

BILL C-470 PROPOSES SALARY CAP ON CHARITIES

*By Terrance S. Carter**

A. INTRODUCTION

On March 3, 2010, Bill C-470, *An Act to amend the Income Tax Act (revocation of registration)*¹, was introduced in the House of Commons as a Private Members' Bill by Albina Guarnieri, MP for Mississauga East – Cooksville.² Bill C-470 seeks to impose a salary cap of \$250,000 for any executive or employee of charitable organizations, as well as public and private foundations. Bill C-470 has received support from the Liberal Party, the Bloc Québécois and the NDP. Impetus for Bill C-470 derives from reported news stories by the Canadian press on excessive salaries by a small percentage of charities. At the time of second reading of Bill C-470, Ms. Guarnieri cited an October 1, 2009 news story from the *Toronto Star*, in which it was reported that the former president of SickKids Foundation received 2.7 million dollars on leaving the organization.³ Ms. Guarnieri suggests that Bill C-470 can, “replace doubt and cynicism about the management of charities with the confidence that the personal financial sacrifice of donors is managed by people who are paid well but not so well as to make a mockery of the concept of charity.”⁴ At the time of writing, Bill C-470 is still to be debated when the Bill returns before the House of Commons before being referred to a committee, so its outcome is uncertain. Nevertheless, Bill C-470 raises a number of important issues that may be of concern to some in the charitable sector.

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¹ The text of Bill C-470 is available online at: <http://www2.parl.gc.ca/Sites/LOP/LEGISINFO/index.asp?Language=E&Session=23&query=6906&List=toc>.

² As of March 15, 2010, Bill C-470 was still in debates at 2nd Reading.

³ *House of Commons Debates*, 009 (15 March 2010) at 1095 (Hon. Albina Guarnieri).

⁴ *Ibid*, at 1117.

B. PROPOSALS IN BILL C-470

Currently, under subsections 149.1(2), (3) and (4) of the *Income Tax Act* (“ITA”),⁵ the Minister of National Revenue (“the Minister”) is given discretion to revoke the registration of a charitable organization, public foundation or private foundation on certain grounds, such as where a charity “carries on a business that is not a related business of that charity.”⁶

Bill C-470 would amend subsections 149.1(2), (3) and (4) of the ITA by adding an additional subsection allowing the Minister to revoke the registration of a charity which “pays to a single executive or employee annual compensation exceeding \$250,000.” Compensation would be defined in subsection 149.1(1) of the ITA as including, “salaries, wages, commissions, bonuses, fees and honoraria, plus the value of taxable and non-taxable benefits.”

Bill C-470 would also amend paragraph 149.1(15)(b) of the ITA to require disclosure of the name, job title and compensation of the five employees receiving the highest compensation at a charity, by replacing it with the following;

(b) the Minister may make available to the public in such manner as the Minister deems appropriate an annual listing of all registered or previously registered charities indicating for each

(i) the name, location, registration number, date of registration and, in the case of a charity the registration of which has been revoked, annulled or terminated, the effective date of the revocation, annulment or termination, and

(ii) the name, job title and annual compensation of the five executives or employees with the highest compensation.

These provisions would apply to 2011 and subsequent taxation years.

C. TRANSPARENCY OF SALARIES IN THE CHARITABLE SECTOR

Ms. Guarnieri argues that the Canadian charitable sector is far behind the level of transparency required in the United States. In this regard, she states that, “We know that 2,147 individuals earn more than \$120,000 a year at charities. We do not know how much more. We can suspect that it might be a lot.”⁷ She further argues that her Private Members’ Bill would be in sync with the current trend in other industries to disclose

⁵ *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) [ITA].

⁶ ITA, section 149.1(2)(a)

⁷ *Supra* note 2 at 1100.

the salaries for the highest paid executives in the business and public sector, arguing that, “as Canadian charities distribute almost \$3 billion a year in tax credits, taxpayers have every right to know whether the salaries they are subsidizing are excessive.”⁸ On her personal website, Ms. Guarnieri also states that, “Presently, donors have to search filings of Canadian charities in the United States to find out how their money is being spent on salaries.”⁹

In terms of transparency of salary levels, the ITA currently requires charities to file their annual return (form T3010B) within 6 months at the end of their fiscal period. Failure to do so is one of the most common reasons for which Canada Revenue Agency (“CRA”) has revoked charitable status. Every charity that has incurred expenses related to compensation of employees during its fiscal period is required to fill in Schedule C of the T3010B. This schedule requires that a charity must report the number of permanent, full-time, compensated positions the charity has, as well as reporting the ten (10) highest compensated positions by entering the number of staff falling within categories beginning at \$1-\$39,000 all the way to \$350,000 and over. These figures must include total compensation, including salary and benefits. In addition, charities are also required to report what the charity's total expenditure on all compensation is in the fiscal period. CRA makes available to the public the T3010B's from the previous fiscal period of all charities in order that donors can be informed and make decisions based in part on the comprehensive salary information that is currently reported by a charity on its T3010B.

