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Chair

Mr. James Rajotte

Standing Committee on Finance

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● (1530)

[*English*]

The Chair (Mr. James Rajotte (Edmonton—Leduc, CPC)): I call this meeting to order. This is the 95th—

[*Translation*]

Mr. Alexandre Boulerice (Rosemont—La Petite-Patrie, NDP): Mr. Chair, I would like to put a motion before the members of the committee.

[*English*]

The Chair: Let me just do the orders of the day; then I'll go right to you.

Mr. Alexandre Boulerice: Thank you

The Chair: This is the 95th meeting of the Standing Committee on Finance. The orders of the day, pursuant to the order of reference of Wednesday, March 14, 2012, are for clause-by-clause consideration of Bill C-377, An Act to amend the Income Tax Act (requirements for labour organizations).

[*Translation*]

You have the floor, Mr. Boulerice.

Mr. Alexandre Boulerice: Thank you very much, Mr. Chair.

The motion I am submitting to committee members reads as follows:

> That this Committee, pursuant to S.O. 97.1, recommends that the House of Commons do not proceed further with Bill C-377, An Act to amend the Income Tax Act (requirements for labour organizations) in order to protect the integrity of the government's budget framework.

And when the motion is adopted, I will move that the Chair report the motion to the House.

I have enough copies to distribute to committee members. They are obviously in both official languages. I could hand them over to the clerk.

I believe we want to focus on the substance, on the merits of the question. We have received information that our own committee requested from the Canada Revenue Agency and that, to a large degree, justifies the motion. That information, which concerns the estimate of costs related to the implementation and administration of Bill C-377, was distributed to us by the clerk this morning. It contains some very interesting items.

I think it provides quite an eloquent answer to the first question we asked about the costs to administer the bill. The answer we have received reads as follows:

> The CRA prepared cost estimates for the administration of the Bill based on an estimated reporting population of fewer than 1,000 entities (i.e. separate reporting requirements are not expected to be imposed on each local associated with a labour organization if the pertinent information is collected by the organization for the purposes of meeting the requirements of the bill).

We are not sure about this assessment, but we will come back to it.

It continues as follows:

> As currently worded, the bill involves the implementation of a comprehensive system that includes electronic processing, validations, and automatic posting to the CRA Web site. The estimated incremental cost to the CRA would be $10.6M (including 91 FTEs) over the first two years and $2.1M ongoing (including 21 FTEs). These costs are mostly attributable to the requirement for the cross-referencing of data.

These requirements are set forth in the bill.

Mr. Chair, the NDP's intent is to subject this committee to the same budgetary discipline measures as the Treasury Board is attempting to impose on all public services. We are looking at an estimated cost of more than $10 million over two years and recurring annual costs of $2 million. Under the framework provided by the House of Commons Standing Orders, are we still dealing with a private member's bill?

On this point, I will recall the point of order I had the pleasure of making in this House last Thursday. I asked the Speaker of the House of Commons to verify whether it is true, as provided by Standing Order 79, that the House may not adopt an appropriation bill if it is not accompanied by a royal recommendation, which is clearly not yet the case.

I would like to emphasize that the Canada Revenue Agency's estimate of costs was based on fewer than 1,000 entities. In other words, fewer than 1,000 reports or organizations would result in costs of $10 million for the first two years alone, as well as additional costs of $2 million a year. However, according to our estimates, there would not be 1,000 reports or 1,000 organizations covered by the bill, but rather several thousands of organizations. We believe instead that the number of organizations would be 25,000.

We can easily conceive that the $10-million figure would be 25 times greater, which would mean $250 million for the bill's administration in the first two years. I say that because, like some of my colleagues, I am fortunate to come from a union movement background. I was responsible for communications at the Quebec branch of the Canadian Union of Public Employees, which had 535 locals, and that was just in Quebec. We are not talking about locals or local unions of the Steelworkers or the Communications, Energy and Paperworkers Union of Canada, the Canadian Auto Workers or other unions that do not belong to the FTQ or the CLC but are independent or affiliated with organizations such as the CSN in Quebec.

In that case, an estimate of the cost based on only 1,000 entities does not seem to correspond to what the bill would actually cost. This question is of course subject to debate, since we want discussions on the topic to be constructive. We think the cost would be much higher. Furthermore, the question whether this is consistent with the characteristics of a private member's bill has not been resolved. In the second edition of House of Commons Procedure and Practice, O'Brien and Bosc state that two types of bills confer parliamentary authority to spend and that both would therefore require a royal recommendation.

● (1535)

Bill C-377 is of the second type and is therefore a bill that authorizes new charges for purposes not anticipated in the estimates. O'Brien and Bosc specifically state that the charge imposed by legislation must be new and distinct. In other words, it must not be covered elsewhere by some more general authorization. New subsection 149.01(4) of the Income Tax Act, as it appears in Bill C-377, requires that the information contained in the public information return referred to in subsection 149.01(2) shall be made available to the public by the minister, including publication on the departmental Internet site in a format that allows for word searches to be performed and for cross-referencing of data.

We can see from the Canada Revenue Agency's answer that consideration was given in the estimate to the costs that this would represent for Canadian taxpayers. These provisions of Bill C-377 therefore require an expenditure of public funds in a manner and for purposes not currently authorized. This therefore means that these are new and distinct funds that must be authorized in order to give the Canada Revenue Agency the means to manage this work, which would also be new and distinct.

Even in the most recent supplementary estimates, which were tabled a few weeks ago and which I had the pleasure to examine as part of my previous duties, nothing suggests that the costs associated with the work this bill requires have been included. Consequently, they have not been anticipated. In view of the answer the Canada Revenue Agency gave us this morning in response to requests by our parliamentary committee, we must therefore view them as new and unanticipated charges.

I am trying to see how this bill could be considered as having symbolic or political consequences, as would be the case if a bill were being introduced to change the name of a national park or to organize a celebration in honour of certain persons. On the contrary, we are dealing with a bill that would result in new, unanticipated and unauthorized costs. Consequently, in the view of the official opposition, this poses a problem.

I would remind my colleagues and Conservative friends that, in times of fiscal austerity, we wonder how the Canada Revenue Agency would be able to find new funding to process new data and discharge this administrative burden being imposed on it. Let us not forget that we are making savage, draconian cutbacks to public services as a whole.

The government is headed in two directions at the same time. On the one hand, it says it will cut spending by 5% to 10% to balance the budget, although we do not know when that will happen. On the other hand, it has decided to examine the books of thousands of labour organizations, trusts and pension funds. It has chosen to be nit-picking and to create red tape. It will have to hire new officials, which will cost taxpayers millions of dollars. How can you do both and still make ends meet? This is a difficult position to defend. Most of the time, you try to be consistent.

Why spend millions of taxpayer dollars to obtain useless information that the members of labour organizations across the country already have? We wonder where the public interest lies in this effort, which vastly exceeds the scope of a private member's bill. The Canada Revenue Agency has received no instructions from the chief statistician and has never had to manage this kind of process for labour organizations. In the debate on second reading of Bill C-377, the bill's sponsor suggested that the provisions included in this legislative measure are similar to those that have been in place for charities since 1977.

Mr. Speaker, let us compare apples with apples, not with oranges or bananas. The information being required of charities and processed by the Canada Revenue Agency is absolutely nothing like the information that would be required of unions and organizations affiliated with or linked to unions, as provided by Bill C-377. There is absolutely no comparison. The program for charities requires them to disclose much less information and communicate much less data. Let us draw a parallel with the answers we received this morning. This program costs more than $33 million annually and involves 300 full-time employees.

Is Bill C-377 the solution we have come up with to save the positions of federal employees and to give them work examining the financial reports of labour organizations? I do not believe that is part of the Conservative government's Economic Action Plan.

● (1540)

If Bill C-377 is adopted, the Canada Revenue Agency will have to create a new section, which will add a whole new, complex layer of government bureaucracy and red tape. Bill C-377 will require a new entity to be established to implement and administer those provisions. Furthermore, the bill is worded in such a way that it includes all labour organizations and labour trusts, which, in our view, do indeed represent approximately 25,000 filers.

Costs will obviously be incurred to train union officers because they will be unfamiliar with the new forms, but, more particularly, other costs will be involved in processing the reports from those 25,000 filers. None of those costs is included in the costs anticipated by the Canada Revenue Agency. Once again, these will be new and distinct costs. Based on the passage cited earlier and the interpretation in O'Brien and Bosc, if that condition is met, a bill must be accompanied by a royal recommendation.

I am pleased that we can talk about the cost of this bill today because the imposition of needless expense should not be the priority of this committee, the House or us legislators. It meets no need. As you will recall, witnesses came and told us that, out of 4.1 million unionized workers, 6 complained in 1 year about the difficulty involved in obtaining certain information from their labour organization. So, as they say, if it isn't broken, don't fix it.

I would like to take a little time to focus on this problem, on the fact that this is a costly solution to a non-problem. That is why this motion is entirely legitimate and should be part of our discussion today.

I would like to cite a brief by the CSN concerning the fact that labour organizations already have an obligation to be transparent and to disclose information to their members. It says here:

> Unions in Quebec and Canada are subject to a variety of legislation that gives them not only rights, but also responsibilities and obligations. Most labour laws require that strike votes be taken by secret ballot, and collective agreements must be ratified by a union's members. Section 47.1 of the Quebec Labour Code provides that a labour organization “must disclose its financial statements to its members every year.” That is interesting.

Let us remember that they are the ones who pay union dues. They are the main parties concerned by this matter. A labour organization must also remit a copy of its financial statements free of charge to any member who requests it.

Section 110 of the Canada Labour Code provides that a trade union "shall, forthwith on the request of any of its members, provide the member, free of charge, with a copy of a financial statement of its affairs."

It specifies that this must be a copy of the financial statements for the last fiscal year and must contain sufficient detail to disclose "accurately the financial condition and operations of the trade union."

These are admittedly quite detailed and clear obligations that call into question the very necessity of Bill C-377, which we have been debating for some weeks now, including today.

The information is all the more important to note, and the CSN recalls that this financial disclosure obligation also exists in Ontario, British Columbia, Manitoba, New Brunswick, Nova Scotia and Newfoundland and Labrador. That is a lot of people, a lot of workers who are protected and to whom their union's financial information will be available, either at a general meeting or at a member's request, if that member feels he or she would gain some advantage from details or information.

That is why the CSN reminds us that this bill sets forth statutory requirements based on false premises. No problem!

The CSN's brief also states:

> Unions are democratic, transparent organizations and are representative of the members, to whom they must account. In our opinion, Bill C-377 represents unwarranted, petty interference in the affairs of a labour organization. What the government should be doing is working cooperatively with employers and unions to develop strong strategies for economic development...

