



## **BILL S-15: THE TOBACCO YOUTH PROTECTION ACT**

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## **BILL S-15: THE TOBACCO YOUTH PROTECTION ACT**

### **BACKGROUND**

#### **A. Bill C-71: the *Tobacco Act***

The *Tobacco Products Control Act (TPCA)*, which received Royal Assent in June 1988, was the first comprehensive legislative response to the ever-increasing health concerns surrounding the use of tobacco products. It provided the authority for:

- banning all tobacco advertising;
- imposing restrictions on and the gradual phasing out of promotional activities and sponsorship by tobacco manufacturers; and
- requiring more explicit health warnings on tobacco product packages.

In September 1995, the Supreme Court of Canada ruled that Parliament could legislate with respect to the advertising and promotion of tobacco products under the criminal law power, which includes matters of public health. However, the court also held that the restrictions on advertising and promotion under the *TPCA* violated the freedom of expression of the affected tobacco companies, and were invalid. In December 1995, the Minister of Health released *Tobacco Control: A Blueprint to Protect the Health of Canadians*, outlining the government's plans for new legislation.

In December 1996, the Minister of Health introduced Bill C-71, An Act to regulate the manufacture, sale, labelling and promotion of tobacco products. More generally known as the Tobacco Act, the bill provided the authority to regulate:

- the composition of tobacco products;
- the access of young people to tobacco products;
- tobacco labelling; and
- tobacco product promotion.

However, the debate over the effect that Bill C-71's proposed restrictions would have on sponsorship funding for art, cultural and sports organizations was particularly intense. This resulted in an amendment providing a transitional period of one year before the main sponsorship provisions came into effect, in the hope that these organizations could find alternative funding. The amendment delayed the coming into force of the sponsorship restrictions until 1 October 1998.

In the Senate, Bill C-71 was referred to the Standing Senate Committee on Legal and Constitutional Affairs. The Committee's report, presented on 15 April 1997,<sup>(1)</sup> contained several recommendations. Noting that "legislation such as Bill C-71 is only one aspect to the development of an integrated approach to prevent young people from starting to smoke," the Committee recommended the development of programs targeted at youth, developed by young people and focused on youth helping youth. The Committee also recommended that the government make use of other resources in the community, including the tobacco industry itself, to develop and fund programs targeted at young persons. Finally, the Committee recommended interim funding for the artistic, cultural and sporting groups dependent upon tobacco company sponsorship, as well as independent studies on such matters as the impact of advertising and promotional activities on both brand preference and new markets.

During the third reading debate, various amendments were proposed with a view to strengthening Bill C-71. Senator Colin Kenny proposed an amendment which would have set up a Tobacco Manufacturers Community Responsibility Fund "to assist the Canadian tobacco manufacturing industry to demonstrate its commitment to the health and welfare of Canadians, and of young persons in particular." Senator Kenny described the rationale behind his amendment as follows:

My first concern is that there is insufficient provision in the legislation to actually get young people off tobacco. The bill focuses on a great many useful things, but it does not focus on the very complex things that go through an adolescent's mind relating to self-identity, peer pressure, role models and rebellion. These topics were related by the experts who came before the committee, and they are very important to solving the core of this problem.

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(1) See the April 1997 entry of Appendix 1 for the full report.

The core of this problem is that we know 40,000 Canadians are dying each year. Who are the tobacco companies targeting to replace those 40,000 people? They are replacing them from the youth of Canada. My concern, then, is to set up something like a tobacco manufacturers community responsibility fund in order to provide resources to get at this specific problem.

My second concern is that the bill does not provide adequate transition measures and adequate help for those who are dependent on tobacco money to put on their events. I am talking about the arts groups, the sports groups and the cultural groups which exist across the country.

...

What I am bringing forward for your consideration, honourable senators, is a productive way for us to assist the tobacco manufacturers in getting our youth off tobacco. I am also bringing forward a proposal for your consideration to provide for a transitional fund that would allow the sports, arts and culture groups to continue to be funded.

#### **B. Bill S-13: The Tobacco Industry Responsibility Act**

The concept introduced in Senator Kenny's proposed amendment evolved into Bill S-13, which he introduced in the Senate on 26 February 1998. Originally, Bill S-13 had three objectives:

- to create a non-profit foundation (Part I, clauses 4-35);
- to establish a levy which would financially support that foundation (Part II, clauses 36-44); and
- to foster a smooth transition for the arts, cultural and sports communities in Canada from dependence upon tobacco industry sponsorship, and of tobacco farmers to other viable crops or farm industry (Part III, clauses 45-52).

The bill had bi-partisan support, having been seconded by Senator Nolin.

The creation of an independent non-governmental foundation was a response to the perception that the tobacco industry wanted to help stop under-age smoking, but did not have the credibility within the community to be effective. The levy of 50 cents per carton was based on the concept of an industry levy for industry purposes, and should have raised at least \$120 million annually for the foundation.

The two transitional funds – one for the arts/cultural/sports community and one for tobacco farmers – would have received half of the revenues from the levy in the first year, but would have been reduced by 20% of the original sum for each of the next four years. By the sixth year, all funds raised by the levy would have been directed exclusively towards combating the use of tobacco by young people, defined as persons under 18 years of age.

Clause 3 set out the purpose of the bill, which was “to enable and assist the Canadian tobacco industry to carry out its publicly-stated industry objective of reducing the use of tobacco products by young persons throughout Canada.” Bill S-13 did not anticipate continued Ministerial involvement, except for the right of the Minister of Health (“the Minister”) to appoint members to the Canadian Tobacco Industry Community Responsibility Foundation and to establish a regulatory framework for payment of the levy.

This somewhat innovative approach was crucial to the constitutionality of the bill. Had the bill proposed that the government directly collect and administer the funds, rather than creating an industry levy (which in this case would be paid to an independent foundation), it would have resembled a taxation measure. Section 53 of the *Constitution Act, 1867* states that bills “for imposing any Tax . . . shall originate in the House of Commons”, making it unconstitutional to begin a taxation bill in the Senate.

The remainder of clause 3 sets out why the legislation was in the interests of both society in general, and the tobacco industry in particular:

- under-age smokers become addicted to tobacco, and suffer the numerous health consequences of its use;
- the industry cannot successfully address under-age smoking because of a lack of credibility; and
- the tobacco industry may well face even further restrictions on the manufacture and sale of tobacco if under-age smoking is not checked.

The *Summary* of the bill noted that Bill S-13 “is complementary to the *Tobacco Act*” and clause 3(2) emphasized this point:

[Bill S-13] complements the general legislative response to the national public health problem of substantial and pressing concern addressed in the *Tobacco Act* by coordinating the private and public sectors in a national effort to address the problem of the use of tobacco products by young persons across Canada.

