A Consultation Paper on the Renewal of Labour Legislation in Saskatchewan

May 2, 2012

Ministry of
Labour Relations and
Workplace Safety

Minister of Labour Relations and
Workplace Safety

SASKATCHEWAN

Legislative Building
Regina, Saskatchewan S4S 0B3

To The People of Saskatchewan:

The Government of Saskatchewan is committed to establishing a fair, open and transparent legislative environment for Saskatchewan workplaces that meets the ongoing needs of employees, employers and the unions that represent organized workers. Government plays an important role by ensuring working people are provided appropriate protections and standards which are relevant, understandable and consistently enforced. To this end, we are undertaking the most comprehensive review of employment and labour relations legislation in the province's history, and I want to hear your views.

The laws which govern employment relationships and workplaces have a significant impact on all our lives. From the minimum wage, to the age of employment, to keeping people safe at work, to ensuring people can form or join the unions of their choosing, to enabling unions and employers to engage in free and fair collective bargaining, all of these touch each and every one of us in some way.

Since the 1990s, there have been a number of amendments to the legislation to address specific needs, such as establishing Family Day or expanding protections respecting smoking in the workplace. We recently consulted with business and labour stakeholders to amend *The Occupational Health and Safety Act, 1993* to improve workplace health and safety in the province.

Our goal to modernize and simplify legislation is ambitious and important. We believe this goal can be achieved through: (1) restructuring and organizing the legislation so it is easier to use and understand; (2) eliminating inconsistencies between provisions that result in confusion; and, (3) clarifying which legislation applies in particular situations. We also want to ensure that labour legislation reflects today's changing work environment, while supporting flexible work arrangements to enhance productivity and work-life balance within Saskatchewan workplaces. Your feedback will play a key role in the development of modern, effective labour legislation.

This discussion paper is intended to assist you when thinking about the various provisions of the current legislation. It is not intended to be exhaustive or definitive. We look forward to your comments on all aspects of the current legislative regime. If you have questions, please contact the Ministry of Labour Relations and Workplace Safety at (306) 798-0225. The discussion paper is arranged into six chapters. Please provide your written response to all chapters by July 31, 2012.

Your written responses will be received, reviewed and analyzed by Ministry staff. In addition, a summary of responses will be forwarded to an Advisory Committee, composed of knowledgeable representatives of stakeholders. The Advisory Committee will review this material and provide their advice on these important issues. Their responses and advice will be carefully considered as renewed legislation is developed.

Please submit all responses no later than July 31, 2012 to:

Ministry of Labour Relations and Workplace Safety
300 - 1870 Albert Street
Regina SK S4P 4W1

Or by email to: labourlegislationLRWS@gov.sk.ca

Thank you in advance for participating and making Saskatchewan the best place to live and work in Canada.

Don Morgan, Q.C.

Minister of Labour Relations and Workplace Safety

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The Intent of the Review

The Ministry of Labour Relations and Workplace Safety is responsible for 15 Acts and associated regulations:

6 governing labour relations:

- *The Collective Bargaining Agreement Expiry Date Exception Act*
- *The Construction Industry Labour Relations Act, 1992*
- *The Health Labour Relations Reorganization Act*
- *The Labour Management Dispute (Temporary Provisions) Act*
- *The Public Service Essential Services Act*
- *The Trade Union Act*

4 governing employment standards:

- *The Employment Agencies Act*
- *The Fire Departments Platoon Act*
- *The Labour Standards Act*
- *The Wages Recovery Act*

3 governing occupational health and safety:

- *The Occupational Health and Safety Act, 1993*
- *The Radiation Health and Safety Act, 1985*
- *The Building Trades Protection Act*

2 other Acts:

- *The Human Resources, Labour and Employment Act*
- *The Victims of Workplace Injuries Day of Mourning Act*

Other than amendments to specific provisions, the majority of these Acts have not been substantively reviewed in almost 20 years, while others have not been reviewed in more than two generations. The exception to this is the statutory review of *The Occupational Health and Safety Act, 1993*, which has resulted in the introduction of amendments during the 2011 fall session of the Legislature. In addition, the Radiation Health and Safety Committee recently completed a review of *The Radiation Health and Safety Act, 1985*. The Government enacted new legislation, *The Public Service Essential Services Act*, to ensure the health and safety of citizens, the protection of public resources and the maintenance of certain public services during any labour relations dispute.

Employers, employees, unions and their central bodies, employer associations, practitioners and the public have from time to time expressed concern that:

- some workplace practices are not recognized by the legislation;
- the legislation can be hard to understand given the language used;
- it can be difficult to know which Act and which provisions apply in a particular situation; and
- inconsistencies exist between provisions resulting in confusion.

Many of these issues have the impact of negatively affecting the productivity of workplaces.

Reviews of legislation are critical for good governance as they ensure that the laws are responsive and relevant to the people of the province. To this end, the Government is undertaking a comprehensive review of labour legislation.

The purpose of this review is to:

- identify whether the intent of employment standards, labour relations and specific occupational health and safety legislation is reflected in the current Acts, and if not, what changes are necessary and appropriate;
- ensure the protections afforded workers are adequate, and the duties and responsibilities of all workplace partners are sufficiently clear so as to ensure compliance;
- address the changing nature of the workplace and provide flexibility to meet the needs of the evolving employer-employee relationship; and
- better organize the legislation so that it is consistent, consolidated and easier to understand.

While this paper focuses predominantly on employment standards and labour relations aspects, it is important to reiterate that the Government remains committed to ensuring that work is performed in such a manner that everyone returns home in a safe and healthy condition at the end of the day.

The result of this review could be the consolidation and/or elimination of legislation that is no longer relevant or is already captured in existing legislation.

This paper asks some general questions about the adequacy of the current legislation in meeting its intended purpose. In addition, there are specific issues raised to assist individuals in formulating a response. The questions are not meant to be exhaustive but rather to initiate discussion.

As a starting point, the following questions are to elicit opinions regarding the structure of labour legislation as a whole.

The only Canadian jurisdiction that has a single piece of legislation governing multiple aspects of labour relations and workplace safety is the Federal Government.

The Government is considering consolidating these Acts and structuring the various provisions in a well-organized compendium that addresses ease of use and ease of understanding issues raised by stakeholders.

Questions to Assist Discussion:

Which Acts should be consolidated?

Are there Acts that are not currently the responsibility of the Minister of Labour Relations and Workplace Safety that should be included in a consolidated Act?

Are there Acts that should not be included in a consolidated Act? What do you see as the benefits or risks of consolidating Acts?

Employment Standards

Employment standards legislation establishes the minimum conditions of employment for employers and employees in Saskatchewan.

Four Acts administered by the Ministry govern employment standards.

- *The Labour Standards Act* establishes the minimum conditions of employment for employers and employees in Saskatchewan.
- *The Employment Agencies Act* prohibits the collection of a fee for assisting in finding employment for an individual.
- *The Fire Departments Platoon Act* establishes a two-platoon system for the scheduling of consecutive hours of duty for firefighters in cities with a population over 10,000.
- *The Wages Recovery Act* establishes a process whereby legal action can be taken for the recovery of unpaid wages.

