May 31, 2013

The Honourable Senator Irving Gerstein
Chair
Senate Standing Committee on Banking, Trade and Commerce
The Senate of Canada
Ottawa, Ontario
K1A 0A4

Dear Senator,

I am writing to follow up on some of the issues that were raised during my May 28 appearance before the Senate Banking Committee as part of its hearings into Bill C-377, *An Act to Amend the Income Tax Act* (*Requirements for Labour Organizations)*.

First, one of the key issues discussed was the question as to what Canadian activities are currently disclosed by U.S.-headquartered unions under the U.S. union transparency laws. You will recall that one of the co-panelists at the hearing, Bob Blakely of the Canadian Building and Trades Union (AFL-CIO), made the following statement about such disclosures:

> "*What goes on in Canada stays in Canada. There may be three or four people at the top of their organizations, an international vicepresident, for example, who may be paid out of the United States*."

A brief scan of the annual filings of some well-known unions active in Canada clearly demonstrates that this statement is false.

Mr. Blakely's union, like all U.S.-headquartered unions, is required to file an annual disclosure statement with the U.S. Department of Labour. That statement is known as an LM2 and is readily available via a search of the U.S. Department of Labor's Office of Labor Management Standards website (http://www.dol.gov/olms). The 2012 disclosure statement includes significant information about the Union's activities in Canada including payments of salaries and benefits to a number of Canadian union executives, as well as information about their lobbying activities.

The filing in the U.S. also includes information about payments to a number of Canadian suppliers of goods and services such as Air Canada, Bell Canada, the Royal Bank and a Canadian law firm. This is in direct contradiction to Mr. Blakely's statement. It is logically inconsistent for Mr. Blakely to object to filing this information with Canadian authorities when it is already publicly filed in the U.S.

As another example of Canadian activities being disclosed in U.S. filings, you may recall that the New Democratic Party of Canada (NDP) was forced to repay over $340,000 in illegal payments that had been accepted from unions after the Chief Electoral Officer found these payments to be in violation of Canada's election financing laws.

That repayment was ordered after U.S.-based unions such as the Steelworkers (AFL-CIO) and National Firefighters (AFL-CIO) were forced to disclose these payments in their 2011 U.S. LM2 filings. It is interesting to note that the Canadian headquartered unions who had also paid this money to the NDP were not required to disclose the amount of the payment, an issue that Bill C-377 would fix.

The second issue I would like to address relates to the constitutionality of Bill C-377. According to House of Commons Standing Order 91.1(1*), at the beginning of the first session of a Parliament, and thereafter as required, the Subcommittee on Private Members' Business meets following the establishment, or replenishment of the Order of Precedence, to determine whether it wishes to designate any of the items as non-votable according to the criteria adopted by the Standing Committee on Procedure and House Affairs.*

The criteria to determine non-votability adopted by the Standing Committee on Procedure and House Affairs pursuant to Standing Order 91.1 are as follows:

- bills and motions must not concern questions that are outside federal jurisdiction;
- **bills and motions must not clearly violate the *Constitution Acts, 1867 to 1982,* including the *Canadian Charter of Rights and Freedoms*;** (emphasis added)
- bills and motions must not concern questions that are substantially the same as ones already voted on by the House of Commons in the current session of Parliament, or as ones preceding them in the Order of Precedence.

At the December 2011 meeting of the Subcommittee on Private Members' Business the matter of the constitutionality of Bill C-377 was raised and discussed in detail. Mr. Michel Bedard, the Constitutional and Parliamentary Affairs Advisor at the Library of Parliament, gave the following testimony during the Subcommittee's deliberations on Bill C-377:

> "*I see no problem with them (the criteria that a Private Members' Bill must meet). It is within federal jurisdiction. **It is not unconstitutional**. (emphasis added), and there's no similar bill currently on the order of precedence, either from the government or a private member*."

It is important to emphasize that Mr. Bedard is a non-partisan employee of the Library of Parliament and a recognized expert on constitutional matters. He clearly states on the record his view that the Bill is not unconstitutional.

After an extensive discussion on Bill C-377, the Committee took a recorded vote on whether or not it met the above criteria, including constitutionality. Former Liberal Leader Stéphane Dion, a noted constitutional expert, voted in favour of the Bill being votable and hence constitutional, specifically noting that he did not agree with the NDP member of the Committee who argued the opposite. The full transcript of that discussion is attached for your reference as Appendix A.

The third and final issue I would like to address relates to the supposed regulatory burden that Bill C-377 would impose on unions. In his testimony Mr. Blakely indicated that it could take up to 550 hours to prepare and file the information required under Bill C-377. Moments later in response to a question from Senator Black, Mr. Blakely assured the Senator that any union member could already easily obtain all of the information required by Bill C-377, indicating that much of it was already required to be disclosed under provincial laws.

This is another gross logical inconsistency. On the one hand, Mr. Blakely is claiming that it would be a huge burden to disclose the information, and on the other he is stating that the information is already readily available. Unfortunately, neither statement is true. On the first point, attached as Appendix B is graphic depiction of what the Airline Pilots Association claimed would be the amount of filing required annually under similar U.S. law, versus what actually had to be filed. The U.S. experience has demonstrated union leaders have no credibility on this point. I would also reiterate that any union adhering to even the most basic standards of accounting will have no trouble meeting the filing requirements of Bill C-377.

On the second point, as the Committee heard from Mr. Francis Donovan on May 30, unions do not readily make this information available to their members and there are well-documented cases of that happening across Canada.

Merit Canada appreciates the interest Senators have in this Bill and we are available to answer any further questions. However, we encourage Senators to take a critical look at the arguments of union leaders since many are false or grossly exaggerated. Union leaders are employing every lobbying tactic at their disposal to avoid having any public or union member scrutiny of the $4 billion in forced contributions they collect annually.

Sincerely,

Terence Oakey
President

c.c. Members of the Senate Standing Committee on Banking, Trade and Commerce