Joining the Race to the Bottom:

An Assessment of Bill 6, Amendments to the Trade Union Act, 2008.

By Jim Warren

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About the Author

Jim Warren is a Regina based researcher and writer, with a special interest in labour issues. His 1985 Master's thesis examined the political experience of organized labour in Saskatchewan during the first three decades of the 20th century. Jim co-authored, *On the Side of the People: A History of Labour in Saskatchewan*, winner of the 2006 Saskatchewan Book Awards for Scholarly Writing and Publishing in Education. Jim is a Research Fellow with the Canadian Plains Research Centre and is currently pursuing studies toward a Ph.D. that deals with public policy related to water use and delivery in Saskatchewan.

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Introduction

The recently elected Saskatchewan Party government introduced fewer than ten bills during its December 2007 inaugural legislative session. Only three of those bills have garnered lasting public attention. One will create the Enterprise Saskatchewan economic advisory agency. The other two involve efforts to reduce the alleged power of unions. It was an auspicious beginning from the perspective of business and legitimate grounds for alarm on the part of the labour movement.

The most controversial of the two labour bills, The Public Service Essential Services Act (Bill 5), has serious implications for collective bargaining and the right to strike. The other bill, An Act to Amend the Trade Union Act (Bill 6), has received less attention but, if passed as presented, will reduce the ability of Saskatchewan workers to form unions and get their employers to the bargaining table. This paper will assess the purpose and potential consequences of Bill 6.

The assessment of Bill 6 demonstrates that its stated purpose relies on a number of questionable assumptions. One of these assumptions involves the government's claim that changes to the Trade Union Act are required because the current legislation is lacking in balance — that the current balance is inappropriately tipped in favour of labour and against the interests of business and investors. Ironically, Saskatchewan's labour laws were created originally in response to widely perceived social imbalance. Throughout Canada legislation supporting trade unions has always rested on the proposition that there is an exceptionally profound imbalance between the power of individual employees and their employers. Trade unionists maintain that the basics have not fundamentally changed; working people remain vulnerable to unfair and exploitive treatment by employers. The incredible size, wealth, and power of today's corporations make the position of the individual worker as precarious as ever. The existing legislation is under attack precisely because it has been relatively successful in achieving the public purpose it was created for. That purpose remains even more relevant today. Without the ability to create unions and bargain collectively, working people remain vulnerable to unfair and exploitive treatment by employers.

The paper argues that the "rebalancing" of labour legislation promoted by the new government actually involves a rejection of that original purpose in favour of those employers who would prefer operating without unions. Bills 5 and 6 are a backward reaching exercise, an attempt to rewrite the conclusion of the

historical debate about the value of unions and the need to civilize industrial relations.

Bill 6 is also promoted as a way to make the province more competitive with other jurisdictions. It has been suggested in certain quarters that Saskatchewan is suffering economic hardship because it recognizes certain trade union rights. This flies in the face of current economic reality. Premier Brad Wall has been proud to announce the province is booming and now able to move beyond "have not" status. But even if we assume, for the sake of argument, that the province's labour legislation is having a critical impact on business success and investment, collective bargaining rights remain protected under the *Charter of Rights and Freedoms*. This paper argues that the *Charter* rights of employees properly trump benefits that might accrue to business operators and investors if workers' rights are diminished.

The concluding section of the paper provides a section by section analysis of the amendments. It supports the contention that Bill 6 significantly diminishes the ability of employees to have their bargaining units certified. The implications of the Bill 6 amendments are considered in relation to the purposes claimed by the government. The analysis recognizes that unintended consequences can be reasonably imagined if the bill is enacted in its present form. Alternative courses of action that may reduce the negative impacts of the legislation will be suggested.

The assessment concludes that none of the individual amendments proposed in Bill 6, when viewed in isolation from the others, would prove fatal to trade union organizing efforts in Saskatchewan. For example, the elimination of bargaining unit certifications based on the traditional system of card signups in favour of supervised votes, would not likely by itself derail a significant proportion of future organizing drives. However, when combined with other changes, such as the relaxation of restrictions on employer dissemination of anti-union propaganda during certification drives, the organizing environment becomes increasingly toxic for unions. Labour relations are governed and impacted by a whole basketful of legislation, regulations and agencies. The impact of Bill 6, when combined with Bill 5 in certain circumstances, will indeed be greater than the sum of the parts. If the government further widens the front of its legislative assault, the labour movement and working people in general could be in for serious trouble. It remains to be seen whether the government intends, for example, to staff the Labour Relations Board with members who are unsympathetic to labour, whether it intends to gut the Labour Standards Act, or if it plans to conscientiously administer and enforce the legislation that remains.

Given the priority the government has assigned to reconfiguring the labour relations environment, the labour movement has reason to worry about what might happen over the remaining years of its mandate.

The origins of Bill 6

The government has stated that the purpose of Bill 6 is "to provide balance and to promote productive, healthy work environments for employers and employees while ensuring that Saskatchewan is competitive with other Canadian jurisdictions".[1]

Implicit in the Government's statement of purpose for Bill 6 is the view that following

several decades where the CCF/NDP were most frequently the party in government, labour legislation has been weighted in favour of employees and their unions at the expense of the interests of employers. Indeed, comments by members of the Saskatchewan Party caucus and prominent business community spokespersons have reflected this opinion for years. A recent example was provided by Marilyn Braun-Pollon, Saskatchewan Director for the Canadian Federation of Independent Business (CFIB). In response to the government announcement introducing the bills, Braun-Pollon called for their prompt passage, "The sooner they can be implemented the better because it will send a strong signal not only to local business owners, but investors outside the province."[2] The signal Braun-Pollon eagerly anticipates is a legislative program calculated to reduce employee power for the benefit of business and potential investors.

Braun-Pollon's comments echoed those made a few days earlier by Steve McLellan, CEO of the Saskatchewan Chamber of Commerce and Michael Fougere, Executive Director of the Saskatchewan Construction Association. McLellan claimed the changes will have "an immediate and dramatic impact in terms of attracting businesses to the province". Fougere stated the changes are long overdue and all about "democracy and fairness."[3]

Contrary to Fougere's optimism about increased democracy and fairness, The clause by clause review section of this paper demonstrates that there is actually a democratic deficit built into Bill 6 as it is currently constituted.

During the 2007 provincial election campaign, the Saskatchewan Party had little to say regarding any specific changes it had in mind for labour legislation. Saskatchewan Party representatives had in fact specified that essential services legislation was not in the cards.[4] But there was mention of the need to rebalance labour laws included in Saskatchewan Party election literature. The quest for a rebalancing reflected a long-standing position of the party and business organizations such as the Saskatchewan Chamber of Commerce and the CFIB. Strangely, Rob Norris the newly appointed minister for the reconfigured "Ministry" of Advanced Education, Employment and Labour claimed he knew nothing about the contents of Bills 5 and 6 at the time of his swearing-in. He did indicate that his party had been working on the legislation for over a year.[5] Clearly the legislation was drafted without input from the labour movement. It wasn't until January 15, 2007 that the Minister sent letters to union officials inviting them to meet and discuss the bills.[6]

While labour was not naively expecting an especially cozy relationship with the new conservative government, union officials could argue they had been blindsided by the prompt introduction of legislation they were told not to expect. Saskatchewan Party statements prior to the election now seem rather insincere. Labour was also out of sorts regarding the creation of the new Ministry. Under CCF, Liberal and NDP governments labour had its own specific portfolio — the Department of Labour. In 1987, when the Devine government lumped labour into the new department of Human Resources, Labour and Employment, the union movement objected. They argued the reconfigured portfolio would diminish the attention given to labour issues and jeopardize the department's capacity to administer and enforce labour legislation.

Labour has expressed similar concerns today. It remains to be seen whether the government's assertion that broadening the scope of the department to include related policy areas constitutes an improvement.[7]

Amending labour legislation and issues of balance

In a general sense the creation of Canada's current regime of labour legislation involved a social balancing act. Labour laws affecting unions generally conform to widely held views regarding the importance of pluralism in western democracies. Advocates of the pluralist model hold that democratic society is made up of important component groups that sometimes have conflicting interests. An important role of pluralist-democratic governments is to act as a referee, to promote balance and fairness between these competing interests.[8] Historically, the purpose of much of the trade union legislation enacted in Saskatchewan and the rest of Canada has been an attempt to address the power imbalance between individual employees and their employers. This was generally accepted as consistent with the pluralist-democratic worldview. Unions have been supported and encouraged by legislation since they are viewed as an effective countervailing force in an otherwise excessively unequal contest between employers and employees. And as labour relations specialists such as Roy Adams have described, unions were also viewed as a form of grass roots democracy that brought elements of dignity and fairness to the economic sphere.[9] This original purpose conflicts with the amendments currently proposed for the Saskatchewan Trade Union Act. Canada's labour laws were not originally created for the specific purposes of improving the competitive position of businesses or attracting investment.

Prior to February 1944, Canadian employers had the legal ability to combat and thwart the efforts of their employees to organize unions and could refuse to negotiate with bona fide employee organizations. Under new labour laws that emerged during and after the Second World War, employer power to resist unions was reduced and the ability of employees to form unions and get their employers to the bargaining table was increased. Again, the underlying assumption in support of the new laws was that an individual employee lacks the bargaining power of employers, and it is often only by associating with other employees in a union that workers can obtain a measure of fairness and success in negotiations over wages and working conditions.

The centrepiece of Canada's wartime labour law was Privy Council Order 1003 (P.C. 1003). Under P.C. 1003 employers were, for the first time in Canada, legally required to recognize and bargain with the unions democratically chosen by their employees. The legislation assisted in ensuring labour peace and recognized the important contribution of workers to the war effort.

