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February 20, 2008

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Ms. W. Young, Deputy Minister
Advanced Education, Employment and Labour
11th Floor, 1945 Hamilton Street
Regina, Saskatchewan
S4P 2C8

Dear Ms. Young:

Re: Canadian Association of Counsel to Employers ("CACE")
Our File: 30897.1

Thank you for very much for the opportunity to meet with you, Minister Norris, Ms. Smith and ministerial officials on January 29, 2008 to discuss recent proposed and potential changes to labour and employment legislation in the Province of Saskatchewan. I am writing this letter in my capacity as a member of the Board of Directors of the Canadian Association of Counsel to Employers. CACE was started in 2004 by a founders committee of management labour and employment lawyers from across Canada. It is intended to be an association for those who specialize in acting on behalf of employers in labour and employment matters. One of the main objectives of CACE is to provide governments, courts, labour boards and other administrative tribunals with input with respect to policy and legislative reform from the perspective of lawyers acting on behalf of employers in Canada.

I have had the benefit of reading Mr. McLellan's correspondence to you dated February 15, 2008 together with the detailed package of proposals for changes to labour legislation in the Province of Saskatchewan that accompanied that correspondence. On behalf of CACE, those proposals are endorsed and supported. We look forward to seeing the progress of the changes that you have already introduced and are hopeful that a broader agenda for change can be adopted as we go forward.

Thank you once again for the opportunity to meet and provide you with input concerning the legislative changes that you are contemplating.

Yours truly,

MacPherson Leslie & Tyerman LLP

Per:
Brian J. Kenny, Q.C.

BJK/jl
cc: Hon. B. Wall, Premier of Saskatchewan
Hon. R. Norris, Minister of Advanced Education, Employment and Labour

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February 15, 2008.

Ms. W. Young, Deputy Minister,
Advanced Education, Employment and Labour,
11th Floor, 1945 Hamilton Street,
Regina, Saskatchewan,
S4P 2C8.

Dear Ms. Young:

We write in reply to the letter addressed from the Minister on January 15, 2008, requesting feedback with respect to recent changes to labour legislation in Saskatchewan. We would like to take this opportunity to thank you, the Minister, Ms. Smith, and Ministry officials for meeting with representatives of the Saskatchewan Chamber of Commerce on January 29 of this year, and hope to expand on our discussion in this letter.

The Saskatchewan Chamber of Commerce is of the view that the amendments proposed are significant in that they address employer free speech in a meaningful way. Amendments to Section 6 require that a union demonstrate a minimum level of support of 45 % of the employees in an appropriate bargaining unit before an application for a secret ballot vote will be ordered. This is a substantial shift from the status quo and will force unions to act in a far more professional manner in their organizing campaigns.

The amendment to Section 11(1)a) imparts a clear right to employers to communicate facts and opinions to their employees in all matters affecting industrial relations including organizing drives and collective bargaining. The only prohibition to that communication will be efforts to restrain, intimidate, threaten or coerce an employee in the exercise of any right under the Act.

The addition of Sections 12.01 (1) & (2) establishing deadlines for reporting unfair labour practices is a welcome change that the Saskatchewan Chamber of Commerce has long advocated for. We would encourage the Ministry to review the Provincial Chamber's position on the Labour Relations Board as passed by our membership at Annual General Meetings. Several of our prominent Expert Committee members have capably served as Business representatives on the LRB and have crafted pointed critiques on the LRB with reasonable and practical calls for change.

The amendment of Section 18 places a reasonable limit on the powers of the Board and its members. The amendments to Section 21, calling for a deadline on LRB decisions and an annual report with accountability measures, are badly needed and benefit all interested parties.

The repeal of Section 33(3) resolves the duration of agreement issue, eliminating the need for any future "IPSCO Act" in the future. This would prevent future LRB decisions such as what occurred in the "Wheat City Metals" Case.

The Saskatchewan Chamber of Commerce is a bit puzzled as to why the powers of the LRB were not brought back into line, nullifying many of the 2005 amendments contained in Bill 87. We have enclosed a comprehensive document that outlines in great detail our recommendations on this and other matters pertaining to labour legislation. We would recommend these changes be added as further amendments in the Second Reading this spring.