Questions to Assist Discussion:

Does the existing employment standards legislation adequately meet its intended purpose?

Should all provisions governing employment standards be contained in the same statute?

Scope of The Labour Standards Act

The Act currently applies to every employee working in the Province of Saskatchewan and their employer except for:

- employees employed in federally regulated industries such as banking, radio, television, interprovincial trucking and railroads;
- employees employed primarily in farming, ranching or market gardening;
- employees in an undertaking in which only members of the employer's immediate family are employed; and
- casual sitters.

In addition, there are parts of the Act that do not apply to:

- an employee who performs services that are entirely of a managerial character (exempt from Part I of the Act);
- teachers (exempt from Parts I, V and VI of the Act);
- commercial fishers (exempt from sections 1 to 47); and
- commercial trappers (exempt from sections 1 to 47).

There are also exemptions and exceptions found throughout the Act and regulations which are specific to certain conditions.

Currently, farm workers are not covered under *The Labour Standards Act*. Accordingly, these workers cannot use the enforcement mechanisms available to other workers under *The Labour Standards Act* to collect wages owed. Nor do they enjoy the protections of minimum standards of employment provided to other workers.

The changes in work methods that have occurred in Saskatchewan over the last 20 years have changed how and who performs work. For example, employment in the agri-business sector has transitioned from family-run enterprises to more traditional business structures with full-time, paid employees rather than family members. This raises the question of whether the current exemptions are appropriate.

Questions to Assist Discussion:

Should the Act apply to more or fewer categories of employment or industries? Why or why not?

The Act currently applies to standard employer-employee relationships. As a result, some individuals' work arrangements may not be covered by the Act (i.e. working remotely or being a self-employed independent contractor). Given the changing nature of work relationships, should the Act be changed to cover these new work arrangements?

Employment Agencies

Some unscrupulous recruiting and employment practices subject job seekers to abuses and financial pressures that are inappropriate. In certain cases, recruiting agencies charge job seekers substantial fees to gain access to help wanted ads. In others, employers pay finder's fees to employment agencies and then seek to recover those expenses from wages paid to affected employees.

The Employment Agencies Act prohibits any person, firm, corporation or association from collecting, directly or indirectly, a fee or compensation for providing information to a person seeking employment. This Act was originally passed in 1919 and it has remained in substantially the same form since 1925. The fines are set at between $10 and $25.

Given the low fines, there have been few prosecutions under this Act.

Questions to Assist Discussion:

Should labour legislation continue to prohibit the charging of a fee for finding employment for an individual? Why or why not?

Should there be fines for anyone charging fees to individuals seeking work? Why or why not?

What would be a reasonable fine?

Hours of Work

The Labour Standards Act currently establishes regular hours of work at 8 hours per day and 40 hours per week. Any hours worked after these limits must be paid at the overtime rate of one and a half times the regular wage. In addition, an employer must get the consent of the employees to work more than 44 hours in a week. These provisions ensure that hours of work cannot be manipulated for the purpose of avoiding an entitlement to overtime.

The Act allows for a modification of the regular hours to a four-day week of 10-hour days before the overtime rate must be paid. This arrangement can only occur with the written permission of the Director of Labour Standards or consent of the trade union.

The Act also allows for the averaging of hours of work over a period of weeks as long as the average number of hours does not exceed eight hours per day and 40 hours per week. This arrangement can only occur with the written permission of the Director, or consent of the trade union.

In addition, the Act ensures employees have at least eight hours off in a 24-hour period (except where there is an emergency circumstance), and that employees have meal breaks when scheduled for six hours or more.

Under this regulated process, employers and employees are not able to vary the hours of work to the mutual benefit of the parties without requesting and receiving written permission from the Government. The permit process requires reviews and investigations of each application, which takes time that could be used investigating and enforcing the Act.

The Fire Departments Platoon Act establishes the hours of work for firefighters. Specifically, the Act establishes that firefighter platoons cannot:

- work more than 24 consecutive hours;
- work more than 10 consecutive hours in a 24-hour period if working the day shift;
- work more than 14 consecutive hours in a 24-hour period if working the night shift; or
- on average exceed 42 hours per week in a 16-week period.

The inclusion of these hours of work provisions in a separate Act sometimes results in confusion as to what provisions apply. It also raises the question of why these provisions should not be included with other hours of work provisions.

Questions to Assist Discussion:

Should employees and employers be able to enter into mutually agreed upon flexible work arrangements without requiring a permit?

What limitations should there be on hours of work, if any?

Are the overtime provisions appropriate, adequate and clearly set out so as to ensure compliance?

Should permits continue to be required in certain circumstances? If yes, please describe the circumstances.

Are the rest and break provisions appropriate?

Should the hours of work provisions under The Fire Departments Platoon Act be amended?

Should these provisions be included in the hours of work provisions for all other workers?

Leave Provisions

The Labour Standards Act has a number of provisions governing leave from employment, including maternity, parental, adoption, bereavement, compassionate care and reservist leave. Some jurisdictions have recently enacted leave provisions for organ donation and citizenship ceremonies.

Questions to Assist Discussion:

Are the existing leave provisions clear and easy to understand? Are the current leave provisions sufficient?

Should Saskatchewan consider expanding the number of leave provisions to include:

- *organ donation;*
- *citizenship ceremonies; and*
- *others?*

What would be the impact of changing the leave provisions?

Annual Holiday Provisions

The Labour Standards Act includes a number of provisions respecting the entitlement to, payment for, and manner of taking annual holidays.

In general, an employee is entitled to three weeks annual holiday after each year of employment with any one employer. Once an employee has completed 10 years of employment with one employer, the employee is entitled to four weeks of annual holiday for each subsequent year of employment.

The Act requires the employer to provide four weeks written notice of the commencement of the employee's annual holiday unless the employer and employee make alternate arrangements.

In addition to time off, employees are entitled to annual holiday pay of three fifty seconds (3/52) of the employee's total wages for the year, where employed for less than 10 years; and four fifty-seconds (4/52)of the employee's total wages for the year, where employed for 10 years or more. The payment of these amounts is dependent upon how the annual holiday is taken.

The current annual holiday provisions have not been changed since the 1990s. Saskatchewan still leads the country in entitlements and holiday pay.

Questions to Assist Discussion:

Are the existing annual holiday provisions clear and easy to understand? Are the current annual holiday provisions appropriate and adequate?

Public Holiday Provisions

There are 10 public holidays established in the Act which is more than any other Canadian jurisdiction. Saskatchewan had nine public holidays until 2006, when the inclusion of Family Day occurred.

Most employees are entitled to public holiday pay of:

$$A = \frac{W}{20}$$

Where W equals the total wages earned by the employee during the four weeks immediately preceding the public holiday, not including overtime.

In addition, most employees who work a public holiday are entitled to an amount equal to one and a half times the employee's regular wage for the time worked.

