
Tax Bills and the Ways and Means Process

Michael Lukyniuk

The consideration by Parliament of the Crown's requests for taxation is one of the cornerstones of our system of government. Although the rules of procedure are fairly straightforward for the introduction of a tax bill, there are many parliamentary issues which are brought into play and merit reflection. Among them are the amount of consideration and resources required for increasingly large and complex Budget Implementation Bills; the repetition found in some debates; the inclusion of non-budgetary matters in the Budget Implementation Bill; the implementation of tax initiatives before legislation is enacted; the effect of tax alleviations proposed by private Members on the government's management of the fiscal plan; and the preclusion of any debate on private Members' bills which propose tax increases. These and other issues related to ways and means are examined in the following article.

One of Parliament's fundamental roles is to give consideration to the Crown's requests for spending and taxation. The procedures in the House of Commons relating to *spending* protect the financial initiative of the Crown by requiring that a royal recommendation – solely obtained by a Minister – be attached to any item proposing an appropriation. The procedures relating to *taxation* are slightly different. Unless a change to a tax law is contemplated, tax provisions continue from year to year. Whenever the Crown wishes to propose a new tax, to continue an expiring tax, to increase an existing tax, or to extend a tax to a new class of taxpayers, it is accomplished through what is known as the “ways and means” process – a procedural term referring to the manner that revenues are raised to meet government expenditures. The rules of the House stipulate that the adoption of a ways and means motion (outlining any increase in the incidence of taxation) must precede first reading of a tax bill. As only a Minister may give notice of a ways and means motion, the financial initiative of the Crown is thus protected for tax purposes.¹

The Basic Form of the Ways and Means Motion

There are basically two types of ways and means motions: one is for the presentation of a Budget, and

the other is to bring in a tax bill (or bills). When the Minister of Finance wishes to present a Budget, notice is given to the House of Commons of a generally worded motion (i.e., ‘That this House approve in general the budgetary policy of the government’). At a designated time, the Minister proposes the *pro forma* motion and presents the Budget which is debated for four days. At the same time, the Minister will also table notices of ways and means motions which provide details of tax initiatives contained in the Budget. The tabling provides provisional authority to impose taxes effective immediately. (For further details on this aspect, see section below, *The Provisional Implementation of Taxation*.) The Budget motion is open to amendment by the Opposition and provisions are also provided in the rules for votes on the amendments and the main motion at specific times.² The defeat of a Budget motion is considered as a want-of-confidence in the government by the House.

When a Minister wishes to bring in a tax bill, a notice of a ways and means motion must first be given to the House. In most cases, the notice of motion is essentially a draft version of the tax bill. The next day, or at some future date, the ways and means motion is proposed and voted on; it is not subject to debate or amendment since the purpose is simply to bring forward the legislative initiative. The role of the House is to consider this “legislative” ways and means motion and to take a decision. If the ways and means motion

Michael Lukyniuk is a former Principal Clerk for the House of Commons. He retired in 2007.

is adopted, a bill (or bills) based on its provisions may be brought forward by the Government. The rejection of *any* ways and means motion is interpreted by parliamentary convention as a loss of confidence in the Government by the House.

The Relationship Between the Ways and Means Motion and the Tax Bill

Speakers of the House of Commons have been called upon to clarify the relationship between the ways and means motion and the subsequent tax bill. The rules of the House of Commons state that a tax bill must be *based on* a ways and means motion.³ In rulings, Speakers have explained that the bill does not have to be *identical* to the motion but significant departures from the intent of the motion are not permitted.

