract illustrates that where the opinion of the Governor-General is the criterion, it does not mean that whatever he regulates will be valid. However, this passage does not mean that the Court may merely substitute its opinion for that of the Governor-General. Rather it illustrates that the opinion the Governor-General must have held must be capable of being related to the purposes of the power. Thus the Court's power of review lies somewhere in between the two "opinions". This point was made in a slightly different way by Turner P in the Shop Employees Case:

> "It (S.11) provides that the Governor-General may make such regulations as appear to him so to be necessary. Mr Arndt (Counsel for the plaintiff arguing that the regulations were invalid) must accordingly take us to the point where we are able to say that the regulations could not reasonably be considered necessary or expedient for the economic stability of New Zealand." [18.]

This same approach was adopted in Brader's case. Cooke J said:

> "By S.11 the opinion of the Governor-General in Council is the criterion but that does not mean that the power of the executive is practically unlimited. The Court has to ask, if the proceedings before it so require, whether the regulations are capable of being regarded as necessary or expedient for the general purposes of the Act. A tenuous or remote connection with economic stability would not be enough, it would invite an inference that the regulations had not really been intended for the purposes authorised

by Parliament. The more indirect the connection the more the Court would have to be ready to draw that inference." 19.

The same test was adopted in the Drivers' case. The majority stated it as follows:-

"The Court is concerned with whether, on the true interpretation of the parent Act, regulations are within the powers conferred by Parliament. They will be invalid if they are shown to be not reasonably capable of being regarded as serving the purpose for which the Act authorises regulations. If the only suggested connection with that purpose is remote or tenuous, the Court may infer that they cannot truly have been made for that purpose. 20.

Before the discussion of this test is continued it is worth noting some of the other points made in the judgments in these cases which relate to the test.

Firstly, that the regulation making power is very wide. This is the result of enacting a general power which is restricted only by its reference to the stated purpose of the Act. As Turner P put it in Shop Employees

".. a statute which does no more than the Economic Stabilisation Act,if it includes a general power to make regulations to implement its expressed policys, calls for a liberal meaning to be accorded to such a section; for the legislature in enacting it must be taken to have intended to create a wide and general power against contingencies the exact nature of which it was unable at the moment of passing the Act to foresee." 21.

He continued further on:

"The ambit of the Act itself must by reason of the nature of its subject-matter be regarded as a wide one. Measures to secure the economic stability of New Zealand need not usually be considered unless that economic stability appears in come degree to be threatened..." 22.

Exactly what is meant by the economic stability of New Zealand remains vague and unclear. Cooke J in Brader approved some comments of Smith J in Otago Harbour Board v Mackintosh Cayley Phoenix Ltd:

"Economic stability implies the stability of the economic system as it has already been established. It implies its firmness, steadiness, its ability to stand without being overthrown. This stability is not inconsistent with some change or movement, but it implies a freedom from essential change and a tendency to recover a state of balance." 23.

A number of points can be made about these passages. Firstly, the Court is unable to test the validity of the regulations by reference to a series of specific guidelines. This is due to the nature of the empowering position, i.e. a general power for a general purpose.

Secondly, the general purpose is itself very wide. There are many factors which may be perceived as an apparent threat to economic stability, Thus there is a need to accord a literal meaning to it so as not to exclude matters that Parliament may have intended to be encompassed within it.

Thirdly, the test that has been developed is essentially one that endeavours to take an objective look at a subjective requirement. By this is meant that the Court will determine whether, objectively, the opinion that the Governor-General must have held was one that was capable of being held. They will determine whether the regulations were reasonably capable of being regarded as necessary or expedient for promoting the economic stability of New Zealand.

A useful illustration of how the test worked in practice can be seen in the Drivers' case. The decision is also interesting in that it was by a very narrow majority that the regulation 5A was held to satisfy the test. The minority judgment is the only occasion on which regulations have been held to fail the test. Furthermore, there are some interesting points that can be made from it.

The facts of the case have been mentioned. What was at issue was whether regulation 5A [24.] was ultra vires the Act.

Regulation 5A prevents the operation of a series of statutory bodies, including Tribunals and Courts, from exercising all or some of their jurisdiction especially in the wage fixing area. Regulation 5A(1)(b) is the one relevant to this case. It provides:-

> "No dispute of interest shall be determined by the Arbitration Court and no proceedings in relation to any such dispute which have been commenced but not completed before the commencement of this regulation shall be continued."

Counsel for the Drivers argued that this ban on proceeding with and determination of disputes of interest was invalid as it was absolute and unqualified prohibition. That the eradication of the largest part of the jurisdiction of the Arbitration Court cannot be related as being reasonably necessary or expedient for the purposes of the policy of economic stabilisation enacted in the 1948 Act. Furthermore the Act should not be construed as authorising the removal of the rights of the subject to take a case to the established Courts (such as the Arbitration Court).

The majority, in holding that the 'reasonably capable' test was satisfied, made the point that althouth regulation 5 prevented increases in remuneration there were some other non-remunerative increases that could be made. These could have included matters concerned with worker safety or other working conditions. This could have resulted in increased costs to the employer. It was unfair that the employer would be unable to pass this on. They thought that virtually every claim made in a dispute of interest would have some bearing on the economic stability in that it would effect costs in some way. If these built up it could effect costs significantly. Of some importance to them was their conclusion that:

> " Even cent rises in prices to the public can matter. All inroads into a freeze could be dangerous in principle. The policy of as near as possible a total freeze is aimed at holding the overall position. In our opinion the Courts cannot say that this policy is not reasonably capable of being adopted for the purpose of economic stability." [25].

Furthermore they thought that the fact that regulation 5 did not ban the hearing of disputes of interest, rather only the settling of them, meant that a base could be built from which a claim could be launched immediately after the end of the freeze. Thus the fixing of rates could be accelerated. They argued that any stability hard won by the freeze could be shattered.

These considerations led to their conclusion that regulation 5A was reasonably capable of being regarded as "necessary or expedient to eliminate the risks and close the gaps left by regulation 5." [26].