The Act also allows for movement of a public holiday where the employer obtains the consent of the trade union or upon application to the Director with the support of the employees.

Questions to Assist Discussion:

Are the existing public holiday provisions clear and easy to understand?

Is the current number of public holidays appropriate?

What would be the impact of changing the number of public holidays?

Should employers and employees be able to observe a public holiday on a different day without requiring a permit?

Notice Provisions

The Act requires that an employer provide written notice to an employee when terminating his or her employment. The notice period depends on the employee's years of service with the employer. Notice ranges from one week for service less than one year, to eight weeks for service of 10 or more years. This notice requirement is consistent across western Canada.

In addition, where there are more than 10 employees laid off or terminated within a four-week period, the employer is required to provide written notice of a group termination to the employees, the Minister and any union representing the employees. The amount of notice is dependent on the number of employees affected. Notice ranges from four weeks for a termination of 10-49 employees, to 12 weeks for 100 or more employees. The group termination notice provisions vary across Canada with some provinces having longer notice requirements than Saskatchewan and some with shorter notice requirements. In some sectors of the economy where there is uncertainty in market demand for a product or service, continuous lay-off notices are provided to employees. This causes uncertainty for employees and burdensome paperwork for businesses.

There is no requirement for employees to provide notice to employers when terminating their employment. Alberta and Manitoba have legislated notice requirements for employees, but in these provinces there are exceptions to the notice requirements. These exceptions are not the same in each province.

Questions to Assist Discussion:

Are the current notice provisions appropriate and adequate? Why or why not?

Should employees be required to provide written notice when terminating their employment? If yes, what would be a reasonable notice period?

What circumstances would warrant the waiving of the notice period?

Minimum Wage

The legislation requires the Minimum Wage Board to review and make recommendations to the Minister on the minimum wage at least once every two years.

In addition, the Board can review and make recommendations on matters identified in section 15.1 of the Act (i.e. board and room rates, hours of work for classes of employees, statement of earnings, transportation home after certain hours, and laundering and repairing uniforms).

There have been recommendations over the years to index the minimum wage to various indicators (e.g. Consumer Price Index, Average Weekly Wage), so as to ensure the minimum wage maintains a certain standard of living. The increase in the minimum wage that occurred on September 1, 2011 was equivalent to an average of the change in the Consumer Price Index and the Average Hourly Wage

for 2010. Currently, only Alberta, Nova Scotia and the Yukon adjust their minimum wage annually based on an indexing formula.

There is a provision in the current Act which allows the Director of Labour Standards to issue a license allowing an employer to pay a disabled worker a wage that is lower than the minimum wage. At the time, this provision was intended to assist disabled workers in getting work experience which could assist them in gaining meaningful employment. Given that this provision has not been used in at least 20 years, it may no longer be relevant.

Questions to Assist Discussion:

Should the minimum wage be indexed? If so, how should the minimum wage be indexed?

If the answer to the previous question is yes, is there a need to continue the Minimum Wage Board?

Is the list of matters the Minimum Wage Board can review and make recommendations on appropriate and adequate?

Should the list be altered? If so, how?

Should employers be able to pay disabled workers wages lower than the minimum wage? If so, under what circumstances?

Payment of Wages

There are numerous sections of the Act that address the issue of payment of wages. Section 47 provides for the payment of wages not less frequently than every seven days where requested by the majority of the hourly, daily or weekly wage employees.

Section 48 provides for the payment of wages at least semi-monthly or every 14 days. Employers must pay all wages within 6 days of the pay period cut-off and within 14 days of the end of the employment.

Section 49 states that all wages are to be paid in Canadian currency or by cheque drawn upon a chartered bank or a credit union, or deposited to an employee's account in either of these types of banking institutions.

Technology has changed significantly over the years which has changed banking practices (i.e. direct deposit). As a result, a review of the payment of wages provisions is needed to ensure that they take into consideration the new technologies and whether there is a need to continue to have various provisions respecting the payment of wages.

Questions to Assist Discussion:

Are the requirements for payment of wages understandable? Why or why not?

Are the time frames for payment of wages appropriate and adequate? Why or why not?

Collection of Wages

Currently the Act provides for the collection of outstanding wages on behalf of employees. Section 54 of *The Labour Standards Act* enables the Director to serve a third-party demand on a person for payment of outstanding wages. This demand requires that the third-party pay the Director of Labour Standards any money that is owed to the employee. The employer can appeal this seizure.

Additionally, the Director may issue a wage assessment against an employer or corporate director that, without appeal, will end up as a judgment in the Court of Queen's Bench. Collection of wages can occur once a judgment is obtained.

Section 56 of the Act creates a deemed trust for wages that results in a priority position for wages. Wages do not take priority over a purchase money security interest or a mortgage taken prior to the wages being due.

In addition, *The Wages Recovery Act* provides for legal action to be taken for the recovery of wages for all workers, whether covered by *The Labour Standards Act* or not.

The various processes for collection of wages have evolved over time to address different situations. These provisions have not been reviewed for some time. As a result, there is a need for a review to ensure the best tools are available to collect wages for employees.

Questions to Assist Discussion:

Are the current provisions adequate and appropriate to address the need to ensure the payment of wages to employees and former employees?

Equal Pay

Currently the Act prohibits an employer from paying male and female employees at the same business different rates of pay if they perform similar work under similar working conditions, unless based upon merit or seniority.

The Government is committed to ensuring clarity in the establishment of minimum standards of employment. As a result, consideration is being given to the adequacy of this provision.

Questions to Assist Discussion:

Are the current provisions adequate and appropriate?

Discriminatory Actions

Currently, section 74 of the Act states that an employer cannot discharge, threaten to discharge or take any reprisal against an employee or discriminate in any manner if the employee:

- reports or proposes to report to a lawful authority any activities thought to be an offense under the Act or a federal Act; or
- has testified or may be called to testify in an investigation or proceeding pursuant to the Act or a federal Act.

These provisions are intended to provide protection to "whistle blowers".

Section 44.2 of the Act states that an employee cannot be dismissed, suspended, laid off, demoted or disciplined for absence due to illness or injury of the employee or a member of the employee's immediate family if:

- the employee has worked for the employer for at least 13 consecutive weeks prior to the absence;
- and:
  - the absence does not exceed 12 weeks in a 52 week period; or
  - for non-serious illness, the absence does not exceed 12 days in a calendar year; and
  - if the employee is injured and receiving benefits under *The Workers' Compensation Act 1979*, and the absence does not exceed 26 weeks.

The employer may require the employee provide a certificate from a medical practitioner.

In addition, an employee cannot be dismissed, suspended, laid off, demoted or disciplined if absent for a period of time in which compassionate care benefits are being paid, or in the waiting period for benefits pursuant to section 23.1 of the *Employment Insurance Act*. In such a case, an employee's combined absences cannot exceed 16 weeks in a 52-week period.

The Act also contains protection from discrimination in other situations, such as pregnancy or when applying for maternity leave.

