



**Confédération
CSN des syndicats nationaux**

Submission by the Confédération des syndicats nationaux
concerning
Bill C-377, An Act to amend the
Income Tax Act (requirements for labour organizations)

to the

House of Commons
Standing Committee on Finance

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Introduction

The Confédération des syndicats nationaux (CSN) is a trade union organization with nearly 2,000 member unions, who together represent over 300,000 working women and men, primarily within Quebec, who are organized on a sectoral or occupational basis into eight federations, and on a regional basis into 13 central councils. We would like to thank the Standing Committee on Finance for giving us the opportunity to present our observations and comments on Bill C-377.

When private member's bill C-377 was introduced by the Conservative member for South Surrey-White Rock-Cloverdale, Russ Hiebert, he said in the House of Commons on February 26, 2012: “[l]abour organizations play a valuable role in Canadian society, representing and defending the rights of workers.”

In his important 1946 judgment laying down the Rand Formula, Justice Ivan Rand wrote that “as the history of the past century has demonstrated, the power of organized labour, the necessary co-partner of capital, must be available to redress the balance of what is called social justice: the just protection of all interests in an activity which the social order approves and encourages”.¹

Bill C-377, however, is an attack on labour organizations and their members, who have for nearly two centuries defended the rights of workers and fought for good working conditions and to make sure that these workers and their families are able to play a legitimate role in our society.

This bill is an attack on all unions in Quebec and Canada and on their labour organizations. All of the unions, central councils and federations that make up the CSN are targeted by C-377.

The CSN is a democratic organization that is transparent to its members. We have nothing to hide; quite the contrary. Our stringent governance rules have been in place for a long time and are well known to our members. We will demonstrate that in this brief, and most importantly, we will not agree to be lectured on morality by this government, which is using a member as a screen to introduce a private member's bill. We are quite familiar with the tactic and we are not fooled into missing the fact that this government espouses the ideology advocated by certain employer think tanks to attack union legitimacy.

¹ Arbitration award by Rand J., Ottawa, January 29, 1946, *Ford Motor Company of Canada Ltd. v. International Union United Automobile, Aircraft, and Agricultural Implement Workers of America (U.A.W.-C.I.O.)*.

Obligations of labour organizations

Unions in Quebec and Canada are subject to a variety of legislation that gives them not only rights, but also responsibilities and obligations. Most labour laws require that strike votes be taken by secret ballot, and collective agreements must be ratified by a union's members. Section 47.1 of the Quebec *Labour Code* provides that a union organization "must disclose its financial statements to its members every year". It must also remit a copy of its financial statements free of charge to any member who requests it.

Section 110 of the *Canada Labour Code* provides that a trade union "shall, forthwith on the request of any of its members, provide the member, free of charge, with a copy of a financial statement of its affairs". It specifies that this must be a copy of the financial statements for the last fiscal year and must be "certified to be a true copy by its president and treasurer" and that the financial statements "shall contain sufficient detail to disclose accurately the financial condition and operations of the trade union ...".

This financial disclosure obligation also exists in Ontario, British Columbia, Manitoba, New Brunswick, Nova Scotia and Newfoundland and Labrador.

A union also has a duty to provide fair representation for everyone who pays dues to it, whether or not they are a member of the union. Unlike private enterprises and Crown corporations, whose officers are appointed, the presidents and officers of labour organizations are elected by the members and are accountable to their members under their constitutions and bylaws.

Statutory requirements based on false premises

Unions are democratic, transparent organizations and are representative of the members, to whom they must account. In our opinion, Bill C-377 represents unwarranted, petty interference in the affairs of a labour organization.

What the government should be doing is working cooperatively with employers and unions to develop strong strategies for economic development and job creation, rather than introducing private members' bills to weaken the trade union movement.

The sponsor of the bill falsely contends that it is justified by the fact that unions are subsidized by taxpayers, since union members are able to deduct their dues from their taxable income. It must be understood that this deduction is claimed under the *Income Tax Act*, which allows every Canadian taxpayer who is a member of a professional

association such as medical associations, bar associations and engineering societies to deduct their membership fees from their taxable income.

