C-377: Unnecessary and unprecedented

Submission to the Senate Standing Committee on Legal and Constitutional Affairs

Prepared by: Joe Boughner and Milt Isaacs
Association of Canadian Financial Officers
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Introduction

As the representatives of more than 4,500 financial officers in the federal public service, the Association of Canadian Financial Officers (ACFO) is disappointed to see that Bill C-377, *An Act to amend the Income Tax Act (requirements for labour organizations)*, has returned to the Senate in its original form, thereby undoing the rational and logical changes proposed by the Honourable retired Senator Hugh Segal and others.

And so we are compelled, once again, to argue that this bill as drafted is an attempt to solve a problem that does not exist in a way that places an undue burden on organizations that already endeavour to work as efficiently as possible on behalf of its members – members to whom unions are already accountable.

As the union representing the very financial officers that are entrusted to ensure public funds are managed in an accountable way, we feel we our well positioned to speak to accountability. Indeed, accountability is in our DNA.

This bill does not provide accountability.

It is the opinion of ACFO, and indeed many other stakeholders inside and outside the labour movement, that Bill C-377 is unnecessary legislation, which is unnecessarily intrusive, unnecessarily targeted at unions and is unnecessarily onerous, both on the unions it targets and to over-worked and under-resourced government agencies.

We hope that this committee will do the right thing and report back to the Senate that this bill should not be allowed to proceed further.

Unnecessary legislation

The prevailing narrative from supporters of Bill C-377 is that it is a necessary step to make unions more accountable to its members for the money spent in their name.

The reality is that **unions already operate in an accountable and transparent manner**. Every year, ACFO presents a budget, independently audited financial statements and an annual report to our membership at our annual general meeting. Our books are available to our members at any time; our elected directors and headquarters staff are available at any time to answer questions; and any dues-paying member has the right to run for a position on our board should they be unsatisfied with the service they receive.

Unions do not receive public subsidies. As non-profit entities unions do not pay income tax and unions are already required to file detailed financial returns. Proposing these new requirements as an income tax act amendment is clearly a red herring designed to detract from the true intentions of this bill.

As Senator Segal said, in his own words:

> *The bill in its drafting, if not in its intent, had serious and, in the view of the vast majority of witnesses, fatal flaws as to the constitutional violation of sections 92 and 91 of the British North America Act, the Charter of Rights and Freedoms, freedom of speech, expression and association as protected by that very Charter of Rights and Freedoms…*
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> *The bill before us is using the Income Tax Act to try to avoid a constitutional challenge before the courts, and that is not going to fly. One of the most important roles of the upper chamber in a confederation is to amend and even prevent legislation that would directly interfere in our constitutional provisions in Canada.*[1]

But the bill isn't just unnecessary. It goes much further than that.

[1] http://www.parl.gc.ca/content/sen/chamber/411/debates/175db_2013-06-17-e.htm

Unnecessarily intrusive

Indeed, the very scope of the proposed legislation is intrusive to an alarming degree. As the Honourable Senator James Cowan noted[2]:

> *(…) there is no limitation here requiring the naming and disclosure of disbursements only to employees earning more than $100,000. The paragraph uses the words "the aggregate amount of all transactions and all disbursements," but goes on to stipulate that there must be separate entries with the name of every payer and payee, with the specific amount that has been paid or received. The only limitation is that the total amount must be more than $5,000. If an employee or contractor earns or receives more than $5,000 during the year, they must be personally identified and the amounts reported.*
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> *In fact, it was at the report stage in the other place that these opening words were clarified to make it clear that "all transactions and all disbursements, the cumulative value of which in respect of a particular payer or payee for the period is greater than $5,000" were to be "shown as separate entries," along with the payer or payee's name.*
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> *Paragraph (b) sets out the general rule. Paragraphs (vii) and (viii) that follow are additions to this general rule of $5,000, but unfortunately they only confuse an already confusing reporting regime.*
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> *In the original version, paragraph (vii) was drafted to require disclosure of all disbursements to officers, directors and trustees; and paragraph (viii) was drafted to require disclosure of all disbursements to all employees, from part-time janitors to filing clerks, and up to the most senior employees.*
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> *These two paragraphs were also amended in the other place, after the bill was reported back from committee. Curiously, the amendment requiring the public disclosure of employees who earn more than $100,000 was inserted into paragraph (vii). It was tacked on to the sentence about officers, directors and trustees. As amended, the paragraph requires the reporting of:*
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> *(vii) a statement of disbursements to officers, directors and trustees to employees with compensation over $100,000 and to persons in positions of authority who would reasonably be expected to have, in the ordinary course, access to material information about the business, operations, assets or revenue of the labour organization or labour trust, including gross salary, stipends, periodic payments, benefits (including pension obligations), vehicles, bonuses, gifts, service credits, lump sum payments, other forms of remuneration and, without limiting the generality of the foregoing, any other consideration provided.*

