



Bill C-377: How Will it Affect You?

Denis W. Ellickson and Andrea Wobick

In December, 2012, Bill C-377, *An Act to Amend the Income Tax Act (Requirements for Labour Organizations)*, a private member's bill initiated by Conservative MP Russ Hiebert passed Third Reading at the House of Commons.

Bill C-377 imposes a multitude of reporting obligations on "labour organizations", which are defined in the Bill as follows:

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.

The reporting obligations also apply to "labour trusts", which are defined 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 benefit of a labour organization, its members or the persons it represents.

Some of the items that unions will be required to disclose annually as a result of Bill C-377 include the following:

1. a balance sheet showing assets and liabilities;
2. a statement of income and expenditures for the fiscal period;
3. statements setting out the aggregate (total) amount of all transactions and all disbursements where the cumulative value of the transactions is over \$5,000, along with the name and address of the payer and payee, the purpose and description of the transaction and the specific amount that has been paid or received or that is to be paid or received, including (but not limited to):
 - (a) statements of accounts receivable, accounts payable, and loans payable;
 - (b) statements of loans exceeding \$250 receivable from officers, employees, members or businesses;

- (c) statements of disbursements to officers, directors and trustees including the gross salary, stipends, periodic payments, benefits (including pension obligations), vehicles, bonuses, gifts, service credits, lump sum payments, other forms of remuneration and any other consideration provided and a "reasonable estimate" of the percentage of time dedicated to political activities and lobbying activities;
- (d) statements of disbursements and salaries to employees whose compensation is over \$100,000, and contractors, including gross salary, stipends, periodic payments, benefits (including pension obligations), vehicles, bonuses, gifts, service credits, lump sum payments, other forms of remuneration and other consideration and a "reasonable estimate" of the percentage of time dedicated to political activities and to lobbying activities;
- (e) statements of disbursements on labour relations activities, political activities, lobbying activities, contributions, gifts and grants, administration, general overhead, organizing activities, collective bargaining activities, conference and convention activities, education and training and legal activities, excluding information protected by solicitor client privilege.

The Legislation contemplates these documents being available to the general public in the website of the Canada Revenue Agency. Over the past year, many organizations and entities, including Sections of the OBA and CBA, have raised concerns about the Bill. As a result of those concerns, some limited amendments were introduced, but only after it had passed Second Reading and had passed through the Standing Committee on Finance.

As a result of the recent motion to amend the Bill, statements of disbursements need not be made with respect to a labour-sponsored venture capital corporation, a labour trust for which the activities and operations are exclusively limited 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;

Not only must all such information be reported each year, but Bill C-377 requires that all such information will also be made available to the public. Furthermore, the Bill imposes a fine of \$1,000 for each day that a labour organization fails to comply with the reporting obligations. As a result of the amendments to the Bill, the fine for a failure to comply is subject to a maximum of \$25,000 (whereas no maximum fine was originally specified).

Labour organizations or labour trusts having headquarters outside of Canada may also have reporting obligations under Bill C-377; however, the Bill does not make clear precisely what those obligations will be.

The above-referenced changes will come into force for the fiscal period starting six months after the date of royal assent by the Government. The Canada Revenue Agency has indicated that it may take up to a year in order to have a system in place to handle the Legislation's reporting obligations.

What are the implications for Bill C-377 for unions and for the legal profession?

Despite the very recent amendments to the Bill, Bill C-377 continues to create onerous obligations that are not required of other non-public organizations and entities, and sets up a regime whereby the Government of Canada, employers and the general public may monitor the activities of unions and use it to further extinguish unions' rights and freedoms.

The implementation of these reporting obligations will certainly be prohibitively expensive and enormously time consuming. The financial consequences of such obligations could devastate the financial viability of smaller labour organizations.

One rationale that has been used to defend Bill C-377 is that unions receive generous tax breaks. However, many organizations, not for profit associations, corporations and individuals benefit from a variety of tax breaks, and they are not subject to the onerous reporting requirements of this Bill.

Another rationale used to justify the Bill is transparency. Again, unions are already transparent. In most provinces, unions must file financial statements with their Labour Relations Board. Sections 92 and 93 of Ontario's *Labour Relations Act* require trade unions to provide members with audited financial statements and to file such statements with the Ministry of Labour each year. There are similar obligations under the provisions of the *Canada Labour Code*.

What are the legal implications of Bill C-377?

Bill C-377 potentially infringes upon constitutional freedoms, privacy rights and jurisdictional issues between the federal and provincial sphere. There are also implications for solicitor client privilege.

The reporting obligations with respect to the amount of time spent on political activities and lobbying may be considered a violation of the constitutionally protected freedom of expression under section 2(b), and freedom of association under section 2(d), of the *Charter of Rights and Freedoms*.

Privacy rights may also be implicated. The Bill does not make clear the level of detail that must be disclosed in order to satisfy Canada Revenue Agency with respect to the compensation disbursed to officers, directors, employees and other individuals. It is possible that the detail required may identify particular individuals and provide information about their political beliefs and activities that would then be made available to the public.

Privacy rights may also be implicated through the disclosure of disbursements for legal activities. While the amendments to the Bill purport to exclude the disclosure of

information subject to solicitor client privilege, it is possible that the recent amendments to the Bill do not guarantee that the information required by Canada Revenue Agency will not force unions to breach solicitor client privilege.

Bill C-377 also raises a jurisdictional issue as between the provincial and federal spheres. Under the Constitution, provinces have jurisdiction over labour matters. It is possible that these amendments to the *Income Tax Act* constitute an intrusion upon provincial jurisdiction.

It is expected that there will be legal challenges mounted in response to Bill C-377 in the coming months.

About the Authors

Denis W. Ellickson is a Partner, Caley Wray LLP. Andrea Wobick is an Associate at Ursel Phillips Fellows Hopkinson LLP.