May 6, 2015

Via email: LCJC@SEN.PARL.GC.CA

Senator Bob Runciman, Chair
Standing Senate Committee on Legal and Constitutional Affairs
The Senate of Canada
Ottawa, Ontario
Canada K1A 0A4

Dear Mr. Runciman:

Re: Bill C-377 − *Income Tax Act* amendments (requirements for labour organizations)

In response to the recent request from the Clerk of the Standing Senate Committee on Legal and Constitutional Affairs (LCJC), that the Canadian LabourWatch Association appear on May 7, 2015, we attach a very comprehensive Submission.

We have reviewed a number of other Submissions, watched the April 22 and 23 proceedings as well as reviewed documents published by a wide range of labour and other organizations about Bill C-377.

Our Submission addresses a number of topics. In particular, we focus on identifying incorrect statements, whether oral or written, made by prominent labour leaders and other critics of C-377. We then provide LCJC, and the public record, with fact based information and analysis. On some topics, we provide a broader analysis than others have.

The most important topic we address relates to the range of assertions about Bill C-377 that suggest it has no income tax purpose. We respectfully disagree.

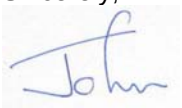
We will focus on two provisions of the *Income Tax Act* and the related, published interpretations. When 8(5) and 8(5)(c) are combined in sequence together the relevant words read like this:

> *"[d]ues are not deductible . . . to the extent . . . levied . . . for any purpose not directly related to the ordinary operating expenses of the . . . union . . ."*

Our goal is to help LCJC make informed choices regarding C-377

Our Submission, including several Appendices of reference resources, is attached.

Sincerely,



John Mortimer
President

cc: Shaila Anwar, Committee Clerk

Submission

to the Senate Standing Committee on Legal and Constitutional Affairs (LCJC)

Regarding Bill C-377 – *Income* Tax Act Amendments (requirements for labour organizations)

May 6, 2015

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Executive Summary

The objectives of our Submission are as follows:

First, to correct incorrect written and oral statements made by labour leaders and other critics of Bill C-377. In particular, it is very troubling that for years, labour leaders have consistently stated things about current Canadian law that are completely false. We will address examples of this directly. Our Submission provides factual evidence to correct the record.

Second, we wish to focus this Committee's attention on the existing section of the *Income Tax Act* that deals with when union dues are not deductible in calculating net income for tax purposes. The only interpretations of 8(5)(c) of the *Income Tax Act* we could find underscore our position that potentially a good percentage of dues levied by unions and deducted by taxpayers do not in fact qualify. Are Canadian foregoing $1 million or is it $100 million in tax revenue? Absent the kind of information that Bill C-377 will make public no one knows.

Third, far too much has been said by critics of Bill C-377 ranging from the Canadian Bar Association to prominent labour leaders about Canadian privacy law that has no factual basis. Numerous official submissions, testimony, written statements to the public and to unionized employees are consistently devoid of specifics. To say that Bill C-377 violates the *Charter* or statute law without ever once citing a single statute, not a single section of any statute, nor any Supreme Court or other court rulings reduces the credibility of their input.

One valid privacy issue was addressed in 2012 by the House of Commons

Appendix C is a one page table covering all 14 tax jurisdictions in Canada. It is based on the statutory language regarding financial disclosure for unions that exists anywhere in Canada contained in Appendix D. We have spoken with several Labour Board Chairs in Canada to confirm that no Labour Board anywhere in Canada today keeps labour organization financial statements for public access. Labour leaders statements to the contrary are false.

Overall, what labour organizations may or may not provide to their Members (and no legislation entitles dues paying non-Members to any information about how their dues are used) is a very distinct subset of who Bill C-377 serves – the Canadian public. No jurisdiction today entitles the public to anything. That is the purpose at the core of C-377.

This example is not the only one where statements have been put in writing or stated orally about the state of the law and Bill C-377 that are categorically untrue. We implore every member of this Committee to carefully review our Submission and to question what labour leaders and other critics are stating.

It is disappointing that labour leaders prepare Lobby Kits like the CLC, that receive wide distribution to be used by unionized Canadians to lobby with falsehoods. The essence of Canadian law is that the people who must pay union dues have the law of their workplace relationship with employers put in control of unions who are misleading them on the law. If they could find a way to not pay for these unfortunate services they can actually be terminated from their jobs.

Our second subject – 8(5)(c) is laid out in full in our submission. But the provisions that are relevant to Bill C-377:

> *"Dues are not deductible ... in computing a taxpayer's income . . . to the extent levied for any other purpose not directly related to the ordinary operating expenses of union,*

Our submission quotes extensively from the only Canada Revenue Agency documents we could find that show that the *Income Tax Act* of Canada has been carefully constructed and consistently interpreted. Even with the very limited knowledge we can have today about the broad range of expenses for which union dues are levied means that untold millions of dollars of union dues are being deducted and tax revenues foregone when they should not be.

The public policy problem is this: No one appears to have the information with which to hold the government accountable to properly apply Section 8(5)(c) of the Act. If unionized Canadians even know this it is obvious that it is not in their interest to surface labour organization expenses that do not meet the *Income Tax Act's* requirements because their net income will go up along with their taxes. Similarly, tax exempt labour organizations who levy dues for non-qualifying purposes have no interest in advising government that the people they represent may be deducting union dues they should not.

Section 8(5)(c) of the Act is entirely consistent with the Rand Formula. Supreme Court Justice Ivan Rand's 1946 Arbitration Award that dealt with the problematic conduct of a striking union at Ford is reviewed in our Submission. The core words were that all unionized employees, whether or not they were also actual union Members:

" . . . should be required to shoulder their portion of the burden of expense for administering the law of their employment, the union contract ***. . . "***

What is going on today with billions of dollars of dues deducted annually, and hundreds of millions in forgone tax revenues is inconsistent with the *Income Tax Act* as currently drafted and with what Justice Rand intended forced dues for union Members and non-Members to be levied for.

Canadians deserve better.

Without the level of detail mandated by Bill C-377 Canadians generally, academics, think tanks and advocacy groups cannot do the necessary research to improve the efficacy of the Canadian tax system as currently structured. Down the road, the outcome of Bill C-377 may mean that Canadian law will change to better clarify what will and will not be financed by forgone tax revenue.

It is striking the amount of money, the amount of materials, the number of people labour organizations are bringing to Parliament Hill.

Yes, C-377 compliance will have a cost and time impact on unions. Like their American counterparts, Canadian labour leaders have grossly exaggerated the cost and time impact. A section of our Submission goes into more detail.

One final section to highlight is the one where we address the fact that labour leaders often take public policy positions that are opposed by the people required to pay unions dues or be terminated from their jobs. Bill C-377 is another example of this problem. Labour leaders oppose what Canadians want and what unionized Canadians want even more – financial disclosure.

Terminology Clarifications

For the purpose of this Submission we set a baseline regarding the terms in the next sections.

Unions vs. Labour Organizations

For the purposes of our Submission we view an umbrella labour organization such as the Canadian Labour Congress (CLC), a provincial federation of labour or other entities such as joint trade councils as being somewhat different from unions.

Firstly, we are not experts in the structure of all such organizations. There may well be some variations.

In general, organizations such as those above are not parties to collective agreements as employee representatives to an employer. These umbrella organizations may have their own collective agreements as an employer with other unions on behalf of their employees. Some of these umbrella organizations, in our understanding, have employees who are not unionized but could be.

Unions represent workers. They are parties to collective agreements with employers.

Umbrella organizations, such as the CLC, have Member unions who pay Membership dues to the CLC.

The *Income Tax Act* appears to group all of the above into one category called "labour organizations"[1].

Union "Members" vs. Union Non-"Members"

In the media and on most union and other labour organization websites or published materials the expression union member is often used in an all-encompassing manner. However, if one reviews labour board rulings and court decisions, it has been our experience that more often than not the expression is used in accordance with its more appropriate and narrower meaning.

A union "Member" is a person who is an actual Member of the union. They may or may not currently work in a unionized job where they are represented by the union they are a Member of. As a Member they have certain responsibilities and rights that are usually spelled out in the union's Constitution and other related documents such as the union's bylaws. (Some, but not all, unions have ancillary documents such as a set of bylaws).

However, not every unionized employee is also an actual union "Member". Some, but not all, Canadian collective agreements give the unionized employees, who are members of the bargaining unit, a choice. They can apply to join the union, or not, but still keep their job. Once an actual union Member, they may be able to resign their union Membership (or lose it for union disciplinary reasons) and still remain an employed member of the bargaining unit. In short, employment is not conditional on becoming and remaining an actual union Member in good standing. A review of collective agreements finds that there are many variations of the above a review of which is not relevant for this Submission. For example, in the construction sector, there

[1] Income Tax Act - R.S.C., 1985, c. 1 (5th Supp.) (Section 149)

are union hiring halls that supply union Members to unionized job sites. These people may end up working for a number of different employers over a year or career.

Some unions always seek forced union Membership security clauses when bargaining with employers. Others, such as the Manitoba Government Employees Union (MGEU), have a historical practice of not seeking such clauses.

One Canadian labour code (the one for unionized Federal government employees) has always been interpreted as not allowing such clauses. As such, experts have advised LabourWatch that the Government of Canada does not have any forced Membership collective agreements with unionized federal government employees.

Canada's Federal situation is consistent with all other countries we are aware of. Forced Membership clauses between unions and employers were either never lawful or, where they were, they have been outlawed in various ways. Canada is alone in the world. In 2001, the Supreme Court of Canada ruled in *Advance*[2] that the *Canadian Charter of Rights and Freedoms* includes a *Charter* right of non-association. In short, forced union Membership is a *Charter* violation unless, as with all *Charter* rights, the court finds a Section 1 justification for this violation.

In Canada, our labour and tax laws, at a minimum, require or allow collective agreements to require unionized employees to be forced to pay union dues as a condition of their employment.

Whether or not a unionized employee, who is a member of a bargaining unit, is or is not an actual union Member does not matter.

Inaccurate Statements by Labour Leaders

From 2011 to present, prominent Canadian labour leaders have made written and oral statements that are simply not true about the state of Canadian law.

This is very troubling because of their level of influence on public policy across Canada and the possibility that public policy makers might assume that this input is true, when in fact it is false.

Below are a number of examples of statements that cannot be backed up by any current law or practice.

We have added emphasis in bold on the sections of their statements that we will correct the record on in a subsequent section of this Submission.

We also provide, either in the body of this Submission or its Appendices, contradicting views of unionized, dues paying employees of some of these and other major unions.

In 2011 the Canadian Auto Workers union (CAW) high profile Economist Jim Stanford wrote in online columns:

> *"The CAW, like other unions, discloses its audited financial statements regularly to its elected board of directors, to all union locals, and to delegates to its conventions.* ***Annual audited statements must be filed with government labour boards, both provincially and federally. Individual members can request the statements from their local, from the***

[2] http://www.labourwatch.com/docs/decisions/LWDecision_AdvanceCutting.pdf

> ***national union, or (if they are "frightened" by the big bad union bosses) directly from the labour boards."****[emphasis added]*[3]

This year the CAW reiterated a version of this when its President Ken Lewenza in a joint op-ed with Communications, Energy and Paperworkers union (CEP) President Dave Coles wrote in the National Post:

> ***"Most jurisdictions in Canada require annual financial statements to be filed by all certified unions, where they can be inspected by the public."*** *[emphasis added]*[4]

Former CLC President Ken Georgetti stated during a radio interview:

"We already provide all of this information by law and by our own practices to the provincial governments and the federal government and our members."[5]

According to a news article, CAW's economist, Jim Stanford answered questions in such a way that the reporter wrote:

> ***"[H]is union discloses audited financial statements*** *regularly to its elected board of directors, all union locals, and to delegates at its convention. Those statements are also filed* ***with government labour boards, where they are accessible to individual members and the public.*** *[emphasis added]* Tory MP introduces 'union transparency bill – Unions insist bill intended to create problem, not solve; information already available",[6]

Mr. Georgetti had also stated more than once, things that are not correct about the most documented challenges union Members have faced when trying to get a major union to obey existing financial disclosure law. When asked about the BC cases Mr. Georgetti has stated:

> *"Oh, that's, that's just bunk. Again the law in British Columbia, because that's where I come from, compels unions to provide their financial information not only to government, but to their members.* [7]

Before FINA on October 25, 2012 Mr. Georgetti stated:

> *It was a long, drawn out case in British Columbia that I'm aware of involving a group of workers and their union. It went to the courts and was resolved*
>
> *It's also federal under the Canada Labour Code. Under the six provincial labour codes* ***there's a demand that unions produce to their members, on their demand, financial statements. If they don't, they can complain directly to the labour board at no cost, and the labour relations board will conduct an investigation and write an order.*** *In 2010-11, there were six orders written by labour boards commanding that unions provide information on those members' request.*

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[3] Private member bill on union financial disclosure, Jim Stanford, rabble.ca - October 6, 2011 and Private member bill on union financial disclosure, Jim Stanford, The Progressive Economics Forum – October 4, 2011

[4] Ken Lewenza and Dave Coles, Special to Financial Post – September 6, 2012

[5] CLC President Ken Georgetti interviewed live on Montreal radio station CJAD on October 5, 2011.

