LABOR ORGANIZATION FINANCIAL TRANSPARENCY AND ACCOUNTABILITY: A COMPARATIVE ANALYSIS

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A new breed of fat cat is stalking Downing Street in search of beer and sandwiches. Union bosses have had pay raises three and a half times the rate of inflation. The average package of pay and perks for a union general secretary has increased by 7.55% and some remuneration deals are topping pounds 125,000 for the first time. Union bosses are taking home pay and perks worth up to nine times the wages of their members at a time when trade union membership is at its lowest since the World War II. Some of the biggest earners are the very general secretaries who have accused company directors of being 'greedy bastards.'[1]

If ever there was a poster child for the Labor Department's bid to bring union bookkeeping into the sunlight, it's Barbara Bullock. You might recall Miss Bullock from the headlines last December, when FBI agents raided the home of the Washington Teachers' Union president and found everything from fur coats to a Tiffany silver service they said she'd bought with $2.5 million in dues money stolen from the rank and file.[2] *(Wall Street Journal, 10/8/2003).*

The above are only two samples of recent media coverage of trade union financial stories in the UK and US gleaned from the two sources; the first story was gleaned from publicly

available annual financial reports filed by trade unions with a government regulatory agency; the latter was compiled from court documents. The first reflects data gathered from an audited financial statement, which had been reviewed and approved by the union's governing body, including the compensation packages of general secretaries. In the second case, the Washington Teachers Union had been filing publicly available financial statements with the Labor Department for the entire period of time the alleged financial scandals had been occurring. Just as publicly-held or –traded businesses have a legal duty to disclose certain financial details to their shareholders, trade unions should have a similar duty to disclose to their members. At the close of the US Senate debate on the passage of the Labor-Management Reporting and Disclosure Act in 1959, Senator Jacob Javits (D-N.Y.) remarked: "I think this is an excellent solution of the matter, because it equates the rights of the union members with the rights of corporate stockholders."[3] However, just like Enron and other corporate financial scandals, publicly available annual reports seldom themselves reveal the underlying scandals.

While there doesn't appear to be much debate of *whether* unions have a duty to disclose their financial details to members, there is considerable controversy over what *impact* these disclosures will have both on the union providing them and on the members who will receive them: specifically, will increased information about union finances enable members to better monitor union finances and accountability, will it be provided in a format that is meaningful and useful to them and what cost impact will it have on the union? While much has been written about application of *agency theory* to corporations and their stockholders, the same cannot be said about its application to trade unions and their members. Agency theory would appear to be a very useful conceptual framework for examining this disclosure and monitoring relationship between union members, trade unions and the government.

In this article, we develop a model based upon agency theory and monitoring costs to better examine the role of government-mandated transparency and disclosure regulations on unions and their members both in terms of the likely cost to unions versus the anticipated benefit of improved member understanding and union accountability. After a brief review of the regulatory landscape, agency theory and monitoring costs literature, a model is developed and multiple configurations of that model are developed and matched with the current transparency and disclosure regulations in several countries. After summarizing our findings, we offer several policy recommendations and directions for future research.

AGENCY THEORY AND FINANCIAL TRANSPARENCY REGULATION

Agency theory seeks to describe the relationship between principals and agents. Here, the principals are union members and the agents are their elected and appointed officials. According to Shapiro[4] this agency relationship will have costs for "moral hazard, shirking, stealing, corruption and monitoring," to name a few.[5] Costs of monitoring the agency relationship may increase also because the organization, on its own, is structured to minimize opportunism through internal controls, reporting requirements and layers of supervision.[6] While trade unions on their own establish monitoring systems (self-regulation and self-monitoring), many countries through the legislative or regulatory process require additional layers of monitoring, including the submission of annual reports to members as well as annual reports filed with a government regulatory agency and in some cases an even more activist role of that agency with responsibility for investigating allegations of non-reporting or mis-reporting, or for corruption or non-compliance. Where such rules supplement those monitoring systems already established by unions, the costs of monitoring the agency relationship will increase. Such increased monitoring costs may however result in improved accountability and transparency for union members.

Just as financial disclosure regimes for corporations are often defined in significant part by

the regulatory environment, the same can be said about trade union financial disclosure and transparency. Britain's 1871 Trade Union Act established a Chief Registrar of Friendly Societies, who then registered trade unions on a voluntary basis. Registration provided trade unions certain benefits, including legitimizing their legal status and providing some immunity at civil law as well as establishing the rights to own property.[7] Australia, New Zealand, and many current and former Commonwealth countries adopted similar laws; these laws are discussed in detail below.

In the United States, there was no similar institution of trade union registration. The Labor-Management Reporting and Disclosure Act passed in 1959 in response to several multi-year Senate investigations of union corruption, including the Teamsters and Laborers' Union. Annual financial reports, made available to the public by the Secretary of Labor, were advocated as a means to increase accountability and transparency and reduce financial mismanagement and abuse. In the words of the US House of Representatives in 1959,

> It is the purpose of this bill to insure that full information concerning the financial and internal administrative practices and procedures of labor organizations shall be, in the first instance available to the members of such organizations. In addition, this information is to be made available to the Government, and through the Secretary of Labor, is to be open to inspection by the general public. By such disclosure, and by relying on voluntary action by members of labor organizations, it is hoped that a deterrent to abuses will be established.[8]

In keeping with agency theory, the union only provides information directly to its members as part of the monitoring function; union members utilize this information to monitor how their union spends their monies and holds them accountable. Unless otherwise specified by law, it has no duty to provide financial information to non-members or the general public.

