

Bill 80 – A Way Forward

A Report & Recommendations on Bill 80 submitted to the Government of Saskatchewan by the Saskatchewan Provincial Building and Construction Trades Council

May 5, 2010



1 Bill 80 – A List of Failures

The drafting, introduction and consultation on Bill No. 80 – The Construction Industry Labour Relations Amendment Act, 2009 can be characterized by a failure to listen, a failure to learn and a failure to look to the future on the part of the government of Saskatchewan.

In response the Saskatchewan Building Trades have developed this paper with two objectives in mind. **First** to summarize all of the shortcomings and flaws with Bill 80 as it is currently drafted. Ideally, the Committee on Human Services would produce a useful report on Bill 80 after having conducted hearings last summer. But with only 2 weeks remaining before the end of the session there appears to be little hope that the Human Services Committee can deliver a report in time for it to be any use. As such, this report has been drafted in the absence of a report from the Human Services Committee.

Secondly, this report suggests an alternative to the approach that the government of Saskatchewan has taken with Bill 80. In introducing the amendments contained in Bill 80, the government cited its desire to advance the following objectives:

- to increase activity in the construction sector;
- to attract more skilled trades people to work in Saskatchewan;
- to increase worker choice; and
- to provide for certainty for the Labour Relations Board with respect to the matter of abandonment.

The Saskatchewan Building Trades believes these objectives can be accomplished through cooperative efforts involving Saskatchewan unions, employers and the government of Saskatchewan.

The Saskatchewan Building Trades proposes that in conjunction with the Government of Saskatchewan setting aside Bill 80, a group of interested parties be struck to examine issues important to the construction sector in Saskatchewan and recommend implementation plans to the Government of Saskatchewan.



2 A Failure to Listen

The government of Saskatchewan has not listened to Saskatchewan people, Saskatchewan contractors or the men and women working in Saskatchewan's construction industry.

This inability or unwillingness to listen began on March 10, 2009, when the Minister of Advanced Education, Employment and Labour, the Honourable Rob Norris introduced Bill 80. By the Minister's own admission, he did not talk to any Saskatchewan businesses, unions, or working people in the formulation of Bill 80. He didn't even give them advance notice.

When questioned about this on March 10, 2009, the Minister plainly admitted that his consultations were limited:

CBC: Who did you consult with prior to this legislation being drafted?

Minister Norris: We've consulted with both unions and employers.

CBC: Which unions?

Minister Norris: We've heard from – certainly we've heard from CLAC [the Christian Labour Association of Canada]; there have been discussions with CEP and then a number of employers.

CBC: Heard from them or consulted with them in the drafting of this legislation.

Minister Norris: In the drafting of this legislation...this has been drafted by the Ministry of Justice and hasn't been shared with any stakeholders.

CBC: By the Ministry of Justice?

Minister Norris: Yes it has been.

CBC: And no business entities or construction firms were consulted in the drafting of this legislation?

Minister Norris: No.

Upon further investigation, the Minister appears to have been very selective in admitting who his government talked with in advance of drafting Bill 80.



Materials obtained through a Freedom of Information (FOI) request show that the Construction and Land Development Sector Council of Enterprise Saskatchewan, led by Michael Fougere of the Saskatchewan Construction Association (SCA) had been calling on government to as early as October 2008 to “...make the necessary legislative changes to bring balance and fairness to our industry by implementing fair abandonment rules and ensuring the freedom of choice for employees to choose which union they wish to represent their interests.”

For the Minister to characterize letters and meetings on the subject from the SCA and recommendations from the Construction & Land Development Sector Team of Enterprise Saskatchewan as not having consulted with business entities or construction firms is incredible.

Minister Norris was content, however, to admit to listening to large Alberta contractors and the Christian Labour Association of Canada in the development of Bill 80. In fact, Minister Norris admitted that the purpose of Bill 80 was to accommodate the interests of out-of-province construction companies and the Christian Labour Association of Canada.

While Minister Norris claims to have had conversations with the Communications, Energy and Paperworkers Union (CEP) in advance of introducing Bill 80, the Minister’s claim was refuted by the CEP in testimony to the Human Services Committee:

“Across the country, we are frequently consulted by governments on legislation prior to the drafting of the types of major changes proposed in Bill 80. The CEP was not, however, consulted by this government on the development of Bill 80. We submit it would have been more just and democratic for this government to consult with the CEP and all interested unions and stakeholders prior to the drafting of this legislation” (CEP, Hansard, June 24, 2009: 889).

