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Chair

Mr. Bryan May

Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities

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● (1530)

[*English*]

The Chair (Mr. Bryan May (Cambridge, Lib.)): Good afternoon, everybody. The committee will come to order.

I have the pleasure of introducing a number of guests here today. From the Industrial Contractors Association of Canada, we have Tony Fanelli, vice-president and manager of labour relations. From Federally Regulated Employers - Transportation and Communications, otherwise known as FETCO, Derrick Hynes, the executive director, is here today. Thank you both for attending today.

From the Canadian Federation of Independent Business we have Daniel Kelly, president and chief executive officer. Thank you, sir, for again appearing. You're our first repeat customer in this Parliament. We didn't scare you too much the last time apparently, or you're a glutton for punishment; we're not sure which. No, I'm just teasing.

Welcome, MP Benson. Thank you for joining us today. I'll acknowledge John when he arrives as well.

We're going to get right into questions. We are back on Bill C-4. Let me ask the witnesses to introduce themselves and give a brief opening. We'll start with Tony Fanelli, please.

● (1535)

Mr. Tony Fanelli (Vice-President and Manager of Labour Relations, Industrial Contractors Association of Canada): Thank you.

My name is Tony Fanelli. I represent a number of organizations in the construction industry in Canada.

I put down Industrial Contractors Association on the application form, but I also represent a broader organization called NCLRA, and I'll get into that.

Would you like a presentation now from me, or do you want to go through introductions?

The Chair: Let's do presentations.

Mr. Tony Fanelli: Fair enough. Okay.

Who is the NCLRA? While people in our industry have a pretty good handle on the alphabet soup of organizations that we have, it's a bitter fact that beyond our immediate group, people know nothing about how we are organized and how we bargain. The NCLRA is the acronym for National Construction Labour Relations Alliance of Canada. It is the umbrella group for the various provincial and national contractor associations from across Canada.

We are the unionized contractors, and account for somewhere in the vicinity of 50% or more of the commercial and institutional sectors of construction. We employ roughly half a million workers. Some contractors employ one or two. The companies that I represent, including our own, go from employing hundreds to employing thousands, and back to hundreds again, in an unending cycle of build up and build down. This makes our business very complex and requires us to be able to deploy workers in a way that makes sense. Frequently the difference between success and failure on the job is how we are able to deploy that workforce.

Each provincial and national contractors group represents a significant number of contractor groups. For example, there are 60 contractor groups within Ontario, 32 in Alberta, 35 in British Columbia, and 28 in Saskatchewan. Each of these contractor groups represents from hundreds up to thousands of individual contractors. The contractor associations bargain on behalf of all the contractors with their labour counterparts.

Our various trade sectors have created a complex network of relationships with our union partners. We are almost inevitably one half of the board of trustees of pension funds, health and welfare plans, training trusts, education trusts, industry improvement funds, supplementary unemployment benefit funds, and a host of others. This is where one of the complicating factors of Bill C-377 would have arisen. The definitions that amend subsection 149.01(1) of the Income Tax Act are very broad. From the legal opinions our various contractor associations received from their legal counsel, these are broad enough to include both contractor groups and individual employers as labour organizations or labour trusts. Surely that is not what anyone would have envisioned.

Our business is highly competitive. Virtually every job is as a result of a tender process. The successful bidder is required to be the tenderer that offers the best price. I personally have never doubted that the rationale behind Bill C-377 was to give our non-unionized competition an advantage. In the bidding process, we are on the training trust funds, the education funds, the industry improvement funds. We make contributions into these funds, and we receive a considerable amount of training support from the training trusts. It is absolutely clear that when the value of our contributions on a trade-by-trade basis, or the support we have from a training fund, becomes a matter of public record, it is a very simple thing to reverse-engineer as to how we've been doing certain work, or how we develop a crew mix, or how we develop or deploy workers, or how we actually manage the work that impacts enormously on our commercial confidentiality. This alone ought to be a significant enough reason to repeal this legislation.

The cost to contractors is really one of the most important issues I want to dwell on. The costs to our contractors in and of itself are massive. In my company, as a general contractor, we hire all trades. We remit to the various trust funds for each of the unions in the construction industry. Each union has four or more such trust funds. There are 16 unions. In some cases, each union represents more than one bargaining group, so our company, which works in six jurisdictions as we speak, will have to file 500 reports annually, and in such detail that some of the reports will be the size of a city phone book. To what end?

● (1540)

If the Construction Labour Relations association of Alberta or the Industrial Contractors Association of Canada are held to be a labour trust and have to make the reports and returns required by Bill C-377, then both our confidentiality and our bargaining strategies are laid open.

This cannot be good for labour relations or good for either party in the labour relations continuum. I've been a labour relations practitioner in Canada for nearly 40 years. During that time there have never been any issues arising in respect of this subject. If this hasn't been an issue in the past, what is going to be gained by such significant public disclosure? That public disclosure will impact thousands of unionized contractors across Canada represented by NCLRA-affiliated organizations.

The view of the contractors is that this is just another competition strategy launched by our most vociferous competition, which hopes to use the power of the Government of Canada so they can come up with unique ways to undercut our bids.

We are also responsible for the privacy of our employees, and the legislation compels us to decide which law we breach: the Income Tax Act or the various provincial and federal privacy laws.

In closing, it might be different if there were some wrong or right in this area, but there simply isn't. The unionized contractors in Canada see no obvious value in any part of Bill C-377, and therefore support the repeal of that legislation under the bill being considered today, Bill C-4.

Thank you.

The Chair: Thank you, sir.

Now we're going to hear from Mr. Hynes, from the Federally Regulated Employers.

Mr. Derrick Hynes (Executive Director, Federally Regulated Employers - Transportation and Communications (FETCO)): Thank you, Mr. Chair.

Good afternoon to all honourable members seated around this table today. It is with pleasure that I present some thoughts to you today on Bill C-4 on behalf of FETCO.

For those of you who are not aware, FETCO stands for Federally Regulated Employers - Transportation and Communications. With that mouthful of words, I'm sure you can appreciate why we tend to shorten our name to just FETCO.

FETCO member organizations are all federally regulated firms in the transportation and communications sectors. The common area of interest that binds us together is labour relations under the Canada Labour Code. We have existed as an employers' association for over 30 years. We are essentially the who's who in the federal sector, encompassing over 400,000 employees and representing many well-known firms such as Air Canada, Bell, CN, CP Rail, and Telus, to name just a few. Most of our member companies are heavily unionized and have a long and successful track record of tripartite engagement in federal labour relations, and I'll speak more on this issue a little later.

As you are all aware, Bill C-4 will repeal two pieces of legislation passed during the last Parliament, Bill C-377 and Bill C-525. FETCO believes that both of these bills resulted from an inappropriate process, one that did not take advantage of a pre-existing and well-established tripartite approach to labour relations.

However, given its significant labour relations implications I will spend my short time with you today focused solely on Bill C-525, the union certification and decertification bill.

FETCO was heavily engaged in the process that brought C-525 through the parliamentary process and has spoken on the record on this bill on several occasions. If I can leave but two key messages with you today that sum up the FETCO position on Bill C-525, it would be the following. Please note that I do recognize these appear to be contradictory, and I hope to explain that throughout my presentation.

First, FETCO had and continues to have concerns regarding the manner in which Bill C-525 was enacted. Second, FETCO supports the basic principles proposed in Bill C-525.

I'm sure at this point some of you are scratching your heads wondering how we can simultaneously support Bill C-525, but at the same time have concerns regarding the process used to enact it in the first place. Please let me explain.

FETCO has consistently argued in concert with organized labour, I should add, that the process used to enact Bill C-525 was inappropriate. Bill C-525 brought in a revised certification and decertification process for all federally regulated organizations via the use of a private member's bill.

While we do not view the use of private members' bills as in any way undemocratic, we do feel they should not be used for changes to the Canada Labour Code. For decades, a meaningful, tripartite, consultative mechanism has existed for such changes, where the three key stakeholders—government, labour, and management—take a deliberate approach to changes under the code and its associated regulations by consulting extensively ahead of time.

Changes to the code should only be considered after a meaningful, upfront dialogue that contemplates all related implications and assesses any change within the greater context of the entire collective bargaining environment. By using this approach via a government bill, a greater degree of rigour is applied to the process. Committees tend to have access to research and analysis and can tap into key internal resources, such as the expertise that exists within the labour program at ESDC and across other government departments.

While a private member's bill does proceed through parliamentary committee and the related process, it does not receive the same level of scrutiny as can be achieved through a meaningful consultation with all stakeholder that is represented by a government-wide approach. We have a system that works. Our suggestion is that we use it.

This brings me to my second key takeaway, which may sound contradictory, but FETCO ultimately did support the basic principles presented in Bill C-525 and is supportive of these changes within the federal collective bargaining environment.

