Syndicat de professionnelles et professionnels du gouvernement du Québec

SPGQ

BRIEF FROM THE SYNDICAT DE PROFESSIONNELLES ET PROFESSIONNELS DU GOUVERNEMENT DU QUÉBEC ON BILL C-377

Submitted to the
House of Commons
Standing Committee on Finance
Ottawa

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The SPGQ

As its name indicates, the SPGQ consists exclusively of groups of professionals working in the Quebec public sector. It represents more than 23,700 members of the public service, crown corporations, and education and health networks in Quebec, linked to more than 35 bargaining units.

The SPGQ studies, defends and develops the professional, social and economic interests of its members.

1. What we are already doing in terms of accountability

There are already reporting requirements for Canadian unions under the tax legislation. Each year, our union sends the Canada Revenue Agency (CRA) its audited financial statements, accompanied by a duly completed form T2 – Corporation Income Tax Return. These same financial statements are also sent to Revenu Québec via form CO-17.SP – Information and Income Tax Return for Non-Profit Corporations.

These financial statements, which are 15 pages in length, include a statement of revenues and expenses, a statement of changes in net assets, a balance sheet, a cash flow statement and complementary notes providing details about the union's articles of incorporation, changes in cash position, receivables, tangible assets, future benefits and other union commitments. The CRA is thus able to check that contributions deducted by members have been used by the union in compliance with the financial rules that govern it, because it has audited financial statements to this effect, accompanied by the independent auditor's report.

These same financial statements are sent to our 592 union delegates once a year and are accessible on request to each of our members, in compliance with section 47.1 of the Quebec Labour Code. In addition, a budget tracking report broken down by union function is submitted quarterly to the elected representatives of our 39 union locals. These quarterly reports are examined and discussed in detail at union meetings of representatives and elected members of the SPGQ executive committee.

Our union can rely on the diligent work of its monitoring committee, which is made up of three members elected by union delegates, and who are completely independent of union management. In its annual report, the monitoring committee is required to perform a number of duties, including to indicate whether expenses were in its opinion duly authorized and used for union purposes.

2. Additional requirements in Bill C-377

In December 2011, Conservative federal member of Parliament Russ Hiebert of British Columbia introduced private member's Bill C-377, to amend sections 149 and 239 of the *Income Tax Act* "to require that labour organizations provide financial information to the Minister for public disclosure".

If adopted in its current form, the bill would place additional major constraints on Canadian unions in terms of accountability. It would in fact require all Canadian union organizations to supply CRA with at least 19 more detailed supplementary statements on such things as salaries, contracts with suppliers, loans, accounts receivable, investments, spending on union

recruitment, collective bargaining, training, education, legal fees, lobbying initiatives and any activities of a political nature (paragraph 149.01(3)(*b*)). The detailed information in question includes the names and addresses of all employees of the union as well as all suppliers for whom there are commitments for disbursements of more than $5,000, as well as the purpose and description of operations concerned, including for legal services.

Even more complementary statements would be required and to break down in even greater detail the expenses listed in at least 6 of the 19 statements mentioned in the previous paragraph (paragraph 149.01(3)(*c*)).

All of this information would then be posted publicly on the CRA website "in a format that allows for word searches to be performed and for cross-referencing of data." (subclause 149.01(4)).

To top it all off, every union organization would be liable on summary conviction to a fine of $1,000 for each day that it fails to comply with the new provisions in question (clause 2).

As we shall see in the next section of the brief, an avalanche of bureaucratic constraints like these would create a terrible burden for members of unions and for the people of Canada in general.

3. SPGQ concerns with respect to the bill

3.1 Costs related to the bill

The passage of Bill C-377 would result in an unjustifiable increase in the costs of monitoring compliance, and in the costs involved in developing website systems and mechanisms for the Canada Revenue Agency. All of this would be at the taxpayers' expense. Nevertheless, the current government in Ottawa is consistently calling for a reduction in the size of the public service! Environmental protection services are being cut, and the firearms registry was eliminated, but they want to increase bureaucratic resources to administer these new excessive demands on unions. In our view, this is illogical and senseless.