[6] Danielle Harder, Canadian Labour Reporter – October 17, 2011

[7] CLC President Ken Georgetti interviewed live on Montreal radio station CJAD on October 5, 2011.

The Truth About Financial Disclosure Law in Canada

As an overview - the public has no statutory right of access. Further, we know of no labour board in Canada that does what union leaders have stated above. Where there is limited access, to limited financial information, it is only for actual union Members. Unionized employees who are not Members but must pay dues as a condition of employment have no statutory rights under any existing scheme anywhere in Canada.

What follows is a more detailed review of the above overview backed up by Appendices C and D. Appendix D contains the existing statutory language in eight out of Canada's fourteen tax jurisdictions.

1. LabourWatch is not aware of any Canadian labour board, whether federal or provincial, whether for private or government sector workplaces, that keeps financial statements from unions, let alone umbrella labour organizations like the Canadian Labour Congress (CLC), to be accessed by any union Member, any dues paying non-Member let alone the public. We have spoken with several Labour Board Chairs over the last year to confirm our knowledge. The statements above by these labour leaders are false with respect to the assertion that labour boards are repositories of union financials for the public to access.

2. The truth is that seven out of ten provinces and one federal statute law have very similar provisions regarding very, very limited financial disclosure. We have reviewed all of the statutory language which we have collected in Appendix D.

3. Appendix C contains a table that overviews the current, in-force legislation across Canada.

4. We can find no statutory language to support the above referenced labour leaders' statements. All 8 statutory schemes have fairly similar outcomes. They are as follows:

    a. None mandate or enable any public access to the financial statements of any union.

    b. None mandate or enable any public access to the financial statement of a labour organization.

    c. None mandate any required detail a union or labour organization must provide. They all simply use the term like: "Financial Statement". Some schemes give a labour board the power to compel what it wants.

    d. None mandate or enable any access by dues paying non-Members of any union.

    e. Only actual union Members may, by law, request financial statements from their union, but not in all jurisdictions.

    f. Both actual union Members and non-Members in three provinces have no statutory basis to ask for a financial statement.

    g. Unionized federal government workers regardless of whether or not they are actual Members have no statutory basis to ask for a financial statement.

h. If a union Member is not provided with financial statements upon request, the employees have to ask the Labour Board to get them. A review of such requests suggests that this means the union Member must litigate the union at the relevant Labour Board. Litigation is necessarily a very public activity – there is no anonymity for the union "Member" should the litigation process involve hearings. These occur during regular business hours. Unions use union dues to fight these requests. There is no fund we know of for a "Member" to access to seek legal enforcement when their union refuses to obey the law.

i. In ***Appendix B*** we have a summary of the *Hubner* line of cases from British Columbia which were discussed during the October 25, 2012 Committee hearing. We review this topic in more detail in a dedicated section below. In brief, it took seven grocery store workers 3 successful Labour Board and two court rulings over a 3 year period to finally get statements.

j. The *Hubner* rulings are not the only such examples of union Member litigation to get a union to obey the law.

The Truth About the Five BC *Hubner* Rulings

In Appendix B, we provide a detailed summary of what the seven union Members went through to get the financial statements that union leaders keep saying they provide monthly and annually and file with government.

If any of the union leaders quoted above were stating the truth, then these seven union Members could have gotten their union's financial statements at the BC Labor Board. But, the BC Board, like all others in Canada does not receive and keep such statements.

The facts are that from their first letter to the BC Labour Board dated July 5, 2007 until an October 8, 2009 BC Supreme Court ruling, the union refused to comply with three Labour Board rulings against them. Then it took not one but two court rulings to get compliance. The union was the United Food and Commercial Workers – who claim to be one of the largest private sector unions in Canada.

In the end the union admitted it did not even have financial statements for almost all of the years they were being asked to produce. The UFCW had to get them done when they lost their battle to not provide them.

Our research says that it is not at all accurate to say that a union Member simply has to write to the Labour Board and the Board goes off and investigates and gets the statements. Our review of the Hubner cases and others is that a union Member has to file and pursue an action against the union. That process may or may not involve actual hearings as some Labour Boards have the discretion to resolve complaints via written submissions.

Ultimately the Hubner employees had to have a lawyer act for them.

Mr. Georgetti's assertion that this can all be done at no cost has never been backed up by any proof.

Union Member Financial Disclosure Not Relevant to Bill C-377 Debate

It is our view that this whole line of discussion is not actually relevant.

Nothing in Bill C-377 has anything to do with what a union Member can or cannot get from their union. Two provinces, one federal sector and all three territories have no disclosure legislation today.

Of those that do, none cover dues paying non-Members, let alone the public.

None of the existing nine schemes in Canada, on their face appear to give any union Member the right to ask the Canadian Labour Congress or any other such umbrella for financial statements. We may be mistaken, but our general understanding is that the CLC's "members" are likely the actual member unions who take from union dues and/or other union revenue to pay their CLC Membership dues as a union or other labour organization not the individual "Members" of each of these unions or organizations that Mr. Georgetti says gets CLC financials.

The level of detail in the eight schemes is limited. Most simply use the term financial statement. There is no mandated detail as in Bill C-377.

Bill C-377 appears to clearly be about the efficacy of the tax system. It is about enabling Canadians, about enabling taxpayers to evaluate one of the most powerful and most privileged group of organizations in terms of the legal powers and privileges and what Canadians experience in terms of reduced tax revenues to the Federal government.

As such, our Submission now moves to an analysis of the tax system in the next section.

In closing this section, we quote from columns written by longtime Windsor Star columnist (since 1982) and CAW Member Chris Vander Doelen. Excerpts from his two columns deal with both Bill C-377 and the recent merger of the CAW and the CEP:

> *"Under the current system, rank and file union members rarely hear financial disclosures of any kind, or have to go cap in hand begging to their local for what should be a basic right.*
>
> *Hiebert's bill would require unions to file all their income and expenses, with the Canada Revenue Agency posting the results online just as they do for charities. Seems fair to me, since it's my money, and since unions are currently tax free, at a cost of hundreds of millions of dollars annually in forgone government income that could go to pay for, say, health care.*
>
> *But it's already clear that the NDP and its friends in organized labour are going to do whatever it takes to block Hiebert's Bill.*[8]
>
> *What if the real purpose of the fund is to wage war against the merged union's political enemies - democratically elected governments? Canadian unions have done it before despite objections from members.*
>
> *What gives the CAW the right to tax me to the tune of $1,200 per year and then use the money to campaign against what I believe to be my own best social, political and economic interests?*

> *Is that the real purpose of the merger - creating an unofficial political party with guaranteed funding from unwilling pawns, able to operate outside the elections rules other organizations have to live by?*
>
> *If that's the case then the merger is really about perpetuating an immoral and clearly unsustainable "business model." Having killed off vast swaths of the industry that used to feed its political appetite, the dinosaur is moving off in search of fresh meat."*[8]

In closing, it is worth juxtaposing the above columns' speculation about the purposes of the merger with a quote from one of the "*two hell raisers made in heaven*"[9] as a CAW spokesperson characterized their merger. CEP President Dave Coles has been reported to have stated:

> *"Can you imagine what it will mean to the CEP, the CAW when we're the first unionized party that governs a country?" Coles said.*[10]

Union Dues: Federal, Provincial and Territory Income Tax Treatment

The purpose of this section is to review the provincial and territorial equivalents to the deduction by individuals of union dues under the *federal Income Tax Act*.

All of the 13 tax jurisdictions in Canada, plus the federal government, treat union dues as a deduction in computing net income. In addition, 12 of these 13 jurisdictions use the calculation of net income in the federal Act as their reference. Quebec does not reference the federal Act with its separately enumerated deduction.

When Are Union Dues Not Deductible?

In a Canadian Labour Congress' Bill C-377 Lobby Kit, they stated:

> *" . . . There simply does not appear to be an income tax enforcement basis for the disclosure entailed in Bill C-377."*

We respectfully disagree.

The *Income Tax Act* currently addresses the potentially broad scope of the deductibility of union dues by imposing a restriction on deductibility, however with so little information there is no pressure brought to bear to ensure enforcement.

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[8] Vander Doelen: NDP tries to stall union bill and CAW preserves fat cats, The Windsor Star – October 20, 2011 and August 25, 2012 respectively

[9] Second union OKs plan to create Canadian mega union , Reuters by Allison Martell and Susan Taylor | Reuters – Mon, 15 Oct, 2012 3:43 PM EDT

[10] Mulcair welcomes CAW/CEP superunion as election ally, iPolitics, by Sonya Bell | Oct 16, 2012 12:13 pm |

Ultimately, we may find after years of Bill C-377 being in force that a significant portion of union dues are not deductible and that there is a lot of tax revenue going uncollected today. Further, like the limitations on the activities of charities, transparency may lead Canadians to pressure politicians to change the current landscape regarding what labour organizations are able to do on a tax-exempt basis with tax deductible dollars.

The relevant portion for the purposes of this Submission is found in paragraph 8(5) and 8(5)(c), which reads as follows:

> *8(5)* Dues not deductible — *Notwithstanding…subparagraphs 8(1)(i)(i), 8(1)(i)(iv) 8(1)(i)(vi) and 8(1)(i)(vii)* ***. . . dues are not deductible****…in computing a taxpayer's income from an office or employment* ***to the extent*** *that they are, in effect,* ***levied***
>
> > *(a) for or under a superannuation fund or plan;*
> >
> > *(b) for or under a fund or plan for annuities, insurance (other than professional or malpractice liability insurance that is necessary to maintain a professional status recognized by statute) or similar benefits; or*
> >
> > *(c)* ***for any other purpose not directly related*** *to the* ***ordinary operating expenses*** *of the committee or similar body, association, board or trade* ***union****, as the case may be. [Emphasis added.]*

If the above criteria are established, the taxpayer is required to reduce the amount of the deduction on a proportionate basis for the 'non-qualifying' levy.

This requirement clearly invites further information and analysis - this is precisely what Bill C-377 will finally enable.

Before going deeper into a review of this topic we note that the 1946 "Rand Formula" arbitration award appears to contain the seeds that underlie this section of the *Income Tax Act*. In the following section of our Submission, we will draw out this proposition by quoting directly from the 1946 Arbitration Award of then Supreme Court of Canada Justice Rand.

Paragraph 8(5)(c) uses a critical phrase "ordinary operating expenses", the definition of which is not contained in the *Income Tax Act*.

There appears to be a dearth of jurisprudence and academic commentary respecting the phrase "operating expense", and the even rarer, modified "ordinary operating expense".

However, with respect to paragraph 8(5)(c), the Canada Revenue Agency set forth its general administrative policy respecting its interpretation of the phrase "ordinary operating expenses" in its Interpretation Bulletin number IT-103R, entitled *Dues Paid to a Union or to a Parity or Advisory Committee*, dated November 4, 1988, at paragraphs 5 and 6, as follows:

> *"5. Dues levied specifically for purposes such as the creation and maintenance of a* ***building fund*** *or for a fund for the payment of* ***funeral expenses*** *are not considered directly related to the ordinary operating expenses of a parity or advisory committee or similar body or a trade union to which they were paid."*
>
> *"6. Where a trade union incurs reasonable costs in* ***prosecuting a legal strike*** *(such as rental of strike headquarters, telephone expenses, publicity and advertising expenses and travelling expenses) and, during such strike provides relief payments to members in need but to which they are not entitled as a contractual right, such costs will be viewed as being related to the ordinary operating expenses of the trade union. For this reason, the part of the annual dues of a member that is levied for the purpose of providing for the current or*

*anticipated costs of prosecuting legal strikes of the union is, **if reasonable in the circumstances**, deductible for tax purposes and not excluded under 2(c) above..."* [Emphasis added.]

While Canada Revenue Agency's statements are not the law they are an important starting point.