To justify the bill, the Conservative member also said that he based his “requirements for public disclosure for labour organizations on the existing provisions for charities in the *Income Tax Act*”. This is another false and misleading statement. The information required of charities is much less detailed and more highly aggregated. This bill would require unions to provide even more detailed information than current legislation requires of companies.

Conflicting ideologies

Mr. Hiebert told the House of Commons that “[the] government’s document production cost will be minimal once the electronic production system, the database and the website are in place”. It is truly amazing to see so many contradictions coming from a government that wants to slash red tape for business and government departments, when what it is doing here is going in the complete opposite direction. The bill instructs the Canada Revenue Agency to make regulations and to produce the information forms and create a comprehensive, searchable database with cross-referencing capacity on a web-based portal for the general public to access the information.

Their slip is obviously showing. What the government is doing here is stomping all over its principles by increasing red tape, for purely ideological, anti-union considerations.

Excessive information

In his bill, the member covers all labour organizations, which are defined as follows in section 149.01(1):

... a labour society and any organization formed for purposes which include the regulation of relations between employers and employees, and includes a duly organized group or federation, congress, labour council, joint council, conference, general committee or joint board of such organizations; ...

Section 149.01(3)(b) of the bill provides that every transaction over \$5,000 from each labour organization in connection with a pension plan, a health and welfare trust fund and the education, training and apprenticeship trust fund will require an entry to provide “the name and address of the payer and payee, the purpose and description of

the transaction and the specific amount that has been paid or received, or that is to be paid or received”.

This disclosure of personal information will have a direct impact on individuals’ privacy. The type of information required will also place excessive demands on unions for administering and managing the information required.

For example, the CSN has eight occupational federations, 13 central councils covering the administrative regions of Quebec, and more than 1,700 affiliate unions in various sectors of the economy. Most of these organizations issues numerous cheques for over \$5,000 every year. The CSN engages in thousands of transactions for over \$5,000 every year. Many of our federations, central councils and affiliate unions tell us that they too process a significant number of transactions over \$5,000 in a year.

We estimate that this bill alone will generate an astronomical and breathtaking number of entries each year. This will impose a substantial cost on the government and on labour organizations. In addition, requiring that pension plans and trusts identify and report all transactions over \$5,000 will greatly increase the cost they will have to pay.

There are many other sections of the bill requiring additional information which will increase the cost to labour organizations and to the government itself.

For example, section 149.01(4) of the bill requires that the information “hall be made publicly available by the Minister, including publication on the departmental Internet site in a format that allows for word searches to be performed and for cross-referencing of data.” These requirements (searching and cross-referencing) make this database even more complex than the database developed for the Long-Gun Registry.

Even though Conservative MP Mr. Hiebert claims that implementing the bill will involve only minimal cost, we believe, on the contrary, that the cost will be several million dollars.

An broad attack on the social role of unions?

The important social, political and economic role played by unions has been recognized on many occasions by various influential commentators, as well as by the Supreme Court of Canada.

The 1991 Lavigne decision of the Supreme Court of Canada recognized the importance and legitimacy of trade unions in engaging in political and advocacy activities. Speaking for the majority, Justice La Forest wrote:

Whether collective bargaining is understood as primarily an economic endeavour or as some more expansive enterprise, it is my opinion that union participation in activities and causes beyond the particular workplace does foster collective bargaining. Through such participation unions are able to demonstrate to their constituencies that their mandate is to earnestly and sincerely advance the interests of working people, to thereby gain worker support, and to thus enable themselves to bargain on a more equal footing with employers. To my mind, the decision to allow unions to build and develop support is absolutely vital to a successful collective bargaining system.²

Section 2(d) of the Charter of Rights and Freedoms explicitly recognizes the right of the freedom of association as one of Canada's fundamental freedoms. The Supreme Court has held that the right to bargain collectively with an employer enhances the human dignity, liberty and autonomy of workers by giving them the opportunity to influence the establishment of workplace rules and thereby gain some control over a major aspect of their lives, namely their work.