In 1974, a ways and means motion provided for the taxation of boats other than “naval vessels” whereas the bill provided exemptions for “boats purchased or imported ... for use exclusively by the Government of Canada” – a somewhat wider definition. The Speaker felt that the bill was sufficiently based on the motion reasoning that “The change relates to one of degree of exclusion, but remains within the general description of Government purchases.” However, the Speaker went on to caution the government that the terms of the ways and means motion are a carefully prepared expression of the financial initiative of the Crown and frequent departures from them can only invite deterioration of that most important power.⁴

In 1975, a ways and means motion provided for an exempt class of persons to be made by regulation whereas the bill established it from a definition in another statute. The Speaker ruled that two different approaches were being proposed and that the Minister should prepare amendments to either the bill or the motion to bring them in closer conformity with one another.⁵

In 1978, a ways and means motion dealt with the 1978 taxation year for residents of prescribed provinces whereas the bill dealt with the 1977 taxation year for residents of other provinces. Despite the fact that these discrepancies were about the *reduction* of taxation, the Speaker ruled that since the motion was the basis for a tax bill, a new motion would have to be adopted to make the bill conform.⁶

The Speaker has also ruled that a tax bill is based solely on the specific wording of the ways and means motion; secondary matters are not taken into account. In 1990, a ways and means motion contained a reference to a technical paper which had not been tabled in the House. This technical paper outlined a

plan for a 9% tax whereas the ways and means motion provided for a 7% tax. The Speaker explained that the technical paper was “peripheral to the expression of the financial initiative of the government”. The motion for a 7% tax stood on its own and didn’t derive any authority from documents previously issued.⁷

Tax Bills

Procedurally-speaking, there are two kinds of tax bills: those stemming from a Budget, and those brought in of their own accord.

Tax bills stemming from a Budget may only be given first reading after a four-day debate on the Budget is concluded and all the votes have been taken. On the day the Budget is presented, the Minister of Finance tables notices of ways and means motions regarding the tax initiatives (i.e., amendments to the *Income Tax Act*, the *Excise Tax Act*, etc.). The main purpose is to provide detailed information on the tax initiatives and to immediately implement these tax changes on a provisional basis (see section below, *The Provisional Implementation of Taxation*). Although these ways and means motions could be used to give first reading to tax bills after the four-day Budget debate, the practice is for the Minister to give notice of another ways and means motion to implement all the provisions of the Budget (including any non-taxation statutes). A review of recent practice reveals that this notice is usually given the day after the Budget debate is concluded. The day following notice, the Minister proposes the ways and means motion to implement the Budget; it is not subject to debate or amendment. If adopted, a tax bill (known as a Budget Implementation Bill) is usually given first reading the following day. Table 1 shows the time frame from the Budget to first reading of the budget implementation bill.

The Budget Implementation Bill contains the principle measures announced in the Budget. This includes amendments to taxation statutes as well as amendments to other statutes involving socio-economic measures. Occasionally new statutes may also be included. The Bill is organized into Parts addressing the different provisions of the Budget, which gives it an omnibus character. Since 2004, the practice has been for the Finance Minister to introduce a second Budget Implementation Bill months later to introduce less pressing measures stemming from the Budget.

The amount of debate and consideration given to a Budget Implementation Bill varies depending on the complexities of the bill and the political controversy it may engender. (A second Budget Implementation

Table 1
From Presentation to First Reading of the Budget Implementation Bill, 1998- 2010

