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Presentation before the Standing Senate Committee on Legal and Constitutional Affairs

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

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AJC Draft C-377 points

The AJC is the exclusive bargaining agent for approximately 2,700 lawyers employed by the government of Canada ("Federal Crown Counsel"). Our members work for the Department of Justice, the Public Prosecution Service of Canada. They and provide in-house legal services to various federal agencies, tribunals and courts across the country. We are proud of the work we do on behalf of Canadians.

We are one of 17 core public service bargaining agents, and the only one invited to speak to this committee.

It is unclear what issue or perceived problem this bill is meant to address, but the objections come from all corners. As you may already know, a private member's bill will follows the same legislative process as any government bill. However, their consideration and the time allocation is restricted while before the House of Commons. As a result, private member's bills are not subject to the scrutiny required of a government bill which, for all intents and purpose, C-377 is, neither do they benefit from the expertise of DOJ lawyers and the governmental apparatus to review their legality throughout the drafting phase. As such, it falls mostly on you, dear senators, to thoroughly review and analyze the invasive measures set forth by C-377. Although I expect this committee is concerned mostly with the legality, constitutionality and severe impact of the legislation, I want to take this opportunity to reinforce a number of these criticisms.

1. **Solicitor-client privilege** – Some of the disclosure required by the bill is protected, but much is not, including expenditures related to collective bargaining or labour relations. Such information must be reported to the Minister of Finance and is made public. [see Federation of Law Societies of Canada submission: See also Unifor re Group Legal Services Plans] The solicitor-client

privilege is the cornerstone of our judicial system. Any breach of this privilege for ideological purposes can only serve to undermine our judicial system and basic rights as Canadians.

2. **Privacy** – It has been noted that there are significant privacy interests at stake with this bill. The extent of the public disclosure required is disproportionate to any conceived goal, include accountability to taxpayers. Union accountability is primarily owed to its members. Even with public accountability argued from tax subsidies, the intrusion on privacy is disproportionate. Such privacy concerns do not limit themselves to union members and employees but could also extend to individuals entering into commercial transactions, such as someone offering snow removal or janitorial services, which are not, in any way, affiliated with a union. It is estimated that 12 million Canadians' privacy would be affected should this bill be enacted into law.

3. **Broad scope** - Many organizations "not targeted" by the bill could be caught up – see Doctors of Nova Scotia submission and Investment Funds Institute of Canada (i.e. all mutual funds, pensions funds). This particular issue clearly illustrates how blunt this instrument is.

4. **Constitutionality - Ultra vires** - Federally, and in most provincial and territorial jurisdictions, legislation requires unions to disclose financial information to their members. It is inappropriate to use the Income Tax Act to intrude outside its constitutional scope – Canadian Federation of Teachers again. **This is not income tax legislation** – "In our respectful view, this Bill, in spite of its title, is not income tax legislation. In pith and substance, in purpose and effect, it is labour legislation. Its main effect, (an effect not

unintended by its sponsors and proponents) will be to alter the balance of labour-management relations across Canada." [SEIU-West]

Proponents argue that unions are subsidized by taxpayers through tax-deductible union dues, so taxpayers have a right to know how unions are spending their members' money. We have tax deductions or credits for a wide range of things, including:

- Registered charities and not-for-profits
- Political contributions
- Fees paid to professional organizations
- Public transit
- Fitness
- Tuition
- Retirement savings
- Other savings accounts
- Just being employed

How do we deal with the taxpayers' right to look into these areas? One could argue that any political spending by municipalities, gyms, universities, banks, any employer should be disclosed not just to shareholders or trustees, but to the public. This bill unfairly targets a subgroup with whom the government does not share any affinities and for what appears to be purely ideological reasons.

5. **Constitutionality - Freedom of expression and association** – It can be argued that there are further constitutional issues that arise with the scope of the disclosure required by this bill. It can easily be seen that the provisions of the bill would significantly interfere

with the internal administration and operation of unions, to a degree that would amount to an infringement of the freedom of association of their members. And as my colleagues from the CBA have pointed out, it is unclear from the Bill what the justification for such an infringement might be.

