

Written submission from the
Saskatchewan Provincial
Building and Construction
Trades Council

**To the Human
Services Committee
Legislative Assembly
of Saskatchewan**

With regard to
*The Construction Industry
Labour Relations
Amendment Act, 2009*

June 17, 2009



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Introduction

The Saskatchewan Provincial Building and Construction Trades Council has prepared this brief to supplement and expand on their presentation and comments made to the Human Services Committee on June 17, 2009. The Building Trades takes the government's amendments to *The Construction Industry Labour Relations Act, 2000* very seriously and believes the amendments as proposed represent a fundamental and radical change to the management of labour relations in the Saskatchewan construction sector. We believe these changes will significantly and negatively impact on how the industry is managed, how the industry is organized and ultimately on the health of the industry. Most importantly, we are concerned with how these changes will affect the lives of working men and women in Saskatchewan, and the lives of their families. The Building Trades Council represents 5,000 to 8,000 working men and women in Saskatchewan at any one time.

Outside of the Communications, Energy and Paperworkers Union (CEP), the Christian Labour Association of Canada was the only purported union the government consulted prior to the introduction of the legislation. Organized labour in Saskatchewan was not consulted and in fact, only learned of the government's intent at a technical briefing held the morning the legislation was introduced.

This presentation will respond to the government's stated goals in introducing the amendments to the Act. It will be divided into five sections. First, we will review the current health of the construction sector in the context of the economy; second, we will review the current system and why it contributes to stability in the construction sector; third, we will review the concerns with the government's perspective that the amendments increase worker choice and increase competition; fourth, we will review the significant issues with abandonment and the creation of two parallel systems; and finally, we will offer some suggestions on how the government might move to a more collaborative approach.

The Saskatchewan Economy

Economic Performance

It is fair to say that the Saskatchewan economy is performing at levels never before seen in the province. Our economy has shown phenomenal strength in recent years, and particularly in spite of the recent global economic downturn. According to Sasktrends Monitor, Saskatchewan's economy grew by a remarkable 25 per cent in 2008, building on growth of 11 per cent in 2007. Real GDP – or Gross Domestic Product with price inflation removed – grew by 4.4 per cent to reach \$41.6 billion in constant 2002 dollars. The 2008 increase of 4.4 per cent is remarkable in that it is double the long term (20 year) average of 2.1 per cent, the largest increase since 2003, and the largest among the provinces. In fact, Saskatchewan's economy has grown at a rate above the long-term average in five of the past six years.

Among the provinces and territories, Saskatchewan has had the second highest growth rate in GDP per capita since 2001, behind only Newfoundland. After the increase last year, the GDP per capita reached \$63, 311, second highest in the country.

The fortunes of the construction industry have followed closely along with the wider economy. Measured by the value of building permits, activity in the construction sector bottomed out in the early 1990's when the value of permits fell to less than \$350 million per year for three consecutive years. The value increased to almost three times that amount by 2005 and doubled again to more than \$2 billion in 2008. (Source: Sasktrends Monitor).

Job Growth

Trades people are working in the province. Just as the construction sector has mirrored the strength of the overall Saskatchewan economy so have job numbers. The boom in construction means a boom in construction jobs.

Construction employment has traditionally ranged between 20,000 and 25,000 jobs through the 1990's. Over the last five years, employment in construction has grown at 9.6 per cent per year. Construction employment in 2008 averaged 37,000 jobs although it was above 40,000 for most of the summer. While construction job growth has occurred in other provinces as well, the five-year growth of 9.6 per cent annually is

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well above the national average of 6.3 per cent. Saskatchewan is third in the country in construction job growth, following only Newfoundland and British Columbia. (Source: Sasktrends Monitor).

The Saskatchewan job situation is the envy of Canada. In May of this year, Saskatchewan was the only province in which the unemployment rate dropped – from 5 per cent to 4.9 per cent – and tied Manitoba for the lowest unemployment rate in Canada. (Source: Sasktrends Monitor).

