



# DEBATES OF THE SENATE

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## INCOME TAX ACT

Bill to Amend—Third Reading of Bill C-377—  
Motion in Amendment—Debate Continued

Speech by:

The Honourable Diane Bellemare

Monday, June 15, 2015

## THE SENATE

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[Translation]

### INCOME TAX ACT

#### BILL TO AMEND—THIRD READING— DEBATE CONTINUED

**Hon. Diane Bellemare:** Honourable senators, as you know, the Standing Senate Committee on Banking, Trade and Commerce studied Bill C-377 from May 22 to June 13, 2013, and the Standing Senate Committee on Legal and Constitutional Affairs studied it quite recently on April 22 and 23 and May 7, 2015.

• (1930)

In total, the two committees studied the bill for 21 hours. The Standing Senate Committee on Banking, Trade and Commerce met for 14 hours and heard from 49 witnesses. This year, the Standing Senate Committee on Legal and Constitutional Affairs met for seven hours and heard from 23 witnesses.

As the Honourable Senator Runciman, Chair of the Standing Senate Committee on Legal and Constitutional Affairs, said, that is more than most government bills and much more than other private members' bills.

In its June 13, 2013 report, the Standing Senate Committee on Banking, Trade and Commerce raised a number of points. Principal among these concerns was the constitutional validity of the bill with respect to both the division of powers and the Charter. Six of Canada's 10 provinces spoke out against Bill C-377: Prince Edward Island, Nova Brunswick, Nova Scotia, Quebec, Ontario and Manitoba. Taken together, they make up more than two-thirds of Canada's population. Provincial government witnesses said that this bill violates their exclusive jurisdiction in labour rights matters. I would like to quote Ontario's Minister of Labour, the Honourable Kevin Flynn:

[English]

The bill, if passed, would have the federal government overstepping its constitutional bounds and stepping into the area of provincial jurisdiction. In Canada, labour relations legislation and the regulation of workplaces rest with the provincial government.

[Translation]

In its 2013 report, the Standing Senate Committee on Banking, Trade and Commerce raised other points about the protection of personal information and the vagueness regarding whom this legislation would apply to. This year, the Privacy Commissioner stated that if Bill C-377 is passed, he would be prepared to challenge it before the Supreme Court.

Based on the evidence heard by the Standing Senate Committee on Banking, Trade and Commerce and the Standing Senate Committee on Legal and Constitutional Affairs, I did some calculations. I tallied the opinions regarding whether Bill C-377 is constitutional or not. Eight legal opinions state that the law is *ultra vires*, that it does not respect the separation of powers between Parliament and the provinces. Only Justice Bastarache, a retired Supreme Court justice, was inclined to find that there was a "reasonable" separation of powers, but only if Bill C-377 was enacted into law. He assumes that its constitutionality would likely be upheld. I would like to remind senators once again that Justice Bastarache wrote an opinion as part of a study carried out by Heenan Blaikie LLP at the request of Merit Canada.

In my tally, Counsel Henri Brun, Professor Alain Barré, the Barreau du Québec, Professor Bruce Ryder, Privacy Commissioners Daniel Therrien and Jennifer Stoddart, and Counsel Paul Cavalluzzo all said that Bill C-377 was unconstitutional. Let us imagine that the eminent jurists we heard were on the Supreme Court. Bill C-377 would be declared *ultra vires* because in light of the legal opinions heard, Parliament, through the anticipated effects of this legal text, would interfere in private law and labour law, which are deemed provincial jurisdictions under the Constitution. In light of the opinions of the legal experts, Bill C-377 would be defeated eight to one. That gives us a good idea of the extent of the committee's debate.

[English]

Your Honour and honourable colleagues, this bill will go before the Supreme Court. You can be sure of that. I believe it is clear that Bill C-377 will be deemed unconstitutional because it is *ultra vires*. In Russ Hiebert's words, Bill C-377 is a piece of legislation that largely mirrors the U.S. requirements. He is referring to the Labor-Management Reporting and Disclosure Act of 1959, which regulates U.S. labour relations and is managed by the U.S. Department of Labor.

[Translation]

The American law deals only with private institutions. In the U.S., the law is constitutional. In all countries that have similar laws — not entirely similar to the American law, which is extraordinarily invasive — these laws on accountability are administered by labour departments.

In the case of the American government, this invasive law, which is similar to Bill C-377, applies not only to unions, but also to individual businesses that are unionized, employer associations, as well as consultants in the context of labour relations. Thus, each of these groups has information in order to ensure a better balance.

As an example, when you are playing poker and you ask the players to show their cards, everyone knows that the player who shows nothing will be the one to win. As for the American law, it is very clear that accountability has to do with labour relations, not taxation.

