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CANADA LABOUR CODE

Bill to Amend—Second Reading of Bill C-4—
Debate Adjourned

Speech by:

The Honourable Diane Bellemare

Tuesday, November 1, 2016

THE SENATE

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[*Translation*]

CANADA LABOUR CODE

BILL TO AMEND—SECOND READING—
DEBATE ADJOURNED

Hon. Diane Bellemare (Legislative Deputy to the Government Representative in the Senate) moved second reading of Bill C-4, An Act to amend the Canada Labour Code, the Parliamentary Employment and Staff Relations Act, the Public Service Labour Relations Act and the Income Tax Act.

She said: Honourable senators, I rise today to move that we pass the bill entitled An Act to amend the Canada Labour Code, the Parliamentary Employment and Staff Relations Act, the Public Service Labour Relations Act, and the Income Tax Act.

This bill would essentially repeal two private members' bills introduced in the 41st Parliament. I am very pleased to be the sponsor of this bill as it is the first bill that I have introduced in this noble chamber.

Let's begin by looking at what Bill C-4 proposes. This bill was introduced in the other place on January 28, 2016, by the Minister of Employment, Workforce Development and Labour, the Honourable MaryAnn Mihychuk. The title indicates which four acts this bill amends. The bill also includes clauses regarding transitional provisions and the coming into force of the amendments. The bill has a total of 17 clauses.

Essentially, clauses 1 to 11 amend the Canada Labour Code, the Parliamentary Employment and Staff Relations Act and the Public Service Staff Relations Act with respect to the terms and conditions of the certification and revocation of bargaining agents representing the employees of bargaining units under federal jurisdiction. In other words, those clauses repeal Bill C-525, which was passed in December 2014. Bill C-525 modified the certification and revocation process governing unions in businesses under federal jurisdiction by replacing the certification system based on the signing of membership cards with a system based on mandatory secret ballot voting. That legislation came into force on June 16, 2015.

Clauses 1 to 11 basically restore the terms and conditions of the certification and revocation process that were in effect before Bill C-525 was passed.

Clauses 12 and 13 repeal section 149.01 of the Income Tax Act, as well as subsection 239(2.31) of the same act. In fact, these clauses completely repeal Bill C-377, which was passed on June 30, 2015. Bill C-377 amends the Income Tax Act to require that all labour organizations, regardless of their size, as well as labour trusts, provide the Canada Revenue Agency with a package of financial information every year or be subject to penalty. They must provide the names of their employees and the amount of their salaries, if they earn over $100,000, as well as the proportion of time dedicated to non-labour-related activities. They must also report any expenditure over $5,000 made by a union, the name of the recipients, the amount received, and the nature of the services rendered. They also need to inform the Canada Revenue Agency of the value of contracts with third parties.

• (1430)

Bill C-377 also provides for the publication of the percentage of time that certain people dedicate to political, lobbying and other non-labour-related activities. Under the law, this information will be published on the Canada Revenue Agency website.

Usually, governments should not have to repeal laws that were passed in previous Parliaments. If this were common practice, it would discredit governments in the eyes of the population, fuel public cynicism and diminish people's confidence in their government. Why would a government have to repeal laws that were passed by the previous government if, in theory, that government ruled in the best interests of the population as a whole and not in the best interests of its voter base?

That is not the case with Bill C-4. This bill does not seek to repeal a law that was passed by the previous government. This bill seeks to repeal two private members' bills that were introduced by two Conservatives members: Bill C-377, which was introduced by MP Russ Hiebert, and Bill C-525, which was introduced by MP Blaine Calkins.

[*English*]

I repeat: Bill C-4 does not repeal a government bill from the previous Parliament. Rather, this bill repeals two private members' bills introduced by MPs.

[*Translation*]

These two bills were passed without amendment by the MPs and senators from the party in power, who held the majority of the votes in both chambers, despite the countless objections raised during study of these bills. These two bills managed to skirt the rigorous review process reserved for government bills, and skirt the consultation process established for bills dealing with labour relations in federally regulated businesses. That is why today we need to take a second, more objective and more independent look at these two bills in order to repeal them.