Following the end of the Second World War, emergency wartime measures such as P.C. 1003 were wound down and most labour law was returned to the purview of the provinces whose constitutional jurisdiction it was. Saskatchewan's newly elected CCF government was among the first to promulgate its own post-war labour relations code. Within six months of its 1944 election victory the CCF enacted the Trade Union Act. Saskatchewan's

was the first legislation of its kind in North America to give civil servants the right to form unions and bargain collectively, including the right to strike.

The preamble to the 1944 Act is extant in today's version, "An Act respecting Trade Unions and the Right of Employees to organize in trade unions of their own choosing for the Purpose of Bargaining Collectively with their Employers." A reasonable argument can be made that the amendments proposed in Bill 6 are inconsistent with objectives identified in the preamble.

The CCF government's first Speech from the Throne provided the rationale for its 1944 labour legislation.

> To enhance the security of other sections of the province's working population my government will bring in legislation designed to afford them greater protection against exploitation. A Collective Bargaining bill will be introduced, designed to grant greater freedom of association among workers. It will grant them the right to bargain collectively with their employers; and it will create machinery whereby enforcement of agreements will be assured … These are but the first of a series of bills to be introduced by the government dedicated to giving Saskatchewan the most advanced labour legislation in North America.[10]

Ironically, the CCF government's pledge to have the best labour legislation on the continent would become something of a public relations albatross for Saskatchewan unionists in the decades to come. Regardless of whether the province's labour legislation was working, or ever had worked, as originally advertised in 1944, successive governments have used memory of the claim as ammunition for ignoring certain legislative changes sought by labour, or to take away previous gains. This has occurred despite the fact that in most important respects other Canadian jurisdictions have caught up with, and in some instances surpassed, standards set by the CCF's 1944 legislation.[10*]

Industrial conflict and labour legislation: some historical lessons

Collective bargaining had of course been going on in Canada, and indeed in Saskatchewan, for decades prior to the enactment of P.C. 1003 and subsequent provincial trade union legislation. For example, railway running trades workers on the prairies had collective agreements with the CPR in the late 1880s. Unions for skilled building trades workers in Saskatchewan's larger urban centres had achieved employer recognition and were negotiating contracts prior to the First World War.

However, despite examples of union success, there were frequent failures. Attempting to get employers to the bargaining table could be an acrimonious and disappointing process. Employers frequently engaged in efforts to avoid collective bargaining and ensure that their workplaces remained non-union. Canadian labour history is rife with examples of union-busting campaigns to resist collective bargaining. The practices used in such campaigns were eventually recognized as illegal unfair labour practices in labour legislation across Canada. A sampling of these banned practices includes:

- spying on workers or interrogating them to discover who supports the union (professional detective agencies are sometimes employed);
- the firing of union organizers and sympathizers and threats of firings (this could extend to firing employees who failed to "rat" on union supporters);
- discriminatory layoffs, blacklisting, demotions, and the withholding of promotions and raises from union supporters;
- lockouts combined with "yellow dog" contracts that require employees to renounce union membership;
- the hiring of replacement workers ("scabs") and professional strikebreakers "goon squads" (this practice is prohibited in B.C. and Manitoba but not in Alberta or Saskatchewan);
- denying union organizers admission to the workplace and banning the discussion of union issues in the workplace;
- the promotion and creation of tame employer-dominated "company unions" that the employer "voluntarily" recognizes to fend off or "ditch" a legitimate union;
- propaganda campaigns to discredit the union, its officials and its objectives, threats of plant relocations and closures, making allegations that unions would prevent promotions, protect the incompetent and shirkers over dedicated workers, prevent harmony in the work-place, apply crippling dues once recognized;
- bribing union officials and supporters to discourage organization or obtain sweetheart contracts.[10**]

It is noteworthy that many of the tactics noted above have been successfully challenged in Saskatchewan by limitations imposed on employers when "communicating" with employees during union organizing drives. This has often been accomplished through section 11 (1) (a) of the Trade Union Act. Under this section, employer communications are prohibited if they "in any manner … interfere with, restrain, intimidate, threaten or coerce an employee in the exercise of any right conferred by this Act". While the Trade Union Act addresses some 21 specific unfair labour practices, the limitations on employer communications prescribed in section 11(1) (a) have acted as an umbrella of protection for employees when confronted by union-resistant employers. As will be discussed later, one of the Bill 6 amendments (clause 6) will significantly loosen the restrictions on employer communications contained in 11(1)(a).

Employer intimidation and efforts to stifle union organizing drives were often mirrored by heightened worker militancy and civil disobedience. Picket lines could become violent and there were instances of sabotage where plants were damaged and equipment disabled. As militancy increased there could be physical confrontations with company strikebreakers and police. (Of course these are still instances of such practices today, but their frequency and intensity is much lower than it was decades ago.)

According to historian Desmond Morton, P.C. 1003 and the provincial legislation that followed it recognized the social disruption, discontent and violence that could accompany the efforts of employers to fend off unions.

> Since the beginning of union history, the most critical conflict ridden step had

> been to secure employer recognition. The significance of P.C. 1003 and its provincial variants was that, for the first time, there was not only legislative backing for orderly collective bargaining but also rules, procedures, and supervising agencies to ensure that workers could choose a bargaining agent and enter into negotiations. That by no means exhausted the grounds of conflict, and employers and even unions found ways of subverting or distorting the apparent intentions of the legislation. However, a dramatic step had been taken.[11]

Saskatchewan history is peppered with examples of aggressive union busting campaigns during organizing drives. The most infamous involved employee conflict with coal mine operators in the Estevan-Bienfait district over recognition of the Mine Workers Union of Canada in 1931. The confrontation saw three pro-union mine workers killed, many injured, 18 jailed, and several deported. It wasn't until 1948 that Saskatchewan's coal miners were able to overcome strident employer opposition and a company-backed union to have the union of their choice recognized. Indeed, conflict ridden organizing drives are not entirely a thing of the distant past. Exceptionally anti-union employers can still provoke a militant response from determined or desperate union supporters.[12]

An important benefit of legislation that supports union recognition and collective bargaining has been a reduction in the frequency and intensity of disruptive and violent industrial conflict. The collective bargaining process has had a moderating influence. It brings a high degree of order and predictability to labour relations. There are legal conditions, time frames and procedures laid out for addressing grievances, conducting negotiations and regulating strikes and lockouts. Indeed, no one has been shot or killed during an organizing drive in Saskatchewan since the passage of the 1944 Act. It is difficult to imagine how turning back the clock by making it more difficult for workers to have their bargaining units certified will be accompanied by a corresponding increase in industrial harmony. Reversing legislation designed to minimize industrial conflict appears inconsistent with government's stated objective of "encouraging healthy productive workplaces".

Union successes

Despite the high hopes the CCF government expressed for the impact of its 1944 Trade Union Act, its application was frustrated by employer resistance and the reluctance of the courts to accept its central objectives. For instance, employers continued to fire suspected union sympathizers following the passage of the legislation. The Labour Relations Board (LRB), which was responsible for administering the Act, could rule that the firing of union supporters constituted an unfair labour practice and call for a remedy, only to have its decisions overturned in court. Between 1945 and 1951 Saskatchewan's Court of Appeal heard six appeals against lower court decisions that ruled against LRB rulings. In every case the Court of Appeal upheld the lower court decisions against the board. It wasn't until 1953, that a Saskatchewan Court of Queens Bench judge finally ruled in support of an LRB decision. A piece of labour legislation by itself is not necessarily a guarantee of the advancement of trade union rights.

Notwithstanding employer resistance and initial legal difficulties, the CCF legislation was successful in encouraging increased trade union organization. The number of unionized workers in the province increased by 192 per cent between 1944 and 1956 compared to below 70 percent nationally over the same period. Labour's higher rate of success in Saskatchewan was in large part due to the 1944 Trade Union Act's provision allowing government and Crown corporation employees to organize. The province's labour movement now accounts for over 100,000 unionized workers, in hundreds of organized workplaces, or approximately 25 percent of the provinces total workforce. Collective bargaining has brought tangible benefits to union members. Organized workers in Saskatchewan have consistently earned from 20 to 30 percent more on average than non-union workers.[13] They typically enjoy benefits that are only rarely available to the unorganized. It is also the case that in jurisdictions with a healthy labour movement employees in unorganized workplaces have higher wages.

The wages and conditions available in union shops tend to raise the bar for all employers, especially during periods of low unemployment. An ironic challenge facing modern day union organizers is that their success in improving the lot of workers in organized shops has encouraged non-union employers to improve their treatment of employees — both to attract scarce workers and to avoid the unionization of their own workplaces.[14] Workers in the non-union shops get a free ride. They do not have to pay dues and support the efforts of the unions that are driving improvements. Thus the success of unions in some workplaces can work to reduce their ability to move into others. Despite what this means for the unions, workers in general see their position improved. The importance of union-avoidance strategies that involve providing wages and benefits similar to those achieved by organized workers could be diminished by Bill 6. This is because Bill 6, as it is currently written, will reduce the ability of workers to form unions.

Union power and economic competitiveness

The government's position is in line with a large body of conventional thinking, which holds that between the mid-point of the 20th century (when much of our modern labour legislation was conceived) and today, unions became too powerful. As the argument goes, union demands are frequently excessive, socially unjustifiable and inflationary. Unions are often unreasonably labeled as the sole cause of strikes and strikes are held to be unnecessary and inconvenient economic disruptions. It is further argued that good wages and benefits won by unions make Saskatchewan businesses uncompetitive with other jurisdictions.

These positions are countered by supporters of the labour movement who hold that the underlying fundamentals haven't changed — without the protection of unions individual workers remain vulnerable to unrestrained employer power. Trade unionists maintain that the imbalance in power between individual workers and their employers is increasingly tilted in the employers' favour. They claim that the continuing concentration of wealth and power in huge transnational corporations has widened the power gap between workers and their employers. The fact that unionized employees generally enjoy higher wages,

better working conditions and benefits than their unorganized counterparts continues to provide evidence that workers still need and want to protect their collective bargaining rights.

