

**Speaking Points for**

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Construction Trades Council**

**Presentation to the Standing Committee on Human Services**

**Public Hearings on Bill 80 - The Construction Industry  
Labour Relations Amendment Act, 2009**

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## Introduction

Hello. My name is Terry Parker. I am the business manager for the Saskatchewan Provincial Building and Construction Trades Council. I am here today with Randy Nichols, President of the Saskatchewan Provincial Building and Construction Trades Council. The Building Trades Council is composed of a dozen affiliated trade unions across the construction trades and represents between 5 and 8 thousand members depending on the level of activity in the sector.

First of all, let me thank you for the opportunity to make a presentation today to the Human Services Committee. As you listen to our presentation, I am sure that you will come to understand that the Building Trades take the amendments to the Construction Industry Labour Relations Act proposed in Bill 80 very seriously. We believe that they represent a fundamental and I might even say radical change to the legislation and the way the construction industry is organized and ultimately the health of the industry.

For this reason, we are appreciative that the government has taken our concerns and the concerns of others seriously enough to hold public hearings through a committee of the Legislature.

My presentation today will take about 30 minutes. After that, I will be available to try to answer any questions that you may have. I will also leave with you copies of our written submission that outlines in greater detail our concerns with the legislation .

I intend to restrict my remarks today to a higher-level analysis of what I think Bill 80 will mean for the industrial construction sector in Saskatchewan, for unionized workers, and for contractors in Saskatchewan. I will at times comment on the difference that I believe exists between the government's stated objectives in introducing Bill 80 and what I think Bill 80 will actually lead to.

And I'd like to make a statement right off the top that Saskatchewan Provincial Building and Construction Trades Council strongly believes that Saskatchewan works best when labour, business and government work together.

And I add to that statement a commitment – that the Building Trades will work with government, and contractors to maintain stability in the sector, enhance choice and democracy for workers and employers, encourage continued growth in the sector, and promote Saskatchewan as a destination and a home for investors, contractors and most importantly workers.

If we have not been clear enough in this offer in the past, we will be clear now. Working together, government, business and labour can make a real and positive difference in the lives of Saskatchewan people. Working at cross-purposes however, we will only hobble a sector that is healthier, more active and more productive than it's ever been.

I want to speak to a number of points today. **First**, I will offer the Saskatchewan Provincial Building and Construction Trades Council's assessment of Bill 80. And here I'll make reference to the objectives for Bill 80 outlined by the government upon the introduction of the Bill in the House.

**Second**, I will comment specifically on the abandonment provisions contained in Bill 80 and their implications.

**Third** and finally I will offer some thoughts as to alternatives to Bill 80 in terms of the possibility of a productive engagement between government, business and labour.

And then, as time allows, I will gladly answer any questions that you may have.

Before I raise further concerns with Bill 80, I think it is helpful to have a discussion on the existing system and how it has contributed to 17 years of stability in the Saskatchewan construction sector. 17 years without a work disruption due to labour relations.

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

And most importantly, the system is inherently stable because one collective agreement governing all unionized employees in a trade division in the province acts as a powerful disincentive to labour disruption. In a 2001 decision, the Saskatchewan Labour Relations Board described the dangers of the type of wall-to-wall system that Bill 80 advocates and commented on why the existing system is so stable. They said:

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

In other words, under the existing system, labour disruptions don't occur because taking down the whole system is too great a price to pay.

## **The Economy**

So, back to my comments on Bill 80. I'll begin where it all begins – with the economy. We all know the economy in Saskatchewan is very strong. Our economy has shown phenomenal growth in recent years, and especially in spite of the recent global economic downturn. According to the Sasktrends Monitor, Saskatchewan's economy grew by a remarkable 25% in 2008, on top of growth of 11% in 2007. Real GDP grew by 4.4% which is double the long term average of 2.1%. That is largest among the provinces. In fact, Saskatchewan's economy has grown at a rate above the long-term average in five of the past six years.

The fortunes of the construction industry have followed closely along with the wider economy. Measured by the value of building permits, activity in the construction sector bottomed out in the early 1990s when the value was less than \$350 million per year for three years running. That tripled by 2005 and doubled again to more than \$2 billion in 2008.

## Job Growth

As you would expect with that kind of economic growth, our tradespeople are working. I don't need to tell anyone in this room about the strength of Saskatchewan's employment numbers. Just as the construction sector has mirrored the strength of the overall Saskatchewan economy so have our job numbers. The boom in construction has meant a boom in construction jobs.

