Submission to the Minister of Labour Relations and Workplace Safety and the Legislative Assembly of Saskatchewan respecting Bill 85, *The Saskatchewan Employment Act*, 2013

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Table of Contents

Executive summary

CUPE has identified seven changes that are of particular concern to our union and its members.

If passed in its current form, Bill 85, *The Saskatchewan Employment Act*, will make significant changes to our province's labour laws resulting in fewer rights and altering the balance of power between workers and employers. Given the sheer volume of changes to be effected by Bill 85, it has been impossible to address the consequences, intended or not, of these amendments in a thorough or satisfactory manner in the brief period allowed. That said, our analysis of Bill 85 has identified significant flaws in the draft Bill.

In this submission, CUPE has identified some of the most problematic changes proposed in Bill 85. While the concerns with Bill 85 are many, CUPE has identified seven changes that are of particular concern to our union and its members.

Changes to the definition of employee in Part VI (Labour Relations), s. 6-1(1)(h)

New exceptions to the definition of employee will deprive thousands of current union members of the right to collectively bargain. These provisions are unlike any other labour relations statute in Canada.

Supervisor collective bargaining, ss. 6-1(1)(o), 6-11

New provisions will sweep many bargaining unit members into a new "supervisor" category, requiring that they be excluded from their current bargaining units and start from scratch in a new supervisory unit. This not only interferes with these workers' right to belong to the union of their choice, it will undermine or invalidate significant negotiated terms in existing collective agreements.

Terms interfering with union financial administration and democracy, ss. 6-62, 6-44(2), 6-59(1)

New provisions requiring unions' dues to be remitted to a union local instead of the employees' choice of national or international union, requiring the union to audit financial statements, and charging the Labour Relations Board with supervision of union constitutions, will interfere with the way union members have decided democratically to arrange the affairs of their union.

Voluntary recognition, ss.6-18, 6-64(c), 6-63(7), 6-49

New provisions will allow employers to voluntarily recognise a so-called union that "acts on behalf" of some or all employees, without requiring the union to demonstrate the support of workers. These unions are specifically excluded from significant provisions of Bill 85, including key unfair labour practice provisions that protect certified bargaining agents only. These "sweetheart" unions can only frustrate workers' right to engage in meaningful collective bargaining through the *bona fide* union of their choice, with access to all relevant protections.

Last offer votes, s. 6-36

New provisions allowing the employer or minority factions of workers to force a vote on an employer's "last offer", at any time after notice to bargain has been delivered and before any bargaining has occurred, will significantly interfere with the union's representation of its members and sabotage the collective bargaining process.

Contracting out of public services, s. 37.1 of the Trade Union Act

Section 37.1 of the *Trade Union Act* creates a deemed successorship where there is any change in contractors for the provision of cafeteria or food services, janitorial or cleaning services, or security services in publicly-owned buildings including hospitals, universities, and municipal buildings. Its exclusion from Bill 85 will disrupt long-standing collective bargaining agreements, interfere with worker freedom of association, and jeopardize the continuity of quality services in these areas.

Erosion of minimum employment standards, Part II of Bill 85

Bill 85 rolls back current provisions in *The Labour Standards Act* governing hours of work, overtime, rest periods, scheduling, weekends, observance of statutory holidays, accommodation of disabled and pregnant workers, and other rules that have protected unrepresented and vulnerable workers in this province for decades. These provisions continue to be necessary to prevent exploitation of vulnerable workers and ought to be strengthened not diminished.

This brief is not intended to be a comprehensive or exhaustive response to all of the problems in Bill 85, and is offered without prejudice to any legal challenge that may be taken against or under Bill 85 and/or any related legislation.

Introduction

The draft legislation was never provided to the public or to the stakeholders during the feedback process.

Bill 85, *The Saskatchewan Employment Act*, was introduced in the Legislative Assembly in December 2012 following a short period in which various "stakeholders" were invited to provide feedback in response to a document entitled *A Consultation Paper on the Renewal of Labour Legislation* (referred to as "the Consultation Paper"), which listed topics that would possibly be included in new legislation to purportedly "modernize" Saskatchewan employment and labour statutes. The draft legislation was never provided to the public or to the stakeholders during the feedback process.

The legislation was finally unveiled when it was tabled for first reading in the Legislative Assembly on December 4, 2012, before the close of the fall session. Many changes that will be effected to existing legislation by Bill 85 were never addressed in the Consultation Paper.

If passed, Bill 85 will replace every significant Saskatchewan statute regulating employment and labour relations. As discussed below, the changes proposed are dramatic and significant. The new law will go far beyond the government's claim to "modernize" and "simplify" labour legislation – it will destroy protections and

Introduction

entitlements that have formed a part of the legislative regulation of the employment relationship for, in many cases, at least three decades. More fundamentally, Bill 85 will alter the balance of power between employers and employees in this province.

The following is CUPE's submission to the Minister of Labour Relations and Workplace Safety with respect to the harmful impacts of Bill 85, *The Saskatchewan Employment Act*, and its impact on our members and workers in the province. It is offered without prejudice to any legal action that may be taken to the validity or Constitutionality of *The Saskatchewan Employment Act* if and when it is passed in any form, and without prejudice to any actions or proceedings that are currently underway or may be undertaken under the Act or any related legislation now or in the future.

More fundamentally, Bill 85 will alter the balance of power between employers and employees in this province.

Too much, too fast: inadequate consultation and review process

These concerns were recently reiterated by members of the Minister's own Advisory Committee on Labour Relations and Workplace Safety

As noted previously, Bill 85, *The Saskatchewan Employment Act* (referred to as "Bill 85" in this document) will replace every significant Saskatchewan statute regulating employment and labour relations, dramatically modifying aspects of a legislative and regulatory regime that has been relatively stable for several decades in this province.

As noted by members of the Canadian Association of Labour Lawyers in an opinion delivered to the Minister in response to the Consultation Paper,[1] the process leading to Bill 85 fell far short of legal standards for meaningful consultation. CUPE has raised concerns that the consultation process was inadequate, particularly since the voices of unrepresented workers were never heard or considered.

These concerns were recently reiterated by members of the Minister's own Advisory Committee on Labour Relations and Workplace Safety, which called on the Minister to conduct a comprehensive review to determine how Bill 85 will impact the rights of wage earners and stakeholders in the province.[2]

Too much, too fast

Given the sheer volume of changes to be effected by Bill 85, it is impossible to address the consequences of these amendments in a thorough or satisfactory manner. A number of responses to the Consultation Paper have requested a longer, more thorough review and consultation process such as that undertaken by the federal government in the late 1990s leading to the revision of Part I of the *Canada Labour Code*, which produced workable legislative solutions that have proven useful to everyone governed by that legislation.

