



Memo

To: Chief Executive Officers of Ontario's Public Hospitals & Hospital Foundations
From: Dykeman Dewhirst O'Brien LLP
Date: February 8, 2011
Re: **Bill C-470 – PROPOSED SALARY CAP FOR CHARITIES ELIMINATED**

December brought some good news for registered charities, including most hospitals, healthcare facilities, and related foundations. On December 10, the federal Standing Committee on Finance amended Bill C-470 (*An Act to Amend the Income Tax Act*), removing some of the most controversial provisions of this proposed legislation – namely, a provision that would have imposed a salary cap on all registered charities and a provision that would have required every registered charity to disclose details about its five most highly compensated employees and executives. These two provisions of the Bill generated considerable criticism and concern within the non-profit sector.

The modified version of Bill C-470 now contains no salary cap and requires registered charities to disclose the name, job title and annual compensation only of employees or executives who receive more than \$100,000 in compensation during a tax year. It is expected that the Bill will be submitted to the House of Commons for a vote in 2011.

Salary Cap

As originally introduced in 2009, Bill C-470 would have given the Minister of National Revenue the discretionary authority to revoke a registered charity's charitable status if the charity paid any employee or executive annual compensation in excess of \$250,000. This would have effectively imposed a salary cap of \$250,000 on compensation earned by employees and executives of registered charities, including most hospitals, healthcare facilities, and related foundations. This cap was introduced ostensibly to prevent registered charities from paying unreasonably high compensation to employees. The sponsor remarked on the occasion of the second reading of the Bill in Parliament that:

The CNIB, United Way and World Vision all reported top salaries far less than the \$250,000 limit proposed in Bill C-470. Clearly, it is not necessary to pay people exorbitant sums to attract talent. However, we have an obligation to assure Canadian donors that whenever they donate to charity their dollars are not siphoned into luxury lifestyles.

However, many critics questioned whether the Bill effectively advances this objective. For example, the Canadian Bar Association published a paper in August 2010, in which it questioned the logic for setting a “one-size-fits-all” salary cap of \$250,000 for all charities, especially since the *Income Tax Act* already contains mechanisms to prevent charities from spending excessively. Specifically, section 188.1 of the *Income Tax Act* prohibits registered charities from giving any person an “undue benefit”, which includes compensation that exceeds fair market value. Opponents of Bill C-470 argued that capping salaries at an arbitrary dollar amount would make it difficult for some registered charities, including hospitals and research institutions, to recruit and retain the most qualified individuals who can command a higher salary in other markets. Fortunately, the Standing Committee modified the Bill and removed the salary cap.

Disclosure Requirement

The original version of Bill C-470 would have required registered charities to disclose the name, job title, and annual compensation of the five most highly compensated employees or executives. Critics argued that this provision created an unreasonable invasion of privacy, especially since registered charities are already required under Section 149.1(14) of the *Income Tax Act* to disclose the salary ranges of their ten highest-paid employees on their Registered Charity Information Returns (albeit without listing the names of the relevant employees earning salaries within such ranges). As the Canadian Bar Association explained in its August paper, “[i]t is an unnecessary and unwarranted invasion of privacy to disclose a person’s salary, no matter how small, merely because that person works for a registered charity (which may receive no government money and may not even issue tax receipts).”

The amended version of Bill C-470 addresses these concerns by replacing the requirement to disclose details about the five most highly compensated employees with a requirement to disclose only the names of employees and executives who makes more than \$100,000. This means that small charities that do not pay any employee more than \$100,000 will have no disclosure obligations under Bill C-470. However, the amended Bill expands the scope of the disclosure requirement for any charity that employs more than five individuals who earn more than \$100,000, requiring such charities to disclose detailed information about all of such employees. This disclosure requirement will not have a significant effect on many registered charities in the Province of Ontario, where the Public Sector Salary Disclosure Act requires “public sector employers” (including public and private hospitals), to disclose the identity of all employees who earn annual compensation that exceeds \$100,000.

The Bottom Line

Bill C-470 is expected to be submitted to the House of Commons for a vote. We will update this announcement as we learn more about the status of the Bill. For more information, please contact either of the lawyers listed below:

Kathy O’Brien
416-967-7100 x 227
kob@ddohealthlaw.com

Christopher Viney
416-967-7100 x 231
cv@ddohealthlaw.com