

SPEAKER'S RULING

Bill C-377 and the Royal Recommendation

I am ready to rule on the point of order raised by the Honourable Senator Bellemare on Thursday, May 28, as to whether Bill C-377, An Act to amend the Income Tax Act (requirements for labour organizations), requires a Royal Recommendation. As you will recall, the point of order was also considered by the Senate on June 9.

Senator Bellemare's concern is that Bill C-377 cannot be considered by the Senate because it appropriates public money but was not recommended to the House of Commons by the Governor General. She argued that the bill would expand the role of the Canada Revenue Agency in a way that is not envisioned by current statute. If Bill C-377 passes, the agency would be responsible for collecting and diffusing information unrelated to the protection of the tax base and compliance with tax obligations. Senator Bellemare also underscored the high costs of the measure. She also expressed concerns about the contradiction between these costs and the balanced budget requirements proposed in Bill C-59, which is currently before Parliament. As part of her argument Senator Bellemare drew a distinction between the activities of the Canada Revenue Agency relating to charitable organizations and the requirements under Bill C-377 relating to labour organizations. The agency does provide public information on charitable organizations, but Senator Bellemare argued that this role has nothing to do with the requirements that Bill C-377 would impose.

Senators Fraser, Tardif and Ringuette supported Senator Bellemare's arguments. They made reference to past rulings establishing that, unless expenditures required under a bill fit within an existing Royal Recommendation or are of an ancillary or administrative nature, the bill must be recommended to the House of Commons by the Governor General. As Senator Tardif explained, "legislation imposing additional functions on bodies funded by public money, if the functions are substantially different from their existing functions, requires a Royal Recommendation."

Several honourable senators challenged this position. Senator Runciman provided the Senate with information from the Canada Revenue Agency indicating that the costs of Bill C-377 would be far lower than those suggested by Senator Bellemare. Both Senator Martin and Senator Dagenais drew the Senate's attention to a decision by the Speaker of the House of Commons, from December 6, 2012, in which he addressed similar points, and determined that the bill did not require a Royal Recommendation. Senator Martin argued that "a Royal Recommendation is not required every time a bill creates a new charge, but only when the charge is new and distinct." Senator Dagenais, for his part, explained that the provisions in the bill can actually be linked to the current mandate and operations of the Canada Revenue Agency. He also noted that witnesses from the agency had drawn connections between the requirements that Bill C-377 would impose and activities that it already undertakes.

In considering this point of order, let me first remind honourable senators that sections 53 and 54 of the Constitution Act, 1867 establish that bills to appropriate funds or to impose taxation must begin in the House of Commons and must be recommended to that house by the Governor General. This is a fundamental principle in our parliamentary system of government, generally referred to as the financial initiative of the Crown. It helps ensure a coherent fiscal structure. Decreases in taxes, on the other hand, do not require a Royal Recommendation.

We should also recognize here that the two houses do not always agree as to how this fundamental principle should be interpreted. Almost a century ago, in 1918, a Senate committee considered the issue. One of its main conclusions was that the Senate has the power to amend bills that appropriate a part of the revenue or impose a tax by reducing amounts, but it does not possess the right to increase the sums. The House of Commons has not accepted this understanding, claiming that it has exclusive rights in relation to such legislation. At times the two houses have even reached different conclusions about the need for Royal Recommendation, with the Senate sometimes determining that a bill does not require a recommendation, while the Commons determines that it does. The general pattern is for the Senate to be more flexible in interpreting these provisions, and the Commons to be more protective of its rights in relation to money bills.

