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INCOME TAX ACT

Bill to Amend—Third Reading of Bill C-377—
Motion in Amendment and Motion in Subamendment—
Debate Suspended

Speech by:

The Honourable Claudette Tardif

Thursday, June 18, 2015

THE SENATE

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[Translation]

INCOME TAX ACT

BILL TO AMEND—THIRD READING—
MOTION IN AMENDMENT AND MOTION IN
SUBAMENDMENT—DEBATE SUSPENDED

Hon. Claudette Tardif: Honourable senators, I wish to add my voice to all those opposed to Bill C-377. As it did in 2012, Bill C-377 unjustly targets unions, violates the Canadian Charter of Rights and Freedoms, and encroaches on provincial jurisdictions. This bill is not only unjust, it is unconstitutional.

This bill has been harshly criticized by a number of professional organizations. I find Senator Ringuette's motion to refer the bill to Committee of the Whole to be quite worthwhile. When the bill arrived at the Standing Senate Committee on Legal and Constitutional Affairs, many groups and individuals asked to share their concerns, but the majority of them did not get a chance to be heard. That is why I find Senator Ringuette's motion so worthwhile, since it would give a voice to those associations and organizations. We could hear them in Committee of the Whole.

I want to thank Senator Bellemare for the amendment she proposed. It would add an exception to Bill C-377 to exempt all labour organizations under provincial jurisdiction. This amendment would prevent Bill C-377 from encroaching on provincial jurisdictions. I also want to thank Senator Cowan for his subamendment, which proposes to make very important changes. I commend the senators on this initiative.

Since it is highly unlikely that Senator Ringuette's motion will pass, and since the voices of other associations and organizations will not be heard, I have decided to share with you the point of view of a number of professional associations.

The Alberta Union of Provincial Employees and the Canadian Teachers' Federation are two groups that were not permitted to appear before the committee. Representatives of the Alberta Union of Provincial Employees, which represents over 85,000 people, listed four reasons why Bill C-377 should be declared unconstitutional. Allow me to quote from their brief on these four reasons.

First, it has long been established that matters relating to labour and labour relations fall under provincial jurisdiction over property and civil rights pursuant to subsection 92(13) of the Constitution Act, 1867. This principle was first established by the *Toronto Electric Commissioners v. Snider*, [1925] AC 396 by the Privy Council and confirmed by the Supreme Court in *Oil, Chemical and Atomic Workers International Union, Local 16-601 v. Imperial Oil Ltd.*, [1963] SCR 584.

[English]

Exceptions to the provinces' powers to regulate labour and labour relations apply in situations in which labour and labour relations are an "integral part of," or are "necessarily incidental to" the headings enumerated under section 91 (Federal powers). Thus in Canada, with respect to federally regulated industries, such as telecommunications, banking and airlines, federal labour laws are *intra vires*. In every other case, which is the majority of cases, labour and labour relations are regulated by provincial governments.

[Translation]

Bill C-377 does not make a distinction between unions that are federally or provincially regulated: it applies to all labour organizations equally. Only the Government of Alberta has the jurisdiction to enact this type of legislation in relation to provincial unions such as AUPE. This blatant intrusion into the provincial sphere violates the division of powers doctrine.

Bill C-377 is an unwarranted incursion into the traditional jurisdiction of the provinces for no valid purpose connected to the raising of taxes — which is what the Income Tax Act is intended to do. The Income Tax Act is not a piece of legislation that requires "disclosure for disclosure's sake"; rather, the Income Tax Act requires disclosure in order to serve its purposes.

This legislation does absolutely nothing to advance the cause of the Income Tax Act. This is abundantly clear given the fact that there are no consequences arising from the requested disclosure other than the consequence of non-compliance. In other words, the bill does not address the contents of the disclosures, simply the consequences of not making any disclosure at all.

As stated earlier, the problem of jurisdiction is sure to attract litigation both by affected unions and provincial governments. There is simply no question that if passed, this legislation will result in potentially years and years of costly constitutional litigation for no good public interest reason.

Second, it represents a serious intrusion on the Charter right to freedom of association. If this bill is somehow able to survive a jurisdictional challenge, unions across Canada are sure to challenge the constitutionality of this legislation on the ground that it seriously interferes with the Charter right to freedom of association by impeding the ability of unions to pursue collective action in a fair way.

Bill C-377 imposes significant financial disclosure requirements on unions. For example, subsection 149.01(3)(a) sets out that labour organizations must file with the minister financial statements for the fiscal period in the form prescribed and that such financial information is to include a balance sheet showing the assets and liabilities of the labour organization as of the last day of the fiscal period and a statement of income and expenditures.

• (1520)

Paragraph 149.01(3)(b) requires labour organizations to disclose detailed financial information concerning all transactions with a value of more than \$5,000, the salaries and benefits of unionized employees, as well as the time spent on political activities. Overall, Bill-377 would make every single aspect of a union's operations available to the public.

Bill C-377 imposes strict financial reporting requirements on unions and orders the public disclosure of that information, which will affect the privacy of confidential information and the financial security of the union. Unions would be expected to make extensive financial information available to the minister, who would then put the information on the Internet. This information could be consulted by employers, other unions and anyone who wished to access it.

Making this information public would put unions in a precarious position. When engaging in collective bargaining, unions would be at a disadvantage vis-à-vis employers who would have access to internal union information, including financial resources, while unions would not have similar information for employers.

If an employer sees that a union does not have abundant resources, it could frustrate negotiations because the employer could use the information it has about the union's financial position against the union. For example, the employer could try to strain the union by stalling the negotiation process or sharing the union's financial position with employees in an attempt to cause them to lose confidence in the union's ability to represent them.