Today in the US, unions with more than $250,000 in annual returns are required to file a detailed report, Form LM-2, which is available to members and the public on the web site of the Office of Labor-Management Standards.[9] A similar, though less-detailed form, the AR-21, is required of all unions in the UK and is also publicly available. Only these two countries require the use of a specific report form; Australia's Federal Government and New South Wales state government specify the chart of accounts that must be used in the annual report. All other countries with financial reporting laws leave the design and contents of the annual report up to the union. However, it must be pointed out that countries that *require* annual financial reports of trade unions, whether they are provided to members and/or the government, are in the minority. Aside from the UK and Ireland, no other EU nation has similar laws. This is *not* to say, however, that unions in these countries don't share financial information with their members; if they choose to do so, they do so in the absence of statutory or regulatory requirement.

DEVELOPING A MODEL OF AGENCY COSTS AND MONITORING FOR TRADE UNION FINANCIAL DISCLOSURE AND TRANSPARENCY

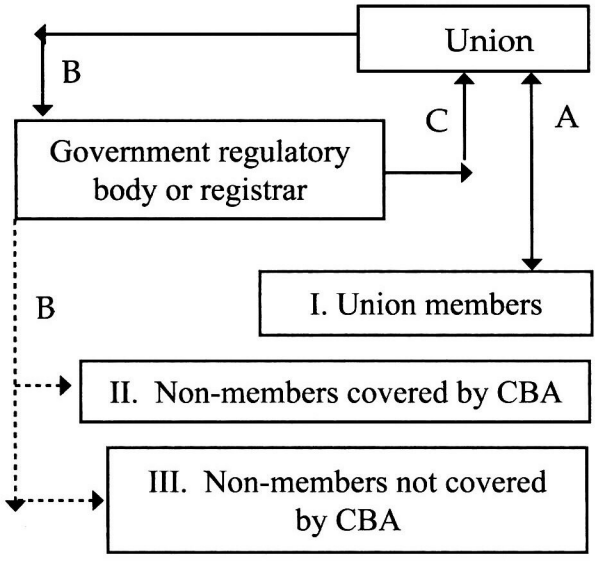
Figure 1 below presents schematically the relationship between the three major actors in

the trade union financial disclosure system: the trade union, the governmental regulatory agency and union members. Governmental regulations may require unions to provide financial reports or statements to members (Path A), or to provide them to the government regulatory agency (Path B), or both and the government may also, upon receipt of such reports, monitor their accuracy and completeness, conduct audits, investigations and even seek criminal prosecution of trade unions who fail to provide information, knowingly submit false reports or engage in fraud. In keeping with agency theory, the union only provides information directly to its members as part of the monitoring function; union members utilize this information to monitor how their union spends their monies and holds them accountable. Unless otherwise specified by law, the union has no duty to provide financial information to non-members or the general public. Figure 1 shows a dotted line ("B") connecting workers who are not members of the union, but who are covered by a collective agreement negotiated by the union, as well as *prospective* members of the union who currently work in a workplace not subject to a collective agreement. The only way these latter two groups of workers can secure the financial data from the union is by becoming members, or, if the government agency receiving the report makes it available to the public, which is currently the case in the US, UK, New Zealand and in most Australian states (except New South Wales and Queensland).

Using the model in figure 1, focusing on the rays connecting the boxes, we can posit three dimensions of transparency: (A) does the government require the *union* to provide an annual financial statement to its members? (B) is the union required to file an annual report with the government? And (C) does the government monitor the union's compliance with these reporting requirements and investigate any complaints of financial wrongdoing other than simply collecting these annual reports?

A more detailed review of figure 1 reviews further nuances in this monitoring relationship.

Figure 1
Agency monitoring costs and union financial transparency



First of all, under (A), some laws facilitate bi-directional information flow between the union and its members by permitting members to access certain financial and accounting records (laws or regulations allowing union members access to financial records without having to wait for annual reports), in which case a double-headed arrow is shown. If the information flow is from the union to the member, then the arrow is single-headed. Note that none of the laws surveyed requires the union to provide financial records or reports to non-members. Instead, non-members (II and III) typically obtain financial information from a union in the second type of disclosure (B) where the information is provided to the government, which in turn makes this information available upon request to workers who may not be union members or to any member of the public (or media).

UNION FINANCIAL DISCLOSURE

Figure 2 below presents a configuration of the three questions posed earlier: (a) do the transparency regulations require disclosure of an annual financial statement to members? (b) do the transparency regulations require a report to the government regulatory agency or registrar? (c) does this government regulatory

agency provide oversight and monitoring beyond simply filing the report or investigating claims that the annual report was not provided to members or filed with the government. We pose these questions as "Yes" or "No" questions even though in several cases the responses are somewhat more complicated; in the detailed discussion of each country below, we will clarify these exceptions and difficulties.