The majority then went on to consider whether the regulations were invalid because they detracted from the jurisdiction of the ordinary Courts. This part of the case will be discussed later.

It is interesting to note and compare the approach of the minority judgment. Although they used the same test and the same considerations they held that the regulation failed to satisfy the reasonably capable test.

The minority did not accept the argument about the non-remunerative awards upsetting economic stability, nor did they accept the argument about the build-up of pressure during the freeze period which may be released in an explosive fashion just after the end of it. What was conclusive for them was that regulations 5 and 8 were together sufficient and totally effective in achieving a wage freeze during the period. Therefore they concluded that regulation 5A added nothing at all to the regulations as a whole and thus could not reasonably be thought to promote one of the purposes of the Act. This reasoning is based on the view that the purpose of the regulations was to impose a wage freeze. The minority say as much:

> "As their name suggests, their purpose and indeed their undoubted effect it to prevent (with certain very limited exceptions) any increase in wages or salaries until after 22 June 1983." [27].

The reason the majority and the minority differed can be explained, in part, by the different approaches they took. The application of the reasonably capable test involves an examination of "the central and dominant purpose of the regulations". [28]. As is discussed later in this part the objects of an Act or regulations may be gathered only from the language (used) in them. It is submitted that there is a distinction between 'purpose', 'effect' and 'means'. It is also submitted that confusion of these three may, and in this case did, lead to different results.

The minority decision was based on a conclusion that the purpose of the regulations was to impose a wage freeze for the freeze period. This conclusion may have been reached because

of the specific mention of wage control in S.4(2). The majority, however, thought differently. They argued that regulation 5(2) which banned the making of instruments which would come into effect just after the freeze period ended indicated that the makers of the regulations were concerned with what happened beyond the freeze. They also thought it an important consideration that the Wage Freeze Regulations were part of a package including the Price Freeze, the Rent Freeze, the Companies (Limitation of Distribution), the Professional Charges (Price Freeze), Financial Services and the Limitation of Directors' Fees Regulations. From this they concluded that the purpose of the regulations was to promote economic stability rather than merely to impose a wage freeze, this they considered to be the means chosen to promote the purpose. Support for this view can indirectly be found in the Explanatory Note at the end of the regulations.[29.] It is stated that the note is not part of the regulations but is intended to indicate their general effect. It provides:

> "These regulations which come into force on 23rd day of June 1982, freeze rates of remuneration until the close of the 22nd day of June 1983."

It is possible to argue from this that the effect of the regulations is to impose a wage freeze whereas the purpose of them is to promote the economic stability.

It is submitted that this distinction between the majority and minority is crucial to their decisions. The majority thought that the purpose of the regulations was to promote economic stability and that the means or effect was a wage freeze. The minority, however, appeared to think that the purpose of the regulations was to impose a wage freeze for the year. Thus when it came to testing the validity of regulation 5A the majority asked whether it could be reasonably capable of being regarded as necessary or expedient for the promotion of economic stability, while the minority questioned whether the purpose of regulation 5A achieved anything at all, given that a complete wage freeze was already imposed by regulation 5 combined with the support given by regulation 8.

If the limited purpose approach of the minority is adopted their argument becomes virtually unanswerable. The definition

of remuneration in the regulations [30.] relates to that in the Wage Adjustment Regulations 1974.[31.]

> ""Remuneration" means salary or wages and all other payments of any kind whatsoever payable to a worker."

No increases in remuneration are allowed.[32.] It is submitted that in terms of a wage freeze regulation 5 is fully effective in securing a wage freeze within the freeze period. Two consequences flow from this. Firstly the argument that the freeze period could be used to do all the groundwork in wage negotiations and then just after the end of the freeze there will be a rush of award increases becomes irrelevant because these will take place <u>after</u> the freeze period. Secondly, the argument that non-remunerative conditions of employment disputes of interest will be outside the ambit of the freeze also becomes irrelevant because the freeze is only intended to freeze wages. Every kind of possible allowance that would take the form of a payment cannot be increased - thus a total remuneration freeze is effected. This is the probable explanation why the minority did not attach so much weight or significance to these arguments as did the majority. While they may affect economic stability their effect on a wage freeze is, at the greatest, minimal.

It is submitted that the more general purpose adopted by the majority is correct. The purpose of the Governor-General in Council in making regulations is to promote the economic stability of New Zealand. It is further submitted that a close inspection of the empowering provisions supports this view. Regulations may be made only if in terms of S.3 they are reasonably capable of being regarded as necessary or expedient for promoting the economic stability of New Zealand. In S.4(2) the Minister is charged with doing all that he deems necessary or expedient for the general purpose of the Act and includes a reference to the stabilisation or control of wages. If this approach is adopted the question then becomes whether regulation 5A is reasonably capable of being regarded as necessary or expedient to promote the economic stability. The point must be made that regulation 5A was an amendment

to the original regulations. It was challenged in isolation. Thus it is to be judged in the light of the wage freeze already imposed by regulation 5. Regulation 5A could not be defended by arguing that it prevents various bodies giving wage increases because that is a job already done by regulations 5 and 8. It has to have some effect beyond this which can reasonably be regarded as capable of promoting economic stability.

2. EVIDENCE

It is at this stage that a very important matter arises. In deciding the outcome of the test, what considerations should the Court take into account ? Furthermore what sort of evidence is admissable in argument either for or against the validity of the regulations ? The issue is further complicated by the fact that many of the considerations must, by nature of the topic, be conjectural.

The starting point for the Courts will always be the words of the empowering statute and the regulations. This approach has been shown in the cases already discussed. The Courts will, by reference to the express terms of the statute, decide what the purpose of the Act is. If the regulations are permitted to be made to promote the general purpose of the Act, then the Courts will decide what the object of the regulations is.