Rule 10-7 specifically deals with bills appropriating public money. It states that "[t]he Senate shall not proceed with a bill appropriating public money unless the appropriation has been recommended by the Governor General." The issue of when a bill must be accompanied by a Royal Recommendation has been dealt with in numerous rulings in the Senate. Extracts from relevant rulings and procedural works can be found in the text relating to rule 10-7 in the second edition of the Companion to the Rules of the Senate. One of Speaker Kinsella's rulings of February 24, 2009, is particularly significant. In it he stated as follows:

The procedural authorities ... indicate that a number of criteria must be considered when seeking to ascertain whether a bill requires a Royal Recommendation. First a basic question is whether the bill contains a clause that directly appropriates money. Second, a provision allowing a novel expenditure not already authorized in law would typically require a Royal Recommendation. A third and similar criterion is that a bill to broaden the purpose of an expenditure already authorized will in most cases need a Royal Recommendation. Finally, a measure extending benefits or relaxing qualifying conditions to receive a benefit would usually bring the Royal Recommendation into play.

On the other hand, a bill simply structuring how a department or agency will perform functions already authorized under law, without adding new duties, would most likely not require a Recommendation. In the same way, a bill that would only impose minor administrative expenses on a department or agency would probably not trigger this requirement.

The list of factors enumerated here is not exhaustive, and each bill must be

evaluated in light of these points and any others at play. It certainly is not the case that every bill having any monetary implication whatsoever automatically requires a Royal Recommendation. When dealing with such issues, the Speaker's role is to examine the text of the bill itself, sometimes within the context of the parent act. Of course, the Speaker, in making this assessment, seeks to avoid interpreting constitutional issues or questions of law.

In a subsequent ruling, on December 1, 2009, Speaker Kinsella clarified that a bill to add a function generally relating to an act's existing purpose and without mandating new hiring or other expenditures, does not necessarily qualify as a "new and distinct" expenditure, and so may not require a Royal Recommendation. I should also remind senators of the general principle, expressed by several Speakers, that, when the analysis is ambiguous, the Speaker should generally prefer to presume that a matter is in order, if a valid argument to that effect can be established. This allows the Senate itself to make the final decision, preserving this chamber's role as a house of discussion and reflection.

Within this context we can turn to the specific concerns raised by Senator Bellemare. As a first point, let me note that the possible interactions of Bill C-377 with Bill C-59, if they both receive Royal Assent, are of interest, but remain hypothetical. The Speaker does not deal with hypothetical issues, so this matter need not be considered further.

In terms of the potential costs for implementing Bill C-377, the Senate has been presented with divergent estimates from two credible sources — the Parliamentary Budget Officer and the Canada Revenue Agency. We have received incompatible information, and it is impossible to reach any certain conclusion on this point.

In truth, however, the central issue in this point of order is whether Bill C-377 expands the Canada Revenue Agency's current functions. Or, to put it another way, do the agency's current responsibilities include the collection and publication of information? Senator Bellemare has argued that the agency has a mandate to protect the tax base and to ensure respect for tax obligations. The Senate has, however, been told that these are not its only duties. The Canada Revenue Agency's web site already provides extensive and detailed information about some organizations, and it may not be unreasonable to see the changes proposed under Bill C-377 as a mere adjustment to the existing activities of receiving and posting information. I also note that representatives of the Canada Revenue Agency have confirmed to senators that they are already involved in providing such information. They have also indicated that there are cases where information is disclosed for purposes not related to taxation.

As I noted earlier, the two houses respect the constitutional requirements relating to financial measures, but do not always agree on how they are to be applied. In general, the House of Commons is more demanding in interpreting these provisions, which give it pre-eminence in the financial field. It would be odd — although by no means impossible — for the Senate to find that a bill requires a Royal Recommendation when the House of Commons has determined that it does not.

Honourable senators, we are faced with varying estimates as to the costs for implementing Bill C-377. We have also been told that the provisions of the bill align with some of the work currently performed by the Canada Revenue Agency. While recognizing the importance of the concerns raised by Senator Bellemare, it does seem that these factors provide a coherent case for accepting that the bill can continue before the Senate. This conclusion is supported by, but not based on, the bill's history in the House of Commons. Mindful of the preference for allowing debate to continue when a sound argument to that effect can be made, I find the bill in order, and debate can resume.