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# PRESS RELEASE

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For Immediate Release

May 8<sup>th</sup>, 2013

## **With Bill C-377 Canada joins Guatemala, Pakistan, and Zimbabwe as countries excessively policing union finances**

Yesterday, Senator Pierrette Ringuette, the Liberal Senate Critic of Bill C-377 An Act to amend the Income Tax Act (requirements for labour organizations), spoke in opposition to the bill.

The Senator pointed out the fundamental flaws found in this bill, including the obvious infringement on provincial jurisdiction, abridgement of charter rights, and questions about the scope of the bill.

Senator Ringuette put particular emphasis on this bill's implications on Canada's international obligations, saying;

“Honourable senators should know that a few years ago the International Labour Organization started investigating complaints from three countries in regard to Convention 87, Article 3. In essence, the complaints were the same for all three countries, which was the policing, by government, of the funds of workers' organizations. These three countries are Guatemala, Pakistan and Zimbabwe.

Yes, honourable senators, Bill C-377 will add Canada to a select group of nations that includes Guatemala, Pakistan and Zimbabwe at the United Nations as countries that are unduly policing the funds of workers' organizations. That is certainly not the international recognition that Canadians are looking for.”

In light of these concerns, Senator Ringuette reiterated that the Senate should not proceed with this bill;

“As members of the Canadian chamber of sober second thought, senators, both individually and collectively, should not endorse any bill like Bill C-377 with such obvious and inherent flaws, the passing of which would be an embarrassment to our chamber and our country, both at home and abroad.”

The official Senate transcript of Senator Ringuette’s remarks is attached.

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## TRANSCRIPT

**Hon. Pierrette Ringuette:** Honourable senators, I would definitely like to thank Senators Cowan, Tardif, Hervieux- Payette, McCoy, Mercer and Rivest for their contributions to the debate on Bill C-377.

Today, I would like to share with you my views on Bill C-377, which was introduced in the Senate by Senator Eaton and MP Russ Hiebert in the other place.

*[English]*

Bill C-377 is not just a wicked attack on labour organizations but also one against all hard-working Canadians and their families.

In her speech, Senator Eaton tried her best to sell us the PMO's weak argument that labour organizations should be subject to the same fiscal reporting onus as charities. At best, this comparison is disingenuous; at worst, it betrays a belief that anyone who actually earns an honest living through organized labour is a charity case. Maybe a few Canadians, from their pedestal, would have the same opinion, but workers around the world, particularly Canadian workers and their families, are grateful for labour organizations' continued advocacy on their behalf. I for one certainly appreciate their long and hard-fought battles for results for all Canadians, not only the unionized ones.

*[Translation]*

First of all, I would like to set the record straight with regard to Senator Eaton's arguments justifying the presence of such a bill in the Senate. She said that, for several years, charitable organizations have had to file, through the Canada Revenue Agency, a report of their revenues and expenditures, as a measure of accountability, and in order to issue tax receipts for donations. She believes that unions that receive the same benefits as charitable organizations should disclose detailed financial statements to the public through the Canada Revenue Agency.

Honourable senators, the similarities invoked by Senator Eaton are unfounded and I think show a serious bias against unionized Canadians.

Here is what the senator failed to mention:

The federal government is solely responsible for accrediting the 85,000-odd charities. This is done through Revenue Canada, which is responsible for overseeing their financial activities to maintain this accreditation. That is also why the disclosure of information regarding the finances and activities of charities is regulated by Revenue Canada, in accordance with the Income Tax Act.

Most Canadians who contribute to these charities are not members of the organizations and therefore would not have any other way of verifying this information. Furthermore, by publishing some financial information about the organizations, Revenue Canada's oversight responsibility is lessened because the public is able to comment. If not for the law that forces charities to disclose their finances and activities, donors would not have access to this information. That is not the case with labour organizations.

*[English]*

Senator Eaton says:

... our government supports and affirms that organizations receiving public benefit should be accountable and transparent in disclosing how they use such benefit.