These references to national coordination and “national effort” suggest an attempt to situate Parliament’s power to pass the bill in the “national concern” branch of the “peace, order and good government” (POGG) power (*Constitution Act, 1867*, opening words of section 91). The Supreme Court of Canada has clearly stated that Parliament has jurisdiction over tobacco use, at least through the criminal law power which includes a public health aspect. However, it is less certain whether federal legislators can also invoke the broader “national concern” or “national dimension” branch of POGG on the basis that tobacco use is an important national problem that can only be dealt with at the national level. Those interested in increased regulation of tobacco use would like to see the applicability of the POGG power confirmed, and may have felt that the courts would be more sympathetic to such an argument when the legislative objective is restricted to the prevention of under-age smoking.

Part I of Bill S-13 would have established the Canadian Tobacco Industry Community Responsibility Foundation as an independent foundation. The overall objective of the foundation would have been to protect young people from smoking and the consequent health risks. Among the more specific objectives were: developing a multi-year strategy to combat the use of tobacco products by young people; monitoring the use of tobacco in Canada; and sponsoring research into the use of tobacco products and how young people can be discouraged from using them. The Foundation was also directed to develop and distribute educational and communication tools to prevent tobacco use by young people, and to sponsor group activities, including among peer groups, for the same purpose. The single most important objective was that of receiving and spending the funds raised by the levy imposed by the bill, although the Foundation could also have received funds from other sources. In dispersing funds, the Foundation was to fund health groups, other organizations and persons, and/or any activity that could prevent tobacco use by young persons.



Part II of Bill S-13 would have set up a levy for industry purposes of \$0.0025 per cigarette, \$0.0025 per tobacco stick, \$0.0250 per cigar and \$0.0025 per gram of tobacco. The levy would have fallen due when a tobacco product was sold, transferred or otherwise disposed of. Because it could only be assessed once for each product, the manufacturers would have been largely responsible for collecting the levy.

Part III of Bill S-13, as introduced, would have required the Foundation to set up two subsidiary corporations to provide funding to:

- the non-profit arts and the arts, cultural and sport industries; and
- tobacco growers who suffer a permanent reduction in their tobacco production;

for a transitional period of five years where a loss of revenue could be established.

In its first financial year, the Foundation would have been required to transfer 40% of the amount raised by the levy to the subsidiary corporation dealing with the arts/cultural/sports communities, and 10% of the levy to the subsidiary corporation dealing with tobacco growers. These two amounts would have decreased by 20% of the original amount for each of the next five years. Thus, by year five, the arts/cultural/sports fund would have been 8% of the total levy, and the tobacco growers fund would have been 2%.

At the start of the second reading debate on Bill S-13, on 17 March 1998, a point of order was raised as to whether Bill S-13 imposed any “tax or impost” or appropriated public revenue, in which case it could only originate in the House of Commons under section 53 of the *Constitution Act, 1867*. As well, on 25 March, Senator Kinsella raised the question of whether Bill S-13 might be a private bill rather than a public one.

On 2 April 1998, the Speaker gave his ruling that Bill S-13 was a public bill dealing with a levy rather than a tax, and properly before the Senate. He noted that matters are presumed to be in order, except where the contrary is clearly established.

On the question of whether Bill S-13 was indeed a private bill, the Speaker noted that the bill would affect public policy insofar as it was aimed at the reduction of smoking by young people. Additionally, the magnitude of the area covered by the bill and the multiplicity of interests involved suggest that it was a public bill.

As for the issue of whether the levy scheme established by the bill constitutes a tax, the Speaker first noted the rule that the Speaker does not rule on questions of law. On a

point of order, however, the Speaker can assess what the bill declares itself to be on its face. In this case, Bill S-13 spoke of a levy to meet an industry purpose rather than a tax, even though the industry purpose would also have a public benefit. Moreover, the funds collected would not have formed any part of government revenue or entered the Consolidated Fund.

Bill S-13 was referred to the Standing Senate Committee on Social Affairs, Science and Technology and reported back on 14 May 1998.

### **C. Bill C-42: An Act to Amend the Tobacco Act (Bill C-71)**

On 3 June 1998, Bill C-42: An Act to amend the Tobacco Act, was introduced in the House of Commons. The bill, which had only five clauses, was designed to extend the transitional period for the introduction of tobacco sponsorship restrictions. In its final form, Bill C-71 provided for a transitional period of one year after the proclamation of the Act before the main sponsorship provisions came into effect. This would have given the affected organizations until 1 October 1998 to find alternative funding.

Bill C-42 proposed that sponsorships that existed as of 25 April 1997, the date that most of the *Tobacco Act* came into force, would not be subject to any restrictions for a further two years, or until 1 October 2000. On-site sponsorship could continue for the next three years subject to some restrictions on promotional material. After this five-year period, the promotion of tobacco sponsorships would be totally prohibited as of 1 October 2003.

As a consequence of Bill C-42, Bill S-13 was amended at third reading in the Senate to remove the transitional provisions. Because the government had decided to defer the sponsorship ban for up to five years, it was no longer necessary to provide transitional support to the arts, cultural and sport communities to compensate for lost sponsorships.<sup>(2)</sup>

On 10 June 1998, Bill S-13 passed the Senate. However, in December 1998, Bill S-13 was ruled out of order in the House of Commons because the Speaker decided that it

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(2) See 3rd reading debate on Bill C-13, *Hansard*, 10 June 1998.

Senator Nolin You will recall that one of the shortcomings we identified last year in examining Bill C-71 was the whole issue surrounding tobacco company sponsorships. This led to our including in Bill S-13 a series of measures to assist cultural and sports organizations over a five-year period to make up for the loss of tobacco company support.

Since we looked at the bill in committee, the government has decided to introduce an amendment to Bill C-71, to defer the sponsorship ban for five years. We must therefore amend Bill S-13 accordingly.

involved a tax and not a levy. Section 53 of the *Constitution Act, 1867*, requires that a bill “for appropriating any part of the public revenue, or for imposing any tax or impost, shall originate in the House of Commons.”

## **BILL S-20 and BILL S-15: THE TOBACCO YOUTH PROTECTION ACT**

Bill S-20 the Tobacco Youth Protection Act, was the successor Bill to S-13. Introduced in the 2<sup>nd</sup> Session of the 36<sup>th</sup> Parliament, Bill S-20 was passed by the Senate on 5 October 2000. The Bill died on the Order Paper when Parliament was dissolved later that month, but was reintroduced in the 1<sup>st</sup> Session of the 37<sup>th</sup> Parliament, on 7 February 2001, as Bill S-15, the Tobacco Youth Protection Act.