The Canada Revenue Agency's most recent administrative policy statement on "ordinary operating expense" emanates from its Technical Interpretation – external number 2011-0400091E5, entitled *Benevolent fund*, dated July 25, 2011. Under consideration in this Technical Interpretation were the amounts paid to a union by its members, to establish a benevolent fund for injured workers, and whether these amounts were deductible by the members for income tax purposes. In determining that subparagraph 8(1)(i)(iv) applied to restrict the deduction, the Canada Revenue Agency stated as follows:

> *"Although the contributions to the Fund are mandatory for union members, it is our view that these contributions are for a special purpose fund and are not directly related to the ordinary operating expenses of the union. A union's "ordinary operating expense" can generally be defined as an expenditure which falls into place as part of the undistinguished common flow of the trade union's activity; that the expenditure forms part of the normal business as carried on, calling for no remarks and arising out of no special or particular situation. A special purposes fund such as you described would not be considered an ordinary operating expense of a union. Therefore, the amounts paid to the union with respect to the Fund are not deductible for income tax purposes."*

The Canada Revenue Agency has also stated that any part of the dues levied to provide materials for professional development of the members, or for social activities, would not qualify for deduction under subparagraph 8(1)(i)(iv) of the Act because of the restriction in paragraph 8(5)(c).11

While the Federal Court's decision *in Burke v. R.*,12 addressed subsection 8(5), it did so in the context of whether union dues that included levies for the union's mortuary benefit fund and old age benefit fund were a superannuation fund and insurance, respectively, and therefore non-deductible. We are not aware of any other jurisprudence on point.

A review of labour organization expenditures for things such as those listed below in the context suggests dues levied for these purposes would not meet the requirements of the *Income Tax Act*.

- Vancouver Film Festival
- Burma Project
- Honduras Solidarity; Columbia Solidarity
- World Water Congress
- Cookbook linking CUPE's Initiatives on poverty
- Pride Uganda Alliance International
- Chavez Black Eagle Awards
- ACORN Canada Reception
- Fundraiser for G20 Arrestees

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[11] Technical Interpretation – external number 2009-0346331E5 entitled *Association dues,* dated February 23, 2010.
[12] [1976] C.T.C. 209.

- Climate Change Conferences
- G8/G20 Events
- Gun Control Coalition
- Campaign Against Charest
- New Brunswick NDP
- Not Just Tourists Toronto
- Latin American Trade Union Conference
- Canadian Peace Alliance

A general indication of the perspective of the Canada Revenue Agency may be obtained from its commentary respecting expenses for scientific research and experimental development.

Some experts would concur that the Canada Revenue Agency's approach to SR&ED matters is very restrictive but in its Application Policy 2002-01 entitled *Expenditures Incurred for Administrative Salaries or Wages — "Directly Related" Test*, dated March 12, 2002, the following statement was issued:

> *Purpose*
>
> *The purpose of this Application Policy is to clarify what administrative salaries or wages are "directly related" to the prosecution of SR&ED, under the traditional method of calculating investment tax credits.*
>
> *…*
>
> *Directly Attributable Tests*
>
> *To meet the requirements under paragraph 2900(2)(c) of the Regulations, an expenditure must satisfy two tests:*
>
> > *1. It must be "directly related" to the prosecution of SR&ED (work) and,*
> >
> > *2. The expenditure would not have been incurred had such prosecution not occurred (incremental).*
>
> *By virtue of the words "directly related", all the time spent by administrative staff would not be "directly related" to the prosecution of SR&D, unlike the time spent by staff hired to perform their duties specifically in such prosecution. However, the words "portion" and "directly related" in paragraph 2900(2)(c) of the Regulations indicate that some duties of the administrative staff would meet the tests, the determination of which would be based on a finding of fact.*
>
> *The dictionary definitions of the words "direct", "directly", "relate" and "related", respectively, are:*
>
> > *1. "direct" means proceeding from one point to another without deviation or interruption; straight;*
> >
> > *2. "directly" would mean, in a direct manner; without an intervening step or intermediary;*

3. "relate" would mean, to show a logical or causal connection between; to have relationship or connection (between two things);

4. "related" (as past tense of "relate") would take the meaning expressed in (c).

The work performed by particular employee(s) or department(s) must connect with (i.e. "related to"), and be done without an intervening step or intermediary between the employee/department (i.e. "directly") and,

- *the SR&ED work; or*
- *the SR&ED staff; or*
- *the machinery/equipment used by staff to perform SR&ED*

Expenditures for administrative salaries or wages that do not meet the above tests are not expenditures on SR&ED under subsection 37(1).

The connection required between the expenditure and the purpose is a significant feature of paragraph 8(5)(c), both in the statutory language, and the administrative application of this phrase in other parts of the *Income Tax Act*.

If applied on a strict interpretation basis, our reference to the Canada Revenue Agency's Technical Interpretation – external number 2011-0400091E5, entitled *Benevolent fund*, dated July 25, 2011, above, confirms their view that any contribution to a special purpose fund is not an expense that is part of the "…undistinguished common flow of the trade union's activity, that the expenditure forms part of the normal business as carried on, calling for no remarks and arising out of no special or particular situation."

In addition, the Canada Revenue Agency stated that a $5.00 per week levy on all union members for the high cost of a law suit appeared to be a special purpose fund, and not an operating expense that could reasonably be considered an "ordinary operating expense".[13]

These types of expenditures will not form part of the "ordinary operating expenses" of the trade union, and must therefore be considered as non-deductible by the dues-paying taxpayer.

The "Rand Formula" from the 1946 Arbitration Award of Mr. Justice Rand

Contrary to the beliefs of some, "Rand" is not the name of a Supreme Court ruling. It was a 1946 Arbitration Award issued to settle a strike at a Ford Motor Company plant in Canada. The Arbitrator selected by the Liberal Cabinet at the behest of Paul Martin Sr.[14] was Supreme Court Justice Ivan C. Rand. Appendix E contains a copy of this 1946 Arbitration Award.

Justice Rand's Award suggests he envisioned a more limited scope for forced union dues for Members and non-Members of the union alike than exists in practice today across Canada.

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[13] Technical Interpretation number 9506405, entitled *Union dues – weekly levy – funds for lawsuit,* dated May 2, 1995.

[14] A Very Public Life, Volume I, pages 395-396) the memoirs of Paul Martin Sr.

Justice Rand wrote (at paragraph 30):

> *All employees should be required to shoulder their portion of the burden of expense **for administering the law of their employment, the union contract**; that they must take the burden along with the benefit. [Emphasis added.]*

This is a most significant statement, especially when juxtaposed to the *Income Tax Act*'s 8(5)(c) language that limits **deductible union dues levied** for **purposes directly related to the ordinary operating expenses of the union**.

Justice Rand appears to have awarded this in the context of the problems associated with the conduct of the particular union and facts before him. He ruled that should the union engage in a strike without a proper strike vote, or an illegal strike, or not repudiate a wildcat strike that the union dues collected by the Company would be suspended (at paragraph 4):

> *"Should the union violate this provision for union security either by declaring a strike otherwise than with the authorization by ballot of the employees or by failing to repudiate or to declare as herein provided, it shall be liable to the penalty of a suspension of the check-off, in the case of any unauthorized strike by the union or an unauthorized general strike or concerted cessation of work by employees which it does not repudiate or of a picket line in connection therewith in respect of which it does not so declare, . . . "*

Finally, his Award says the union needed the funds to mature and that such a dues scheme might not be appropriate for all unions. In fact, he wrote that such a scheme might be bad for other unions (at paragraph 35):

> *"I should perhaps add that I do not for a moment suggest that this is a device of general applicability. Its object is primarily to enable the union to function properly. In other cases it might defeat that object by lessening the necessity for self-development. In dealing with each labour situation we must pay regard to its special features and circumstances."*

Labour Organization Powers and Privileges Are Unique

Given the reality of the Rand Formula, labour organizations are truly unique. It is a valid question to ask about the range of professional organizations that exist in Canada. The first answer though is that the breadth of them and particularly the variations in their structure and what they do means that not all of them are unions and they are not all like unions in how they operate. In some professions membership is voluntary in the related entity that "does politics", but dues for the entity that regulates the profession and deals with disciplinary cases may not do politics. Compulsion in some of these organizations serves a very different public purpose. In short, what disclosure may be appropriate for Canadians is a separate topic that would involve different issues and players.

In time, transparency will enable taxpayers to effectively evaluate the billions of dollars collected and spent annually by unions, and whether hundreds of millions in foregone annual tax revenues are appropriate. Union leaders will be far more accountable. Such daylight will end certain financial transactions.

The difference is that unlike unionized employees forced to pay dues to earn a living, no one must invest in a particular business or be its customer.

A Broader Perspective on the C-377 Privacy Debate

A lot has been said, about the topic of privacy. Almost all that we have heard or read is devoid of references to any statute law, Supreme Court of Canada or lower court ruling in backing up the claim that Bill C-377 violates Canadian privacy law.

Analysis of the CBA's FINA Submission and Committee Appearance

In our view the submission of the Canadian Bar Association was a high level submission that appears to generate concern because of who it comes from. But to be frank, it is largely devoid of specifics.

A review of Mr. Mazzuca's testimony on October 25, 2012 and their September 17, 2012 submission is notable in that not a single ruling of any court, let alone the Supreme Court was cited. Not one statute, let alone specific provisions that Bill C-377 as currently drafted would potentially violate statute law or the *Charter* were cited.

For example, in Mr. Mazzuca's opening remarks he stated on behalf of the CBA:

> "*The problem, from the constitutional point of view, is that it requires such extensive reporting of payor/payee reason for the transaction with respect to political activities, lobbying activities, and organizing activities, as well as collective bargaining activities, that this could hamper an ability of a trade organization to actually conduct its business.*
>
> *"To the extent that this in any way places a restriction on individual Canadians freedom of expression and freedom of association, the CBA believes that would place the bill at risk of a charter challenge. Also the bill itself does not, on its face, set out a justification for these infringements."*
>
> *"That, in and of itself, would potentially violate the freedom of association to belong to a trade union, to an effective trade union, as well as the freedom of expression regarding political speech."*

The CBA written submission stared:

> "*It obligates disclosure of personal information which is normally considered among the most sensitive – financial information and information about political activities or political beliefs."*

As we noted above, no *Charter* case law, if any even exists today, is cited for the CBA propositions above.

Further, Bill C-377 mandates certain reporting on time and expenditures allocated to political activities. The CBA did not suggest how reporting about a person's workplace activities on behalf of the organization exposes an employee paid by the union to do political work to be disclosing their personal political beliefs.

Let's look at an allegedly real example. During a recent election LabourWatch received a call from someone who said roughly as follows:

> *"I am trying to help a friend of mine with a problem. Instead of going to work at his job for a large grocery chain, he is paid by the Company to work on a Liberal candidate's campaign, but he wants to work for the NDP and they will not let him. The way it works is this, the Company pays the guy to work on the Liberal campaign and later on the union pays the Company back for the wages he was paid which are the same as if he works all these days at the store."*

So in this instance an employee appears to have been compelled by his employer upon union demand to work for a party he personally opposes. If this was reported under Bill C-377 we would only know where the union made someone work politically as this union was openly supporting the Liberals and not the NDP in that election. Bill C-377 would not require this worker to divulge his views, only the fact of where the union made him work politically.

Privacy Statutes Expressly Exempt Other Statutes

Firstly, The Federal *Privacy Act*, RSC 1985, c P-21 may arguably not apply to Bill C-377 if it does not end up requiring disclosure or collection of "personal information" – whether it does will depend what the Bill ultimately requires collected and disclosed if it is amended at Committee.

Secondly, we will now look at relevant provisions of the *Privacy Act* and applicable case law to identify how Bill C-377 could be caught by it or be exempt from it.

Under the *Privacy Act*, there are a number of provisions and exemptions that would allow disclosure and that recognize an element of practicality should exist when government institutions collect, disclose and use personal information.

On this point, we point to the following provisions of the *Privacy Act*:

> *"5. (1) A government institution shall, <u>wherever possible</u>, collect personal information that is intended to be used for an administrative purpose directly from the individual to whom it relates except where the individual authorizes otherwise or where personal information may be disclosed to the institution under subsection 8(2)."*

Note that this section is subject to disclosure authorized under 8(2) and importantly, is implicitly recognizing there will be situations where it is simply not possible or practicable to collect information from individuals directly – the Bank *of Canada* [2007] C.I.R.B.D. No. 17 case raises the issue of the difficulty of obtaining consent from each individual when the group of individuals affected is large (see paras.48-50).

