

RESEARCH NOTE / NOTE DE RECHERCHE

Working in the Shadows for Transparency: Russ Hiebert, LabourWatch, Nanos Research, and the Making of Bill C-377

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WHEN CONSERVATIVE MP RUSS HIEBERT stood in the House of Commons in late 2011 to speak in support of his private member's bill, C-377, *An Act to amend the Income Tax Act*, he declared that 83 per cent of Canadians were in favour of unions publically disclosing detailed financial information. Other Conservative MPs, provincial conservative governments, and anti-union organizations (e.g., Merit Canada) were fond of citing the 83 per cent result in ads, Twitter feeds, and other pro-C-377 statements.¹

The development of C-377 highlights what political economist Andrew Jackson describes as the “new attack” on the Canadian labour movement and the role of public opinion polls in steering, and subsequently supporting, the development of legislation.² Drawing from documents obtained through access to information requests, key informant interviews, Hansard records, and personal correspondence, our paper focuses on the role of a 2011 LabourWatch-Nanos Research public opinion poll in promoting C-377. This

1. In Saskatchewan, the provincial government cited Bill C-377 and the LabourWatch-Nanos poll in its consultation paper on labour law reform and entertained the possibility of including a similar provision in what was to become the Saskatchewan Employment Act (SEA). Ultimately, the SEA would not contain any reforms that approached C-377's scope, but the legislation did expand union disclosure language, albeit far less intrusive than what the federal counterpart would have demanded.

2. Andrew Jackson, “Up against the wall: The political economy of the new attack on the Canadian labour movement,” *Just Labour* 20 (Summer 2013): 51–63; Claire Hoy, *Margin of Error: Pollsters and the Manipulation of Canadian Politics* (Toronto: Key Porter Press, 1989).

analysis highlights the “paradox of transparency” whereby anti-union lobby groups demand transparency for unions but shun the practice of public openness themselves.³ We begin by situating C-377 in the political economy of anti-unionism and as part of a string of legislative reforms that work to jeopardize the strength of unions and collective bargaining in Canada. The paper proceeds to describe the substantive elements of Bill C-377 and its legislative process. Next, we consider the historical development of US union financial disclosure legislation and, in particular, the role of anti-union lobbyists in this process. We then describe the lobbying efforts for C-377 and, in particular, the LabourWatch-Nanos poll that became central to public discourse about C-377 and a central means through which the legislation was, and continues to be, legitimized. This aspect of the saga sheds light on the limits of self-regulation in the polling and marketing industry and its abuse by anti-union groups. We conclude that the architects of C-377 operated “in the shadows” with limited transparency and accountability for their actions.⁴

The Political Economy of C-377

CONSERVATIVE MP RUSS HIEBERT introduced C-377 on 5 December 2011.⁵ The legislation would require trade unions to disclose a wide range of detailed financial and other information to the Canada Revenue Agency (CRA), which in turn would be made publically available and searchable on the CRA’s website. The main features of the bill require unions to provide balance sheets, income

3. A total of eight recorded, semi-structured interviews with Members of Parliament, union officials, and polling experts were conducted between May and July of 2014. In addition, two individuals provided comments on condition of anonymity. Key informants were identified and contacted because of their affiliation with the LabourWatch-Nanos poll, parliamentary and senate subcommittee hearings, political connections, advocacy, and contribution to the development of and opposition to Bill C-377. There were also six individuals who did not respond to our request for an interview or were unavailable for comment. The research interviews were approved by the University of Regina Research Ethics Board on 13 May 2014 (REB# 2014-078).

4. The Treasury Board has prohibited the release of written and electronic discussions surrounding Bill C-377, a bill that is supposed to promote transparency. Over 40 pages of information were blocked from being released under Section 69 of the Access to Information Act, following a request submitted by the authors. Because the act does not extend to include the constituency offices of individual MPs, details of Hiebert’s relationship with LabourWatch and Merit are unavailable through access to information requests.

5. Hiebert introduced Bill C-317, *An Act to amend the Income Tax Act*, C-377’s predecessor, on 3 October 2011. Unlike C-377, however, C-317 included a provision that would have revoked the tax exempt status of a labour organization, in accordance with Section 149(1)(k) of the Income Tax Act, should that organization fail to provide sufficient financial information. But private members’ bills are prohibited from including matters of taxation unless accompanied by government support. On these grounds, the bill was ultimately ruled out of order by the Speaker of the House of Commons. Hiebert revised the legislation and returned on 5 December 2011 with Bill C-377.

statements, and statements of all transactions over \$5,000 identifying the payer and payee and description of each such transaction. Separate statements for expenses related to each of the following activities are also mandated: labour relations, political lobbying, gifts, grants, administration, overhead, organizing, bargaining, conference, convention, education, training, and legal. The bill would also compel unions to disclose the salaries of union officers, directors, employees, and contractors as well the percentage of time individuals in these roles dedicate to political and lobbying activities. Unions, policy makers, privacy advocates, and business groups all recognized the implications of this legislation from the start.

Disclosure of union financial information in Canada is currently regulated by provincial and federal labour relations legislation along with union constitutions and bylaws. Section 110 of the Canada Labour Code, for instance, obliges trade unions and employers' organizations to provide members with a copy of financial statements upon request, free of charge. Similar provisions exist in a majority of labour relations laws across the country. And although the Supreme Court upheld the constitutionality of dues check-off and union political expenditures in its pivotal *Lavigne v. Ontario Public Service Employees Union (OPSEU)* decision of 1991, how labour organizations spend resources has remained a point of contention for conservative groups in Canada.⁶ We argue that C-377 is a part of this saga to undermine the political influence of unions by targeting how unions deploy resources.

The call for a Canadian policy for public disclosure of union financial information was first iterated in a 2006 Fraser Institute report, *Union Disclosure in Canada and the United States*. Based on an analysis of the US reporting model, the institute concluded that unions should be required to publicly disclose "representation and non-representation spending on a consolidated basis." Although the report did not provide a blueprint for such a policy, the authors contended that union transparency would enable "workers to make more informed decisions regarding their preference for collective representation."⁷ Transparency, the report maintained, leads to and is essential for accountability. Five years later, Conservative MP Russ Hiebert acted upon this call by Canada's leading conservative think tank through the development of C-377 but with the added caveat that his legislation was also about accountability to taxpayers.

When testifying before the Senate Committee on Banking, Finance, and Trade, Hiebert noted that dues deductibility costs the federal treasury an estimated \$500 million a year in lost revenue. "The fundamental premise behind Bill C-377," he insisted, "is that the public is providing a substantial

6. Supreme Court of Canada, *Lavigne v. Ontario Public Service Employees Union*, (Ottawa 1991) 2 SCR 211, <http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/774/index.do>.

7. Milagros Palacios, Jason Clemens, Keith Godin, and Niels Veldhuis, *Union disclosure in Canada and the United States* (Vancouver: The Fraser Institute, 2006), 23–24.

benefit and they should know how that benefit is being used.”⁸ According to Hiebert, C-377 is principally about financial accountability and in line with the Conservative government’s track record on the development of transparency legislation affecting public office-holders, Crown corporations, and “Native reserves.” Canada was an outlier, the MP and his allies maintained, among other countries like the UK, the US, Germany, and Australia, where some measure of public union disclosure standards were already in place. But ultimately, Hiebert couched his language in terms of fiscal responsibility, accountability, and public demand for union financial disclosure legislation. Yet, C-377 has emerged in the context of a constellation of anti-union measures at the federal and provincial levels, and it must be weighed against the changing face of union rights and influence in Canada.

