Canadian Labour Congress
Congrès du travail du Canada

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June 14, 2013

Senators (individually addressed)
The Senate of Canada
Ottawa, Ontario K1A 0A4

Dear Senator:

Re: Bill C-377 *An Act to Amend the Income Tax Act (Labour Organizations)*

The hearings on Bill C-377 at the Banking, Trade and Commerce Committee have completed and you will shortly be faced with a decision on how you vote at third reading of Bill C-377.

This bill is a solution in search of a problem. It wrongly violates Canada's Constitution and the *Charter of Rights and Freedoms*. The Banking, Trade and Commerce Committee heard from eminent constitutional experts who testified that Bill C-377 falls outside Parliament's jurisdiction. These include not only independent constitutional experts but also the Canadian Bar Association and the Barreau du Québec.

The Certified General Accountants of Canada stated that the bill relates not to the tax authority of the federal Parliament but the regulation of trade unions or labour relations. Along these lines the Canada Revenue Agency also said the purpose of the bill was public disclosure and not for taxation purposes.

Five provinces have advised the Minister of Labour or the Committee that the bill is outside of Parliament's jurisdiction and intrudes on provincial jurisdiction. These are Manitoba, Ontario, Quebec, New Brunswick and Nova Scotia.

The bill causes Canada's Privacy Commissioner concern, and it offends the intent of federal and provincial privacy laws.

It creates an unfair advantage for non-union construction contractors and an uneven playing field in the labour market. It ignores the basic facts of the democratic structures of trade unions and the legal frameworks within which trade unions already operate.

Out of a wide range of non-profit and professional organizations that democratically, and, I might add, appropriately, govern their own affairs, from doctors to lawyers to

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engineers to accountants, Bill C-377 exclusively singles out unions for punitive and costly treatment.

Honourable Senators, you can put a stop to this mistaken and error ridden legislation. You can do so completely in keeping with your important role in the Canadian Constitution as the house of sober second thought. It is within your mandate to protect Canadians from a political failure by the House of Commons.

In the transcripts from the Banking, Trade and Commerce Committee you will find that the overwhelming testimony from those witnesses who are independent of any labour organization or one of the organizations lobbying for the bill, have called for the bill to not be passed.

Only those witnesses tied in some way to Merit Canada, Labour Watch, the Fraser Institute, Canadian Federation of Independent Business and the National Citizen's Coalition are all well known anti-labour organizations and whose members sit on each others boards supported the bill.

I know you do not have the time to read the many excellent submissions or review the transcripts of the testimony. I would, though, like to highlight some of the statements made at the hearing or which were submitted by a number of the witnesses.

Provincial Governments

> "I understand you have heard from the Canadian Bar Association on the issue of constitutionality, that they have concerns about whether this bill violates the jurisdiction of the provinces with respect to regulations of labour organizations. I share those concerns of the Bar Association and others with respect to provincial jurisdiction over labour relations."

The Honourable Frank Corbett, Minister of Labour and Advanced Education, Government of Nova Scotia, testimony to the Senate Standing Committee on Banking, Trade and Commerce, June 6, 2013.

> "As Manitoba unions are already regulated and accountable to their members under provincial labour law, this Bill may be seen as an incursion into, and potential violation of, Manitoba's labour relations jurisdiction.
>
> I understand that the governments of Quebec, Ontario and Nova Scotia have also expressed their concerns with this proposed legislation. I join them in respectfully asking the Government of Canada for a stay of the adoption process until we have had the time to discuss our very serious concerns respecting Bill C-377."

The Honourable Jennifer Howard, Minister, Manitoba, letter to the Honourable Lisa Raitt, April 4, 2013.

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> "This bill would thus constitute a precedent which goes against the approach to, and management of, labour relations in Quebec and, according to certain experts, is already deemed as a violation of the division of jurisdiction in that area. In this regard, we would like to meet with you in order to discuss this issue and we therefore request that the adoption of the bill be postponed or even stopped until we meet given its significant impact."

The Honourable Agnés Maltais, Minister, Quebec, letter to the Honourable Lisa Raitt, December 12, 2012.

> "I believe the purpose of this bill substantively interferes with and impedes the internal administration and operations of unions, and is not grounded on defensible labour relations practice or policy. Given the concerns I have outlined I recommend this bill not be passed into law."

The Honourable Linda Jeffrey, Minister, Ontario, letter to members of the Senate of Canada.

> "The regulation of labour law, including governance of trade unions, is an area of provincial jurisdiction. It has been well settled since the Privy Council decision in *Snider* (1925), that jurisdiction over labour relations rests with the provinces.
>
> As the Minister responsible for labour in the province, and in light of the concerns highlighted above, it is my strong recommendation that this Bill not proceed."

The Honourable Danny Soucy, Minister, New Brunswick, letter to Standing Committee, June 6, 2013.

Witnesses at Senate Standing Committee on Banking, Trade and Commerce

> "It is the Canadian Bar Association's submission that it should not be passed into law due to a number of concerns we have with respect to its contents. Those concerns are really four-fold: the first deals with privacy; the second concerns constitutional aspects; the third is its application to various funds; and the fourth is its impact on the sanctity of solicitor-client privilege."