Bill S-15 differs from the original Bill S-13 in three significant ways: clarifying that the bill is intended to introduce an industry levy rather than a taxation measure; tightening up the administrative provisions surrounding the creation of a Foundation, thereby considerably enhancing the accountability and transparency of the proposed Foundation; and tripling the amount of the proposed levy.<sup>(3)</sup> The first category of change – clarifying that the bill is intended to introduce a levy for industry purposes – appears designed to provide a firmer base for the argument that Bill S-15 does not impose a tax, and to give the Speaker of the House of Commons room to alter his ruling should he so wish.<sup>(4)</sup>

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(3) See “Tobacco Youth Protection Act: Bill S-20”, from the website of Senator Kenny, for a description of the changes; [www.sen.parl.gc.ca/ckenny/typa.htm](http://www.sen.parl.gc.ca/ckenny/typa.htm)

(4) See Appendix 4, 2nd reading debate on Bill S-20, 9 May 2000:

Senator Nolin Bill S-13 was not passed by the House of Commons. By correcting it, we ensure that Bill S-20 will not suffer the same fate.

Bill S-20 amends S-13 in order to ensure that the Speaker in the other place accepts it, not as a measure that is establishing a tax, but rather one that involves a levy.

In committee we will have the time to explain to the members why Bill S-20 is appropriate. There are three reasons why it is acceptable. According to the ruling by the Speaker of the Other Place, the preamble was what was involved. There have been legal rulings to that effect. The preamble sets out clearly why the tobacco industry, which is currently out of public favour, has no credibility to defend, promote, or counteract the way youth smoking is developing, even if it wished to. A number of industry spokespersons testified on this, but they had no credibility whatsoever. This is why it is important for there to be a fund available if such an objective is to be attained.

Bill S-20 improves on Bill S-13. It should be approved by the other place, because clause 3 of the bill establishes that a distinction must be made between the reason for establishing the Foundation – the program of education for

The difference between a taxation measure and a levy is not always clear. Peter Hogg, in *Constitutional Law of Canada* notes, for example, that “marketing levies” – designed either to defray the cost of administering a marketing scheme or to equalize the returns to producers – are not considered taxes.<sup>(5)</sup> He also notes that a levy, or regulatory charge, will have to be based on some valid head of regulatory power.

Although impositions are generally not considered taxes unless the proceeds are paid into the Consolidated Revenue Fund, the Speaker cited Erskine May to the effect that “money raised by statutory imposition [that] is not to be channelled to the Consolidated Fund but is nonetheless to be used for the benefit of the public at large or for purposes which might otherwise have required to be financed from the Consolidated Fund” is likely to be considered a tax or impost.<sup>(6)</sup>

The Speaker seemed to accept that Bill S-13 would not be a taxation measure if it imposed a charge “primarily for a purpose beneficial to the tobacco industry.” He concluded, however, that the purpose of the bill was “a matter of public policy, namely, the health of young Canadians and not, as many members have argued, a matter of benefit to the tobacco industry.” He also found that it strained credulity to claim that the objective of reducing the use of tobacco products by young persons is a benefit to the tobacco industry.

However ingenious the framers of Bill S-13 have been in drafting and structuring the bill to resemble an industry purpose, one that perhaps would enhance the standing in our society of the tobacco industry, Bill S-13 has as its main object the reduction and elimination of smoking. This is a matter of public health policy and it is by virtue of this public purpose that I have concluded that the charge Bill S-13 imposes on the industry is a tax.

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(cont'd)

youth – and the bill. That may seem similar, but they are two completely different things. Perhaps they were not properly understood by the Speaker of the other place.

Clause 35 of the bill establishes the benefits for the industry. It sets out three reasons that, according to the knowledgeable counsel who examined the matter, would indicate that Bill S-20 should not meet the same fate as Bill S-13. If it receives the approval of this house, when it is under examination in the other place, we have every reason to believe that it will be passed.

(5) Carswell, looseleaf edition, section 30.10(b).

(6) See Appendix 4, Speaker’s Ruling, *Hansard*, 2 December 1998, p. 3.

Several significant changes between S-13 and S-15 relate to the Speaker's ruling that S-13 was a taxation measure and not a levy. A lengthy preamble has been added to establish that it would be in the industry's interest to prevent youth from smoking, and that the industry does not have the credibility to undertake such a program on its own. As well, a new Part III, *Industry Benefits*, has been added as section 34, declaring the "benefits of this Act to the Canadian tobacco industry." These benefits include the containment of an illegal market for industry products, and some mitigation of the damage to the consequent reputation of the industry.

Many of the other differences between Bill S-13 and Bill S-15 reflect technical changes or drafting improvements. The short title of Bill S-15 is the Tobacco Youth Protection Act and the name of the Foundation established is the Canadian Anti-Smoking Youth Foundation. The short title of Bill S-13 was the Tobacco Industry Responsibility Act and, when the bill was first introduced, the Foundation was correspondingly named the Canadian Tobacco Industry Community Responsibility Foundation. However, when third reading of Bill S-13 began in early June 1998, Senator Wilbert Keon proposed a further amendment to change the name of the Foundation to the Canadian Anti-Smoking Youth Foundation on the grounds that the tobacco companies would otherwise be "getting a free ride on the backs of the poor unfortunate nicotine addicts who are paying the fare for this foundation."<sup>(7)</sup> The change in the short title of the bill and the name of the Foundation would seem to reflect a "tidying-up" of this amendment by reconciling the short title and the name of the Foundation.

Part I of Bill S-15 contains the interpretation and purpose sections. These are similar to the comparative sections in Bill S-13, although the purpose of the bill, laid out in clause 3 in both bills, has been considerably refined in Bill S-15. The purpose is now threefold:

- to assist the Canadian tobacco industry in attaining the objective, articulated to Parliament, of preventing the use of tobacco products by young people;
- to provide a framework for a national private-sector effort protecting youth against tobacco products that complements public-sector efforts; and
- to complement the general legislative response to a national public health problem of substantial and pressing concern addressed in the Tobacco Act.

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(7) See *Hansard*, 10 June 1998.

This redrafted provision would seem to emphasize that the purpose of Bill S-15 would be primarily to benefit the industry, and secondarily to complement – not replace – public-sector efforts to reduce youth smoking. The reference to a “substantial and pressing concern” suggests that the jurisdiction for the act would be grounded in the “national concern” branch of the “peace, order and good government” (POGG) power, rather than just the criminal law power.

Part II of Bill S-15 would establish the Canadian Tobacco Youth Protection Foundation. The objectives of the foundation would be substantially the same as in Bill S-13, although a new objective has been added: to examine the existing models for tobacco control in North America and to develop a model to be applied in Canada. Also new are several provisions to increase accountability. Clause 24, *Transparency*, would require that “the business and affairs to the Foundation shall be generally conducted in a transparent manner that is open to public scrutiny,” and sets out several detailed requirements. Clause 31, *Programs*, sets out proposed evaluation and contracting requirements when programs are to be funded by the Foundation.

