

April 3, 2017



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General Vice-Presidents:  
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Lana Payne Stan Pickthall Linda Silas  
Brigitte Sottile Sharleen Stewart

Dear CLC Executive Committee Members:

**Re: the ATU and Article 4 Section 9 of the CLC Constitution**

### **Overview**

This matter began with the President of Local 113 of the ATU expressing his desire to take some 10,000 members of ATU Local 113 with him in a move to a different union. In the end ATU lost one member of Local 113 – that same President.

This after untold amounts of money wasted on court battles, after the CLC was deeply divided over the issues, after gallons of ink and scads of airtime were devoted to critical comments about CLC affiliates. The word fiasco comes to mind.

### **The beginning**

Section 9 of Article 4 speaks to the justification process starting when “a group of workers” makes a request of the CLC.

It is not at all clear that this was ever intended to allow an elected officer to begin the process. But even with that, it is, has to be, an absolute requirement that there be a group of workers involved. The affiliates need reassurance that this process will be applied reasonably, and that the CLC will not allow it to be abused. No-one wants to see the Congress become the cause of dissension within a union.

It is abundantly clear that Mr. Kinnear was not required to show any proof that he had any reasonable degree of support for his application. He clearly was not asked to show that the Executive Board agreed with him, or that there had been any such decision made by the membership, or even that a substantial number of members supported him. That is simply unacceptable.

The Investigator makes an almost offhand comment that the President of a Local speaks for his members. Would we therefore argue that a Labour Relations Board should grant a certification or decertification if a President applies without any evidence of membership support? Should a President have the right to call a strike without a vote of the members first?

If the CLC is to adopt the policy that any elected person can start the disruptive and challenging Justification process without any evidence that he or she has any substantial support, simply because that person holds an office, we will be inviting anarchy.

This failure to show support cannot be retroactively repaired by an appointed investigator. The Congress seems to have been almost unaware of, or uncaring about, the disruption caused by an active Justification process. This whole process cannot properly be started on the basis that maybe the investigator will find out that it was supported. Without some serious evidence of support for the application, the application should have absolutely no legitimacy.

Does the requirement for a “group of workers” mean that any time we have 3 or more people acting together, that qualifies as a “group”? Of course not. There is a legal definition of a group of workers. That is the definition given by the Labour Board in its certification. So, if the certification is for a group of 10 people, there surely must be some serious evidence that would suggest that the majority, or even a substantial minority, of that 10 members is dissatisfied. If the certification is for 1,000, we would need evidence that a majority or a significant minority is dissatisfied.

It is clearly absurd to suggest that a tiny fraction of a bargaining unit can trigger a Justification application. The “group” is whatever the Labour Board has determined to be an appropriate unit. Twenty five members in a 1,000 member local can’t get the local decertified. They shouldn’t have the right to get a Justification process started.

### **Did the Investigator find any reasonable proof of support for the application?**

This application should never have gotten off the ground because it was begun based on the unsupported word of the President of the Local.

But some have argued that the finding of the Investigator can be applied retroactively to legitimize the application. Even if the Investigator does find some evidence, that cannot be applied retroactively – but for interest sake let’s look at what the Investigator did find.

He found lots of evidence that Mr. Kinnear was dissatisfied. But we kind of knew that, since Mr. Kinnear applied in the first place.

At a meeting in October “Members spoke openly about dissatisfaction with the ATU.” How many members? Unclear. Were they dissatisfied to the point of wanting to leave ATU? Unclear.

“One member is recorded as saying ‘why belong to the International’ allegedly to strong applause”. Allegedly? How many people applauded? Unclear. Was there any kind of a vote? Apparently not.

One brother is quoted as saying that brother Hanley was out of line. How does that demonstrate that even that one member was prepared to leave the International?

The Local voted to pull out of some voluntary ATU structures – but that in itself shows that there was never a vote on whether to leave the union entirely; members voted on other things and could have easily introduced a motion to get more serious about their dissatisfaction.

“Near the end of January a discussion took place again demonstrating contempt from some members about (the International Convention)”. Some members? How many is that? And does ‘contempt for the way the Convention was handled’ automatically mean that those members therefore want to leave their union? Why would that be the conclusion?

