

## **Bill C-470**

### **TWELVE FREQUENTLY ASKED QUESTIONS**

#### **1. What is Bill C-470?**

Bill C-470 is a private member's bill introduced in the House of Commons by Liberal MP Albina Guarnieri (Mississauga East-Cooksville). It would allow the Minister of National Revenue to deregister any charitable organization, public foundation, or private foundation that paid any employee \$250,000 or more in total compensation (including salary, paid benefits, and unpaid benefits). Effectively, this would put a compensation cap on charitable organizations and foundations. It would also allow the Minister to publish the names and compensation details of a charitable organization's or a foundation's five most highly paid employees, regardless of their compensation level.

#### **2. What compensation information do charities have to report federally right now?**

As of 2009, the Canada Revenue Agency (or CRA) requires individual charities to divulge the compensation ranges for their 10 most-highly paid employees. This information is publicly available on the CRA website showing the number of employees falling within compensation ranges defined by CRA. Names are not attached to that information, nor are exact salary figures provided. There is no cap on compensation.

#### **3. How many charities will be directly affected by the compensation cap?**

As of last year, of more than 80,000 charities across Canada, approximately 1,800 had one or more employees earning more than \$120,000 a year. The number of charities that have any staff earning more than \$250,000 would be much smaller. Many of these are hospitals, universities, and other very large charities.

However, because the maximum compensation level of \$250,000 contained in Bill C-470 has no provision to account for inflation or potential future changes in global compensation standards, the cap will become increasingly onerous and affect more individuals with each passing year.

#### **4. If most charities and their employees aren't affected by the proposed compensation cap, why should they be concerned?**

All charities, and small charities in particular, should be concerned about the disclosure of the compensation for the five most highly paid employees. If there is no threshold, for many small charities this could mean that the compensation level of all employees, regardless of their role or compensation level, would be disclosed publicly.

By way of comparison, in the U.S., there is a similar compensation disclosure policy on the IRS's Form 990, but the IRS only requires charities to list those employees who received more than \$100,000 of reportable compensation.

All charities should also be concerned about the signal that this bill sends out to the public. It conveys the sense that charities in general are doing something wrong, that this is not the case with other sectors which are not subject to this same oversight, and that charities therefore need to be reined in.

Donors and volunteers could decide consequently that charities are not worthy of their support and young graduates could decide that this is not the sector in which they want to build a career.

### **5. How would Bill C-470 undermine the autonomy of charities' Boards of Directors?**

Charities are governed by independent Boards of Directors who have a fiduciary duty to make decisions – including those concerning executive compensation – in the best interest of the mission of the organizations. The bill would see the federal government limit the autonomy of our Boards in a way that no other sector faces – even sectors that receive far more public funding both in absolute terms, and as a proportion of their revenue. The compensation cap contained in Bill C-470 essentially says that our Boards cannot be trusted to make responsible financial decisions.

### **6. Why should charities be allowed to pay such high salaries?**

Although the vast majority of organizations do not approach these compensation levels, many charities are multi-million dollar organizations, tackling intractable economic, social, and environmental challenges, and dealing with extremely complex management issues. They operate in the same international labour market as all other employers. If the market dictates that a certain combination of skills, experience, and responsibilities merits a particular level of compensation, then charities – like any other employer – need to take this into account when making their compensation decisions.

### **7. Some people say that universities and hospitals are covered by the bill, some people say they aren't. Who should I believe?**

Bill C-470 is quite clear in that it applies to all charitable organizations, public foundations and private foundations. In some cases, universities or hospitals have established separate foundations to carry out fundraising activities. However, the universities and hospitals are still themselves registered charities. Bill C-470 would apply to universities, hospitals and their respective foundations.

Any suggested exemption for universities and hospitals would only reinforce the impression left by this bill that all other Canadian charities are somehow doing something wrong – which could not be further from the truth. Canadian charities are, by and large, very well run and effective organizations.

### **8. If the compensation cap is up to the Minister's discretion, is it really an issue?**

Violation of the compensation cap would be added to the list of reasons for which the Minister could deregister a charity. The Minister has discretion in that he or she would not have to immediately and automatically deregister a charity that violated the cap. In the case of other discretionary reasons for deregistration, this generally allows the charity or foundation in question to bring its behaviour into compliance with the rule in question; the Minister has discretion to allow a violation to be rectified, not to ignore the violation in perpetuity.

The Minister would be obliged to consider all cases that seem to violate Bill C-470 and to give the organization an opportunity to change its compensation policies but the Minister would not, under current practice, have the discretion to effectively exempt an organization from the compensation cap. This inability to consider special or extenuating circumstances relevant to compensation at a specific charity could have unintended consequences for that charity.

Finally, the mere existence of the cap would create the perhaps erroneous public perception that any salaries above \$250,000 should be viewed as excessive, regardless of the ultimate decision of the Minister.