What's the rush with Bill 85? Our analysis has indentified significant flaws in the draft Bill. CUPE calls on the Minister of Labour Relations and Workplace Safety and the Members of the Legislative Assembly to set aside this flawed legislation and embark on a true review and consultation process before passing the sweeping changes to the laws regulating the employment relationship in this province.

Problems with Bill 85

As discussed, CUPE's analysis of Bill 85 has identified significant flaws in the draft legislation that are certain to result in uncertainty, conflicts between workers and employers, labour unrest and injury to both unrepresented workers and unionized workers.

Equally significant are the ways in which Bill 85 has failed to meaningfully address, and in some instances regrettably reproduces, flaws in the existing statutes.

Bill 85 has failed to meaningfully address, and in some instances regrettably reproduces, flaws in the existing statutes.

We have addressed some of the areas of significant concern in the pages that follow. This is by no means an exhaustive identification of the areas of Bill 85 that are likely to cause problems in the future. As noted, we have not had sufficient time to conduct an adequate analysis of all the proposed changes in the short time that we have had the draft legislation, given the vastness of the changes proposed, the fact that many of the changes were not addressed in the Consultation Paper, and the failure of the Government to provide stakeholders with full or timely access to relevant information, including the specific intention behind each of the meaningful amendments to be effected with Bill 85.

CUPE's concerns with respect to Bill 85 are clustered around specific themes. These are discussed in the following pages. Again, these

concerns are not intended to be comprehensive and are offered without prejudice to current or future proceedings challenging Bill 85 and/or taken under its terms.

In addition to the comments offered in the following pages, CUPE adopts and relies on its brief submitted in response to the Consultation Paper, *Equality Has Many Faces*, available online at http://www.lrws.gov.sk.ca/canadian-union-public-employees-sk.

Blocking employees' access to collective bargaining

Every jurisdiction in Canada has a statute that was enacted to promote access to collective bargaining for workers, reflecting Canada's international law obligation to promote and protect freedom of association, which is also guaranteed by s. 2(d) of the *Canadian Charter of Rights and Freedoms*.[3] The Supreme Court of Canada has said that freedom of association protects collective bargaining, because:

> ***Collective bargaining permits workers to achieve a form of workplace democracy and to ensure the rule of law in the workplace. Workers gain a voice to influence the establishment of rules that control a major aspect of their lives.*** [4]

Access to meaningful collective bargaining is already limited in this Province. Statutory certification is a necessary precondition to accessing a meaningful collective bargaining process protected by statute. The majority of workers in Saskatchewan do not belong to unions. Instead of responding meaningfully to this deficit, Bill 85 perpetuates the problem. Many changes proposed in Bill 85 will cut off access to meaningful collective bargaining for workers who are currently represented, including amendments to the definition of employee in Part VI, and ill-thought-out provisions allowing employers to voluntarily recognise unions.

New definition of employee

Currently employees are excluded from the application of the *Trade Union Act* only if they "actually exercise authority and actually perform functions that are of a managerial character"; or if they are "regularly acting in a confidential capacity with respect to the industrial relations of his or her employer." (s.2(f)(i)) These provisions have been consistently applied by the Labour Relations Board for decades. They are consistent with existing exclusions in every labour relations statute in effect in other jurisdictions. They form part of the common core of Canadian labour law.[5] This is consistent with the requirement that exclusions from the statutory collective bargaining regime must be construed strictly to ensure that employee freedom of association is protected.[6]

The definition of employee in Part VI of Bill 85 unravels this careful statutory protection. Section 6-1(1)(h) of Bill 85 significantly expands current exemptions to the definition of "employee" to include "a person whose duties include activities of a confidential nature in matters relating to any of the following: (I) labour relations; (II) business strategic planning; (III) policy advice; (IV) budget implementation or planning." The elimination of the requirement that the employee "regularly" act in confidential manner means that a significant number of workers that are currently in scope could be excluded under the new definition.

Under the new definition of employee, an employee who provides information on departmental budget estimates, or participates in strategic planning sessions, could find herself out of scope as soon as the legislation is passed. The three new criteria - which have no parallel in any labour relations statute in any other Canadian jurisdiction or in the international law - will deprive a significant number of current union members of access to statutory certification which is a precondition to

a meaningful process of collective bargaining, guaranteed by freedom of association under the Canadian *Charter of Rights and Freedoms*. They are directly contradictory of Canada's international law commitments, and wholly inconsistent with the decisions of the United Nations International Labour Organization ("the ILO"), which has said that "[a]n excessively broad interpretation of the concept of 'worker of confidence,' which denies such workers their right of association, may seriously limit trade union rights and even, in small enterprises, prevent the establishment of trade unions, which is contrary to the principle of freedom of association."[7]

Removing a significant number of workers from their current bargaining units, in violation of their constitutionally guaranteed freedom of association, will predictably cause instability in affected workplaces. CUPE urges the Members of the Legislative Assembly to shelve Bill 85's badly-drafted definition of "employee".

Voluntary recognition

While voluntary recognition may be touted by the Minister as a solution to some of the barriers to access to statutory certification caused by the 2008 *Trade Union Amendment Act* (Bill 6), Bill 85's flawed voluntary recognition scheme will exacerbate those barriers. Section 6-18 allowing employers to voluntarily recognise a so-called union that "acts on behalf" of some or all employees, without requiring the union to demonstrate the support of workers, will frustrate workers' ability to organize and bargain collectively through the union of their choice, and to gain access to a meaningful collective bargaining process.

Under s. 6-18, while the employer may terminate the voluntary collective agreement through the mere provision of notice,

there is no ability for employees to renounce the collective agreement, or to terminate the representation of the "union." This is totally inconsistent with the workers' right to bargain collectively through the union of the employee's choice.

