



A private member's bill seeking transparency in labour organizations also risks the privacy of plan participants and beneficiaries.

# Privacy Risks Within Bill C-377

by | D. Cameron Hunter and Karen DeBortoli

If passed, Bill C-377—An Act to Amend the Income Tax Act (requirements for labour organizations)—will require all plans that pay benefits to union members to make details of any pension and benefit payments exceeding \$5,000 each year publicly available. This means that plans will have to name members and beneficiaries who receive payments in excess of this threshold, including pension payments (i.e., monthly pensions, lump-sum termination, death payments) as well as those receiving disability income, significant drug benefits, or other major services or treatments.

The stated intention of Bill C-377 is to make union finances more transparent, given the tax deductibility of union dues and the tax-exempt status of labour organizations. However, the bill will impose unprecedented disclosure requirements far surpassing those placed on government agencies and other organizations that receive preferential tax treatment, such as registered charities and Canada's First Nations.

In the absence of major revisions to the bill, it will also increase the vulnerability of individual benefit recipients, whose names, addresses and personal finances will become a matter of public record.

Introduced as a private member's bill by Conservative Member of Parliament Russ Hiebert (South Surrey-White Rock-Cloverdale), Bill C-377 passed first reading in the House of Commons in December 2011 and had its second reading in February 2012. It has now been referred to the Standing Committee on Finance. As a private member's bill, it's not clear whether the legislation is backed by the Conservative government.

### What Bill C-377 Says

Bill C-377 will amend the Income Tax Act to require every labour organization and labour trust to file a public information return within six months of the end of each fiscal period. The bill defines a *labour trust* as:

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 benefits of a labour organization, its members or the persons it represents.

The information return that must be filed by covered organizations/trusts includes:

- A set of financial statements for the fiscal year, including a balance sheet showing the assets and liabilities and a statement of income and expenditures for the organization/trust.
- A set of statements showing the aggregate amount of all transactions and disbursements (or book value of investments and assets) over \$5,000 as separate entries, including the name and address of the payer and payee, the purpose and description of the transaction, and the specific amount paid or received (or to be paid or received). Payments subject to such disclosure include:
  - Disbursements to officers, directors, trustees, employees and contractors, including gross salary, stipends and benefits (including pension payments)
  - Disbursements on administration
  - Disbursements on general overhead
  - Disbursements on legal activities.
- A statement showing all labour relations and non-labour relations expenditures, including salaries.
- For labour organizations or trusts headquartered outside Canada, a statement of amounts paid or credited by or on behalf of taxpayers resident in Canada, and a statement of expenditures made by the organization/trust inside or outside of Canada that are directly related to its operations in Canada.

The above information is to be made available to the public on a government website. If a labour organization or trust fails to comply with the provisions of Bill C-377, it is subject to fines of \$1,000 for each day it fails to comply.

### What Bill C-377 Does

As a result of the legislation's definition of *labour trust*, union-sponsored pension and benefit plans will be subject to Bill C-377. The definition will also encompass the following entities, which are established or maintained to benefit union members:

- Any employer-sponsored or union-sponsored pension plan covering unionized employees
- Any benefit plan operating through a trust.

Pension and benefit plans will be subject to Bill C-377 if they cover both union and nonunion workers. This would

give the legislation a particularly broad reach, place the privacy of plan members at risk and potentially impose financial reporting duties on unions regarding pension plans that are typically the responsibility of plan administrators.

A troubling aspect of the proposed legislation is the impact on individual plan members and beneficiaries. Under the proposal, details of members' and beneficiaries' pension and benefit payment amounts exceeding \$5,000 will be publicly available, along with their addresses. For instance, it would not be uncommon for a lump-sum benefit paid to a terminated member of a pension plan or the lump-sum death benefit paid to the widow of a deceased pension plan member to exceed \$5,000. Disclosure of such recipients' benefits would appear to be a significant invasion of privacy. Individuals in receipt of disability benefits or in need of significant drug benefits will have their personal information (including the reason for being in receipt of disability or which drugs are being taken) publicly available. While the stated aim of Bill C-377 is to provide more disclosure of union finances, it should be noted that these disclosure obligations will also apply to nonunionized members who are members of a labour trust.

