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INCOME TAX ACT

Bill to Amend—Second Reading of Bill C-377—
Debate Continued

Speech by:

The Honourable Claudette Tardif

Tuesday, April 23, 2013

THE SENATE

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INCOME TAX ACT

BILL TO AMEND—SECOND READING—
DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Eaton, seconded by the Honourable Senator Rivard, for the second reading of Bill C-377, An Act to amend the Income Tax Act (requirements for labour organizations).

Hon. Claudette Tardif (Deputy Leader of the Opposition): Honourable senators, I rise today with the permission of Senator Ringuette, who has adjourned this motion in her name and who is the second speaker on this bill.

I wish to add my voice to those who strongly oppose Bill C-377, An Act to amend the Income Tax Act (requirements for labour organizations).

This is a private member's bill, but it is the latest in a string of private bills to be aggressively pushed forward by the government itself.

In my remarks today, I will address several aspects of this bill: its constitutionality, its privacy concerns, its costs to the Government of Canada, its potential to affect the well-being of Canadian workers and its overall lack of justification.

Honourable senators will be familiar with the content of the bill, having heard the remarks of its sponsor, the Honourable Senator Eaton, as well as the thorough and critical examinations of this bill by Senators Cowan and Segal. This legislation seeks to require labour organizations to disclose their financial information, including the salaries and benefits of some employees, to the Canadian public.

Human Resources and Skills Development Canada states that as of January 2012 more than 4.6 million Canadian workers are covered by collective agreements. Millions more were union members during their working lives and are now retired. We know that this bill, if passed, will affect, directly or indirectly, a huge segment of the Canadian population.

I will start by addressing what may be the primary area of concern regarding Bill C-377: its constitutionality. There are various questions about whether this bill will stand up to a constitutional challenge. First, the bill infringes on Canadians' constitutionally protected rights to freedom of expression and freedom of association.

Second, there is a jurisdictional issue. Honourable senators will know that the division of legislative powers is set out in sections 91 and 92 of the Constitution Act, 1867. Subsection 92(13) of the Constitution specifies that Property and Civil Rights is an area that is under the exclusive jurisdiction of the provinces.

It is clear to me that when the Member of Parliament for South Surrey—White Rock—Cloverdale drafted this bill, he did not fully understand the limits that the Canadian Constitution puts on the federal parliament's legislative powers.

Tax legislation is a federal jurisdiction, but it is erroneous to claim that Bill C-377 is simply tax legislation that might, incidentally, touch the sphere of organized labour. There is no connection between the regulations proposed in this bill and the enforcement of tax requirements. There is simply no income tax enforcement basis for the disclosures required by Bill C-377. This is evidenced by the fact that the same requirements could have easily been enacted by a bill that made no amendment to the Income Tax Act. Further, there is no structural connection between the measures in Bill C-377 and the tax exemptions provided to unions in the Income Tax Act.

The sole purpose of this bill is to regulate the operation of labour organizations. As such, the Canadian Constitution invalidates it.

The Canadian Bar Association concurs with this analysis. They stated: "In our view, it is inappropriate for operational restrictions to be brought forward as amendments to taxation legislation."

Honourable senators, calling something "tax policy" does not make it so any more than calling a 700-page omnibus bill a "budget" makes it a budget.

[*Translation*]

Bill C-377 also raises serious concerns about privacy. The Privacy Commissioner of Canada, an officer of Parliament who acts at arm's length and is mandated to defend Canadians' right to privacy, publicly expressed her concerns regarding this bill as follows:

> Transparency and accountability are essential features of good governance and critical elements of an effective and robust democracy.
>
> However, as the Privacy Commissioner of Canada, it is my mission to protect and promote the privacy rights of individuals....Bill C-377 raises serious privacy concerns.

• (1640)

In the other place, amendments were made to this bill in order to take into account certain privacy concerns. The commissioner felt that the bill still went too far, even after amendments were made to improve certain aspects of it. Her main argument was that the loss of privacy was not proportional to the need for disclosure.

By way of clarification, the commissioner pointed out that there are instances in Canada where salaries are publicly disclosed when funded directly by the public. "However, these exceptional cases of public disclosure do not create a clear precedent for labour organizations given that their accountability is to their members, not the general public."

So-called "sunshine laws" exist for some governments and Crown corporations. However, these organizations are funded from the public purse. The commissioner is of the opinion that the intrusion on privacy seems highly disproportionate.

[*English*]

We need an appropriate balance between legitimate public interest goals and the respect for privacy interests protected by our laws and by the Canadian Charter of Rights and Freedoms. I do not believe that this bill achieves that appropriate balance.

Last year, the government launched a website, reduceredtape.gc.ca, and a national commission to find ways to reduce red tape, which they call "irritants" in government regulations and processes. On this website, one will find pages of government talking points about how cutting red tape is the most effective way to keep spending down and make government work for people. Yet, Bill C-377, by definition, is red tape. It certainly sends a confusing message to the Canadian public when members of the government push to pass a bill such as this.