Michael Mazzuca, Chair, National Pensions and Benefits Law Section, Canadian Bar Association, Senate Standing Committee on Banking, Trade and Commerce, Evidence, May 22, 2013.

> "As my colleague from the Canadian Bar Association and my colleague from the Federation of Law Societies of Canada mentioned earlier, we share some concerns about the constitutional validity of this bill. I will go over them quickly and I hope that we will have an opportunity to discuss them in greater detail later on.

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> Beyond the title of the bill – which is what we have to look at when we try to determine its constitutional validity – the bill, based on its content, is really a piece of legislation aimed at a player in labour relations and, as a result, it is really about labour relations. That raises some major concerns in terms of constitutional validity. The first very important concern is that, in Canada, under the *Constitution Act*, 1867, the regulation of labour relations falls exclusively under provincial jurisdiction. The federal legislator has exceptional jurisdiction over labour relations in organizations that conduct federal activities. Yet that is not the case with this bill."

Gilles Trudeau, représentant, Barreau du Québec, Senate Standing Committee on Banking, Trade and Commerce, Evidence, May 22, 2013.

> "I am well aware, as you will be, that the legislation before you has changed since it was initially drafted. Initially, there was nothing in the legislation to protect solicitor-client privilege. There now is. There are provisions in two of the subsections that exclude from the disclosure requirement matters that are privileged. We were very pleased to see that because it seems to indicate an intention by the proponents of the bill that there is not a desire or objective of having privileged information released as part of this legislation. We think that that is positive and constructive.
>
> The difficulty we have, though, is that the way the bill has been amended, those exclusions apply only in respect of two of the twenty subsections in the legislation. They create an ambiguity in the legislation that is an unnecessary ambiguity."

John J.L. Hunter, Q.C., Past President, Federation of Law Societies of Canada, Senate Standing Committee on Banking, Trade and Commerce, Evidence, May 22, 2013.

> "I am here to share the bad news that Bill C-377 is beyond the legislative jurisdiction of the Parliament of Canada. Its dominant characteristic is the regulation of the activities of labour organizations, a matter that falls predominantly within provincial jurisdiction to pass laws in relation to property and civil rights pursuant to section 92.13 of the *Constitution Act*, 1867. If Bill C-377 is passed by Parliament, it will be declared unconstitutional and of no force and effect by the courts."

Bruce Ryder, Professor, Osgoode Hall Law School, Senate Standing Committee on Banking, Trade and Commerce, Evidence, May 23, 2013.

> "Professor Elliot also notes that there is no link between the content of the bill and the tax exemption for the union and the deductions for Canadian taxpayers. He notes that the bill does not even seek to establish any type of relationship between these various elements.

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> Given that this bill deals with labour organizations, unions, we must classify them within a category of subjects. Like Professor Ryder, Professor Brun and Professor Elliot, I have written that it clearly falls under section 92.13 of the *Constitution Act*, 1867, and the establishment of a labour organization falls under private law, or relationships between individuals. Professor Elliot specifically refers to Professor Hogue's definition about section 92.13.
>
> Bill C-377, were it to enter into force, would be totally unconstitutional."

Alain Barré, Professeur, Université Laval, à titre personnel, Senate Standing Committee on Banking, Trade and Commerce, Evidence, May 23, 2013.

> "Let us be clear: Bill C-377 is not a tax bill. Using the *Income Tax Act* in this manner, we believe, is inappropriate.
>
> Some may argue that providing more financial information will bring about increased transparency, promote good governance and improve accountability, yet unions disclose financial information of these matters to those who oversee their activities: their members.
>
> It is argued that Bill C-377 is necessary because union members benefit from a tax deduction, yet this measure is not unlike the tax deduction accessed by many other Canadians, including our own members, with respect to professional dues. The policy intent of this deduction is to recognize that there are certain costs associated with the maintenance of professional status that are often employment requirements."

Carole Presseault, Vice President, Government and Regulatory Affairs, Certified General Accountants Association of Canada, Senate Standing Committee on Banking, Trade and Commerce, Evidence, May 29, 2013.

> Mr. Gallivan: "We are considering the focus of this measure as disclosure, not for income tax administration purposes or tax assessment purposes."
>
> Question from Senator Segal: "You are saying that unlike all the other data sets that you largely collect, this would not be part of your tax collection intelligence system on which we all depend for the fair collection of taxes and the provision of revenue to Her Majesty for the good services that her governments perform. Am I misunderstanding?"
>
> Mr. McCauley: "To nuance it a bit, you are right in terms of tax."

Brian McCauley, Assistant Commissioner, Legislative Policy and Regulatory Affairs Branch, Canada Revenue Agency and Ted Gallivan, Director General, Business Returns Directorate, Assessment and Benefit Services Branch, Senate Standing Committee on Banking, Trade and Commerce, Evidence, May 23, 2013.

> "I should underscore that transparency and accountability need to be appropriately balanced with the protection of individuals' privacy. Put

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differently, any public disclosure of personal information as contemplated in Bill C-377 needs to be carefully assessed against a substantive need for disclosure.

