

August 5, 2015

Summary of Bill C-377 - An Act to Amend the Income Tax Act (requirements for labour organizations)

On June 30, 2015, Bill C-377 received royal assent from the Senate. This memo discusses the potential impact this new legislation will have when regulations come into force.

Issue

Bill C-377 has been heavily criticized by union organizations due to the onerous reporting requirements and potential conflicts between privacy legislation and the requirements of the Act. Criticisms include claims that the bill is anti-union and unconstitutional. The federal NDP and Liberal parties have stated they will repeal the bill if elected.

With Bill C-377 receiving royal assent, union organizations should understand the extent of the reporting requirements, and begin to make preparations for the reporting, in the event that the bill holds out against challenges in court to its current form.

Key Definitions

The act provides three key definitions governing which organizations the act applies to, which are provided below:

- **Labour organization:** Includes a labour society and any organization formed for purposes which include the regulation of relations between employers and employees, and includes a duly organized group or federation, congress, labour council, joint council, conference, general committee or joint board of such organizations.
- **Labour relations activities:** Activities associated with the preparation for, and participation in, the negotiation of collective bargaining agreements and the administration and enforcement of collective agreements to which the labour organization is a signatory.
- **Labour trust:** A trust or fund in which a labour organization has a legal, beneficial, or financial interest or that is established or maintained in whole or in part for the benefit of a labour organization, its members or the persons it represents.

Required Disclosure

Labour organizations and labour trusts will be required to submit an annual information return to Canada Revenue Agency which includes the following information (which will be made available to the public):

- Financial statements for the fiscal year including a balance sheet showing the assets and liabilities of the organization or trust and a statement of income and expenditures of the organization or trust;
- Statements listing the aggregate amount of all transactions and disbursements;
- For each respective payee with cumulative transaction values totaling over \$5,000, individual line entries for each transaction and disbursement, including the payer and payee name, purpose of the transaction, and the specific amount of the transaction paid or received;
- An individual statement of disbursements for officers, directors and trustees, employees with compensation over \$100,000 and persons in positions of authority including gross salary, periodic payments, benefits (including pension obligations), vehicles, bonuses, gifts, service credits, lump sum payments, other forms of remuneration provided;
- An aggregate statement of disbursements to employees and contractors including gross salary, periodic payments, benefits (including pension obligations), vehicles, bonuses, gifts, service credits, lump sum payments, other forms of remuneration provided;
- An individual statement with a reasonable estimate of the percentage of time spent on political activities, lobbying activities and other non-labour relations activities for officers, directors and trustees, employees with compensation over \$100,000 and persons in positions of authority and an aggregate statement for employees and contractors; and
- A statement of aggregate amount of disbursements on labour relations activities.

Exemptions

The Act provides for the following exemptions from the reporting requirements:

- Labour-sponsored venture capital corporations; and
- Labour trusts that exclusively limit their activities and operations to the administration, management, or investments of a deferred profit sharing plan, an employee life and health trust, a group sickness or accident insurance plan, a group term life insurance policy, a private health services plan, a registered pension plan, or a supplementary unemployment benefit plan.

These exemptions notably do not cover supplemental retirement plans, vacation pay, self-insured death benefit plans, training funds, and self-insured dental plans. These would be required to comply with the disclosure requirements of the Act.

Analysis

The definition of a labour organization is far-reaching. It could potentially include not only union organizations, but also employer associations that negotiate with unions as it could be argued that they were partially formed for the purpose of regulating the relations between employee and employer.

The definition of a labour trust includes a trust or fund in which a labour organization has a financial interest. This could potentially affect mutual funds and other funds in which labour organizations have invested, and in turn, affect individuals invested in the funds who are not associated with labour organizations.

The additional administrative burden will prove costly for unions as the reporting will be required at a local union level. Audit costs will be increased, and there is a provision in the bill for penalties of \$1,000 for each day of non-compliance to a maximum of \$25,000.

The required disclosures could undermine the ability of unions to negotiate for their members, as the relevant information would be publicly available to employers.

In-Force Date

The Act will apply “in respect of fiscal periods that begin after the day that is six months after the day on which this Act is assented to.” As the Act was assented to on June 30, 2015, the first filing would be in respect of fiscal periods that start on or after January 1, 2016. Therefore, the first required filing for organizations with a fiscal year end of December 31st would be June 30, 2017, in respect of the fiscal year ending December 31, 2016.

The Regulations for this Act have not yet been created.

We expect that this bill will face significant opposition in court.