However, before going any further, you might wonder why these two bills have been combined into one bill, Bill C-4. Wouldn't it have been better to study them separately? In actual fact, these bills have a lot in common. Studying them together makes it easier to understand their scope in the workplace and their adverse effects on the working environment. These two bills also have an impact on wealth creation and distribution.

Again, these two bills, which were introduced by MPs and not the government, are private members' bills. They may very well have received the informal support of the previous government, but that is not the issue. Given the stakes involved, these bills should have undergone the preliminary review processes before being introduced in the other place. Indeed, since these are private members' bills, they did not follow the usual, more rigorous path of a government bill.

When a minister prepares a bill, he or she must follow a process that involves internal and external consultations. The Minister of Justice typically has to weigh in on several fronts, including respect for provincial jurisdiction and consistency with the Canadian Charter of Rights and Freedoms. Many government bills are also subject to consultations involving various interested groups to ensure that the bills adequately address the issues of concern to the relevant sectors.

It's a good idea for governments to conduct external and internal consultations if they want to win elections and come up with appropriate solutions to real problems. That's particularly true for bills having to do with labour relations and the Canada Labour Code. The Federally Regulated Employers - Transportation and Communications was very clear in its condemnation of the process leading to the passage of Bill C-525. The organization raised that point in its December 10, 2014, brief to the Standing Senate Committee on Legal and Constitutional Affairs and reiterated its message recently in the other place. I will quote from the 2014 brief as follows:

[*English*]

> Notwithstanding FETCO's support of C-525, we want to express serious concerns that FETCO has regarding the process of using private members bills to amend the Canada Labour Code.

FETCO also continues to say that it is important to have:

> . . . pre-legislative consultation processes when contemplating changes to the Canada Labour Code and regulations. These processes ensure that fact-based and informed decisions are taken with respect to federal labour law and regulations. FETCO believes that this consultation model has permitted federally regulated employers, unions and the Federal Government to successfully advance the interests of their respective constituents and has contributed the stability of labour-management relations in the Federal jurisdiction and the economic well-being of the Canadian economy.

[*Translation*]

I should point out that the Canada Labour Code, which also contains provisions governing union accountability, was completely overhauled between 1996 and 1998. Unions, employers, relevant government agencies, and experts worked together to achieve consensus between management and unions and strike a labour relations balance to ensure a certain degree of stability and industrial peace.

In that regard, this is what Andrew Simms, chair of the task force to review the Canada Labour Code, told the committee in the other place:

> 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 Labour Code.

Honourable senators, Bill C-525 and Bill C-377 disrupt this balance.

The second thing that these bills have in common is that they originated with the same external interest groups.

[*English*]

Indeed, they were strongly supported by organizations known for their opposition to unions, including LabourWatch Canada, Merit Canada and other groups.

LabourWatch Canada was founded in 2000, with a mandate to provide employees with information on how to cancel a union card during a union organizing campaign, how to decertify a union, and how to file an unfair-labour-practices complaint against a union. LabourWatch Canada also provides information for employers on how to avoid legal problems when having to battle with a union campaign for certification.

[*Translation*]

Merit Canada was established in November 2008 to serve as the national voice for eight provincial open shop construction associations. It succeeded the Canadian Coalition of Open Shop Construction Associations, which was founded in 1999 to challenge the constitutionality of a compulsory union membership requirement to work in Quebec's construction industry.

These organizations would like to establish the American model and the same labour relation rules in Canada. As you know, unions and businesses in the United States fill out a questionnaire in order to disclose how much they spend on labour relations. Furthermore, a secret ballot is mandatory.

[*English*]

These groups want to establish what they call a "level playing field" between Canada and the U.S. Now, as you know, Canada and the United States have different approaches to labour relations. In the U.S., I think it's fair to say employers sometimes have comparatively more negative views on unions.

• (1440)

Finally, these two bills essentially target the same group: the unions. They contain no reciprocal provision for employers.