To summarize, the government of Saskatchewan introduced legislation to radically change the way the construction industry works in Saskatchewan and spoke only to those who already shared its ideologically based notions.



3 Bill 80 – A Failure to Learn

The construction industry in Canada and in Saskatchewan has had a long history. By the 1960s and 1970s the construction industry was characterized by instability and fragmentation with labour unrest, strikes and lockouts. Agreements were bargained one at a time employer by employer and the results were chaotic.

Thirty years ago it was recognized that the labour relations framework in the industry was broken and in need of fixing. The fix was found in strengthening the position of employers relative to unions to prevent employers from getting “whip-sawed” by unions. The solution was to bargain collective agreements provincially between employees and employers at one table so that all unionized employers had access to the same pool of skilled labour at the same wage and benefit cost.

In Saskatchewan that solution was established through the Construction Industry Labour Relations Act, and it provided stability and prosperity for the construction industry. The construction industry, like the wider economy in which it functions thrives on stability. Investment flows to stability and flees from instability.

In the 1980’s the government in Saskatchewan changed the rules in the construction industry to let companies double breast or create a non-union entities to get out of their union certifications. The provincial government of the day also repealed the Construction Industry Labour Relations Act and as a result, trade unions were decimated. Working men and women of Saskatchewan paid for the government’s missteps through lower wages and benefits and an unstable construction industry. The consequences were that activity in the construction industry bottomed out in the early 1990s when the value of building permits fell to less than \$350 million for three consecutive years.

In the 1990s stability and fairness was restored through the simple mechanism of bargaining collective agreements at a provincial table. The system is inherently stable because one collective agreement governing the system acts as a powerful disincentive to labour disruption. In practice, strikes and lockouts do not occur as taking out the whole system is too great a price to pay for employees or employers. The result? Since bottoming out in the early 1990s at \$350 million the value of building permits increased to almost three times that amount by 2005 before exploding to more than \$2 billion in 2008.



Minister Norris himself took the opportunity in hearings on Bill 80 to point out how active the construction industry has become in Saskatchewan:

The construction industry's share of the gross domestic product in 2008 within Saskatchewan was 5.7 per cent, an increase of almost 1 per cent since 2004. Last year's \$9.8 billion in new construction investments was a 104 per cent increase over 2004. There were nearly 7,000 housing starts, an 81 per cent increase over 2004. And there were about 3,235 employers in the construction industry last year. There was \$1.25 billion in payroll for 26,500 employees, a 76 per cent increase over 2004, with an average weekly earnings over \$950, a 27 per cent increase over 2004 (Minister Norris, Hansard, June 24, 2009: 895).

What Minister Norris fails to hear in his own words is that the construction industry is working – in fact it has never worked so well in Saskatchewan. If it ain't broke, don't fix it.

3.1 Construction is Unique

Through the witnesses that appeared before the Human Services Committee it became apparent that the construction industry has many unique characteristics, many of which make it vulnerable to instability and the changes being proposed through Bill 80. Some of the characteristics of the construction industry include:

- Employment is usually on a short-term basis. Construction jobs can last from more than a year to as little as a single day. Many tradespeople will work on two, three or more different projects in a year and for as many employers. The principle relationship for a tradesperson is with his or her craft-based union rather than with a particular employer. As a result, unions or joint union-employer trusts rather than employers often operate benefit plans.
- A substantial amount of employment in the unionized construction industry is managed through the dispatch systems operated by the Building Trades craft unions. Unions provide employers with the skilled workers they need, fulfilling a valuable human resource function. In the event that out-of-province workers are needed to meet labour market demand, the Building Trades are able to access 500,000 Building Trades members Canada-wide through the travel card system.



- The short term and geographically dispersed nature of industrial construction work means that trades people are required to be highly mobile – thus the term “journeyman.” The portability of standard benefits provided through provincially bargained agreements allows maximum labour mobility both within and across provincial jurisdictions.
- On the employer side, many employers are specialized by trade just like the craft unions they work with (plumbers, electricians, millwrights, boilermakers, carpenters, etc).
- In addition to regular collective agreements, there are also ‘project agreements’ that govern terms on large projects.
- Unlike many other industries, there is a long-standing partnership in the construction industry between employer and unions in the delivery of skills training. Building Trades unions also deliver significant training in Saskatchewan. For example, the Plumbers and Pipefitters UA 179 delivers about \$600,000 in training in the province every year and is currently building at \$1.5M training facility in Saskatoon.

