

**The Saskatchewan  
Employment Code –**

**Taking the  
Low Road  
to Growth?**



## Introduction

The Government of Saskatchewan has released the results of its 90-day consultation on a new Saskatchewan Employment Code. The Saskatchewan Building Trades have reviewed the submissions from Saskatchewan businesses and are very concerned that the submissions will significantly shape government's direction. If implemented, the suggestions from Saskatchewan businesses and business organizations will result in right to work legislation that will weaken unions and put downward pressure on the wages of working men and women.

In this document, we review, summarize and analyze the positions of businesses in the construction industry with respect to a Saskatchewan Employment Code. Many of the positions taken by Saskatchewan business are justified by the need to be competitive with other Canadian jurisdictions and help employers address a tight labour market. The Building Trades share concerns about competitiveness and the labour market but do not believe that the strategies advocated by the business community will solve labour market shortages. Saskatchewan is facing a variety of challenges in ensuring we have the right workers with the right skills at the right time to perform the work that is fundamental to the well-being of our economy. Unfortunately for us all, the Saskatchewan Employment Code will not solve those problems.

Taken together, the suggestions of Saskatchewan businesses and business organizations form a **Low Road to Growth** through reduced wages, fewer worker rights and benefits and greater freedoms to allow employers to dictate the terms of employment. We urge the Government of Saskatchewan to reject the notion that economic prosperity can be created by reducing benefits to workers. Instead, we suggest the government articulate a high road to growth through greater productivity and expanded training opportunities to enable all Saskatchewan people, including First Nations and women, to work in the trades.

## Who Responded? Did the Process Work?

The Saskatchewan Building Trades raised concerns in its submission with the government's consultation process and the timelines. So did many other organizations. When releasing the submissions, the government used the numbers of submissions as a justification of the process. We believe the government has overstated the results of the consultation. The numbers demonstrate our concern.

Forty labour organizations responded, 13 professional or special interest organizations responded and 16 public sector organizations provided their perspectives. 2,186 businesses responded – of note, however, only 48 of the business responses were from identified companies, while 2,137 were from businesses whose names were redacted by the government and who simply completed a form letter supplied by the Canadian Federation of Businesses, the small business advocacy group.

Of the almost 1,600 individuals who responded, 1,201 were form letters as opposed to distinct submissions. Only 392 people submitted individualized responses.

## What Does Business Want?

A number of themes run through the submissions from Saskatchewan's businesses. Many share the concern of the Saskatchewan Building Trades about the potential dampening effect of labour shortages on the province's ability to take advantage of the world's demand for our resources.

But other commentary from some provincial businesses is of great concern to the Building Trades. This community appears to suggest that the best way to respond to labour shortages and competition for labour from Alberta and the rest of Canada is by adopting a lower standard of protection and compensation in our workplaces.

**The Saskatchewan Building Trades are proud to work with and provide value to businesses in Saskatchewan – we understand that our members work and prosper when our contractors and owners work and prosper.** But we believe our highly skilled and productive membership deserves to participate with our employers in the current good times. During less prosperous times, our members are forced to leave their families, homes and friends to find work in other jurisdictions. Like our employers, our members accept the risk of bad times – and we believe we should share in the benefits of good times along with business owners.

Let's take a look at the comments of the business community. They support right to work legislation by allowing individuals to opt out of paying union dues, they support weakening the foundation of unions and collective bargaining by increasing opportunities for companies to shed union certification, they support making it harder for unions to certify workplaces, and they believe workers should no longer be able to refuse to work overtime. All of these strategies are being advocated by businesses to decrease wages and benefits for the working men and women in the province. We believe that the cumulative impact of these policy positions, if adopted by the Saskatchewan government, will ensure the weakening and eventual demise of our unions and the important role we play in supplying labour to build Saskatchewan's economy.