There is evidence that the majority of the Executive did not support Mr. Kinnear. The Investigator found – as noted above – that there was some dissatisfaction in the membership. Of course there would be. This is a Local of 10,000 members. Unanimity would be impossible. How much dissatisfaction? We have no idea. Was this dissatisfaction deeply enough felt that there was a desire to leave the International? There is zero evidence to support that proposition.

### **The decision to remove the ATU from the protection of Article 4**

A repeated reading of the whole of Article 4 fails to show any section or any wording that gives the President of the Congress the right to remove the protection of Article 4 from a Union under the circumstances of this case. That is a serious matter. Removing the protection of Article 4 is an extremely heavy punishment, and for the President of the CLC to be given that right by the affiliates would require a clearly stated provision.

I would request that the Executive Committee be shown where that power is granted to the President, and failing that, we need an assurance that this kind of action will not be repeated.

### **The Trusteeship**

Much has been made of the trusteeship imposed by the ATU on Local 113. The Investigator effectively calls it a retaliation for the Justification application.

The fact that the trusteeship was imposed after a request for such a trusteeship came from the significant majority of the Executive Board of Local 113 was not mentioned in the report of the Investigator. Surely this was, at least in part, the Executive Board asking for help in preventing the President from acting in opposition to the wishes of the Board.

But let's look more closely at this issue. Mr. Kinnear was not the President of the independent union of Local 113. He was the President of a Local of ATU. He got his position, his authority, his resources, only because he was an officer of ATU. He decided to use that ATU position, that ATU authority, those ATU resources, to try and take his members out of ATU. Presumably, if he had been successful, he would have used his ATU position to take the membership lists belonging to ATU, the funds belonging to ATU, and so on, with him as he left the ATU.

Let me ask this: would a single affiliate of the CLC - faced with a situation where an elected officer of that affiliate was trying to use his position as an elected officer of that affiliate to convince his members to leave the affiliate – would any of us allow that to happen?

Would General Motors allow one of their factory presidents to start using GM's factory and resources to build Fords?

Would a government allow one of its departments to start following the orders of the opposition party?

Why would a union allow one of their officers to use the union's resources in an attempt to lead the members into another union?

### **A crucial question**

I don't want anybody's head on a platter, nor to seek a scapegoat. But we all need an answer to a very troubling question.

How did those two members of Local 113 have that discussion about what would unfold – a discussion that was eerily prophetic and accurate – before the application for justification was even filed?

These two members not only predicted that the ATU would impose trusteeship, and in fairness that's not that hard to predict, but they also predicted that the CLC would respond by removing the entire ATU from the protection of Article 4.

We need to know how that prediction was possible. Such a series of events, the expulsion of a union from Article 4 under these circumstances, has never been seen before, so it wasn't that these members had an astonishing knowledge of the CLC's inner workings.

In fact as noted above it is doubtful that this kind of expulsion was even valid – so these two members knew in advance about a move that wasn't even spoken to in the Constitution.

This matter cannot be put to rest until we have a satisfactory answer to this question. If we don't ask it here, it will not stop the question from being asked throughout the labour movement, and in that case people will supply their own answers to the question.

### **Two other matters**

The Constitution, in Section 9 of Article 4, says "the CLC shall encourage (dissatisfied members) to work within the constitutional and policy procedures of their own union". The Investigator is required to "Have as a primary objective, working with the affected members and the affiliate, to have them remain with their union."

It is very hard to see where either of those provisions was followed in the ATU case. Everything seems to have been aimed at proving the alleged legitimacy of the complaints, and defending Mr. Kinnear, not at assisting the members to stay with ATU.

That is an unsettling conclusion.

Other issues remain, but since they are not the issues under consideration at this time they don't need to be addressed here: there is an outstanding raiding charge against UNIFOR, and the matter of the President of UNIFOR having violated section 7 of Article 4, in that he "circulated information designed to publicly discredit another affiliate...".

In solidarity,

A handwritten signature in black ink, appearing to be 'Larry Brown', with a stylized, flowing script.

Larry Brown  
President