Parliament/ Session	Date of Budget presentation	Budget adopted	Ways & means notice tabled	Ways & means adopted	1st reading Budget Implementation Bill
36/1	Feb. 24, 1998	Mar. 10, 1998	Mar. 17, 1998	Mar. 18, 1998	Bill C-36: Mar. 19, 1998
36/1	Feb. 16, 1999	Mar. 3, 1999	Mar. 9, 1999	Mar. 15, 1999	Bill C-71: Mar. 16, 1999
36/2	Feb. 28, 2000	Mar. 29, 2000	Mar. 30, 2000	Apr. 6, 2000	Bill C-32: Apr. 7, 2000
37/1	Dec. 10, 2001	Jan. 29, 2002	Jan. 29, 2002	Jan. 30, 2002	Bill C-49: Feb. 5, 2002
37/2	Feb. 18, 2003	Mar. 18, 2003	Mar. 19, 2003	Mar. 25, 2003	Bill C-28: Mar. 25, 2003
37/3	Mar. 23, 2004	Mar. 31, 2004	Mar. 29, 2004	Mar. 31, 2004	Bill C-30: Mar. 31, 2004
38/1	Mar. 23, 2004	Mar. 31, 2004	Dec. 6, 2004	Dec. 7, 2004	Bill C-33: Dec. 8, 2004
38/1	Feb. 23, 2005	Mar. 9, 2005	Mar. 21, 2005	Mar. 22, 2005	Bill C-43: Mar. 24, 2005
38/1	Feb. 23, 2005	Mar. 9, 2005	Nov. 17, 2005 ¹		
39/1	May 2, 2006	May 10, 2006	May 9, 2006	May 10, 2006	Bill C-13: May 11, 2006
39/1	May 2, 2006	May 10, 2006	Oct. 16, 2006	Oct. 17, 2006	Bill C-28: Oct. 18, 2006
39/1	Mar. 19, 2007	Mar. 27, 2007	Mar. 27, 2007	Mar. 28, 2007	Bill C-52: Mar. 29, 2007
39/2	Mar. 19, 2007	Mar. 27, 2007	Nov. 13, 2007	Nov. 14, 2007	Bill C-28 ² : Nov. 21, 2007
39/2	Feb. 26, 2008	Mar. 4, 2008	Mar. 11, 2008	Mar. 13, 2008	Bill C-50: Mar. 14, 2008
40/1	Feb. 26, 2008	Mar. 4, 2008	Nov. 28, 2008 ³		
40/2	Jan. 27, 2009	Feb. 3, 2009	Feb. 2, 2009 ⁴		
40/2	Jan. 27, 2009	Feb. 3, 2009	Feb. 4, 2009	Feb. 5, 2009	Bill C-10: Feb. 6, 2009
40/2	Jan. 27, 2009	Feb. 3, 2009	Sept. 14, 2009	Sept. 18, 2009	Bill C-51: Sept. 30, 2009
40/3	Mar. 4, 2010	Mar. 10, 2010	Mar. 22, 2010	Mar. 24, 2010	Bill C-9: Mar. 29, 2010
40/3	Mar. 4, 2010	Mar. 10, 2010	Sept. 28, 2010	Sept. 29, 2010	Bill C-47: Sept. 30, 2010

1. Parliament was dissolved on Nov. 29, 2005.

2. Bill C-28 also included tax provisions from another ways and means motion tabled on Oct. 30, 2007.

3. The ways and means motion also included provisions from an Economic Statement made on Nov. 27, 2008. The Session was prorogued on Dec. 4, 2008.

4. This ways and means motion was not proceeded with.

Bill normally involves less debate.) A review of recent cases reveals that second reading debate in the House of Commons is usually spread over four sitting days and resembles the Budget debate. Consideration in the Commons' Standing Committee on Finance is usually held over five meetings, where departmental officials are invited to appear and answer detailed questions relating to the provisions of the bill. At the last meeting, the committee proceeds through every clause of the bill where amendments may be proposed and votes taken. Final debate in the House at report stage and third reading usually entails five more sitting days. In the Senate, Budget Implementation Bills are normally dealt with in five or six days for all stages.

As for tax bills which do not stem from a Budget, the rules of the House permit the Minister of Finance to table notices of ways and means motions at any time during the year without the need of another Budget presentation. This provides a mechanism for the Minister to deal with rapidly developing situations, to

bring in specific tax reforms, or to deal with technical matters. The adoption of one of these motions gives the Minister the authority to bring in a tax bill (or bills) based on the motion. The Minister may seek the adoption of the motion soon after the notice is given, the notice of motion may linger on the *Order Paper* for months, or it may be superseded by another notice of motion updating the same initiative.