[2] http://www.parl.gc.ca/content/sen/chamber/411/debates/151db_2013-04-16-e.htm

> *However, because of paragraph (b), which I read earlier, everyone making more than $5,000 must already be named. Paragraph (vii) does not say that anything less than $100,000 need not be reported. It does not override paragraph (b).*

Bill C-377 contains several basket clauses which have far reaching applications. As Honourable Senator Tardif appropriately noted during the second reading debate of the Senate[3]:

> *I have specific concerns about clause 149.01(3)(b)(xx), "any other prescribed statements," which serves as a basket clause for the financial disclosure requirements, meaning that any additional disclosure requirement could be imposed at any time by this government regulation. This means effectively that if we allow this bill to pass, then we are granting the government permission to increase at any time the financial disclosure requirements of labour organisations. This is not a responsible way to proceed.*

Senator Cowan also expressed similar concerns[4]:

> *The words "any other prescribed statements" contain no limitation. Anything could be added: political party memberships or the home addresses of employees. As drafted, there is absolutely no limit on what the government could prescribe to be disclosed by regulation.*

Further, Senator Cowan rightfully noted the concluding language in the first paragraph: "…the paragraph does not end with 'specifically' or 'namely' or similar words. It ends with the words 'and including.' Basic principles of statutory interpretation mean that the words of this opening paragraph are the governing words and what follows does not limit those words, it just adds to them."

This level of financial disclosure requirement is unprecedented and arbitrary. The language in this ostensible finance Bill is convoluted and difficult for anyone, including financial professionals, to decipher its meaning. What is certain, however, is that this legislation is not helpful in determining whether unions are accountable.

[3] http://www.parl.gc.ca/content/sen/chamber/411/debates/154db_2013-04-23-e.htm
[4] http://www.parl.gc.ca/content/sen/chamber/411/debates/151db_2013-04-16-e.htm

Unnecessarily targeted

Like other non-profit organizations, charities and professional associations, ACFO strives for the betterment of the Canadian fabric. However, this bill extends the public reporting for unions far past what is required for organizations whose members enjoy the same tax-related benefits – religious congregations, law societies, medical associations etc.

Terrance Oakey, president of Merit Canada and a key supporter of Bill C-377 has noted repeatedly that these proposed requirements are the same as other public bodies: "If charities, MPs, MLAs, city councilors, public servants, First Nations bands and so on, can provide disclosure, why can't union bosses?[5]"

This is an unfair comparison. MPs, MLAs, city councilors and public servants disclose their financial information to the public because they are responsible for spending public money. In the same vein, unions are spending money received from their membership and disclosing the spending of that money to their membership. What Mr. Oakey is suggesting is that an unfair double standard be imposed solely for unions.

