

# **CLC Summary of Bill C-317**

## **Introduction**

Bill C-317 – An Act to amend the Income Tax Act (Labour Organizations) was introduced as a Private Members Bill (PMB) on October 2, 2011 in the House of Commons. The Bill requires that the Income Tax Act be changed to make it mandatory for all labour organizations to make detailed annual financial filings covering salaries, revenues, and expenses. The information would be posted, on the Canada Revenue Agency (CRA) website, for anyone to read.

The framers of the Bill argue that workers get hundreds of millions of dollars in tax benefits through union and professional dues deductions. They point out that charities have to disclose how they spent their money on the CRA website because people get a tax benefit when they contribute to a charity. They argue that any organization that enjoys a tax exemption should be fully transparent so that taxpayers may assess the propriety of their actions and determine whether the tax exemption is being used for the intended purposes.

While the intent of the Bill seems simple enough, when you dig into the details, the Bill is onerous and labour intensive in its reporting requirements on unions, unfair in its segregation of labour organizations under the Income Tax Act, and completely discriminatory in its disclosure requirements. There seems little or no connection to the Bills filing and disclosure requirements over the internal affairs and expenditures of trade unions and the tax deduction and exemption rules under the federal tax authority.

The real crux of the Bill is political activity of labour organizations. Charities may engage in political activities that are ancillary or incidental to their charitable purposes, provided the charity devotes “substantially all” (generally 90% or more) of its resources to charitable activities or purposes. In no case, may the charity directly or indirectly support or oppose a particular candidate or Party. CRA monitors political activities of charities, in part, through the annual filings of the charity.

By contrast, the Lavigne Supreme Court decision (1991) affirms the rights of unions to engage in political activity without the restrictions that a charity is subject to. This allows us to question the necessity of disclosing information on political activity and lobbying to the tax authority, when the activity itself continues to be perfectly lawful and does not affect a labour organization’s tax status.

## **Who is included? – Everyone!**

Under the definitions of the Bill C-317, the Act defines a “labour organization” as follows:

“labour organization” includes a labour society and any organization formed for the 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 definition of labour organization is quite broadly framed. Umbrella organizations that do not directly participate in negotiation and administration of collective agreements may still be subject to the disclosure provisions of Bill C-317.

“Labour Trusts” have the same requirements under the Bill but there is no mention of union controlled non-profit corporations. If a non-profit corporation, for example, is considered excluded from the labour organization exemption and is structured to provide benefits to union members, it could be considered a taxable entity. This all depends on how CRA chooses to interpret the information obtained in their review of the public information returns.

## **What do we have to disclose?**

Section 149.01 - Subsection 3 requires disclosure of financial statement to include:

- Individual transactions above \$5,000 identifying the payee, payer, the purpose and description of the the transaction with such transactions segregated based on accounts receivable, loans, asset sales, investments, accounts payable, and loans payable.
- Disbursements to officers, directors, and trustees must be identified in similar fashion to executive compensation disclosure in public companies, **with the added disclosure of percentage of time dedicated to political and lobbying activities.**
- Sub-statements disclosing disbursements to employees and contractors **again with political and lobbying activities segregated and reported.**
- Disbursements respecting labour relations activities, political activities, contributions, gifts and grants, administration, general overhead, organizing activities, collective bargaining activities, conferences and convention activities, education and training, legal, and categories yet to be prescribed.

- International unions must disclose amounts allocated to the Canadian union or Trust and the expenditure of the labour organization or Trust both inside and outside Canada.

The drafters of this legislation are also seeking to find the proportion of salary paid to officers and employees and **contrast the amount of resources dedicated to labour relations activities with political and lobbying activities.**

## **Comparison with Charities**

A Canadian charity can operate in only one of two ways: either it devotes its resources to carrying out its own charitable activities or it makes grants to qualified donees.

In contrast, the policies applied to labour organizations where it has been long recognized and accepted, that the only restriction on a labour organization's activities in order for the tax exemption to apply, is that any commercial activities it engages in, are not the organization's dominant purposes and that any commercial proceeds are generally used for labour organization activities.

In contrast to charities, the Supreme Court of Canada in the Lavigne case, specifically recognized the importance and legitimacy of trade unions engaging in political and advocacy activities, as integrally related to collective bargaining and the broader aims of their members.

Furthermore, unlike a trade union's activities, where decisions about which activities to engage in are part of the democratic decisions of the membership, the charity system is essentially a closed system.

## **Disclosure**

Contrary to the general policy of the Income Tax Act that disclosure of taxation information is treated as confidential, this Bill would make all information openly accessible to the public and open to public scrutiny.

Under Bill C-317, the level of disclosure for labour organizations is far more onerous than for regular charities.

Bill C-317 requires labour organizations to make reports available to the public, through the minister, while charities have to make individualized reports, but they are not made available to the public.

There is a solid rationale for high level disclosure of governance and financial information for charities. Since charities publicly solicit donations in an open forum for the purpose of applying the donations to further charitable objects, small safeguards should be in place to ensure that the objectives communicated to potential donors are adhered to and that the money donated is dedicated to the purposes. This rationale does not extend to trade unions.

Labour organizations operate for the benefit of its members. The governance and transparency of the organization should be a matter of concern to the membership, not the general public. The nature of Bill C-317 would seem to go more to the regulation of labour organizations, a matter unrelated to fiscal enforcement or taxation. **There simply does not appear to be an income tax enforcement basis for the disclosure entailed in Bill C-317.**

In comparison to public and private corporations, there is nothing in the Income Tax Act that requires or leads to public disclosure of financial transactions or governance information for public and private corporations, including those that bargain with trade unions. There is nothing that singles out expenditures over \$5,000 or various components of those expenditures or details of salary, political or lobbying expenditures for mandatory reporting by corporations, nor is there any required public disclosures.

Finally, there is no intention to change the existing assessment rules regarding tax exempt status and deductibility of dues, the sheer level of detail sought is not tied to assessment at all, leading one to question whether Bill C-317, as drafted, can be challenged as being outside of purposes of the Act and beyond federal taxation for requesting labour organizations filings appears to be to obtain information on who is engaging in and how much money is spent on lobbying and political activities.

The right-wing think tank, Canadian Centre for Policy Studies claims that the “proposed changes go a long way toward restoring the right of workers to control how their dues are spent, but its only a first step. In the long run, this information will only matter if workers are allowed to opt-out of paying for non-bargaining activities with which they disagree.”