Construction employment traditionally ranged between 20 and 25 thousand jobs through the 1990s. Over the last 5 years, employment in construction has grown at 9.6% per year and in 2008 averaged a whopping 37,000.

And while construction job growth has occurred in other provinces as well, our 5-year average growth of 9.6% annually is well above the national average of 6.3% and behind only Newfoundland and British Columbia.

I have heard some say that we need to change our labour laws because Saskatchewan is an anomaly in Canada. Well, Saskatchewan **is** an anomaly in Canada, not because of our labour laws – but because of the strength of our economy, the strength of our construction sector and the strength of our job growth.

## Apprenticeship

Not surprisingly, given our job growth, we are also training apprentices at a record pace. As the members of the Human Services Committee know, the Saskatchewan Apprenticeship and Trade Certification Commission is industry led. That means that both employers and employees – including heavy representation from unionized sectors – serve on the board of the Commission. Union members also contribute their time and expertise to the Joint Training Committees and the training boards, and are the backbone of the apprenticeship system.

Using activity as a measure shows apprenticeship is working. We are training ever more of our young people to work in the 50 designated trades in Saskatchewan.

As of June 30, 2008, there were 8,130 apprentices registered in Saskatchewan. This represents an increase of 20 per cent over the total at the end of 2007. The

Commission received 2,853 new registrations in 2007-08, which exceeded the previous year's record of 2,408 new registrations. These numbers attest to the success of the program and the high level of activity underway in sectors served by apprenticeship, including construction.

Apprenticeship only works when there is a strong partnership between employers and employees and when there are jobs.

The economy is strong. The construction industry is strong. The apprenticeship system is strong. The system in place under the Construction Industry Labour Relations Act is working.

I'll say it again. Saskatchewan is working right now. Perhaps better than it ever has.

This begs the question. Why would you put that strength in jeopardy? Why would you risk destabilizing a system that has produced such stellar results? Why would you try to fix a system that isn't broken? And why would you do it without first talking to the men and women who work everyday in the industry about what they think would be best?

These are some of the questions that I respectfully hope the committee will keep in mind as it considers this issue.

The government did of course, in its introduction of Bill 80 outline its reasons for why its proposed amendments to the Construction Industry Labour Relations Act are necessary. I'd like to take a few moments to give you my thoughts on the government's stated objectives.

## **Choice for Employees**

We are told, that the amendments are necessary and I quote here the Minister of Labour in his news conference "first and foremost [for] the choice for employees."

I'd like to address this notion that the Bill 80 amendments will provide more choice for employees.

Under the current Construction Industry Labour Relations Act, a construction worker in Saskatchewan has the choice to work either for a unionized or a non-unionized contractor. If that worker chooses the benefits of working on a unionized site, then he or she must join the union associated with his or her particular trade. If you were a pipefitter, for instance, you would join the United Association of Pipefitters and Plumbers – or the UA as it's commonly called.

I believe it is this requirement to join the provincially specified union that the government finds lacking in terms of choice. Or that the choice for a worker is in effect, limited to the choice between working on a unionized or a non-unionized site.

So let us examine the choice that the Bill 80 amendments would offer for workers in Saskatchewan. Bill 80 will allow **contractors to pick the union** they want to deal with through a process called voluntary recognition. This differs from certification, where it is the workers who decide they want to form or join a union. Under Bill 80, a contractor may voluntarily recognize a union of its choice including a “dummy” union or an “employer union.” This allows the employer to choose the so-called union, and then to choose the terms of the collective agreement, including wages and benefits.

Under this scenario, the choice for the employee is take it or leave it.

Let me be absolutely clear on this - **Bill 80 does not expand choice for workers.** If there is only one point that I can leave you with today, it is this: If your choice as a worker is whether to be represented by the union that the employer has picked for you **that is no choice at all.**

In 1999, the Alberta Labour Relations Board outlined the risks of voluntary recognition in relation to a case involving the Christian Labour Association of Canada. They said:

"... there are risks to voluntary recognition which are not present....where the relationship is initiated by....certification proceedings. For example, there is a danger that a "sweetheart" deal may be struck, one which favours the trade-union and management but which is to the distinct disadvantage of the employees.