[*Translation*]

Bill C-377 does not include any provisions regarding transparency for companies and employer associations in the area of labour relations. However, the American legislation that inspired Bill C-377 and other legislation in jurisdictions like France and Australia dealing with transparency all include provisions for companies and employer associations. They are also administrated by their respective labour ministries. In the name of union democracy, Bill C-525 imposes mandatory secret ballot voting during union certification campaigns and facilitates the revocation of certification. However, it places no obligation on employers to give unions greater access to employees to help them make an informed decision as they exercise their right to vote. In fact, Bill C-525 will actually help companies fight certification campaigns and simplifies the revocation of certification.

When employees cannot organize and discuss their common issues in the workplace, it is often the employer's authoritarian decision that prevails. Therefore, in the name of noble principles like transparency and democracy, on which everyone can agree, these laws, in practical terms, are likely to upset the balance of power between unions and employers. They also tend to sow discord in the workplace, and they fly in the face of another democratic principle, that of democracy in the workplace, and I will come back to that later.

Basically, the common thread in these two bills is that they both attack the integrity and vitality of the union movement. They are both immense in scope. Bill C-377 would be extremely costly for smaller union organizations, which would discourage smaller units from becoming organized. In addition, it will disclose strategic information to the employer, which would limit unions' bargaining power. Furthermore, Bill C-525 would also reduce the rate of unionization, and I will come back to that later as well.

These two laws constitute a frontal attack on Canadian unions. They upset the delicate balance of power between employees and employers, and they are likely to create instability in labour relations and damage efforts to generate economic prosperity. Passing Bill C-4 would restore the balance of power as generally negotiated in the labour codes and the balance of power established in 1998 in the comprehensive review of the Canada Labour Code, which was based on discussions between unions, employers and the government.

Then again, this does not mean that the situation that existed before Bill C-377 and Bill C-525 were passed was perfect. It just means that it was better than the situation we have now that these two bills are in force.

I am proud to sponsor Bill C-4 because I didn't vote for the two laws that it seeks to repeal.

[*English*]

These last two laws constitute, I repeat, a frontal attack on Canadian unions. They upset the delicate balance of power between employees and employers, and they are likely to create instability in labour relations and damage efforts to generate economic prosperity.

I am proud to sponsor Bill C-4 because I didn't vote for the two laws that Bill C-4 seeks to repeal.

[*Translation*]

I will now speak more at length about Bill C-525, since that law is in effect. Bill C-525 replaced the membership card accreditation system with a system involving mandatory secret ballots for employees under federal jurisdiction. The labour relations between employers and employees under federal jurisdiction are governed by three laws. The Canada Labour Code governs labour relations between private sector companies and Crown corporations and their employees. The Canada Industrial Relations Board, which from here on I will refer to as the CIRB, is responsible for managing the acquisition and termination of bargaining rights in the private sector.

The public sector is governed by two laws: the Public Service Staff Relations Act and the Parliamentary Employment and Staff Relations Act. The Public Service Labour Relations and Employment Board, which from here on I will call the PSLREB, manages the certification of bargaining agents and the revocation of certification in the public sector.

Until 1977, Canada's union certification system was exclusively a card system, which was enshrined in the provincial and federal labour codes. Beginning in 1977, some provinces amended their labour codes to implement mandatory secret balloting for certification.

The card-check system applied to companies under federal jurisdiction until June 16, 2015. Until then, the CIRB could grant bargaining rights to an agent when 50 per cent of a private sector company's employees or more signed union cards.

When considering an application, the CIRB checked the cards to ensure that they had been signed without undue pressure from a union and that more than 50 per cent of the employees had signed. In case of uncertainty, the CIRB could order a secret ballot, and did so a number of times. The CIRB had that discretionary power, which it used on a number of occasions. When the number of signed cards represented between 35 per cent and 50 per cent of the employees, the CIRB had to order a mandatory secret ballot. In other words, it is not true that the card system conflicts with secret balloting.

In the case of public sector workers, the PSLREB follows the same process for an application for certification when the number of cards is greater than 50 per cent of the workers. However, it does not accept applications for certification when the number of cards is equivalent to 50 per cent or fewer of the workers.

