



## Government bringing balance to Saskatchewan labour laws

Saskatchewan's new Saskatchewan Party government has introduced in the Legislative Assembly significant amendments to the Province's labour laws.

The proposed *Public Service Essential Services Act* is intended to balance the rights of workers and the rights of citizens to the maintenance and protection of public safety and resources during labour disputes. The Act applies to public employers whose services are essential, consisting of the government, Crown Corporations, universities and SIAST, health employers and municipalities. The legislation, if passed, would require negotiations over essential services to begin 90 days before the expiry of a collective. Government essential services will be set out in regulations, which will be passed at a later date.

The proposed changes to *The Trade Union Act* would:

- require mandatory secret ballot votes on certification or decertification;
- require 45 per cent written support for an application of certification or decertification;
- repeal the three-year limitation on the length of a collective agreement;
- permit the Labour Relations Board to refuse to hear an unfair labour practice application where more than 90 days have elapsed since the complainant knew or ought to have known of the circumstances underlying the application;
- require the Board to issue a decision within six months following a hearing;
- require the Board to submit an annual report containing details of the cases heard, the time between filing of the ap-

plication and the hearing, the time between the hearing and issuing the decision; and

- respect the right of employers to communicate with employees respecting facts and the employer's views. A similar provision existed in *The Trade Union Act* years ago, but was repealed by the New Democratic government. It is important to note that coercive or threatening communications will still be prohibited under these new amendments.

While the proposed amendments have only passed first reading, the proposed legislation has already received severe criticism from some labour groups within Saskatchewan. Specifically, it has been suggested that some of the essential service amendments violate the *Charter of Rights and Freedoms*. This argument is based on an over-blown interpreta-

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**“The proposed Act is intended to balance the rights of workers and the rights of citizens to the maintenance and protection of public safety... during labour disputes.”**

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tion of a recent Supreme Court of Canada judgment that arose out of British Columbia.

Nevertheless, the Saskatchewan Party government has indicated that it intends to consult with labour groups before these amendments are made law. It may, therefore, be several months before the amendments, in one form or another, come into force.

Anyone wishing to provide feedback to the government on the proposed legislation should email it to:

[legislationfeedback@lab.gov.sk.ca](mailto:legislationfeedback@lab.gov.sk.ca).

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## ***Giant Tiger***

# **Court Overturns Certification Order**

In a Judgment dated October 25, 2007, Mr. Justice Zarzeczny quashed an Order of the Saskatchewan Labour Relations Board certifying the Union Food and Commercial Workers, Local 1400 as the bargaining agent for employees of a Regina department store business. The certification application had been filed with the Board by the Union in February of 2004. The Board rendered its decision granting the certification application in July, 2007.

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**“While the Court recognized that a certain amount of delay is inevitable, the length of delay in this case destroyed the legitimacy of the Board’s decision.”**

In the intervening time between the filing of the application and the decision, all but 12 of the 65 original employees had left their employment and the employer had opened a new store.

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On judicial review, Mr. Justice Zarzeczny found that the Board’s delay in rendering its decision was inordinate and extraordinary. He ruled that the Board’s certification order could not stand in light of the material changes that had occurred in the work place since the certification application was filed in 2004. While the Court recognized that a certain amount of delay is inevitable, the length of delay in this case destroyed the legitimacy of the Board’s decision.

This Judgment should have lasting implications for the hearing of certification applications and other administrative tribunal matters. It is a clear signal from the Court of Queen’s Bench that administrative tribunals must decide matters expeditiously if their decisions are to survive judicial review.

In response to this issue, the Saskatchewan Party government has recently introduced a Bill that would require the Labour Relations Board to render its decisions within six months of the hearing of the application.

## ***Post-secondary students may not be covered by minimum call-out exemption***

*The Labour Standards Act Regulations* provide that employees get a minimum payment every time their employer requires them to report for work, even where it turns out there is no work for them to perform. This is sometimes referred to as “minimum call-out pay”. As of January 1, 2008, minimum call-out Pay is \$24.75.

The *Regulations* provide that minimum call-out pay is *not* required for employees who are “school students”. In a 2007 Adjudicator’s decision, it was concluded that the term “school students” only applies to students in Grade 12 and under. As a result, post-secondary students are no longer recognized by the Department of Labour as exempt from the minimum call-out pay requirement.

There is reason to question whether the Adjudicator’s decision is correct in law. The decision, however, was not appealed by the employer. The issue will not be conclusively resolved until the term “school students” is interpreted by the Courts. Any employers who are ordered by the Department of Labour to pay minimum call-out pay to post-secondary student employees are encouraged to seek legal advice.

### **Chair of Labour, Employment and Human Rights Law Practice Group Appointed**

David Stack has been appointed Chair of McKercher McKercher & Whitmore LLP’s Labour, Employment, and Human Rights Law Practice Group. David is a partner located in the Saskatoon office of McKercher McKercher & Whitmore LLP.

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## Minimum wage increase effective in New Year

Effective January 1, 2008, Saskatchewan's minimum wage will increase from \$7.95 per hour to \$8.25. This is the first of a three stage increase that will see the minimum wage increase to \$8.60 per hour on May 1, 2008, and to \$9.25 per hour on May 1, 2009.

The minimum call-out pay, which is three times the level of the minimum wage, is also increasing. There are over 12,000 minimum wage earners in Saskatchewan.

Currently, the larger provinces such as British Columbia, Ontario, Alberta, and Quebec have set the minimum wage around \$8.00. Smaller provinces such as Nova Scotia, New Brunswick, Newfoundland and P.E.I. have pegged their minimum wage between \$7.00 and \$7.60.

<i>Saskatchewan's changing minimum wage</i>	
<b>January 1, 2008</b>	<b>\$8.25/hour</b>
<b>May 1, 2008</b>	<b>\$8.60/hour</b>
<b>May 1, 2009</b>	<b>\$9.25/hour</b>

## Ontario Court Refuses to Enforce Union Fines

In a recent decision, the Ontario Superior Court refused to enforce fines that the Public Service Alliance of Canada sought against members for choosing to cross the picket line. While the Union Constitution provided for penalties against Union members who crossed the picket line, Mr. Justice Smith of the Ontario Superior Court stated that the Courts will only uphold such penalty clauses when they reflect a genuine pre-estimate of the damages incurred by the Union as a result of the employee breaching the Constitution. Mr. Justice Smith ruled that the fines that the Union sought to impose were unconscionable and arbitrary.

Mr. Justice Smith noted in his Judgment that Saskatchewan is the only jurisdiction that has enacted legislation empowering a trade union to impose fines on members who continue working during a strike. Saskatchewan legislation authorizes the Union to impose a fine on a member only to the extent of the net pay that the member received during the strike. Even under Saskatchewan legislation, the Union must provide the member with a fair hearing prior to imposing the fine, and the Union must then enforce the fine through the Courts. There may also be constitutional arguments that an employee can raise to challenge union fines in the appropriate circumstances.

### **Labour, Employment and Human Rights Law Practice Group**

Lawyers in the McKercher McKercher & Whitmore LLP Labour, Employment and Human Rights Law practice group actively advise and represent clients on labour related matters and in appearances before the Labour Relations Board and various Arbitration Tribunals.

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