

THE COMMISSIONER OF ELECTIONS  
COMMISSAIRE AUX ÉLECTIONS

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Dear Mr. Orle, Ms. Johnson and Mr. Bartel:

**Re: Complaint re third party advertising, Unifor and MFL**

Mr. Orle submitted a number of elections complaints concerning alleged violations by Unifor, a registered third party under The Elections Financing Act (the "Act").

I arranged for these complaints to be investigated and that investigation is now complete. The investigator recommended that no further action be taken against Unifor, and for the reasons that follow, I agree.

Mr. Orle's complaints may be summarized as follows:

1. Unifor has violated s. 83(1) of the Act by exceeding the \$25,000 spending limit through a combination of billboard advertising, the use of a webpage, <https://mb.uniforvotes.ca/healthcare>, the distribution of a leaflet "in at least one constituency", and bus shelter advertising;
2. Unifor has violated s. 84(1) of the Act by posting election communications on its website without identifying itself in that communication and indicating that it has authorized that communication;
3. Unifor has violated s. 89.1 of the Act by acting in collusion with Manitoba Federation of Labour to distribute two leaflets: "Too many Manitobans can't find affordable, reliable child care..." and "Fairness at Work" on Unifor's behalf, thereby reducing Unifor's election

communication expenses. The copy of both leaflets is substantially similar to posts on Unifor's website;

4. Unifor has violated Part 14 of the Act by its distribution of a pledge form which calls on members to pledge "to vote in the next Manitoba election", and to provide their contact information to Unifor.

The investigator received written responses to the complaints from counsel for Unifor and counsel for the Manitoba Federation of Labour. He also communicated with representatives of Pattison Outdoor Advertising and Outfront Media concerning the amounts expended by Unifor on the billboard and bus shelter advertising.

***Has Unifor has violated s. 83(1) of the Act by exceeding the \$25,000 spending limit through a combination of billboard advertising, the use of a webpage, <https://mb.uniforvotes.ca/healthcare>, the distribution of a leaflet "in at least one constituency", and bus shelter advertising?***

The investigator determined that as of the date of Mr. Orle's complaint Unifor had expended \$18,843.85 on election communication expenses during the election period. In coming to his conclusion the investigator was provided, and examined, details of those expenses.

Billboard and bus shelter advertising did remain in place longer than was called for by the contract with each of Pattison (in the case of billboard advertising) and Outfront Media (in the case of bus shelter advertising). Both Pattison and Outfront have a practice of leaving advertisements in place after the expiry of the contract, free of charge, until there is an advertisement to replace them. Unifor did not know this until September 4, as a result of the complaint. When it found out, it requested that the ads be removed. This was separately confirmed with Pattison and Outfront Media.

Unifor reports that the costs incurred by it to host and maintain use of the web page total \$97.82.

The leaflets which were the subject of Mr. Orle's complaint were sent by mail by Unifor to its members. Unifor says that these leaflets are not "election communications" within the meaning of the Act, and therefore do not fall within s. 82.1(1), which is stated to apply as follows:

**(1) Which communications are covered by this Part?**

This Part applies only to election communications that are

- (a) published in newspapers, magazines or other periodicals,
- (b) broadcast on radio or television,
- (c) posted or distributed on the Internet, or

- (d) posted on billboards, buses or other property normally used for commercial advertising.

Unifor is correct on this point. Section 115 of the Act defines "promotional material" in part as "posters, leaflets, letters, cards, signs and banners...the purpose of which is to support or oppose (directly or indirectly) a registered party or candidate" [underlining added]. Section 82.1 does not include "promotional material" as being election communications to which Part 12 applies.

Unifor also says that its distribution of these leaflets to its members is expressly excepted by s. 82.1(2)(d):

## **(2) Exceptions**

This Part does not apply to any of the following:

- (e) the transmission to the public of an editorial, debate, speech, interview, column, letter, commentary or news item,
- (f) the distribution of a book, or the promotion of the sale of a book for not less than its commercial value,
- (g) the transmission by an individual, on a non-commercial basis on the Internet, of his or her personal views,
- (h) the transmission of a document or message directly by a person or a group to their members, employees or shareholders. [underlining added]

In my opinion, Unifor is correct. As long as the leaflets were distributed to its members, they fall within the exception provided by s. 82.1(2)(d), and the expense associated with their distribution need not be reported as third party election expenses under Part 12.

***Has Unifor violated s. 84(1) of the Act by posting election communications on its website without identifying itself in that communication and indicating that it has authorized that communication?***

I have concluded that Unifor has not violated s. 84(1) of the Act.

Section 84(1) of the Act requires that a "third party must identify itself in any election communication it places and indicate that it has authorized the communication."

The investigator has advised me that Unifor's webpage did identify Unifor and indicated that it had authorized the communication.

***Has Unifor violated s. 89.1 of the Act by acting in collusion with Manitoba Federation of Labour to distribute two leaflets: "Too many Manitobans can't find affordable, reliable child care..." and "Fairness at Work" on Unifor's behalf, thereby reducing Unifor's election communication expenses?***

Although the contents of the MFL leaflets appear to have been drawn verbatim from posts on Unifor's website, Unifor denies that it colluded with Manitoba Federation of Labour to distribute the two leaflets. In any event since the leaflets in question aren't "election communications" and don't give rise to "election expenses", there was no prohibition against Unifor and MFL acting in concert.


***Has Unifor violated s. 99 of the Act or Part 14 of The Elections Act by its distribution of a pledge form which calls on members to pledge "to vote in the next Manitoba election", and to provide their contact information to Unifor?***

Unifor's response to this complaint was that the distribution of the pledge form was a communication to its membership, and therefore fell within the exception in s. 82.1(2)(d) of the Act. Furthermore, it said, the distribution of the pledge form did not constitute an offence under s. 99 of the Act, nor under Part 14 of The Elections Act.

There is no evidence that Unifor sent this communication to anyone other than its membership. In addition, Unifor appears to be correct in its assertion that the distribution of this pledge form does not constitute an offence under either s.99 of the Act (which is the general offence section in that Act) nor under Part 14 of The Elections Act (which is the part of that Act dealing with bribery and intimidation offences, voting offences, offences relating to candidates, offences relating to election officials and other miscellaneous offences).

For the foregoing reasons, I am of the view that Mr. Orle's complaint has not been established and I will be closing my file.

Yours truly,



Bill Bowles