Given the above, it is apparent that Bill C-470 does not reflect a full understanding of how compensation is presently reported on by charities and what measures are already in place to ensure that there is transparency concerning employee compensation. Charities are already required to report salaries in excess of \$120,000, as well as the number of employees that are paid such an amount. It is therefore not clear how the proposed amendments to the ITA contained in Bill C-470 as it is currently drafted will enhance transparency with regard to the reporting of compensation of employees of a charity, other than to include the names of specific employees and the specific salaries of those employees. In fact, the current requirement to disclose the compensation of the ten highest paid employees of a charity is greater than the five proposed by Bill C-470. The fact that the T3010B was amended in 2009 to reflect that there are salaries in the range of \$350,000 and

⁸ *Ibid*, at 1113.

⁹ Albina Guarnieri, “Parliament Debates Transparency for Canada's Charities” www.albinaguarnieri.com, accessed March 29, 2010.

above means that the CRA is fully aware of the higher range of compensation within the charitable sector but has not identified it as a problem to date.

As well, the imposition of a salary cap affecting the entire charitable sector goes against the trend of removing a “one-size-fits-all” solution to the regulation of perceived issues within the sector, such as the recent elimination of the 80/20% disbursement quota in the March 2010 Federal Budget.¹⁰ Furthermore, the proposed salary cap would only affect a relatively small proportion of charities, since CRA reported in RC4457 *Small and Rural Charities: Making a Difference for Canadians 2008*, that according to the annual returns for the 2006 – 2007 fiscal period, well over half of the registered charities in Canada reported total annual revenues of less than \$100,000.¹¹

Other comments made by Ms. Guarnieri also illustrate a less than full understanding concerning the regulation of charities with regard to fundraising when she argues that, “Years behind the United States, Bill C-470 would not deal with many of the practices that have grabbed attention in recent years. From fundraising organizations that get a \$180 commission for signing up a donor, regardless of the amount contributed, or to other high-class fundraising techniques that cost more than 30¢ of every \$1, all that is left up to the minister to explore.”¹² In fact, in June 2010, CRA released its new Fundraising Guidance¹³ following a lengthy consultation period with the charitable sector. CRA’s Fundraising Guidance has introduced a series of fundraising ratios and other expectations to address the concerns that are now being raised by Ms. Guarnieri.

D. CONCLUSION

Unlike the recent consultation process involving the charitable sector that led to the disbursement quota reform in the March 2010 Federal Budget, Bill C-470 has involved no consultation with the charitable sector whatsoever. Such consultation would likely show that there are a number of charities, such as universities and hospitals, that could face difficulty in keeping key senior executives if Bill C-470 is passed. As such, the

¹⁰ For more information, see Karen J. Cooper and Terrance S. Carter “Significant Benefit for Charities in 2010 Federal Budget DQ Reform” in *Charity Law Bulletin No. 197* (March 8, 2010) online at: <http://www.carters.ca/pub/bulletin/charity/2010/chylb197.htm>.

¹¹ See CRA, RC4457 *Small and Rural Charities: Making a Difference for Canadians 2008*, available online at: <http://www.cra-arc.gc.ca/E/pub/tg/rc4457/rc4457-e.html>.

¹² *Supra* note 2 at 1110.

¹³ CRA, *Policy Statement CPS-028, Guidance on Fundraising by Registered Charities* (June 11, 2009), online: <http://www.cra-arc.gc.ca/tx/chrts/plcy/cps/cps-028-eng.html>. See also CRA, *Additional Information on Guidance CPS-028, Fundraising by Registered Charities* (June 11, 2009), online: <http://www.cra-arc.gc.ca/tx/chrts/plcy/cps/cps-028-ddn-eng.html>.

proposals in Bill C-470 should be the subject of broad sector based consultation so that a balanced approach toward salary transparency, as well as the determination of an appropriate level for senior executive compensation can be carefully studied and addressed. It is hoped that when Bill C-470 is referred to a committee, there will be an opportunity to start this much needed consultation with the sector to ensure that all concerns and relevant issues will be properly addressed.