

**IN THE MATTER OF A COMPLAINT TO THE INTERNATIONAL
LABOUR ORGANIZATION
COMMITTEE ON FREEDOM OF ASSOCIATION
CASE NO. 2654**

BY:

**THE NATIONAL UNION OF PUBLIC AND GENERAL EMPLOYEES (NUPGE)
AND
SASKATCHEWAN GOVERNMENT AND GENERAL EMPLOYEES UNION
(SGEU)**

AGAINST:

THE GOVERNMENT OF CANADA (SASKATCHEWAN)

RESPONSE FOR REQUEST FOR FURTHER CLARIFICATION

INTRODUCTION

The Government of Canada has been asked by the Committee on Freedom of Association (CFA) to provide clarification on particular provisions within *The Public Service Essential Services Act* and *The Trade Union Act*. In addition, the Saskatchewan Federation of Labour (SFL) made an additional written submission to the CFA on May 25, 2009, and the Government has been invited to respond on the matters raised in that submission.

I QUESTIONS RAISED BY THE COMMITTEE ON FREEDOM OF ASSOCIATION

The specific questions on *The Public Service Essential Services Act* are:

- What precisely are “prescribed” essential services as found in clause 2(c)(ii)(B)?
- Can the definition of “public employer” in clause 2(c) encompass private entities?
- What remedy or compensatory guarantee is provided to a worker who’s right to strike is restricted or prohibited by the Act?

The specific questions on *The Trade Union Amendment Act, 2007* are:

- How does the new quorum system work in practice?
- What were the factors that led the Government to conclude that it was necessary to modify the certification procedure by adding a secret ballot requirement?

THE PUBLIC SERVICE ESSENTIAL SERVICES ACT

What precisely are “prescribed” essential services as found in clause 2(c)(ii)(B)?

To answer the question respecting what are “prescribed” essential services, it is necessary to provide some background information. In 2006-07, the Saskatchewan Government and General Employees Union (SGEU) went on strike for eight weeks. As part of the resolution of the strike the mediator recommended that the SGEU and the government of Saskatchewan prepare an essential services plan prior to the expiry of the next collective bargaining agreement.

In recognition of this process, and to be open and transparent as to the services of Executive Government that are considered essential, a provision was included in the *Act* which would require those services deemed essential to be established in regulations.

Regulations under clause 2(c)(ii)(B) came into force on July 10, 2009. A copy of these regulations is attached as requested.

Can the definition of “public employer” in clause 2(c) encompass private entities?

There is the potential for private entities to be included in the definition of “public employer”; but only where the service provided is a public service and meets the definition of an “essential service”.

Based on these criteria, private entities that provide a private service can not be designated as essential under this legislation.

The intent of this provision is to address any unionized enterprise where a public service is provided by a private entity, for example emergency medical services or ambulance services.

What remedy or compensatory guarantee is provided to a worker who’s right to strike is restricted or prohibited by the Act?

Section 18 of the *Act* states that if there is a work stoppage, essential service employees are required to perform the duties of their employment in accordance with the terms and conditions of the most recent collective bargaining agreement. As a result, those employees working in positions identified as essential are entitled to wages and benefits as established in that collective agreement.

THE TRADE UNION AMENDMENT ACT, 2007

How does the new quorum system work in practice?

The amended certification and rescission process requires the trade union (certification) or union member (rescission), to produce written support of at least 45 per cent of the employees in the potential or existing bargaining unit. If this threshold is reached, the Labour Relations Board is required to order a vote by secret ballot. Such votes are monitored by the Board or a representative of the Board. In general, these votes likely occur in the workplace or through mail-in ballot.

In making application to the Labour Relations Board, the trade union must ensure that the written support used for its application (certification) to the Board is dated within the 90-days preceding the date of application. This allows for the most recent and current workers in that organization to make their wishes known without involving those whose employment may have ceased.

What were the factors that led the Government to conclude that it was necessary to modify the certification procedure by adding a secret ballot requirement?