When Bill C-377 was introduced on second reading, on 6 February 2012, Mr. Hiebert said that "The government's document production cost will be minimal once the electronic production system, the database and the website are in place." **We wish to point out to members of the Standing Committee on Finance that the member of Parliament did not provide any estimates, or even a credible ballpark figure, for the various implementation and operating costs that would be engendered by Bill C-377 for the Canada Revenue Agency, and hence for taxpayers.**

Without getting into detailed calculations, it is easy to anticipate that the costs of complying with these excessive measures in Bill C-377 would be enormous for the unions, and hence for their contributing members. At the SPGQ, our member contributions are relatively moderate, on average less than 0.75% of their salaries. Three of our 38 employees work in accounting and they are already up to their ears with their current workload. Without additional resources, our union would simply be unable to handle the additional red tape requirements of the federal government without impacting on some of the services we provide to our members.

From an equity standpoint, we would like Mr. Hiebert to explain to us why these new requirements would not extend to other bodies that receive tax benefits, such as employer associations or federal political parties? It would even be more logical to begin with the latter, because the tax credits for contributions to political parties can run as high as 75%, compared to 15% or 22% for contributions to union organizations.

Similarly, why would think tanks like the Fraser Institute and the Institut économique de Montréal, whose "research" would appear to advocate transparency for others, not be subject to the requirements put forward in Bill C-377? It is, moreover, essential for the public good to be aware of who exactly is funding them.

As for private enterprise, Ottawa is going in precisely the opposite direction.[1] On 1 October of this year no less, Treasury Board president Tony Clement announced the adoption of an action plan that includes 6 systemic reforms and 90 specific recommendations to reduce regulatory and administrative requirements for businesses.

This is quite a contrast when compared to the red tape requirements being placed on unions under Bill C-377. It is further evidence of the fact that the bill is inappropriate and unjust.

3.2 Impacts on citizens' rights

We wish to point out here that the information required under the bill includes the names and addresses of all persons employed by the union and all suppliers with committed disbursements of over $5,000, in addition to a description of the services received, including legal fees. **Furthermore, all this information will then be made public on the CRA website in a format that allows for word searches to be performed and for cross-referencing of data.**

We believe that there is a real risk of misuse of the personal data on union organizations that would be made public on the CRA site. For example, this information could be used, in one way or another, by some private organizations that are generally hostile to unions and who work to undermine their influence and their actions.

We are not just imagining that the personal data might be misused. On 26 September, we learned through the media that Jason Kenney, the Canadian Minister of Citizenship, Immigration and Multiculturalism, had sent out a targeted message by email to a number of Canadian citizens who are in favour of defending gay rights. The following is an excerpt from the newspaper *Le Devoir* from 26 September on this subject:[2]

> The approach taken by Mr. Kenney's Office would appear to be the outcome of a strategy that has been fine tuned for a number of years by the Conservative Party of Canada. Using a program called Constituent Information Management System, the Conservatives have developed an extremely detailed database on Canadian voters. …
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> A report commissioned by Canada's Privacy Commissioner and released in March 2012 pointed out that the parties gather information about voters from

[1] Treasury Board of Canada Secretariat, *Red Tape Reduction Action Plan*, Ottawa, 1 October 2012, http://www.tbs-sct.gc.ca/rtrap-parfa/index-eng.asp.

[2] Bourgault-Côté, Guillaume. "Big Brother conservateur? La commissaire à la vie privée se dit 'troublée' par l'envoi de courriels ciblés de la part de Jason Kenney", *Le Devoir*, 26 September 2012, p. A3.

> various sources, including telephone public opinion polls, petitions or surveys. But Canada's privacy statutes do not apply to political parties, and the collection of such information remains largely unregulated. Big Brother can therefore carry on undisturbed.

Canadians, including Quebeckers, are entitled to freedom of opinion and freedom of association. They also have a right to have their privacy protected as well as their personal information. Bill C-377 appears to us to clearly infringe these rights.