“Anti-unionism” defined as a “conscious, deliberate decision to undermine and erode hypothetical, potential and actual workplace collective unionization and union organization” helps to explain the nuances of C-377 and other labour legislation enacted by the Harper government and private members’ bills since 2009.⁹ Some of these measures include: reactive and preventative back-to-work legislation; private members bills altering the Canada Labour Code, making it more difficult for workers to unionize yet easier to decertify; “essential service” declarations that restrict or outright prohibit the right of public and private sector workers to engage in job action; as well as a handful of legislative interventions into the collective bargaining process. These measures have come to define a reactionary new form of industrial relations. At Air Canada, Canada Post, Canadian Pacific Railway, and CN, federal interventions have worked to undermine the foundations of industrial pluralism – the bedrock of Canada’s labour relations regime – through these and other reforms.¹⁰ Such developments are anchored in the expansion of what Panitch and Swartz describe as “permanent exceptionalism,” a coercive regime of industrial relations that deploys *ad hoc* government policies aimed at containing or repressing “manifestations of class conflict as practiced within the institutionalized freedom of association,” while allowing the framework of trade union rights and collective bargaining to remain intact. C-377 leaves the architecture of union rights untouched by sidestepping established industrial relations legislation and with it the demarcation between federal and provincial jurisdictions. Yet, as we demonstrate, the legislation’s chief supporters,

8. Canada, *Hansard*, “Proceedings of the Standing Senate Committee on Banking, Trade and Commerce,” 22–23 May 2013, 34.

9. Tony Dundon and Gregor Gall, “Anti-unionism: Contextual and thematic issues,” in Tony Dundon and Gregor Fall, eds., *Global Anti-Unionism: Nature, Dynamics, Trajectories, and Outcomes* (New York: Palgrave Macmillan, 2013), 1–19.

10. Andrew Stevens and Doug Nesbitt, “An era of wildcats and sick-outs in Canada? The continued decline of industrial pluralism and the case of Air Canada,” *Labor Studies Journal* 39, (2014): 118–139.

the Canadian LabourWatch Association (LabourWatch) and the Merit Contractors Association (Merit), subtly deploy the language of anti-unionism and its functional underpinnings – social and political persuasion – in their effort to ensure support for C-377.¹¹

LabourWatch's interventions into shaping public opinion on unions, labour legislation, and C-377 have been evident since the organization was formed in 2000. And while it speaks of workers' rights and democratic workplaces as paramount to successful labour relations, LabourWatch's "member driven" Board of Directors is populated exclusively by representatives from the accommodation, food services, and retail industries, along with the Canadian Federation of Independent Business (CFIB), and the Merit Contractors Association.¹² Some of these organizations have lobbied to restrict access to collective bargaining rights for workers in various jurisdictions across Canada.¹³ Employer-side law firms also lend to the organization's mission. Information about LabourWatch is scarce since it does not publicly disclose financial statements, nor does it identify major contributors, but various sources indicate that the organization runs on annual revenues estimated between \$50,000 and \$100,000.¹⁴ LabourWatch's current president and leading advocate for C-377, John Mortimer, has held senior management positions with non-unionized companies like Future Shop and Wendy's Restaurants and has advised firms on how to remain "union-free" through decertification and opposing organizing campaigns. It is through this anti-union advocacy group that business associations attempt to shape labour policy and attitudes about organized labour in Canada. Hiebert, meanwhile, has described LabourWatch, which espouses on its website that it "it does not engage in any government lobbying to effect legislative change," as a "non-partisan" organization.¹⁵

Although not a government bill, nor a matter of formal government policy, C-377 has nonetheless received the influential endorsement of the Prime Minister's Office (PMO) despite being authored by a seemingly peripheral backbench MP. Still, there is no doubting C-377's role in serving the interests

11. Dundon and Gall, "Anti-unionism: Contextual and thematic issues."

12. LabourWatch, Board of directors, accessed 13 May 2014, <http://www.labourwatch.com/about/directors>.

13. Taubman and Mortimer, "Free choice, unions & public policy," 29 April–1 May, International Open Shop Conference (2010), accessed 2 February 2015, https://www.meritalberta.com/iosc6/iosc6_presentations/IOSC6_Free_Choice.pdf; CFIB, *Modernizing Saskatchewan's labour laws* (Canadian Federation of Independent Business, 2012).

14. Canadians for Responsible Advocacy, *In Focus: Restaurants Canada, Canadian Federation of Independent Business, Canadian LabourWatch Association, Accountable Advocacy Certification* (Ottawa: Canadians for Responsible Advocacy, 2014), http://responsibleadvocacy.org/wp-content/uploads/2014/01/CFRA-20140611-IF-June_In_Focus.pdf.

15. Alex Browne, "Hiebert touts poll support," *Peace Arch News*, 4 November 2013, <http://www.peacearchnews.com/news/230585611.html>. See also LabourWatch, "Principles," <http://www.labourwatch.com/about/principles>.

of sections of society that seek to undermine the political strength and influence of organized labour. As Merit President Terrance Oakey wrote in the wake of Tim Hudak's defeat in the 2014 Ontario provincial election, "unionized Canadians should enjoy the same freedom as their counterparts in other countries to opt out of the portion of their dues used for purposes other than collective bargaining."¹⁶ His op-ed was principally taking aim at the dues-funded resources Ontario's unions pumped into the election campaign in an effort to prevent the formation of an anti-labour Progressive Conservative government. C-377, for Oakey, is the window through which the public can identify the portion of union revenues used for political purposes – a potential setup for subsequent legislation allowing for opting out of union dues altogether.¹⁷ LabourWatch constructed a similar claim in its submission to the House of Commons Standing Committee on Finance regarding C-377 by pointing to union fundraisers in support of G20 arrestees, film festivals, anti-poverty conferences, and international solidarity efforts as illegitimate expenses unrelated to the core functions of labour organizations. C-377 was an imminent solution to these spending issues, from LabourWatch's standpoint:

In time, transparency will enable taxpayers to effectively evaluate the billions of dollars collected and spent annually by unions, and whether hundreds of millions in foregone annual tax revenues are appropriate. Union leaders will be far more accountable. Such daylight will end certain financial transactions.¹⁸

But Hiebert's bill was not received with universal acclaim among traditional Conservative allies. Merit was the evident frontrunner in terms of lobbying efforts supportive of C-377, demonstrated by the influence the organization wielded with the PMO and other power brokers in Conservative circles. And it was through LabourWatch that the CFIB, food service, and retail industry associations were able to represent their collective interests regarding labour policy development and anti-unionism. However, in some instances, as we show, C-377 worked counter to the interests of sections within the business

16. Terrance Oakey, "Canadian workers – and voters – are at the mercy of the union bosses' partisan whims," *National Post*, 17 June 2014, <http://news.nationalpost.com/2014/06/17/terrance-oakey-canadian-workers-and-voters-are-at-the-mercy-of-the-union-bosses-partisan-whims/>.

17. In 2014, Alberta's branch of Merit Contractors launched an online campaign, FairnessForWorkers.ca as a labour relations informational hub oriented around a "belief in the principles of fairness, openness, transparency, justice, accountability and the freedom to choose." One of the questions in a survey designed by the Merit-organized campaign asked participants if "employees should be allowed to voluntarily opt-in or opt-out of financially contributing to political and social causes that are unrelated to their work?" This question was situated in the context of a survey focused on union financial transparency and public disclosure (FairnessForWorkers.ca, 2014, <http://www.fairnessforworkers.ca/about-us/>).

18. LabourWatch, "Submission to the House of Commons Standing Committee on Finance Regarding Bill C-377 – Income Tax Act Amendments (requirements for labour organizations)," 5 November 2012, 16.

community – particularly the financial industry – which saw the bill as a threat to their client’s privacy and differential fee structures. These divergent interests expose a lack of consensus among economic elites and their allies in government. It is with some irony that such developments, and the introduction of C-377 itself, helped to forge an unlikely alliance of labour – and even within the often-divided house of labour – lawmakers, legal practitioners and scholars, some Conservative politicians, senior civil servants, privacy experts, provincial governments, and segments of the business community, all of whom opposed some or all aspects of the bill. Indeed, Hiebert’s private member’s legislation appears to have done more to catalyze the formation of bipartisan antagonism than to have served as a safe rallying point for conservatives.

In the face of this criticism, Hiebert maintained his commitment to C-377 by citing a 2011 LabourWatch-Nanos Research poll result that became a sanctuary for the MP amid the growing criticism from opponents. Indeed, the poll served as the principal source of legitimacy for the legislation and as an objective representation of popular interest.¹⁹ Most importantly, the LabourWatch-Nanos poll functioned as a mechanism through which particular interlocking anti-union organizations and business lobby associations wielded political influence and worked to shape public policy. C-377 is a manifestation of such ideological aims, and it is in this political economic context that we understand the emergence of the bill. But such a contest is not without historical precedent. The evidence shows that Hiebert’s initiative was premised on US legislation that had come to pass over decades in a more intense climate of anti-unionism.