We are of the view that Bill 5 is a well reasoned and practical approach to essential services legislation. It places the focus on the parties working out the details; which we agree with wholeheartedly. As well, the approach taken by the government is comparable with other jurisdictions in Canada. The TUA amendments will require unions to change the way they do business but in our view do not impose a hardship of any sort.

Sincerely,

Steve McLellan,
CEO.

rjp

encl.

cc: Hon. B. Wall, Premier of Saskatchewan
Hon. R. Norris, Minister of Advanced Education, Employment and Labour

PROPOSALS FOR CHANGES TO LABOUR LEGISLATION IN THE PROVINCE OF SASKATCHEWAN

1. *The Construction Industry Labour Relations Act*
2. *The Trade Union Act*
3. *The Labour Standards Act*
4. *The Occupational Health and Safety Act; and*
5. A general concern on all legislation

I. *The Construction Industry Labour Relations Act*

Because of fundamental problems with the Act including, but not limited to, employer rights to change bargaining agents and only one choice for employees to select who will represent them if they wish to be unionized and fundamental flaws with the way in which the Act was created, it is our position that the entire *Construction Industry Labour Relations Act* should be repealed.

It would be impossible at this time to suggest amendments that would solve the problems of the Act. The problems are fundamental to the legislation itself and the concepts under the legislation. The construction industry operated without such an Act from 1983 to 1992 without major labour disruptions. The competitive work environment should determine rates of pay and other conditions of employment in the construction industry and both the unionized employers and employees require more rights. If the construction industry was to have changes in order to operate more effectively, this should be done after consultation with a committee selected by the industry and unions to indicate the specific concerns with operating under general labour laws and dealing with those specific things at that time.

If the legislation itself was to remain in effect, the major problems that would need immediate changes are:

a) If a business now becomes a unionized contractor by certification, contracts automatically apply to that contractor without the ability to bargain. If that contractor has a benefit plan, that benefit plan is automatically ended and the plan under the collective agreement applies. In addition, all wages, working conditions, fees required to be paid to unions and CLR and other monetary items apply to these projects regardless of the fact that these costs were not built into the bids for this work. The bargaining representative, CLR, who receives money was selected by the Government and the business has no right to change that agent even if they have no confidence in the agent. Therefore changes would have to be made to those sections that allow these problems to occur.

b) Certified contractors have no ability to bargain their own terms of employment for their employees. They must accept the will of the majority in the bargaining trade division, even if the majority does not do the same kind of work but is in the same

trade division. The problem is that the definition of sectors and who is included with the sector is too broad. Within each sector the trade divisions are too broad as there are differences in the work and the rates of pay for workers.

In particular, a major problem is that the legislation combined industrial work with commercial work. Industrial and commercial work are quite a bit different but if the contractor is certified for an industrial project, he is automatically certified for commercial projects although the type of worker and work would not be the same.

c) The employees working for the Company do not get a choice of unions but must select only one union if they want to have a union represent them. The Labour Relations Board and Government have said that any other organization that regularly represents these workers in other Provinces could not represent them in Saskatchewan because of this legislation. The *Central Mills* case illustrates this problem.

d) The spin-off section is far too broad as it does not matter whether two businesses are doing different kinds of work within the large sectors and trade divisions, they are considered as one unionized contractor. If the contractor has a business where they have carpenters working for them doing regular carpenter work and wish to create a specialty company that deals with drywall or scaffolding, it is automatically unionized under spin-off legislation because carpenters are required to do drywalling and scaffolding. Although the type of carpenter work is different and the type of business they are operating under is different, the spin-off section would capture both. Spin-off should be left to the common employer legislation under *The Trade Union Act*. You must, however, make it to apply only to new businesses and not capture businesses that have operated to today's date.

e) The present employers' organization was mandated by the NDP legislation in 2000 and cannot be changed by the contractors themselves. From 1994 to 2000 the contractors had attempted to change the agent but were stalled by the Labour Relations Board and problems in the legislation itself. The present Act would be the same as providing that no matter how much employees dislike a union they cannot decertify the union. Contractors under this legislation are in that position.

f) There is no concept in this legislation or *The Trade Union Act* dealing with the legal concept of abandonment that has been recognized by Labour Boards for over 60 years. The unions are now saying the Labour Boards have no power to apply the concept. This concept should be defined so as to eliminate the union's right to reclaim businesses that they have left alone for over 15 years.

