WITHOUT PREJUDICE

LIMITED AND PROVISIONAL RESPONSE OF THE PUBLIC SERVICE ALLIANCE OF CANADA TO THE GOVERNMENT OF SASKATCHEWAN'S "CONSULTATION" PAPER ON THE RENEWAL OF LABOUR LEGISLATION IN SASKATCHEWAN

EMPLOYMENT STANDARDS

Scope of The Labour Standards Act *(Page 3)*

The current legislation does not meet its intended purpose in all respects. The Act should apply to the fullest and broadest range of employees (including managers), employment, industries and work arrangements. Its scope of application should be amended accordingly. The protections of basic labour standards cannot be reasonably withheld from any class of working people in a modern, democratic society.

Employment Agencies *(Page 4)*

Labour legislation should continue to prohibit the charging of a fee for finding employment for an individual in order to protect vulnerable persons from the exploitation that is inherent to such a practice. In addition to other punitive measures, fines should be imposed on anyone who contravenes such a prohibition in order to create meaningful deterrents to such conduct. We are not in a position at this time to advise as to the quantum of a reasonable fine, as considerable research is required in order to address that question, for which there has been insufficient time provided due to the unreasonable deadlines imposed in this constitutionally deficient "consultation" process.

Hours of Work *(Page 5)*

It should not be permissible for employers and employees to enter into flexible work arrangements without requiring a permit. The potential for abuse arising from inequality of bargaining power as between individual employees and their employers is simply too great to allow such practices.

Limitations on hours of work and protections in respect of same must at minimum remain in place as currently established, but should be improved in the favour of employees such as to reflect the superior protections and standards established by British Columbia legislation, and in particular a provision should be introduced, such as that in place in BC, that requires that no employee can be required to work a quantum of hours so excessive as to cause harm to the employee's health or safety.

Overtime provisions should be amended so as to provide payment for such hours at two (2) times the employee's normal rate of pay for work performed in excess of both the maximum daily hours and the maximum weekly hours of work. Strong disincentives to

the abuse of hours of work by employers should be implemented and again, British Columbia can be referred to as a helpful model in this regard.

A provision should be introduced that would formally regulate and enshrine the common practice of banking overtime hours to be taken in the form of time off work, rather than as pay, within a reasonable period of time after the overtime hours have been worked.

Protective standards should be enacted in respect of the scheduling of split shifts so as to prevent abuse by employers and ensure that adequate rest is provided to employees.

Reporting pay provisions should amended to provide that reporting pay is provided at a minimum of three (3) hours pay at the worker's regular rate of pay (or their overtime rate, if applicable) rather than at the provincial minimum rate of pay.

Both rest period and reporting pay entitlements should be provided to part-time workers and the current threshold requirement of twenty (20) hours per week should be rescinded in favour of such standards. The standards currently provided by Quebec legislation offer a superior model in this regard, and one that should be equalled or bettered by Saskatchewan legislation.

Leave Provisions *(Page 6)*

Saskatchewan's leave provisions would benefit from improvements in the favour of employees in order to bring them into accordance with best and most beneficial practices from other jurisdictions such as Quebec and British Columbia, in those areas in which they currently provide a lesser standard or lesser entitlement. In addition, there should be no minimum period of service required in order to attract entitlement to maternity leave. Bereavement leave should be provided on a paid basis. Parental leave periods should not be discriminatorily reduced for those employees who have previously taken maternity leave. Sick leave standards should be raised in accordance with the best practice established by Quebec.

Leave provisions should be expanded to include organ donation, citizenship ceremonies and other appropriate circumstances.

Public Holiday Provisions *(Page 7)*

The number of public holidays should be increased, in order to encourage community participation and community-building activities by employees, and so as to provide a greater entitlement to paid time away from work for purposes of additional rest and recreation.

Notice Provisions *(Page 8)*

Minimum notice of termination in the amount of two (2) weeks should be provided to employees. Part-time, contract and temporary employees should be entitled to the

protections of notice period requirements. Termination pay should include overtime earnings and employees should be provided not only termination pay but also the benefits to which they would have been entitled had they worked through a notice period. Group termination provisions should have their notice period requirements increased and a requirement to implement Joint Planning Committees in circumstances of group terminations should be established.

No minimum written or other notice of resignation requirement should be imposed on employees who terminate their employment.

Minimum Wage *(Page 8)*

The minimum wage should be indexed to the average wages of persons earning more than the minimum wage, calculated on a national basis. As the average wage in Canada increases, so too should the minimum wage required to be paid in Saskatchewan.

Protection against deduction from wages from employees in circumstances of cash shortages, faulty work or accidental damage to property, so as to ensure that no employee is ever paid an amount that is effectively below the legislated minimum.

The Minimum Wage Board must be continued and it should be empowered to index wages as described above.

The question as to whether disabled workers wages lower than the minimum wages is one that may deserve further analysis in an effort to establish appropriate means by which to remedy systemic disadvantages in obtaining employment that are faced by persons with disabilities, but this analysis cannot be completed or provided at present, due to the insufficient amount of time provided by this constitutionally deficient "consultation" process.

Equal Pay *(Page 10)*

The current equal pay regime should be amended so as to eliminate barriers to entitlement based on part-time or other employment status issues or one's date of hire. Protection should be extended beyond gender equality so as to ensure equal pay is attracted without discrimination on the basis of age, race, recent immigration status, single-parent status and <u>all</u> other typical grounds upon which persons who are members of traditionally marginalized groups experience discrimination.

In addition Saskatchewan should introduce pay equity legislation that conforms to best practices in other jurisdictions, and such provisions should prohibit discriminatory pay practices not only in respect of women, but also in respect of all other marginalized groups who experience such forms of discrimination.