Principles of Transparency and Accountability: The US Roadmap

HIEBERT WAS INITIALLY CIRCUMSPECT about the inspiration for his private member’s bill, but when facing off against senators who opposed C-377, he acknowledged that his bill had been “mirrored on American legislation.”²⁰ Hiebert announced at the same hearing that his bill “levels the playing field” between Canadian unions, since those labour organizations with international

19. This is a form of scientific validity, we add, that ironically comes just as the Conservatives continue to decouple science from environmental policy making, bringing into question the types of data and objective sources that fuel the development of federal legislation and political decision making. Chris Turner, *The War on Science: Muzzled Scientists and Wilful Blindness* (Vancouver: Greystone Books, 2013).

20. Canada, *Hansard*, “Proceedings of the Standing Senate Committee on Banking, Trade and Commerce,” 22 May 2013, 34. In a 2012 interview with Hiebert, a reporter noted: “Hiebert finds it ironic that one can find more information on spending by Canadian labour organizations that are affiliated with U.S. unions on the U.S. Labour Department’s website than can be had from any source in Canada.” Said Hiebert, “That exact issue is what got me interested in this a couple of years ago.” See Alex Browne, “Hiebert raps ‘illegal’ union donations,” *Peach Arch News*, 6 November 2012, <http://www.peacearchnews.com/news/177499471.html>.

affiliations in the United States have had to submit detailed financial information about their American affiliates to the US Department of Labor since 1959. Of course, the development of US disclosure rules has unfolded gradually since the mid-1940s.²¹ LabourWatch President John Mortimer, a critical proponent of C-377, similarly invoked US legislation when promoting Hiebert's bill to audience members at the 2012 Merit Canada International Open Shop conference in Ottawa, in a panel titled "Free Choice: Unions and Unions Dues."²² The genesis of the US LM-2 reporting form and the Office of Labor-Management Standards (OLMS), which oversees the disclosure process, illuminates the nuances of Hiebert's bill and the discourse surrounding "transparency" as a rallying point for anti-union organizations and conservative policy makers in Canada.

Beginning in 1947, provisions in the *Labor-Management Relations Act*, or *Taft-Hartley*, required labour organizations to file annual reports with the secretary of labor that showed total assets and liabilities of the union, along with a list of financial disbursements and the purposes for which they were made. *Taft-Hartley* also required unions to "furnish to all of the members of such labor organization copies of the financial report" filed with the government. Senator Robert Taft, who co-sponsored the act, explained that unions should be required to file "statements as corporations have had to file them."²³

Further reforms were instituted in 1959 with the passing of the *Labor-Management Reporting and Disclosure Act* (LMRDA), or the *Landrum-Griffin Act*. In addition to submitting detailed financial records to the secretary of labor, unions were obligated to provide members with this sensitive information should a request be made through LMRDA channels. To this end, the act also established the OLMS as a means of enforcing new disclosure protocols. Supporters of the *Landrum-Griffin Act* in Congress reasoned that it would work to ensure that unions conducted themselves in a manner that was both transparent and democratic by giving the secretary of labor, unions, and members, broader powers to inspect records and determine if any person or organization had violated the act.²⁴ And much like the debate surrounding *Taft-Hartley* a decade earlier, the partisan discussion that enveloped *Landrum-Griffin* reinforced the interest of extending corporate disclosure practices to organized labour. As with corporations, the theory holds, public disclosure would work to eliminate or discourage abuses by union officials. Ultimately, the detailed

21. John Lund, "Financial reporting and disclosure requirements for trade unions: A comparison of UK and U.S. public policy," *Industrial Relations Journal* 40 (2009): 122–139.

22. Kelly Lapointe, "What does a Conservative majority mean for Merit?" *Daily Commercial News and Construction Record*, 6 June 2012, <http://www.dailyccommercialnews.com/Associations/News/2012/6/What-does-a-Conservative-majority-mean-for-Merit-DCN050467W/>.

23. Lund, *Industrial Relations Journal*, 124.

24. Scott Lilly, *Beyond justice: Bush Administration Labor Department abuses labor union regulatory authority* (Washington: Center for American Progress, 2007).

reporting standards demanded by Republicans failed to materialize in public policy.

Throughout the presidency of Ronald Reagan, neo-conservatism strengthened and by the 1990s the reporting regime in the United States was increasingly antagonistic toward unions and the labour movement generally. House Republican Whip, Newt Gingrich, was particularly driven to politicize union reporting standards. In a letter written to Secretary of Labor Lynn Martin in 1992, Gingrich made clear the importance of crafting changes to existing regulations along ideological lines. Specifically, requiring the posting of workplace notices informing workers of their right to opt out of paying the portion of their union dues committed to non-workplace issues, in addition to instituting changes that broadened the information unions were required to disclose. These changes, according to Gingrich, would “weaken our opponents and encourage our allies.”²⁵ Grover Norquist, a Gingrich ally and advisor, meanwhile, was less cryptic with the intention behind revising financial reporting standards and other labour law reforms. “We’re going to crush labor as a political entity,” he said and ultimately “break unions.”²⁶

It was under the second Bush Administration that the anti-union momentum behind such regulatory reforms came to fruition. By the end of 2002, the Labor Department had revised the LM-2 reporting form and now required unions to include a breakdown of each expenditure over \$5,000 as well as a description of associated activities based on representation activity, political action, contribution or gift, overhead, and union administration. This specific requirement, and the most costly of the reporting standards, only applies to unions and other labour bodies with revenues in excess of \$250,000, unlike C-377, which would apply to every labour organization in Canada, no matter the size. For conservatives like Norquist and Gingrich, part of the intent was to burden unions with costly expenses and staff time resources that would necessarily be drawn away from advocacy, organizing, politics, and bargaining. Officially, the increasingly politicized OLMS announced that the proposed changes would provide union members with “more detailed information about the financial activities of their unions” and facilitate member engagement and union democracy.²⁷ Republican Party strategist Paul Weyrich, however, explained that the secretary of labor was convinced the new transparency rules would “change the dynamic within the large unions” and shock members when they found out how their dues were being spent.²⁸ And much like the rationale behind C-377 in Canada, the politically motivated reporting requirements following changes to LM-2 were being expressed to the public as

25. Cited in Scott Lilly, *Beyond justice*, 4.

26. Cited in Scott Lilly, *Beyond justice*, 4.

27. Cited in Lund, *Industrial Relations Journal*, 127.

28. Scott Lilly, *Beyond justice*, 11.

a means of increasing member involvement in their own unions. To this end, government policy was being developed and promoted by a number of influential lobby groups throughout the United States.

Leading up to the Bush-era 2002 reforms, a group aligned with the US Chamber of Commerce, namely the Center for Union Facts, was spending millions of dollars to launch an anti-union media campaign highlighting alleged corruption within organized labour, wetting the public's appetite for more rigorous disclosure guidelines.²⁹ When the expanded LM-2 forms came into effect, the public information became a veritable cornucopia for the Center and other union "watchdog" organizations like the National Right to Work Committee and the Alliance for Worker Freedom, founded by Norquist.³⁰ Still, the unprecedented and arguably unmanageable scope of publicly available information was not sufficient for the anti-union lobby. The National Right to Work Committee, which has developed a working relationship with Canada's LabourWatch, insists that the LM-2 changes have not gone far enough to deter "rampant union corruption."³¹ The evidence to substantiate such claims is lacking, even amid the goldmine of disclosure statements, as US researchers Lund and Roover demonstrate.³²

Over this 55 year period, union disclosure requirements in the US transformed from extending reporting standards demanded of publicly traded corporations to a policy architecture strategically crafted to shame and undermine labour organizations as a whole. All the while, the principles of democracy, accountability, and transparency were deployed to rationalize each phase of development. Unions, meanwhile, have in some cases witnessed the tripling of their reporting costs as additional accounting, auditing, legal help, bookkeeping, and clerical staff are now required to examine, compile, and report receipts and other paperwork.³³ Yet, despite these historical precedents, Hiebert's attempt at a smooth passage of C-377 did not materialize.