II. *The Trade Union Act*

The Trade Union Act requires numerous amendments - some of these as a result of amendments in 2005 and some fundamental to our system itself. We will deal with the 2005 amendments first and then with the rest of the Act.

1. Under s. 4.3(1) the term of a member will be extended if the member's term expires before proceedings are completed if they began to hear a case. There are a great many concerns with this section. If a Government changes and the new government wants the member removed, that person will not be very happy with the removal. At that time, cases that are not yet concluded will be in the hands of a disgruntled member. In addition, any decision not rendered would keep that person on as a member. This may affect your ability to appoint a new member because of the limits in the Act on the number of Chairs and Vice-Chairs. At the present time, the present Chairperson has a large number of unwritten cases. In labour relations, matters must be decided quickly in order that the parties can get on with their lives. If the member, by being negligent in the performance of their duties can continue their salary and rate this model would be counterproductive to labour relations. This section must be repealed **before** any existing member is removed. If you then want legislation to deal with cases left when a member's term expires, a more reasoned and time limited model should be chosen.

2. With regard to subsection 4(2), it appears that in matters involving a union member's complaint against the union that only a chair or vice-chair needs to hear the matter under the Act. With respect, this ignores the reality of the labour relations system whereby management and union appointees sit with a chairperson to assist in the determination if the Labour Relations Board is going to decide it. You should determine how many complaints are made by members against the union and whether there is a better method of handling those complaints, such as binding arbitration.

3. With regard to new powers under Section 18 in 2005, although the Section when introduced in 2005 was headed as "Procedural powers", the amended Act just lists these as additional powers. They in fact are substantial intrusive powers of the board that are detrimental both to employees and employers conducting business in Saskatchewan. The 2005 amendment should be reconsidered at this time. In particular, you should repeal s. 18(f), (g), m), (n) to (u) and (x).

4. Section 18.1 on privileges and immunities which provides that the members of the Board will have the same privileges and immunities as a Judge of the Court of Queen's Bench is problematic. If the Government wants to create positions that are considered equivalent to the Court of Queen's Bench Judge, the whole mechanism of appointing members to the Board should be reviewed first. There has to be checks and balances in the appointment process, similar to Queen's Bench Judges whereby

the appointment is made only after application to an independent body and approval by that independent body. It is also possible to file a complaint against a Queen's Bench Judge for their delay in rendering decisions or their conduct during a hearing, or even their conduct away from Court. In such circumstances, there is an independent tribunal that hears the complaint. In addition, Queen's Bench Judges are bound by rigid rules on process and procedure, especially as it relates to how hearings are conducted. Conduct that practitioners have seen in the Labour Relations Board would never be condoned in the Courts. Section 18.1 should be repealed unless a process is set up as to how both the appointments are made and the removal of those people can be handled.

5. The Section 26.5 amendments in 2005 on first contracts are amendments that will have first contract imposed in all cases. Any practitioner in labour law can tell you that to have bargaining within 20 days after an order is made and to achieve a contract within 90 days is unrealistic. If first contract rights remain the Section should be rewritten to clarify the process, rights and considerations for the Board.

   When first contract legislation was introduced, the Labour Relations Board decisions said that the parties must negotiate their own agreement and that only in the extreme circumstances will the Labour Relations Board impose an agreement. Present practice and these changes have delayed bargaining of first contracts and has the union applying for first contract in virtually every case. In addition, the Board appoints a union friendly Board agent to threaten the employer with a bad recommendation if they do not agree. Recommendations to the Board by the Agent which the Board applies, unless you convince them otherwise, creates bad precedent and expectations and ignores the reality of bargaining.

   The concept would allow parties to stall bargaining for 90 days and then have the Labour Relations Board impose the agreement. This is counterproductive to the process. In all cases, the weaker of the parties in bargaining can easily stall for the 90 days and require the Board to impose a contract. Experience with first contract legislation in Saskatchewan is that at the present time it is not favourable to the employer.

   Labour legislation must be balanced and must encourage the parties to reach their own agreement. Imposed agreements have never been viewed in Canadian labour relations law as a reasonable solution. You should repeal the first contract section or provide clear rules on its use.