Figure 2
Possible union financial disclosure scenarios

Scenario	Member disclosure required?	Report to government required?	Government Oversight	What country
1	No	No	No	EU
2	Yes	No	No	Chile, Canada
3	No	Yes	No	Singapore
4	Yes	Yes	No	New Zealand
5	No	Yes	Yes	US
6	Yes	Yes	Yes	UK

Scenario #1: No regulations, No monitoring

This would apply to countries that do not have any legal requirements that unions must provide annual financial reports either to their members or to a government agency (and with no reports, there would obviously be no government oversight). The countries of the European Union, except the UK and Ireland, would fall into this classification. Here, no monitoring costs are imposed upon trade unions by legislation or regulation and any monitoring costs would be a result of their own rules or constitutions to provide financial information and disclosure. As for union members, there is no state-sanctioned standard of financial disclosure about union financial matters.

Scenario #2: Member financial reports required but no governmental report or monitoring

Here, only members must be provided with an annual report, but the government does not receive one and the applicable government agency does not play any significant role in enforcing this requirement. This would apply to certain provinces within Canada; this would also apply, for the most part in Chile. The law exists only to ensure that union members actually receive an annual financial report. The monitoring costs are fairly modest here but at least there is an assurance that members will get *some* level of financial information about their union. In no case does the specify *exactly* what information the members must receive; this is left up to the union.

Scenario #3: Member reports not guaranteed but the government gets a report

In this case, members aren't required to be provided with an annual report, but the government is. We were not able to find perfect example of this case, but Singapore comes pretty close here, in that it does not actually require unions to furnish a report to members, but just to make one available on request. In addition, the governmental agency in Singapore actually conducts *extensive* monitoring of trade union finances, not just with this report, but also with significant monitoring powers.

Scenario #4: Members get a financial report, the government gets one too but it does nothing more than simply collect the report

In this scenario, which applies to New Zealand, unions are required to present an annual report to their membership, often at an annual meeting, then file a report and certification that the report has been presented to the membership with the government. The government then does very little with the report besides ensure that it is filed and makes it available to the public. In both cases, employer associations or corporations file the same sort of report as do trade unions.

Scenario #5: Members aren't required to receive a report, but the government does and the government actually conducts investigations or audits and can process civil or criminal charges against unions or officers

In this scenario, the law doesn't actually require that union members receive an annual report, although in the case of the US, it does provide them with a legal right to access financial records; the government gets a detailed financial report from the union and in turn has broad investigatory powers to audit and investigate unions and to prosecute unions who make false filings or engage in fraudulent financial activity. The example we will use here is the United States. Union members here (see type I of figure 1) actually receive the *same* report that non-members covered by the CBA and who are not covered by the CBA do, although only members can access their union's financial records on demand. Here, members actually have the *potential* to receive the most detailed records of all, if they utilize this right, but the cost to the union of having to file this very detailed report and to develop internal controls to protect against any government investigations or audits is relatively high.

Scenario #6: Members receive a report each year

Finally, in this case, the law requires that members receive a report each year, that the unions file a similar report and certification that the members have seen the report with the government. The government also has broad investigatory powers to compel unions to open records to members or investigate possible wrongdoing, referring wrongdoers for criminal investigation. The UK is the example we will use here. Costs here may be even higher than in the U.S. because in the UK, the annual reports submitted to the government *must* be audited (in the US, there is no such requirement), the union *must* certify that the audited financial report has been provided to its members and the union must be prepared to submit to government investigations.

REPRESENTATIVE COUNTRY SCENARIOS

We now turn to a more detailed discussion of each scenario and the representative country beginning with the second scenario, since the first scenario is the null condition (all three questions are answered in the negative).

***Scenario* #2 (Chile and Canada):** Sections 263 and 264 of the Labor Code of Chile govern financial accountability and transparency for local or branch labor organizations. If the organization has 200 or more members, it must prepare an annual summary of accounts, which must be reviewed and signed by an accountant. This balance must then be submitted for approval by the membership each year after notice is published in at least two locations in the workplace and at the union office. After the annual account summary is approved, it must be submitted to the Labor Inspectorate. However, labor organizations with *less than* 200 members don't have to prepare a summary of accounts but must keep a current journal of all expenses and receipts as well as an inventory of all property. Regardless of the size of the union, section 265 requires that a book of minutes and all accounts must be kept current and accessible to all members and the Labor Inspectorate. If 25 percent or more of the members of the labor organization so request, the union must have an audit performed by an external auditor.

The Canadian case is also somewhat split, with one province requiring a copy of the annual report to be sent to the government (Manitoba) and the other provinces and the Federal Labor Code requiring only that a copy of the annual report be sent to the members of the union.

Canadian Federal law applies only to a fairly limited sector of intra-provincial employers and employees of the Federal Government. Each province is therefore free to regulate labor relations and union governance, generally through the provincial labor codes. According to a standard labor law text, eight jurisdictions in Canada have enacted provisions requiring annual financial reporting. While Canadian unions are no longer required to file an annual audited financial statement with the Chief Statistician

of Canada (this provision was repealed in June 1998), Manitoba has the most comprehensive requirement requiring all unions in that province to file an audited financial statement each year within six months of the close of the fiscal year setting forth its income and expenditures in sufficient detail. The annual salary of those officers and employees receiving $50,000 per year or more must also be reported. This report may be inspected at the Manitoba Labor Board offices and it may also be requested directly by bargaining unit members from their union. If a member is not satisfied with the degree of information disclosed in this annual report, he may file a request with the Labor Board to order that the requested information be provided. The law also provides that the Labor Board may sanction unions that have failed to file this annual report.[10]

Provincial labour boards have repeatedly held a union needs to provide more than an audited general statement of its income, assets and expenditures to meet the legislative disclosure requirements. . . . "Anything further in the way of supporting details or reasons justifying expenditures are matters to be dealt with internally through the union's constitution or by-laws, not by way of the Code."