These provisions are currently found in various parts of the Act. This can sometimes make it difficult for individuals to know their rights and responsibilities. In addition, the nature of work has changed, and it is important to ensure that these protections afforded workers continue to be relevant.

Questions to Assist Discussion:

Are the discriminatory action provisions understandable? Why or why not?

Are the discriminatory action provisions appropriate and adequate? Why or why not?

Labour Relations

Labour relations legislation regulates labour-management relations, and establishes employer obligations and union obligations. It also establishes and protects employees' rights to organize to form or join in trade unions and to bargain collectively through representatives of their choosing and facilitate the right to strike. It also makes provision for the resolution of disputes and the conduct of free and fair collective bargaining by defining unfair labour practices which, in effect, establish the rules under which collective bargaining is to occur.

Six Acts assigned to the Ministry govern the relationship between employers and trade unions. *The Trade Union Act (TUA)* provides the general framework for all labour relations between an employer and a trade union. Two other Acts govern labour relations in specific sectors: construction (*The Construction Industry Labour Relations Act, 1992*), and health care (*The Health Labour Relations Reorganization Act*).

In addition, there are Acts that address specific features of labour relations: essential services (*The Public Service Essential Services Act*); term of a collective agreement (*The Collective Bargaining Agreement Expiry Date Exception Act)*; and labour disputes during the election writ period (*The Labour Management Dispute (Temporary Provisions Act*)). Other Acts also contain a labour relations component: *The Fire Departments Platoon Act*, *The Police Act, 1990* and *The Education Act, 1995*.

Questions to Assist Discussion:

Does the existing labour relations legislation adequately meet its intended purpose?

Should all provisions governing the conduct of labour relations be contained in the same statute?

Scope under The Trade Union Act

Currently the TUA excludes individuals from belonging to a union if their primary job responsibilities are of a managerial character or where they regularly act in a confidential capacity in labour relations matters.

Over the last 20 years, competitive pressures have led to a flattening of organizational structures which have given rise to significant changes in employees' responsibilities. For example, employees have taken on more supervisory and managerial responsibilities. As a result of these changes, some employees are placed in a position where they are managing and potentially disciplining employees within the same bargaining unit to which they belong. This can place supervisors in a conflict position with their union. The potential also exists for the emergence of conflicts of interest where an individual exercises managerial duties, as these individuals attempt to balance the often competing interests of the management of the organization with the interests of the union. These situations

could be eliminated by not allowing supervisors or those individuals in a confidential capacity to belong to the same union as the employees they supervise.

In addition, the labour relations community may benefit from some clarity respecting what is meant by "actually exercise authority and actually perform functions that are of a managerial character".

Questions to Assist Discussion:

Should the TUA be amended to clarify what is meant by "managerial character" and "confidential capacity with respect to the industrial relations"?

Should employees with supervisory responsibilities be in the same union as the employees they supervise? Why or why not?

Accountability

A private member's bill, C-377 *An Act to Amend the Income Tax Act (requirements for labour organizations)*, has been introduced in the federal Parliament. This requires labour organizations to disclose to the Minister responsible an extensive list of information on union financial activities, which can be made available to the public.

In August 2011, Nanos Research published a report which identified that "83% of Canadians agreed with mandatory public financial disclosure for both public and private sector unions on a regular basis." The survey also identified that respondents disagreed with union dues being used to contribute to attack ads (73 per cent), political parties (70 per cent) or advocacy groups (60 per cent).

This survey sampled 1,001 employed Canadians between July 20th and July 25th, 2011.

The Government wants to know what Saskatchewan people think on this issue.

Some union members have approached the Government on this issue. These questions seem to arise in relation to political action and other activities not related to collective bargaining or the administration of a collective bargaining agreement. In addition, union members have also expressed concern that they feel they have no recourse if they disagree with how union dues are used.

The Government has also heard from union members that they are unsure of their right to recourse where they feel a union has violated their rights of membership, as set out in the union's constitution and bylaws.

Questions to Assist Discussion:

Are trade unions sufficiently accountable? For example, do you believe that unions should be required to provide annual audited financial statements to its members, the Government and the public?

If so, what should be included in these financial statements?

Should union members be able to vote on how their union dues can be used in a secret ballot vote?

Should union members be able to stipulate what their union dues are used for?

Should union members be able to opt out of paying that portion of union dues that is not used for labour relations purposes?

Should union members have a mechanism to bring to the Labour Relations Board questions regarding whether their union has complied with the union's constitution and bylaws?

Certification and Decertification of Union

Certification:

Certification and decertification are processes by which employees can express their wish to be represented by a union or not.

In the case of certification, the TUA requires that employees express their support to be unionized through a secret ballot vote. A vote must be conducted involving those people that would comprise the bargaining unit. There are situations where project-based work takes place over a finite period of time and/or requires a highly skilled workforce possessing unique skills that are not readily or widely available.

Currently, the TUA does not allow an employer to voluntarily recognize a union as the representative of its employees. As a result, unions must make application to the Labour Relations Board (LRB) and the LRB must conduct a secret ballot vote to determine representation. In some cases this is impractical, as the work being done is for a short period of time and, in most cases, completed before the certification process and secret ballot vote can be conducted.

On occasion, an employer will deploy strategies designed to avoid the unionization of its workforce. Some of these strategies prevent workers from exercising their rights to organize, to form or join a union, and as such are unlawful. Others are lawful.

Decertification:

In the case of decertification, the TUA enables union members to apply to the Labour Relations Board to terminate their relationship with their union. Such applications can only be made during the "open period" of the collective agreement (a period of not less than 30 days or more than 60 days before the anniversary of the effective date of the agreement). In many instances, union members are not aware that applications must be made during this open period. As a result, they are required to wait a year or more to make an application.

The TUA does not currently enable employers and union members to apply to the Labour Relations Board to terminate their relationship with a union due to the union's failure to actively represent its members. This situation is often referred to as abandonment. As a result, union members have limited ability to terminate their relationship with the union, except during the open period.

The TUA does not enable an employer to apply to the Labour Relations Board to rescind an active certification order where there are no employees working for the employer, even when they have not employed any employees for a number of years.

Questions to Assist Discussion:

Is there a need to clarify who can vote on a certification and decertification application (i.e. laid off employees, probationary employees)?

Do the existing provisions adequately distinguish unlawful and lawful union avoidance strategies?

Should provision be made to enable an employer to voluntarily recognize an existing union without conducting a vote? For example, should this be done where there are short periods of work? If so, under what circumstances?

Is it necessary to restrict applications for changing union representation or decertification of their union to the "open period"?

Is an option to permit such applications but limit the number of applications in a 12 month period? What issues would this raise?

Should an employer and/or union members be able to apply to the Labour Relations Board to rescind a certification order? For example, should this occur where a union is not representing its employees, either through meetings with members or collective bargaining on their behalf with the employer?

Under what other circumstances should an employer and/or union members be able to apply to the Labour Relations Board to rescind a certification order? For example, should this be available where the employer no longer employs workers? And, if so, should there be a minimum time period before an application can be brought forward? Are there other issues to consider?

