December 22, 2014

Senator Bob Runciman
Chair, Standing Senate Committee on Legal and Constitutional Affairs
The Senate of Canada
Ottawa, Ontario K1A 0A4

Dear Senator Runciman:

Bill C-377 [An Act to amend the Income Tax Act (requirements for labour organizations)]

I am writing to you on behalf of the Canadian Life and Health Insurance Association (CLHIA) in order to draw to the attention of the Standing Senate Committee on Legal and Constitutional Affairs some serious and, we believe, unintended effects of the captioned private member's bill. While designed to promote public accountability of labour organizations, the bill as drafted would, for instance, require disclosure and publication of personal contributions to – and benefit payments from – Registered Retirement Savings Plans for individuals who have never had any connection to any labour organization. We believe these effects do not align with broader government policy.

We have previously raised this issue with the Bill's sponsor, with the House of Commons Standing Committee on Finance, and with your colleagues sitting on the Standing Senate Committee on Banking, Trade and Commerce; our letters to Mr. Hiebert, Mr. Rajotte and Senator Gerstein are attached for your information. While amendments passed by the House of Commons address some of our concerns and narrow the scope of the Bill, we believe that the amended Bill would, if enacted, have a pervasive and inappropriate impact on Canadian consumers. Further amendments to narrow the Bill's scope are needed.

Established in 1894, CLHIA is a voluntary association with member companies accounting for 99 per cent of Canada's life and health insurance business. The Canadian life and health insurance industry protects more than 27 million Canadians, as well as over 45 million policyholders in more than 20 countries around the world, with products such as life insurance, annuities, pensions, RRSPs, RRIFs, disability insurance and supplementary health insurance. The industry makes benefit payments of over $64 billion annually to Canadians.

Bill C-377 would require non-profit labour organizations and labour trusts to file detailed financial information with the Canada Revenue Agency (CRA) on an annual basis. This obligation would go beyond the existing requirement to file form T1044 *Non-Profit Organization (NPO) Information*

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Return, and would include both a statement of the organization's assets and liabilities and, in some circumstances, a statement of significant cash flow transactions that would identify the parties (including individuals), amounts and purposes of all transactions in excess of $5,000. Importantly, the CRA would be required to make these expanded filings publicly accessible and searchable.

The primary problem with the current Bill is the definition of "labour trust" to include "**a** trust or **fund… maintained** in whole or **in part for the benefit of** a **labour organization**, its **members** or the persons it represents" (emphasis added).

Based on the bolded text above, the scope of Bill C-377 appears to extend beyond labour organizations and trusts as ordinarily contemplated to impose a reporting obligation with respect to retail mutual funds held in RRSPs, TFSAs, or otherwise, if even one member of a labour organization chooses, separate and apart from any labour organization recommendation or involvement, to participate in such a vehicle. In effect, if any union member purchases units of a retail mutual fund, that entire mutual fund would fall into the definition of labour trust, with all of the attendant reporting and disclosure obligations then applying to all individuals who purchase units of that mutual fund, regardless of any personal labour organization affiliation.

That any Canadian contributed to an RRSP for his or her spouse, should not, in CLHIA's view, be required to be disclosed to the public throughout Canada, and around the world, simply because an unrelated union member invests in the same mutual fund.

We recommend a simple amendment to this Bill - that the definition of "labour trust" be revised as follows:

"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 exclusive benefit of a labour organization, its members or the persons it represents".

If left unaltered, the definition would require that financial institutions ascertain, at the time of each transaction by each individual client, whether that individual client were a member of a labour organization, and, if so, thereafter report with respect to all individuals who participate in the particular fund or arrangement. This is clearly unworkable in any practical way and, we expect, is unintended.

In addition, we consider that there is a possible ambiguity in the use of "contractors" in paragraph (3)(viii) and "contractor" in subsection (5). The former context appears to refer to a "worker employed under a limited-duration employment contract" while the latter context suggests a "service provider or agent". "Contractor" does not appear elsewhere in the *Income Tax Act*, and other uses of "third party" within that Act are subject to specific definitions that are not applicable to proposed section 149.01.[1]

[1] See subsections 74.5(6) and (7), subsection 118.1(13.2), and sections 143.1, 163.2 and 231.2.

We recommend that the reference to "contractors" in paragraph (3)(viii) be clarified, that the reference to "contractor" in subsection (5) be removed, and the term "third party" be defined for the purposes of section 149.01, in order to avoid reliance on the ordinary meaning of that term.