**9. Would a sliding scale compensation cap, based on the size of a charity, be a workable solution?**

Regardless of whether the cap is a hard cap or a sliding scale, it would undermine the autonomy of the charities' Boards of Directors. Boards and trustees are, by design, established to adeptly determine adequate executive compensation, which renders the imposition of any cap, hard or sliding scale, unwarranted.

Furthermore, there are a myriad of factors that would need to be considered in any attempt to establish a sliding scale including:

- the revenue of an organization;
- the number of employees;
- the number of beneficiaries;
- the nature of the charitable activity;
- the range of required skill sets and thus the composition of the staff;
- regional labour markets and living costs; and,
- the regulatory and compliance framework within which the organization operates.

Two organizations with similar revenue could vary widely in other regards, meaning that no one factor could be used in isolation of the others. Designing a workable sliding scale would require the appointment of a minister or federal official to become effectively the charity sector's "Pay Czar" in order to determine which organizations would fall under which gradients in the scale. The result would be a very complex and potentially politically charged decision-making process and would require charities to spend additional time and money to develop the business cases to justify these decisions. It would also place an unacceptable restriction on the decision-making authority of the volunteer boards of many charities who directly represent the interests of donors.

**10. What are charities willing to do to show that they're transparent and accountable when it comes to executive compensation levels?**

Charities already adhere to all of the reporting requirements established by the Canada Revenue Agency. These requirements were strengthened in 2009 to include disclosure of the compensation ranges of the 10 most highly paid employees.

The charitable sector believes strongly in transparency and accountability. Imagine Canada, in collaboration with a number of partners, is developing a Standards Program that will call for executive compensation disclosure. To the extent that elements of Bill C-470 would enhance existing levels of transparency and accountability, we look forward to working with parliamentarians to achieve that goal.

However, a compensation cap has nothing whatsoever to do with transparency; it is a punitive restriction that removes authority from independent Boards of Directors and undermines the great work that Canadian charities do every day in communities all across the country.

**11. What do you mean when you say this may not be something that the federal government has jurisdiction to regulate - rather it should fall to the provinces?**

Under the Canada Constitution Act, the jurisdiction over charitable property lies with the provinces. The federal government is involved because of its taxing authority and the special tax status of charities (tax exemption and issuance of tax receipts). Provinces have various statutes that apply and

there is some argument that such a cap is not a taxing matter but rather would fall into the matters to be regulated by a province.

## **12. What is the most significant compensation issue affecting the sector?**

The most significant compensation issue that needs to be addressed in the sector is not high executive salaries but low salaries and poor benefits overall, including pensions. The sector is a significant driver of economic activity and employment across Canada – far larger than, for example, the automobile industry – but the vast majority of charities and nonprofits in Canada are smaller community-based organizations. Many have difficulty recruiting and retaining staff, the main reason being the lower salaries and fewer benefits they can offer given their limited financial resources.

## **SUPPLEMENTARY QUESTIONS AND ANSWERS**

### **1. What is the international practice regarding compensation caps or limits?**

We are not aware of any compensation caps being imposed on charities in other countries. There was a proposal in California several years ago to limit executive compensation at charities, but this was defeated; instead, the Nonprofit Integrity Act of 2004 requires that charities' boards (or an appropriate board committee) review and approve compensation levels for the President (or CEO) and Treasurer (or CFO) to ensure that they are "just and reasonable." This is exactly what Boards of Directors of Canadian charities already do.

There have been recent reports that the United States Senate and the Government of New Jersey are considering the issue of compensation caps but, to our knowledge, neither has made a firm public proposal.

The IRS does not impose any compensation caps. However, the IRS does require charities to list those employees who received more than \$100,000 of reportable compensation.

### **2. Does the fact that charities benefit from public and governmental support justify federal intervention in autonomous Boards of Directors' compensation decisions?**

No other sector faces such a limitation, despite the fact that other sectors receive substantial federal financial support. For example, research and development tax credits cost the federal government \$1 billion a year more than charitable tax credits, but nobody is proposing to limit compensation in the high-tech sector, for instance, because of this. Additionally, corporations deduct salaries before calculating taxes payable; the foregone revenue is, in effect, a taxpayer subsidy of corporate salaries.

### **3. At a time when many charities are seeking new ways to generate income, does a cap make it more difficult to attract employees with more business-oriented, legal or technical skills?**

Individuals with these types of skills are already in high demand in other sectors of the economy, and this demand will grow more acute as the labour force shrinks. Many of them will have their choice of jobs and will be able to command compensation reflecting the realities of the marketplace. If the charities that need the services of individuals like these face an arbitrary compensation cap, they will be less able to compete for people with these skills at the same time that governments and other funders are expecting charities to demonstrate that they can operate in a more entrepreneurial way.