Alternatively, an employer may, for no readily apparent reason invite a trade-union to enter into a collective agreement, but later examination reveals that the employer's objective was to influence his employees against another trade-union which had been

experiencing some organizational success. Finally, even in the absence of such clear improprieties, it is entirely possible that a voluntary recognition will result in the employees having foisted on them a bargaining agent which they never wanted and still do not want."<sup>1</sup>

The Christian Labour Association of Canada has often been accused of being a "company union" with substandard collective agreements and antidemocratic structures and processes. In a comparison of wages at one Alberta employer that managed to get rid of a legitimate union in favour of the Christian Labour Association of Canada, it was found that wages dropped in 9 of 11 occupations – some by more than 25%. The number of paid vacation days and holidays was also reduced.<sup>2</sup>

And outside of the CEP, the Christian Labour Association of Canada was the only so-called union that the government consulted in developing this legislation. Certainly organized labour in Saskatchewan was not consulted.

I should add here as we consider the issue of choice for workers that I have not heard a single worker – unionized or non-unionized ever complain about this so-called lack of choice. It is a non-issue.

I would challenge the government to produce any evidence that the working men and women in Saskatchewan's construction industry want this change. I can tell you the 5 to 8 thousand members of the Saskatchewan Provincial Building and Construction Trades Council strongly oppose the Bill 80 amendments.

I would also ask why the government has singled out construction workers. The situation of workers being required to join a predetermined union exists in all kinds of sectors in Saskatchewan, not the least of which being among workers employed by the provincial government itself. If you work for the government of Saskatchewan, you are required to join the SGEU. If you work for one of the Health regions as a nurse in Saskatchewan you are required to join SUN. If you work for a publicly funded school, you join the STF. If we do not think employee choice is important in these areas, why

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<sup>1</sup> Alberta Labour Relations Board, Vertex Construction Services Ltd. Decision, March 17, 1999. Paragraph 28

<sup>2</sup> <http://www.thetruthaboutclac.ca/compare.asp>

is it important in construction? Because the government is using “worker choice” to cloud the real impacts of Bill 80.

## **Attracting Out of Province Contractors**

Another of the justifications the government gives for introducing bill 80 is that without the amendments, construction companies from outside of the province can't come into Saskatchewan with their workers, who they may have an existing relationship with.

In fact, there is nothing to prevent a company from coming to Saskatchewan and nothing to prevent them from bringing their workers with them. In fact, any company outside of Saskatchewan could bid on and win a contract in Saskatchewan, and could then bring in or hire as many workers as they want in Saskatchewan and start working. It's as simple as that.

If, however, the workers of that company decide, for whatever reason, that they want to be unionized, they could do so.

It is my strong suspicion that government wants to prevent workers who work for a non-unionized employer from certifying that employer. Bill 80 will diminish the ability of employees on a construction site to organize and form a union. Bill 80 does this by allowing a company – for instance a contractor from outside of Saskatchewan – to strike an arrangement with an employer friendly union, sign a sweetheart deal, and require anyone who works for that employer to join that union of the employer's choosing.

## **Abandonment**

I would like now to move on to the abandonment provisions included in Bill 80. Abandonment refers to the notion that a union has abandoned its bargaining rights through inaction or inattention, and if such a situation is found and proved, would enable the Labour Relations Board to revoke a union's certification.

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

Interestingly, for at least 20 years, the Labour Relations Board in Saskatchewan has ruled on matters of abandonment without requiring any specific legislative provisions to do so. And the courts in Saskatchewan have through their past rulings supported as reasonable the LRB's authority to consider and make decisions on abandonment.

This begs the question, if the LRB has the authority to rule on abandonment, and has in fact done so, with the support of the courts, what is the purpose of the abandonment provisions in Bill 80? After a careful reading of the legislation, the answer appears to be that the government is intending to dramatically change labour law in Saskatchewan to allow employers to use abandonment as a back door to getting rid of union certifications. It is worth noting as well that if these changes become law, Saskatchewan will be the only jurisdiction in Canada that has enacted legislation on abandonment in this retroactive manner.

This is a complicated issue, and I will try my best to state our understanding of the changes in Bill 80 in the simplest of terms.

In essence, the abandonment provisions in Bill 80 will allow employers to walk away from their certification orders if they can prove that a union has been inactive for three years – even in the distant past, and even if the employer bringing the claim of abandonment had no employees during the three years in question.