29. Esther Kaplan, "Liar, liar: The new propaganda war against unions," *New Labor Forum* 16 (2007): 105–113.

30. Kaplan, "Liar, liar."

31. John Lund and Benjamin J. Roovers, "Through the looking glass: Does the Labor Department's new form LM-2 really deliver greater transparency?" *Labor Studies Journal* 33 (2008): 309–329; Glenn M. Taubman and John Mortimer, "Free choice, unions & public policy: What are workers really thinking."

32. Lund and Roovers, "Through the looking glass."

33. Jane M. Von Bergen, "Unions adjust to stricter oversight," *Philadelphia Inquirer*, 11 December 2005; Dan Hoar, "Disclosure rules bury unions under piles of paperwork," *Hartford Courant*, 24 April 2005.

Bill C-377 Contested

WITH THE SUPPORT OF THE PMO, MP voting on C-377 suggests that it is really a government bill. Our conversations with an opposition MP and union officials illuminated the fact that the government had ordered a two-line whip, where the prime minister, his cabinet, parliamentary assistants, and committee chairs were all required to vote in favour of the legislation.³⁴ At third reading in the House of Commons, in December 2012, just five Conservative MPs voted against C-377, and not a single opposition MP offered support for Hiebert's legislation.³⁵ Still, there appears to have been high-ranking dissent within the Conservative caucus over C-377. Former Canadian Labour Congress (CLC) President Ken Georgetti noted, "When we were dealing with [then Minister of Labour] Lisa Raitt, she was quite blunt that she thought that 377 was very harsh. She didn't say what her position was in Cabinet but she thought it was pretty harsh. We know Flaherty thought it was, I think his words were 'garbage'."³⁶ "But," he concluded, "it had the support of [the PMO], that's what counted." However, the PMO's influence met resistance in the senate.

Led by Tory Senator Hugh Segal, some Conservative and Liberal senators provided damning critiques of C-377. Segal was particularly blunt in his assessment:

This bill before us, whatever may have been its laudable transparency goals, is really – through drafting sins of omission and commission – an expression of statutory contempt for the working men and women in our trade unions and for the trade unions themselves and their right under federal and provincial law to organize. It is divisive and unproductive.³⁷

In a rare show of bipartisanship, senators passed several amendments to remove or revise some of the most controversial aspects of the legislation. Twenty-two Conservatives abstained or voted with Liberals to amend C-377 in June 2013. However, these changes were not accepted by the House of Commons, which returned the bill in its un-amended form to the Senate in November 2013. In early 2014, it appeared that the contentious bill would

34. Robert Blakely, interview by Andrew Stevens, 8 July 2014; Ken Georgetti, interview by Andrew Stevens and Sean Tucker, 17 June 2014.

35. Openparliament.ca, "Bill C-377," accessed 13 May 2014, <http://openparliament.ca/bills/41-1/C-377/>.

36. Ken Georgetti, interview by Andrew Stevens and Sean Tucker, 17 June 2014. Speaking on condition of anonymity, other sources confirmed that both Lisa Raitt, then minister of labour, and the late Jim Flaherty, minister of finance, both opposed the legislation. An evidently flustered Raitt, the architect of back-to-work legislation at Air Canada and CPR between 2011 and 2012, nonetheless issued public support for Hiebert's bill when confronted by a scrum of reporters on 12 December 2012, just as after C-377 passed its third reading. Citing her "heavily unionized family," Raitt praised the bill for providing financial information to members (Straight Goods News, "Lisa Raitt, Bill C-377," 12 December 2012, <https://www.youtube.com/watch?v=UjYnDORggMs>).

37. Canada, *Hansard*, "Debates of the Senate," 17 June 2013, 148, 175.

be quietly buried in the Senate.³⁸ To the surprise of many, however, C-377 emerged as a priority for the government by September 2014. Kevin Sorensen, minister of state for finance, insisted that the bill was worth moving ahead: “Our government believes that Canadians and workers should have the right to know where their mandatory dues are being spent. That is something that all Canadians are asking for. That is why we continue to support Bill C-377.” Hiebert added that an “opportunity for some education to occur” had since taken place with dissident senators.³⁹ Subsequently, the critiques of Hiebert’s bill have grown sharper in the Senate. For example, a Liberal senator recently stated: “Honourable senators, I rise today to speak to Bill C-377, familiarly now known as ‘the anti-union bill.’”⁴⁰ At the time this paper was written, the bill was referred, at second reading, to the Standing Senate Committee on Legal and Constitutional Affairs.

Many union officials were surprised that C-377 had gained traction in the house. As Canada’s Building Trades Unions (CBTU) Canadian Operating Officer, Robert Blakely commented, “I think we were really surprised that the bill targeted only unions; employer organizations were left outside of it all.” In terms of the scope of Hiebert’s legislation, Blakely continued, “we were really surprised that someone was trying to do that through the guise of the *Income Tax Act*, given that unions are regulated under Section 92(13) of the Constitution.”⁴¹ He and others soon realized that their concerns were well-founded. Passage of C-377 would mark a sharp change in Canadian labour law not only in terms of the amount of financial information unions would be required to disclose but also to whom the information would be disclosed (i.e., the public instead of the affected union members).

A motley crew of C-377 opponents eventually emerged to raise concerns about the economic, privacy, and constitutional implications of the bill. This coalition included legal experts, the federal Privacy Commissioner, Certified General Accountants Association of Canada, the Canadian Bar Association, and even organizations in the financial services industry.⁴² President and

38. Tom Korski, “A bill is quietly buried,” *Blacklock’s*, 28 February 2014, <http://www.blacklocks.ca/a-bill-is-quietly-buried/>.

39. Russ Hiebert, Cable Public Affairs Channel (CPAC), interview, 23 September 2014, <https://www.youtube.com/watch?v=GXShI25YoAw>.

40. Canada, *Hansard*, “Debates of the Senate,” 25 November 2014, 149, 98.

41. Robert Blakely, interview by Andrew Stevens, 8 July 2014.

42. Canadian Bar Association, “Re: Bill C-377 – *Income Tax Act* amendments (requirements for labour organizations),” 17 September 2012; Bill Curry, “Union bill passes, but privacy commissioner says it still goes too far,” *Globe and Mail*, 12 December 2012, <http://www.theglobeandmail.com/news/politics/union-bill-passes-but-privacy-commissioner-says-it-still-goes-too-far/article6287958/>; Jim Stanford, “C-377: A chance for the Senate to prove its worth,” 17 June 2014, *Progressive Economics*, <http://www.progressive-economics.ca/2013/06/17/c-377-a-chance-for-the-senate-to-prove-its-worth/>. To address the constitutional legitimacy of Bill C-377 and its conformity with the Charter of Rights and Freedoms, Merit Contractors

CEO of Fengate Capital Management, Lou Serafini, stated: “Fengate is not comfortable disclosing our fees [...] given the competitive nature of our business and the importance price plays in securing investments and clients.” The bill’s requirements would create “a burdensome obligation in the private sector and potentially harm our competitive landscape,” he continued.⁴³ Doing business with a labour organization, in other words, would come at a cost. Some in the accounting community were equally concerned about the implications of Hiebert’s legislation. As Carole Presseault, VP of the Certified General Accountants Association of Canada, remarked, “Let us be clear: Bill C-377 is not a tax bill. Using the Income Tax Act (ITA) in this manner, we believe, is inappropriate. The ITA is not an instrument to regulate the behaviour of unions, and it is not an instrument to regulate transparency of organizations ... Its purpose is to raise revenue for government.”⁴⁴

Unions, of course, were united in their antagonism toward C-377, but the construction unions in particular had the most to lose should Hiebert’s bill become law. With access to financial information and details of business operations vis-à-vis C-377, Merit Canada would be at an advantage with its chief competitor in the construction industry – the building trades unions. Blakely was clear with this concern: “What Merit would have gained from us was an intelligence bonanza,” namely insights into the training programs funded and run by the building unions, along with the business practices of unionized construction companies.⁴⁵

Hiebert and his LabourWatch and Merit allies remained undeterred by the widespread opposition to C-377. Support for the legislation was maintained by strategically deferring to the results of a 2011 Nanos Research poll commissioned by LabourWatch. The poll’s report that promoted a marquee finding, we argue, functioned as the foundation on which C-377 was elevated and pursued politically. It also sheds light on the less blunt yet insidious ways in which anti-unionism manifests itself in Canadian political discourse related to labour policy and the paradox of transparency. A paradox, we add, that surfaced in the poll that aimed to build support for C-377.

solicited an expert opinion from former Supreme Court Justice Michel Bastarache. The former high court justice concluded, “if Bill C-377 is enacted into law, it would likely be upheld by the courts as a valid enactment of Federal Parliament’s power over taxation under section 91(3) of the *Constitution Act, 1867*.” He went on to write, “Moreover, I conclude that Bill C-377 is consistent with the *Charter* and that, in any case, any infringement would likely be justified as a reasonable limit under section 1 of the *Charter*” (Michel Bastarache, Letter to Terrance Oakey, 2 June 2013, <http://www.opportunitytowork.ca/wp-content/uploads/2013/06/Bastarache-Opinion.pdf>).