## Taking the Low Road

It is clear that some businesses support efforts by the Government of Saskatchewan to weaken the foundation of organized labour in the province. Comments from businesses are targeted at implementing right to work legislation and at weakening the system that has successfully managed labour relations in the construction industry **since 1992 without a single strike.**

Saskatchewan businesses clearly support the right to work proposals of the government. Graham Construction is very clear about its position and right to work legislation:

*"Graham supports "right to work" legislation which recognizes an employee's right to work whether within or outside of a union setting."*

We note that calling organized attacks on unions as "right to work" has provided a convenient characterization.

Even the term "right to work" is a convenient characterization of a systematic attack on union members. It might be better labeled as "right to work for less" or "right to work longer hours, for less pay and benefits under worse conditions."

Although other employers are not as blatant as Graham Construction about their endorsement of so called "right to work" legislation, they clearly support the principles. Merit Contractors want *The Trade Union Act* amended to remove the section whereby a union can require (as part of a collective agreement) an individual to continue his or her membership in the union as a condition of employment. Arguably, this change is a first step in allowing individuals the right to work in a unionized workplace without joining or belonging to a union. Ledcor also advocates removing this provision. This company supports a fundamental principle of right to work legislation – each individual should be left to decide whether they join the union in their workplace.

Numbers of employers also advocate for changing the rules with regard to the payment of union dues, another feature of so-called “right to work” legislation. Ledcor believes that the right of unions to engage in activities like political action, currently guaranteed by the Supreme Court of Canada, is unsound. They believe unions should be prohibited from using dues for any action unrelated to collective bargaining, while employers and organizations representing employers are free to dedicate their resources in any way that they deem in the interest of their members.

One of those organizations, the Canadian Federation of Independent Businesses, recommends in favour of allowing unionized employees to opt out of the payment of union dues in relation to activities not related to collective bargaining. In our submission to government, we clearly outlined the Supreme Court of Canada’s position on this issue and put the government on notice that dramatic changes in this area would be considered unconstitutional.

In our submission to government, we drew attention to the proposals with regard to abandonment, voluntary recognition, as well as provisions dealing with successorship and common employers. We believed then, and we continue to believe, that such changes could extend the changes made to the industry through Bill 80 and continue the disturbing trend of allowing employers to shed union certifications with little or no regard to the interests of the working people.

Not surprisingly, many of the employers who submitted briefs support the government’s proposals and add to the problems. Merit Contractors and the Progressive Contractors want the rules relating to abandonment (already changed through Bill 80) to be further weakened so that a business who does not have employees for a three-year period is no longer bound by an existing certification order. This would allow a company to carry on business in Saskatchewan “without any employees” but subcontract for employees through what is called a “labour broker.” Because it has no employees of its own, the business would not be bound by existing certifications. This company would be further inoculated from union certification through changes to the common employer provisions so that a general contractor subcontracting work to a unionized company cannot be considered a common employer. The government also appears to be interested in allowing these concepts to apply to businesses and endeavours in Saskatchewan other than construction. Consider the implications for unionized health care workers currently employed in privately owned long-term care facilities. Employers in that sector could readily shed their unions (and thus collective agreements) after only three years of using a labour broker.

In addition to making changes to rid an employer of an existing certification, the Merit Contractors also want to make it harder to certify an employer by demanding a quorum of 75 per cent of those eligible to vote in favour of a certification. This proposal is offensive in that if implemented it would mean that the desire of a majority of employees to unionize (between 50 per cent plus one up to 75 per cent minus one) could be ignored. This falls well short of “fair and balanced.”

The litany of changes proposed by Saskatchewan business that the government appears willing to consider is almost too long to review. Businesses want open periods in collective agreements to be restricted to once every three years, limiting the opportunity for a legitimate review of the contract. In addition, decertification of an existing order would be simpler – in the case of a tie vote, the union would not have a majority and would be decertified. A further proposal recommends secondary picketing at sites other than the worksite to be prohibited. These changes, like the others described above, weaken unions and their ability to protect the interests of their members.