If you'll indulge me, I'd like to read into the record today some comments presented by FETCO to the Senate Standing Committee on Legal and Constitutional Affairs when Bill C-525 was being contemplated in December 2014:

> Bill C-525 is a private member's bill. In its original form, it was unfairly constituted and prejudicial to unions and employees seeking [union] certification. In its original form, C-525 required that in order for a union to be certified, it would have to demonstrate in a secret ballot vote that the union had an absolute majority of employees in the appropriate bargaining unit as opposed to the majority of employees in the appropriate bargaining unit casting ballots in favour of the union.
>
> FETCO is [most] pleased that Bill C-525 was modified substantially...by the House of Commons Standing Committee on Human Resources...before passing third reading in the [House of Commons].

● (1545)

> FETCO members prefer a secret ballot vote to a card check system for the purpose of determining if the union is to become the certified bargaining agent for employees. A secret ballot vote is the essence of true democratic choice and is entirely consistent with Canadian democratic principles. It allows each and every employee to express their true wishes without undue influence or disclosure of how they cast their ballot. This is the mechanism that is used for the electoral process in Canada. It is the fairest process.
>
> ...Furthermore, this certification process by means of a secret ballot vote based on the majority of votes cast is the standard that currently exists in the labour relations legislation in the provinces of Alberta, British Columbia, Nova Scotia, Ontario and Saskatchewan. It is a widely accepted method to determining certification in Canada. It is not new.
>
> The provisions in Bill C-525 regarding the threshold number of employees required before the Canada Industrial Relations Board will order a certification vote or a decertification vote is 40%. This is appropriate.
>
> These provisions are equally fair and are consistent with the rules for establishing certification and decertification vote thresholds in the various provincial jurisdictions.
>
> In sum, FETCO supports Bill C-525 as currently written.

Honourable members, I hope that you now better understand the genuine dilemma that Bill C-525 represents and represented for FETCO members. While we objected to the process used to enact it, we certainly supported the final language that was revealed following committee reviews in the House of Commons and the Senate.

Bill C-525 contains three key principles that FETCO continues to support.

First, it ensured that a secret vote would be required for all union certification and decertification efforts. The secret vote is fundamental in our democratic society. We cannot think of another approach that is more open and fair to employees when making these important choices.

Second, it ensured that unionization could not be achieved solely by the use of signed union cards. Employees were free to vote their conscience secretly, without fear of coercion. This approach is consistent with the majority of Canadian jurisdictions.

Third, it set the threshold for requiring a vote for certification or decertification at 40% of those that sign union cards. This is also consistent with the majority of Canadian jurisdictions. The 40% threshold is required in Alberta, Newfoundland and Labrador, Nova Scotia, and Ontario. In fact, 45% is required in British Columbia and Saskatchewan.

Bill C-525 brought the federal system in line with the majority of other jurisdictions in the Canadian labour relations system covering the majority of employees in the country, and it brought the democratic secret vote. This is why it was and still is, for that matter, supported by FETCO.

Thank you for your time and for the privilege of speaking with you today.

● (1550)

The Chair: Thank you very much, Mr. Hynes.

Now we will hear from Daniel Kelly, president and chief executive officer of the Canadian Federation of Independent Business.

Welcome.

Mr. Daniel Kelly (President and Chief Executive Officer, Canadian Federation of Independent Business): Thank you, Mr. Chair. Thank you very much, members, for being here today.

I am keen to talk to you a little bit about why CFIB is concerned about the changes to the rules that are being contemplated and why we ultimately favoured the approaches that were taken in Bill C-377 and Bill C-525.

By way of background, we have 109,000 small-sized and medium-sized businesses as members of CFIB. All of them are independently owned and operated. None of them are publicly traded. These are true independents that are out there trying to make a living against incredible odds sometimes in your ridings across the country.

Union issues are tricky ones for many employers. Most of our members, the vast majority of our members, are non-union right now. Of course, that's true of most private-sector workplaces, as our data shows. Unionized firms in Canada are on the decline. But we did support the rules that were put in place in the two bills, and I want to give you a bit of background as to why we developed those positions.

It wasn't that we loved some of the provisions of Bill C-377. Typically, CFIB is calling on government to reduce regulations, not increase rules and regulations and red tape, so it was a bit unusual for us to support a bill that would add rules and regulations to a sector that currently has, I think, fairly few. The reason we did is to try to accommodate the gap that exists in Canada with respect to the fairness of our union rules relative to their international counterparts. It often surprises people to know that Canada is now the international outlier when it comes to union certification. In virtually every country in the world paying union dues, being part of a union, is a choice. It's not mandatory if there is a certified union in that location. In all of Europe, an employee can opt out of paying union dues. It's part of the European Union rules.

That often surprises people because we think somehow in Canada our union legislation is somewhere between Europe's, which is more restrictive, and the U.S., which might be a little more free. In fact, that's not true at all. Some states do require mandatory dues, as we do in Canada—a decreasing number of them—but Canada is now one of only a couple of countries that still require mandatory dues payment if there is a union in that workplace. That's the real issue that was behind our members' support for these two bills.

That a union can compel people to pay dues, through government law, we believe requires the highest levels of scrutiny, disclosure, and accountability. That's why we liked many of the provisions of Bill C-377. If that were taken off the table—and I'm not suggesting that the government is likely to go in that direction—I don't think Bill C-377, the provisions that are there today, would become necessary if employees were able to say, “I believe my union's doing a good job. I want to pay them dues” or they might say, “Hmm, I'm not sure. I'm going to withhold my dues or threaten to withhold my dues to ensure that I'm getting my questions answered properly from my union”. That is what's behind our support for these measures: the fact that Canada is now an international outlier, whereas perhaps in the past Canadian union laws were more in the mainstream.

Small firms, of course, strongly believe that union members should have the right to opt out of union dues. But I also want to share with you that employees, too, believe that additional disclosure is required. Some Leger marketing surveys suggest that 84% of the public agree that additional disclosure is required.

It wasn't a surprise that the new government has decided to turn back the clock on Bill C-377, but I have to admit it is very surprising that the new government is eliminating the right to a secret ballot vote in union certification. To me, that is the biggest issue that is on the table today.

● (1555)

One of the first things many provincial governments—for example, an NDP government at the provincial level that has been elected with the support of unions—do very early in their mandate is eliminate secret ballot votes in union certification. I cut my teeth on that issue back in Manitoba when a government changed there and Gary Doer was elected many years ago.

This is always a worry for small and medium-sized firms. The very principle of secret ballot votes, which we hold so near and dear in electing you, should be there for choosing whether or not to have a union, especially when that union has the power to compel absolutely everyone in the unit to pay dues whether they wish to or not.

That, I think, is the part I want to leave with you. Our biggest concern about this is the fact that this bill would end the right to a secret ballot vote in all circumstances before a union is certified. Even union members, when polled, believe that votes should be held prior to certifying a union. This isn't just the view of employers, among whom it might not be a terribly big surprise—small employers in particular—but is also, we believe, the view of the general public and of current and past union members.

My final thoughts for you are that as long as dues remain mandatory, requiring unions to provide additional detailed information is certain to bring more transparency and accountability—certainly more costs, certainly more red tape, I don't deny that one bit—and that because secret ballot votes are so fundamental to our democratic processes, we would urge you to maintain them on this very important and sensitive issue in the employer-employee relationship.

Thank you.

The Chair: Thank you, Mr. Kelly.

Now we go over to Mr. Zimmer for his first question.

Mr. Bob Zimmer (Prince George—Peace River—Northern Rockies, CPC): Thank you for coming today.

I just have one question. I think I know the answer to this from Derrick. Your position is very clear, and I thank you for it.

I will ask Tony. Is your group, or are you as a member of your group, supportive of voluntary union dues in your association?

Mr. Tony Fanelli: We are not really in a position to speak to it. Voluntary union dues, as far as we're concerned as employers.... We just go to the unions we work for and get the people we need to employ for our projects. How they run their business and how they do their affairs is their business.

There are certain local unions in which it is voluntary. There are others that do not have it as voluntary. It's not an issue for us, one way or the other.

Mr. Bob Zimmer: How about the second question, on the secret ballot? What's your position on the secret ballot?

Mr. Tony Fanelli: I don't take a position on that. We don't get involved. Most of our work falls within provincial jurisdictions, so it falls under the current provincial labour relations codes. This is under national or federal labour codes.

Mr. Bob Zimmer: Here is a question for Mr. Kelly. I'm a former union member—

A voice: As am I.

Mr. Bob Zimmer: —and one of my concerns when I was a member was that our union dues were used to front certain political campaigns. I was one person who didn't really know where my dues were going. I would see in a paper or I would see in other locations what my union dues were going to support, without knowing the details. We saw the evidence that was there, but we never really understood how much was going to those campaigns.

Considering that most of these public sector unions avoid a lot of taxes—they're associations and so aren't taxed, accordingly—in our minds, when we brought forward this legislation.... I know that the people who brought these measures forward honestly brought them forward to see change in a positive way for folks like me and other members who have the same thoughts I have.