Apprenticeship

Not surprisingly, given our job growth, Saskatchewan is also training apprentices at a record pace. The Saskatchewan Apprenticeship and Trade Certification Commission is industry-led. Both employers and employees – including a heavy representation from unionized sectors – serve on the board of the Commission. Union members also contribute their time and expertise to the Joint Training Committees and the Training Boards. Union members are the backbone of the apprenticeship system.

As of June 30, 2008, there were 8,130 apprentices registered in Saskatchewan. This represents an increase of 20 per cent over the total at the end of 2007. The Commission received 2,853 new registrations in 2007-08, which exceeded the previous year's record of 2,408 new registrations. (Source: Saskatchewan Apprenticeship and Trade Certification Commission). These numbers attest to the success of the program and the high level of activity underway in sectors served by apprenticeship, including construction.

The Saskatchewan Provincial Building and Construction Trades Council strongly believes the economy is strong, the construction industry is strong, job growth is strong, and the apprenticeship system is working. The evidence shows the current system under *The Construction Industry Labour Relations Act, 1992* is working and does not need the government to fix it.

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The Current System

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As context for the later discussion, it is important to note that the current system governing labour relations in the construction sector has contributed to seventeen years of stability in the Saskatchewan construction sector. That means seventeen years without a single work disruption due to labour relations.

The concept behind the existing system is quite simple. Construction collective agreements are bargained provincially between the employers and employees at one table. The employers are on one side in the form of a representative employers’ organization, such as the Construction Labour Relations Association of Saskatchewan (CLR), with the employees on the other side represented by the trade unions and the Saskatchewan Provincial Building and Construction Trades Council. Wages and benefits apply across the province.

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Most importantly, the system is inherently stable because one collective agreement governing the system acts as a powerful disincentive to labour disruption. In practice, labour disruptions do not occur as taking out the whole system is too great a price to pay for employees or employers. This means, for example, that if the United Association of Pipefitters and Plumbers decides on a work stoppage at one work site in the province, all unionized pipefitters and plumbers across the province must stop work. If an employer decides to lock out pipefitters and plumbers on one work site, all employers will be affected because all pipefitters and plumbers across the province will be locked out. Furthermore, either scenario could also lead to all unionized workers refusing to cross picket lines. So what begins as a local problem becomes an issue across the province affecting all projects and the economy.

Bill 80 will destabilize the industry by introducing parallel systems for bargaining and labour relations in the province. The proposed section 4 states that bargaining may be conducted provincially by trade between the employer’s organization and the appropriate trade division for that trade, but allows for other options for bargaining, including all-employee certifications (known as wall-to-wall certifications) or bargaining on behalf of more than one trade.¹ This can be done regardless of whether the Minister has designated a trade as being the appropriate unit to



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¹ See subsection 4(1), and 4(2), paragraphs (a) and (b).

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bargain on behalf of a trade. While unions may continue to organize along trade lines (hereinafter referred to as the old system), they may now organize a bargaining unit that has workers from multiple trades or an all-employee unit including non-construction workers.

In a 2001 decision, the Saskatchewan Labour Relations Board described the dangers of the type of wall-to-wall system that Bill 80 advocates and commented on why the existing system is so stable. They said:

“The stabilization goal of accreditation laws would be compromised if the Board permitted “wall-to-wall” bargaining in the construction industry. Complex patterns of collective bargaining would replace province-wide trade negotiations. Multiple bargaining tables, each with their own right to strike and lockout on any construction project, would replace single province-wide trade tables. In the construction industry, the existence of a picket line at the gates to a large project can have the effect of shutting down the entire project because of the principles of union solidarity that are typically practised by construction workers. This potential for chaos is the harm that was sought to be avoided in the enactment of the construction industry labour relations laws throughout the country.”²

In addition, under Bill 80, not only is wall-to-wall bargaining permitted, but the Labour Relations Board, in deciding what is an appropriate bargaining unit, shall not give preference to a craft or trade over another bargaining unit.³

The introduction of parallel systems is particularly significant when it is coupled with the changes to the law of abandonment to be discussed later in this submission.