Canada's parliament and all the provincial legislatures have recognized the unique and important role played by Canada's labour organizations.

While the federal and provincial governments and the Supreme Court of Canada have reinforced the right of unions to function as legitimate organizations with the right to participation in politics, Bill C-377 will upset the balance of labour relations.

It was a long struggle for working men and women to achieve many of the rights obtained by the latter half of the 20th century and for unions to be recognized as an important part of our society.

However, in the 21st century we are still witnessing attacks on the organizations that workers built over the decades. While it is a more sophisticated approach than in the past, the aim is still the same – to neutralize unions and render them ineffective. This would eliminate the only voice that workers have to gain rights and a role in the workplace.

² Lavigne v. Ontario Public Service Employees Union, [1991] 2 S.C.R. 211

C-377: A tool for people with anti-union aims

For some years now we have been seeing the rise of employer think-tanks dedicated to finding ways to diminish and alter the social role played by labour organizations in our society.

The bill will, for example, allow an employer in collective bargaining with a union to have access to all the union's financial information such as funds set aside for collective bargaining disputes, what was spent on legal advice and media relations, and provisions for replacing wages of members on strike or lock-out. It will, in fact, encourage employers to take advantage of the financial vulnerability of some unions and thus will probably lead to an increased number of labour disputes.

Let us not delude ourselves, and let us not be naïve: the purpose of Bill C-377 is to give anti-union organization confidential information about the allocation of unions' financial and human resources, their priorities, the law firms whose services they use and the polling companies, printers, financial institutions and pension plan or group insurance administrators with whom they do business.

Analyzing the data that the bill requires to be posted on a CRA website would allow a company to identify the financial resources available to support organizing drives and prepare for collective bargaining and the funds that are set aside for arbitration.

There is not a single organization in Canada – not a single publicly traded company, not one of the 85,917 charities registered with CRA, nor one of the estimated 100,000 non-profit organizations, with the exception of labour organizations – that will be required to make confidential detailed information publicly available in the way this bill demands of unions.

What are we to make of the fact that of all organizations whose members may deduct the dues or membership fees paid to a professional association (such as the governing bodies of the legal, teaching, engineering, accounting and medical and other health professions), labour organizations are the only ones targeted?

It is undeniable that this is a targeted attack on labour organizations, and to claim otherwise amounts to indescribable hypocrisy.

Confidentiality and privacy

Labour trusts are included in the list of organizations to provide reports. In the bill a “labour trust” means a trust fund in which a labour organization has a legal, beneficial or financial interest or that is established or maintained in whole or in part for the benefit of a labour organization, its members or the persons it represents.

This means that all pension plans providing pensions for workers who belong to a union, all health benefit trusts and long-term disability plan carriers making payments for providing health plans for workers and all education and training trusts will need to report in the same detail as other labour organizations.

This provision could impose significant additional costs on the pension plans and trust funds, possibly reducing benefits or increasing premiums and contributions and providing to the CRA for publication on their website information related to the participants in the plans.

What this means is that a health plan beneficiary receiving reimbursement for a costly prescription will have their name, address, why they are receiving the payment and amount received made publicly available for everyone to see. It is an outrageous invasion of an individual’s privacy.

It also means that all transactions over \$5,000 to legal counsel by labour organizations identifying the issue for which the payment was made will be publicly available on the CRA website and to anti-union employers. This is a serious violation of solicitor-client privilege and identifies publicly the type of legal services or advice unions receive and which lawyers in a community are working for unions.

Paragraph 3(b) will also require labour organizations to provide to the CRA details of payments to commercial suppliers. These details will be publicly posted. It is unlikely that private companies like Telus, Bell, Rogers, Canon or Xerox would like to see the information in private contracts published on the Web.

