



For greater transparency

Comments from the Quebec Employers Council on Bill C-377, *An Act to amend the Income Tax Act (requirements for labour organizations)*

November 2012

The Quebec Employers Council

The Quebec Employers Council works to ensure that businesses have the best possible conditions in Quebec—particularly in terms of human capital—in order to prosper in the context of global competition over the long term. An organization conducive to the development of employer solidarity, the Quebec Employers Council exercises leadership that has established it as the essential reference in its fields of intervention. It uses its considerable influence constructively to create a more prosperous society in which entrepreneurship, productivity, wealth creation and sustainable development are prerequisites for an enhanced standard of living for all citizens.

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Introduction

The Quebec Employers Council wishes to thank the Standing Committee on Finance for the opportunity to comment on Bill C-377, *An Act to amend the Income Tax Act (requirements for labour organizations)*.

The Council welcomes the bill, which, in the interests of transparency, requires unions to release their financial statements and disclose how they spend dues collected from their members.

As the representative of Quebec's employers, the Employers Council has already spoken several times in favour of these kinds of changes. It believes it is completely appropriate that the amount of dues that workers are required to pay to their union under the Rand formula¹ be made public, as well as the manner in which they are used.

According to a recent survey conducted by Nanos Research on behalf of *LabourWatch*, 83% of Canadian workers are in favour of requiring labour unions to disclose their financial statements. This figure is even higher in Quebec, where 95% of workers surveyed were in favour.

A survey in March 2012 of 1,049 Quebecers conducted for the Employers Council itself by Léger Marketing² yielded similar results. What they show is that the general public, at 97%, believes that unions should be legally required to provide information—to their members or the public—on how the dues paid by unionized employees are spent.

While the Employers Council supports the bill in principle, it does believe that it could be improved with a little streamlining.

¹ The "Rand formula" requires an employer to deduct union dues payable by all employees in a bargaining unit, regardless of whether or not they are members in good standing of the union.

² <http://www.cpq.qc.ca/assets/files/sondages/2012/sondage0512.pdf> (in French only).

Tax advantages

The main argument in favour of requiring the disclosure of financial statements and other financial transactions is, without question, the many tax advantages that unions enjoy. Union dues are tax deductible federally.³ Strike pay provided by unions to its members is not taxable. Lastly, union revenues are tax-exempt. As a result, the taxpayers are entitled to know how dues are being spent.

Furthermore, the Rand formula provides unions with “quasi-taxation” powers over a certain group of taxpayers—those who work in unionized workplaces, meaning 31% of workers in Canada and 39% in Quebec.

The Employers Council believes that union dues total about \$1 billion in Quebec and over \$4 billion across Canada. It would make sense and would be perfectly legitimate for the privilege granted to unions by the Rand formula to come with financial transparency obligations for unions and their leadership. This is not the case in the current legal framework. These obligations would be particularly appropriate in Quebec, where, in sectors such as the construction industry, unions sometimes enjoy a monopoly in certain trades, making union membership mandatory.

The government, public agencies, listed companies and most organizations with large memberships are subject to strict standards requiring the disclosure of financial information to their members or the public. It would make sense for organizations as large as unions to be subject to similar requirements.

Current lack of transparency

The current situation generally features a lack of transparency not only for taxpayers and the general public, but also for the unionized workers themselves with respect to details about union spending, while they are all forced to pay union dues.

Although the federal and some provincial labour codes include certain disclosure provisions, the current situation is far from transparent. For example, unions in Quebec are required to release each year’s financial statements to their members.⁴ However, it is up to the unions themselves to determine what financial details are disclosed. There is no requirement to have the financial statements audited. Neither is there a requirement to break down expenditures between those used for labour relations and those used to finance ideological or political campaigns that dues-paying workers may not necessarily agree with. As well, union members do not automatically receive a copy of the financial statements; instead,

³ And generate tax credits in Quebec and other provinces.

⁴ Section 47.1 of the Quebec *Labour Code*: “A certified association must disclose its financial statement to its members every year. It must also remit a copy of such financial statement free of charge to any member who requests it.”

they must explicitly request them. A worker in a bargaining unit and not a member of the union but still required to pay union dues would not even be entitled to this information.

The *Canada Labour Code* states that unions “shall, forthwith on the request of any of its members, provide the member, free of charge, with a copy of a financial statement of its affairs”. It also states that the financial statement “shall contain information in sufficient detail to disclose accurately the financial condition and operations of the trade union”. However, these provisions do not specify what type of information is to be disclosed, and yet again, they apply only “on request” by “any of its members”. Ontario and British Columbia have similar disclosure provisions.

These rather minimal provisions far from guarantee that union members and the general public are informed of how union dues are used or provide the required transparency commensurate with mandatory dues and the related tax advantages.

Union leadership interest in the bill

In addition to fulfilling the requirements of good governance and financial transparency, the requirements set out in the bill will benefit the unions themselves and their leadership. Union leaders will then be able to show that they have nothing to hide, that dues are being put to good use in the best interests of unionized workers, that their salaries and expenses are not excessive, and that they are in keeping with current practices.

Lastly, it is worth noting that in a country such as France, the trend is toward greater transparency and disclosure. Since legislation on democratic renewal and labour reform was passed, French unions are required to comply with strict accounting standards and publish their financial statements online.

