

June 1, 2015

**By Fax: (416) 512-9992**

Ms. Amanda B. Potasky  
Garfin Zeidenberg LLP  
5255 Yonge Street, Suite 800  
Toronto, ON M2N 6P4

Dear Ms. Potasky:

**Re: OPSEU Liquor Board Employees Privatization Fight-Back Fund**

I am General Counsel to the Ontario Public Service Employees Union. I understand that you are retained in respect of certain concerns raised by Ms. Denise Davis, Chair of the OPSEU Liquor Board Employees Division (“ the Division”) and by other members of the Divisional Executive regarding the use of the Privatization Fight-back Fund. Please advise if you are no longer retained in respect of these issues, or if your clients agree to discuss these issues directly with OPSEU, rather than through legal counsel. Such direct discussions would be OPSEU’s preference.

As you know, your letter of February 5, 2015 did not request a response. The concerns were framed as “formal notice to OPSEU” of the Divisional Executive’s position, which was that the OPSEU Executive Board did not have the lawful authority to access the Privatization Fight-back Fund for costs arising from a human rights campaign regarding the wage structure at the LCBO. Your letter also confirmed that the Divisional Executive intended, if necessary, to seek relief from the Courts through an unspecified legal action.

As the Divisional Executive is aware, the OPSEU Executive Board met on March 4-5 to reconsider the motion that your clients found contentious. I am advised that Ms. Davis asked the Executive Board to rescind the motion and by doing so to discontinue funding for the proposed human rights campaign. Ultimately, following considerable discussion, the motion was reconsidered, and was defeated upon reconsideration. Consequently, OPSEU anticipated that the issue was resolved. A further response to your letter did not seem required.

Subsequent communications from Ms. Davis have raised concerns for OPSEU. For example, since mid-March, Ms. Davis has continued to indicate at various times that: there was no “approval” to access the Privatization Fight-back Fund for the human rights campaign; OPSEU has not calculated or credited interest to the Privatization Fight-back Fund; the Divisional Executive has asked OPSEU to prepare financial statements and general ledgers for the Privatization Fight-back Fund since 2011; and the Divisional Executive has requested and not received adequate financial reporting concerning the Privatization Fight-back Fund.

It is most concerning that Ms. Davis has suggested at various times that the Officers of OPSEU and the Executive Board acted improperly or contrary to law in some way, or that it is the role of the Divisional Executive to “allow” OPSEU to access the Privatization Fight-back Fund for appropriate matters. Most recently, the Divisional Executive has also suggested that LBED trustees should be permitted to audit the expenses allocated to the Privatization Fight-back Fund.

In OPSEU’s view, many statements made by Ms. Davis are inaccurate, misleading or simply incorrect. It now appears to OPSEU that Ms. Davis, and so possibly the Divisional Executive, may have fundamental misconceptions concerning the roles of the Divisional Executive and the Executive Board within OPSEU, and concerning the administration of the Privatization Fight-back Fund on behalf of OPSEU’s members.

I understand that these apparent misconceptions have been discussed with Ms. Davis and others over a period of years. I am also advised that First Vice-President/Treasurer Almeida, among others, has explained OPSEU’s position to Ms. Davis in some detail on many occasions. Nevertheless, we find that Ms. Davis continues to advance positions that are unsupported, or have previously been explained as incorrect.

In light of recent communications, OPSEU wishes to confirm certain aspects of its position, as follows:

- The Liquor Board Employees Division is not a trade union, corporation or other legal entity independent of OPSEU. Instead, the Division is a creation of OPSEU, in accordance with article 21 of the OPSEU Constitution. Divisions are permitted to adopt and promote any policy not inconsistent with the Constitution or policies of OPSEU. It is clear from paragraphs 2 and 3 of the Merger Agreement that the LBED was intended to have the same rights and obligations as any other Ministry or Sector Division.
- The Merger Agreement, as negotiated in April 2005 between OPSEU and the Ontario Liquor Board Employees Division (OLBEU), was a transitional agreement. Paragraphs 11-13 of the Merger Agreement contain a statement of founding principles, not a legal obligation or ongoing contract between OPSEU and the Division. As is clear from the OPSEU Constitution and the Merger Agreement, the rights and funding provided to the LBED are subject to change in accordance with the Constitution, policies and procedures of OPSEU.
- The Division is not the successor to the OLBEU. OPSEU is the successor to OLBEU, in accordance with s 68 of the Labour Relations Act and the Merger Agreement. OPSEU, and not the Division, holds all bargaining rights in respect of the bargaining unit of employees of the LCBO.
- In other words, the legal rights and obligations of the Division and Divisional Executive are as set out in the OPSEU Constitution and statute. The Executive Board, or Convention when in session, is the governing body of OPSEU. Neither