Many of our contractors, service providers and commercial companies operate in very competitive environments and are always looking for additional information to assist them in bidding process. This bill will give them and their competitors an incredible amount of confidential contractual information.

Provincial jurisdiction or federal jurisdiction?

The Canadian Constitution gives exclusive federal jurisdiction over labour relations in specific industries, as well as some businesses, including transportation, that crosses provincial boundaries. However, the 90% of labour and employment that is not subject to federal jurisdiction is governed by the laws of the province or territory where the employment takes place. All provincial legislatures have enacted labour laws, employment standard legislations and established labour boards to regulate labour relations in their jurisdiction.

Many provinces and territories have enacted legislation regarding the disclosure of the financial information of union members. In Quebec, the Professional Syndicates Act, which governs incorporated unions, specifically provides, in section 5:

Every syndicate must keep one or several registers containing:

(c) The revenues and expenses, the assets and liabilities of the syndicate.

Section 9 provides that unions,

... subject to existing laws, enjoy all necessary powers for the attainment of their object, and may, in particular:

(1) establish and administer special indemnity funds for the heirs or beneficiaries of deceased members, or for the members on the decease of their spouses, special funds for assistance in case of illness or unemployment, or other funds of the same nature, which shall be governed exclusively by the by-laws approved by the Autorité des marchés financiers;

Section 13 of the Act provides:

Every syndicate formed under this Act shall keep and divide its accounts so that each kind of service and benefit accorded to the members may be separately administrated, and the fund or cash therefor be kept distinct.

Regarding unincorporated unions, section 47.1 of the Labour Code provides:

A certified association must disclose its financial statement to its members every year. It must also remit a copy of such financial statement free of charge to any member who requests it.

Provincial governments have enacted legislation governing labour relations in their provinces, based on the delicate balance that often prevails in that area. In Quebec, as an example, that regulation is clearly entirely sufficient for the supposed objective of transparency sought by the Conservative member.

Bill C-377, if enacted, would be regulating unions that fall within provincial/territorial jurisdiction and would make confidential information available to employers, and this would have a significant influence on labour relations in the provinces.

Although Bill C-377 purports to amend the Income Tax Act, it is back-door regulation of unions that fall under provincial jurisdiction.

Transparency or controlling unions

What is the state of transparency in labour organizations that the bill's sponsor seeks to address? Unions have frequent meetings where all members are entitled to attend. At these meetings, the executive officers of the local are accountable for their decisions. When they provide financial reports, this guarantees real accountability.

Union constitutions generally provide for disclosure of financial information to members. In the CSN, our financial statements are available on our website. The semi-annual financial statements are examined by a surveillance committee [article 60(b) of our constitution]; the confederal bureau, which consists of all officers of our organization, receives the statements [article 47(k) of the constitution], and they are then approved by the confederal council, which is the supreme authority between conventions of our organization [article 53(j) of the constitution]. Our convention, which is held every three years, adopts the audited financial statements and sets the budget for the next fiscal year. We also have a controller who has access to all of the documents and also has the power to investigate the veracity of any expenditure.

Information about lobbying activities by CSN officers and staff is already reported and is accessible on the website of the lobbying commissioner of Quebec.

As we said earlier, we have no need of lectures in morality. We are the epitome of transparency to our members, and in our organization we do not hide behind elephants and try to pull the wool over the eyes of democracy.

Conclusion

Bill C-377 is an attack on unions and their members that gives employers and anti-union organizations significant confidential financial detail on the internal workings of labour organizations while not having to provide similar information themselves.

The CSN asserts that Bill C-377:

- restricts freedom of association and is contrary to Section 2(d) of the *Canadian Charter of Rights and Freedoms*;
- contravenes federal and provincial privacy legislation;
- intrudes into provincial jurisdiction with respect to the regulation of labour relations and unions;
- will impose significant costs on the government and labour organizations.

We further submit that Bill C-377 is so flawed that it must be withdrawn.