Once again, Senator Segal offers useful context[6]:

> *Proposed subparagraph 149.01(3)(b)(ix) lists the need to declare what is spent on labour relations activities, with no concurrent disclosure imposed on the management side. How about a law that forced my political party to disclose its campaign, travel, research and advertising budgets to the Liberal Party of Canada or to the NDP two weeks before the election was called?*
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> *Perhaps Coca-Cola should be forced to disclose to Pepsi its marketing plan and expenditures over $5,000.*
>
> *How about the Montreal Canadiens having to tell the Boston Bruins whether their coach spent more than $5,000 on dinner for their team and where they ate in Boston before the game?*
>
> *Honourable senators, this bill is about a nanny state; it has an anti-labour bias running rampant; and it diminishes the imperative of free speech, freedom of assembly and free collective bargaining.*

[5]http://www.calgaryherald.com/business/Oakey+time+unions+become+more+transparent/7035381/story.html
[6] http://www.parl.gc.ca/content/sen/chamber/411/debates/138db_2013-02-14-e.htm

Unnecessarily onerous

By this point is should be clear that this unnecessary legislation is anything but an attempt to bring accountability to unions. However, this legislation doesn't only fail to improve accountability, it will force unions to redirect the very resources it ostensibly protects to address the administrative burden inherent in the increased reporting.

The additional burden placed on unions as a result of this legislation is not inconsequential. Bill C-377 will have a number of negative ramifications for Canadian unions, union members, other Canadians and the Government of Canada.

Unions are already required to submit or file a number of comprehensive financial reports and returns– both for their members and for the federal government. If Bill C-377 came into force, unions would be required to submit yet another report on the same activities.

This will require unions to use additional resources to prepare this new financial report. Some unions, particularly smaller unions, will have to redirect resources previously aimed at other activities they undertake; this may include charitable, community or service-based activities. Indeed, some unions have noted that they may have to raise union dues to prevent a shortfall.

Similarly, in order to ensure that these reports are prepared and submitted properly, the federal government will need to use additional resources and personnel to review each statement prior to posting it online.

Both the CRA and the Parliamentary Budget Office (PBO) have admitted that the wording of Bill C-377 is so vague and indeterminate that it is extremely difficult to come up with solid cost figures. The CRA's estimates assume that fewer than 1,000 labour organizations would have to report. The PBO believes that 18,300 union organizations would have to report.

The scope of Bill C-377 is such that it includes every union local, large and small in the country, meaning that about 25,000 labour organizations would have to report. In the United States, a department that administers similar but less onerous reporting regulations had a budget of $41.3 million in 2012 to track 26,000 unions.

In a time when the federal government is eliminating federal jobs and burdensome registries (for example, the Long Gun Registry) in part to limit federal spending, it seems counterproductive for the government to support a bill that would force them to redirect additional public service resources toward a bureaucratic registry instead of something with a clear benefit to the Canadian public.

These concerns were shared by Senator Segal[7]:

> *My colleague from Prince Edward Island, Senator Downe, has spoken eloquently about the need to work harder on tax evasion. Do we want to take people who might be working on tax evasion and have them assess which union local bought a new boiler for its headquarters? That is what this bill would produce …*
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> *Have we decided that CRA has lots of employees with little to do? When did that meeting happen? Who came to that conclusion? To manage the new nosey mission, CRA would need new employees and up to $2.5 million in operating funds, plus an extra $800,000 a year. That is CRA's own estimate. The Parliamentary Budget Officer says the number will be much higher.*

[7] http://www.parl.gc.ca/content/sen/chamber/411/debates/138db_2013-02-14-e.htm

Conclusion

Canadian unions derive their mandate and legitimacy from the members they represent. They are not managed by autonomous “union bosses;” they are led by duly-elected representatives who come from the very membership ranks this bill purports to defend. There is no shortage of mechanisms by which members can hold their union leadership to account.

Indeed, it was members of this very committee who first recognized this bill for what it is. It was the good work of the Senate of Canada that prevented this flawed bill from becoming law two years ago. That it has been sent back to the upper chamber in its original form is frustrating but we trust that the sober second thought that defines your work will once again win the day.

Union members in Canada have every right to expect their union leaders to be accountable to them. It is, however, disingenuous to suggest either that they do not today or that this bill will somehow make unions more accountable. The legislation was flawed two years ago and it is flawed today.

We are counting on this committee to do the right thing.