In conclusion, the amendments in 2005 should be reconsidered or amended to:

a) remove members' rights to extend their terms by simply being negligent in the performance of their duties, or taking on a large number of cases right at the end of their term. These should be repealed.

b) creating rigid procedural rules and disallowing employees from making applications to the Labour Relations Board is not conducive to a labour relations system.

c) providing extensive powers to the Board and any agent they wish to appoint is not conducive to the system.

d) allowing the appointment and use of board agents to advise the Board is not conducive to the system, especially if it intended that these agents will not be required to follow ordinary rules of natural justice and can file reports with the Labour Relations Board which will be accepted as evidence without the ability to cross-examine that person (these are the rules used by the Board now in first contract cases). You cannot get confidence in a system that is not viewed as fair by making the rules more stringent. This is not conducive to a healthy labour relations system in the Province of Saskatchewan.

e) having Board imposed contracts on the parties 90 days after certification is not conducive to a healthy labour relations system in the Province as it will not encourage bargaining. This is especially the case if the employers feel that the contracts imposed favour the unions.

We would also suggest the following changes to the Act before the 2005 amendments:

a) Under Section 2(j.2)(iv), definition of "lock-out", add "a defensive action of the employer taken to counteract any strike action."

b) Add a definition of "picketing" to include all aspects of picketing, including the carrying of signs or providing documents for those who wish to cross a picket line to do business with the employer engaged in a labour dispute with the employees.

c) Add a definition of "abandonment" that provides that "it means that the union by its words or actions has neglected or refused to bargain the interests of the workers in the bargaining unit or the employer has not operated or had any employees in the bargaining unit for a period of at least 3 years."

d) There should be a discussion as to whether "security staff" should be in the same unit as people they may have to enforce policies against in an investigation.

e) 5(k). There should be some discussion as to whether our open period of 30 days is sufficient to deal with the rights of employees to decertify a union. You may wish to consider changes to the Act which allows decertification ten months after certification or at any time after the expiry of a collective agreement, even during a labour dispute as is done in other jurisdictions.

f) Add a new (iii) under (k) stating that:

iii) the bargaining unit has been abandoned. Either the employer, employee or union may apply for such an order.

g) 5.3 on interim orders. We should repeal or expand to deal with a method to deal with damages, caused by interim relief orders to protect the interests of the employer and to prevent prejudging of cases based upon Affidavit evidence. We could also incorporate the Ontario practice of not automatically granting orders for the union on conflicting evidence if an employee is removed in an organizing drive before there is a formal hearing.

h) Section 6(1) representation votes should be amended to allow that in certification and decertification, votes are always conducted. There is also a question as to whether you should be able to get a vote with support as low as 25 percent or whether it should move to 40 percent, similar to other Provinces. If an application is filed and there is better than 40 percent support, the employer should not have to file a Statement of Employment.

i) The Act should be amended to allow all employees whose hours of work, wages or working conditions could be affected by the certification to be eligible to vote. This is especially necessary for construction unions when employers operate under multi-skill concepts. We may also want to make this clear under Section 5(a), (b) and (c). The date to determine the support should be the date of the Order and not the date of the application. Therefore, if there is a delay in the decision, those employees who will be affected by the certification or decertification should vote.

j) Section 9 of the Act on dismissal of applications needs to be reworded so employees get a chance to decertify. That right should only be removed in the clearest of cases where the employee is coerced or intimidated by the employer to apply, not merely because the employee gets information from the employer on the procedure to follow. The present wording and decision of the Board takes away the rights in circumstances where the decision to decertify was made by the employees and the employer only gave information on how to do it or the names of lawyers or web sites that would tell them the rules. The Section should be amended to provide:

> The Board may reject or dismiss an application made to it by an employee or employees where the board is satisfied that the application is made as a result of the coercion or intimidation of an employee or employees by the employer or employer's agent. Providing information on how and when such applications can be made shall not by itself be considered to be coercion or intimidation.