The PMO's position, as conveyed by the honourable senator, reveals the true scope of Bill C-377, and I will expand on this issue later in my speech, while analyzing the new definition of labour organization within Bill C-377.

*[Translation]*

The reality is that fewer than 10 per cent of labour organizations in Canada are regulated by the federal Minister of Labour under the Canada Labour Code. Section 110 of this code states that trade unions and employers' organizations are required to make their financial statements available to their members — their contributors — as a form of accountability, and the same goes for labour organizations in most provinces.

I must point out that labour relations organizations do not have access to tax deductions. Individual workers are the ones who can deduct dues from their taxes, if applicable. Employers' organizations and employee organizations that oversee employer-employee relations are considered not-for-profit organizations by Revenue Canada, much like associations for doctors, engineers, nurses and teachers.

Senator Eaton is also arguing that France, England, the United States and Australia have legislation similar to Bill C-377. That is also false. In those countries, the legislation on these matters is the result of their authority over labour relations, not their tax jurisdiction. Furthermore, the information collected is minimal compared to the extremes that we see in Bill C-377.

*[English]*

Honourable senators, in a nutshell, the arguments in support of Bill C-377 are fundamentally false. I shall move on to serious issues related to Bill C-377, because spending any further time addressing Senator Eaton's weak and flawed defence of this bill would be a waste of time.

*[Translation]*

The most important things — but not the only things — to remember about Bill C-377 are as follows: it violates the Canadian Constitution regarding the provinces' constitutional jurisdictions; it violates the Canadian Charter of Rights and Freedoms; it flies in the face of our international obligations under Convention 87, Freedom of Association and Right to Organize, 1948, of the United Nations International Labour Organisation, a convention that Canada ratified in 1972, with the provinces' consent; it breaches the privacy of Canadians; and finally, its definition of "labour organization" is flawed.

Honourable senators, need I remind you that our job here in the Senate is to have a critical second look at the bills passed in the other place, and to ensure that those bills are consistent with the laws of the land and respect the provinces that we each represent? The Canadian public fully expects the legislators they have elected to Parliament and to their respective legislative assemblies to at least be familiar with the legislative parameters of this country — in other words, the Constitution — as we create new legislation.

(1550)

Section 91 of the Constitution details the areas of jurisdiction exclusive to Parliament, and section 92 details the areas of jurisdiction exclusive to the provinces. Labour relations fall exclusively under provincial jurisdiction according to the 13th class of subjects in section 92, namely Property and Civil Rights in the Province. These civil rights include contractual rights and the right to form employers' and union organizations that negotiate and sign contracts governing labour relations. Jurisprudence confirms that exclusivity.

I would like to make an aside about federal-related jurisprudence concerning labour relations. There is an exception giving the federal government jurisdiction in situations where it governs the operations of interprovincial businesses, such as Canada Post, Air Canada or interprovincial ferries. In other words, Parliament can be involved in labour relations legislation for industries, businesses and companies under its jurisdiction, depending on the nature of their operations. Parliament also has the authority to legislate within its jurisdiction if there is a state of emergency, a serious situation that is endangering lives or the state.

Honourable senators, I am certain you agree that Bill C-377 is not an emergency, and neither lives nor the state are in danger. This bill is simply an intrusion into provincial jurisdiction. Four provinces have already spoken out against the bill. Does the objective of the bill, the essential nature of Bill C-377, address labour relations, or is it using taxation to hide its scope?

While the title — Bill C-377, An Act to Amend the Income Tax Act — suggests a taxation measure, the subtitle — requirements for labour organizations — clearly indicates that it is a measure targeting only labour organizations, which fall under provincial jurisdiction exclusively.

In other words, with Bill C-377, the Harper government is trying to slip through the back door what it cannot manage to get through the front door. Bill C-377 is not entirely within the federal government's jurisdiction. Does Bill C-377 apply strictly to federally regulated labour organizations, which make up roughly 10 per cent of such organizations?