More problematically, voluntarily recognised unions are specifically excluded from significant provisions of Bill 85. For example, section 6-64(c) makes it an unfair labour practice only "to fail or refuse to engage in collective bargaining with the employer respecting employees in a bargaining unit if a certification order has been issued for that unit." Section 6-63(7) says that employers cannot be found guilty of a number of specific unfair labour practices "unless the board has made an order determining that the union making the complaint has been named in the certification order as the bargaining agent of the employees." In particular, a voluntary recognised union cannot claim the protection of sections 6-63(1)(d) making it an unfair labour practice to fail or refuse to engage in collective bargaining with the union; s. 6-63(1)(e) requiring employers to negotiate with the union for the settlement of grievances and disputes arising during the term of the collective agreement; s. 6-63(1)(f) requiring employers to allow union representatives to engage in grievance and dispute resolution on paid work time, and s. 6-63(1)(n) requiring the employer to maintain terms and conditions of employment during negotiations if the collective agreement is no longer in force (the statutory freeze). Similarly, voluntarily recognised unions are not required to bargain in good faith (s.6-64(1)(c)).

Sections 6-63(6) and 6-64(2) appear to indicate that it could be an unfair labour practice for a voluntarily-recognised union to negotiate union recognition and scope clauses - standard contract provisions that are key, both to contract interpretation, and to "the capacity of the union members to come together and pursue collective goals in concert", marking them

as significant to freedom of association: see *Health Services and Support - Facilities Subsector Bargaining Assn. v. British Columbia*, 2007 SCC 27, [2007] 2 SCR 391 at para. 89.

Finally, s.6-49 providing for access to arbitration for suspension and termination of members where the collective agreement is not in force is not available in a voluntary recognition relationship.

All of these statutory distinctions indicate that the voluntary recognition provisions in Bill 85 will not promote access to collective bargaining or address barriers to unionization. These provisions will facilitate and create and legitimize employers' sweetheart deals with sham employee agents who are not required to demonstrate the support of workers, will not have an ability to negotiate effectively on behalf of workers or engage in meaningful dispute resolution under their collective agreements, and will not necessarily be able to access the protections of Bill 85 if and when the employer chooses to disregard the terms of the voluntary agreements -- all of which will be passed off to workers as a facsimile of meaningful collective bargaining.

Interference with the workers' choice of bargaining agent

A number of provisions of Bill 85 interfere with the employee's constitutional and international human right to belong to the union of her choice, including a new definition of supervisor in Part VI of Bill 85, and provisions that will promote or enable interference in existing certificates including provisions promoting decertification applications, contemplating reorganization in health care, promoting raiding, and eliminating deemed successorship provisions. These provisions will not promote good labour relations, are not consistent with good labour relations policy, and are offensive to freedom of association.

Supervisor bargaining units

New provisions in Bill 85 provide that, unless the union and the employer make an "irrevocable election" that supervisory employees can remain in their current bargaining units or be included in bargaining units in the future, "the board shall not include in a bargaining unit any supervisory employees." (ss.6-11(3) and (4)). The definition of "supervisory employee" is excessively broad and will sweep in many bargaining unit members who would not be considered supervisors for labour relations purposes. It includes any employee "who regularly exercises one or more of the following duties: (i) supervising employees; (ii) independently assigning work to employees and monitoring the quality of work produced by employees; (iii) scheduling hours of work or overtime; (iv) providing comments to be used for work appraisals and merit increases for employees; (v) recommending discipline for employees." (s.6-1(o))

These provisions are without parallel in any labour legislation in any other Canadian jurisdiction. While British Columbia allows for the exclusion of supervisory employees from a bargaining unit, the definition of who qualifies as a supervisor is left to the Board, which has indicated in its jurisprudence that the exemption will be applied sparingly and narrowly, and that there is a presumption that supervisors are appropriately included in larger bargaining units (see s.29 of the *B.C. Labour Relations Code; Cowichan Home Support Society*, BCLRB No. B28/97 (Leave for Reconsideration of BCLRB Nos. B100/95, B179/95 and B217/95), 34 C.L.R.B.R. (2d) 121; and *Yarrows Limited,* BCLRB No. 22/75, [1975] 2 Canadian LRBR 26). In contrast to the British Columbia legislation, Bill 85 removes Board discretion to determine the appropriateness of an inclusive bargaining unit and instead, places that determination in the hands of the employer, who can use the inclusion of supervisors in existing bargaining units as leverage to extract concessions from unions

who may wish to preserve the integrity of their existing bargaining units and collective agreements. This is clearly wrongheaded.

Many of CUPE's bargaining units and collective agreements will be impacted by this change particularly in light of the over-broad definition of supervisor. In collective agreements that have evolved over decades, employers and unions have committed to distribute quasi-supervisory duties, like those listed in the Bill 85 definition of supervisory employee, among bargaining unit members through the negotiation of job descriptions and classification systems. These in turn form part of the foundation of compensation and job evaluation systems. Specific collective agreement terms dealing with the temporary assumption of higher duties could be rendered meaningless if these sections of Bill 85 are implemented. Significant negotiated terms governing protection of bargaining unit work, union recognition, and scope of the bargaining unit will be undermined or eroded if supervisors are removed from existing bargaining units. In light of the Supreme Court's decision in *Health Services, supra*, these effects will have Constitutional significance.

Further, as noted above, the definition of supervisory employee in Bill 85 is excessively broad. The jurisprudence of the ILO is informative in this regard. The ILO has held that it may be consistent with freedom of association to require supervisory employees to belong to different unions than other workers on condition that "the categories of such staff are not defined so broadly as to weaken the organizations of other workers in the enterprise or branch of activity by depriving them of a substantial proportion of their present or potential membership."[8] The ILO has specifically said that "the expression 'supervisors' should be limited to cover only those persons who genuinely represent the interests of employers."[9] Given that a worker will fall into the Bill 85 definition of supervisor even if he or she only

performs one of the five listed categories of duties, the number of employees caught by the definition will be significant, and will significantly exceed the limitations on such exclusions prescribed by international law. Given that the Canadian *Charter of Rights and Freedoms* is presumed to incorporate international legal standards for freedom of association as a minimum standard, it is apparent that Bill 85's terms dealing with supervisory employees must be rethought.

Decertification

A number of new provisions in Bill 85 promote disruptions to unions' representational relationships without consideration of employee choice. These are inconsistent with freedom of association and the employees' right to bargain collectively through the union of their choice.

