



COMPLAINT/FOLLOW-UP SUBMISSION

TO THE INTERNATIONAL LABOUR ORGANIZATION COMMITTEE ON
FREEDOM OF ASSOCIATION

CONCERNING THE SASKATCHEWAN PUBLIC SERVICE ESSENTIAL
SERVICES ACT, 2008 AND THE TRADE UNION ACT AMENDMENT ACT,
2008 (BILL 5 AND BILL 6 RESPECTIVELY) PASSED BY THE
LEGISLATURE OF SASKATCHEWAN, CANADA.

ON BEHALF OF THE SASKATCHEWAN FEDERATION OF LABOUR,
ITS AFFILIATES AND

Advance Employees' Association
Canadian Office and Professional Employees' Union local 397
Canadian Union of Public Employees
Communications, Energy, and Paperworkers' Union of Canada
Construction and General Workers Union local 180
Grain Services Union
Health Science Association of Saskatchewan
International Alliance of Theatrical Stage Employees, Moving Picture Technicians,
Artists and Allied Crafts of the United States, Its Territories and Canada
International Association of Bridge, Structural, Ornamental and Reinforcing Ironworkers
International Association of Heat and Frost Insulators and Allied Workers
International Brotherhood of Electrical Workers local 2038, 2067, 529
International Longshore and Warehouse Union
Public Service Alliance of Canada
Saskatchewan Joint Board Retail Wholesale Department Store Union
Saskatchewan Union of Nurses
Teamsters' Canada Rail Conference Saskatchewan Legislative Board
United Association of Journeymen Fitters, Welders, Plumbers and Apprentices of the
United States and Canada local 179
United Brotherhood of Carpenters and Joiners of America 1985, 1021
United Mine Workers of America local 7606
United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and
Service Workers International Union and its locals
University of Regina Faculty Association

September 8, 2009

Introduction

The Saskatchewan Federation of Labour (SFL) *et al* in July 2008 submitted a Statement of Evidence in support of the complaint filed by the National Union of Provincial Government Employees (Canadian case #2564). It was forwarded to the Committee on Freedom of Association through the Canadian Labour Congress.

In the letter attached to this follow-up submission, please note that SFL *et al* have asked that our status be changed to that of a complainant. The Statement of Evidence outlined what we considered to be the violations of freedom of association by the government of Saskatchewan with the enactment of the *Public Services Essential Services Act* (Bill 5) and the amendments to the *Trade Union Act* (Bill 6). It also sought what we considered to be appropriate remedies. Please consider the Statement of Evidence as a formal complaint.

This follow-up submission is in support of that complaint.

The ILO encourages parties to attempt to have their complaints heard before the potentially harmful effects of government legislation actually occur (Special procedures for the examination in the International Labour Organization of complaints alleging violations of freedom of association Annex I para.27). The SFL *et al*'s July 2008 Statement of Evidence outlined our concerns about the consequences of Bills 5 and 6 before Saskatchewan workers actually experienced violations of their freedom of association rights.

Saskatchewan workers have now had over a year of experience with the legislation. Bills 5 and 6 were proclaimed on May 14, 2008. As explained in our July 2008 Statement of Evidence, the SFL, along with 18 unions, filed a lawsuit in Saskatchewan court challenging the constitutionality of Bills 5 and 6. The suit is proceeding to court. In preparation for that lawsuit, the SFL has been collecting evidence of the impacts of these new laws.

Please note that this submission refers to several affidavits which have been prepared for the Saskatchewan lawsuit. These affidavits contain material not related to freedom of association and some contain hundreds or thousands of pages of exhibits. We have provided relevant excerpts and/or summaries for the purposes of this submission. If the Committee would like complete copies, please contact the SFL.

This submission also contains references to the Hansard, which is the transcript of the official proceedings of the Legislative Assembly of Saskatchewan. These transcripts are thousands of pages long. We have provided relevant excerpts and/or summaries for the purposes of this submission.

The main elements of our research and evidence are as follows:

- The lack of consultation prior to the introduction of Bills 5 and 6 violates Saskatchewan workers' freedom of association.

- The combined effects of Bills 5 and 6 have resulted in a substantial drop in certifications and an increase in employer interference in organizing drives. The elimination of card certification has weakened the ability of unions to protect and exercise their freedom of association.
- Thousands of workers have lost the right to strike and as a result are unable to achieve collective agreements and to exercise freedom of association rights.
- The Labour Relations Board, which is the tribunal responsible for protection and enforcement of freedom of association rights as codified in Saskatchewan's labour laws, is not seen to be impartial by Saskatchewan unions.
- The government recently passed an anti-trespassing law that infringes upon freedom of association rights to picket, demonstrate and strike.

As a result of this substantive evidence, the SFL *et al* respectfully submit that the only appropriate remedy given the complexity and extent of the problems workers are experiencing, is to recommend that the legislation be repealed and that proper consultations be immediately undertaken with all stakeholders.

Lack of Consultation Prior to the Introduction of Bills 5 and 6

1. As explained in SFL's July 2008 Statement of Evidence, there were no consultations with any unions before the laws were introduced in December, 2007.
2. After the laws were introduced, there was a very cursory and nominal opportunity to make submissions to change the laws. Some unions were invited to provide 'feedback' and to attend a 45 minute meeting. Construction unions were not invited. (The SFL's written submission to the Ministry was attached to our July 2008 Statement of Evidence). Several unions also made submissions asking for the laws to be scrapped and detailing concerns about many aspects of the Bills.
3. One of the main requests from the SFL and the unions (including the Saskatchewan Union of Nurses, the Canadian Union of Public Employees Saskatchewan Division, the Service Employees International Union West, and the Grain Services Union) was to ask the government to delay the legislation until after transparent and thorough consultation had taken place with unions about both Bills.
4. The SFL and District Labour Councils held public meetings across the province to discuss and debate the Bills and invited the government representatives to participate. The government refused to participate in the meetings.
5. The SFL and unions lobbied the official Opposition, took out advertisements, developed an e-mail campaign and held a rally to demand open and thorough consultations. The government refused to consult.
6. At the second reading of Bill 5, the government made a few minor and insignificant changes to Bill 5, none of which addressed the concerns of the SFL, nor the concerns of the trade unions who had provided detailed submissions. No changes were made to Bill 6. *It should be noted that during the election campaign just prior to becoming government, unions had no reason to believe that there would be essential services legislation. In October 2007, just prior to the election call, while being interviewed by the Canadian Broadcasting Corporation, the now Minister of Health, Don McMorris, stated publicly that he did not see the need for essential services because unions had always provided those services voluntarily during a labour dispute (see attached news clipping dated December 6th, 2007).*
7. In conclusion, *there were no discussions or consultations with any union prior to the introduction of both Bills 5 and 6, and during the legislative process leading to proclamation, there were no consultations of any substance or effect. This is in direct contravention of a plethora of ILO reports and decisions.*