● (1545)

What we have here is a bill that is not designed to develop our economy or employment. Its purpose is to increase the amount of red tape, create more bureaucracy, generate new forms and ensure that we keep government officials busy dealing with information to which union members already have access and which is protected by the laws of our country and by our labour codes.

The sponsor of the bill, according to the CSN, falsely contends that it is justified by the fact that unions are subsidized by taxpayers, since union members are able to deduct their dues from their taxable income. It must be understood that this deduction is claimed under the Income Tax Act, which allows every Canadian taxpayer who is a member of a professional association such as medical associations, bar associations and engineering societies to deduct their membership fees from their taxable income. To justify the bill, the Conservative member also said that he based his bill's requirements respecting publication of the financial information of labour organizations on similar provisions that have long been in the Income Tax Act.

This is another strange statement. The information required of charities is much less detailed and more highly aggregated. This bill would require unions to provide even more detailed information than current legislation requires of companies, charities or professional organizations, which are not at all concerned here. It is somewhat strange that only labour organizations are targeted, when the obligation to pay dues and the fact that taxpayers receive a tax credit for dues paid to the Ordre des ingénieurs du Québec or the Canadian Bar Association is based on the same logic. However, this is not the only problem that this project raises.

Several people have told us some very interesting things about the privacy issues in this matter. Commissioner Jennifer Stoddart informed us of her concerns about the fact that the names and perhaps addresses of certain beneficiaries of pension funds or supplementary insurance plans would have to be made public. That raised questions in our minds about how we wanted to treat our municipal employees and employees of organizations that produce energy in this country. Is it necessary to know that a firefighter or police officer is on short-term sick leave or disability leave and is receiving benefits from the company that manages his or her insurance plan? These kinds of things undermine those people's privacy, and, in addition, in the case of police officers, such information can also cause problems for their own safety and that of their families.

I believe this is an intrusion into the privacy of people who, as unionized workers, receive certain benefits negotiated with their employer. I do not see why parts of the private lives of those people should be made public. The Conservative government generally says it wants to protect freedoms, whereas this bill of a back-bench member of Parliament does not protect people's privacy or freedom at all but rather puts them in a kind of straightjacket, while the government trains a big eye and a telescope on what they are doing, how they spend and what benefits they receive. Their names and addresses will be disclosed as a result of that.

Some people raised a number of questions on this matter. As you will recall, the Privacy Commissioner's testimony was very interesting, but she was not the only person who said this. I remember that representatives of the Canadian Bar Association also talked to us about privacy issues and submitted some quite explicit documents to us. I will take the liberty of citing a few passages from them. The first sentence that I am going to quote is highly relevant. And we have not received an interesting response on this question. The Canadian Bar Association wrote, and I quote:

> As a threshold statement, it is unclear what issue or perceived problem the Bill is intended to address. The Bill mandates greater public disclosure of details of the financial operations of labour unions, and limitations on their political and lobbying activities using mechanisms that could be problematic from a constitutional and a privacy perspective.

I will come back to the constitutional issues involved. I have the legal opinion of a labour law professor at the Department of Industrial Relations of Laval University which will be very enlightening on the constitutional problems raised by Bill C-377.

The Canadian Bar Association also emphasized the following:

● (1550)

> The CBA Sections have serious reservations about the Bill from a procedural point of view. The Bill could have a pronounced impact on the operations of labour unions, yet these processes are embedded in amendments to the Income Tax Act. In our view, it is inappropriate for operational restrictions to be brought forward as amendments to taxation legislation.

Like the Privacy Commissioner, the Canadian Bar Association people have concerns about this issue.

They also said the following:

> Bill C-377 lists financial disclosure procedures that would be required by "every labour organization and labour trust." It is unclear whether the requirements to disclose salaries and benefits paid to officers, directors, trustees, employees and contractors would require particularized disclosure or global disclosure of all payments in these categories. To the extent that the Bill would require particularized disclosure, it obliges disclosure of personal information which is normally considered among the most sensitive—financial information and information about political activities or political beliefs. The ambiguity in the language in section 149.01(3)(b)(vii) is of concern, because it is not clear whether the statement of time spent on political activities must be particularized. Even if more generalized disclosure is envisaged, for smaller organizations this could result in a direct privacy impact because it may be obvious to whom the information relates. The basket clause at 149.01(3)(b)(xx) authorizing further statements to be required by regulation ("any other prescribed statements") raises the specter that additional disclosure requirements may be imposed by regulation.
>
> Without further clarity on the underlying problem the Bill is intended to address, the Bill lacks an appropriate balance between any legitimate public goals and respect for privacy interests protected by law. The Bill appears to directly target activities protected by the Canadian Charter of Rights and Freedoms by requiring disclosure of time spent on political activity. Privacy is recognized as a fundamental constitutional right under Canadian law, and this Bill has the potential to invite constitutional challenge and litigation.

The Canadian Bar Association also believes that costs are a problem.

We will come back to this new information that we received from the Canada Revenue Agency this morning. We are talking about $10.6 million for the first two years and only 1,000 organizations that would be affected.

The Canadian Bar Association also stated the following:

> Federal and provincial labour legislation already imposes obligations on labour unions to publish or make available regular financial statements to their members, and some of those obligations are quite extensive. Labour organizations operate for the benefit of their membership and in this way more closely resemble that of a closed corporation. The governance and transparency of the organization should be a matter of general concern to its membership, not the public at large.

The governance and transparency of organizations should be a matter of general interest to members first and foremost. It is they who pay dues, who receive the financial reports, who confer on democratically elected representatives the mandate to represent them and to direct their negotiations, union obligations and the information and awareness campaigns they must conduct. The principals are the workers themselves, who pay union dues. It is thus toward them—and the Canadian Bar Association reminds us of this fact—that there must be an obligation of transparency, not toward the general public. Otherwise, the scope of this rule will be extended to apply to all organizations that enjoy some tax benefit granted by the federal government.

However, I dare believe that my Conservative friends would not go so far as to apply it to all private sector companies that receive a reduction or tax credit, to all families receiving a tax credit or to all individuals who receive a tax credit for professional dues. All those people would thus have to be accountable for the way in which they spend their money and make all their financial returns public. That would cause a kind of massive bureaucratic rather than legislative problem. The Canadian Bar Association further notes:

> The additional cost of administration to meet the Bill's requirement would be significant. Unions could be forced to raise dues or reduce services to their members.

Let us remember that the objective of a labour organization is first of all to defend the interests of its members, but also to move society forward so that it is more just. While a union may spend money to complete forms, it may not use that money to protect health and safety, provide better working conditions or negotiate clauses on work-life balance. If the goal is to use an administrative process to impose a straightjacket on unions and to hit them so hard they will be incapable of discharging their primary obligation, which is to provide services to their members, that will be a problem for us. That would be tantamount to perverting the very existence, the primary mandate of labour organizations, of the labour movement in Quebec and Canada. In the 20th century, that movement managed to improve the working conditions of Canadian and Quebec workers.

● (1555)

I will come back to this later. However, I am personally convinced that the very existence of a middle class in this country is largely due to the good work done by the labour organizations to ensure, for example, that the working day is no longer 14 hours long but has been reduced to 8 hours, that we have a minimum wage in this country and that we have regulations so that people can work in decent conditions from a health and safety standpoint.

It therefore runs counter to the interests of the public and all workers to compel labour organizations by legislative means to devote time, energy and resources to something frivolous, futile and absolutely unproductive in the economic development of our country. This does not create jobs but does saddle us with additional public officials who will have to deal with red tape all year in order to manage thousands and thousands of transactions over $5,000.

From the standpoint of the pensions and benefits that people receive from their labour organizations or affiliates—I am thinking of pension funds—the bill seems excessive, according to the Canadian Bar Association. The association tells us that, if the purpose of the bill is to improve union transparency, it does not make sense that it will compel the disclosure of information as required by Bill C-377.

However, the violation of privacy is not the only concern for citizens and workers. There are others as well. They are not at all resolved by the potential amendments that we could discuss. I am thinking of the problem of secrecy. This is not secrecy for individuals, but rather commercial secrecy.

The bill requires unions to disclose information on companies or businesses with which they do business. So just imagine the situation. Let us consider an advertising business that is engaged in marketing placement. Let us consider a legal office or simply a local labour organization's paper or printer supplier. Every contract greater than $5,000 will have to be disclosed publicly.

This is strategic information for those businesses that, in their competitors' eyes, would disclose the benefits they afford the labour organization, the benefits they can give and the prices they offer for the products and services they will supply. One therefore wonders what company, with some competition or competitors in its market, will be sane enough to say that it will continue doing business with the regional council of such and such a union or with a particular local when it knows perfectly well that all its industrial secrets will be in the public domain.

● (1600)

[*English*]

The Chair: We have a point of order.

Go ahead, Mr. Adler, please.

Mr. Mark Adler (York Centre, CPC): The member's motion talks about the apparent costs of Bill C-377, and I would like to say that the member is talking about everything but the costs. He should just stick to the relevant aspect of his motion and speak to the costs that he's claiming, which are in his motion.

He's not being relevant and is wasting the time of the committee.

The Chair: Thank you, Mr. Adler.

Do you seek the floor on this point of order, Mr. Mai?

Mr. Hoang Mai (Brossard—La Prairie, NDP): It's on Mr. Adler's point of order.

I think my colleague mentioned that initially, when he spoke about the costs. What he's doing right now....

[*Translation*]

What my colleague is doing now is really talking about all the consequences that this has and about the direct connection with costs. My colleague mentioned the costs that CRA mentioned. He also mentioned the problems the Canadian Bar Association raised with respect to costs. I am listening to my colleague and he is still talking about all the costs associated with the implementation of this bill.

Consequently, he is simply explaining all the connections with costs and the increase that represents. The connection is made. We have it in the introduction. We can still see it, and I believe he has not finished because many costs will have an impact.

I remind my colleague that, when we arrived here today, it was after receiving the report that the Canada Revenue Agency had provided. This is a report that we received before arriving here today. So it is normal for my colleague to continue talking about the implications of those costs.

I would also emphasize another point. It was mentioned in the House that you are a very good chair. I know you are fair. I know that you have always had the kindness in this committee to listen to the views we had to express and that you have always been prepared to accept comments from both sides.

Consequently, I thank you and I expect you will continue to proceed in the same manner and to manage this committee as you usually do.

[*English*]

The Chair: Okay, *merci*.

I do have three more. I'm ready to rule on the point of order, though.

To the three, I have Mr. Marston, then Mr. Martin, and then Mr. Adler.

Go ahead, Mr. Marston, please.