Bill C-525 changed the certification process by requiring a secret ballot for all applications for certification. The threshold for a secret ballot for all companies is now 40 per cent. In the private sector, a secret ballot is held for all applications for certification when 40 per cent of the employees sign cards. Certification is granted when the results of the secret ballot show that more than 50 per cent of the voters want to join the union.

Although on the surface this system may seem more democratic, that is not necessarily the case. Under the current system, certification is granted when 50 per cent of the voters want to join the union. Under the former card system, more than 50 per cent of the employees had to sign membership cards, which the employees generally had to pay for, even though the cards had a symbolic value. In fact, and this is the key argument, it is false to claim that a secret ballot in the workplace is similar to the secret ballot in a provincial or federal general election. Employees are more likely to be pressured by their employer when they vote in the workplace to join or not join a union than when they express their preference through a membership card system. On top of that, employers generally refuse to cooperate with unions and share information about their employees that would enable them to be informed about the full implications of joining or not joining a union.

In other words, in an ideal world where no pressure is exerted upon employees, the secret ballot is probably the most democratic way for an individual to express his or her choices. However, the real world of labour relations is far from ideal for holding a vote on the certification and decertification of a union.

[*English*]

In other words, in an ideal world, where no pressure is exerted upon employees, the secret ballot is probably the most democratic way for an individual to express his or her choices. However, the real world, where such pressure does exist, is a different story.

[*Translation*]

It is clear that the certification and revocation system under Bill C-525 is an obstacle to unionization because quite often a vote to organize will prompt the employer to threaten to move or close the plant. Employees therefore vote to join or not join a union in a climate of fear.

• (1450)

There is less likelihood of intimidation with the card-check system because the penalties for unions are very high if it is proven that there was intimidation. Unions automatically lose their accreditation. This reality has been well documented in the academic literature and I will quote Professor Sara Slinn, who conducted a detailed analysis of certification procedures for the Ontario government in 2015:

[*English*]

> An extensive body of literature identifies the workplace as a critical location for organizing, recognizing the significant disadvantage unions are at compared to employers in this regard. This imbalance arises because, unlike a union, the employer can exercise its property and managerial rights to control union access to employees, has constant access to and control over employees in the workplace, has information to contact employees outside the workplace, and controls employees' economic welfare. This allows employers relatively greater opportunity to influence employees, leading to information asymmetries depriving employees of information about options and consequence of unionization, thereby disadvantaging unions. This imbalance in access between employers and unions gives rise to two issues addressed on the academic literature: access to the workplace for organizers and union access to employee information and lists.

[*Translation*]

The new rules imposed by C-525 on certification and decertification are equally unfavourable for unionization. With the passage of Bill C-525, only 45 per cent of employees have to indicate that they wish to revoke their membership in a union in order for a secret vote to be held. Under the previous system, more than 50 per cent of employees had to indicate that they were interested in decertification in order for a secret vote to be held.

In fact, the data shows that there were few complaints of intimidation filed with the CIRB under the card system up to June 16, 2015. The statistics show that between 2004 and 2014, the CIRB dealt with 23 cases of alleged intimidation or coercion during an organizing drive, and six were validated. That is six cases over a ten-year period. Of those six cases, four involved intimidation by the employer. The two others involved complaints between unions during a raiding campaign.

However, the experiences of provinces that adopted the secret ballot system show that employers use more intimidation practices with certification under a mandatory secret ballot than under the card-check system.

The study conducted by Professor Sara Slinn on behalf of the Ontario Ministry of Labour revealed, and I quote:

[*English*]

> Research suggests that employer —
>
> — unfair labour practices —
>
> — during certification are not only common but are intentional. A multi-jurisdictional survey of Canadian managers in workplaces that had recently experienced union organizing reported that "overt opposition to union certification was the norm" and that 80% of employers in the sample admitted to actions that the author characterized as open opposition to certification . . .

[*Translation*]

In light of those facts, can we say with any certainty that secret ballot voting is any more democratic than the card system? What would people say if voters heading to the polls had to exercise their civic duty under the threat of possibly losing their job? Canadians have passed laws and regulations to ensure that this does not happen. Bill C-525 provides no restrictions to limit the employer's actions during certification campaigns.