I would just ask you how, in terms of your membership, you square that circle. It hit me really quite hard when I saw supporting.... I'm not saying they didn't support my party and that therefore I'm angry about this; absolutely not. I was a teacher and thought that my classroom was a non-partisan place and that my association should be a non-partisan place as well. To see dues used for political purposes and not fully understand how much was actually going there was a hard circle to square.

Do you have any thoughts on that? How do we make this better from now on? We think we know the direction it's going. How do you make this better for folks like me?

● (1600)

Mr. Daniel Kelly: There are some things. One thing that did happen is that I believe it was the previous Liberal government that did prohibit union and corporate contributions to political parties, and our members supported that. Most of our members are incorporated and they supported the idea of banning union and corporate contributions.

It's not so much the contributions. It is all the other ways that unions support causes that then help elect political parties. Certainly at the provincial level we see that happening absolutely every day. For example, unions routinely fly their executives to anti-Israel conferences around the world. There are all sorts of ways that causes, perhaps not shared by their members, are supported through mandatory dues.

Again, I've been asked many times, “What about this legislation as it would apply to my organization, as a voluntary membership group?” Certainly if governments ever chose to do that we would certainly comply. The difference is that for a business association or most groups that are out there, the minute somebody is uncomfortable with the views or the spending on my part or my association's part, they can quit the very next day and they can withhold the most valuable vote they have, and that is their money.

In the current legislative environment in Canada we do not allow that to happen. I have to say, the legislation that exists, which Bill C-377 is based on, largely exists today in the United States. Governments, even the current Democrat government, has not eliminated that legislation that exists in the U.S. today, so this isn't brand spanking new stuff.

As I said before, our fundamental issue is that with the power to mandate dues, to force dues through government law, we believe come additional responsibilities. Bill C-377 is only one way to do that. The other would be perhaps to prohibit political causes on the part of unions. That is essentially what's behind the legislation in all of Europe. The main reason unions have voluntary membership in all of Europe is to prevent unions from using mandatory dues for political purposes. That's another way that I suppose Parliament could explore.

Mr. Bob Zimmer: Yes, and I think you've clarified that for all of us, too, because that would be a more extreme step for us to take, to make dues voluntary.

The problem I had.... I'm a former carpenter as well. I still call myself a carpenter first, by the way. I could just go to another union. I didn't need to go to just one particular union, but as a teacher in B. C. I had no choice. Whatever process that particular association was involved in, I was part of it whether I liked it or not. I think this was accountability that we wanted to see. If it's going to be done, at least...so that we can all see it.

Accountability measures are something we should all pursue and then, again, if there is nothing to hide, there is simply nothing to hide.

The Chair: Thank you, Mr. Zimmer.

Now, we'll go on to Mr. Long, please.

Mr. Wayne Long (Saint John—Rothesay, Lib.): Thank you, Mr. Chair.

Thank you to our three guests for presenting this afternoon, it was very informative.

I will say that when I did my campaigning as a potential new MP —I'm from Saint John—Rothesay and it's a very union, industrial town—certainly one of the things I heard consistently at the doors, most certainly from union people, was that Bill C-525 and Bill C-377 were anti-union, mean-spirited, and designed with an agenda in mind.

I'll start with Mr. Hynes. Can you tell me whether your view of unions is closer to adversary or partner?

Mr. Derrick Hynes: The latter, that it's more a partner.

Speaking on behalf of the member organizations of FETCO, we are 18 members, firms, most of which are very large within the Canadian context, and most of which are heavily unionized, almost all in fact. These companies have long-standing sophisticated relationships with their counterparts on the labour side. I would say that my members would be very comfortable saying that they view the union to be a partner in the relationship.

● (1605)

Mr. Wayne Long: Just to follow up, your members indicated their support of Bill C-525 because it was promoted as a fair, democratic process by which employees can "express their true wishes".

Critics believe this legislation was designed to complicate and thereby lower the rate of union certification. This seems to counter the fair, democratic process. Was FETCO doing a disservice to the workers it represents by supporting the legislation?

Mr. Derrick Hynes: The legislation put us really in a tough spot because there were principles in the legislation. It shouldn't surprise anybody around this table that the employers within FETCO were supportive of employees having the right to a secret ballot to vote their own conscience on whether or not they would join the union.

The fundamental problem we kept bumping up against was the process used to do this. As I noted in my presentation, we have a well-established tripartite process for legislative regulatory and policy changes within the labour environment within the federal sector. It works. There are many examples of it working. We would have preferred that these changes would have gone through that channel and had that discussion at the front end.

Mr. Wayne Long: The issue I have is legislation that actively creates weaker union representation. How can that be considered fair and democratic? Can you explain how it's not the case? I don't understand.

Mr. Derrick Hynes: As I noted in my presentation, the fundamental right we believe employees should have is the right to choose their union representation. Not unlike most decisions that are made in that context, these votes in the democratic system are done secretly where an individual has an opportunity to vote his or her conscience.

I don't believe there is a motivation among FETCO member companies to diminish the labour movement or to reduce the number of unions, but we do believe there should be an option at the front end for employees to have the right to vote their conscience secretly.

Mr. Wayne Long: I find it hard to think the democratic principle is supported by weaker representation. I guess I'll leave it with that.

Mr. Kelly, what's your view of unions? Are you closer to an adversary or a partner?

Mr. Daniel Kelly: My personal views are irrelevant. For small businesses, we have 109,000 of them. I would imagine we would have some in both camps that view their union as a partner and those that view them very much not that way.

As I said, most of our members are not unionized, but I don't think it would shock you to believe that most small business owners are not huge fans of unions as they exist today. I'm from Winnipeg. I like to think that in 1919—as I have fought for 22 years now at CFIB, as of today, for the little guy—I would have been a strong proponent of unions at the time.

Mr. Wayne Long: Would you say you're representing employees' rights or employer rights?

Mr. Daniel Kelly: Our members are exclusively all small employers, and therefore, my job is to represent their needs and views as employers.

Mr. Wayne Long: It's no secret, obviously, you supported Bill C-377. The Barreau du Québec, Canadian Bar Association, constitutional experts like Bruce Ryder, Robin Elliott, Alain Barré, and Henri Brun, all view the reporting requirements in Bill C-377 as violating the Canadian Charter of Rights and Freedoms. All of these groups believe that the reporting requirements force unions to disclose information that could disadvantage them in joint collective bargaining.

How do you rationalize your support for the bill, the small business owners you represent, in light of the criticisms?

Mr. Daniel Kelly: There are lots of criticisms and there are lots of supporters. There's a former Supreme Court judge that believes that it's all bunk and the law is constitutional. None of this had been tested yet, right? That, I imagine, would have happened over time.

Our views of this are largely based on the fact that most of these rules exist in the U.S. right now. That would be why we believe this is a fair balance given the unprecedented powers unions have in Canada.

The Chair: Thank you, Mr. Kelly.

We'll move on to Ms. Benson.

Ms. Sheri Benson (Saskatoon West, NDP): Thank you very much.

Mr. Fanelli, I'd like to spend a bit of time with you with some questions. Obviously, we've heard you're not supportive of Bill C-377. It was too broad. It included employers and trusts, and many things where privacy would be an issue, but not only privacy.

You talked about the fact that it would actually give your competitors an advantage in the business world. Could you expand a bit on that? In what way?

● (1610)

Mr. Tony Fanelli: If all trust funds, all training funds, and virtually every fund that would be connected to a union are subject to public exposure, our competition would clearly understand over time how those monies go into training and how we do business. In the construction industry, training and development is a key component to the success of projects we build. The staff either make or break an employer. We saw this legislation would open the door for the non-union to come in, just as I mentioned.

On top of that are the reporting requirements, the reporting responsibilities, that would come out of this. When we did some of the preliminary audits on the cost of doing this, it was just prohibitive. It would happen not only with employers like us, the people I represent, the bigger employers in Canada, but across every employer association in every jurisdiction in this country. That's the reason we're opposed.

Ms. Sheri Benson: Thank you.

Mr. Hynes, I get the distinction you're trying to make, although I don't agree with it. I think it is important for this committee to understand the history of what has worked well as far as the Canada Labour Code and that process. I think your comments about the way that this private member's bill came in...and if we were to allow a very important piece of legislation to in some ways get things attached to it willy-nilly, the impact for employers, even the cost involved, would be difficult for your association.

I would like to hear your comments on why it's important for your businesses, the people you represent, to protect that process around the Canada Labour Code.

Mr. Derrick Hynes: That's a great question. That's really one of our fundamental points throughout this process when Bill C-525 was brought forward. We've been consistently making the same argument and that is that under the Canada Labour Code, for our employers in particular, we do have a rich and successful history of the tripartite model for doing business, whereby government, management, and labour talk about issues. Nobody is delusional, thinking that we're always going to get along, but you quickly find areas of principle where you do agree, and then you sort out the ones on which you don't agree.