The matter was discussed in Brader's case. The judgment of McMullin J is particularly useful. He referred to a passage in Carroll v Attorney General for New Zealand [33.] which is worth quoting here:

> "The Courts have no concern with the reasonableness of the regulation; they have no concern with its policy or that of the Government responsible for its promulgation. They merely construe the Act under which the regulation purports to be made giving the statute.... such fair large and liberal interpretation as will best attain its objects. Then they look at the regulation complained of. If it is within the objects and intention of the Act, it is valid..... The objects and intention of this Act can, of course, be gathered only from the words used, and, in my opinion the same rule applies to the construction of the regulations."

This is very much a question of law for the Courts alone to decide. Extrinsic evidence will not be allowed if it is intended to show the purpose of the regulations. In Brader's and in Carroll's case affidavits were submitted by Government officials. In the latter case the affidavit was excluded because the official expressed an opinion as to the purpose of the regulations. In Brader's the affidavit evidence was admissable because it showed only the workings and the effects of the regulations. As McMullin J said:

> "Whether regulations are or are not ultra vires a statute is a matter which is usually to be decided on the face of the regulations without recourse to extrinsic evidence. But there may be cases in which regulations are so technical in content as to require some elucidation as to their practical working." 34.

Again then, there is this distinction between purpose and effect. In the Drivers' case, therefore, if the validity of the original regulations had been at issue, the minority would not have admitted evidence which would show the effect of the regulations because the effect of the regulations was what they considered to be the purpose. The majority would have admitted evidence to show the effect of the regulations, i.e. to show that the wage freeze would bring inflation down. This obviously could lead to some confusion.

The point was made in an article by J L Caldwell that admission of evidence to show the effects of regulations is to let evidence which shows the "objects and purpose of the regulations through the back door." 35.

He further points out that it is natural to assume that what the regulation achieved was what it was intended to achieve. Thus it is no real step from showing the effects of the regulations to showing the purpose of them.

If the effect of the regulations can be clearly established the Court will be more likely to draw the inference as to the purpose of the regulations which flow from the effect. In terms of Brader's case, once it was firmly established that the effect of the regulations would be to conserve petroleum and that a failure to conserve could adversely affect the economy (all matters within the grasp of the average citizen) then the logical inference to draw from this is that the

regulations could reasonably be regarded as necessary for the purpose of economic stability.

If the effect of the regulations is a question of fact, then as Turner J said in Reade v Smith [36.] the question will be very difficult to resolve against the Crown. Furthermore if the effect is a matter of opinion or speculation as to future possibilities it must be almost impossible to resolve against the Crown. This process of admitting extrinsic evidence is thus heavily weighted in favour of the Crown. They will have the best, most acceptable, sources of information. If the Government can show that the regulations have some effects reasonably capable of being related to economic stability they will be virtually home and dry.

Furthermore if the party arguing that the regulations were invalid had conclusive evidence that the regulations were made for the purpose of, for example, curbing the Trade Unions, then it would be inadmissable even though it shows clearly that the regulations, while they may incidentally have an effect on economic stabilisation, have a central and dominant object designed to promote something entirely different. It is submitted that there is likely to be a presumption in favour of the evidence of the Crown. If they can show that the regulations would have, or had, some beneficial effect on the economic stability of New Zealand, or would have some effect that was capable of being regarded as necessary or expedient for the promotion of economic stability, then the regulations will prevail.

Evidence is of course only really relevant to questions of fact and in many cases the regulations can be judged on questions of law only. In Reade v Smith for example the matter was decided on a question of law because the effect of the regulations was against one of the express purposes or policys of the Act, thus invalid. The question in Brader's case was much more a question of fact. The question of the validity of regulation 5A in the Drivers'case is much harder to categorise. Regulation 5A was not expressly authorised by the statute but at the same time was not contrary to its express policies. The majority looked at the effects regulation 5A might have and decided that these would have some effect on economic

stability. The interesting point to note is that the Court did this without, it appears, any actual hard fact evidence of the effects of the regulation. If the facts of the case were changed slightly and the amendment had been made six months after the original regulations and challenged six months later, the result may have been different. The Drivers' may have been able to bring evidence to show that over that period regulation 5A had had no effect at all on the situation brought about by the original regulations.

Any challenge based on evidence must involve evidence to show that the state of knowledge at the time the regulations were made was such that it was known by the regulation makers, or obvious to them, that these regulations would have no effect at all reasonably capable of being regarded as necessary or expedient for promoting economic stability. However, it is clear that it would be very difficult to establish this.

The way the Drivers' case was settled was very much on the basis of opinion. In the opinion of the majority it was possible that regulation 5A may have had some effect on economic stability, the minority thought not. The decision could thus be classified as part-law and part-opinion based on general knowledge rather than admitted expert evidence.

It is submitted that it is this sort of complex question which the Court will have enormous difficulty in deciding. The weight to be given to each consideration will be very hard to determine. Exactly what sort of considerations are admissable remains unclear.

PART III

CONSTITUTIONAL PRINCIPLES AND INTERPRETIVE PRESUMPTIONS

Even though regulations may satisfy the reasonably capable test they may still be held invalid if they offend a constitutional principle. There are certain constitutional principles which limit the scope and powers of the executive to legislate. From these principles the Courts have developed a set of presumptions of interpretation. Based upon the principle that the Crown may not suspend the laws of Parliament [37.] there is the presumption that regulations will not derogate from statutes. They will look to see if the provisions of the regulations clash or are inconsistent with the provisions of any statutes. If they do the regulations will be presumed to be invalid unless there is clear antecedent authority from Parliament for the inconsistency. An example of antecedent authority is the new S.11A [38.] of the Economic Stabilisation Act which will be discussed in more detail in Part IV.

Also based on constitutional principle is what is known as the rule in Chester v Bateson [39.] The Courts have formed the presumption that regulations should not deprive the citizen of his right to go before the Courts to seek determination of his rights [40.] unless there is very clear parliamentary authorisation. The majority in the Drivers' case expressed doubt about the ability of Parliament itself to remove the jurisdiction of the Courts. This principle and presumption will be discussed later in the note.