3.2 Unions of ‘Convenience’ and Voluntary Recognition

A ‘union of convenience’ is a union that is chosen by an employer rather than by workers because the union’s collective agreements provide for terms and conditions that are significantly below prevailing norms. By signing a collective agreement with a ‘union of convenience’ an employer prevents legitimate unions from seeking representation.

Under Bill 80, employers will be able to voluntarily recognize ‘unions of convenience’ which will have the effect of enabling an employer to avoid being organized by another, legitimate union that is not preferred by the employer. To the detriment of workers, Bill 80 will offer protection for ‘unions of convenience’ through two separate measures.

First, the nature of voluntary recognition pre-empts the normal union certification process and disposes of the normal “open-period.” During the “open-period” members can decertify their union. That option is not available under Bill 80, meaning that members of those ‘unions of convenience’ will never be able to decertify their union.

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

Second, Bill 80 eliminates an employee’s right to file a “Duty of Fair Representation” complaint against his or her union with the Labour Relations Board. Bill 80 neatly eliminates that option for workers because that section of The Trade Union Act applies only to certified unions, not to unions that have been voluntarily recognized.

In essence, Bill 80 will at once allow unions of convenience to operate in Saskatchewan and effectively prevent them from being disposed of by legitimate unions or by their own members.

3.3 Labour Shortages

An economy needs to continually develop, attract and retain workers with skills matched to labour market demand. Saskatchewan has seen labour market shortages in some areas of the skilled trades due to both demographic factors such as the ageing of our workforce and increased demand as the result of major private industrial developments. The prospect of labour shortages is a real issue facing Saskatchewan and deserves a real solution. Instead, the government of Saskatchewan has elected to use labour shortages as an excuse to push through legislation that will give unfair advantage to out-of-province companies and unions.



Labour shortages in Saskatchewan will be alleviated only through strategies to develop, attract and retain skilled workers. Bill 80 will confound these efforts for two reasons.

First, the industry's stability has led to record levels of employment. 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. According to the Sask Trends Monitor, 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 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: Sask Trends Monitor). Bill 80's potential to destabilize the construction industry may lead to lower employment levels.

Second, the preference given to 'unions of convenience' Bill 80 will only have the effect of driving down wages.

Through a Freedom of Information request for any wage analysis conducted by the government of Saskatchewan in relation to Bill 80, the government of Saskatchewan provided a single, two-sided page comparing the wage rates of unionized workers in Saskatchewan with comparable tradespersons working for the Christian Labour Association of Canada in Alberta. There are two remarkable shortcomings to the analysis done by the government of Saskatchewan.

First, it is superficial and contains errors. The analysis compares only three Alberta companies using the Christian Labour Association of Canada (Ledcor, Bird Construction, & Monad Industrial) with wages for similar trades under Building Trades collective agreements. A useful analysis would require much more detail on the wide variety of collective agreements involving the Christian Labour Association of Canada in Alberta. Additionally, the analysis offered by the government of Saskatchewan includes only a limited number of trades. Left out completely are boilermakers, insulators, painters, crane operators, welders, and sheet metal workers. Finally, the analysis, brief as it is, contains notable errors. First, it shows ironworkers being represented by IBEW, which is not the case. Secondly, it shows the Saskatchewan union rate for carpenters going down over time, from \$37.17 on April 30, 2006 to \$29.67 on June 15, 2008, which is



also not the case.

Secondly, and more troubling, the wage analysis provided by the government of Saskatchewan is based on the faulty premise that comparing workers unionized through the Building Trades in Saskatchewan to workers working under the Christian Labour Association of Canada in Alberta is a valid comparison. In effect the government's wage analysis implies that a Saskatchewan worker can expect to receive a similar wage for his or her work from the Christian Labour Association of Canada as he or she would receive through a Building Trades affiliate. In fact construction wages in Saskatchewan are in the range of \$5 - \$8 / hour lower than in Alberta (see Figure 1).