One issue which has preoccupied parliamentarians over the last decade concerns Budget Implementation Bills which contain measures not mentioned in the Budget. The rules of procedure permit such omnibus initiatives as long as they respect the exigencies of notice, the need for a royal recommendation, etc. For example, in 2008, a point of order was raised concerning a ways and means motion which proposed to repeal the RESP provisions of private Members Bill C-253. The objection was that nothing was mentioned in the Budget regarding this matter. The Speaker explained that although the ways and means

motion implemented provisions of the Budget, it was procedurally correct for it to include other provisions not related to the Budget.⁸

Notwithstanding the procedural correctness of incorporating non-budgetary matters in the Budget Implementation Bill, strong objections have been expressed. Professor C.E.S. Franks argued that “Canadian budget implementation acts ... have morphed from short bills dealing with minor items mentioned in the budget speech to enormous omnibus bills that go way beyond what is mentioned in the budget. They now make profound changes to many unrelated aspects of administration and policy.”⁹

The Senate National Finance Committee echoed these concerns following its review of Budget Implementation Bill C-10 in June 2009. The Committee observed that “Bill C-10 was one of the worst examples of this practice, in that it contained time-sensitive measures for employment insurance benefits during an economic crisis, putting parliamentarians in the impossible position of having to choose between doing a thorough job or helping Canadians who are desperately in need.... Unfortunately, this is not an isolated incident. Rather, it is a pattern of behaviour which has been observed in governments of both political stripes. If the pattern persists, at some point Parliament will have to consider measures to protect

it from being stampeded into hasty decisions by such manipulations.”¹⁰ The report went on to list four possible actions – to divide the bill into coherent parts and deal with them separately; to delete all non-budgetary provisions; to defeat the bill on the grounds that it is an affront to Parliament; or to establish a new rule prohibiting the introduction of budget implementation bills that contain non-budgetary measures.

The size and complexity of Budget Implementation Bills over the last decade raises the question whether parliamentarians have the ability and resources to adequately deal with such wide-ranging measures (often in short timeframes). Many provisions contained in such Bills may be adopted with little or no scrutiny. For instance, in 2007 many parliamentarians were surprised to learn that significant changes were made to the borrowing authority procedures following the adoption of the Budget Implementation Bill C-52.¹¹

The Provisional Implementation of Taxation

Another unique characteristic of the legislative process relating to taxation is that any change in taxation is effective the moment a Minister tables a notice of a ways and means motion. The implementing legislation may only be adopted months (or years) later, but the taxes are collected from the date of the notice. This practice is not supported by any statutory authority

Table 2
Consideration given to Budget Implementation Bills, 1998- 2010

Parliament/ Session	Budget presentation	1st reading	2nd reading debate (sittings)	Committee meetings	Report and 3rd reading (sittings)	Senate (days)
36/1	Feb. 24, 1998	Bill C-36: Mar. 19, 1998	3	17	3	NA
36/1	Feb. 16, 1999	Bill C-71: Mar. 16, 1999	4	4	2	NA
36/2	Feb. 28, 2000	Bill C-32: Apr. 7, 2000	3	4	3	NA
37/1	Dec. 10, 2001	Bill C-49: Feb. 5, 2002	3	4	4	6
37/2	Feb. 18, 2003	Bill C-28: Mar. 25, 2003	4	5	5	8
37/3	Mar. 23, 2004	Bill C-30: Mar. 31, 2004	3	2	2	4
38/1	Mar. 23, 2004	Bill C-33: Dec. 8, 2004	3	1	2	8
38/1	Feb. 23, 2005	Bill C-43: Mar. 24, 2005	7	4	4	4
39/1	May 2, 2006	Bill C-13: May 11, 2006	4	3	1	7
39/1	May 2, 2006	Bill C-28: Oct. 18, 2006	4	2	2	4
39/1	Mar. 19, 2007	Bill C-52: Mar. 29, 2007	5	5	5	6
39/2	Mar. 19, 2007	Bill C-28: Nov. 21, 2007	4	1	4	1
39/2	Feb. 26, 2008	Bill C-50: Mar. 14, 2008	5	7	5	5
40/2	Jan. 27, 2009	Bill C-10: Feb. 6, 2009	4	5	5	5
40/2	Jan. 27, 2009	Bill C-51: Sept. 30, 2009	3	2	2	8
40/3	Mar. 4, 2010	Bill C-9: Mar. 29, 2010	6	7	6	18
40/3	Mar. 4, 2010	Bill C-47: Sept. 30, 2010	4	1	2	3