The majority in the C.S.U. [41.] case based their decision on the presumption that regulations may not derogate from statutes unless authorised. They said:

> "It is an important constitutional principle that subordinate legislation cannot repeal or interfere with the operation of a statute except with the antecedent authority of Parliament itself. It is a constitutional principle because it gives effect to the primacy of Parliament in the whole field of legislation. And as a corollary a rule of construction springs from it that the Courts will not accept that Parliament has intended its

> own enactments to be subject to suspension amendment or repeal by any kind of subordinate regulation at the hand of the Executive unless direct and unambiguous authority has been spelled out to that effect, or is to be found as a matter of necessary intendment, in the parent statute." 42.

It is submitted that the Court appears to have confused the principle and the presumption. They have confused it because they have not really drawn a distinction between them. What they describe as the constitutional principle in the first sentence of the quote just given is in fact the interpretive presumption. The second sentence is the constitutional principle. The principle is that Parliament is supreme. The rule of construction is just an expansion of the presumption. The distinction becomes important and will be discussed later in relation to the difference in judicial approach in the C.S.U. case and the case of Auckland City Corporation v Taylor.[43.]

The Shop Employees case [44.] dealt in part with the question of repugnancy. It was argued by the Shop Employees that the Stabilisation of Remuneration Regulations 1972 [45] purported by regulation 16(5) and (6) to limit the powers of the Court of Arbitration which was set up by the provisions of the Industrial Conciliation and Arbitration Act 1954. One of the questions asked of the Court of Appeal was whether regulation 16(5) and (6) was ultra vires and void by reason of repugnancy to the Industrial Conciliation and Arbitration Act 1954 and in particular to SS 32, 36 and 47(1) thereof.

Deborah Shelton in her thesis made an excellent summary of the Court's decision:

> "The Court found that although the Court of Arbitation had, under the Industrial Conciliation and Arbitration Act 1954, a wide jurisdiction in industrial matters, this jurisdiction was limited by the qualification in S.36, that orders of the Court could not be 'inconsistent with this or any other Act'. Section 4 of the Acts Interpretation Act 1924 provides that the word 'Act' when used in any statute includes not only an Act of Parliament but also rules and regulations made thereunder. The Court of Appeal held that the regulation was not repugnant to the Industrial Conciliation and Arbitration Act 1954. The jurisdiction of the Court of Arbitration had never been absolute, S.36 restricted the Court to making orders not inconsistent with any other statutes or regulations."

This extract illustrates that although the regulations did interfere with the operation of the statute it was not invalid because of the limitation placed on the operation of the statute by the statute itself. In other words Parliament was held to have intended that the Court's jurisdiction not be complete. This intention was sufficient antecedent authority for the interference. The Court did not really have to discuss whether the Economic Stabilisation Act authorised inconsistency with statutes. However, there are implications throughout the judgments that the ambit of the Act is such that to fulfill its purposes it is inevitable that regulations made under it will trespass on other statutes, especially in the heavily-statute controlled area of wage fixing.

Richmond J said:

> "I have reached the conclusion that it must have been the intention of the legislature when it enacted the Economic Stabilisation Act, to authorise the making of regulations which would, to such extent as the Governor-General in Council might consider necessary or expedient for the general purposes of the Act, derogate in some degree from the ordinary statutory procedures for fixing rates of wages in various sectors of the community." [46].

This effectively amounts to a statement that Parliament must be taken to have implicitly authorised a certain amount of interference. However, as Turner P said:

> "Whether such regulations go so far as to transgress the proper ambit of the empowering section in any given case may possibly become ultimately a question of degree." [47].

This retains an element of flexibility for the Courts and furthermore it is probable that no other approach would really work. It is interesting to note that the reasonably capable test is also based to some extent upon degree. In terms of the Brader discussion of the question by Cooke J, just when a connection is remote or tenuous is definitely a question of degree.[48].

Exactly the same issue arose on the facts of the Drivers' case but was not really addressed. The regulation clearly derogated and interfered with the workings of the Industrial Relations Act 1973 and many other Acts besides. This could have been due to the decision in the Shop Employees' case. The Industrial

Relations Act S.48(4) is the equivalent of S.36 of the Industrial Conciliation and Arbitration Act. The Court thought that regulation 5 was a valid limitation on the Arbitration Court and thus inferentially upon the statute that set it up.

The C.S.U. case is a good illustration of Turner P's comment that it is a question of degree. In that case the challenge to the regulations was based on an alleged inconsistency with the provisions of the State Services Conditions of Employment Act 1977. The challenge was in effect that the regulations should not apply where the provisions of the 1977 Act already applied. The majority of the Court of Appeal agreed.

As with much of New Zealand's wage and salary negotiations the procedures and guidelines for controlling conditions of employment in the State Services is provided by statute. The 1977 Act was an attempt to encapsulate in a statute a structured and co-ordinated means of administering employment conditions of the State Services. The Act sets up a number of Tribunals and other methods for hearing applications and settling disputes. One such body was the State Services Co-ordinating Committee. The code provided by the Act was intended to be exclusive. S.6(1) provides: "Except as otherwise provided in this Act and notwithstanding anything to the contrary in any other enactment as from the commencement of this Act, the conditions of employment of employees in the State Services shall be prescribed by an employing authority by determination under this Act and not otherwise." (emphasis added by the majority.).

The majority thought that this was an important provision that contained 'strong language'. [49.] They analysed the effect of the regulations upon the provisions of the Act and concluded:

> "So quite clearly there is an inconsistency between Act and Regulations in three important respects. First there is the direct conflict with S6(1). Second, the regulations attempt to impose an overriding qualification upon the statutory criteria. And third they would abrogate the review provisions of the Act." 50.

Bearing in mind the constitutional principle and the presumption based on it the majority discussed whether the Economic Stabilisation Act gave the necessary antecedent authority for regulations to override statutes. It pointed out that virtually all wage agreements

in New Zealand were subject to some statutory control. It drew the distinction between the Arbitration Court legislation (The Industrial Relations Act 1975) and the State Services Conditions of Employment Act 1977 in that there is no equivalent to S.48(1) which prohibits the Arbitration Court making orders inconsistent with any other Act in the 1977 Act. The Court referred to Turner P in the Shop Employees' case and concluded:

> "We think that in the light of its/declared purposes spirit and the Act is wide enough to authorise regulations controlling wages payable directly or indirectly under statutory schemes. To treat a statute controlled area as automatically outside the reach of the Act would be to emasculate or frustrate seriously the power that Parliament conferred in 1948." 51.