The process should be made more informal so employees can apply on their own without the need to hire a lawyer.

k) Section 11(1)(a) on communication has to be amended as follows:

> (a) to intimidate, restrain, threaten or coerce an employee in the exercise of its rights under the Act, provided, however, that this

section shall not restrict anyone including the employer from providing accurate information before and during an organizing drive, before and during bargaining or before and during a decertification drive, either in response to union communications during the organizing drive or in response to questions raised by the employees or information that may be relevant to the employees in assisting them to determine whether they wish to be represented by the union.

l) 11(1)(e). Add after "good and sufficient reason other than union activity", add "as the primary reason for the discharge or suspension", and add at the end "If the evidence established that the primary reason for the action taken by the employer was other than the union activity, this Section shall not apply."

m) 11(1)(i), add "but nothing in this Section prevents an employer from disclosing accurate information to employees about the possible consequences of a labour dispute or to prevent the operation from another location during the labour dispute."

n) 11(1)(m) needs to be changed to provide clarity as to when the employer can change the terms of employment. There appears to be three times: strike, lock-out and impasse. This would make our legislation consistent with other Provinces. We would suggest the following language:

> ... to unilaterally change any terms of a collective agreement at the end of its term and before a new agreement is concluded or any rates of pay or benefits before a collective agreement is negotiated unless:
>
> a) a strike or lock-out begins. In such circumstances, no prior terms apply or rates of pay or other conditions of employment for the duration of the labour dispute;
>
> b) the employer and union have negotiated and are at an impasse in bargaining. For the purpose of this section an impasse is reached when one or other negotiating groups conclude that further bargaining would not be beneficial and no further bargaining dates are set until one party modifies their position.

o) Add 11(2)(g): "to picket when engaged in a labour dispute on any private property or at any location other than the employer's location from which the employees were certified. In the case of construction workers, only those sites where the employer had uncompleted contracts when the dispute began."

p) Add 11(2)(h): "to picket any employer other than the employer involved in the labour dispute."

q) 11(4)(b) remove "when he committed the acts complained of" and replace with "when the decision was made or input was sought from the employees which could lead to the

decision on the acts complained of". The reason for this is that a lot of times the union organizing drive begins because of changes that the employer seeks input on or says they are going to make. The Labour Relations Board now bases their decision on the date that the decision is actually implemented rather than communicated, resulting in the application to stop changes in the workplace from occurring even though the changes were known before the employees applied for unionization.

r) 11(1)(m) should be clarified on what items are protected with regard to bonus payments. The first is whether the employer must continue to pay bonuses during the time that bargaining takes place after a union becomes certified. 11(1)(m) should not continue discretionary payments and that in deciding on bonus for employees after unionization the employer can consider the costs of unionization and negotiations in determining whether a bonus will be paid.

s) If you do not have a vote on all applications, you should also consider a section be placed in the Act requiring the Labour Relations Board to disclose to either the employer or the union the number of documents received in support of an application provided the unit of employees is greater than 5. This would protect the confidentiality as we could not find out who was signing but at least could find out what kind of support was present for the application.

t) Section 25.1 should have added "but nothing in this section prevents an employee from proceeding to Court for violation of the employee's rights under the Union's Constitution and Bylaws". The rights are different. Employees whose rights are violated should be able to go to Court for damages.

u) Section 26.6 on list of arbitrators needs to be concluded, both in terms of list and process.

v) Section 32 on dues needs to be amended to allow the employees to revoke their authorization. This is important if an employee works during a strike. We would suggest a new Section 32(3) providing:

> Employees who have provided the written direction to the employer can revoke it by written direction to the union and employer. In such circumstances, the employer's ability to deduct will cease upon receipt of the written notice.

w) Section 33. We do not need 3 year maximum collective bargaining agreements. It appears that in some industries 6 years is common and other Provinces don't have such restrictions. The length of contract should be left to the parties.

x) Section 36(1) on union security should be removed and merely allow for the right to bargain these clauses. This would give the employer the right to bargain rand formula dues and have no automatic requirement for people to be forced into a union, provided they all pay the dues. There is now a question as to whether this Section is permissible under the *Charter* and the recent Supreme Court case (*Health Sciences v. B.C.*). The

employee should also be allowed to revoke their membership providing they pay the periodic dues required of members at any time. No one should be required to be a member to work for an employer. In addition, Section 36(4) and (5) should be repealed. This combined with amendments to Section 46 would only allow a union to take away a membership for crossing a picket line.

y) Section 36.1(1), add "provided however that nothing in this section shall remove an employee's right to sue a union for violation of the employee's rights under the Constitution and Bylaws of the union."

zz) Section 37.1 on deemed sales should be repealed. This Section was in Ontario and removed because it really was not fair to the people who acquired a new contract through the bidding process.

aa) Section 42 needs to be limited. Remove all the words beginning with "or as may be incidental".