“In any case any limitation on collective bargaining on the part of the authorities should be *preceded* by consultations with the workers and employers’ organizations in an effort to obtain their agreement.” (See 1996 Digest, para.884; 330th Report, Case No. 2194, para.791; and 335th Report, Case No. 2293, para.1237)

“The Committee has considered it useful to refer to the Consultation (Industrial and National Levels) Recommendation, 1960 (No.113), Paragraph 1 of which provides that measures should be taken to promote effective consultation and co-operation between public authorities and employers’ and workers’ organizations without discrimination of any kind against these organizations. In accordance with Paragraph 5 of the Recommendation, such consultations should aim at ensuring that the public authorities seek the views, advice and assistance of these organizations, *particularly in the preparation* and implementation of laws and regulations affecting their interest.” (See 1996 Digest, para.928; 316th Report, Case No.1972, para.703; 325th Report, Case No.2110, para.263; and 337th Report, Case No.2244, para.1254)

“Tripartite consultation should take place *before* the Government submits a draft to the Legislative Assembly or establishes a labour, social or economic policy.” (See 334th Report, Case No.2254, para.1066)

“It is important that consultations take place in good faith, confidence and mutual respect, and that the parties have sufficient time to express their views and discuss them in full with a view to reaching a suitable compromise. The Government must also ensure that it attaches the necessary importance to agreements reached between employers’ and workers’ organizations.” (See 328th Report, Case No.2167, para.296)

“The Committee has emphasized the value of consulting organizations of employers and workers during the *preparation* and application of legislation which affects their interests.” (See 1996 Digest, para.929; 316th Report, Case No. 1972, para.703; 327th Report, Case No.2145; para.308; 329th Report, Case No.2123, para.526; 335th Report, Case No.2305, para.508)

“The Committee has emphasized the importance that should be attached to full and frank consultation taking place on any

questions or *proposed* legislation affecting trade union rights.” (See 1996 Digest, para.927; and, for example, 327th Report, Case No.2145, para.308, and Case No.2132, para.660; 330th Report, Case No. 2144, para.717, and Case No.2229, para.938; 331st Report, Case No.2187, para.440; 332nd Report, Case No.2187; para.721; 335th Report, Case No.2305, para.508; 336th Report, Case No. 2324; para.283; 337th Report, Case No.2244, para.1254; and 338th Report, Case No.2281, para.249)

“It is essential that the introduction of *draft* legislation affecting collective bargaining or conditions of employment should be *preceded by full and detailed* consultations with the appropriate organizations of workers and employers.” (See 1996 Digest, para.931; 302nd Report, Case No.1817, para.318; 311th Report, Case No.1969; para.149; 320th Report, Case No.2025, para.410; 326th Report, Case No. 2095, para.195; 327th Report, Case No.2118, para.637; 329th Report, Case No.2177/2183, para.651; 330th Report, Case No.2180, para.302; 334th Report, Case No.2269, para.792; and 338th Report, Case No.2326, para.436)

A Substantial Drop in Certifications

8. Since Bills 5 and 6 have come into force, new and successful unionization drives have come to an historic low. The effects of the new laws have brought the freedom of unorganized workers to form unions to a disconcerting new low. The 2008-2009 Labour Relations Board Annual Report states that the number of certification orders granted in 2008-2009 was only 16. This represents a sharp decline from the previous four years, where the average number of certifications granted per year was 57.
9. This sharp decline in unionization rates was expected. Saskatchewan has followed the experience of other jurisdictions that passed similar laws. Unionization rates dropped significantly in Ontario and British Columbia, after mandatory votes replaced automatic card certification and employers were permitted to use their coercive power to campaign against union organizing drives. We refer you to our July 2008 Statement of Evidence and the copy of the Brief of the SFL submitted to the Minister of Advanced Education, Employment and Labour for details. It is not a coincidence that Bill 6 combined the mandatory vote with the new employer communication amendment that allows employers to share their ‘opinions’. The SFL submits that Bill 5 has also contributed to this decline.

Employer Interference has Increased in Organizing Drives and Collective Bargaining

10. There are a number of ILO decisions that demonstrate the various ways that employers can interfere with workers exercising their freedom of association, some subtle and some not-so-subtle. Because of the imbalance of power that employers enjoy at the workplace, the ILO has said that any attempt to influence or persuade employees not to support unionization is a violation of freedom of association.

“Attempts by employers to persuade employees to withdraw authorizations given to a trade union could unduly influence the choice of workers and undermine the position of the trade union, thus making it more difficult to bargain collectively, which is contrary to the principle that collective bargaining should be *promoted*.” (See 1996 digest, para.766; 304th Report, Case No. 1852, para.494; and 337th Report, Case No. 2395, para.1188)

11. Bill 6 gives employers the right to communicate anti-union ‘opinions’. This change in law is not reconcilable with the ILO principle that governments and employers are obligated to *promote* collective bargaining, and therein organizing and the right to strike (See para.69).

12. In Saskatchewan, employers are now communicating directly with workers in such a way as to undermine the freedom to associate and to exercise their right to be represented by a union. Before the changes to the *Trade Union Act*, such communication was illegal, because of the recognition that employers hold the balance of power in the workplace, (as recognized by the Supreme Court of Canada and ILO jurisprudence). The following three examples have been provided to the SFL by affidavit.

- A most dramatic and recent example of this type of direct communication occurred during a United Steelworkers July 2008 strike at the Potash Corporation of Saskatchewan. The employer communicated directly with employees and their families through two letters mailed to employees’ homes, dated July 18th and October 8th. Garth W. Moore, president of Potash Corporation of Saskatchewan sent these letters, a form of direct communication that was unprecedented. He circumvented the bargaining committee in an attempt to undermine the committee and the strike. An October 10th, 2008 press release states: “The United Steelworkers (USW) are considering filing a charge of bad faith bargaining under the Saskatchewan *Trade Union Act* against PotashCorp following a direct communication sent to the homes of striking USW members at

PotashCorp's three mines sites near Saskatoon. This is another attempt by the company to circumvent the bargaining process and try to influence our members. We believe PotashCorp's actions are in violation of Saskatchewan law." (see attached press clipping dated October 10th, 2008). This evidence has been provided to us by affidavit of Lee Edwards, sworn October 22nd, 2008.

- The Communications, Energy and Paperworkers' Union (CEP) have also experienced coercive employer communication since Bills 5 and 6 were passed. In an affidavit sworn by Rhoda Cossar on April 30th, 2009, the actions of employer Mercury Graphics are described. In August 2008 the employer threatened to fire all the workers and close the plant if the workers went on strike and did not accept the employer's unilateral concession bargaining demands. The workers struck on September 7th, and on September 15th, Mercury Graphics locked them out. On September 17th, the workers received a letter, threatening that if they did not accept the employers' demands, they would close the plant. September 19th, the employer gave notice of permanent closure and the workers were terminated.
- Employer ISM Canada has changed its industrial relations practices and is now communicating directly with individual members of CEP. The most recent example took place in June 2009. Two ISM managers, Paul Duran and Tim Frass, held a meeting with an employee and attempted to get her to sign her own demotion letter without the consent of the bargaining committee or the union (sworn in an affidavit provided to the SFL by Gary Schoenfeldt).