There are other issues with regard to the language of the proposed section 4. Subsection 4(5) appears to be saying that when a “unionized employer” who is required to bargain with a union for employees in any of the designated trades (i.e. an employer is operating under the old system) and subsequently becomes named as an employer in one of the new types of bargaining units, they are no longer governed at all by the Act. It is unclear from this section what exactly the government’s intentions are with respect to if or how the two systems created under Bill 80 will operate together.

² Re: *Central Mill Construction Ltd.*, [2001] SLRBD No. 7 (QL)

³ See subsection 4(3).

The government may have intended, however, that subsection 4(5) apply to a very different situation. It may have intended that the effect of the Labour Relations Board making an order under subsection 4(2)(a) or (b) replaces a certification order under the old system. This is commonly referred to as a “raid,” where one union replaces another union as representative of the same or some of the same employees.



The Real Impact of Bill 80 on Worker Choice and Competition

Worker Choice?

When introducing the amendments, the Minister of Labour stated Bill 80 is necessary “first and foremost [for] the choice for employees.”⁴ The Building Trades strongly disagrees with the Minister’s statement and in fact, believes the amendments are really about providing choice for employers.

“Bill 80 does not expand choice for workers. If the only choice left under Bill 80 is to be represented by the union that the employer picks, that is no choice at all.”

Under the current *Construction Industry Labour Relations Act, 1992*, a construction worker in Saskatchewan has the choice to work either for a unionized or a non-unionized contractor. If that worker chooses the benefits of working on a unionized site, then he or she must join the union associated with his or her particular trade. Pipefitters, for example, must join the United Association of Pipefitters and Plumbers, or the UA as it is commonly called. The Building Trades Council believes it is the requirement to join the provincially-specified union that the government finds problematic. Their concern appears to stem from the choice for a worker being limited to the choice between working on a unionized or a non-unionized site.

A close examination of Bill 80 shows what kind of choice is offered to workers. Bill 80 will allow contractors to pick the union they want to deal with through a process called voluntary recognition. This differs from certification, where it is the workers who decide they want to form or join a union. Under Bill 80, a contractor may voluntarily recognize a union of its choice including a “dummy” union or an “employer union.” This allows the employer to choose the so-called union, and then to choose the terms of the collective agreement, including wages and benefits. Under this scenario, the choice for the employee is take it or leave it.

Bill 80 does not expand choice for workers. If the only choice left under Bill 80 is to be represented by the union that the employer picks, that is no choice at all.



⁴ News Conference, March 10, 2009

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Risks with voluntary recognition were outlined in 1999 by the Alberta Labour Relations Board. In relation to a case involving voluntary certification of the Christian Labour Association of Canada, the Board said:

“... there are risks to voluntary recognition which are not present, or are less likely to be present, where the relationship is initiated by a certificate or bargaining authority issued by a labour board, following the full paraphernalia of certification proceedings. For example, there is a danger that a “sweetheart” deal may be struck, one which favours the trade-union and management but which is to the distinct disadvantage of the employees.

Alternatively, an employer may, for no readily apparent reason invite a trade-union to enter into a collective agreement, but later examination reveals that the employer’s objective was to influence his employees against another trade-union which had been experiencing some organizational success. Finally, even in the absence of such clear improprieties, it is entirely possible that a voluntary recognition will result in the employees having foisted on them a bargaining agent which they never wanted and still do not want.”⁵

The Christian Labour Association of Canada has often been accused of being a “company union.” In one comparison of wages in one Alberta employer who managed to change unions in favour of the Christian Labour Association of Canada, it was found that wages dropped in nine of 11 occupations, some by more than 25 per cent; that the number of paid vacation days was reduced; and that fewer holidays were provided.⁶

The Building Trades has not heard from one worker – unionized or non-unionized – complaining about a lack of choice. The government has not provided evidence that the working men and women in Saskatchewan’s construction industry want this change. Certainly the government did not take the time before the introduction of these amendments to ask for their opinion.

