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Letter to Independent and Conservative Senators who abstained or were absent for the Bill C-377 vote

The Honourable <FirstName> <LastName>
Senator
The Senate of Canada
Ottawa, Ontario K1A 0A4

Dear Senator <LastName>:

Re: Bill C-377, *An Act to Amend the Income Tax Act (Labour Organizations)*

In July 2012, I wrote to Senators who voted on Bill C-377. The bill was amended, rather than defeated and sent back to the House of Commons. We had hoped the government would at least give pause and think about the implications of legislation that was poorly written, discriminatory and unconstitutional. However, it appears that notwithstanding the message from the Senate and the report and recommendations of the Banking, Trade and Commerce Committee which heard from many witnesses opposed to the bill, the government is still prepared to push the bill through Parliament.

While the amendments do limit the application of the bill, it still remains unconstitutional by infringing on provincial jurisdiction. There are still privacy concerns that are not addressed. Pension and trust fund managers will still have to undergo extensive costs in order to comply with the bill.

What was demonstrated was the important role of the Senate in the Canadian Constitution as the house of sober second thought. It was, and remains, within your mandate to protect Canadians from a political failure by the House of Commons. There are many reasons for not proceeding with this bill and I outlined them in detail in a letter to all Senators on June 14, 2013.

Nothing has changed since practically every witness in front of the Committee outlined their concerns with the bill. Many of these expert witnesses advised the Committee that they did not believe the bill could be amended in any way that would make it constitutional.

It is our position that the bill is so fundamentally flawed, it should be defeated. The bill is not only offside with the government's position on red tape and intrusion into private organizations, but it is also, as Senator Hugh Segal, the Prime Minister's special envoy to the Commonwealth pointed out in a CBC interview on June 27, 2013, contrary to fundamental conservative principles:

“Conservatives believe in things like the Constitution. We believe in the protection of innocent people’s privacy. And when we had people from the Mutual Fund Industry of Canada, from the Canadian Life and Health Insurance Industry come before the Committee and say the way the bill was drafted, a lot of innocent folks who have nothing to do with unions were going to have their privacy violated...”

“The other thing that was deeply troubling from a conservative point of view was the fact that the bill was clearly ultra vires. It violated Section 92 of the Constitution. If the Liberal Party views itself as the party of the Charter of Rights and Freedoms, Conservatives view themselves as the party of the British North America Act. We believe those distinctions between federal and provincial areas of responsibility are important and we had formal letters from four provinces representing Conservative governments, NDP and Liberal saying this is a violation of our constitutional rights.”

“And let me also say that my definition of being a loyal Conservative is you protect the Prime Minister from legislation that is so flawed, that has so many technical and other drafting problems that it’ll get the government involved in huge difficulties, massive court cases and huge costs for years to come. That is one of the things that on occasion the Senate needs to do.”

I should point out that there has been one significant development. The supporters of the bill often refer to a poll that shows that 83% of the Canadian public including union members support the principles of the bill. But, as was pointed out in an article in the *Vancouver Sun*, July 5, 2013 by Peter O’Neil, it appears the poll was manipulated to produce the result that the proponents of the bill, the LabourWatch organization, wanted. I am enclosing a copy of the story for your information.

The Marketing Research and Intelligence Association, the professional body for polling firms, commented in its recent decision on a complaint by the Canadian Labour Congress that “the omission of question 18 from the report and the reporting of question 20 without the preamble, allowed potentially biased information to be reported by LabourWatch.” Question 20 is the one that LabourWatch promotes as justification for this bill.

One of Canada's leading pollsters, Alan Gregg, who used to do polling for the Conservative Party said that in his opinion, the two key questions were crafted in a "horrendously biased" way to get the results LabourWatch wanted to promote tougher disclosure laws for unions [Vancouver Sun, July 5, 2013].

"This is not the kind of polling that people in our discipline should be doing. Clearly it's being done by an advocacy group that's got a particular axe to grind..."

The Canadian Labour Congress does not believe that Parliament, the House of Commons and the Senate, should be misled and manipulated into supporting legislation on this basis.

The witnesses to the Committee opposing the bill included constitutional experts, such as the Canadian Bar Association and the Barreau du Québec representatives who testified that Bill C-377 falls outside Parliament's jurisdiction.

Five provinces, Manitoba, Ontario, Quebec, New Brunswick and Nova Scotia, have advised the Minister of Labour or the Committee that the bill is outside of Parliament's jurisdiction and intrudes on provincial jurisdiction.

The Certified General Accountants Association of Canada stated that the bill relates not to the tax authority of the federal Parliament but the regulation of trade unions or labour relations. Along these lines, the Canada Revenue Agency also said the purpose of the bill was public disclosure and not for taxation purposes.

The bill causes Canada's Privacy Commissioner concern, and it offends the intent of federal and provincial privacy laws.

The overwhelming testimony from those witnesses who are independent of any labour organization or one of the organizations lobbying for the bill, called for the bill not to be passed.

The only organizations who testified at the House of Commons and Senate Committees – Merit Canada, LabourWatch and the Canadian Federation of Independent Business – are all well known anti-labour organizations and whose members sit on each other's boards.

As I wrote to you earlier, I can think of no better summary observation on Bill C-377 than that from the *Globe & Mail* editorial of December 14, 2012 print edition:

"An apparently ideologically driven bill that singles out unions, and not professional bodies such as law societies, is not a sound basis for public policy. We should not legislate witch hunts."

It is not sufficient to observe that there are serious issues with this proposed legislation. It is the role of the Senate to provide leadership. I urge you to carefully consider the purpose of the bill, its discriminatory and unconstitutional nature and vote to defeat Bill C-377.

Yours truly,



Kenneth V. Georgetti
President

Enclosure

cc: CLC Canadian Council
CLC Assistants and Directors

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