



January 19, 2015

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

Dear Senator Runciman:

RE: Bill C-377 - An Act to amend the Income Tax Act (Requirements for Labour Organizations)

I am writing on behalf of the Members of The Investment Funds Institute of Canada ("IFIC")¹ to raise a serious concern with respect to Bill C-377, which has been referred to your Committee for study. We believe the Bill's current language will have significant and costly unintended consequences for Canada's investment funds industry, to the detriment of the millions of Canadians who own mutual funds.

Over the last two years IFIC and other commentators, including the Canadian Life and Health Insurance Association, have raised these same concerns, in writing and in person, with the Senate Committee on Banking, Trade and Commerce, and with staff in the office of the Minister of Finance. We have proposed corrective language to the offending provision in the Bill (the definition of 'labour trust' in section 149.01), which will eliminate this unintended consequence without changing in any substantive way the government policy the Bill seeks to fulfil.

Our concern is that the Bill's overbroad definition of "labour trust" inadvertently creates a reporting requirement for all retail mutual funds (and other public trusts), imposing a costly, unnecessary administrative burden that ultimately will be borne by all mutual fund security holders. The definition of "labour trust" must be narrowed to exclude public investment funds structured as trusts, and include only those funds with substantial nexus to labour organizations, so as to avoid this serious impact on the investment management industry.

The Bill's stated intention is to require public disclosure of financial information of labour organizations. In section 149.01, the Bill defines "labour trust" to include (in relevant part) "a trust or fund... maintained in whole or in part for the benefit of a labour organization, its members or the persons it represents"².

¹ IFIC is the national association of the Canadian mutual funds industry. Our Members comprise investment fund managers that sponsor, manage and administer funds and dealer and broker firms that distribute funds' securities. The industry service organizations, including legal and accounting firms, participate in our policy work. As of November 2014 the mutual fund industry in Canada represented about CAD \$1.15 trillion in total assets under management in highly-regulated, publicly offered mutual funds.

² The full text of the definition is 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.'*

Applying a plain interpretation, we believe this definition captures as a “labour trust”, and therefore applies the Bill’s full reporting obligations to, any trust, or investment fund structured as a trust, that is offered for sale to the public if that trust has one security holder or beneficiary that is a member of a labour organization. In Canada most publicly offered mutual funds are structured as trusts. Therefore a publicly distributed mutual fund with thousands of public security holders would be caught, and be subject to reporting obligations, if even one of its security holders is employed in a unionized workplace and/or is a member of the union in that workplace.

An individual’s personal investment in a public mutual fund is extremely remote from the activities of the union of which the person may happen to be a member. We doubt that reporting on the personal investment or savings activities of individual labour union members was the intention of the drafters or promoters of this Bill, since to capture publicly distributed funds clearly goes far beyond the objective of enhanced financial transparency of a labour organization.

Operationally, managers of public mutual funds have no practical way to determine if any particular investor in a fund is or continues to be a member of a labour organization. An investor’s union affiliation, if any, is completely irrelevant to his/her personal decision to purchase mutual fund securities, or to the assessment of which fund(s) would be suitable to recommend to that individual. As such, union membership is not information that investment advisers request or have ever requested from investors in the course of providing them with investment advice. Fund companies and distributors therefore have no information as to whether or not any particular investor is a union member. With all of the various fee structures that are available to investors, a mutual fund typically has more than one series of securities. Currently in Canada there are over 9,000 series of mutual funds, each of which could be considered a labour trust under the current definition and our plain interpretation described in this letter. Therefore each of these 9,000 fund series could be subject to this reporting requirement. This is a very significant and costly administrative burden to potentially place on this industry and ultimately all of the millions of security holders of these funds.

Our comments have focused on the Bill’s impact on mutual funds, as this represents the majority of our members’ business, but we believe the definition also extends the Bill’s application and requirements to any other trusts and pension plans that may have a single member of a labour organization as a participant, even if the trust or fund is not created primarily, specifically or exclusively for, or directed by, a labour organization or its members. Adding all of the other pension trusts and other trust and fund types that we believe are inadvertently captured by the current definition of “labour trust”, increases many times over the administrative burden the Bill would create on Canada’s asset management industry.

To remedy this overbroad interpretation there must be a more substantial connection between the fund and the labour organization. We repeat our original proposed solution - the definition of “labour trust” in section 149.01 should be amended to read **“a trust or fund... wholly maintained in whole or in part for the benefit of a labour organization, its members or the persons it represents”**. We also support the additional recommendations to amend the Bill proposed by CLHIA in its letter of December 22, 2014 which will also help to minimize the unintended consequences of the Bill.

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Thank you for considering our comments on this important issue. We would be pleased to discuss our concerns in greater detail with you or the Committee, and request an opportunity to appear during the Committee's hearings on the Bill to present our concerns in person.

Should you have any questions or wish to discuss these comments, please contact me directly by phone at 416-309-2300 or by email at jdelarentiis@ific.ca or Ralf Hensel, General Counsel, Corporate Secretary and Director of Policy by telephone at 416-309-2314 or by email at rhensel@ific.ca.

Yours sincerely,

THE INVESTMENT FUNDS INSTITUTE OF CANADA



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