Our industry is also concerned that the structure of paragraph 6(b) and the exemptions provided therein are narrower than would be appropriate. This could unreasonably impede the ability of employers and their service providers to meet the evolving needs of employees. To provide appropriate flexibility to meet such needs in the future, we recommend that this paragraph be amended as follows:

(6) Subsection (2) does not apply to
(a)…
(*b*) ~~a labour trust the~~ such activities and operations of a labour organization or a labour trust which are related ~~limited exclusively~~ to the administration, management or investments of a deferred profit sharing plan, an employee life and health trust, a group sickness or accident insurance plan, a group term life insurance policy, a private health services plan, a registered pension plan, ~~or~~ a supplementary unemployment benefit plan or other plan for the benefit of a group of employees of one or more employers or members of a labour organization.

Thank you for your consideration of these issues. CLHIA has requested the opportunity to appear before the Standing Committee, and I can be contacted by telephone at (416) 359-2021 or by email at rsanderson@clhia.ca should you or Standing Committee members have any questions in this matter.

Yours sincerely,

(Original signed by)

Ron Sanderson
Director, Policyholder Taxation and Pensions

Attachments

Canadian Life
and Health Insurance
Association Inc.

Association canadienne
des compagnies d'assurances
de personnes inc.

January 31, 2013

Senator Irving Gerstein
Chair, Standing Senate Committee on Banking, Trade and Commerce
The Senate of Canada
Ottawa, Ontario K1A 0A4

Dear Senator Gerstein:

Bill C-377 [An Act to amend the Income Tax Act (requirements for labour organizations)]

I am writing to you on behalf of the Canadian Life and Health Insurance Association (CLHIA) in order to draw to the attention of the Standing Senate Committee on Banking, Trade and Commerce some serious and, we believe, unintended effects of the captioned private member's bill. While designed to promote public accountability of labour organizations, the bill as drafted would, for instance, require disclosure and publication of personal contributions to − and benefit payments from − Registered Retirement Savings Plans for individuals who have never had any connection to any labour organization. We believe these effects do not align with broader government policy.

We have previously raised this issue with the Bill's sponsor and with the House of Commons Standing Committee on Finance; our letters to Mr. Hiebert and Mr. Rajotte are attached for your information. While amendments passed by the House of Commons address some of our concerns and narrow the scope of the Bill, we believe that the amended Bill would, if enacted, have a pervasive and inappropriate impact on Canadian consumers. Further amendments to narrow the Bill's scope are needed.

Established in 1894, CLHIA is a voluntary association with member companies accounting for 99 per cent of Canada's life and health insurance business. The Canadian life and health insurance industry protects more than 26 million Canadians, as well as over 45 million policyholders in more than 20 countries around the world, with products such as life insurance, annuities, pensions, RRSPs, RRIFs, disability insurance and supplementary health insurance. The industry makes benefit payments of over $64 billion annually to Canadians.

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Canadian Life and Health Insurance Association Inc.

Association canadienne des compagnies d'assurances de personnes inc.

Bill C-377 would require non-profit labour organizations and labour trusts to file detailed financial information with the Canada Revenue Agency (CRA) on an annual basis. This obligation would go beyond the existing requirement to file form T1044 *Non-Profit Organization (NPO) Information Return*, and would include both a statement of the organization's assets and liabilities and, in some circumstances, a statement of significant cash flow transactions that would identify the parties (including individuals), amounts and purposes of all transactions in excess of $5,000. Importantly, the CRA would be required to make these expanded filings publicly accessible and searchable.

The primary problem with the current Bill is the definition of "labour trust" to include "**a** trust or **fund… maintained** in whole or **in part for the benefit of** a **labour organization**, its **members** or the persons it represents" (emphasis added).

Based on the bolded text above, the scope of Bill C-377 appears to extend beyond labour organizations and trusts as ordinarily contemplated to impose a reporting obligation with respect to retail mutual funds held in RRSPs, TFSAs, or otherwise, if even one member of a labour organization chooses, separate and apart from any labour organization recommendation or involvement, to participate in such a vehicle. In effect, if any union member purchases units of a retail mutual fund, that entire mutual fund would fall into the definition of labour trust, with all of the attendant reporting and disclosure obligations then applying to all individuals who purchase units of that mutual fund, regardless of any labour organization affiliation.

That any Canadian contributed to an RRSP for his or her spouse, should not, in CLHIA's view, be required to be disclosed to the public throughout Canada, and around the world, simply because an unrelated union member invests in the same mutual fund.

We recommend a simple amendment to this Bill - that the definition of "labour trust" be revised as follows:

"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".

If left unaltered, the definition would require that financial institutions ascertain, at the time of each transaction by each individual client, whether that individual client were a member of a labour organization, and report with respect to those individuals. This is clearly unworkable in any practical way and, we expect, is unintended.