The Court clearly anticipated that there may be occasions where the regulations would be valid even though inconsistent with other statutes. However they continued:

> "Therefore the issue must involve a weighing of alternatives. Weighing them we think that our constitutional duty is to resolve any conflict or doubt that arises in favour of the supremacy of Parliament. That is to say, special legislation as strongly worded as the 1977 Act is not to be overridden by mere regulations unless the authority to override it has been squarely and undoubtedly been given by Parliament. Any other resolution would be too dangerous a constitutional precedent. In a case as balanced as this one, it is vital that the Court should come down firmly on the side of that basic principle of democracy. We therefore hold unanimously that the Wage Freeze Regulations do not override the special code in the State Services Conditions of Employment Act." 52.

To summarise the majority approach without, it is hoped, doing too much violence to their reasoning.

Constitutional principle demands that there is a general rule that delegated legislation which interferes with, or is repugnant to, the operation of a statute except with the antecedent authority of Parliament will be presumed to be invalid. Due to the special nature of the Economic Stabilisation Act, Parliament must be taken to have intended that there would be occasions, especially in the wages field, when statutory procedures would be interfered with by regulations. When a statute is of such a nature as the State Services Conditions of Employment Act, i.e. legislation specifically enacted to provide for a particular purpose after due consideration and which clearly purports to have exclusive jurisdiction, the Court will take it that it was not intended to be orderidden by mere regulation unless there was clear antecedent authority.

The approach of the Courts in the Shop Employees' and the C.S.U. cases is interesting to compare to that taken by Perry J in Auckland City Corporation v Taylor.[53] That case was very similar to the C.S.U. decision. The case considered the effect of the Economic Stabilisation (Rent) Regulations 1976[54] had on the Rent Appeal Act. The regulations provided for an overriding and predominant consideration to be taken into account by every Rent Appeal Board, and were clearly in conflict with the provisions of S.8 of the Rent Appeal Act 1973.

Perry J said:

> "To hold that the government may by regulation alter a statute enacted for a specific purpose or to hold that when the legislature has carefully set out the way in which the board is to assess an equitable rent then that can be completely overridden by a regulation specifically incorporating 'an overriding and predominant consideration' is, in my view, a very sweeping claim. Here we have an Act of Parliament specifically enacted for the purpose of determining the equitable rents of dwelling houses - providing for the establishment of Rent Appeal Boards to make such determinations and setting out in careful detail the way in which such boards are to exercise their jurisdiction."

He continued:

> "The question, then, is whether the Economic Stabilisation Act 1948 authorises the modification of such an Act. In the absence of a specific power I do not consider it does."

There are two important points to note from these passages. Firstly Perry J placed much emphasis on the fact that it was a statute enacted for a specific purpose very carefully enacted, seemingly complete and exhaustive. Secondly that he required express, specific authorisation to override the statute before the regulations could be valid.

As in the C.S.U. case there was no provision in the Rent Appeal Act similar to S.48(1) of the Industrial Relations Act which limited the jurisdiction of the Act. The reliance on the texture of the Act interfered with was the same in both cases. The absence of any mention of Taylor's case in the C.S.U. decision may be explained by the fact that in the Drivers' case the Solicitor-General had sought to have it overruled by the Court of Appeal, because of its similarity to the C.S.U. case the Court may not have wanted to mention it. This is purely conjecture.

It is submitted that there is a difference in approach between Perry J in Taylor and the Court of Appeal in Shop Employees and the C.S.U. case. Perry J gave the interpretive presumption the standing of a rule that could not be defeated except by express antecedent authorisation. The majority in the C.S.U. considered that the presumption did not require specific express antecedent authority and was a major consideration in a 'weighing of alternatives.'

It is submitted that the Courts in these cases have been faced not merely with a clash between regulations and an Act but also between Acts. This is an issue that has been lying beneath the decisions in the cases. The decisions have tackled the clash between regulation and Act, but only in part the clash between Acts. They have tackled the symption but have not really addressed the cause. The wage, price and rent freeze measures taken under the Act have all been accepted as valid uses of the regulation making power. Turner P in Shop Employees commented that a ceiling on salaries and wages was just the sort of thing likely to be imposed for the purposes of the Act.[55]. It is a clash of textures. There is the wide general power given by the Economic Stabilisation Act and the specific provisions of an Act like the State Services Conditions of Employment Act. In the C.S.U. case the great reliance placed on S.6(1) illustrated that the Act intended to provide an exclusive code. In the Shop Employees case S.36(1) of the Industrial Conciliation and Arbiration Act indicated that the Court was not intended to be sacrosanct or exclusive. What the Courts did not address was when the Economic Stabilisation Act was to take over from the ordinary statutes, they stopped short, saying only that it was a matter of degree.

McMullin J in the minority in the C.S.U. case has specifically addressed this clash of textures. He saw the issue in the case as:

> "Whether or not this challenge can be sustained depends on the construction to be placed upon certain provisions of the State Services Conditions of Employment Act, S.6(1) in particular, and a consideration of the relationship between that Act and the Economic Stabilisation Act." 56.
> (emphasis added)

He went on to discuss the two Acts and concluded:

> "This compendious phrase (the opening words of S.6(1)) does no more than emphasise that conditions of employment shall be determined under the State Services Conditions of Employment Act and no other Act. But it does not impinge upon the operation of the Economic Stabilisation Act. There is no reason why both enactments should not stand together. They are intended to apply to different circumstances and they are not mutually repugnant. The Executive is left free to invoke the Economic Stabilisation Act if it can reasonably form an opinion that a movement in wages likely to occur on the application of the formula provisions of the State Services Conditions of Employment Act requires freeze regulations in the interests of the stability of the economy." 57.