43. Canada, *Hansard*, “Proceedings of the Standing Senate Committee on Banking, Trade and Commerce,” 29–30 May 2013, 35.

44. Canada, *Hansard*, “Proceedings of the Standing Senate Committee on Banking, Trade and Commerce,” 29–30 May 2013, 35.

45. Robert Blakely, interview by Andrew Stevens, 8 July 2014.

The LabourWatch-Nanos Research Poll and the Campaign to Build Popular Support for C-377

LABOURWATCH RELEASED *State of the Unions 2011* in September 2011, only months after the Conservatives had secured their majority mandate. The report, the third of a series of polls conducted by Nanos Research for LabourWatch since 2003, was intended to generate public support for open shops and other labour law reforms favoured by some business groups. A month after *State of the Unions* was released, Conservative MP Russ Hiebert, introduced Bill C-317, the predecessor to C-377.

Hiebert and LabourWatch each developed talking points highlighting a particular result from the Nanos poll to feed a supposed public appetite for union financial transparency: “83% of Canadians agreed with mandatory public financial disclosure for both public and private sector unions on a regular basis.”⁴⁶ Within weeks of introducing Bill C-377 it became apparent that the 83 per cent result would be a central pillar in Hiebert’s public and parliamentary campaign for his bill. The Conservative MP highlighted the result at every stage of the legislative process – at introduction of the bill, in debate, and in House of Commons and Senate committee hearings.

With the passage of the bill, the public would be empowered to gauge the effectiveness, financial integrity and health of any labour union. This is something that Canadians want. According to a Nanos poll taken on Labour Day of last year, 83% of Canadians and 86% of union members want public financial disclosure for unions.⁴⁷

The poll result was displayed prominently on a now-defunct website his office created for promoting the bill (www.C377.ca) and in other communications such as twitter postings and newsletters.⁴⁸

Hiebert’s caucus colleagues also used the result when speaking in support of C-377. In the House of Commons, Conservative MP Mark Adler emphasized the “independent” and “well-respected” position of the firm that authored the poll, Nanos Research:

I would like to share some of this important independent polling data. Specifically, the well-respected Nanos Research firm recently conducted a survey of Canadians and asked about their impressions of unions, particularly with respect to financial transparency and their use of union dues.... 83% of Canadians agreed with mandatory public financial disclosure for both public and private sector unions on a regular basis.... Even more impressive, a whopping 85% [*sic*] of unionized workers agreed that it was time for mandatory union disclosure of financial information. That overwhelming support has been reflected in a lot of public commentary that we have heard on Bill C-377 in the past year.⁴⁹

46. LabourWatch, *State of the Unions 2011* (August 2011), <http://www.labourwatch.com/resources/research/reports>.

47. Canada, *Hansard*, “Private members’ business,” 6 February 2012, 74.

48. Russ Hiebert, “Make unions accountable,” *National Post*, 17 July 2013, <http://fullcomment.nationalpost.com/2013/07/17/russ-hiebert-make-the-unions-accountable/>.

49. Canada, *Hansard*, “Private members’ business,” 7 December 2012, 194.

Terrance Oakey president of Merit Canada and a leading spokesperson for Bill C-377, highlighted the 83 per cent result the day Hiebert's first private members bill was introduced in a letter sent to all members of parliament. His pro-transparency message was also disseminated widely throughout the media and in parliamentary committee meetings.⁵⁰ Despite the fact that Merit represents non-union construction companies, and is one of no less than ten "open shop" construction associations across Canada, Oakey was granted an audience to speak about labour organization transparency and the LabourWatch-Nanos poll in front of the House of Commons Standing Committee on Finance:

[It] should come as no surprise that a Nanos poll recently found that 86% of unionized Canadians support greater transparency for labour organizations, so when labour leaders appear before you to oppose this bill, they are not representing the views of unionized Canadians.⁵¹

For a number of reasons, Merit's role in the development of C-377 deserves attention.

Since 2012, Merit has officially communicated with policy makers and staff from the PMO on sixteen occasions, with all such encounters involving discussions surrounding Bill C-377 and other labour legislation.⁵² Not surprisingly, Russ Hiebert is the second most contacted public official after the PMO (thirteen communications), followed by Minister of Democratic Reform Pierre Poilievre (ten communications). Despite the supposed public fanfare surrounding the union transparency legislation, of the over 100 C-377 lobbying registrations, only 2 business organizations appear as lobbying for the bill: the CFIB and Merit Canada. As mentioned, Merit's reasons for supporting the legislation are self-serving and guided by their members' vested financial interest and desire to avoid unionization.

50. Oakey provided more insight into the purpose behind C-377, as he lamented the defeat of Ontario's Progressive Conservatives under the disastrous leadership of right-to-work champion, Tim Hudak. "Union bosses" and union dues, he opined in the *National Post*, were (successfully) deployed to topple the political aspirations of Merit's favoured contender in the election race. Transparency legislation like C-377, Oakey concluded, was required to reign in the economic and political influence of organized labour in the country. "Unions should be free to engage in the political process however they wish," he insisted, "but they should not be allowed to do so with forced contributions from workers, and with no transparency." See Terrance Oakey, "Canadian workers – and voters – are at the mercy of the union bosses' partisan whims," *National Post*, 17 June 2014, <http://news.nationalpost.com/2014/06/17/terrance-oakey-canadian-workers-and-voters-are-at-the-mercy-of-the-union-bosses-partisan-whims/>.

51. Canada, *Hansard*, "Standing Committee on Finance," 7 November 2012, FINA-90.

52. Office of the Commissioner of Lobbying of Canada, *Monthly communication reports for Merit Canada*, accessed 29 July 2014, <https://ocl-cal.gc.ca/app/secure/orl/lrrs/do/clntCmmLgs?cno=281784®Id=675007>.

The author of the LabourWatch-Nanos survey, Nik Nanos, recognized in 2012 by the *Hill Times* as Canada's most influential and best known pollster, offered further analysis on his poll's result at Merit Canada's 2012 International Open Shop Conference in Ottawa.⁵³ Nanos stated that accountability and transparency was a "no brainer" and the poll result was a "slam dunk" for union disclosure.⁵⁴ Furthermore, the poll "basically means that unions have a significant problem in terms of transparency" and "people expect value for what is being done and they expect a certain level of transparency." Nanos even commented on the relative costs of presumably implementing transparency legislation, one of the contentious issues related to C-377: "Twenty years ago [transparency] was expensive to do," he said. "Now with the Internet there's an expectation that it is low cost, while, in the past, it was actually quite expensive to be transparent."⁵⁵ Georgetti's response to Nanos' interventions is that he "went over the line from being a pollster to an advocate" in his comments at Merit's open shop conference.⁵⁶ Another former CLC official, meanwhile, believed that Nanos "was simply a vehicle used by LabourWatch and the Merit Contractors to achieve a goal."⁵⁷

Conveniently left out of the public debate over C-377 was recognition that LabourWatch had financed the influential 2011 Nanos poll, estimated to cost over \$25,000. Proponents of C-377 used Nanos Research as the source of this seemingly objective study of unions and public opinion. In comparison, LabourWatch President John Mortimer, maintained a comparably low profile. Nevertheless, he was called to speak in support of C-377 as an expert witness before the Senate Committee on Banking, Trade, and Commerce on May 30, 2013, and played a critical role in advocating for Hiebert's legislation.