The premise underlying the business community's worries about competitiveness is that good union wages and benefits reduce their ability to compete with other jurisdictions. There is another way to look at this. Trade union officials point out that the need to compete is often presented as a burden to be borne primarily by employees. Collective bargaining has always involved a divvying up of the revenue pie. In making its case to retain as much of the pie as it can as profit, business tends to focus on problems presented by wage increases and improved benefits and working conditions. When voicing concerns about becoming more competitive, business tends to ignore the role played by bad management decisions, burgeoning corporate profits, and runaway compensation paid to corporate executives. Similarly, issues related to productivity are tied disproportionately to labour. The eight-hour day and five-day week were opposed by employers because they would supposedly make their firms less productive. Often missing from the business side of the productivity debate are issues related to management decisions about capital investment and the challenges of adopting new technologies, which often replace workers.

The campaign to make Saskatchewan competitive with other jurisdictions places labour rights on a slippery slope. Dogmatic adherence to the need-to-compete mantra involves a quest to be lower than the lowest common denominator for wages and working conditions. Rather than enter a race to the bottom, it would make more sense to insist other jurisdictions treat their own workers better and compete fairly. To this end we could strive to include protections for workers and the environment in our international and interprovincial trade agreements rather than attempt to lower our own standards.

Even if, for the sake of argument, we suppose that the business perspective is accurate and there really is a need to make changes in labour legislation to attract investment, it hardly seems urgent. Since the province is experiencing what the current government, and its NDP predecessor, have called an economic boom, it seems a strange time to reduce the capacity of the province's wage earners to share in it by making it more difficult for them to organize unions. Premier Wall recently stressed the need to ensure the boom benefits everyone in the province. One would assume that includes employees. Clearly the province's resources have tremendous value in international markets. And despite allegedly anti-business labour laws, the investment dollars seem to be pouring in. Thus it is unclear why there is such a pressing need to erode trade union legislation to secure growth and investment. What is actually occurring is a rehashing of the same old debate that has always been central to collective bargaining in the private sector — it is still mostly about how profit and risk are shared between business operators, investors and employees.

In addition, if the response of the labour movement and employees to the government's labour program involves heightened militancy, heated adversarial conflict, and economic disruption, it is hard to imagine such circumstances improving the competitive position of Saskatchewan firms. Inadequate or insincere consultation and a failure to consider

compromise positions in relation to the content of Bills 5 and 6 would not bode well for industrial relations harmony in the province.

It is worth noting that the main focus of Bill 6 is not on rebalancing existing certifications and bargaining relationships. Bill 6 is mostly about limiting the ability of unions to win new certifications in the future. Bill 6 will perhaps offer comfort to people who own small mom and pop businesses that unions aren't particularly interested in organizing anyway. More importantly, it will be a boon to large non-union corporations headquartered outside the province. Anti-union big box retailers such as Wal-Mart, along with investors and speculators who want to avoid unions will be among the main beneficiaries of Bill 6. Wal-Mart, in particular, has opposed elements within the Trade Union Act that Bill 6 attempts to address.

Saskatchewan's labour force and the growing lack of skilled workers

Businesses in Saskatchewan and indeed across most of Canada have identified the shortage of skilled workers, particularly in the building trades, as one of the most critical problems they face.[15] It seems counter-intuitive to expect that efforts to reduce the capacity of trade unions to organize and subsequently win optimal wages and working conditions for their members will encourage more workers to relocate to Saskatchewan or more young people to enter the trades. Officials with Saskatchewan's building trades unions maintain that policies of the Progressive Conservative government of Grant Devine, crippled their organizations during the last half of the 1980s and produced a sharp decline in wages and working conditions for skilled trades people.[16] They claim that the assault drove many skilled workers out of the province and out of the construction industry and also discouraged young people from entering into apprenticeship training.

According to Kelvin Goebel, a senior official with Saskatchewan's carpenters' union,

> The chickens have come home to roost. Regressive labour legislation drove people out of the province and out of the trades and now contractors are upset that we have a labour shortage. And even more absurd, we now have a government that plans to do business a favour by taking a shot at our unions, making it more difficult for us to organize people and make those jobs more attractive.[17]

The Saskatchewan Road Builders and Heavy Construction Association has recently petitioned the government to remove an exemption that allows highway contractors to avoid paying employees overtime until after they have worked 100 hours. The contractors are anxious to attract workers to their industry and believe that improving labour regulations on behalf of employees can help. Once the exemption is removed, highways workers will be eligible for overtime pay after working eight hours.[17*] Clearly, the road builders view improving legislation on behalf of employees as a means to attract and retain them.

An unintended consequence of Bills 5 and 6 can be foreseen in the potentially negative impact they could have on efforts to attract skilled workers to the province in the future. While that impact may be negligible or difficult to measure it is certainly reasonable to conclude that Bill 6 does nothing to attract workers. One of the lessons to be taken from the Alberta boom is that when development in

the energy sector took off, there were mass desertions of workers from sections of the unorganized service sector. It is reasonable to speculate that had the service sector in Alberta been more highly unionized when the boom took off, union wages and benefits would have worked against the disruptions that occurred.

Minimum standards and worker protection

The labour movement's detractors often argue that improvements in minimum standards for wages and working conditions and a new generation of more enlightened employers would mitigate the impact of a substantial decline in union power on individual workers. An awkward irony is that many who make this argument have themselves consistently opposed improvements to minimum standards. Just recently the CFIB reiterated its longstanding opposition to an increase in the minimum wage. Indications from labour minister Rob Norris are that the government is already back peddling on plans made by the previous NDP government to tie regular minimum wage increases to increases in the cost of living and Canada's poverty line.[18]

Minimum labour standards are even more vulnerable to dilution than legislation that protects trade union rights. Labour standards lack the constitutional protection available to unions and collective bargaining. What governments have given in terms of minimum standards, governments have taken away. During the 1980s, for example, the Devine government demonstrated minimal concern as increases in the cost of living leapt far beyond improvements in the minimum wage.[19] The Devine government's lack of zeal in performing inspections and enforcing minimum standards substantially diminished the value of labour standards to working people.[20]

On the other hand, for the last 100 years the labour movement has been among the most influential and consistent advocates of improvements in minimum standards and advancements through a broad range of policies that have improved the lives of working people. The motivation for this support involves a melding of social conscience and a recognition of the advantage that comes from having a "floor price" of minimum wages and conditions as a background to contract negotiations. The labour movement has been among the most prominent organized forces behind many of the social reforms that Canadians cherish. The list includes things like Medicare, the eight-hour-day, bans on child labour, minimum wages, the forty-hour week; paid vacations, employment insurance, occupational health and safety legislation, pensions, pay equity for women, and employment equity for minorities.

Employer lobby groups like the CFIB, the Saskatchewan Construction Association, and Saskatchewan Chamber of Commerce generally lack enthusiasm for trade union achievements and have consistently supported legislative changes that would strengthen the hand of employers in industrial relations. Union organizing drives continue to meet with strident opposition from certain (but not all) employers. For example, notoriously anti-union Wal-Mart, the world's largest retailer, has thrown the weight of its legal and public relations departments into a successful effort (thus far) to fend off a drive to organize two of its Saskatchewan stores.

Wal-Mart has opposed the limitations on employer communications within the Trade Union Act and also objects to the Labour Relations Board's ability to certify a bargaining unit on the basis of signed union membership cards.

As Dr. S. Muthu, Professor Emeritus, Faculty of Business Administration, University of Regina, recently wrote:

> Wal-Mart has been pushing for an end to the card-check certification [currently recognized in Saskatchewan] and the adoption in all Canadian jurisdictions of a vote in every certification to rebalance the power between organized labour and employers.[21]

Wal-Mart's objections to portions of Saskatchewan's Trade Union Act are addressed by the Bill 6 amendments.

There are employers besides Wal-Mart who continue to oppose unionization, preferring to do business without the nuisance and expense of unions and collective bargaining.[22] This is understandable given that businesses seek to maximize profits and that unionized workers typically cost more than unorganized employees. The organized usually insist on benefits such as pension plans, they combat workplace harassment and discrimination, and they don't react well to arbitrary management decisions related to promotion and dismissal. Unions are seen by some businesses as a major inconvenience, a challenge to outdated concepts of management's prerogatives and supremacy — and without them it is assumed profits could be higher.

Trade union rights, popularity and democracy

The Saskatchewan government may take comfort from the findings of a recent poll which demonstrated that a large majority of respondents approved its labour agenda.[24] The poll results have not discouraged the labour movement in registering opposition to the bills. Being the underdog is something that unionists are accustomed to. Indeed some activists thrive on it.

The labour movement, like many governments and businesses, enjoys a roller coaster ride in public approval ratings. During the 1930s unions were widely recognized as the champions of ordinary working people whose interests had been too long ignored. By the mid-1960s opposition toward unions rose among Saskatchewan farmers upset over strikes that disrupted the grain transportation system and suspicions that rich union contracts were driving up the price of farm machinery. In the late 1960s and early 1970s the youth movement and Canadian nationalists viewed unions as welcome allies in campaigns against the "establishment" and growing American corporate expansion into Canada. By the mid-1970s sympathy for unions declined as wage increases were viewed as contributing to high inflation. In addition, the wage demands of recently organized public sector unions became an irritant to a public that saw a relationship between improved wages in the public sector and higher taxes.

Recent strikes involving health care and highway workers appear to have been particularly irritating to some sections of the Saskatchewan public. The level of public tolerance for strikes by government and health care workers (with

the exception of nurses) is especially low. Even though only 28 healthcare workers withdrew services in the last province-wide strike by members of the Health Sciences Association sections of the public were disturbed. Last winter highways workers were accused of endangering lives by not ploughing the roads. Even though, as soon as the weather deteriorated they quickly went back to work. A lengthy strike by university support workers in the fall of 2007 was elevated to the status of a health care crisis when managers at Saskatoon's University Hospital were unable or unwilling to perform clerical functions and process admissions. The government's labour agenda has no doubt been influenced and encouraged by this mood.

