

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

Submission by:

**UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY,
ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION
(UNITED STEELWORKERS)**

To the:

HOUSE OF COMMONS STANDING COMMITTEE ON FINANCE

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The USW: An International Leader

The United Steelworkers (USW) is Canada's largest private sector union, representing members in virtually every economic sector and jurisdiction in the country. USW represents men and women who work in mines, auto parts plants, universities, nursing homes, steel mills and bakeries. We are a strong and diverse union. We have the support of approximately 225,000 members across Canada as our union seeks to improve the lives of working people everywhere by negotiating collective agreements which set the standard for our own members and for other workers in similar workplaces.

USW is proud of its role as bargaining agent for many thousands of employees across Canada. We are committed to leadership in transparency and accountability.

Unions are democratic organizations

Democratic principles are the foundation upon which unions are built. The values of representative democracy are embedded in our structure. For example, USW's leaders, at the Local, District and International level, are democratically elected in a fair and transparent "one member, one vote" structure, which is governed and regulated by the Union's Constitution.

Additionally, the conduct of unions is heavily regulated by labour statutes across every jurisdiction in Canada. These laws contain disclosure requirements which mirror those often already contained in the constitutions or bylaws of some unions, and they require strict accountability by unions to their membership about finances. For example, most provincial labour relations statutes already require unions to provide members with annual financial statements upon request. These laws reflect a policy that recognizes

that members with a stake in the organization should have ready access to financial information.

Unions have an important role to play in Canada's Democracy

Unions are an important part of Canada's democratic system, having long engaged in collective bargaining and political activities as advocates for working people. And the benefits of union activism have extended far beyond the members of unions themselves to Canadians generally: many workplace improvements and important social programs in Canada are the result of union activism. The Supreme Court of Canada has long recognized the important role played by unions in Canada's democracy. For example, in *Lavigne v. Ontario Public Service Employees Union*, [1991] 2 S.C.R. 211, the Court said:

Unions' decisions to involve themselves in politics by supporting particular causes, candidates or parties, stem from a recognition of the expansive character of the interests of labour and a perception of collective bargaining as a process which is meant to foster more than mere economic gain for workers. From involvement in union locals through to participation in the larger activities of the union movement, the current collective bargaining regime enhances not only the economic interests of labour, but also the interest of working people in preserving some dignity in their working lives....¹

Importantly, in the *Lavigne* decision, the Court also commented on the importance of union autonomy and the right of unions to be free from government interference to ensure that unions remain an important institutional element of a robust democracy.

In addition to this recognition of the importance of unions to democracy, union activities are protected by the *Charter of Rights and Freedoms*. Section 2(d) of the *Charter* explicitly recognizes freedom of association as a fundamental Canadian freedom, which includes the right to bargain collectively. The Supreme Court has held

¹ *Lavigne v. Ontario Public Service Employees Union*, [1991] 2 S.C.R. 211 at para. 156.

that “[t]he 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” (*Health Services and Support – Facilities Subsector Bargaining Assn. v. British Columbia* 2007 SCC 27 (CanLII) at para. 82).

A policy that requires comprehensive, detailed public disclosure of a union’s expenditures and finances means that the union’s time and financial resources will be dedicated to complying with these requirements. The union’s important role in the democratic process will necessarily be diminished as a result. Government policy should not tie the hands of a well established and historically important part of the fabric of Canadian democracy.

Bill C-377 Imposes Huge Costs on Government and Creates More Red Tape

USW is an international union, based in the United States. As such, USW has experience with the *Labor-Management Reporting and Disclosure Act (LMRDA)*, the American union disclosure legislation, which is referred to from time to time by the proponents of Bill C-377, *An Act to amend the Income Tax Act (Requirements for Labour Organizations)* (Bill C-377). *LMRDA* was originally introduced in 1959 with basic disclosure obligations. In 2002, it was significantly changed. Since 2004, *LMRDA* requires many (but not all) unions to disclose every expenditure over \$5000.² But, contrary to the assertions of Bill C-377 supporters, *LMRDA* has not resulted in increased member participation or knowledge of union finances. Rather, the extensive and detailed filing requirements make it extremely difficult to for an individual to access meaningful information.

