

of the various pension plans would require an act of Parliament irrespective of future changes in income tax requirements.

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Beyond the many promises the minister has made not to de-index pensions, or alter contribution levels, according to the legal opinion he received, the government could not legally make regulations to de-index pensions or change benefits. However, in the first opinion provided to the minister by R.R. Walsh, General Legislative Counsel, a different scenario was raised.

The General Legislative Counsel wrote, and I quote from documents prepared by him in respect to the regulation-making powers for Income Tax Act compliance:

It is not clear that amendment of PSSA/CFSA/RCMPA would be required to reduce or remove indexation as a permissible benefit . . . An amendment of the Income Tax Regulations by the Governor in Council (without the involvement of Parliament), made applicable to all pension plans, might be sufficient to reduce or remove indexation without amendment of the statutes governing the plans.

The scheme of Bill C-55 is to amend plans in order to make them comply with the Income Tax Act. The government wants to de-index and, thus, has to amend, since it is being established that the plans must comply with the income tax regulations. The income tax regulations must be amended to de-index, for example, with the result that changes will have been made by regulation.

Senator Bosa: That sounds complicated.

Senator Frith: Does that sound complicated, honourable senators? I must say it again, because it should not sound complicated. Senator Bosa says it does sound complicated.

The problem is that we do not want it to be possible to de-index your pension by regulation, senator. The resultant hope is that, if your pension is to be de-indexed, it will have to go back to Parliament, where it will receive debate and study in committee in both houses.

However, the government does not want to have to do that. The government wants to de-index your pension without having to go back to Parliament. What the General Legislative Counsel is saying is that it would be possible for the government to do that, because the government is establishing, in what is before us, the need to have pension plans comply with income tax regulations. Instead of amending the plan, it simply amends the regulations, the regulations amend the plan and away goes indexation.

It does get a bit more complicated as it applies to this act, but that is the concern that was expressed by all the citizens and that was the information and opinion given first by the General Legislative Counsel, Mr. R.R. Walsh.

[Senator Frith.]

It appears that our fears may be justified in that the government would have the ability to by-pass Parliament in making changes to pension plans by regulation. As honourable senators might expect, in a second letter to clarify his opinion, Mr. Walsh stated that the amendments made to the income tax regulations would only be applicable to pension plans for income tax purposes and that such an amendment would not have the effect of removing or reducing indexation as a benefit under the Public Service Superannuation Act, the Canada Forces Superannuation Act or the RCMP Superannuation Act. He went on to say that the removal or reduction of the benefits provided for under any of these acts could only be effected by an amendment to the relative statute by Parliament.

However, I found that less than fully reassuring, because we know the extent to which significant changes can be made by making changes to income tax regulations. For example, we know that something like the most widely subscribed to pension plan in Canada, the Canada Pension Plan, can be wiped out by dealing with it through income tax changes. The government did not repeal the Canada Pension Plan. Nor did it abolish it. It clawed back from certain citizens who had contributed to the plan, and effectively repealed it by changing the Income Tax Act. That was the famous claw-back.

I remember reading a short story by Sir Walter Scott on the subject of imprisonment for debt. In it there was a small debate going on between a learned lawyer and a farmer about the fact that in British law at the time there was no such thing as imprisonment for debt. The lawyer tried to explain that it was not imprisonment for debt, that if one were in debt the Queen sent a notice stating that the debt should be paid. Therefore, what one was imprisoned for was disobeying the Queen, not being in debt.

I remember the farmer saying something like, "Well, it still sounds like imprisonment for debt to me." The lawyer answered by saying, "But you fail to perceive the elegance of the legal fiction."

That is what in effect can be done with the Income Tax Act. The government may say, "It is true you have the Canada Pension Plan, sir or madam, but because you are in a certain income tax bracket we will take it back every month. You still have it, you understand. If you complain, you fail to perceive the elegance of the legal fiction."

Senator Murray: That does not apply to the Canada Pension Plan. You are talking about the Old Age Security.

Senator Frith: Quite right, and I thank you. That makes it worse. I am glad you corrected that, Senator Murray, and I hope the record shows it.

Senator Murray: It takes federal-provincial agreement to make any changes to the CPP.

Senator Frith: Apparently, you fail to perceive the point also.

Senator Murray: No, I do not.