While from a legal perspective this would be permissible under the *Privacy Act*, I am concerned with the creation of yet another exception.

Specifically, the names of individuals will still have to be disclosed for certain disbursements that have a cumulative value above $5,000, such as loans, political activities, lobbying activities, contributions, gifts, grants, conference activities, education and training activities. These disclosures clearly involve personal information and, in many cases, sensitive personal information. Again, one possible way to reduce privacy intrusion while still achieving accountability objectives would be to limit the scope of disclosure to aggregate numbers or to withhold the names of individuals.

We did examine and study the new provisions, and we have come to the conclusion that there are ambiguities in understanding the legislative intent to disclose certain categories of information in aggregate form."

Jennifer Stoddart, Privacy Commissioner of Canada, Senate Standing Committee on Banking, Trade and Commerce, Evidence, May 29, 2013.

"First, and most important, our concern pertains to client privacy and confidentiality. In its present form, the bill requires every labour organization and labour trust to file a public information return. The information that must be filed includes a set of statements for the fiscal period, setting out all transactions and disbursements over $5,000. The purpose and description of the transaction must be disclosed, the specific amount of the payment and who received it.

This disclosure and the publication of this information is problematic for professional advisers. Fengate is not comfortable disclosing our fees, given the competitive nature of our business and the importance price plays in securing investments in clients. Furthermore, we consider the process of our investment decisions as being proprietary information. Making it publicly available would expose our underwriting processes to our competition.

Lastly, these funds are already subject to significant public disclosure under provincial pension legislation and under existing provisions of the *Income Tax Act*.

In summary, the bill will create a burdensome obligation in the private sector and potentially harm our competitive landscape."

Lou Serafini, Jr., President and Chief Executive Officer, Fengate Capital Management, Senate Standing Committee on Banking, Trade and Commerce, Evidence, May 30, 2013.

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> "We believe that Bill C-377 as currently drafted inadvertently creates a reporting requirement for mutual funds that will impose on them a costly and unnecessary administrative burden that will ultimately be borne by the millions of Canadians who own them.
>
> The reporting obligation is imposed on the labour trust, and it is subject to a fine if it does not comply. Labour trust is cast in so broad a manner that we believe on a fair and reasonable interpretation it captures any trust or fund offered to the public in which there is a single unit holder or beneficiary who is a member of a labour organization. That fund would then be subject to the bill's full disclosure requirements.
>
> At its essence, then, any mutual fund that has just one investor who is a member of a labour organization would be tainted and therefore subject to the bill."

Ralf Hensel, General Counsel and Director of Policy, The Investment Funds Institute of Canada, Senate Standing Committee on Banking, Trade and Commerce, Evidence, June 6, 2013.

> "We believe that this bill would be at odds with reasonable consumer expectations of privacy for their medical and financial affairs. Other evidence, including from the Canadian Bar Association, also raises this concern.
>
> The Bar Association described impacts on group registered retirement savings plans, but the problem is broader. For instance, if a member of a labour union were independent of her union activities to hold units of a retail mutual fund in an RRSP, then that fund would appear to constitute a labour trust under this bill. It would appear that the mutual fund would be tainted so that all other investors in the mutual fund, despite being unrelated to the union member and having no union membership themselves, would find their personal financial transactions to be a matter of public record, searchable by anyone, anywhere."

Ron Sanderson, Director, Policyholder Taxation and Pensions, Canadian Life and Health Insurance Association Inc., Senate Standing Committee on Banking, Trade and Commerce, Evidence, June 6, 2013.

> "As much as I hate to raise the issue, I suppose I could draw a parallel between this bill and the oft-debated gun registry, which is why I am often quite surprised when I hear that Conservative parliamentarians are pushing for Bill C-377.
>
> As police officers, we were told that the gun registry was expensive to set up, expensive to maintain and was of little value since criminals would not be the ones to register their firearms. Bill C-377 will create a registry that will be expensive to set up. According to Canada Revenue Agency, it could cost many millions of dollars, be expensive to maintain and would likely be of little value since people committing fraud are unlikely to

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report on their own criminal behaviour.

Amendments that were adopted in the house have gone some way toward fixing these issues. The bill in its current form would still represent a serious breach of privacy for our members and for companies that are engaged in a business relationship with our associations.

Police personnel who take an active role with their local associations do not immediately stop being police officers. Requirements that their names or other identifying and personal details be compiled and reported on in a nationally searchable online database could present long-term security risks for our members and potentially their families."

Tom Stamatakis, President, Canadian Police Association, Senate Standing Committee on Banking, Trade and Commerce, Evidence, May 23, 2013.

I can think of no better summary observation on Bill C-377 than that from the Globe & Mail editorial of December 14, 2012:

> *An apparently ideologically driven bill that singles out unions, and not professional bodies such as law societies, is not a sound basis for public policy. We should not legislate witch hunts.*

It is not sufficient to observe that there are serious issues with this proposed legislation. It is the role of the Senate to provide leadership. I urge you to carefully consider the purpose of the bill, its discriminatory and unconstitutional nature and vote to defeat Bill C-377.

Yours sincerely,

Kenneth V. Georgetti
President

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