Table 3
Size of Budget Implementation Bills, 1998-2010

Parliament/Session	Budget presentation	Bill	Number of Parts	Number of clauses and schedules	Number of pages (1 st reading)
36/1	Feb. 24, 1998	Bill C-36	13	134	160
36/1	Feb. 16, 1999	Bill C-71	9	54	55
36/2	Feb. 28, 2000	Bill C-32	7	48	59
37/1	Dec. 10, 2001	Bill C-49	6	179	112
37/2	Feb. 18, 2003	Bill C-28	11	145	262
37/3	Mar. 23, 2004	Bill C-30	8	50	57
38/1	Mar. 23, 2004	Bill C-33 (2nd)	3	66	76
38/1	Feb. 23, 2005	Bill C-43	24	237	110
39/1	May 2, 2006	Bill C-13	13	251	186
39/1	May 2, 2006	Bill C-28 (2nd)	3	63	132
39/1	Mar. 19, 2007	Bill C-52	14	161	136
39/2	Mar. 19, 2007	Bill C-28 (2nd)	14	229	377
39/2	Feb. 26, 2008	Bill C-50	10	199	139
40/2	Jan. 27, 2009	Bill C-10	15	614	528
40/2	Jan. 27, 2009	Bill C-51 (2nd)	12	68	52
40/3	Mar. 4, 2010	Bill C-9	24	2221	880
40/3	Mar. 4, 2010	Bill C-47 (2nd)	9	199	143

but is simply a convention known as the “provisional implementation of taxation”. Fundamentally, the system is voluntary. The rationale for such a system is to prevent commercial disruptions, to prevent certain individuals from taking advantage of changes and to allow the government some certainty in its fiscal planning. This convention is commonly invoked the day when a Finance Minister presents a Budget.

In 1985, the Minister of Finance published a paper which identified some problems with this system and raised potential solutions (including a draft bill providing statutory authority).¹² A committee which undertook a study of this draft bill was opposed in principle to the notion that a tax could be collected prior to a bill being adopted by Parliament.¹³ No legislative action was forthcoming.

In 1991, the Auditor General commented on the collection of taxes before enabling legislation is enacted.¹⁴ Two broad categories were identified: commodity tax changes and income tax changes. Regarding commodity taxes, the Auditor General stated that consumers would regrettably be “out of pocket” if an increase in a commodity tax is not adopted by Parliament. As for changes to income tax laws, the Auditor General was sceptical whether the National Revenue Department could identify and readjust income tax returns if proposed legislation was rejected or amended by Parliament. Several cases

were cited where the Department administered tax changes in spite of the fact that legislative authority was absent. In defence, the Department explained that although its mandate is to administer tax changes after enactment, the tax collection cycle is an annual process requiring that guides and forms must be published in advance. The legislative process may place the Department in a position where it suggests to taxpayers that they “comply with proposed law to avoid confusion, inconvenience and to deliver the tax process efficiently”.

Despite any parliamentary action on this issue, other groups have expressed their disenchantment. In its report, *Policy Resolutions 2008-2009*, the Canadian Chamber of Commerce voiced its frustration in this manner: “The announcement of tax rule changes with no legislation makes it difficult for individuals and businesses to plan their affairs when they have no assurance as to what form the law will take, whether it will be implemented and how it will apply.”¹⁵

Levies, Service Charges and Program Contributions

One of the key characteristics of a *tax* is that it is used for the benefit of the public at large. On the other hand, a *levy* is a charge made for an industry’s benefit. As such, a levy does not need to be preceded by the adoption of a ways and means motion. Some examples of levies are the impositions made by: the *Copyright Act* on blank tapes to reimburse recording artists; the *Canada*

Shipping Act on ship owners to deal with oil spills; and the *Canada Petroleum Resources Act* on the oil industry to a support environmental studies research fund.