In addition, unlike most provincial legislation, Bill C-525 provides no specific time limit between the date of the application for certification and that of the secret vote. As Professor Slinn states, and I quote:

[*English*]

> Election delay significantly reduced the likelihood of certification in circumstances where there was either no statutory time limit for holding the vote or the time limit was not well enforced.

[*Translation*]

The case of the WestJet pilots' organizing drive tends to confirm this fact, given that the secret vote was held one month after the application for certification was filed and was spread over a two-week period. It's no wonder the campaign failed. Given that union membership is generally strong among Canadian pilots, one can assume that the campaign failed because of the longer timeframes.

A number of Canadian studies show that the introduction of mandatory secret ballot voting in the provincial labour codes is partially responsible for declining unionization rates. American studies have reached the same conclusion.

The last study I wanted to reference was conducted in 2013 by the Department of Human Resources and Social Development before Bill C-525 passed. That study clearly demonstrated that the secret ballot voting system adopted by some of the provinces is largely responsible for the decline in unionization in Canada.

I will read the conclusion of this study:

[*English*]

> From 1993 to 1997, the proportion of business sector employees in Canada covered by a mandatory vote regime increased from 23% to 53%. By 2001, the proportion had increased to 61%, reaching a high of 63% in 2008.
>
> Through this time period namely since the early 1990, union density in the business sector has steadily declined. From 1997 to 2012, the time period of this study, density declined from 23% to 19%.

That is in the business sector.

> In this study we examined the link between the adoption of a mandatory vote regime and this decline in business sector union density. We found that the use of mandatory vote regime has been an important factor in the decline of union density in the Canadian business sector. It was estimated that had all Canadian jurisdictions not used a mandatory vote regime for union certification starting in 1997, business sector union density would have been substantially higher by 2012. Simulations show that union density would have increased by around a half a percentage point from 1997 instead of dropping by 4 percentage points.

[*Translation*]

This study, conducted by the department in 2013 and kept secret until just recently, indicated that if the percentage of employees in Canada covered by a mandatory vote regime had remained at 1997 levels, or 53 per cent, the prevalence of labour unions would have been 23 per cent instead of 19 per cent. These results corroborate the results of previous studies done on the subject.

Independent research institutions such as the OECD and university research institutes are unanimous. They say that the stagnation in employment income can be attributed in part to the weakening of unions.

The weakening of unions also affects the distribution of wealth, namely through the growth of income inequality. The Gini coefficient is a mechanism for evaluating the growth or reduction of income inequality and comparing the results across various countries. This indicator shows that income inequality increased significantly in Canada between 1980 and 1990, and up to the early 2000s. The indicator remained stable thereafter. This corresponds to the period when the mandatory vote regime became popular and when a growing percentage of Canada's workforce was subject to this form of certification.

As I said earlier, the percentage of Canada's workforce subject to the secret ballot voting system for unionization increased by 174 per cent between 1982 and 2014.

During that time, union coverage fell by 28 per cent and the Gini coefficient rose by 10 per cent. The certification method doesn't explain everything. Other factors, such as the structure of the economy, also play into why income distribution deteriorated, but certification method is an aggravating factor.

• (1500)

Honourable senators, I also want to point out that, even as it is becoming harder for workers to unionize, a large and growing proportion of workers, more than 10 per cent of those employed in Quebec, in fact, belong to professional bodies and associations in which membership is virtually mandatory. According to a study conducted for the Fédération des chambres de commerce du Québec, both the number and proportion of individuals in the labour market who belong to a professional association are growing. Currently, almost 9.4 per cent of the people employed in Quebec belong to a professional association. The bargaining power of those professional associations is growing, and they employ a variety of techniques to command substantial remuneration. Could this be another factor that explains the growing income gap? The Senate should study this new labour market reality and its impact on the redistribution of wealth.