13. The SFL recognizes that employers can communicate freely about working conditions in the ordinary course of business; however this communication has always been limited in that it cannot be used to interfere with workers exercising their freedom to associate. The new law encourages and promotes employer communication that undermines union representation and discourages workers from engaging in union activity.

Eliminating Card Certification and Imposing Mandatory Votes: An Employer Strategy to Undermine Freedom of Association

14. With the automatic card certification process that workers previously enjoyed, (unions had to sign up 50% plus one of all workers in an appropriate bargaining unit) workers could meet secretly with union organizers, have all their questions answered in private and decide to exercise their freedom to associate without the employer's knowledge or influence. Union cards were filed with the Labour

Relations Board (LRB) and were kept confidential from the employer. During contested applications, the LRB went to great lengths to ensure that, through questioning, the employer could not identify which workers supported and which workers opposed the union. Workers were free to make a choice for or against union representation without fear of reprisals.

15. Since Bill 6 passed, there is a growing list of examples where this privacy has been lost, thereby denying workers their freedom of association (See paragraphs 16-18). The SFL submits that freedom of association must include this privacy; otherwise it becomes a hollow concept.

Construction and Film Industries Hit Hard

16. Experienced union organizers have provided sworn affidavits to the SFL, testifying to both the nature of the construction and film industries, and to the negative effects the new requirements have on their organizing drives and on certifications. These unions include:
 - Construction and General Workers Union local 180 (affidavit of Lori Sali, Business Manager);
 - International Association of Bridge, Structural, Ornamental and Reinforcing Ironworkers local 771 (affidavits of Bert Royer, Secretary-Treasurer and Business Manager);
 - United Association of Journeyman, Fitters, Plumbers, Welders and Apprentices of the United States and Canada local 179 (affidavit of Randy Nichols, Business Manager)
 - United Brotherhood of Carpenters and Joiners of America, local 1985 (affidavit of Barry Holma, Union Organizer)
 - The International Alliance of Theatrical Stage Employees, local 295 (affidavit of Deborah Sawarin, Business Representative)
17. Many construction and film production employers come into Saskatchewan for a short project and then leave. They generally return to Saskatchewan for future projects. Sometimes they may only hire a few members of each trade depending on the nature of the project, so bargaining units may contain only a handful of employees.
18. The hiring hall concept is in place in both construction and film; employers call the union hall and the union sends out its members who have already joined the union. This system was bargained by workers and employers and has worked well in these industries for several decades. Furthermore, the transient, project-oriented

nature of these industries means that mandatory votes are not in the interest of workers, nor in the interest of business. It costs businesses inordinate amounts of money to halt film production to hold a vote, for example. The International Alliance of Theatrical Stage Employees informed us that the production down time costs between one thousand to ten thousand dollars per minute.

19. The changes to the *Trade Union Act* under Bill 6 now require that even when every worker signs a union card, a compulsory vote is now also required. The employer is notified by the LRB that a unionization drive is taking place and a vote is held at the workplace with the employer having access to the voters list, who votes and the vote result. The employer has a representative at the polling station and monitors who votes. The vote could be 100 per cent in favour of the union and the employer would know who voted – secrecy is gone because the employer knows the names of each employee who voted for the union. The Construction and General Workers experienced this problem with the ICON Construction application, October 24th, 2008. The Carpenters also experienced this problem with Raven Construction Management Incorporated during an August 2008 organizing drive, and with Thyssen Krupp Safeway Incorporated during an August 2008 organizing drive. There is nothing secret about this process and workers cannot protect their privacy. The only way to ensure that the employer does not know that a worker voted for the union in these circumstances is for that worker not to vote. This flawed process encourages employees who want their privacy protected to stay home on voting day.

“The determination to ascertain or verify the representative character of trade unions can best be assured when strong guarantees of secrecy and impartiality are offered.” (See 302nd Report, Case No. 1817, para.325)

“It is unnecessary to draw up a list of trade union members in order to determine the number of members; this will be evident from the record of trade union membership dues and there is no need for a list of names which could make acts of anti-union discrimination easier.” (See 327th Report, Case No. 2132, para.661)

“The requirement that the authorities make it a practice of obtaining a list of the names of all the members of an organization and a copy of their membership card to determine the most representative organization poses a problem with regard to the principles of freedom of association. There is a risk of reprisals and anti-union discrimination inherent in this type of requirement.” (See 336th Report, Case No. 2153, para.166)

20. Below are examples of several cases in the construction industry, and the film industry, in which union cards were signed and submitted to the LRB, a vote was ordered, but did not take place for months. By the time the vote was scheduled, the project was over. The workers lost their ability to enjoy a collective agreement, and to have employers recognize them as a bargaining unit on any future projects. Construction and General Workers experienced this delay with Raven Construction Management Incorporated, October 21st, 2008 application. Ironworkers experienced prohibitive delays during their December 2008 organizing drive at Les Structures De Beauce Incorporated. The Carpenters experienced prohibitive delays during both the Raven and Thyssen organizing drives cited in para.10, as well as in an October 2008 organizing drive at Kamtech Services Incorporated. Plumbers and Pipefitters had a similar experience at Taj Industrial McLean Lake project in winter 2009. The International Alliance of Theatrical Stage Employees local 295 experienced similar problems with respect to an application filed October 20th, 2008 with Little Mosque Productions Incorporated, and also with a March 29th, 2009 application at Lullabye Productions Incorporated.

“A long registration procedure constitutes a serious obstacle to the establishment of organizations and amounts to a denial of the right of workers to establish organizations without previous authorization.” (See 338th Report, Case No. 2273, para.294)

“The free choice of workers to establish and join organizations is so fundamental to freedom of association as a whole that it cannot be compromised by delays.” (See 306th Report, Case No. 1865, para.329)

“The formalities prescribed by law for the establishment of a trade union should not be applied in such a manner as to delay or prevent the establishment of trade union organizations. Any delay caused by authorities in registering a trade union constitutes an infringement of Article 2 of Convention No.87.” (See the 1996 Digest, paras.249 & 251; 308th Report, Case No. 1894, para.536; 316th Report, Case No. 1773, para.615; 324th Report, Case No. 2053, para.231; 332nd Report, Case No. 2225; para.337; and 334th Report, Case No. 2282, para.638)

21. In other jurisdictions where the law has shifted from automatic card certification to mandatory votes, governments have at least mitigated these effects by legislating a time limit by which a vote has to take place (for example in British Columbia the limit is 10 days). In Saskatchewan there is no time limit.