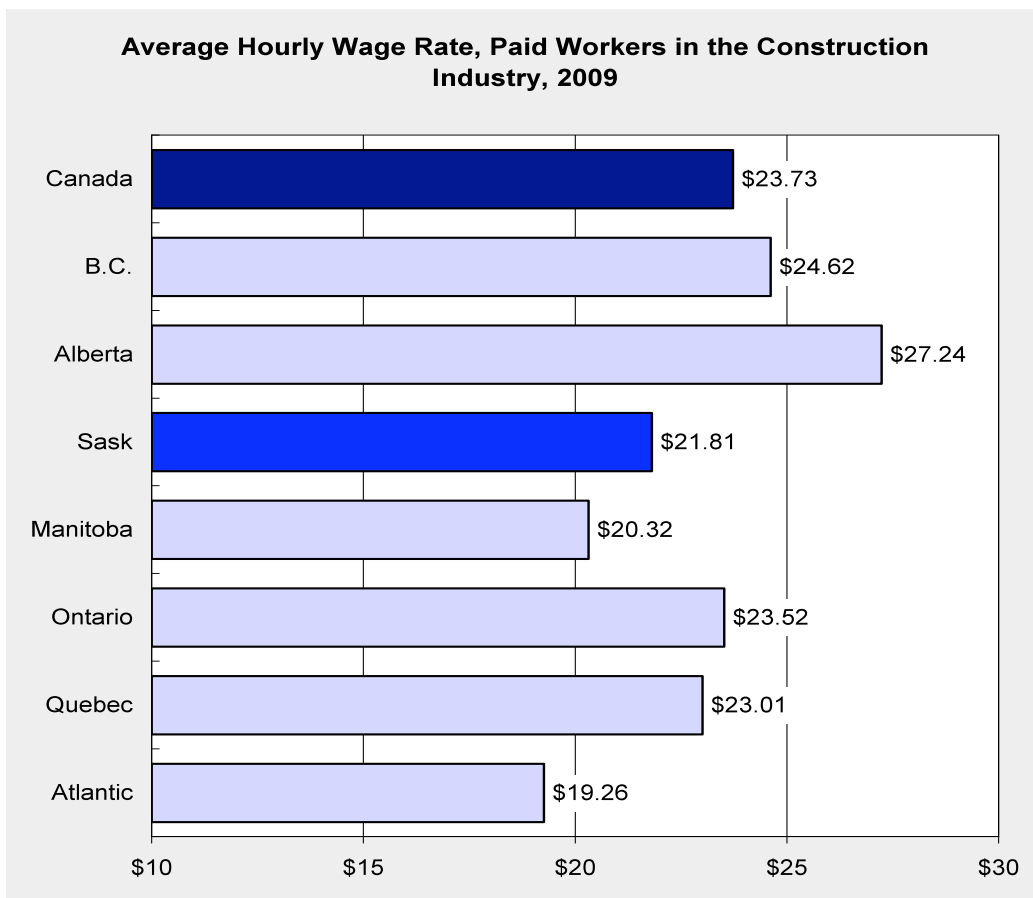


Figure 1. Source: Stats Canada Labour Force Survey



Further, just as the wages and benefits for those working through the Christian Labour Association of Canada in Alberta lag significantly the wages and benefits available to members of the Alberta Building Trades, it is reasonable to expect that the same thing will happen in Saskatchewan. In other words, the Christian Labour Association of Canada will undercut wages and benefits for Building Trades workers in Saskatchewan just as they have in Alberta. The result is downward pressure on wages and benefits for Saskatchewan workers.

This is a peculiar way indeed to go about attracting more skilled labour to the Province. Saskatchewan's biggest competition for skilled labour has long been Alberta. There is no reason to believe that bringing in Bill 80 will attract men and women in the skilled trades to come to Saskatchewan.

3.4 Abandonment

Abandonment refers to the notion that a union has abandoned its right to represent workers and bargain collective agreements on their behalf through either inaction or inattention. If the Labour Relations Board finds that abandonment has occurred, it can order the decertification of the offending union.

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 (LRB) has ruled on matters of abandonment without requiring any specific legislative provisions to do so. The courts in Saskatchewan have, through past rulings, supported the Labour Relations Board's authority to consider and make decisions on abandonment. This fact appears to have been lost on the government. The government of Saskatchewan has erroneously claimed that the LRB has been somehow unable to rule on matters of abandonment and as such required the abandonment provisions included in Bill 80.

The manner in which the abandonment provisions have been drafted in Bill 80 present significant concerns. The provisions of s. 6.1 of *The Construction Industry Labour Relations Act, 2009* directly contradict the law of abandonment as developed by the Saskatchewan Labour Relations Board (with the approval of



the Court of Appeal), other boards in Canada, and legislation in other jurisdictions, making it very easy for employers here to extract themselves from bargaining obligations in circumstances that are not truly representative of an “abandonment” situation.