In short, there is no evidence that mandatory secret balloting enhances democracy at work because Bill C-525 makes certification harder and decertification easier. We might define workplace democracy as employees having opportunities to identify common challenges that affect their productivity, their quality of life at work and their participation in management decisions, which unionization often makes possible, but Bill C-525 promotes a more autocratic management model.

Again, there is no perfect system for union certification. The system we had before Bill C-525 was passed was not perfect, but it was better than the mandatory secret vote because it allowed employees to express their wishes without being subjected to pressure from the employer.

Repealing Bill C-525 will correct a typographical error contained in the bill, which abolishes some of the powers of the PSLREB. The government had promised to correct this error, but it did not. Therefore, the Senate passed a bill that not only was deficient in terms of substance, but also lacked rigour in its wording. It makes one wonder what happened to senators' independence.

As you know, esteemed colleagues, Bill C-377 was passed just before Parliament was prorogued, just as the government majority in the Senate managed to end the Liberals' filibuster.

Analyzed under objective criteria, Bill C-377 should never have been passed. It is very likely that it will be declared unconstitutional because it encroaches on provincial jurisdictions. Furthermore, seven provinces expressed their disapproval of this bill. It also undermines respect for and the right to privacy. A number of Liberal and independent senators spoke very eloquently against the passage of this bill. I invite them to repeat their arguments to you. I will not name them, as I am afraid I will forget some of them.

It is also important to mention that Bill C-377 was not enforced in 2016 and that its implementation is costly for the government and for unions.

I would remind honourable senators that the first iteration of Bill C-377, namely Bill C-317, was introduced in the other place in 2011, and the Speaker of that chamber found the bill to be out of order because, in his opinion, it required a ways and means motion. In other words, it had to be introduced by a minister of the Crown. Bill C-317 was therefore dropped from the Order Paper. The Conservative member reworked his bill and introduced it again as Bill C-377 in 2012. It passed the other place in December 2012. Once before the Senate, that bill was vigorously debated and was amended, in particular by Senator Segal. It was then sent back to the other place in June 2013. However, when the session was prorogued in the summer of 2013, Senator Segal's amendments were dropped and Bill C-377 returned to the Senate intact. It passed at third reading in the final days of June 2015, without amendment.

I would remind honourable senators that labour relations fall under provincial jurisdiction for businesses under the provinces' authority, and that unions are subject to provisions of transparency and accountability under the federal labour code and eight provincial codes, Alberta and Prince Edward Island being the exceptions. The Canada Labour Code even includes disclosure provisions for employer organizations. Nearly all experts and legal professionals have stated that Bill C-377 encroaches on the powers of the provinces to manage their labour relations and that it violates privacy rights. It also causes many financial problems for labour organizations and labour trusts.

Since I won't go into all the details of the bill — although I would advise my colleagues to read it themselves — I would like to remind the chamber of the observations in the report of the Standing Senate Committee on Banking, Trade and Commerce presented in the Senate on May 7, 2013:

[*English*]

> While the committee is reporting Bill C-377 without amendment, it wishes to observe that after three weeks of study, hearing from 44 witnesses and receiving numerous submissions from governments, labour unions, academics, professional associations and others, the vast majority of submissions raised serious concerns about this legislation. Principal among those concerns was the constitutional validity of the legislation, both with respect to the division of powers and the Charter. Other issues raised included the protection of personal information, the cost and need for greater transparency, and the vagueness as to whom this legislation would apply.

The committee shares these concerns. The committee did not offer any amendments because these substantial issues are best debated by the Senate as a whole.

[*Translation*]

Dear colleagues, if the committee did not introduce any amendments, it is because Bill C-377 was not amendable. There is only one thing to do: we need to repeal this unworthy law.

Repealing Bill C-377 will prevent the court challenges that stakeholders will most likely win. In fact, the Alberta Union of Provincial Employees launched a constitutional challenge against Bill C-377 in July 2015. The union agreed to suspend court proceedings until Bill C-4 is passed, if that happens. The Canadian Bar Association and the Office of the Privacy Commissioner of Canada, which raised serious privacy concerns about Bill C-377, suggested that the bill may be challenged on those grounds.