² The LM-2 Form requires this information.

John Lund is the current director of the Office of Labor-Management Standards [OLMS] of the United States Department of Labor and the leading academic authority on union financial reporting. He has observed that members of the public or trade unions seeking information find themselves overwhelmed by the sheer amount of union financial information available on government databases.³ Furthermore, given the lack of meaningful access to the information filed, Lund thinks the huge cost to the government of developing and maintaining the disclosure program outweighs the benefits. He writes:

Increased reporting and disclosure requirements also impose additional costs on the taxpayer...In the U.S., the OLMS had to develop special electronic filing software. Even though no exact compilation of additional union and government costs associated with increased disclosure and reporting requirements has been published, it is fairly easy to identify what those costs are. The benefits of increased transparency and disclosure requirements, however, are virtually impossible to identify, much less quantify.⁴

This government should not duplicate the red tape and cost that this kind of legislation created in the United States.

On October 1, 2012, Treasury Board President and Minister for the Federal Economic Development Initiative for Northern Ontario Tony Clement launched the government's Red Tape Reduction Action Plan, stating that:

Cutting red tape and making the regulatory process as pain-free as possible is one of the most important initiatives our Government can undertake to help business thrive. In today's world of global economic uncertainty, we want to make sure we are doing everything we can to support jobs and investment ("Canada Among World Leaders in Cutting Red Tape - Minister Clement

³ John Lund, "Financial Reporting and Disclosure Requirements for Trade Unions: A Comparison of UK and US Public Policy," *Industrial Relations Journal*, 40:2 (2009), p. 137.

⁴ John Lund, "Living in a 'Goldfish Bowl': Assessing Recent Changes in Labor Organization Financial Reporting Regimes in the U.S. and Australia," *WorkingUSA: The Journal of Labor and Society*, 11:2 (June 2008), p. 293.

Unveils Red Tape Reduction Action Plan, <http://www.tbs-sct.gc.ca/media/nr-cp/2012/1001-eng.asp>, accessed October 2, 2012).

By implementing this plan, the Harper government has demonstrated a commitment to reducing the size and scale of government, and eliminating complex regulation. The new and onerous requirements of Bill C-377 fly in the face of this clear government priority.

When Prime Minister Harper announced the Red Tape Reduction Plan in January 2011, he specifically expressed concern about the effect of bureaucracy on businesses. The same adverse impacts will burden labour trusts, if Bill C-377 passes.

Mr. Harper said this about the effects of over regulation:

When governments over regulate, bureaucracies expand and the paper burden grows, the red tape becomes too much for individual entrepreneurs to bear alone. And they have needed to turn to a growing number of lawyers, accountants and consultants for help.

Those billing costs are adding up, reducing opportunities for growth, and being passed on to us as consumers at the cash register in practically everything we buy. It is a hidden tax and a silent killer of jobs.

In other words, cutting red tape is a most effective way to show that we are making government work for people, not the other way around. No government department has been spared in our efforts to focus on customer service, to eliminate pointless rubber stamps, and to get rid of unnecessary intrusions (PM announces Red Tape Reduction Commission, <http://pm.gc.ca/eng/media.asp?id=3894>, accessed October 9, 2012).

Bill C-377 will require unions and “labour trusts” (i.e. private pension and benefit plans) to report a huge amount of information that is not currently maintained in a common format across organizations, or in the format that will eventually be required by the bill. Compliance with the onerous requirements of Bill C-377 will require significant

expenditures and staff resources of labour trusts. These increased administrative costs will have to be recovered from somewhere, possibly from the assets that would otherwise have funded the pensions themselves. This may result in reduced pensions and benefits for Canadian seniors, which would in turn increase their reliance on the public purse. Bill C-377 will redirect important resources towards reports that will serve little to no purpose for union members or the public.

On July 19, 2011, Mr. Hiebert noted on his website that he supports income autonomy for seniors. He went on to highlight the Conservative government's recent tax breaks for seniors. He appears to be committed to raising the standard of living for older Canadians, many of whom now live in poverty. However, Bill C-377 may actually have the effect of reducing seniors' income by burdening their pension plans with bureaucratic paperwork. Pension assets are deferred wages. This is their money, and Mr. Hiebert's plan will waste that money.

