



Canadian Football League Players' Association Pension Plan Trust Fund

A BRIEF TO THE STANDING COMMITTEE ON FINANCE

June 2012

Bill C-377 and its Impact on the CFLPA Pension Plan Trust Fund



CANADIAN FOOTBALL LEAGUE PLAYERS' PENSION PLAN

1. Introduction

We are writing in regards to Bill C-377, a private member's bill brought by Conservative MP Russ Hiebert. According to public comments made by Mr. Hiebert, the purpose of the Bill is "to increase transparency and accountability" in labour unions, and to empower the Canadian public "to gauge the effectiveness, financial integrity and health of Canada's unions".¹ Despite this stated goal, in its current form the Bill will have a substantial, detrimental and unjustified impact on many pension and benefit plans.

We write in our capacity as the Trustees of the Canadian Football League Players' Association Pension Plan Trust Fund (the "CFLPA Pension Fund" or the "Fund"), and hope that as the Committee deliberates, you will consider the general impact that this Bill will have on pension plans and funds and the specific impact that a Bill which calls for the type of disclosure envisioned by Mr. Hiebert will have on the CFLPA's Pension Fund in particular.

1.1: Who We Are

The CFLPA Pension Plan (the "Plan") has been in operation since 1967, and was established to provide pension benefits to the players of the Canadian Football League well after their playing careers have ended. The Plan is a defined contribution pension plan, registered with the Financial Services Commission of Ontario and the Canada Revenue Agency. The Plan is not funded through union dues. All of the CFL Member Clubs (i.e. the Calgary Stampeders Football Club, the Saskatchewan Roughriders Football Club and the Winnipeg Blue Bombers Football Club etc.) make contributions to the Plan for the benefit of all players in the CFL pursuant to the Collective Bargaining Agreement between the CFL and the CFLPA. The CFLPA members also have set contributions that they must make, and they have the option of making additional contributions. As of December 31, 2011, the Plan had 2,954 total members of whom 696 were active CFL players, and held assets of over \$53 million.

The Fund holds the assets of the Plan, and the Trustees are tasked with administering the Fund and the Plan. The Fund is administered and invested in accordance with the Canadian Football League Players' Pension Plan Trust Fund Trust Agreement (the "Agreement"). The Canadian Football League, the CFLPA and the Trustees are all parties to the Agreement. The Fund must be administered by six trustees, all of whom are appointed by the CFLPA. At least three of these trustees must be active players or their representatives and three must be retired players or their representatives. The Trustees must meet at least once per year, and any member of the CFL or CFLPA can require a meeting of the Trustees by filing a written notice. Under the Agreement, the Trustees must arrange for the books and records of the Fund to be audited each year, and the statement summarizing the results of the audit must be available for inspection by any person with an interest in the Fund.

Although the Trustees of the Fund are appointed by the CFLPA, the Fund and Plan are run independently. Neither the CFL nor the CFLPA has any role in determining how the Fund

¹ www.c377.ca.

Trustees invest its assets, how benefits are paid or in the general administration of the Fund or the Plan.

The Trustees have retained Manulife Insurance and Strategic Income Security Services to assist them in the administration and investment of the pension fund. The Plan is a defined contribution pension plan, which means that members accumulate significant member accounts that are invested by them pursuant to options made available by the Trustees and Manulife. These accounts are ultimately used at retirement age to produce retirement income. The Fund is audited annually by BDO Dunwoody, chartered accountants. It is regulated by the Financial Services Commission of Ontario and the Canadian Revenue Agency.

We have several specific concerns about the Bill as proposed by Mr. Hiebert. These concerns are summarized below, and our Brief concludes with specific recommendations for amending the Bill in order to alleviate its impact on pension plans such as the one that we administer.

2. Specific Concerns

2.1: *Applicability of Bill C-377 to Pension Plans*

Mr. Hiebert has declared that the purpose of the Bill is to improve union transparency, but the legislation is drafted in such a way that it will require extensive and onerous financial disclosure from any pension plan that has any unionized beneficiaries. This is so even if none of the money in the pension fund originates from a union. This simply does not make sense and does not comport with Mr. Hiebert's stated purpose in tabling this legislation.