Firstly, the phrase which suggests that the employer must be active in the construction industry actually states that the Board, in determining the issue of abandonment, is not limited by either “the system of collective bargaining in the construction industry” (referring to the sectoral bargaining regime where employers bargain through Representative Employer Organization’s) or “the absence of employees in the appropriate unit of an employer with an active presence in the construction industry.” Not only are these two points in complete contradiction to the law of abandonment here and elsewhere, the direction to disregard the fact that there may be no employees in the bargaining unit opens the door to significant mischief on the part of employers seeking to eliminate their bargaining obligations.

To elaborate, an employer may be considered “active” in the construction industry even where it subcontracts its work or acts as a labour broker (as was the case in the Graham Construction decision). In addition, an employer may be considered “active” if it is employing employees in various trades other than the one for which it is certified. In both such situations, an employer may be considered “active” and therefore eligible to seeking a finding of abandonment, even though it employed no employees who would be covered by the certification order. This conclusion runs directly contrary to the most basic underpinnings of the concept of abandonment, that is, there must be trades people employed by the employer within the jurisdiction of the union’s certification order in order to find that the union has failed to promote or enforce their bargaining rights. In other words, there must be someone for whom the union could have acted or represented and enforced their rights, before the union can be said to have committed abandonment. If the employer doesn’t employ anyone within the jurisdiction of the certification order, there is no one for whom the union could have acted. This was one of the underpinnings noted with approval by the Court of Appeal in the Graham Construction decision upon its review of the law of Saskatchewan and other provincial jurisdictions.

Therefore, aside from turning the current law of abandonment on its head, there seems to be no other reason to include a provision that directs the Board to not consider an absence of employees working in the certified unit unless this government wants to open the door for employers to create their own



circumstances that would allow them to extract themselves from bargaining obligations simply by continuing to work in the construction industry, but not employ any trades people that would fall within the jurisdiction of the union, for a three year period. The employer has effectively set up an “abandonment” situation that the union could do nothing to avoid, it obviously having no power to force an employer to use the certified trade in its construction work. If this is truly not the intention of the government in enacting these provisions, then there is no other way to explain s. 6.1(4)(a).

A further and very troubling aspect of the abandonment provisions is their retroactive nature. In s. 6.1(4)(c), Bill 80 states that any period of union inactivity may qualify for abandonment, whether or not the inactivity occurred before, on or after the legislation becomes law and, whether or not the inactivity occurred before, on or after the filing of any application with the Board. Furthermore, in s. 6.1(7) it states that the new abandonment provisions apply to any application made to the Board, whether the application is brought before, on or after the legislation becomes law.

As the government surely must know, rarely is new legislation made retroactive in its application. The reason for this is obvious – it is only fair and reasonable that people have notice of new rules before those rules apply to them so that they can modify their behaviour as appropriate. Because the new abandonment rules completely change the law of abandonment in Saskatchewan, it is completely unfair and unreasonable that they apply retroactively. Section 6.1 says that the Board can consider periods of union inactivity occurring before this legislation becomes law as well as apply the new abandonment provisions to applications filed with the Board before this legislation became law. Aside from the inherent unfairness and unreasonableness of retroactivity, these two aspects would theoretically allow cases going back 20 to 30 years to be decided over again according to the new abandonment rules. While one would hope that that is unlikely to happen (yet conceivable through a reconsideration application to the Board), there is simply no way to avoid the conclusion that these two aspects were included in the proposed legislation so that the Board could now decide the issue of abandonment in the Graham case (which, in 2008, the Court of Appeal remitted back to the Board for a fresh determination) and other old applications that were awaiting the outcome in the Graham decision, under these new abandonment rules. The Graham case involved applications from 1998 and 2000 (i.e. applications filed before the legislation becomes law) and dealt with factual circumstances that arose in the 1980’s (i.e. a period of union



inactivity before the legislation becomes law – and, notably, during the repeal of construction labour relations legislation). With the retroactive application of the new abandonment law, the Graham matter and other similar outstanding applications can now be decided according to the new rules (which rules are, as we've pointed out earlier, completely contrary to those determined to be reasonable by the Court of Appeal).

It is common knowledge that during the time period following the repeal of the CILRA in 1983 and the introduction of the CILRA, 1992, there was little union activity given the disappearance of the legislation, the overall uncertainty of the status of certification orders and the lack of available enforcement mechanisms. This has been the subject of much discussion by the Board in past cases. The retroactive nature of s. 6.1 would surely allow any number of employers to bring abandonment applications alleging a three-year period of inactivity that occurred during the 80's and, on the legislation the government has proposed, it is obvious that an employer could rely on that period of inactivity.