First, Section 6-17(4) eliminates the open period currently in place for employee-initiated applications for decertification, limiting such applications only to once every twelve months after the first two years following initial certification. This means that upon passage of Bill 85, all current certificates older than two years are going to be vulnerable to decertification applications at any time. This is wholly inconsistent with good labour relations policy, which has confined such applications to a short window during the term of a collective bargaining agreement, to promote labour peace during the term of the agreement, and to prevent such applications during collective bargaining and/or job action, recognising that employees may "stampede" to such decisions in response to the employer's actions at exactly the time the union's resources ought to be focussed on representing members not defending attacks on its representational capacity. [10]

Interference with the workers' choice of bargaining agent

Under the *Trade Union Act* and *Regulations* currently, a decertification may be brought for any reason, provided the applicant demonstrates that at least 45% of the members of the bargaining unit no longer support the union, or that the applicant was prevented from demonstrating such support by an unfair labour practice committed by the union or an employee (ss.5(k), 6(1.1), 10.1). Bill 85 creates three new categories of decertification application: a decertification application alleging the union has ceased to be a union (s.6-14), a decertification application alleging the union or anyone acting on its behalf committed an unfair labour practice prior to the certification (s.6-15), and an application to decertify based on an allegation of abandonment. Employee support is not required for an application under ss. 6-14, 6-15 or 6-16, and only 6-15 (remedial decertification) requires the conduct of a vote among employees. These provisions are inappropriate because they allow a challenge to a union's representation rights, without consideration of evidence of employee choice. Further, these provisions will promote nuisance applications that should have been brought under s.6-17, if in fact workers no longer want the union.

Finally, in Bill 85 employers are specifically given standing in sections 6-14, 6-15 and 6-16 to apply for decertification contrary to current Board jurisprudence,[12] while s. 6-17 says that "an employee within a bargaining unit" may bring an Application to decertify based on loss of support (in contrast to ss. 6-14, 6-15, and 6-16, which say "an employee within the bargaining unit" [emphasis added]). Allowing employers and strangers to the collective bargaining relationship to apply for decertification of a bargaining unit, particularly where employee support evidence is not required, is inconsistent with the purposes of the legislation and with freedom of association.

There is no business case to be made for expanding the time in which decertification applications can be filed, the bases on which they may be brought, or the parties that can bring them, particularly since the existing provisions are adequate and consistent with freedom of association. Stable labour relations cannot exist if unions are continually tied up in nuisance challenges to their representation, and unable to effectively represent their members. These provisions are inconsistent with freedom of association and good labour policy and must be reconsidered.

Promotion of raids and reorganization in health care

Finally, troubling questions are raised by sections of Bill 85 apparently targeted at shuffling bargaining units established pursuant to the recommendations of the Dorsey Commission under the *Health Labour Relations Reorganization Act* (Division 14 of the Part VI of Bill 85), and new provisions intended to facilitate raids on existing bargaining units and certificates (ss. 6-10, 6-11(1) and (2), 6-13, 6-64(1)(g), 6-105).

Division 14 of Part VI of Bill 85 has raised alarm among our health care provider bargaining unit, as much because of what it does not say, as what it does say. References to multi-employer bargaining units appear to contemplate further reorganization of existing bargaining units and/or employers, which is troubling, given that there have been two significant reorganizations after which the parties invested significant resources in renegotiating existing collective bargaining agreements to make them workable. Labour peace in the health sector will not be promoted by further disruption of these now-stable agreements and bargaining relationships.

Interference with the workers' choice of bargaining agent

The new raid provisions are certainly not necessary. Under the *Trade Union Act* currently, union members have ample protections and rights should they wish to pursue certification with a different bargaining agent (i.e. s. 6(2) for varying bargaining agent, ss. 11(2)(a) and (f) protecting workers from union intimidation). Affiliates of the Canadian Labour Congress and the Federation of Labour provide members with access to a sophisticated and balanced process for changing union representatives that union members, through their democratic decision-making structures, have determined are fair and reasonable and acceptable to all. Raiding provisions were not identified, to our knowledge, as something that stakeholders wanted in advance of the project to modernize Saskatchewan labour law, and they were not addressed in the Government's *Consultation Paper on the Renewal of Labour Legislation*. Whose agenda is being served by the inclusion of these provisions in Bill 85?

Problematically, provisions in Bill 85 requiring unions to negotiate or transfer their rights and duties respecting union-administered benefit plans as part of the raiding process are very likely inconsistent with laws governing commercial contracts, privacy, and trusts (ss.6-64(1)(g), 6-105(4)(5)(6)and (7)). There is a serious question as to whether these obligations will be enforceable.

In summary, new provisions of Bill 85 promoting raids are unhelpful and unwanted. More problematically, they will undermine the ability of employees to engage in meaningful collective bargaining, and they will contribute to labour unrest, by fomenting inter-union conflict and diverting resources to unproductive and unnecessary representational contests. This is not consistent with good labour relations policy. Given that these provisions serve no apparent legitimate purpose, they should be scrapped.

Successorship of food, cleaning and security services in public buildings

The elimination of deemed successorship provisions, currently in s. 37.1 of the *Trade Union Act*, is short-sighted. Section 37.1 currently provides for continuity of collective agreements and union representation if there is a change in the service providers of tendered cafeteria/food services, janitorial/cleaning services and security services in buildings owned by the Provincial government, municipalities, hospitals, universities and public institutions – ensuring that quality services are provided with continuity by professional unionized workers. The purpose of s.37.1 is to ensure a level playing field for contractors bidding on these tendered services, while ensuring that the workers providing these para-public services are treated fairly.

The elimination of these provisions declares "open season" on the companies currently providing these services, encouraging low-ball bids from outsiders the next time services are tendered. These employers will be forced to adopt extremely regressive positions in bargaining with unions representing affected workers, if they wish to remain competitive with downward pressure from outside contractors.

If current service providers are beaten out by lowball bids, current workers' longstanding certifications and collective bargaining agreements will very likely be terminated in a manner that does not engage the successorship provisions in Bill 85. Workers will be deprived of union membership and required to reapply for their jobs. Many of these workers currently belong to larger bargaining units, which will be fragmented. They may return to work with different bargaining agents or as non-unionized workers alongside their former union brothers and sisters, which may cause conflict in workplaces.

Interference with the workers' choice of bargaining agent

Regardless of whether current employees remain union members or not, the quality of food, cleaning and security services provided in hospitals, universities and public buildings will be subjected to the same downward pressure as employee wages and benefits.