Bill C-377 applies to both "labour organizations" and "labour trusts". The definition of "labour trust" includes "a trust or fund...that is established or maintained in whole or in part for the benefit of a labour organization, its members, or the persons it represents." This definition of "labour trust" is not limited to funds and trusts that originate with unions or are funded through union dues. The definition of "labour organization" would clearly capture the CFLPA, and thus the definition of "labour trust" would similarly capture the CFLPA Pension Fund as it is a "trust or fund" that is "established" for "the benefit" of the CFLPA's members. It is unclear whether the drafters of the Bill intended its provisions to apply to pension plans, but what is clear is that it is not appropriate to regulate pension plans in this manner. Pension plans, as described below, are subject to extensive regulation under the *Income Tax Act* and under provincial pension legislation. For example, under provincial law pension trustees are subject to the highest fiduciary duties and must use the fund's assets only to benefit the members. Contributions for political purposes or use of funds for anything unrelated to the administration of pension funds or paying pension benefits is unlawful.

2.2: *Privacy of Members*

One of the aspects of Bill C-377 that most concerns the Trustees of the Fund is the impact that this legislation will have on the privacy interests of our members. Currently, the legislation calls for the disclosure of a set of statements for the relevant fiscal period setting out all transactions and disbursements over \$5000. The statements must include 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. The language of the Bill is so broad that this disclosure requirement would seem to include disclosure of transfers of pension entitlements to the Fund's beneficiaries. In a defined contribution plan such as the CFLPA's, each plan member has a specific account which holds all contributions made on their behalf. Once that member reaches retirement, the assets held in the account will be used to purchase an annuity, life-income fund, or other locked-in retirement income vehicle. Members who are U.S. residents may, in some circumstances, transfer these funds out of Canada, subject to withholding tax. These transfers will typically be quite large and will easily surpass the \$5,000 threshold. When these payments are made, Bill C-377 requires the disclosure of the amount paid, the payee's name, address and the purpose and description of the payment. This information must be presented to the Minister and will be made available on a public website.

We believe that the legislation should be amended to exempt pension and benefit plans from its ambit, but at the very least it is essential that the legislation is amended to ensure that the details of pension and benefit payments are not available to the general public. This would represent an unjustifiable intrusion on the privacy interests of Canadians, and will have an even greater impact on the beneficiaries of the CFLPA Pension Fund than it does on others. Many of the beneficiaries of the Fund are well-known to the Canadian public. Former CFL players such as Doug Flutie, Damon Allen, Michael "Pinball" Clemons, Warren Moon, Mike Pringle and Milt Stegal are household names in Canada, and their public stature increases the importance of keeping their personal information private. Professional athletics can cause an immense amount of passion and curiosity in fans and generates much media attention. Keeping this information confidential is extremely important to the beneficiaries of the CFLPA Pension Fund. It is especially important that the addresses of these individuals are not disclosed to the general populace and that they not be subjected to unwanted solicitations of harassment as a result of unwarranted disclosure of their pension accounts and places of residence.

Furthermore, requiring that the information that must be disclosed under Bill C-377 be made available on a public website is contrary to the general principle that personal information filed with the Canada Revenue Agency is kept confidential and not made public. This principle is codified in section 241 of the *Income Tax Act*, which provides that except in very limited circumstances, "no official or other representative of government shall...knowingly provide, or allow to be provided, to any person any taxpayer information... [or] knowingly allow any person to have access to any taxpayer information". Bill C-377 exempts the information disclosed pursuant to its terms from the protection of section 241. Given the sensitive nature of the information that must be disclosed under Bill C-377 as currently drafted, we believe that it is highly inappropriate to make this information publicly available. No members of any pension plan in Canada are otherwise subject to public disclosure of their pensions and home addresses.

