

41st PARLIAMENT, 1st SESSION

**Subcommittee on Private Members' Business of the Standing
Committee on Procedure and House Affairs**

EVIDENCE

Excerpt Bill C377

Thursday, December 8, 2011

Next is Bill C-377. I'll ask our analyst to comment on it.

Mr. Michel Bédard:

This bill will require that labour organizations provide financial information to the minister for public disclosure.

You may recall that a similar version of this bill was examined by the subcommittee when we first met in the current session. The Speaker made a ruling to the effect that the bill should have been preceded by a ways and means motion, because there were some taxation provisions in the bill. The bill has been modified, and all the provisions pertaining to taxes have been removed and replaced with a fine. The bill was designated as votable by the subcommittee when we first looked at it. Therefore, I have no comment in respect of the four criteria. I see no problem with them. It is within federal jurisdiction. It is not unconstitutional. And there's no similar bill currently on the order of precedence, either from the government or a private member.

The Chair:

Okay.

Is there any discussion?

Do you have a question, Mr. Toone?

Mr. Philip Toone:

Yes. First of all, I would argue that it violates criterion number 2, still.

We have the ruling from the Speaker, and I think we need to look at that attentively.

It's true that a whole section dealing with the Income Tax Act has been taken out, and now we're looking at a fine. It's certainly not the first bill that's going to come before the House that speaks of fines. On that level, I can see that it does agree with the Speaker's ruling.

Where I do have a problem with it, though, is that in my opinion, it's certainly violating the freedom of association provision in the charter.

The Chair:

Just as a reminder, this committee did not turn this bill down in the previous decision, on any of the four criteria before us. So unless there's something new about this bill in terms of its constitutionality, I would argue that we may be reinventing the wheel.

Mr. Philip Toone:

It is a new bill, and the previous one was rejected by the Speaker. So if we follow the ruling of the Speaker, we are looking at a new bill. Mr. Hiebert was given an opportunity to resubmit a bill, which I think was a very fair ruling. This is what we have before us now.

First of all, a union is not a static organization. It's not the Rotary Club, with all due respect to the Rotary Clubs of the world, of which I'm a member. It's not the Canadian Taxpayers Federation, which doesn't even have any clear membership guidelines. I don't know how you become a member.

The Chair:

You're not a member of that?

Mr. Philip Toone:

I don't think very many people are members. I've called them, actually, to ask them how to become one, and I did not get an answer.

Mr. Scott Reid:

I feel like calling a point of order. It would be nice to get back to the actual substance of this bill, when you're done with the structure of the Taxpayers Federation.

(1225)

Mr. Philip Toone:

Fair enough. I appreciate that, Mr. Reid.

We are creating provisions for an organization with a constitution that falls under the auspices of many federal and provincial laws as it is. There are already criteria for them to be responsible to their membership; it is a form of responsible government in fact.

The criteria being proposed here are quite onerous and, frankly, I think these would be very, very detrimental to the ability of unions to fulfill their obligations.

As far as freedom of association is concerned, I think we have to make that freedom of association vital. If an organization is constantly having to report back the minutiae of its daily activities, I don't see how that in any way is in the public interest. It certainly isn't in the interest of the union as a judicial entity. Again, they already have reporting mechanisms. It's a democratic institution. Members are free to ask questions of their leadership at any given time, and disclosure is already done.

What we're talking about is creating public disclosure for all Canadians to see, and frankly there are even accounting principles of the House of Commons that aren't that publicly disclosed. I don't see why we would benefit from a certain degree of interpretation of accounting rules whereas unions would not.

I think it's putting a very heavy burden on associations, which, quite frankly, I think violates their constitutional right to exist. If we have a union that has that level of burden, I'm not sure that people would even want to join it. This would put in doubt a union's ability to gain membership. The provisions being proposed here are so onerous that, personally, I would think twice about becoming a union member, and I think a lot of people would agree.

Again, we are attacking the very foundation of a constitutional right to freedom of association. I think this bill takes that a step too far. We've had decisions in the past where the courts have ruled regarding the importance of the unions having the right to exist. In one particular ruling, *Berry v. Pulley*, one of the questions that came out of it was the loss of control of the union over its ability to represent its members.

Mr. Scott Reid:

Excuse me, this was in the Supreme Court, was it?

Mr. Philip Toone:

This was Chris Pulley. It's a B.C. Supreme Court ruling.

Mr. Scott Reid:

Was that subsequently appealed?

Mr. Philip Toone:

Not to my knowledge.

Mr. Scott Reid:

What date was this, if you don't mind my asking?