Additionally, Part VI, clause 44, would require the Auditor General to annually audit the Foundation (audit costs to be borne by the Foundation). Part VIII, clause 46, would require the Minister to order an independent review of both the Act and the Foundation five years after the Act comes into force, and to lay the review report before the Houses of Parliament.

Part IV of the bill establishes the levy for industry purposes. In Bill S-15, the levy would be three times as great as in Bill S-13: \$0.0075 per cigarette, tobacco stick or gram of tobacco, and \$0.0750 per cigar.

Another important difference is that Bill S-15 and its predecessor S-20 has the support of the major tobacco companies:

In June, the tobacco companies surprised everyone by appearing before a Senate committee to support the bill. In recent days, Imperial Tobacco and JTI-Macdonald have bought ads in major newspapers to sell their position.

The JTI-Macdonald ad describes S-20 as “one of the best pieces of legislation ever designed” to curb teen smoking.<sup>(8)</sup>

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(8) Mark Kennedy, “Senator’s bill on tobacco levy embarrassing government,” *Ottawa Citizen*, 25 September 2000, p. A11.

Overall, the main difficulty facing the bill would seem to be the Speaker's statements regarding "public policy." Although all public bills involve a degree of public policy, the argument will presumably be made that regardless of any industry benefits, educating youth on the dangers of tobacco is primarily a public policy function, which should be dealt with by the government and financed out of the Consolidated Fund. Moreover, there may well be concern with the precedent that Bill S-15 would set. If it were to be decided that Bill S-15 does not impose a tax, then similar bills could presumably be introduced by members in the House of Commons without a Ways and Means motion.

Tobacco raises a specific problem, because it is widely accepted that there must be a ceiling on cigarette prices above which smuggling will re-commence. Therefore, the hundreds of millions of dollars that would be raised by Bill S-15 could well restrict the government's own taxing room.

Finally, there may well be a concern that, whether it is a levy or a tax, Bill S-15 looks very much like a "dedicated" levy or tax. Although there are undoubtedly many in the health community who enthusiastically back the concept of a stable income for a Foundation whose purpose is to stop youth smoking, governments have traditionally had concerns about losing their flexibility to allocate funding to the priorities that arise on a budget-to-budget basis.

## **APPENDICES**

### **Appendix 1: Chronology**



## Chronology of Events

1988 June	The <i>Tobacco Products Control Act</i> (TPCA), receives Royal Assent
1989 January	The <i>Tobacco Products Control Act</i> comes into force
1991	The Quebec Superior Court finds the TPCA invalid
1993	The Quebec Court of Appeal upholds the constitutional validity of the TPCA
1995 September	The Supreme Court of Canada, by a 5-4 decision, finds that the TPCA violates the freedom of expression provisions of the <i>Canadian Charter of Rights and Freedoms</i> .
December	The Minister of Health releases <i>Tobacco Control: A Blueprint to Protect the Health of Canadians</i> .
1996 December	The Minister of Health introduces Bill C-71, the <i>Tobacco Act</i> .
1997 April 15	The Standing Senate Committee on Legal and Constitutional Affairs reports back Bill C-71 without amendment, but with the recommendation that programs be developed targeted at preventing young people from smoking. The Committee notes that the artistic, cultural and sporting groups now receiving monies from tobacco companies who sponsor their activities will need both public and private support over the next three to five years.
April 25	Bill C-71 receives Royal Assent, having been amended so that the sponsorship restrictions do not come into force until 1 October 1998.
1998 February	Bill S-13 receives first reading in the Senate.
April	The Speaker of the Senate rules that Bill S-13 is validly before the Senate, and the bill is referred to the Standing Senate Committee on Social Affairs, Science and Technology.
May	Bill S-13 is reported back to the Senate.
June 3	The Honourable Allan Rock, Minister of Health, introduces an amendment to the <i>Tobacco Act</i> (Bill C-42) extending the transitional period during which the sponsorship provisions will not apply to either 1 October 2000 or 1 October 2003, depending largely upon whether the promotion is on the site of the event being promoted.

- June 9

Third reading of Bill S-13 begins, with Senator Nolin, the co-sponsor of the bill, moving an amendment to remove the sections on transitional funding for arts and sports groups.
- June 10

Bill S-13 passes the Senate.
- November

Bill S-13 receives first reading in the House of Commons
- December 2

The Speaker of the House of Commons rules that S-13 is not properly before the House, and first reading proceedings are null and void.
- 2000

April 5

Bill S-20, the *Tobacco Youth Protection Act*, is introduced in the Senate.
- May 9

Bill S-20 is referred to the Standing Senate Committee on Energy, the Environment and Natural Resources.
- June 8

When the presidents of three tobacco companies appear before the Committee, two out of the three support Bill S-20.
- October 5

Bill S-20 passed by the Senate.
- 2001

February 7

Bill S-15, the *Tobacco Youth Protection Act*, is introduced in the Senate.

**Appendix 2:**

**24<sup>th</sup> Report of the Standing Senate Committee on Legal and Constitutional Affairs,  
15 April 1997 [Bill C-71: The Tobacco Act]**

**24<sup>th</sup> Report of the Standing Senate Committee  
on Legal and Constitutional Affairs  
15 April 1997  
[Bill C-71, the *Tobacco Act*]**

**Report of Committee**

**Hon. Sharon Carstairs**, Chair of the Standing Senate Committee on Legal and Constitutional Affairs, presented the following report:

Tuesday, April 15, 1997

The Standing Senate Committee on Legal and Constitutional Affairs has the honour to present its

**TWENTY-FOURTH REPORT**

Your Committee, to which was referred Bill C-71, An Act to regulate the manufacture, sale, labelling and promotion of tobacco products, to make consequential amendments to another Act and to repeal certain Acts, has, in obedience to the Order of Reference of Thursday, March 13, 1997, examined the said Bill and now reports the same without amendment but with the following recommendations:

Smoking and its associated health problems are a significant health concern in Canada. However, it was clear to your Committee that there were no simple solutions.

Your Committee believes that legislation such as Bill C-71 is only one aspect to the development of an integrated approach to prevent young people from starting to smoke and/or encouraging others, both young and old, to quit smoking.

Your Committee is particularly interested in the development of programs targeted at youth. Your Committee recommends that such initiatives be motivational, comprehensive, continuous and holistic. Wherever possible, they should be developed by young people and focus on youth helping youth.

Your Committee is aware that not all revenues raised from the surtax on tobacco, now approximately \$65 million per annum, is directed toward such initiatives. Your Committee believes it is incumbent upon government to direct such revenues particularly to pre-teens and teenagers, to prevent the development of what, for many, will become a lifelong habit.

However, your Committee also recommends that the government make use of other resources in the community, including the tobacco industry itself, to develop and fund programs targeted at young persons.

In addition, your Committee strongly recommends that the government find, by public and private means, transitional funding to allow artistic, cultural and sporting groups to obtain alternatives to the monies now provided by tobacco companies to sponsor their activities.