## Weaken the Regulation of the Labour Market

There is great support from a number of companies to change Saskatchewan's rules relating to working conditions and wages as a response to labour costs, shortages and competition. A labour market with minimal regulation is seen by employers as optimum.

The Progressive Contractors cite the need to "create economic advantage by ensuring cost certainty and labour stability." Ledcor Industries Inc. notes that:

*"Labour costs are the most variable aspect of a construction project and constitute the greatest risk element to a potential investor in terms of costs and completion schedules. Strategies that reduce these risks will increase Saskatchewan's competitive position."*

The "risk" in this formulation is actually the wages paid to employees. So reducing the "risk" may be the same as reducing wages. While there are ways to reduce labour costs without reducing wages, those generally fall into the category of productivity improvements realized through investments in training, capital investments such as machinery or technology, or process improvements. Legislative changes will not increase productivity. Important questions should be asked of the government before any changes are made to legislation. These questions include: **What are the strategies proposed by business and do they really address the concerns of labour costs and shortages or are they only about maximizing profits for the employers at the expense of employees?**

**The Construction Labour Relations Association of Saskatchewan, representing unionized contractors, advocates removing a worker's right to refuse overtime as a solution to worker shortages.** They state in their submission:

*"When it comes to overtime arrangements, the ability of the worker to refuse puts a significant portion of the employer's business in the worker's hands. In a tight labour market, where the employer is limited in their ability to source and staff all positions, being subject to the whim of the workers as to whether they want to work or not for a short-handed employer is troublesome."*

In the same vein, **BHP Billiton believes the appropriate response to worker shortages is to remove the employee's consent to work more than the maximum legislated hours of work per week** (currently set at 44 hours per week). The Construction Labour Relations Association believes that "if this legislated overtime restriction was to be removed then the free employment market would decide the right balance."

In fact, in a free marketplace, workers will choose whether or not to work overtime based on the wages they are offered for doing so. This is why overtime comes with a wage premium – to entice workers to work over and above a 44-hour work week.

There are two important considerations here. Firstly, if workers cannot refuse to work overtime, what grounds will they have to rightly ask for more money to work extra hours.

Secondly, **requiring** individuals to work more than 44 hours per week is clearly a major and fundamental change to accepted standards of employment in our society that runs counter to desires to improve work/family balance.

Changing notice requirements for employers and employees is also seen as a strategy for increasing competitiveness for the employer. **Ledcor suggests *The Labour Standards Act* be amended to allow the construction industry to provide a mere four hours notice to employees at the time of layoff and/or termination.** At the same time, this company expects an employee who is quitting to provide a minimum of two weeks written notice to their employer of their pending departure from employment.

This clearly does not fit the description of "fair and balanced."

The Saskatchewan Construction Association argues that layoff provisions should be amended to lessen the impact on employers “where the employee leaves one job and immediately obtains another job. In these cases, the employee should not be paid the entire amount required by the Act, given that they are gainfully employed in another job.” Some employers go on to suggest that the general employment rules requiring an employee to mitigate (i.e., find other work and reimburse his or her employer for any payment in lieu of the notice period) should be implemented. The Saskatchewan Building Trades do not support this position and believe that, in practice, it is almost unworkable.

The Merit Contractors Association and Ledcor want government to allow an employer to average a construction worker’s time over a two-week period, to avoid the payment of overtime until such time that the tradesperson has worked more than 80 hours in a two-week period. This change would allow the employer to legally schedule a worker for 60 hours in one week and 20 hours in the following week, all without incurring any overtime costs.

## What Do the Facts Tell Us?

### Labour Disruption

Arguably, the industrial construction industry is already stable – no strikes for 20 years. The Building Trades believe that provincial bargaining makes the single most important contribution to stability in this industry – under this system, if one trade goes on strike the strike extends to all the employers of that trade – which has served as a powerful deterrent to strikes. Unbelievably, the government questions the value of province-wide bargaining in its consultation paper. The Progressive Contractors support individual bargaining by each employer instead of by trade division – returning to the very practice that destabilized the industry in the 1980s.