The question must be asked as to why construction workers are singled out. The situation of workers being required to join a predetermined union exists in all kinds of sectors in Saskatchewan, including workers



⁵ Alberta Labour Relations Board, Vertex Construction Services Ltd. Decision, March 17, 1999. Paragraph 28

⁶ <http://www.thetruthaboutclac.ca/compare.asp>

employed by the provincial government. If you work for the Government of Saskatchewan, you are required to join the SGEU. If you work for one of the health regions as a nurse in Saskatchewan you are required to join SUN. If you work for a publicly-funded school, you must join the STF. If employee choice is not important in these areas, why is it important in construction? The Building Trades believes it is because the government is using “worker choice” to cloud the real impacts of Bill 80, which ensures employers have ample opportunity and the right environment to shed union certifications.

Project Agreements

Project collective agreements are allowed under the current Act, although they are voluntary in nature. A project agreement allows the employer, the union and the registered employer association to negotiate an agreement to govern the terms of a particular construction project. It is effective only for the length of the project. Under Bill 80, the changes proposed allow the Labour Relations Board to issue a certification for a particular project, and to determine whether or not the certification should be confined to a particular project.⁷

This is a significant departure as currently the Labour Relations Board is unable to issue project certification orders, even though employers, unions and project owners may enter into project agreements. It must be noted that this change has been made with no additional provisions governing when a project certification might be appropriate. Will it only be applied to very large projects or only to short-term projects? Only projects where the employer is out-of-province and is unlikely to continue to do business in Saskatchewan again or for many years? Or, will this provision eventually come to replace the current regime, so that project certifications become the norm, unless the employer has continuous, ongoing construction projects in the province? With no limits on the question of when a project certification might be appropriate, the Labour Relations Board has a very wide discretion to apply the concept in a broad manner. It leads one to question how the introduction of new forms of organizing and bargaining will maintain industrial stability, one of the ultimate goals and strengths of the current system.

It should also be noted that this change appears to only apply to the old system; new companies entering the province or starting up, where a union may be trying to certify their workers, have the option of asking the Board to order a project certification. The result may be no broad-based union certification which follows the employer past the project and the

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⁷ See clause 7(b) of CILRA 2009.

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Increased Competition

Another justification the government gives for introducing Bill 80 is that without the amendments, construction companies from outside of the province cannot come to Saskatchewan with their workers, with whom they may have an existing relationship.

In fact, there is nothing to prevent a company from coming to Saskatchewan and nothing to prevent them from bringing their workers with them. In fact, any company outside of Saskatchewan could bid on and win a contract in Saskatchewan, and could then bring in, or hire as many workers as they want in Saskatchewan. If the workers of that company decide they want to be unionized, they could do so. The Building Trades believes that is what the government wants to prevent with Bill 80. They want to prevent workers who work for a non-unionized employer from certifying that employer. Bill 80 will diminish the ability of employees on a construction site from organizing and forming a union. Bill 80 does this by allowing a company – for example, a contractor from outside of Saskatchewan – to strike an arrangement with an employer-friendly union, sign an agreement with them, and anyone who works for that employer will have to join the union chosen by the employer.



Abandonment – Two Parallel Systems

“After a careful reading, the answer appears to be that the government is intending to dramatically change labour law in Saskatchewan to allow employers to use abandonment as a back door to getting rid of union certifications. If these changes become law, Saskatchewan will be the only jurisdiction in Canada that has enacted legislation on abandonment in this retroactive manner.”

Abandonment refers to the notion that a union has abandoned its bargaining rights through inaction or inattention. If such a situation is found and proved, the Labour Relations Board would be able to revoke a union’s certification.

Although the concept of abandonment has long been considered and applied by the Saskatchewan Labour Relations Board, neither *The Trade Union Act* nor *The Construction Industry Labour Relations Act, 1992* has ever contained provisions governing the concept. Bill 80 would legislate the concept and change dramatically the law relating to abandonment in Saskatchewan.