2.3: Pension and Benefit Plans are Heavily Regulated

Another reason that pension and benefit plans should be exempted from the provisions of Bill C-377 is that such plans are already subject to extensive regulation and disclosure requirements under both provincial and federal law. For example, section 27 of Ontario's *Pension Benefits Act* ("PBA") requires the administrator of a pension plan to send an annual statement to all plan members and section 20 of the PBA requires the administrator to file an annual information return with the pension regulator. Section 76 of the *PBA Regulations* requires the inclusion of financial statements with that information return, and section 29(1) empowers individual beneficiaries to inspect those documents personally. Similar provisions exist in pension legislation across Canada.² Section 8409 of the *Income Tax Act Regulations* also stipulates that an administrator of a pension plan must file an annual information return with the Canada Revenue Agency, containing prescribed information. Section 93(2) of Ontario's *Labour Relations Act* also demands that the administrator of a pension or benefit plan with unionized beneficiaries must file audited financial statements with the Minister of Labour, and section 93(3) requires that the plan administrator provide a copy of this statement, at no charge, to any union member that requests it. Benefit plans and health and welfare trusts are also heavily regulated under the *Income Tax Act* and its Regulations.³ Further, plan administrators are already subject to fiduciary obligations under statute and common law, and this buttresses the fact that this regulation is unnecessary as those that manage pension funds are already transparent and accountable to their constituents. No members of any pension plan in Canada, including public servants, are subject to having their pension amounts and home addresses posted on a public website.

2.4: Unnecessary Costs

As the members of the Committee are likely aware, today's low interest rates and fragile world economy have made managing a pension fund and ensuring that adequate benefits are delivered to members more difficult than ever before. Bill C-377 represents additional and unnecessary cost to these plans, and will make the provision of benefits all the more difficult to deliver. Furthermore, it will make the cost of setting up and managing a pension plan more onerous, and this will lead to less plans being instituted by private employers.

The amount of disclosure that is mandated by the Bill is very significant. The Fund has assets of approximately \$53 million, and each year, the Fund's investment managers enter into thousands of transactions in excess of \$5,000. Requiring that each of these transactions be disclosed, along with the name and address of the payer and payee, the purpose and description of the transaction,

² See, for example: Alberta's *Employment Pensions Plans Act*, ss. 14 and 15; B.C.'s *Pension Benefits Standards Act*, ss. 9 and 10; Manitoba's *Pension Benefits Act*, s. 29; New Brunswick's *Pension Benefits Act*, ss. 15 and 25; Newfoundland and Labrador's *Pension Benefits Act*, ss. 16 and 25; Nova Scotia's *Pension Benefits Act*, ss. 27 and 33; Quebec's *Supplemental Pension Plans Act*, ss. 112 and 161; Saskatchewan's *Pension Benefits Act*, ss. 11 and 13; Canada's *Pension Benefits Standards Act*, ss. 12 and 28;

³ See, for example, Information Bulletin 85R2 for Health and Welfare Trusts.

and the amount that has been paid or received is completely inappropriate and will lead to significant cost. We can see no justification for providing this information to the Canadian public, and we certainly do not see how it relates to increasing the transparency and accountability of unions.

2.5: *Retaining Advisors*

Pension plans require professionals such as investment managers, actuaries, accountants and lawyers in order to function. The nature of the disclosure that is required by Bill C-377 will make it more difficult for pension plans to attract and retain top professional advisors. These individuals may be reticent to accept a position with a pension plan if they know that their fees will be disclosed, along with their name and address, to the entire population of Canada.

Furthermore, investment managers closely guard their investment choices, and will not want those choices to be made publicly available. The confidentiality of these choices is part of their competitive advantage. If the investment choices made by the Fund's investment managers are not kept confidential and investments in excess of \$5,000 must be published, it could negatively impact the performance of the Fund, as these decisions would be public and open to imitation by competitors and could be taken advantage of by counterparties to the transaction. No pension fund in Canada, including those for public servants, is subject to having its investment decisions published on a public website.

3. *Recommendations*

We have one general recommendation which we believe could solve all the problems that we have identified with Bill C-377. If the Committee is not open to our general recommendation, we also have one additional recommendation that we believe is essential to ensuring the privacy of pension and benefit plan beneficiaries.

3.1: *General Recommendation – Exempt Pension and Benefit Plans from Bill C-377*

We believe that the appropriate way to address the concerns that we have raised is simply to exempt pension plans such as the CFLPA's from the application of Bill C-377. This could be done in a number of ways, but we believe that the simplest would be to amend the definition of "labour trust" provided in the legislation.