### Wages

It is true that wages are up, a situation the Government of Saskatchewan heralded in a September 27, 2012, press release. The Minister of the Economy, Bill Boyd, trumpeted the following:

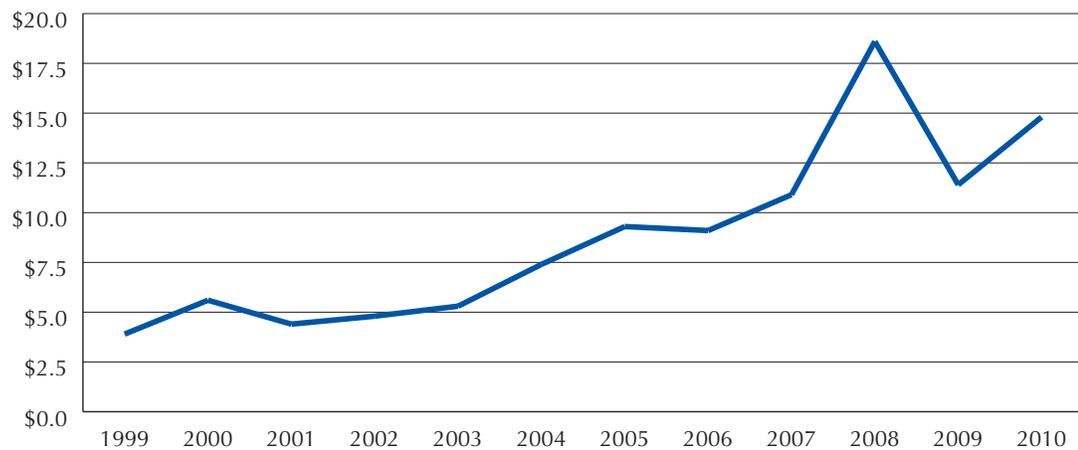
*"The skilled job opportunities available in our province are boosting wages for workers.... It has a direct impact on the economy and on the quality of life for people in Saskatchewan."*

Not surprisingly, given our resource-based economy, employment in construction leads year over year growth when compared to all other industries. According to an October 5, 2012, press release from the Government of Saskatchewan, there were an additional 6,500 people working in construction this September compared to the same time last year. Minister Boyd boasted:

*"These are strong job numbers to support our growing economy,... It looks like this year could be another record year that positions Saskatchewan as having one of the best economies in the nation."*

At the same time wages are up, corporate profits are at all-time highs. The resource boom has been enormously profitable for Saskatchewan business, growing from \$4 billion in 1999 to approximately \$9 billion in 2006, and to just under \$15 billion in 2010.

**Corporate Profits before Taxes (in billions), Saskatchewan**



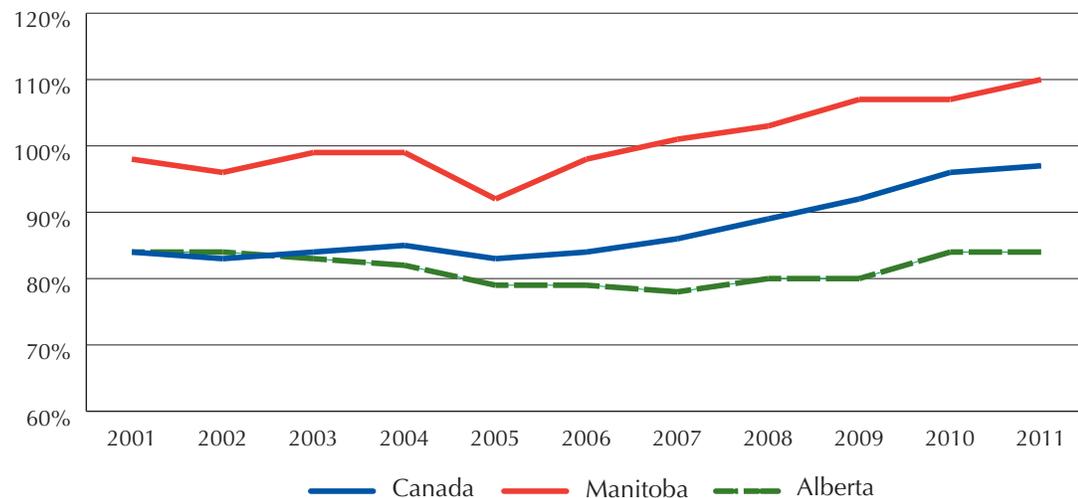
Source: Sask Trends Monitor; Statistics Canada data