Even after cost-reduction amendments were made to this bill, the Parliamentary Budget Officer estimated that approximately 18,000 records are likely to be filed per year, leading to an estimated cost of $36 million to the Canadian taxpayer for the first two years and $14.4 million per year after that.

Where does the public interest lie in this bill? What is the value to be derived from the millions that will be spent by the Canada Revenue Agency? The proponents of this bill have failed to demonstrate that there is a need for this legislation proportionate to these costs.

I am deeply troubled by this bill because I am convinced that it will be detrimental to the effective functioning of unions and to the well-being of Canadian workers. For example, the detailed financial disclosures required by the bill would place unions and labour organizations at a disadvantage, given that management would know details about the union's finances, such as the balance in a strike pay fund and, consequently, a union's ability to sustain a strike.

I have specific concerns about clause 149.01(3)(*b*)(xx), "any other prescribed statements," which serves as a basket clause for the financial disclosure requirements, meaning that any additional disclosure requirement could be imposed at any time by this government by regulation. This means effectively that if we allow this bill to pass, then we are granting the government permission to increase at any time the financial disclosure requirements of labour organizations. This is not a responsible way to proceed.

We often hear from the Harper government that they are focused, above all else, on jobs and the economy. In evaluating this bill in terms of those metrics, I can only conclude that it would be an encumbrance to our country's continued economic development. It runs counter to the interests of the public, and especially of the workers, to legislate workers' organizations to devote their time, energy and resources to red tape rather than to improving working conditions and accessibility. Labour organizations have a positive role to play in our economic growth, but that contribution is impeded when an antagonistic government clogs their functioning with red tape.

Honourable senators, I believe it is important to have a meaningful discussion in this chamber about the justification — or rather, lack thereof — for this proposed legislation. The case for this bill hinges on one misguided principle: Labour organizations are subsidized by the public purse through the Income Tax Act and, therefore, are particularly obligated to disclose their financial information to the Canadian public.

Honourable senators, that is simply not the case. In addition to the fact that they are not required to pay income tax, labour organizations do not receive any special subsidies or public funding. Their members are the ones who can deduct their union dues on their annual income tax returns.

This brings me to a key point: with regard to this case, we must remember that there are no established or accepted principles that make these groups accountable to the Canadian public. Like any other organization, unions must be accountable to their members.

The members, the people who pay union dues, are the ones who need to know how the unions are spending their money. The Canadian Bar Association made a good argument that bears repeating. I quote:

> Labour organizations operate for the benefit of their membership and in this way more closely resemble that of a closed corporation. The governance and transparency of the organization should be a matter of general concern to its membership, not the public at large.

Unions must be accountable to their members. Just because these organizations are given tax breaks, that does not mean that they should have to disclose information that would infringe on privacy.

As honourable senators know, corporations also receive numerous tax breaks.

Unions are not shrouded in secrecy, as some honourable senators on the other side would have us believe. In most union locals, expenditures must be ratified by the membership and the executive board. Their financial officers are elected and the vast majority of union constitutions require that consolidated financial statements be given and made available to every single member of that union.

We also know that legal measures are already in place. Section 110 of the Canada Labour Code states:

> (1) Every trade union and every employers' organization shall, forthwith on the request of any of its members, provide the member, free of charge, with a copy of a financial statement of its affairs to the end of the last fiscal year,...

It continues:

> (2)... shall contain information in sufficient detail to disclose accurately the financial condition and operations of the trade union or employers' organization for the fiscal year for which it was prepared.

In respect of a complaint to the Canada Industrial Relations Board, section 110 states:

> (3) The Board, on the complaint of any member of a trade union or employers' organization that it has failed to comply with subsection (1), may make an order requiring the trade union or employers' organization to file with the Board,...

In 2011, a total of 6 of 4.6 million workers filed complaints about transparency or access to information. It is clear to me that union members have sufficient and satisfactory avenues through which to access their labour organization's financial information. Bill C-377 is trying to solve a problem that does not exist.

Setting aside for a moment the established existing infrastructure that ensures appropriate transparency, I am also concerned about the inconsistent application of the principle that Bill C-377 purports to champion. Why is it that unions are singled out for this hyper disclosure? Professional member-based organizations, such as law societies, to which practising lawyers must belong and whose dues are also tax-deductible, receive preferential tax treatment but are not included in Bill C-377. My colleague in the other place, the Member of Parliament for Cape Breton—Canso, introduced amendments to include these professional associations, which, for the purposes of this bill, are no different than other labour organizations. The government voted them down. This sends a clear message that they support imposing these disclosure requirements for unions only but not for anyone else. It is a difficult position to defend.

• (1650)

What about private companies? Many tax breaks are offered to these organizations, and the principle behind this bill would require that they be subject to this transparency model as well. Preferential tax treatments for private companies, which account for millions in reduced public revenue, include the Youth Employment Strategy, the Scientific Research and Experimental Development Tax Incentive and the Canadian Innovation Commercialization Program.