bb) Section 43 on technological change should be changed to make it clear that it does not apply to a closure of a business or for economic layoff. In addition, the significant number of employees Regulation should be changed to remove any reference to the collective bargaining agreement. Basically, if you want to use the Act, it should be a significant number as defined by the Regulations of the Act.

cc) Subsection 43 (10) should make it clear that the longest that you can be stopped from carrying out changes is 90 days. Therefore, subsection 43(10)(c) should say "the 90-day notice period has expired."

dd) Subsection 43(12), "permanent damage" should be clarified to include economic losses such as bankruptcy, etc.

ee) Section 45 on a vote on the final offer at the present time with its procedure is useless. You would never be able to get a vote on your final offer. You either have to repeal this Section or provide for a means for the Section to be used quickly after it is requested.

ff) Section 46(1) should be amended to provide:

> Following the conclusion of a strike or lock-out and conclusion of a collective bargaining agreement where the employer intends to operate its business again and where an employer and the trade union have not reached an agreement on the return to work of striking or locked out employees the employer shall reinstate the striking or locked out employees in accordance with this section.

This amendment would allow the parties to decide how employees return to work, if at all.

gg) Subsection (2) should have the following words added at the end of the Section: "and all striking or locked out employees shall be deemed for the purpose of this section to be on valid layoff as provided in *The Labour Standards Act* and Collective Bargaining Agreement during the labour dispute".

hh) Repeal (3)(b).

ii) Subsection (4) should have a sentence in "hired after the strike or lock-out begins".

jj) Subsection (6) should be repealed and replace with "other than the right of the union to remove an employee membership and rights associated with memberships, no employee shall be disciplined or fined if they worked for the employer during the labour dispute".

kk) Section 47(4) should have added at the end "unless the plan requires the person to be actively at work in order to qualify for the benefits."

III. *The Labour Standards Act*

The major parts of the Act that create problems are:

a) The provisions of the Act relating to agriculture, especially as it relates to hog operations. You could have discussions with these operators to see how the changes have affected them.

b) Hours of work and overtime. This Section creates more problems because it fails to recognize different types of work arrangements. Contract provisions such as extended shifts to 12 hour shifts or 10 hour shifts are now common and liked by employees. Many employers are unable to have full knowledge of the sections of the Act and therefore are in technical violation of the Act even when the employees find these extended shifts more favourable to them.

There are problems with people on call and paid monthly wages in industries such as ambulance services. There is also a problem because the Director can revoke an averaging permit at any time.

Section 13 on work schedules are honoured in the breach more than the observance. It should be repealed.

Sections 13.2 and 13.3 should be repealed to allow the employer to work out arrangements that best work for that industry with the employee.

c) Minimum wage should be removed from the Minimum Wage Board and dealt with by government. Problems created by Minimum Wage Board Orders such as driving people home after midnight, whether they are male or female, have had unforeseen consequences and should be reconsidered.

d) The section on Annual holidays should be changed, because they provide for holidays if you have 52 weeks not broken by 26 weeks. You therefore could have a vacation date providing you with time off work if you worked only for half of a year. The year of employment should be stopped any time you are not at work for a period of greater than 14 days, similar to the layoff provisions of the Act. This also becomes a major problem when you calculate when you get the higher levels of holidays if breaks of half year or less do not count as break employment. The Act should define the right based upon time actually worked.

e) The layoff provisions in Section 43 should have mitigation wording, so if an employee is laid off from one company and begins work with a new company that acquires it, or begins a new job immediately, the money earned should be taken off the pay in lieu of notice. This is consistent with common law principles.

f) Section 44(3) on group terminations should be repealed.

g) Section 45.1 should be repealed.

h) Under 61(1), the adjudicators system should be reconsidered. Who is going to be an adjudicator or a method to have a group of people to hear complaints under all labour legislation should be considered.

i) There should be some amendment to Section 70 of the Act where it requires the employer to have records showing the total number of hours worked by an employee each day. For industries such as trucking, where people are paid by the month or the trip, it is useless to try and put this in so we think there should be an amendment providing that it not apply to industries where employees are paid by the trip or the month unless the total pay provided would give the employee less than minimum wage.