I think both employers and unions recognize that at the end of the day government is going to have to make some decisions when it makes legislative regulatory policy changes, but when we do it within the context of that tripartite model, it's proven to have worked. There are lots of examples of it, and even today we have various committees that meet various stakeholder groups where those three parties are around the table. It generally results in better solutions.

With respect to private members' bills, and I've heard this point several times, we don't think there's anything undemocratic about them. We just think that when it comes to the Canada Labour Code we have a process that does seem to work. It's worked for a number of years. It leads to better solutions where, at the very front end, we have discussions about key issues. They're not one-off issues, but we look at them in the totality of the entire code and what the implications might be for employers, government, and unions. Our experience has been that this leads to better outcomes.

● (1615)

Ms. Sheri Benson: I'm certainly not saying there isn't room for change or improvement, but I think we have a process in place with the Canada Labour Code that works, and I think we should stick with that. I agree with you, we're not saying a private member's bill would be undemocratic, but why not use a system that works that includes consultation with all the key partners. I think a collaborative approach to labour-management relations is better for everyone. It's better for business and it's better for employees and ultimately it's better for communities.

Thank you.

The Chair: Thank you.

We'll move over to MP Ruimy, please.

Mr. Dan Ruimy (Pitt Meadows—Maple Ridge, Lib.): Thank you very much.

Thank you very much for coming.

Mr. Kelly, as a small businessperson myself, I sometimes find the challenges you talk about...it's a challenge. In my position as an MP I now have to look at both sides of the coin and doing so has enlightened me a little.

Under your CFIB mandate, your organization's top three priorities are fighting for tax fairness, reasonable labour laws, and reduction of regulatory paper burden. Are you doing well in those areas?

Mr. Daniel Kelly: Yes, it depends on the day.

Mr. Dan Ruimy: Your organization has been a strong advocate for cutting red tape. You have an annual cutting red tape week, I believe, and as part of that week, you have what's called a paperweight award.

Correct?

Mr. Daniel Kelly: Indeed.

Mr. Dan Ruimy: Something like this.... This is typically what you're asking unions to fill out on a yearly basis. That doesn't seem fair. That goes against your reduction of paperwork burden.

Mr. Daniel Kelly: Sure.

Mr. Dan Ruimy: I have a hard time trying to understand that. To me, that doesn't seem fair.

The proposed requirements would advocate for unions to face tax unfairness compared to their association counterparts, such as professional associations, charities, and think tanks, which don't have to do that, and would result in labour laws that are not deemed reasonable or constitutional providing further barriers for workers, and again, more paperwork. I don't know how we come to terms with that.

If the Government of Canada imposed a new reporting requirement that requires you to fill out a report that is hundreds of pages in length, full of detailed information, would that qualify for that award? It would, wouldn't it?

Mr. Daniel Kelly: Certainly.

Mr. Dan Ruimy: What if, by the government's official estimates, that report would create a burden of about 536 hours a year at a cost of about $17,000? I guess that would still qualify. Would it qualify for tax fairness? Because when it comes down to it, as small businesses, we all want to make a profit. I can't imagine my paying $17,000 to fill out documentation.

This, by the way, is coming from the U.S. government, when they calculated the impact their reporting regulations would have on unions.

I see you're nodding your head so I'm glad we agree. Given that Bill C-377 is based on these regulations, I have no reason to believe the estimate would be any different for Canadian organizations under Bill C-377.

Again, would this fit your definition of red tape?

Mr. Daniel Kelly: Sure. There's absolutely no.... Let me say this very clearly. I did say this in my presentation too. There's no question that this bill creates red tape. It creates costs. It requires a giant leap forward in accountability measures, in detailed reporting requirements for unions.

Let me quickly clarify our views on regulation and red tape. We have never come to government to suggest that there should be no red tape and no regulation. We are opposed to red tape, I suppose, but regulation is an appropriate measure for governments to take. Our only request is that the balance of the regulation be fair, that it be in keeping with the need for the regulatory intervention in the first place.

As I said earlier, our first choice with respect to this legislation would be the opportunity for workers in a unionized environment to choose whether to pay dues or not, as exists in every other country in the world save a couple, and only a few states now in the U.S. That would eliminate the need for any measure like the measure that was taken in Bill C-377, so our hope was that these additional measures would be balancing the unprecedented powers that unions have to force the unwilling to pay dues. That is the reason we were in support of this.

I recognize and fully believe that a large number of unionized employees are happy to pay union dues, but for those who aren't, we believe that either they should have the ability to opt out or at the very least additional disclosure should be given to them to allow that to happen. I don't deny any of those things you said. We continue to be huge champions for red tape and regulatory reduction, balanced of course with government's need to regulate in important areas of public policy, but I can square that circle pretty easily.

● (1620)

Mr. Dan Ruimy: I'm glad you can, because I can't, and that's a problem for me. We're not balancing with other organizations. Professional associations don't have to do this type of reporting. Charities don't have to do this type of reporting. Think tanks don't have to do this type of reporting. It's not fair. Your mandate is all about being fair, and this is not fair.

That's where I start my challenge. As it is right now, it's just not going to—

Mr. Daniel Kelly: On the fairness side, I would say that with all of those groups you mentioned, though, if somebody is uncomfortable or is unsure as to how they're spending the dollars that are contributed to them, they have the ability to withhold those dollars. In unions they don't.

The Chair: Thank you, Mr. Kelly.

We will now go to Monsieur Robillard.

[*Translation*]

Mr. Yves Robillard (Marc-Aurèle-Fortin, Lib.): Good afternoon to all of you. Thank you for joining us today.

My special thanks go to our interpretation service; we never thank them enough.

My question goes to you, Mr. Fanelli. Can you tell us whether your organization supports the invasive declarations that Bill C-377 gives rise to?

[*English*]

Mr. Tony Fanelli: When you say “invasive declarations”, be specific. What do you mean, the reporting requirements?

The Chair: Sorry, can you repeat that? I don't believe Monsieur Robillard had the translation on.

Mr. Tony Fanelli: He asked me a question about invasive requirements. What are we referring to, just the reporting requirements?

Mr. Dan Ruimy: I'll just translate for Mr. Robillard.

Coming back to Bill C-377, in your opinion, how invasive do you find the reporting that we're talking about?

Mr. Tony Fanelli: Very invasive. It's digging into organizations or parts of organizations that are connected to unions, which also affect employers, which creates not only the reporting aspect but the costs associated with that.

So yes, I'm opposed to that. Absolutely.

Mr. Yves Robillard: Good.

[*Translation*]

What is your opinion about Bill C-377, as the representative of an employers' group and as the vice-president of one of the largest engineering and construction companies in Canada?

[*English*]

Mr. Tony Fanelli: My position, on behalf of the employers I represent, is that we are opposed to Bill C-377. We were opposed from the time it was first brought forward. Our position has not changed.

Mr. Yves Robillard: I'll share my time with Ms. Tassi.

● (1625)

Ms. Filomena Tassi (Hamilton West—Ancaster—Dundas, Lib.): Thank you, Mr. Chair.

Mr. Kelly, I've heard you say a number of times through this presentation that your concern is with respect to these mandatory dues. That's really where your concern lies.

If I'm following this right, you're supporting Bill C-525. You like that because in fact it makes it harder for unions to unionize. That's what I'm hearing you say. You're saying that you don't like the mandatory dues, so you support Bill C-525, because it makes it harder to unionize, so that members in the union do not have to pay the dues.

Mr. Daniel Kelly: Not at all. In our support of Bill C-525, we're certainly not suggesting that all people in the prospective bargaining unit be allowed to have a vote as to whether or not they wish to be union. Now, certainly we would ideally wish that this becomes voluntary for everybody there, but at the very least, even in the current construct in Canada, as happens in the majority of provinces, we believe there is no better democratic procedure than to have a secret ballot vote so that there can be no intimidation either way, from the employer to the employee or from the union to the employee, to sign a card.

We don't elect you by having a show of hands in your riding. We elect you through a secret ballot vote. We believe union certification is another important decision.

Ms. Filomena Tassi: My time is limited, so if I can just get to the point. That doesn't get to your concern, which has to do with the pain of the...and some sort of suggestion that you could have an opting out of union dues. I have no idea how that would function in any organization because you have a collective group who are trying to come together and work together, and to have some opting in and some opting out, who gets to vote, to me I think it's far-fetched to suggest that.

Mr. Daniel Kelly: Except that it does exist in every other country in the world.

Ms. Filomena Tassi: I think here it's evident that it goes against the organization of unions.

With respect to this question both to FECTO and CFIB, were both of you aware that at the same time the former labour minister, Minister Leitch, was supporting Bill C-525, she had academic research from her own department that concluded mandatory vote would decrease unionization but chose not to make it public. Independent researchers, including Sara Slinn, who's appearing in our next panel, concluded through their research that mandatory vote systems facilitate more worker coercion by employers than coercion by unions of workers by card check.