A minority point of view, still alive and well in the province, holds that strikes, while inconvenient, are nonetheless a modest price to pay to have a truly democratic society. A case in point is the legendary strike by the union Solidarity at Poland's Gdansk Shipyards in 1980-1981, which reminded the world that a symbiotic relationship exists between free trade unions and democracy. The facts indicate that collective bargaining works, over 95 percent of all agreements are settled without strikes or lockouts. Nonetheless, for some people, the fact that a group of workers has the ability to disrupt the lives of others by going on strike is unacceptable. There are indeed contradictions between the collective philosophy of trade unionism and the self-absorption that is the signature of prominent trends in modern mass consumer culture.

Far from recommending a rebalancing of trade union legislation in favour of employers or investors, recent Supreme Court decisions have held that unions and collective bargaining involve fundamental freedoms enshrined by the *Charter of Rights and Freedoms*. The high court has not been sympathetic of late to provincial legislation that diminishes the ability of workers to bargain collectively. In a June 2007 decision the Court stated:

> Freedom of association guaranteed by s.2 (d) of the *Charter* includes a procedural right to collective bargaining .... The history of collective bargaining in Canada reveals that long before the present statutory labour regimes were put in place, collective bargaining was recognized as a fundamental aspect of Canadian society, emerging as the most significant collective activity through which freedom of association is expressed in the labour context. Association for purposes of collective bargaining has long been recognized as a fundamental Canadian right which predated the *Charter*. The protection enshrined in s.2 (d) of the *Charter* may properly be seen as the culmination of a historical movement towards the recognition of a procedural right to collective bargaining.[23]

While the labour movement may be experiencing one of its periodic public relations slumps, it can take comfort in its current level of organizational strength as well as the fact that *Charter* rights apply equally to both the popular and the unpopular. People do not have to win popularity contests or do well in the polls to have their rights protected.[25&26]

It is becoming increasingly clear that a government attempting to move too far in the direction of curbing trade union rights is swimming against the legal tide. Whether, the courts will view Bills 5 and 6 as crossing the line is a matter for them to decide; although it is hard to imagine the Supreme Court ever agreeing

that the need to attract investors supersedes anyone's *Charter* rights. The essential services legislation proposed in Bill 5 (which is not the specific topic of this paper) appears to be on shakier legal ground than Bill 6 given recent Supreme Court decisions. On February 6, 2008, Saskatchewan Federation of Labour (SFL) president, Larry Hubich asked the provincial government to exercise its ability to have proposed legislation that raises *Charter* issues assessed by the province's Court of Appeal. It is not inconceivable that the Court might have insights on how to address the aims of the legislation without negatively affecting *Charter* rights. Saskatchewan's justice minister, Don Morgan has refused to comply with the SFL request.[27] Morgan's refusal simply means the legislation will not be tested until after it has been enacted.

Part II: The Legislative Environment and Clause by Clause Review of Bill 6

The influence of the mythical pendulum

When the Progressive Conservative government was defeated in 1991 by the New Democrats, major changes in labour legislation were anticipated. Observers of Saskatchewan public policy at that time assumed that labour legislation swung like a pendulum. When left of centre CCF and NDP governments were in office, labour law swung to the left in favour of the unions; when right of centre Liberal and Conservative governments replaced them, the pendulum swung back to the right and many previous gains of labour were reversed. The pendulum metaphor reflected a fairly accurate assessment of the situation from 1944 to 1991. It continues to influence attitudes about labour policy today. It supports the notion that following a change of government, major changes to labour legislation are to be expected, and that the appropriate level of balance is somehow achieved by a good swing of the pendulum in the opposite direction. However, from 1991 onwards the pendulum metaphor has come to be more of a myth than reality.

After the Liberals defeated the CCF in 1964, Premier Ross Thatcher swung the pendulum sharply to the right.[28] Thatcher's 1966 amendments to the Trade Union Act (Bill 79) made it more difficult for unions to organize. Under the CCF legislation if 25 percent of the employees in a work place signed union membership cards the Labour Relations Board could require a vote by employees to see if a majority of those voting wanted to form a union, or it could simply grant the certification. Thatcher's changes had the effect of requiring approval from 60 percent of the employees in a bargaining unit before certification was granted. Thatcher worked to erode legislative provisions that supported union security by allowing employees identified as "professionals" to be excluded from bargaining units. He also repealed the section of the Act that limited employer communications with employees during certification drives.

The most contentious of the Liberal government's innovations was essential services legislation (Bill 2) which gave cabinet the ability to end public sector strikes without having to hold a debate and vote in the

legislature. In 1970 Thatcher amended Bill 2 extending its scope beyond the public sector. In July of 1970 the amended legislation was imposed on striking private sector plumbers and electricians. In 1971, trade unionists and teachers played an important role in an election campaign that saw the Thatcher Liberals defeated by the NDP led by Allan Blakeney.

Premier Blakeney called a special session of the legislature shortly after the 1971 election to repeal Bill 2. Subsequently the Trade Union Act was amended to remove virtually all of the 1966 amendments. Legislation was also enacted to provide for province-wide bargaining for teachers and the construction industry. The Blakeney government addressed working people's concerns across a wide front. It introduced the most advanced occupational health and safety legislation in North America; improved the provision of benefits under workers compensation; recognized the concept of equal pay for work of equal value in the public sector; and implemented numerous improvements in labour standards including adoption of the forty-hour work week, regular increases in the minimum wage, and a minimum of three weeks paid vacation for all employees.

The 1980s saw another sharp reversal in the gains achieved by Saskatchewan's labour movement. Premier Grant Devine's Progressive Conservative government amended the Trade Union Act in 1983 (Bill 104), once again making it more difficult for unions to organize. The bill included 17 amendments that revived many of the restrictions on union activity that had been included in the Thatcher government's Bill 79 along with a few new twists. The improvement and enforcement of labour standards suffered during Devine's watch. While the government did not tamper with the Occupational Health and Safety Act brought in by the Blakeney NDP, it reduced inspections and investigations in response to complaints. Construction industry unions were devastated by the government's failure to prevent "double breasting", the scheme whereby a contractor can avoid the requirements of a union contract by setting up a non-union spin-off company.

By 1991 the political and economic environment had fundamentally changed. Privatization, de-regulation, free trade, and extreme government debt had severely weakened state power. Labour's expectations for a rebalancing of the industrial relations environment were not considered a priority in this changing climate. **The pendulum failed to swing as labour hoped following the 1991 NDP election victory.** The NDP plan for reforming labour legislation was to engage in a consultative process using review committees that included representation from both business and labour in hopes of achieving consensus.

The committee established by the NDP to review issues in the construction sector managed to reach a consensus. However, in response to continued business opposition the government retreated from implementing one of the recommendations most avidly sought by the building trades unions.[29] The first committee set up to review the Trade Union Act failed to reach a consensus. A second committee was established and it managed to reach agreement on most issues.[30] However, the government delayed introducing legislation until March of 1994 in reaction to ongoing opposition from business. Indeed, even after some labour legislation was passed, the government waited years to proclaim sections that business found objectionable. In the face of business opposition, a provision granting part-time employees wishing to make their

jobs fulltime the right of first refusal over available hours of work (*most available hours*) never was proclaimed.

The post-1991 NDP did adjust a number of the former conservative government's changes that labour found most odious. For instance, the limitation on employer communication during organizing drives was reinstated. And the Calvert government, embarrassed by high work related injury rates, did increase OHS inspections toward the end of its mandate. The NDP did not, however, reverse all of the changes made by the Conservatives. Among the sections left in place was the notorious *McLaren amendment*, which requires union organizers to wait six months before attempting to organize a workplace where a previous certification bid has failed.

In his Master's thesis, labour relations specialist Mariusz Kijkowski, has demonstrated that Saskatchewan's business lobby had a virtual veto over the implementation of changes to the Trade Union Act during the 1991-1994 period. Business interests managed to prevent a complete reversal of all the changes implemented by the Devine government in the 1980s and also prevented immediate proclamation of some of the amendments it found objectionable.[31]

Not only did labour fail in its efforts to reverse all of the "damage" done by the Conservatives, it also failed in getting government to adopt "improvements" that were being made in other provinces. Manitoba, Quebec, British Columbia and, for a time, Ontario had enacted legislation that prevented employers from hiring replacement workers and professional strikebreakers. The Saskatchewan NDP would not risk the disapproval of the business community by introducing what unions call "anti-scab legislation". Similarly, the government dawdled over meeting commitments to enact pay equity legislation intended to address the imbalance between the incomes of male and female workers.

The pendulum swinging of previous decades was not much in evidence during the sixteen years of NDP government that ran from the fall of 1991 until November 7, 2007. Claiming that Saskatchewan has the most advanced labour legislation in North America lost credibility during the 1990s. Nonetheless, from 1991 until 2007 the idea sustained the government when it resisted making legislative changes sought by labour. It could always be argued that labour was being unreasonable in its demands since it already had the best legislative deal in the country. Similarly the idea that Saskatchewan has such exceptionally labour-friendly legislation has fueled the passions and policy positions of business supporters.

The labour legislation basket

One of the challenges for those making the case that Saskatchewan's labour laws are excessively labour-friendly and worse for business than those in other provinces is that there is no single act that encompasses labour law in Saskatchewan or any other province. Rather a basketful of acts, regulations, agencies and social policies is involved in labour relations. Often it is not simply the isolated alteration of a specific section of a specific act or regulation that either business or labour need to be concerned about. Indeed, it would be an exaggeration to argue that any of the Bill 6 amendments by themselves would devastate the labour movement. What made the industrial relations environment inimical to working

people and unions during the 1980s was a toxic combination of initiatives across a wider public policy front. Since the new government has not shown its hand with regard to what other legislation it might change or how conscientiously it intends to administer labour related legislation, the labour movement will be reluctant to let any single amendment that reduces its capabilities go by without opposition.