Unfair Labour Practice

Section 11 of the TUA outlines the activities of the employer, employer's agent, trade union, employee or other person that are considered unfair labour practices, including refusing to bargain collectively; striking or locking-out employees without proper notice; and interfering with, restraining or intimidating an employee in the exercise of any rights under the Act.

The wording of this section makes it difficult for employees, employers, unions and employer agents to understand and comply with their respective obligations. This is an issue of clarity and understandability.

Questions to Assist Discussion:

Are the unfair labour practices identified in the TUA adequate? Why or why not?

Should this section be re-written to clarify the obligations of employees, employers, employer agents and unions?

Province-wide Collective Bargaining

The Construction Industry Labour Relations Act, *1992*, and to a certain extent *The Health Labour Relations Reorganization Act*, provide for multi-employer, multi-union collective bargaining relationships to be formed on a province-wide basis.

In the province-wide bargaining structure, the union bargains with a representative employer organization that is established in legislation.

Questions to Assist Discussion:

Should legislation make provision for multi-employer, multi-union collective bargaining? Why or why not?

If so, are there particular sectors that should be referenced in legislation where province-wide collective bargaining relationships are permitted or encouraged? Why?

Transferring Certification

The TUA provides for a certification order and collective agreement to be transferred when all or part of a business is sold to a new employer. Such provisions are known as successorship and/or common employer declaration provisions. These types of provisions offer security to unions and stability to the collective bargaining relationship. They are common throughout all jurisdictions in North America.

In addition to the general successorship provision, the TUA includes a special successorship provision for cafeteria, janitorial, or security services in buildings owned by the provincial government or a municipality. When these services are re-tendered, any collective agreement and certification order are transferred to the new contractor. Saskatchewan is the only jurisdiction in Canada with this type of successorship provision.

Questions to Assist Discussion:

Is the successorship and common employer declaration appropriate?

Should businesses who bid on contracts to provide cafeteria, janitorial, or security services in government-owned buildings be automatically subject to existing certification orders and collective bargaining agreements?

Are there conditions that should apply and others that should be negotiated in the new employer-employee relationship? Please identify conditions that should transfer to a new employer.

Negotiations

The TUA requires employers and trade unions to bargain in good faith with a view to concluding a collective bargaining agreement. Effective labour relations are predicated upon the notion of "free and fair collective bargaining" where the parties act in good faith, exercising the available tools, such as strike and lockout, to advance their interests and reach an agreement on the terms and conditions of employment for a term specified. Collective bargaining is an adversarial process that requires the exercise of will and power to achieve a desired outcome. It is generally acknowledged that the best deals are those reached between the parties at the bargaining table. Success in collective bargaining is defined as concluding a deal or reaching a settlement without a strike or lockout. The vast majority of negotiations are successful; however, on occasion disputes occur.

Where a dispute occurs, the legislation makes provision for support and assistance to the parties in reaching a settlement.

Section 33 of the TUA speaks more specifically of the requirements of the parties to a collective agreement. In particular, the section states that either party can give written notice to the other party to commence the negotiation of a collective agreement. Currently, the time period for serving notice is not less than 30 days and not more than 60 days before the expiry of the collective agreement.

The provisions of the TUA do not require the parties to reach an impasse before requesting assistance of a conciliator, mediator or arbitrator in the conclusion of a collective agreement. In addition, there is no requirement for the parties to request any assistance prior to taking job action (i.e. strike or lock-out).

The Fire Departments Platoon Act establishes a process whereby either the firefighters' union or the city can request arbitration to settle any outstanding terms and conditions of a collective agreement. If either party does not nominate a panel representative or the parties cannot agree on the chairperson of the arbitration panel, a request is made to the Lieutenant Governor in Council to make appointments.

There have been situations where little or no meaningful collective bargaining has occurred, and instead one or both parties have taken job action or sought the assistance of a conciliator, mediator or arbitrator.

Questions to Assist Discussion:

Do the provisions of the various Acts adequately promote free and fair collective bargaining?

What does bargaining to an impasse mean to you?

Do you believe it is important to the employer and the union to negotiate, without interference, to a point of impasse:

- *before requesting assistance either through conciliation, mediation or arbitration?*
- *before being allowed to take strike or lock-out action?*

Are the provisions respecting re-negotiation of a collective agreement appropriate?

Should employers and unions be required to go through conciliation or mediation prior to taking strike or lock-out action?

With respect to the firefighters and the cities, is there a need to change the arbitration process? If so, how? For example, should both parties have to agree to arbitration prior to a request being made to the Lieutenant Governor in Council for the appointment of panel members?

Third Party Dispute Resolution

The TUA provides for third party dispute resolution through boards of conciliation, special mediators, boards of arbitration, expedited arbitration, mediation and grievance mediation. Many of these dispute resolution processes have been in the TUA since the early 1990s, if not the 1970s. While some of these processes are used by the parties on a more regular basis, others, such as boards of conciliation, have not been used in a number of years.

Questions to Assist Discussion:

Are these processes adequate to assist the parties in resolving disputes? Why or why not?

Are these dispute resolution processes effective in achieving their intended purpose? Why or why not?

Duty of Fair Representation

Section 25.1 of the TUA requires trade unions to represent their members in a fair, unbiased and non-arbitrary manner in grievance and rights arbitration proceedings.

In addition, the TUA states that every employee is to be afforded the principles of natural justice in any dispute between the employee and the union on matters relating to the union's constitution and the employee's membership in the union or disciplinary action taken by the union.

In cases where a union member believes he or she has not been treated in a fair and unbiased manner, an application can be made to the Labour Relations Board.

Union members have expressed concerns that these provisions do not clearly articulate the duties of the union in dealing with its members.

Questions to Assist Discussion:

Is this provision sufficient to ensure that union members are represented appropriately and adequately? Why or why not?

Should the TUA specify mechanisms that union members can apply to seek redress? For example, applications to the Labour Relations Board?

Picketing

The TUA does not contain provisions defining picketing and identifying types of activities which constitute lawful picketing.

The Supreme Court of Canada has ruled that picketing and secondary picketing (picketing at a place other than the workplace) is a protected right under section 2(d) of the *Canadian Charter of Rights and Freedoms*. The Court found that picketing at the private residence of management employees is contrary to the law, and limited picketing by stating that it cannot involve a violation of tort or criminal law (such as trespassing, interference with contractual obligations, nuisance or intimidation).

Since the Supreme Court decision, there have been picketing activities that could be viewed as outside the protected activities identified by the Court (picketing at managers' homes, attempts to intimidate customers and others via the picket line, as well as blocking access points [ie. railroads and roadways]).

Questions to Assist Discussion:

Should picketing activities be regulated in the TUA?

If so, what types of activities should be permitted or restricted? For example, should restrictions be placed on where picketing can take place?

Should the LRB be able to grant injunctive relief in resolving allegations of unlawful picketing?