3.3 Pith and substance of the bill

We also question the pith and substance of the Act. **We feel that this is not a piece of taxation legislation, but rather legislation about labour relations designed to undermine unions.**

It is clear to us that the goal of Bill C-377 is not to ensure that union contributions deducted by our members for the purposes of calculating their taxes have been used to finance the activities of their union organizations. The existing provisions of the *Income Tax Act* are adequate in this regard. The real goal of C-377 is rather to require the unions to make public all of their highly detailed information about their organizations.

To whom could this additional information be truly useful? As we explained above, union members and their representatives already have proper access to additional financial statements and information that can give them an understanding of and control over the uses to which their contributions are put.

On the other hand, this bill constitutes a response to the insistent demands by several think tanks that are generally hostile to unions, and which over the past few years have published studies and a variety of reports on the issue of union revenues and challenged some of the tax benefits associated with these.[3] The Fraser Institute of Canada led the way as early as 2006 when it recommended that Canada should follow the lead of U.S. legislation for reporting requirements for unions.

It is important to point out here that the Fraser Institute receives a significant amount of its funding from foreign foundations, and more specifically from the United States of America. This situation was criticized in May by the Honourable Robert W. Peterson, a Canadian Senator, in an inquiry entitled *Interference of Foreign Foundations in Canada's Domestic Affairs*.[4]

Here are some excerpts from Mr. Peterson's inquiry concerning the Fraser Institute:

> The Fraser Institute is a think tank registered as a charitable organization. Unlike the Suzuki Foundation and Sierra Club, the Fraser Institute claims it does not engage in any of the 10 per cent of political activity permitted for charitable organizations.

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[3] These include studies published by the Fraser Institute (*Union Disclosure in Canada and the United States*, Sept. 2006) and by the Institut économique de Montréal (*Le financement et la transparence des syndicats*, Oct. 2011).

[4] *Interference of Foreign Foundations in Canada's Domestic Affairs – Inquiry*, Statement made on 15 May 2012 by Senator Robert W. Peterson. Source: Parliament of Canada, Senate Debates (Hansard), 41st Parliament, 1st Session, Vol. 148, Issue 79, 15 May 2012, http://www.parl.gc.ca/Content/Sen/Chamber/411/Debates/079db_2012-05-15-e.htm.

> Honourable senators, is publicly calling on the government to change election spending laws considered political activity? Is pushing provinces to adopt right-to-work legislation considered political activity? Is producing unsubstantiated "scientific" reports attempting to delegitimize climate change after receiving funds from ExxonMobil considered political activity?
>
> …The institute has also been receiving funding from questionable foreign sources for some time. One group that funds the institute is the Koch brothers, two American billionaire brothers who own the second-largest privately held company in America. Their combined wealth of $35 billion is surpassed in the United States only by Bill Gates and Warren Buffett. The Kochs operate oil refineries in Alaska, Texas and Minnesota, and control over 4,000 miles of pipeline. They have given tens of millions of dollars to Republican candidates, as well as helped fund projects undermining work on climate change, destroying environmental legislation, taxes, trade unions, and anything related to health care reform.
>
> As heads of the oil-and-gas-based Koch Industries empire, the brothers have poured hundreds of millions of charitable dollars into lobby groups, advocacy organizations, education institutes and conservative campaigns across North America, including in Canada. …
>
> It is interesting that since 2007 the Koch brothers have donated over half a million dollars to the Fraser Institute, and prior to 2008, the institute received funding from the Claude R. Lambe Foundation, an umbrella Koch family foundation. Add this to the fact that the foundation's tax records show that grants to the Fraser Institute are among the highest amounts donated, and the pattern begins to develop.
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> In fact, funding from foreign sources amounted to nearly 16 per cent, according to the Fraser Institute's 2010 tax return. These foreign donations, totalling more than $1.7 million in 2010, are significantly higher than both the David Suzuki Foundation and the Sierra Club of Canada's foreign funding put together. I say again, that foreign funding was $1.7 million in 2010 and $2.9 million in 2009 alone. Compare that with $550,000 for the David Suzuki Foundation and $140,000 for the Sierra Club.
>
> When federal statistics show that only 2 per cent of the country's charities receive funds from outside Canada, funding from political operatives like the Koch brothers actually make up a big chunk of that foreign funding, not money for environmental lobbying, as this government is suggesting.