Mr. Wayne Marston (Hamilton East—Stoney Creek, NDP): Well, before you rule on the point, my colleague here has framed it very well.

The fact is that this bill, in the form that we've seen it come before us, raises many questions. It was so flawed when it got to us initially that even the government members had to step back from it. They had to step back with their own caucus members to frame that discussion, to put that discussion before us here today in the context of where we're at now.

We're facing, I understand, some government amendments to the bill, but the fact of the matter is that the bill, in our opinion, is extensively flawed. My friend here is doing the best he can to demonstrate that, within the context and within the frame of what's being delivered to us here today.

The Chair: Okay.

We have Mr. Martin, please, on the point of order.

Mr. Pat Martin (Winnipeg Centre, NDP): Mr. Chair, yes, I will speak briefly to the point of order.

As a fellow chair of a parliamentary committee, I just hope you will take into consideration, in making your ruling, that when a member of Parliament raises relevance as the point of order, precedent has it that this opens a whole can of worms. In fact, members should move relevance as a point of order very, very rarely and very gingerly. I come from the ginger group, Mr. Adler.

Voices: Oh, oh!

Mr. Pat Martin: I can only surmise that Mr. Adler maybe didn't have his earplug in place for his translation and he may be suffering from the same problem I'm having with the information sent to us by the CRA in terms of translation.

Now, as a unilingual anglophone from Manitoba, I'm having a difficult time even following what the CRA's recommendations to us were, or the information given, because it was circulated in one official language, not two. Now, this is a problem, but if Mr. Adler can't see the relevance of the points that my colleague is making in order to protect the integrity of the government's budget framework, he would also have to argue against the relevance of the Minister of Labour ordering strikers back to work even before they go on strike because it's better for the economy. If the broad language of my colleague's motion is offensive to the member, then so too should the actions of the Minister of Labour be offensive when she cites the economy to run roughshod over the rights of working people to withhold their services in a legal strike situation.

I only raise this, Mr. Chairman, to remind you, with all due respect, that in our hands is placed a sacred trust, as chairs of parliamentary committees, to uphold due process and parliamentary procedure because that fine construct that is the Westminster parliamentary system collapses if we don't honour and respect process.

A mischief nuisance of relevance to interrupt my colleague's pattern of thought in developing the motion that he put forward, which was in order—

● (1605)

The Chair: Okay, let's not impugn motive.

Mr. Pat Martin: Mr. Chairman, I put these remarks forward only as guidance to help you in your deliberation as to the relevance—

Some hon. members: Oh, oh!

Mr. Pat Martin: —of my colleague's point of order on relevance, with all due respect.

The Chair: Okay, thank you.

Go ahead, Mr. Adler, please.

Mr. Mark Adler: The member's comments are about as relevant as reading the telephone book.

Clearly, the member talks about the costs. I haven't heard one number mentioned so far. I'd like to know more about these costs that he's claiming to—

Mr. Pat Martin: That's all I heard—numbers.

The Chair: Order. Order.

Mr. Mark Adler: Pardon me for speaking while the member's trying to interrupt me.

Mr. Chair, I'd like to hear some numbers, some hard facts from the member, and not just rambling and tying up the time of the committee.

The member talks about the integrity of Parliament. Well, we're witnessing a clear abuse of parliamentary procedure right here. If the member talks about the apparent costs that this bill is going to be imposing, I'd like to see some of those costs. If he could distribute those to the committee members, that would even be better.

The Chair: Again, I'm prepared to rule, but, Mr. Mai wants to speak on this.

Mr. Hoang Mai: Yes, definitely, on the second—

The Chair: Okay. We're getting into debate on a point of order, so it's just to the point of order very specifically, and then I'll make my ruling.

Mr. Hoang Mai: If Mr. Adler had been listening, my colleague started with a number that came out from CRA. I would recommend that either he withdraw his comments or apologize to my colleague.

Mr. Pat Martin: Yes, that's right.

Mr. Hoang Mai: If he hasn't been listening and tells someone that the person has not mentioned one number, that's going too far, Mr. Chair. That's not respecting our colleague, when the first thing he did was mention the number that CRA gave us, so I do hope that Mr. Adler will apologize and that he will consider what my colleague has been saying and maybe now listen more carefully to his thoughts.

The Chair: With respect to your point of order, Mr. Adler, as you know and as I've mentioned before and as has been defined by many speakers, relevance is defined very broadly. Further to that, the motion itself is fairly broad:

> That this Committee, pursuant to S. O. 97.1, recommends that the House of Commons do not proceed further with Bill C-377, An Act to amend the Income Tax Act (requirements for labour organizations), in order to protect the integrity of the government's budget framework.

That is a very broad motion. It's very difficult for me, as the chair. I would say that Mr. Boulerice may be testing the bounds of relevance, but I can't declare any of his comments not relevant.

We'll go back to Monsieur Boulerice, *s'il vous plaît*.

[*Translation*]

Mr. Alexandre Boulerice: Thank you very much, Mr. Chair.

I will continue, and since we have colleagues here who want figures, I will take the liberty of repeating them.

According to the Canada Revenue Agency, it will only cost $10.6 million to implement Bill C-377. We received that information this morning.

● (1610)

[*English*]

It's $10.6 million for the first two years. I really want to be sure that you understand my numbers.

The Chair: Please go through the chair.

On a point of order, go ahead, Mr. Adler.

Mr. Mark Adler: On a point of order, Mr. Chair, he said "you".

The Chair: Yes, comments go through the chair. Let's keep this debate very respectful and make all of our comments through the chair.

[*Translation*]

Mr. Alexandre Boulerice: Thank you, Mr. Chair.

I repeat, we have figures on this point.

[*English*]

The Chair: He always listens very carefully to everthing—

[*Translation*]

Mr. Alexandre Boulerice: I am entirely convinced of that. I was at not all casting doubt on your listening ability, which has been put to the test in recent weeks.

Some questions about costs are indeed related to the administration of Bill C-377. The Canada Revenue Agency tells us it will cost $10.6 million to administer the bill in the first two years and $2.1 million ongoing for the following years. These figures are valid for approximately 1,000 union organizations or labour organizations. By comparison, the treatment of charities costs $33 million a year and requires 300 federal public servants to work full time on this matter to review the evaluations and reports of all charities in receipt of tax benefits.

I would like to introduce a new point in the discussion. This is not the only question the Canada Revenue Agency answered in the information it sent us today. On the contrary, a second question was asked, and it is very interesting and relevant: Have the costs of administering the requirements of this bill been included in the estimates presented to the House of Commons? The answer is no.

The Canada Revenue Agency tells us that the point of order I raised with the Speaker of the House of Commons last week does seem founded since the estimates include no budget item or vote for the administration of this new expenditure.

Sometimes, and this has happened in the past, the implementation of new ways of verifying things or recording certain information or certain items ultimately resulted in much higher costs than those initially forecasted. We therefore have a legitimate fear that this may be the case with Bill C-377, particularly when we consider that it is not 1,000 union organizations that will be affected by this bill, but rather 25,000.

When you examine all the answers the Canada Revenue Agency sent us today, there is absolutely no reason to be reassured by or comfortable with this bill. Instead we fear there will be an excessive and unnecessary increase in red tape and in the number of forms to complete for organizations that simply have better things to do, whether it be providing service to their members or increasing their members' assets. This burden will be imposed not only on the union organizations as such, but also trusts and pension funds, which will also be affected by this. They must make investments. They do not have the time or money to take in their members' pension contributions and then complete the paperwork that this bill would inevitably create.

I am going to cite an open letter that I wrote on this matter and that was published in the *National Post*. Please pardon my terrible accent in English. If we are going to talk about money, about costs and impacts, let's talk about the impact that will be felt on our economy. The title of my letter was:

[*English*]

"Targeting unions is hurting the financial markets".

It continues:

> Canada's economy is in a fragile state. Just last week, the IMF lowered its forecast for global growth due to ongoing instabilities in the United States and the Euro Zone, as well as the slowdown of the Chinese economy. Meanwhile, TD Bank lowered its estimates for economic growth here in Canada for 2012, and is projecting only modest growth for 2013 and 2014.
>
> You would figure that in times like these, the federal government would be cautious in the legislation that it supports. But sadly, the Conservatives' partisan instincts have taken precedence.
>
> Take bill C-377 for example. On its surface, it aims to bring transparency to union finances. Yet, to achieve this aim, the Conservatives could be imposing a massive clampdown on our financial markets and costing business—both big and small—millions in lost revenue.
>
> Most private member's bills live and die in obscurity, as they have no chance of passing. C-377, however, appears to have the blessing of both the Prime Minister and the Finance Minister

—but these days they don't get along a lot—

> and could become law by the end of the year.

● (1615)

> Essentially, this Conservative bill would require any labour organization, including pension funds and health plans, to publicly disclose all aspects of any expenditure over $5,000. The bill does this by prying open business contracts and causing the confidential details to be posted on the Canadian Revenue Agency's website. This includes everything from office rental and photocopier leases to consulting, legal and financial services. This would force businesses to either turn down valuable customers or have their entire business model disrupted.
>
> The potential damage of this Conservative bill is even more dangerous when it comes to the financial markets. The reporting requirement applies to all market transactions by union pension funds and any firms managing their assets. These pension plans make up the second largest source of investment capital in Canada, after chartered banks, with assets of over $1-trillion dollars. Amongst these assets are significant amounts of Canadian stocks, bonds and real estate.
>
> Beyond imposing obvious difficulties associated with reporting all transactions on billions of dollars in financial assets, the bill likely will lock pension funds out of engaging in private-equity deals. This will drastically reduce the flow of Canadian dollars into such deals, decrease Canadian ownership, and hurt the bottom line of Canadians' pensions.

> The reporting requirements also will create a massive bureaucracy for all involved. For a mid-sized pension fund covering several thousand workers, C-377 would mean over 11,000 financial transactions would need to be reported a year. For the largest pension funds, this could run into the millions.
>
> Putting aside the economic impact, this bill would represent a massive invasion of privacy, as pension funds that come from union plans will be forced to report the name and address of hundreds of thousands of pensioners to the government every year. That, too, will also be made public.

The Chair: Mr. Boulerice, excuse me.

Go ahead on a point of order, Mr. Jean.

Mr. Brian Jean (Fort McMurray—Athabasca, CPC): I listened with interest, of course, and with bated breath to every single statement made by the member. I notice that he's dealing with the motion or the bill as unamended. Of course, he would have received a copy of the amendments that I will be moving today if we ever get to that point. One of those amendments would change some of that, and it clarifies that registered pension plans, health benefit plans, and other registered plans do not have to file the information that he's referring to.

In fact, what he's relying on for his motion is not actually covered in this and would be changed by the amendments.