Many provincial governments' labour ministries have privately and publicly expressed concern about Bill C-377. Canada's two largest provinces — Ontario and Quebec — which together account for 62 per cent of Canadian workers, have both spoken publicly in opposition to this bill. Manitoba and Nova Scotia have also voiced their concerns.

I received a letter from the Minister of Labour for Ontario, in which she wrote:

> I believe the purpose of this bill substantively interferes with and impedes the internal administration and operations of unions and is not grounded on defensible labour relations practice or policy.

The minister called the bill "unnecessarily provocative" and expressed concern that "in these tough economic times we need governments, organized labour, and management to work together, and this bill as passed through the House needlessly intervenes in that process."

The minister from Ontario speaks from experience. Ontario once had a similar law to Bill C-377 provincially. However, the province found it to be time-consuming and expensive to handle the disclosure and discovered that little benefit was derived. They repealed the law. Could I ask for five minutes, please?

The Hon. the Speaker *pro tempore***:** Honourable senators, is more time granted?

Hon. Senators: Agreed.

The Hon. the Speaker *pro tempore***:** Five minutes, Senator Tardif.

Senator Tardif: Thank you.

The minister states that, "These disclosure requirements failed to promote productive labour relations and did not provide any value-added accountability to union members."

In Alberta, countless groups of citizens whom I represent here in this place have voiced their opposition to Bill C-377. Among them are the Alberta Regional Council of Carpenters and Allied Workers, the Alberta Federation of Labour, the Alberta Teachers' Association, the United Nurses of Alberta and the Alberta Union of Provincial Employees.

The Alberta carpenters decry the fact that the bill "commands unions to report on the percentage of time its officers, employees and contractors spend on political and lobbying activities," which "represents a stunning invasion of privacy into the legitimate daily work of unions in pursuit of their members' best interests."

The Alberta Federation of Labour's president, Gil McGowan, states:

> This is a political bill. In the same way that they have cut funding to environmental and women's groups, they are trying to weaken and muzzle a strong progressive voice.

The Alberta Teachers' Association indicates that:

> Since women make up 70 per cent of the teachers in Canada, they will be significantly impacted by Bill C-377 both as union members and as taxpayers because of the loss of services paid for by union resources that are now diverted to this unnecessary accounting exercise as well as the implementation cost that must now be borne by taxpayers.

Alberta nurses, 25,000 strong, point out that their union executive, like the majority of others, is "directly accountable to the United Nurses of Alberta's members for the union's actions and its spending." They say:

> Our member nurses directly control how UNA's finances are spent through well-established transparent democratic processes... We disclose audited financial statements to our directors, all UNA locals and to delegates at meetings...

The nurses see this bill as completely unnecessary and politically motivated.

The Alberta Union of Public Employees' president, Guy Smith, stated:

> The provisions of the proposed legislation would create a large administrative and financial burden on our union, effectively reducing the cost-effectiveness and efficiency of our organization due to the onerous reporting requirements the bill would create if proclaimed into law. I am frankly surprised that a government which aspires to reduce regulatory red tape and create a country that is more efficiently managed would endorse such legislation.

When our colleague Senator Segal spoke on this bill on February 14, he summed up the bill thusly:

> This bill is about a nanny state; it has an anti-labour bias running rampant; and it diminishes the imperative of free speech, freedom of assembly and free elective bargaining.

[*Translation*]

Honourable senators, I have presented the flaws in this bill with respect to privacy, administrative costs, the negative impact on workers and the lack of justification for Bill C-377. None of the evidence presented supports the basis for this bill. As senators, it is our responsibility to exercise caution before passing it. We know that this is a private member's bill that has the enthusiastic support of the government. Nevertheless, five members of government in the other place were so convinced that the bill was bad public policy that they voted against it. One of them is a fellow Albertan, the member for Edmonton—St. Albert.

In this place of second sober thought, I would hope that honourable senators will carefully study this bill and its harmful consequences and vote against Bill C-377.

Hon. Pierre Claude Nolin: Would the senator accept a question? Senator Tardif told us that subsection 92(13) of the Constitution Act, 1867, which gives the provinces jurisdiction over private law — and a contractual labour relationship is part of that responsibility — would prevent the Parliament of Canada from enacting legislation concerning a provincial labour organization.

However, if the bill focused only on federal labour relations and were amended, for example, to eliminate all provincial labour organizations in order to concentrate only on federal labour organizations, does the senator believe that it would pass the constitutional test?

Senator Tardif: Honourable senators, I would say that, on the basis of the Constitution, that could perhaps allay this criticism. However, there are quite a few other aspects of this bill that are problematic.

Senator Nolin: Honourable senators, Senator Tardif has understood that I restricted my question to the constitutional issue, which was her first argument.

(On motion of Senator Tardif, for Senator Ringuette, debate adjourned.)