22. The Labour Relations Board has suggested unions obtain a voluntary agreement as an alternative; however, the Saskatchewan *Trade Union Act* does not permit

the LRB to enforce voluntary agreements so unions would be operating under non-enforceable collective agreements.

23. It is clear that abolition of automatic card certification in favour of mandatory votes violates freedom of association because it destroys the collective bargaining regime that has worked for the benefit of workers and businesses for decades. The hiring hall process has become meaningless, secrecy in organizing is compromised, and the delays are resulting in the inability to have a union and enforceable collective agreements.
24. Saskatchewan had the card certification process in place almost since the freedom to associate was enshrined in the *Trade Union Act* over 60 years ago. In preparation for the SFL's lawsuit, we reviewed the LRB decisions and reports since 1945 and found that intimidation, coercion or any other form of unacceptable conduct by unions gathering support through card certification was almost non-existent. In close to 200 reported cases dealing with interference and intimidation during organizing drives, more than 180 were about employer interference. There were only a few cases where there were substantive allegations against unions for inappropriate conduct.
25. Concerns about union intimidation of workers were *not* raised by government as a justification to eliminate card certification, and Bill 6 was not asked for by employees concerned about unions. Bill 6 was lobbied for directly by representatives of employers including the Canadian Federation of Independent Business and the Chamber of Commerce as well as promoted by the Saskatchewan Party while in opposition in the Legislature on behalf of business.

Automatic Card Certification is the Most Effective Protection against Employer Interference

26. Employer organizations in the United States are in the midst of an unprecedented, incredibly expensive and aggressive campaign against automatic card certification. This is reflective of who wants to eliminate card certification – it is employers. It begs the question: why are employers opposed to card certification? Surely it is not because they are supporting freedom of association; and yet, employers and governments are obliged to *promote* freedom of association (See para.69). In our province, automatic card certification has been normal and standard labour relations policy for decades. There is not one shred of evidence that card certification did not promote freedom of association. *Card certification, as an alternative to having no state certification process, is the most effective remedy for protecting against employer interference.* As outlined above, the decline in union certifications, and therefore union density in other jurisdictions such as British Columbia and Ontario, tells the story. Please refer to the SFL *et*

al's 2008 Statement of Evidence and the copy of the Brief of the SFL submitted to the Minister of Advanced Education, Employment and Labour for details.

27. The Saskatchewan government has provided no rationale for changing the certification process, except to say it would make workplaces more 'democratic' if workers had to also hold a secret ballot vote. The SFL submits that democracy includes a truly 'secret' ballot, and the greatest possible protection against the repression that follows from employers (including governments) that fire or discipline workers who they know are union activists. The ILO digest contains hundreds of examples of the suffering of workers worldwide who are known or assumed to be union activists.
28. Before Bills 5 and 6, and despite the protection in law workers used to enjoy in Saskatchewan, Saskatchewan and Canadian case law is filled with examples where employers have used coercion and intimidation to stop union drives illegally by firing union supporters during an organizing drive. In dozens of cases, unions presented evidence before the LRB that once someone is fired for union activity, even if they are given their job back through an order of the court, the organizing drive still fails. In that workplace, workers will not in the future entertain the question of joining a union, knowing they would be putting their livelihoods on the line. This fear would be even greater for vulnerable workers, such as single parents and immigrants, who would most benefit from unionization.
29. When union organizers speak to workers about the possible consequences of joining a union, they are open with workers about the fact that they cannot guarantee they will not be fired or disciplined if they are caught signing a union card. Organizers explain that the law prohibits such discipline; yet employer retaliation is not an uncommon occurrence. Furthermore, unions cannot guarantee that the employer will not close the workplace and lay off the workers if they unionize, as has happened. Saskatchewan's *Trade Union Act* prohibits that consequence as well. (Even if unions can prove that an organizing drive was lost because of illegal firings, the *Act* does not allow the LRB the option to provide a remedy of automatic certification. The LRB cannot provide a remedy for the loss of freedom of association that often follows from employer interference.)
30. In a survey of Canadian businesses conducted in the 1990s, 95 per cent of the employers surveyed said they would engage in unfair labour practices if it would result in preventing a union certification because the only consequence would be to reinstate the workers and possibly pay monetary loss. The union drive would be dead. A 2009 American survey found that 60 million workers would join a union if they could, yet only 12.4 per cent of workers currently have a union. In a study of National Labor Relations Board (NLRB) cases done by American Rights at

Work, 94 per cent of employers resisted unionization and 25 per cent illegally fired union organizers. Even in cases where the NLRB held certification votes, in 46 per cent of the cases employers engaged in illegal activity, both before and during the vote. Bill 6 encourages this employer interference by: notifying the employer that an organizing drive is underway at the workplace before certification; permitting the employer to communicate anti-union ‘opinions’ before certification; requiring the employer to be present to identify who votes; and allowing the employer to know how workers voted in situations where there is a small bargaining unit.

31. In situations where employers communicate their opinion that unionization might have negative consequences for workers if they unionize at workplaces *before* a union drive starts, unions and courts have no way of protecting workers and ensuring their freedom to associate can ever be realized. There is no way to know whether or not employer interference occurred. It is reasonable to assume that many more workers are stopped from organizing even earlier in the process.
32. The Saskatchewan government has publicly stated that encouraging employer interference was not the intent of the changes to the *Trade Union Act*. In February 2008, the SFL and several individual unions met with the Minister of Advanced Employment, Education and Labour responsible after the law was introduced, and raised this concern. The SFL proposed a simple amendment clarifying that coercion and interference would remain an unfair labour practice. The Ministry, in its meeting with Retail, Wholesale, Department Store Union in February 2008, acknowledged that the concerns might be legitimate, yet refused to fix it.
33. The Committee has recognized that automatic card certification (state approval to exercise workers’ freedom of association to become unionized) is an acceptable limitation on freedom of association, because it still allows the workers to make the decision to become unionized or not without employer influence. *What we are suggesting is that automatic card certification in and of itself may be the most effective remedy to ensure that exercising freedom of association to become unionized is truly a free exercise.*

Essential Services Law Curtails Unionization

34. Another disturbing effect regarding declining unionization rates is the expected effect of Bill 5, the new essential services law. The assumption for all workers who exercise their right to join a union is that they then have the right to bargain collectively in an effective manner and to achieve a collective agreement. That is the *raison d'être* for exercising the right of freedom of association. If one cannot collectively bargain, why join a union or even stay unionized? This concern has

been raised by several union activists in the meetings the SFL has been holding around our province about this new law (over 30 to date).