Section 110 of the Labour Code of Canada provides that every labor union and employer organization, must, upon request of a member, provide a certified true copy of the organization's most recent annual financial statement. This statement must "provide in sufficient detail to disclose accurate the financial condition and operation" of that organization. If the Canada Industrial Relations Board receives a complaint from a member that their organization has not complied with this requirement, they may order the organization to provide a copy to that member or any group of members it deems fit.

Three of the larger provinces, Quebec, Ontario and British Columbia, have very similar provisions in their labor codes. The Quebec Labor Code[11] provides that a union "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."

Section 92 of the Ontario Labour Relations Act requires the labor organization to provide an *audited* financial statement to members, which must also be certified by the organization's treasurer, for the last fiscal year, upon request. If a member complains to the Ontario Labor Board that the labor organization has failed to provide such report, the Board may order them to provide the audited statement to any member it directs. Unlike union-administered vacation, pension or training funds, which require an outside accountant to perform the audit, the labor organization's financial report does not require the services of a chartered accountant and no particular form is prescribed for the annual report. Unlike the Federal Labor Code, however, Ontario law allows a member to complain to the Ontario Labor Board that the audited financial statement is inadequate, which then triggers an investigation by the Labor Board, who may order the union to provide another audited report "containing the particulars the Board considers appropriate." The Board may also direct that the audit be performed by a chartered accountant. However, the Ontario Labour Relations Board, as several of the following cases demonstrate, will only require the union to provide the most recent annual statement, not the last six years, as was the case in *Nixon v. LIUNA Local 1089*.[12] By the same token, the *Nixon* Board denied the member's request for detailed supporting transactional records holding "there is no obligation

under the Act to provide copies of the audited financial statement or any other financial information beyond the last fiscal year's statement" and that "the kind of detailed information the applicant is seeking is not information generally included in financial statements." While the applicant asserted members have a right to reasonable accountability which is not provided in the audited financial statement, he alleged numerous discrepancies which led him to believe fraudulent activity was occurring; however, as the OLRB noted, the applicant failed to provide a single example of what discrepancies he was concerned about nor did he present any material facts or particulars in the audited financial statement which he found inaccurate, stating "the Board requires applicants to be very specific about what part of the statement is inadequate." However, the OLRB *did* find that the applicant's labor organization did err in not providing the applicant with a *certified* copy (by the treasurer of the organization) and ordered it to do so.

The *Nixon* case did not completely forestall the provision of transactional records where financial mismanagement was demonstrated in some fashion, reasoning "unless there is a compelling reason to do so, the Board does not involve itself in the internal workings of a trade union. If the applicant is unhappy with the way the union is run, he can seek to influence its affairs through its internal processes and procedures." But in a later case, *Joanisse v. IBEW Local 105*,[13] the Board directed the applicant to specify the reasons behind his requests for information and to tie this to the "inadequacy" of the union's financial statement, but warned that the applicant "should be aware that the purpose of Section 92 is to ensure he has the financial statement of his union. If he believes funds have been misappropriated, that is not a matter the Board will enquire into. That is more properly a matter for civil or criminal court."

Section 151 of the British Columbia Labor Code is very similar to Federal and Ontario law, only it requires the financial statement be made available without charge to each of its members before June 1 of each year, a copy of the audited financial statement, signed by not only the treasurer but also the president of the union. It utilizes word for word the same language as Federal and Ontario law regarding the "sufficient detail to disclose accurately the financial conditions and operations." In one recent case, the BC Labour Board, in *Wright v. BC Carpenters*,[14] ruled a member does not have to provide any specific reason for requesting the union's annual financial statement.

Provincial labour boards have repeatedly held a union needs to provide more than an audited general statement of its income, assets and expenditures to meet the legislative disclosure requirements. For example, the Ontario Labour Board in *Strong*[15] found the union was not required to provide a complaining member seeking particular information about specific operations, including payment of "lost wages" to officers. In holding that the general information provided by the annual statement was specific, the Ontario board held a union doesn't need to "set forth the minutiae of detail of the source and origin of every cent which is received and disbursed."

The Canada Industrial Relations Board has adopted this definition, adding that "anything further in the way of supporting details or reasons justifying expenditures are matters to be dealt with internally through the union's constitution or by-laws, not by way of the Code."[16]

In construing the definition of what constitutes a satisfactory statement, labour boards have routinely dismissed complaints seeking more detailed information, such as salaries of specific staff and officers, settlement costs of staff dismissals, expenses for organizing new members, staff allowances, costs of union conventions, director and committee member expenses, consultant fees, costs of labor board proceedings involving the union, information about union funds and specific mortgage monies paid by a union.

In extraordinary circumstances, where relations between a union and the requesting member are strained and provided the amount of information requested is not burdensome, a more detailed breakdown of financial information may be ordered.[17]

While not specifying a particular format the union must use to present its annual financial statement, audited financial statements provided by a union to its members must be, at the very least, the same statements used by the union to carry out its financial affairs. For example, if the union has, besides a general fund, separate strike and organizing funds, it cannot simply provide a consolidated audited financial statement for all funds to a requesting member.[18]

Nor must the audited statement be prepared by a chartered accountant. In *Robert v. UA Local 800*,[19] the Ontario Board ruled the legislation doesn't require the use of a chartered accountant, but that there are two essential components of an acceptable audit: (a) some distance between the person or group conducting the examination and those who prepared the financial records and (b) the person or group conducting the audit must have some competency with accounting practices and recordkeeping to ensure a comprehensive review of the records. If the audit is conducted by somebody other than a chartered accountant, the Board will look at the conditions under which the audit took place and the relationship between the auditor(s) and the recordkeepers.