Nonetheless, the Trade Union Act occupies a very important place in the legislative mix. It extends rights to working people and guarantees the exercise of those rights. But again, its operation and impact cannot be viewed in isolation from the way it is administered along with other aspects of government involvement in industrial relations and social policy that affects the lives of working people.

For example, it is impossible to measure the efficacy of the Trade Union Act in isolation from the behavior of the Labour Relations Board (LRB). Established under the Trade Union Act, the LRB adjudicates applications for union certification and decertification and charges of unfair labour practices. It also provides a refereeing function, administering conciliation, and arbitration procedures, often making use of staff from the Department of Labour to do its work. The composition of the LRB, the experience and objectivity of its members, is a critical factor influencing the labour relations climate in the province. A pronounced bias on the board in favour of either management or labour can have a significant impact on the interpretation of the Act. The fact that cabinet has the authority for appointing board members is a matter of obvious concern to both the labour movement and employers. The impact of the Bill 6 amendments to the Trade Union Act will not be fully appreciated until its application by a Saskatchewan Party government appointed LRB is measured. Hypothetically, a LRB with a pronounced pro-business bias could diminish the capacity of people to form unions and engage in collective bargaining without the government changing a word in the existing legislation. Obviously unreasonable LRB decisions would be challenged in the courts but that involves delays and costs that frustrate legitimate union activity. Given, the interpretive powers of a potentially unsympathetic LRB, the labour movement will be anxious to have any ambiguity in the wording of the Bill 6 amendments cleared up before they are enacted. Government assurances about intent and interpretation will not be readily accepted at face value.

Saskatchewan, like other provinces, also has legislation that addresses labour relations in particular industries. There is for example special legislation governing collective bargaining for teachers and police in most provinces. The Construction Industry Labour Relations Act, in combination with the Trade Union Act, apprenticeship legislation, and health and safety legislation governs labour relations for the construction trades. The Occupational Health and Safety Act (OHS) is another important piece of legislation affecting the lives of both unionized and unorganized employees.

The Labour Standards Act provides benefits that extend to both organized and non-union employees. The Act regulates in the areas of minimum wages; working hours and overtime issues; paid vacations; notice periods for layoff and dismissal; and a host of other conditions and issues related to employment.

(Subsequent to the drafting of this paper the provincial government announced the firing of the chair and vice chairs of the LRB — prior to the expiration of their terms. A new chair, management-side labour lawyer, Ken Love, has been appointed and additional appointments are pending. The government has indicated one, rather than two, vice chairs will be appointed. With the added duties the board will face in relation to the administration of the Bill 5 and 6 changes it is curious that the government contends that fewer senior board officials will be required.)

The impact of standards legislation is dependent on how assiduously it is enforced. For example, during the Devine years random inspections virtually ceased, inspectors generally only showed up at a workplace in response to a specific employee complaint. The labour movement argued that this practice denied employees the anonymity that random inspections offered. This in effect, made some of the most disadvantaged employees in the province, vulnerable to employer retaliation. The efficacy of labour standards continued to be eroded under the Romanow and Calvert governments by the granting of exemptions to employers, allowing them to ignore certain minimum standards. Before its 2007 defeat the Calvert government's Department of Labour had allowed for 1,250 exemptions.[32] Lunch breaks were denied to clerical workers in places like doctors offices and special regulations applied to a wide range of employees in the province's north and highways workers who were denied over-time pay.

Having good legislative standards succeeds only if sympathetic leadership by cabinet ministers and senior bureaucrats is present and appropriate levels of administrative support are provided. The full measure of the new government's impact on unions and working people will not be fully appreciated until there is an administrative and enforcement record to examine.

Bill 6: A clause by clause review

In the arguments presented above the implications of the Bill 6 amendments have been considered in connection with their putative purposes. That discussion challenges the legitimacy of the stated purposes of Bill 6 and suggests the potential for negative consequences. The clause by clause review, which follows, attempts to relate the specific wording of the proposed changes to that discussion. The clause by clause review also reveals that both unstated assumptions and unintended consequences can be reasonably imagined in relation to Bill 6.

Amendments 1 and 2 are neutral insofar as policy assessment is concerned. They involve the basic legal requirements of any Saskatchewan legislation. They provide the title of the Bill, and indicate that it amends the Trade Union Act.

Amendment 3 involves changes to section 6 of the existing Act that will make representation votes mandatory. Without modification the amendment could substantially frustrate employees' efforts to organize. Assumptions about the democratizing effect of mandatory certification votes can be challenged by Act's requirement for a double quorum, which threatens the secrecy of balloting.

Under the existing legislation, after a union succeeds in obtaining signed membership application cards from the 25 percent of the employees in a workplace and applies to the

board, the LRB can authorize a certification vote by employees in the proposed bargaining unit. In practice, votes are held in very few cases. The vast majority of certifications are granted on the basis of the card evidence presented in conjunction with the application. And in practice the evidence required by the LRB involves the presentation of signup cards from over 50 percent of those people to be included in the bargaining unit the day the application for certification is filed.[33]

The amendment will require a vote in all cases. Currently, in the rare instances when a vote is held, a majority of 50 percent plus one of those voting decides the issue, provided that a majority of those eligible to vote actually vote. This is referred to as a double quorum system (section 8 of the current Act). It is interesting that the double quorum requires a higher level of participation than we require when electing members to the legislature or parliament. Since votes are only rarely held, the double quorum has not been a significant bone of contention in Saskatchewan. If the amendment passes and votes become mandatory it will become an area of concern. It is noteworthy that Alberta, a province the current Saskatchewan government is accused by critics of attempting to emulate, does not have a double quorum requirement. In a 100-person unit 10 people could decide the issue in Alberta.[33*]

From labour's perspective a significant advantage of the card signup certification process is that it can be conducted in relative secrecy without employers being able to determine who is and who is not a union supporter. The employer cannot penalize or intimidate union supporters if the employer doesn't know for certain who they are. If a successful certification vote requires a majority of all employees to vote, the employer can interpret an abstention as a "no" vote. This is because if enough employees abstain, a pro-certification vote will fail. The secret is out if those who choose to vote can be automatically considered union supporters. An anti-union employer will be able to deduce which employees do and which don't see unionization the employer's way. This leaves those employees who vote vulnerable to employer sanctions. A truly secret ballot is not possible under the double quorum system.[34]

Observers including Professor S. Muthu argue that given the challenges unions face in organizing a workplace, the card certification system constitutes a valid method of measuring employee preference.

> … if a union gets fifty-one percent of the employees to sign union cards, it is for that union akin to winning a plebiscite under a dictatorship. Granting union recognition and certification after a card-check by a labour relations board in such cases is perceived to be most legitimate and justifiably so. [34*]

Despite arguments in favour of card signup certifications, they are likely destined to be eliminated. However, if the system is to be abandoned in favour of measures that are ostensibly more democratic, it is critical that democratic principles, such as the secret ballot, are reflected in Bill 6 amendments.

Currently unions have six months to achieve the minimum 25 percent signup rate required to apply for certification. However, in practice union organizers will usually ensure they have achieved signup rates well over 50 percent before filing an application. Amendment 3 will require the union to obtain a 45 percent minimum card signup rate and shorten its time to

get that done to 90 days. Theoretically union supporters will have to work faster and meet a higher threshold of signup success before they can apply for certification. Since organizers typically sign up more than 50 percent of those eligible today the 45 percent minimum will not be their biggest problem. The tighter time limit likely be of greater concern.

That said, it is interesting that the amendment sets the signup threshold higher than it is for Saskatchewan employees subject to federal legislation (35 percent) or Alberta and Manitoba, which have 40 percent thresholds. Out of the western provinces only B.C. requires a 45 percent signup rate to trigger a vote.

Under the proposed legislation even a card signup rate of 100 percent would be unacceptable without a vote. Union organizers have a strong preference for the card system, they understand the process and are good at convincing people to sign. They believe the union message is a good one and that people are generally eager to sign once they've heard it. They are especially appreciative of their ability to conduct signups in relative secrecy from the boss as it protects employees from retaliation.

Critics of card signup certification claim the system is not immune from abuse. They allege it is possible for employees to be duped or pressured into signing. The potential for this is recognized by the Act. There are unfair labour practice provisions that can be invoked against a union if an employee is intimidated, threatened or coerced into signing (section 11(2)(a)). Nonetheless, employers may feel that the unfair labour practices specified do not eliminate opportunities for unfairness. They may believe peer pressure and employees not wanting to say no to a coworker gives the union an unfair advantage when certification is granted on card signup alone. One of the positive results of the proposed amendment for labour is that it will demonstrate the seriousness of worker support to employers when the union is successful.

The proposed changes require union organizers to speed up the card signing process to meet a 90 day limit but are mute as to how long the LRB can dawdle before a certification vote is held. For high turnover employers like Wal-Mart the longer the delay between application and the vote the better it is for the employer. The company has more time in which to launch and execute an anti-union campaign. In high employee turnover workplaces, the longer the delay between the application and the vote, the more likely it will be that workers who are sympathetic to the union and familiar with its goals will have been displaced by new hires. In addition, employers have the ability to delay votes by arguing to the LRB that the union's signed card evidence fails to meet certain technical criteria. They may claim that certain employees should be considered managers and be exempt from the bargaining unit. In addition, employers can attempt to gerrymander the application/election process by arguing that employees from another branch, unit or trade should have been included in determining whether the percentage signup threshold has been met. In such circumstances, the adjudicating role of the LRB is critical if damaging delays are to be avoided.