Bill C-377 received the enthusiastic support of various employer organizations like Merit Canada and the Canadian Federation of Independent Business. It was also applauded by journalists and columnists from several press organizations known for their anti-unionism, including *Sun News*, the *National Post* and the *Financial Post*. The reason for all this support is obvious: the bill could give them access to detailed information about union spending, which would enable them to better assess the employer-union power relationships and also identify potentially controversial expenses. All of which would of course be with a view to undermining unions and placing them on the defensive.

3.4 Constitutionality of the bill

Bill C-377 would appear to us to run counter to the Canadian Constitution in several respects.

First of all, we feel that **it constitutes a breach of the right to freedom of association**, through unreasonable bureaucratic requirements. If implemented, the unions would have to hire staff to prepare the excessively detailed reports prescribed in the bill, thus requiring them to spend funds that could otherwise be used to defend the rights of their members. Furthermore, employers and certain organizations that are hostile to unions would obtain very detailed information about the unions, including how resources are deployed for the recruitment of new members and for the protection of their rights, and these could be used to work against them.

Secondly, we believe that the bill encroaches on provincial areas of jurisdiction. As we mentioned above, we do not consider this to be a tax bill but rather a matter of labour relations, which is primarily an area of provincial jurisdiction.

We would like to end by adding that, for the reasons given in section 3.2 of this brief, we feel that the bill breaches the right to privacy provided in the Quebec Charter of Human Rights and Freedoms.

The SPGQ has asked an independent expert to prepare a legal opinion that would primarily address the pith and substance of Bill C-377 as well as its constitutional validity. We will send a copy of this opinion to members of the Standing Committee on Finance as soon as we receive it.

4. Parallel with the experience of the United States

In the United States, the requirements applicable to union organizations in terms of the disclosure of information are the responsibility of the U.S. Department of Labor. This department is responsible for enforcing the *Labor-Management Reporting and Disclosure Act* (LMRDA), whose purpose is to promote best practices within unions as well as their financial integrity. These provisions require the unions to meet specific standards for the retention of their assets and for the election of union leaders. It also sets out numerous accountability requirements for unions, including financial reporting.

The LMRDA was passed in 1959 and it has been amended several times since. According to senior researcher Scott Lilly of the U.S.-based Center for American Progress research institute, many of the amendments made to the Act over the past 20 years were introduced as a result of partisan interests.

Mr. Lilly supports his line of argument with references and solid documentary evidence. These include a copy of a note sent in February 1992 by Newt Gingrich, the then-whip of the Republican Party, to Lynn Martin, the Secretary of Labor, in which he urged her to take two steps, including the following: make changes to form LM-2, to be filled out by unions, in a manner that would provide essential information for members about union spending. In support of his request, Mr. Gingrich stated that, "It will weaken our opponents and encourage our allies if we take these two steps."[5] These political pressures were quickly followed by the development of stricter regulation which was enacted that year.

Subsequent amendments to the LMRDA were made in 2003 by the Bush government. According to information compiled in Lilly's study, form LM-2 was made even more burdensome, increasing the amount of information to be supplied by the unions by at least 60%. Lilly gave the example of an international union which found that the volume of information to transmit to the Labor Department had increased from 125 to 600 pages.[6]

Professor John Logan, Director of Labor and Employment Studies at San Francisco State University, concluded in this regard that:

- these revisions have failed to provide greater financial transparency and disclosure, and failed to provide any real benefit to union members;

- nor have they been beneficial to the government or the general public;

- in fact they have only been useful to external organizations hostile to unions and collective bargaining on ideological grounds;

- they have imposed a significant compliance burden on unions and ordinary union members have borne the financial and administrative costs of those burdens.[7]

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[5] Lilly, Scott. Beyond Justice: *Bush Administration's Labor Department Abuses Labor Union Regulatory Authorities*, Center for American Progress, December 2007, pp. 4 and 19, http://www.americanprogress.org/wp-content/uploads/issues/2007/12/pdf/landrum_griffin.pdf.

[6] *Ibid*., p. 7.