Finally, the union's financial statement will not meet the statutory requirement of a "true copy" if it does not identify the firm of accountants or other auditors who prepared the statement or if it fails to include the opinion of the accountant or auditor as to the scope and fairness of the audit.

Under these standards, an audit of the union's records by the secretary treasurer of the organization or some internal review committee is insufficient, even if the report is approved by a membership meeting. The Ontario Board has ordered the union's records to be audited by a chartered accountant as a remedy.[20] But the Ontario Board has also held an audit prepared by a certified general accountant to satisfy this requirement as well.[21]

The Ontario board has generally required a member to exhaust the union's internal procedures before it will assume jurisdiction on cases involving the financial statement, but this exhaustion of remedies requirement is waived where "the issue involves a violation of public policy, if the alternative remedy is illusory in that it provides inadequate relief or if the speed, economy and convenience of the internal remedy is not approximately equivalent to the remedy provided through the Board.

In one case, the Board assumed jurisdiction where the internal appeal procedure required the member to obtain 300 signatures on a petition, but did not provide any union guarantee that an independent audit would be made once the petition had been submitted.[22]

Labor boards do not have the authority to enforce a union constitution, even where that document provides for greater rights to financial information than is available under law. The appropriate remedial route would then be through the union's internal procedures or to the civil courts.[23]

***Scenario #3* (New Zealand):** Under the 2000 Employment Relations Act, unions must register with the Incorporated Societies Registrar. Part of that registration includes a provision that they must first become an incorporated society under the 1908 Incorporated Societies Act; they must also register as a union under the 2000 Act as well. The only government oversight is that it is an offense to mislead the Registrar of Unions; the penalty can be up to NZ$ 5,000.[24]

Current New Zealand law requires that a labor organization each year get approval for its annual financial statement at a general meeting of its members and then deliver a copy of that statement to the Registrar of Incorporated Societies. Once the statement is filed, it becomes a public record and can be retrieved on-line from the Registrar's web site. It should be noted that many, if not most, of these annual financial statements are prepared by chartered accountants, but they specifically state they are <u>not</u> audited statements and statements examined include such a disclaimer from the chartered accountant preparing them.

***Scenario #4* (Singapore):** Singapore does not require that a financial report actually be *provided* to union members only that it be made available upon request. The Trades Union Act, Chapter 333, of Singapore, regulates the formation, registration

and financial activities of trade unions. Under the direction of the Registrar, who is appointed by the Minister of Labor, a registry of trade unions is maintained. Every trade union must be registered and like the UK law, registration confers special standing, including the right to engage in work stoppages; however, by virtue of this registration, the Registrar has the power to request further information at any time to ensure that the trade union is entitled to continued registration. In reviewing an application for registration, the Registrar may deny registration on the grounds that the objects, rules or constitution of the trade union conflict with the purposes of the Trade Union Act, are "oppressive or unreasonable" and the trade union might be used for "unlawful purposes or purposes inconsistent" with the applicable laws and regulations or where the trade union may be used "against the interests of the workmen in that particular trade, occupation or industry." According to section 10 of the Act, "if any one of the objects of such trade union is unlawful, the registration of the trade union shall be void.

Under the Bush Administration, the Office of Labor-Management Standards requires considerably detailed reporting on its LM-2 form. . . Under the new disclosure rules, the AFL-CIO's LM-2 report went to over 700 pages from 180 pages. One must ask how many union members really have the time and patience to sift through this lengthy a disclosure.

Besides having the power to void the registration of the trade union, the Registrar may also direct any financial institution not to pay any money or honor any checks drawn on a trade union's account for up to three months without the Registrar's written authorization if it is believed that the funds of the union may be misused. If the financial institution fails to comply with the Registrar's order, they may be fined up to $3,000 and imprisoned for up to three years, or both (Section 16).

Section 49 provides that trade union funds may be invested only in: (1) investments authorized by law for investment of trust money; (2) interest-earning deposits in banks or financial institutions; (3) shares of cooperatives established by registered trade unions or (4) any undertaking of the Singapore Labour Foundation or one related to it. The Registrar may obtain an injunction restraining any unauthorized or unlawful expenditure of funds on the Registrar's own motion, on that of the Attorney General or upon application of five or more persons who have a "sufficient interest in the relief sought" (Section 50).

Section 51 requires every treasurer or equivalent officer of a registered trade union upon resignation or vacation from that office, as well as at least once a year (at a time specified in the union's rules or by resolution of the union's membership) to render a "just and true account of all moneys received and paid by him during the period" since the last such report and the balance of all such accounts, bonds, securities and other properties owned by the union. This account must be accompanied by a statutory declaration and it must be audited by a "fit and proper person approved by the Registrar." The same person cannot perform this annual audit for a continuous period of more than five years without the prior written approval of the Minister.