The Chair: It may be a good point, but it's a point of debate, not a point of order.

Mr. Brian Jean: He's debating the wrong issue, Mr. Chair.

The Chair: Whether he's debating the wrong issue is not.... It's not debate.

Mr. Brian Jean: He hasn't had an opportunity to look at the amendments. I'm not sure if he actually read them to recognize that there are compromises.

The Chair: He moved his motion before the amendments were presented, so....

Mr. Brian Jean: Maybe if he had an opportunity to hear the amendments, he would actually be able to support them.

The Chair: I assume he's had an opportunity to read the amendments.

Mr. Brian Jean: You never know.

The Chair: Okay.

I've ruled that it's not a point of order. I don't see any further need for discussion on a non-point of order.

Okay. *Encore....*

[*Translation*]

Mr. Alexandre Boulerice: Thank you, Mr. Chair.

We are indeed discussing the motion that was introduced and read before the members of this committee a few minutes ago.

I am going to complete the argument I was advancing, with the aid of the document I was using as evidence, to emphasize clearly and resoundingly the dangers that this bill represents not only for the government's budgetary expenditures, but also for all the very important investments linked to unions, particularly workers' retirement schemes and pension plans.

[*English*]

> Putting aside the economic impact, this bill would represent a massive invasion of privacy, as pension funds that come from union plans will be forced to report the name and address of hundreds of thousands of pensioners to the government every year. That, too, will also be made public.
>
> At a time when the economic recovery in Canada and around the world is still precarious, New Democrats condemn the economic recklessness in this bill. For the sake of our economy and the stability of our markets, C-377 cannot be allowed to pass.

● (1620)

[*Translation*]

It is quite clear that a number of cost and money issues are related to the motion we have introduced.

Mr. Chair, I am going to take the liberty of addressing a particular topic. First I am going to introduce it because I feel that some members might challenge it. I'm going to talk about the constitutionality of the bill that has been tabled.

Why are we addressing this matter in a context in which we are talking about costs? That is because, if this bill is not deemed constitutional at the outset by most experts, it will involve excessive costs to the federal government. In the unfortunate event this bill becomes law, organizations or provinces would definitely institute proceedings in the courts. Submitting a bill that presents constitutional problems from the outset means exposing oneself to potential lawsuits and legal fees. When you institute proceedings concerning the constitutionality of an act and have to go as far as the Supreme Court, it takes years and represents tens and even hundreds of thousands of dollars.

The argument I want to advance on the non-constitutionality of the bill before us is directly related to the federal government's costs. I am going to share with you the serious objections and questions raised by Mr. Alain Barr., who is a professor of labour law at Laval University's Department of Industrial Relations. He writes as follows:

> Bill C-377, An Act to amend the Income Tax Act (requirements for labour unions), was introduced at first reading on December 5, 2011. If Bill C-377 were to be enacted and brought into force as it now stands, all labour organizations in Canada would be required to file an annual return...
>
> The essential issue raised by this bill is its legality, or constitutional validity, having regard to the division of legislative powers set out in sections 91 and 92 of the Constitution Act, 1867. That is the mandate we have been assigned. One member of Parliament has already anticipated this kind of problem: in debate on the bill at second reading, Joe Comartin (Windsor-Tecumseh) said that "we have a problem with the bill because it probably extends itself into [provincial jurisdictions]" (House of Commons Debates, Official Report, 41st Parliament, 1st Session, February 6, 2012, p. 4863). However, the member did not provide substantiation for his assertion.
>
> Sections 91 and 92 of the Constitution Act, 1867 establish the division of powers by "classes of subjects" (in French, "categories de sujets") within which "matters" (in 2 French, "matières") are listed. Section 91 establishes the classes of subjects assigned exclusively to Parliament, while section 92 establishes the classes of subjects assigned exclusively to the provincial legislatures. After examining the content of the bill under consideration, we contend that the drafters of Bill C-377 have failed to properly assess the extent of the constraints that the Constitution of Canada imposes on Parliament in this regard. The reasons follow.

> To assess the constitutional validity of any legislation (in some cases, its sphere of application), we must analyze its content, applying a two-step process. The first step, discussed in section 1 below, is to determine the "matter" ("matière") of the impugned legislation. In other words, its "pith and substance" (in French, "caractère véritable") must be determined. That step is the most important and delicate part of the exercise: when the dominant nature, the substance or the essence of legislation is determined correctly, its constitutional validity can be assessed. When that has been done, the matter identified must then be assigned to the appropriate class of subjects, under sections 91 and 92. If the legislation can be placed under a head of jurisdiction assigned to the legislative body that enacted it, once it has been analyzed, then its constitutional validity will be recognized; otherwise, the legislation will be invalid. In other words, in order to determine the constitutionality of any legislation, the "matter" to which it relates, its essence—its pith and substance—must first be established.(1)
>
> The second step is to determine, having regard to the pith and substance of the legislation, whether it was enacted by the legislative body that has jurisdiction. In order to decide whether the legislation under consideration is valid, or what its sphere of application is, we must therefore identify the federal jurisdiction in relation to labour relations, and clarify the extent of that jurisdiction.(2)
>
> After analyzing the substance of the legislation as it is drafted, we find that Bill C-377 is not tax legislation that might incidentally trench on the sphere of labour organizations. In fact, it is labour legislation, whose sole purpose is to regulate the operation of labour organizations. Accordingly, having regard to the constitutional limitations on federal jurisdiction in relation to labour relations, we must conclude that this bill is invalid in terms of the division of legislative powers set out in the Constitution of Canada. Furthermore, there is no need even to consider its sphere of application, since as it is drafted, the bill is totally invalid, given that its very "substance" relates to an area that is under the exclusive jurisdiction of the provinces of Canada, based on section 92(13) of the Constitution Act, 1867: "Property and Civil Rights in the Province". Accordingly, this bill, as it is drafted, cannot apply to any labour organization in Canada.

Professor Barré continues, Mr. Chair, considering the pith and substance of the bill before us.

> In any challenge to the constitutional validity of legislation, the courts must first classify the legislation. To do that, they must identify its pith and substance (in French, its "*caractère veritable*"). Identifying the pith and substance of legislation "in fact involves identifying the 'matter' to which the legislation essentially relates" (Henri Brun, Guy Tremblay, Eugénie Brouillet, Droit constitutionnel, 5th ed., Cowansville, Éditions Yvon Blais inc., 2008, p. 448). This means determining its "dominant characteristic", its "true nature" or its "pith and substance". In short, the actual substance of the legislation must be identified. English-Canadian authors refer to the "true meaning", the "dominant feature", the "leading feature", the "true nature and character", or the "dominant or most important characteristic"....In other words, does the legislation under consideration relate to "labour relations"? Can it be described as "labour law"?
>
> In determining the pith and substance of legislation, the first task is to identify its real objective, and not its effects. Its "dominant purpose" must be considered: "the secondary purposes and effects of the legislation do not affect its validity" (Henri Brun, Guy Tremblay, Eugénie Brouillet, *Droit constitutionnel*, 5th ed., Cowansville. Éditions Yvon Blais inc. 2008, p. 450). However, since we must strive to identify "the real objective of the impugned legislation, and not its stated or apparent objective" (idem, p. 449), knowledge of the effect of the legislation may be useful, and even essential, particularly in the case of colourable legislation—legislation in which a legislature is regulating a matter other than the one announced in the "stated" purpose of the legislation (see André Tremblay, Droit constitutionnel. Principes, 2nd ed., Montréal, Les Éditions Thémis, 2000, pp. 316 and 319). This point seems particularly germane in this case. Professor Hogg has spoken clearly on this point:

● (1625)

[*English*]

> ...the search for pith and substance will not remain within the four corners of the statute if there is reason to believe that the direct legal effects of the statute are directed to the indirect achievement of other purposes.

[*Translation*]

> Extrinsic evidence (in particular, parliamentary debates) may therefore also be considered in identifying the pith and substance of any legislation being considered (see Hogg, pp. 15-15). The question is therefore a simple one: does Bill C-377 (in the event that it is enacted by Parliament and brought into force) relate to tax policy or labour relations? In other words, is this tax legislation or labour legislation; more specifically, is it legislation whose purpose is to regulate labour organizations?
>
> The question seems to have received little notice to date. However, in a document published on its website, "Bill C-377: Costly and Discriminatory", the Canadian Labour Congress (the CLC) does seem to have recognized it as an attempt at colourable legislation....
>
> In another CLC document ("CLC Summary of Bill C-377"), the author clearly refers to the lack of connection between the regulation proposed in the bill and the enforcement of tax requirements:
>
> > The nature of Bill C-377 would seem to go more to the regulation of labour organizations, a matter unrelated to fiscal enforcement or taxation. There simply does not appear to be an income tax enforcement basis for the disclosure entailed in Bill C-377.

Is this a case of colourable legislation?

Is the inclusion of this regulation in the Income Tax Act a disguise—a clever stratagem to cloak it in a legal garment appropriate to the circumstances, in order to "legitimize" its enactment, in terms of the division of legislative powers established by sections 91 and 92 of the Constitution Act, 1867? Is Parliament pursuing a goal that is incompatible with the division of powers?

In its submission to the Standing Committee on Finance, the Canadian Bar Association noted that the bill could "have a serious impact on the operations of labour unions" and observed that it was "inappropriate for operational restrictions to be brought forward as amendments to taxation legislation". In our opinion, this is a blatant case of "colourable legislation": under cover of tax legislation, Parliament is attempting to intrude in a field that is under the exclusive jurisdiction of the provincial legislature.

First, the mere fact that the regulation is incorporated into the Income Tax Act does not mean that a court construing the legislation may conclude that its pith and substance is tax policy: the courts take no notice of the form of legislation when they determine its legal classification The evidence is that this could easily have been regulated by a separate bill having no connection with the Income Tax Act. On that point, we might note, for comparative purposes, that since the enactment of the Landrum-Griffin Act in the United States in 1959, the obligation placed on labour organizations to file returns has been created in labour legislation. In addition, the scheme in question is administered by the Labor Department.

It is therefore by examining the summary, content and factual background in which legislation is enacted that its pith and substance will be determined. We would first note that the summary (the explanatory notes) of the bill make no effort to establish any connection between the proposed regulation and the provisions of the Income Tax Act. Other than the reference to the title of the act to be amended, the summary in no way suggests that the objective of the bill is related to tax policy. On the contrary, the summary clearly suggests that the "stated" objective of the legislation is nothing other than to compel labour organizations to provide "financial information" to the federal government. In other words, the "stated" objective suggests that this is a matter of regulating labour organizations, a subject that in fact falls under the exclusive jurisdiction of the provinces.