For deduction purposes, the Income Tax Act recognizes under the "dues" category, those dues that a Canadian must pay in order to receive income from his or her work, regardless of the organization that receives those dues. For deduction purposes, it is the workers who have to prove to the tax man that these dues are applicable to his or her income. I refer you to CRA's interpretation bulletin IT-158R2 and IT-103R.

For this bill to have anything to do with taxation, the Act to Amend the Income Tax Act should focus on dues as a tax-related item. Honourable senators, you can read and reread Bill C-377 and nowhere will you find the word "dues".

The content, purpose, essence and nature of this bill have nothing to do with taxation and everything to do with the financial and organizational management of labour organizations, which fall under provincial jurisdiction.

There is no fiscal measure and nothing that will have an impact on workers' income. Bill C-377 is an administrative and operational intrusion that furthers the government's political agenda.

The Canadian Bar Association wrote to the chair of the finance committee of the other place to say that it was inappropriate to amend tax law in order to impose operational restrictions. If the purpose of the bill was to introduce fiscal measures for non-profit organizations, including labour organizations, then it would address non-profit organizations as a whole under that tax category.

The specificity of Bill C-377 is not to be found in the area of taxation; just read the bill summary:

This enactment amends the *Income Tax Act* to require that labour organizations provide financial information to the Minister for public disclosure.

Bill C-377 is disguised as a tax law, but in reality, it has more to do with internal administration that falls under provincial jurisdiction.

In 1972, when the Canadian government ratified Convention 87 of the United Nations International Labour Organization, it had to obtain the provinces' consent because labour comes under their exclusive jurisdiction. It is therefore our duty, as the only representatives of the provinces in the Parliament of Canada, to reject Bill C-377 because it interferes in an area of provincial jurisdiction.

[English]

The enactment in 1982 of the Canadian Constitution and the Canadian Charter of Rights and Freedoms defined our maturity as a nation and as a free and democratic society. It is a beacon of freedom for our citizens and an inspiration to many around the world. Among the fundamental freedoms of Canadians are the freedoms of association and expression. Section 32 of the Charter clearly states that the Charter applies to Parliament, the Government of Canada, and the legislature and government of each province. All legislators in Canada, when exercising their responsibility to legislate, must abide by the Charter.

Honourable senators, although the Charter provides individual rights, those rights are essentially extended to organizations as well when an individual seeks membership as a means for his or her right or aspiration, as expressed by the Honourable Mr. Justice McIntyre. Labour organizations, by extension, have the individual rights and freedoms of their members — fair-minded Canadians pursuing their freedom of association, freedom of expression and peaceful assembly with common objectives to have better lives in general and conditions of citizenship. These individual freedoms exercised collectively via an association or organization to achieve common goals may require political or non-political activities. They may require funds directed strictly to bettering one's life in various aspects, such as health care, retirement, sick leave, legal counsel, et cetera, all of which are part and parcel of one's freedoms of speech and of association to further one's cause. The excessive public disclosure listed in Bill C-377 is a direct constraint on individual rights and freedoms under the Charter and, therefore, also the collective rights of individuals in an association.

Many honourable senators will remember Senator Beaudoin. His book, *La Constitution du Canada*, which he gave to me, describes reasonable limits for a legislative body in terms of restricting rights and freedoms. He stresses that these limits must be reasonable and justifiable in a free and democratic society and that the burden of proof lies with the one who restrains rights and freedoms. Let me repeat that because it is extremely important: The burden of proof lies with the one who restrains rights and freedoms. The legislator must show a real urgency when seeking to restrain rights and freedoms and that there is a balanced approach between the importance of the issue and the measures taken through legislation.

(1600)

The proponents of Bill C-377 have not been able to convince us that it is reasonable and justifiable or that it is an urgent issue threatening the stability of Canada.

Honourable senators, as mentioned earlier, in 1972 Canada, with the agreement of the provinces, ratified Convention 87, the Freedom of Association and Protection of the Right to Organise Convention of the International Labour Organization of the United Nations.

Article 3 of Convention 87 states:

3. (1) Workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes.

3. (2) The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.

