

Provincial Office: December 17, 2020

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Dear Minister Copping,

United Nurses of Alberta (UNA) acknowledges receipt of your request for feedback on discussion questions relating to regulations for the *Restoring Balance in Alberta's Workplaces Act, 2020* (the *Act*). In broad strokes, UNA entirely rejects the premise of the *Act* on the basis that it needlessly duplicates our union's established democratic decision-making and financial disclosure processes, attempts to create a false dichotomy between core and non-core union functions, does the opposite of working towards "restoring balance" in workplaces and is unconstitutional. As such, we urge the Government of Alberta to repeal the *Act* and avoid the costly and protracted legal battles that will surely follow should it be enacted.

In UNA's view, the *Act* represents little more than red tape aimed at duplicating and undermining well-established and respected democratic mechanisms for UNA members to determine the amount of dues they pay as well as how dues revenue is spent. Therefore the cumbersome requirement outlined in the *Act* for each member to accept or subsequently revoke a certain amount of dues destined for causes that have been arbitrarily selected in the *Act* is redundant.

Given that our members have already democratically chosen — and have the opportunity to choose on a regular basis as set out in our constitution, bylaws and policies — to pay a prescribed amount of dues and spend those dues in certain ways, UNA considers all of our union's activities to be core activities. Indeed, our members have voted to make them so, including donations to social causes such as efforts to reduce the incidence of domestic and sexual violence, and charities such as the Red Cross in response to the 2013 Calgary flood and 2016 Fort McMurray wildfire. Members are also able to request audited financial statements at any time, making financial disclosure provisions of the *Act* superfluous.

Unions operate in an inherently political environment and are creatures of legislation themselves. They have a legal duty to fairly represent and protect their members' rights, remuneration and working conditions from attack by political activities. It is therefore absurd to attempt to classify "political activities" as being non-core functions of a union. In fact the opposite is true — unions represent a place for workers to democratically decide on

how best to pool their resources in order to more effectively respond to political activities that affect their interests than if they acted alone. The irony of being asked by the government to devote resources to the political activity of providing feedback on legislation that would diminish our ability to provide feedback on future legislation is manifest.

Instead of restoring balance to workplaces as the name of the *Act* suggests, it would weaken a union's ability to advocate in the political arena and tip the balance in favour of other political actors who are not hamstrung by the same cumbersome and unjust restrictions imposed by the *Act*. UNA therefore rejects the premise that political activity is a non-core function given our legal obligation to represent the best interests of our members whose rights and working conditions are subject to political decisions.

By policy, UNA is a non-partisan organization and does not affiliate with or make donations to any political party. However, UNA is unapologetically politically active and encourages and facilitates members, Locals and Districts to do likewise. Not only is it a fundamental principle of justice in a democratic society for them to freely associate and assert their workplace interests and rights, our members are also health care experts. They have a professional obligation to advocate for an adequate health care system and social conditions supportive of improved population health.

It is therefore in the public interest that their participation in the political decision-making process be supported, not thwarted. Undeniably, UNA and our members have invaluable perspectives to add to the public discourse as Alberta works towards making our health care system more cost-effective and patient centred.

UNA also rejects the premise of the *Act* on the basis that it is most certainly unconstitutional. As outlined in *Lavigne v. Ontario Public Service Employees Union, 1991*, the Supreme Court of Canada held that automatic dues checkoff, otherwise known as the Rand Formula, is justified under s. 1 of the Charter as a reasonable limit in a free and democratic society. That is, the statute's objective in requiring all union members to pay dues enables unions to participate in the broader political, economic and social debates in society and to contribute to democracy in the workplace. Further, that an opting-out formula could seriously cripple a union's financial base and the spirit of solidarity so important to the underpinnings of unionism. Accordingly, UNA will not undermine its members' interests nor substantiate the premise of the *Act* by providing feedback into regulations for an unconstitutional piece of legislation aimed at limiting our ability to represent our members.

In summary, UNA urges the government to seriously reconsider the necessity of the *Act* for the reasons outlined above. The government has embarked on efforts to reduce red tape, and repealing the *Act's* requirements for duplicative and cumbersome administrative processes for unions would demonstrate sincerity in achieving this endeavour. UNA members already have the democratic authority to make decisions regarding dues levies

and subsequent expenditures. One such decision they have made is to be politically active in order to advance and protect their collective interests in their workplaces and communities. Since our organization and members are subject to political whims, being politically active is viewed as one of our core functions.

UNA and its members have been and are always willing to work with the government towards our mutual goal of an efficient and effective health care system and conditions that impact the socioeconomic determinants of health. Finally, UNA wishes to reassert the constitutionally protected right of automatic dues checkoff so that our organization can participate in the political environment in which we exist and operate without undue administrative hindrance.

In conclusion, UNA is deeply concerned by the negative implications of the *Act*, including the way it will limit the ability of nurses to participate collectively in public discourse. The recent decision by the Saskatchewan Court of Appeal in *Strom v. Saskatchewan Registered Nurses' Association, 2020*, found that criticism of the healthcare system — especially by those delivering the services — is manifestly in the public interest and can enhance confidence by demonstrating that those with the greatest knowledge are both prepared and permitted to speak. The ruling went on to say that public confidence in aspects of the health care system may suffer as a result of fair criticism, but that too can ultimately result in positive change. The opposite, then, is also true: public confidence is diminished and positive change is not realized when those delivering the services are impeded from speaking. UNA encourages the government to take the implications of this ruling into consideration and repeal the *Act*. Nurses take their professional responsibilities seriously. We are prepared to speak up, and we will not be silenced.

Sincerely,

A handwritten signature in black ink that reads "Heather Smith". The signature is written in a cursive, flowing style.

Heather Smith, President
United Nurses of Alberta