Mr. Philip Toone:

This was 1975. I can give you the reference.

Mr. Scott Reid:

It was 1975, so it's not a charter case.

Mr. Philip Toone:

It's not a charter case, but the ruling is still indicative and useful for the debate. We have a question of whether a loss of control over internal affairs would undermine the ability of a union to present a united front to employers and pursue the collective interests of their members.

I think this would undermine the ability of the union to represent its members, because we'd be divulging internal information to the very people they're supposed to be protecting their members from.

I don't agree with this bill, and if we go back to the criteria, I think it's a clear violation of freedom of association.

The Chair:

Are there other comments?

Mr. Reid.

Mr. Scott Reid:

I haven't had a chance to look at that particular case. In fact, I hadn't heard of it before, although I'd be happy to read it.

The relevant part of the charter being referred to—and this is the only constitutional argument, I think, Mr. Toone is making—is section 2 of the Charter of Rights: “Everyone has the following fundamental freedoms...”. It goes through a series of them, and then gets to paragraph 2(d) and the freedom of association. That's the constitutional issue we're discussing here.

I gather the objection is that the law, to be within the Constitution, and not to be interpreted [Inaudible--Editor], that is, broadly the protections that it offers, and that if they were merely technically...but not in spirit, you'd have an unconstitutional matter. Would that be a fair assessment of the general thrust of what you're getting at?

Yes, okay.

That's a good way to interpret the law. However, I think this does not conform with that, for a variety of reasons. I confess that, not having had the chance to review this in detail, I am working merely from what I can pull out of my head at the moment. I've just observed, with regard to the disclosure required here, that this does not strike me as being in excess—indeed, it's substantially less, I would think—of the kind of disclosure one has to provide to the Canada Revenue Agency. The actual compliance costs or the actual costs imposed on the organization would not be novel, new, or excessive, as compared to requirements that already exist, so that unions can carry out their activities as outlined under our country's tax laws. They have a certain status, they have to report, they have to make sure they're not taking all their money and devoting it to excessive salaries. If they run a pension system, they have to make sure they're conforming with the rules that govern that pension system, and so on.

These are detailed reporting requirements. What's required here, it seems to me, is less onerous than that. On that basis, I would reject the argument that the compliance costs here are such as to endanger the operation of unions in Canada. That's the first argument that was presented.

The second argument presented was that the disclosure of internal information to a company with which you are negotiating would reduce the negotiating clout of the union. I've only been involved in union negotiations on one occasion, when I was one of the negotiators with the steelworkers. I am mystified as to how the steelworkers would have been at a disadvantage in dealing with the organization. One of their locals negotiating with a company had to disclose the information laid out here, which is about how the steelworkers operate, not about the budget that had been used for the actual negotiations. This certainly doesn't require them to reveal their negotiating strategies, what their plans are, and those internal discussions.

In fact, it seems to me that it's very much like the kind of information that a publicly traded company has to disclose in order to comply with securities regulations, which are far more onerous and time-consuming than these would be. Nobody thinks that a publicly traded company is therefore unable to function or negotiate effectively with its trade unions, and therefore that trade unions and collective bargaining ought to be restricted to privately held companies. We make no such restriction.

I personally don't think either of those two arguments have much weight. I could provide further information, if I had more time to research it and to dig up the reference cited by Mr. Toone. The essential point here is that these are really such insubstantial arguments they can be disregarded.

(1230)

The Chair:

Mr. Dion.

Hon. Stéphane Dion:

May I ask Philip to repeat all that for us, without reading his notes or anything? What is the basic reason this committee should block this bill?

The Chair:

Mr. Toone.

Mr. Philip Toone:

Yes, of course.

Before responding, I would like to highlight what Mr. Reid brought to our attention. We didn't have a lot of time to discuss and analyze this bill. We were really down to the wire. I would like to come back to that. What should our time frame be to debate a bill and determine whether it is constitutional? I had barely 24 hours to think about it, and I don't think that's enough. I know that it's an exceptional situation, that there was the decision of the Speaker of the House of Commons and all that. But we didn't have time to really think properly. Having said that, I would like to come back to this a little later, Mr. Chair. So we could talk about the time frames we expect when a bill is presented to us.

To come back to Mr. Dion's question, the freedom of association is constitutional and fundamental in Canada. Unions must have the right to benefit from all the opportunities to properly represent their members. It's the law of trusts, in the end. It's as if they were trustees. Their responsibilities are extremely heavy. But they must do everything they can to properly represent their members, the same way as members must do everything they can to represent the constituents in their ridings. We cannot keep them from doing that.