“Repeated recourse to legislative restrictions on collective bargaining can only, in the long term, prejudice and destabilize the labour relations climate, if the legislator frequently intervenes to suspend or terminate the exercise of rights recognized for unions and their members. Moreover, this may have a detrimental effect on workers’ interests in unionization, since members and potential members could consider useless joining an organization the main objective of which is to represent its members in collective bargaining, if the results of such bargaining are constantly cancelled by law.” (See 1996 Digest, para.875; 330th Report, Case No. 2196, para.304; and 336th Report, Case No. 2324, para.283)

Designations Take Away Right to Strike and Freedom of Association

35. As expected, employers are using their right to designate workers as ‘essential’ under Bill 5 in ways that infringe on workers’ freedom of association. This is most evident in the healthcare industry. The Saskatchewan Association of Health Organizations (SAHO), is a non-profit, non-government association of health agencies in Saskatchewan, representing over 140 regional health authorities, hospitals, special care homes, as well as various agencies and associations that provide health services, education and/or regulations. SAHO serves as the bargaining agent for these health authorities who employ approximately 25,000 workers, in six healthcare unions: the Canadian Union of Public Employees (CUPE); the Service Employees’ International Union WEST (SEIUWEST); the Saskatchewan Union of Nurses (SUN); the Health Sciences Association of Saskatchewan (HSAS); the Saskatchewan Government and General Employees Union (SGEU); and the Retail, Wholesale, Department Store Union (RWDSU). SAHO has co-ordinated, through the health regions, the process of designating employees as ‘essential’ at five of the six bargaining tables (SUN contract was settled without having to negotiate an essential services agreement). SAHO has co-ordinated the compilation of detailed lists of the numbers of ‘essential’ employees. These lists that set the levels were released February 25th, 2009” (see attached press release dated February 25th, 2009).
36. Health regions developed the lists of ‘essential’ workers by individual name as well, based on Section 9(2) of the *Act*.
37. The *Act* requires only that the employer *begin* to negotiate an essential services agreement; it does not require the employer to reach an agreement. The employer has the right to unilaterally designate a list of essential services employees if the

union does not agree to its proposal. Unions do not have equal negotiating power with employers, and in effect, have none because of the employer's right to unilaterally impose terms without the consent of the union.

“A minimum service may be set up in the event of a strike, the extent and duration of which might be such as to result in an acute national crisis endangering the normal living conditions of the population. Such a minimum service should be confined to operations that are strictly necessary to avoid endangering the life or normal living conditions or part of the population; in addition, workers' organizations should be able to participate in defining such a service *in the same way as employers and the public authorities.*” (See 1996 Digest, para.558; 308th Report, Case No.1923, para.222; 317th Report, Case No.1971, para.57; and 330th Report, Case No.2212, para.751)

38. This unilateral right to designate employees as 'essential' has resulted in a great deal of over-designation. In one example at Hospital Laundry, represented by RWDSU, the employer designated more employees than were employed. When questioned, the employer then reduced the number to 95 per cent of all employees and clarified in writing they had no right to strike as defined by the *Trade Union Act*. Later on in the process, the number has been reduced to 75%. These facts were captured in an affidavit to the SFL of Brian Haughey, RWDSU staff representative.
39. SAHO has said that employers have the power to designate an *escalating* number of workers, if a potential strike starts to become effective. In several health regions, for example, the number of members of HSAS will escalate until, during the third week of a strike, 100 per cent will be designated 'essential', according to the February 25th lists. The *Act* permits such escalating designations.

“The determination of minimum services and the minimum number of workers providing them should involve not only the public authorities, but also the relevant employers' and workers' organizations. This not only allows a careful exchange of viewpoints of what in a given situation can be considered the minimum services that are strictly necessary, but also contributes to understanding the scope of the minimum service does not result in the strike becoming ineffective in practice because of its limited impact, and to dissipating possible impressions in the trade union organizations that a strike has come to nothing because of over generous and unilaterally fixed minimum services.” (See 1996 Digest, para.560; 299th Report, Case No.1782, para.325; 302nd

Report, Case No. 1856, para.436; 308th Report, Case No.1923, para. 222; 320th Report, Case No.1963, para.231, and Case No.2044, para.453; 324th Report, Case No.2078; para.17; 325th Report, Case No.2018, para.88; and 338th Report, Case No.2373, para.381)

40. Employees designated ‘essential’, according to the lists provided by SAHO on February 25th, 2009 include laundry workers, cafeteria workers, library workers, groundskeepers and even people who are presently lawfully off work due to workers’ compensation, approved education or maternity leaves, and casual employees. Section 2 of the *Act*, sweeps in casino workers, crown corporation government insurance agents, and post secondary education workers as potentially ‘essential’. The SFL notes that the *Act* does not include many unionized emergency ambulance workers, nor does it include emergency shelter workers for battered women and children. We point this out, not because they should lose their right to collectively bargain/strike, but to illustrate that this law is not about public safety nor health, but about weakening the right to collectively bargain.
41. In the case of SGEU, for one example, employees from the healthcare bargaining committee have been designated as ‘essential’. While they are and have been off work with the consent of the employer to bargain a collective agreement, they have been designated as ‘essential’ if a strike occurs and must report to work and not in any way support the strike, even during their non work hours. Healthcare employers like the Regina Qu’Appelle Health Region, have also said in writing, that approved vacation leaves may be cancelled for designated workers because they are essential. In one HSAS example, the health region does not replace 80 per cent of the workers who take vacation during the summer months, yet during a strike, they will be designated as essential and will not be allowed to take those already approved vacations.
42. The *Act* prohibits any strike action and ‘strike’ is defined by the *Trade Union Act* as prohibiting any and all forms of activity which may interfere with, restrict or reduce the effective delivery of services. This denial of ‘essential’ workers’ ability to support the collective bargaining process even when a worker is off-duty has been openly acknowledged in the case of SAHO.
43. Normally and historically, out-of-scope, or non-union, managers would be used to perform work the employer considered “essential” during a strike. Under the *Act*, however, employers are supposed to calculate the designated workers, without considering the availability of managers to do the work in the event of a strike. The health regions have stated in writing they do not have to consider the use of

out-of-scope management, contract workers, replacement workers or volunteers when making lists.

44. There is no compulsory arbitration mechanism to achieve a collective agreement through a third party. There is no provision in the *Act* for any means to compensate workers for taking away their right to strike. In spring 2009, the Saskatchewan Government and General Employees' Union and the Saskatchewan government, as employer, appeared before arbitrator Colin Taylor to ask him to decide the extent to which employees designated as 'essential' were entitled to compensation for losing the right to strike and to bargain a collective agreement. In its written submission dated March 31st, 2009, the Saskatchewan government opposed this concept, and argued that an arbitrator has no jurisdiction to award compensation to workers who had lost their right to strike. In addition, the government argued that even if Mr. Taylor had jurisdiction, it would not be appropriate to provide any compensation for 'essential' employees.