> *"7. Personal information under the control of a government institution shall not, without the consent of the individual to whom it relates, be used by the institution except*
>
> *(a) for the purpose for which the information was obtained or compiled by the institution or for a use consistent with that purpose; or*
>
> *(b) for a purpose for which the information may be disclosed to the institution under subsection 8(2)."*

We believe the *Canada (Privacy Commissioner) (Re),* [2000] F.C.J. No.179 (attached), a decision of the Federal Court of Appeal, provides a full answer to the issue in that information would be used in accordance with the purpose for which it was disclosed under s.8(2)(b).

> *"8. (2) Subject to any other Act of Parliament, personal information under the control of a government institution may be disclosed*
>
> *(b) for any purpose in accordance with any Act of Parliament or any regulation made thereunder that authorizes its disclosure;"*

Again, we believe that *Canada (Privacy Commissioner) (Re),* [2000] F.C.J. No.179, provides a full answer to the issue. In this case the Court held that Parliament's broad wording in s.8(2)(b):

> *"cannot but be interpreted as being a provision that enables Parliament to confer through a given statute a wide discretion, both as to form and substance, with respect to the disclosure of information that is collected, such discretion, or course, to be exercised in conformity with the purpose of the Privacy Act."*

Our further perspectives are as follows below.

Could a labour organization assert a right to privacy under section 7 of the *Charter?* Recent case law stands for the proposition that section 7 does not apply to corporations (2037839 Ontario Ltd. v. Canada (Attorney General) (upheld by the Ontario Court of Appeal). As such, a labour organization would not have any standing to do so.

Privacy rights protect "personal information about an individual". There is no privacy legislation which would prohibit a law which requires any organization to disclose the amounts spent on political activity. This information is not "personal information about an individual". It is nothing more than the same types of disclosure required by Generally Accepted Accounting Principles regarding many other types of expenditures. We are not aware of any constitutional right infringed and I note that the CBA doesn't list which right that would be.

The majority of the disclosure requirements in Bill C-377 relate to disclosure of expenditures made by the labour organization in furtherance of its own organizational interests and financial administration. Accordingly, any contention that the Bill ought not to be passed in its entirety because of alleged privacy violations under the *Charter* ignores the fact that the privacy protection under the *Charter* may only apply to a few of the provisions of the Bill.

The sponsoring MP advised the Committee on October 25, 2012 that he will propose certain amendments. A review of the unofficial transcript of the MP's remarks suggest the issues raised regarding, for example, the disclosure of an individual person's name and address related to receiving benefits and pension payments will be precluded from Bill C-377 by an amendment. Numerous organizations and experts have pointed to this issue. Appropriately structured amendments would address these issues and remove an area where a *Charter* challenge would have a viable basis for success.

Today there is no free-standing or absolute right to privacy in Canada. Canadian law has developed such that privacy is at the root of a new common law tort.

There is legislation enacted both federally and in some, but not all, provinces.

Above all there is some privacy protection under the *Canadian Charter of Rights and Freedoms* ("*Charter*").

However, any alleged violation of the right to privacy must be based on the contention that one of these privacy-related laws has been breached. Put simply, a general complaint about disclosure of information that an individual considers to be personal is not legally valid unless it is predicated on the breach of a recognized law.

Many jurisdictions in Canada have enacted legislation to protect personal information and/or individuals' privacy. For example, Manitoba, Newfoundland, British Columbia and Saskatchewan have created a statutory tort of invasion of privacy. Moreover, there is federal privacy legislation and privacy legislation in Quebec, British Columbia and Alberta that governs among other things, the collection, use and disclosure of "personal information".

Privacy legislation does not create an all-encompassing right to privacy in every circumstance.

Each piece of privacy legislation has a defined scope with respect to the jurisdiction in which it operates, the type of information with which it is concerned and the activities that it regulates.

At common law, there is also no free standing or absolute right to privacy. In *Jones v. Tsige* [2012] O.J. No. 148 (ONCA) the Ontario Court of Appeal recognized a new tort based on invasion of privacy.

However, the tort is narrow in scope and will only apply to deliberate and objectively offensive breaches of privacy. The Court explicitly stated that the tort has no application to disclosure made with lawful justification and therefore it will not impact legislated disclosures of personal information as envisioned by Bill C-377.

Courts have recognized a *Charter*-protected right to privacy. This right most commonly arises under the protection against unreasonable search and seizure enshrined under section 8 of the *Charter.* However, a number of cases have also held a violation of the privacy interest may infringe on the right to liberty and security of the person protected under section 7 of the *Charter.* A pre-requisite of this latter protection is the conclusion that in certain circumstances the right to privacy is a principle of fundamental justice.

However, the right to privacy is not free-standing and it is not absolute. The protections afforded under both sections 7 and 8 of the *Charter* are contingent on the finding of a "reasonable expectation of privacy" with respect to the information being disclosed. If no reasonable expectation of privacy exists then the privacy interest is not protected under the *Charter* and there is no principle of fundamental justice at stake.

The protection afforded to privacy under the *Charter* is the closest Canadian law comes to a generalized protection of the privacy interest. However, even under the *Charter* this protection is limited and the circumstances of the particular disclosure required must be examined on a case-by-case basis in order to determine whether *Charter* protection is available. Accordingly, any generalized contention that disclosure of personal information necessarily violates a principle of fundamental justice under the *Charter* is simply wrong at law.

Costs of Compliance

Let's talk facts.

There is no question that compliance with C-377 will cost money and time for labour organizations. A lot has been claimed by Canadian labour leaders about costs. As in the United States in the

past, there is a lot of hyperbole and exaggeration. Labour organizations have focused their message to unionized employees on the idea that they will have to raise union dues, cut services or benefits. That may be the outcome. But labour organizations could also review expenditures such as those listed in this Submission in our section titled "When Are Union Dues Not Deductible" and not make them going forward or convince more workers to join them and increase their revenues to cover these incremental costs. All organizations face changes in revenue and expenses over time and need to review priorities.

At the October 25, 2012 FINA session, CLC President Ken Georgetti stated:

> *"This legislation would sweep in every labour organization in Canada—not just unions—every labour...all of my labour councils. I have 136 labour councils, all run by volunteers. Most of their budgets are less than $1,000, to $1,500 a year. . . . This legislation sweeps everybody.... It doesn't just ask for financials, it asks for exclusive, very highly-detailed reporting that we think will cost us tens of millions of dollars, as organizations across the country."*

With a $5,000 reporting threshold the truth is that these labour organizations would file a series of schedules with the number zero on them. They would file certain overall schedules such as an income statement and a balance sheet. When you add in the claims of Mr. Georgetti and others that they already provide financials for their Members, surely they already have at least an income statement and a balance sheet done each year.

The US Labour Department implemented a $5,000 reporting threshold and more comprehensive public filing requirements for US Labour organizations just under ten years ago. American labour organizations predicted very high costs.

However, once filings came in, and had to show costs equal to or greater than $5,000 there was new truth to belie earlier labour leader claims.

A notable example provided involves the CLC equivalent American AFL-CIO, a multi-hundred million-dollar-a-year operation. They had estimated costs of $1 million a year to comply. Actual reported disbursements in the first year were $55,000.

In our modern age of electronic bookkeeping and filing where we can use a standardized system of electronic filing, costs for labour organizations will be quite minimal. For many, the only expense they may incur in complying with this Bill is a software upgrade.

During the October 25, 2012 FINA session Mr. John Logan (Professor, Labour and Employment Relations, San Francisco State University said a number of interesting things. In particular he stated:

> *"In the United States we have about 29,000 labour organizations that file these reports."*

And also that:

> *"The costs to the government in terms of processing these forms are a minimum—these figures are from the federal register from the department of labour—a minimum of $6.5 million per year."*

Professor Logan's annual comes across as a critic of the US system and Bill C-377. If his annual government cost of $6.5 million for 29,000 filing organizations is correct, this is a very cost effective taxpayer service.

Appendix A

Union Member Contradicts Union Leader Claims on Disclosure

Union secrecy first-hand

By Marc Roumy, National Post - September 15, 2012

Re: "More open than you," Ken Lewenza and Dave Coles, Sept. 7

In their article, union leaders Ken Lewenza and Dave Coles were critical of enhancing union financial accountability through Bill C-377, which troubled me. As a flight attendant for Air Canada, based in Toronto and a member of the Canadian Union of Public Employees (CUPE), I do not believe my union is as open to its members as they say the CAW and CEP are.

On a quick search of my union's website, there are no financial statements to be found. At our local union meetings, the budget is handed out and numbered and then returned once the meeting has ended. If a member cannot make a meeting, and then wishes to see this statement, they must make an appointment and meet with the secretary-treasurer at the local union office. Since most of my colleagues work just before or after local union business hours, this can be inconvenient to arrange. Yet, as a delegate for a national convention - 2,000 out of a 610,000 strong membership - one does receive an individual budget booklet to take home.

I have attended two national conventions. Even then, after repeated inquiries to union officials, I still do not know the salaries of my national president, secretary-treasurer and vice-presidents. Moreover, to attend a convention, I have to be elected as a delegate, travel across the country (the last national convention was in Vancouver) and then carefully read through the budget booklet to glean the specifics of what my national union does with my dues.

It was a revelation to learn that they fund the election campaigns for NDP candidates, and many other nonunion activities within Canada such as the Vancouver Film Festival, and organizations outside of Canada (Burma Project, Honduras Solidarity and a World Water Congress, etc.). At the 2011 national convention, unlike in 2007 and 2009, nothing was put to a debate or vote regarding CUPE National's foreign policy agenda. When I inquired why, I was told that whatever was adopted in 2009 would remain in force.

Surprisingly, Mr. Lewenza and Mr. Coles compared these activities to a privately held business. However, an investor in a business can choose to withdraw their stake and invest elsewhere if they feel their money is being improperly spent. As a union member in Canada we are not given this choice and, even more alarmingly, we are currently denied the option to discuss how our money is used to support non-union activities.

Many would find such a situation intolerable. For many of my colleagues and me, we believe our union would be stronger if we had a truly open and easy access to our union's financial statements. If we have nothing to hide, then we should know what our union leaders earn and where our dues are being spent. If CUPE does not choose to change direction soon, and in the near future we are given the freedom to get hired or associate without obligation to a union, then I fear there may come a day when many of my colleagues will choose to no longer be part of CUPE.

Marc Roumy, Air Canada Component trustee of CUPE, Toronto

Appendix B

Summary of *Hubner et al. v. United Food and Commercial Workers Local 247*

Summary of *Hubner et al. v. United Food and Commercial Workers, Local 247*

Trade unions are required to make available annual audited financial statements to each of their members pursuant to Section 151 of the British Columbia *Labour Relations Code*. This requirement is based in part on principles of accountability and transparency. In theory this should contribute to the democratic functioning of a union.

The language of the legislation is clear:

151 (1) A trade union and an employers' organization must make available without charge to each of its members, before June 1 in each year, a copy of the audited financial statement of its affairs to the end of the last fiscal year, signed by its president and treasurer or corresponding principal officers.

(2) The financial statement must contain information in sufficient detail to disclose accurately the financial condition and operation of the trade union or employers' organization for its preceding fiscal year.

(3) The board, on the complaint of a member that the trade union or employers' organization has failed to comply with subsection (1), may order the trade union or employers' organization to file with the board, in the time set out in the order, a statement in a form and with particulars the board determines.

(4) The board may order a trade union or employers' organization to furnish a copy of a statement filed under subsection (3) to the members of the trade union or employers' organization that the board in its discretion directs, and the trade union or employers' organization must comply with the order.

However, some unions do not abide by this statutory requirement to provide information. As demonstrated below, some unions repeatedly obstruct the rights of their members and outright refuse to provide this basic financial information.

In 2007, members of the United Food and Commercial Workers Union, Local 247, requested that their union produce copies of its financial statements for the years 2001 to 2006. The employees had become concerned about the manner in which the UFCW was handling its finances. When the UFCW declined, the bargaining unit members applied to the BC Labour Relations Board for an order compelling the Union to do so (see BCLRB Decision No. B231/2007).

The UFCW claimed it was only required to provide financial statements for the previous fiscal year. It submitted that it is only obligated to provide its members with historical documentation where its members provide good reasons. The Board disagreed, noting "the purpose of Section 151 is to provide union members a degree of transparency with respect to their union's finances", and that "… a union should be prepared to make available to it members its audited financial statements."