The current definition in Bill C-377 reads:

"labour trust" means 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.

We believe that it should be amended to read:

“labour trust” means 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, but does not include a pension plan registered under the Income Tax Act or any other trust or fund which is created for the purpose of providing health benefits, supplementary pension benefits, or life insurance benefits to any person.

This amendment would fully assuage all the concerns that we have about the proposed legislation. It would ensure that pension and health plans with unionized beneficiaries would not be caught by the provisions of Bill C-377. Based on the stated goals behind the legislation, we believe that this would be appropriate.

3.2: *Recommendations to Ensure Privacy of Members*

We believe that it is inappropriate to require the disclosure of specific payments to the beneficiaries of the Pension Fund or any related health or insurance plan. This issue can be dealt with by adding subsection 149.01(5) at the end of the proposed section 149.01, and having that subsection read:

“Despite anything in this section, the information that must be submitted under sections 149.01(3)(a) and 149.01(3)(b) shall not include payments made to a person pursuant to a pension plan, health plan, life insurance plan or post-retirement compensation arrangement or the investments of such plans.”

4. Conclusion

We thank you for taking the time to consider our concerns in relation to Bill C-377. The transparency and accountability of unions will not be enhanced by requiring pension and benefit plans – whose funds do not originate with unions or from union dues – to disclose the details of how they manage their money or the names and addresses of individuals who draw benefits from the plans. Bill C-377, as it applies to pension and health plans, will lead to intrusion on the privacy of plan members and potential abuses and consequences that no other taxpayer is subject to. It will also create added red-tape, administrative difficulties and costs for an industry that is presently struggling to deliver the benefits upon which many elderly Canadians rely.

In short, Bill C-377 is inappropriate regulation for pension and benefit plans, especially plans like the CFLPA Pension Plan. At the very least, the definition of “pension trust” should be amended to make clear that it applies only to those trusts or funds which are set up by unions and funded through union dues. It is vital that the Bill be amended to ensure that it does not create unintended and unwanted consequences, and we hope that as the Committee deliberates on the Bill they will respond to these concerns by ensuring that Bill C-377 does not affect pension and benefit plans.

If the Committee believes it would be helpful, we are happy to appear before the Committee in order to provide more detail and context about the impact that we believe Bill C-377, in its current form, will have on pension plans in general and on our specific plan in particular.

Yours truly,



The Trustees of the CFLPA Pension Plan Trust Fund

Fred James (Chair)
Bayne Norrie (Secretary)
Stu Laird
Don Moen
Alan Ford

Appendix: Explanatory Notes

The CFLPA Pension Plan (the “Plan”) has been in operation since 1967, and was established to provide pension benefits to the players of the Canadian Football League well after their playing careers have ended. The CFLPA Pension Plan Trust Fund holds the assets of the Plan, and the Trustees are tasked with administering the Fund and the Plan.

The purpose of this Brief is to set out the concerns of the Trustees of the CFLPA Pension Plan Trust Fund in relation to Bill C-377. We believe that Bill C-377 represents inappropriate regulation of pension plans such as ours, and we identify several specific concerns that we have with the Bill.

Specific Concerns:

As currently drafted, the Bill will apply to a pension or benefit plan with any unionized beneficiaries, even if the relevant union does not fund or administer the plan.

The Bill will have an adverse impact on the privacy interests of the Plan’s members, as the broad language in the Bill seems to require the disclosure and publication of pension benefit payments, along with the member’s name and address. The high profile of many of the CFLPA Pension Plan’s beneficiaries heightens our concern about this aspect of the Bill.

Pension and benefit plans are already heavily regulated, and this legislation creates additional expense without justification.

The disclosure and publication requirements of the Bill will make retaining advisors more difficult and require reporting of hundreds of sensitive investment transactions.

Recommendations:

Exempt pension and benefit plans from the requirements of Bill C-377.

Amend the Bill to ensure that it does not require the disclosure and publication of payments made to a person pursuant to a pension plan, health plan, life insurance plan or post-retirement compensation arrangement.