The government acknowledges that non-residential construction is the best in Canada. In an October 17, 2012, press release, Economy Minister Bill Boyd heralds growth of 34.5 per cent in industrial projects in the third quarter of 2012 compared to the same period last year, 27.7 per cent in commercial projects and 27.5 in institutional projects.

The business submissions suggest that construction wages in Saskatchewan are too high and that lowering wages will somehow increase the supply of labour, thereby addressing labour shortages.

In fact, despite the improvements in wages noted by the Government of Saskatchewan, wages in the construction industry in Saskatchewan have not changed in relation to wages in Alberta between 2001 and 2011. The following graph shows Saskatchewan construction wages as a percentage of wages paid nationally, in Manitoba and in Alberta. The data indicates that Saskatchewan wages have increased as a percentage of national wages, to the point where they are almost equal and have surpassed Manitoba's wages. Interestingly, however, Saskatchewan's wages measured as a percentage of Alberta's wages are the same in 2001 as they were in 2011, at 84 per cent.

**Average Hourly Wage Rates, Saskatchewan, as a Percentage of Canada, Manitoba and Alberta, 2001 to 2011**



Source: Sask Trends Monitor from Statistics Canada Labour Force Survey

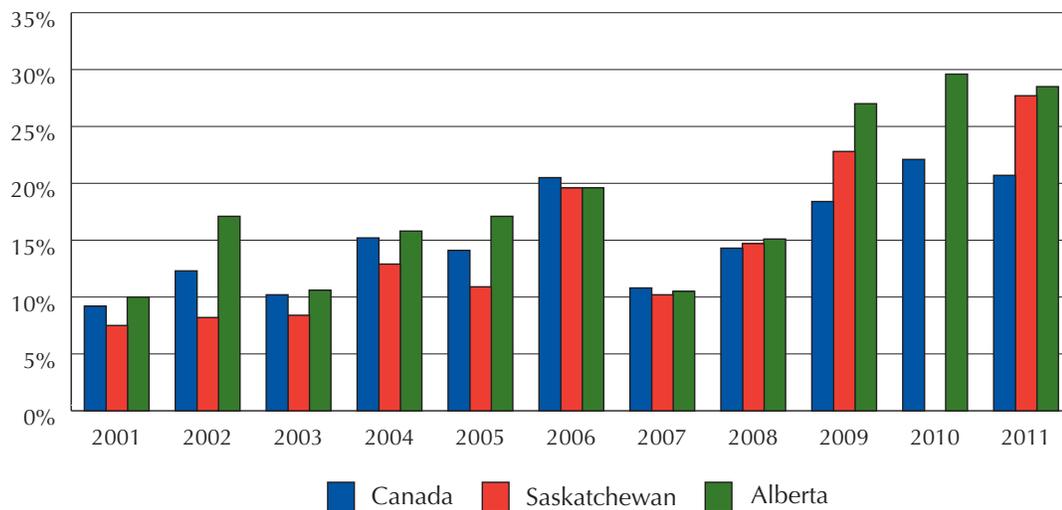
This picture is not surprising given that the labour market is national, particularly in the case of construction where travellers come from other provinces to work. To compete for labour, our wages increased to national levels and, in the case of Manitoba, surpassed them. But our competition for labour has always been and will continue to be Alberta. Believing that a lower wages rate will increase the supply of labour is, at best, magical thinking. Higher wages in Alberta will continue to attract construction workers to Alberta at the cost of Saskatchewan business.

