

Bill C-377, An Act to Amend the Income Tax Act (requirements for labour organizations)

Submission to the Standing Senate
Committee on Legal and Constitutional
Affairs

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Introduction

Unifor is Canada's largest private-sector trade union, but we have members in the provincial and federal public sectors as well, in virtually every industry.

We have 305,000 members in 755 local unions in every province and territory. Each of those local unions will have to comply with the reporting requirements and public disclosure requirements that are in this Bill.

We're concerned about Bill C-377. It is a blatantly anti-union piece of legislation. It exists for no reason other than to harass and weaken unions across Canada.

The Bill unfairly targets unions. It is an attempt to remedy a problem that lives only in the imagination of its proponent, Mr. Heibert.

If the Bill addressed a real problem about how unions operate, we would see the Minister of Labour bring forward legislation after careful consultation with all stakeholders. That has not happened. We have a Private Member's Bill which will tie up unions in the kind of red tape that this Government supposedly hates.

Nobody denies the right of a Member of Parliament to bring forward an idea for legislation. That is Mr. Heibert's right. However, it is the responsibility of all Parliamentarians – in the Senate and in the House – to really question the wisdom of this Private Member's Bill which interferes so substantially with labour relations policy.

We are not delivering a detailed brief about the legal and other issues with Bill C-377. Others have done an excellent job of that.

We refer you to the brief filed by the respected constitutional and labour lawyer Paul Cavalluzzo which we believe demonstrates the serious legal problems of this Bill.

We expect that Professor Bruce Ryder will have comments similar to those that he made in 2013 that questioned the right of the federal Parliament to make laws to regulate the internal affairs of trade unions at all.

We refer you to the comprehensive briefs filed by Canadian Association of Labour Lawyers and the letters from the Canadian Bar Association. They say that the Bill violates the Charter of Rights and Freedoms, and infringes on provincial jurisdiction. They express concerns about invasions of privacy, and of solicitor-client privilege.

Real purpose is to harass unions

Rather than repeat what other critics have said, our comments will focus on the ways in which this Bill is discriminatory against trade unions, and the impact that this Bill would have on the ability of trade unions to represent their members.

The serious, detrimental effects of the Bill betray its real purpose which is to make the job that unions do for their members more difficult.

In a recent analysis of Bill C-377, Professor David Doorey of York University, who the Supreme Court of Canada has quoted twice this year¹, hit the nail on the head when he challenged the proponents of the Bill to admit what the Bill is really about. Here is what he said:

“It’s easy enough to demonstrate that Bill C-377 is a ridiculous, partisan, waste of taxpayer money designed simply to punish, disadvantage, and hopefully silence unions, a political thorn in the Conservative’s side. Just ask a Conservative supporter of the Bill why *tax policy* should require unions to disclose far more information about their activities and employees than any other organization, including charities, corporations, churches, and dues collecting professional associations. They have no answer, because there can’t be one beyond ‘we really dislike unions’.”²

That’s what is behind this Bill. It is based only on an attitude that sees unions as somehow illegitimate, or untrustworthy.

We remind the Committee that the law in this country still embraces trade unions as a legitimate actor in a system of sound labour relations. That is in the Preamble to Part I of the *Canada Labour Code*. Trade unions have been recognized as fundamental to Canadian democracy by the Supreme Court of Canada³.

We remind you as well that the role of trade unions in representing their members is a very broad role. The Supreme Court has recognized that unions are only effective when we are active politically.⁴ We view labour relations as very broad – it doesn’t just happen at the bargaining table. It happens in the community.

Accountability of trade unions

So we need to look at the alleged purpose of the Bill. In his appearance, Mr. Heibert focused on the need for accountability – but I ask, accountability to *whom*?

Accountability - to trade union members?

Trade unions already operate in an open and transparent manner. They are accountable to their members. For example, Unifor’s constitution requires locals to undergo periodic audits and to make those results available to their members.

¹ *Potter v. New Brunswick Legal Aid Services Commission*, 2015 SCC 10 at para 84; *Mounted Police Association of Ontario v. Canada (Attorney General)*, 2015 SCC 1 at para 96.

² David Doorey, “Tory Senator Insults Order of Canada Recipient for Asking Why Unions Need Disclose More Than Charities” *Law of Work*. Accessed on 5 May 2015: < <http://lawofwork.ca/?p=8008>>

³ *R v Advance Cutting & Coring*, [2001] 3 SCR 209.

⁴ *Lavigne v. OPSEU*, [1991] 2 S.C.R. 211.

Further, trade unions are democratic institutions. Members are able to vote for their union leaders and therefore have the option to not re-elect leaders that they feel do not adequately serve their needs.

If there was a problem with accountability, we would have seen legislation from the Minister of Labour to change the *Canada Labour Code*. That hasn't happened.

Accountability - to the general public?

Mr. Heibert suggests that unions should be held accountable to the general public because they don't pay tax or somehow receive tax benefits. Let's make this very clear. Unions pay all taxes required of them – including municipal taxes, sales taxes etc.

Unions are like other non-profit organisations – they have no profits and therefore do not pay income tax.

Only individual members and their families qualify for tax deductions for the dues they pay. This is no different from the many other kinds of employment expenses and business expenses that are tax deductible.

But Bill C-377 only attacks unions.

There have been many comparisons made to the disclosure required of charities. As pointed out by a number of witnesses before this Committee, the disclosure requirements of unions under this Bill far exceed those required of charities.

Further, as noted by the CLC in its brief, there are over 90,000 organizations categorized by the CRA as non-profit, but only trade unions are targeted in this Bill. If this Bill is truly about accountability of non-profit organizations that don't pay income tax, then it would impose the same reporting and public disclosure requirements on all non-profits, and not just trade unions.

This supports the conclusion that this Bill is really about harassing and undermining the effectiveness of trade unions.

This is confirmed when the impact of the disclosure requirements on trade unions is examined.

Cost of compliance

First is the cost of compliance. Each of Unifor's 755 local unions will have to track their expenditures in order to report transactions that exceed \$5,000. Our local unions will essentially have to duplicate the audit function that is done now by local union trustees or outside auditors at a cost that we estimate at \$5,000 to \$25,000 per year for each local.

That means that for our local unions – and Unifor is just one union – the annual compliance cost could be three to four million dollars or more. That does not include Unifor's costs at the national level.

That means that unions will have to spend a significant amount of money and resources that might otherwise be used to provide better representation to their members, including countering the antiunion lobbyists who stand to benefit from this Bill.

Interference in labour relations

Second, the Bill will harm the ability of unions to exercise their right to collectively bargain. Employers will gain access to information that can be used to undermine a union's position during negotiations.

For example, the threat of a strike holds little weight when an employer has detailed knowledge of a union's finances and therefore how long a union might be able to sustain a strike.

As well, employers will know how and where unions have spent money, whether on communications, printing, lawyers, etc.

We usually know little about the financial situation of employers, especially those that are privately-owned. The disclosure requirements would greatly upset the balance of power between unions and employers, and limit the ability of union members to meaningfully exercise their right to collectively bargain.

Conclusion

What becomes clear when a closer look is taken at the alleged rationale behind this Bill and the impact it will have on unions, is that Bill C-377 is motivated by a dislike of unions.

Unions are being singled out and targeted by a piece of legislation that can have no purpose other than to harm the trade union movement and undercut the ability of Canadian citizens to enjoy the advantages of union representation.

For all of these reasons, in addition to the many put forward by other witnesses, we urge you to reject this piece of legislation.