“Where the right to strike is restricted or prohibited in certain essential undertakings or services, adequate protection should be given to the workers to compensate for the limitation thereby placed on their freedom of action with regard to disputes affecting such undertakings and services.” (See 1996 Digest, para.546; and, for example, 300th Report, Case No.1818, para.367; 306th Report, Case No.1882, para.429; 310th Report, Case No.1943, para.227; 318th Report, Case No. 1999, para.166; 324th Report, Case No.2060, para.518; 327th Report, Case No.2127; para.192; 330th Report, Case No.2166, para.292; 333rd Report, Case No.2277; para.274; 336th Report, Case No.2340, para.649; and 337th Report, Case No.2244; para.1269)

“As regards the nature of appropriate guarantees in cases where restrictions are placed on the right to strike in essential services and the public service, restrictions on the right to strike should be accompanied by adequate, impartial and speedy conciliation and arbitration proceedings in which the parties concerned can take part at every stage and in which the awards, once made, are fully and promptly implemented.” (See 1996 Digest, para.547; and, for example, 300th Report, Case No.1818, para.367; 306th Report, Case No.1882, para.429; 308th Report, Case No.1897, para.478; 310th Report, Case No.1943, para.227; 318th Report, Case No.2020; para.318; 324th Report, Case No.2060, para.518; 330th Report, Case No.2166, para.292; 333rd Report, Case No.2277, para.274;

336th Report, Case No.2340, para.649; and 337th Report, Case No.2244; para.1269)

“Compulsory arbitration to end a collective labour dispute and a strike is acceptable if it is at the request of both parties involved in a dispute, or if the strike in question may be restricted, even banned, *i.e.* in the case of disputes in the public service involving public servants exercising authority in the name of the state or in essential services in the strict sense of the term, namely those services whose interruption would endanger the life, personal safety or health of the whole or part of the population.” (See 1996 Digest; para.515&553; 302nd Report, Case No.1845, para.512; 303rd Report, Case No.1810/1830, para.62; 307th Report, Case No.1890, para.372; 310th Report, Case No.1931, para.506; 314th Report, Case No.1948/1955, para.75; 333rd Report, Case No.2281, para.631; 335th Report, Case No.2303, para.1376; and 338th Report, Case No. 2329, para.1275)

45. Under the *Act*, unions cannot challenge the employers’ designation of classifications of workers who are ‘essential’; they can only argue at the LRB about whether the numbers in any classification are too high.
46. These over-designations, escalating designations, and designations of those who normally would not be working, illustrate our concern that this *Act* has nothing to do with public safety and is about interfering with the freedom of association. Why would it be acceptable to be away from work without being replaced when there is no strike, yet forced to work if there is a strike? Without the right to strike, to support a strike of your coworkers if you are ‘essential’, and with no effective instrument to achieve a collective agreement, how do workers change their working conditions?
47. One effect of this new law is to significantly increase the cost to workers of trying to bargain a new collective agreement and to delay any progress towards negotiating a new collective agreement. Since Bill 5 was proclaimed, collective bargaining has come almost to a complete halt and very few collective agreements are being concluded in the public sector. The vast majority of healthcare workers are still without collective agreements since they expired in March 2008. SAHO has not yet tabled monetary items because there is no essential services agreement. This has resulted in months and months of time and resources being spent on negotiating who might be ‘essential’ during a strike, rather than making good faith efforts to bargain a collective agreement. In the public sector in the last 25 years, 95.5 per cent of collective agreements have been settled without a

labour dispute; this time and money spent on ‘negotiating’ essential services agreements is beyond wasteful.

48. Unions do not have unlimited money and their freedom of association, which includes the right to collective bargaining, is under serious threat if they have to deplete their money and resources without ever being able to conclude a collective agreement.
49. The *Act* states that it supercedes all other laws, collective agreements, and case precedents. Even if unions had freely negotiated essential services agreements including protocols with the agreement of the employer during the last 25 years in Saskatchewan for use during a strike (we note that unions have always historically provided emergency services during a labour dispute in Saskatchewan), these agreements are overridden by the government and employers now. The government in particular, as the largest employer in the province, has stated in writing to the Saskatchewan Government and General Employees’ Union that any essential services agreement they reach at the bargaining table can be overridden by their executive regulation-making authority under the *Act*.
50. In June 2009, the government enacted regulations declaring large portions of the public service as ‘essential’ services. The regulations are attached.
51. As a result of this overhaul in labour legislation, Saskatchewan workers are now finding that their freedom of association - to form a union, to join a union, to be active in the union, to collectively bargain, and to withdraw one’s labour over unjust working conditions - has been curtailed.

“The right to strike is an intrinsic corollary to the right to organize protected by Convention No.87.” (See 311th Report, Case No.1954; para.405)

52. This long list of concerns regarding essential services do not exist in other jurisdictions in Canada. For example, essential services workers in other jurisdictions can participate in strike activity during their off-hours, and only have to perform ‘essential’ duties while working, as opposed to all duties (including non-essential ones) as is the requirement in Saskatchewan. Individual workers are not designed as ‘essential’ and unable to strike. Essential services levels and duties are agreed upon and rotated throughout the union membership. In Saskatchewan we have the dubious distinction of individual workers losing their freedom to participate in union activity to support collective bargaining.

We are not suggesting that the Committee reverse any of its decisions which state that the right to strike should not be exercised in a way that could endanger life or limb of the public. Workers and unions in Saskatchewan respect this moral

obligation and exercise their rights accordingly. In such fact situations where the uncontradicted evidence is that the unions have established longstanding essential services protocols with their employers (as in Saskatchewan), legislating away workers' right to strike is unjustified.

53. While the government may say that, with this new power that they have given to themselves and to employers they will act kindly and expect employers to do the same, freedom of association is supposed to be *promoted* according to the ILO Conventions and recommendations (See para.69). Lawmaking should be measured from that perspective.
54. The government may suggest that worker and unions' concerns regarding employer interference in organizing and over-designations can be ameliorated by charging employers with unfair labour practices before the LRB. The SFL notes, however, that the LRB does not have the jurisdiction to address many of these concerns. For example, under the *Trade Union Act* the LRB cannot issue automatic certifications as a remedy for employer interference in organizing campaigns. The LRB does not have jurisdiction under the *Public Services Essential Services Act* to rule that particular classifications of workers should or should not be designated as 'essential'. Furthermore, the LRB does not have jurisdiction to award compensation to employees who lose their right to strike because they are designated 'essential'. The SFL and unions on this complaint also have an overarching concern regarding the impartiality and independence of the LRB, since the Saskatchewan Party government replaced the chair and vice-chairs in March 2008.