As Professor Muthu has stated,

> The near universal mantra from management gurus on preventative labour relations is 'you can't lose an election that

never takes place.' [work] to have an election held in a unit you want and not the unit the union wants. Organization delayed can be organization denied.[34**]

In B.C. the board has a tight 72-hour time frame to initiate certain votes. At present there is no deadline imposed on the Saskatchewan LRB. However, the general practice is to deliver a decision on certifications within 10 days of the final application hearing.[35] Labour will worry that there is a possibility that a lack of sympathy on the part of a Saskatchewan Party appointed LRB could compromise the board's motivation to render timely decisions. Similarly a board disposed to entertaining vexatious or frivolous employer objections to union applications could delay, and thereby derail, certification drives. An alternative to consider is the establishment of a tight statutory deadline between the receipt of an application for certification and the date of the vote along with adequate staffing to ensure the LRB can meet its new responsibilities.

Saskatchewan's building trades unions are particularly concerned over the repeal of section 6(2)(c) contained in amendment 3. This section currently gives the LRB the authority to refuse to hold a vote affecting the certification of a bargaining unit if it is satisfied that the employees are already represented by an appropriate and legitimate bargaining agent. For over 100 years across North America building trades workers have been represented by unions that reflect specific skills areas; there is a carpenters union for carpenters and a plumbers union for plumbers, etc. The current section allows the board to intervene in a case where (for the sake of illustration) an aggressive labourers' union organizer applies to represent the operating engineers or the electricians on a job site. The LRB can act as a referee, and discourage this sort of disruptive raiding activity.[36] Employers have been known to encourage this raiding, particularly when it involves a tame company-friendly union replacing a more legitimate employee organization.

The fears of the building trades unions may be excessive. Prohibitions on employer-dominated unions will indeed remain in the amended Trade Union Act. And there are LRB cases and elements of the Construction Industry Labour Relations Act that recognize traditional trade union jurisdictions. That said, there still appears to be no compelling reason to drop section 6 (2) (c).

Alternatives to Amendment 3

If the amendment is passed (and it most likely will be) it will at least enable unions to convincingly and conclusively demonstrate that employees are joining freely. Unions will likely not win an argument to sustain the status quo. They will have difficulty fighting a measure, that the public doesn't necessarily understand, which ostensibly offers greater democracy. However, it remains incumbent upon the government to ensure that claims about increasing the level of democracy available during certification campaigns are actually reflected in the legislation it creates. As it stands the proposed legislation does not allow for a truly secret ballot. The proposed legislation would be more democratic and likely be less objectionable to labour if a few safeguards are put in place such as: 1) imposing a tight deadline on the

board for holding a vote. If it is being done regularly within ten days now, that would seem to be a good time limit to place into the Act. 2) Since votes are to become mandatory, the double quorum requirement should be dropped. The Act should be amended to indicate that the majority required to decide a vote is 50 percent plus one of those voting — period. 3) Since the time frame for obtaining card signups has been reduced, it makes sense to keep the minimum percentage threshold lower than 45 percent. The federal threshold of 35 percent or even the 40 percent employed in Alberta and Manitoba would be preferable. 4) Ensure that adequate staff resources are in place to administer the amended system.

There is no compelling or legitimate reason to repeal section 6 (2)(c), it should remain in the Act.

Amendments 4 and 5 involve changes to section 10.1 and 10.2 of the Act. These are rarely used sections that come into play when a union or employer claims that but for an unfair labour practice the certification would have been approved or disallowed. It appears to be an effort to make the 45 percent threshold set out in amendment 3 common to other sections of the Act. This amendment appears to reduce the current level of support required for these sorts of challenges. Currently the LRB can authorize a vote if it believes a majority (50 percent plus 1) of employees support the application. Under the amendment the LRB can call for a vote without evidence that the 45 percent signup threshold has been met.

Alternatives to Amendments 4 and 5

If votes are to become mandatory for certification, unions should not find this clause objectionable. Granting the LRB remedial and punitive powers in relation to employers or unions that engage in unfair labour practices during certification drives is a reasonable practice. If an employer commits an unfair labour practice that derails a signup campaign, the certification vote should go ahead, regardless of whether 45 percent card signup has been achieved.

Amendment 6. Trade unionists argue this amendment constitutes a significant reversal in trade union fortunes. The amendment involves section 11(1)(a) of the current Act. This is the section that restricts the ability of an employer to communicate with employees with respect to any of the rights conferred to them under the Act. Labour activists view anti-union employer communications activities as the "mother" of all unfair labour practices since they open the door for employers to engage in many of the other 21 unfair labour practices spelled out in the Act. They argue the ban on communication serves a gatekeeper function. It is something of a catchall that prevents employers from engaging in a wide range of union-busting activities. Union observers claim most of the successful prosecutions for unfair labour practices under the Act (estimated as high as 95 percent) are related to this section.[37]

Obviously, freedom of expression, as guaranteed in the *Charter of Rights and Freedoms* applies to employers. Therefore no one should

expect that a total ban on employer communications has ever been or will ever be possible. The bone of contention with this amendment involves interpretations about whether certain employer communications cross the line and constitute unfair labour practices. Again the composition and performance of the LRB may be critical to assessing the impact of the amendment.

The relevant sections currently read:

> 11(1) it shall be an unfair labour practice for an employer, employer's agent or any other person acting on behalf of the employer:
>
> (a) in any manner, including by communication, to interfere with, restrain, intimidate, threaten or coerce an employee in the exercise of any right conferred by this Act

The amendment alters 11 (1) (a) as follows:

> (a) to interfere with, restrain, intimidate, threaten, or coerce an employee in the exercise of any right conferred in this Act, but nothing in this Act precludes an employer from communicating facts or opinions to its employees.

As noted above, labour observers maintain the loss of section 11(1)(a) could weaken the applicability of other unfair labour practice sections. For example, section 11(1)(o) prohibits employers from interrogating employees regarding whether they are attempting to exercise their rights under the Act. Will the employer now be able to "communicate" with employees regarding their views about the union as well as the positions of other employees in the workplace? Again interpretation by the LRB will be critical. Will interrogations, euphemistically described as discussions, be considered legitimate communication under the Act?

Since the amendment allows the employer to communicate opinions, does it protect the employer when it makes libelous statements about the union? Is the employer free to describe the union as crooked and full of thugs and deviants, because that is his/her opinion?

Employers in Alberta are allowed to communicate their "views". However, the Alberta LRB has held that allowable employer communication does not include surveying employees on their views about collective bargaining issues, or providing misleading or demeaning information about unions.

Apparently Section 11(1)(a) has been particularly distressing to Wal-Mart, forming the basis of its legal efforts to derail attempts to unionize its North Battleford and Weyburn stores in 2003. Unchecked, Wal-Mart has the ability to employ an incredible level of financial resources, and sophisticated communications expertise in its efforts to defeat unions. Section 11(1)(a) limited Wal-Mart's ability to bombard its Weyburn and North Battleford employees with slick "world class" anti-union propaganda. Its ability to hold inspirational anti-union pep rallies and indoctrination sessions were impacted by the section. Wal-Mart has launched a legal challenge to 11(1)(a) claiming its freedom of expression has been infringed. Regardless of whether the legal challenge succeeds, the delay has temporarily derailed the Saskatchewan organizing drive. Other employers, hoping to prevent the unionization of their businesses, share Wal-Mart's low regard for 11(1)(a). Supporters of the existing section can argue that Canadian society places a number of restrictions on freedom of speech and

expression (libel and anti-hate laws, for example), and that the restrictions placed on employer communications during organizing drives are reasonable given the potential for abuse.

As Professor Muthu points out restrictions on employer communication are also intended to counter the incredibly advantageous position that employers enjoy over union organizers by virtue of management's virtual monopoly on communications within the workplace.

> Virtually every dimension of the workplace — the walls, bulletin boards, meeting facilities, leaflet distribution, compulsory captive audience meetings addressed by union-avoidance gurus during working hours, supervisors' one-to-one 'gentle admonitions' with employees on the dangers of unionization, monitoring washrooms, coffee lounges, and even parking lots — becomes a forum for constant anti-union tirade, but in which pro-union information is avoided like the plague.[37*]

Trade unionists are also concerned that amendment 6 does not say when employer communication is permissible. Is it only during organizing drives and decertification drives? Or can it be assumed the employers' ability to "communicate" will extend to a whole range of circumstances, everything from the election of union executive members to bargaining issues.

The government of British Columbia has made a similar change to its legislation. Labour officials in that province have been particularly disturbed that employers are now able to freely express their "opinions" even if they have no basis in fact for holding them. A recent Labour Relations Board decision in B.C. has been of only mild comfort to trade unionists. It ruled that employers can not make attendance at anti-union presentations compulsory.[38] In B.C. employers are free to state their views but employees are free not to listen. The ban on forced listening may be of minimal comfort to union organizers, they might expect that non-attendance at anti-union pep talks would be viewed by employers as a signal of support for the union.

Alternatives to Amendment 6

Loosening the lid on employer communications would be preferable to having it come all the way off. An alternative to granting employers an unrestricted ability to communicate "opinions" would be to include language in the amendments that would reflect the restrictions imposed by the Alberta LRB. Namely, that employers cannot survey employees regarding their views on the union or collective bargaining issues; and that employers cannot provide misleading or demeaning information about the union. Secondly, the amendments could include restrictions on "forced listening" similar to the restrictions required by the B.C. LRB. Language that would actually prohibit employers like Wal-Mart from holding slick anti-union pep rallies would be helpful. To be truly meaningful the prohibition on forced listening would need to prevent employers from staging anti-union presentations. If such a change is not introduced, unions would be justified in demanding equal company time to conduct rebuttal presentations under the condition of compulsory attendance.

These sorts of provisions would provide unions with an enhanced level of assurance that the loosening up of the rules that restrict employer communications would not subject them to defamatory attacks.

In addition, the ability of employers to communicate on issues related to the certification should be restricted to the period between the application for a certification and the LRB supervised vote — provided that there is a tight time limit between the union's application for certification and the vote.