I include the Canadian Charter of Rights and Freedoms and the International Convention 87 in my arguments on freedoms since I believe that, in relation to Bill C-377, they are inextricable and complementary. Convention 87 was ratified in 1972 by Canada and the provinces, before we enshrined the Charter in our Constitution in 1987. The individual right within the Charter is in addition to the collective rights under Convention 87 for all Canadians.

Notice that, within Convention 87, organizations have the right to organize their administration and activities and formulate their programs. The slate of public disclosures required in Bill C-377 is a complete breach of Article 3 of Convention 87, which we have signed at the UN.

Honourable senators should know that a few years ago the International Labour Organization started investigating complaints from three countries in regard to Convention 87, Article 3. In essence, the complaints were the same for all three countries, which was the policing, by government, of the funds of workers' organizations. These three countries are Guatemala, Pakistan and Zimbabwe.

Yes, honourable senators, Bill C-377 will add Canada to a select group of nations that includes Guatemala, Pakistan and Zimbabwe at the United Nations as countries that are unduly policing the funds of workers' organizations. That is certainly not the international recognition that Canadians are looking for. As members of the Canadian chamber of sober second thought, senators, both individually and collectively, should not endorse any bill like Bill C-377 with such obvious and inherent flaws, the passing of which would be an embarrassment to our chamber and our country, both at home and abroad.

Honourable senators, there is also the major issue of the right to privacy in this bill. Bill C-377 requires detailed disclosure, name of person, et cetera, for any disbursement above \$5,000 per year. That person can be an employee, a service provider, a retiree, et cetera.

How absurd can Bill C-377 be? How ignorant of our current Privacy Act, which covers all federal statutes, including the Income Tax Act that Bill C-377 is attempting to unduly amend? Let me enumerate the most evident ones from the Privacy Act.

Section 4:

No personal information shall be collected by a government institution unless it relates directly to an operating program or activity of the institution.

Section 5(1):

A government institution shall, wherever possible, collect personal information that is intended to be used for an administrative purpose directly from the individual to whom it relates except where the individual authorizes otherwise or where personal information may be disclosed to the institution under subsection 8(2).

Section 8(1):

Personal information under the control of a government institution shall not, without the consent of the individual to whom it relates, be disclosed by the institution except in accordance with this section.

Section 8(2) then provides a list of exceptions, which include warrants, legal proceedings, et cetera.

Bill C-377 does not require individual consent to publish personal information; therefore Bill C-377 contravenes our Privacy Act.

Honourable senators, in reality there are two disclosure requirements in Bill C-377. The first one is from the organization to Revenue Canada, and the second one is from the Minister of Revenue Canada to the public via the agency's website.

The Canada Revenue Agency and its minister will have to reach every individual identified in the entire disclosure requirement of Bill C-377 from all the labour organizations to get their written consent before putting the individual's information in the public domain. That activity, on its own, would probably require contacting millions of Canadians at least once a year to receive their written consent. Since Bill C-377 clearly states that the information shall be made public by the minister, the onus to seek consent from individual Canadians to make their private information public becomes his responsibility and not that of the labour organizations.

Honourable senators, I have not witnessed a major or minor public outcry and interest that could outweigh the invasion of the private life of working Canadians.

Another unanswered question is this: What if a labour organization signs a service contract that contains a non-disclosure clause?

I will move on to the word "organization." There are so many controversies in regard to Bill C-377 that I have not yet touched on. However, one of them is extremely important; it is the word "organization."

(1610)

Proposed section 149.01(1) says: "The following definitions apply in section 149 and in this section." It says:

"labour organization" includes a labour society and any organization formed for purposes which include the regulation of relations between employers and employees, and includes..."

Recently the Supreme Court ruled, for example, that the RCMP Officers' Association, although not an accredited organization, had the same rights as one that was, since its purpose was to regulate relations with its employer. This precedent will be applied to all employee and employer organizations, such as the NHL and the CFL.

The definition found in this bill would apply to a broad range of organizations, in fact practically any group that performs a function considered to be labour relations. This would include professional associations like the Canadian Medical Association, the Canadian Bar Association, the NHL and the CFL, groups that, I believe, count a number of us as members.