The point that McMullin J is making is a good one. There is a clash between the wide ranging ambit of the Economic Stabilisation Act and the more limited operation of the State Services Conditions of Employment Act. In the area of wage fixing there is bound to be a clash between regulations imposing a wage freeze, pursuant to the purposes of the Economic Stabilisation Act, and other Acts which provide for normal procedures of wage fixing because those procedures will have become redundant as no change in wages can be fixed. When measures are introduced by regulation to freeze wages, which are just the sort of measures likely to be introduced under the 1948 Act, inevitably there will be interference with other wage negotiation statutes. It seems a little strange that interference should be alright in the context of the Industrial Relations Act 1973 but not in the context of the State Services Conditions of Employment Act. It seems strange when the only real difference between them is the contrast between S.48(1) of the 1973 Act and S.6(1) of the 1977 Act. It is this difference, however, that has led to the different decisions. Both Acts serve exactly the same type of function and were enacted to serve the same sorts of purpose one for the public sector, one for the private sector.

The different decisions must be attributed to the difference perceived by the Court in Parliamentary intention in the two Acts. S.48(1) of the 1973 Act (or S.36 of the old 1954 Act) is worded in such a way that Parliament did not intend that it be exclusive. S.6(1) on the other hand is strong evidence that Parliament intended the 1977 Act to be exclusive.

It is submitted that the more global view of McMullin J would avoid the apparent inconsistency between the decisions in the Shop Employees' case and the C.S.U. case. The specific Acts provide the ordinary procedure to be followed in normal wage negotiations. In times of economic instability when the Executive feel that far-reaching measures are needed they can invoke the Economic Stabilisation Act. The operation of the 1948 Act is not intended to wreck or abolish the ordinary procedure, merely to suspend its operation for the period of the freeze.

Richmond J in Shop Employees said something similar to this:

> "I have reached the conclusion that it must have been the intention of the legislature, when it enacted the Economic Stabilisation Act, to authorise the making of regulations which would, to such extent as the Governor-General in Council might consider necessary or expedient for the general purpose of the Act, derogate in some degree from the ordinary statutory procedures for fixing rates of wages in various sectors of the Community." 58.

It is submitted that it is unnecessary, having attributed this clear intention to the legislature, to frustrate it by reference to the provisions of the Act which is interfered with. The provision of S.6(1) of the State Services Conditions of Employment Act should not be interpreted as extending to cover the provisions of the Economic Stabilisation Act. As the Solicitor-General was reported to have said in the C.S.U. case it would be unlikely that the stabilisation regulations would not apply to 187,000 members of the work force. 59. Furthermore it could not have been the intention of the legislature when they enacted the State Services Conditions of Employment Act S.6(1) that it would operate to exclude the effects of the Economic Stabilisation Act.

There was a further issue in the Drivers' case that had to be discussed once regulation 5A had been held to satisfy the reasonably capable test. The majority posed it as:

> "Is the result altered by the traditional reluctance based on fundamental constitutional principles, to allow the jurisdiction of the ordinary Courts to be taken away? The reluctance

> is especially strong when the interference is by regulation as distinct from an Act of Parliament; it may be called the rule in Chester v Bateson, from the Divisional Court decision reported in (1920) 1 KB 829." 60.

Chester v Bateson concerned regulations made pursuant to S.1(1) of the Defence of the Realm Consolidation Act 1914. That section provided that regulations may be made in general for securing the public safety and defence of the realm. Furthermore there was a power to authorise the trial and punishment of persons committing offences against the regulations and in particular against regulations that were designed specifically in this case to prevent assistance being given to the enemy or the successful prosecution of the war being endangered.

Regulation 2A(2) of the Defence of the Realm Regulations 1917 provided that munitions workers who lived in 'special areas' may not have actions taken against them to obtain an order or decree for recovery of their houses or for the eviction of tenants from the houses they lived in.

Darling J said of the regulation:

> "It is to be observed that this regulation not only deprives the subject of his ordinary right to seek justice in the Courts of Law, but provides that merely to resort there without the permission of the Minister of Munitions first had and obtained shall of itself be a summary offence and so render the seeker after justice liable to imprisonment and fine." 61.

The right to seek justice was held to be an elemental right that could not be taken away except by Parliament. The regulation making power did not authorise such a step as was taken in Regulation 2A(2).

In the Drivers' case the majority drew the distinction between industrial arbitration and the determination of legal rights. Regulation 5A only suspended the use of the Arbitration Court for disputes of interest which is an arbitrary function of the Court, not one that involved the determination of legal rights. The rule in Chester v Bateson did not apply because Regulation 5A did not prevent the Court from exercising its jurisdiction in solving issues of right.

What is interesting about the discussion in the majority judgment is this dictum:

> "At the beginning of our consideration of this question we wish to underline the importance of the rule in Chester v Bateson. Indeed we have reservations as to the extent to which in New Zealand even an Act of Parliament can take away the rights of citizens to resort to the ordinary Courts of Law for the determination of their rights." 62.

It is clear that the majority consider that the rule enshrines a constitutional principle of some importance. What is more interesting is that the expression of doubt about the ability of Parliament itself to prevent access to the Courts for the determination of rights.

Two points can be made about this. Firstly it is clear that they would require at the very least a provision expressing specifically that regulations made pursuant to the Act may deprive a person of his or her right to seek justice before the Courts of the land. Secondly it is more probable that they consider that regulations can never do this. It appears that they consider it not an interpretive presumption, rather an irrebuttable principle.

Their doubt as to the ability of Parliament to take away the right is contrary to the decision in Chester v Bateson itself. Darling J quoted a passage with apparent approval [63.] from Scrutton J in In re Boaler.[64.] Scrutton J held that Parliament could deprive the subject of the right to have his or her rights determined by the Courts.

While the opinion of the majority stems, no doubt, from a desire to uphold the Separation of Powers theory, it may just impinge upon the Sovereignty of Parliament.

PART IV

CONCLUSIONS AND AFTERTHOUGHTS

It might well be commented that the discussion in Part III of this note is of historical interest only when considered in the light of the Government's response to the decision in the C.S.U. case.

