



CANADIAN FEDERATION OF
INDEPENDENT BUSINESS

101, 2400 College Avenue
Regina, Saskatchewan S4P 1C8
Telephone: (306) 757-0000
Fax: (306) 359-7623

**100,000 members strong
.....and growing**

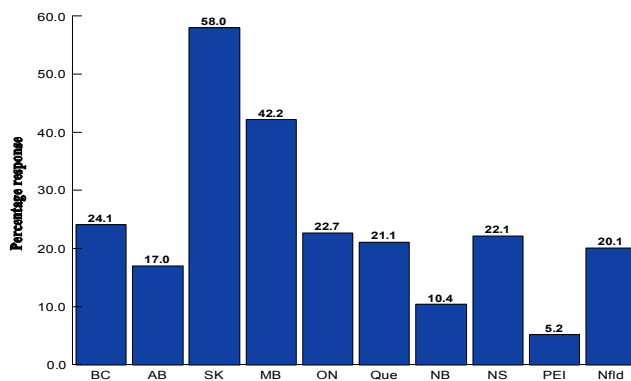
April 25, 2005

Hon. Deb Higgins
Minister of Labour
Room 306, Legislative Building
Regina, Saskatchewan
S4S 0B3

Dear Minister Higgins:

On behalf of the Canadian Federation of Independent Business (CFIB) and our 5,250 small- and medium-sized business owners in Saskatchewan, I am writing to follow up to your recent request to provide comment on *The Labour Standards Amendment Act, 2004* and *The Trade Union Amendment Act, 2004*. CFIB's concerns with Bills 86 & 87 have been very clear from the beginning. As you will recall, CFIB as a member of the Saskatchewan Business Council (SBC), issued a news release on December 10th, 2004 calling on the government to not reintroduce these Bills.

**Figure 1:
Sask's Concern Over Provincial Labour Laws
is Highest in Canada**



Source: CFIB Our Members' Opinion Survey No. 55
(January 2005)

Saskatchewan members is provincial labour laws, which has increased from 40.3 to 58 per cent (see Figure 1). In fact, recent survey data reveals that concern over labour laws is higher in Saskatchewan than any other Canadian province. Many local and national firms do not view Saskatchewan as "*open for business*" from a labour legislation perspective. When surveyed, over 49 per cent of CFIB members and over 45 per cent of the general public agreed that more balanced labour laws should be a

While the government's message continues to be promoting the "*Future is Wide Open!*", your plans to proceed with Bills 86 & 87 suggest the contrary. It is our fear that if your government proceeds with Bills 86 & 87, you will undoubtedly confirm Saskatchewan's reputation as an anti-business jurisdiction. CFIB believes the government should focus more of its energy on how to make Saskatchewan more competitive and job-friendly.

One of the fastest growing issues since 2000 among CFIB's

priority for the Saskatchewan government in the next five years. On the issue of their overall view of Saskatchewan labour laws, over 77 per cent of business owners said they viewed Saskatchewan labour laws as too pro-labour/union. Almost a third of the general public said they also believed Saskatchewan's labour laws are too pro-labour/union.

CFIB sees no demonstrated need for the changes proposed in Bills 86 & 87. It is unclear what problems the government is trying to fix.

Bill 86 – Amendments to *The Labour Standards Act*: These amendments would provide the Director of Labour Standards with the legal authority to enforce this section directly. The Director of Labour Standards would be given the authority to determine whether there has been a breach of the provision, including the ability to order the reinstatement of the employee and compensation for lost wages. There is then, an appeal to an adjudicator named under the Act. **Concerns:** CFIB's main concern is that the amendment is unnecessary. The Minister of Labour has publicly stated that the existing whistleblower protections in the legislation already provide the best protection in Canada for employees. There are concerns that the amendments would provide excessive authority in the hands of a government employee and the Director of Labour Standards. Also the adjudicators, under the appeal process, lack expertise or independence.

Bill 87 – Amendments to *The Trade Union Act*: In terms of process, CFIB believes it would be beneficial if each of the Sections and the need for the amendments could be explained in terms of what cases have led to the need for the changes, and what is the intended impact that the changes will have on the labour relations system in the province. At a minimum, the government should explain the system that they intend to create and how that will improve the performance of the Labour Relations Board (LRB).

CFIB has said for quite some time that we need to create a more balanced climate at the LRB. In fact, when surveyed, more than 50 per cent of our members who have dealt with the Board believe they did not have a fair opportunity to present their information. In our view, there is presently a lack of confidence in the Board from a business perspective. You cannot get confidence in a system that is not viewed as fair by making the rules worse. This is not conducive to a healthy labour relations system in Saskatchewan.