To date, the government has not provided any clear reason for the legislation being drafted with this retroactive effect. If there is any plausible reason for these provisions to be retroactive (other than that which we have suggested in the preceding two paragraphs), we urge the government to share it.

We also note that the abandonment provisions apply only to employers and unions operating under the current bargaining regime and not to the new types of bargaining relationships under the proposed 2009 Act. Given that the proposed abandonment rules drastically change the law of abandonment in Saskatchewan, and given the fact that there is currently very clear court authority for the proposition that the Board has the ability to consider and apply the law of abandonment without specific legislative authority, it seem highly unusual that this new law of abandonment should apply only to the old bargaining regime in construction; so much so that one wonders if there isn't a hidden agenda to allow employers in the old regime a method to extract themselves from bargaining obligations – if that were not the case, why is there such a narrow application of this new law?

In conclusion, for the many reasons set out above, there is no need for this new abandonment provision – and certainly not one that completely changes the rules as we all know them and one that applies only to the old regime of bargaining relationships in the construction industry.



3.5 Saunders Electric – A Special Note

Further evidence of this lack of need of such legislation may be found in the Saskatchewan LRB's recent reconsideration of the Saunders Electric decision, the original decision of which was seen as a catalyst for the new abandonment rules. In late 2009, a panel chaired by Chairperson Love of the LRB overturned former-Chairperson Seibel's 2008 ruling in Saunders. The Board, on the strength of the Court of Appeal's decision in Graham Construction, ruled that the Board does indeed have authority to make a finding of abandonment in the construction industry and that the union in that case had abandoned its bargaining unit. Although the Board's reasons for doing so are sketchy, it is very clear that it decided to ignore the existence of sectoral bargaining (as an excuse to a finding of abandonment), and appeared to have accepted, among other time periods, that abandonment could be found to have occurred during the period the legislation had been repealed. **Thus, it seems as though the LRB is having no difficulty applying the concept of abandonment in the construction industry, which serves to underline the question of why such legislation is necessary at all?**

To summarize, no legitimate union would quarrel with the notion that it has to actively represent its member's interests or suffer the consequences of decertification. What the government proposes through Bill 80 is to allow employers to decertify their unions even if it would have been impossible for a union to provide that representation because, for example, the employer had no employees.

The abandonment provisions in Bill 80 are retroactive – meaning that the rules will be changed and applied to circumstances in the past. Retroactive provisions in legislation are used on rare occasions to correct past injustices but are otherwise absent from the domain of good government. Enacting these abandonment provisions, which will give an employers a back door out of their union certifications, will put the government of Saskatchewan out of step with democratic governments.

3.6 Maintenance

Another indication that the government is operating from an imperfect understanding of the construction industry comes from Bill 80's provision to eliminate contract maintenance from the definition of construction. Although the government provided only the barest of justifications for this move, it appears to be based on the superficial notion that maintenance work is



qualitatively different from construction work. In fact, industrial maintenance is often indistinguishable from construction on the work site and uses the same pool of workers as does industrial construction. There is no reason whatsoever to think that exempting maintenance will increase the number or companies that are willing to bid on maintenance projects.

3.7 The Constitutional Question

In introducing Bill 80, Minister Norris made reference to the notion that Bill 80 was required because the current Construction Industry Labour Relations Act is unconstitutional. The government has offered no support for its stated view that this is the case. To the contrary the best analysis available calls into question whether Bill 80 itself is constitutional. Noted constitutional scholar John D. Whyte wrote as much in the Star Phoenix on April 22, 2010. That article is attached at the end of this document.

4 Bill 80 – A Failure to Look to the Future

The construction industry in Saskatchewan is enjoying a record level of prosperity and activity that comes as a result of a stable labour relations environment. Bill 80 threatens this stability both because of its content and in the aggressive and partisan manner in which it was presented by the government of Saskatchewan. If the government had truly been interested in improving the functioning of the Saskatchewan construction industry it would have talked to Saskatchewan workers, unions and contractors **before** it framed its legislation. Instead it chose to ambush the industry with flawed legislative changes based on consultation with powerful out-of-province interests.

So captive to the interests of powerful out-of-province construction companies and the Christian Labour Association of Canada is the government of Saskatchewan that it has failed to anticipate the consequence of Bill 80 for Saskatchewan construction companies.