The intent of the establishment of a secret ballot process was to ensure that workers (seeking unionization) or union members (seeking alternate representation or rescission),

can freely express their democratic choice without fear of reprisals, intimidation and coercion by representatives of the union, employer or individuals in the workplace.

In Canada there are currently five jurisdictions that employ a mandatory vote process for the certification process.

II RESPONSE TO THE SASKATCHEWAN FEDERATION OF LABOUR SUBMISSION, MAY 25, 2009

THE TRADE UNION AMENDMENT ACT, 2007

As was stated in the Government's initial statement of evidence, the amendment to section 11(1)(a) clarified that an employer is not precluded from communicating facts and its opinions to employees. It remains an unfair labour practice for an employer to interfere with, restrain, intimidate, threaten or coerce an employee in the exercise of any right conferred by the Act. It is the responsibility of the Labour Relations Board to determine if such actions have occurred.

Prior to this amendment, the legislation had been interpreted by the Labour Relations Board to mean that an employer could not communicate in any manner to employees during a certification drive.

As was noted in the initial statement of evidence, extensive consultations were conducted on the proposed amendments to *The Trade Union Act*. After thoughtful consideration of the information gathered, it was determined that amendments to the Bill were not required. This does not invalidate the process.

THE PUBLIC SERVICE ESSENTIAL SERVICES ACT

The intent of *The Public Service Essential Services Act* is to ensure that essential services are provided to the citizens of the province during a labour dispute. This is the first round of negotiations under this new legislation. As a result, the parties to collective agreements are learning the requirements of the legislation as they work together through a new process. While this new process has the potential to slow negotiations, it is noted that where there is a perceived violation of the Act, an application can be made to the Labour Relations Board.

As identified above, the Government has enacted regulations, *The Public Service Essential Services Regulations*, which designate those Executive Government services that are deemed essential. This list includes child protection and emergency social services as well as highway snow removal. It is noted that ambulance services are a responsibility of the Regional Health Authorities which are included in the definition of "public employer" in the Act.

The Act does supersede the provisions of other laws and collective agreements. This is to ensure that an essential services agreement is reached between the parties that meets the minimum standard established in the Act.

THE LABOUR RELATIONS BOARD APPOINTMENTS

The Court of Queen's Bench for Saskatchewan dismissed the SFL's challenge to the appointment of the chair and vice-chairs of the Labour Relations Board (LRB) in a decision dated January 14, 2009, a copy of which is attached.

The Court determined that the Government of Saskatchewan clearly had the statutory authority to terminate the appointments of the previous chair and vice-chairs of the LRB. The Court concluded there was no merit to the SFL's arguments that the new appointments to the LRB impacted the impartiality and independence of the board.

The SFL commenced an appeal of this decision to the Saskatchewan Court of Appeal. As of September 29, 2009, the materials required for the appellants to perfect their appeal have not been filed, and no date has been set for a hearing.

THE TRESPASS TO PROPERTY ACT

The Trespass to Property Act, S.S. 2009, c. T-20.2, a copy of which is attached, came into force on July 1, 2009. The legislation designates certain activities as offences, such as entering onto enclosed lands, lands that are posted against entry, refusing to leave lands or premises when requested to do so, or refusing to stop an activity on lands or premises when requested to do so. A peace officer can issue a ticket or potentially arrest an individual acting in breach of the legislation. The legislation does not change property owners' rights to control access to their own land under the existing common law related to trespass. Rather, the purpose of the legislation is to provide peace officers and property owners with an effective enforcement mechanism in circumstances where a trespass occurs.

The rights of individuals to engage in otherwise lawful picketing are not affected by the implementation of *The Trespass to Property Act*. Section 3 specifically provides that persons acting under a "right of authority conferred by law" are not committing trespass. Lawful picketing is encompassed under the right to freedom of association, and constitutionally guaranteed pursuant to section 2(b) of Canada's *Charter of Rights and Freedoms*. Case law continues to develop to define the appropriate balance between the rights of a property owner and the right to picket. Accordingly, it is neither necessary nor desirable to define *Charter* rights in provincial legislation.