In 1998 and 2001, points of order were raised against the Tobacco Youth Protection Bills S-13 and S-15. They proposed to impose a levy on tobacco manufacturers which would fund a non-profit foundation whose mandate would be to prevent the use of tobacco products by young persons. In both cases, the Speaker of the House found that this was not a levy but a tax since "the purpose of the bill is a matter of public policy, namely, the health of young Canadians and not ... a matter of benefit to the tobacco industry." Since tax bills had to originate in the House of Commons and be preceded by the adoption of a ways and means motion, the Speaker ruled the proceedings null and void.¹⁶

As for service charges, they are administrative fees, not a tax on the public. Service charges are meant to defray public expenses that user's incur. As such they do not involve the adoption of a ways and means motion. In 2001, Broadcasting Bill S-7 proposed that the Canadian Radio-television and Telecommunications Commission regulate the awarding and taxing of costs between parties that appear before it. A point of order was raised which contended that taxation was involved. The Commons Speaker explained that the purpose was to award costs to a party appearing before this quasi-judicial body and have them paid by another party; much like a court does upon the adjudication of a case. The phrase "taxing of costs" simply means ordering that expenses be paid by one of the parties. It had nothing to do with the ways and means process.¹⁷

To some groups, mandatory contributions to the Canada Pension Plan and to Employment Insurance may be considered as taxes. Although these contributions are collected by the Government and placed in the CRF just like tax revenues, they are dedicated to specific social programs. As such, legislation increasing the level of contributions does not require the adoption of a ways and means motion (although increasing the level of payments may require a royal recommendation).

The Alleviation of Taxation

Another important characteristic of the rules relating to taxation is that any alleviation in taxation does not require the adoption of a ways and means motion since the initiative of the Crown to impose taxation is not involved. Alleviations in taxation may take different forms: it could be a reduction or an elimination of a tax rate, an exemption for a class of individuals, or a tax credit. Their effect on the deficit-surplus situation

of the government's finances could be significant, but this is an issue separate from the financial initiative of the Crown.

In 1995, objections were raised against the Canada-US Tax Conventions Bill S-9 which proposed retroactive reductions in the rate of withholding taxes. The Speaker explained that this bill did not increase any tax nor did it involve the expenditure of public funds.¹⁸

In 2005, a point of order was raised against Excise Tax Bill C-259 which sought to eliminate an excise tax on jewellery. This private Members bill did not require a ways and means motion because it was eliminating a tax.¹⁹

In 2006, a point of order was raised against Income Tax Bill C-253 which proposed to have RESP contributions considered as tax deductions. The bill also proposed that, if the contributions were not used for educational purposes, they would be taxed when taken out. The Speaker ruled that "This proposal amounts to a tax deferral.... I do not regard such a tax deferral as imposing any increased tax burden on the contributor. It is permissible for a private member's bill to introduce a tax exemption, or to propose a delay in the reporting of income."²⁰

In 2008, a point of order was raised against Income Tax Bill C-219 which proposed that volunteer emergency workers be permitted to deduct amounts from their taxable income. It was argued that Bill C-219 was removing tax alleviations that the Budget Implementation Bill had introduced. The Speaker stated that Bill C-219 did not repeal any provisions of the *Income Tax Act* but was adding provisions dealing with deductions. As such, no increases in taxation were proposed and the bill was properly before the House.²¹

The Removal of Existing Tax Alleviations

Where tax laws already provide exemptions from the normal levels of taxation for specific classes of individuals, a proposal to remove an existing tax exemption would result in more taxes being paid by those individuals. Consequently, a motion of ways and means would be required. Some might argue that the removal of an exemption only returns the exempted class of individuals to the position where they would have to pay normal rates of taxation (i.e., they would not be subject to higher-than-normal rates of tax). However, any increase in taxation for any class of individual results in more monies being deposited in the CRF and consequently the adoption of a ways and means motion is necessary.