In addition, we consider that there is a possible ambiguity in the use of "contractors" in paragraph (3)(viii) and "contractor" in subsection (5). The former context appears to refer to a "worker employed under a limited-duration employment contract" while the latter context suggests a "service provider or agent". "Contractor" does not appear

elsewhere in the *Income Tax Act*, and other uses of "third party" within that Act are subject to specific definitions that are not applicable to proposed section 149.01.[i]

We recommend that the reference to "contractors" in paragraph (3)(viii) be clarified, that the reference to "contractor" in subsection (5) be removed, and the term "third party" be defined for the purposes of section 149.01, in order to avoid reliance on the ordinary meaning of that term.

Our industry is also concerned that the structure of paragraph 6(b) and the exemptions provided therein are narrower than would be appropriate. This could unreasonably impede the ability of employers and their service providers to meet the evolving needs of employees. To provide appropriate flexibility to meet such needs in the future, we recommend that this paragraph be amended as follows:

(6) Subsection (2) does not apply to
(a)…
(*b*) ~~a labour trust the~~ such activities and operations of a labour organization or a labour trust which are related ~~limited exclusively~~ to the administration, management or investments of a deferred profit sharing plan, an employee life and health trust, a group sickness or accident insurance plan, a group term life insurance policy, a private health services plan, a registered pension plan~~,or~~ a supplementary unemployment benefit plan or other plan for the benefit of a group of employees of one or more employers or members of a labour organization.

At time of writing, it is not clear whether this Bill will be referred to the Standing Senate Committee on Banking, Trade and Commerce; assuming that it is referred to your Standing Committee, we encourage your review and amendment of this aspect of the Bill. I can be contacted by telephone at (416) 359-2021 or by email at rsanderson@clhia.ca should you or Standing Committee members have any questions in this matter.

Yours sincerely,

(Original signed by)

Ron Sanderson
Director, Policyholder Taxation and Pensions

Attachments

[i] See subsections 74.5(6) and (7), subsection 118.1(13.2), and sections 143.1, 163.2 and 231.2.

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and Health Insurance
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de personnes inc.

October 18, 2012

Mr. James Rajotte, M.P.
Chair, House of Commons Standing Committee on Finance
House of Commons
Ottawa, Ontario K1A 0A6

Dear Mr. Rajotte:

Bill C-377 [An Act to amend the Income Tax Act (requirements for labour organizations)]

I am writing to you on behalf of the Canadian Life and Health Insurance Association (CLHIA) in order to draw to the attention of the House of Commons Standing Committee on Finance some effects of the captioned private member's bill that we believe are unintended and may not align with broader government policy. We have previously raised this issue with the Bill's sponsor; our letter to Mr. Hiebert is attached for your information. To date, alternative wording proposed by Mr. Hiebert's staff would not effectively address our concerns.

Established in 1894, CLHIA is a voluntary association with member companies accounting for 99 per cent of Canada's life and health insurance business. The Canadian life and health insurance industry protects more than 26 million Canadians, as well as over 45 million policyholders in more than 20 countries around the world, with products such as life insurance, annuities, pensions, RRSPs, RRIFs, disability insurance and supplementary health insurance. The industry makes benefit payments of over $64 billion annually to Canadians.

If adopted, Bill C-377 would require non-profit labour organizations and labour trusts to file detailed financial information with the Canada Revenue Agency on an annual basis. This reporting obligation would go beyond the existing requirement to file form T1044 *Non-Profit Organization (NPO) Information Return*, and would include both a statement of the organization's assets and liabilities and, in some circumstances, a statement of significant cash flow transactions that would identify the parties (including individuals), amounts and purposes of all transactions in excess of $5,000. Importantly, the Canada Revenue Agency would be required to make these expanded filings publicly accessible and searchable.

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Canada's life and health insurance industry is concerned that, as drafted, the bill could require inappropriate disclosure of personal health, medical and financial information for individuals who receive benefit payments from uninsured supplementary health benefit plans, pensions, RRSPs and similar arrangements, as well as disclosure of individuals' contributions to such plans, even where those individuals have no real connection to a labour organization. This is because "labour trust" is defined broadly in the Bill, to include "**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" (emphasis added).

Based on the bolded text above, the scope of Bill C-377 appears to extend beyond labour organizations and trusts as ordinarily contemplated to impose a reporting obligation with respect to various benefit plans, retail mutual funds held in RRSPs, TFSAs, or otherwise, and similar arrangements unrelated to labour organizations.

That your next door neighbour was reimbursed by an insurance company for her son's orthodontic treatment, or that you contributed to an RRSP for your spouse, should not, in CLHIA's view, be required to be disclosed to everyone on your street, throughout Canada, and around the world, simply because an unrelated individual who is a member of a labour union uses the same insurer, or invests in the same mutual fund.