There is an obvious disconnect here: if charities are expected to be more market-oriented in their organization and approach, this also needs to be reflected in their human resource and compensation strategies. Finally, philanthropy is a global effort, meaning that individuals interested in charitable work can seek employment both within and outside of Canada. The imposition of a compensation cap on Canada's charities could make them uncompetitive in the international marketplace.

**4. If all charities are covered by the cap and have to play by the same rules, what's the problem with recruitment?**

Charities – like any other sector – face the reality of high demand for the pool of people with the skills and experience to successfully manage and operate large and/or complex organizations. Many charities do not just compete with each other for staff; they increasingly compete with the private sector, the public sector, and with organizations in the U.S. and abroad. None of those other entities face a compensation cap, meaning that Canadian charities and foundations would be placed at a serious disadvantage in competing for talent on a global basis.

**5. Could a cap dissuade new graduates from entering the sector or promising future leaders from remaining in the sector?**

The issues that charities address are becoming ever more complex. The environment in which they operate is also becoming increasingly complex – both because of rapidly changing technologies and ways of doing business, and because of an ever-evolving regulatory framework. Charities will increasingly need to seek people with specialized training in law, information technology, finance, and administration, among other fields.

New graduates represent a significant pool of potential new talent for charities particularly as we move into a tighter labour market. They may not expect competitive salaries in the immediate term, but they are fully aware of their longer-term financial prospects. If the compensation that could be offered by charities is arbitrarily capped, it may be much more difficult for some of these individuals to envisage a long-term future in the sector.

**6. If charities are already reporting the compensation ranges for their 10 most highly-paid employees, what additional transparency would Bill C-470 provide?**

Bill C-470 would authorize the publication of exact compensation (as opposed to compensation ranges that CRA publishes). It would authorize the publication of the names of the five most highly compensated employees, however high or low their compensation level. This would be in addition to the information already published by CRA. In the U.S., there is a similar compensation disclosure policy on the IRS's Form 990, but the IRS only requires charities to list those employees who received more than \$100,000 of reportable compensation.

**7. Is the proposed bill consistent with other Government of Canada policies?**

There are potential conflicts between Bill C-470 and other federal government policies. For example, the most recent federal budget, which announced changes to the current disbursement quota regime governing charities, emphasized the importance of providing charities with greater financial flexibility and independence to manage their affairs, albeit in a transparent and accountable manner. Contrary to this recent announcement, the proposed bill would reduce both the autonomy of the Boards of Directors to ensure stewardship of charities' funds and could limit charities' ability to make the decisions that will ensure that they are fulfilling their mandates in the most effective ways possible.

Similarly, the Canada Research Chairs program has attracted thousands of the best and brightest researchers to Canadian universities, with compensation rates that reflect this. Bill C-470 could limit the federal government's ability to implement its own science and technology policies and to attract top international talent.

## **8. What if universities, colleges and hospitals were exempted from the bill?**

Exempting universities, colleges and hospitals would be extremely difficult to do given the great diversity in size and scope even among these charities. Moreover, there would be great practical and administrative difficulties in treating different types of charitable organizations in a different manner, effectively creating two tiers of charitable organizations in Canada.

## **9. How would Bill C-470 affect corporate foundations?**

To the extent that corporations have established foundations, they will be affected by Bill C-470. Depending on their HR policies and how their foundations are staffed, they may no longer be able to staff their foundations in the way they see fit or may have to close down their foundations as they would no longer be registered charities insofar as they were unable to comply with the compensation cap. The contraction of the corporate foundation sector is a potential unintended consequence if Bill C-470 were to pass.

## **10. How would the proposed bill affect current HR agreements?**

The bill would have a direct impact on legally-binding collective and individual agreements into which charities have entered. Bill C-470 does not propose a realistic transition period, meaning that institutions such as hospitals, universities, and other large charities would face the choice of deregistering or violating these agreements – with all of the associated legal complications. In the case of medical professionals who are on staff at hospitals, compensation rates are determined by provincial governments in negotiation with representative organizations of physicians and surgeons. In this case, Bill C-470 would actually dictate to provincial governments how much they are allowed to pay these medical practitioners and in that respect would arguably represent an intrusion by the federal government into an area of provincial jurisdiction.

## **11. Is there a right way of deciding on compensation?**

There is no one answer to the question of how much compensation a charity should offer compared to organizations in other sectors. There are market forces at play and individual organizations have to decide what they need to pay for the skills and results they require, based on their own knowledge and expertise and on their experience in benchmarking compensation. Comparing jobs across different functions within an organization is challenging enough, but to try to compare and manage compensation across different-sized organizations, sectors and regions is a hugely subjective process. These decisions are best left in the hands of the volunteer Boards of Directors of individual charities, who have a fiduciary obligation to act in the best interest of their organization.

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