Out-of-province contractors do and will look to Saskatchewan as an opportunity. That fact is an inevitable consequence of a decade of solid economic growth. Properly managed, this situation is an opportunity for the people of Saskatchewan. To take advantage of Saskatchewan's growth requires the government of Saskatchewan to harness economic growth for the benefit of



Saskatchewan people, not to brush them aside while pandering to the interests of Alberta-based companies and the Christian Labour Association of Canada.

For all the meaningless words about worker choice, certainty, and the benefits of a holistic system uttered by the government and its Ministers, Bill 80 establishes one simple dynamic that can do nothing but harm Saskatchewan workers and contractors. Bill 80 establishes two regulatory systems. It maintains the existing system that exists currently under the Construction Industry Labour Relations Act and binds unionized Saskatchewan companies to that system. And it creates a new, laissez-faire system for out-of-province companies and 'unions of convenience' that are picked by employers for their retrograde collective agreements. Lower wages and benefits are a well-known hallmark of the Christian Labour Association of Canada. These lower labour costs cannot but make the bids of companies using the Christian Labour Association of Canada more competitive than Saskatchewan companies using real unions. The consequence? Out-of-province companies and 'unions of convenience' benefit from Saskatchewan growth. Saskatchewan companies hold or lose market share, and Saskatchewan workers are forced to take less for their work.

It was perhaps said best in the committee hearings into Bill 80 by Sid Matthews, representative of Saskatchewan's largest contractors. Of Bill 80, Mr. Matthews said:

We really don't need Bill 80 to put some of our employers out of business or to sidetrack our plans for sustained economic development (Hansard, June 23, 2009: 877).

It couldn't be plainer. The government of Saskatchewan needs to listen to Saskatchewan contractors and workers and set aside Bill 80.

But rather than build on the impressive strength of the construction industry, the government of Saskatchewan has chosen to auction off Saskatchewan's present and future boom in industrial construction to out of out-of-province bidders while shutting Saskatchewan's construction companies and workers out of the bidding. While this may get some industrial projects in the province built cheaper in the short term on the backs of lower wage costs, it will certainly cost the province in the long term by taking money out of the pockets of Saskatchewan working people and putting Saskatchewan companies at a competitive disadvantage to their out-of-province counterparts.



5 Recommendations

This report recommends an alternate approach: One that values the knowledge that Saskatchewan workers and contractors have of how the construction industry here works; One that seeks to find innovations that benefit all parts of the system and sees an expansion of our economic infrastructure; and one that builds on hope for the future, not fear of retribution.

The government of Saskatchewan could set about fixing all of the flaws of Bill 80 outlined above. It would be an arduous task and one with no guarantee of success. Instead the Saskatchewan Building Trades recommend setting aside Bill 80 in favour of a constructive process involving Saskatchewan unions, employers and the government of Saskatchewan to examine issues important to the construction sector in Saskatchewan and recommend implementation plans to the Government of Saskatchewan.

In introducing the amendments contained in Bill 80, the government cited its desire to advance the following objectives:

- to increase activity in the construction sector;
- to attract more skilled trades people to work in Saskatchewan;
- to increase worker choice; and
- to provide for certainty for the Labour Relations Board with respect to the matter of abandonment.

The Saskatchewan Building Trades believes that valuable contributions towards accomplishing these objectives can be made through cooperative efforts involving Saskatchewan unions, employers and the government of Saskatchewan.

The Saskatchewan Building Trades proposes that in conjunction with the Government of Saskatchewan setting aside Bill 80, a group of interested parties be struck to examine issues important to the construction sector in Saskatchewan and recommend implementation plans to the Government of Saskatchewan.



Issues to be considered could include those that require immediate attention and those that have a longer time horizon. Principles to guide discussion include:

1. Government sets aside Bill 80.
2. Government engages in a process with equal representation from building trades and Saskatchewan construction industry employers.
3. Government will be represented on the committee but will not act as chair.
4. The committee will be chaired by an objective third party not affiliated with either the construction owners or building trades.
5. Immediate priority will be placed on finding a resolution to the abandonment issue on the basis that unions need to be actively representing their members to keep their certifications in good standing, and take into account the fact that the industry has by nature been cyclical and experienced times of inactivity where active representation is not practical or appropriate.

Upon resolution of the abandonment issue, the group may address additional issues as appropriate such as strategies to ensure that a balance exists between labour market supply and demand in the Saskatchewan construction industry including matters related to labour mobility, training, attraction and retention, and productivity.

