

fee that contravenes this scrutiny principle will be reported to both Houses as amounting to an unusual and unexpected use of power. While the legality of such an instrument may also be open to question, the Joint Committee believes that in any such case, the offending instrument should be reported to the Houses under the Joint Committee's scrutiny criterion No. 11 ("unusual or unexpected use of the powers conferred by the enabling legislation") so as to emphasize the constitutional impropriety of the instrument. Your Committee considers that this approach is justified by the need to respect the important distinction between a fee and a tax.

It is a rule of our constitution that no moneys are to be levied for or to the use of the Crown except by grant of Parliament. Thus, while the imposition of either a fee or a tax requires legislative authorization, a tax is a compulsory payment imposed on the subject in order to raise revenues for a public purpose whereas a fee is a charge prescribed for the services of a public officer or for the grant or recognition of a privilege or right. Although Parliament will frequently empower the Governor in Council, a minister or some other delegate to prescribe a fee payable by those to whom a service is provided or a privilege or right is granted or recognized, it rarely delegates its authority to impose a tax. Indeed, there is a presumption against such a delegation of authority, and the courts have held that specific and unequivocal language is required before one can conclude that Parliament has delegated its authority to impose taxes. The right of Parliament to impose taxes is to be jealously guarded, and those charged with the parliamentary scrutiny of delegated legislation have a responsibility to be vigilant in ensuring that when Parliament delegates to the Executive the authority to prescribe a fee, that authority is not used to collect a tax. When, as in the case of the *Central Registry of Divorce Proceedings Fee Order*, the amount of a fee payable for services provided by public officers is fixed at a level that greatly exceeds the costs of providing those services, there is a blurring of the distinction between a fee and a tax. Your Committee considers that an exercise of the authority to prescribe a fee which has this result is improper as it intrudes on the exclusive constitutional right of members of Parliament to consent to the imposition of taxes.

A copy of the relevant *Minutes of Proceedings and Evidence* (Issue No. 8, Third Session, Thirty-fourth Parliament) is tabled in the House of Commons.

Respectfully submitted,

Senator Normand Grimard

Derek Lee, M.P.

*Joint Chairmen*