



October 1, 2012

Jean-Francois Lafleur, Clerk of the Committee
Standing Committee on Finance
Sixth Floor, 131 Queen Street
House of Commons
Ottawa ON K1A 0A6

Dear Mr. Lafleur:

**Re: Bill C-377 and Its Impact on the *Winnipeg Civic Employees' Pension Fund*
and the *Winnipeg Civic Employees' Disability Fund***

Please find enclosed a brief from *The Winnipeg Civic Employees' Benefits Program* for submission to the House of Commons Standing Committee on Finance.

Thank you for the opportunity to present our concerns and recommendation regarding Bill C-377.

Sincerely,

[original signed by]

Glenda Willis
Executive Director,
on behalf of The Board of Trustees of The Winnipeg Civic Employees' Benefits Program

Enclosure

cc: The Honourable James M. Flaherty, Minister of Finance
The Honourable Gail Shea, Minister of National Revenue
The Honourable Lisa Raitt, Minister of Labour
The Right Honourable Stephen Harper, Prime Minister
Tom Mulcair, Leader of the Opposition
The Honourable Peter Van Loan, Government House Leader
Russ Hiebert, Member of Parliament
Peggy Nash, Member of Parliament
Alexandre Boulerice, Member of Parliament
Hoang Mai, Member of Parliament

WCEBP.WINNIPEG.CA
T 204 986 2516 F 204 986 3571 WCEBP@WINNIPEG.CA
5TH FLOOR - 317 DONALD STREET WINNIPEG, MANITOBA R3B 2H6



BRIEF FROM THE WINNIPEG CIVIC EMPLOYEES' BENEFITS PROGRAM

Fifth Floor, 317 Donald Street
Winnipeg, MB R3B 2H6

Inappropriate Regulation of Benefit Funds in Bill C-377

Executive Summary

The Winnipeg Civic Employees' Benefits Program (the "*Program*") provides pension and disability benefits to over 16,000 members employed by the City of Winnipeg and eight other participating employers.

The *Program* operates under a jointly-trusted governance structure pursuant to the terms and conditions of the *Pension Trust Agreement* and the *Disability Plan Trust Agreement* entered into by the City of Winnipeg and various civic unions. The 14-member *Board of Trustees of The Winnipeg Civic Employees' Benefits Program (Pension Fund)* is appointed equally by the City of Winnipeg and the civic unions. The 12-member *Board of Trustees of The Winnipeg Civic Employees' Benefits Program (Disability Fund)* is also appointed equally by the City of Winnipeg and the civic unions. All members of the Disability Fund Board also sit on the Pension Fund Board.

This brief concerns Bill C-377, a private members' bill brought by Conservative MP Russ Hiebert. The Bill would amend the *Income Tax Act (Canada)* and applies to "labour organizations" and "labour trusts".

Mr. Hiebert has stated publicly that the purpose of his Bill is "to increase transparency and accountability" in labour unions, and to allow Canadians to "to gauge the effectiveness, financial integrity and health of Canada's unions".¹

However, the Bill impacts more than just unions themselves. 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 is broad and would capture any benefit fund that has any unionized beneficiaries. The disclosure requirements provided in the Bill would clearly apply to *The Winnipeg Civic Employees' Benefits Program* Pension and Disability Funds.

The discourse surrounding the Bill concerns the transparency of unions, and despite the fact that such disclosure may in fact be inappropriate for benefit funds, the requirements of the Bill will apply to all benefit funds with any unionized members. There are numerous reasons why Bill C-377 represents inappropriate regulation of the *Program* Funds.

¹ www.c377.ca.

Problems with Applying Bill C-377 to the *Program Funds*

Redundancy

The *Program Funds* are already subject to extensive disclosure obligations under existing provincial and federal legislation. For example, section 18(4) of Manitoba's *Pension Benefits Act* (PBA) mandates that the administrator of a pension plan must file an information return with the Commission. Under section 3.28(1) of the *Pension Benefits Regulation*, the administrator of a pension fund must file audited financial statements with the Commission. Section 3.31(2) provides that the administrator is obligated to provide any member or beneficiary under the plan with copies of the Information Return or audited financial statements if the member or beneficiary requests. Furthermore, section 8409 of the *Income Tax Act (Canada) Regulations* also stipulates that an administrator of a pension plan must file an annual Information Return, containing prescribed information. Under section 8409(2)(d), the CRA Information Return and the Manitoba Information Return are filed jointly.