j) Under Section 72, you may want to strengthen it to make it clear that you would consider the whole work arrangement as compared to Labour Standards in determining whether the employee has received a better contract than the Act. You also should put in a section that any time a union represents the employees, the provisions of the Collective Bargaining Agreement would be deemed to be better than the Act.

k) Section 83 of the Act should be clarified to point out that employees who are offered similar work with similar salary and working conditions with the business that acquires it turns down the offer, the employee shall not be entitled to the benefit of Section 43 of the Act.

l) Section 10 of the Regulations has to be amended because it is unfair to people who make arrangements to pay monthly wages for hours that are greater than 8 in a day or 40 in a week when the total wages paid pays the employee substantially more than minimum wage and overtime.

m) Section 13 of the Act and regulations under it dealing with periods of rest should also be amended because it is totally useless in the way it is working. Subsection (2) talks about wherever possible two consecutive days are to be given off, "one of those to be Sunday". We do not know whether "wherever possible" describes only Sunday or two consecutive days and the requirement of getting a director's exemption is cumbersome and probably not done by anyone who does not comply with the Act. It should either be reworked or better yet, repealed.

n) Under Section 15 of the Regulations, someone should ask the carriers of benefits whether these benefits can be carried during a time when the employee is not available for work. We know disability insurance has a requirement that you have to be actively at work in order to qualify and someone on a leave of absence would not be actively at work.

o) Section 22 of the Regulations on group terminations should be reconsidered.

p) The benefit plans for part-time employees should be removed. This should be left to the employers and employees involved. This Act discourages new employers who have part-time workers from giving benefits to full-time employees.

IV. *The Occupational Health & Safety Act*

Because the powers given to Occupational Health and Safety officers to require immediate action by the employees based upon the order of the officer are so great under the Act as compared to other labour legislation where you can have your rights clarified first there is a need to answer basic questions on the items included in this Act. These questions are:

a) Are you dealing with **real** safety concerns? Questions of harassment and discrimination are not immediate safety concerns. These are best handled under other legislation.

b) Are officers trained to handle the issues raised in a fair manner without a bias? The present system appears to favour a worker over the employer.

c) Is there a fair and unbiased system for handling complaints under any area covered? In particular, the area in harassment complaints and unreasonable safety concerns covered by the Act is problematic. We would suggest you review the harassment question to determine if it should be under this Act rather than Human Rights or Labour Standards.

d) If it should be included under the enhanced powers of this Act, you should:

   i) identify the specific problem, that is, is it a safety issue requiring an immediate answer? Not everything on these kinds of complaints need an immediate answer.

ii) train the officers to deal with these matters in a fair manner. There should be no orders made until there is an adjudication finding wrongdoing;

iii) ensure that there is a fair procedure and adjudicator model that will not be biased in favour of the employee complaining;

iv) ensure that adjudicators are properly appointed and legally trained to handle cases in an a fair and knowledgeable manner;

v) clarify how damages are calculated to ensure that the principles of reasonableness and mitigation apply to the worker involved.

The present Act gives too much power to the employee who complains about safety concerns as well as the officers, and provides too slow and cumbersome appeal process with little consideration for the employer. The adjudicators who ultimately hear the cases at the present time may be knowledgeable about some kind of safety issues but are not people who normally would decide harassment or similar questions.

V. Forum Shopping

There should be a general section in all legislation to provide that an employee could not proceed to many forums in the same matter. As an example, you should not be able to claim harassment under a collective bargaining agreement, Occupational Health and Safety and Human Rights. Each of these forums is costly to an employer and generally the employee pays nothing.

The main areas where such complaints would arise are under the duty to accommodate, discipline in the workplace, and harassment complaints. While it is conceded that there has to be a forum to deal with these complaints, once the employer has dealt with it, the worker should not be able to proceed to another forum under different legislation to have the matter reheard.

You should therefore have a general restriction that provides that once you select a forum for your complaint arising out of your employment that you cannot proceed under other legislation and that if a second complaint is filed and somehow proceeds to a hearing, the employer shall be paid all their legal expenses for that hearing from the complainant or government.

Another way of dealing with this would be to consider a single board to deal with complaints under *The Trade Union Act, The Occupational Health & Safety Act, The Labour Standards Act, Human Rights Code* and perhaps *The Workers Compensation Act.* The procedures may be different for certain kind of complaints but only one hearing would be allowed to deal with all issues raised.