Labour Relations Board does not have the Confidence of Trade Unions

55. As you know from our July 2008 Statement of Evidence, the SFL, the Canadian Union of Public Employees, and the Retail, Wholesale, Department Store Union, filed a case in Saskatchewan's Court of Queen's Bench alleging that the terminations of the former chair and vice-chairs of the LRB and their replacement by a new chair were unconstitutional and a violation of international law. We argued that the process of appointments and the interference of the government compromised the judicial independence of the LRB. The Court of Queen's Bench heard the case and issued a decision in January 2009. The Court determined that the principles of judicial independence apply to Labour Relations Board, but did not find in our favour with respect to the facts. The matter is now before Saskatchewan's Court of Appeal and will be heard in fall 2009. The following concerns are in addition to those raised in that court proceeding.
56. There was no consultation with the SFL, or with any of its affiliated unions about the appointment process and/or suggested names. The new chair was appointed

without notice that a vacancy existed and without inviting applications. The appointments were recommendations of the political arm of the new government known as the “transition team”, most of whom were neither elected nor independent of government. We note that the government is the largest employer in the province of Saskatchewan – they will now be appearing, charged with allegations of unfair labour practices, before this new chair of the LRB.

57. At the time of the firings (March 2008) of the former LRB chair and vice-chairs, the Premier of Saskatchewan, Brad Wall, stated in a media scrum that they were fired because they were “legacy appointments”. This statement was consistent with statements the Saskatchewan Party had made while in Opposition, namely that these Board members were too close to the trade union movement, and biased in favour of unions. These statements are recorded in the Hansard, the official transcripts of the Legislative Assembly of Saskatchewan.
58. During that same media interview at the time of the firings, the Premier also said that the new replacements should interpret the law, including the two new laws (*i.e.* Bills 5 and 6), in a manner consistent with the philosophy of his party while in Opposition. That philosophy was anti-union, and there are several quotes from elected members to that effect recorded in the Hansard. The Premier also said that the new Board should interpret the laws in such a way as “to promote business investment”. We have alleged in our lawsuit that these ‘directions’ to the Board are contrary to the stated purposes of the *Trade Union Act* (which the LRB administers and which states that the purpose of the *Act* is to promote free collective bargaining). The excerpts from the Hansard and the media interview have been collected by the SFL and filed with the Saskatchewan Court of Appeal.
59. The new chair was a lawyer who advised the Saskatchewan Party government’s transition team, the same team which recommended the firing of the old LRB members. He was also a member of the Saskatchewan Party, an ideologically very conservative and anti-union political party. Upon his appointment, he received a \$60,000 raise – a 50 per cent increase over his predecessor.
60. The appointment was made by the Executive Council of the Saskatchewan government by Order-in-Council #98/2008, effective March 6th, 2008. That Order-in-Council simultaneously terminated the former chair and vice-chairs without cause and in the middle of their terms, and appointed a new chair ‘at pleasure’. ‘At pleasure’ means that the chair or vice-chairs can be fired at any time if the government does not like their decisions. Under the all of the above conditions, the LRB cannot be said to be, nor seen to be, judicially impartial and independent.

61. The new chair previously appeared as counsel before the LRB on a few occasions, and in a couple of cases sought to decertify unions. In cases he brought before the LRB involving RWDSU, the decertification attempts failed because the LRB at that time determined there had been employer interference.
62. This appointment, its process and the public statements of the Premier about the reasons for the termination of the former chair and vice-chairs (for being biased in favour of unions) and his expectations of the new appointees are contrary to the principles of impartiality promoted by the ILO.

“In mediation and arbitration proceedings it is essential that all the members of the bodies entrusted with such functions should *not only be strictly impartial*, but, if the confidence of both sides, on which the successful outcome even of compulsory arbitration really depends, is to be gained and maintained, they should *also appear to be impartial* both to the employers and to the workers concerned.” (See 1996 Digest, para.549; 310th Report, Case No.1928, para.182, and Case No.1943, para.240; 318th Report, Case No.1943, para.117; 324th Report, Case No.1943, para.26; 327th Report, Case No.2145, para.306; 328th Report, Case No.2114, para.406; 333rd Report, Case No.2288; para.829; 335th Report, Case No.2305, para.507; and 336th Report, Case No.2383, para.773)

“The Committee has pointed out that Article 8 of Convention No.151 allows a certain flexibility in the choice of procedures for the settlement of disputes concerning public servants on condition that the confidence of the parties involved is ensured. The Committee itself has stated in relation to grievances concerning anti-union practices in both the public and private sectors that such complaints should normally be examined by national machinery which, in addition to being speedy *should not only be impartial but also seen to be such by the parties involved.*” (See 1996 Digest, para.918)

“The government is responsible for preventing all acts of anti-union discrimination and it must ensure that complaints of anti-union discrimination are examined in the framework of national procedures which should be prompt, *impartial and considered as such by the parties concerned.*” (See 1996 Digest, para.738; and, for example, 307th Report, Case No.1877, para.403; 310th Report, Case No.1880, para.539; 321st Report, Case No.1972, para.77; 327th Report, Case No.1995, para.211; 330th Report, Case

No.2126, para.152; 334th Report, Case No.2126, para.73; 335th Report, Case No.2228, para.897; 336th Report, Case No.2336, para.536; 337th Report, Case No.2395, para.1200; and 338th Report, Case No.2402, para.467)

“Complaints against acts of anti-union discrimination should normally be examined by national machinery which, in addition to being speedy, *should not only be impartial but also seen to be such by the parties concerned*, who should participate in the procedure in an appropriate and constructive manner.” (See Digest 1996, para.750; 330th Report, Case No.2158, para.853; 331st Report, Case No.2187, para.443; 332nd Report, Case No.2262, para.397; and 334th Report, Case No.2126, para.73)

“Respect for the principles of freedom of association clearly requires that workers who consider that they have been prejudiced because of their trade union activities should have access to means of redress which are expeditious, inexpensive and *fully impartial*.” (See 1996 Digest, para.741; and, for example, 310th Report, Case No.1880, para.539; 327th Report, Case No.2098, para.757; 328th Report, Case No.2158, para.319; 329th Report, Case No.2172, para.351, and Case No.2176, para.565; 330th Report, Case No.2186, para.372; 333rd Report, Case No.2281, para.633; 335th Report, Case No.2236, para.967; and 338th Report, Case No.2378, para.1145)

63. Given the circumstances surrounding the LRB since the Saskatchewan Party government was elected, trade unions have lost confidence in the impartiality of the tribunal charged with hearing all matters related to the *Trade Union Act* and the *Public Services Essential Services Act*.

Anti-trespassing Law Further Restricts Freedom of Association

64. The government recently proclaimed a new law which on its face makes it potentially illegal for anyone to picket on any locations where workers have always lawfully picketed. This new law, *The Trespass to Property Act* was introduced as Bill 43. The Opposition proposed an amendment to Bill 43, to clarify that this new law would not restrict lawful picketing. The government rejected the amendment, even while admitting that the *Act* as written may contravene the freedom of expression clause of the Canadian *Charter of Rights and Freedoms*. As it now reads and is in force, peaceful assembly and peaceful associational activities for all citizens including workers who want to lawfully associate and assemble and express themselves against the government and

lawfully picket in legal strikes (should they not have lost that right by the “essential service” designations) may now be illegal. A citizen can be arrested and fined without warrant and there is a reverse onus to prove his or her innocence.