[English]

With that in mind, how can Bill C-377 find application within our Canadian Income Tax Act and within Parliament's taxation power? How can Bill C-377, a bill that does not modify the Canadian fiscal framework and that doesn't impose any fiscal penalty for non-compliant labour organizations, fall under federal jurisdiction concerning the raising of money by a system of taxation?

I think it is clear, honourable colleagues, that Bill C-377 is about disclosure and labour relations.

[Translation]

Many witnesses told us that this bill was going to have a significant impact on labour relations, to the detriment of unions and the benefit of employers. I repeat, this bill has to do with accountability, and that is the responsibility of the Department of Labour. In Canada, that is a shared jurisdiction; labour organizations registered in the provinces are governed by provincial labour codes, while those registered at the federal level are governed by the federal labour code. The labour codes of

the various jurisdictions are where you'll find important provisions on accountability.

That being said, Quebec has passed a new law regarding accountability in the construction industry. Under that law, unions and employer associations are required to complete forms.

#### MOTION IN AMENDMENT

**Hon. Diane Bellemare:** I would like to make an amendment to reduce the negative impact of this bill and make it slightly less unconstitutional.

I therefore move:

That Bill C-377 be not now read a third time but that it be amended in clause 1, on page 5,

(a) by replacing line 34 with the following:

“poration;”; and

(b) by adding after line 43 the following:

“(c) labour organizations whose labour relations activities are not within the legislative authority of Parliament;

(d) labour trusts in which no labour organization whose labour relations activities are within the legislative authority of Parliament has any legal, beneficial or financial interest; and

(e) labour trusts that are not established or maintained in whole or in part for the benefit of a labour organization whose labour relations activities are within the legislative authority of Parliament, its members or the persons it represents.”.

• (1940)

In other words, honourable senators, I am proposing that an exemption be added to Bill C-377 in order to exclude from this bill any and all labour organizations that fall under provincial jurisdiction. Thus, the bill would cover only federal labour organizations.

**Some Hon. Senators:** Hear, hear!

**Senator Bellemare:** In closing, I would like to say that, at this difficult time when the Senate is being accused on all sides of not playing its role as a chamber of sober second thought, and of not taking the interests of the people it represents seriously, I urge you to vote in line with your constitutional obligations, the official positions of your respective governments, in other words, the provincial governments and the people they represent, and all of the emails you received that have criticized this bill as being too invasive.

Thank you.

**Some Hon. Senators:** Hear, hear!

[English]

**The Hon. the Speaker:** On debate on the amendment?

**Hon. George Baker:** Would the honourable senator permit a question?

**Senator Bellemare:** Yes.

**Senator Baker:** Relating to the amendment, is it the senator's understanding that the major problem that she wishes to correct is this? Is the senator of the understanding that this bill would cover all unions regardless of size in Canada and, that in the United States and other countries, there is a limit and they have to have 100,000 members? This bill will cover the tiniest of unions, including the city workers union, say the city maintenance workers in a small town in Canada. Every person in a position of authority, like the shop steward of the union, anybody in a position of authority, will have to once a year provide a statement to Revenue Canada of how many hours they spent on union activities, on political activities and on all other activities that the person was involved in, including the Boy Scouts, for example?

Could the honourable senator stand in her place and verify that this is what this bill would do and that's why she is trying to correct it through amendment?

[Translation]

**Senator Bellemare:** That is what I am trying to correct with this amendment. There will still be problems with this bill with regard to the Privacy Commissioner, because even if the bill covers only federal organizations, the fact remains that it will still apply to all local labour organizations. In the United States, for example, there are three categories and each category has specific forms. Organizations in the local units category are required to disclose only a small amount of information, if any. However, the larger the organization, the more information they have to disclose.

As for my amendment, it would only cover federally regulated labour organizations.

[English]

**Senator Baker:** Would the honourable senator also verify that if this bill passes as it is, there will be no comparable legislation? It will not be comparable to that in the United States, as it's claimed?

[Translation]

**Senator Bellemare:** I confirm that that will be the case. Not only in the United States, but also in Great Britain, in France and throughout the world.

[English]

**Senator Baker:** Yes, throughout the world.

[Translation]

**Senator Bellemare:** — accountability bills also apply to the employer.

This bill is essentially unique, and that is why the Fraser Institute — which is not a left-leaning research organization — which thoroughly studied the American law and compared it to the legislation of other countries, criticized the American law and concluded that it is not a good law for Canada because it is too invasive. Not only would it be invasive, but, even worse, it would only apply to unions.

**Senator Baker:** Thank you very much.

**Senator Bellemare:** You're welcome.

(On motion of Senator Cowan, debate adjourned.)