How do you reconcile that with your support of Bill CC-525?

Mr. Daniel Kelly: Unions will always suggest that a secret ballot vote will allow employers to intimidate employees against certification. I don't know how that is possible.

Having debated this very issue at provincial governments for decades, I don't disagree with the point that some of the unions make, and that is a vote really should take place quickly after there has been a certification attempt to ensure there isn't a long period where the employer can come back and say, “You know what? If you guys vote to unionize, I'm going to shut the place down.”

I believe there should be some ability for the employer to share information to the employees. There is very close scrutiny in all of these votes from labour boards across Canada, including at the federal level, but a secret ballot vote is a fairly basic democratic right. I have to tell you if we're uncomfortable about it for unions, I don't understand how then we're comfortable using it for electing important people like you.

Ms. Filomena Tassi: With all due respect, it's not so much that as it is the process that takes place, marching the employees by the office of the person who's running the company....

The Chair: Sorry, Filomena. That's your time.

We are running up to it. Do you have a very brief question? I can give you a couple of minutes.

Mr. Mark Warawa (Langley—Aldergrove, CPC): I think, Chair, I have four minutes, and Ms. Tassi took some of my time, but that's okay.

The Chair: No, look it's....

Mr. Mark Warawa: Can I have my four minutes?

The Chair: You can have three. Let's do three. We have to recess for the next one so we're either going to carve into this time or carve into the next time.

Mr. Mark Warawa: I'm okay with carving into this time.

The Chair: Okay, let's do that.

Mr. Mark Warawa: Thank you to the witnesses for coming here. I find it interesting that Mr. Ruimy would bring up an 82-page document with data. It's printed off in 82 pages. This is all electronically created. All these figures, the unions know these figures. It's not extra work to create these figures, but he holds up a document that is printed out in 82 pages.

Mr. Dan Ruimy: It's actually a lot more than 82 pages.

Mr. Mark Warawa: I don't see that it's red tape. It's interesting that the minister was presented this same prop, and then she was asked, so what are you proposing, Minister? Are you proposing this? In the United States we know that unions are not burdened with this as a requirement down there. Unions are still able to function, so we said, are you looking for something more reasonable then, or are you absolutely eliminating all transparency, all accountability, and that's what the plan is? It's not that. It's not something less that's reasonable. It's nothing—zero transparency, zero accountability. It's not a good example of where Canada is.

Mr. Hynes, you said you supported the transparency of Bill C-525, and that was the secret ballot. I think that for Mr. Kelly it's the same thing. You didn't support the process, but you supported the outcome.

Given the lack of transparency that's being proposed and the lack of secret ballot, which is a fundamental tenet of democracy, then what is the motive? If this is good what we have for our country, what is pushing the Liberal government to go in this direction? Do you have any input on what might be the motivation? Whose back is getting scratched here?

● (1630)

Mr. Daniel Kelly: Look, I often get shot political questions, and I have to say I am not a politician so I don't answer political questions.

The Chair: That's a good answer. Let's wrap up on that, if that's okay.

Mr. Wayne Long: Mr. Chair, I have a point of order.

To the member opposite, we do have disclosure. I just want to quote this for the record.

The Chair: Is this a point or order or debate?

Mr. Wayne Long: It's a point of order.

The Chair: It sounds like debate.

Mr. Bob Zimmer: They've already taken enough time, Chair.

Mr. Mark Warawa: They took my time.

The Chair: Yes. Let's break, guys. We have to set up for the next panel because we have several video conferences. I do apologize.

I just want to very briefly thank Mr. Hynes, Mr. Fanelli, and Mr. Kelly for joining us again today. Obviously we could have used more time, but thank you all for being here.

We will recess for a very brief technical set-up.

● _____ (Pause) _____

●

● (1635)

The Chair: All right. There's a point of order.

Mr. Mark Warawa: Chair, on a point of order, I'm wondering which clock we're using for record keeping.

The Chair: I have both a clock here as well as on the wall.

Mr. Mark Warawa: Which clock are you using?

The Chair: We have a time clock, actually, right here as well, so that's what we're using.

Mr. Mark Warawa: So you're saying you have multiple clocks. Which time are you using?

The Chair: This is the timer the clerk is using to write down the times.

Mr. Mark Warawa: For the time that the meeting begins and ends, or is that the time the speaker, the member of this committee, is being given?

The Chair: This is a stopwatch, yes, and we're wasting time right now, I think.

Mr. Mark Warawa: No, I think this is a point of order and it's very important.

The Chair: Okay. Please.

Mr. Mark Warawa: You can't use a stopwatch for when the meeting starts and when the meeting stops.

The Chair: We have a clock right there, which is in line with my phone as well.

Mr. Mark Warawa: Perfect, and I have a BlackBerry, similar to you, and I believe it's very similar to the clock that's on the wall. The fact is, that clock on the wall is—

The Chair: There's a bit of a glare, so I've been referring to my phone, if that's okay, because if you sit here, you can't really see it as it comes along the bottom.

Mr. Mark Warawa: Chair, just for future reference, I think what you're saying is that the time you're going to be using is your BlackBerry, and I thank you for that clarification.

The Chair: Okay.

Now that that's figured out, I would like to welcome our new guests, our new panellists. Via video conference from Berkeley, California, coming to this committee as an individual, is Andrew C. L. Sims.

Thank you for joining us, sir.

Mr. Andrew C.L. Sims (As an Individual): Well, I'm actually here. I may look like an American, but I'm actually Canadian.

Some hon. members: Oh, oh!

The Chair: Oh, I apologize. I'm reading this from the bottom up, apparently. Sorry.

In person, Mr. Sims, welcome.

Mr. Andrew C.L. Sims: Thank you.

The Chair: Via video conference from Berkeley, California, also coming to this committee as an individual, is John Logan, professor, labour and employment relations, San Francisco State University.

Welcome, sir. Can you hear me?

Dr. John Logan (Professor, Labour and Employment Relations, San Francisco State University, As an Individual): Thank you.

The Chair: Also by video conference, from West Vancouver, British Columbia, also coming to this committee as an individual, is Sara Slinn, associate professor, Osgoode Hall Law School, York University.

Welcome.

Dr. Sara Slinn (Associate Professor, Osgoode Hall Law School, York University, As an Individual): Thank you.

The Chair: We're going to start with Mr. Sims' presentation. Please keep it under 10 minutes. Thank you.

Mr. Andrew C.L. Sims: I think I can accommodate you in much less than 10 minutes, Mr. Chair.

Let me introduce myself in terms of why I'm here and the experience I'm prepared to expose to you, should you want to ask questions.

My career for 42 years has been in labour relations. In 1984 I left a legal practice to join the ranks of the neutrals and became, first, a vice-chair for a year and then then chair of the Alberta Labour Relations Board until 1995. I was there 10 years. I continued as a vice-chair of that board until 2015. I've also served as a vice-chair of the Canada board for three years and, probably of most significance to your deliberations, chaired the 1996 task force to review the Canada Labour Code that resulted in the report, “Seeking a Balance”, which I'm going to make some brief reference to.

That report resulted in fairly significant changes to the Canada Labour Code, enacted in 1998. Those provisions, other than essentially the provisions we are discussing today, have been the framework for Canadian federal labour relations ever since 1998, through to 2016.

I want to speak first about process. When my colleagues and I—my colleagues Rodrigue Blouin from Quebec and Paula Knopf from Toronto—were commissioned to do the task force, we consulted very early with the parties to federal labour relations and on our own experience. We had three board chairs, three experienced arbitrators.

Our view, and the view of virtually everybody we consulted with, was that this was a successful tripartite system. We encouraged the parties to meet together not only to put their briefs forward, but to discuss things at a series of round tables. In a room like this, we had a consensus process that met about 10 times.

Probably the proudest day of my professional career was sitting in a room like this with a federal minister. It had been initiated by Minister Robillard, but it was Minister Gagliano by the time we were done. There were two groups, the representatives of federal employers and the representatives of the Canadian labour movement. They both said to us, and more importantly, to the minister of the day, “We don't agree with everything that is in this report.”

One side disagreed with a couple of things, and the other side disagreed with a couple of things—significantly, one of which was the card system—but both said very clearly and ultimately enthusiastically that it was a package deal, something they could both live with, and a framework that they could buy into and use to administer their labour relations. I believe the bill that came out of that was a successful revision to the Canada code. I think it has worked.

We said in our preamble, if you can pardon me for reading just a bit:

> We want legislation that is sound, enactable and lasting. We see the too frequent swinging of the political pendulum as being counter productive to sound labour relations. We looked for reforms that would allow labour and management to adjust and thrive in the increasingly global workplace.