These events are important to the people of Canada, and Canadians do not want them to cease. Your Committee recognizes that many groups have sacrificed and sought alternative funding over the past five years, and they should be congratulated. However, the urgency presently exists for those who accept tobacco sponsorship, and they will need both public and private support over the next three to five years.

Your Committee is of the view that the government must sponsor a number of important studies. These studies should be conducted by independent researchers, and they should be subject to peer review. First, a study should be undertaken to examine the value and consequences of reclassifying tobacco as a narcotic or noxious substance. The purpose of this study would be to enable government to make more effective regulations governing this product. A second study should be undertaken to determine the impact of advertising and promotional activities on both brand preference and new markets, in particular where young persons are concerned.

SHARON CARSTAIRS

*Chair*

**Appendix 3:**  
**Speaker's Ruling on Bill S-13, Senate, 2 April 1998**

**Speaker's Ruling on S-13**  
**Senate**  
**2 April 1998**

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**Tobacco Industry Responsibility Bill**

**Second Reading-Points of Order-Speaker's Ruling**

On the Order:

Motion of the Honourable Senator Kenny, seconded by the Honourable Senator Nolin, for the second reading of Bill S-13, to incorporate and to establish an industry levy to provide for the Canadian Tobacco Industry Community Responsibility Foundation.-(*Speaker's Ruling*).

**The Hon. the Speaker:** Honourable senators, on Tuesday, March 17, I stated that I would take under advisement the important points of order that had been raised with respect to Bill S-13, to incorporate and to establish an industry levy to provide for the Canadian Tobacco Industry Community Responsibility Foundation. Arguments were presented by several senators, and three separate documents were presented by Senator Kenny.

[*Translation*]

On March 25, with leave of the Senate, Senator Kinsella raised another question regarding the procedural acceptability of this bill. He asked the Chair to consider whether this bill might in fact be a private bill rather than a public one. I have reviewed all the statements made by senators who participated in the discussion on the point of order, studied the documents that were tabled and examined the bill itself. I am now prepared to rule on the point of order.

[*English*]

There are two fundamental questions that were first raised with respect to Bill S-13 on March 17. The first has to do with the possibility that the bill requires a Royal Recommendation. The second is whether the levy described in the bill is, in fact, a tax. If the answer to either of these questions is affirmative, that the bill does require a Royal Recommendation or that the bill does impose a tax, then this so-called "money bill" would not properly be before the Senate, since such a bill must originate in the House of Commons. Under such circumstances, the order for second reading of the bill would have to be discharged and the bill itself dropped from the Order Paper. In order to determine the answers to these questions, it is necessary to review the basic arguments.

[*Translation*]

Senator Lynch-Staunton, who brought this matter to the attention of the Senate when Bill S-13 was called for second reading, took no position on the matter. He raised the question simply for the purpose of clarification asking whether Bill S-13 was a money bill. A similar motive seems

to have prompted Senator Stollery to rise on a point of order after the second reading of the bill was formally moved. In presenting his case, Senator Stollery pointed to the obvious financial implications of the bill and suggested that this bill may indeed be a money bill. After citing sections 53 and 54 of the Constitution Act, 1867 as well as rule 81 of the *Rules of the Senate*, the senator noted that the bill appears to authorise the collection of money that is to be spent in pursuit of a public purpose. If such an assessment were accurate, the bill, in Senator Stollery's words, "must be introduced in the House of Commons by a minister, not in the Senate by a private member".

[*English*]

Speaking on behalf of the bill's procedural acceptability, Senator Kenny began by stating simply that Bill S-13 is not a money bill. He claimed that the financial provisions of the bill "do not appropriate any part of the public revenue and do not impose a tax." Developing his position in greater detail, he pointed to the clauses of the bill which indicate that the money raised through the levy is not public revenue. The senator noted, for example, that the collected funds received by the non-profit corporation established through the bill do not form any part of the Consolidated Revenue Fund, even if the corporation should be dissolved. He also cited a clause which states explicitly that the corporation is not an agent of the Crown, and its funds are not public funds.

As to whether the levy is a tax, Senator Kenny explained that, based on relevant citations of the 21st edition of *Erskine May Parliamentary Practice*, the levy described in the bill is not a tax, and as such is exempt from normal financial procedures including, presumably, the obligation to have this bill considered first in the House of Commons before the Senate.

(1450)

This is because, as he stated, the levy is being imposed exclusively on the tobacco industry and in pursuit of its own purposes even though there is a public benefit as well. In addition, he sought to buttress his case with references to legal opinions which concluded that the levy described in the bill was not a tax. Since it did not have as its primary purpose the collection of revenue for government purposes and because the levy was part of a regulatory scheme, the money collected through this bill was not a tax.

[*Translation*]

After Senator Kenny had spoken, several other senators made some comments. Senator Kinsella attempted to find out if the government had a position on this bill. This theme was subsequently raised again by Senator Murray after Senator Carstairs explained that because the bill was not sponsored by the government, it had taken no position on it. Instead, she said that the government was prepared to await the Speaker's decision. Senator Bryden then expressed some doubt about whether the levy was in fact a tax. Of greater concern to him was whether the bill was making the government some sort of ally of the tobacco industry. Speaking immediately after Senator Murray, Senator Gigantès suggested that the Senate should be more confident in exercising its own powers.



[*English*]

Finally, Senator Stewart maintained that the real question, in fact the only question, was whether the levy involves a tax or impost. As he put it, "If it is a tax or impost, it is out of order here. If it is not a tax or an impost, the question of a Royal Recommendation for an appropriation does not arise."

A week after the point of order was originally raised, Senator Kinsella obtained the leave of the Senate to reopen the matter in order to ask another question with respect to the procedural acceptability of Bill S-13. His question concerned whether this bill was a private bill or a public one. In stating his case, he noted that the corporation established by this bill was for the benefit of the tobacco industry. This being so, he then wondered if perhaps the industry should be petitioning for this bill, a required preliminary to the introduction of any private bill. He then referred to the four criteria listed in *Beauchesne's Parliamentary Rules and Forms* used to assess whether a bill should be viewed as private or public and suggested that the Chair take them into consideration. Senator Kinsella also took note of the fact that the bill conferred on the corporation certain powers, including the power to collect levies. Without reaching a firm conclusion, he indicated that he was suspicious that this bill is more in the nature of a private bill.

I want to thank all honourable senators who contributed their views to this point of order. As I already stated, I have taken the opportunity to review the arguments, the tabled documents and the bill itself since the point of order was first raised March 17.

Let me begin with this general proposition. It is my view that matters are presumed to be in order, except where the contrary is clearly established to be the case. This presumption suggests to me that the best policy for a speaker is to interpret the rules in favour of debate by senators, except where the matter to be debated is clearly out of order.