Before I close, I would like to say a few words about the transitional measures set out in Bill C-4. They have to do with Bill C-525 and indicate that applications for certification submitted during the period in which secret ballots are mandatory will be examined under the system provided for in this regard.

In short, passing Bill C-4 will make it possible to restore the balance of power in labour relations. In times like these, we need to promote stable labour relations and social dialogue, when it is necessary to adapt to change that is inevitable and all Canadians are hoping for renewed prosperity, as the population gets older. On that note, I would like to point out that many studies have shown that, during campaigns to revoke certification and in times of turbulent labour relations, the stock index drops. That sends a message to those who manage workplace activities: industrial peace and stable labour relations have value. It is better for employers to come to an agreement with their employees on mutually beneficial ways of doing things than to govern with a narrow view of management rights.

Unions played a major role in shaping our social programs and establishing mechanisms for distributing wealth. Today, they still play an important role in our democratic societies. It is unrealistic to try to do away with them. Rather than seeing unions as organizations that cause problems, we need to understand that they are part of the solution.

[*English*]

Finally, we must pass Bill C-4 and repeal Bill C-377 and Bill C-525. They are objectively flawed laws because of problems with the processes employed for their adoption, as well as their substance.

Thank you very much.

[*Translation*]

Hon. Claude Carignan (Leader of the Opposition): Will the honourable senator take a question?

Senator Bellemare: Certainly.

• (1510)

Senator Carignan: You say that you didn't vote for Bill C-525, that you abstained from voting because you disagreed on a technicality. During your speech, you said that secret ballots aren't a miracle solution, but can increase the credibility and the legitimacy of unions. The card system has been in place since the birth of unionization. It has proved useful in the past, but one would think that it's still relevant in the 21st century. Why did you make this complete about-face?

Senator Bellemare: Let's not forget that I proposed amendments at committee. Unfortunately, honourable senators who are here today but don't sit on the committee can't know that because the Standing Senate Committee on Legal and Constitutional Affairs did not pass my proposed amendments.

I proposed two types of amendments: the first was to shorten the timeframe. If we are to have secret ballots, I'm convinced we absolutely need guidelines. Bill C-525 contains no such guidelines. It mentions no timeframe, includes no guidelines and offers no access for unions.

It's in that context that I submitted amendments to the committee. I also proposed to correct the typo. However, as you know, I was part of a caucus at the time, and so I abstained from voting. That being said, I thought Bill C-377 was utterly inappropriate because it went against our principles.

Again, as far as Bill C-525 goes, secret ballots are an expression of democracy, but in order to work, they have to take place within a well-defined framework. In fact, I remind you that the chair of the tripartite committee in charge of reviewing the Canada Labour Code in 1998 said that there were differences of opinion. Employers wanted secret ballots and employees wanted to keep the current card-check system. They came up with a system. Let them negotiate and maybe one day they'll come up with a regime where secret ballots are the cure-all and are much more widely used. We don't know. Today's technological context is very different. Most certification votes currently happen in the workplace, and the data we have suggest that problems emerge when —

The Hon. the Speaker: I'm sorry, senator, but your time is up. Do you want five more minutes?

Senator Bellemare: If there are any other questions, I will gladly answer them. Thank you, Mr. Speaker.

[*English*]

The Hon. the Speaker: Is leave granted, honourable senators?

Hon. Senators: Agreed.

[*Translation*]

Senator Carignan: If you're worried about intimidation in the workplace, what do you think about remote voting either by mail, by phone or electronically, like they do in some U.S. states? It would guarantee secrecy and prevent the workplace intimidation you're worried about.

Senator Bellemare: There are two things I would like to remind you of. I'm opposed to both the process and the substance of Bill C-525. I don't think we should be debating the contents of Bill C-525 or whether there should be electronic voting or not. That is not for us to decide. Employers, unions and government agencies are the parties involved in labour relations. That system served us well in the past and can do so again. It's for them to decide how to manage labour relations.

For now, all I can say is that Bill C-525 is a bad bill because it didn't follow the proper process and also because, fundamentally, it doesn't allow for the holding of neutral, secret ballots.