A report by the Conference Board of Canada released on October 25, 2012, *Compensation Planning Outlook 2013*, confirms that Alberta and Saskatchewan will suffer from the most acute labour shortages, particularly in the resource sector. The report indicates that employers will have to offer the highest base pay raises in order to compete for workers.

Business also seems to believe that legislative changes allowing employers to work their employees for longer hours will solve labour shortages in construction. We do not support this notion as our members are already working significant hours of overtime. Anecdotally, we know that many industrial construction workers are accepting overtime hours because the projects require it. They recognize that our industry is cyclical and when there is work they must take advantage of the opportunity.

The chart below demonstrates that Saskatchewan and Alberta workers are both working significantly more hours of overtime in the last 10 years, measured as a percentage of payroll. In fact, in 2011, Saskatchewan and Alberta workers were working at comparable rates. Simply put, there are not many more hours that can be wrung from workers. As the chart below shows, almost one-third of wages for construction workers in Alberta and Saskatchewan are composed of overtime that is the highest for Saskatchewan workers in the last decade and three times higher than 10 years ago.

**Per Cent of Weekly Earnings in Construction Composed of Overtime**



*Source: Sask Trends Monitor from Statistics Canada Survey of Employment, Payroll, and Hours. Manitoba has not been included because of small sample size; 2010 data for Saskatchewan not included because of small sample size.*

The idea that changing the rules governing overtime will somehow address the labour shortages in construction is more magical thinking. Workers are already working overtime in significant numbers. We believe the real interest of business in regard to overtime is to reduce the point at which an employer incurs overtime, thus reducing their wage costs.

## Conclusion

The Saskatchewan Building Trades believe there is a real opportunity for the government to show leadership and chart a high road to growth for Saskatchewan. The Premier's recent announcement of the *Saskatchewan Plan for Growth* suggests that the government may be interested in putting forward a thoughtful plan to meet the needs of Saskatchewan people and businesses and taking a high road to growth.

As the *Saskatchewan Plan for Growth* states, "The purpose of growth is to secure a better quality of life for all Saskatchewan people."

We agree. And we submit that the objective of redesigned labour legislation ought to do the very same thing: to make work experiences **better** for Saskatchewan people, not to pay them lower wages, make them work longer hours without getting overtime pay, or hobble the unions that represent them in the workplace.

Saskatchewan is at a historic point. The decisions the Government of Saskatchewan makes now will determine what kind of Saskatchewan we will have in the future. Our government can leverage our impressive economic growth to make meaningful investments in Saskatchewan people. In the case of the construction industry, this means investments in the education and skills of those working in our industry and those who could make construction a meaningful career.

We do not believe that drastic changes to labour legislation should be part of this plan. Dramatic legislative changes will not address the real issues of national labour shortages and competition for workers. Nor will it help future Saskatchewan workers – especially among First Nations and Métis youth – gain the skills they need to succeed. The Premier's new population and growth plan means that 60,000 more workers will be in the province by 2020. Investment in training at SIAST and the Apprenticeship Commission, both capital and operating funds, will be needed to meet the province's new targets. Government needs to take these issues as their real priority and respond with a full labour market plan and budget strategy in this legislative session. Promises of new training seats without a concrete plan to address space shortages at SIAST will not be sufficient.

We believe that the government must resist the ideological temptation offered by some Saskatchewan businesses to implement right to work legislation in our province. This would be an unwarranted attack on unionized workers, some of whom voted for this government. Instead, we urge the government to identify and implement practical solutions to labour market problems that will benefit Saskatchewan workers and employers alike.