Technological Change

Section 43 of the TUA requires that when an employer introduces a technological change that will impact on the terms and conditions of employment of a significant number of employees, the employer must notify the union representing the employees and the Minister and negotiate a workplace adjustment plan.

Technological change is defined as:

- introducing new technology or equipment;
- changing the way work is done due to the introduction of new equipment or materials; or
- removing or relocating part of the work, undertaking or business outside the bargaining unit.

The intent of the provision was to ensure that employees were provided appropriate notice and accommodation at a time when technology was changing at an ever increasing pace. An example is the introduction of new equipment in a laundry facility which results in fewer staff required to undertake the work.

This section of the TUA has been applied to closures of a business that have occurred as a result of some processes becoming redundant, and not as a result of the introduction of new technology.

Questions to Assist Discussion:

Is the definition of technological change appropriate?

Should the definition of technological change include closure or ceasing a portion of a business?

First Collective Agreement

The TUA currently requires that following the certification of an employer, the union and employer must meet and commence collective bargaining within 20 days after the order is granted unless the parties agree otherwise.

Either of the parties to the certification order can request assistance from the Labour Relations Board in the conclusion of a first agreement. The Board may provide assistance if certain conditions exist:

- a certification order exists;
- collective bargaining has occurred but failed to achieve a first collective agreement; and
- at least one of the following exist:
  - a strike vote has been taken and a majority of employees have voted in favour;
  - the employer has commenced a lock-out of employees;
  - the employer or union has committed an unfair labour practice by refusing to collectively bargain; or
  - 90 days have passed since the certification order has been issued.

Some parties to a first collective agreement have identified that the time period to commence bargaining is too short. In addition, others have noted that superficial bargaining occurs until a party is able to request assistance from the Labour Relations Board, with a view to receiving a better agreement than could be negotiated.

Questions to Assist Discussion:

Do the timelines and process permit the parties the appropriate time to bargain a first collective agreement?

Are there other conditions that should have to be met before the Labour Relations Board becomes involved? For example, should there be a requirement for a report to be presented to the Board following conciliation by the parties?

If so, should the conciliator have the ability to make recommendations to the Labour Relations Board that the parties continue to negotiate?

Final Offer Votes

The TUA requires a number of steps be completed before the Labour Relations Board can order a vote on the employer's final offer:

- a strike must continue for 30 days;
- an application must be made by the employer, union or the employees involved in the strike provided the employees represent at least 25% of the bargaining unit or 100 employees, whichever is less; and
- a special mediator must be appointed, undertake an investigation and recommend that a vote be taken.

The TUA states that every employee involved in the strike that is not working in a full time job elsewhere is entitled to vote on the employer's final offer.

Some parties have noted that the process that must be followed prior to the Labour Relations Board ordering a final offer vote is cumbersome, time-consuming and needlessly delays the concluding of a collective agreement.

In addition, there has been confusion over what constitutes a strike continuing for 30 days. Some have stated that the strike action must continue uninterrupted for the entire 30 days; others believe that it is the cumulative number of days since the commencement of strike action, whether or not the strike action has been discontinued at any point.

Questions to Assist Discussion:

Is the current final offer vote process appropriate for achieving the objective of enabling employees to vote on the employer's final offer?

Is there value in requiring a special mediator be appointed before a final offer vote can be conducted?

Is there a better process? If so, what would it look like?

The TUA currently limits the number of applications for a final offer vote to one. Should there be a limit?

Should a strike have to carry on for 30 days before a vote can be conducted? If not, what is the appropriate time period?

How should a strike be defined? Should it be continuous or total days on strike? Should all employees in the bargaining unit be allowed to vote on a final offer?

Strike and Lock-out

Under section 34 of the TUA, employees can strike and employers can lock-out employees after: (1) notice to collective bargain has been given pursuant to subsection 33(4); (2) the parties have commenced bargaining with a view to renewing the collective agreement; and, (3) the term of the collective agreement has expired.

In addition, the trade union and/or the employer must provide 48 hours written notice to the other party of the intention to strike/lock-out.

Section 46 of the TUA provides for the reinstatement of employees following a strike or lock-out. Further, section 47 provides for the continuance of a benefit plan where the trade union tenders sufficient payment to maintain the employee's membership in the benefit plan.

Concerns have been expressed by parties to collective bargaining that the process for striking or locking out are inadequate. Parties have stated that bargaining in good faith does not always occur. Instead, surface bargaining takes place in order to be able to meet the requirements of the strike and lock-out provisions.

Questions to Assist Discussion:

Are the notice provisions respecting strike and lock-out appropriate and adequate? Why or why not?

Are the requirements prior to commencing a strike and lock-out appropriate and adequate? Why or why not?

Are the reinstatement provisions appropriate and adequate? Why or not? Is the continuation of benefits provision appropriate and adequate?

Union Dues

Currently, the TUA requires an employee to join the union if the employer is unionized. The TUA also enables an employee to opt out of belonging to a union on religious grounds. In such situations, the employee is required to donate an amount equal to the union dues to a charity agreed upon by the employee and the union. The process of determining a religious objection is time-consuming and requires the presentation of substantive information to the Labour Relations Board in support of an application.

The Government has heard from interested parties that there should be other grounds for opting out of paying union dues. Examples include financial hardship, status as a student or being a minor.

In addition, the TUA requires that on the request of the employee and the union, the employer is to collect and remit union dues to the union.

The Government heard from different groups that the TUA should not include a requirement for union dues to be collected by employers; instead, this should be an issue for negotiation between the union and employer.

Questions to Assist Discussion:

Are there situations where employees should be able to opt out of the union for reasons other than religious grounds? If so, in what situations?

Are there any instances where union dues should not be collected in a situation where the employee has opted out?

Should legislation make provision for the collection of dues or should this be a matter of negotiation between the parties?

Fines

The TUA enables a union to assess or fine any of its members who work at the workplace during a strike. The amount of the fine cannot be more than the net wages the employee earned during the strike.

The TUA further states that the fine or assessment is deemed to be a debt owing to the union and may be recovered in the same manner as a debt owed pursuant to a contract in a court of competent jurisdiction.

The Government has been asked why there is a legislated process for unions to collect fines or assessments.

Questions to Assist Discussion:

Is it necessary for the TUA to facilitate the collection of fines and assessments of a union and stipulate that a debt is owing as if a contract in a court of law? If so, what must a union do to demonstrate due process was followed in the levying of the fine or assessment?

Is it more appropriate for unions to seek remedies available through civil court procedures and small claims?

Administration

The TUA requires the parties to a collective agreement to file a copy of the agreement with the Minister. Government officials and members of the labour relations community use this information in determining wage trends in the province as well as growth areas. While there is a legislated obligation to provide copies of collective agreements to the Minister, many employers and unions do not make these available.

There is no requirement to file copies of arbitration awards with the Minister. Consideration is being given to requiring the filing of arbitration awards in an effort for Government to be aware of the awards that are being made by arbitrators.

Questions to Assist Discussion:

Should the requirement to file copies of collective agreements with the Minister continue? If yes, should the TUA include a provision that states that a collective agreement is not in force unless filed with the Minister?