65. Rather than enjoying the rights protected under the freedom of association as a premise for our activities, trade unions in Saskatchewan now operate under a legal regime where such rights are able to be usurped under threat of draconian fines and in the case of picketing, arrest.

Workers should enjoy the right to peaceful demonstration to defend their occupational interests.” (See 1996 Digest, para.132; and, for example, 306th Report, Case No. 1884, para.695; 307th Report, Case No.1909; para.493; 320th Report, Case No.2023, para.425; 321st Report, Case No.2031, para.174; 326th Report, Case No.2113, para.374; 330th Report, Case No.2189, para.453; 335th Report, Case No.2320, para.664; 336th Report, Case No.2340, para.650; 337th Report, Case No.2318, para.338, and Case No.2323, para.1043)

66. Embedded in democracy’s roots is the freedom of association, nurturing the necessary features we all seek for the citizens of the world. The ILO and the UN gave breath to this concept and it has flourished, although sometimes painfully. The freedom of association permits citizens to collectively learn, in the labour context, the purpose and value of voting, elections, and the fundamental aspects of democracy in action. Unions are forums for this education, training and experience. In the broader context, unions represent the vision and desires of citizens seeking to build a better society for all, beyond the importance of changing working conditions for all workers. It is historically significant that Saskatchewan was the first province in Canada to introduce universal medicare, human rights, occupational health and safety and many labour standards laws. Unions have been leading supporters of these social milestones and were also instrumental in the successful struggle for: pay equity; maternity leave; pensions; disability insurance; workers compensation; the eight hour day; end of child labour; enhanced vacation and statutory holidays; minimum wage; public education and health care; and adequate social assistance programs.
67. The Saskatchewan Party government has introduced laws and policies that appear to support the potential privatization of large sections of the healthcare and Crown corporations sectors, both of which are almost exclusively unionized. This will result in the loss of thousands of unionized jobs and valued public services that provide safe, efficient and socially and economically beneficial necessities. Bill 5 limits and the SFL submits, prohibits the use of strikes to promote and protect the

social fabric of Saskatchewan. We believe that this is a significant, but not admitted reason for the introduction of these laws.

68. The ILO has consistently and emphatically stated that workers' freedom of association includes not only the right to strike for a collective agreement, but also the right to strike for the protection and promotion of the social and economic well-being of all members of society.

“The occupational and economic interests which workers defend through the exercise of the right to strike do not only concern better working conditions or collective claims of an occupational nature, but also the seeking of solutions to economic and social policy questions and problems facing the undertaking which are of direct concern to the workers.” (See 1996 Digest, para.479; 304th Report, Case No.1851, para.280; 314th Report, Case No.1878, para.31; 320th Report, Case No.1865, para.526; 326th Report, Case No.2094, para.491, 329th Report, Case No.2094, para.135; and 331st Report, Case No.1937/2027, para.104)

“Organizations responsible for defending workers' socio-economic and occupational interests should be able to use strike action to support their position in the search for solutions to problems posed by major social and economic policy trends which have a direct impact on their members and on workers in general, in particular as regards employment, social protection and standards of living.” (See 1996 Digest, para.480; 305th Report, Case No. 1870, para.143; 320th Report, Case No.1865, para.526, and Case No.2027, para.876; 336th Report, Case No.2354, para.682; and 337th Report, Case No.2323, para.1039)

“While purely political strikes do not fall within the scope of the principles of freedom of association, trade unions should be able to have recourse to protest strikes, in particular where aimed at criticizing a government's economic and social policies.” (See 1996 Digest, para.482; 300th Report, Case No.1777, para.71; 304th Report, Case No.1851, para.280, and Case No.1863, para.356; 314th Report, Case No.1787; para.31; 320th Report, Case No. 1865, para.526; and 333rd Report, Case No.2251, para.985)

“The right to strike should not be limited solely to industrial disputes that are likely to be resolved through the signing of a collective agreement; workers and their organizations should be able to express in a broader context, if necessary, their

dissatisfaction as regards economic and social matters affecting their members' interests.” (See 1996 Digest, para.484; 300th Report, Case No.1777, para.71; and 320th Report, Case No.1865, para.526)

69. The SFL submits that Saskatchewan's labour laws should reflect the social and political ideals which underlie the reasons for the freedom of association. The SFL notes that the World Bank now recognizes this fundamental social objective because it requires those who seek their financial support to promote freedom of association. There is no aspect of the basic changes introduced through these laws that on their face move us in this direction let alone support the freedom of association. The evidence since their introduction validates our original concerns and betrays their true intent.

“The object of the special procedure on freedom of association is not to blame or punish anyone, but rather to engage in a constructive tripartite dialogue to *promote respect for trade union rights in law and practice.*” (See 323rd Report, Case No.1888, para.199)

“The membership of a state in the International Labour Organization carries with it the obligation to respect in national legislation freedom of association principles and the Conventions which the State has freely ratified.” (See 300th Report, Case No.1793, para.263)

“The ultimate responsibility for ensuring respect for the principles of freedom of association lies with the government.” (See 304th Report, Case No.1852, para.492)

In addition to the foregoing submission, the SFL has been asked by the Canadian Labour Congress Executive Vice-President to comment on the following three issues:

a) *What constitutes “prescribed” essential services and “prescribed” public employers under the Act respecting Essential Services and any relevant regulations?*

Prescribed essential services under the *Public Services Essential Services Act* are defined by the *Act* and the government by regulation can prescribe *any service* it deems appropriate.

b) *Clarification on whether the definition of “public employer” in section 2(c) of the Act did or could encompass private entities.*

The definition of public employer in Section 2(c) of the *Act* does not presently encompass private entities; however Section 2(i)(xi) authorizes the government by regulation to include private sector employers.

c) *Indications of what remedy or compensatory guarantee was provided to workers whose right to strike was restricted or prohibited by the Act.*

As indicated in our July 2008 submission, there are no remedies or compensatory guarantees provided to workers whose right to strike is restricted or prohibited by the *Act*. In addition, the *Act* does not provide for any form of arbitration for those workers to achieve a collective agreement.

We thank you for your careful consideration of this submission. Please do not hesitate to ask for any additional information which you may find helpful in your deliberations. Furthermore, pursuant to Section 69 of the Special procedures for the examination in the International Labour Organization of complaints alleging violations of freedom of association, the Committee can request in appropriate circumstances whether it should hear from the parties, or one of them, during its sessions so as to obtain more complete information on the matter. Because of the significance of these issues, and because of the extent of the evidence of harm that we have gathered and we continue to gather regarding both Bills, we would welcome the opportunity to appear before you.

All of which is respectfully submitted September 8th, 2009.

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