Honourable senators, we have all heard the saying "Be careful what you wish for."

**Senator Tardif:** That is right.

**Senator Ringuette:** Well, this is it. This definition includes employers' organizations with the word "and" in the definition of this bill, i.e., in addition to, which becomes applicable not only to the new section 149.01 but to all of section 149.

That is only normal since, as they say, it takes two to tango, i.e., at least two parties. Both the employee and the employer are required for there to be a "relation." This new definition is more in line with the definition that we can find, for instance, in the following references:

Gérard Dion, author of the only Canadian dictionary in industrial relations, on page 326 defines the word "organization" in the industrial relations context as "a permanent group aiming to achieve set objectives. An enterprise is an organization, as is a union."

Furthermore, the Canada Labour Code, on page 5, defines "employers' organization" as any organization of employers, the purposes of which include the regulation of relations between employers and employees; and on page 6, "trade union" means any organization of employees, or any branch or local thereof, the purpose of which includes the regulation between employers and employees.

The New Brunswick Industrial Relations Act defines "employers' organization" as an organization of employers formed for the purposes — we have the same wording again — that include the regulation of relations between employers and employees and includes any organization of employers that has for its objects, or one of its objects, the regulation of relations between employers and employees and includes an accredited employers' organization.

The United Nations International Labour Organization, Convention 87, which I mentioned earlier, Article 10, reads:

In this Convention, the term *organisation* means any organisation of workers or of employers for furthering and defending the interests of workers or of employers.

Honourable senators, the continued and consistent definition of both employee organization and employer organization in its purpose in labour relations legislation provincially, federally and internationally confirms that the disclosure requirements of Bill C-377 apply to employers' organizations.

I also believe that if Bill C-377 undergoes a court challenge, the court may well decide that a single enterprise is also an organization. The requirements of Bill C-377 would be extended to a single employer that has the purpose of regulating labour relations between himself and his employees.

The Canadian Bar Association has briefly highlighted this issue in a letter to the Chair of the House of Commons Standing Committee on Finance.

The explicit specification in 149.01(1) that the definitions apply to all of section 149 confirms the inclusion of employers' organizations since currently it is not defined in the exempt division of the Income Tax Act.

For example, 149.1, on page 2176 of the Income Tax Act, is the section that lists the individual or entities that are currently tax exempt. Item 149(1)(k) highlights a labour organization.

This new definition in Bill C-377 applicable to section 149 has a purpose, that of establishing within the exemption section of 149.01 employer organization. That is certainly necessary since they are also subject to the disclosure requirements in Bill C-377.

Honourable senators, make no mistake; this is an anti-union, special interest group that has rolled this Trojan horse of a bill before us, with their friends at PMO to thank for opening the gates of Parliament. Their goal is simple: legislatively sanctioned corporate espionage. This is state-sponsored war on labour in Canada, and the government is blatantly arming the big corporations with legislation like Bill C-377. It is reprehensible, and unworthy of this chamber.

My only consolation is that they will soon find their efforts will blow up in their faces: They will have to conform to the same disclosure measures. Never mind filing tax returns only once every three years, like its major proponent, Merit Canada.

Honourable senators, there are certainly more issues in the different clauses of Bill C-377 than those I have mentioned. However, I strongly believe that these issues are more than sufficient to no longer continue the study of this bill. The scope of Bill C-377 is not 1,000 organizations but roughly 50,000 organizations representing millions of Canadian workers and their employers.

This bill is not about a fiscal issue or a taxpayer issue, as has been claimed. The taxpayer will gain nothing from the revelation of who cleans a union's office. It is an offensive tactic wielded by special interest groups. The issue of this bill is labour relations, which is under provincial jurisdiction. The goal of this bill is policing the funds of labour organizations, as is done in Guatemala, Pakistan and Zimbabwe, and it is unacceptable. Continuing the study of this bill and its potential passage will be an embarrassment to the Senate, and to all Canadian parliamentarians, both nationally and internationally. It makes international pariahs of us all. Think twice.