53. *Hill Times* staff consulted with federal politicians from all parties, "government insiders," and lobbyists to determine the 100 most powerful people in Ottawa. *The Hill Times*, "Power & influence," Winter-Spring, 2012, http://www.hilltimes.com/sites/hilltimes.com/files/freissue/012912_ht.pdf.

54. Kelly LaPointe, "Majority allows government to move quickly on initiatives," *Journal of Commerce*, 6 June 2012, <http://www.journalofcommerce.com/Associations/News/2012/6/Majority-allows-government-to-move-quickly-on-initiatives-JOC050457W/>.

55. LaPointe, "Majority allows government to move quickly on initiatives."

56. Nik Nanos is frequently interviewed on several political affairs programs and in the *Globe and Mail* for his views on the public sentiment in relation to current political events and legislation. A testimonial on Nanos' speaker's bureau page highlights his political acumen: "You can hire a pollster, a pundit and a politician to speak at your event. Or you can hire Nik. He knows what Canadians are thinking and he's plugged into politics like few others" (Brickenden, *Nik Nanos*, accessed 12 August 2014, <http://www.brickenden.com/speaker/Nik-Nanos>). However, Nik Nanos and his firm endeavor not to be seen as partisan, as highlighted in a recent profile, which stated: "[Nanos'] reputation for political neutrality works ... in attracting clients who appreciate doing business with a company above the political fray" See Shelley Pleiter, "Nanos by the numbers," *QSB Magazine*, Summer 2014, <http://qsb.ca/magazine/summer-2014/profiles/nanos-numbers>.

57. Maureen Prebinski, interview by Sean Tucker and Andrew Stevens, 27 July 2014.

Earlier, in a 2012 submission to the House of Commons Standing Committee on Finance, LabourWatch had taken the lead in trying to discredit C-377's opponents, including legal scholars and the Canadian Bar Association, which had called into question the constitutionality of the bill. And although LabourWatch claims to maintain a non-partisan status, Mortimer made his ideological commitments evident in an email sent to then Minister of Labour, Lisa Raitt on the eve of C-377's passage in the House of Commons in 2012. "I am in Ottawa for this important day," he wrote, "for the conservative movement and for Canadian taxpayers."⁵⁸

Priming the Poll

TWENTY-FIVE YEARS AGO, Hoy documented the manipulating effect pollsters can have on Canadian politics. Polls "become larger than life itself in many ways," he argued,

often portrayed as absolute, take-it-to-the-bank indicators of what is about to happen, rather than simply as imperfect measures of how people felt, at one particular time, about something they may or may not have understood or cared about.⁵⁹

This is an apt description of the LabourWatch-Nanos poll that became a pillar of the campaign to adopt C-377. Ironically, the widely cited poll that seemingly found Canadians demanding public disclosure of union financial information suffered from serious methodological and transparency problems. The two main problems were "priming" respondents and suppressing the subsequent results to one critical survey question. "Priming" often involves providing one-sided lead-in statements to survey respondents immediately before a survey question is asked. The practice can be useful for testing the appropriateness of a political message with different audiences. However, other applications are less acceptable by professional standards.

The body of both the original and revised versions of the LabourWatch-Nanos poll's final report do not disclose that respondents were presented with one-sided priming information before responding to the question about whether unions should be required to publically disclose detailed financial information. In fact, before responding to the marquee question – 83 per cent of Canadians support union financial disclosure – respondents were told the following by Nanos employees who conducted the survey:

As you may know, public and private sector unions do not pay taxes, the union dues of unionized employees of the private and public sectors are tax deductible and their strike

58. John Mortimer, e-mail to Minister of Labour, Lisa Raitt, 12 December 2012; The Minister's Chief of Staff responded to Mortimer and directed the LabourWatch president to Minister of Finance, Jim Flaherty, considering that the contents of C-377 fell under the purview of Finance, not Labour.

59. Hoy, *Margin of Error*, 8.

pay is not taxable. In addition, taxpayers pay the wages of civil servants and, therefore, fund their union dues.

In interviews polling and marketing research experts criticized poor methodological practices with respect to priming. Richard Johnston, Canada Research Chair in Public Opinion, Elections, and Representation, stated that the “the kind of preamble that Nanos used in the survey on Bill C-377 clearly stacks the deck in a particular direction.”⁶⁰ Executive Director of the Roper Center for Public Opinion Research at the University of Connecticut Paul Herrnson similarly cautioned that “part of the problem with priming is if you’re really interested in public opinion and what someone is thinking or knows and you prime them, you may be creating the answer they give.”⁶¹ Northrup, director for social science research at York University, added that,

The issues in the [2011 Nanos survey] are not issues where the average person has done a lot of thinking about it, heard a lot of pros and cons arguments and been able to come to an informed decision. And because of that, in that type of circumstance, priming can be much more dangerous than it could be in a survey where you’re talking about things that are much more crystallized.⁶²

Interestingly, past LabourWatch-Nanos polls have also used priming but disclose the priming information that prefaces survey questions in the body of the polling report.⁶³ However, in the case of the 2011 poll, this important fact was hidden and, to our knowledge, never reported by those who used the 83 per cent result to promote C-377. Herrnson made it clear that disclosure of priming information is “a service to citizens” who read about a poll. It was not until after the report had been released that Nanos publically disclosed the full survey as an appendix to the report.⁶⁴

The second problem with the poll’s report is that results were suppressed for a key question. The original report for the poll stated: “Canadians were divided on whether the Canadian public or just union members/unionized employees should have access to unions’ financial information.” However, the report provided no supporting evidence for this statement. After repeated requests by one of the authors of this paper for clarification on this statement, Nik Nanos issued a revised report on 28 October 2011 that included a new appendix in

60. Richard Johnston, interview by Sean Tucker, 31 July 2014.

61. Paul Herrnson, interview by Sean Tucker, 30 May 2014.

62. David Northrup, interview by Sean Tucker, 15 July 2014.

63. See, for example, questions 19.0 & 19.1 See LabourWatch, www.labourwatch.com/docs/research/labour_day_2008_poll_report.pdf.

64. In fact, there were three versions of the 2011 LabourWatch-Nanos Report. The first, released in September 2011 contained no appendix and no questionnaire. The second version, released on 29 October 2011, contained an appendix but no questionnaire. The final and full version of the report was posted on Nanos’ website sometime after 29 October 2011. One author (Sean Tucker) came across the third version in about April 2012.

which it was disclosed that the poll had asked an additional question, but Nanos refused to publicly release the related results. The original undisclosed question also provided one-sided information to respondents referencing the US union disclosure regulations that was meant to condition respondents' choice among four targets of disclosure of union financial information: unionized employees, actual union members only, the Canadian public (i.e., everyone), or no one. Specifically, respondents were told:

In the United States, detailed disclosure of specific financial information is required by all unions to be made available to anyone who wants it. In Canada, some provinces do not have any requirements for unions to disclose financial information, while others require limited financial information be provided to union members only upon request.

In the appendix of the revised report, Nanos provided this *post-hoc* reasoning for suppressing the responses to this “flawed question”: 1) the response choices were not mutually exclusive and 2) the possible vagueness of the term “access” to financial information.⁶⁵ Interestingly, LabourWatch’s version of the report altered Nanos Research’s survey so that it omits any reference to this survey question.