In addition, the UFCW objected to providing the financial statements to some of its members on account that it believed that they "… have been involved in several recent attempts to disrupt [UFCW] meetings or to interfere with the functioning of [UFCW] representatives and the [UFCW] generally." The UFCW also claimed that it was "… concerned the named Complainants may be interested in utilizing or disclosing the [UFCW's] financial information so as to compromise the [UFCW's] interests." Again, the Board disagreed with the UFCW and upheld the right of bargaining unit members to access their union's financial statements, stating the *Code* "does not restrict the purposes for which a member may request the Union's Financial Statements."

Consequently, the Board ordered production of the UFCW's historical financial statements.

Unsatisfied with this result the UFCW unsuccessfully applied to the Board for leave and reconsideration of the original panel's decision (see BCLRB Decision No. B249/2007). Amongst other things, the UFCW claimed that its members did not provide sufficient reason requiring it to produce its historical financial statements. Once more, the Board asserted that unions have an obligation to make available annual financial statements to their

members. The Board was clear that the purpose of the disclosure requirement is built on the simple principal that "members that fund a union have the right to know how funds are used."

Despite this second confirmation that it was required to disclose its financial statements, the UFCW refused to do so without conditions. As a result, members of the UFCW brought an action in the British Columbia Supreme Court seeking an order that the Union be found in contempt for wilfully disobeying an order of the Board (see 2008 BCSC 951). In an effort to protect its interests, the UFCW claimed it would only provide the financial statements if those who viewed them signed a confidentiality agreement. Although the Board's order for production did not contain any conditions regarding the release of the documents, the Court was not prepared to find the UFCW in contempt without first referring the matter back to the Board to clarify whether the order precluded the conditional release of the documents.

Upon return, the Board reiterated that its order did not include any conditions. The Board declared that the UFCW ought to be aware that it is required to provide its financial statements to its members and cannot refuse to do so because the members refuse to sign a confidentiality agreement (see BCLRB Decision No. B158/2008). Although at this point the UFCW – after much legal wrangling, years of delay and multiple applications before the Board and Supreme Court – begrudgingly provided its members with the financial statements to which they were legally entitled.

One of the more frustrating outcomes of this entire exercise, from the perspective of a union member, was that the UFCW later admitted that the audited financial statements for 2002-2007 did not even exist until late 2007 and early 2008 (see 2009 BCSC 1380).

Appendix C

Overview of Current Canadian Financial Transparency Law for Labour Organizations and Unions

OVERVIEW of CURRENT CANADIAN FINANCIAL TRANSPARENCY LAW for LABOUR ORGANIZATIONS and UNIONS as of May 5, 2015

	Labour Organization (A) Financial Disclosure to the Public, Dues Payers or Union "Members" Required by Law	Union Financial Disclosure to Public Required by Law	Union Financial Disclosure to Non-"Members" Who Pay Union Dues Required by Law	Union Financial Disclosure to Union "Members" Required by Law	Must Union Financial Statement for Union "Members" Be Audited?	Disclosure Type to Union "Members" Only	Required Detail Specified by Law	Union "Member" Options if Union Does Not Comply	Breakdown of Ordinary Operating Expenses vs Non-Ordinary Operating Expenses
AB	No statutory financial disclosure obligations for labour organizations or unions as of February 2, 2015.								
BC	No	No	No	Yes	Yes	Financial statement upon request	None	File & pursue labour board action against union	No
FED (Private)	No	No	No	Yes	No	Financial statement upon request	None	File & pursue labour board action against union	No
FED (Public)	No statutory financial disclosure obligations for labour organizations or unions as of February 2, 2015.								
MB	No	No	No	Yes	No	Financial statement upon request (B)	None	File & pursue labour board action against union	No
NB	No	No	No	Yes	Yes	Financial statement upon request	None	File & pursue labour board action against union	No
NL	No	No	No	Yes	Yes	Financial statement upon request (C)	None	File & pursue labour board action against union	No
NS	No	No	No	Yes	No	Financial statement upon request	None	File & pursue labour board action against union	No
NT	No statutory financial disclosure obligations for labour organizations or unions as of February 2, 2015.								
NU	No statutory financial disclosure obligations for labour organizations or unions as of February 2, 2015.								
ON	No	No	No	Yes	Yes	Financial statement upon request	None	File & pursue labour board action against union	No
PE	No statutory financial disclosure obligations for labour organizations or unions as of February 2, 2015.								
QC	No	No	No	Yes	No	Financial statement upon request (D)	None	File & pursue labour board action against union	No
SK	No	No	No	Yes	Yes	Financial statement upon request	Audited	File & pursue labour board action against union	No
YT	No statutory financial disclosure obligations for labour organizations or unions as of February 2, 2015.								

A. No statute addresses "labour organizations" such as the Canadian Labour Congress (CLC) or other umbrella entities that are not unions at law, in so far as they do not represent a bargaining unit of employees in their work relationship with an employer.

B. Manitoba's statutory wording suggests a financial statement means only an income and expenditure statement.

C. In Newfoundland and Labrador no Regulations have been enacted, as per the statutory language, to address the statutory disclosure obligation. Further, the Provincial Labour Board has no Policies of its own. As such, it appears that absent the applicable Regulations, NL union "Members" have no functional rights.

D. Quebec's statutory language suggests a union must disclose its financial statement to its "Members" each year, and provide a copy upon request. Interaction with unionized Quebecers does not support that there is a union practice of disclosure to all "Members" by all unions as per the law.

Appendix D

Compendium of Financial Disclosure Provisions in Various Canadian Statutes

Table of Contents

Alberta

No statutory financial disclosure obligations for labour organizations or unions as of November 2, 2012.

British Columbia

Labour Relations Code

Financial statements
151 (1) A trade union and an employers' organization must make available without charge to each of its members, before June 1 in each year, a copy of the audited financial statement of its affairs to the end of the last fiscal year, signed by its president and treasurer or corresponding principal officers.

(2) The financial statement must contain information in sufficient detail to disclose accurately the financial condition and operation of the trade union or employers' organization for its preceding fiscal year.

(3) The board, on the complaint of a member that the trade union or employers' organization has failed to comply with subsection (1), may order the trade union or employers' organization to file with the board, in the time set out in the order, a statement in a form and with particulars the board determines.

(4) The board may order a trade union or employers' organization to furnish a copy of a statement filed under subsection (3) to the members of the trade union or employers' organization that the board in its discretion directs, and the trade union or employers' organization must comply with the order.

Federal (Private Sector)

Canada Labour Code

Access to Financial Statements
110. (1) Every trade union and every employers' organization 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 to the end of the last fiscal year, certified to be a true copy by its president and treasurer or by its president and any other officer responsible for the handling and administration of its funds.

(2) Any financial statement provided under subsection (1) shall contain information in sufficient detail to disclose accurately the financial condition and operations of the trade union or employers' organization for the fiscal year for which it was prepared.

(3) The Board, on the complaint of any member of a trade union or employers' organization that it has failed to comply with subsection (1), may make an order requiring the trade union or employers' organization to file with the Board, within the time set out in the order, a statement in such form and with such particulars as the Board may determine.

(4) The Board may make an order requiring a trade union or employers' organization to provide a copy of a statement filed under subsection (3) to such members of the trade union or employers' organization as the Board in its discretion directs.

1977-78, c. 27, s. 70.

Federal (Public Sector)

No statutory financial disclosure obligations for labour organizations or unions as of November 2, 2012.

Manitoba

The Labour Relations Act

PART VII.1 - DISCLOSURE OF INFORMATION BY UNIONS

Union to give financial statement to members
132.1(1) At the request of a member, every union shall give the member, at no charge, a copy of a financial statement of the union's affairs to the end of its last fiscal year. The statement must be certified to be a true copy by the union's treasurer or other officer responsible for handling and administering its funds.

Content of financial statement

132.1(2) A union's financial statement must set out its income and expenditures for the fiscal year in sufficient detail to disclose accurately the union's financial condition and operation and the nature of its income and expenditures.

Complaint
132.1(3) If a member of a union complains to the board that the union has failed to give him or her a financial statement in compliance with this section, the board may direct the union to

(a) file with the board, within the time the board determines, a copy of the financial statement of its affairs to the end of its last fiscal year, verified by its treasurer or another officer responsible for handling and administering its funds; and

(b) give a copy of the statement to the members of the union that the board in its discretion may direct.

Union must comply
132.1(4) The union shall comply with the board's direction.

Complaint that financial statement inadequate
132.1(5) If a member of a union complains to the board that the union's financial statement is inadequate, the board may inquire into the complaint and may order the union to prepare another financial statement in a form, and containing the information, that the board considers appropriate.

New Brunswick

Industrial Relations Act

139(4) Every trade union shall upon the request of any member furnish him, without charge, with a copy of an audited financial statement of its affairs to the end of its last fiscal year, certified by its treasurer or other officer responsible for the handling and administration of its funds to be a true copy, and, upon the complaint of any member that the trade union has failed to furnish such a statement to him, the Board may direct the trade union to file with the Chief Executive Officer, within such time as the Board determines, a copy of the audited financial statement of its affairs to the end of its last fiscal year verified by the affidavit of its treasurer or other officer responsible for the handling and administration of its funds, and to furnish a copy of such statement to such members of the trade union as the Board in its discretion directs, and the trade union shall comply with such direction.

Newfoundland & Labrador

Labour Relations Act

Financial statements
143. (1) Upon being so requested by a member, a trade union shall, without delay, provide him or her, without charge, a copy of the audited financial statement of the union

a) for the year preceding the year in which the request is made;

b) verified by the auditor of the union; and

c) in the form and setting out the particulars and further information that may be required by the regulations.

(2) Where a member of a trade union complains to the minister that the union has failed to comply with a request by him or her, under subsection (1), the minister may request the trad e union to provide the minister with the financial statement described in subsection (1) and the trade union shall comply immediately with the request of the minister.

Northwest Territories

No statutory financial disclosure obligations for labour organizations or unions as of November 2, 2012.

Nova Scotia

Trade Union Act

Constitution, by-laws and other documents and financial statements
76 (1) Every trade union shall file with the Minister a copy duly certified by its proper officers to be true and correct, of its constitution, rules and by-laws, or other instruments or documents containing a full and complete statement of its objects and purposes.

(2) A general statement of the receipts and expenditures of every trade union for the preceding calendar year verified by the affidavit of a responsible officer shall be transmitted to the Minister before the first day of April in every year, and shall be in such form and contain such particulars and such further information as the Minister may from time to time require.

(3) Every member of such trade union shall, on application to the secretary or treasurer of such trade union, be entitled to a copy of such statements free of charge.

(4) Every treasurer or other officer having custody of the funds or property of a trade union shall, at such times as required so to do by the rules or by-laws of the trade union, render to the members of the trade union at a meeting of the trade union a just and true account of all moneys received and paid by him since he last rendered the like account and of the balance then remaining in his hands and of all property of the trade union and shall cause his said account to be audited by a fit and proper person named by the members of the trade union at a meeting thereof, and the treasurer or other officer shall, upon the account being audited, if required by the members, hand over to such person or persons, as the members of the trade union shall designate, the balance which on such audit appears to be due from him and all securities and effects, books, papers and property of the trade union in his hands or custody, and if he fails to do so any such person or persons so designated may, on behalf of the trade union, sue the treasurer or other officer in any competent court for the balance appearing to have been due from him upon the account last rendered by him and for all the moneys since received by him on account of the said trade union, and for the securities and effects,

books, papers and property in his hands or custody, leaving him to set off in such action the sums, if any, which he may have since paid on account of the trade union. *R.S., c. 475, s. 76.*

Nunavut

No statutory financial disclosure obligations for labour organizations or unions as of November 2, 2012.

Ontario

Labour Relations Act, 1995

Duty of union to furnish financial statement to members
92. (1) Every trade union shall upon the request of any member furnish the member, without charge, with a copy of the audited financial statement of its affairs to the end of its last fiscal year certified by its treasurer or other officer responsible for the handling and administration of its funds to be a true copy, and, upon the complaint of any member that the trade union has failed to furnish such a statement, the Board may direct the trade union to file with the Registrar of the Board, within such time as the Board may determine, a copy of the audited financial statement of its affairs to the end of its last fiscal year verified by the affidavit of its treasurer or other officer responsible for the handling and administration of its funds and to furnish a copy of the statement to the members of the trade union that the Board in its discretion may direct, and the trade union shall comply with the direction according to its terms. 1995, c. 1, Sched. A, s. 92 (1).