We said further on, at page 40, in describing the criteria for reform, that:

> stability is desirable and pendulum-like changes to the Code do not serve the best interests of the parties or the public;
>
> consensus between the parties is the best basis for advocating legislative change;
>
> recommendations should be enactable, long-lasting and premised upon the overriding concept of voluntarism.

● (1640)

I won't go on and read more, but we went on at some length, first, about what we thought was the reason we were successful in getting consensus, and second, the importance that consensus plays in a labour relations system. I have not changed my views on that.

I have now been involved in administering labour boards, arbitration, and mediation in the federal and provincial industries. I've done a number of legislative reviews. I still believe firmly, even passionately, that political interventions that are seen as deliberately tipping the pendulum are corrosive of labour relations. They prompt the other side to go away from the bargaining table and common interests, and to pursue political solutions to gain an advantage. That is disruptive of our labour relations system, which ultimately requires both sides to face economic realities head-on and not use legislative advantages to try to defeat the other.

It's a fairly strong expression of views, but it is not simply my personal experience. It is founded on the last 30-year—and I think the most significant 30 years—review of the Canada code, and the people whose laws will be affected.

In my view, the two bills that are repealed by Bill C-4 failed to meet that criteria. They both had the air of one side seeking political intervention for more ideological, economic, or relationship reasons, and they have corroded the view that legislative reform at the federal sector is based on the tripartite model.

I have some specific comments, but I'm not going to go through them. I think I'm going to leave them for questions.

I will say one thing, and I think this is very important given the discussion I heard earlier. I heard several comments about every other country in the world. With our American partners, although their system is unique in many ways—unique is perhaps a euphemism—some of their system trumps ours.

Voices: Oh, oh!

Mr. Andrew C.L. Sims: That's a bad joke, isn't it?

The uniqueness of our system compared with the European system is this. You can have two unions in the European workplace, and people can choose which union or no union. You are each elected on a first-past-the-post basis within a constituency. We have a labour relations system based on the same approach. The union represents everybody once elected, and represents nobody if not elected. That is different from the European system. To compare the two without recognizing that difference, I think distorts the debate.

Those are my introductory comments, Mr. Chair.

Thank you.

● (1645)

The Chair: Thank you, Mr. Sims. I especially thank you for making sure we had a Donald Trump reference in the public record. I appreciate that.

On our way down to the States actually, we welcome Mr. John Logan, professor, labour and employment relations, at the San Francisco State University. Welcome.

If you wouldn't mind...your opening remarks, sir.

Dr. John Logan: Thank you.

I'll also keep my remarks brief and obviously my remarks are aimed at the U.S. experience with union financial reporting and with mandatory elections.

To a large extent, the Canadian bills we're discussing were based on the U.S. experience. It's certainly my experience that both the union financial reporting that was introduced during the Bush II administration, which Bill C-377 was based upon, and the experience of mandatory elections in the United States have really been a failure and researchers have demonstrated repeatedly that this has not been good public policy in the United States.

I published a number of articles on union financial reporting in the United States, most recently an article last year comparing the approaches of the Obama and Bush II administrations.

As I've said, the law governing union financial reporting in the United States was past in the late 1950s, but what we got in the early 2000s under the Bush administration was a significant departure from past practice, whereby they imposed far more detailed, far more complex, far more onerous reporting burdens on unions in the name of promoting greater accountability and transparency. They clearly have failed to achieve this.

As I've said before, it was those rules that Bill C-377 was largely based upon.

The Obama administration has reversed the majority of those rules and has adopted voluntary compliance programs with unions whereby it works co-operatively with unions at the national level to uncover cases of fraud and embezzlement. In fact, it has a much better record than the previous Bush administration in this regard. However, if the goal of the Bush financial reporting role was to impose a much more onerous administrative burden on unions, they certainly achieved that much.

Research done by two senior scholars at Cornell University and Penn State University in the United States—and I can talk in more detail about that research—demonstrated that unions were having to divert a great deal of personnel and of financial resources, and adopting new accounting methods, in order to comply with these new rules. It was, in fact, a very onerous burden that was placed upon unions, and in fact, a very costly burden that was placed upon the federal government, but one that had no apparent benefit for ordinary union members. In fact, I would say it was quite the opposite. I would say that ordinary union members were hurt significantly, because, ultimately, they were the ones who had to pay the cost of complying with these new complex reporting regulations. Union officials, whose time would previously have been taken up negotiating contracts, providing services, and doing other things that union members want them to do, were no longer able to do that. They were instead having to make sure that the unions were in compliance with the new reporting rules.

I think it was clear that the only people who really benefited from these new rules were certain organizations who were hostile to unionization and to collective bargaining. In fact, in the article I mentioned, the comparison of financial reporting under the Obama and Bush administrations, I cite several examples of organizations that are hostile to unions that make clear that they benefited tremendously from these new complex regulations, but ordinary union members did not benefit.

● (1650)

As I said, overall I think it is very clear that the reporting regulations that Bill C-377 was based upon were a failure in the United States. They did not bring about greater transparency or accountability. They did not uncover more cases of corruption or embezzlement. However, they did impose a significant administrative burden on unions, and they did prevent unions from providing better services to ordinary union members.

Second, and just briefly, on the mandatory elections.... The United States, of course, has several decades' experience with mandatory certification elections, and it has not been a positive experience. The United States is widely recognized among advanced anglophone countries to have the largest representation gap, i.e., the gap between the percentage of employees who say they would like to have union representation and the percentage of employees who actually have it and who are able to get union representation under the system of mandatory elections.

The person who perhaps has studied this the most is Harvard economist Richard Freeman. I will quote briefly from a study that Freeman did a few years ago. He says, “The gap between what workers want and obtain in representation is greater in the United States than in any other advanced English-speaking country.”

According to Freeman, about one half of non-union workers in the United States desire union representation but don't have it, a figure that is significantly larger than the 25% to 35% gap we see in Canada and in other advanced anglophone countries. Mandatory elections in the United States have not delivered union representation to those workers who want it. In fact, the record in the United States is far worse than it is in Canada or in other advanced anglophone countries.

The other consequence of mandatory elections is that the United States has an appalling record when it comes to unfair management practices during certification campaigns. The organization that has studied this most thoroughly is the Center for Economic and Policy Research, based in Washington, D.C. One of their recent studies estimates that workers were illegally fired in approximately 30% of union certification elections in 2007, and that 96% of U.S. employers engaged in anti-union campaigns of varying levels of aggressiveness and illegality.

Again, these are significantly higher levels than we find in Canada. Anti-union campaigns are not unusual in Canada, but more American employers engage in anti-union campaigns. More American employers engage in illegal actions during anti-union campaigns. In part, this may simply reflect the fact that Canada is a more civilized country, and I am perfectly willing to concede that this is in fact part of the explanation. However, there is also the issue that Canadian employers, because of the mixed system of card-check certification and elections, have far fewer opportunities to engage in illegal practices than do their American counterparts.

● (1655)

I'll finish by quoting from the Centre for Economic and Policy Research study from 2012 I cited earlier, which concludes, “Compared to Canada, many workers in the United States are not able to exercise their right to freely join and form unions and participate in collective bargaining, in large part due to employer opposition, which current labor policy fails to adequately address.”

In conclusion I would say that far from Canada learning from the U.S. experience when it comes to the issues of union financial reporting and union certification, perhaps it's the United States that has much to learn from Canada when it comes to these two critically important public policy issues.

Thank you.

The Chair: Thank you, professor.

Now on to Sara Slinn, associate professor, Osgoode Hall Law School, at York University coming to us from West Vancouver, British Columbia, welcome.

Dr. Sara Slinn: Thanks very much.

I'll focus my comments on the representation procedures, reflecting my research experience in this area, and will address two aspects of these procedures: the nature of votes, and the academic research on the effect of choice of procedure on certifications.

In terms of the nature of representation votes, first of all, the confidential nature of votes shouldn't be overstated when assessing the reliability of mandatory vote representation procedures. Both employers and the union know which employees voted and which did not, in every vote, and know how many ballots were cast for and against unionization. This encourages employers and unions to draw conclusions about individual employee's choices and likely discourages some employees from voting, particularly in smaller units or where fewer ballots are cast.

Secondly, there is a faulty political election analogy at work here. Mandatory vote supporters commonly rely on a political election analogy founded on the view that certification votes are analogous to political campaigns and elections. The attraction of this argument is understandable, appealing as it does to ideas of free speech and informed choice and workplace democracy, but it's a false analogy.

The nature of union representation is not analogous to government power or political representation, and as a result, the nature of decision-making in a union vote is not analogous to that in a political election. First, the nature of the decision is different. Certification doesn't transform the employment relationship. It simply introduces the union as the employee's agent for the limited purpose of bargaining and administering any collective agreement that the union may be able to negotiate. The employer's overriding economic authority over employees continues in any event.

Secondly, there is no non-representation outcome possible in the political context. In political elections citizens vote between two or more possible representatives. There is no option to be unrepresented, so as Becker, for example, has pointed out, if union representation elections were to be analogous to political elections, then it would be a vote among different collective employer representatives with no option for non-representation. That's simply not the system that we have anywhere in Canada.