Interference with union administration and democracy

A number of provisions in Bill 85 fall afoul of the Constitutional and international law requirement that unions be independent of employer and government domination. *The United Nations' Freedom of Association and Protection of the Right to Organise Convention, 1948* (No. 87), ratified by Canada on March 23, 1972, specifically commits in Article 3 that:

> ***Workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes. The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.***

Reflecting these principles, every labour relations statute in every jurisdiction in Canada makes it an unfair labour practice for an employer to interfere with the administration of a trade union.[13] The Supreme Court of Canada has confirmed that this protection extends to freedom from state interference as well, stating that "the state must not substantially interfere with the ability of a union to exert meaningful influence over working conditions through a process of collective bargaining conducted in accordance with the duty to bargain in good faith:" *Health Services and Support - Facilities Subsector Bargaining Assn. v. British Columbia*, 2007 SCC 27, per the Majority at para. 90.

Direct remittance of union dues

A new provision in Bill 85 that apparently requires that union dues be remitted to a union local instead of the national or international union (s.6-44(2)), regardless of what the bargaining unit members have chosen, is offensive to the principle that unions enjoy financial independence from governments and the state. The ILO has said that:

> ***Provisions which restrict the freedom of trade unions to administer and utilize their funds as they wish for normal and lawful trade union purposes are incompatible with principles of freedom of association.*** [14]

No reason has been offered as to why the Government considers it necessary or appropriate to interfere with unions' preference of the office to which dues are remitted. Many union locals and councils in this Province have chosen to ask that dues are to a national or international union parent, which in turn provides the local with support and services. Given the substantial intrusion that this provision makes on the freedom of unions to administer funds in accordance with the decisions of their members, it is probably unconstitutional and ought to be reconsidered.

Audited financial statements

Similarly, a new provision requiring the union local to circulate audited financial statements and other "prescribed information" to members (6-62(1)) is both unnecessary and intrusive and may also fall afoul of the principle of freedom of association. We are unaware of any union in this jurisdiction that does not already provide financial information to members, in accordance with the union constitution. Many unions already

choose to produce audited financial statements, sometimes at significant cost. As noted above, unions are entitled to complete autonomy from employers and the state in determining how dues are collected – and spent.

In *Lavigne v. Ontario Public Service Employees Union*, [1991] 2 S.C.R. 21, upholding dues check-off provisions in Ontario labour legislation, Justice Gerald La Forest explained that unions are left to make their own rules about how to spend their revenues, because:

> ***...[t]he integrity and status of unions as democracies would be jeopardized if the government's policy was, in effect, that unions can spend their funds as they choose according to majority vote provided the majority chooses to make expenditures the government thinks are in the interest of the union's membership.***

La Forest concluded that "[i]t is, therefore, for the union itself to decide, by majority vote, which causes or organizations it will support in the interests of favourably influencing the political, social and economic environment in which particular instances of collective bargaining and labour-management dispute resolution will take place." [15]

International law says that audits of union financial affairs are justified only in exceptional circumstances, and only where the body charged with supervision of such processes enjoys independence from the administrative authorities, which is not true of the Labour Relations Board in this province. [16]

Over 130 CUPE locals make up CUPE's union membership across Saskatchewan. Some CUPE locals have less than seven members. Paying for an accounting firm to audit their statements would actually force small union locals to go into debt. The cost is also unnecessary.

Interference with union administration and democracy

An elected volunteer member is already the Treasurer and provides reports to members at meetings. Union locals also have elected, volunteer Trustees to independently review the statements of the Treasurer for accuracy and to ensure dues are spent according to motions passed by majority vote at regular meetings.

LRB supervision of union constitutions and elections

Finally, terms expanding the supervisory jurisdiction over matters arising under union Constitutions (s. 6-59(1)) are problematic. Currently, matters of internal union governance and enforcement of union constitutions fall within the jurisdiction of the Superior Courts, to ensure the independence of trade unions from state domination. Again, this is consistent with international law, which requires that internal union disputes be resolved in one of three ways. "When internal disputes arise in a trade union organization they should be resolved by the persons concerned (for example, by a vote), by appointing an independent mediator with the agreement of the parties concerned, or by intervention of the judicial authorities."[17] Particularly where union elections are concerned, the ILO has held that" in cases where the results of trade union elections are challenged, such questions should be referred to the judicial authorities in order to guarantee an impartial, objective and expeditious procedure."[18] Given that the Labour Relations Board is not seen, or required, to be independent of government (*Saskatchewan Federation of Labour v. Saskatchewan Government and General Employee's Union*, 2010 SKQB 390) it is not consistent with freedom of association to give the LRB supervisory jurisdiction over union constitutions and elections.

Interference with union administration and democracy

So-called "union accountability rules" are nothing but a disguised attack on union autonomy, and they must be treated as such. There is no business case to be made for these discriminatory provisions, which leads one to question why such provisions are being considered by this Legislative Assembly. These provisions are inconsistent with freedom of association and international law.

Undermining the collective bargaining process

The core aspect of union activity that freedom of association protects is access to a meaningful collective bargaining process.[19] The defining characteristic of free collective bargaining in the context of freedom of association is voluntariness. The ILO has said, in this regard:

> ***The voluntary negotiation of collective agreements, and therefore the autonomy of the bargaining partners, is a fundamental aspect of the principles of freedom of association.***
>
> ***Collective bargaining, if it is to be effective, must assume a voluntary character and not entail recourse to measures of compulsion which would alter the voluntary nature of such bargaining.*** [20]

For decades the *Trade Union Act* has provided unions and employers in Saskatchewan with a workable structure in which to conduct meaningful collective bargaining. A number of provisions in Bill 85 will compromise the voluntariness, the meaningfulness, and the effectiveness of this system, including provisions requiring the delivery of notice of impasse triggering a cooling off period and mandatory conciliation, provisions allowing employers and others to force a vote on an employer's "last offer" without regard for the collective bargaining process, and provisions limiting the ability of the parties to engage in job action.

Last offer votes

A new provision in Bill 85 will allow the employer, a union, or a minority faction of workers to force a vote on an employer's "last offer", at any time after notice to bargain has been delivered (s.6-36). This badly drafted section will, if passed as written, allow for the unilateral subversion of the collective bargaining process by these parties, should they so desire.

Unlike similar provisions in other Canadian jurisdictions, there are no checks and balances on the ability of these individuals to force the vote. For example, in Manitoba and in the federal jurisdiction, the Minister is required to consider whether the vote would be in the public interest, and may decline to order the vote.[21] The Board has no discretion, once an application is received, to decline to order the vote (s.6-36(3) provides that "on receipt of an application pursuant to this section, the board shall direct that a vote be taken" [emphasis added]).