Complaint that financial statement inadequate
(2) Where a member of a trade union complains that an audited financial statement is inadequate, the Board may inquire into the complaint and the Board may order the trade union to prepare another audited financial statement in a form and containing the particulars that the Board considers appropriate and the Board may further order that the audited financial statement, as rectified, be certified by a person licensed under the *Public Accounting Act, 2004* or a firm whose partners are licensed under that Act. 1995, c. 1, Sched. A, s. 92 (2); 2004, c. 8, s. 46.

Prince Edward Island

No statutory financial disclosure obligations for labour organizations or unions as of November 2, 2012.

Quebec

Labour Code

Financial statement.
47.1. A certified association must disclose its financial statement to its members every year. It must also remit a copy of such financial statement free of charge to any member who requests it.

1977, c. 41, s. 28.

Saskatchewan

The Saskatchewan Employment Act

Financial statement of unions

6 61(1) Within six months after the end of a union's fiscal year, the union shall make available without charge:

(a) to each of its members the audited financial statement of its affairs to the end of the preceding fiscal year, signed by its president and treasurer or corresponding principal officers;

(b) to each of its members who are in a bargaining unit the unaudited financial statement of that bargaining unit; and

(c) to each of its members any prescribed information.

(2) The financial statements mentioned in subsection (1) must contain information in sufficient detail to disclose accurately the financial condition and operation of the union for its preceding fiscal year.

(3) On the complaint of a member that the union has failed to comply with subsection (1), the board may order the union to provide to each of its members the financial statements and information required by this section to be provided.

(4) The financial statements mentioned in subsection (1) must be provided by:

(a) personally giving them to the member;

(b) mailing them to the member;

(c) posting them in the workplace;

(d) posting them online on a secure website to which the member has access;

or

(e) providing them in any other manner that ensures that the member will receive the statements.

2013, c.S-15.1, s.6-61.

Yukon

No statutory financial disclosure obligations for labour organizations or unions as of November 2, 2012.

Appendix E

The "Rand Formula" the 1946 Arbitration Award

"Rand Formula"

Ford Motor Company of Canada Limited and The International Union United Automobile, Aircraft and Agricultural Implement Workers of America (U.A.W.C.I.O.).

Arbitration award of Mr. Justice Rand, Ottawa, January 29, 1946.
Arbitration-Award on issue of union security - Union shop disallowed - Compulsory check-off for all employees - Penalties for "wildcat" strikes - Administrative points.

Interesting Background Information

The architect of compulsory union dues in Canada was then Supreme Court Mr. Justice Ivan C. Rand who was an Appointed as arbitrator to settle a strike. The dispute was between the Ford Motor Co. in Windsor, Ontario and the United Auto Workers Union. He handed down an Arbitration Award on January 29, 1946, that made union dues compulsory for both Members and non-Members of the union at this Ford location.

The Liberal Cabinet Minister of National Health and Welfare who helped "bring about his appointment" was Paul Martin Sr., who wrote in his memoirs, *A Very Public Life*, (Volume 1, pages 395-396):

"Although I ***knew that Rand's views on the rights of labour*** *were encompassed within a progressive social outlook,* ***I wondered whether I could convince the cabinet to appoint him****...Privately, I knew that* ***the workers were getting fed up and might revolt against the strike leaders*** *if a settlement was not found soon. This I wanted to avoid, for it would* ***set the cause of unionism in Canada back ten years****. On 14 December, local 200 offered to support the appointment of an arbitrator, whose decision would be rendered within five days of the completion of his hearings on all those maters not agreed to by the two parties. The Ford management went along with this, and I learned with relief that, subject to a vote (almost certainly approving his decision), the workers would return to the assembly lines. I encouraged Pat Conroy and George Addes* [see Note below] *to urge the mass meeting on 14 December to vote for a new ballot.* ***Conroy knew, because I had told him confidentially, that Mr. Justice Rand would be the arbitrator****. Finally, six days later, the strikers voted by a three-to-one majority to return to work.* (Emphasis added.)

At the end of January 1946, Mr. Justice Rand announced his decision... The underlying principle of Mr. Justice Rand's report was that the "unions should be made stronger but at the same time they must become responsible and more democratic.""

There are several pages in this book about this very important event in Canadian labour history that is well worth reading.

Pat Conroy, was a Canadian labour leader who was born in Scotland and immigrated to Canada, settling in Drumheller, Alberta in 1919. He worked in the coal mines and joined the United Mine Workers of America. From 1922 he held several union positions until he became Vice-President of the Western Canadian District 18. In 1940 when the Canadian Congress of Labour (CCL) was founded, he became its Vice-President and the next year its full-time Secretary-Treasurer. In 1949 he helped found the International Confederation of Free Trade Unions.

George Addes was a founder of the United Automobile Workers union and it's Secretary-Treasurer from 1936 until 1947. Addes and Richard Frankensteen led a major faction of the Union, supporting piecework and incentive pay in auto plants.

In an article written by David Moulton that is included in the book *On Strike* (edited by Irving Abella), Paul Martin Sr. is quoted as saying (page 147):

"…Martin, who knew Rand personally, recalls, 'I talked with him [Rand] about these problems…I knew his views…he was a man who knew the evolution that was taking place in social thinking… he had been thinking about these questions for a long time…and it just happened I was in a position to help bring about his appointment'"

And union leaders are quoted on page 146 of *On Strike* as saying:

"Whatever their difficulties with the NFSC (National Ford Strike Committee), the union leadership eventually accepted the negotiation-arbitration proposal. …Conroy came up and gave us to understand that the government would pick a ***strictly impartial person sympathetic enough*** *(*emphasis added*) … they almost told us they would give us some kind of union security…we couldn't tell the workers that… Paul Martin, even though he promised to work for the appointment of Mr. Justice Ivan Rand ("someone who I believe reflected progressive ideas"), maintains that no prior understanding or deal was assumed to have been made at the government level."*

(Note: Pat Conroy was Secretary/Treasurer of the Canadian Congress of Labour at this time.)

A strike of employees of the Ford Motor Company at Windsor, Ont., which commenced Sept. 12, 1945, was terminated the following December when the union accepted the joint plan of settlement of the Dominion and Ontario governments, the principal provisions of which called for arbitration by a judge of the Supreme Court of Canada of points which could not be settled by collective bargaining negotiations.

1) Mr. Justice I. C. Rand was named arbitrator. His award denies union shop, which has been asked by the union, but provides for a new form of union security and the compulsory check-off of union dues from the wages of all workers under the agreement whether union members or not. The award also provides for penalties against individuals in the case of "wildcat" strikes and against the union in the case of a strike called without a secret ballot of all employees.

Award on the Issue of Union Security

3) **RAND, J:** The parties to this controversy have agreed to be bound on all points in dispute by the decision of an arbitrator. Ordinarily, the matter of arbitration is a claim for redress or an assertion of a right in respect of a contract or some other legal relation. In such a case the issue is clearly defined; it arises in an accepted legal setting and is to be decided on well recognized rules and considerations.

4) The task here has no such basis or simplicity. There is no legal right claimed to be violated and there is no specification or acceptance of the considerations on which a decision is to be founded. There is instead a contest of extra-legal relations and interests which in general must for the present at least be resolved by the force of ethical and economic factors resting ultimately on the exercise of economic power. As I conceive it, from the social and economic structure in which we live I must select considerations which have attained acceptance in the public opinion of this country and which as principles are relevant to controversies of the nature of that before me; and having done that, I must apply them to the specific matters in hand. Such an inquiry involves an examination of so wide and general a field of social doctrine, that at the risk of appearing pedantic, and in what may seem a jargon-like vocabulary. I must deal briefly with what I think will be agreed upon as fundamental lessons of experience, in an orientation which now holds the stage in the economic drama.

Basis of Problem

5) Any modification of relations between the parties here concerned must be made within the framework of a society whose economic life has private enterprise as its dynamic. And it is the accommodation of that principle of action with evolving notions of social justice in the area of industrial mass, production that becomes the problem for decision. Certain declarations of policy of both Dominion and Provincial legislatures furnish me with the premises from which I must proceed. In most of the Provinces and by dominion war legislation, the social desirability of the organization of workers and of collective bargaining where employees seek them has been-written-info laws. That desideratum the Ford Company accepts. The corollary from it is that labour unions should become strong in order to carry on the functions for which they are intended. This is machinery devised to adjust, toward an increasing harmony, the interests of capital, labour and public in the production of goods and services which our philosophy accepts as part of the good life; it is to secure industrial civilization within a framework of a labour-employer constitutional law based on a rational economic and social doctrine. Its necessity arises from the actual implication of large scale industry in the life of labour and community and the mass of human relations thus created. Industry is seen to be integrated with the economic and social establishment and any disturbance in its scope or tempo sends out repercussions affecting interests which have been built up on the assumption of its continuance. The economic life arid fortunes of men become hostages to that continuance, which in turn takes its place as part of the general security.

6) Now that security is here, in a democratic order which I think is government through the form of predominant individual opinion, but which assumes the presence of diverse opinion that may at any time become predominant and which at all times respects minority interests. The preservation of the individual as a centre of thought and action and its reconciliation with the general security is the end of that government. But unguarded power cannot be trusted and the maintenance of social balance demands that the use or exercise of power be subject to controls. Politically this resides in alert public opinion and the secret ballot.

7) In the economic sphere there is the same necessity for counterchecks. We have the institution of private property. This may be conceived in terms of natural right adhering to a free will, an absolutist concept; or in social terms, in which control of use is permitted to the individual until the general interest requires its modification. In the former sense, property becomes more or less identified with personality and its invasion tends to arouse a primitive savagery.

8) In industry, capital must in the long run be looked upon as occupying a dominant position. It is in some respects a greater risk than labour; but as industry becomes established, these risks change inversely. Certainly the predominance of capital against individual labour is unquestionable; and in mass relations, hunger is more imperious than passed dividends.

9) Against the consequence of that, as the history of the past century has demonstrated, the power of organized labour, the necessary co-partner of capital, must be available to redress the balance of what is called social justice: the just protection of all interests in an activity which the social order approves and encourages. But organized labour itself develops and depends upon power, which in turn must be met in balancing controls in relation to the individual members or workers over whom it may be exercised, as well as to industry and public. To avoid misapprehension, I should add that I do not believe in any special deposit of virtue in any group. One difference between people in this respect is that some are aware of the persistence of an original taint.

10) That we cannot draw back and try to reverse the whole progress of the last 100 years in labour-employer relations, that we must go through to a higher evolution of them must, I think, be accepted as axiomatic. On that assumption there are two fundamental views to be taken on the mode of bringing that progress about: either to leave it as the issue of economic war in all its ferocity and waste or as the gradual rationalization of an area where interests are both common and conflicting. That we must have some sort of law or convention regarding these relations is inescapable: whenever human beings are drawn together socially or economically, a rule of that nature by whatever name we call it becomes imperative, and the stronger the conflict of interest the more insistent the demand for settled understandings. But we preserve the conquests of these understandings as we do of human rights generally, and they are taken on by new groups as of course.

11) Is there any doubt at this time in serious minds of the right of labour to organize? In fact, our law now declares that right. The question is whether the remaining controversies are to be settled in the mode of war or reason. Considering the immense stage in which these relations now appear, it would be a sad commentary on what we call Christian civilization if every foot of that field would have to show the waste of conquest by economic struggle, There is still and may always be a residue of this area which it will be beyond the powers of man to conquer by the force of his intellectual or spiritual faculties and a similar residue may remain in economic relations. But the measure of our civilization will be the degree to which that residue is diminished in scope.

12) From the foregoing I draw the following conclusions. The organization of labour must in a civilized manner be elaborated and strengthened for its essential function in an economy of private enterprise. For this there must be enlightened leadership at the top and democratic control at the bottom. Similarly as to capital. The absolutist notion of property like national sovereignty must be modified and the social involvement of industry must be the setting in which reconciliation with the interests of labour and public takes place. This means the rationalization of the individual industrial organism. Where rational considerations meet in an apparent impasse, a new factor must be taken into account, the issue of ultimate economic conflict. Apart from the question of wages, to men of good will who will recognize their obligation to the social order which makes possible and safeguards the very activity whose rights they defend, it ought not to be necessary that the inevitable loss to every interest should be actually suffered in labour strike; at the lowest, an intelligent appreciation of relative strengths including the public conviction by which these relations must ultimately be decided would obviate that loss; and I would not accept the view that the development of such judgment is beyond human powers. Hitherto the tendency has been to treat labour as making demands quite unwarranted on any basis of democratic freedom in relation to property and business and the ordinary mode of settling labour disputes, a piecemeal concession in appeasement. I cannot see

much effort to place conciliation on principle and although at once I disclaim any hope of doing more than to suggest principle through a slightly altered approach, I must at least make that attempt.