For the last 20 years, the Saskatchewan Labour Relations Board has ruled on matters of abandonment without requiring any specific legislative provisions to do so. Saskatchewan courts have, through past rulings, supported as reasonable, the Labour Relations Board’s authority to consider and make decisions on abandonment. If the Labour Relations Board has the authority to rule on abandonment and has in fact done so, with the support of the courts, what is the purpose of the abandonment provisions in Bill 80? After a careful reading, the answer appears to be that the government is intending to dramatically change labour law in Saskatchewan to allow employers to use abandonment as a back door to getting rid of union certifications. If these changes become law, Saskatchewan will be the only jurisdiction in Canada that has enacted legislation on abandonment in this retroactive manner.

The abandonment provisions in Bill 80 will allow employers to walk away from their certification orders if they can prove that a union has been inactive for three years – even in the distant past – and even if the employer bringing the claim of abandonment had no employees during the three years in question. The new abandonment provisions could be used to immediately clear the decks of any inactive certifications in the construction industry. This is not currently the case, because without the Bill 80 provisions, an employer could not successfully argue abandonment had occurred in a situation where the employer did not have any employees. The reasoning seems obvious – a union can hardly be actively promoting its bargaining rights to an employer if that employer has no employees on whose behalf a union may bargain. Bill 80 specifies that no such limitations shall be placed on the Labour Relations



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Board in its consideration of the abandonment. Specifically, proposed section 6.1 subsection 4 states that:

“The board is not limited in the exercise of its jurisdiction by the system of collective bargaining in the construction industry pursuant to this Act or by the absence of employees in the appropriate unit of an employer with an active presence in the construction industry.”

Additionally, Bill 80 amendments will allow any three-year period to be considered by the Labour Relations Board in assessing abandonment, including the distant past. Section 6.1, subsection 4 states in clause (c):

“The board may consider any period of inactivity by a trade union in the promotion and enforcement of its bargaining rights, whether that period occurred before, on or after the coming into force of this section or the filing of any application pursuant to this Act or *The Trade Union Act* respecting that employer;”

So for instance, if a construction company – Green Construction – is operating under a long-standing certification order in Saskatchewan, they could bring a claim of abandonment before the Labour Relations Board. Under the provisions of Bill 80, a union could be found to have abandoned its bargaining rights – and thus its certification – if at anytime in the past, there were three consecutive years of inactivity. Even if that inactivity existed because Green Construction had no employees during those years, and even if those three years of inactivity were followed by a decade of active bargaining and representation.

A situation of union inactivity for a three-year period was not uncommon during the 1980's following the repeal of the legislation governing the construction industry.

Further, the Bill 80 amendments state that the Labour Relations Board is not limited in making a determination of abandonment “by the system of collective bargaining in the construction industry.” This means a union could be found to have abandoned its bargaining rights because it had bargained with the Representative Employers Organization (REO) on behalf of employees with the designated unions – as specified by *The Construction Industry Labour Relations Act, 1992*, instead of having bargained with a particular employer. For example, assume the UA has a long-standing contract bargained with a representative employer organization of which Green Construction is a member, and the UA has been bargaining in good faith with the REO as it is required to do under the Act. Under Bill 80, Green Construction could say the UA has abandoned its responsibilities and apply to have the UA decertified. Bill 80 changes the



rules retroactively and asks the Labour Relations Board to specifically ignore the nature of the construction industry and the legislative requirement on unions to bargain with REOs, not individual contractors. Changing the rules by which we govern our relationships after the fact is a power very rarely used by governments and should only be used to correct a significant injustice. The fact that many of these contractors have had active, stable and productive relationships with their certified unions over the most recent 15 years suggest there is no injustice to correct.

“Taken together, Bill 80 amendments give unionized contractors ample opportunity to shed their union certification.”