[7] Logan, John. *Testimony on Union Transparency and Accountability under the Bush and Obama OLMS*, March 2011, http://edworkforce.house.gov/UploadedFiles/03.31.11_logan.pdf.

These conclusions were submitted by Professor Logan to the United States Congress Committee on Education and the Workforce at hearings held in March 2011 on the subject of union transparency and accountability.[8]

Mr. Hiebert has obviously drawn upon the more recent versions of the *Labor-Management Reporting and Disclosure Act* for his recommended additions to Bill C-377. The information to be requested is of the same nature and listed in the same order as on the U.S. LM-2 form. The threshold for expenses is also $5,000. There are differences, however, because Bill C-377 is even more stringent than the U.S. legislation. Indeed, there are several additional requirements, including those provided in the following paragraphs of the bill: 3(*b*) XV to XX, 3(*c*) and 3(*d*).

[8] Committee on Education and the Workforce. *The Future of Union Transparency and Accountability: Hearing Before the Subcommittee on Health, Employment, Labor and Pensions*, U.S. House of Representatives, Washington, DC, 31 March 2011, Serial No. 112-15, http://www.gpo.gov/fdsys/pkg/CHRG-112hhrg65361/pdf/CHRG-112hhrg65361.pdf.

Summary and conclusion

In our brief, we began by explaining that Canadian unions already had a satisfactory level of accountability under tax legislation and that our union had already sent to the Canada Revenue Agency its complete and audited financial statements, accompanied by a duly completed form T2 – Corporation Income Tax Return. We also described the various measures already taken by our union with respect to accountability, financial transparency and internal and external auditing.

These measures are already better than those taken by political parties, employer associations and think tanks (e.g. the Fraser Institute and the Institut économique de Montréal) which are not covered by the bill at all.

We also underscored the contrast between the increase in bureaucratic requirements for unions in Bill C-377, and in the very recent announcement by the Conservative government of an ambitious action plan to reduce regulatory and administrative requirements for businesses. The $1,000 a day fine for a union organization that fails to comply with the provisions of Bill C-377 is one more illustration of the unbalanced and unjust nature of the bill.

We drew the Standing Committee on Finance's attention to the administrative costs that would result from the additional requirements provided in Bill C-377, both for the Canada Revenue Agency and the unions. These new expenses would on the one hand reduce the resources available for the government to provide services to the people, and on the other hand make it more difficult to provide union services to our members.

We went on to address the major problems of the bill in terms of human rights and freedoms, including freedom of association and the right to privacy.

We further believe that the bill encroaches on provincial jurisdictions. As we mentioned earlier, we do not believe that this is a tax bill, but that it has more to do with labour relations, which is mainly an area of provincial jurisdiction.

The SPGQ has asked an independent expert to prepare a legal opinion, primarily on the pith and substance of Bill C-377 and on its constitutional validity. We will send a copy of this opinion to members of the Standing Committee on Finance as soon as we have received it.

We concluded by drawing a parallel with the experience in the United States, where the requirements for union organizations with respect to the disclosure of information are the responsibility of the U.S. Department of Labor. According to the sometimes explicit documents that we consulted, many additional reporting requirements introduced into American regulations in this area over the past 20 years were motivated by partisan interest. They have not improved the accountability of U.S. unions and have not been beneficial to their members. Indeed, they have only been useful to external organizations hostile to unions and collective bargaining on ideological grounds.

It is perfectly clear that Mr. Hiebert borrowed heavily from the United States' experience in this matter, assisted by the efforts of think tanks, whose funds come in part from south of the border. There are some differences, however, because Bill C-377 is even more restrictive than the American model.

For all of these reasons, we ask the members of the Standing Committee on Finance to recommend to the House of Commons that the bill be rejected altogether.

If the members were to decide instead to pass the bill, we would ask that it be applicable as well to political parties, employer organizations and think tanks.

We would like to invite Mr. Hiebert to visit us in Quebec City or Montreal to familiarize himself with our operations and our philosophy, as well as to discuss the challenges that need to be addressed in terms of labour relations in the public sector. We sincerely believe that this would be more conducive to an approach that would generate prosperity based on social partnership of the kind that exists, in many of the most prosperous and civilized countries on the planet.