Now let us talk about the content of the legislation. An examination of the content of the legislation discloses only a very tenuous connection with the fiscal provisions of the Income Tax Act. There is no structural connection between the content of Bill C-377 and the tax exemption enjoyed by labour organizations under section 149(1), nor is there with the tax deduction that taxpayers may claim under section in calculating their income from employment.

Earlier we talked about the fairness or even discriminatory aspect this bill.

The fact that new section 149.01 has been added immediately after section 149, which allows that tax exemption, has no effect: as we will recall, the courts take no notice of the form of legislation in classifying it: in determining its essence.

Under section 149(1)(*k*), no tax is payable by “a labour organization or society”. However, the Income Tax Act contains no definition of the expressions “labour organization” or “labour society". In other words, it is enough that a "labour organization" exists, within the usual meaning of the word "exist", for it to claim the tax exemption under section 19(1)(*k*) of the Income Tax Act. The Canada Revenue Agency added nothing more when it stated that a labour organization "corresponds generally to an association of workers in the same or allied fields, organized for the purposes of furthering their occupational, economic or other interests".

In another case, the reference to furthering the occupational interests of workers was expressed as:

● (1630)

[*English*]

> ...for the purpose of securing the most favourable conditions, wages, or hours of work for its members.

[*Translation*]

In short, in order to qualify as a "labour organization" and thus benefit from the tax exemption,

[*English*]

> The organization must be organized and operated for the benefit of labour, [which] is normally understood to refer to the workers or employees.

[*Translation*]

Thus, an organization whose objects are

[*English*]

> to consider and adopt methods for promoting and regulating sound labour relations, to [negotiate] collective agreements with a trade union, and to pursue related undertakings on behalf of its employer-members

[*Translation*]

is not considered

[*English*]

“a labour organization”

[*Translation*]

within the meaning of section 149(1)(*k*). That is plainly consistent with the usual meaning of the expression "labour organization".

Mr. Barré continues:

> Certainly, we may note that Bill C-377 defines the concept of "labour organization", a definition that would apply both under section 149, which establishes the right to the tax exemption, and under new section 149.01, which creates a new obligation for labour organizations to provide annual financial information.

I would add a note here and talk as well about a new obligation for the Canada Revenue Agency, given what we learned this morning, that is to say that the act's administration would cost only $10.6 million in the first two years. Going back to Mr. Barré's comments:

> Two comments are called for here. First, the effect of that text is not to expand or narrow the concept of the “labour organizations” that are entitled to the tax exemption provided for in section 149(1)(k). Whether the labour organization is one whose purpose is "the regulation of relations between employers and employees (new s. 149.01(1)) or one that may be defined "an association of workers …
>
> … the essence is the same: in all cases, it is in fact a definition of a labour organization in the ordinary meaning of the expression. Second, adding the definition given in section 149 creates no connection between the two provisions such as would alter the pith and substance of the new legislation. In short, the fact that sections 149 and 149.01 both include the same definition of a "labour organization" does not in any way alter the pith and substance of section 149.01. Once again, that would amount to placing more weight on the "form" of the legislation than on its "substance".
>
> We also note that the legislation does not require that the labour organization be "certified" or "recognized", as the case may be, under provincial or federal law, to enjoy the tax status conferred by section 149(1)(*k*). Any labour organization, within the usual meaning of that expression, is entitled to that tax status.
>
> Under section 8(1)(*i*), a taxpayer who pays “annual dues” to a trade union may claim and obtain a deduction in calculating their income from employment. For the meaning to be given to the expression "trade union", the Act simply refers to the definition already found in section 3 of the Canada Labour Code: an "organization of employees … the purposes of which include the regulation of relations between employers and employees". However, Bill C-377 creates no organic connection between the right to that deduction and the obligation imposed on the labour organization to file an annual return with the prescribed information. Absent an express connection, must the objective of Bill C-377 be understood to allow the Canadian public to obtain information about how their dues are used by their labour organizations? In that case, the pith and substance of the legislation would related to the "regulation" of labour organizations.
>
> Because the expression "labour organization" is not defined in the legislation, there is not precise requirement to be met in order to enjoy that tax status and the tax exemption associated with it. Accordingly, any labour organization theoretically enjoys that tax status. The purpose of the information required by Bill C-377 is therefore apparently not to ascertain whether or not a particular labour organization is entitled to the tax status conferred by section 149(1)(*k*). In other words, there is apparently no organic connection between the information the legislation seeks to obtain and the tax exemption enjoyed by the labour organizations.
>
> Because this is a private member's bill and not a government bill, we also have to examine the statements made by its sponsor, to identify the stated objective of the bill. This does not mean looking for anti-union animus on the author’s part. It is sufficient to establish the "stated" objective, it being understood, however, that the "real" objective may be different from that "stated" objective.

● (1635)

[*English*]

The Chair: On a point of order, go ahead, Ms. McLeod.

Mrs. Cathy McLeod (Kamloops—Thompson—Cariboo, CPC): Thank you, Mr. Chair.

I certainly appreciate the points that my colleague has made. I think as I listen, we're not getting to the critical amendments. The amendments deal with the issues that he's raised as a critical concern. I think it's important that we have the opportunity to introduce the amendments and then we can address the issues that he's talking about in his opening comments. I do believe it is a point of order to suggest that moving forward with some discussion around the amendments would be critical in addressing what is in his motion.

The Chair: I can deal with it now unless members opposite want to speak to this point.

I have Monsieur Mai first.

Mr. Hoang Mai: The idea right now is to talk about the motion. We have brought forth a motion before the committee. We have to look at it and debate it. There are issues that have been raised, and that's exactly what my colleague is doing right now.

[*Translation*]

He is explaining the reason why we have introduced this motion. He is also talking about the impact the bill would have in its present form. Everything he says on that point and in relation to the motion is very clear. A motion must take note of the point the parties have reached. We must therefore consider the bill as it was referred to this committee and as we see it now. My colleague's arguments are indeed valid. They concern both the bill and the motion.

● (1640)

[*English*]

The Chair: Ms. McLeod didn't raise the issue of relevance. The member has the right to the floor, but I think what she's asking is whether the member would allow the committee to go to clause-by-clause consideration and then make his arguments during clause-by-clause consideration. It's a request.

I don't have the authority, as the chair, to stop the member and go to clause-by-clause study.

Ms. McLeod, you're putting the request to the members opposite. Is that acceptable, Mr. Boulerice? The request is made to you as a member. I don't have the authority to stop you from speaking on this motion. It's your decision.

[*Translation*]

Mr. Alexandre Boulerice: Thank you very much, Mr. Chair.

I hear the concerns of my colleague opposite. However, I am complying entirely with Standing Order 116, which provides as follows:

> 116. In a standing, special or legislative committee, the Standing Orders shall apply so far as may be applicable, except the Standing Orders as to the election of a Speaker, seconding of motions, limiting the number of times of speaking and the length of speeches.

In view of that, it would be interesting to continue hearing Professor Barré's analysis, his thoughts as a whole and his conclusions on the subject. As previously noted, this will equip us with stronger and more comprehensive arguments for determining whether the motion I introduced a little earlier is valid. So I will continue my presentation. I still have a lot to say about the constitutionality of this bill and about other aspects as well.

[*English*]

The Chair: Is this another point of order?

Mr. Wayne Marston: I don't know. You will have to rule whether it's a separate point of order or part of this point of order.

The Chair: My ruling was that I don't have any authority to stop Mr. Boulerice if he wants to speak, but I think it was a respectful request.

Mr. Wayne Marston: I understand. I'll make the point I'm trying to make, and then you can decide whether I'm off base or not. I may well be, but I was counting on speaking to this motion, not going on to the next.

You were asking the member if he would give up his time, but I'm looking forward to sharing some of this myself. He's done a wonderful job so far, but there's more to be added.

Thank you, Mr. Chair.

The Chair: The point is that I don't have the authority to stop it. I would make a helpful suggestion, as the chair, that we could deal with clause-by-clause consideration. We could deal with the amendments. Members can vote yea or nay on the amendments and yea or nay on the bill, and the arguments can be made within the context of the clauses within limits, but it's up to members opposite. It is their right to speak to this motion. Obviously, if the first speaker agreed to the request by Ms. McLeod, then Monsieur Mai, Mr. Marston, Mr. Martin, and Ms. Glover would have to agree to that request as well.

Does that clarify matters?

Mr. Wayne Marston: I appreciate it. Thank you.

The Chair: Go ahead, Mr. Martin.

Mr. Pat Martin: My only comment, Mr. Chairman, would be that Ms. McLeod asked for the floor on the basis that it was a point of order, so just to keep order in the committee, it would be incumbent on you to rule that no, it is not a point of order, and then we could entertain this friendly motion that's going back and forth.

On the question of why you won't wait until the motion is put on an amendment to make these arguments, my understanding from a process point of view is that you ran out of time to hear further witnesses and to get the answers from the CRA, so the agreement was that you would deal with the response from the CRA, as submitted to the committee in written form, prior to the clause-by-clause analysis.

Is that a fair interpretation?

The Chair: That was not my understanding.

Mr. Pat Martin: Could I ask for some clarity on it?

The Chair: My understanding was that we would move right into clause-by-clause consideration. Obviously, before we did so, the motion was moved, so....

Mr. Pat Martin: I think it's very important that we get clarity on that before we even entertain further interventions from other parties.

The Chair: Your member has the floor, so I'm going to return to your member. I think Ms. McLeod respectfully asked the chair to put the question that we move to clause-by-clause consideration and the amendments in order to allow the two members who have introduced amendments to put their amendments to the committee. I think it was done in a spirt of respectful dialogue.

That request was denied; therefore, I'm going back to Monsieur Boulerice, and we'll get clarification with respect to what the committee should have done, but the orders of the day I have before me show us moving into clause-by-clause consideation of the bill.

Your colleague has the floor, unless you wish to raise further points of order.

● (1645)

Mr. Pat Martin: There's some clarification that—

Mr. Hoang Mai: Maybe on that point of clarification...?

The Chair: I'm not really sure what the point of this is, though. Can I just...?

Mr. Hoang Mai: I'll let you decide, sir.

The Chair: Are you arguing that we should not hear from your colleague?

Mr. Hoang Mai: On the contrary, I was-—

The Chair: I mean, we are going to hear from your colleague.

Mr. Hoang Mai: I was trying to help you out, Chair, in terms of what the motion said.

Some voices: Oh, oh!

The Chair: After you score, you usually celebrate. I don't know what the issue is. I mean, you won the debate—

Mr. Hoang Mai: That's fine.

The Chair: —or you won the point.

Go ahead, Monsieur Boulerice.

[*Translation*]

Mr. Alexandre Boulerice: Thank you very much, Mr. Chair.

