

THE INCOME TAX ACT

**A Canadian Teachers' Federation Brief
on Bill C-377, an *Act to amend the Income Tax Act*.
(requirements for labour organizations)**

September 2012



Introduction

The Canadian Teachers' Federation is an alliance of 15 Member organizations and one Affiliate Member representing nearly 200,000 teachers across the country. CTF's mission is to serve as a unified voice of teacher organizations in Canada on education and related social issues by promoting high quality public education, the status of the teaching profession and the freedom to learn.

We have prepared this brief to raise some of our concerns regarding Private Member's Bill C-377 – An Act to Amend the Income Tax Act (requirements for labour organizations). This enactment amends the Income Tax Act to require that labour organizations provide financial information to the Minister for public disclosure. Reports would include details about spending on a range of activities including union organizing, collective bargaining, education and training, and political action, all of which would be made available online on the Canada Revenue Agency website.

CTF's concerns regarding this proposed legislation are primarily focused on three main areas – jurisdictional issues, the cost to taxpayers, and the invasion of privacy.

Jurisdictional issues

The CTF and its Member teacher organizations make their decisions in an open and democratic way, providing transparency to their members – financial statements are open to all members; budgets are voted upon and spending is monitored by the membership; financial reports are distributed to the membership on an annual basis.

Currently most provinces require that financial statements of unions be provided to members. This Bill appears to create requirements that would normally be within provincial and territorial jurisdiction. This commentary from the Cox & Palmer Regional Employment and Labour Group Newsletter identifies a jurisdictional problem with the Bill.

The Bill applies to both provincially, as well as federally regulated unions. By framing the amendment as an income tax issue, which falls under the federal powers in the Constitution, the reporting requirements cross the usual constitutional barrier which prevents the federal government from passing legislation which regulates unions under provincial jurisdiction.

One has to wonder why the Federal Government would amend federal tax law to tamper in what is clearly an issue within provincial/territorial jurisdiction.

Issues of cost & fairness

While there would be a significant cost to unions – affecting over 25,000 labour organizations in Canada – to comply with this proposed legislation, the cost to government to set up the infrastructure to support this Bill could run into the tens or even hundreds of millions of dollars. This would entail developing the regulations needed to enact the legislation; developing and preparing all of the forms and instruction booklets required; developing the software programs to file, receive and process the

information including the need to employ auditors, accountants, lawyers and administrative workers for this purpose; and developing a massive online searchable database. Such an enormous outlay of public funds cannot be justified.

The federal Government's Deficit Reduction Action Plan has a stated goal to achieve "at least \$4 billion in ongoing savings by 2014/2015." In these times of government restraint we find it unconscionable that the government would consider starting a program of such a scale aimed at one sector of the public.

Bill C-377 also raises questions of fairness as it singles out labour unions and does not apply to other professional associations that collect dues from their members. In addition the disclosure requirements in the Bill in terms of detail and amount far exceed those required by charities and even publicly traded companies.

Privacy concerns

It is our belief that a host of privacy rights would be violated under Bill C-377. Provisions of the Bill may conflict with the Privacy Act and the Personal Information Protection and Electronic Documents Act (PIPEDA) with respect to personal information and commercial activity.

For example, labour organizations would be required to disclose disbursements on legal activities over \$5000, potentially violating solicitor-client privilege, a fundamental tenet of our legal system. This proposed legislation would require public posting of information that could breach the required confidentiality of these communications.

In addition, it is our understanding that trusteed pension and health plans (labour trusts) will have to disclose the details of all pension and health related expenditures over \$5,000, another violation of individual privacy rights. Specifically, plans will have to name members and beneficiaries who receive payments in excess of the threshold, including pension payments (i.e. monthly pensions, lump-sum termination, death payments) as well as those members receiving disability income, or other major services or treatments. Any individual receiving benefits under the catastrophic drug plan of one of these trusts, for example, would certainly have their right to privacy breached as their personal information along with the reason for the benefit will be publicly available.

Another privacy concern involves commercial activity carried out by labour organizations. A detailed description of any contractual arrangement of a union with its suppliers exceeding \$5,000 would have to be posted on the CRA website – including names and addresses of suppliers, the purpose and a detailed description of the transaction, and the specific amount paid – thus making public (including to the supplier's business competitors) the private business relationships entered into with suppliers.

Workers in unions are employed by the membership. Salary information and disbursements are part of the audited financial statements and budget that are approved by that membership. Bill C-377's requirement for a report of all disbursements paid to union officers and employees resulting in their names, salaries and benefits being disclosed to the public is an infringement on the privacy of the employee and the employer-employee relationship.

Final comments and recommendation

It is somewhat ironic that similar arguments to those made in this brief regarding cost and privacy concerns compelled the cancellation of the national long gun registry. Internationally, Canada is on the record as being in opposition to tracking and controlling the trade of firearms as the “treaty could result in privacy violations and exorbitant administrative bills” (Jeff Davis, Post Media News, July 6, 2012). One has to wonder as to why this government is changing its position in this instance.

Bill C-377 is not occurring in a vacuum but rather a broader context of legislative and other actions being put in place that are perceived by many to be attempts at weakening labour activities and undermining collective bargaining in this country.

This Bill facilitates greater federal interference in provincially regulated labour relations. The Bill is also an intrusion into the internal affairs of unions with a potential to severely undermine the ability of a union to serve its members. In sum, Bill C-377 would be an unnecessary, costly, discriminatory Bill.

We believe that Bill C-377 is so fundamentally flawed on many levels that it should be rejected in its entirety.