Questions about the poll were first raised with Nanos, LabourWatch, and Russ Hiebert as early as October 2011.⁶⁶ Allan Gregg, Chairman of Harris/Decima and former Tory pollster, provided a sharp critique of the poll in 2013. Calling the two questions “horrendously biased,” Gregg went on:

This is not the kind of polling that people in our discipline should be doing. Clearly it’s being done by an advocacy group that’s got a particular perspective on the world and an axe to grind, and they’re using the poll not to illuminate their understanding of public opinion but as a PR [public relations] tool.⁶⁷

The only reference to questions about the quality of the LabourWatch-Nanos poll and priming found in the parliamentary debates and committee transcripts is a short exchange between Senator Campbell and Hiebert in which the Senator called the MP’s 83 per cent result, “like many things, smoke and mirrors.”⁶⁸ In reply, Hiebert stated, “I do want to point out, however, that Nanos does stand behind its polling and the answers it received in relation

65. Nanos Research. *State of the Unions 2011*, August 2011, <http://www.nanosresearch.com/library/polls/2011StateoftheUnions.pdf>.

66. One author (Sean Tucker) sent an email to Russ Hiebert on October 10, 2011: “I am concerned that LabourWatch and Nanos Research may be misrepresenting public opinion by not fully and publically disclosing responses to a survey question that addresses the need for legislation such as the bill you have tabled.” No reply was ever received from Hiebert’s office.

67. Peter O’Neil, “Poll cited by Tory MP in union disclosure fight under review by polling standards groups,” *Vancouver Sun*, 5 July 2013, <http://www.vancouversun.com/business/Poll+cited+Tory+union+disclosure+fight+under+review+polling+standards+group/8618568/story.html>.

68. Canada, *Hansard*, “Proceedings of the Standing Senate Committee on Banking, Trade and Commerce,” 22 May 2013, 34.

to this question.” As the subcommittee hearings progressed, Nanos Research and other polling was one of the few remaining lines of evidence that Hiebert could successfully muster to support his widely criticized bill, even after the results of the Nanos poll had been discredited in the media.⁶⁹

The CLC had, in September 2012, filed a complaint with the Marketing Research and Intelligence Association (MRIA), the Canadian polling industry’s self-regulatory body, alleging that Nanos Research had violated the association’s code of conduct by improperly priming participants involved in the poll and suppressing the results of one question. It is unclear to what extent Hiebert took this development as a threat to the campaign to deliver passage of his bill. Paraphrasing Hiebert’s communication specialist, Peter Stock, *Peace Arch News* reporter Tracey Holmes noted, “If the review [by the MRIA] determines the poll results are inaccurate, it still shows ‘a huge majority’ of people favour transparency.”⁷⁰

Complaints and Reactions: The CLC, MRIA, LabourWatch, and Nanos Research

THE MRIA IS COMPOSED OF OVER 1,800 member practitioners working in the fields of market intelligence, survey research, data mining, and knowledge management. Formed in 2004, the MRIA is largely responsible for regulating and promoting the professional and business interests of its membership. Nik Nanos was party to the association’s founding, served as the organization’s president between 2006 and 2007, and was elected MRIA Fellow in 2010.⁷¹

According to the MRIA’s *Code of Conduct and Good Practice*, members’ commitment to ensuring “that research is conducted appropriately at all times, matching the appropriate tools to objectives and avoiding research which is inadequate, misleading or inaccurate,” forms one of the ten core principles.⁷² Further to a commitment to reporting integrity, researchers “must not knowingly allow the dissemination of conclusions from a marketing research project which are not adequately supported by the data.”⁷³ “Members must

69. Peter O’Neil, “Poll cited by Tory MP in union disclosure fight under review by polling standards groups”; Peter O’Neil, “‘Potentially biased’ poll did not violate professional standards: Ruling,” *Vancouver Sun*, 3 October 2013, <http://www.vancouversun.com/Potentially+biased+poll+violate+professional+standards+ruling/8994993/story.html>.

70. Tracy Holmes, “Poll cited by MP Hiebert challenged,” *Peace Arch News*, 22 July 2013, <http://www.peacearchnews.com/news/216513691.html>.

71. MRIA, *What is the MRIA?* accessed 13 May 2014, <http://mria-arim.ca/about-mria/what-is-mria>.

72. MRIA, *Code of Conduct and Good Practice for Members of the Marketing Research and Intelligence Association* (MRIA 2007), <http://mria-arim.ca/about-mria/standards/code-of-conduct-for-members>.

73. MRIA, *Code*, 9

not provide, or allow without protest,” the code reads, “interpretations of the research that are inconsistent with the data.”

Individuals and organizations that allege violations of the code have the opportunity to engage in an informal negotiated resolution process, and then, if a resolution is not reached and approval is provided by the MRIA executive director, a formal process is invoked involving a complaint panel comprised of MRIA members who have no conflict of interest with the case. A key part of the complaint process requires that parties to a complaint must agree not to discuss the complaint publically while the panel investigates and rules on the matter.

A year after the CLC launched its complaint against Nanos Research, the MRIA Standards Portfolio Chair issued a decision to the parties, noting that “the Complaint Panel ... found no evidence of a violation of the Code by the Respondent [Nanos Research], nor evidence of any act or omission by the Respondent that has brought discredit to the industry/profession.”⁷⁴ Yet, the Chair did acknowledge flaws in the poll:

The Complaint Panel found that the reporting of the two questions in issue, specifically the omission of question 18 from the report and the reporting of question 20 without the preamble, *allowed potentially biased information to be reported by LabourWatch*. However, despite the lack of clarity in reporting observed, the Complaint Panel concluded *the Code had not been violated*.⁷⁵

The Chair provided no rationale for the panel’s decision, however, subsequent interviews with individuals familiar with the CLC complaint shed light on the lengthy and contentious elements of the MRIA complaint process. Maureen Prebinski, former executive assistant to Ken Georgetti at the CLC, and anonymous sources described how the complaint process unfolded.

Around July of 2013, LabourWatch intervened and argued that they should have standing in the CLC-Nanos Research complaint process. Although LabourWatch was not granted standing, the MRIA did allow the organization to provide a written submission to which the CLC then responded. This development frustrated the CLC. Georgetti was disappointed that the MRIA would allow “a third party into the equation” especially “when [the MRIA] told us that we had to keep confidential the conversations and the complaint we had with [the MRIA] in order for the complaint to [be processed].” In his view, the entry of LabourWatch made the complaint process seem “like a kangaroo court.”

Other evidence suggests that the complaint panel took the CLC’s concerns seriously. An anonymous source reported that these were the initial recommendations from the complaint panel to Nanos Research in April 2013:

1. Nanos should inform the [sic] LabourWatch, and copy the CLC and MRIA, that the [sic] question 20 must only be reported within the complete context of the question including the preamble.

74. Ruth Corbin, “RE: Complaint of professional misconduct regarding Nanos Research’s conduct and reporting of LabourWatch Poll,” 30 September 2013.

75. Corbin, “RE: Complaint.” Emphasis added.

2. The complete preamble for question 20 must be used whenever Nanos refers to the question or the 83% figure, and Nanos should acknowledge to the CLC in writing the importance of including the preamble when talking about the results.
3. Nanos should also inform LabourWatch that the full questionnaire, including the omitted question, needs to replace the questionnaire that was on the LabourWatch website.
4. Nanos should also seek permission from LabourWatch to release the results of question 18. These results should be communicated to the CLC by letter (with a copy to MRIA).

Nanos agreed with the panel's recommendations, but LabourWatch, which owned the data and research, refused to comply, reducing the impact of the panel's finding and allowing LabourWatch and its allies to continue to use the flawed results for political purposes.⁷⁶ In an open letter to senators, Georgetti insisted that the 83 per cent figure was a product of manipulation by a coalition of anti-union groups, namely LabourWatch. "Parliament, the House of Commons and the Senate," Georgetti wrote, should "not be misled and manipulated into supporting legislation on this basis."⁷⁷

Not to be stalled by the eroded credibility of the 2011 poll, LabourWatch sponsored another Labour Day *State of the Union* report in 2013 using Leger Research Intelligence. Some, but not all, of the contentious prompts that were the source of MRIA complaint were formally tested. Specifically, Leger asked the question about public disclosure of union financial information with and without the priming information. The results showed that 83 per cent (without priming) and 85 per cent (with priming) of respondents agreed that unions should be required to "publicly disclose detailed financial information on a regular basis."⁷⁸ Leger reported that there was no statistical difference between the two conditions. Hiebert has proudly promoted the follow-up poll result as continued justification for Bill C-377, highlighting the importance of this research-based pillar to his campaign.⁷⁹

Conflicting results on union member opinions of Hiebert's project, however, have not received the same attention. A 2012 Leger poll sponsored by the Building and Construction Trades Department (AFL-CIO), which also primed respondents to some questions, found that 81 per cent of their members *opposed* Hiebert's bill, and 65 per cent responded that public disclosure of

76. Georgetti recalls that Nanos "proposed a compromise that he would recast or put the question differently on his website and the [LabourWatch] guys refused to do it." Further, according to the former CLC president, Nanos did not "admit that he was intentionally inaccurate but he saw that his work could have been called into question. I think Nik realized that but [LabourWatch] wouldn't cooperate with him and, in fact, they made it known to Nik they'll never use him again."