Therefore, the *Program Funds* are already required to submit a significant amount of financial information to the provincial regulator and to the CRA and plan members can access that information should they so desire. These disclosure obligations are buttressed by the fiduciary duties that the *Program Funds*' trustees are subject to under the common law and under legislation – duties which require the trustees to act in the best interests of the beneficiaries of the Funds. The provisions of Bill C-377 will impose broader disclosure requirements on the *Program Funds*, seemingly without justification.

Immensity of Required Disclosure

As the Bill is presently worded, it will require the disclosure of a statement each time the *Program Funds* enter into a transaction with a value greater than \$5,000. The statement must include the name and address of the payer and payee, the purpose and description of the transaction, and the amount that has been paid or received. Considering the size of the *Program Funds*, and the number of transactions and payments to members for pension and disability benefits that the *Program Funds*' asset managers enter into each year, the amount of disclosure that will be required by this Bill will be staggering and the cost of compliance will be significant.

Impact on the Privacy of Members

Although it seems highly unlikely that the legislation is actually intended to require the disclosure of individual benefit payments, the plain wording of the legislation as currently drafted seems to require that whenever the *Program Funds* make a payment of greater than \$5000 to a beneficiary, it will be necessary to disclose the amount of the payment, the name of the individual it is paid to, and their address. The Bill overrides the privacy protection afforded by section 241 of the *ITA*, and will require that this information be made publicly available on a website by the Minister of Finance. Annual pensions, disability income, commuted value transfers, death benefits and various medical benefit payments could all surpass the \$5,000 threshold and compromise the privacy of the thousands of individual beneficiaries of the *Program Funds*.

Impact on Confidentiality of Investment Decisions

The requirement that the investment decisions of the *Program's* asset managers will have to be disclosed may make it difficult to retain professional asset managers, as such professionals typically consider their investment choices to be confidential and part of their competitive advantage. This may also negatively affect the performance of the *Program Funds*, as the choices that the asset managers make will not be confidential and could be imitated by other similar professionals or counterparties to the transaction may take advantage at the expense of the *Program Funds*. In addition, some investment managers may not want their fees made public and will be discouraged from taking on pension fund clients.

Disclosure of Salaries and Expenses

Despite the fact that Bill C-377 is meant to make unions more transparent and accountable, it will require disclosure of amounts spent by the *Program Funds* which have absolutely nothing to do with how unions spend their money. Half of the trustees of the *Program Funds* are appointed by the employers that participate in the *Program Funds*, but nevertheless, the wording of Bill C-377 clearly requires public disclosure of the expenses and salaries of these trustees.

Bill C-377 will require the disclosure of a statement of disbursements paid to officers, directors, employees, contractors and trustees including gross salary, stipends, periodic payments (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, and a record of the percentage of time dedicated to political and lobbying activities. The salary and remuneration of each trustee will be posted on a website, despite the fact that half of the trustees have no involvement with the unions that represent their employees, and despite the fact that the assets that the *Program Funds* manage do not originate from union dues or from the unions themselves. Mr. Hiebert claims that the justification for the disclosure mandated by the Bill is that unions get a public benefit due to the non-taxability of unions themselves and the deductibility of union dues. It is difficult to see how this justification applies to the disclosure requirements that the *Program Funds* would be subject to.

The Bill will also require the disclosure of statement of disbursements on administration and a statement of disbursements on education and training activities, and on conference and convention activities. This will require the disclosure of amounts that the trustees spend on training, on attending conferences, and on administration. Again, it is difficult to see the justification for this requirement.



Recommendation

It is our opinion that Bill C-377 will significantly impact *The Winnipeg Civic Employees' Benefits Program* if it becomes law in its present form. We believe that this is inappropriate regulation for pension and benefit funds.

***The Winnipeg Civic Employees' Benefits Program* recommends amending Bill C-377 to exempt pension and benefit funds from the legislation.**