All discussions in the group will be held as confidential. Recommended solutions from the group will be brought to the Minister of Advanced Education, Employment and Labour for consideration and action. Recommendations of the group will be made public following presentation to the Minister at a date agreeable to the parties.



Bill 80 reforms aren't panacea gov't envisions

BY JOHN D. WHYTE, SPECIAL TO THE STARPHOENIX APRIL 22, 2010

Following is the viewpoint of the writer, a professor of law at the University of Saskatchewan.

Bill 80 contains the government's proposals to amend Saskatchewan's collective bargaining regime for the construction industry.

Everywhere in Canada, labour relations in the construction sector follows the pattern of bargaining between comprehensive employer groups and unions that represent specific crafts or trades. There are good reasons for using this structure instead of the usual arrangement of having a single union represent all the employees at a specific firm or worksite.

First, system-wide bargaining means that the constant changes in workforce size and workers' place of work don't require constant reorganization of unions or repeated certification application. Second, a craft-based union system means that unions can -- and do -- take responsibility for training and developing a skilled workforce.

Third, craft unions have strong national networks that facilitate the migration of skilled workers to places such as Saskatchewan, where they are needed. Finally, under the system-wide model, labour relations in Saskatchewan's construction sector have been stable and disruption free. All strikes are costly to the economy, but stoppages in construction have especially serious ripple effects.

The government proposes the indirect dismantling of the current labour relations scheme through encouraging worksite, or firm-based, collective bargaining. And it is making it easy for employers, by recognizing new unions, to terminate existing union certifications.

The Labour minister justifies the new law, which will produce the inevitable instability of firm-by-firm collective bargaining, by saying it's in keeping with developments in constitutional law. In fact, the Supreme Court of Canada has recently articulated constitutional principles that should apply to labour relations. Far from justifying the plan in Bill 80 to undermine the established structure for the construction industry, the principles enunciated by the high court support the existing arrangement.

There are two aspects to constitutionally protected collective bargaining. The first prevents interference with the process of collective bargaining that affects "the capacity of the union members to come together to pursue goals in concert." The second relates to the degree of impact on the "collective right to good faith negotiation and consultation."

Bill 80 clearly harms the ability of construction workers to pursue their interests in concert; it unravels current agreements and arrangements, and subjects to the vacillations of construction employment the process of collective bargaining and the benefits gained from it.



Saskatchewan Building Trades

May 5, 2010

In addition, the retroactive features of Bill 80 undermine good faith bargaining.

The Supreme Court also stated that the constitutional right to collective bargaining will be shaped by circumstances, so that different regulatory arrangements will be needed to meet the obligation.

Consequently, it cannot be claimed without reservation that Bill 80's changes are unconstitutional. What can be said, though, is that the harmful impact on workers' interests makes the bill suspect, and that its changes cannot be justified on the grounds that they are constitutionally mandated.

Furthermore, in two instances the proposed reforms give employers the ability to overturn labour arrangements that have been agreed upon and are in current operation. Thus, Bill 80 operates retroactively to remove established rights.

There is an absolute constitutional prohibition against retroactive criminal legislation, while retroactive changes to civil legal relations are also considered a legislative offence.

Citizens and groups invest in existing regulatory structures through their efforts, commitments and planning, and it is only in the most compelling of circumstances that retroactive legislation that reverses ground rules can be accepted.

For instance, the Supreme Court allowed British Columbia to change procedural rules that relate to the liability of cigarette manufacturers for health-care costs because, without this element of retroactivity, industry accountability could not be established for disease caused by smoking.

Such a pressing social purpose is not present in the case of construction labour relations. Even if Bill 80's purposes were legitimate, they could be achieved through the normal legitimate enactment of prospective legislation.

The provisions of Bill 80 allow individual employers to recognize any union (including employer-sympathetic unions). At that point, existing employer obligations under the present collective bargaining arrangement could be removed.

Second, employers can ask the Labour Relations Board to declare that currently certified unions have abandoned collective bargaining if, at any time in the past, they did not engage in worker representation for three years. Since this rule applies even to an employer who has had no relevant craft employees for three years (which has been common in Saskatchewan's construction industry) this can become a significant weapon for dismantling the existing and fair structure for construction industry labour relations.

If the government's priorities are stable relations between construction employers and their workers, concern for the rights and interests of employees, and to sustain constitutional integrity, it has badly missed the mark. It has chosen instead to be influenced by the mistaken idea that the freer the labour market, the better it is for workers and the economy.