We believe that the proposed requirement to report such information is unintended; it would certainly be inconsistent with the spirit of the *Personal Information Protection and Electronic Documents Act*.

Subsection 248(1) of the *Income Tax Act* already contains a definition of "employee benefit plan" that identifies specific arrangements that are excluded from that definition. Parallel exclusions could be used to better focus Bill C-377 and avoid such unanticipated disclosure of medical or financial information of members of such plans. Similarly, third party arrangements offered by a regulated financial institution should be exempted where membership in a labour organization is not a defining characteristic of eligible participants.

We therefore recommend the following amendment to Bill C-377:

149.01(1)

"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) a fund, plan or trust referred to in subparagraph 6(1)(*a*)(i) or paragraph 6(1)(*d*) or (*f*),

(b) a trust described in paragraph 149(1)(*y*),
(c) an employee trust,
(d) a salary deferral arrangement, in respect of a taxpayer, under which deferred amounts are required to be included as benefits under paragraph 6(1)(*a*) in computing the taxpayer's income,
(e) a retirement compensation arrangement,
(f) an arrangement the sole purpose of which is to provide education or training for employees of the employer to improve their work or work-related skills and abilities,
(g) an interest in an account, fund or contract held or issued by a regulated financial institution that is available on substantially the same terms to an individual who is not a member of a labour organization, or
(h) a prescribed arrangement.

We would be pleased to meet with you and answer any questions regarding our proposed amendment to Bill C-377. I can be contacted by telephone at (416) 359-2021 or by email at rsanderson@clhia.ca.

Yours sincerely,

(Original signed by)

Ron Sanderson
Director, Policyholder Taxation and Pensions

attachment

Canadian Life and Health Insurance Association Inc.

Association canadienne des compagnies d'assurances de personnes inc.

Frank Swedlove
President

June 11 2012

Mr. Russ Hiebert, M.P.
309 East Block
House of Commons
Ottawa, Ontario K1A 0A6

Dear Mr. Hiebert:

Bill C-377 [An Act to amend the Income Tax Act (requirements for labour organizations)]

I am writing on behalf of the Canadian Life and Health Insurance Association (CLHIA) in order to draw to your attention some effects of your Bill C-377 that we believe are unintended and may not align with broader government policy.

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If adopted, Bill C-377 would require non-profit labour organizations and labour trusts to file detailed financial information with the Canada Revenue Agency on an annual basis. This reporting obligation would go beyond the existing requirement to file form T1044 *Non-Profit Organization (NPO) Information Return*, and would include both a statement of the organization's assets and liabilities and, in some circumstances, a statement of significant cash flow transactions that would identify the parties (including individuals), amounts and purposes of all transactions in excess of $5,000. Importantly, these expanded filings would be required to be made publicly accessible and searchable once filed with the Canada Revenue Agency.

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Canada's life and health insurance industry is concerned that, as drafted, the bill could require inappropriate disclosure of personal information for individuals who receive benefit payments from uninsured supplementary health benefit plans, pensions, group RRSPs and similar arrangements, as well as for individuals who have no real connection to a labour organization. This concern is rooted in the fact that "labour trust" is defined broadly in the Bill, to include "**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" (emphasis added).

Based on the bolded text above, the scope of Bill C-377 could be interpreted as extending beyond labour organizations and trusts as ordinarily contemplated to impose a reporting obligation with respect to various benefit plans. Consequently, the reportable transactions would likely include personal health, medical and financial information.

We expect that the reporting of such information is unintended and would certainly be inconsistent with the spirit of the *Personal Information Protection and Electronic Documents Act*.

For example, an employer could be subject to this reporting obligation with respect to an exclusively employer-financed health and dental benefit plan, simply because some of the employees covered under the plan are members of a labour organization.

Equally importantly, the above italicized text of the Bill suggests that where a member of a labour organization invests in a retail mutual fund, enters into a life insurance contract the value of which is determined by reference to a segregated fund, or participates in any other generally available investment fund, that investment would bring the entire fund and all other individual participants in that fund within the reporting scope of the proposed changes, even where those individuals have no personal affiliation with a labour organization. For example, your constituents' RRSP contributions, to the extent they exceed $5,000 in any year, would become publicly searchable by their neighbours. We think this would be inappropriate.

Several approaches could be adopted to limit the type of plans to which Bill C-377 might apply, so as to address the issues we have identified. CLHIA would be pleased to discuss our concerns and possible alternative legislative text with you. Ron Sanderson, the Association's Director, Policyholder Taxation and Pensions, is our principal resource on this matter, and he can be contacted by telephone at 416-359-2021, or by email at rsanderson@clhia.ca.

Yours sincerely,

(Original signed by)

Frank Swedlove

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