[*Translation*]

Addressing first the question that was raised by Senator Kinsella asking if Bill S-13 should be viewed as a private bill rather than a public one, I have taken his advice and looked closely at the four criteria spelled out in the sixth edition of *Beauchesne* at citation 1055. In addition, I have carefully reviewed the bill in light of the standard definition of a private bill. *Beauchesne*, in words closely based on *Erskine May*, states, at citation 1053, that "private legislation is legislation of a special kind for conferring particular powers or benefits on any person or body of persons, including individuals and private corporations, in excess of or in conflict with the general law." Proceedings on a private bill are initiated by a petition solicited by the parties interested in promoting the bill.

In this case, Senator Kinsella has suggested that, if this bill is indeed a private bill, it would be out of order since it was not introduced into the Senate through a petition. If, on the other hand, it is a public bill, no petition would be necessary. Senator Kinsella identifies the possible petitioners as the "tobacco industry." He does not, however, identify the individuals or corporations who should be the petitioners for the tobacco industry. Nor does the bill define the tobacco industry or specify who are its members.

[*English*]

Whatever the precise identity of the tobacco industry, the first question that must be decided is whether Bill S-13 is a private bill or a public bill.

Looking at the four criteria which would determine whether a private bill should be handled as a public bill, I am struck by two of the criteria which lead me to believe that Bill S-13 is properly a public bill. The first is the fact that the objects of the bill affect public policy. While it cannot be denied that the language of the bill highlights industry benefits, it is equally true that public policy is very much served by the bill insofar as it is aimed at the reduction of smoking by young people as is stated in subsection 3(2) of the bill. As well, the magnitude of the area covered by the bill and the multiplicity of the interests involved, which is the third criterion listed in Beauchesne, suggest to me that the bill is a public bill.

In the absence of any compelling reasons to assess the bill any other way, I am satisfied that Bill S-13 can proceed as a public bill.

Taking the first question that was raised on March 17, does the bill require a Royal Recommendation, I must conclude that it does not.

[*Translation*]

The fundamental purpose of the requirement for a Royal Recommendation is to limit the authority for appropriating money from the Consolidated Revenue Fund to the Government. In section 2 of the Financial Administration Act, "appropriation" is defined to mean "any authority of Parliament to pay money out of the Consolidated Revenue Fund"; "Consolidated Revenue Fund" is defined to mean "the aggregate of all public moneys that are on deposit at the credit of the Receiver General." Only Ministers can obtain the necessary approval from the Governor General for a Royal Recommendation to appropriate these funds. The Constitution stipulates that bills requiring or possessing a Royal Recommendation must originate in the House of Commons, a requirement enforced through rule 81 of the Senate.

With respect to Bill S-13, the money raised through the levy is to be collected by the Canadian Tobacco Industry Community Responsibility Foundation or its agent. The Foundation also disposes of the funds raised in the manner and for the purposes spelled out in the bill. While section 2 of the Financial Administration Act defines "public money" in part as "all money belonging to Canada," clause 33(1) of the bill expressly states that "the Foundation is not an agent of Her Majesty and its funds are not public funds of Canada." Moreover, no part of the bill suggests that any money need be appropriated from the CRF in order to implement any aspect of this bill.

Therefore, I can see no requirement for a Royal Recommendation for this bill.

[*English*]

The second question of March 17 has to do with whether or not the levy scheme established through this bill constitutes a tax. In answering this question, I am constrained by the rule that the Speaker does not rule on questions of law. Citation 168(5) of Beauchesne states that "The Speaker will not give a decision upon a constitutional question nor decide a question of law, though the same may be raised on a point of order or question of privilege."

What is within my authority, however, is the examination of the bill, in order to assess what it declares itself to be. I accepted the plain and ordinary meaning of its words and studied them to see if all the clauses relevant to the issue of the levy were internally consistent. I then measured the levy described in the bill against the criteria Erskine May sets out at pages 730-737 for identifying levies that are exempt from financial procedures governing the imposition of taxes.

(1500)

With respect to the matter of the plain language of the bill, it speaks in terms of a levy rather than a tax. This is evident from Part II of the bill. It is also clear that the levy is imposed upon the tobacco industry alone. The purpose of the levy, as stated in the bill, is to meet an industry purpose beneficial to it, although this industry purpose also has public benefit. Clause 3 states categorically that the purpose of the bill is "to enable and assist the Canadian tobacco industry to carry out its publicly-stated objective of reducing the use of tobacco products by young persons throughout Canada".

The levy is imposed exclusively on tobacco products of whatever description and is to be spent in pursuit of the goals listed in clause 5. Consequently, with respect to the language of the bill, I must accept that what is proposed is a levy, not a tax.

[*Translation*]

Erskine May describes two criteria by which a bill proposing a levy is exempt from the financial procedures, including the adoption of a Ways and Means resolution that would normally apply to bills imposing a tax. The first criterion is that the levy must be for industry purposes. The second is that the funds collected must not form any part of government revenue. Erskine May includes examples of bills which were regarded as levies as well as those which failed to meet either or both of these two criteria. Some of these examples are of relatively recent date, suggesting that the criteria remain applicable in modern British practice. More important, they also seem to be applicable in Canadian practice.

[*English*]

Beauchesne, at citation 980(1), states that "a Ways and Means motion is a necessary preliminary to the imposition of a new tax." It is a corollary to the principle behind the Royal Recommendation in that it requires a sanction of the Crown to provide the revenue that may be appropriated for public purposes at a future date. Beauchesne goes on to explain the circumstances relative to the introduction of a new tax. Citation 980(2) declares that "no motion can be made to impose a tax, save by a Minister...nor can the amount of a tax proposed on behalf of the Crown be augmented, nor any alteration made in the area of imposition. In like manner, no increase can be considered. . . . except by a Minister, acting on behalf of the Crown.

Once a Ways and Means motion has been proposed and subsequently adopted, it becomes a Ways and Means Resolution. Following the adoption of this resolution, a bill is introduced based on its provisions, given first reading, printed, and ordered for second reading at the next sitting of the house. In Canadian practice, based on the British model, any bill proposing to introduce a new tax must be preceded by a Ways and Means motion. Without it, any charge proposed in a bill would not be identified as a tax.

Bill C-32, An Act to amend the Copyright Act, passed by the previous Parliament, was mentioned by Senator Kenny when he presented his case on this point of order. Certain provisions of Bill C-32, a government bill, imposed a levy on the sale of blank tapes to be distributed to artists and artist groups as a form of royalty. The senator indicated that Bill C-32 did not have a Royal Recommendation, suggesting at the very least that the funds distributed were not regarded as an expenditure of government revenue and, hence, not connected by a tax. However, that is not the complete picture. There is further evidence that the levy was not viewed as a tax. I say this because, so far as I have been able to determine, the bill was not preceded by a Ways and Means resolution, which would have been a prerequisite if the funds had been viewed as a tax.