When the decision was handed down the Government decided to validate the regulations and change the empowering Act rather than convert the wage/price freeze into law by enacting it. In a flurry of parliamentary activity the Government introduced and had passed the Economic Stabilisation Amendment Act 1982. Such was the speed with which it was rushed through the House that Geoffrey Palmer was prompted to say:

> "The proceedings of the Select Committee were a study in the wondrous ways of making bad law. The Bill was introduced into the House yesterday. Yesterday we sat beyond 3 am. At 9 am the Select Committee began listening to evidence. It sat until a quarter to two. At 5.30 pm when the House rose its members went back to deliberate. We finished at 6.30 pm and we are now engaged in a proceeding to pass the Bill through all its stages."

Mr Palmer was highlighting the time, or lack thereof, in which the Act was passed. In no uncertain terms he was arguing that there was insufficnt time for full consideration and debate on the Bill.

The Commerce and Energy Committee, to whom the Bill was referred, recommended the insertion of a provision for disallowance if within 28 days after having been tabled in Parliament a resolution is passed to disallow them. [66.]

The Amendment Act overturned the effect of the decision in the C.S.U. case in 59(1).

> "The regulations specified in the Schedule to this Act are hereby validated and confirmed and are hereby declared to be, and to always have been, validly made under the principal Act."

The effect of this provision is two fold. Firstly, the Regulations specified in the Schedule to the Act are validated, thus no question as to their validity can arise in the future

except insofar as S.9(3) provides that S.9(1) does not apply in cases of prosecutions for offences committed before the commencement of the Amendment Act. Secondly the regulations have been declared 'to be and to have always been, validly made under the principal Act.'.

This is a rather curious provision. If only the first limb of the provision had been enacted Parliament would in effect be saying that they accept the decision of the Court of Appeal and that this is legislation to change the effect of their decision and validate the regulations. The second limb goes further. In declaring the regulations to have always been validly made it appears to be saying that the reasoning in the decision is also overturned.

It could be argued that they are saying one of two things in the second limb of S.9(1). First, it could mean that the Economic Stabilisation Act authorised such inconsistency with the State Services Conditions of Employment Act. Second it could mean, more generally and more significantly, that regulations may override or interfere with statutes. Against the second possibility it is arguable that if this is what Parliament intended the section to mean, then the new S.11A enacted by the Amendment Act would be unnecessary and too narrow.

The new S.11A provides that regulations made under the Act shall prevail over certain specified Acts listed in (2) insofar as they relate to certain areas of the Acts to do with remuneration mentioned in (1)(a), (b) and (c). It also provides in (3) that regulations shall prevail over any Act that provides for the control adjustment or fixing of rents where there is conflict between them. (It is to be noted that the Industrial Relations Act 1973 and the State Services Conditions of Employment Act 1977 both appear in S.11A(2).)

It is submitted that the new S.11A and S.9(1) of the 1982 Amendment must have some meaning therefore the second possibility mentioned above cannot be what Parliament intended. S.9(1) must therefore be inperpreted more restrictively. The section will be read as referring only to the regulations in the Schedule and to have no further effect. Its effect is to deem them to have always been valid. S.11A on the other hand is intended to

have future operation. There is now clear and unequivocal authority to make regulations which affect or conflict with the Acts mentioned in S.11A(2). S.11A can be seen to be in fact enhancing the decision of the Court in the C.S.U. case. It illustrates that Parliament recognises the constitutional principle and the presumption and is ensuring that in future no question of lack of antecedent authority arises.

It is also submitted that S.11A(2) is further evidence that, as was discussed before, the conflict was not so much between the stabilisation regulations and other Acts rather the Economic Stabilisation Act itself and other Acts. Parliament has recognised that in the operation of the Economic Stabilisation Act there will be occasions on which regulations made pursuant to it are bound to conflict with the operation of other Acts.

The discussion in Part III of this note is of more than historical interest only. The cases are mainly recent decisions of the Court of Appeal. The same reasoning and judicial techniques may well be applied to regulations made under the Economic Stabilisation Act where what is at issue is considerations such as the presumption that regulations may not prevent access to the Courts for determination of rights. There are Acts not mentioned in S.11A(2) which may conceivably be interfered with. In the carless days and supply of petrol context, the Motor Spirits Distribution Act may be interfered with. Furthermore there may be similar empowering provisions in different Acts.

The cases and the Amendment Act provide a background from which it is possible to make some comments of a more general nature on the way the New Zealand Constitution is working.

Deborah Shelton in her thesis concluded:

> "The needs of the modern state have required the Executive to acquire and exercise powers, including legislative powers, in and over the economy. If Constitutional Law is genuinely concerned with the control of the functions of government, and if the Constitution is to return to a degree of coherence, the existence and nature of the powers of the Executive must be incorporated into the New Zealand Constitutional system, and, within the democratic process ways of controlling them must be found." 67.

It is submitted that since Ms Shelton concluded this, the controls on the Executive have certainly not been tightened and if anything have been relaxed even more.

The 'reasonably capable' test which demands only a connection with the main purpose of the empowering Act that is more than 'tenuous' or 'remote' will in fact mean that virtually all regulations made pursuant to an empowering provision similar to that of the Economic Stabilisation Act will be held to be valid. This is evidenced by the decision of the majority in the Drivers' case which held that regulation 5A was valid.

The presumption that Parliament would not abandon the entire field of the economy to the Executive is being gradually eroded by the increasing use of the powers of the 1948 Act. In times of world economic recession and hardship, when New Zealand's economy is forever threatened by inflation, large overseas debt and increasing balance of payment problems, most economic policies could be upheld in the name of economic stability. When the most significant government action in dealing with the economy in the last ten years was taken by Order in Council, one begins to wonder about the validity of the presumption.