The alternatives presented above allow employers a qualified freedom of speech, but would still help ensure that abuses and unfair labour practices do not occur. By not limiting communications in the manner described, employers have an ability to propagandize employees that is light years beyond the ability of union supporters to respond to. After all, employees constitute something of a captive audience for employers. The employer's access to them is far greater than it is for union organizers.

Amendment 7 [Sections 12 (1.1) and 12 (1.2)] introduces a time limit of 90 days for the filing of unfair labour practice complaints with the LRB. Currently there is no deadline. However, one-year deadlines are common to other legislation such as the Labour Standards Act and the Human Rights Code. It could be argued that this clause encourages everyone to speed up things in the interest of getting them resolved. Another outcome could be that fewer complaints will be filed due to difficulties in meeting the tighter deadline. Others have suggested that tightening up the time frame will encourage unions to send more complaints to the board. Since the unions will have less time to consider the advisability of filing a complaint — they would be tempted to file rather than miss the deadline.

Alternatives to Amendment 7

This is a major change in procedure. If the deadline is to be tightened it would seem that six months would be an easier adjustment to make than the 90 day limit. The government appeared to be seeking consistency with its 45 percent threshold, perhaps it could recognize the same principle by giving employers and employees the same deadline (six months) it proposes for the LRB in amendment 10. One problem that will occur with the new deadline involves the handling of incidents that may have occurred prior to the passage of the Act when everyone was under the impression they had more time to file. A practice when implementing new legislation is to sometimes provide a phase-in period. This issue has been brought to the attention of the Minister by union officials and a correction is anticipated.

Amendments 8 and 9 Currently unions make use of their own signup cards. The new sections 17 and 18 will give Cabinet the ability to regulate the content of those cards. To the best of this writer's knowledge, the nature of the cards employed has never been ruled a major concern of the LRB over the course of its 63 year history. Many of the cards employed by the various unions have been a part of their tradition for decades; they are elements of

their organizational culture and identity. One wonders what Saskatchewan Party Cabinet ministers may know about signup cards and union traditions that would give them license to tell the LRB and unions what should be in them.

Alternatives to Amendments 8 and 9

The best alternative is to drop the amendment altogether.

Amendment 10 creates the new sections 21.1(1) and 21.2(1). These are essentially housekeeping amendments. The new 21.1 encourages the LRB to render decisions within six months. As noted earlier this would be an excessive amount of time if it became the norm for approving certification applications. The new 21.2 requires the production of an annual report containing certain pieces of information.

Alternatives to Amendment 10

This is an amendment that should provide something of a benefit to everyone interested in industrial relations. Provided the LRB is given the staff resources to make it happen, the annual report idea is worth pursuing.

Amendment 11 repeals section 33(3) of the Act, which places a three-year time limit on collective agreements. Saskatchewan is unique among the western provinces in having a time limit on agreements. Following the passage of the amendment agreements could conceivably run for five, ten or even twenty years. This is an amendment that again raises the "if it ain't broke, why fix it" question. From the 1960s until today the section was relatively immune to politics. The Thatcher government originally introduced the three-year time limit. It was shortened to two years by the Blakeney NDP, and later changed back to three years. The Thatcher government probably saw the time limit as a means of preventing unions from extending what it saw as excessive gains won during a building boom over too long a period. There was also concern during the early1970s that unions were too often winning cost of living adjustment (cola) clauses that stoked inflation. Keeping agreements down to three years would limit the duration of whatever harm they might be producing. As one union official recently commented, "What would be wrong with a twenty year contract if it came with the right kind of cola clause?"[38]

When minister of labour, Gordon Snyder, shortened the limit to two years, he maintained it was to avoid the practice of front-end loading. This was the practice whereby unions were seduced into signing agreements by the offer of attractive increases in the first year, but found themselves far behind the rate of inflation before the end of the third year. Snyder saw this as a recipe for industrial unrest.[39]

This section offers benefits to both employees and employers. The time limit recognizes the danger of excessively one-sided contracts that arise when one of the groups involved in negotiations is in an extremely vulnerable position.[40] The inability to change such a contract for an extended number of years can foster discontent that accelerates over time. Problems develop between negotiations that were unforeseen in the last round of bargaining. Grievances can accumulate over time and if they are not addressed through meaningful discussions the potential for conflict increases. Dropping section 33(3) could have unintended consequences. Wildcat strikes and lockouts become more likely when the parties

have no opportunity to resolve festering issues. Negotiating every two or three years relieves that pressure. Reducing collective bargaining opportunities heightens it.

It is possible that the government's decision to drop the time limit was designed to enable it to obtain four-year (or longer) agreements with public sector unions. The province's three largest health care unions, CUPE, SEIU and SUN, will be bargaining for new agreements in the spring and summer of 2008. These unions will probably be confronted by the new handicap of essential services legislation during the upcoming round of bargaining. They may be vulnerable to the imposition of agreements lasting more than three years. Agreements lasting four years or more will allow the government to avoid dealing with three of its biggest bargaining headaches again until after the next provincial election. It would thus not have the threat of disruptive public sector disputes looming over it in association with its next election campaign. Perhaps this is too cynical an interpretation. But then it is hard to imagine what else could possibly be the benefit of the change to anyone — from business, labour or the public.

Alternatives to Amendment 11

Simply because this section is unique to Saskatchewan doesn't make it a wrong-headed idea. If for some reason the government is determined to eliminate the three-year limit, the closer the new limit is to three years the better. Five years would be better than six and four would be better than five.

Amendment 12 states that the amendments will come into force upon assent by the Lieutenant Governor. This is distinct from the approach of the Romanow and Calvert governments, which never put certain sections of the amendments contained in the 1994 version of the Labour Standards Act into force following assent (governments have the ability to hold off on making new legislation effective until it is proclaimed by Cabinet). The new government is not going to vacillate over implementing its labour agenda.

Alternatives to Amendment 12

No other option needs to be considered. Having legislation take effect upon assent is an entirely legitimate way for a government to operate.

Summary: The impact of Bill 6 and policy alternatives

No one should be surprised that the Saskatchewan Party government plans to change the province's labour legislation. Legislation that is supported by the labour movement often conflicts with the views of their core supporters. Doing something about labour has been on its agenda for years and it is expected by certain sections of the business community. Nonetheless, there are grounds to hope that the government is interested in making changes with the least disruption, controversy and conflict possible. To that end the government may indeed be prepared to entertain some suggestions for improvement or compromise from labour and other sections of the public. Hopefully the discussion presented here will help inform that process. The conversations required can occur even though the labour movement has every reason to claim that Bill 6 erodes the ability of workers to form unions, and that the alleged need to achieve

balance and swing the pendulum back to the right is based on faulty assumptions. There is value for the government undertaking a thorough consultation with labour, if only to obtain feedback that helps it appreciate some of the unintended negative implications of the legislation that perhaps they have not anticipated.

While consultations with labour will not likely result in a consensus that both labour and business will ever be completely satisfied with, it can still be helpful. The labour relations climate in the province will be much calmer if the government shows its hand with respect to its plans for the basket of policies that affect working people. If there are more surprises in the offing, the potential for frustration and conflict will only increase. Regardless of the tensions that erupt with respect to Bills 5 and 6, the government still has the opportunity to earn a degree of approval from labour by conscientiously administering and enforcing things like labour standards, and occupational health and safety legislation. The government's sincerity in this regard could have been demonstrated by allowing the terms of the LRB to expire in accordance with the terms of their appointments. The appointment of new members who lack the requisite skills, or people who are notoriously biased against labour will not be helpful. The appointment of a credible and competent LRB is critical to long term labour peace.

The government still has an opportunity to demonstrate it is prepared to really listen to what labour has to say. It also has the opportunity make the kind of gestures that would make its rhetoric about balance more convincing. This will require the government to demonstrate greater faith in the collective bargaining process. A central contention of this paper is that collective bargaining remains the most viable mechanism available within modern democracies for balancing employee rights with employer prerogatives and the overall well-being of society. Bill 6, as proposed, is in conflict with this proposition. As it stands the proposed legislation constitutes an effort to enhance employer power and reduce the capacity of employees to achieve union recognition and the ability to bargain collectively with their employers. Government reconsideration of Bill 6 through amendments to the proposed amendments is certain to bring about greater industrial relations harmony.

Chronology

1935 The Wagner Act enforces collective bargaining rights in the U.S.

1944 (February) The federal government implements P.C. 1003 as a wartime measure.

1944 (November) Saskatchewan's CCF government passes the Trade Union Act.

1966 The Thatcher government amends the Trade Union Act (Bill 79) and passes the Essential Services Emergency Act (Bill 2).

1970 The Thatcher government extends the scope of Bill 2 to cover private sector unions.

1971 The Blakeney government repeals Bill 2.

1972 The Blakeney government amends the Trade Union Act, reversing virtually all of the Thatcher amendments.

1983 The Devine government amends the Trade Union Act (Bill 104) reviving the spirit of many of the Thatcher changes from 1966.

1994 The Romanow government amends the Trade Union Act but does not reverse all the Devine government's changes. The Labour Standards Act was amended but some changes such as most available hours remain unproclaimed.

2007 (November 7) The Saskatchewan Party wins a majority of seats in the Saskatchewan Provincial Election.

2007 (December 4) Premier Brad Wall and his government are sworn in. Wall announces that his government will be making changes to the province's labour legislation including the introduction of essential services legislation.

2007 (December 10) The Speech from the Throne announces changes to labour legislation including essential services legislation.

2007 (December 19) Advanced Education, Employment and Labour minister, Rob Norris (Saskatoon-Greystone), announces Bill 5, An Act Respecting Essential Public Services, and Bill 6, An Act to Amend the Trade Union Act.

2008 (January 15) Letters from minister Rob Norris are sent to a select number of union officials inviting them to meet with him to discuss the proposed legislation.

References

1. Saskatchewan Ministry of Advanced Education Employment and Labour, "Backgrounder" attached to the January 15, 2007 invitation to union officials to consult re. Bills 5 and 6.