Should a requirement to file copies of arbitration awards with the Minister be included in the TUA? If yes, should the TUA include a provision that states that an arbitration award is not in force unless filed with the Minister?

Collective Bargaining in Education and Police Sectors

The Government is reviewing whether all labour relations requirements should be located in one Act. As part of this review, consideration is being given to the labour relations requirements set out in *The Education Act, 1995* and *The Police Act, 1990*.

Education

In Saskatchewan, *The Education Act, 1995* governs all aspects of elementary and secondary education including collective bargaining.

Currently there is a two-tiered system of collective bargaining in the education sector which has been in place since 1973:

Provincial Level
Collective bargaining occurs between the employee representatives (a committee of four members appointed by the Saskatchewan Teachers' Federation (STF)) and joint employer representatives (a committee comprised of nine members appointed by Government and the Saskatchewan School Boards Association (SSBA)).

Matters negotiated at the provincial level include salaries of teachers, allowances for principals and vice-principals, superannuation of teachers, group life insurance for teachers, and sick leave for teachers.

Local Level
Collective bargaining occurs between the employee representatives (a committee of teachers employed by a board of education) and the employer representative (a committee appointed by the board of education).

Matters negotiated at the local level include sabbatical leave for teachers, educational leave for teachers, salaries for substitute teachers, the duration of a local agreement, pay periods for teachers and special allowances for teachers as well as such other matters as the parties choose to bargain. With respect to matters bargained at the local level that subsequently becomes part of provincial bargaining, the local agreements prevail notwithstanding the terms of the provincial agreement on that matter.

The conseil scolaire (Francophone system) follows the local level collective bargaining process.

As part of the bargaining process, the employee representative is required, no later than 101 days prior to the expiry of the collective agreement, to select a dispute resolution process that will be followed in the event that an agreement cannot be reached between the parties. The two options are arbitration or conciliation.

In the event negotiations fail to achieve an agreement, either party can provide written notice to the chairperson of the Educational Relations Board seeking the appointment of an arbitration board or a conciliation board, depending on the selection made by the employee representative.

The award of an arbitration board is binding on the parties, whereas the conciliator's report is only binding if the parties agree prior to the conciliation report being presented. *The Arbitration Act*, *1992*, does not apply to such arbitration or conciliation proceedings.

It is important to note that the Educational Relations Board has the authority to appoint a mediator at any time during the negotiations to assist in resolving disputes.

There is no reference to the conditions necessary to permit striking or locking out in *The Education Act, 1995*.

Police

In Saskatchewan, *The Police Act*, *1990* governs the resolution of disputes associated with collective bargaining between local police associations and their employer.

Collective bargaining occurs between the local police association and either the board of police commissioners or the municipal council. *The Police Act*, *1990* establishes that municipalities with populations over 5,000 must establish a board of police commissioners; this is optional for municipalities with populations under 5,000.

In the event that the parties are unable to conclude a collective agreement, either party can request, in writing, the Minister responsible for *The Human Resources, Labour and Employment Act* to appoint a conciliator. While in conciliation, neither party can take strike nor lock-out action until the conciliator's report has been presented.

If the parties are still unable to conclude a collective agreement, the parties may submit any and all matters related to hours and conditions of work, wages or employment to a board of arbitration. The award of a board of arbitration is final and binding on the parties.

Strike and lock-outs can occur as long as the parties provide 120 hours notice before taking strike or lock-out action.

Questions to Assist Discussion:

Should the labour relations components of The Education Act, 1995 and The Police Act, 1990 be included in legislation that governs labour relations for all segments of the economy? Why or why not?

Are there distinct elements of the labour relations systems for the education sector and the police sector that should be maintained if included in a single labour relations Act?

Is the current two-tiered bargaining structure in the education sector appropriate?

Are there aspects of the collective bargaining structure in the education sector that could be improved upon?

Who should be involved in the negotiation of (a) provincial, (b) local collective agreements? Why or why not?

Should Pre-Kindergarten to Grade 12 teachers be included within the scope of The Trade Union Act?

Essential Services

The intent of *The Public Service Essential Services Act* is to encourage public sector employers and unions to negotiate essential services in advance of the expiry of a collective agreement to ensure public health and safety is not put at risk in the event of a workplace dispute.

Scope of The Public Service Essential Services Act

The Act applies only to public employers as defined by the Act. This includes: the Government, Crown corporations, universities and Saskatchewan Institute of Applied Science and Technology (SIAST), health employers (regional health authorities, affiliates and the Saskatchewan Cancer Agency), municipalities and the Boards of Police Commissioners.

While the Act applies to public employers, only those services that fit within the definition of essential services are required to be provided during a workplace dispute. Essential services are those that are necessary for a public employer to provide in order to prevent:

- a danger to life, health or safety;
- the destruction or serious deterioration of machinery, equipment or premises;
- serious environmental damage; or
- disruption of the courts.

The Act requires those employees who are identified by the public employer as essential to work in the event of a work stoppage, and prohibits the employer or union from barring them from work, or disciplining them for being at work.

Negotiation of an Agreement

The Act currently requires the employer and union to begin negotiations for an essential services agreement where no such agreement is in place and there is less than 90 days left before the expiry of the existing collective bargaining agreement.

To facilitate the negotiation process, the public employer may identify:

- the services,
- the classifications of employees,
- the numbers of employees, and
- the names of the employees

that are considered essential by the employer.

If an essential services agreement has not been negotiated and a work stoppage occurs or has the potential to occur, the public employer is to notify the union of the services, classifications, numbers and names of the people considered essential. Unless the union objects, those employees must work during the work stoppage.

If the union believes that essential services could be maintained with fewer employees, the union can apply to the Labour Relations Board for an order varying the number of employees in any classification that must work during the work stoppage. Within 14 days of receiving an application, the Labour Relations Board can hold a hearing, conduct any investigation and make an order determining how many employees must work during the work stoppage.

Queen's Bench Decision

On February 6, 2012, the Saskatchewan Court of Queen's Bench rendered its decision on the constitutionality of *The Public Service Essential Services Act* and *The Trade Union Amendment Act, 2008*. In its decision, the Court upheld the validity of *The Trade Union Amendment Act, 2008*, and the ability of government to enact essential services legislation; however, it determined that certain aspects of *The Public Service Essential Services Act* (PSES Act) rendered the Act unconstitutional. The Court identified the following possible changes to the Act:

- provide an impartial and effective dispute resolution process by which a union may challenge public employer designations of the services that are essential and of the classification, numbers and names of employees who must provide essential services in cases where public employer designations under the PSES Act remove a meaningful right to strike by the employees, provide an adequate, impartial and effective dispute resolution process;
- enable public service unions to have meaningful input into determining which employees will work during a strike; and
- require public employers to consider the availability of other qualified persons to provide essential services during a strike.

The decision of the Saskatchewan Court of Queen's Bench has been appealed to the Saskatchewan Court of Appeal.