I would say that it's the same as tackling the law of privilege. Of course, the law of privilege isn't the same thing; it concerns elected members. All the same, the unions must represent their members, which is even recognized in the Canadian Charter of Rights and Freedoms. I don't want to encroach on that freedom, and I also don't want to encroach on those responsibilities. It's a basic freedom.

(1235)

Hon. Stéphane Dion:

What's wrong with the bill from this perspective?

Mr. Philip Toone:

There are a number of requirements that are so heavy that I cannot see how the unions could really represent their members properly. We have heard that the bill did not make government accountability to the public overly burdensome. We have heard that it didn't harm the representations, the negotiations between unions and management.

For instance, though, unions will have to declare the state of their disbursements relating to staff relations activities. It's a heavy burden, which could enable management to be aware of something that the unions would not have access to from the other side. It's a burden that would be carried by only one party.

I'll give you another example. There's the state of disbursements relating to the payment of overhead. It's so vague we would be able to accuse unions of infractions for all kinds of reasons. But, once again, management's burden in this respect isn't as heavy.

The state of disbursements relating to the organization or activities, what's that? It's very heavy. What we're asking the unions is exceptionally heavy, while what we're asking management, even if the corporations are publicly listed, is not an equal burden. The freedom of association is [Editor's note: inaudible].

Mr. Scott Reid:

I apologize, but on a point or order, I'd just like to find out which sections you're referring to.

Mr. Philip Toone:

I can specify exactly. Now we're looking at subparagraphs 149.01(3)(b)(ix), and 149.01(3)(b)(xvi).

Mr. Scott Reid:

I apologize for interrupting.

The Chair:

Mr. Dion, is this a point of order?

Mr. Toone, are you through with your intervention?

Mr. Philip Toone:

I have one more point.

The personal liability issue of the fiduciary responsibility has to be looked at very attentively as well. The simple ability to recruit members and obtain certification is put in doubt because of the onerous criteria involved here. The ability to bargain collectively is certainly put into doubt.

The Chair:

We're wandering into some areas that could be debated when the bill comes forward.

Mr. Dion.

Hon. Stéphane Dion:

I agree with that, Mr. Speaker. I think these are valid preoccupations, but they are a matter of interpretation. On your own part, you are using words like "one may think", "one may consider", or "one may not consider". I think our colleagues will have an opportunity to look at this very carefully, and your points will be discussed in the House and in committee.

The Chair:

Okay.

Mr. Reid, and then I would like to bring this to a close as soon as we can.

(1240)

Mr. Scott Reid:

Criterion number 2 is that bills and motions must not clearly violate the Constitution Acts, 1867 to 1982, including the Canadian Charter of Rights and Freedoms. I take it from that, although the wording is not perhaps as we might have wished, that they cannot violate in their pith and substance--as the courts would have said it--the charter. That is to say that the bill cannot be so constructed as to be, in its essence, a violation of the Constitution or of the charter.

It seems to me that the concerns Mr. Toone is expressing relate to things that could be amended. One can deal with these things via amendment. I'm not sure I actually concur with him on this point, but they could be dealt with via an amendment. For example, if you think that the level of precision that's required is such that the bill becomes onerous, then the logical thing to do is to say, let's pick a larger number we deal with, in the same way that governments have to disclose their grants and contributions down to \$10,000, but not below that because we understand that it would be onerous to go beyond that. Something like that could be done. Thus, one could deal with the problems associated with any burdens being too great. Obviously it would only be in the course of debate that we could establish actual examples of how this is too great.

I think this is an argument for careful debate of the bill and perhaps for amendment otherwise.

The Chair:

I think we're approaching the point of being ready to make a decision.

I want to make a couple of points. First of all, in terms of time, my understanding is that this is the same bill—other than the section on fines, which was changed from a de-registration—and that we had had enough time to study the essence of the bill prior to this.

The second point is that maybe we need to reflect upon the current four criteria to either add or subtract from them, and possibly think about, if there is obvious need, having a ways and means motion as one of the criteria in the future. That's not to do with this particular issue alone.

However, I think we're ready to move ahead on the question. I'm going to ask, all those in favour of allowing Bill C-377?

Mr. Philip Toone:

Can we take a recorded vote.

The Chair:

Sure, if that's requested.

The motion is that Bill C-377 be designated as non-votable.

All those who agree that Bill C-377 should be non-votable?

(Motion negated: nays 2; yeas 1)

The Chair:

So that bill, by definition, is votable.