The Particular Problem

13) From these general considerations I pass to the particular problem. It would, I think, be futile to try to fix detailed responsibility for the past unsatisfactory relations between the Ford Company and its employees.

14) The primary and essential error lay, in my opinion, in what I have called an absolutist concept of property; the plant and business belonged to the Company; the Company was buying labour as a commodity; and labour had no more direct interest in the conduct of any part of the business than the seller of any other commodity.

15) Whatever of fairness or reasonableness was to supplement high wages lay exclusively in the wiser judgment of management. It was an arm's length relation. This attitude could do only one thing: engender a like attitude on the part of employees; and deterioration into tension and hostility was inevitable. Particularly was that inevitable when the nature of the operations is considered. Here is a highly congested and articulated undertaking; the work generally is the repetition of limited operations; the psychological effects, or in another aspect, the employee psychology, under the best conditions would require a sympathetic handling; in a hostile atmosphere they could be deplorable. Critically, the failure is not so much ethical or economic as intellectual; with such a set of assumptions even a wholly mechanical administration could be accompanied by the conviction of -righteousness. What astonishes me is the anomaly of a magnificent engineering plant, machines and functions co-existing with a human engineering with so many apparent strains and frictions. But the negotiations throughout were carried on by both sides with frankness and good manners; both were desirous of avoiding futile recriminations and of setting themselves to the work of providing for the future protection of the best interests of the industry as a whole. It would therefore be a poor service to them to dwell further on these features. I can only trust that their real mutuality of interest in this enterprise is finally being sensed.

16) Certain actions which took place during the strike appeared to the public mind as extraordinary and I shall make a brief observation on them. Beyond doubt picketing was carried on in an illegal manner. The resistance to the preservation of plant property was from the standpoint of the strikes a supreme stupidity. The filing of the street alongside the plant with vehicles and the interference with innocent members of the public was an insolent flouting of civil order. But beyond doubt too, there was exasperation and provocation, and these actions seem to indicate the intensity of conviction on the part of the men that fair demands were being met only by stolid negativism. No one attempts to justify these actions, but a strike is not a tea party and when passions are deeply aroused civilized restraint go by the board unless the powers of order are summoned to vindicate them. Illegal action is for the civil authority to deal with. That authority must take the risk of temporizing with lawlessness. If broken heads are the only alternative to protection of members of the public, I do not understand that public safety must be abandoned.

17) These matters are indeed relevant to the question of union responsibility. There must be growth in these organizations as in all other groups as well as individuals and only experience can bring maturity of judgment and of conduct. An irresponsible labour organization has no claim to be clothed with authority over persons or interests. But I am dealing with a body recognized as the bargaining agent for approximately 9,500 employees, and while their abuse of striking power cannot be excused, much less justified, we cannot disregard the complex of hostile attitudes and resulting exasperations from which that abuse in fact arose. The protection which the law in general now affords against an irresponsible organization as a bargaining agent is the power in the employees to choose a new agent.

18) I have had the opportunity of sizing up the leadership of this union so far as it is represented by the Committee of Negotiation. The members are all of English speaking origin and British citizenship. They have impressed me as being men of the stuff of which ordinary Canadians are made. With the exception of Messrs. Burt and MacLean who are on leave of absence from General Motors at Oshawa as international representatives of the union, they are men with seniority in the Ford Plant ranging from 10 to 18 years. They conducted themselves in negotiation with intelligence and reasonableness. I have no doubt their dominating

interest is the job of those they represent in that industry and that their object is to attain for those employees and their families a secure and self-respecting living, which seems to be the object of most Canadians. That aim is legitimate, whether or not attainment is possible.

19) It has been suggested that the union officers, as other labour leaders, are primarily concerned with the maintenance of their positions and power and no doubt some of them have experienced stirrings of that nature. But union organization is admittedly necessary in the present set-up of our society and we cannot expect these men who have gifts of leadership - and it is by such leaders that movements against wrongs are initiated - to be quite free of those human frailties from which only few saints escape. The only effective remedy for abuse of this nature is a greater democratization of the union.

20) It is intimated also that they are merely the instruments of a communistic group which seeks not the realization of private enterprise but its subversion. There may be such a group among the automobile workers in and about Windsor. There may be some degree of organization and leadership. But the employees who would be susceptible to one-sided teachings of that sort would not in general have the remotest understanding of communist ideology and would grasp at its promise as an escape from what is vaguely felt to be a dictatorship of capital. I should say on principle that a leadership which is opposed to communistic ends and methods, as I think this is, should be supported in a democratic economy; it is the failure of that leadership that furnishes the opportunity for strengthening the position of its opponents. I have no doubt that in the situation of Windsor to-day a city so immediately exposed to the pressure of labour action in the United States, an unreasoning denial of some effective form of union security would throw the controversy into a cauldron of deepening animosities ruinous to the interests of men, industry and public. Nor is it sufficient to say that these men must recognize their responsibilities. Responsibilities are the correlatives of rights and where the latter are unreasonably denied it is somewhat of mockery to be told that you must discipline yourself to injustice in order to demonstrate your title to justice. I am aware of the difficulty of defining justice, but in this particular field we have come within sight of general standards according to which what the judgment of fair minded Canadians would call -rough justice can be approximated.

Union Security

21) Let me now apply these considerations to the case before me in relation to the claim to union security; other points of difference have arisen, but they are minor, they concern plant administration matters, and I will deal with them in a separate memorandum.

22) Union security is simply security in the maintenance of the strength and integrity of the union. Disruptive forces may come from the Company or from other competing labour organizations or simply from the lack of centripetal force within the employee body. But the first is now forbidden by law and the second is not in fact present: the negotiating union is unchallenged in the organization of workers of automobile and affiliated industries.

23) What is asked for is a union shop with a check-off. A union shop permits the employer to engage employees at large, but requires that within a stated time after engagement they join the union or be dismissed if they do not. This is to be distinguished from what is known as a "closed shop" in which only a member of the union can be originally employed, which in turn means that the union becomes the source from which labour is obtained.

24) The "check-off" is simply the act by the employer of deducting from wages the amount of union dues payable by an employee member. It may be revocable or irrevocable for a stated time and may or may not fix the amount of deduction. Where there is a closed or union shop, the check-off becomes less significant because of the fact that expulsion from the union requires dismissal from employment.

25) In addition to the foregoing of which there may be many modifications, there is what is known as "maintenance of membership" which is a requirement that an employee member of a union maintain that membership as a condition to his continuing employment for a stated time, generally the life of an agreement. In this also there can be many modifications.

Factors in the Decision

26) Basing my judgment on principles which I think the large majority of Canadians accept, I am unable in the circumstances to award a union shop. It would subject the Company's interest in individual employees and their tenure of service to strife within the union and between them and the union which, with extraordinary consequences, in one instance has proved a serious matter for the Company concerned: and it would deny the individual Canadian the right to seek work and to work independently of personal association with any organized group. It would also expose him even in a generally disciplined organization to the danger of arbitrary action of individuals and place his economic life at the mercy of the threat as well as the action of power in an uncontrolled and here an unmatured group. It may be said that that is the danger to the individual in society, but while we must run the risk of the latter, certainly in some situations it is desirable to withhold the same power from smaller units. This points to a field within labour organization affecting the interest of the individual, the employer, and the public, which perhaps must be left for legislation. At least a code of these relations cannot be made a conditional annex to the determination of a limited point of dispute as I have it here.

27) I should point out that the employer can by his consent subject his employees to the full force of the organized power of unionism, and in many groups in trades and employments in Canada that has taken place, e.g., printing trades including that work in many newspapers, longshoremen, theatrical and moving picture operators, hotel and restaurant employees, building workers, pulp and paper mill workers, miners, milk and dairy employees, seamen, and others. Some of these trades are organized as exclusive crafts, but their power is recognized and strengthened whenever in a plant permanent or temporary employees are taken from their ranks. In these cases, the employer's interest in his personnel, except as to competency, is surrendered and the individual's right against the organization, except as a member of it, is destroyed. It may be of some interest that the Ford Motor Company in the United States with over 100,000 employees affected has accepted the union shop and check-off in all of its production and assembly plants and units in that country.

28) On the other hand, the employees as a whole become the beneficiaries of Union action, and I doubt if any circumstance provokes more resentment in a plant than this sharing of the fruits of unionist work and courage by the non-members. It is irrelevant to try to measure benefits in a particular case; the protection of organized labour is premised as a necessary security to the body of employees. But the Company in this case admits that substantial benefits for the employees have been obtained by the union, some in negotiation and some over the opposition of the Company. It would not then as a general proposition be inequitable to require of all employees a contribution towards the expense of maintaining the administration of employee interests, of administering the law of their employment.

29) What I am dealing with is employment in a mass production industry. The employees are co-ordinated with mechanical functions which in large measure require only semi-skilled operators. No long apprenticeship is necessary to acquire those skills; some operations can be taken on at once, and there is a general rise in complexity. But it is essentially the utilization of concentrated manpower in a framework of machines in which the initiative and artistry of the individual is either nonexistent or becomes stereotyped,. The large body of employees from their stature and their average skills are inescapably of a class that must be governed more or less in the mass and by mass techniques and one chief object of the plant law is to diffuse authority among the labour representatives to make administration as flexible as possible. But in such a body we cannot look for that generalized individuality in understanding and appreciation of the necessity for employee organization which craftsmen have tended to evolve. Their objectives and their conception of union function are much too simplified for that. With the aggravation of an annual lay-off, the result is that the union is subject to a periodic disorganizing tendency. Then too, the union has little to offer the men except their plant law: there is less individual appeal of or opportunity for social activities or union benefit provisions than in other classes of labour. In these conditions, it is, in my opinion, essential to the larger concern of the industry that there be mass treatment in the relation of employees to that organization that is necessary to the primary protection of their interests.

30) I consider it entirely equitable then that all employees should be required to shoulder their portion of the burden of expense for administering the law of their employment, the union contract; that they must take the burden along with the benefit.

31) The obligation to pay dues should tend to induce membership, and this in turn to promote that wider interest and control within the union which is the condition of progressive responsibility. If that should prove to be the case, the device employed will have justified itself. The union on its part will always have the spur to justify itself to the majority of the employees in the power of the latter to change their bargaining representatives.

32) It may be argued that it is injust to compel non-members of a union to contribute to funds over the expenditure of which they have no direct voice; and even that it is dangerous to place such money power in the control of an unregistered union. But the dues are only those which members are satisfied to pay for substantially the same benefits, and as any employee can join the union and still retain his independence in employment, I see no serious objection in this circumstance. The argument is really one for a weak union. Much more important to the employee will be the right which is being secured to him in the conditions to be attached to the check-off, to have a voice in that of which he is now a victim, the decision to strike. Whether the constitution of the union is sufficiently democratic in securing the powers of the members or such money power is dangerous are matters which concern the members and the public. The remedy lies essentially in the greater effectiveness of control in the members; but outside interference with that internal management is obviously a matter of policy for the legislature. Apart from the strengthening of the union on which I have made observations in these reasons, I see no special interest of the employer as such in these possible dangers and in the present state of things, those who control capital are scarcely in a position to complain of the power of money in the hands of labour.

33) The Company's suggestion was that in relation to the union shop the union should be left to its own resources until such time as legislation was passed placing controls and requirements on the constitution of unions, their accountability to members and the public and other features of their internal organization. But this assumes the exhaustion of the resources of private negotiation which I think unwarranted and in the actual circumstances and for the reasons I have given it would perpetuate a ruinous hostility in labour relations; and Mr. Aylesworth conceded that the scheme I am about to make effective went "quite" a way to meet his objections to a union shop.

Terms of Award

34) My award is a check-off compulsory upon all employees who come within the unit to which the agreement applies. It shall continue during the period of the contract. The amount to be deducted shall be such sum as may from time to time be assessed by the union on its members according to its constitution, for general union purposes; it shall not extend to a special assessment or to an increment in an assessment which relates to special union benefits such as for instance union insurance, in which the nonmember employee as such would not participate or the benefit of which he would not enjoy. The deduction shall be made only in the conditions and circumstances laid down by the constitution and by-laws of the Union, but it shall not include any entrance fee. At the end of each calendar month and prior to the 10th of the following month the Company shall remit by cheque the total of the deductions to the local union.