I will continue this thrilling analysis by Professor Barré, of Laval University, of the validity of the bill and its constitutional aspect. He was referring to the stated objective of the bill or its underlying objective. We believe this is quite important. Is it deemed to be constitutional? If passed, will this bill result in endless, costly legal battles for everyone?

Mr. Barré continues:

> With respect to the stated objective, it is in no way necessary to determine the author's state of mind. In other words, the fact that the bill's sponsor states that "labour organizations play a valuable role in society, … defending the rights of workers … and ensuring that they have proper compensation for the work they do" does not mean that his bill might not have as its object the regulation of labour organizations. On the other hand, if such a problematic state of mind existed, it might be useful to seek to identify it.
>
> According to Russ Hiebert, the member of Parliament who has sponsored Bill C-377, the Income Tax Act provides "substantial benefits" for labour organizations House of Commons Debates, Official Report, 41st Parliament, 1st Session, December 5, 2011, p. 3978). At second reading, on February 6, 2012, Mr. Hiebert added that "it is only right for the public to know how that money is being spent" (House of Commons Debates, Official Report, 41st Parliament, 1st Session, February 6, 2012, p. 4859). Also at second reading, after stating that "[t]he purpose of the bill is not about requiring disclosure to union members", he stated that the bill's purpose is rather "requiring disclosure to the general public because the public is providing a financial benefit through the tax system. The public has a right to know how the benefit they provide to labour organizations is being used" (House of Commons Debates, Official Report, 41st Parliament, 1st Session, March 13, 2012, p. 6221). It seems extremely doubtful that the existence of a mere tax deduction could operate to create an "interest", let alone a "right" (a legally protected interest) in the public to know the full extent of labour organizations' financial administration, or at least all of the financial information covered by Bill C-377.
>
> Certainly, we must consider that in the case of colourable legislation, the "stated objective" can sometimes be set up against the "real objective". However, in this case, the real objective of the legislation is no more nor less than the stated objective. Here, the overlap is complete, and the two objectives amount to only one. Whether we look at the summary of the bill, the content, or the statements made in the House of Commons, the stated objective is to regulate labour organizations. That is clearly the dominant nature of Bill C-377. If any tax nature were to be attributed to this bill, it would without question have to be found that any such nature is purely incidental, and irrelevant for constitutional purposes (in French, "sans importance au regard de la qualification de la loi sur le plan constitutionnel").
>
> We now need to determine whether Parliament may validly enact regulation of this nature, and then examine the extent of federal jurisdiction in relation to labour relations, and more particularly the ability of Parliament to legislation in relation to the institution referred to as "trade union" or "labour organization"....
>
> The fundamental rules governing the division of powers in relation to labour relations are well known. Since the decision of the Judicial Committee of the Privy Council in London in Snider, labour relations are, as a rule, under the legislative jurisdiction of the provinces of Canada, based on section 92(13) concerning "Property and Civil Rights in the Province" ("la propriété et les droits civils dans la province") (see Toronto Electric Commissioners v. Snider, [1925] A. C. 396). In other words, the matter of "labour relations" falls within the class of subjects described as "Property and Civil Rights in the Province".
>
> As an exception to that rule, however, Parliament may legislate in relation to labour relations in the sectors of the economy that fall under its legislative jurisdiction under section 91 or paragraphs (*a*), (*b*) and (*c*) of section 92(10) of the *Constitution Act, 1867*. That exception to the general rule was recognized in l955 in the *Stevedoring* case (Reference as to the Validity of The Industrial Relations and Disputes Investigations Act, [1955] S.C.R. 529). The power to regulate a particular economic activity necessarily implies the power to regulate labour relations in works, undertakings or businesses whose activity falls under its jurisdiction.

That is why we have the Canada Labour Code.

> Labour relations in those works, undertakings or businesses is in this case a vital part ("aspect essentiel") of its operation (see Commission du salaire minimum v. Bell Telephone Co., [1966] S.C.R. 767). In other words, the matter "labour relations" may also fall within the classes of subjects that assign to Parliament the power to legislate in relation to certain sectors of the economy. Works, undertakings or businesses that operate in those sectors of the economy are in fact commonly referred to as "federal works, undertakings or businesses". The Supreme Court of Canada has held that federal jurisdiction in relation to labour relations essentially depends on Parliament's legislative authority over a particular economic activity: "[Federal] jurisdiction over labour matters depends on legislative authority over the operation, not over the person of the employer".

● (1650)

> The question of the constitutional validity of Bill C-377 thus brings us, in the words of the Canada Labour Relations Board, to an "unexplored corner of labour relations" (see Finn v. Canadian Brotherhood of Railway, Transport and General Workers, 47 di 49, p. 65). The extent of federal jurisdiction in relation to labour relations in federal works, undertakings or businesses is relatively clearly defined. Bill C-377, however, raises the question of the limits of federal jurisdiction: does it authorize Parliament to legislate in relation to the "trade union" as an institution, not in its capacity as bargaining agent under an otherwise validly enacted system of collective bargaining?

[*English*]

The Chair: Just a moment. I understand there's....

Is there a problem with translation?

Mr. Pat Martin: I'm not getting any translation from French to English.

The Chair: Let's do a test on the translation *en français*.

Mr. Pat Martin: That sounds good. *Merci.*

The Chair: Okay, continue.

[*Translation*]

Mr. Alexandre Boulerice: Bill C-377, however, raises the question of the limits of federal jurisdiction: does it authorize Parliament to legislate in relation to the "trade union" as an institution, not in its capacity as bargaining agent under an otherwise validly enacted system of collective bargaining? That is ultimately the fundamental question raised by Bill C-377.

> ... While the issue has not often been discussed, it is in fact not novel. In 1968, after noting that the regulation of unions "probably" came under the legislative jurisdiction of the provinces based on section 92(13), "Property and Civil Rights in the Province", the Woods Report concluded that "any attempt to enact federal legislation in relation to trade unions in the strict sense would probably fail, in whole or in part.… Parliament may enact optional legislation, but it could not require that all unions comply with the standards it [imposed]" (para. 758).

I believe that is entirely consistent with our study of the bill and the motion that the official opposition has presented to committee members.

> In light of the opinions stated by those authors, we can begin to understand why the Canada Labour Relations Board might have described the subject as an "unexplored corner of labour relations" (see *supra*). It seems to us that those authors were wary of addressing the issue of legislative jurisdiction in relation to the trade union to the extent that the union has "independent constitutional value" ("*un aspect constitutionnel indépendant*"), in the words of Bora Laskin. Those authors seem to be referring only to the issue of the division of legislative powers in relation to the matter "labour relations", without addressing the issue of a trade union having independent constitutional value.
>
> Certainly, Parliament's exceptional jurisdiction authorizes it to legislate in relation to a trade union in its capacity as bargaining agent, within the meaning of section 3 of the *Canada Labour Code*, in connection with a federal work, undertaking or business. For example, it may validly legislate in relation to: the source deduction of union dues by the employer (s. 70), voting prior to a strike being called (s. 87.3(1)), the union's duty of fair representation (s. 37), inclusion of a clause requiring union membership in a collective agreement (s. 68), and do on. In all those cases, the federal regulation essentially relates to the union in its capacity as bargaining agent. However, the regulation contemplated by Bill C-377 is clearly not of that nature: its subject is the union as an institution, not in its capacity as bargaining agent within a system of industrial relations instituted by valid legislation: the Canada Labour Code.
>
> In addition, we know of no authority that would enable Parliament to legislate in relation to a trade union as an institution. In other words, to the extent that the union has "independent constitutional value", Parliament has no authority to regulate it. The provincial legislatures alone have that kind of authority, based on section 92 (13) of the Constitution Act, 1867: "Property and Civil Rights in the Province". Federal jurisdiction is clearly limited to labour relations in federal works, undertakings or businesses, whose economic activity falls under the exclusive legislative jurisdiction of Parliament under the Constitution of Canada.
>
> If Professor Hogg's opinion (see supra) were to be taken literally, we would have to understand that Parliament could legislate validly in relation to trade unions in connection with their status as bargaining agents, but only in relation to unions whose members are employed in the operation of a federal work, undertaking or business. That proposition must be rejected in its entirety. Many unions are certified under both the Canada Labour Code and provincial legislation.

Professor Barré concludes as follows:

> Having concluded this legal opinion, we are of the opinion that the real purpose of Bill C-377 is to regulate labour organizations. Because this is a blatant case of colourable legislation, it is obvious to us that this bill is an attempt to regulate labour organizations by subjecting them to an obligation to provide financial information, which obligation has no genuine connection with the tax provisions set out in the law, whether it be the tax exemption enjoyed by labour organizations under section 141(1)(*k*) of the Income Tax Act or the deduction that taxpayers may claim in calculating their income under section 8(1)(*i*).
>
> With respect to Bill C-377, it is not a matter of deciding its sphere of application, as is commonly the case in litigation relating to the division of legislative powers in the field of labour relations. If it were a case relating to the sphere of application of legislation that was otherwise validly enacted, its sphere of application would then have to be limited to those labour organizations that act as bargaining agents in connection with the operation of a federal work, undertaking or business. The question that arises here, however, is rather the question of its constitutional validity: Parliament has no authority to regulate 15 unions as a distinct subject. Its only power is limited to labour relations within federal works, undertakings or businesses. A union that has the status of "bargaining agent" in connection with the operation of a federal work, undertaking or business cannot be described as a federal work, undertaking or business.
>
> ... If Bill C-377 were to be enacted and brought into force, the legislation certainly might be declared to be "of no force and effect" by the Canadian courts, based on section 52(1) of the Constitution Act, 1982: its content is inconsistent with the division of legislative powers set out in the Constitution of Canada.

● (1655)

This is a legal opinion that was requested by a Quebec union, the Syndicat des professionnelles et professionnels du gouvernement du Québec. It shows the legal labyrinth in which Bill C-377 could put us if it were to be passed by the House of Commons.

Let us talk about the costs that the Canada Revenue Agency disclosed to us this morning and that are based solely, I would point out, on approximately 1,000 organizations, which probably represent 4% of the organizations that will be required to complete reports. The work of the Canada Revenue Agency, which handles the files of charities, costs more than $33 million a year and employs 33 full-time federal public servants.

Enormous additional legal costs could be incurred if, by some unfortunate chance, this bill were ever supported by the majority of members. That would result in costs to pension funds and trusts that must first serve their members. There would also be costs to labour organizations, which would have to deal with red tape instead of doing their job, improving working conditions and working with employers to find solutions, improve our technology and work organization, introduce more health and safety rules in workplaces to prevent hundreds of workers from losing their lives every year because they work at insufficiently regulated job sites or workplaces.