Another area of worry was outlined by the Statutes Revision Committee in their report on the Remuneration (New Zealand Forest Products) Regulations 1980. In a discussion of the significance of Section 4 of the Acts Interpretation Act the Committee, commenting on the fact that 'Act' includes regulations, means that in cases where the statutes allow things to be done 'by any other Act' Parliament is in effect waiving its sovereignty. It stated:

> "The Committee is of the opinion that no amendment or alteration of an Act of Parliament should be effected by a simple act of the Executive unless Parliament has made a conscious decision that such a course is appropriate in all the circumstances." 68.

It was this factor which lead to the decision in the Shop Employees' case and was of some influence in the Drivers' case. These decisions mean that the Arbitration Court's jurisdiction can be interfered with by regulation. Furthermore that regulations may interfere with the operation of the Industrial Relations Act.

The new S.11A of the Economic Stabilisation Act is in part also contrary to the spirit of the Committee's opinion. While Parliament has enacted an almost complete list [69.] of the Acts that may be interfered with, what it could not predict is the circumstances in which those Acts will be interfered with.

By overturning the decision in the C.S.U. case the Amendment Act spurned a decision that highlighted the traditional limits of executive power and at the same time slashed at the fetters which impose those limits. Its effect, as Geoffrey Palmer pointed out, is slightly ironic:

> "The Court of Appeal said that Parliament is supreme. The Government is saying that Parliament should surrender that supremacy. The Government's Bill clearly invites the House to make a conscious decision to transfer its powers to make law to the executive branch of the Government." 70.

While the last sentence may reek of political exaggeration, there is no doubt that S.11A does give the Executive wide powers. It illustrates the fuzzy nature of the modern separation of powers. Firstly, not only does the Executive have the power to make law which implements broad economic policy, but now they can do it at the expense of Parliament. The Executive can make law which overrules statutes.

Secondly the passing of such a piece of legislation begins to undermine the relationship between the Courts and the Executive in the control of delegated legislation. The Amendment Act removed one aspect of judicial control over regulations made pursuant to the 1948 Act. While the Court might well have anticipated some parliamentary measures to validate the regulations, the Amendment Act went further than than.

Not all is bleak however. The willingness of the Courts to uphold the Chester v Bateson rule in appropriate cases is encouraging, as was their willingness to uphold the presumption against repugnancy.

If all else is lost the new S.13A with its provision for disallowance of the regulations by resolution of Parliament may be indicative of the move towards more parliamentary scrutiny and control of delegated legislation.- This may act as a check on policy while the Courts will remain a check on legality.

While on the fact of it the regulation-making power under the Economic Stabilisation Act 1948 may seem very wide, there are limitations to, and controls on it. Yet still there is a fear that the power, which many consider necessary in these troubled economic times, may be abused. That has been a problem forever.

> "O, it is excellent
> To have a giant's strength, but it is tyrannous
> To use it like a giant." 71.

FOOTNOTES

1. See Caldwell 'Economic Stability and Careless Days' 1981 NZLJ 542
2. (1981) 1 NZLR 73
3. SR 1979/153
4. SR 1982/141 and the Amendment No.2 SR 1982/194
5. (1982) 1 NZLR at 374
6. 22nd June 1983
7. Majority: Cooke, McMullin and Ongley J J
   Minority: Woodhouse P and Richardson J
8. (1982) 1 NZLR at 742
9. S.4 of the Economic Stabilisation Amendment Act 1982 substitutes 'remuneration' (defined in S.2 of that Act) for 'wages, salaries'.
10. S.11A as inserted by S.5 of the Amendment Act
11. S.13A as inserted by S.6 of the Amendment Act
12. "Government. The Economy and the Constitution". D Shelton at 248-249.
13. Supra n.2
14. Supra n.5
15. S.11(1) Economic Stabilisation Act 1948
16. (1976) 2 NZLR 521 at 535
17. (1952) AC 427 at 450
18. Supra n.16 at 529
19. Supra n.12 at 78
20. Supra n.5 at 388
21. Supra n.16 at 529
22. Ibid
23. Supra n.2 at 75
24. Supra n.4. This regulation was inserted by the Amendment
25. Supra n.5 at 389
26. Ibid at 390
27. Ibid at 375
28. Supra n.2 p.77
29. Supra n.4 p.7
30. Ibid, reg 4
31. SR 1974/143

32. Reg.5 provides that no instrument which increases a rate of remuneration may be created. 'Instrument' is defined in Reg. 3 and is fairly exhaustive.
33. (1933) NZLR 1461 per Ostler J at 1478
34. Supra n.2 p 83
35. "Economic Stabilisation And Carless Days" J F Caldwell 1981 NZLJ 542 at 543
36. (1959) NZLR 996 at 1001
37. The Bill of Rights 1688"(1) Suspending Power - That the pretended power of suspending of laws or the execution of law by regal authority without consent of Parliament is illegal."
38. Inserted by S.5 of the Economic Stabilisation Amendment Act 1982
39. (1920) 1 KB 829
40. Supra n.5 at 390
41. Supra n.8
42. Ibid at 745
43. (1977) 2 NZLR 413
44. Supra n.16
45. SR 1972/59
46. Supra n.16 at 536
47. Ibid at p.530
48. Supra n.2 at 78 (and supra n.19)
49. Supra n.8 at 744 and 747
50. Ibid at 745
51. Ibid at 746
52. Ibid at 747
53. Supra n.43
54. SR 1976/122
55. Supra n.16 at 529
56. Supra n.8 at 748
57. Ibid at 749
58. Supra n.16 at 536
59. Supra n.8 at 745
60. Supra n.5 at 390

61. (1920) 1 KB 829 at 834
62. Supra n.5 at 390
63. Supra n.61 at 834
64. (1915) 1 KB 21 at 36
65. Hansard 1982 No.43at 5703
66. S.6 of the 1982 Amendment Act inserted the new S.13A into the Act
67. Supra n.12 at 405
68. Report of Statutes Revision Committee on Remuneration (New Zealand) Forest Products) Regulations1980 App J.H.R. 15 at p.9
69. The Acts which deal with rent in relation to S.11A(3) are not listed.
70. Supra n.65 at S.620.
71. Shakespeare: " Measure for Measure". Act II, Scene 2, Line 107.

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