Bill C-377 will also require the government to develop large and complex databases to categorize this information. The costs of developing, testing and implementing the system will be significant, and will be borne by Canadian taxpayers – the same ones that the Harper government says need tax relief, not a higher tax burden. Yet Mr. Hiebert glosses over the huge cost of implementing the bill, stating that, “[the] government's document production cost will be minimal once the electronic production system, the database and the website are in place” (Parliament of Canada, Hansard, Monday, February 6, 2012).

However, as Mr. Hiebert appears to concede, the costs to government and taxpayers do not end when the database and website are established. Developing the

necessary infrastructure to enable a publicly available posting and cross-referencing information system is an enormous and ongoing task. It will require regulations, forms, training and information manuals and a new comprehensive, searchable database with cross-referencing capacity on a web-based portal for the general public to access the information.

There are also considerable ongoing costs of ensuring compliance with the Act - monitoring, auditing and enforcing the scheme. Bill C-377 is inconsistent with the position of the Harper government, who since 2004 have been working to reduce paperwork through the Paperwork Burden Reduction Initiative (PBRI - http://www.ic.gc.ca/eic/site/pbri-iafp.nsf/eng/h_sx00001.html, accessed October 9, 2012).

Bill C-377 is drafted so that its potential to impose additional reporting obligations is virtually limitless. Specifically, the proposed language of s. 149.01(3)(b)(xx) allows for “any other prescribed statements” to be required pursuant to the regulations. Unlike a piece of legislation, these regulations can be enacted through cabinet and without any Parliamentary debate. Using vague language to enable regulations to expand an already broad disclosure requirement is anti-democratic. This ambiguous language opens the door to new and complex layers of unnecessary red tape that will come at a substantial cost. Simply put, the initial and ongoing cost to government of Bill C-377 will be significant. This is a waste of government resources and taxpayer dollars and counter to the government’s current policy priorities.

Finally, the reporting required by Bill C-377 includes disclosure of every transaction over \$5,000 by every labour organization in the country (s.1, C-377, re: s.

149.01(3)(b) *Income Tax Act*). This volume of required reporting will create a government database that is similar to what was required to administer the recently abandoned long gun registry, which Mr. Hiebert voted to abolish, in accordance with the Harper government's commitment to eliminate waste (Vote No. 128, 41st Parliament, 1st Session Sitting No. 81 - Wednesday, February 15, 2012,

<http://www.parl.gc.ca/HouseChamberBusiness/ChamberVoteDetail.aspx?FltrParl=41&FltrSes=1&Vote=128&Language=E&Mode=1>, accessed October 2, 2012). Indeed, when

Bill C-19, *Ending of the Long-Gun Registry Act* was passed, Public Safety Minister Vic Toews stated that:

[w]ith today's achievement, we lessen the burden on law-abiding gun owners and fulfil the promise we made to Canadians to eliminate the wasteful and ineffective long-gun registry (Harper Government delivers on promise to abolish the long-gun registry, <http://www.publicsafety.gc.ca/media/nr/2012/nr20120405-eng.aspx>, accessed October 9, 2012).

Ironically, Bill C-377 will increase the same kind of administrative load that the Harper government has consistently worked to reduce. It will undoubtedly be both wasteful and ineffective.

Bill C-377 Violates Important Privacy Rights

Privacy rights are Canadian values protected by law and by s. 8 of the *Charter of Rights and Freedoms*. Bill C-377 will have a serious impact on the privacy rights of both individual citizens and the business community.

First, Bill C-377 says unions must disclose the salaries of each and every one of their employees. No other law in Canada which requires salary disclosure comes close to being this broad and sweeping in its scope. This provision, which is mandatory, contains no exceptions (see the proposed s.149 (3)(b)(viii) *Income Tax Act*). The effect

of this policy is that unelected and non-political staff of a union including clerical and administrative staff would have their salaries posted alongside their names on a government website. This egregious invasion of privacy means that a person who happens to be employed by a union will have their income posted on a website which is searchable by anyone, including their neighbours, friends and family.

