



DEBATES OF THE SENATE

2nd SESSION • 41st PARLIAMENT • VOLUME 149 • NUMBER 149

INCOME TAX ACT

Bill to Amend—Third Reading of Bill C-377—
Point of Order—Debate Suspended

Speech by:

The Honourable Claudette Tardif

Tuesday, June 9, 2015

THE SENATE

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[Translation]

INCOME TAX ACT

BILL TO AMEND—THIRD READING—
POINT OF ORDER—DEBATE SUSPENDED

On the Order:

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

Hon. Claudette Tardif: Honourable senators, I rise to speak to the point of order on Bill C-377. I would like to thank Senator Bellemare for raising this point of order, which I believe is entirely justified.

[English]

In my opinion, Bill C-377's provisions to provide for the reporting and public disclosure of certain financial transactions and administrative practices of labour organizations envisions a new function and purpose within the Canada Revenue Agency. As such, the terms and conditions of the Royal Recommendation that authorizes the CRA's current spending are being altered. Since a new and distinct authorization for spending is being permanently created, this will require a Royal Recommendation, which this bill is clearly lacking.

Past Speakers have ruled that legislation imposing additional functions on bodies funded by public money, if the functions are substantially different from their existing functions, requires a Royal Recommendation.

A Speaker's ruling on Bill S-204 in February 2009 specified that the procedural authorities indicate that four criteria must be considered when evaluating whether a bill requires a Royal Recommendation: first, if a clause directly appropriates money; second, if there is a provision allowing a novel expenditure not already authorized in law; third, if the bill broadens the purpose of expenditure already authorized; and, last, if a measure extends benefits or lessens qualifying conditions to receive a benefit. In all four cases, the bill would need a Royal Recommendation.

Two of the criteria apply to Bill C-377: allowing a novel expenditure not already authorized in law and broadening the purpose of expenditure already authorized.

The bill creates a new purpose for the Canada Revenue Agency in terms of a public reporting function that has no obligatory ties to taxation under the Income Tax Act. The bill would add an additional purpose by creating what the CRA characterizes as "a comprehensive system that includes electronic processing, validations, and automatic posting to the CRA Web site."

Honourable colleagues, we must ask ourselves how Bill C-377 contributes to achieving any objectives of the Income Tax Act. Are the provisions of the bill rationally and functionally

connected to the existing provisions of the Income Tax Act? The answer is no.

The Canada Revenue Agency is responsible for applying and interpreting the Income Tax Act. The primary goal of the agency, as Canada's tax administrator, is to ensure that taxpayers comply with their tax obligations and that Canada's tax base is protected.

Bill C-377 is strictly a function of publicly reporting information on one specific group of individuals — in this case, labour organizations and labour trusts. Furthermore, those reporting requirements are outside of any direct obligations that those organizations or their members have under the Income Tax Act.

When officials from the CRA appeared at the Standing Senate Committee on Banking, Trade and Commerce, they confirmed the bill was purely disclosure. Honourable colleagues, given that Bill C-377 would create an additional purpose and new program requirements that would amend the Income Tax Act and modify the purpose of the CRA and therefore result in new expenditures, the bill must be accompanied by a Royal Recommendation.

Your Honour, I wish to draw your attention to a Speaker's ruling on February 27, 1991, regarding Bill S-18, An Act to Further the Aspirations of the Aboriginal Peoples of Canada. Our Speaker at that time found that provisions imposing additional functions on bodies funded by public monies require a Royal Recommendation if the functions are substantially different from their existing functions.

As we look at the status of this bill, it is useful to recall its legislative history. The first incarnation of Bill C-377 was Bill C-317. That bill tied the reporting function of labour organizations to the enjoyment of the tax-exempt status offered them in paragraph 149(1)(k) of the Income Tax Act. Any labour organization not in compliance with the financial disclosure requirements outlined in Bill C-317 would lose its tax-exempt status.