Specific comments

While the Employers Council does agree with the general approach, it does question certain provisions of Bill C-377.

If this bill were enacted, there would essentially be two categories of requirements for unions: the requirement to disclose financial statements, and the requirement to release statements on various transactions over \$5,000.

The question is whether it is conceivable to require greater detail in the financial statements and possibly less in other statements. The breakdown of expenses as to whether or not they are related to labour relations is particularly interesting and important; the Employers Council considers this to be a key aspect of the bill. The distinction between labour relations expenses and those going toward other causes is not a real problem. Certain criteria could even be developed to make them easier to carry out. In a number of countries, these two types of expenses are presented separately.

- *Complexity of the process*
Some union leaders and others claim that the new requirements greatly complicate matters and will increase costs considerably, even possibly resulting in increased dues. In the opinion of a number of experts consulted, appropriate coding and systematic expenditure accounting could make the task easier and would not generate additional costs, at least in the medium term, once all the procedures are in place. Except for the issue of the \$5,000 threshold, virtually similar requirements are in place for a number of public and private organizations. However, there could be a way to simplify or combine certain requirements.
- *\$5,000 threshold*
As regards the \$5,000 threshold, above which transactions are to be disclosed, the Employers Council simply says that unions vary from one to another. For some, \$5,000 is a significant amount, while for others it is quite minor. Perhaps consideration could be given to adjusting the amount based on membership size or setting the threshold as a certain percentage of total dues collected?
- *Loans over \$250*
The question the Council has in this respect is why would a union be lending money? Is this normal? Is it a common practice? What is the purpose of this and what amounts are we generally dealing with? In the Council's opinion, if a union wishes to issue loans, it should do so through voluntary, not mandatory dues from its members.
- *Auditing of financial statements*
The bill is silent on the auditing of financial statements. Regardless of the extent of information or details required, validation by external experts is essential to lending credibility to these statements. Therefore, the Council recommends that consideration be given to this issue.
- *Lack of clarity in certain provisions*
In clause 1 of the bill, new subparagraphs 149.01(3)(b)(xiv) and (xv) of the *Income Tax Act* do not appear to be very clear. When these subparagraphs refer to "a statement of disbursements on general overhead" and "a statement of disbursements on organizing activities", what exactly are these activities? The wording here should probably be clarified.

The Quebec Employers Council's status as an employer organization

In response to those who would argue that employer associations are not subject to the requirements introduced by the bill, the Employers Council states that, as an employer organization, unlike union organizations, it is funded mainly by **voluntary** contributions from its member associations and businesses and by the net proceeds from the various

activities and events it organizes. The Employers Council's financial statements are audited annually by an external auditing firm selected by the Board of Directors and presented to the membership at its AGM. Furthermore, any member dissatisfied with how the contributions are used may withdraw from the association at any time and no longer contribute to the organization. Unfortunately, such a decision is unavailable to a worker in a unionized workplace.

Beyond Bill C-377

While this bill does require the disclosure of several details regarding how union dues are used, it of course does not contain any requirement to justify these expenditures. According to the Employers Council, additional measures are needed to give more power to workers and greater legitimacy to union activity.

While the Quebec Employers Council understands the reasoning behind the Rand formula, which ensures that all workers who benefit from the working conditions negotiated by the unions are required to pay their share, it believes that labour associations should be legally required to use all funds collected on a mandatory basis for representing the interests of unionized workers solely for labour relations purposes. Beyond this disclosure, the Council believes that the portion of these dues used to fund activities other than representation as part of labour relations (such as public affairs campaigns and government relations) should be funded by voluntary worker contributions.

How can a union justify being able to use dues for ideological or political purposes, dues that under the Rand formula are collected on a compulsory basis from all members, regardless of their political opinions or affiliations?

If unions want to get involved in political or ideological activity, they should be required to fund these activities through voluntary contributions. Using compulsory union dues for partisan purposes is completely unacceptable in the Council's view. This position is overwhelmingly shared by a very large segment of the Quebec population, which quite obviously includes unionized workers.

The March 2012 Léger Marketing survey on behalf of the Employers Council⁵ shows that the general public supports greater transparency in how union dues are used, which are to be strictly limited to labour relations purposes.

A full 88% of respondents find it unacceptable for union dues to be used to take sides on various social issues, and 97% of them find it unacceptable that they are used to support a political party.

By prohibiting unions from spending compulsory union dues to support ideological or social causes, Canada would be following a global trend. In most democratic countries, unions are

⁵ Ibid., note 2.

prohibited from spending compulsory union dues on these purposes without the individual consent of its members. This is true for the U.S., Australia, New Zealand and the European Union in accordance with a 2007 European Court of Human Rights decision.

Conclusion

Bill C-377 corrects an anomaly regarding the disclosure of financial statements of unions that benefit from compulsory dues collected from unionized workers as well as significant tax advantages. The bill also has the advantage of harmonizing and clarifying requirements across Canada. It is part of a series of measures to help bring transparency and good governance, and it helps bring greater balance among the interests of unions, workers and taxpayers. However, certain provisions would be worth reviewing to improve their effectiveness by limiting the administrative provisions that do not achieve the stated objective.