The Registrar is also empowered to direct the auditor to appear before him, or may have the financial records of the union audited by another person; any such additional appearances or audits must be paid by the union and any person not complying with this section is liable for a fine of up to $2,000 or six months or both. Section 52 may also require any officer or employee of a trade union to produce financial records and

documents and to answer any questions that the Registrar deems necessary. Failing to comply with this provision, or for willfully withholding information or refusing to answer or giving a false answer is punishable in the same manner.

In addition to the audited annual report, Section 53 requires every trade union secretary to file an annual audited statement of receipts and disbursements, assets and liabilities for the twelve-month period ending March 31st. This report must be accompanied by a copy of the auditor's report, together with all alterations and amendments to the union rules and all changes in officers made by the union in the previous twelve months. Every member of the union is entitled to receive a free copy of the general statement from the union's secretary. Failing to provide such a statement can result in the secretary being fined up to $2,000. Any person who willfully makes, orders or causes any false entry or omission in this annual statement may similarly be fined up to $2,000 and/or imprisoned for up to 3 months. Section 54 provides that the account books and a list of members shall be open to inspection to any officer or member of the union and the Registrar at "any reasonable time."

***Scenario* #5 (U.S.):** The primary law regulating labor organization financial accountability and transparency in the United States is the Labor-Management Reporting and Disclosure Act ("LMRDA") of 1959, primarily Titles II and V. The former deals with reports which must be prepared and filed by labor organizations, their officers and employees each year; the latter deals with the "fiduciary" responsibility of labor organizations, their officers and employees. The law extends coverage to all three levels of labor organizations—local (branch), intermediate and national—of all unions with at least one private sector member. Unions representing Federal government workers are covered by this law, but *purely* public sector unions (with *no* private sector members) are not covered by the provisions of Titles II and V.

Section 201(b) of Title II requires all subject labor organizations to file an annual *financial* report with OLMS signed by the principal officers of the union "in such detail as may be necessary to accurately disclose its financial conditions and operations for the preceding year." Section 201(C) provides that all the transactional records used to prepare Form LM-2, -3 or -4 (the labor organization's annual financial report, which is filed with the Office of Labor-Management Standards) must be made available to members for "just cause." Court decisions have set a rather low threshold for what constitutes just cause. The annual financial report unions must file must also itemize the salary and reimbursed expenses of each officer and employee who receives more than $10,000 per year. The LM report details all receipts by sources into predetermined categories (*e.g.* dues, per capita taxes, interest, dividends, rent, sale of supplies, etc.), disbursements, as well as the types of assets and liabilities at the beginning and end of the union's fiscal year. The law, however, does not require the union to perform any kind of audit.

Finally, all the reports labor organizations, their officers and employees file with the OLMS are public records (section 205) and are currently available on the OLMS web site. All records used to file these reports must be retained for at least five years after the year in which the reports were filed. Title II provides criminal and civil penalties for filing and recordkeeping violations.

Under the Bush Administration, the Office of Labor-Management Standards requires considerably detailed reporting on its LM-2 form. Unions must now itemize most expenditures and "other" receipts of $5,000 or more per year by a vendor or payor. Single payments of $5,000 or more to a single vendor or from a single payor require disclosure of the nature, date and amount of the payment. Functional activity reporting also requires unions to certify what percentage of time officers and employees spend in five "functional activity categories"—representational activities, political action and lobbying, general overhead, contributions, gifts and grants, and union administration. The same expenditures subject to the itemization rule must also be "booked" into these same five functional activity categories. LM-2 filings have become considerably longer; the AFL-CIO General Counsel has been quoted as saying that under

the new disclosure rules, the AFL-CIO's LM-2 report went to over 700 pages from 180 pages.[25] One must ask how many union members really have the time and patience to sift through this lengthy a disclosure, which is longer page-wise than most corporate annual reports.

Additionally, the Bush Administration has stepped up its "Compliance Assistance Program," audits of national and branch unions, who are randomly selected. These reports, for the first time, are now published on the OLMS web site, along with reports of criminal indictments and prosecutions for Title II and Title V violations. With a 2007 annual budget of US$ 52.4 million and a staff of 406 full-time equivalent employees,[26] clearly the agency has at least some of the necessary resources, but these additional audits, criminal enforcement and more detailed disclosure requirements have significantly raised monitoring costs for many U.S. unions.

One U.S. accountant predicted an increase in outside accounting fees of 15 to 20 percent including outside audits *in addition to* much higher internal costs, largely associated with administrative time breaking expenses into functional activity categories. Another union official stated the new LM-2 would cost $125,000 over the old form; these costs were associated with extra fees for outside accounting, auditing and legal help, plus additional overtime pay for bookkeeping and clerical staff sifting through receipts and other paperwork.[27] These costs will fall disproportionately on smaller unions, as several observers have noted: a spokesman for the Teamsters for a Democratic Union reported, "The bulk of these forms are filed by local folks. It's an enormous hassle for a small workers' organization."[28]

***Scenario #6* (United Kingdom):** The agency regulating internal trade union affairs in the UK, including financial transparency, is the Certification Office. Created under the Employment Protection Act of 1975, the first Certification Officer was installed in February 1976. However, the 1871 Trade Union Act established a Chief Registrar of Friendly Societies, who registered trade unions on a voluntary basis. Registration provided trade unions certain benefits, including legitimizing their legal status and providing some immunity at civil law, as well as establishing the right to own property. Appointed by the Secretary of State for Trade and Industry, the Certification Officer exercises judicial powers and is independent of executive authority (unlike the Office of Labor-Management Standards in the U.S.). For the financial year ending March 31, 2004, the net budget was £614,000 and a staff of ten, who work mostly on the collection and analysis of annual financial returns, filed by labor and employer organizations.[29]