Parallel provisions in other Canadian jurisdictions tie the "final offer vote" to an advanced stage in the collective bargaining process. For example, in Alberta, a vote may be ordered by the Board after the parties have met and attempted to bargain a collective agreement and proposals are exchanged, but only if the Board is satisfied that "the offer, if accepted, could form a collective agreement."[22] In other jurisdictions, the final offer vote is contemplated before or during job action.[23]

It is recognised that so-called final offer votes are a significant interference with the union's representation of members. The 1995 review of Part I of the *Canada Labour Code*, chaired by Andrew Sims, rejected final offer votes for this and other reasons, finding that final offer votes undermine the democratic administration of the union, are destructive of collective bargaining relationships, increase the risk of work stoppages, and are not justified by concerns the union is not communicating with its members.[24]

Undermining the collective bargaining process

The unrestricted nature of Bill 85's last offer vote provisions is inconsistent with the rule that it is an unfair labour practice to bargain directly with a union's members and not the negotiating committee. Outside the narrow circumstances in which a final offer vote has been approved by the Labour Relations Board in the past (i.e. as a last resort mechanism to bring a longstanding labour dispute to an end), last offer votes are offensive to the statutory requirement that employers recognise and bargain with the duly selected representatives of a union's members.

In sum, this badly drafted provision is wholly inconsistent with good labour relations policy and must be redrafted by the Legislative Assembly if Bill 85 is to be passed. Its use will sabotage the collective bargaining process.

Notice of impasse, mandatory conciliation, and the cooling-off period

Saskatchewan Courts have affirmed that workers have a Constitutional and international human right to withdraw their labour and strike as part of a meaningful collective bargaining process. As Justice Dennis Ball of the Saskatchewan Court of Queen's Bench recently commented in *Saskatchewan v. Saskatchewan Federation of Labour*, 2012 SKQB 62 (at para. 115):

> ***... the right to strike is a fundamental freedom protected by s. 2(d) of the Charter along with the interdependent rights to organize and to bargain collectively. That conclusion is grounded in Canada's labour history, recent Supreme Court of Canada***

jurisprudence and labour relations realities. It is also supported by international instruments which Canada has undertaken to uphold. Governments may enact laws that restrict or prohibit essential service workers from striking, but those prohibitions must be justified under s. 1 of the Charter.

A new section in Bill 85 (s.6-34) will require the parties to notify the Minister when they reach "impasse" in bargaining (a state not defined in the legislation), to participate in mandatory conciliation, and to refrain from instituting any job action for at least 14 days after the conclusion of the conciliation process. These provisions will make it difficult or impossible for workers or employers to engage in effective job action, which will drag out bargaining and make it more difficult to conclude collective agreements, promoting industrial instability and undermining labour peace.

Again, it is difficult to understand why these provisions are included in Bill 85. Mandatory conciliation has proven ineffective in other jurisdictions. In Ontario, where similar provisions exist in the *Labour Relations Act*, parties commonly participate only to clear the hurdle to job action.[25] A pre-job action cooling off period was rejected by all stakeholders consulted in a 2008 review of provisions in the *Canada Labour Code* dealing with work stoppages. [26] In that review, it was acknowledged that imposing a cooling off period during a job action would be met with Constitutional challenge, as inconsistent with the right to strike.

It is CUPE's view that these provisions will unnecessarily prolong bargaining and unjustifiably inhibit parties from engaging in job action.

Essential services

Part VII of Bill 85 says that the *Public Service Essential Services Act* ("PSESA") is continued. Although the Consultation Paper requested feedback from stakeholders on essential services, and although we understand that additional consultations were conducted with public sector unions with respect to an amended law, the Government chose to pursue an appeal of the Court of Queen's Bench decision striking down the PSESA as inconsistent with s.2(d) of the *Charter*. CUPE has already commented at length on the requirements of an essential services regime that will be respectful of our members' fundamental rights while preserving safety and continuity of services in our communities (see *Equality Has Many Faces*, at pages 159 to 180). Whatever the outcome of the appeal, it remains CUPE's position that the PSESA undermines collective bargaining by depriving our members of an ability to stage meaningful strike action. The continuation of this flawed and unconstitutional law in Bill 85 is disappointing.

Erosion of minimum employment standards

Modern employment standards legislation is intended to supply basic protections of minimum standards required to reflect working conditions that protect employees from exploitation, recognising the imbalance of power between workers and employers. Sadly, even today these laws continue to be necessary to prevent employers, large and small, from taking advantage of vulnerable workers. Deficits in the effectiveness and enforcement of these laws are well-documented and indicate that reform is needed to improve protections. Many provisions of Bill 85 do the opposite.

Hours of work and overtime

Bill 85 will spell the end of the eight hour day, the end of the 40 hour week, and the end of overtime as workers know it. These rollbacks to foundational worker protections ought to be rejected by employers and the Members of the Legislative Assembly alike.

Under the new legislation workers may be forced to work a ten-hour day as a matter of course, without requirement for previous authorization. The new overtime provisions in Bill 85 provide, in s. 2-18, that the employer is obligated to pay overtime to employees after 8 hours of work per day only if they work 5 days per week. In other words, for part-time workers who work 40 hours a week or less, the employer can require them to work 10 hours per day without overtime up to a maximum of 4 days per week. There is, however, no obligation to pay overtime just because an employee is working 10 hours per day rather than 8 hours per day. Under the current *Act*, it was possible for employers to obtain a written authorization from the Director of Labour Standards to schedule full-time employees to work4 ten-hour shifts per week rather than 5 eight-hour shifts per week. The requirement for written authorization is no longer included in this section in Bill 85.

Similarly, the standard 40-hour week is not protected in Bill 85. Section 2-12 of Bill 85 significantly rewrites existing provisions in Section 12 of the *Labour Standards Act* granting employees a right to refuse overtime work in excess of 44 hours per week. While the existing legislation provides a stringent definition of "emergency circumstances" in which the employer may require an employee to work overtime in excess of 44 hours per week, Bill 85 permits an employer to require an employee to work in excess of 44 hours per week "if unexpected, unusual or emergency circumstances arise," (2-12(3)) and those terms are not defined. In addition, a provision placing the onus on the

employer to prove that an emergency existed or that the employee was not discriminated against unlawfully is not reproduced in this section; instead, a general employer onus provision is included in a completely different section of Bill 85 dealing with prosecution alleging discriminatory action (2-8(1)), which is confusing and weakens the authority of the amended provisions. Taken together, these provisions erode workers' right to refuse overtime in excess of 44 hours per week.