Discriminatory Actions *(Page 11)*

The discriminatory actions provisions should be studied and revised in order to reflect a superior standard and establish a new benchmark for the province and for the country. This is a project that requires significant research, investigation and analysis. These tasks cannot be completed and spoken to at present due to the insufficient amount of time provided by this constitutionally deficient "consultation" process.

LABOUR RELATIONS

Labour Relations *(Page 12)*

Saskatchewan should return to a regime that permits "card check" certifications and the mandatory vote regime should be repealed without delay. Mandatory vote regimes serve no purpose but to enhance the ability of employers to resist and defeat the legitimate collective bargaining aspirations of employees. If this is not repealed, the threshold level of support for obtaining a representation vote should be reduced from its current level in order to promote fair access to collective bargaining, in accordance with the practice under federal jurisdiction.

Scope Under The Trade Union Act *(Page 12)*

The TUA should be amended so as to strictly and narrowly define both "managerial character" and "confidential capacity with respect to industrial relations", in order to provide the broadest possible access to collective bargaining and union representation, and in order to prevent common forms of abuse that are engaged in by employers in an effort to limit and/or defeat those important aims.

Employees with supervisory responsibilities should be permitted to be in the same union as the employees they supervise unless a clear and compelling conflict of interest would arise such as to make such inclusion inadvisable. The onus to establish such a conflict of interest should be a heavy one that rests on the party asserting its existence. Historical experience of labour relations has shown that it such conflicts of interest are frequently alleged to exist by employers, but that they rarely exist as a matter of fact.

Accountability *(Page 13)*

We believe that trade unions are sufficiently accountable and that no further accountability measures are required. A requirement that unions provide audited financial statements to members, the government and the public is unnecessary, unreasonable, outrageous and motivated by anti-union stereotypes and biases that have no reasonable foundation in historical experience.

Union members already vote on and thereby stipulate substantively how their union dues are used via the internal, democratic processes, from the local union level on up to the

federation and congress levels. No governmental intervention (interference) with these processes is required and none can be justified.

Employees represented by unions should not and must not be permitted to opt out of paying union dues, if those same employees will nevertheless reap the benefits of unionization, the collective agreement that sets out their terms and conditions of employment, and the duty of fair representation that is owed to them by their bargaining agent. To enact a regime that permits otherwise is to promote a form of social and economic parasitism by way of permitting those employees who might opt out to act as "free riders" who would receive "something for nothing", which is a quality and posture that no working person should be entitled or encouraged to assume. Any move towards a repeal of the Rand doctrine is a regressive, repressive and outrageous attack on the dignity of working people and on trade unions themselves. Current requirements that an employee request deduction of union dues should be repealed in favour of a mandatory deduction regime that sees the Rand doctrine implemented as a statutory obligation.

The current processes, mechanisms and fora available for union members to pursue allegations that the constitution or bylaws of their union have been violated are entirely adequate and there is no need or valid justification for introducing new processes that bring those matters to the Labour Relations Board.

Certification and Decertification of a Union *(Page 14)*

No employer should be entitled to apply to the Labour Relations Board seeking to rescind a certification order in circumstances other than those already permissible (such as a jurisdictional objection or challenge.) Under no circumstances should an employer be entitled to apply to rescind a certification order merely because that employer no longer employs workers. This union's experience has shown that many employers may experience lengthy periods of time in which they employ no employees in a particular bargaining unit, but that those bargaining units do frequently later become populated again. The bargaining rights held by the union in those circumstances should not be rescinded simply by reason of the employer's failure to employ persons, be that failure the result of business factors or a deliberate choice. Once obtained, bargaining rights must not be terminated except in accordance with the wishes of employees, not those of an employer. Existing provisions and processes are adequate for this purpose and need not be expanded.

Unfair Labour Practice *(Page 16)*

The Labour Relations Board should be granted jurisdiction to certify trade unions as bargaining agent in the event that an employer commits unfair labour practices that render it impossible to determine the true wishes of employees. Employers should be required to effect a posture of strict neutrality towards employee organizing efforts and their entitlement to express opinions regarding unionization should be repealed.

Transferring Certification *(Page 16)*

The successorship and common employer declarations are appropriate and necessary. They should be extended to apply automatically and by operation of law to as broad a range of employers, industries and locations as possible. In the case of changes of cafeteria, janitorial or security service providers or other similar forms of activity that see frequent changes of contractor/provider, those declarations should apply automatically at all locations in Saskatchewan, not merely to government-owned buildings. A change of contractor should never cause employees in such vulnerable sectors to lose their existing union representation and collective agreement protections.

Picketing *(Page 19)*

Picketing activity should be regulated by the courts, not by the Labour Relations Board. The LRB should not be given jurisdiction to grant injunctive relief where there are allegations of unlawful picketing.

Union Dues *(Page 22)*

No employee should be entitled to opt out of union membership for reasons other than valid religious grounds, which should be strictly interpreted. There are no situations in which union dues should not be collected from employees, including religious objectors. Those persons dues deducted should be remitted to charity. Legislation should require the mandatory deduction of union dues by way of deeming the inclusion of a Rand doctrine dues deduction clause into every collective agreement, if the parties fail to include one in their bargained language.

The Act should facilitate the collection of fines by unions in circumstances of strikebreaking activity by employees. This approach is in the public interest and will assist in shortening the duration of strikes when they occur.

Administration *(Page 23)*

Collective agreements should be considered to come into force upon the bargain being reached by the parties and this effectiveness should not require filing with the Minister or any other entity in order to come into force. The same approach should be applied in respect of arbitral awards, with no filing requirement in order for them to become effective and in force.