The unions should not spend their time dealing with red tape but should work to improve the lives of millions of workers. The unions' campaigns also affect aspects of our community and social lives that are beneficial for everyone. I mentioned health and safety regulations, but we could also cite public pension plans, pay equity, minimum wage and minimum hours of work. When unions are able to do their job to improve everyone's lives, that is good for society as a whole. We have a private member's bill that will be extremely costly for taxpayers and that could well deprive unions of their means of action to improve the lot of our communities.

Workers whose wages and bonuses rise will spend in their community. So that benefits all the people with whom they do business.

Going back to the idea of the people with whom they do business, if ever a business that delivers services to citizens also does business with a labour organization, under Bill C-377, its professional, trade and strategic secrets will be made public. That will be extremely harmful for our economy as a whole.

I hope my colleagues will allow me to do this, but I would also like to raise some concerns that have been reported to us. I am taking advantage of the fact that this is November 26 in order to do it. I would like to talk about the Canadian Football League Players' Association. On the day after the Grey Cup match, I believe it would be appropriate to hear from the players, who, among other things, gave us such a great championship match, which was won yesterday by Toronto, which unfortunately had previously beaten Montreal.

What do the Canadian Football League players say about the bill as it concerns pension plans, for example? Mr. Hiebert has declared that the purpose of the bill is to improve union transparency, but the legislation is drafted in such a way that it will require extensive and onerous financial disclosure from any pension plan that has any unionized beneficiaries. This is so even if none of the money in the pension fund originates from a union. This simply does not make sense and is not consistent with the objectives Mr. Hiebert stated in his presentation.

Bill C-377 applies to both labour organizations and labour trusts. The definition of "labour trust" includes a trust or fund that is established or maintained in whole or in part for the benefit of a labour organization, its members or the persons it represents.

● (1700)

> That definition is not limited to trusts and funds that originate with unions or are funded through union dues. The definition of "labour organization" would clearly capture the Canadian Football League Players' Association and thus the definition of "labour trust" would similarly capture the Canadian Football League Players' Association's pension plan as it is a trust or fund that is established for the benefit of our organization.

Our Canadian players, who have reservations about the scope of this bill and the burden it represents, fear they may be subject to extremely restrictive regulation and be required to deal with red tape rather than do their job. Like Commissioner Stoddart and the people from the Canadian Bar Association, they are concerned about the consequences for participants' privacy. Here is what they say on the subject:

> One of the aspects of Bill C-377 that most concerns the trustees of the fund is the impact that this legislation will have on privacy. Currently, the legislation calls for the disclosure of a set of statements for the relevant fiscal period setting out all transactions and disbursements over $5,000. The statements must include the name and address of the payer and payee, the purpose and description of the transaction and the specific amount that has been paid or received. The language of the bill is so broad that this disclosure requirement would seem to include disclosure of transfers of pension entitlements of the fund's beneficiaries. In a defined contribution plan such as that of the association, each plan member has a specific account which holds all contributions made on their behalf. Once that member reaches retirement, the assets held in the account will be used to purchase an annuity, a life-income fund, or other locked-in retirement income vehicle. Members who are U.S. residents may, in some circumstances, transfer these funds out of Canada, subject to withholding tax. These transfers will typically be quite large and will easily surpass the $5,000 threshold. When these payments are made, Bill C-377 requires the disclosure of the amount paid, the payee's name, address and the purpose and description of the payment. This information must be presented to the minister and will be made available...

[*English*]

The Chair: Sorry. Go ahead on a point of order, Mr. Hiebert.

Mr. Russ Hiebert (South Surrey—White Rock—Cloverdale, CPC): Thank you, Mr. Chair.

The orders of the day refer to clause-by-clause consideration of Bill C-377. What the member is now doing is basically preventing or depriving members from reviewing the clauses that the member, Brian Jean, has introduced. There are a number of amendments, which I support—surprise, surprise—that address the very concerns that Mr. Boulerice is now commenting on.

I have to emphasize that by commenting on them, he's actually misleading the public. These proceedings are televised, and he's repeated a number of times in the last hour and a half that he's had the floor that there are all kinds of negative consequences associated with Bill C-377, yet in truthfulness he has not at all admitted or at least even consented to the fact that the amendments, which he's aware of, that were tabled last Friday by Mr. Jean actually address these very concerns that he's speaking to right now.

For example, the amendments clarify that registered pension plans, health benefit plans, and other plans do not have to file information. They clarify that registered benefit payments to individuals like he was just referring to will not be disclosed. The amendments remove home addresses from filing requirements. They limit which salaries and business transactions are disclosed.

● (1705)

The Chair: Please go to the point of order, Mr. Hiebert.

Mr. Russ Hiebert: I'm getting to that.

The amendments reduce the cost of government for electronic filing and eliminate.... On this point, he said that the cost associated with the CRA report was largely due to the cross-referencing of data. These amendments eliminate the need for cross-referencing of data. That would eliminate the cost that he's now speaking to.

Mr. Chair, I ask that the member—

The Chair: Order. Order.

Mr. Russ Hiebert: —consent to this committee completing its obligation to the public, which is to consider these clause-by-clause amendments, and no longer mislead the public with his ongoing diatribe.

The Chair: Okay.

I have Mr. Mai, Mr. Marston, and Mr. Cuzner on a point of order.

Go ahead, Mr. Mai.

Mr. Hoang Mai: On the point of order, Mr. Chair, I would like to clarify regarding the—not that I wanted to instruct you—

The Chair: Do this one, and then we'll come back to that.

Mr. Hoang Mai: On this point of order, it was with respect to the fact that right now what we're doing is looking at the motion that we put forward. We are talking about the motion, and that's why I'm on the list and my colleagues are on the list. We want to talk about the motion that we have put forward. I understand that Mr. Hiebert is not very happy with the motion we have, but I think the important thing right now is for the Canadian public to listen to why we have put forward a motion and what our position is with respect to the motion. It's normal for us to debate something that we brought forward. As you know, Mr. Chair, we're just following the rules. Right now the rules are saying that we are allowed to talk about a motion that we have put forward.

Thank you.

The Chair: Thank you.

Next is Mr. Marston, and then Mr. Cuzner.

Mr. Wayne Marston: Further, Mr. Chair, I believe that Mr. Hiebert was here at the beginning of the meeting when you ruled on Standing Order 116. I won't read it. I won't take the time to read the whole thing out, but a member may speak as often as he or she likes, providing, of course, the member is recognized by the chair. The member was duly recognized, and he moved the following motion:

> That...pursuant to S. O. 97.1, recommends that the House of Commons do not proceed with Bill.C-377, An Act to amend the Income Tax Act (requirements for labour organizations)...

and so on and so forth.

That's a duly moved motion before this committee. There's nothing else. There are no amendments at this point, Mr. Hiebert; there is this motion before the committee.

Sorry, Mr. Chair.

The Chair: Go ahead, Mr. Cuzner.

Mr. Rodger Cuzner (Cape Breton—Canso, Lib.): Thank you very much, Mr. Chair. You and the interpreters are doing an exceptionally good job today, I must admit.

On this specific point of order, the government has had an extension on this bill already. The government has had an extension on this bill for 90 days. It has only decided to deal with this in the last number of meetings.

My motions in bringing the Parliamentary Budget Officer forward to support it.... We would like to make the actual costs public before we vote on a bill like this.

My letter from the Parliamentary Budget Officer states that they received official notice on November 16, that they don't have the information from the CRA, and that they don't feel they can actually prepare the information.

If Mr. Hiebert wants to read his amendments into the record and allow Canadians to believe that these problems are addressed through his amendments, it's totally inappropriate. The information is not there. At least we're getting more enlightenment from my colleague Mr. Boulerice than from the government on this particular bill.

● (1710)

The Chair: I want to thank all of you for your input.

My understanding of what Mr. Hiebert was doing was that he was recommending, similar to Ms. McLeod, that we proceed to clause-by-clause consideration, that we proceed to the amendments, because that is where the members of the committee can argue over whether the amendments address the concerns raised by Monsieur Boulerice.

Again, it's a recommendation. Mr. Marston is correct that procedurally we can't move there unless all the members who are on the speaking list consent to move there. Mr. Boulerice has the right to the floor under the motion and under the standing order that Mr. Marston raised.

It was my hope to deal with the clauses in the bill today, but it looks as though we are quickly running out of time. That's my ruling on the point of order.

Mr. Hiebert, Monsieur Boulerice has the floor, and other members are on the list. Unless they consent to do so, we will not proceed to clause-by-clause consideration of the bill.

Monsieur Mai, do you want to raise the issue of the CRA? You indicated in your previous comments that you did.

Mr. Hoang Mai: Yes. What we said regarding the CRA was that according to the motion put forth by Mr. Cuzner and then debated in the committee,

[*Translation*]

> …due to the full agenda facing the Committee, and due to difficulties in scheduling additional meetings, the Committee provide a list of questions to officials from the Canada Revenue Agency regarding the cost of implementation and administration of Bill C-377, by Tuesday, November 13, 2012 at 9 a.m., and that the answers be provided in writing to the Chair of the committee prior to the Committee's clause-by-clause consideration of this Bill.

Between the last studies and today, that is before conducting the clause-by-clause consideration, we received the answer from the Canada Revenue Agency breaking down a number of costs, in particular. However, as we did not have that information until now, today we wanted to talk about the costs outlined to us by the Canada Revenue Agency. A number of witnesses have discussed costs as well. That is why my colleague, Mr. Boulerice, introduced a motion requesting that we discuss these amounts first.

[*English*]

The Chair: I just want to clarify that this motion is the motion by Ms. McLeod. The one by Mr. Cuzner is with respect to the Parliamentary Budget Officer. The motion by Ms. McLeod was complied with by CRA officials. Your argument is that you want to consider the responses to them before clause-by-clause examination.

I just want to make sure that we are agreed on that.

Mr. Hoang Mai: Yes, and I want to say that I really appreciate the work that CRA has been doing; it is great. We had a lot of questions, and they answered them.

This has nothing to do with the CRA; on the contrary. I think they are doing an amazing job in giving us information on such short notice. It's not related to CRA; it's more with respect to how this bill was ill-prepared.

The Chair: I will make the request again. Again, it's a request, not a point of order. The request is that we proceed to clause-by-clause consideration of this bill, to the clauses and the amendments that deal with this bill.

Mr. Boulerice, it's up to you. You can continue using your time, or we can proceed to examine the bill clause by clause.

