

November 29, 2019

SENT VIA EMAIL shawn.mcleod@gov.ab.ca

Shawn McLeod
Deputy Minister of Labour and Immigration
Labour Building, 10th Floor
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Edmonton, AB T5K 0G5

Dear Mr. McLeod,

RE: CONSULTATION ON UNION POLITICAL SPENDING ON NOVEMBER 22, 2019

We acknowledge receipt on November 22, 2019 of your invitation to attend a consultation on Saturday, November 30, 2019 in Edmonton. Your invitation describes this consultation as being about how “to protect workers from being forced to fund political parties and causes”.

We regret that we are not able to accept this invitation. The notice provided to us simply is insufficient to give us confidence that the invitation relates to a genuine and meaningful consultation about this subject. As explained more fully below, legislation to control the way that unions spend their money would be a radical departure from the way in which Canadian law regulates unions. Any such radical change ought to be preceded by careful study and review. We are not aware of any such careful study. We would be pleased to contribute to such a study.

In the expectation that our views about meaningful consultation will not be accepted by you, we take the opportunity below to make some brief comments about the subject matter of this consultation.

This does not appear to be meaningful and good faith consultation

We are concerned that your invitation does not indicate that the government is engaging in a process of real and meaningful consultation about the need for law reform in this area. The invitation provides only eight days of notice and provides no indication of the policy choices being considered by government, other than a reference to a brief statement in the governing party’s platform. It is impossible to view this as a productive or meaningful process.

Amendments to labour relations laws ought to follow careful study and review, and ought to avoid unnecessary politicization. There is useful guidance about this in the reform of the *Canada Labour Code* some years ago. In 1998, the collective bargaining parts of the *Canada Labour Code* were amended in a significant way following careful study by a task force that consulted widely with labour and management. That task force, led by

respected Alberta arbitrator Andy Sims, reported its findings to the Minister of Labour in 1996¹. It warned in part that “undue politicization of our labour laws” introduced an element of political confrontation into collective bargaining relationships that undermines the ability of workplace parties to communicate frankly and directly with each other (Seeking a Balance, p. 39). In consideration of those and other concerns, the Sims Task Force adopted a number of premises on which its recommendations for changes to the Canada Labour Code would be based. Those premises included the need for consensus between the parties (i.e. labour and employers) so that any reform would be required to be based on criteria that included the existence of consensus (Seeking a Balance, p. 41).

Unifor is not aware of any impartial study or review that has recommended a need to regulate the way in which unions spend money. We urge the government to refrain from unduly politicizing labour laws by adopting one-sided restrictions on the way that unions make spending decisions.

There is no need to regulate union political spending

Unifor shares with other unions the view that no justification exists for government interference in the democratic decisions that union members make about how their unions spend money.

We note that nothing in your invitation suggests that the government is considering restrictions on corporate decisions about political activities and spending. If the government’s concern is “restoring balance”, we are compelled to ask why no attention is paid to the role of corporations in politics. Will corporations and employers be asked about their spending on political causes as part of this process?

The collective bargaining role of unions is inseparable from their political role. The close relationship between unions and politics has long been recognized in Canadian law. In the [Lavigne](#) case², which was decided by the Supreme Court of Canada almost thirty years ago, the Court recognized the policy foundation for government non-interference in union spending. The issue in that case was the constitutionality of a statutory Rand formula by which every employee contributed to the expense of union representation and in exchange was protected by the union’s duty of fair representation. Justice LaForest described how the Rand formula scheme contributes to the government objective of workplace democracy (emphasis added):

276 The second government objective I have alluded to explains why government puts no limits on the uses to which contributed funds can be put. This objective is that of contributing to democracy in the workplace. The integrity and status of unions as democracies would be jeopardized if the government's policy was, in effect, that unions can spend their funds as they choose according to majority vote provided the majority chooses to make expenditures the government thinks are in the interest of the union's membership. It is, therefore, for the union itself to decide, by majority vote, which causes or organizations it will support in the interests of favourably influencing the political, social and economic environment in which particular instances of collective bargaining and labour-management dispute resolution will take place. The old slogan that self-government entails the right to be wrong may be a good way of summing up the government's objective of fostering genuine and meaningful democracy in the workplace.

¹ Sims, Andrew C.L., *Seeking a Balance, Canada Labour Code Part 1 Review* (Ottawa, 1995).

² [1991] 2 SCR 211.

This passage from *Lavigne* is a useful reminder that any government interference in union spending undermines union democracy by removing from union members the right to determine how their unions will spend money.

With only one small exception (which was Manitoba in the late 1990s), Canadian jurisdictions have never regulated or controlled the extent to which unions spend money on political activities. In the short-lived Manitoba example, unions were required to establish an “opt-out” arrangement by which bargaining unit employees could opt out of election advertising spending, or spending that supported or opposed political parties in an election. Where an employee opted out of political spending, the amount of dues for that expense was instead to be directed to a charity. There was no attempt to regulate spending on political causes broadly defined. The focus was only on election-related spending. Manitoba soon returned to the Canadian norm. This brief exception shows the consistency of the Canadian approach to promoting workplace democracy by leaving to unions and their members decisions about how unions spend their money, including on political causes and campaigns.

To the extent that Canadian jurisdictions have seen it appropriate to limit union (and corporate) influence in elections, they have properly done so in election financing laws that evenly restrict union and corporate donations to political parties and candidates, and that regulate third-party spending. These laws recognize that the role of unions and other entities (including corporate employers) is best regulated by way of election financing laws. If it is now intended to regulate union decisions about political spending, the question is fairly asked where is the parallel regulation of similar corporate decisions. If the answer is that no regulation of corporate decision-making is similarly contemplated, the government’s motivation is revealed to be about weakening unions as the representatives of working people, and not a concern about accountability or democracy.

In summary, Unifor would object strongly to government interference in the decisions of its members about how Unifor spends their dues money.

Other comments

While we have declined this invitation, we ask that you continue to notify us of the government’s intentions concerning this subject.

Unwarranted and unbalanced government interference in union decision-making should not be a priority of this or any other government. There are many problems that demand your attention including the need for greater regulation to address the effects of precarious low-waged work. We would urge you to focus on real problems and not a politicized attack on unionized workers.

Yours very truly,



JERRY DIAS
National President



LANA PAYNE
National Secretary-Treasurer

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