Under section 4.3(1) – the term of a member is proposed to be extended if the member's term expires before proceedings are completed if they have begun to hear a case. **Concerns:** There are a number of reasons why the legislation should not change. In labour relations, matters must be decided quickly in order that the parties can get on with their lives. If the members, by being negligent, in the performance of their duties can continue with salary and commitment, this would be counterproductive to labour relations matters.

Section 17 amendments are extremely difficult to understand. Why does the government feel that the Chairperson of the LRB, rather than the government, would make regulations regarding the LRB? Our greatest concern is that the rules may become so rigid with regard to conducting hearings before the LRB that only lawyers who are experts in labour law would be able to appear before the Board.

Section 18 – “Procedural powers of Board”. Our concern is that what is being created are substantial intrusive powers of the Board that are detrimental both to employees and employers conducting business in Saskatchewan. The following is a brief outline of our concerns.

- Section 18(a) – which incorporates the *Canada Labour Code* - fails to comprehend and understand that the *Canada Labour Code* applies generally to sophisticated large employers throughout Canada. The parties should be able to attend before and have a hearing at which they explain their case. It should be accessible to non-sophisticated persons who wish to appear, whether they are union or management. A rigid set of rules requiring specific procedures to be followed are not conducive to a concept of a fair hearing.
- Section 18(b) – is a Section that prescribes rigid rules to be followed before you can be heard at the LRB. Labour law in general is designed to allow the parties to have a hearing without formalistic or rigid rules. This amendment would allow the Board to refuse to hear from a party if rigid rules were not followed.
- Section 18(c) – our concern is with the removal of a specific right to apply to the LRB for an order. The government needs to explain the need for this section. Employers and trade unions should never effectively be barred from making applications to the LRB.
- Section 18(f), (g), and (h), – it is apparent that the LRB wants the power on their own to enter into premises and inspect, view work, material, machinery, appliances, articles, records or documents and question any person.
Concerns: This would give a great deal of power to the LRB to go in themselves or to appoint any person to do any of the things mentioned. The powers given are generally given to police and safety offence regulators to be used in limited circumstances. There should be no need for an adjudicative body to have such powers. In this time of privacy and *Charter Rights*, it is unfair to give the LRB or anyone it wishes to appoint the power to enter premises, view private records or question anyone. The government needs to get the confidence back into the LRB and create rules that are more balanced, not creating more powers for the LRB.

Section 18.1 – The amendments would provide the members of the LRB the same privileges and immunities as a judge of the Court of Queen’s Bench. **Concerns:** The government needs to explain why the LRB require these powers, and where in other jurisdictions this exists. No Section 18.1 amendments should be allowed unless a process is begun by removing all of those who are on the LRB and reappointment through another method with rigid rules as to how both the appointments are made and the removal of those people are done.

Section 26.5 amendments would have the first contract imposed in all cases. **Concerns:** Labour law practitioners can tell you that to have bargaining within 20 days after an order is made and to achieve a contract within 90 days is unrealistic. This is unduly restrictive timeframe. Often it takes 1 or 2 months from certification to schedule bargaining dates to accommodate the schedule of both involved. CFIB believes these amendments defeat the whole purpose of collective bargaining. Labour relations must be balanced and must encourage the parties to reach their own agreement. Imposed agreements have never been viewed in Canadian labour relations law as a reasonable solution.

In conclusion:

- Saskatchewan's existing whistleblower protections already provide the best protection in Canada for employees. CFIB believes the proposed amendments in Bill 86 are unnecessary.
- Allowing members to extend their terms by simply being negligent in the performance of their duties, or taking on a large number of cases right at the end of their term, is not conducive to the system.
- Creating rigid procedural rules and disallowing employees from making applications to the LRB is not conducive to a good labour relations system.
- Providing extensive powers to the Board and any agent they wish to appoint does not create a more balanced LRB.
- Having Board imposed contracts on the parties 90 days after certification is not conducive to a healthy labour relations system in the province as it will not encourage bargaining. This is especially the case if the employers feel that the contracts imposed favour the unions.

It should be noted that these amendments fail to address many employer concerns such as the need for a secret ballot vote in all union certification attempts, employer free speech, and the need for a more balanced climate at the Labour Relations Board. We therefore recommend the government abandon Bills 86 & 87 in favour of an agenda of economic development and growth.

I trust you will seriously consider our members' views. If you or your staff has any questions, please call our office at (306) 757-0000.

Sincerely,

ORIGINAL SIGNED BY:

Marilyn Braun-Pollon

Marilyn Braun-Pollon

Director, Provincial Affairs, Saskatchewan

cc: Hon. Lorne Calvert, Premier of Saskatchewan
Mr. Dan Perrins, Deputy Minister to the Premier
Mr. Bill Craik, Deputy Minister of Labour
Mr. Brad Wall, Leader of the Official Opposition
Mr. Ken Krawetz, Labour Critic