Privacy legislation such as the Personal Information Protection and Electronic Documents Act (PIPEDA) allows disclosure of personal information without consent in order to comply with or enforce a federal or provincial law. While the Office of the Privacy Commissioner of Canada (OPC) has not commented publicly on Bill C-377, it is following the progress of the legislation and has indicated that it has concerns about the disclosures required of labour trusts. It is also likely that the health information that can be disclosed, as noted above, will violate legislative protections afforded to personal health information, such as those contained in Ontario's Personal Health Information Protection Act, 2004. This may raise concerns for Ontario's Information and Privacy Commissioner.

Another troubling aspect of the proposed legislation is the ability to comply with its requirements. Many pension and benefit plans outsource administration to third parties. The information on specific details of benefit payments (e.g., disability and drugs) is rarely provided to employers or trustees, as it would contravene privacy policies.

## What Is a Private Member's Bill?

Unlike government bills, which are introduced by cabinet ministers, private member's bills are introduced by a member of Parliament, whether in government or in opposition. These bills can be on any topic, provided that their measures do not entail an expenditure of public funds.

While a private member's bill follows the same legislative process as a government bill, these bills may only be considered during Private Members' Hour—a one-hour period every day the Parliament is sitting (i.e., in session). Pursuant to rules implemented in 1986, 20 items of private member's business (including bills) are selected at random to receive priority in debate. Six of these items are chosen by a committee to be votable and must come to a vote in the House.

Very few private member's bills actually become law. Between May 14, 1910 and March 26, 2011, only 236 private member's bills were passed by Parliament. Many of these bills relate to changing the name of riding of the member who introduced the bill, or to designate days or weeks to mark specific events.

Bill C-377's required disclosures far exceed those demanded from the public sector. For example, Ontario's Public Sector Salary Disclosure Act, 1996, requires organizations that receive public funding from the province annually disclose the names, positions, salaries and total taxable benefits of employees paid \$100,000 or more in a calendar year. By contrast, Bill C-377 would require disclosure of any payments over \$5,000, regardless of an individual director, officer or trustee's total actual salary (if any).

Finally, the requirement to disclose disbursements on legal activities could effectively disclose the legal issues or strategies of a labour organization or trust. In addition to being an unwanted intrusion into private business dealings, it could also undermine solicitor-client privilege.

Other aspects of Bill C-377:

- At least some of the disclosures required of labour trusts are redundant as they are already required under

other legislation. For example, trusts must already file audited financial statements for both pension plans and benefit plans. Trustees owe a fiduciary duty to all beneficiaries of the trust, and all transactions are subject to the requirements of pension and trust law, as well as the Income Tax Act, with attendant penalties for noncompliance.

- Additional costs of compliance could add significantly to the audit and administration costs for labour trusts, and such costs could lead to a reduction in the amounts of pension and benefit payments that could be made to members of plans (both union and, in the case of an employer-sponsored plan with union and nonunion members, nonunion employees).
- Bill C-377 imposes significant penalties, with no provision for dispensing with penalties in cases of inadvertent noncompliance.
- The cost of enforcing the disclosure provisions of the bill, including the development and maintenance of the related website, will require the expenditure of public funds. As discussed in the sidebar, legislation that requires public expenditures cannot be introduced through a private member's bill. ☹

## BIOS

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## What's Next?

While introduced by a Conservative MP, it is important to note that Bill C-377 is a private member's bill as opposed to a government bill. It is therefore not possible to state whether the Conservative government supports the bill.

In second reading debates on Bill C-377, which took place March 13, 2012, the private member stated that the purpose of the legislation "is requiring disclosure to the general public because the public is providing a financial benefit through the tax system. The public has a right to know how the benefit they provide to labour organizations is being used." Parliament must determine whether that right extends to viewing personal information about individual pension and benefit plan members.

The ultimate fate of Bill C-377 is unknown. Given the backlog of matters before the Standing Committee on Finance, it is not expected to come up for consideration until June. While very few private member's bills become law, some insiders have indicated Bill C-377 has a reasonable likelihood of passing in some form.