It is interesting to note that the abandonment provisions in Bill 80 will apply only to construction certifications under the “old system” – that is, the system of relationships between unions and unionized employers that existed since 1992 under *The Construction Industry Labour Relations Act, 1992*. New employer-driven unions do not have to worry about abandoning their obligations to their members.

Taken together, Bill 80 amendments give unionized contractors ample opportunity to shed their union certification.

This is especially important as Bill 80 essentially creates two parallel and uneven industry labour relations systems in Saskatchewan. As the Minister of Labour has pointed out, the existing system under *The Construction Industry Labour Relations Act, 1992* would stay in place for existing unionized contractors, while inviting new contractors into Saskatchewan under a new set of rules.

The government has said the Bill 80 amendments are necessary to make the construction industry more competitive. If the government is taken at its word, then contractors in the new system will be more competitive (i.e. able to more readily bid on and win contracts) than contractors in the old system. If that is the case, then contractors under the old system – Saskatchewan-based contractors with Saskatchewan workers – will be at a competitive disadvantage compared to out-of-province contractors with out-of-province workers. In essence, the government will place Saskatchewan firms and Saskatchewan workers at a disadvantage compared to out-of-province competitors.

That is bad enough, but to remedy having disadvantaged local contractors, the government has provided them with a way out of their certifications through the abandonment provisions in Bill 80 so they can compete on a level playing field with their out-of-province competitors.

The abandonment provisions built into Bill 80 are a very radical change to the system of construction labour relations and are targeted at the construction sector alone. Curiously the abandonment provisions considered so necessary in the construction sector are not required in any other sector.



CONCLUSION

“The system is not broken. The government does not need to fix it.”

This submission raises significant and substantial concerns with government’s proposals to change the construction industry. We believe these changes will not improve the existing legislation and will, in fact, lead to serious harm to the industry.

The construction industry in Saskatchewan is hot. Building permits, employment levels, and apprenticeship registrations are all up. The system is not broken. The government does not need to fix it.

“The abandonment provisions of Bill 80 are radical and will allow willing employers to shed their union certification, conceivably against the will of its workers. To retroactively change the rules governing abandonment is at odds with the principles of good and fair government.”

Although the government has said that the issue of employee choice is at the forefront of their reasons for introducing the legislation, in fact, the only additional choice provided is to employers. The democratic approach would be to talk to the working men and women of Saskatchewan and not just to the Christian Labour Association of Canada (CLAC) and the Progressive Contractors of Alberta, whose executive director is a former long-term CLAC staffer.

The abandonment provisions of Bill 80 are radical and will allow willing employers to shed their union certification, conceivably against the will of its workers. To retroactively change the rules governing abandonment is at odds with the principles of good and fair government.

The government is creating two parallel systems in the construction industry that will create unevenness and inequality between existing Saskatchewan workers and companies, and new workers and companies entering the province. The government does this despite the fact that these workers and companies are working hard everyday to build the strong economy and province we are all enjoying. In addition, the parallel system being created is incredibly complex and will be next to impossible to implement in a logical and orderly fashion. This is not the first time the government has created chaos in labour relations in the province – witness the mess created in health regions with essential services legislation that was poorly conceptualized and even more poorly implemented.

The government needs to rethink Bill 80. The Saskatchewan Provincial Building and Construction Trades Council and our affiliate unions are ready, willing and able to work with business and government to make an effective system work better. Let us not risk the stability of the system. Consider very carefully the implications of shaking up this system.



To quote Alberta Venture magazine – that province’s most widely-read business magazine, the Christian Labour Association of Canada has caused “... so much controversy in Fort McMurray that it has sparked fist fights and rallies by rival tradespeople who take union affiliations so seriously they wear their opposition to CLAC on T-shirts and hard hats.”⁸ That is the kind of disruption that we can do without. We should be spending our energies on building the infrastructure that will grow our economy.

The government should set aside Bill 80 as flawed and unworkable, and work with organized labour to chart a new, fair, democratic course for the construction industry.



⁸ Alberta Venture.com: <http://www.albertaventure.com/?p=1923>, May 2008