35) This mechanism, from the orthodox standpoint, preserves the basic liberties of Company and employee which I have mentioned. The assessment affects only the employees; the employer is concerned only in the expense of the check-off and the strength which it may give to the union. But the expense can properly be taken as the employer's contribution toward making the union through its greater independence more effective in its disciplinary pressure even upon employees who are not members, an end which the Company admits to be desirable. I should perhaps add that I do not for a moment suggest that this is a device of general applicability. Its object is primarily to enable the union to function properly. In other cases it might defeat that object by lessening the necessity for self-development. In dealing with each labour situation we must pay regard to its special features and circumstances.

36) In addition to all other provisions in the agreement and subject to but except so far only as it or they may from time to time be affected by any law or any regulation having the force of law, which, from time to time, shall be read with these provisions, this obligatory check-off shall be subject to the following conditions:

1. No strike, general or partial, shall be called by the union before a vote by secret ballot supervised by an officer of the Department of Labour for Ontario appointed by the Minister of Labour for that province shall have been taken of all employees to whom the agreement applies and a majority voting have authorized the calling of a strike within two months from the balloting.

2. The union by one of its international officers or by two officers of the local, including the President, shall repudiate any strike or other concerted cessation of work whatsoever by any group or number of employees that has not been called by the union after being so authorized; and shall declare that any picket line set up in connection therewith is illegal and not binding on members of the union. The repudiation and declaration shall be communicated to the Company in writing within 72 hours after the cessation of work by the employees, or the forming of the picket line respectively.

3. In addition to any other action which the Company may hereunder or otherwise lawfully take, any employee participating in an unauthorized strike or other concerted cessation of work not called by the union shall be liable to a fine of $3.00 a day for every day's absence from work and to loss of one year's seniority for every continuous absence for a calendar week or part thereof.

4. Should the union violate this provision for union security either by declaring a strike otherwise than with the authorization by ballot of the employees or by failing to repudiate or to declare as herein provided, it shall be liable to the penalty of a suspension of the check-off, in the case of any unauthorized strike by the union or an unauthorized general strike or concerted cessation of work by employees which it does not repudiate or of a picket line in connection therewith in respect of which it does not so declare, for not less than two and not exceeding six monthly deductions; and in the case of an unauthorized partial strike or cessation of work by employees, for failure to repudiate or declare, not less than one and not more than four monthly deductions; the suspension to be in the former case, next following the return to work of the striking employees, and in the latter case, next following the violation. The penalty above the minimum shall be in the discretion of the Company, but the Company shall have regard to the seriousness and the flagrancy of the violation; the reasonableness of that discretion shall be a matter for the grievance procedure and shall be submitted direct to the umpire. The suspension shall be absolute in its effect on dues for each of the months of the suspension period, subject however, to the decision of the umpire on any appeal under this paragraph.

5. At any time after the expiration of ten months from the date of the agreement and from time to time thereafter but with not less than one year between ballotings, not less than 25 per cent of all employees to whom it applies may on application to the Minister of Labour for Ontario obtain a secret ballot to be supervised by an officer of the Department of Labour for Ontario designated by the Minister for the selection of a bargaining agent, but the union shall continue to be the bargaining agent of the employees until a new bargaining agent has been so selected by a majority of the employees.

6. The deduction on the records of the Company shall constitute the sums so dedicated as money held by the Company in trust for the Local.

7. This provision for union security shall be enforced by the Company against each employee to whom the agreement applies as a condition of his continuance in or entrance into the Company's service.

8. Any employee shall have the right to become a member of the union by paying the entrance fee and complying with the constitution and by-laws of the union.

9. Except as otherwise specifically provided or dealt with, any dispute as to a violation of any condition or provision of this section shall be matter for the grievance procedure and shall be submitted direct to the umpire.

10. The Company, the Union, and the Local shall do all such acts and things as may be requisite or necessary to the observance and carrying out of this provision for union security according to the true intent and meaning hereof.

(The paragraph numbers refer to the clauses of the Collective Agreement)

25. (a) If management's decision is not satisfactory to the employee concerned, written notice of appeal signed by the employee may be served on the Personnel Manager within four regular working days of the delivery of the decision, appealing here from to an impartial umpire to be selected by the parties to the grievance or if such parties fail to select an umpire within five regular working days of the receipt by the Personnel Manager of the notice of appeal, then to an impartial umpire designated by the Minister of Labour for Ontario. The umpire so designated shall be a jurist of repute in that province. Each party shall have the right to object to one name proposed by the Minister. Except as herein otherwise expressly provided, the decision of the umpire shall be final and binding on the parties to the appeal.

(b) Except as otherwise expressly provided herein, the umpire shall not have jurisdiction to modify in any manner any discipline imposed on an employee or the Union in accordance with the terms of this agreement or the published rules and regulations of the Company; but the Union may at any time suggest to the Company that the penalty provided; by any such rule or regulation is unreasonable; and if agreement cannot be reached thereon, the matter shall be a grievance hereunder and shall be submitted direct to the umpire; but the decision of the umpire shall not be binding on the Company. This shall not affect the determination by the umpire of the fact, of such violation or any question of the interpretation of this agreement or of the said rules and regulations. But if it is specifically alleged that the penalty has not been imposed in good faith but has been influenced by improper or ulterior motives or by reasons other than the proper administration of discipline within the plant, the umpire shall hear the evidence offered in support; and if he finds the allegation to be true, he shall have jurisdiction, notwithstanding anything herein contained, to modify the penalty accordingly.

The expenses of the umpire, if any, shall be borne in equal shares by the Company and the Union, and the shares shall be paid direct to the umpire by each.

50. Notwithstanding their seniority status, stewards, in the event of a lay-off, shall be continued at work when not less than ten employees are working in their respective jurisdictions. In the case of overtime or extra work, stewards shall be continued at work when work of their classification is available in their jurisdiction respectively which they are able and willing to do; and, in the case of overtime or extra work, in any event, when not less than 15 per cent of the employees within their respective jurisdictions are at work, with a minimum number in all cases of ten and a maximum percentage requirement of twenty-five.

51. Notwithstanding their seniority status, plant committee men and negotiating committee men who are employees of the Company shall be continued at work as long as work of their classification is available in the plant in which they are employed and which they are able and willing to do.

52. A person who has been a member of the armed forces of Canada including the Merchant Marine at any time since September 1, 1939, upon entering the service of the Company and subject to the conditions of the probationary period, shall be given an immediate seniority equal to the length of time he served in the forces and this constructive seniority shall be taken. into account in his application for work; but this shall not entitle him on such entrance to displace a person then in the Company's employ, except where the former was at the time of his becoming a member of the forces a resident of Essex County, Ontario, and the latter was immediately before his employment by the Company a non-resident of that county. To obtain the benefit of this clause, the person applying shall do so within one year from his discharge from the forces and shall at such time present his discharge papers. There shall be attached to such papers a certificate by the Company showing the date when he was taken into the Company's service.

56. The president and the Financial Secretary-Treasurer of the Local and any international officer of the Union having jurisdiction exclusively in Canada, being employees of the Company, so long as offices held by them are full-time positions, shall be granted leave of absence by the Company and while on such leave of absence shall accumulate seniority.

57. If an employee be transferred from one department to another, he shall incur no loss of seniority; provided that an employee transferred at other than his own request, unless such transfer is the result of his failure satisfactorily to perform the work required of him, shall be the junior employee in the occupational group or department, as the case may be, who is able satisfactorily to perform the work required of him in the new department, and he shall be notified of an opening occurring in his immediate former department within a period of six months from the date of his transfer and within 24 hours of such notification may elect to be retransferred to his immediate former department, subject to his being able satisfactorily to perform the work required of him. If the employee on being so notified does not elect to be so retransferred, he shall thereafter have no claim on his immediate former department.

77. (a) Subject to any provision of law or any regulation having the force of law, this agreement shall continue until March 31, 19+7, and thereafter unless and until terminated as herein provided. The termination may be effected on March 31, 1947, or on September 30, 1947, or on such days in any year hereafter, in the following manner: Either party may give to the other two calendar months' notice of negotiation, setting forth all matters in respect of which it desires to amend this agreement. The parties will thereupon negotiate on such matters. If they do not agree thereon, the party giving the notice may, not later than the last week of the said period, give to the other a further notice of termination to take effect at the end of the month next following the period of negotiation, and on the expiration of that month this agreement shall come to an end. If no such further notice is given, this agreement shall continue in effect as if no notice of negotiation had been given, subject to any amendment the parties may have agreed to incorporate herein; upon the election at any time or from time to time by the employees of a new bargaining agent, that agent shall be deemed to be substituted for the Union or other representative of the employees, as the case may be, as a party hereto as fully and to all intents and purposes as if it had been originally a party hereto.

79. The parties declare the desirability of a group medical, hospital and life insurance scheme for the benefit of the employees. If within six months from the date hereof the

Company and the Local have not been able to agree upon such a scheme, the Local may at its own expense make provision for such benefits by an arrangement with an indemnity insurance company approved by the Minister of Labour for Ontario. The monthly premiums payable by the employees shall, upon the written authority of every such employee, be deducted each month from the payroll of the Company at its expense and the total sum in accordance with the direction of the Local remitted to the indemnity company with which the Local has contracted. The authorization to deduct shall make provision for cases in which the money payable to the employee in any month is not sufficient to enable the Company to make the necessary deduction.

80. Subject to any law or any regulation having the force of law, scales of wages and classifications may be the subject of a supplementary agreement, and unless otherwise provided therein the umpire hereunder shall have no jurisdiction in relation to such scales and classifications; but this shall not affect his jurisdiction over the matter of the application of such classifications as may from time to time be in effect to any employee.

Appendix F

Canadian LabourWatch Association Overview

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Advancing Employee Rights: Informed employees and informed choices

LabourWatch advances employee rights in labour relations. We provide employees with resources on unionization, to help employees make informed choices.

In short, our mandate is to providing missing pieces of the labour relations puzzle for Canadian employees

Employees generally have limited access to the information, legal counsel and financial resources available to most unions and some employers. To help employees who need to make critical decisions, LabourWatch provides user-friendly websites (LabourWatch.com and the French-language InfoTravail.ca) with province or jurisdiction-specific forms and detailed instructions.

We provide links to:

- Unions for employees who want to become or remain unionized.
- Labour Boards and ministries of labour and union reform websites.
- News on emerging labour relations developments on the internet.

We provide detailed information for employees who may want to achieve their statutory and Charter rights to the union of their choice or to be union-free:

- How to cancel a union card during a union-organizing campaign.
- How to decertify a union.
- How to file an Unfair Labour Practices complaint against a union.

All via a website that is available 24 hours a day, seven days a week with no passwords and no fees.

We are a nationwide non-profit whose mission is to explain labour law to employees affected Canada's 11 private sector labour codes in Canada. Over the years we have also been a source of information and assistance to government sector employees.

Big labour is quite critical of LabourWatch. They call us anti-union. Why? Because of the way we explain labour law to employees in a more comprehensive way than unions or labour boards. Our particular focus is serving employees who want to exercise their statutory and Charter rights to have the union of their choice as well as to remain or to become union-free.

According to our research, which in our view is corroborated by research funded by Big Labour, most union–free employees do not want to be unionized. More than twice as many unionized employees would rather be union-free than the reverse.

Since being founded in the year 2000, we have helped employees who were unlawfully prosecuted in court by their union. In one set of cases the unions had a legal opinion advising them that they had no legal right to do so. Ultimately the courts agreed with the union's legal counsel. Different unions in different cases were joined together by the Supreme Court of Canada when it refused to hear the appeals of their lower court losses that upheld Canada's common law protections.

We have also been doing a lot of research and education for Canadian leaders about where employee and taxpayer rights stand not only in Canada, but in the world.

Canada is now alone in the world in that it does not protect Canadian society in general and workers in particular regarding a number of inappropriate powers of labour leader powers and privileges. We still allow things that no other country that we know of ever allowed let alone still allows.

Brief Bio of LabourWatch President John Mortimer

For the last 14 years John Mortimer has served as President of the Canadian LabourWatch Association

In addition to his part-time role with LabourWatch he has owned and operated his own small business for the past 15 years which is where he spends the bulk of his work time.

Prior to LabourWatch and his own business John spent almost 15 years as the most senior Human Resources (HR) leader in a cross section of the economy. For example:

- In Canada for Wendy's Restaurants, as well as a high technology company.
- In North America for Future Shop.

In addition to his HR responsibilities with these employers, he led other departments such as Risk Management, Management Information Systems and Administration. Early in his career, he worked for the Federal Government in a branch of Employment & Immigration.

While John also sits on the Board of Directors of the Canadian Taxpayers Federation, Board Members are not public spokespersons for the CTF.