[*English*]

Hon. Yonah Martin (Deputy Leader of the Opposition): I have a question for Senator Bellemare.

You mentioned your concern that intimidation within unions is quite high, and so the repeal of both private members' bills are part of this bill.

I'm wondering, because of the elimination of a secret ballot, which is a fundamental principle in democracy, and restoring the card-check system, if there's also a concern that that system is susceptible to intimidation and fraud when employees are pressured into giving their support for a union or being wrongfully informed that a signature on a card is meant simply to indicate that they wish to receive more information.

I know that there were polls conducted before the adoption of Bill C-525. A poll conducted in 2013 by Leger Marketing in Quebec and another by Nanos in 2011 found there was support for secret balloting upwards of 84 to 86 per cent. I'm curious if you have any statistics post the adoption of Bill C-525 where those numbers would have dramatically dropped to indicate there wasn't support for that bill.

In regard to repealing Bill C-525, what is the justification and what surveys and/or consultations were done with the members of the union, because the support was, clearly, very high.

[*Translation*]

Senator Bellemare: I thank Senator Martin for her question. I don't have the latest numbers. What we know is that the Canada Industrial Relations Board, over the past 10 years, has received very few bullying complaints from unions with the card-check system.

However, recently, between June 2015 and February 2016, 10 complaints have been validated. Actually, there were 24 complaints regarding 64 certification requests, 10 or 11 of which have been validated. That's a lot more than under the old system.

If we were to ask people if they are fully aware of the way in which secret ballots take place, I don't know what their answer would be. If we asked them if they would vote in elections under the threat of losing their jobs, I don't know what they would say. I think they would like secret ballots to take place in a neutral context.

I agree with you that secret ballots are very important and are an expression of democracy, but the card-check system, practically speaking, is also an exercise of democracy in the workplace.

Moreover, the card system also includes secret ballots. As soon as the board has reason to believe that less than 50 per cent of the people have signed their cards, it can force a secret vote. It has done so in the past. Secret ballots are also mandatory in other circumstances.

No system is perfect, but as far as labour relations go, the card-check system seems more efficient than the secret ballot system.

[*English*]

The Hon. the Speaker: Senator Bellemare's time has expired again. It's up to her whether or not she wishes to ask for more time to answer questions.

Are you asking for more time, Senator Bellemare?

[*Translation*]

Senator Bellemare: I ask for five more minutes, please.

The Hon. the Speaker: Is leave granted?

Hon. Senators: Agreed.

[*English*]

Hon. Stephen Greene: I'm interested in your position on secret ballots. In particular, we had this debate in the Modernization Committee. I'm sure you remember it. In that committee, you were in favour of secret ballots. I was wondering what the difference is between your position on this and your position on your bill.

[*Translation*]

Senator Bellemare: Like everyone, I agree that the secret ballot is an expression of democracy. It's an important symbol, but in the reality of the workplace, secret ballots are not held in a perfectly neutral context with every necessary external condition in place for people to really express their opinion.

• (1520)

Studies show that secret ballots lead many businesses to use bullying tactics. That's why some studies recommend using secret ballots with specific guidelines to allow union representatives to go meet union members in the workplace and make presentations. In these conditions, employers and employees could find common ground.

Currently, union representatives can't contact their members. It can be very easy for employers to bully or fire employees. It happens. The board has specific examples which we could debate further if you want.

Senator Carignan: I'm having a hard time following you, Senator Bellemare.

If I understand correctly, you are saying that the secret ballot system isn't as good at ensuring legitimate, free and voluntary unionization as the card-check system. If that's the case, why do labour commissioners or tribunals order a secret vote when concerns arise regarding the free and voluntary signing of membership cards?

In several provinces, whenever there's any doubt over the signing of membership cards, a secret vote is ordered to preserve the free and voluntary nature of the process. Don't you think there's a dichotomy here, a contradiction between this and what you're saying?

Senator Bellemare: Not at all. I see no contradiction between these two positions.

(On motion of Senator Martin, debate adjourned.)