The new abandonment provisions could be used to immediately clear the decks of any inactive certifications in the construction industry. This was not previously possible, because without the Bill 80 provisions, an employer could not successfully argue that abandonment occurred in a situation where it had no employees. The reasoning seems obvious – a union can hardly be actively promoting its bargaining rights to an employer if that employer has no employees on whose behalf a union may bargain. Bill 80 specifies that no such limitations shall be placed on the Labour Relations Board in its consideration of abandonment. Specifically, proposed section 6.1 subsection 4 states that:

*The board is not limited in the exercise of its jurisdiction by the system of collective bargaining in the construction industry pursuant to this Act or by the absence of*

*employees in the appropriate unit of an employer with an active presence in the construction industry.*

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

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

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

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

Further, the Bill 80 amendments state the Labour Relations Board is not limited in making a determination of abandonment “by the system of collective bargaining in the construction industry.” This means a union could be found to have abandoned its bargaining rights because it had bargained with the Representative Employers Organization (REO) on behalf of employees with the designated unions – as it is required by the current law to do, instead of having bargained with a particular employer. So, for example, if the UA has a long standing contract bargained with a representative employer organization of which Green Construction is a member, and the UA has been bargaining in good faith with the REO as it is required to do, under Bill 80, Green Construction could say the UA has abandoned its responsibilities and apply to have the UA decertified. All because Bill 80 changes the rules retroactively and asks the Labour Relations Board to specifically ignore the nature of the construction industry and the legislative requirement on unions to bargain with REOs, not individual contractors.

Changing the rules by which we govern our relationships after the fact is a power very rarely used by governments and should be only be used to correct a significant injustice.

The fact that many of these contractors have had active, stable and productive relationships with their certified unions over the most recent 15 years suggest there is no injustice to correct.

Another interesting point I would like to raise is that the abandonment provisions in Bill 80 will apply only to construction certifications under the “old system” – that is the system of relationships between unions and unionized employers that existed since 1992 under the Construction Industry Labour Relations Act. New employer driven unions won’t have to worry about charges of abandonment because the abandonment provisions of Bill 80 won’t apply to them.

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

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

The government has said that the Bill 80 amendments are necessary to make the construction industry more competitive. That’s not my opinion, but if you take the government at its word, then contractors in the new system proposed by Bill 80 will be more competitive – ie. able to bid on and win more contracts – than contractors who continue to operate under the old system. If this is the case, then contractors under the old system – Saskatchewan-based contractors with Saskatchewan workers – will be at a competitive disadvantage compared to out-of-province contractors with out of province workers. In essence, the government will place Saskatchewan firms and Saskatchewan workers at a disadvantage compared to their out of province competitors.

That is bad enough, but it appears in an attempt to remedy that situation, the government has given local contractors a way out of their certifications through Bill 80’s abandonment provisions so that they can compete on a level playing field with their out of province competitors.

As I said previously, the abandonment provisions built into Bill 80 are a very radical change to the system of construction labour relations and are targeted at the

construction sector alone. Curiously the abandonment provisions deemed so necessary in the construction sector are not required in any other sector. We note that no similar changes were proposed to be included in The Trade Union Act when significant amendments were made in 2007 to the union certification process.

## Conclusion

To conclude, I would like to reiterate three points, and make a suggestion as to where to go from here.

**First**, the construction industry in Saskatchewan is very strong. Building permits, employment levels and apprenticeship are all up. The system is not broken. The government doesn't need to fix it.

**Second**, although the government has said that the issue of employee choice is at the forefront of their reasons for introducing this legislation, in fact the only additional choice provided is to employers. The democratic thing to do here would be to talk to the working men and women of Saskatchewan, and not just to the Christian Labour Association of Canada and the Progressive Contractors of Alberta, whose head, by the way, is a former long term CLAC staffer.

**Third**, the abandonment provisions of Bill 80 are radical and will allow employers that wish to do so to shed their union certification, conceivably against the will of its workers. To retroactively change the rules governing abandonment is at odds with the principles of good government.

**Finally**, I'd like to end with a suggestion of where to go from here and to reiterate an offer that I made at the start of this presentation. The government needs to give a comprehensive re-think to Bill 80. The Saskatchewan Provincial Building and Construction Trades Council and our affiliate unions are ready, willing and able to work with business and government to make an effective system work better. When I said that Saskatchewan works best when business, labour and government work together, I meant it. We are not afraid of change, and we are not unwilling to create new and valuable ways of doing things. We like it when employers thrive, because when employers thrive, our members benefit.

But let us not risk the stability of the system. We need to consider very carefully the implications of shaking up this system. To quote Alberta Venture magazine – that province’s most widely read business magazine, the Christian Labour Association of Canada has caused “...so much controversy in Fort McMurray that it has sparked fist fights and rallies by rival tradespeople who take union affiliations so seriously they wear their opposition to CLAC on T-shirts and hard hats.”<sup>3</sup> That is the kind of disruption that we can do without. We should be spending our energies on building the infrastructure that will grow our economy.

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

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<sup>3</sup> Alberta Venture.com: <http://www.albertaventure.com/?p=1923>, May 2008