77. Ken Georgetti, letter to Senators, "RE: Bill C-377, *An Act to Amend the Income Tax Act (Labour Organizations)*," 13 October 2013.

78. LabourWatch-Leger, *State of the Unions 2013* (LabourWatch-Leger 2013), http://www.labourwatch.com/docs/research/Leger_State_of_the_Unions_October_2013_Report.pdf.

79. Alex Browne, "Hiebert touts poll support."

financial information is not necessary at all.⁸⁰ Seventy per cent even recognized that C-377 is an attempt to embarrass union members and union leaders while 74 per cent agreed that their unions are “already transparent enough.” Strangely, Mortimer cited this union-funded poll as an “inescapable reality of where Canadians stand: in favour of greater transparency,” even though the report draws contrary conclusions about union disclosure and C-377, specifically.⁸¹ LabourWatch went so far as to criticize the Building Trades poll by suggesting that the labour organization primed respondents and used flawed methodology to solicit a desired result. “That this is what gets done with tax deductible unions dues, by a tax exempt organization to keep operating without transparency” is cause enough for C-377, LabourWatch insisted in its submission to the House of Commons.⁸²

How are Canadians to make sense of the results of the LabourWatch-funded Leger and Nanos polls? And *whom* do Canadians favour disclosure of union financial information to (i.e., the public or just unionized workers of the target union)? On one hand, the public and union members themselves may indeed hold an appetite for union transparency, but there is no evidence to suggest that C-377 is the solution that Canadians demand. Johnston, Canada Research Chair in public opinion polling, speculated that the impact of the priming in the case of the 2011 LabourWatch-Nanos poll would be minimal:

My guess would be that if you put that general question without the preamble you'd still get a pretty one-sidedly pro-disclosure response. You're asking people to endorse openness. Well who's against that? [This] against the background of a generally negative cultural response to the union movement. ... I suspect that if you asked exactly the same question about corporations it may not be 83 per cent but I bet you it would be pretty one-sided.⁸³

80. Building Trades-Leger, *Building Trades 2012 member research study*. See Building Trades-Leger 2012, http://www.labourwatch.com/docs/research/Report_-_Building_Trades_-_Member_Survey_-_March_12_2012_V2.pdf.

81. John Mortimer, “Why Bill C-377 will make unions and Canada better,” *National Post*, 22 October 2012, <http://fullcomment.nationalpost.com/2012/10/22/john-mortimer-why-bill-c-377-will-make-unions-and-canada-better/>. The Building Trades-Leger poll focused on the membership’s awareness of Bill C-377 along with potential costs associated with the legislation, should it become law. Despite only targeting Building Trades members, only 35 per cent of respondents were aware of C-377. And not unlike the LabourWatch-Nanos poll, priming was used. For instance, question four asked: “And to what extent would you support or oppose a bill that requires unions to publicly disclose their financial information to anyone who has access to the internet, even if it requires you to pay more in Union Dues or see a cut in your benefits/pension.” Not surprisingly, 81 per cent of respondents opposed legislation that could affect dues or benefits/pension.

82. Canadian LabourWatch Association, “Submission to the House of Commons Standing Committee on Finance,” 5 November 2012, http://www.labourwatch.com/docs/research/Canadian_LabourWatch_Association_-_FINA_Submission.pdf.

83. Richard Johnston, interview by Sean Tucker, 31 July 2014.

Working in the Shadows for Transparency

THE EVIDENCE MARSHALED in this paper shows that the broader campaign to adopt C-377 – a bill meant to force US-style financial disclosure mechanisms on Canadian unions – has ironically demonstrated a disregard for transparency and accountability. The case of C-377 also demonstrates the process through which economic and political elites wield influence and mobilize resources to lobby and generate support for legislation. Here, LabourWatch functions as a vehicle through which business associations attempt to craft popular consciousness around unions, dues, and labour legislation generally. The 2011 LabourWatch-Nanos Research poll primed respondents to the central question that has been used to support C-377 and suppressed the result of another important survey question that may have casted doubt on the strength of public support for the target of disclosure (i.e., the public). LabourWatch, Merit Canada, Hiebert, and others who have cited Nanos' 83 per cent result have yet to publically acknowledge the related priming information and that LabourWatch funded the flawed poll. In sum, the actions of groups and individuals associated with creating, disseminating, and reviewing the 2011 LabourWatch-Nanos poll show a consistent disregard for the principle of transparency espoused by C-377 and its proponents.

The language used by union "watchdog" associations in the US was about fighting union corruption and empowering union members. Similarly, the Canadian experience involves a coalition of anti-union policy makers and advocacy groups operating under the aegis of popular opinion and democracy. Unlike the United States, however, Hiebert, LabourWatch, and others have been careful to publically voice support for the institutions of trade unionism and "workplace democracy," all the while attempting to subdue labour organizations through potentially costly, and, indeed, unprecedented, accounting standards. This guise of working for the public interest, as we have shown, is supported and subsequently maintained by the deployment of survey research commissioned by LabourWatch, a self-declared non-partisan association that claims it does not lobby for legislation.

Hiebert's message since the beginning of Bill C-377's journey has been consistent. Citing public support for transparency rendered by the LabourWatch-Nanos poll, the MP's talking points have always focused on accountability and openness. When speaking with Ezra Levant on *Sun News*, Hiebert embellished the righteousness of his bill by quoting former US Supreme Court Justice Louis Brandeis saying, "sunshine is the greatest cleanser of all. When you shine the sun on some people's activities then it increases the confidence that they have that things are going well."⁸⁴ Evidence suggests, however, that same standards have not applied to Hiebert, Merit, or LabourWatch.

84. *Sun News*, "Union transparency," accessed 13 May 2013, <https://www.youtube.com/watch?v=md6jq8yAw8U&feature=youtu.be>.

Another looming question in this saga is what direct and indirect connections exist among Hiebert and LabourWatch and Merit, as well as the influence these parties had within official government channels. Hiebert insists that C-377 “was mine and mine alone.”⁸⁵ However, such links would help elucidate the mechanics of anti-unionism and the exercise of interests propagated by a cross section of economic elites in the design and implementation of Hiebert’s bill. Specifically, did C-377 develop organically after the LabourWatch-Nanos report was released in 2011? Was Hiebert given direction from his allies when drafting C-377, as Liberal Senator Larry Campbell suggested at the Standing Senate Committee on Banking, Trade and Commerce, when Campbell pushed Hiebert to account for his ties with Merit?⁸⁶ Or, aside from the assistance of House of Commons lawyers, is C-377 truly the product of a private member’s ruminations over union transparency and accountability?

Despite the appeal of transparency and public access to information, what the development of C-377 has shown is that transparency as a concept is far from a simple measure. Similarly, the legislation also demonstrates that transparency can be invoked selectively and ideologically as required. The seeming popularity of this practice allowed debate over C-377 to continue almost three years after the legislation was first introduced in the House of Commons as a private members bill. The seemingly common sense nature of the legislation has permitted the anti-union animus guiding the conversation to shroud itself in the logic of union accountability and transparency, which is broadly supported by the public. This has been achieved, we argue, by an alliance of conservative policy makers and anti-union advocacy groups using public opinion polling conducted by an influential polling company.

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85. Browne, “Round 2 predicted to be no smoother for C-377.”

86. Canada, *Hansard*, “Proceedings of the Standing Senate Committee on Banking, Trade and Commerce,” 22 May 2013, 34.