

House Of Commons Standing Committee on Finance

We are writing in regards to Bill C-377, a private member's bill concerning amendments to the *Income Tax Act* in regards to labour organizations.

Our organization, the Multi-Employer Benefit Plan Council of Canada (MEBCO), was established in 1992 as a not-for-profit, federal non-share capital corporation. MEBCO's mandate is to represent the interests of Canadian multi-employer pension and benefit plans with provincial and federal governments regarding proposed or existing legislation and other policies affecting such plans.

MEBCO's volunteer Board of Directors is responsible for identifying issues that impact upon multi-employer plans and developing strategies to address those issues. They are elected from all professions and disciplines involved in multi-employer plans, including union and employer trustees, professional third-party administrators, non-profit and in house administrators, actuaries, benefit consultants, lawyers and chartered accountants.

On October 3, 2011, Bill C-317, an earlier version of Bill C-377, was put before the House of Commons by Russ Hiebert, the MP for South Surrey - White Rock - Cloverdale, British Columbia. On November 4, 2011, the Speaker of the House held that Bill C-317 had violated the rules of the House and all proceedings to that date were declared null and void. The Speaker determined that Bill C-317 would create a new class of taxpayer, and therefore should have been brought as a government bill.

Mr. Hiebert has now amended the bill, which originally purported to alter the tax-exempt status of non-compliant organizations, to instead impose a \$1,000 penalty for each infraction. Unfortunately, despite Mr. Hiebert having this opportunity to amend the bill, aspects remain which we believe will have a detrimental and unjustified impact on pension and benefit plans. We have previously written to you about our concerns, and we are doing so again in order to reiterate the importance of rejecting Bill C-377. MEBCO believes that the Bill goes far beyond the intended objective and would impose enormous costs and other implications for many private and public entities doing business in Canada. The Bill proposes to require disclosure of personal information (including personal health and medical information) which conflicts with legislation already in place. Further, the Bill proposes to duplicate existing financial disclosure requirements applicable to pension and benefit trusts.

On the website for Bill C-377, Mr. Hiebert states that through the operation of the Bill, the Canadian public "will be empowered to gauge the effectiveness, financial integrity and health of Canada's unions", and that the purpose of the bill is "to increase transparency and

accountability” of labour unions.¹ Just as we noted in our previous letter about Bill C-317, we believe that Bill C-377 goes well beyond Mr. Hiebert’s stated intentions. We are writing to again urge all members of the House of Commons to consider the consequences the Bill will have for multi-employer pension and benefit plans.

In its present form, Bill C-377 would mandate certain disclosure from “labour organizations” and “labour trusts”, as defined. The definition provided for “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 is broad and would capture any benefit fund that has any unionized beneficiaries, including public sector plans and any applicable public or private entity.

We believe that there are several reasons why it would not be appropriate for this Bill to become law due to serious flaws, exemplified by its treatment of pension and benefit plans under the proposals in Bill C-377.

Pension and benefit plans are already subject to extensive disclosure requirements under other provincial and federal legislation. For example, s. 93 of Ontario’s *Labour Relations Act, 1995*, requires the administrator of a plan that benefits union members to file an annual statement with Minister of Labour setting out various aspects of plan finances. The legislation also requires that a copy of that statement be provided, at no cost, to any union member that makes such a request. Similar disclosure requirements are created by Ontario’s *Pension Benefits Act* and under sections 12 and 13 of the Federal *Pension Benefits Standards Act*. A variety of other statutes in Canada impose similar requirements,² and moreover, pension and benefit plans are already required to file annual statements with the Canada Revenue Agency. In addition, trustees of pension and benefit plans are subject to stringent fiduciary duties at common law that obligate them to act solely in the best interests of the plan and its beneficiaries. Similar duties arise under pension benefits legislation.³ Bill C-377 will create additional and unnecessary red tape for a sector that is already in a difficult state. This extra administrative layer does not further the goals of the proposed legislation. Since the transparency and disclosure provided for under existing pension and benefits legislation already ensure plan members and other stakeholders receive sufficient information and disclosure concerning these plans, all that this additional red tape will serve to accomplish is the unnecessary depletion of plan assets reducing the amount available to pay intended benefits to plan members and beneficiaries. These funds have fixed contribution rates and fixed resources, and therefore, the cost of compliance will necessarily result in smaller benefits for workers.