Bill C-317 also sought to affect the tax treatment of union members if their union did not comply with those requirements by not allowing union dues to be tax-deductible.

• (1710)

Your Honour, I would draw your attention to a Speaker's ruling in the other place concerning Bill C-317, delivered on November 4, 2011. The ruling held that Bill C-317 had not respected the Standing Orders of the other place because to remove a tax exemption was to, in effect, raise taxes, which would require a ways and means motion that bill did not have. The Speaker's ruling forced Mr. Hiebert to remove the parts of Bill C-317 that tied the reporting requirements to the enjoyment of tax exempt status by labour organizations and tax deductibility of dues by their members.

Mr. Hiebert complied with the ruling, removed the offending parts and the bill then became Bill C-377. However, after deleting these sections, the legislation no longer had any direct tie or connection to taxation or benefits provided by a labour

organization or its members. A labour organization or trust that fails to comply with the requirements of Bill C-377 will not lose its tax exempt status and its members will not lose the tax deductibility on their union dues; therefore, the analogy to charities is fundamentally flawed.

As I've stated, this bill creates a totally new purpose or function by the CRA in its capacity as the administrator of the Income Tax Act. As such, it requires a Royal Recommendation. The precedents are clear.

As mentioned by our honourable colleague Senator Bellemare, who carried out extensive research on the topic, the monies required to implement this bill are enormous. This is not an ancillary expense but includes data gathering — costs that are new and outside the agency's mandate. As well, 18,300 labour organizations will be required to register with the CRA, setting up, in fact, a data registry.

The degree of detailed information this bill requires is far broader in scope than any other requirement on any other entity that is publicly disclosed by government. This creates a new and distinct function for the CRA, which therefore requires a Royal Recommendation.

It is estimated that the direct costs of implementing Bill C-377 could be as high as \$139 million and then \$38.4 million every year thereafter for maintenance. These monies were not provided for in the budget estimates of this year. Treasury Board did not provide for this extra expense. This bill needs a Royal Recommendation, which could have and should have accompanied the bill from the House of Commons.

Your Honour, let me draw your attention to a previous Speaker's ruling in the other place on October 20, 2006 regarding Bill C-286, An Act to amend the Witness Protection Program Act (protection of spouses whose life is in danger). The bill proposed to expand the Witness Protection Program to include persons whose life is in danger because of acts committed against them by their spouses. The Speaker explained that the bill proposed a

protection that does not currently exist under the Witness Protection Program. In doing so, the bill proposes to carry out an entirely new function. As a new function, such an activity is not covered by the terms of any existing appropriation. New functions or activities must be accompanied by a new Royal Recommendation.

Your Honour, I draw your attention to another Speaker's ruling in the other place, this time on November 8, 2006 regarding Bill C-279, An Act to amend the DNA Identification Act (establishment of indexes). I believe the particulars on this issue have a lot of similarities to the case at hand. Bill C-279 would have created a new purpose for the DNA Identification Act and establish new indexes in the DNA data bank, similar in context to the new database that would be created under this bill for unions.

The Speaker explained that there was an addition of a new purpose to the DNA Identification Act, which was to identify missing persons via their DNA profiles. The Speaker said in his ruling that:

Amending legislation that proposes a distinctly new purpose must be accompanied by a further royal recommendation.

Your Honour, let me conclude by saying that unlike its failed predecessor, Bill C-317, the reporting requirements and the public disclosure imposed by Bill C-377 in no way are linked to the imposition or levitation of taxes, levies or tariffs. Instead, this bill seeks to use the powers of the Income Tax Act to solely provide public information that would constitute a new function or activity. In addition, the bill clearly creates a new labour relations function of the CRA that not only does not exist presently but duplicates this function that is already happening at the Canada Industrial Relations Board, because this bill creates a new function and purpose at the CRA.

I respectfully submit to you, Your Honour, that Bill C-377 should not be allowed to proceed because it lacks the necessary Royal Recommendation.