Third, the bill represents an unjustified seizure of confidential information. Under section 8 of the Charter, organizations have the right to be secure against unreasonable search or seizure. The bill violates the spirit of this section, if not the section itself, by demanding, through the operation of statute, submission and publication of otherwise confidential and personal and private information for reasons that are clearly not proportionate to the magnitude of the intrusion.

The nature of the disclosures sought under Bill C-377 and the fact that those disclosures will be publicly disclosed on a searchable Internet database raises serious concerns that the bill represents an unconstitutional intrusion into the privacy interests of the union. In particular, it represents a violation of the rights of union executives who are required to report as to the percentage of time they spend on political activities, lobbying activities and other non-labour relations activities. There is every reason to believe that the expectations of the union and of union leaders that certain information should not be publicly disclosed would be found to be reasonable.

If Bill C-377, or some aspects of it, are found to be an intrusion on the right to be free from unreasonable search and seizure pursuant to section 8 of the Charter, it is highly unlikely that the bill could be saved by proving that it is a reasonable infringement under section 8. Again: it is simply not proportionate to the public interest it purports to serve.

Fourth, the legislation represents an unjustified attack on the Charter right of freedom of expression. While there is no administrative or penal consequence attached to the disclosure of information about the activities of union officials, the act of disclosure will no doubt have a chilling effect on the ability of union officials to conduct their affairs in an atmosphere free of coercion. Furthermore, the disclosure provisions will impose a chill on unions that may choose to engage in political or social activism as part of representing their members' interests. The Supreme Court of Canada has confirmed that union participation in such activities and associated financial contributions to political parties or social causes is expressive activity that is protected by the Charter.

The disclosure requirements of Bill C-377 therefore also infringe freedom of expression guaranteed under section 2(b) of the Charter and cannot be justified under section 1 as a proportionate response.

[English]

Honourable colleagues, as you can see, Bill C-377 is unnecessary and unfair. According to the Alberta Union of Provincial Employees:

Unions are democratic institutions. There are many checks and balances in place within union constitutions to ensure

that members know what is happening with union finances, and what activities, including political activities, its executives and Standing Committees are involved with in the name of the Union. The Executive Committee is required to justify its actions and expenditures to the membership every year. If a problem arises, the delegate members can vote out the Executive Committee, in whole or in part, and pursue the remedies available to them through ordinary operation of civil and criminal law.

[Translation]

Honourable senators, that is it for the brief submitted by the Alberta Union of Provincial Employees.

As for the Canadian Teachers' Federation, which represents more than 200,000 members of the teaching profession in Canada, Bill C-377 is problematic on a number of levels. Allow me to read some excerpts from the Federation's brief. It states a number of concerns shared by the Alberta Union of Provincial Employees.

First, there are problems in terms of jurisdiction. The CTF and its Member teacher organizations make their decisions in an open and democratic way. Financial statements are open to all members; budgets are voted upon and spending is monitored by the membership; financial reports are audited professionally and distributed to the membership on an annual basis. Currently the Canadian Labour Code, nationally, and legislation in most provinces and territories require that unions provide their financial statements to members. It is inappropriate to attempt to utilize the Income Tax Act in a manner many believe is outside its constitutional scope.

By passing this legislation, the federal government would amend federal tax law to interfere in what is clearly an issue under provincial and territorial jurisdiction. This legislation will give rise to numerous and costly court challenges.

Then there are issues of cost and fairness. There would be a significant cost to unions — affecting over 25,000 labour organizations in Canada — and a cost to Canadian taxpayers estimated by both the Parliamentary Budget Office and the CRA as being \$11 million in the first year with ongoing costs of \$2 million per year. This would entail developing the regulations needed to enact the legislation; developing and preparing all of the forms and instruction booklets required; developing the software programs to file, receive and process the information including the need to employ auditors, accountants, lawyers and administrative workers for this purpose; and developing a massive online searchable database. Such an outlay of public funds cannot be justified.

The burden placed on unions to comply with C-377 would take away from their ability to represent their members. When considering the adverse effects on labour unions caused by Bill C-377, the mover suggested that members could just choose another union that was not adversely affected by the penalties imposed. Colleagues, that is a pretty poor answer.

A host of privacy rights would be violated under Bill C-377. If the bill is not amended, Canadian mutual fund owners, pension recipients and joint union-employer pension or health insurance arrangements will likely be swept into the disclosure provisions of the bill as labour trusts. Individuals who have paid into plans and who become eligible to receive a payment of more than \$5,000 in any one year will have their privacy invaded.

• (1530)

This breach of privacy will open the books of labour organizations to those with whom they might negotiate. Even

after amendments, Bill C-377 would require the disclosure of information that could be unfair to unions and their suppliers at best and unconstitutional at worst.

[English]

Further to their brief, I have received information from the Canadian Teachers' Federation on the day-to-day impact Bill C-377 would have on their members. In their letter requesting to appear before the Standing Senate Committee on Legal and Constitutional Affairs, the President of the Canadian Teachers' Federation expressed:

In many cases, teacher locals have an elected president who is also teaching either full or part time. The reporting

requirements of the bill would take valuable time away from this teacher who would otherwise be marking, preparing lessons, or participating in extracurricular activities.

Bill C-377 would have severe unintended consequence on students across Canada.

[Translation]

Honourable senators, Bill C-377 is unconstitutional and unfair. Many organizations, groups and individuals did not have an opportunity to comment on this bill. I encourage you to support Senator Ringuette's motion to go into Committee of the Whole to hear from this large number of witnesses.