Second, Bill C-377 will negatively impact the business community by making all contracts over \$5000 with a given service provider a matter of public record. For example, a computer company has a strong interest in discovering the value and details of USW's arrangements with their current supplier. This information gives competitors a huge advantage in underbidding the existing supplier the next time the contract is renewed. Bill C-377 will impact many different kinds of businesses given that unions represent millions of members in Canada, with officers and administrative structures located across the country.

There is no evidence that Canadians want unions to have to disclose financial information

Mr. Hiebert relies on flawed data when he says that Canadians believe unions should be required to publicly disclose financial information. Specifically, he refers to a Nanos poll conducted in 2011 for the Canadian LabourWatch Association. He claims that this poll shows that 83 percent of Canadians want the kind of union disclosure mechanisms contained in Bill C-377. However, the poll was poorly structured and eventually raised several red flags. Dr. Sean Tucker is a professor of Business Administration at the University of Regina and holds a PhD in Organizational Behaviour and Industrial and Labour Relations. Dr. Tucker has identified serious methodological

problems related to the poll. Indeed, his comments about the methodology are so persuasive that Nanos has now labelled the poll data “inadequate.” Despite the clear indication from Nanos that the poll was flawed, Mr. Hiebert continues to rely heavily upon it. There is no good evidence that Canadians actually support Bill C-377.

Bill C-377 discriminates against unions

Bill C-377 subjects unions to disclosure obligations that do not exist for similar organizations. The sponsor of the bill claims that taxpayers subsidize unions since the *Income Tax Act* permits union members to deduct the dues they pay to their union from their taxable income. However, he is choosing to read the *Income Tax Act* selectively. The section he refers to permits any taxpayer who is a member of a professional organization (including medical associations, bar associations, and professional engineering societies) to deduct their professional fees. Both union dues and professional fees are considered an employment expense and the law permits individual union members, doctors, lawyers and other professionals to deduct the expense against their taxable income. The deduction is not made by the organizations to which they belong. The bill singles out unions by excluding professional organizations from its reporting obligations. This is unfair and discriminates against union members.

In justifying the bill, the sponsor stated that he based his “requirements for public disclosure for labour organizations on the existing provisions for charities in the *Income Tax Act*” (Parliament of Canada, Hansard, Monday, February 6, 2012).⁵ However, the disclosure required of charities is highly aggregated and much less detailed than what is

⁵ Since labour organizations are non-profits and have no profits upon which to pay income tax, they are not required to file income tax returns. They do however pay all required income taxes, municipal taxes, the appropriate sales tax (HST, GST or PST) and any capital taxes required by provincial governments.

imposed by Bill C-377. This bill would place unions under much more stringent reporting obligations than current legislation requires of non-profits, and would require the same extensive reporting requirements regardless of size or budget. The *Canada Not for Profit Corporations Act* requires organizations that derive funding exclusively from their membership to provide an audited financial statement only when their revenues exceed \$1,000,000 per year.⁶ Requiring all unions, regardless of size, to report under Bill C-377 will redirect important resources towards reports that will serve little to no purpose.

Conclusion

Bill C-377 is anti-democratic legislation that cannot deliver what it promises. Instead of providing transparency, it undermines the democratic governance of unions and hampers unions' participation in Canada's democratic society. Bill C-377 will take up significant union resources and the resources of pension and benefit plans in order to comply with the bill's disclosure requirements. Making this information publicly available in a cross-referencing database will come at a monumental cost to the government and in turn, to Canadian taxpayers. It will create unnecessary layers of red tape that the Harper government has repeatedly said it wants to cut. Finally, Bill C-377 invades the privacy of Canadian citizens and businesses, making the salaries of non-political employees and businesses the subject of uniform disclosure. This compromises the fundamental Canadian value of respect for privacy.

⁶ Requirements for Soliciting Corporations under the *Canada Not-for-profit Corporations Act* (NFP Act) "What is a soliciting corporation?" <<http://www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/cs05011.html>>, accessed July 30, 2012; *Canada Not for Profit Corporations Act*, s. 179 (b); *Canada Not For Profit Act Regulations*, s. 80(2).

This bill flies in the face of clear government priorities and will increase the size and cost of government bureaucracy. We urge the Finance Committee to examine the serious problems raised here and we encourage Parliament to defeat Bill C-377 on third reading.

All of which is respectfully submitted,

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