Unless Bill C-377 is rejected, it will require the disclosure of a statement each time a “labour trust” enters into a transaction worth more than \$5000. That statement will have to set out the name and address of the payer and payee, the purpose and description of the transaction, and the

¹ www.c377.ca.

² See, for example: section 16 of Quebec’s *Supplemental Pension Plans Act*; sections 9 and 10 of British Columbia’s *Pension Benefits Standards Act*; sections 14 and 15 of Alberta’s *Employment Pension Plans Act*; and section 13 of Saskatchewan’s *Pension Benefits Act*.

³ See, for example, s. 22 of Ontario’s *Pension Benefits Act*.

amount that has been paid or received. The plans and funds which MEBCO represents would have thousands of such transactions in a year. Many multi-employer plans administer funds worth billions of dollars, and have numerous agents conducting large transactions on a daily basis. Just like all large institutional investors, pension and benefit plans need to respond to market situations quickly, and new investment transactions occur constantly. Some transactions would be part of the competitive advantage of institutional pension fund managers (i.e. what they buy and sell) and the proposed Bill could significantly impact on the ability of multi-employer pension plans to retain skilled asset managers. Bill C-377 would require that an immense amount of material be filed by multi-employer plans. The cost of complying with this proposed legislation will be a significant cost to those plans.

Perhaps the greatest evidence that Bill C-377 has been drafted without the realities of pension and benefit plans being taken into account is the fact that the disclosure required under Bill C-377 would seem to require that whenever a plan makes a payment of greater than \$5000 to a beneficiary, it is necessary for the plan to disclose the amount of the payment, the name of the individual it is paid to, and their address. As currently drafted, Bill C-377 would require that this information be provided to the Minister and apparently this private information will then be made available to the general public. We believe that this represents an improper intrusion on the privacy interests of pension and benefit plan beneficiaries. We are certain that the Bill is in conflict with the Personal Information Protection and Electronic Documents Act (PIPEDA) and the provincial privacy legislation equivalents. We are also certain that the Bill is in conflict with the Ontario Health Information Act, 2004.

Although many periodic pension and benefits payments are less than \$5000, there are many situations where payments could surpass that threshold. When an employee's membership in a plan is terminated, it is possible for the employee to recover the commuted value of the pension from the plan. In such cases, payments of greater than \$5000 are typical. There are also health related payments such as dental, life insurance, prescription drugs, dependent life insurance, accidental death and dismemberment insurance and disability benefits that could exceed the monetary threshold set out in the Bill. When an employee or pensioner passes away, there is often a death benefit paid to his or her surviving dependents out of a health and welfare fund. A payment such as this would typically be for far more than \$5000. Bill C-377 would require each of these payments, along with various pieces of personal information, to be individually reported to the Minister and made publicly available. Again, we presume that this was not the intention of the drafters of the Bill. We assume Bill C-377 is not intended to and should not require the financial situation of individual pensioners and beneficiaries to be placed before the Canadian public. Further, since Bill C-377 also requires that the purpose and description of the transaction be disclosed, the Bill will require the disclosure of sensitive medical information where the payment to a beneficiary is in relation to coverage under a health plan.

For all these reasons, we believe that Bill C-377 should not become law due to the serious flaws discussed above. It is inappropriate to impose these types of requirements on "labour trusts", such as pension and health and welfare plans. We believe that the Bill, as it applies to such plans, would be redundant, in conflict with existing legislation, costly, invasive of privacy and generally unsuited to the regulation of such plans, especially the multi-employer plans that MEBCO represents.

We hope that our concerns will be considered by Parliament. We appreciate you taking the time to consider our comments on this issue and we would be pleased to discuss this matter further with you.

Regards,

MEBCO