Applying the criteria explained in *Erskine May*, and based on the model of the Bill C-32, I can only determine that the levy proposed in Bill S-13 is not a tax from a procedural point of view. Consequently, the bill is not subject to the usual financial procedures that would require it to be considered first in the other place.

My ruling is that the bill is properly before the Senate, and debate on second reading may now proceed.

**Appendix 4:**  
**Speaker's Ruling on Bill S-13,**  
**House of Commons, 2 December 1998**

**Speaker's Ruling on Bill S-13**  
**House of Commons**  
**2 December 1998**

*The Speaker:* I am now ready to rule on the point of order raised by the hon. government House leader on November 18, 1998, concerning the procedural acceptability of Bill S-13, an act to incorporate and to establish an industry levy to provide for the Canadian anti-smoking youth foundation.

[Translation]

First of all, I would like to thank the hon. government House leader and the hon. member for St. Paul's for their learned contributions on this subject.

I also want to thank the other members who intervened on this point of order: the hon. members for Macleod, Winnipeg North Centre, Pictou—Antigonish—Guysborough, Haldimand—Norfolk—Brant, Esquimalt—Juan de Fuca, Hillsborough, Kamloops, Thompson and Highland Valley, Pierrefonds—Dollard, New Brunswick Southwest, Lac-Saint-Jean, Delta—South Richmond, Whitby—Ajax, Burnaby—Douglas and Wentworth—Burlington. Their contributions were very helpful to the chair in examining this case.

We heard almost two hours of argument on this point of order and, while I do not propose to match those arguments minute for minute, I ask the House to bear with me as I explain the facts of the case before us and the conclusions which I have drawn from them.

[English]

Bill S-13 establishes the Canadian anti-smoking youth foundation, a non-profit corporation whose mandate is to reduce and to work toward the elimination of the use of tobacco products by young persons in Canada. To this end, Bill S-13 proposes that a levy be imposed on tobacco manufacturers to provide the foundation with the necessary funds to carry out its mandate.

A private member's bill originating in the other place, Bill S-13, was adopted there on June 10, 1998 and was given first reading in the House of Commons on November 18, 1998.

[Translation]

The point of order raised by the hon. government House leader, simply put, is that the Bill S-13 proposes a taxation measure and that, as such, the bill ought to have been introduced in the House of Commons where it would have to have been preceded by a ways and means motion. On that basis, he argues that the bill is improperly before the House and asks the Chair to rule that the House of Commons cannot proceed with its consideration.

[English]

Before I address the substance of this point of order, I want to respond to the contention made by the hon. member for St. Paul's. The hon. member argued that inquiring beyond the face of the bill and questioning the express provisions of it is to go well beyond the realm of procedure and into an area of law with which the Speaker is not to deal. The hon. member argued that the question of whether Bill S-13 imposed a tax was a matter of law and legal interpretation and, as such, not normally within the jurisdiction of the Speaker.

1510

The general proposition that the Speaker will not decide a question of law is set out in Beauchesne's 6th edition, citation 168(5) at page 49, although the hon. member for St. Paul's did not invoke this citation. The examples provided by Beauchesne involved questions that could only be considered as questions of law and which had no procedural dimension. In both cases the issue was whether the legislative proposal before the House was within the legislative powers of the House as set out in the Constitution Act, 1867.

The question that I must consider in relation to Bill S-13, that is whether or not the charge imposed by the bill is a tax, relates to the procedural rules and practices of this House as well as to the time honoured privilege of this House in respect of taxation measures.

More specifically, two questions are presented on this point of order and both are clearly within my jurisdiction as Speaker. First, is a ways and means motion required for Bill S-13? Second, should this bill have originated in the House and not the other place? However, both these questions depend on the answer to be given to a third question, that is, does Bill S-13 impose a tax. If it does, a ways and means motion is required and the bill ought to have originated in this Chamber.

This third question is unavoidable if the procedural and privilege questions are to be addressed. For this reason, though this tax question might be characterized as a question of law and in another context outside this Chamber might be raised and considered as a question of law, in this context it is considered only as an integral part of a question on procedure and parliamentary privilege. Accordingly, it is proper that I address this question and let me do so now.

[Translation]

In his presentation, the hon. government House leader argued that Bill S-13 should have originated in the House of Commons since it imposes a tax.

Section 53 of the Constitution Act, 1867, states:

Bills for appropriating any Part of the Public Revenue, or for imposing any Tax or Impost, shall originate in the House of Commons.

Furthermore, as described in citation 980 found at page 265 of Beauchesne's, 6th edition, bills imposing a tax must be preceded by adoption of a ways and means motion.

To safeguard the financial privileges of the Commons, it is the duty of every member of this House to be vigilant and to ensure that every bill that comes before the House respects this criterion.

Standing Order 80 is categorical on the subject and states in part:

All aids and supplies granted to the Sovereign by the Parliament of Canada are the sole gift of the House of Commons, and all bills for granting such aids and supplies ought to begin with the House—

In short, the House of Commons claims pre-eminence in financial matters—that is public expenditure and taxation—and all such legislation must originate in the House.

[English]

To determine if Bill S-13 is properly before the House, the Chair must ascertain whether or not it imposes a tax. If it does impose a tax, the bill should have originated in the House of Commons and been preceded by a ways and means motion.

Members will appreciate that this matter involves issues of a complex and technical nature. For this reason, the Chair has taken particular care to examine closely the relevant authorities on this issue. I have consulted extensively the works of Erskine May and have found May to be a comprehensive and reliable source of information on financial procedures. I ask for the House's indulgence as I offer the following exposition of the problem at hand.

1515

As members know, financial procedure is primarily concerned with the authorization of public expenditure and taxation. It has been argued that the charge proposed by Bill S-13 is not a tax because the funds collected would not form any part of the consolidated revenue fund.

Under the heading of “Matters requiring authorization by Ways and Means resolution”, May's, 22nd edition at page 777, states:

Although impositions are not generally charges on the people (that is to say, taxes) unless the proceeds are payable into the Consolidated Fund, the absence of a requirement for payment into the Consolidated Fund is not by itself conclusive indication that a charge upon the people has been avoided. If, for example, money raised by statutory imposition is not to be channelled to the Consolidated Fund but is nonetheless to be used for the benefit of the public at large or for purposes which might otherwise have required to be financed from the Consolidated Fund, that imposition is likely to need authorization by a Ways and Means resolution.



In other words, if a charge raises funds that are channelled to the consolidated revenue fund, that charge is a tax. Even if a charge raises funds that are channelled elsewhere, the charge may still be a tax, however. But a charge can only be considered a levy, and thus free to go forward without the usual constraints of financial procedure, if it is a charge made for an industry purpose.