Finally, in terms of cards being a reliable measure of employee support, it's often contended that votes more accurately indicate employees' desire for union representation than cards, suggesting that card-based certification fosters union misconduct to compel employees to sign cards. Although this is possible, there is no evidence, either in academic studies or in the case law from jurisdictions that use this procedure, that it is a significant or a widespread problem. Anecdote isn't evidence, and certainly it shouldn't be a compelling basis for legislative change in the face of a lot of academic research finding that mandatory vote systems have negative effects on labour relations and that employer interference in certification is indeed a significant and widespread problem.

In terms of the academic research on the effect of the choice of procedure—vote versus card-based certification—you're likely already familiar with a lot of this so I'll be relatively brief and leave it largely to your questions if you want to go into more detail on these particular topics.

First of all, studies have consistently concluded that mandatory vote procedures in Canadian jurisdictions are associated with statistically significant reductions in certification application activity, including certification success rates. This is in the order of about 20 percentage points. Reduced organizing activity—that's applications as well as certifications—are found to be concentrated in typically more difficult to organize units where we're talking about weaker and more vulnerable groups of employees. The increased opportunity for delay and for greater opportunity for employer unfair labour practices are identified in the research as contributing to these effects.

● (1700)

Just on some earlier comments querying how it could be that employers could engage in unfair labour practices or anti-union activity in the vote procedure, it's clear how this can happen.

In every case, in a vote-based procedure, the employer is notified by the labour board that a certification application has been made. It then has the period between that notification and the date of the vote. In most jurisdictions in Canada, in all but two, there is a deadline for that vote. It's between five and 10 working days. Under the Canada Labour Code, there is no deadline for that vote.

This provides ample time for employers to engage in anti-union campaigns. Anecdotally I've heard of five-day plans where it's advertised what the employer must do on each of the days, for example in the five-day period in Ontario between the application and the vote, to defeat the certification. There's no evidence there isn't sufficient time for employers to respond between the application, the notification, and the vote.

Secondly, there's quite a bit of research on delay in the vote process. Representation votes, by requiring a vote in addition to submitting evidence, necessarily result in a longer certification procedure. It has been found that it significantly reduces the likelihood of certification where there's either no time limit—as is currently the case under the Canada Labour Code and other federal legislation—or the time limit's not well enforced. This is in the order of 10% to 32%.

These studies concluded that a combination of enforced statutory time limits and expedited hearings for unfair labour practices was necessary to satisfactorily offset these negative effects. Neither of these are currently available.

Delay should be a real concern under the current provisions, and it is something that Bill C-4 would in part address.

In terms of employer interference, the vote-based procedure gives employers a substantial opportunity to seek to defeat the organizing attempt. There are numerous studies showing this is not only widespread, but effective. A large percentage of managers surveyed in some of these studies admits to engaging in what they believe to be illegal unfair labour practices to avoid union representation.

Survey evidence by Lipset and Meltz has also found in Canada that non-union employees expect employer retaliation and expect anti-union conduct by employers. Research by Mark Thompson at UBC has found that Canadian employers are no less anti-union in their attitudes toward unions than U.S. managers. That is something also to keep in mind.

In terms of remedying employer interference, the dilemma with the mandatory vote procedure is that, on the one hand, quick votes are seen as necessary to protect employees from inappropriate employer interference, and on the other hand, holding a vote quickly might not allow labour boards an opportunity to effectively remedy employer unfair labour practices. The vote can be held before the unfair labour practice can be heard and a remedy awarded.

Employees require greater protection from employer interference under a vote system. These include access to expedited unfair labour practice procedures and more substantial interim remedies, but such necessary protections were not provided by Bill C-525.

I'll make a comment regarding the Bill C-377 changes. Disclosure is already required for unions for all bargaining unit employees. I'd also like to echo Mr. Sims' comments that in Europe there is a very different approach to labour relations. The difference in the approach to disclosure and to union finances is embedded in a very different labour relations system. The Canadian and U.S. system is, in the broader international perspective, an extremely unique labour relations system, and it's inappropriate to consider transplanting one specific element of an interwoven very different system.

● (1705)

In closing, the Bill C-4 proposed amendments reversing the Bill C-525 and Bill C-377 changes, particularly to representation procedures, are a change that better protects employees' decision-making about collective representation.

Thank you.

The Chair: Thank you very much, Professor Slinn.

Our first question is from Mr. Barlow. Welcome, by the way.

● (1710)

Mr. John Barlow (Foothills, CPC): Thank you very much. It's good to be here, Chair, and good to meet all of you as well. I haven't had a chance to say hi to everyone, but thanks for having me today.

Thank you very much to our witnesses for spending some time with us today.

Andrew, I want to ask you some questions first. I kind of want the Canadian input.

We've talked a lot today about employers and unions, but we haven't talked a lot about union or potential union members. I think what this really should be about is what is best for union members.

From what I've heard from residents of my constituency, whether they're in carpentry or mining, or pipefitters in the oil and gas sector, they liked what was in Bill C-525 and Bill C-377. It could certainly be different in other communities. We did some pretty substantial polling, and we saw that well over 80% of union members supported the changes that were in these two bills.

I'm wondering if anything has been done more recently. I think our poll was 2014. How do we come up with saying we don't want these things, when the word we're getting from union members is that this is something they do want?

Mr. Andrew C.L. Sims: Polling like that is a bit like comments on Twitter. It's covered in 140 characters. It's the way you ask the question. Most union members, in my experience, and I've dealt with them for many years.... Sure, they want to know what the union is spending. Where's the forum to get that? It's from their union.

Now, that's entirely different than saying that they want their union not only to have to file these huge forms but to answer every question that comes from every person, whether a union member, or a busybody who is fussing around on the Internet trying to figure out why union president X paid $3,672 for an arbitration. It's a huge burden. I talk to these people daily, and not just the business agents. I talk to ordinary union members, and I don't hear them saying they want that sort of thing.

I'm sorry if that disagrees with your surveys, but it's not my experience.

Mr. John Barlow: No, that's why we're here and we're asking these questions. We want to hear from you.

On the secret ballot, I've certainly had opinions on the secret ballot and I've definitely heard different ones on that. What is your feeling on their thoughts on the secret ballot?

Mr. Andrew C.L. Sims: I have experience with both systems, because in 1988 the Alberta labour code switched from a card system to a secret ballot system. I was certainly of the view that to make that work it was essential to have very early votes, no more than 15 days from the application for certification. I carried that experience with me when we went through the federal review.

Remember, the federal jurisdiction, though it's not obvious from the income tax provision, is limited to what I call the trains and boats and planes jurisdiction. Your bargaining units are largely huge cross-national bargaining units, and the voting system is a very impractical, time-consuming process. Frankly, though I'm quite open to both systems, in the federal system, based on the consultations we had, it wasn't worth the candle. It wasn't giving you more democracy. It was giving you much more delay and much more cost, and it wasn't anything that the parties we consulted with —not only labour and management, but the public as well—saw as a major issue. Management was in favour, and we recognized that in the report.

I want to say one more thing about the vote system that hasn't been mentioned. We did make a very significant change to the Canada code. Certification is only one step. The major step with unions and management is the decision to take a strike or lockout, and in 1998 we introduced a mandatory strike vote. That vote has to happen before you have the major feature of industrial action. Nobody is talking about that, but that is the main check, that employees support the union in the crucial position they're taking. That was new and that has worked well.

Mr. John Barlow: Thank you. I'll go to our other two panellists, if you don't mind.

Sarah and John, thank you for taking the time to be here.

You both spoke about some of the studies you've done. John, I think you mentioned one with the centre of economic policy.

I have two quick questions. First, would it make a difference if we legislated a time limit on voting if we used a secret ballot?

Second, you talked about all of the influence and pressure from business owners to ensure that they stop unions from certifying, but I think we'd be naive if we didn't say that it also happens in the other direction. What kinds of studies have been out there in terms of influence, intimidation, and pressure from unions when it comes to the card-check system?

● (1715)

Dr. John Logan: I'm happy to address those questions.

I think to your first question, if you have a system of mandatory elections, it certainly makes a difference to have time limits on the duration of the campaign. Shorter campaigns are clearly preferable. They offer much greater protection for employee choice. They offer much less opportunity for coercion.

As I said, there are larger comparison studies. We have a number of these. I mentioned Richard Freeman's work at Harvard. A number of other people have conducted these kinds of studies.

The U.S. is an outlier when it comes to having the biggest representation gap. It's also the country that's had mandatory elections for the longest period of time. In that respect, it's clear that mandatory elections in the United States have not done a good job of protecting employee free choice, based on all of the empirical evidence we have.

With regard—

The Chair: Thank you, Mr. Logan.

Sorry, we do have to move on to the next question. Thank you.