Questions to Assist Discussion:

Should the negotiation of essential services agreements occur only after it is clear that the union and employer are unable to conclude a collective agreement? If yes, should the parties be required to negotiate an essential services agreement prior to taking strike or lock-out action?

In the event that the employer and union are unable to conclude an essential services agreement, should the parties be required to submit to mandatory conciliation?

If conciliation is unable to achieve an essential services agreement, should arbitration be provided to conclude the agreement?

What role should the Labour Relations Board play in resolving any impasse around the provision of essential services during a dispute?

If no essential services agreement is in place between a public employer and a trade union, what mechanism should be in place to ensure that an appropriate level of essential services continues to be provided?

Appeals, Penalties and Administration

All labour legislation includes penalty provisions to act as a deterrent to non compliance. Fairness dictates that when an authority determines that someone is acting contrary to the law, the accused should have an ability to have that determination challenged or reviewed prior to the application of an administrative penalty. It is generally understood that compliance is a product of effective enforcement and educational activities that promote and encourage awareness of standards.

This section of the discussion paper raises the question of whether the current penalty and appeal provisions provided for in Saskatchewan's labour legislation are appropriate and adequate, and whether there are better ways of providing access to due process which meets the standards of fairness and equity such administrative procedures must ensure in a modern democratic society. The current legislative environment provides a variety of mechanisms to compel compliance and for challenging decisions by officers and other officials, offering procedural fairness, consistent interpretation and effective enforcement:

- complaints, investigations, administrative decisions- labour standards and occupational health and safety
- adjudication - appeal of administrative decisions- labour standards and occupational health and safety
- LRB hearing - upon application- labour relations
- judicial review - labour standards, occupational health and safety, and labour relations - Court of Queen's Bench
- prosecution - Provincial Court- labour standards and occupational health and safety
- judicial appeal - Court of Appeal

Some have argued that the existing mechanisms are complex and difficult to navigate. Others have argued that adjudication processes are neither timely nor effective. Access to the courts could be reduced through the provision of an effective administrative appeal process that provides timely access to remedial decision-making that provides consistent, reliable, and effective interpretation of the legislation, while ensuring a high standard of procedural fairness and due process to the public, appellants and respondents.

Labour Relations Board

The Act currently provides for the appointment of a Chairperson and not more than two Vice-Chairpersons as well as an equal number of members representative of employers and organized employees. The Chairperson and Vice-Chairpersons can be appointed for terms of five years and are eligible for reappointment. The members can be appointed for terms of three years and are eligible for reappointment.

The Board is bestowed a number of powers and duties that can be found throughout the Act (i.e., sections 5, 17, 18 and 42).

As part of an ongoing review of board structures, consideration is being given as to whether the current structure and appointment process is appropriate for the Labour Relations Board, or whether changes can be made to improve the representation and impartiality of the Board.

In addition, there have been amendments over the years which have added powers and duties to the Board which are seen in different sections of the Act. To provide clarity of these powers and duties consideration needs to be given to re-structuring so that all these are found in one section of the legislation.

Questions to Assist Discussion:

Should the role of the LRB be expanded to include hearing all appeals related to employment standards and occupational health and safety matters?

Is the current structure of the Board adequate and appropriate? Why or why not?

Are the terms of office adequate and appropriate? Why or why not? Are the powers of the Board adequate and appropriate?

Role of the Officer

The occupational health and safety and employment standards legislation include provisions respecting the powers of officers, which include, but are not limited to, inspection, investigation and determination of whether contraventions to the legislation have occurred. The adequacy of these authorities should be reviewed from time to time to ensure they meet current needs.

Questions to Assist Discussion:

Are the existing powers of the officer appropriate and sufficient? Why or why not?

Penalties

Both occupational health and safety and employment standards legislation currently provide for the levying of fines only after being found guilty of an offence in the courts. This can be a long, time consuming and costly process.

Some employers see the existing fines as a cost of doing business, and do not necessarily move to compliance following conviction, particularly under employment standards legislation.

Amendments to *The Occupational Health and Safety Act, 1993* are being considered by the Legislative Assembly and amendments are being prepared to *The Summary Offences Procedure Regulations, 1991* to allow Occupational Health Officers to issue tickets for some infractions of the legislation.

In addition, amendments to *The Occupational Health and Safety Act, 1993* introduced in December 2011will, in most cases, double the fines that are applied for violations of the Act. A review of the fines under the other Acts should also be reviewed to determine if they should be updated.

Questions to Assist Discussion:

Are the penalties in Saskatchewan's labour legislation sufficient to act as a deterrent to non-compliance? If not, what might be done to enhance compliance and address persistent offenders?

Should the employment standards legislation allow for administrative penalties to be assessed by the Ministry? If so, what type of violations should administrative penalties be used for?

Where there are repeat violations of the legislation by employers, should the Ministry have the ability to initiate payroll and employment audits of employers, at the expense of the employer?

What types of safeguards should be in place to permit an employer to have that determination reviewed or challenged?

Should summary offence ticketing be applied to violations of employment standards? If so, what type of violations?

Appeals

Under the existing labour legislation there are a variety of appeal processes:

- labour standards adjudicators are used to appeal wage assessments made under *The Labour Standards Act* ;
- occupational health and safety adjudicators are used to appeal determinations of violations of *The Occupational Health and Safety Act, 1993* (non-harassment related matters);
- occupational health and safety special adjudicators are used for harassment related matters raised under the Act; and
- the Labour Relations Board is used for labour relations matters involving trade unions and employers.

The legal principle of res judicata states that once an issue has been definitively settled by judicial decision, the same issue cannot be litigated a second time. The Government has heard of instances where a single issue has been reviewed by various adjudicative bodies. This situation occurs where a duplication of remedy and process is available to complainants. It has been referred to as forum shopping. This could be addressed by requiring each complainant to make an informed decision as to which process they will use to seek a remedy.

Consideration needs to be given as to whether there is a means of simplifying the appeals process, which could include creation of a single appeal body similar to other jurisdictions (e.g. Manitoba and Nova Scotia).

Questions to Assist Discussion:

Is there a need for all these appeal mechanisms? If so, why?

Should the issue of forum shopping be addressed in legislation? If so, how?

Should a single appeal body, such as the Labour Relations Board, be responsible for the various types of appeals? If so:

- *how would you see such an appeal body structured?*
- *should qualifications for the members be established in legislation?*

Should provisions limit the number of reviews of a single matter?

Administration

Under *The Occupational Health and Safety Act 1993*, there is a requirement for the Occupational Health and Safety Council to review the adequacy of the Act at least once every five years. No other labour legislation has a similar requirement.

The Government has committed to reviews on a 10-year cycle to ensure that regulations remain current. Similarly, reviews of legislation at specified intervals would ensure that legislation remains current to the changing needs of the province.

Questions to Assist Discussion:

If a single Act were created, should there be a review process built into each part of the Act? Why or why not?

How should the review or reviews be conducted (i.e. by a Committee similar to the Council)?

How often should the reviews be conducted?