In 2002 and 2004, points of order were raised concerning Income Tax Bills C-252 and C-472 which sought to remove an exemption for businesses where

they were permitted to deduct fines as an expense for income tax purposes. The effect would be to increase taxes for businesses affected. Since this bill was not preceded by the adoption of a ways and means motion, the Speaker declared the proceedings null and void.²²

In 2002, a point of order was raised concerning Income Tax Bill C-317 which sought to remove an exemption for elected provincial officials for expenses related to their duties. As this would result in an increase in taxation, the Speaker ruled the proceedings null and void since it had not been preceded by the adoption of a ways and means motion.²³

In 2007, a point of order was raised concerning Income Tax Bill C-418 which sought to prevent corporations from deducting as a business expense any salary paid to an employee or officer in excess of \$1 million. As this would result in an increase for corporations affected, the Speaker ruled the proceedings null and void since the bill had not been preceded by the adoption of a ways and means motion.²⁴

In 2010, a point of order was raised concerning Income Tax Bill C-470 which sought to revoke the charitable status of organizations that paid in excess of \$250,000 to any of its executives or employees. It was claimed that this would extend the incidence of a tax. After considering the matter, the Speaker concluded that the bill was actually adding a further reason for the Minister to consider when deciding whether to revoke the registration of a charitable organization. The Speaker ruled that the bill “seeks to provide a new criterion that would allow the minister to determine into which existing class of taxpayer an organization falls. The existing tax regimes and the existing tax rates are not affected. Accordingly, I rule that Bill C-470 does not extend the incidence of a tax to a new class of taxpayer and therefore need not be preceded by a ways and means motion.”²⁵

Private Members Tax initiatives

Since the financial initiative to introduce taxes rests with the Crown, the role of private Members to introduce and debate their own taxation proposals is severely limited. This limitation is in stark contrast to the rules of the House of Commons regarding spending. Those rules permit private Members to introduce a bill containing spending provisions and have it debated in the legislative process until the moment of third reading. If by that time a royal recommendation (from the Crown) has not been attached to the bill, the Speaker will decline to put the question on third reading. Under this process, the financial initiative of the Crown is respected and the proposal is at least

debated in the House. However, the rules regarding taxation preclude any form of debate for such private Members bills.

If a private Members bill proposing an increase in the incidence of taxation is introduced and a point of order is raised, the Speaker will order that the bill be removed from consideration immediately since it was not first preceded by the adoption of a ways and means motion. There is no opportunity to debate such a legislative initiative. This discrepancy raises the question whether it would be appropriate for the rules to be amended to provide the same amount of debate for tax bills as for bill involving spending. At the end of the legislative process, the financial initiative of the Crown will still be maintained but the role of the House of Commons as a forum for debate will have been enhanced.

The one area of taxation that is open to private Members' initiatives is where tax alleviations are contemplated. As already explained, bills which propose the alleviation of a tax do not require the adoption of a ways and means motion since the initiative of the Crown to *impose* a tax is not involved. Therefore, any private Member's bill proposing tax credits or reductions could proceed through the legislative process and become adopted by the House of Commons and the Senate. However, the impact that such private Members bills could have on the management of government finances is potentially very serious.

In 2009 and 2010, the Parliamentary Budget Office (PBO) was asked to perform cost estimates for three private Members' bills alleviating taxation. Income Tax Bill C-288 proposed to provide a tax credit of up to \$8,000 for recent graduates that work in designated regions of the country, within 24 months of matriculation. Depending on the take-up by graduates and the number of designated regions, the PBO estimated it would cost between \$180 and \$600 million per annum in foregone revenues.²⁶ Income Tax Bill C-371 proposed to provide a tax incentive to encourage landlords to invest in the purchase of low-cost residential rental property. The PBO estimated that this would result in foregone federal revenues in the neighbourhood of several \$100,000 to several million dollars depending on the definition of “low-cost”.²⁷ Income Tax Bill C-466 proposed to exempt certain types of employee transportation benefits from income tax. The PBO concluded that “Drawing on publicly available data, peer-reviewed publications and consultations with knowledgeable parties, it is estimated that the proposed legislative amendments are likely to result in foregone annual revenues to the federal government of between \$10 million and

\$180 million, following a five-year implementation period.”²⁸

While such private Members’ initiatives do not offend the financial initiative of the Crown to increase taxation, they could severely disrupt or unbalance a government’s ability to manage its fiscal programme. Imagine if a private Members bill were adopted to reduce the Goods and Services Tax to one percent. Such an example illustrates the predicament that a government could face with regard to such private Members bills.