Currently, the Certification Office maintains a list of registered employer associations and trade unions (for the year ending 31 March 2005, there were 186 listed trade unions), produces an annual report, analyzes annual returns and produces an annual report summarizing them, and investigates the financial affairs of unions (and employer associations). Such investigations may result from a complaint filed by a union member complaining that the union has not followed its own rules in financial management or that the union has refused to provide them with access to financial records. The Certification Officer has broad investigatory powers under Sections 31 and 37 of the 1992 Trade Union and Consolidation Act. However, as the following table shows, it has used these powers relatively little in the last seven years. In the case of investigating financial affairs of unions and employer associations, the Office will generally conduct its own informal investigation and in most cases (see Figure 3 below) resolve the complaint, although they do have the power to appoint an investigator to launch and complete a more formal investigation. Figure 3 below, which was compiled from the Certification Office's annual reports since 1999, shows that this is rarely done.

While Figure 3 below shows very clearly that for the last seven years, relatively few members have either complained about their trade unions' financial management in general (item 1 in Figure 3), or that their trade unions have refused to provide them with access to financial records (item 3 above). The Certification Officer has very broad powers (described in more detail below) under Section 37(A) of the Act to compel trade unions to produce financial documents,

or to appoint a special investigator or inspector to review these documents (item 2 above) yet in the last seven years, he has had to do so only four times, according to the annual reports of the Certification Office.

In addition, when the annual returns of trade unions are filed, these include a statement from an accountant. If a qualified opinion is issued on any part of the annual return, the Certification Officer must investigate. Figure 3 shows that the number of qualified returns are small and are decreasing over time (item 5).

Trade unions must file Form AR-21 every year. The law requires within eight weeks of submission of the AR-21 to the Certification Office, the union must issue a specific statement to all of its members; this statement must provide all of the following:

- total income and expenditure of the union;
- how much of the income consisted of payments in respect of membership;
- total income and expenditure of any political fund of the union;
- salary and other benefits paid to each member of the executive, the president and the general secretary;
- the name and address of the auditor; and,
- set out in full the auditor's report and should not contain anything inconsistent with the contents of the annual return.

This statement must also advise members how they can complain should they be concerned that some irregularity is occurring or has occurred in the financial affairs of the trade union.

The Act *requires* the following wording be utilized:

> A member who is concerned that some irregularity may be occurring, or have occurred, in the conduct of the financial affairs of the union may take steps with a view to investigat-

Figure 3
Annual Certification Office statistics on financial complaints and investigations processed (compiled from Annual Reports of the Certification Office, 1999 -2006 inclusive)

Section 3 items	1999-2000	2000-01	2001-02	2002-03	2003-04	2004-05	2005-06
1. Concerns and complaints raised about financial affairs of trade unions by union members with Certification Office	5	6	3	1	5	3	6
2. Was inspector appointed to investigate any of these concerns or complaints?	0	0	0	0	0	0	0
3. Number of times Certification Officer has required unions to produce financial documents	1	1	1	0	1	0	0
4. Number of complaints received by Certification Officer that trade unions have denied access to financial records	0	1	2	2	1	1	1
5. Percent of qualified audited returns	2.9%	1.3%	0.4%	1.3%	1.6%	1.4%	0.6%

ing further, obtaining clarification and, if necessary, securing regularisation of that conduct. The member may raise any such concern with such one or more of the following as it seems appropriate to raise it with: the officials of the union, the trustees of the property of the union, the auditor or auditors of the union, the Certification Officer (who is an independent officer appointed by the Secretary of State) and the police. Where a member believes that the financial affairs of the union have been or are being conducted in breach of the law or in breach of rules of the union and contemplates bringing civil proceedings against the union or responsible officials or trustees, he should consider obtaining independent legal advice.

This required statement doesn't have to be distributed to members individually, but may be distributed via a union newsletter or alternative means. It is not a requirement that the statement to members be distributed individually.

SUMMARY AND DISCUSSION

The focal point in any debate over transparency and improved disclosure should be on the consumer of that information, the union member, the principal under agency theory. What information does the union member actually need to better enable them to monitor their union's finances, to better participate in union governance and to prevent financial mismanagement? The relationship between a single member and a large national union is rather remote, and there is relatively little a union member at one end of his country can do to monitor the financial management of his union by a principal thousands of miles away. The same is true for shareholders in large multinational corporations, but at least in both cases, the union member or the shareholder do have, to some degree, the right to "vote with their feet" and to decline membership, not renew membership or in effect, sell their shares.

This is even truer for the Type II and Type III workers shown in figure 1 above. Those who are covered by a collective bargaining agreement but who are not financial members may simply decide not to join (or to join). Type IIIs may decide during a recruitment campaign to join (or not join) if they feel the information provided is inadequate, non-existent or depicts a union that is not properly managing its finances. Put in these terms, the adequate provision of financial information does have a direct impact on the decision to join or remain a member, as well as the degree to which a member chooses to participate in his or her union. It also impacts the quality of participation of union members in the administration of their unions. However, Type II and Type III workers will not have access to union financial reports unless *two* conditions are *both* met—the union files a report with the governmental agency monitoring internal financial affairs of trade unions *and* this agency makes these reports available to the public, either upon request or via the web site. Note here that Singapore does *not* make these reports available and South Africa makes only limited portions of the report available. They are not available to workers other than union members in Chile and the Canadian jurisdictions described above. Only in the US and the UK can Type II and III workers access this information. But will it be the *right* kind of information?