2. Angela Hall, "Labour Law Changes to Test Government". *Leader-Post*, Nov. 24 2007.

3. Bruce Johnstone, "Sask. Business Likes Changes", *Leader-Post*. Dec. 21, 2007.

4. James Wood, "Government Silent on Details of Essential Services Law." *Leader-Post*, Dec. 13, 2007. Wood indicates Saskatchewan Party MLA Elwin Hermanson and candidate Don McMorris told reporters there would be no essential service legislation.

5. Ibid. and Murray Mandryk, "Sask. Party rewrites election script." *Leader-Post*, Dec. 7, 2007. Recent revelations indicate Saskatchewan party officials were involved in discussions with University of Saskatchewan officials regarding essential services legislation during and after last fall's provincial election campaign. See Murray Mandryk commentary, *Leader-Post*, March 18, 2008.

6. Based on letter sent to Chris Banting, Executive Secretary, Retail Wholesale and Department Store Union, on Jan. 15, 2008 by Wynne Young, Deputy Minister, Advanced Education, Employment and Labour.

7. James Wood, "Veteran presence in new cabinet". *Leader-Post*, Nov. 22, 2007. Wood quotes Brad Wall: "To have labour included with a file on training, on post-secondary and frankly on immigration, I think captures these important areas under one file."

8. Kijkowski, Mariusz, *Charles E. Linblom's Revised Pluralism and the 1994 Reform of the Saskatchewan Trade Union Act*. Regina: University of Regina Master's thesis, 1997. And, Warren, Jim W. *From Pluralism to Pluralism: the political experience of organized labour in Saskatchewan from 1900-1938*. Regina: University of Regina Master's thesis, 1985. Both writers describe the importance of pluralist ideology in the legitimation of trade unions in democratic-capitalist society.

9. Adams, Roy J. *Labour Left Out: Canada's Failure to Protect and Promote Collective Bargaining as a Human Right*. Ottawa: Canadian Centre for Policy Alternatives, 2005. p. 30. Labour's role in capitalist society was described concisely in Galbraith J.K. *Economics and the Public Purpose*. Boston: Houghton Mifflin, 1973. p.71. "A central function of the modern trade union is to bring the rules to which the worker is subject partly within his jurisdiction — to ensure that, however indirectly he has a say in their nature and enforcement."

10. Speech from the Throne excerpt from the *Leader-Post Morning Edition* Oct. 20, 1944.

10* For example all provinces as well as the federal government allow civil servants to

bargain collectively. In addition, provinces including Quebec, B.C., and Manitoba have some form of what labour calls"anti-scab" legislation and provinces such as Manitoba has surpassed Saskatchewan in the adoption of pay equity measures for women.

10** Sections 11 (1) (a) through to 11 (1) (p) of the Saskatchewan Trade Union Act describe unfair labour practices by employers. Morton, Desmond. *Working People*. Ottawa: Deneau Publishers, 1981. p. 84.

11. Endicott, Stephen L. *Bienfait: The Saskatchewan Miner's Struggle of '31*. Toronto: University of Toronto Press, 2002. Endicott provides the most recent and comprehensive account of the 1931 organizing drive. For more recent examples of conflict during certification drives see Warren, Jim and Kathleen Carlisle, *On The Side of The People: A History of Labour in Saskatchewan.* Regina: Coteau Books, 2005. This book describes a number of more recent heated disputes related to union recognition including The Morris Rod Weeder plant occupation in 1973 and the 1986 dispute over recognition of construction unions at the Co-op Heavy Oil Upgrader in Regina.

12. Warren, Jim and Kathleen Carlisle, *On The Side of The People: A History of Labour in Saskatchewan.* Regina: Coteau Books, 2005. Union growth figures are from the statistical tables.

13. Interview with Barry Holma, United Brotherhood of Carpenters Joiners and Millwrights, Regina: Feb. 15, 2008.

14. Stephanie Flegel. "Labour Shortage". *Leader-Post*. Jan. 12, 2008. The article describes a Regina and District Chamber of Commerce report that cites the labour shortage as the largest single issue for its members. And, Veronica Rhodes. "Labour woes curb potential" *Leader-Post*. Jan. 14, 2008. Rhodes quotes comments by Michael Fougere, president of the Saskatchewan Construction Association regarding the shortage of skilled labour. Fougere called the labour shortage, "The single biggest issue for the association".

15. Warren and Carlisle, 2005. See Chapter 15 pages 245-249 "Attack on the Building Trades".

16. Interview with Kelvin Goebel, Executive Secretary Treasurer for Saskatchewan's United Brotherhood of Carpenters Joiners and Millwrights, Regina: Feb. 15, 2008.

17* Interview with Glen Lazeski, president, Saskatchewan Road Builders and Heavy Construction Association, February 26, 2008.

17. James Wood. "Gov't to allow initial increases, but puts indexing on hold". *Leader- Post*, Dec. 22. 2007.

18. Warren and Carlisle, 2005. p. 252. The Devine government only raise the minimum wage twice during its nine years in office. There were two 25 cent per hour increases implemented in conjunction with the 1986 and 1991 election campaigns.

19. Ibid. pp. 242-243. Under Devine random inspections of workplaces under the Labour Standards Act virtually ceased and inspections under the Occupational Health and Safety Act dropped by one third.

20. Wal-Mart launched a legal challenge against section 11(1)(a) of the Trade Union

Act, claiming its freedom of expression under the Charter was violated by the communications ban. Wal-Mart is hoping to avoid United Food and Commercial Workers certification of its North Battleford and Weyburn stores. Wal-Mart refused to turn over company manuals that were alleged to be instructing managers on how to defeat organizing drives.

21. Muthu, S. *Proposed Amendments to the Trade Union Act: A critique*. Unpublished paper March 2008. p. 10.

22. Health Services and Support Facilities Subsector Bargaining Association v. British Columbia. SCC27, Date 2007 06 08 Docket: 30554.

23. Lana Haight. "Residents happy with Wall". *Leader-Post*, Jan 19, 2008. And, Angela Hall. "Sask. Party likes what poll on legislation says". *Leader-Post*, Jan. 23, 2008. Both articles discuss the findings of a poll conducted by Saskatoon based Insightrix Research Inc. poll. The poll asked respondents if they approved of the government's essential services legislation, 38.4 percent strongly approved of it, 28.9 percent said they somewhat supported it, 20.2 percent opposed it and 12.4 percent had no comment.

24. Murray Mandryk "Labour Blind to its Image Problem." *Leader-Post,* Feb. 9, 2008. This is a point of view which seems to have escaped Saskatchewan political columnist Murray Mandryk who recently wrote that the labour movement's failure to realize it lacks public support, somehow diminishes its capacity to question whether Bill 6 and Bill 5 defy the *Charter of Rights* Mandryk argues "Using a court challenge to delay passage of essential services legislation may only worsen labour's image problem."

25. Jorge Barrera, "Big companies wield too much power, says poll". *Leader-Post*, Jan. 2, 2008. A recent story appearing in the *Leader-Post* (the same paper Mandryk's column appears in), reported, "A majority of the world's most informed, engaged and connected citizens believe large corporations have too much influence over government and wield more power than governments ...The majority of these citizens back aggressive action by their governments to regulate national and multinational corporations." If Mandryk applied similar logic to these results, he could make an argument for opposing changes to labour legislation backed by the corporate community.

27. Angela Hall. "Courts should decide if legislation is legally sound: SFL". *Leader-Post*, Feb. 8, 2008.

28. Eisler, Dale. *Rumours of Glory: Saskatchewan and the Thatcher Years*.Edmonton: Hurtig, 1987. And, Warren and Carlisle, 2005. Chapter 11, "Confronting Ross the Boss". Both these sources document the battles waged between Ross Thatcher and the labour movement in the 1960s.

29. Warren and Carlisle, 2005.p. 268. The Construction Industry Advisory Committee achieved a consensus. However, when the legislation went forward in 1992 the government removed the "reach back" provision which would have allowed unions to revive contracts that had been dodged by companies that had set up spin-off operations.

30. Ibid. pp. 262, 263. The first committee was the Trade Union Act Review committee chaired by Saskatoon law professor Daniel Ish. The second, somewhat more successful committee, was chaired by lawyer Ted Priel.

31. Kijkowski, 1994.p. 80.

32. Warren and Carlisle, 2005. p.266.

33. Melanie Baldwin, Board Registrar, Saskatchewan Labour Relations Board, assessment provided to the author via email Feb, 14, 2008.

33* The comparison with Alberta was provided in written comments to the author submitted by a former Saskatchewan LRB official, March 17, 2008.

34. Saskatchewan Federation of Labour document. "Preliminary Analysis Bill 6: Sask Party amendments to the Trade Union Act." Dec. 2007.

34* Muthu, p. 5.

34** Ibid. p. 5.

35. Melanie Baldwin, 2008.

36. The LRB's 1979 Newberry decision established the recognition of traditional trades designations in determinations about which union should represent workers on construction projects. LRB File No. 114-79.

37. Saskatchewan Federation of Labour document. "Preliminary Analysis Bill 6". Dec. 2007. This is an estimate made by the legal staff and legal consultants for a number of Saskatchewan unions.

37* Muthu, p. 5.

38. Jim Selby, Director of Organization, Alberta Federation of Labour., e mail to author Feb. 14, 2008.

39. Snyder, Gordon. "Social Justice Through Legislation: Saskatchewan Labour" this was a paper produced by Snyder and incorporated into other books including: Glor, Eleanor.ed. *Policy Innovation in the Saskatchewan Public Sector*. Toronto: Cactus Press, 1997; as well as a personal memoir produced by the Snyder family.

40. Garnet Dishaw, a staffer with the Saskatchewan branch of the Health Sciences Association, provided this insight in an interview in Regina on Feb. 1, 2008.