[*Translation*]

Mr. Alexandre Boulerice: I insist on my right as a parliamentarian to continue my presentation on the motion submitted to you earlier. This presentation includes important information on the consequences of the bill, particularly the issue of costs related to its administration and the fact that the government will now have to process tens of thousands, even millions of pieces of information. However, the purpose of all that, the objective of the bill and the problem it is intended to solve is not very clear to us. Furthermore, it could well have disastrous consequences for workers and for insurance and pension plan beneficiaries.

Now I will return to the opinion of the Canadian Football League Players' Association, which I had not finished presenting. Before we vote on this motion, I also want to provide you with some other relevant information. I would be remiss if I did not point out the red tape involved and the creation of a new bureaucracy and, in passing, quote someone who I think was right at the time:

● (1715)

[*English*]

"Cutting red tape is a most effective way to show that we are making government work for people, not the other way around."

Mr. Pat Martin: Who would have said that?

[*Translation*]

Mr. Alexandre Boulerice: That is what Stephen Harper said in January 2011. So I find it hard to understand how a Conservative member can run completely counter to the vision and perspective stated by his own Prime Minister.

With regard to unnecessary costs, the players' association wrote as follows:

> As members of the Committee are likely aware, today's low interest rates and fragile world economy have made managing a pension fund and ensuring that adequate benefits are delivered to members more difficult than ever before. Bill C-377 represents additional and unnecessary costs to these plans, and will make the provision of benefits all the more difficult to deliver. Furthermore, it will make the cost of setting up and managing a pension plan more onerous, and this will lead to less plans being instituted by private employers.
>
> The amount of disclosure that is mandated by the Bill is very significant. The Fund has assets of approximately $53 million, and each year, the fund's investment managers enter into thousands of transactions in excess of $5,000. Requiring that each of these transactions be disclosed, along with the name and address of the payer and payee, the purpose of and description of the transaction and the amount that has been paid or received is completely inappropriate and will lead to significant cost. We can see no justification for providing this information to the Canadian public, and we certainly do not see how it relates to increasing the transparency and accountability of unions.
>
> Pension plans require professionals such as investment managers, actuaries, accountants and lawyers in order to function. The nature of the disclosure that is required by Bill C-377 will make it more difficult for pension plans to attract and retain top professional advisors.

This is also a cost and it also has an impact on the pension plans of millions of workers. It will become more difficult to attract qualified people as a result of the obstacles and unnecessary and irritating forms that they are trying to put in place on the other side. I continue:

> These individuals may be reticent to accept the position with a pension plan if they know that their fees will be disclosed, along with their name and address, to the entire population of Canada.
>
> Furthermore, investment managers closely guard their investment choices, and will not want those choices to be made publicly available.

I have some very important evidence on this point that committee members should hear. I am going to share it with you soon.

> The confidentiality of these choices is part of their competitive advantage. If the investment choices made by the fund's investment managers are not kept confidential and investments in excess of $5,000 must be published, it could negatively impact the performance of the Fund, as these decisions would be public and open to imitation by competitors and could be taken advantage of by counterparties to the transaction. No pension fund in Canada, including those for public servants, is subject to having its investment decisions published on a public website.

As regards the impact on pension fund managers, there is some very interesting information here from Mr. Anderson, who is President of the Multi-Employer Benefit Plan Council of Canada. He wrote a letter to the Hon. Jim Flaherty (Minister of Finance) about the bill before us today. That letter is in English, and I apologize in advance once again if I hurt anyone's ears. I am quoting Bill Anderson:

[*English*]

We are writing in regards to Bill C-377, a private member's bill concerning amendments to the Income Tax Act in regards to labour organizations.

Our organization, the Multi-Employer Benefit Plan Council of Canada (MEBCO), was established in 1992 as a not-for-profit, federal non-share capital corporation. MEBCO's mandate is to represent the interests of Canadian multi-employer pension and benefit plans with provincial and federal governments regarding proposed or existing legislation and other policies affecting such plans.

● (1720)

[*Translation*]

This is the heart of the matter.

[*English*]

> MEBCO's volunteer Board of Directors is responsible for identifying issues that impact upon multi-employer plans and developing strategies to address those issues. They are elected from all professions and disciplines involved in multi-employer plans, including union and employer trustees, professional third-party administrators, non-profit and in house administrators, actuaries, benefit consultants, lawyers and chartered accountants.
>
> On October 3, 2011, Bill C-317, an earlier version of Bill C-377, was put before the House of Commons...

It changed to C-377, and, Mr. Anderson said,

> Unfortunately, despite Mr. Hiebert having this opportunity to amend the bill

after C-317

> aspects remain which we believe will have a detrimental and unjustified impact on pension and benefit plans. We have previously written to you about our concerns, and we are doing so again in order to reiterate the importance of rejecting Bill C-377. MEBCO believes that the Bill goes far beyond the intended objective and would impose enormous costs and other implications for many private and—

Mr. Pat Martin: Costs again.

Mr. Alexandre Boulerice: Costs again, exactly.

Mr. Pat Martin: The word keeps coming up again.

Mr. Alexandre Boulerice: Yes, in every letter. It's a cost for everybody.

> The Bill proposes to require disclosure of personal information (including personal health and medical information) which conflicts with legislation already in place. Further, the Bill proposes to duplicate existing financial disclosure requirements applicable to pension and benefit trusts.
>
> On the website for Bill C-377, Mr. Hiebert states that through the operation of the Bill, the Canadian public "will be empowered to gauge the effectiveness, financial integrity and health of Canada's unions", and that the purpose of the bill is "to increase transparency and accountability" of labour unions. Just as we noted in our previous letter about Bill C-317, we believe that Bill C-377 goes well beyond Mr. Hiebert's stated intentions. We are writing to again urge all members of the House of Commons to consider the consequences the Bill will have for multi-employer pension and benefit plans.
>
> In its present form, Bill C-377 would mandate certain disclosure from "labour organizations" and "labour trusts", as defined. The definition provided for "labour trust" includes "a trust or fund...that is established or maintained in whole or in part for the benefit of a labour organization, its members, or the persons it represents." ...
>
> We believe that there are several reasons why it would not be appropriate for this Bill to become law due to serious flaws, exemplified by its treatment of pension and benefit plans under the proposals in Bill C-377.
>
> Pension and benefit plans are already subject to extensive disclosure requirements under other provincial and federal legislation. For example, s. 93 of Ontario's Labour Relations Act, 1995, requires the administrator of a plan that benefits union members to file an annual statement with Minister of Labour setting out various aspects of plan finances. The legislation also requires that a copy of that statement be provided, at no cost, to any union member that makes such a request. Similar disclosure requirements are created by Ontario's Pension Benefits Act and under sections 12 and 13 of the Federal Pension Benefits Standards Act. A variety of other statutes in Canada impose similar requirements, and moreover, pension and benefit plans are already required to file annual statements with the Canada Revenue Agency. In addition, trustees of pension and benefit plans are subject to stringent fiduciary duties at common law that obligate them to act solely in the best interests of the plan and its beneficiaries. Similar duties arise under pension benefits legislation. Bill C-377 will create additional and unnecessary red tape for a sector that is already in a difficult state.

A voice: The Prime Minister doesn't like red tape.

Mr. Alexandre Boulerice:

> This extra administrative layer does not further the goals of the proposed legislation. Since the transparency and disclosure provided for under existing pension and benefits legislation already ensure plan members and other stakeholders receive sufficient information and disclosure concerning these plans, all that this additional red tape will serve to accomplish is the unnecessary depletion of plan assets reducing the amount available to pay intended benefits to plan members and beneficiaries. These funds have fixed contribution rates and fixed resources, and therefore the cost of compliance will necessarily result in smaller benefits for workers.

● (1725)

[*Translation*]

If you want to talk about costs, here once again we have some highly relevant evidence on the subject regarding the consequences of Bill C-377. This evidence concerns not only the organization of work at the federal level, but also the benefits that workers could receive and the costs this may represent for these thousands of organizations. They will have to complete mountains of paper on the pretext that Canadians can then be told that such and such a contract over $5,000 was awarded to a supplier or subcontractor and that a particular benefit was given to a member because he or she was entitled to receive it.

Can you imagine if the FTQ's Fonds de solidarité, CSN's Fondaction or the Ontario Teachers Pension Plan were required to disclose all contracts or transactions greater than $5,000? That would be a serious situation.

I do not want to give anyone preferential treatment. Concerns have been expressed by the Football League Players' Association, but also by the National Hockey League Players, who are currently locked out. If we had a labour relations bill before us, we could do something else.

The National Hockey League Players' Association has sent us a letter, signed by Alexandra Dagg, the association's director of operations, that gives us a good idea of the impact this legislation will have on labour associations. This letter raises some interesting questions. It is written in English and reads as follows:

[*English*]

> The NHLPA is a democratic, membership-based organization, governed by a Constitution. The players democratically elect representatives from every team, who then make up the Executive Board. The NHLPA financial statements are presented and approved by the Executive Board. Players also elect an audit committee who work closely with the financial staff of the NHLPA and review, discuss and approve the financial statements for presentation to the larger Executive Board. Further, consistent with the requirements of labour relations legislation, any member of the NHLPA can view our financial statement at any time. Decisions are made by the players for the players as to where NHLPA funds are spent.
>
> Bill C-377 mandates detailed public disclosure of the financial operations of labour organizations and labour trusts. Although the Bill is framed as a taxation statute, it seems aimed at placing significant limitations on the political activities of unions. There are serious doubts as to the Bill's legality.

[*Translation*]

A little earlier, I cited Professor Barré at length on this subject. He said the following:

[*English*]

> First, the substance of the Bill relates to labour relations, a matter which falls under provincial jurisdiction under the Constitution. Second, the bill's disclosure and reporting requirements likely would violate the constitutionally-protected freedoms of expression and the association of the union, its members and officers. These disclosure and reporting requirements are much more intrusive than the requirements placed on charities and non-profit organizations.

It's like this bill would create a Big Brother. I don't get it.

Mr. Pat Martin: It's the heavy hand of the state.

Mr. Alexandre Boulerice: Yes, the state is in every part of our life, in workers' organizations, pension plans, and trusts.

Going back to the letter,

> Finally, the disclosure and reporting requirements contained in the Bill represent a significant incursion into the privacy of unions and their members. Not only is the Bill's legality in doubt but it will impose an additional significant burden on unions while at the same time providing no value to the citizens of Canada.

● (1730)

[*Translation*]

I believe this letter is extremely interesting. It is very clear on the issues as a whole, which once again bring us back to the motion that we introduced at the start of this meeting, but also to the puerile nature—if I may use that term—of this bill, which, once again, represents,

[*English*]

a costly solution for an absence of a problem.

[*Translation*]

This will have—

[*English*]

The Chair: Thank you, Mr. Boulerice.

As it is 5:30 p.m., meeting number 95 is adjourned.

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