the Division, nor the Divisional Executive, have legal rights or access to funding beyond the lawful authority of the governing body of OPSEU.

- In accordance with OPSEU's policies and accounting principles, the Divisional Executive has received regular and complete financial statements concerning the Privatization Fight-back Fund, including concerning the calculation of interest. OPSEU produces such statements on a quarterly basis, which should be more than sufficient for the needs of the Divisional Executive. As Ms. Davis was advised, OPSEU will not prepare monthly statements or disclose bank statements or general ledgers to the Divisional Executive. OPSEU has no obligation to provide such materials, nor are they required by, or provided to, other OPSEU Divisions.
- OPSEU's financial statements and records, including those concerning the Privatization Fight-back Fund, are audited on an annual basis by PriceWaterhouseCoopers, as required by law. The results of that audit are reported in detail to the OPSEU leadership and membership at Convention.
- When reported to the Divisional Executive at December 31, 2014, the Privatization Fight-back Fund was recorded in excess of \$3.5 million.

It is disingenuous for the Divisional Executive to suggest now that the Privatization Fight-back Fund is earmarked only for anti-privatization activities to the extent approved by the Divisional Executive. As Ms. Davis is aware, for some years, the Divisional Executive asked OPSEU to charge its operational expenses such as cell phones and meeting costs to the Privatization Fight-back Fund. OPSEU agreed to this request in order to support the finances of the Divisional Executive, which at the time were rather precarious.

Your letter also suggested that the proposed human rights campaign was not an anti-privatization initiative. OPSEU could not disagree more. The focus of that campaign was to support applications to the Human Rights Tribunal of Ontario that were filed on behalf of more than 1400 predominantly female OPSEU members. These members are employed as part-time and casual employees of the LCBO, and are drastically underpaid in comparison to predominantly male full-time employees performing the same or comparable work.

The LCBO wage structure is increasingly similar to private industry in that it relies on precarious casual employment to maximize profits. This wage structure is one reason that the LCBO is attractive to the privatization industry. In OPSEU's view, the HRTTO applications have the potential to achieve a non-discriminatory wage structure, which like successor rights under the Crown Employees Collective Bargaining Act, would offer a measure of insulation from threats of privatization, as well as directly benefitting the affected members.

As you may know, Kathleen Wynne's Government is making plans to privatize some or all of the regime for alcohol sales in Ontario. The threat of privatization has never been more imminent to the Division than it is at present. In such circumstances, OPSEU anticipated that the Divisional Executive would support OPSEU's efforts to fund anti-privatization initiatives, including campaigns against privatization and the campaign to support the HRTO applications. In any event, the Divisional Executive should be aware that OPSEU has the legal right and responsibility to manage all OPSEU funds, including the Privatization Fight-back Fund, for the benefit of its membership.

Accordingly, please understand that OPSEU does not accept or agree with the Divisional Executive's apparent position, that the Executive Board acted improperly or contrary to its legal obligations when it approved funding from the Privatization Fight-back Fund for the costs arising from the proposed human rights campaign. OPSEU fully intends to access the Privatization Fight-back Fund in future, for anti-privatization expenditures as it deems appropriate. As always, OPSEU will consult with the Divisional Executive throughout.

Thank you for reviewing this information, and for discussing OPSEU's positions with your clients. Please feel free to contact me if you have questions, though as I said above, OPSEU's preference would be to discuss any concerns directly through the appropriate democratic structures within OPSEU.

Yours truly,

Eric O'Brien  
General Counsel  
Legal Services Division

EOB/ld

c: Eduardo Almeida  
Doug Evetts  
Maurice Gabay  
Brian Gould  
Rob Field