6. **Cost -** The cost of implementing this financial reporting scheme is tremendous – estimated by Parliamentary Budget Office and CRA at $11m in the first year, and $2m annually in following years. [CFT again] Another interesting point on this issue of red tape – a bill to amend the Access to Information Act and Privacy Act – short title: CBC and Public Service Disclosure and Transparency Act had a similar goal – to disclose all government and Crown Corp employees who earn over $188,600K/year (the minimum DM salary). Unfortunately for the sponsor of the bill, a committee amendment changed the threshold to $444,000/yr (the maximum DM salary). One of the reasons provided by the MP for amending the bill: the bureaucratic cost of the disclosure at that level. It thus seems unimaginable that a $5000 threshold, for every transaction would be any less onerous or practical.

7. **Mandatory dues** – Those in favour of this bill argue that the collection of mandatory dues – the Rand formula - equals an indirect power to tax. Let's go back to that decision by Justice Rand – "The Rand formula offered an individual/collective rights compromise in the liberal democratic tradition. It was an integral part of the post-war model of Canadian labour relations. In this model, capitalism is taken for granted and, in a liberal political democracy, labour and capital are "juridical equals" and partners in a regulated system of collective bargaining. Dissenters are free to

opt out of union membership, but they can be compelled to pay for the collective goods gained by the union. In exchange for the financial stability gained by dues check-off, unions must be responsible and democratic." [Debra Parkes – The Rand Formula Revisited, Manitoba Journal of Law]

To argue today that mandatory dues are equal to an indirect power to tax is to simply forgo the historical context in which it was established, its importance in maintaining a strong voice speaking on behalf of workers and an effective partner to discuss with the employer, thus reducing work related conflicts. Rather, as per Justice Rand's decision, mandatory dues provide for an equitable solution in requiring all employees benefiting from the work of their employee association to pay dues.

8. **Another thing about indirect taxation** – It is also argued that strike pay being tax-free is indirect taxation. That is an interesting argument as it relates to my organization and many other bargaining agents that represent core public service employees. Let me explain. Many of us who represent professions and other occupations have never elected the strike route under the governing legislation. That all changed with the recent amendments to the PSLRA. We can no longer choose the arbitration route.

9. **Political contributions** – Proponents of this bill argue that union members should know where there money is being spent, e.g. whether any is spent on political activities. If this is what this bill is truly going after then I have two points to make: (1) unions have a responsibility to their members to be transparent financially, and

by and large this responsibility is mandated by statute. (2) This is really a matter between a union and its members, and there is a democratic process within unions in which members can participate in order to have a say in union business.

10. **Weakening of unions** – On a more ideological level, one can argue that the weakening of unions generally can lead to greater income inequality, even less growth. [see Canadian Federation of Teachers submission]

Here a few stats/statements that you might want to remind the committee of at one point.

In 2011, a total of six complaints were filed with labour boards across the country, all of which were resolved; six complaints out of 4.2 million union members throughout Canada.

It is unfortunate that we seem to be at a time and place where ideology seems to be favoured over policies that are based on research, evidence and facts.

This bill brings absolutely no benefits to the taxpayers while incurring a significant price tag

Former Conservative Senator Huge Segal quotes:

"This will actually worsen labour relations in Canada, slow economic development, and upend the balance between free collective bargaining, capital investment and return, which are vital to a strong and free mixed-market economy. As a Conservative, I oppose the upending of this balance."

“This bill before us, whatever may have been its laudable transparency goals, is really — through drafting sins of omission and commission — an expression of statutory contempt for the working men and women in our trade unions and for the trade unions themselves and their right under federal and provincial law to organize.”

“My Canada is the kind of country where trade unions and free collective bargaining makes our economy stronger and Canada a better place. It is as important a part of a strong and growing economy as capital investment, reasonable profits, and fair wages. And without collective bargaining there is never any guarantee on fair wages. And without fair wages we are not building a society of which we can be proud, and we can transfer to our kids and grandchildren knowing we have transferred them something that reflects our values as Canadians.”

Thank you. Merci.