Bill 85 also appears to contemplate doing away with the requirement to pay time-and-half for overtime. New section 2-18(3) allows for employers and employees to agree, "in the prescribed circumstances and subject to the prescribed conditions", to bank overtime hours. There is no provision that overtime hours so banked would be redeemable as straight time or at overtime rates. Also, s. 2-1(n) defines overtime as either paid at a rate of 1.5 times an employee's hourly wage or paid at a prescribed rate for a prescribed category of employees. This appears to contemplate that for employees to be determined by regulation overtime may be less than the 1.5 times an employee's hourly wage that has been the standard statutory minimum.

In a province where workers already struggle for balance while trying to afford a skyrocketing cost of living, provisions increasing hours of work and narrowing overtime entitlements will only add to the pressure. These changes are the opposite of what working people in this province need.

The elimination of weekends and common observance of holidays

Section 13 of the current legislation requires an employer to grant employees two consecutive days off each week and that "one of those day is to be a Sunday wherever possible" (s. 13(2), *Labour Standards Act*). Bill 85 only requires an employer to "grant one day off every week to an employee who usually works or is at the disposal of the employer for 20 hours or more in week," (s. 2-13(3)) and does not include the Sunday provision. The two-day consecutive break only applies to "prescribed places with more than 10 employees, or for prescribed categories of employees." (s. 2-14(5)). These changes will eliminate the two-day weekend for the vast majority of workers in the province.

Under s. 2-31 of Bill 85, an employer may substitute another day for the observance of a public holiday in prescribed conditions or with the approval of the Director of Employment Standards, or in unionized workplaces with the agreement of the bargaining agent. In the current act this is possible only with the Director's order which is made contingent on the agreement of the employer and the majority of employees. This will make it easier for employers to designate the observance of public holidays on alternative days without the agreement of non-unionized employees.

Requiring more people to work on weekends and statutory holidays will hurt families and communities in this province. Saskatchewan workers, and especially working parents, are already required to work extraordinarily long hours, leaving little or no time for community involvement. Weekends and statutory holidays are often the only times that families have to spend together. If workers choose to work on these days, they should be appropriately compensated for the inconvenience and sacrifice of a commonly-observed day of rest.

Endangerment of rest periods and meal breaks

Under s. 2-13 of the new legislation, employers will be required to provide employees with "a period of eight consecutive hours of rest in any day" except in "emergency" circumstances. This appears to indicate that there are circumstances in which an employee could be required to work in excess of sixteen hours per calendar day, or could be required to work two eight or ten hour shifts in a 24-hour period. It is difficult to understand in what circumstances this would be considered appropriate or desireable.

Section 2-14 provides that employees are entitled to a half hour unpaid meal break in any five hour shift unless "unexpected, unusual or emergency circumstances" arise. There is no definition of "emergency" in the Act, nor is there any explanation of what "unexpected, unusual or emergency circumstances" are. Given the permissive language that exists in the current legislation, which allows employers to disallow meal breaks if it is unreasonable for a worker to take a break, it was totally unnecessary to expand the circumstances in which meal breaks may be withheld.

Rest breaks are necessary to ensure the basic dignity of workers. Given that workers will be required to be at work for longer hours under Bill 85, rest breaks will have greater significance for workers, who need time during the day to take care of personal affairs. More fundamentally, rest breaks are necessary to protect employee health. The provisions in Bill 85 that loosen rest break requirements are wholly inconsistent with good workplace practices and must be reconsidered.

Change in schedule

Bill 85 requires employers to provide employees with their schedules a week in advance, and to provide them with a week's notice of any change in the employee's schedule, unless "unexpected, unusual or emergency circumstances" arise. (Section 2-49(5)). The current *Act* provides in Section 13.1(6) that the employer is exempted from the obligation to provide a week's notice of change in schedule only "where any sudden or unusual occurrence or condition arises that could not, by the exercise of reasonable judgment have been foreseen by the employer." The amendment is clearly intended to allow employers to change schedules without providing a week's notice.

The current provisions governing changes in schedule permit the employer some flexibility while protecting vulnerable workers from unexpected income loss - one week at a time. It is very disappointing that the drafters of this legislation have chosen to water down this provision, which provides the most vulnerable workers with meagre insulation against short-term income loss.

Accommodating pregnant and disabled employees

Like s. 44.3 of the *Labour Standards Act*, Section 2-41 of Bill 85 provides that an employer is required to modify an employee's duties or reassign the employee to other duties if the employee "becomes disabled and the disability would unreasonably interfere with the performance of the employee's duties" -- but only "if it is reasonably possible to do so." Regrettably, Bill 85

does not include the provision in the current legislation which places the onus on the employer to prove that it is not reasonably practicable to modify the employee's duties or reassign the employee to another job. This falls short of the duty to accommodate a disabled person imposed by human rights law, which requires an employer to accommodate a disabled person if it is possible to do so without incurring undue hardship.

Similarly, section 2-49(4) of Bill 85 requires an employer to reassign a pregnant employee or modify her duties if "the employee's duties or pregnancy would be unreasonably interfered with", and "it is reasonably practical to do so." While there was no corresponding section in the *Labour Standards Act*, this provision falls significantly short of what the duty to accommodate requires of employers under human rights law. Section 2-49(5) continues an employer right to force a pregnant employee to commence maternity leave up to 12 weeks before the estimated birth if the pregnancy "would unreasonably interfere" with her duties and "no opportunity exists to modify the employee's duties or to reassign the employee", but a provision in the current legislation placing the onus of proof on the employer has been dropped from Bill 85. Again, this is inconsistent with the duties placed on employers by human rights legislation in this jurisdiction and in every jurisdiction across Canada.

Given the clear requirements of the duty to accommodate, which are consistent across Canadian jurisidictions and have been settled since at least 1999, the year the Supreme Court of Canada issued its decision in *British Columbia (Public Service Employee Relations Commission) v. British Columbia Government Service Employees' Union*, [1999] 3 S.C.R. 3 ("Meiorin").
Bill 85's provisions purporting to allow employers to escape their duty to accommodate disabled or pregnant employees' are disappointing.

Vacation and other emergency leaves

Despite indications that Bill 85 would be more "flexible" with respect to the employee's ability to access vacation days for periods of less than one week (as required by the current legislation), s. 2-25(1)(b)(ii)(A) provides that vacation must be taken in periods not less than one week in length. Given the lack of provision in Bill 85 for paid sick leave or personal emergency leave, the continuation of this requirement seems punitive towards employees, who often need to take single vacation days to accommodate personal circumstances and appointments, or to cover a short term illness without loss of pay.