Thus, the point of order, as I see it, hinges on the nature of the charge in Bill S-13 and its objects or purpose. Consequently, a closer examination of the bill is required.

The argument has been made that Bill S-13 imposes a levy “for an industry purpose”. In chapter 32, “Ways and Means and Finance Bills” of May's 22nd edition, we read, at page 779:

Levies upon employers in a particular industry for the purpose of forming a fund used to finance activities beneficial to the industry are not normally regarded as charges (that is to say, taxes).

May goes on to state:

Modern legislation, however, frequently makes provision for the imposition of other types of fees or payment which, although not taxes in a strict sense, have enough of the characteristics of taxation to require to be treated as “charges upon the people” and therefore to be authorized by a Ways and Means resolution moved by a Minister of the Crown. This distinction between the types of payments which are or are not covered by the rules of financial procedure is not always straightforward in practice.

In other words, the central issue here is whether or not the levy imposed by Bill S-13 is a charge that is imposed primarily for a purpose beneficial to the tobacco industry. If so, the charge would not be a tax.

Here too May is helpful when he describes a case which presents some similarities with Bill S-13, namely, the U.K. Merchant Shipping Bill of 1973-74. That bill obliged oil importers to contribute to an international fund for compensation for oil pollution damage. In the 21st edition, at page 731, May states:

This impost was so clearly not for the benefit of the industry concerned that it was held to be a tax in spite of the fact that its proceeds were not payable to the Consolidated Fund.

Ultimately, therefore, it was decided that particular bill fell under the rules governing financial procedures and so had to be preceded by a ways and means resolution before being considered by the House of Commons in the United Kingdom.

[Translation]

In studying the case now before us, I have examined whether our House has ever dealt with the public bill providing for an industry levy. In a session of the 35th Parliament, Bill C-32, an act to amend the Copyright Act called for the imposition of a levy on blank audio tapes.

1520

The levy was of benefit to that industry since it permitted the audio duplication of copyright material for private use. This would enhance the market for blank audio tapes. The levy on the tapes was designated to raise funds by which owners of copyright material would be compensated for losses caused by private duplication of that material. The link between the benefit to the industry and the levy being imposed seems clear in that case. The levy appears to satisfy the criterion that it was of benefit to the industry and so would not normally be regarded as a tax.

Bill C-32 was not required to adhere to the usual financial procedures and was not preceded by a ways and means motion.

[English]

In the case of Bill S-13, the Chair must determine the nature of the charge being imposed by the bill. It has been argued that the charge is a levy for the benefit of the tobacco industry. In support of that view we are referred to clause 3 of the bill which bears the heading “Purpose” and which states in subsection (1), in part:

(1) The purpose of this Act is to enable and assist the Canadian tobacco industry to carry out its publicly-stated industry objective of reducing the use of tobacco products by young persons throughout Canada—

I will set aside, without comment, the question of whether or not the industry has publicly stated as its objective the reduction of smoking in any segment of the population.

Let me simply continue to quote from clause 3(1) which expands on the purpose of the bill to reduce the use of tobacco products by young Canadians as follows:

—given that

(a) numerous debilitating and fatal diseases and other consequences injurious to health are associated with tobacco use;

(b) young persons throughout Canada use tobacco products and become addicted to tobacco and dependent on its use;—

(d) young persons can only use tobacco products because the products are manufactured and sold;—

The text then goes on to read in subsection (2) of the same clause 3:

(2) The Act complements the general legislative response to the national public health problem of substantial and pressing concern—

These statements seem to me to indicate that the purpose of the bill is a matter of public policy, namely, the health of young Canadians and not, as many members have argued, a matter of benefit to the tobacco industry.

There are those who say that the two need not be mutually exclusive and that the benefit to the industry is such that the charge in question is not a tax, but a levy. Proponents of this view point to paragraph (1)(c) of this same clause 3 which reads:

(c) the industry is incapable of addressing on its own the problem of tobacco use by young persons because, by its own admission, its members and agents lack credibility as advocates for a reduction in the use of tobacco products—

Surely the lack of credibility referred to here is a function of our common sense understanding of the self-interest of the tobacco industry, namely, that as a commercial enterprise its primary goal is to expand its markets and thereby to increase profits. Young people would constitute the future growth potential for the industry's market. How could it be to the benefit of the industry to reduce smoking among the very people who would constitute its growth market? It is this implausible proposition that underlies the credibility problem to which the bill refers.

Proponents of the bill argue that the public relations benefit represented by the establishment of the foundation would be a benefit for the industry. They cite the independence of the proposed foundation and its role in the national co-ordination of anti-smoking efforts. Is it not reasonable to suppose, if the industry had wanted to improve its public image in this matter, that of its own volition it could have created an arm's length body like the foundation? Why is legislation like this required?

1525

Let us return to clause 3, this time to paragraph (1)(e) which reads:

(e) it is foreseeable that the industry's ability to manufacture and sell tobacco products will be further restricted if the rate of use of tobacco products by young persons is not reduced;

It has been argued that this section points again to a benefit to the industry since the foundation activities may pre-empt further restrictions on the industry. This is to speculate on future government measures and to conclude that the establishment of the foundation will obviate the necessity for such measures. But is this simply not another way of saying that this charge in this bill is a benefit to the industry only because future measures might be less palatable?

I have carefully considered all of the arguments presented and have examined all of the cases which hon. members have brought to my attention, even though I have not discussed each one in detail in this ruling.

I am forced to conclude that the charge imposed by Bill S-13 is directed not toward any benefit to the tobacco industry but to a matter of public policy, that is, the health of young Canadians, a laudable purpose without doubt.

The bill seeks to establish the Canadian anti-smoking youth foundation whose objective is to reduce and eventually eliminate the use of tobacco products by young persons in Canada. It strains credulity to claim that this objective is a benefit to the tobacco industry.

However ingenious the framers of Bill S-13 have been in drafting and structuring the bill to resemble an industry purpose, one that perhaps would enhance the standing in our society of the tobacco industry, Bill S-13 has as its main object the reduction and elimination of smoking. This is a matter of public health policy and it is by virtue of this public purpose that I have concluded that the charge Bill S-13 imposes on the industry is a tax.

The House of Commons has the exclusive right and obligation to legislate financial measures. Only the House of Commons, acting on the initiative of ministers of the crown, can impose taxes to generate the funds needed to support public policy programs. I am obligated as your Speaker to ensure that these fundamental financial privileges are not compromised.

Simply put, any bill imposing a tax must originate in the House of Commons and must be preceded by a ways and means motion. Since Bill S-13 proposes a tax, did not originate in the House of Commons and thus was not preceded by a ways and means motion, I therefore find that it is not properly before the House.

Accordingly, first reading proceedings are null and void and this item is withdrawn from the order paper.

I thank hon. members for their attention.

(Order discharged)