Notes

1. For detailed information regarding the rules and practices of the Canadian House of Commons relating to ways and means, see *House of Commons Procedure and Practice*, 2nd Edition, Chapter 18.
2. House of Commons Standing Order 84.
3. House of Commons Standing Order 83(4) states ‘The adoption of any Ways and Means motion shall be an order to bring in a bill or bills based on the provisions of any such motion....’
4. House of Commons, *Journals*, December 18, 1974, pp. 224-5.
5. *Ibid.*, July 14, 1975, pp. 706-7.
6. *Ibid.*, May 19, 1978, pp. 784-6.
7. *House of Commons Debates*, January 29, 1990, pp. 7546-9.
8. House of Commons, *Debates*, March 13, 2008, pp. 4109-10.
9. *Globe and Mail*, July 14, 2010.
10. Senate, National Finance Committee, Sixth Report, tabled June 11, 2009.
11. See *Ottawa Citizen*, May 3, 2010, ‘Parliament gave away oversight of borrowing by mistake: Senators’, article by Kathryn May.
12. Michael H. Wilson, *The Canadian Budgetary Process: Proposals for Improvement*, Department of Finance, May 1985, pp. 15-22.
13. House of Commons, Standing Committee on Procedure and Organization, Report, December 17, 1985.
14. Auditor General of Canada, Annual Report 1991, Chapter 2, sections 2.69 to 2.92.
15. Canadian Chamber of Commerce, *Policy Resolutions 2008-2009*, p. 32.
16. House of Commons, *Debates*, Bill S-13: December 2, 1998, pp. 10788-91; Bill S-15: June 12, 2001, pp. 5024-7. It is interesting to note that the Speaker of the Senate came to a different conclusion concerning Bill S-13 and whether it constituted a tax. See *Journals of the Senate*, April 2, 1998, pp. 577-82.
17. House of Commons, *Debates*, November 27, 2001, pp. 7572-4.
18. *Ibid.*, October 16, 1995, pp. 15409-10.
19. *Ibid.*, June 7, 2005, p. 6741.
20. *Ibid.*, November 1, 2006.
21. *Ibid.*, February 1, 2008, p. 2480.
22. *Ibid.*, October 24, 2002, p. 889 (Bill C-252); March 11, 2004, p. 1366 (Bill C-472).
23. *Ibid.*, November 22, 2002, pp. 1808-9.
24. *Ibid.*, November 28, 2007, pp. 1463-4.
25. *Ibid.*, March 15, 2010, pp. 419-20.
26. *An Assessment of Cost Estimates Presented for Bill C-288: An Act to Amend the Income Tax Act (tax credit for new graduates working in designated regions)*, Public Budget Office, Ottawa, November 24, 2009: http://www2.parl.gc.ca/sites/pbo-dpb/documents/C-288_Final.pdf
27. *Cost Estimate of Bill C-371: An Act to Amend the Income Tax Act (low-cost residential rental property)*, Public Budget Office, Ottawa, September 4, 2009: http://www2.parl.gc.ca/sites/pbo-dpb/documents/C-371_Final_EN.pdf
28. *A Cost Estimate of Proposed Amendments to the Income Tax Act to Exempt Certain Employer-Provided Transportation Benefits from Taxable Income*, Public Budget Office, Ottawa, February 4, 2010: http://www2.parl.gc.ca/sites/pbo-dpb/documents/Costing_C-466_EN.pdf