In addition, a new provision (s. 2-25(2)) allows employers, upon provision of four weeks written notice, to force employees to take their vacation "at a time when the employer has closed all or part of the workplace" provided those vacation periods are not less than one week in length. This provision seems intended to allow employers to avoid issuing notice of layoff for planned shutdowns, or to negotiate with trade unions for the right to schedule vacations during plant shut down.

Given Bill 85's regressive amendments to hours of work and rest provisions, the continuation of restrictive limits on the employee's ability to take vacation days is particularly disappointing. Workers in this province are already pushed to the brink when it comes to balancing the demands of work, family, and life. Continuing to ban workers from taking single vacation days seems unnecessarily punitive. And employers do not need a statutory right to force employees to take vacation during plant shutdowns - this is something that is well within their bargaining agency to negotiate either with individual workers or a bargaining agent as required. Both of these provisions disclose a bias in Bill 85 favouring employers, which is particularly inappropriate in the context of minimum employment standards designed to protect the most vulnerable workers.

Conclusion

Given the inadequate time to respond to Bill, and the incomplete information available concerning the intent of changes and the extensive reliance on regulations, it has not been possible to complete a comprehensive review of Bill 85 and its impacts. The foregoing represents CUPE's initial concerns with specific sections of Bill 85. We reserve the right to make additional and further submissions as more information becomes available. And we offer this analysis without prejudice to legal action.

In these pages we have identified numerous, significant flaws in Bill 85 that indicate provisions are unconstitutional, inconsistent with international human rights and labour law, inconsistent with good labour and employment policy, unworkable, and unfair. Overall, the flaws in the legislation reveal a very troubling intention to amplify the existing imbalance of power favouring employers over workers, and to undercut their representation by trade unions.

CUPE calls upon the Members of the Legislative Assembly of Saskatchewan to halt the progress of Bill 85, and to engage in a *bona fide* consultation process with workers and their representatives aimed at developing employment and labour legislation, badly needed in this province, that will effectively protect employees and provide them with safe, decent working conditions and the ability to effectively exercise their fundamental rights to organize and to engage in collective bargaining.

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1 Online at the Government of Saskatchewan's Modernizing Employment and Labour Relations Legislation website, http://www.lrws.gov.sk.ca/canadian-association-labour-lawyers

2 Saskatchewan Federation of Labour. "News Release: Labour Reps on Minister's Advisory Committee Urge Reconsideration of Bill 85 (Saskatchewan Employment Act)," February 20, 2013; Online at http://www.sfl.sk.ca/uploads/File/News%20Release%20-%20Advisory%20Committee%20Calls%20for%20Reconsideration%20of%20Bill%2085.pdf, last visited February 25, 2013; see also Jennifer Graham, Canadian Press. "Saskatchewan labour leaders want province to slow down on labour law changes" February 20, 2013; online at http://www.huffingtonpost.ca/2013/02/20/saskatchewan-labour-leade_n_2725798.html, last visited February 25, 2013.

3 Adams, G., *Canadian Labour Law, 2nd ed.* (Aurora: Canada Law Book, looseleaf) at s.10.1540.

4 Health Services and Support - Facilities Subsector Bargaining Assn. v. British Columbia, 2007 SCC 27 per McLachlin C.J. and Lebel J. for the Majority at para. 85.

5 Adams, supra, at s. 2.3820.

6 As required by the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), ratified by Canada March 23, 1972

7 ILO. Freedom of Association: Digest of decisions and principles of the Freedom of Association Committee. Geneva, International Labour Office, Fifth (revised) edition, 2006, at para. 251.

8 ILO. Freedom of Association: Digest of decisions and principles of the Freedom of Association Committee. Geneva, International Labour Office, Fifth (revised) edition, 2006, at para. 247.

9 Ibid. At para. 248.

10 See discussion in Adams, G., Canadian Labour Law, 2nd ed. (Aurora: Canada Law Book, looseleaf) at s. 9.110.

11 Not to be confused with an application for rescission of a certification order obtained by fraud, currently in s. 16 of the *Trade Union Act*, and continued in s.6-110 of Bill 85.

12 See, for example, VicWest Steel Inc. v. Sheet Metal Workers International Association, Local 296, [1988] Feb. Sask. Labour Rep. 55, LRB File No. 072-87, discussed in United Brotherhood of Carpenters and Joiners of America, Local 1985 v. Graham Construction and Engineering Ltd., 2008 SKCA 67

13 Adams, G., *Canadian Labour Law, 2nd ed.* (Aurora: Canada Law Book, looseleaf) at s. 2.4010.

14 ILO. Freedom of Association: Digest of decisions and principles of the Freedom of Association Committee. Geneva, International Labour Office, Fifth (revised) edition, 2006, at para. 469.

15 Lavigne v. Ontario Public Service Employees Union, [1991] 2 SCR 211

16 ILO. Freedom of Association: Digest of decisions and principles of the Freedom of Association Committee. Geneva, International Labour Office, Fifth (revised) edition, 2006, at para. 489.

17 Ibid., at para. 1122.

18 Ibid., at para. 422.

19 Ontario (Attorney General) v. Fraser, 2011 SCC 20, [2011] 2 SCR 3

20 ILO. Freedom of Association: Digest of decisions and principles of the Freedom of Association Committee. Geneva, International Labour Office, Fifth (revised) edition, 2006, at paras. 925 and 926, citations omitted.

21 Adams, G., *Canadian Labour Law, 2nd ed.* (Aurora: Canada Law Book, looseleaf) at s. 11.940.

22 Alberta Labour Relations Code, s.69.

23 i.e. British Columbia, New Brunswick, Ontario. See discussion in Adams, G., *Canadian Labour Law, 2nd ed.* (Aurora: Canada Law Book, looseleaf) at s. 11.940 to 11.980.

24 Sims, Andrew C.L., Seeking a Balance (Hull: Minister of Public Works and Government Services Canada, 1995).

25 Adams, G., *Canadian Labour Law, 2nd ed.* (Aurora: Canada Law Book, looseleaf) at s. 11.930.

26 Annis, Peter. *Work Stoppages in The Federal Private Sector: Innovative Solutions.* Human Resources and Skills Development Canada, 2008; online at http://www.hrsdc.gc.ca/eng/labour/labour_relations/wsfps/docs/report.pdf