The question posed above is difficult to respond to not only in terms of *who* but in terms of *what*: how much detail should the information provide? Should it provide information about officials' salaries and expenditures or is the salary of the top officials (AR-21) sufficient? Should the financial disclosure provide a complete listing of all properties owned by the union, or will an aggregate total be sufficient? In responding to these questions, we must consider the level of financial comprehension of union members. Even if the information is provided in the proper level of detail, will the members who actually take the time to read the financial statement be able to comprehend and act upon it?

Government regulations appear to assume that transparency is a "yes/no" proposition, not

one of degrees and perhaps confuse transparency with accountability. The two are not the same. It's difficult for the latter to occur without the former; accountability should ultimately be the objective of transparency and disclosure.

Unions, members and governments alike need to be evaluating the impact of improved disclosure on union finances. Transparency is not a free good; chartered accountants, bookkeeping staff, publishing reports on-line or in print all have significant costs associated; this has definitely been the case in the US with the revised LM-2 reporting and recordkeeping requirements. Transparency should not be solely a function to be discharged because of legislative or regulatory imperative; transparency is an opportunity to improve accountability, to actually *reduce* monitoring costs in the long run. Accountability, if properly enabled by transparency (the right information to the right people at the right time), can enhance the ability of unions not only to survive a hostile political climate, but to grow their organizations and their memberships.

While certain governments may adopt a "one size fits all" approach to reporting, unions and government must become more sensitive to the needs of members who want to better understand how their union manages their money. Increasing government budgets for monitoring union financial transactions may have some impact, but there are clearly too many unions and too many transactions to monitor and not enough staff.

Regulations or legislation which do *not* specify a particular reporting format (scenario 2) actually give unions greater flexibility in designing a meaningful format and mechanisms for delivering the information. Unions may actually be constrained by having to use a particular format or a specific chart of accounts. Yet without some government mandate for reporting (and a certification from the union that the reporting has actually taken place), government can't be assured that there has been reporting.

The question here is whether the information provided in this report is comprehensible and useful; in the case of New Zealand, no specific format is required and the level of aggregation is quite high. In the UK, there is more itemization, but officer and employee salaries, other than the top officers, are not itemized. Only in the US is this information readily available along with itemization schedules for expenses (and other income) of $5,000 US per year per vendor or payor. Thus, in the US, members and non-members alike actually have access to the same financial information unless the union member chooses to access his or her union's financial records to examine transactional records. Again, they must have "just cause" for doing so.

A final question is how active should government be in monitoring financial reporting of unions to their members. The Canadian, UK and New Zealand approaches rely upon the union to provide these reports; provincial labor boards in Canada may, upon receipt of a complaint, compel a union to provide the information (so too can the Registrar in Singapore). In the UK and in New Zealand, unions must *certify* the report has been provided. Data from the UK (Figure 3 above) indicate that relatively few members complain that they don't receive financial information.

But how well is the self-regulatory system working to prevent financial mismanagement by unions? While the UK data indicate there is not much of a problem, this may also be due to the requirement that financial statements be audited by chartered accountants. While New Zealand and Canada do not have this chartered accountant requirement, an audit by an independent third party may act to reduce the tendency of the agent to engage in fraudulent activity. The US is the only country studied, other than Chile, which does not require audited financial statements and the only country besides Singapore which does not require unions to provide annual financial statements to their members. Given the large number of "CAP" investigations of local unions, which reveal recordkeeping and reporting violations (but not financial mismanagement), it would appear to be timely for the US to consider a requirement that financial statements be audited.

Policy recommendations: It is difficult to offer any policy recommendations on a global level given the diversity of financial reporting and disclosure requirements observed in this article. However, it seems obvious that particular attention needs to be devoted to providing union members with information about union finances and financial management in a format that is comprehensible and useful to them, to help them and their unions do a better job monitoring the financial management of their principals. Although outside the scope of this paper, unions need to devote special attention to designing financial reporting schemes that explain key accounting concepts, provide a consistent set of measures over time and provide a framework for analysis of it and provide also a means by which members can obtain more information, ask questions and increase their involvement in the decision-making process.

Finally, in an era of shrinking public budgets, it seems worthwhile to consider whether or not an increased reliance on self-regulation may be more cost effective. Union members shouldn't have to obtain financial information about their unions from the media; they should be getting this information directly from their union. No amount of resources will ever come close to substituting the role the principals can play in regulating their agents and disclosure policies and regulations must take this into account. Before unions and governmental agencies have additional monitoring costs set upon them by legislation and regulation, policy makers must assure that such regulations will provide comprehensible and meaningful information to union members from which they can exercise their agency powers. Ultimately, this may well be a task better suited to self-regulation and union members than increased government intrusion into trade union affairs and the occasional media disclosure.

Future research should more closely examine the informational needs, financial comprehension and self-regulating systems available to union members who have access to such information and how improved systems may be designed. In addition, before any new government regulations or legislation governing union financial transparency is considered, there should be a "union member impact analysis" conducted to determine specifically *how* such changes will *improve* union members' understanding of their union's finances and improve their ability to meaningfully participate in the financial administration of their unions. ▲

ENDNOTES

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