I believe next up is Mr. Long.

Mr. Wayne Long: Thank you, Mr. Chair.

Thank for the great presentations this afternoon.

Professor Slinn, I just have a few questions. Earlier Mr. Zimmer stated that he was a member of a union. I guess it was a B.C. union. Are there not laws in Canada already in place that make it a requirement for unions to provide the information that Mr. Zimmer was talking about?

In fact, I think there are Canadian laws already about transparency. I'm just going to quote this. Federally and in eight of 10 provincial jurisdictions—B.C., Manitoba, Saskatchewan, Ontario, Quebec, New Brunswick, Nova Scotia, and Newfoundland—unions are required to provide financial information to their members, either by request or automatically, each year. In B.C., Ontario, New Brunswick, and Newfoundland, financial statements must be audited and provided to members on an annual basis.

Can you comment on that, please, Professor Slinn?

Dr. Sara Slinn: I didn't hear the earlier comment, but I can comment on the legislation requiring disclosure.

Yes, that is correct. There is widespread mandatory disclosure legislation in Canada already.

Just to expand on what you were saying, it's not just to provide that information to members of the union; it's also to members of the bargaining unit. Whether or not the individual happens to be a member of the union, if they're in the unit represented by the union they're entitled to that information.

Mr. Wayne Long: Okay.

There's another thing just for the record. I know that Mr. Barlow was talking about how every union member he talks to is pro Bills C-377 and C-525. You know, the Saint John firefighters, IBEW, the pipefitters, operating engineers across the country—I haven't found anybody who does support it.

I have another question for you, Professor Slinn. Many opponents of the mandatory vote argue that if a secret ballot is good enough to elect our provincial representatives, it should be good enough for workers in deciding whether to unionize or not. Can you comment on that?

Dr. Sara Slinn: It's not really a legitimate analogy to draw between a political election and a union certification election. The nature of the decision-making and the possible outcomes are different.

If we were going to say that a union election was analogous to a political election, then there would be no possible outcome where workers were not represented, and that's absolutely an outcome under certification votes.

Mr. Wayne Long: Professor Slinn, you suggest that the weakness of the mandatory ballot system rests in the period between when the employer is made aware of unionizing efforts and the casting of ballots.

Can you elaborate to the committee why this is the case and the significance of this period?

● (1720)

Dr. Sara Slinn: Again, between the period when the employer has in all cases been notified by the labour board that an application has been made and the time that the vote is held, in virtually all jurisdictions in Canada there is a time limit for that of between five and 10 working days.

The procedure Bill C-525 brought in has no time limit at all, so potentially it is a very long time period.

We also found in some of our research that this time limit was often not very well enforced by labour boards. Even though the statutory requirement was for five or 10 days, for example, it could often be significantly longer. We found that in that time period unfair labour practices did occur and they had a very strong effect on discouraging certification.

How this happens, is again, the employer has been notified that there's a certification vote and has a substantial period of time, a number of days, where they can communicate with employees. Unions do not have a reciprocal ability to contact and communicate with workers. For example, workplace organizing is illegal for unions to engage in; that is an illegal unfair labour practice. It provides a substantial period of time when the employer has unparalleled access to employees to have their views communicated.

Mr. Wayne Long: Just for the record, CLAC, an Alberta union by and large, I think, gave testimony in earlier hearings. They are very much opposed to Bill C-525 and said the card-check system was a system that worked.

Again, Professor Slinn, you did such a good job on your presentation I guess I'm focused on yours, but I'd like you to elaborate on why you believe the card-check system is an unreliable measure of employees' wishes.

The Chair: Respond very quickly. We have about 10 seconds.

Dr. Sara Slinn: The audio cut out and I couldn't hear the question.

The Chair: Sorry.

We're out of time for that question, so we're going to move on.

Ms. Benson, please.

Ms. Sheri Benson: Thank you, Chair.

I'm going to go back to my colleague's question that was put to Professor Logan to give you a chance to expand on it. His question related to some evidence—I haven't heard any evidence; I've heard most of the evidence to the contrary—of intimidation by unions of union members, that somehow that happens as often or as much as employers...and somehow this mandatory vote system would be a way to get around that.

The Chair: Excuse me, we have a point of order.

Mr. Bob Zimmer: I wanted to offer my witness to that because I witnessed it first-hand as a union member. I wanted to know if you would like that testimony, I would be glad to offer it.

Ms. Sheri Benson: I'm just asking the professor, he's giving evidence. I just want to know some of the research around.... I'm not saying it's—

The Chair: I don't think that's a point of order, Bob, but thanks. I appreciate it though.

We'll add a couple more seconds to your time. Go ahead.

Ms. Sheri Benson: Anyway, I hope that's clear, Professor Logan.

Dr. John Logan: I'll just speak to the U.S. experience. Sara is far better qualified than me to speak about the Canadian experience. We had this debate quite thoroughly during the time of the Employee Free Choice Act in the early years of the Obama administration. It was constantly raised by opponents of the Employee Free Choice Act that introducing card certification in the United States would expose employees to union intimidation. In response it was pointed out repeatedly by academics and researchers that there was no empirical evidence to demonstrate that this in fact was a widespread problem. Of course this doesn't mean that it's never, ever happened, and one case is arguably too many. However, compared with the number of cases of alleged employer intimidation of workers in their efforts to get workers to vote against unionization during certification elections, clearly that is a problem that's absolutely endemic in the U.S. system of union certification.

Employer intimidation happens on a very regular basis. I mean, we have very reliable data from the National Labor Relations Board about the number of charges filed each year. There's no question about it, this is not just what unions say. There are many academic studies documenting the level of employer unfair labour practices, which go up and down and were at very high levels in the 2000s and have declined slightly since then.

That is an enormous problem under the current system of mandatory elections in the United States. There are very few documented incidents of union intimidation of workers to sign certification cards. I think it's largely a red herring. However, there are laws against it. Under the laws as they exist, union intimidation is illegal, just as employer intimidation is illegal, so there is a process for dealing with this already. If there are, in fact, cases where the union has engaged in improper pressure and intimidation, there's a process for dealing with that under the law.

● (1725)

Ms. Sheri Benson: Thank you very much.

I will ask Dr. Slinn whether you could just briefly give a succinct comment about the Canadian experience and if it's reflective of what we've heard from the American experience around intimidation.

Dr. Sara Slinn: Yes it is, and I can add some numbers to this. A study that I did of a Canadian jurisdiction that involved both, first the card system and then the vote system, found that the overwhelming majority of both complaints and unfair labour practice findings were made against employers. So 78% of unfair labour practice complaints during organizing were filed against employers, and 21% against unions. When it came to findings of violation, 88% were against employers, and 11% against unions. Again it's not something that never happens, but the weight of the problem is clearly with employer unfair labour practices.

On the second aspect of your question about the effects and reductions in certification under the vote system, regarding the U.S. studies that Professor Logan referenced, that context was where there was no time limit on votes. For the studies done in Canada, all of those involved vote systems that had very short time limits of about five or 10 days. These consistently find a significant reduction in certification applications and outcomes in the order of a 20-percentage-point reduction in certification outcomes. Time limits, these clearly suggest, don't solve the problem that seems to be inherent with the vote system. A quick vote is not a solution.

The Chair: Thank you very much.

We'll go to Mr. Ruimy for a very brief question.

Mr. Dan Ruimy: Just one? Oh, man.

The Chair: Just one, and that has to be quick, please.

Mr. Dan Ruimy: I have a little bit of preamble.

The Chair: No, you don't.

Mr. Dan Ruimy: I want to thank Mr. Sims and Ms. Slinn for their comments. I very much appreciated the comments on the differences between Canada and other countries. They really are comparing apples to oranges, and if that were the case, then I guess this would be called Europe here or they would be called Canada.

Earlier it was suggested that by taking away Bill C-377, there would be zero accountability, absolutely zero. It was suggested by my colleague on the other side. Is that true, Mr. Sims?

● (1730)

Mr. Andrew C.L. Sims: I've been at or supervised a fair number of union meetings, and if you don't think they're pretty rambunctious, if you don't think unionized employees are heavily involved in criticizing, challenging their union, that's not my experience.

They're not wee, timorous beasties. Union elections are contested. Expenditures are contested. There are passive union members who don't participate, but there are very active ones. I don't think the appellation “unaccountability” is true.

The difference is this. There's a lot of accountability to the members of the bargaining unit. The real issue, as one of the construction reps earlier said, is the access to the information to the outside world to use for political purposes, to use for economic purposes, for sniping—all that goes on. This is just part of the battle.

The Chair: Thank you, Mr. Sims.

This wraps up the day, I'm afraid.

I'd like to thank Mr. Sims, Professor Logan, and Professor Slinn, for joining us today. I would like to sincerely thank all of the technicians, my colleagues here, and the interpreters behind us, who do a fantastic job.

Thank you, everybody. We'll see you on Wednesday.